

# Young / Sommer LLC

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December 28, 2021

Jeffrey S. Battistoni, Esq.  
Van DeWater and Van DeWater, LLP  
85 Civic Center Plaza, Suite 101  
Poughkeepsie, New York 12601

RE: Application of Cellco Partnership d/b/a Verizon Wireless Proposed Public Utility/Personal Wireless Service Facility located at 50 Cross Street, Marlborough ("Marlboro HS")

Dear Mr. Battistoni:

It was a pleasure meeting you at the Marlborough Planning Board meeting on December 20, 2021.

The purpose of this letter is to set forth our position on the Federal Communications Commission ("FCC") Shot Clock requirements relative to the above-referenced application.

As you are aware, the proposed application, which involves the installation and operation of a personal wireless service facility, is subject to the requirements of the Federal Telecommunications Act of 1996 ("TCA"). In 2009, the FCC issued a declaratory ruling, commonly known as the "Shot Clock Ruling", which clarified that under the TCA local municipalities must act on personal wireless service facility permit applications within a "reasonable period of time." Specifically, the FCC found that local governments must take final action on a personal wireless service facility permit application involving a collocation within ninety (90) days after it was filed, or 150 days for any other application (i.e., a new tower application).

Because this application is for a new tower facility, the applicable timeframe within which the Town of Marlborough must render a decision on the application is 150 days.

The Shot Clock Ruling also provides a mechanism by which the Shot Clock timeframe can be tolled. One such mechanism is triggered if the municipal agency, within thirty (30) days of submission of the application, finds that the application is missing certain required items. If that happens, the applicable Shot Clock period is tolled until such items are submitted. If, however, the local municipality does not identify any missing items within such thirty (30) day period, the Shot Clock period does not toll, unless by mutual agreement of the parties.

Pursuant to a Report and Order adopted by the FCC on October 17, 2014, the FCC expressly confirmed that the timeframes set forth in the Shot Clock Ruling commence upon submission of the application and not upon a determination of completeness of such application. Paragraph 258 of the referenced Report and Order provide as follows:

“258. As an initial matter, we note that under the *2009 Declaratory Ruling*, the presumptively reasonable time frame begins to run when an application is first submitted, not when it is deemed to complete. Accordingly, to the extent municipalities have interpreted the clock to begin running only after a determination of completeness, that interpretation is incorrect.”

In its Declaratory Ruling and Third Report and Order dated September 26, 2018 (“Third Report and Ruling”), the FCC revisited this issue and confirmed that the relevant FCC Shot Clock timeframes start to run upon submission of the local application, and not a determination of completeness. See, Third Report and Order, ¶ 138.

The FCC’s Third Report and Ruling also confirms that the relevant Shot Clock timeframe applies to all required permits and approvals necessary to install and operate the proposed facility. See, Third Report and Order, ¶ 128. Notwithstanding the above, we believe that the proposed wireless communications facility requires only Planning Board approval.<sup>1</sup>

Applying the above rules to the current application, we note that in October 2021, our office submitted to the Planning Board a Preliminary Conceptual Site Plan application, which is required to initiate the site plan review process under the Marlborough Town Code. This application was received by the Town on October 13, 2021. The Preliminary Conceptual Site Plan application is the first step in the site plan approval review process.

We believe that the Town’s receipt of the Preliminary Conceptual Site Plan application commenced the applicable 150-day Shot Clock timeframe.

Verizon Wireless subsequently appeared before the Marlborough Planning Board on November 1, 2021 to discuss the Preliminary Conceptual Site Plan application. During the meeting, the Planning Board and Verizon Wireless discussed the need for a balloon test and a visual analysis. The visual analysis was provided, along with additional supporting materials, to the Town Planning Board on December 10, 2021.

If we presume that the 150-day Shot Clock period commenced on October 13, 2021, and was tolled between November 1, 2021 and December 10, 2021 (the period during which the balloon test and visual analysis were being prepared), the 30-day period (excluding toll periods) during which a municipality must identify incomplete items, ended on December 22, 2021. Based on my calculations, I, therefore, believe that the 150-day Shot Clock timeframe will expire on April 21, 2021.

Based on the foregoing, Verizon Wireless expects that the Planning Board will be in a position to take final action on the application on or before April 21, 2021. Moreover, Verizon Wireless remains willing to cooperate with any reasonable requests to facilitate a timely decision.

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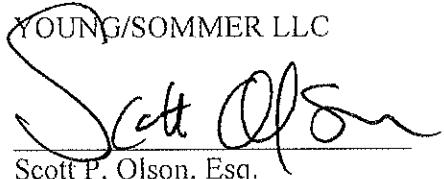
<sup>1</sup> As I mentioned during the December 20, 2021 Planning Board meeting, the New York State Uniform Fire Prevention and Building Code expressly exempts freestanding towers from the need to obtain a building permit. See, 2017 Uniform Code Supplement, § 101.2(4).

Please kindly contact me to discuss any questions or concerns. Thank you for your consideration.

Very truly yours,

YOUNG/SOMMER LLC

By:

  
Scott P. Olson, Esq.

cc: Cindy Lanzetta, Chair