

VILLAGE OF MONTEBELLO  
STATE OF NEW YORK

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In the Matter of the Application of

**Homeland Towers LLC and Verizon Wireless**

For A Wireless Telecommunicaions Facility

Premises: 350 Haverstraw Road  
Montebello NY, 10901

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**MEMORANDUM IN OPPOSITION**

Respectfully submitted,

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## Preliminary Statement

Homeland Towers, LLC (hereinafter “Homeland”) and Verizon Wireless (hereinafter “Verizon”), together referred to as “Applicants,” have filed an application with the Village of Montebello seeking a Monroe balancing determination to install a 110-foot (11-story) monopole at 350 Haverstraw Road, Montebello, New York.

The proposed site is zoned Open Space-Recreational. An eleven (11) story monopole will loom over the site, be visible from multiple areas, and will forever change the scenic view. It is incompatible with the nearby homes and the surrounding community. It will “stick out like a sore thumb,” rising well above all existing structures, trees, and vegetation.

This community is not against all wireless facilities. It is against the irresponsible placement of cell towers, where the Applicants have not proven a need for the proposed tower, where construction of such a tower would have severe negative aesthetic consequences for the nearby residents, would cause a significant reduction of property values, would pose a dangerous precedent, and would forever change the skyline of Montebello.

This memorandum in opposition is being submitted on behalf of homeowners and residents whose homes are adjacent to or in close proximity to the site for the Applicants’ proposed cell tower.

As discussed more fully below, approving the Applicants’ proposed cell tower not only violates applicable Village of Montebello zoning regulations but also violates the Legislative intent underlying these regulations. Furthermore, it would also inflict upon the nearby homes and the surrounding community the exact types of adverse impacts these zoning regulations are designed to prevent.

It should also be noted that Homeland Towers is a *site development company* and does not provide wireless services. It does not need the proposed tower to provide those services. It requires the tower to generate revenue. The only way to do that is to convince the appropriate board that there is a gap in wireless service and, therefore, a need for the tower.

In support of its application, the site developer has submitted factually baseless propagation maps and photo-simulations that are inherently defective.

Granting the application and allowing the irresponsible placement of such a facility would be further exacerbated by the fact, as addressed below, that the community would derive no benefit from the installation. Thus, the Board of Trustees should deny Homeland's application for the following reasons:

(a) Applicants have failed to establish that granting the application would be consistent with the requirements of the applicable zoning laws;

(b) granting the application would violate both the letter of the Village's Zoning Law and its legislative intent as well;

(c) the Applicants have failed to establish that the proposed facility:

(i) is *actually necessary* for the provision of personal wireless services within the Village, and

(ii) that it is necessary that the facility be built at the proposed site, and

(iii) that it is necessary that the facility be built at the proposed height.

(d) the irresponsible placement of the proposed facility would inflict upon the nearby homes and community the precise types of adverse impacts which the Zoning Law was designed to prevent; and

(e) the Applicants cannot establish that the denial of their application would constitute an

effective prohibition under the Telecommunications Act of 1996.

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As such, it is respectfully submitted that the application should be denied and done so in a manner consistent with the requirements of the Telecommunications Act of 1996 (“TCA”).

## POINT I

### The *Monroe* Balancing Test Does Not Apply to the Applicants in Their Pursuit of a Communications Tower at 350 Haverstraw Road

Multiple federal lawsuits have been filed due to a disturbing and increasingly common pattern across New York State. Cell tower development companies seeking to install highly intrusive towers in close proximity to residential neighborhoods, fully aware that adjacent property owners have the right to oppose such projects through established zoning procedures, have conspired with local government officials to intentionally circumvent those property owners’ rights to be heard at duly noticed public hearings before their local Zoning Boards of Appeal (“ZBA”). This case exemplifies that unlawful practice.

Under New York law, public hearings before a Zoning Board of Appeals constitute statutorily designated public forums for purposes of the First Amendment. These hearings are mandated to provide property owners who may be adversely affected by the granting of a variance with notice and a meaningful opportunity to voice objections. They exist to ensure that residents whose homes, safety, and property values may be impacted are afforded the opportunity to petition their government and exercise their right to free speech in opposition to proposed projects.

Here, Homeland Towers seeks to construct a massive eleven-story, 110-foot cell tower

mere feet from the homes of local residents. The tower's extraordinary height and proximity would not only violate multiple provisions of the Montebello Zoning Code but would also place homes squarely within the tower's fall zone in the event of a structural failure. In addition, the tower would expose those homes to the risk of ice fall and debris fall, while inflicting severe, unavoidable adverse aesthetic impacts on the surrounding residential neighborhood. Such impacts would foreseeably diminish the market value of homeowners' properties.

The Montebello Zoning Code contains multiple restrictions that prohibit this installation absent Homeland's application for, and receipt of, three separate variances from the Zoning Board of Appeals. Specifically, the proposed tower: (a) exceeds existing height limitations, requiring a height variance; (b) violates the minimum setback requirement; and (c) constitutes a use not permitted in the open space district at issue, thereby requiring a special use permit. Each of these variances may be granted only by the Planning Board, and/or the Zoning Board of Appeals and only after compliance with the procedures mandated by New York Town Law.

To obtain such variances, Homeland was required to file applications with the ZBA and the Planning Board, after which a public hearing must be held pursuant to statute. As a condition precedent to such a hearing, notice must be published to ensure that potentially affected property owners receive advance notice and a meaningful opportunity to appear and be heard. These procedural safeguards are not discretionary; they are mandated by state law to protect the rights of the public.

Knowing the dramatic adverse impacts the proposed tower would inflict and anticipating vigorous opposition from affected homeowners, Homeland and Verizon Wireless are conspiring with members of the Montebello Village Board of Trustees to deprive residents of their right to

be heard before the ZBA. Upon information and belief, Homeland and Verizon are urging the Board of Trustees to bypass the variance process by purporting to conduct what is known as a “Monroe Balancing Test” and to grant waivers from zoning requirements—authority the Board of Trustees does not possess.

A Monroe Balancing Test derives from a judicial decision resolving a conflict between two separate municipalities, in which a court weighed competing governmental interests. It does not empower a town board to override its own zoning code, nor does it apply where no inter-municipal conflict exists. Nevertheless, Homeland and Verizon are attempting to induce the Board of Trustees to assert authority it does not lawfully possess and to conduct its own purported balancing test in order to approve the tower and effectively grant zoning waivers and variances.

In doing so, the Board of Trustees will act *ultra vires*. It will not only intrude upon the ZBA’s exclusive statutory authority to hear and decide variance applications, but it will simultaneously deprive homeowners of their right to be heard in the statutorily designated public forum. A Board of Trustees cannot acquire powers it does not possess by invoking a “balancing test,” nor may it employ such a mechanism to extinguish constitutionally protected rights. Homeowners’ rights to speak at a duly noticed ZBA hearing and to petition the government for redress of grievances are protected by the First Amendment.

New York’s statutory framework reinforces this separation of authority. Under Town Law § 261, towns are empowered to enact zoning regulations governing land uses and structures. Town Law § 263 sets forth the legislative purposes underlying such regulations, including preventing incompatible land uses, limiting structure size and placement, protecting

property values, and safeguarding public safety.

State law strictly circumscribes the authority granted to towns by requiring the creation of a separate, independent Zoning Board of Appeals, vested with exclusive authority to grant variances. See N.Y. Town Law § 267(2). Applications for variances must be made to the ZBA, which is required under § 267-a(7) to hold a public hearing so that affected persons may be heard. Notice requirements under state law mandate publication to ensure meaningful public participation. ZBA members must complete annual training to balance competing interests competently, whereas Board of Trustees members—who lack the authority to grant variances—are not required to complete such training. Further reinforcing this separation of powers, Town Law § 267(3) prohibits Town Board members from serving on the ZBA.

Montebello complied with state law by establishing a ZBA vested with the authority to “hear and decide appeals and requests for variances” from the zoning code. The Town Board is expressly prohibited from granting variances for use, height, or area limitations. Thus, Homeland could not lawfully construct its proposed tower without first obtaining a use variance, a height variance, and an area variance from the ZBA.

Notwithstanding these clear statutory mandates, Homeland and its counsel, acting also on behalf of Verizon Wireless, are attempting to conspire with members of the Board of Trustees to circumvent the ZBA process entirely. These efforts included nonpublic communications on October 16, 2025, in which Homeland’s attorney explicitly requested that the Board conduct a Monroe Balancing Test for the purpose of granting an “immunity from the local zoning regulations.”

Through the coordinated actions described herein, the Applicants are attempting to

deliberately bypass mandatory zoning procedures, silence community input, and deprive residents of their constitutional right to be heard in the designated public forum. Their conduct violates both New York statutory law and the First Amendment to the United States Constitution and will directly cause injuries to nearby residents, thereby giving rise to a federal lawsuit.

## POINT II

### The Village of Montebello Has the Authority to Regulate Wireless Facilities, and the Power to Deny the Application Because it Fails to Comply with the Requirements of the Zoning Law of the Village of Montebello

#### A. Local Authority to Regulate Telecommunications Facilities

The proliferation of cell towers has prompted municipalities to enact legislation to regulate their construction. Although many site developers and cellular service providers will argue, or at the very least imply, that the Telecommunications Act of 1996 (TCA) prohibits local governments from regulating telecommunications facilities, this is simply untrue. The TCA, 47 U.S.C. §332(c)(7), specifically preserves local zoning authority. Subsection (A) provides for general authority:

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

While subsection §332(c)(7)(B) imposes certain procedural requirements on local governments when regulating wireless facilities, the fact remains that a municipality may restrict the placement, location, construction, and modification of wireless facilities within its

community through zoning regulations. See *T-Mobile South, LLC v. Roswell*, 135 S Ct 808 (2015); *Cellco Partnership v. Town of Clifton Park, NY*, 365 F.Supp. 248 (N.D.N.Y. 2019); *Primeco Personal Communications, Ltd. P'ship v City of Mequon*, 352 F.3d 1147 (7<sup>th</sup> Cir. 2003); *Eco-site, LLC v Town of Cedarburg*, 2019 WI App 42; *GTE Mobilnet of California Ltd. P'ship v City of Berkley*, 2023 WL 2648197 (D. N.D. CA 2023); *Petition of Cellco Partnership d/b/a Verizon Wireless*, 2022 WL 18825861 (N.H. 2022); *Colfaxnet LLC v City of Colfax*, 2020 WL 6544494 (E.D. CA 2020). “The TCA seeks to strike a balance between its goal of ‘encourage[ing] the rapid deployment of new telecommunications technologies’ without unduly encroaching on traditional local zoning authority.” *Primeco, supra*; *Eco-site, supra*; *New Cingular Wireless PCS LLC d/b/a AT&T Mobility v. Zoning Board of Adjustment of the Borough of North Haledon*, 469 F.Supp.3d 262 (D. N.J. 2020) citing *T-Mobile Ne. LLC v. City of Wilmington, Del.*, 913 F.3d 311 (3d Cir. 2019). “To this end, it ‘expressly preserves the traditional authority enjoyed by state and local government to regulate land use ....’” *Id.*, citing *APT Pittsburgh Ltd. P'ship v. Penn Twp. Butler Cty. of Pa.*, 196 F.3d 469 (3d Cir. 1999); *Extenet Systems, Inc. v. Township of North Bergen, New Jersey*, 2022 WL 1591398 (D.N.J. 2022).

Under the TCA, an application to erect a cell tower can – and should – be treated as a land use issue, to be decided by a municipality in its ordinary course of business, using the same considerations normally employed in a land use case.

Consistent with the intent of this federal law, informed local governments have enacted “Smart Planning Provisions,” which are local land use regulations designed to:

- (a) prevent an *unnecessary proliferation* of wireless facilities while
- (b) preventing, to the greatest extent possible, unnecessary adverse impacts upon residential homes and communities due to the irresponsible placement

of wireless facilities.

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As set forth below, Homeland/Verizon's application should be denied because granting the application would not only violate the requirements of the Zoning Law of the Village of Montebello, but it would inflict upon the nearby homes and the surrounding community the precise types of adverse impacts the relevant provisions of the Code were enacted to prevent.

#### B. Village Comprehensive Plan

A Village's Comprehensive Plan is the guideline for the enactment of zoning regulations. It sets forth the vision and goals the Village seeks to achieve through zoning and other land-use laws. New York State Law regulates the preparation of comprehensive plans. Section 7-722 of the Village Law describes a comprehensive plan as a document that will "identify the goals and objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development" of a village.

The Village of Montebello has established five (5) goals in its Comprehensive Plan:

- Goal 1: Maintain and enhance the existing natural and residential character of the Village of Montebello, exemplified by winding roads framed by mature trees, homes set apart, rock walls and hedges, and beautiful views of the mountains surrounding the Village.
- Goal 2: Preserve the critical environmental assets of the Village for the benefit of current and future citizens of Montebello.
- Goal 3: Create a greener community by becoming a Climate Smart Community to help mitigate climate change through carbon neutrality and employing more sustainable practices in connection with land use and development.
- Goal 4: Provide a more aesthetically enhanced, safe, and efficient access to and from the NYS Thruway as well as a traffic-calmed road network within the Village that maintains and enhances the existing beauty of the road edges, e.g., stone walls and mature trees.
- Goal 5: Promote quality economic development in the Village to improve Montebello's economy, increase its tax base, and create employment opportunities while maintaining and enhancing the Village's character and quality of life.

The proposed 110-foot cell tower at 350 Haverstraw Road is inconsistent with the Village of Montebello's adopted goals and should not be approved. Its height and industrial character would disrupt the Village's defining residential landscape of winding roads, mature trees, stone walls, and mountain views, contrary to Goal 1. The tower would intrude upon and potentially impact critical environmental assets, thereby undermining Goal 2, and does not advance the Village's Climate-Smart objectives or sustainable land-use vision under Goal 3. It would also degrade the scenic road corridor and Thruway approach, conflicting with Goal 4's emphasis on aesthetic and traffic-calmed design. Finally, by introducing a visually dominant structure into a residential area, the project risks harming property values and quality of life, which is contrary to Goal 5's mandate to promote economic development while preserving Village character.

#### C. Village Zoning Law and Purpose

To implement these goals and protect these interests, the Village has enacted specific zoning regulations.

##### (i) Intent and Purpose

The intent and purpose of the Village's Zoning Law is set forth in Article I as follows:

- The goals, objectives, policies, and vision statement expressed in the Village of Montebello Comprehensive Plan adopted by the Montebello Board of Trustees, as may be amended from time to time.
- The protection and enhancement of environmental, human, and community resources must be fully respected.
- The impacts of growth must be controlled to maintain the rural and semirural character of the Village consistent with the ability of the Village to provide facilities and services.

- Development should meet locally generated needs and should not adversely affect road patterns and community appearance.
- Public facilities and services must be planned and implemented consistent with the ability of the Village to fund such facilities and the needs of the community.
- A greater role for the public must be encouraged for policy and land use implementation.

(ii) Use Regulations

The Use Table organizes permitted land uses by zoning district, with columns identifying whether a use is permitted by right or requires special approval. Uses listed in Column B are permitted as of right, subject to applicable bulk and supplemental requirements. Uses in Columns C and D require special permit approval by the Planning Board or Village Board, respectively, and all special permit uses also require site development plan approval pursuant to Article IX. Any use not expressly identified in the Use Table is prohibited, and any use designated as requiring a special permit is prohibited absent such approval. Where uses are described generically, the Planning Board is authorized to determine whether a proposed use falls within that category based on comparable land use impacts.

The Use Table expressly provides that a transmission tower in the Open Space—Recreational District is permitted only upon issuance of a special use permit, together with site plan approval. Although the proposed structure may be characterized as a telecommunications tower rather than a traditional transmission tower, it is plainly most analogous in form and land-use impact. It must therefore be treated similarly under the Use Table, requiring a special permit and approval of a site development plan. These procedural safeguards cannot be circumvented through application of the Monroe balancing test, as the Zoning Code mandates compliance with its enumerated approval processes. Alternatively, if the applicant contends that a transmission

tower is distinct from a telecommunications tower, then the latter use, being absent from the Use Table for the district, is deemed prohibited, as any use not expressly identified is not permitted.

(iii) Bulk Requirements

While the proposed 110-foot cell tower may nominally satisfy the setback distances applicable to Use Group “a,” it plainly exceeds the maximum height permitted within that group, which is limited to 15 feet. The structure’s proposed height is therefore in direct conflict with the governing bulk regulations. Moreover, the distances to the property lines—88 feet to the north, 345 feet to the east, 67 feet to the south, and 50 feet to the west—demonstrate that, as discussed in section (vi) herein, the tower could fall beyond the property boundaries in the event of structural failure, creating an obvious safety hazard. The setback requirements of 60 feet, 30 feet, and 50 feet set forth in the table are premised on structures no taller than 15 feet; it is unreasonable to apply those same minimum setbacks to a structure exceeding 100 feet in height. Logically and from a safety perspective, a tower of this magnitude would require substantially greater setbacks. Accordingly, the application should be denied for failure to comply with the height limitations and the intended protective purpose of the setback requirements.

(iv) Site Plan Approval

In reviewing site development plans, the Planning Board must consider the public health, safety, and welfare, as well as the comfort and convenience of both the public and neighboring properties, and may impose appropriate conditions to advance the purposes of the chapter. Specifically, the Board evaluates whether traffic access is safe and properly designed; whether adequate off-street parking and internal circulation are provided; whether landscaping and

screening protect adjacent residential properties; whether signage, lighting, and building design are compatible and avoid a monolithic appearance; whether the project minimizes environmental impacts and preserves natural resources; and whether the overall site layout, infrastructure, and operational features avoid adversely affecting neighboring properties or the site's highest and best use.

A 110-foot cell tower does not satisfy the foregoing site development standards because it fails to promote compatibility, environmental harmony, and protection of neighboring properties. Such a structure is inherently incompatible in scale and visual impact with surrounding residential development, dominating the landscape rather than blending with it, and thereby undermining the objective that buildings, signs, and lighting remain in scale and not create a monolithic or intrusive appearance. The tower's height and industrial character cannot be effectively screened in all seasons, frustrating the requirement that service areas and similar facilities be reasonably buffered from adjacent residences and streets. Moreover, the construction of a substantial freestanding structure, together with associated equipment compounds, access drives, and utility installations, risks adverse environmental impacts and disturbance of natural resources, contrary to the mandate that development be in harmony with the natural environment. Finally, the presence of such a large and visually prominent installation may negatively affect the highest and best use and value of adjacent residential properties, thereby conflicting with the Planning Board's obligation to safeguard the public health, safety, welfare, and neighborhood character.

(v) Special Use Permit

Uses identified in Article III, § 195-9, Use Table, Column C, are permitted only upon the issuance of a special permit by the Planning Board, in accordance with the applicable procedures and standards set forth therein. Once approved, such uses are deemed permitted within the respective district, subject to any conditions imposed by the approval. Pursuant to the Municipal Home Rule Law, the Village Planning Board retains exclusive authority to grant special permits for uses designated in Column D of the Use Table. Because these uses present varied and potentially significant impacts on local land use, they are not susceptible to fixed standards or precise descriptions. In evaluating such applications, the Village Planning Board exercises its legislative discretion to ensure the protection of public health, safety, and welfare, and to promote the efficient use of the Village's environmental and land resources.

Before granting any special permit, the Planning Board must determine that the proposed use and development comply with the chapter's applicable conditions and standards, including those governing site development plans, and may adopt additional rules pursuant to Article XX. While certain uses are subject to specific minimum standards set forth elsewhere in the chapter, all special permits are also governed by general standards requiring that the use be appropriately located, sized, and designed so as to be harmonious with the orderly development of the district and not detrimental to adjacent properties. The use must ensure safe pedestrian and vehicular access, avoid hindering neighboring development through its height, layout, or landscaping, and not impose greater public service or fiscal burdens than uses permitted as of right. Special permits are further subject to conditions, including inspection rights, potential time limitations,

and any additional safeguards the Board deems necessary to protect public health, safety, and welfare and to advance the intent of the zoning chapter.

A 110-foot cell tower at 350 Haverstraw Road does not satisfy the governing special permit standards because it is neither harmonious with the orderly development of the district nor compatible with surrounding residential properties. The sheer height and industrial character of the structure are out of scale with nearby homes and natural features, undermining the neighborhood character and discouraging the appropriate use and development of adjacent lands. Its size and visual dominance cannot be adequately mitigated by landscaping or screening, and its proximity to property lines raises safety concerns regarding structural failure and fall zones. Moreover, the installation and maintenance of such a facility, together with associated equipment and access requirements, may impose impacts and burdens greater than those associated with uses permitted as of right. For these reasons, the proposed tower fails to meet the general standards required for special permit approval and should be denied.

(vi) Fall Zone, Structural Failure, Ice Fall, and Debris Fall

As mentioned, Homeland also fails to comply with the minimum setback distance to the property line.

There are three specific dangers associated with cell towers of the type proposed by Homeland, which routinely compel local governments to deny applications, where the proposed site for a tower lacks a sufficient fall zone or safe zone to protect the community from danger. The common rule of thumb is that such facilities are required to be sited with a minimum setback

of at least 110% of the height of the tower, to afford sufficient minimum protection to the surrounding communities.

The three well-documented dangers that necessitate such requirements are:

(1) structural failures, (2) ice fall, and (3) debris fall. Structural failure and debris fall may also result from fire, which poses an additional threat.

As proposed by Homeland, the subject tower is deficient in its safety zone by almost 60 feet on the west side. That means that should the tower fall, 60 feet of the tower, possibly a burning tower, would crash across the property line. This poses a significant, possibly deadly threat to anyone on the other side of the property line.

It also means that anyone on the other side of the property lines would be subject to the dangers of ice fall and debris fall. One of the most common dangers necessitating minimum setback and safety zone requirements is the danger of ice fall. In locales where ice can, and does, form on tall towers during the winter months, chunks of such ice are known to dislodge in the spring as they thaw, which then hurl to the ground at speeds as high as 70 miles per hour, thereby presenting a danger to anyone or anything below.

For example, for a simple 150-foot monopole cell tower, when chunks of ice dislodge from the equipment mounted near the top of the tower, by the time they reach the ground, they are traveling at a speed of sixty-seven miles (67) per hour, which is more than sufficient to kill or seriously injure anyone unfortunate enough to be struck by same. Annexed hereto as **Exhibit "A"** is an expert physicist's report detailing the calculated speed of ice falling from cell towers. Where the tower is *taller*, as the proposed wireless facility is, the danger is much worse.

To see vivid video examples of ice falling from towers smashing among cars in a parking lot, one can simply visit *YouTube* and perform a search for “ice falling from towers,” or one can watch specific YouTube videos of such at:

<https://www.youtube.com/watch?v=YWqiSHRwmk8;>

[https://www.youtube.com/watch?v=OoSxnIniFSs;](https://www.youtube.com/watch?v=OoSxnIniFSs) or

[https://www.youtube.com/watch?v=48UyQtYYuUM,](https://www.youtube.com/watch?v=48UyQtYYuUM)

Finally, mandatory minimum safe zone requirements are imposed by local governments across the nation because cell towers carry the ever-present additional danger of debris fall, where something merely disconnects, dislodges, or falls off of the structure or is simply dropped by a worker performing routine maintenance from the top of the tower, which occurs far more often than might be expected. Here, too, by the time the object reaches ground level, it is traveling at sufficient speed to kill or seriously injure anyone within the area.

These dangers are heightened in storm and high-wind conditions. Such strong winds not only dislodge ice and debris but can also force such ice and debris to travel far beyond a reduced safety zone. Furthermore, all these dangers will be multiplied when Homeland increases the height of the tower by up to 20 feet, as they are permitted to do *without any further input from the Town*. See below at POINT III.

Attached as **Exhibit “B”** are images of cell tower structural failures as well as tower fires.

For these reasons alone, Homeland’s application should be denied.

### POINT III

§6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow Verizon to Increase the Height of the Facility Without Further Zoning Approval

As substantial as the adverse impacts upon the nearby homes and community would be if the proposed cell tower were constructed at the 110 foot height currently proposed by the Applicants could subsequently unilaterally choose to increase the height of the tower to as much as *130 feet*, and the Village would be legally *prohibited* from stopping them from doing so, due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding section §704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and *shall approve*, any eligible request for a modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. § 1455(a).

Under the FCC's reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole, or tower. The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent of the height of the tower, *plus* the height of an additional antenna, *plus* a distance of ten (10) feet to separate a new antenna from the pre-existing top antenna, up to a maximum height increase of twenty (20) feet, potentially resulting in a 130-foot tower.

Considering the compounded substantial adverse impacts that increasing the height of

the cell tower would inflict upon the community, the application should be denied.

Once again, this is especially true since, as set forth in Point VI, subsection A below, Homeland/Verizon has not even established that the proposed 110-foot tower is actually needed to provide wireless coverage within the Village, let alone one that is 130 feet high.

#### POINT IV

##### The Proposed Eleven-Story Cell Tower Will Inflict Substantial, Wholly Unnecessary, Adverse Aesthetic Impacts Upon Nearby Homes and Surrounding Area

Being proposed for installation in the heart of a residential neighborhood, where no other structures stand more than two stories in height, and where no foliage would or could “camouflage” or “buffer” such a massive steel tower, it is beyond argument that the tower will not only stand out like a sore thumb, it will dominate the skyline in all directions, adversely impact the character of the neighborhood, and inflict dramatic adverse aesthetic impacts on the nearby homes.

As logic would dictate, the persons best suited to assess the nature and extent of the adverse aesthetic impacts that an irresponsibly placed cell tower would inflict upon homes in close proximity are the homeowners themselves.

Consistent with this logic, federal courts have recognized that when a local government is considering a wireless facility application, it should accept statements and letters from the actual homeowners as direct evidence of the adverse aesthetic impacts that a proposed facility would inflict upon nearby homes, since they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See, e.g., Omnipoint Communications Inc. v. The City*

*of White Plains*, 430 F.3d 529 (2d Cir. 2005).

Annexed collectively hereto as Exhibit “C” are letters from homeowners whose homes are situated in close proximity to the site upon which Homeland seeks to install its proposed cell tower. Each letter details, from a firsthand perspective, the actual adverse aesthetic impacts that the proposed facility would inflict upon their respective homes. They have provided compelling descriptions of the dramatic adverse impacts their properties would suffer if the proposed installation of a wireless telecommunication facility were permitted to proceed.

These letters convey first-person perspectives detailing the nature and extent of the adverse aesthetic impacts that their respective homes will suffer if the installation of the proposed fourteen-story tower is permitted.

Significantly, as is set forth herein below, all of the adverse aesthetic impacts the proposed wireless facility would inflict upon these homes are entirely unnecessary because Homeland has not demonstrated that: (a) there is any actual need for the proposed tower to be built, (b) it would need to be built at the proposed location as opposed to a less intrusive alternative location, or (c) it would need to be built at such a large height.

The specific and detailed impacts described by the adjacent and nearby property owners constitute “substantial evidence” of the adverse aesthetic impacts they stand to suffer because they are not limited to “generalized concerns.” These letters contain specific, detailed descriptions of how the proposed facility would dominate the views from within their homes and from virtually all perspectives of their properties. The adverse aesthetic impacts detailed in these letters are precisely the type of damaging impacts that the applicable provisions of the zoning code were specifically enacted to prevent.

Federal courts around the country have held that significant or unnecessary adverse aesthetic impacts, such as those detailed in these letters, constitute proper legal grounds for a local government to deny a zoning application seeking approval for the construction of a wireless telecommunication facility. *See, e.g., Omnipoint Communications Inc. v. The City of White Plains*, 430 F. 3d 529 (2nd Cir. 2005); *T-Mobile Northeast LLC v. The Town of Islip*, 893 F.Supp.2d 338 (2012); *Crown Castle NG E. Inc. v. Town of Greenburgh, N.Y.*, 552 F. App'x 47, 50 (2d Cir. 2014).

#### **POINT V**

##### **The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties**

In addition to adversely affecting the aesthetics and residential character of the neighborhood at issue, such an irresponsibly placed wireless facility in such close proximity to nearby residences would inflict upon those homes an adverse impact on the actual value of those residential properties.

As established by the evidence submitted herein, if Homeland is permitted to construct the proposed wireless facility in the middle of all the adjacent and nearby homes, it would inflict upon those homes losses in property value ranging from ten (10%) percent to as much as twenty-five (25%) percent.

Across the United States, real estate appraisers and real estate brokers have rendered professional opinions that simply support what common sense dictates.

When wireless facilities are installed unnecessarily close to residential homes, such homes suffer material losses in value, typically ranging from 15% to 20%, but up to 30% in

some cases. In the worst cases, facilities built near existing homes have rendered those homes wholly unsaleable.

Federal courts recognize that it is perfectly proper for a local zoning authority to consider as direct evidence of the reduction in property values that an irresponsibly placed wireless facility would inflict upon nearby homes, the professional opinions of licensed real estate brokers (as opposed to appraisers) who provide their professional opinions as to the adverse impact upon property values that the installation of the proposed wireless facility would cause. *See Omnipoint, supra*. This is especially true when they possess years of real estate sales experience within the community and the specific geographic area at issue.

As evidence of the adverse impact that the proposed facility would have upon the property values of the homes that would be adjacent and/or in close proximity to it, annexed hereto as Exhibit "D" are professional opinion letters from licensed real estate professionals familiar with the Montebello housing market, who prepared evaluations of the effects of a cell tower erected in the subject neighborhood. If the proposed tower is constructed where and as proposed, it will reduce the values of nearby homes by up to 20% and would make those homes less marketable, even at reduced purchase prices.

Based on the substantial adverse aesthetic and economic impacts the irresponsible placement of the proposed tower will inflict on the nearby homes and the surrounding community, Homeland should be prevented from constructing a cell tower at 350 Haverstraw Road.

## POINT VI

### The Application Fails to Present Sufficient Probative Evidence to Justify the Proposed Tower

This Memorandum in Opposition does not argue that there is seamless wireless coverage within the Village of Montebello. However, it is respectfully submitted that without the applicant providing any *actual data* to show where any gaps in Verizon's wireless service coverage actually are, it is impossible for the Village to determine whether the massive tower proposed by Homeland would remedy any such gaps, or to find that the proposed height for the tower is the minimum height necessary to remedy any purported gap as is explicitly required under the Code.

Furthermore, the submitted documents do not indicate the number of persons who would benefit from this tower. Homeland and Verizon would certainly benefit financially. The owner of the property where the tower is proposed to be installed would benefit from rental income. But how many people would benefit from better or increased service? Only Verizon customers would benefit, and perhaps not even all of them. There is no data on how many residents, commuters, or visitors would experience improved cellular service.

Any Board cannot make a well-reasoned decision when they have so little information on which to base it.

Homeland/Verizon have failed to proffer probative evidence to establish a need for the proposed tower at the height and location proposed, or that granting the application would be consistent with the "smart planning" requirements of the Village's Zoning Law. The clear intent behind the provisions of the zoning regulations is to promote the "smart planning" of wireless infrastructure within the Village. Smart planning involves the adoption and

enforcement of zoning provisions which require that cell towers be *strategically placed* so that they *minimize* the number of towers needed in the Village, while they saturate the Village with complete wireless coverage (that is, they leave no gaps in wireless service), while avoiding any unnecessary adverse aesthetic or other impacts upon protected scenic views and the community itself.

To enable them to determine if a proposed cell tower would be consistent with smart planning requirements, sophisticated zoning and planning boards require carriers and site developers to provide direct evidentiary proof of:

- (a) the precise locations, size, and extent of any geographic gaps in personal wireless services that are being provided by a specifically identified wireless carrier, which offers personal wireless services within the respective jurisdiction, and
- (b) the precise locations, size, and extent of any geographic areas within which the identified wireless carrier suffers from a capacity deficiency in its coverage.

The reason that local zoning boards invariably require such information is because without it, the Board is incapable of knowing: (a) if, and to what extent a proposed tower will remedy any *actual gaps* or deficiencies which may exist, (b) if the proposed height for a tower is the minimum height needed to remedy such gaps, and (c) if the proposed placement is in such a poor location that it would all but guarantee that more towers would be built because the proposed tower could not actually cover the gaps in service which actually existed, thereby causing an unnecessary redundancy in cell towers within the Village.

In the present case, Verizon has failed to provide adequate hard data to establish that the proposed placement of the facility would, in any way, be consistent with such smart planning

provisions. Therefore, it has failed to provide actual probative evidence to establish: (a) the *actual location* of gaps (or capacity deficiency) in personal wireless services within the Village and (b) why or how the proposed cell tower would be the best and/or least intrusive means of remedying those gaps.

A. Verizon Has Failed to Submit Sufficient Probative Evidence in Support of Its Alleged Need for The Proposed Tower at The Height and Location Proposed

(i) The Applicable Evidentiary Standard

To the extent that applicants hoping to build cell towers seek to have their applications reviewed under the “Public Necessity” standard established in *Consolidated Edison Co. v. Hoffman*, 43 N.Y.2d 598 (1978), the applicant must prove that the new cell tower it proposes is “a public necessity that is required to render safe and adequate service” and that there are compelling reasons why their proposed installation is more feasible than at other locations. *See T-Mobile Northeast LLC v. Town of Islip, supra.*

Within the context of zoning applications, such as the current application filed by Homeland, the applicant is required to prove:

- (1) that there are gaps in a specific wireless carrier’s service,
- (2) that the location of the proposed facility will remedy those gaps, and
- (3) that the facility presents a “minimal intrusion on the community.” *Id.*

It is critical that the Planning Board make factual determinations regarding these specific issues and that it deliver a written decision setting forth those determinations, citing the evidence on which it makes its factual determinations. In the absence of these components, any decision the Board ultimately makes could be readily challenged by the applicant.

The Court in the *T-Mobile* case stated that where a local zoning board denies a cell tower application, even if only “one reason given for the denial is based upon substantial evidence, the decision of the local zoning body cannot be disturbed [by a federal court]”. *T-Mobile Northeast LLC v. Town of Islip, supra*.

With respect to a “gap in service,” “where the holes in coverage are very limited in number or size... the lack of coverage likely will be *de minimis* so that denying applications to construct towers necessary to fill these holes will not amount to a prohibition of service.” *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999); *T-Mobile v Town of Islip, supra*.

Further, the Court in the *T-Mobile* case, *citing Willoth*, held that “the fact that T-Mobile may have a need for the Proposed Facility does not ‘trump all other important considerations, including the preservation of the autonomy of states and municipalities.’”

“As part of the public necessity test, a zoning board must consider whether there is a more feasible option that would be less intrusive on the community.” *Verizon v Town of Oyster Bay, supra, citing Verizon v Village of Floral Park Bd. Of Trustees*, 812 F.Supp.2d 143 (E.D.N.Y. 2011).

Moreover, a local government may reject an application for construction of a wireless service facility in an underserved area without thereby prohibiting wireless services if the service gap can be closed by less intrusive means. *Willoth, supra, citing Town of Amherst v Omnipoint Communications*, 173 F.3d 9 (1<sup>st</sup> Cir 2 1999). And a denial is merited where the applicant has identified other potential sites but stated in conclusory fashion that they were unfeasible and stated...that it was unable to build a less intrusive structure.... *Omnipoint, supra*.

An applicant is required to perform their due diligence and conduct a good-faith

investigation into alternative sites. *Up State Tower Co. v Town of Southport, NY* 412 F.Supp.3d 270 (W.D.N.Y. 2019). Interestingly, the *Omnipoint* Court found that where “other cell companies serve the area...the Board could infer that other towers erected by other companies are in the vicinity, and that Omnipoint had the burden of showing either that those towers lacked capacity for an Omnipoint facility or that (for some other reason) those towers were unavailable to bridge Omnipoint’s coverage gap.”

Homeland/Verizon’s application does not demonstrate that they have performed their due diligence and conducted a good-faith investigation.

Additionally, there is no evidence proffered that would indicate whether Homeland or Verizon considered any type of technology other than the proposed macro tower. Many cellular service providers are now using small cell technology mounted on existing electric poles in public rights-of-way. The applicants have not addressed the potential for the use of small-cell or other technologies, or the attendant benefits of such less obtrusive technologies.

(ii) Verizon Has Failed To Meet Its Burden

Verizon has failed to meet its burdens of proving: (a) that its proposed tower is a Public Necessity, (b) that, as proposed, its tower would present a minimal intrusion on the community, (c) that its proposed placement would be compatible with the surrounding community within the meaning of the zoning regulation, or (d) that denial of its application would constitute a “prohibition of personal wireless services” within the meaning of 47 U.S.C.A. §332(7)(B)(i)(II).

As an initial evidentiary matter, glaringly absent from Verizon’s application is any “*hard data*,” which could easily be submitted as *probative evidence* to establish that: (a) there is an actual Public Necessity for the tower being proposed, which (b) not only necessitates the

installation of a new tower, but (c) requires it to be built at the specifically chosen location, (d) on the specifically chosen site (as opposed to being built upon alternative, less-intrusive locations), and (e) requires that it be built at an elevation no lower than the height now being proposed by Homeland.

(iii) The Lack of Hard Data

The most accurate and least expensive evidence that can be used to establish the location, size, and extent of both *gaps* in personal wireless services and areas suffering from *capacity deficiencies* are two specific forms of *hard data*: (a) dropped call records and (b) actual drive test data.

Unlike “expert reports,” RF modeling, and propagation maps, all of which are often manipulated to reflect whatever the preparer wants them to show, *hard data* is straightforward and less likely to be subject to manipulation, unintentional error, or inaccuracy.

At best, propagation maps are only as good as the data entered to generate them. A propagation map is only a predictive model of signal strength and coverage. The programs used to create such studies use thousands of calculations, and the results depend entirely on the program used and the parameters defined by the person running that program.

Additionally, as here, the propagation maps usually do not represent all frequencies available to the carrier. The absence of a particular frequency does not constitute a lack of service on one or more other frequencies. Verizon’s propagation maps depict the 700 MHz and 2100 MHz frequency bands. Verizon has twelve (12) possible frequencies available. (See **Exhibit “E”** which lists Verizon’s network frequencies)

Dropped call records are generated by a carrier’s computer systems. They are typically

extremely accurate because they are generated by a computer that already possesses all of the data pertaining to dropped calls, including the number, date, time, and location of all dropped calls suffered by a wireless carrier at any geographic location, and for any chronological period. With the ease of a few keystrokes, each carrier's system can printout a precise record of all dropped calls for any period of time, at any geographic location. It is highly unlikely someone would be able to enter false data into a carrier's computer system to materially alter that information.

Similarly, actual drive test data does not typically lend itself to the type of manipulation that is almost uniformly found in "computer modeling," the creation of hypothetical propagation maps, or "expert interpretations" of actual data, all of which are easily manipulated, such that they are essentially rendered worthless as a form of probative evidence.

Actual raw drive test data consists of actual records of the actual recorded strengths of a carrier's wireless signal at precise geographic locations. Although the data are readily obtainable and reportable, Verizon has failed to provide the basic information necessary for the Board to make an *informed* decision.

Verizon has failed to provide any credible evidence to establish the cause of any dropped calls. Nor has Verizon provided the hard data that would show the precise cause of each and every dropped call.

B. Verizon's Analysis Regarding Its Wireless Coverage  
Is Contradicted By Verizon's Own Actual Coverage Data

As is a matter of public record, Verizon maintains an internet website at <https://www.verizon.com>. In connection with its ownership and operation of that website, Verizon maintains a database containing geographic data points that collectively constitute a

geographic inventory of Verizon's *current* coverage for its wireless services.

As maintained and operated by Verizon, that database is linked to Verizon's website, and is the data source for an interactive function, which enables users to access Verizon's own data to ascertain both: (a) the existence of Verizon's wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

Verizon's interactive website translates its actual coverage data to provide imagery whereby areas that are covered by Verizon's service are depicted in various shades of red, and areas where Verizon has a lack (or gap) in coverage are depicted in white. The website further translates the data from Verizon's database to specify the actual *service level* at any specific geographic location.

A copy of Verizon's coverage map for the Montebello area can be viewed on Verizon's website and is also attached as **Exhibit "F"**. This Exhibit was accessed and printed on February 12, 2026, from Verizon's website.

On its website, the coverage map, based on Verizon's own data, indicates that there is no significant coverage gap in Verizon's service in or around the proposed site. The coverage map indicates solid levels of 4G and 5G service.

This is in stark contrast to the claims made by Verizon in its submission, which it allegedly supported with its propagation maps. This clear contrast between the claims made on Verizon's website to sell its services to the public and the claims made by Verizon to sell its proposed tower to this Board is striking. At a minimum, these differences demonstrate the ease with which data can be manipulated to serve a particular purpose.

C. *ExteNet Systems, Inc. v. Village of Flower Hill and Flower Hill Board of Trustees*

The Federal District Court for the Eastern District of New York issued an informative and instructive decision that reiterates the holding in *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999). While noting that “improved capacity and speed are desirable (and, no doubt, profitable) goals in the age of smartphones, ... they are not protected by the [TCA].” *ExteNet Systems, Inc. v. Village of Flower Hill*, 617 F.Supp. 3d 125 (E.D.N.Y. 2022). In the *Flower Hill* case, the Board found significant adverse aesthetic and property value impacts and, most importantly, no gap in wireless coverage and, therefore, no need to even justify the significant adverse impacts. Quoting *Omnipoint, supra*, the Court found that the lack of “public necessity” can justify a denial under New York law. “In the context of wireless facilities, public necessity requires the provider ‘to demonstrate that there was a gap in cell service, and that building the proposed [facility] was more feasible than other options.’” *Id.*

Further, the Judge held that “as with the effective prohibition issue, the lack of a gap in coverage is relevant here and can constitute *substantial evidence* justifying denial... And, since one reason given by the Board for its decision was supported by substantial evidence, the Court need not evaluate its other reasons.” *Id.*, (*emphasis supplied*).

The applicant bears the burden of proof and must demonstrate a significant gap in service – not just a mere lack of 5G or 4G. A cell phone is able to “downshift” – that is, from 5G to 4G – if necessary to maintain a call throughout coverage areas. Unless there is an actual gap, the call will continue. Therefore, there is a significant gap only when there is ***no service at all***. *Id.*

Similarly, in this instance, in addition to the clear adverse impact on the neighboring properties, Verizon has failed to produce any evidence of a truly significant gap in wireless

service. Showing a gap in a particular frequency is not sufficient. *All* frequencies must be absent for a significant gap to exist. Verizon has failed to meet this burden; therefore, its application should be denied.

## POINT VII

### To Comply With the TCA, Verizon's Application Should Be Denied in a Written Decision, Which Cites the Evidence Provided Herein

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

#### A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial that is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See, e.g., MetroPCS v. City and County of San Francisco*, 400 F.3d 715 (2005).

#### B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." *See, Up State Tower Co., LLC v. Village of Lakewood, New York*, 431 F.Supp. 3d 157 (W.D.N.Y. 2020), (citations omitted).

Review under this standard is essentially deferential, such that Courts may neither engage in their own fact-finding nor supplant a local zoning board's reasonable determination. See, e.g., *T-Mobile v. Town of Islip*, *supra*, and *Cellular Telephone Co., d/b/a AT&T v. Town of Oyster Bay*, 166 F.3d (2d Cir. 1999).

To ensure that the Board's decision cannot be invalidated under the Telecommunications Act of 1996, it is respectfully requested that the Board deny Verizon's application in a separate written decision, wherein the Board cites the evidence upon which it made its determination.

### C. The Non-Risks of Litigation

All too often, representatives of wireless carriers and/or site developers seek to intimidate local zoning officials with veiled, or sometimes overt threats of litigation. These threats of litigation under the TCA are, for the most part, entirely hollow. This is because, even if the applicant were to file a federal action against the Village and prevail, the TCA does not permit recovery of compensatory damages or attorneys' fees, despite creative attempts to characterize their cases as claims under 42 U.S.C. § 1983.<sup>1</sup>

If the Court were to find in the applicant's favor, the remedy would be for the Court to direct the municipality to allow installation of the proposed facility. This means that if an applicant were to sue the Village and be successful, the Village would not pay them anything in damages or attorneys' fees under the TCA. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last only a short time. As a result of the brevity and

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<sup>1</sup> See *City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Hagerstown*, 2002 WL 1364156 (2002), *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9<sup>th</sup> Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3<sup>rd</sup> Cir 2002).

relative simplicity of such cases, the attorneys' fees incurred by a local government are typically quite small compared to virtually any other type of federal litigation.

**Conclusion**

Applicants, Homeland and Verizon, have failed to meet their burden to show that a significant gap in service exists that would be remedied by the proposed tower, and that the facility would present only a minimal intrusion on the community.

In light of the foregoing, it is respectfully submitted that Homeland/Verizon's application to build its proposed 110-foot cell tower should be denied in its entirety.

Dated: Merrick, New York  
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Respectfully Submitted,

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