

## Planning Board meeting on March 22, 2023

robertbergesq@aol.com <robertbergesq@aol.com>

Tue 3/14/2023 10:31 PM

To: Robert Cole <rcole@scarsdale.com>; Nicholas M. Ward-Willis <nward-willis@kblaw.com>

Cc: Mayor <mayor@scarsdale.com>; Clerk's Department <clerk@scarsdale.com>

**CAUTION:** External sender.

Gentlemen, I see that the Scarsdale Village Planning Board will be meeting on Wednesday, March 22, 2023 to consider the applications of Verizon Wireless for "eligible facilities requests" to co-locate wireless communications facilities on the Village monopole at 50 Tompkins Road and on the roof of Village Hall at 1001 Post Road. Ordinarily, the Village Attorney serves as counsel for the Village Board of Trustees, as well as the various Village Boards and Councils and the Town Board of Assessment Review. And normally, the multiple representations are not a problem. However, with respect to next week's applications by Verizon Wireless for the "eligible facilities requests," the Village, as lessor, is essentially a co-applicant with Verizon Wireless. Moreover, the Village has a substantial financial interest in seeing these wireless facilities installed on Village properties so that the Village obtains the large recurring lease payments from Verizon Wireless. The Village Attorney has represented the Village Board of Trustees in connection with the lease agreements, has provided legal advice to same, and continues to represent the Board of Trustees' interests in seeing that this project is effectuated.

The Village Planning Board, under New York State law, is an independent body appointed by the Village Board of Trustees with the full power and authority to perform certain enumerated duties. Chapter 306 of the Scarsdale Village Code constitutes the Wireless Telecommunications Facilities Law of the Village of Scarsdale. Applications for wireless facilities within the Village are subject to the approval of the Village Planning Board. The wireless facilities which the Village Board of Trustees has approved for Verizon Wireless to install on the monopole and on the roof of Village Hall thus must be approved by the Village Planning Board. Verizon Wireless is expected to apply for permits for these facilities using "eligible facilities requests," and the Planning Board will have to determine whether or not these facilities qualify under the federal Spectrum Act as "eligible facilities" and whether or not these facilities (particularly the facilities on the monopole) present public safety hazards. These determinations will involve questions of law and fact, and can well be expected to require the assistance of competent, independent, and non-conflicted legal counsel.

Mr. Ward-Willis and his law firm, Keane & Beane, P.C. find themselves in a conflict of interest situation with regard to providing legal counsel to the Village Planning Board in connection with these forthcoming applications. They simply cannot represent *both* the interests of the Village (through the Board of Trustees), as leaseholder for the leases with Verizon Wireless, and the interests of the Village Planning Board with respect to the independent, unbiased consideration of the merits of these applications.

I respectfully request that independent counsel be retained immediately for the Village Planning Board for its consideration of these applications. The Village Board of Trustees likely needs to make this decision, and if it has any questions about the need to do so, it should refer the issue to the Village Board of Ethics immediately. Thank you for your prompt consideration of this vital issue.

Best regards, Bob Berg.

Robert J. Berg, Esq.  
Law Office of Robert J. Berg PLLC  
17 Black Birch Lane  
Scarsdale, New York 10583  
(914) 522-9455  
robertbergesq@aol.com

