

CITY OF ST. PETERSBURG
STATE OF FLORIDA, COUNTY OF PINELLAS

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In the Matter of the Application of:

CROWN CASTLE USA, INC.

Application for Special Exception and
Temporary Use Permit

Premises: 400 45th Ave. South
St. Petersburg, Florida

Parcel ID: 06-32-17-03780-018-0190

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MEMORANDUM IN OPPOSITION

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Preliminary Statement

Crown Castle USA, Inc. (hereinafter “*Crown Castle*”) has filed an application for a Special Exception and Temporary Use Permit under § 16.50.480.3(D), of the Land Development Regulations of the City of St. Petersburg regarding Wireless Communication Structures (hereinafter the “Wireless Code”), seeking to install a one hundred twenty (120) foot, twelve (12) story cell tower on a lot immediately adjacent to (and within less than 50 feet of) a residentially zoned district (specifically NS-1), where no existing structure currently stands taller than two (2) stories in height. The proposed tower will loom over the gateway to the beautiful neighborhoods of Coquina Key, Bahama Shores, Pinellas Point, the “Pink Streets” and Bayou Highlands.

We submit this Memorandum in opposition to Crown Castle’s application.

As set forth hereinbelow, *Crown Castle’s* application should be denied, because:

- (a) *Crown Castle* has failed to establish that its proposed tower meets the requirements of § 16.50.480.3(C) of the Wireless Code, and that granting the application would be consistent with smart planning requirements contained within the Wireless Code;
- (b) granting the application would violate both the letter and the legislative intent of the Wireless Code;
- (c) the irresponsible placement of such a massive tower at the proposed location would inflict upon the nearby homes and community the precise types of adverse impacts which the Wireless Code was enacted to prevent;
- (d) there are far less intrusive alternative locations where the desired facility could be built or co-located, in greater conformity with the requirements of the Wireless Code; and
- (e) the applicant has failed to establish that the proposed tower: (i) is actually

necessary for the provision of personal wireless services within the City,¹
(ii) that its siting, as proposed, would have the least-adverse visual impact on the environment and its character, or (iii) that the height proposed is the minimum height necessary to remedy whatever “gaps” in coverage which the applicant claims to exist.

POINT I

Granting *Crown Castle* Permission to Construct a Massive *Twelve* (12) Story Cell Tower at the Location it Proposes Would Violate Both the Requirements of the Wireless Code and Legislative Intent Based Upon Which Those Requirements Were Enacted by the City

Crown Castle is a privately-owned, for-profit, *site development* company.

Specifically, unlike a *wireless carrier*, *Crown Castle* does not provide any personal wireless services. Instead, *Crown Castle* generates its revenue by building cell towers and then leasing space on such towers *to* wireless carriers, such as T-Mobile and Verizon, here. As such, *Crown Castle* has little incentive to find alternative locations where T-Mobile and Verizon can collocate their equipment. Annexed hereto as Exhibit “A” are several pages from *Crown Castle’s* internet website which evidences same, and a page from Forbes Magazine with a blurb describing what *Crown Castle* does. As such, it is not in *Crown Castle’s* interest to have T-Mobile or Verizon co-locate on an existing tower. *Crown Castle* needs to build a tower in order to make money, and the bigger the better.

Nevertheless, there are other existing towers on which T-Mobile and Verizon can collocate, and which would provide the means for closing the alleged service gap that would result from the loss of the current tower on which T-Mobile and Verizon are now located. For

¹ See § 16.50.480.3(C)(1)(e)

example, there is a tower currently located in the heart of *Crown Castle's* search ring, on which AT&T as its antennas. This location provides adequate coverage for AT&T, and would obviously do the same for any carrier collocating on the same tower. Attached as Exhibit "B" is a screen shot from AT&T's website showing complete coverage for the area surrounding the proposed tower. Indeed, the existing tower at that location would need to be replaced, since (as *Crown Castle* points out in its own application) the tower contains the antennas internally. In order to collocate, a new tower would be required, which would still net *Crown Castle* a profit. Upon information and belief, *Crown Castle* is currently in talks with the owner of the lot where the AT&T tower is located.² That being the case, *Crown Castle's* assertion that it cannot collocate T-Mobile and Verizon on that tower (as claimed in its application) is misleading. Thus, the new tower proposed by *Crown Castle* would be wholly unnecessary to close any alleged gap in personal wireless service. That being the case, the City would not violate the Telecommunications Act of 1996 ("TCA") by denying *Crown Castle's* application.

As set forth below, *Crown Castle's* application should be denied because granting the application would violate both the *requirements* of the Wireless Code and its *legislative intent*.

Crown Castle has failed to provide probative evidence sufficient to establish that: (a) the proposed tower is actually necessary to remedy any gap in personal wireless services within the City, (b) the site and location upon which *Crown Castle* seeks to construct such massive tower is the least intrusive location at which to place such facility, or (c) that the height proposed for the tower is the minimum height necessary to remedy whatever gap in wireless service *Crown Castle* is claiming exists.

² See the accompanying affidavit of Paul Gonnelli, sworn to June 28, 2022.

As is explicitly set forth in its text, the purpose for which the City of St. Petersburg enacted its Wireless Code was to regulate the installation of wireless facilities and cell towers within the City to minimize the adverse effects of such facilities.³

As set forth below, and as established by the admissible evidence being submitted herewith, if *Crown Castle's* application were to be granted, the irresponsible placement of a tower at the location proposed by *Crown Castle* would inflict upon the nearby homes and residential community the precise types of adverse impacts which the Wireless Code was specifically enacted to prevent.

A. *Crown Castle's* Application Does Not Comply With The Requirements of the Wireless Code

Crown Castle's application, and all of its supporting submissions, wholly fail to comply with the requirements and limitations of the Wireless Code.

As an initial matter, *Crown Castle* has failed to comply with §16.50.480.3(C)(1) which requires that the applicant for a new wireless support structure (which the proposed tower would be) demonstrate the need for the proposed tower, at the proposed location, using the proposed technology.

Crown Castle has failed to demonstrate that “there is no existing WCSF or other structures or replacement of an existing WCSF that can be used for the placement of a WCA” [wireless communications antenna]. Simply put, *Crown Castle* must demonstrate that its proposed tower is needed at the location and at the height proposed.⁴ Indeed, as set forth above, an existing AT&T tower would provide a perfect location for T-Mobile and Verizon to collocate their equipment.

³ See § 16.50.480.1(A)

⁴ See § 16.50.480.3(C)(1)

As is set forth below, *Crown Castle* has failed to provide a shred of probative evidence to establish: (a) the expected existence of a *significant gap* in personal wireless coverage, much less the size and extent of such gap, or (b) the existence of any geographical area, and the size and extent of same, wherein there exists (or would exist) a *capacity deficiency* which would render it “necessary” to build the twelve-story tower for which *Crown Castle* seeks approval. See Point III hereinbelow.

B. The Proposed Cell Tower Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of The Area

Recognizing the likely adverse aesthetic impacts which an irresponsibly placed cell tower would inflict upon nearby homes and residential communities, the City of St. Petersburg enacted § 16.50.480.3 to regulate the placement of cell towers to prevent unnecessary adverse aesthetic impacts.

It is beyond argument that the irresponsible placement of *Crown Castle*'s massive *twelve* (12) story tower in a residential neighborhood where no other structures stand more than two (2) stories in height, would cause the massive tower to *stand out like a sore thumb*, to dominate the skyline, and to inflict substantial adverse aesthetic impacts upon the nearby homes.

Moreover, as has been held by federal courts, including the United States Court of Appeals for the Second Circuit, significant and/or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for the construction of a cell tower. See *Omnipoint, infra*.

(i) Evidence of the Actual Adverse Aesthetic Impacts Which the Proposed Tower Would Inflict Upon the Nearby Homes

Federal Courts have consistently held that adverse aesthetic impacts are a valid basis

upon which to deny applications for proposed wireless facilities. *See Omnipoint Comm., Inc. v. The City of White Plains*, 430 F3d at 533 (2nd Cir. 2005); and *T-Mobile Northeast LLC v. The Town of Islip*, 893 F.Supp.2d 338 (2012).

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

Consistent with this logic, the United States Court of Appeals for the Second Circuit has recognized that when a local government is considering a cell tower application, it should accept, as direct evidence of the adverse aesthetic impacts which a proposed tower would inflict upon nearby homes, statements and letters from *the actual homeowners*, because they are in the best position to know and understand the actual extent of the impact they stand to suffer *See e.g. Omnipoint, supra*.

Annexed as Exhibit “C” is *substantial evidence* of the wholly unnecessary and substantial adverse aesthetic impacts which the irresponsible placement of *Crown Castle’s twelve* (12) story tower would inflict upon the nearby homes. Exhibit “C” is comprised of letters from: Paul Gonnelli, Ajay Gonnelli, Linda Gonnelli, Richard Neubert, Norman Scott, Kris Jacobs, David Stinnett, Kathryn and John Ingram, Lois Ziegler, William Jackson II, William Jackson III, Shane Shipley and Jerry Clinkscales.

In each letter, the homeowners personally detail the adverse aesthetic impacts that the proposed tower would inflict upon their respective homes. They have provided detailed and compelling descriptions of the dramatic adverse impacts their properties would suffer if the proposed installation of a massive cell tower were permitted to proceed.

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.” Rather, they contain detailed descriptions of how the proposed tower would dominate their views from their “dining room,” “bedroom,” “bathroom,” “family room,” “deck” and backyards, and generally from all over their properties. As detailed therein, the substantial adverse aesthetic impacts which the irresponsible placement of the proposed tower would inflict upon the nearby homes, are the precise type of injurious impacts which §290-77, *et seq.*, of the Zoning Code was specifically intended to prevent.

(ii) *Crown Castle’s Application Does Not Include a Visual Assessment, and As Such It Is Incomplete.*

One of the most important frames of reference for a local government in assessing the aesthetic impact of a proposed cell tower is a comprehensive Visual assessment. Local governments typically require applicants to submit photo-simulations of a proposed cell tower in order to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts which a proposed installation will inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions, by *deliberately omitting* from any such photo-simulations, any images *actually taken from* the nearby homes which would sustain the most severe adverse aesthetic impacts. Here, *Crown Castle* does not even bother to provide this information. Nevertheless, it is a critical element of any cell tower application.

In *Omnipoint, Supra*, the United States Court of Appeals for the Second Circuit explicitly ruled that where a proponent of a wireless facility presents visual impact depictions wherein they “omit” any images from the actual perspectives of the homes which are in closest proximity to

the proposed installation, such presentations are inherently defective, and should be disregarded by the respective government entity that received it.

Specifically, the Court stated:

“the Board was free to discount Omnipoint’s study because it was conducted in a defective manner. . . *the observation points were limited to locations accessible to the public roads, and no observations were made from the residents’ backyards much less from their second story windows*” *Id.*

Crown Castle’s application it does not include any Visual Assessment to demonstrate the view of its proposed tower from any of the nearby homes which will sustain the most severe adverse aesthetic impacts from the tower’s installation.

This is the exact type of “presentation” which the federal Court explicitly ruled to be defective in *Omnipoint*.

As such, in accord with the federal court’s holding in *Omnipoint*, *Crown Castle’s* failure to include a Visual Assessment renders *Crown Castle’s* application inherently defective. Consequently, *Crown Castle’s* application should be considered incomplete until one is submitted.

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

In addition to the adverse impacts upon the aesthetics and rural character of the area at issue, the irresponsible placement of such a massive cell tower in such close proximity to nearby residential homes would contemporaneously inflict upon such homes a severe adverse impact upon the actual value of those residential properties.

(i) Real Estate Brokers’ Letters Have Been Determined by

Federal Courts to Be Valid, Direct Evidence of the Adverse
Impact of a Proposed Cell Tower On Neighboring Properties

Federal Courts, as opposed to real estate appraisers, have determined that letters from local real estate brokers *are valid evidence* of the adverse impact a nearby cell tower will have on property values of the homes adjacent to, or in close proximity to it. This is because real estate *brokers*, as opposed to *appraisers*, deal with potential buyers every day. A broker with years of experience in a particular market is in a better position than an appraiser to know what buyers are thinking – *i.e.*, what they look for, what makes a property attractive to them, what turns them off about a property, etc. These are factors appraisers are not in a position to know, since they do not work directly with prospective buyers.

When large cell towers are installed unnecessarily close to residential homes, such homes suffer material losses in value which typically range anywhere from 5% to 20%.⁵

In the worst cases, cell towers built near existing homes have caused the homes to be rendered wholly unsaleable.⁶ Moreover, because the proposed twelve-story tower is so

⁵ In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a Cell Tower in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced price by 10% on average.

The Bond and Wang - *Transaction Based Market Study*

The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*

The Bond and Beamish study involved surveying whether people who lived within 100' of a Cell Tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

⁶ Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a cell tower. See HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a cell tower was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. See, e.g. October 2, 2012 Article “. . . Cell Tower is Real Estate Roadblock” at

frighteningly close to the neighboring residential properties, it would be virtually impossible to find a buyer for any of the homes around the site.

As has been recognized by federal courts, it is perfectly proper for a local zoning authority to consider, as direct evidence, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who provide their professional opinions as to the adverse impact upon the specific property values which would be inflicted on neighboring properties by the installation of the proposed cell tower. *See Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d at 534-535 (2nd Cir. 2005). This is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

As evidence of the adverse impact that the proposed cell tower would have upon the property values of the homes which would be adjacent and/or in close proximity to it, annexed hereto as Exhibit "D" are letters setting forth the professional opinions of licensed real estate professionals, acutely familiar with the specific real estate market at issue, and who submit their professional opinions that the installation of the proposed massive *twelve* (12) story tower would cause property values of the affected homes to be reduced by ten (10%) to *fifteen* percent (15%) (or more), and would make those homes more difficult to sell, even at reduced purchase prices.

Protecting property and preserving the character of the City are among the purposes of the Zoning Code. Specifically, the Zoning Code reads:

A. The purpose and intent of these regulations are to regulate the establishment wireless communication support facilities (WCSF) in recognition of the public need and demand for advanced telecommunication and information technologies and services balanced against the impacts such facilities may have on properties within the City. This balance is established by:

<http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-ho-me--172366931.html>.

1. Providing for the *appropriate location* and development criteria for WCSFs and wireless communication antennas (WCAs) within the City; and
2. Encouraging WCSFs to locate in and to be surrounded by commercial and industrial uses;
3. *Minimizing the adverse effects* of WCFs through careful design, siting and screening criteria;
4. Maximizing the use of existing and future WCSFs and encouraging multiple users on such facilities;
5. *Protecting the archeological, architectural and historical character* of neighborhoods and designated historic districts and landmarks.

(Emphasis added.)

As demonstrated above, *Crown Castle's* proposed tower will adversely affect neighboring properties. Accordingly, *Crown Castle's* application should be denied, as it does not comply with the above regulations.

POINT II

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow *Crown Castle* to Increase the Height of the Proposed Tower Without Further or Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities will be if the proposed cell tower was constructed at the one hundred twenty (120) foot height currently proposed by *Crown Castle*, if such tower were to be built, *Crown Castle* could unilaterally choose to increase the height of the tower to as much as one hundred forty (140) feet, and the City would be legally prohibited from stopping them from doing so, regardless of the Zoning Code's requirements, 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 §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) (Emphasis added).

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*.

Considering the even more substantial adverse impacts which an increase in the height of the cell tower to fourteen (14) stories would inflict upon the homes and communities nearby, *Crown Castle's* application should be denied.

Once again, this is especially true since, as set forth in Point III hereinbelow, *Crown Castle* has not even established that the proposed tower is actually needed to provide wireless coverage within the City.

POINT III

Crown Castle Has Failed To Proffer Probative Evidence Sufficient to Establish a Need For the Proposed Tower at the Location and Height Proposed, or That the Granting of its Application Would be Consistent With the Smart Planning Requirements of the Zoning Code

The obvious intent behind the provisions of the Zoning Code, was to promote "smart planning" of wireless infrastructure within the City.

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 to saturate the City with complete wireless coverage, while contemporaneously avoiding any unnecessary adverse aesthetic or other impacts upon homes and communities situated in close proximity to such towers.

Entirely consistent with that intent, § 16.50.480.3 was adopted as a smart planning provision which was specifically enacted to regulate the “placement” of cell towers to minimize their potential negative impacts.

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

(a) the precise locations, size, and extent of any geographic gaps in personal wireless services which are being provided by a specifically-identified wireless carrier, which provides personal wireless services within the respective jurisdiction; and

(b) the precise locations, size, and extent of any geographic areas within which that 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 require that more towers will need to be built, because the proposed tower did not actually cover the gaps in service which actually existed, thereby causing an unnecessary redundancy in cell towers within the City.

In the present case, *Crown Castle* has wholly failed to provide any hard data to establish that the proposed placement of its tower would, in any way, be consistent with smart planning. It has failed to provide actual probative evidence to establish: (a) the *actual location of gaps* (or deficient capacity locations) in personal wireless services within the City, and (b) why or how their proposed massive cell tower would be the best and/or least intrusive means of remedying those gaps.

A. *Crown Castle* Has Failed to Submit Probative Evidence to Establish The Need for The Proposed Tower at The Height and Location Proposed

(i) The Applicable Evidentiary Standard

To the extent that applicants seeking to build cell towers seek to be considered as public utilities, their applications must be reviewed under the “Public Necessity” standard established in *Consolidated Edison co. v. Hoffman*, 43 N.Y.2d 598 (1978). As such, 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*, 893 F.Supp.2d. 338 (2012).

Within the context of zoning applications such as the current application which has been filed by *Crown Castle*, 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 issue a written decision setting forth those determinations, and citing the evidence based upon which it make its factual determinations.

In the absence of same, any determination which the Board ultimately makes could easily

be challenged by the applicant, by the filing of a complaint based upon the City's failure to make such determinations.

As has been clearly enunciated by the Court in *T-Mobile*, where a local zoning board denies a cell tower application within a written decision which sets forth its factual determinations, and cites the evidence based upon which it made those determinations: “[E]ven 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*, 893 F.Supp.2d. 338, 354 (2012).

(ii) *Crown Castle Has Failed To Meet Its Burdens*

It is beyond argument that *Crown Castle* 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 adverse impact on the community, (c) that its proposed placement would minimize its “visual impact” within the meaning of the Zoning Code, or (d) that denial of its applications would constitute a “prohibition of personal wireless services” within the meaning of 47 U.S.C.A. §332(7)(B)(i)(II).

Further, *Crown Castle* has wholly failed to comply with the requirements of the Zoning Code which explicitly mandate that an applicant seeking to build a wireless telecommunications facility “shall provide proof ... that there is a public necessity for the siting of a new public utility building or structure[.]”

Indeed, glaringly absent from *Crown Castle's* application is any “*hard data*,” which could easily be submitted by the applicant, 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 *Crown Castle*.

(iii) The FCC Has Determined that Propagation Maps Without Supporting Data are Inadequate to Identify Gaps in Coverage

Recently, the FCC recognized the absolute need for hard data rather than the commonly submitted propagation maps (such as those submitted by Horizon here), which can be easily manipulated to create over-exaggeration in need and significant gaps.

As is discussed within the FCC's July 17, 2020, proposed order, FCC-20-94⁷, "[i]n this section, we propose requiring mobile providers to submit a statistically valid sample of on-the-ground data (i.e., both mobile and stationary drive-test data) as an additional method to verify mobile providers' coverage maps."⁸ The FCC defines drive tests as "tests analyzing network coverage for mobile services in a given area, i.e., measurements taken from vehicles traveling on roads in the area."⁹ Further within the FCC's proposed order, several commenting entities also agree that drive test data is the best way to ascertain the most reliable data. For example: (i) "City of New York, California PUC, and Connected Nation have asserted that on-the-ground data, such as drive-test data, are critical to verifying services providers' coverage data...;"¹⁰

Proposed order FCC-20-94, on page 45, paragraph 105, discusses provider data.

⁷ The proposed order can be accessed here: file:///C:/Users/pc/Downloads/FCC-20-94A1_Rcd.pdf

⁸ See page 44 paragraph 104 of proposed order FCC-20-94.

⁹ See page 44 fn. 298 of proposed order FCC-20-94.

¹⁰ See page 45 fn. 306 of proposed order FCC-20-94.

Specifically, the FCC states:

“The Mobility Fund Phase II Investigation Staff Report, however, found that drive testing can play an important role in auditing, verifying, and investigating the accuracy of mobile broadband coverage maps submitted to the Commission. The Mobility Fund Phase II Investigation Staff Report recommended that the Commission require providers to “submit sufficient actual speed test data sampling that verifies the accuracy of the propagation model used to generate the coverage maps. Actual speed test data is critical to validating the models used to generate the maps.”

Of greatest import, on August 18, 2020, the FCC issued a final rule in which the FCC found that requiring providers to submit detailed data about their propagation models will help the FCC verify the accuracy of the models. Specifically, 47 CFR §1.7004(c)(2)(i)(D) requires “[a]ffirmation that the coverage model has been validated and calibrated at least one time using on the ground testing and/or other real-world measurements completed by the providers or its vendor.”¹¹

The mandate requiring more accurate coverage maps has been set forth by Congress. “As a result, the US in March passed a new version of a bill designed to improve the accuracy of broadband coverage maps.”¹² “The Broadband Deployment Accuracy and Technological Availability (DATA) Act requires the FCC to collect more detailed information on where coverage is provided and to ‘establish a process to verify the accuracy of such data, and more.’”¹³

“The project - required by Congress under the Broadband DATA Act - is an effort to improve the FCC’s current broadband maps. Those maps, supplied by the operators themselves, have been widely criticized as inaccurate.”¹⁴

¹¹ The Rule can be accessed here: <https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-1/subpart-V#1.7004>

¹² <https://www.cnet.com/news/t-mobile-and-at-t-dont-want-to-drive-test-their-coverage-claims/>

¹³ *Id.*

¹⁴ <https://www.lightreading.com/test-and-measurement/verizon-t-mobile-atandt-balk-at-drive-testing-their-networks/d-d-id/763329>

If the FCC is requiring further validation and more accurate coverage models, there is no reason the City should not do the same. For the foregoing reasons, dropped call records and drive test data are critical.

(iv) Hard Data and the Lack Thereof

Across the entire United States, applicants seeking approvals to install large cell towers provide local governments with *hard data*, as both: (a) actual evidence that the tower they seek to build is actually necessary, and (b) actual evidence that granting their application would be consistent with smart planning requirements.

The most accurate and least expensive form of *hard data* which can be used as evidence to establish the location, size, and extent of *significant gaps* in personal wireless services is drive test data.

The most accurate and least expensive form of *hard data* which can be used as evidence to establish the location, size, and extent of a geographic area suffering from a *deficiency in capacity* in personal wireless services, is dropped call records.

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

Drive Test Data

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 so easily manipulated, that they are essentially rendered worthless as a form of probative evidence.

To obtain drive test data, all that is required is performance of a drive test. This involves attaching a recording device to a cell phone, and driving through any given area to test for gaps in wireless service. The device records wireless signal strength every few milliseconds, so that in a two-hour drive test, the device can record several hundred thousand recorded signal strengths, which collectively depict a complete and accurate record of the existence, or lack, of any significant gap in wireless service.

Hard drive test data consists of the actual records of the actual recorded strengths of a carrier's wireless signal at precise geographic locations.

Dropped Call Records

Dropped call records are generated by a carrier's computer systems. They are typically extremely accurate because they are generated by a computer which 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, and the likelihood that someone would enter false data into a carrier's computer system to materially alter that information is highly unlikely.

As is reflected in the record in the case, *Crown Castle* has not provided either of these forms of *hard data* as probative evidence.

Instead, *Crown Castle* has provided propagation maps which purport to demonstrate gaps in coverage in the area surrounding the proposed installation.

These propagation maps contain *no hard data, whatsoever*. As explained in subsection (iii) above, the FCC has concluded that propagation maps without the hard data on which they

are based are inherently unreliable.

Accordingly, these propagation maps lack any probative value in establishing: (a) the existence of any location of any significant gap in personal wireless service, or area suffering in any capacity deficiency, much less (b) the location and geographic size of any actual gap in service or area suffering from a capacity deficiency.

POINT IV

Crown Castle's Application Must Be Denied Because The Proposed Location Fails to Afford Any Meaningful Fall Zone or Safe Zone

Crown Castle's proposed location is virtually on top of several occupied homes. Indeed, it is less than 50 feet from the nearest neighbor, and only slightly more from another. This proximity does not allow for a safe fall zone equivalent to the height of the proposed tower – one hundred twenty feet. In order to protect the lives and physical safety of the adjacent residents, and the physical integrity of the houses in which they live, the City should require a fall zone no smaller than the equivalent of the proposed tower's height – 120 feet. At this height, there is no fall zone that would adequately protect the lives and property of the immediately adjacent, nearby residents. Moreover, the location is at a busy four-way intersection. The safety of the people driving by in their cars, or on bicycles would also be at risk. The City should not allow such a hazard to be constructed in this residential neighborhood.

The dangers which the irresponsible placement of monopole cell towers present are well-documented. Indeed, local governments across the entire United States have enacted and enforced zoning provisions to ensure that the installation of such towers includes a fall zone or safe zone of sufficient size to preserve the health and safety of their residents.

As detailed herein, and as supported by the evidence submitted herewith, the four

principal dangers that irresponsibly placed monopole cell towers present are structural failures, fires, ice fall,¹⁵ and debris fall.

Due to the speed at which such cell towers are being constructed in the United States, and a desire on the part of *site developers* (like *Crown Castle*) to build them as cheaply as possible, quality control over the manufacture, construction, and maintenance of monopole cell towers is nearly non-existent.

Not surprisingly, structural failures of monopole cell towers and monopole fires occur far more often than the public knows. Such failures and fires often result in a monopole cell tower collapsing to the ground, presenting a severe risk of property damage, injury, or death.

The two most common causes of a monopole cell tower's failure and complete collapse are baseplate failures (*See Exhibits "E" and "F"*) and fires (*See Exhibits "G" and "H"*).

Baseplate failures cause the entire tower to collapse,¹⁶ and fires either cause the tower to "warp" or to collapse in a flaming heap.¹⁷ In addition to baseplate failures, monopole collapses are also caused by failures of flanges, joints and/or bolts.

Although it is not widely publicized, even brand-new monopoles are known to fail, in dramatic fashion, often going from being 165 feet "*tall*" to 165 feet "*long*" in a matter of seconds. For the residents who live within mere feet of the tower, this can be a devastating

¹⁵ Ice fall in St. Petersburg is less of a danger, since ice is a rare occurrence. Nevertheless, it is still important to understand the dangers of even the rarest of occurrences where the tower is looming over the homes of St. Petersburg residents. <https://www.tampabay.com/florida/2019/01/19/snowflakes-a-state-of-emergency-and-streakers-remember-when-it-snowed-in-tampa-41-years-ago/>

¹⁶ To see dramatic images of a 165-foot tower having collapsed at a firehouse, crushing the Fire Chief's vehicle, go to www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle, or go to Google and search for "Oswego cell tower collapse."

¹⁷ To see videos of modern towers bursting into flames and/or burning to the ground, go to <http://www.youtube.com/watch?v=0cT5cXuyiYY&NR=1> or http://www.youtube.com/watch?v=y__NKVWrazg, or simply go to *Google*, and search for "cell tower burns."

tragedy.

By way of example, Exhibit “ F ” is a photograph of a new 165-foot cell tower that failed and collapsed, with the remains of the monopole landing more than half a football field from its base, crushing a Fire Chief’s vehicle in the process. Exhibit “E” is a mere sampling of images of collapses, which were due to baseplate failure.

Monopoles, such as the one being proposed by *Crown Castle*, are, *by far*, the most susceptible to fires and collapse due to fire. *See* Exhibits “G” and “H” respectively, which include a sampling of images of monopoles that suffered fires and articles regarding the same.

For at least the past decade, engineering firms have conducted thorough analyses of the causes of such failures and fires and have proposed safer designs for monopole cell towers. Still, site developers generally do not avail themselves of the safer designs simply because of cost. At https://www.towernx.com/downloads/Monopole_Structures_Current_Issues.pdf, one can view an engineering report that was completed by structural engineers. That report clearly documents instances of both structural failures of and fires on monopole cell towers (with images) and provides recommended structural upgrades to prevent such failures and fires.

In all, these four (4) principal dangers have induced local governments to adopt specific setback requirements for cell towers, which serve as the reason why required setback distances are invariably tied *directly to the height of monopole cell towers*.

i. Structural Failures

As reflected within the aforementioned Exhibits “E” through “H,” and as confirmed in the engineering report referenced above, the most common causes of the collapse of monopole cell towers are component failures at the base of the tower and fires. When such failures occur, an entire sixty thousand (60,000) pound steel tower will collapse with its wreckage landing at a

distance equal to, or sometimes greater than, the height of the tower itself.

The danger of such a collapse cannot be overstated. There have been documented fatalities resulting from cell tower collapse. Most of those fatalities are workers who work on the towers or emergency response personnel injured or killed when responding to a cell tower collapse and/or fire.

Annexed hereto as Exhibit "I" is an article about an incident involving the death of several individuals resulting from the collapse of two cell towers. One of the victims killed in the collapse was a firefighter responding to the scene to provide emergency assistance to the workers.

ii. Fire

At least once per month, a monopole cell tower somewhere in the U.S will experience a fire, and an unspecified number of them will, thereafter, collapse in a flaming heap.

The most notorious example was a monopole cell tower in Wellesley, MA, which erupted into flames on a main thoroughfare, and the entire tower proceeded to collapse in flames. Meanwhile, hundreds of drivers drove past it.

To watch a color video of that event, simply go to *YouTube* and perform a search for "Cell Tower Burns to the ground." The results will include one or more color videos of the flaming tower collapsing as motorists drove by.

Exhibits "G" and "H" are photographs depicting, and articles describing, a mere sampling of well-documented monopole cell tower fires.

iii. Ice Fall

A natural, but well-known (albeit rare in Florida) danger that is also associated with the placement of monopole cell towers in close proximity to homes or public areas, is "ice," and the

genuine risk that can come during the winter-early spring, when ice, which has formed upon an installation, begins to melt, comes loose, and hurtles to the ground.

With one hundred fifty (150) feet being the most common height of monopole cell towers, a physicist prepared a formal report detailing the speed of ice chunks, which are commonly known to fall after a winter thaw, based upon a tower height of 150 feet.

Annexed hereto as Exhibit "J" is a true copy of a physicist's report dated April 16, 2013, which calculates the speed of ice falling from a one hundred fifty (150) foot cell tower at sixty-seven (67) miles per hour.

As logic would dictate, if chunks of ice fell from a height of fifteen (15) stories, they could seriously injure or kill anyone they strike. Worst of all, chunks of ice falling from cell towers generate no noise, and as such, anyone in such danger area would receive no warning before being struck by same.

iv. Debris Fall

Finally, there is also the danger associated with debris fall, which pertains to those cases within which entire sections of a monopole (up to ten feet in length), antennas, or decorative pieces of a tower, actually fail and fall off.

Debris fall cases often occur during routine maintenance work on the cell tower, during which a portion of a tower, an attachment on the tower, or a tool used to work on the tower, are caused to fall from the Tower.

Much like falling ice, falling debris exposes anyone in the debris fall zone to extreme danger of personal injury or death if the falling debris or tools should strike them. Exhibit "K" is a photographic image of a worker's lump hammer, which, after being dropped from a too closely

placed tower, crashed through the roof of a nearby structure.

Granting *Crown Castle's* application to construct its massive, 120-foot, twelve-story, extendable tower at the specific location it proposes would virtually guarantee that the adjacent neighbor's property, and any licensees who visited that area upon *the site owner's property*, would be within or would have access to, the fall zone, ice fall zone, and debris fall zones of the proposed tower.

Accordingly, *Crown Castle's* application should be denied.

POINT V

To Comply With the TCA, *Crown Castle's* Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

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 which 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 710(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."

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. American Towers, Inc. v. Wilson County*, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196]

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny *Crown Castle's* application in a separate written decision, wherein the Board cites the evidence-based 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 either open or veiled threats of litigation. These threats of litigation under the TCA are, for the most part, entirely hollow.

This is because, even if they file a federal action against the City and win, the Telecommunications Act of 1996 does not enable them to recover compensatory damages or attorneys' fees, even when they get creative and try to characterize their cases as claims under 42 U.S.C. §1983.¹⁸

This means that if *Crown Castle* sues the City and wins, the City *does not pay them anything in damages or attorneys' fees* under the TCA.

¹⁸ See *City of Rancho Palos Verdes v. Abrams*, 125 S.Ct 1453 (2005), *Network Towers LLC v. Town of Hagerstown*, 2002 WL 1364156 (2002), *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803 (9th Cir 2007), *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3rd Cir 2002).

Typically the only expense incurred by the local government is its own attorneys' fees. Since federal law mandates that TCA cases proceed on an "expedited" basis, such cases typically last only months rather than years.

As a result of the brevity and 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

In view of the foregoing, it is respectfully submitted that *Crown Castle's* application for approval to build its proposed Cell Tower should be denied in its entirety.

Dated: Merrick, New York
June 28, 2022

Respectfully Submitted,

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From: [Paul Gonnelli](#)
To: [Kayla J. Eger](#)
Subject: Fwd: Memo and links to exhibits
Date: Wednesday, June 29, 2022 8:42:31 AM
Attachments: [Memo in Opposition.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning Kayla,

Attached is a PDF file with our Memo of Opposition to the proposed cell tower Crown Castle has applied for at 400 45th Ave. S. Also included are 5 links to exhibits pertaining to the memo. Please forward this on to the Development Review Commission. We will be delivering to you 6 hard copies of this package hopefully sometime today. Hopefully they will have the time they need to review this information prior to the hearing.

Thanks Kayla and let me know if you need anything else.

Paul & Linda Gonnelli

Sent From My iPhone 12 Pro

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You can view "Exhibits Cover Sheet, list and Exhibits A-C.pdf" at: <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:1bf2d734-8224-404f-b9f4-04fb8b168541>

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[https://acrobat.adobe.com/link/track?
uri=urn:aaid:scds:US:8c888ff6-dd70-4e91-9054-
fe1ec553616d](https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:8c888ff6-dd70-4e91-9054-fe1ec553616d)

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