



TO: HONORABLE KEVIN J. MOYNIHAN

FROM: IRA W. BLOOM, TOWN ATTORNEY

DATE: OCTOBER 14, 2022

RE: CELL TOWER PROPOSAL

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You have asked me to advise on the process that the town bodies (Board of Selectmen, Town Council, and Planning & Zoning Commission) should follow in reviewing the proposal by Homeland Towers and Verizon to locate a cell tower at the town-owned 47-acre property at 769 Ponus Ridge Road. I understand that the first 6 acres (approximately) of the property easterly from Ponus Ridge Road is occupied by West School and related parking lots and playground. The balance of the 47 acres is forested except for an Aquarion water tank amidst trees approximately 400 feet behind West School. The proposed tower would be located approximately 1000 feet behind the West School building in the middle of the forested area with access either from an extension of an existing driveway behind West School to the Aquarion water tank or from the Northerly frontage of the forested property at the end of the cul-de-sac of the adjacent Windfield Lane.

I have reviewed the relevant Planning and Zoning telecommunication regulation (Regulations), Section 7.8, along with its history. I have also reviewed applicable statutes and local ordinances to outline the full process set forth below. In examining Section 7.8, a threshold question arose as to whether Homeland Towers, as a private tower construction company, along with Verizon, a telecommunications provider, are required to obtain a special permit approval from the Planning & Zoning Commission (P&Z) for this proposed West tower. The answer is no. The jurisdictional authority of such a telecommunication tower, whether on town property or private property, is with the Connecticut Siting Council (CSC).

In fact, a full reading of Section 7.8 supports this conclusion. The relevant subsection is 7.8F, Antennae Regulated by State Authorities (State). Subsection F.1. acknowledges that the CSC has jurisdiction over "telecommunications towers...owned or operated by...a...certified telecommunications provider or used in a cellular system." Verizon is such a provider. Thus, the Regulations themselves acknowledge the exclusive jurisdiction of the CSC. However, as explained below, the P&Z, is not bypassed in this process. It retains both the Conn. Gen. Stat.

Section 8-24 review and a review during the Municipal Consultation Process during the CSC application.<sup>1</sup>

Accordingly, for the proposed West tower, the procedure would be as follows in this recommended order:

1. Conn. Gen. Stat. Section 8-24 review by the P&Z: This statutory review of the proposed improvement and lease is held before the P&Z. The overall standard is whether the proposal is consistent with the Plan of Conservation and Development (POCD). After a public meeting, the P&Z will issue either a positive or negative report on the proposal. A negative report can be appealed to the Town Council.
2. Town Council review: In addition to a possible Conn. Gen. Stat. Sec. 8-24 appeal, the Town Council will hold a public meeting to review this project under Town Code Section 10 ("improvement" to town property; the so-called "Bach" amendment). In addition, a Town Council public hearing is required under Conn. Gen. Stat. Sec. 7-163e.
3. Board of Selectmen: The Board of Selectmen will review and vote on a proposed lease between Homeland Towers and the town. It should be noted that since this is a lease of municipal property, the town can add provisions to the lease itself, including P&Z recommendations (see 4. below).

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<sup>1</sup> Section 7.8 E.3 provides that a "new antenna *and/or tower*" [emphasis added] located on property owned by the Town is also subject to a Special Permit from the P&Z. On its face, this contradicts Section 7.8 F.1., which grants jurisdiction for certain towers to the CSC. After reviewing the video of the original 2018 P&Z meeting on this regulation and reviewing drafts of this regulation, it appears that the words "*and/or tower*" were added to Subsection E.3. during the discussion on this regulation. Those words did not appear in the original regulation.

In retrospect, the addition of the words "and/or tower" to Subsection E.3. was an error, since it directly contradicts established Connecticut law, accurately stated in Subsection F.1., that towers which are operated by telecommunication providers and are part of a cellular system are under the exclusive jurisdiction of the CSC. In a recent conversation, Glenn Chalder, of Planimetrics, the Town's consultant who drafted the regulation, confirmed this conclusion. Mr. Chalder indicated that the original intent of the regulation was to create distinct categories of towers so that there would be no overlap of regulatory authority, and that, in hindsight, the inclusion of those additional words in Subsection E.3, "and/or tower," conflicts with that original intent. Mr. Chalder concurs that the original intent would mean that the proposed West tower would proceed to the CSC only and no Special Permit would be required, per Connecticut law. Mr. Chalder further noted that, since the CSC has exclusive jurisdiction, any P&Z denial would have no force or effect.

4. Second P&Z review: As part of the required CSC “Municipal Consultation” process, the P&Z would evaluate the details of the project as presented to the CSC and make recommendations. These recommendations may be presented to the Board of Selectmen to be incorporated into the lease between the town and Homeland Towers. If incorporated, they will be binding upon the parties as a contractual commitment

The above procedure achieves several goals: 1) compliance with the law; 2) full opportunity for public input; 3) decisions by elected local officials; and 4) P&Z input at two levels.

cc: John Goodwin  
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