

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF DIAMOND TOWERS V LLC FOR A  
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY  
AND PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE, AND OPERATION OF A  
TELECOMMUNICATIONS FACILITY AT 185 ACADEMY  
ROAD, TOWN OF CHESHIRE, CONNECTICUT

DOCKET NO. 498

June 7, 2021

DIAMOND TOWERS V LLC  
POST-HEARING BRIEF

Respectfully Submitted,



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## **PRELIMINARY STATEMENT**

Diamond Towers V LLC (“Diamond” or the “Applicant”), by its attorneys, Cuddy & Feder LLP, respectfully submit this post-hearing brief in support of its application (“Application”) for a Certificate of Environmental Compatibility and Public Need (“Certificate”) in Docket No. 498. The Application addresses the demonstrated public need for a new tower facility in the central area of the Town of Cheshire so that FCC licensed wireless carriers may provide reliable wireless communication services for the benefits of residents and visitors at homes in residential neighborhoods, within the Cheshire Town Center and Business District, and along other major roads in the area and general vicinity.

As set forth in detail in the Application, Diamond secured a lease with the Cheshire United Methodist Church, owner of the 8.10-acre parcel located at 185 Academy Road, for a location for the proposed facility (the “Site”). Throughout the proceedings in this Docket, Diamond and intervenor Cellco Partnership d/b/a Verizon Wireless (“Verizon”) provided data, testimony and otherwise responded to questions from the Siting Council and Staff that address the public need for reliable wireless services and new tower infrastructure in this part of the state. The Town of Cheshire and public do not oppose construction of the tower for new services in the community.

The Applicant respectfully submits that the Site is uniquely situated for a tower facility needed to serve the public, there are no known practical or feasible alternatives and that there are no significant adverse environmental impacts associated with the project which outweigh the public need for improved wireless services in central Cheshire. As such, the Applicant submits that the project meets the statutory criteria set forth in Section 16-50p of the Connecticut General Statutes (“C.G.S.”) for approval and is requesting a Certificate for the proposed tower facility to meet the public need for wireless services in this area of the state.

## **STATEMENT OF FACTS**

### **I. Verizon's Need**

Verizon's radiofrequency ("RF") engineers establish site search areas where new wireless facilities are needed to address the public's inability to reliably access its wireless network. In this case, Verizon experiences increased network demands in this area of Cheshire and the Proposed Facility will offload the existing wireless facilities and infrastructure located to the west of the Parcel to provide the needed fill-in capacity and coverage to the nearby business corridor to the west of the Parcel during peak usage times. Applicant's Ex. 1, Attachment 1. The Proposed Facility will also enhance reliable wireless services to residences in the surrounding area and provide additional new wireless coverage heading east along Route 68. Applicant's Ex. 1, Attachment 1.

Verizon's need for a facility to address the increased network demands and enhance coverage in this area of Cheshire dates back nearly 10 years. Applicant's Ex. 1, Attachment 2. The Proposed Facility will provide reliable services in Verizon's network to an area that includes the Cheshire Town Center and Business District, as well as numerous homes and principal arterial roads, including the intersection of Routes 10, 68 and 70, which the Town's Plan of Conservation and Development estimates has more than 20,000 motor vehicle trips per day. Applicant's Narrative, p.20. The Facility is needed by Verizon, in conjunction with its other existing and proposed facilities, to meet increased network demands and provide reliable services to the public in this part of Cheshire.

### **II. Site Search**

Verizon has been investigating sites at various times in this area of Cheshire since approximately 2012. Several years after Verizon's initial investigation, the Parcel was identified as a candidate and Verizon approached Diamond with interest in constructing a facility. Applicant's Ex. 1, Attachment 2. The elevation of the proposed Site, which has a willing landowner with whom commercially reasonable lease terms could be negotiated, is suited to address the targeted areas for fill-in capacity and coverage along the eastern portion of Route 68 with a relatively low tower height. Applicant's Ex. 1, Attachment 2. The surrounding area in this part of Cheshire consists of

mainly residential properties and large areas of watershed/water supply lands and wetlands where tower facilities are not generally permitted. Applicant's Ex. 1, Attachments 2, 4 & 6.

### **III. Technical Consultation with the Town of Cheshire**

A Technical Report for the proposed Facility at 185 Academy Road was provided to the Town as part of the C.G.S. 16-50l consultation process. Applicant's Ex. 1, Bulk Filing, Attachment 5. On November 23, 2020, the Town of Cheshire held a duly noticed public information meeting by Zoom videoconference, which included an opening statement by Town Manager, Sean M. Kimball, a presentation by the Applicant, and comments and questions from Jack Casner, Cheshire Fire Chief/Emergency Management Director. After the public information meeting, the Director of Planning & Development, William S. Voelker, provided comments regarding the Proposed Facility in correspondence dated December 21, 2020. Applicant's Ex. 1, pp. 25-26, Attachment 10. This correspondence notes that the proposed location is favorable because of its position in the rear yard of the church, the tower design is consistent with the Cheshire Planning & Zoning Regulations and concludes that the Proposed Facility will not result in any wetland impacts. Applicant's Ex. 1, Bulk Filing, Attachment 2.

### **IV. Certificate Application, Intervenor & Pre-Hearing Filings**

On March 11, 2021, the Applicant submitted an Application to the Siting Council for a Certificate to construct, maintain and operate a wireless facility at 185 Academy Road. The Proposed Facility consists of a new self-supporting monopole designed to resemble a pine tree ("monopine") that is 95' in height with faux branches extending an additional 4' above the top of the pole, bringing the total height to approximately 99'. The monopine tower will be located within a 2,100 square-foot (s.f.) fenced equipment compound located within the 2,600 s.f. lease area in the south-central portion of the Site. Verizon's antennas would be installed at an antenna centerline height of 90' on the monopine tower, with a walk-in equipment cabinet and emergency back-up generator located within the fenced equipment compound. The equipment compound will be enclosed with an 8' tall shadowbox fence. Applicant's Ex. 1, Attachments 3 & 4. The monopine tower and fenced equipment compound are designed to support the antennas and equipment of other FCC licensed

wireless carriers. Vehicle access to the Facility would be provided from Academy Road using an existing paved driveway leading to the southeast corner of the paved parking area (approximately 480') which will connect to a 12'-wide wooden gate enclosing the leased area. Utility connections would be routed underground from an existing utility pole located at the southeast corner of the paved parking area. Applicant's Ex. 1, Attachments 3 & 4.

The Siting Council granted intervenor status to Verizon on April 9, 2021. The Applicant submitted responses to Siting Council interrogatories on May 3, 2021. Verizon submitted responses to Siting Council interrogatories on May 4, 2021.

**V. Public Hearing**

At the May 11, 2021 public evidentiary hearing, the Siting Council heard comprehensive testimony from the Applicant's and Verizon's joint panel of witnesses on the need for the Facility, the investigation of sites and any environmental effects associated with construction of the Facility. A remote public hearing was held by the Siting Council on May 11, 2021, via Zoom Videoconferencing, in accordance with Governor Lamont's March 14, 2020 Executive Order No. 7B. The hearing was closed on May 11, 2021 after all parties were given a full and fair opportunity to present evidence and cross-exam witnesses.

**POINT I**

**A PUBLIC NEED CLEARLY EXISTS**

**FOR A NEW TOWER FACILITY IN CENTRAL CHESHIRE**

Pursuant to C.G.S. Section 16-50p, the Siting Council is required to find and determine as part of any Certificate application, "a public need for the proposed facility and the basis for that need." C.G.S. §16-50p(a)(1). In this Docket, Verizon provided coverage analyses, data and expert testimony that clearly demonstrate the need for a new tower facility to provide reliable wireless services in central Cheshire to homes, retail areas and the traveling public. Applicant's Ex. 1, Attachment 1.

The record in Docket 498 also demonstrates that this Site is uniquely situated at an elevation and location that would provide reliable wireless service to remedy this identified need for fill-in coverage. Applicant's Ex. 1, Attachment 1. In addition, the Proposed Facility will be designed to accommodate use by the Town to provide emergency communication services, if the Cheshire Fire Department decides it would like to place equipment on the tower. Applicant's Ex.1, p. 5; Tr. 5/11/21, 2pm, pp. 17, Applicant's Ex. 4, A. 3. Coverage maps, data and expert testimony demonstrated that a tower facility, at a significantly higher antenna centerline than the Proposed Facility would not meaningfully change the coverage patterns and was not justified. Applicant's Ex. 7, A41; Tr. 5/11/21, 2pm, pp. 38-39. Verizon also confirmed through expert testimony that a few existing small cells it installed west of the Proposed Facility are not a technical alternative to the Proposed Facility and need for a new macro-cellular facility to offload existing sites during peak usage times and providing new reliable wireless coverage along the targeted portions of Route 68. Tr. 5/11/21, 2pm, pp. 25-26.

Based on the evidence, the Applicant submits that the public need for a new tower facility in the central area of Cheshire to provide reliable wireless services is not a disputed issue in this Docket.

## **POINT II**

### **THERE ARE NO EXISTING STRUCTURES OR BETTER ALTERNATIVE SITES FOR SITING THE PROPOSED WIRELESS FACILITY**

The Applicant submitted evidence that there are no existing structures that are viable for providing reliable wireless service to this area of Cheshire. The Proposed Facility is intended to offload existing tower sites to the West where Verizon operates facilities. Applicant's Ex. 1, Attachment 2. Any structures above the tree line in this area of Cheshire, including church steeples, are either too far west or too short or even sites on the National Register of Historic Places. As such, any existing structures were not evaluated as a possible siting alternative to a new tower.

No other viable alternative tower sites were identified by anyone. This includes a comprehensive technical consultation with the Town and its various officials. All of the comments pursuant to Section 16-50l consultation, one of the purposes for which is an opportunity for a municipality to explore and offer any alternatives, focused on the appropriateness of the Proposed Facility and the Site was ideally situated given surrounding land uses in this part of Cheshire. As such, neither the Town or members of the public suggested any alternatives or alternative Sites during both the municipal consultation process and the Siting Council's review of this Application. The Applicant submits that the evidence shows there is no better known site for a tower to serve this area of Cheshire.

### **POINT III**

#### **THE PROPOSED TOWER FACILITY PRESENTS NO SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS**

Pursuant to C.G.S. Section 16-50p, the Council is required to find and determine as part of a Certificate application any probable environmental impacts of a facility on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity, fish and wildlife, distance to schools and commercial child daycare centers<sup>1</sup> and facility design. The Applicant respectfully submits that the minimal impacts associated with the proposed Facility will have no significant environmental effects on the resources listed in C.G.S. Section 16-50p and clearly do not outweigh the public need for the Facility as proposed in this Docket.

#### **I. Potential Visual Effects**

The Applicant respectfully submits that the evidence and testimony in this proceeding, as summarized below, demonstrates that the visibility of the Proposed Facility will not result in any

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<sup>1</sup> Distance to schools and commercial day care facilities are evaluated in the context of significant visual impacts.

significant adverse visual impact to scenic or other natural resources. The Applicant's comprehensive Visibility Analysis demonstrates that areas from where the Facility would be visible are comprised of 7+/- acres of year-round visibility and 39+/- acres of seasonal visibility. Together, this represents approximately 1% of the 2-mile radius study area. Applicant's Ex. 1, pp. 16, Attachment 8. The monopine design, topography, vegetation and the relative height of the tower will obscure, partially or totally, views of the tower from most locations in the study area during leaf-on conditions. The visual assessment concludes that the majority of the views beyond the Site will be limited to nearby locations along Academy Road north/northwest of the Facility up to 0.12 miles away and in the adjacent Cheshire Hillside Cemetery. Applicant's Ex. 1, Attachment 8. During leaf-off conditions, obstructed visibility is predicted in the area to the west/ northwest of the Facility extending up to 0.44 miles from the Site. Beyond the immediate area, no additional visibility is predicted to the east, north or south of the Proposed Facility. Applicant's Ex. 1, Attachment 8; Tr. 5/11/21, 2pm, p. 36 & 64-65. The presence of mature trees, both in the immediate area of the Site and throughout much of the study area, as well as the monopine design minimize the extent of visibility. Applicant's Ex.1, pp. 16, Attachment 8.

The proposed at-grade equipment associated with the Facility will be located within an equipment compound that will be screened by an 8' tall shadowbox fence. Applicant's' Ex. 1, Attachments 3 & 4; Tr. 5/11/21, 2pm, pp. 15 & 22. Correspondence from the Town of Cheshire supports the proposed location because of its position in the rear yard of the church, approximately 418' from the edge of Academy Road, and location relative to the Cheshire Hillside Cemetery, where views are partially screened by existing mature vegetation and future development is unlikely. Applicant's Ex. 1 Attachment 3.

The evidence demonstrates that the proposed Facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood or community.

## **II. Potential Impacts to the Natural Environment**



As clearly established in this Docket, impacts to the natural environment from the proposed Facility are not significant.

**a. Wetlands, Watercourses and Floodplains**

As set forth in the Wetland Investigation Report in the Application, the Proposed Facility is located approximately 105' from the nearest wetland resource, which is located to the east of the existing paved area at the base of a steep embankment. As such, the Proposed Facility is not anticipated to result in an adverse impact to wetlands due to the distance separating the proposed work activities from the nearest wetland or watercourse. Applicant's Ex. 1, pp. 18, Attachment 6. Further, all appropriate sediment and erosion control measures will be designed and employed in accordance with the Connecticut Soil Erosion Control Guidelines, as established by the Connecticut Council of Soil and Water Conservation and DEP (2002). Soil erosion control measures and other best management practices will be established and maintained throughout the construction of the Proposed Facility. Applicant's, Ex.1, pp. 18, Attachment 6.

**b. Habitat Assessment and Wildlife**

As demonstrated in the record, the Applicant's consultants conducted thorough evaluations of the Site. The facility site is not located within 0.25 mile of any locations identified on the DEEP Natural Diversity Data Base ("NDDB") maps as areas that represent approximate locations of endangered, threatened and special concern species and significant natural communities in Connecticut. Thus, consultation with the DEEP is not required. Applicant's Ex. 1, p. 17; Attachment 9. As the evidence in the record demonstrates, no migratory bird species are anticipated to be impacted by the proposed development. The Site is not near an Important Bird Area and the Proposed Facility would comply with the U.S. Fish & Wildlife Service guidelines for minimizing the potential impacts to bird species. Applicant's Ex.1, Attachment 6. Therefore, the Proposed Facility will not have any adverse impacts on wildlife or critical habitat.

**c. Clearing & Grading Assessment**

Access to the Facility will utilize the existing paved driveway and paved parking area that will connect to the adjacent enclosed leased area. Applicant's Ex. 1, Attachment 4. No improvements

to the existing driveway and parking area are required. Tr. 5/11/21, 2pm, p. 14. The total area of clearing and grading disturbance for the Proposed Facility is approximately 2,600 s.f. Installation of the proposed compound area will not require the removal of any trees. Applicant's Ex. 1, Attachment 3. Site improvements will require approximately 100 cubic yards of fill excavated from the Site and approximately 50 cubic yards of crushed stone is required for construction of the compound. Applicant's Ex.1, Attachment 3.

As noted in Section II(a) above, the Proposed Facility design will incorporate all appropriate sediment and erosion control measures. The Applicant respectfully submits that the proposed improvements at the Site will not result in any significant adverse environmental impact on the surrounding area and will allow for safe access to and development of the Facility.

### **III. Other Environmental & Neighborhood Considerations**

A tower facility at the location proposed will comply with all public health and safety requirements. Applicant's Ex.1, Attachment 9, Applicant's Ex. 4, A15, Applicant's Ex. 4, A16. Additionally, since the Proposed Facility will be unmanned, there will be no substantial impacts from traffic on area roadways, sanitary waste or material impact on air emissions.

Consultation with the SHPO confirmed that while there are 5 properties listed or eligible for listing within 0.5 miles of the project area, those sites will not be adversely impacted by the Proposed Facility due to varying topography, distance and intervening foliage. Applicant's Ex.1, Attachments 8 & 9. As such, the Council should find and determine that the Facility as proposed will not have any historic, cultural or adverse visual impacts on the neighborhood.

In addition, no adverse impacts to Connecticut Prime Farmland and/or Important Agricultural Soils are anticipated. Applicant's Ex. 4, A18.

As the Applicant's expert testimony clearly established, the location of the Proposed Facility at the Site minimizes visibility, avoid wetlands, watershed/ water supply lands and maximizes existing mature vegetation for screening. Applicant's Ex. 1, Attachments 2; 4 & 6; Tr. 5/11/21, 2pm, p. 37.

Expert testimony from the Applicant's engineers concluded that the noise associated with the operation of the Proposed Facility will remain well below the DEEP standards and the generator proposed by Verizon will be located within a sound-attenuating enclosure to provide for quiet operation. Applicant's Ex. 1, Attachment 5; Applicant's Exhibit 4, A16; Tr. 5/11/21, 2pm, pp. 17-18.

Given the foregoing facts, the Applicant submits that the tower will not result in any adverse impacts to the adjacent property.

#### **IV. Public Safety**

As demonstrated in the record and by Mr. Robert Burns' expert testimony, the Proposed Facility will be designed with a hinge point at an elevation of 55' so that in the unlikely event of a structural failure, the tower fall zone will be contained within the Site boundaries. Applicant's Ex. 1, Attachment 3; Tr. 5/11/21, 2pm, p. 24.

In response to the Connecticut Airport Authority's request, the Applicant filed a Form 7460, Notice of Proposed Construction or Alteration, with the Federal Aviation Administration ("FAA"). On May 19, 2021, the FAA issued a Determination of No Hazard to Air Navigation for the Proposed Facility. The Applicant is enclosing a copy of the FAA's Determination herein as Attachment 1 which the Council may take administrative notice of as an official document from a governmental agency.

## **CONCLUSION**

The Applicant demonstrated a public need for the proposed tower Facility presented in this Docket. The record in this proceeding reveals that there are no known practical or feasible alternatives to a tower at the Site in question. The Applicant's evidence demonstrates the importance of this proposed tower Facility needed to serve the public which has experienced gaps in reliable services since the advent of modern day wireless communications.

While there are some very limited visual effects associated with the Proposed Facility, principally on immediately adjacent properties, the Applicant respectfully submits that such effects are unavoidable in meeting the public's need for reliable commercial and public safety emergency communications services. Moreover, the Applicant has designed the tower facility on the Site to avoid to the greatest extent practicable any visual impacts and impacts on the natural environment.

Based on all of the foregoing, and upon balancing of the probable environmental effects associated with the proposed facility as required by statute, the Applicant respectfully submits the public need for the tower facility for reliable communications far outweighs any adverse environmental effects associated with the project the Council might deem significant pursuant to the statutory criteria governing its review of certificate applications for new tower facilities. For the reasons set forth in this brief and as more fully evidenced by the record in this Docket, the Applicant submits that the standards and criteria set forth in C.G.S. Section 16-50p for approval of tower facilities by the Council have been met and fully warrant issuance of a Certificate for the facility as proposed in Docket 498.

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, an original and fifteen (15) copies of the foregoing was sent electronically and delivered to the Connecticut Siting Council via overnight mail, with an electronic copy sent to:

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Dated: June 7, 2021



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