

Donna Conkling

From: robertbergesq@aol.com
Sent: Friday, October 22, 2021 12:12 AM
To: Mayor; Attorney's Office; Clerk's Department; Manager's Department
Subject: Proposed revisions to Scarsdale Village Code re Wireless Communications Facilities

CAUTION: External sender.

Dear Mayor, Village Attorney, and Village Manager:

Thank you for allowing the public to participate in last week's Village Board working session on revisions to the Village Code provisions regarding wireless communications facilities. I understand from my daughter, Zoe, that you have instructed Best, Best & Krieger to provide you with an updated draft code by the end of the month. While it's certainly important to move expeditiously -- Zoe has spoken repeatedly to the Village Board about this topic over the past several years underscoring the need for such revisions -- it's even more important to get it done right.

At last week's meeting and in the email I had sent prior to the meeting, I mentioned that the Town of North Hempstead has an excellent code on wireless communications facilities which preserves local control as much as possible over the deployment of such facilities, while fully complying, in my opinion, with federal law. Since the meeting, I have reviewed the Town of North Hempstead code very carefully. As I said before, the Town of North Hempstead is extremely similar to the Village of Scarsdale in many respects, and the protections provided in that code are exactly what I suggest we adopt in Scarsdale's code.

I would not have Best, Best & Krieger re-invent the wheel. I would copy the Town of North Hempstead code on wireless communications facilities, tweaking it slightly as needed to reflect any uniquely Scarsdale issues. The Town of North Hempstead code provisions can be accessed with the following link: <https://ecode360.com/9302423>.

As I expressed at the working session, I strongly disagree with Best, Best & Krieger's recommendation to dispense with an appeals process within the Village following an initial determination by the Planning Board or the Village Engineer as to whether an applications for a wireless communications facility should be granted or denied. An aggrieved party should not have to run to State Supreme Court and file an Article 78 petition to appeal a first stage determination. Especially for our Village residents, the expense is prohibitive, and it's an unfair burden to impose on any aggrieved party. The expiring shot clock rationale for foregoing an administrative appeal is a red herring. It's the rare case where a telecom will refuse to toll the shot clock and risk having its application denied instead of working with a municipality which is acting in good faith to process the application by agreeing to extend the shot clock.

One final point - there's no question that Best, Best & Krieger has tremendous expertise in this area. But in my experience, the firm does not take aggressive stances against the telecoms or bold positions as to the protections municipalities have under state and local law to control deployment. I think the problem is an institutional one that arises because the firm represents so many municipalities and other clients. The firm needs to maintain cordial, if not friendly, relationships with the telecoms and the FCC. That may be why the firm proposed what I found to be a rather generic, bland code for the Village which lacks a number of needed protections.

I've seen this play out at various municipal public meetings where the firm is representing the municipality. For example, the firm is representing Culver City, California. Culver City is undergoing rapid densification of wireless communications facility deployment, and residents are increasingly upset, especially when the construction crews show up outside their homes without notice and start to erect 5G poles. Recently, after much community pressure, the Culver City government agreed to have the Public Works Department hold a community meeting on the evening of September 8, 2021 at which a Best, Best & Krieger attorney presented, along with the City's RF consultant, and various City officials. The Best, Best & Krieger attorney's comments were skewed towards "the City's hands are really tied... There's nothing the City can really do." I was shocked at how complacent she was and how willing she was to throw in the towel and not stand up for the residents. A number of residents have told me they are really disheartened about their City's and the firm's unwillingness to push back against the telecoms. In one particular situation, the City was extremely reluctant to even ask a carrier to move a single 5G pole where the antenna stands 15 feet from the balcony of a senior resident in senior housing. The senior has serious health issues and is worried about being exposed 24/7 to high levels of wireless radiation 24/7, as well as total destruction of her view. The meeting is accessible with the following link: <https://www.culvercity.org/City->

[Hall/Departments/Public-Works/Main-Page-5G-Cell-Sites.](#) This defeatist attitude is what concerns me about the firm, and its initial draft code only underscored my concerns. In short, copy the Town of North Hempstead Code and provide an appeals procedure at the Village level.

Best regards, Robert J. Berg