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CAPE COD
COMMISSION

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DEVELOPMENT OF REGIONAL IMPACT DECISION

Date: January 13, 2022
Project: Blue Sky Towers South Yarmouth Re-submission (File No. 21012)
Project Applicant: Blue Sky Towers III, LLC d/b/a BSTMA III, LLC
c/o Ricardo Sousa, Esq., Prince Lobel Tye, LLP
One International Place, Suite 3700, Boston, MA 02110
Property Owner: Roman Catholic Bishop of Fall River
Property/ Site: 1044 Route 28, South Yarmouth, MA 02664
(Assessors Map 50; Parcel 189.1)
Title Reference: Book 669, Page 144; Book 13431, Page 139

SUMMARY

The Cape Cod Commission (“Commission”) hereby grants Development of Regional Impact (“DRI”) approval, with Conditions, for “Blue Sky Towers South Yarmouth Re-submittal,” to construct a 110-foot wireless communications tower with associated improvements at 1044 Route 28 in South Yarmouth, pursuant to a vote of the Commission at its meeting on January 13, 2022.

FINDINGS

The Cape Cod Commission hereby finds and determines as follows:

- F1. The Applicant proposes development on a leased portion of a 4.4-acre +/- parcel, which currently contains a chapel church building and parking area (“Property” or “Site”), by constructing a 110-foot multi-carrier monopole-style wireless communications tower with associated equipment (“Project”). The Applicant has legal standing to pursue the Project through a letter of authorization from the Property owner (Roman Catholic Bishop of Fall River).
- F2. The east side of the Property abuts Route 28 and is occupied by other commercial properties. The west side of the Property is predominantly occupied by single family residences. The Property is in

a Freshwater Recharge Area (FWRA) but is not mapped for other sensitive resources identified in the Regional Policy Plan (“RPP”) such as priority habitat, natural landscapes, or undeveloped areas subject to flooding.

- F3. Given the surrounding uses and development patterns and the type of development being proposed, the Site is best represented by the “Suburban Development Area” Placetype. Suburban Development Areas are characterized by moderately dense residential neighborhoods as well as automobile-oriented commercial development.
- F4. The Applicant proposes to develop and operate on the Project Site an approximately 110-foot-tall wireless communications tower with other supporting and ancillary improvements, including:
- clearing ¼-acre +/- of wooded area;
 - constructing a 55'x65' stone compound surrounded by a 6'-tall stockade fencing;
 - installing the monopole tower, carrier antennas, concrete equipment pads, and all associated ground equipment (including equipment cabinets, propane generators, propane tanks, ice bridge protection, and high sound mitigation shields) within the fenced area;
 - installing an approximately 12'x35' gravel driveway connecting the fenced area to the existing parking lot;
 - installing vegetated stormwater management swales along the perimeter of the fenced area;
 - loaming and seeding the disturbed areas outside of the fenced area; and
 - plantings to visually buffer the proposed compound and associated ground-mounted equipment.
- F5. Suburban Development Area strategies include improving the design and function of commercial areas through landscaping and stormwater treatment; and encouraging redevelopment of existing commercial suburban development with denser clusters of buildings surrounded by less developed areas. The Applicant proposes to develop a currently undeveloped portion of the Property and to provide landscaping and stormwater management.
- F6. Ongoing operations and activity at the Property would be minimal. Due to the minimal ongoing operations, the Project does not involve regionally significant or sustained effects on the transportation network.

BACKGROUND

- F7. The Project was previously reviewed as a Development of Regional Impact (DRI) as File No. 21005, which was withdrawn by the Applicant prior to the close of the public hearing process. This re-submittal is a continuation of that review process.
- F8. The Applicant made the following modifications to its proposal from DRI File No. 21005 in the application reviewed here:
- the tower height has been reduced by 10' from 120' to 110';

- the breadth of the equipment frames has been reduced from 12' to 6' on each of the three faces of the frames;
- spacing between the Antenna RAD Centers has been reduced by 4-5' from 15' to 10'-11';
- the equipment pad area has been reduced from 70' x 75' (5,250 sf) to 55' x 60' (3,300 sf);
- tree clearing has been reduced from 11,390 sf to 9,960 sf;
- utility lines have been moved from overhead to underground;
- fencing has been changed from chain-link to stockade; and
- landscaping has been increased.

F9. The Commission retained, at the Applicant's expense, a consultant with expertise reviewing technical aspects of the proposal. The consultant, David Maxson of Isotrope Wireless, LLC ("Isotrope"), provided an initial report on the original application for File No. 21005, followed by supplemental comments on that filing. Isotrope submitted additional comments for this filing, which were reviewed as part of the proceedings.

PROCEDURAL HISTORY

- F10. The Project requires mandatory DRI review pursuant to Section 3 of the Commission's *Chapter A: Enabling Regulations Governing Review of Developments of Regional Impact ("Enabling Regulations")* (revised May 2020) as the "[c]onstruction of any Wireless Communication Tower exceeding 35 feet in overall height...".
- F11. The Commission received a mandatory DRI referral for the Project from the Town of Yarmouth ("Town") on 8/12/2021.
- F12. The hearing period was opened procedurally on 10/15/2021
- F13. The Applicant submitted a DRI application for the Project to the Commission on 10/25/2021.
- F14. The first substantive hearing was held by a DRI Subcommittee ("Subcommittee") on the Project on 12/14/2021. The hearing was continued to 1/3/2022, where the Subcommittee reviewed a draft written DRI decision prepared by staff at the Subcommittee's direction. At this hearing session, the Subcommittee voted 4 in favor, 1 opposed to recommend to the full Commission that it grant DRI approval for the Project, with conditions, as set out in the draft written DRI decision reviewed by the Subcommittee.
- F15. The full Cape Cod Commission held a hearing on the Project at its meeting on 1/13/2022. It considered the recommendation of the Subcommittee, including the draft written DRI decision. At the hearing on 1/13/2022, the Commission voted to adopt the draft written DRI decision, and approve the Project, with the Conditions set out in said revised decision.

DRI REVIEW STANDARDS

- F16. Section 6(c)(viii) of the *Enabling Regulations* contains the standards to be met for DRI approval, which include, as applicable, consistency with the RPP, District of Critical Planning Concern ("DCPC") implementing regulations, municipal development bylaws, and Commission-certified Local Comprehensive Plans ("LCP"). The Commission must also find that the probable benefit from the Project is greater than the probable detriment.

MUNICIPAL DEVELOPMENT BYLAWS, LCP, AND DCPC CONSISTENCY

- F17. There are no DCPC implementing regulations applicable to the Project.
- F18. The Town of Yarmouth's current Local Comprehensive Plan (LCP) was adopted in 2001. It states that telecommunications infrastructure would be dealt with via future planning efforts. The Town has an undated inventory of potential sites for wireless communications towers, but none of the identified sites are proximate to the coverage gap that has been identified.
- F19. The Project will require a Special Permit from the Zoning Board of Appeals, Design Review, Site Plan Review, and any other non-land use town permits, such as permits for the propane tanks, from the Town of Yarmouth.
- F20. The Project Site is within the Business District (B2) and also in the Village Centers Overlay District (VCOD) Village Center 3 (VC3). This is an optional overlay district to incentivize redevelopment of Route 28 while requiring strict design standards. Wireless communications towers may be allowed in any zoning district, but are encouraged on existing structures and sites designated by the Town. Section 408 of the Bylaw establishes detailed guidelines including, but not limited to, the siting, design, and screening of wireless communications towers.
- F21. Under Section 408 of the Bylaw, wireless communication towers may be permitted in the B2 zoning district only under a Special Permit issued by the Zoning Board of Appeals ("ZBA"). The ZBA may alter or waive one or more of the requirements of Section 408 if it finds that the alteration or waiver of the requirement(s) will not derogate from the intent of the Bylaw. Based on the current design, required waivers may include, but are not limited to, the requirement that the wireless communication tower:
- Be designed and sited to have the least visual effect on the environment (§ 408.7.1);
 - Not be located within open areas that are discernable from public roads ... or residential development (§ 408.5.1);
 - Be no higher than 10 feet above the average height of trees or buildings within 300 feet (§ 408.7.6); and
 - Provide a vegetated buffer sufficient to effectively provide year-round screening (§ 408.7.10.3).

RPP CONSISTENCY REVIEW

- F22. The Commission reviewed the Project relative to the 2018 RPP and companion Technical Bulletins, which were those in effect at the time the Commission commenced substantive hearing on the Project. Under Section 9 of the RPP, the Commission assesses the Project's consistency with the RPP by determining whether the Project is consistent with the goals and objectives in the RPP that are deemed applicable, material and regionally significant with respect to the Project. The companion Technical Bulletins assist in elaborating and interpreting the RPP's goals and objectives.
- F23. The RPP goals and objectives specifically referenced in this section of the Decision and discussed in detail below are those determined to be applicable, material, and regionally significant with respect to the Project and are thus subject to RPP consistency review.

F24. Subject to the Conditions set out in this Decision, the Project is consistent with the RPP goals and objectives and with the corresponding provisions from the Technical Bulletins, as discussed in detail below, and as such the Project is consistent with the RPP.

Water Resources

F25. The Water Resources Goal of the RPP is to maintain a sustainable supply of high-quality untreated drinking water and protect, preserve, or restore the ecological integrity of Cape Cod's fresh and marine surface water resources. Water Resources Objectives WR1, WR2, and WR4 are applicable and material to the Project:

- Protect and preserve groundwater quality (WR1);
- Protect, preserve, and restore freshwater resources (WR2); and
- Manage and treat stormwater to protect and preserve water quality (WR4).

F26. The primary source of nitrogen will be from stormwater runoff. Staff reviewed the proposed stormwater system and found it consistent with WR4, and thus the Project is consistent with WR1.

F27. While the Project is located within a Fresh Water Recharge Area, there is no septic system proposed and the Project Site does not contain shoreline to a pond or lake.

F28. Commission staff has reviewed the project plans and stormwater report, and the system is appropriately sized and designed consistent with Objective WR4.

F29. The Project is located in the Crowell Pond Freshwater Recharge Area. To meet WR2, the Project is required to prevent loading of nutrients and other contaminants to freshwater resources.

F30. Nitrogen loading from the Project will be generated only by stormwater runoff from impervious areas. The impervious areas proposed are the stone compound area, which would contain the ground equipment and monopole, and the gravel.

F31. Because no wastewater generation or fertilization is proposed or anticipated, the Project is expected to be well below the 5 ppm sitewide nitrogen loading concentration limit.

F32. The Applicant has proposed two (2) backup emergency generators and a transformer. The proposed backup generator fuel will be propane, posing little to no risk of groundwater contamination. The transformer will use biodegradable and non-toxic fluids.

Open Space

F33. The Open Space Goal of the RPP is to conserve, preserve, or enhance a network of open space that contributes to the region's natural and community resources and systems. Open Space Objective OS3, which seeks to protect or provide open space appropriate to context, is applicable and material to the Project.

F34. The Area of Development Impact for purposes of the required open space mitigation, excluding area used for naturalized elements of the stormwater management systems, is 12,000 sf.

F35. Projects in Suburban Development Areas are required to provide high-quality open space in a ratio of 1:1 on-site, offsite, or by cash contribution.

F36. The Applicant previously committed to a cash payment to the Town of Yarmouth to provide open space and meet Objective OS3. A payment in lieu of the provision of restricted open space land is

appropriate given the relatively small Area of Development Impact for the Project and the Project's location in a highly developed area.

F37. Based on the current per-acre open space mitigation figure of \$125,951 for the Town of Yarmouth, the .28-acre Development Impact Area results in a required payment of \$35,266.

Community Design

F38. The Community Design goal of the RPP is to protect and enhance the unique character of the region's built and natural environment based on the local context. Community Design Objectives CD1 and CD3 are applicable and material to the and material to the Project:

- Promote context-sensitive building and site design (CD1); and
- Avoid adverse visual impacts from infrastructure to scenic resources (CD3).

F39. The proposed site abuts a mature wooded area on two sides and is set back from Route 28 roughly 125 feet, behind an existing paved parking area. It is set back from Forest Road approximately 165 feet and is sited behind an existing church and parking area.

F40. The proposal has been modified to include significant improvements to landscaping, including the use of a stockade fence.

F41. The Applicant provided photosimulations of the proposed monopole from vantage points identified by the Commission. Even at the reduced height the tower will be highly visible along segments of Route 28 in South Yarmouth and at approaches to the intersection of Route 28 and Forest Road.

F42. The proposed tower will be visible in the distance from some locations in the South Yarmouth National Register Historic District, specifically areas on the west end of Old Main Street where there are crossroads that provide views to the north.

F43. The proposed tower will be visible in the distance from Circuit Road near Swan Pond but would have a very small presence in the viewshed because of its distance from that site.

F44. The tower will be highly visible from adjacent locations with large public parking areas and to motorists using Route 28 within roughly ¼-mile from the Site. However, the revised proposal includes several changes to the design and site that reduce the visibility and overall silhouette of the tower. The antennas are on smaller frames that mount them closer to the tower, resulting in a shorter and narrower profile.

F45. While not as consistently narrow as a concealed antenna monopole (CAM), the visual impact to regional resources from this proposed multi-carrier monopole may not be significantly greater than if each carrier were to install multiple CAMs along the Route 28 corridor, similar to the one installed by Verizon across Route 28 from this Site.

F46. The Project is unlikely to have any significant visual presence in the historic district due to its distance from the district and due to the density of buildings and mature vegetation that obscure most views to it. Further, the surrounding locations are not designated scenic roads or scenic vistas, and there are many other man-made features in the viewshed that would obscure or distract from the proposed tower.

Capital Facilities & Infrastructure

- F47. The Capital Facilities & Infrastructure Goal of the RPP is to guide the development of capital facilities and infrastructure necessary to meet the region's needs while protecting regional resources. Capital Facilities & Infrastructure Objective CAP2, which seeks to coordinate the siting of capital facilities and infrastructure to enhance the efficient provision of services and facilities that respond to the needs of the region, is applicable and material to the Project
- F48. Based on the materials provided by the Applicant, the Project is infrastructure that would improve cellular service in the area of the proposed site, in response to the needs of the region.
- F49. Wireless network connectivity is influenced by many factors, including proximity to a cell site, physical obstacles and signal interference. Wireless service can be affected by severe weather, topographical features, or large structures or other objects between a phone and the nearest cell site.
- F50. The Applicant suggests that T-Mobile and AT&T have identified a significant gap in wireless coverage in this area of Yarmouth. The Applicant identified the proposed site as the only feasible location to close T-Mobile's and AT&T's significant gap.
- F51. The Project would improve cellular coverage in Yarmouth for T-Mobile and AT&T, and includes space for two additional carriers.
- F52. The Commission retained a wireless consultant to review the claimed coverage gaps as required under Technical Bulletin 97-001.

Consistency with Technical Bulletin 97-001: Guidelines for DRI Review of Wireless Communication Towers (Revised September 2010)

- F53. The Commission retained a wireless consultant, David Maxson of Isotrope Wireless, LLC ("Isotrope") to assist the Commission in the review of technical data, including the coverage analysis provided by the carriers, T-Mobile and AT&T.
- F54. Isotrope reviewed the data and found that a significant gap in coverage does exist for T-Mobile and AT&T. Dish has also expressed interest in location on the tower as it seeks to build out its new wireless network.
- F55. In consultation with Commission staff, Isotrope identified potential alternate locations away from the Route 28 corridor, and the Applicant provided responses on those locations. It is likely that the identified locations would neither be available nor preferential to the proposed site.
- F56. Isotrope's review determined that the proposed gap could be filled with multiple concealed antenna monopoles (CAM) along the Route 28 corridor, providing similar effectiveness in closing the coverage gap to the single monopole proposed.
- F57. The Commission does not review CAMs of less than 80' in height. This inherent preference within the Commission regulations was weighed against the impacts of alternatives to the Project in relation to regionally significant resources. However, the use of CAMs may be preferential in relation to local resources when the proposal is reviewed at the Town level.

Regional Benefits/Detriments

F58. Probable benefits of the Project identified include:

- The Project will address identified wireless coverage and capacity problems along the Route 28 corridor, providing needed service to a variety of users including area residents, the traveling public, and visitors who rely on such services for emergency communications, to operate their businesses, and to communicate with friends and family either at home or in their vehicles. Wireless communications are used by many homeowners who have eliminated land lines and use of multiple wireless platforms creates high data demand that will be served by the Project.
- The Project provides opportunities for other national wireless carriers to site-share on the proposed WCT, potentially eliminating or limiting the future need for additional wireless towers in the area.

F59. Probable detriments of the Project identified include:

- The Project may have visual impacts along the Route 28 corridor, with more acute impacts to properties in immediate proximity to the Site.
- The Project is not consistent with local initiatives to improve the visual character of the Route 28 corridor.

CONCLUSION

Based on the Findings above and subject to the Conditions set out below, the Commission further determines, finds, and concludes that the Project is consistent with the 2018 Cape Cod Regional Policy Plan, applicable provisions from the Yarmouth LCP, and applicable municipal development bylaws; the probable benefit of the Project is greater than the probable detriment; and the Commission hereby grants DRI approval for the Blue Sky Towers South Yarmouth Re-submission Project described herein.

CONDITIONS

- C1. This Decision shall be final when the appeal period set out in Section 17 of the Cape Cod Commission Act has elapsed without appeal (or if such an appeal has been filed, when the appeal has been finally settled, dismissed, adjudicated, or otherwise disposed of in favor of the Applicant). Thereafter, this Decision shall be valid and in effect, and local development permits may be issued pursuant hereto for a period of seven years from the date of this Decision, or for such extended period as may be permitted by the Commission pursuant to the *Enabling Regulations*.
- C2. A copy of the Decision, when final and prior to commencement of the Project, shall be recorded with the Barnstable Registry of Deeds.
- C3. This Decision shall be appurtenant to and run with the Property. The Decision shall bind and be enforceable against, and inure to the benefit of, the Applicant, its heirs, successors, and assigns.
- C4. The Applicant shall obtain all required federal, state, and local permits, licenses, and approvals for the Project. Consistency with Municipal Development Bylaws shall be ratified and confirmed by the Applicant obtaining all said required local permits, licenses, and approvals for the Project. Prior to commencement of the Project, the Applicant shall provide the Commission with copies of all required local permits, licenses, and approvals for the Project.

- C5. The Project shall be constructed, operated, and maintained consistent with the following documents ("Approved Project Plans"). Plans, protocols, and other documents received or required to be submitted as Conditions of this Decision shall be treated as incorporated into the Approved Project Plans once received, reviewed, and approved for consistency with this Decision by Commission staff, and the Project shall thereafter be constructed, operated, and maintained consistent with the Approved Project Plans, as so supplemented:
- Plan set entitled "Site Name: South Yarmouth, Site Number: MA-5104, Address: 1044 Route 28, South Yarmouth, MA 02664" consisting of 11 sheets, prepared by Jesse Moreno, Proterra Design Group, LLC, final revision dated 10/25/2021
- C6. The Applicant shall provide a copy of this Decision and the Approved Project Plans to the Project's general contractor prior to commencement of the Project. The Applicant shall maintain a copy of this Decision and the Approved Project Plans on the Project Site throughout Project construction.
- C7. Prior to and as a Condition to issuance of a building permit/s for the Project from the Town of Yarmouth, the Applicant shall request and obtain from the Commission a Preliminary Certificate of Compliance; the issuance of such Preliminary Certificate of Compliance evidences that the Applicant has satisfied all Conditions in this Decision required to have been satisfied prior to the issuance of a local building permit/s.
- C8. Prior to and as a Condition to issuance of a Certificate/s of Use and Occupancy or building permit sign-off/s for the Project from the Town of Yarmouth Building Department, the Applicant shall request and obtain from the Commission a Final Certificate of Compliance; the issuance of such Final Certificate of Compliance evidences that the Applicant has satisfied all Conditions in this Decision required to have been satisfied prior to the issuance of a local Certificate/s of Use and Occupancy or building permits sign-off/s, and shall confirm that the Project was constructed or implemented in accordance with this Decision.
- C9. The Applicant hereby authorizes Commission staff to make site visits as necessary, at reasonable times and upon reasonable notice to the Applicant, to confirm that the Project has been implemented in accordance with this Decision, including upon an Applicant's request for a Certificate of Compliance hereunder.
- C10. Prior to and as a condition to issuance of a Final Certificate of Compliance by the Commission, the Applicant shall make a cash contribution in the amount \$35,266 to the Town of Yarmouth to support acquisition and conservation of open space.
- C11. All proposed backup generators shall be propane fueled.
- C12. Transformer fluids used onsite shall be biodegradable and non-toxic.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE

Executed this _____ day of _____ 2022

For the Cape Cod Commission by:

Signature

Print Name and Title

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss _____, 2022

Before me, the undersigned notary public, personally appeared _____,

in his/her capacity as _____ and on behalf of the Cape Cod Commission, whose

name is signed on the preceding or attached document, and such person acknowledged to me that

he/she signed such document voluntarily for its stated purpose. The identity of such person was proved

to me through satisfactory evidence of identification, which was [] photographic identification with

signature issued by a federal or state governmental agency, [] oath or affirmation of a credible witness,

or [X] personal knowledge of the undersigned.

Notary Public

My Commission Expires: _____

DRAFT