



Planning Department

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## Memorandum

To: Town Board

C: Town Clerk, Town Attorneys

From: David Sprout, Planning Department

Subject: Clarity Connect  
639 Midline Road  
Freeville, NY 13068

Date: October 13, 2016

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On March 22, 2011, through Resolution #71, the Town Board approved Clarity Connect's Site Plan and Special Use Permit application to erect a tower at 639 Midline Road. In August 2016, Chuck Bartosch, principal at Clarity Connect, was sent a reminder that the fencing requirement, as set forth in Section 11 of Town of Dryden Local Law #3 of 2006, the Telecommunications Tower Siting Law (TTS, the Law), had yet to be completed at the Midline Road site. The tower is on property owned by Kathy Zahler and Paul Lutwak (owners).

In that correspondence, Mr. Bartosch was given 30 days to respond with a request to the Board for relief from the requirement or with an approved plan for the installation of a fence. Mr. Bartosch chose the former.

Section 11 of the Law requires that:

All Telecommunications Towers and Antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically:

- 1) All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and
- 2) Transmitters and Telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

In Clarity Connects request to waive the fencing requirement, Mr. Bartosch states that the property owners will not permit Clarity to install the fence, that Mr. Lutwak (owner) sent a letter to the town stating that he will not allow a fence to be installed, and that the owners are only receiving free internet access in exchange for siting the tower on their property. Mr. Bartosch believed the fenc-

ing issue was resolved several years ago. Some background information is provided at the end of this memo.

Section 29 of the Law states that:

Any Applicant desiring relief or exemption from any aspect or requirement of this Law may request such from the Board at a pre-Application conference, provided that the specific request for relief or exemption is contained in the original Application for a Special Use Permit, or in the case of a previously granted Special Use Permit in a request for modification of a Telecommunications Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption is solely on the Applicant to prove to the satisfaction of the Board. The Applicant shall bear all costs of the Board or the Town in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Board, and such permission shall not be unreasonably withheld. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service providers.

The FCC has no regulations pertaining to fencing. The National Association of Tower Erectors (NATE) advises that, though not an industry regulation, a perimeter fence should be maintained, not just for safety issues but also for liability issues. The Board can consult with the town attorney regarding possible ramifications if the waiver is granted.

On March 22, 2011, the Town Board completed SEQR for the Midline Road tower and made a negative determination of environmental impact (Resolution #70). For the purpose of SEQR, the Board should reaffirm that 2011 determination.

The Planning Department forwarded this request to the Tompkins County Planning Department for 239 review. The County has replied that the action will have no negative inter-community or county-wide impact.

Compliance with conditions of approvals should be verified at this time. In addition to the Standard Conditions of Approval, periodic written reports, signed by a NYS licensed Professional Engineer, noting maintenance issues, procedures, and timetables to address such issues were to be submitted and the Board reserved the right to review the Tower Removal Bond to ensure the bond is adequately funded.

Mr. Bartosch has been notified that the Board will not consider Clarity's request until the Special Use Permit fee is paid and escrow money (see Section 29 above) is deposited to the Town.

### Background

In a March, 2013 letter addressed to Mr. Bartosch, the property owners argued that a fence wasn't necessary because the tower is in the middle of their posted property, with limited access. They could not foresee anyone tampering with the tower. They further argued that they preferred to allow the abundant wildlife in the area to roam freely, uninhibited by a fence. They concluded the argument by stating that the unsightly fence, as proposed, would be easily visible from their hiking trails.

In a letter to CEO Kevin Ezell, in April 2013, Edward Rosenbloom, of Armor Tower, the owner of the tower, requested that the Town of Dryden remove/waive the fencing requirement. Mr. Rosenbloom cited the landowners letter in his request. Town Board resolution #71 of March 22, 2011 was referenced. That resolution, approving the tower stated that Clarity would minimize the clearing of the property and avoid unnecessary tree cutting. It did not waive the fencing requirement.

Reference to an email August 7, 2012, from former Highway Superintendent Jack Bush regarding another tower was also included in the Rosenbloom letter. Mr. Bush expressed opposition to the installation of the required fence around a Beam Hill Road tower. Presumably, the Bush email was included to bolster the Zahler/Lutwak argument but Mr. Bush's concern was about snowplowing and access, not aesthetics and wildlife. The Highway Superintendent's request to waive the fencing requirement was denied and the Beam Hill Road fence was installed.