

MATINECOCK BOARD OF TRUSTEES MEETING

SEPTEMBER 16, 2014

DECISION ON NY-CLEC LLC/CROWN CASTLE INTERNATIONAL CORP.

The Village has received an application from NY-CLEC LLC (“Applicant”), a subsidiary of Crown Castle International Corporation to enter into an agreement with the Village to allow the installation of a distributed antenna system telecommunication network (“DAS”) within the public right-of-way. This application was subsequently amended to seek permission to install only four (4) DAS Antennae, with supporting systems, on four existing utility poles within the Village along Chicken Valley Road, a Nassau County road (the “Application”) instead of the previously requested Village-wide agreement. These locations are more specifically designated as:

1. DAS RAN 19 to be installed on an existing wood utility pole (#152) located on the east side of Chicken Valley Road, third pole south of Planting Fields Road in the vicinity of 540 Chicken Valley Road.
2. DAS RAN 21 to be installed on an existing wood utility pole (#119S) located on the west side of Chicken Valley Road, one pole south of Laurel Woods Drive in the vicinity of 700 Chicken Valley Road.
3. DAS RAN 34 to be installed on an existing wood utility pole (#99) located on the north side of Chicken Valley Road, two poles west of Wolver Hollow Road.
4. DAS RAN 35 to be installed on an existing wood utility pole (#84) located on the north side of Chicken Valley Road, six poles east of Locust Lane. (Individually “DAS Antenna” Collectively “DAS Antennae”).

The Village recognizes that the Applicant is a telecommunication service provider with a Certificate of Public Convenience and Necessity from the New York State Public Service Commission. As such, it has specific rights under State and Federal law to access public rights-of-way.

The proposed four DAS Antennae in the Village are but a small component of the overall Crown Castle network, which consists of fiber optic cable and other telecommunication facilities installed within the existing utility corridor throughout Nassau County. Their telecommunication equipment sends and receives telecommunication signals from wireless devices, primarily those emitted by vehicles traveling along the roadway. Each individual DAS Antenna will be installed on a single pole and will contain limited range telecommunication equipment that will project the wireless signal along the length of the roadway to the next antenna via a fiber optic cable installed

on the utility poles. The four DAS Antennae are a minor part of the Applicant's overall system, and are required to complete their network that currently exists in the adjacent Villages of Mill Neck, Muttontown, Oyster Bay Cove, Upper Brookville and Brookville, and provide improved seamless wireless coverage for motorists traveling on designated primary roads on the North Shore.

Each DAS Antenna is designed to co-locate up to four carriers. However, at this time, only one carrier will be utilizing the Applicant's antennae in the Village. The Applicant has agreed to limit the size of the equipment box containing the mechanical equipment on the utility pole to be the minimum size required to accommodate the current carrier. If additional carriers co-locate, the Applicant will be required to apply to the Village for permission to install larger equipment boxes.

In support of its application, the Applicant has submitted numerous documents on its status as a utility, legal position on its rights to use the right-of-way, the benefits of their system to the community, a long form EAF and other detailed responses and explanations of issues raised by the Village and concerned residents. These documents, along with correspondence from concerned residents and minutes of the public hearings are made part of the Village record and filed in the official Village file for this matter.

This Application was filed with the Village in 2012 and since that time the Village has studied the application, reviewed its impacts on and benefits to the Village, and has received public comments at public hearings held on March 25, 2014, and continued on April 8, 2014 and August 19, 2014. On August 19, 2014, the Board of Trustees closed the public hearing and thanked both the Applicant and all concerned residents for their input in connection with this application.

After due deliberation and consideration, the Board of Trustees ("Board"), at this time, will render its decision on the Applicant's Application to install the four DAS Antennae within the public right-of-way.

In connection with New York Rules and Regulations, under 6 NYCRR 617.6, the Board of Trustees, as the approving agency, must determine whether the action is subject to SEQR, which it is, and if so, classify this action for SEQR review. The Board of Trustees may classify the action as a Type I Action, which is likely to have significant adverse impacts on the environment and require the preparation of an EIS, or a Type II Action, which action is not subject to review under SEQR, having been determined that the action, would not have a significant impact on the environment, or is otherwise precluded from environmental review. If the Board finds that the action is neither a Type I nor a Type II action, it is an Unlisted action which then must be addressed under SEQR to the degree and extent depended upon the perceived impact of the application on the environment as required by SEQR.

Under 6 NYCRR 617.7.5(c)(11), "Extension of Utility Distribution Facilities," including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action is deemed a Type II action. Applicant contends that its application

should be classified as a Type II Action. The adjacent property owners contend that the action should be classified as a Type I action pursuant to 6 NYCRR 617.4(b)(9) which states: “Any unlisted action occurring wholly or partially within or substantially contiguous to any historic building, structure, facility, site or district, or historic site listed on the National Register of Historic Places . . . ” is classified as a Type I Action. Since one of the installations will be located on a utility pole that is not on, but within the proximity of Planting Fields, a New York State Park and historic site, it is the adjacent property owners position that this action in totality should be classified as a Type I action.

Originally, the Applicant was requesting permission for a Village wide right-of-way agreement to install its facilities throughout the Village. Because the scope of the Application has been substantially reduced to only four utility poles at defined locations, the level of environmental impact and subsequent review has also been substantially diminished. The Board has reviewed the Full Environmental Assessment Form submitted by the Applicant, and has analyzed the identified relevant areas of environmental concern to determine whether the Application may have a significant adverse impact on the environment. After consideration of the action pursuant to 617.2(b) and 617.3(g), the Board hereby determines that the mere proximity of one site adjacent to Planting Fields should not, in and of itself, warrant classification of this action as a Type I action. Based upon the reduced scope of the amended Application, the Full EAF, and the fact that the DAS Antennae will be located within the right-of-way on existing utility poles, which are already encumbered with substantial equipment of a similar nature, and all of the above findings, this Board determines that the Application minimally exceeds the threshold for classification as a Type II Action. Accordingly, the Application, as amended, should be classified and reviewed as an Unlisted Action under SEQR.

In reviewing the criteria contained in 617.7(c), the Board finds that the Applicant’s Application will not result in any significant adverse impacts on the environments for the noted reasons. The Application will not result in substantial adverse environmental impacts set forth in Section 617.7 as it applies to quality of life issues, the nature of the community and its resources. The DAS Antennae will be mounted on existing utility poles, and no substantial construction, clearing, grading, filling or other site-work will be performed to install the antennae that would create a major disruption to natural resources, the community or its residents to require further environmental review.

The Board has received substantial opposition from individual property owners concerning the Application, specifically relating to health and wildlife concerns, along with skepticism as to the true need of the system and the possibility of further expansion of these facilities in the Village. Under the Telecommunication Act of 1996, the Village may not regulate the placement, construction and modification of personal wireless service facilities based upon health concerns emanating from radio frequency emission if the installation falls within Federal guidelines. The Applicant has demonstrated that its facilities comply with the FCC regulations concerning emission. As to the wildlife concerns and future expansion, the objectors have not adequately demonstrated any specific environmental or legal issues that this Village has jurisdiction to consider that would prevent the

Board from considering or approving the present application. Similar DAS antennae have been installed in numerous villages in Nassau County, including the Villages of Mill Neck, Muttontown, Brookville, Upper Brookville and Oyster Bay Cove, all without any environmental or other deleterious effects on the residents.

Accordingly, after due consideration of the entire record of proceedings, the Board, on motion duly made and seconded, unanimously

RESOLVED, that NY-CLEC, LLC is granted a non-exclusive right to allow the installation, use and maintenance of four (4) utility pole mounted wireless telecommunication facilities within the Village's public right-of-way at the following locations, pursuant to a Right-of-Way Use Agreement, the form of which is annexed hereto:

1. DAS RAN 19 to be installed on an existing wood utility pole (#152) located on the east side of Chicken Valley Road, third pole south of Planting Fields Road in the vicinity of 540 Chicken Valley Road.
2. DAS RAN 21 to be installed on an existing wood utility pole (#119S) located on the west side of Chicken Valley Road, one pole south of Laurel Woods Drive in the vicinity of 700 Chicken Valley Road.
3. DAS RAN 34 to be installed on an existing wood utility pole (#99) located on the north side of Chicken Valley Road, two poles west of Wolver Hollow Road.
4. DAS RAN 35 to be installed on an existing wood utility pole (#84) located on the north side of Chicken Valley Road, six poles east of Locust Lane, and it is

FURTHER RESOLVED that this approval is subject to the following conditions:

1. There shall be no further installations in the Village other than at the above four sites with the designated equipment.
2. If additional sites are proposed in the future, the Applicant must submit a new application and comply with all rules and regulations of the Village as shall then be applicable.
3. The Applicant shall reimburse the Village for all outstanding expenses, including Village legal fees, in connection with the application.

4. On each of the four installations, the equipment cabinet to be installed shall be the minimum size for the current level of service for one carrier only. If further carriers are to be added which requires a larger equipment cabinet, an application shall be submitted to the Village for its review and approval.
5. In each of the four installations, four fiber optic lines shall be dedicated for future use by the Village, and it is

FURTHER RESOLVED, that the Mayor, or in his absence the Deputy Mayor, be, and they hereby are, authorized to execute the Right-of-Way Use Agreement for the installation of the four units within the public right-of-way for the proposed sites as set forth on the annexed copy made part hereof.