

## Donna Conkling

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**From:** robertbergesq@aol.com  
**Sent:** Sunday, November 14, 2021 2:40 AM  
**To:** robertbergesq@aol.com; Mayor; Clerk's Department; Attorney's Office; Robert Cole  
**Cc:** zberg4@gmail.com  
**Subject:** Village of Scarsdale - Proposed new telecom code  
**Attachments:** Combined 11.16.21.docx

**CAUTION:** External sender.

Good evening. I have reviewed the revised draft telecom code in advance of the Village Board's "working session" scheduled for Tuesday, November 16, 2021. I had hoped that some of the suggestions my daughter, Zoe, and I have provided over the past few months to the Board and Village Staff would have been incorporated. It looks like we may have possibly scored on just one -- this draft provides a de novo administrative appeal of the initial decision of a wireless facility application whereas the earlier drafts provided no such administrative appeal and required an aggrieved person to file an Article 78 petition in Supreme Court. This is an important change because 1) it provides a second stage review at the Village level, which furthers the goal of preserving local control as much as we can; and 2) it saves the aggrieved person the considerable expense of bringing an Article 78 action in court when the issue may be resolved at the Village level at no cost. Thank you. Unfortunately, things go downhill from there.

### Thoughts from the Trenches

As I've mentioned a number of times so far, as a result of my daughter's powers of persuasion, I have become deeply involved over the past year in legal and political efforts to encourage the safe deployment of wireless communications facilities in communities nationwide, while preserving as much local control as possible. I represent individuals and organizations before municipal boards across the country challenging specific wireless facility applications. I am a co-lead counsel for a number of individuals and environmental groups in a major federal lawsuit against the Tahoe Regional Planning Agency and Verizon opposing Verizon's proposed cell tower in the environmentally sensitive and visually protected Lake Tahoe Basin. And I am involved in a number of more mundane cell tower battles in various courts and before various boards. Since now I am spending most of my professional practice focused on this topic, I'm particularly concerned when well-grounded recommendations from Zoe and myself about "best of class" telecom code provisions are being dismissed without comment.

It's especially troubling to hear the Mayor publicly claim that the Board's goal is to enact a telecom code that preserves the greatest amount of local control, and then review a proposed code like the one presented to the BOT that is a giveaway to the telecoms. The draft code was bad when I first reviewed it and wrote to the Board about it a month or two ago. I spoke about its flaws at the last working session, as did Zoe. I followed up with more written comments. Mr. Cole provided Zoe with a draft earlier in the week, and I understand she provided him with additional feedback. And here we have the supposed "state of the art" "best of class" draft telecom code, crafted for Scarsdale Village, and it plain sucks.

### Chickens Running Around with their Heads Cut Off

#### Why Have The Village Engineer Administer WCFs in the Public ROW and the Planning Board Handle WCFs Outside?

In an unnecessarily complicated bifurcation, the proposed code is broken down by wireless communications facilities ("WCFs") in the public ROW and those outside. WCFs in the public ROW are addressed in a new supplemental section to Chapter 256 of the Village Code, while WCFs outside the public ROW are dealt with in Chapter 310. This is rather ridiculous. There's no reason to put any part of the telecom code in Chapter 256. Deal with the code in all its permutations in its own Chapter. Splitting it into two Chapters of the Village Code just makes matters worse.

Now, why have the Village Engineer be in charge of WCFs in the public ROW and have a separate body, the Planning Board, deal with WCFs outside the public ROW? This field is complicated enough. There's a substantial learning curve. Let's keep the Village Engineer out of this, and have the Planning Board deal with both as the body that makes the decision. The Village Engineer and his staff can and should be used to assist the Planning Board and to handle all of the administrative functions, including coordinating with independent consultants. But the Planning Board should, in the first instance, be the entity with the decision-making power.

Against my better judgment, I have spent much of Friday night and Saturday reviewing the proposed code in detail and making comments and suggestions. Why am I spending hours of my time when you ignore virtually everything Zoe and I suggest? That's a good question. But this subject matter has been my daughter's professional passion for more than 3 years now. She started the most influential Facebook group on the topic and now has 135,000 followers. She has decided to become a lawyer in order to become a more effective advocate for her public interest causes, and now is a first year law student at Tulane. So we are highly invested in ensuring that our hometown enacts a worthy telecom code, and we have so much expertise to offer.

Best, Best & Krieger, despite what it must be saying to you, offers a weak, generic telecom code, prepared in a remarkably sloppy and choppy structure. Zoe and I have suggested much superior codes such as the Town of North Hempstead code. Best, Best must be telling you its proposed code is much better. Saving face? Trying to keep the telecoms happy? Who knows? All I know is we can do much much better.

Can you believe that your proposed code NEVER requires a public hearing on any application? I assure you that in so many communities where no one shows up to Board meetings, the meeting rooms overflow when cell tower public hearings are held.

Under the proposed code, Dave Goessl, the Village Engineer, will be able to decide on his own, using general guidelines and much of his own discretion, and without any public hearings, all applications for wireless facilities in the public right of way. When the poles start going in the ground outside our residents' homes, the Village Manager's phone is going to start ringing off the hook, and there are going to be loads of angry residents.

You can do much better than what is before you. Scarsdale's residents deserve much better. I have marked up the current proposed code with comments, but this code is not nearly ready for prime time.

I look forward to the discussion on Tuesday evening. Enjoy the rest of your weekend.

Best, Bob Berg.