

# Young / Sommer LLC

ATTORNEYS AT LAW

EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205  
Phone: 518-438-9907 • Fax: 518-438-9914

www.youngsommer.com

David C. Brennan, Esq.  
Writer's Telephone Extension: 224  
dbrennan@youngsommer.com

June 8, 2020

***Via Overnight Delivery and E-Mail***

Planning Board  
Town of Brunswick  
336 Town Office Road  
Troy, New York 12180

***Via Overnight Delivery and E-Mail***

Zoning Board of Appeals  
Town of Brunswick  
336 Town Office Road  
Troy, New York 12180

RE: Blue Sky Towers III, LLC, Cellco Partnership d/b/a Verizon Wireless and AT&T Site Plan Review and Special Use Permit and Rosenberg Variance Application Creek Road (Tax Map Nos. 113.00-5-7.1 (tower parcel) and 113.00-5-10.11 (easement parcel))

Ladies and Gentlemen:

This office is in receipt of the LaBerge Group's summary of the public comments made at the joint public hearing on January 17, 2020. This letter will serve to document the Applicants' responses and provide additional information/responses for the Boards' consideration.

## Summary of Comments and Applicants' Information and/or Response

Comment 1:	Applicants' Information/Response:
The proposed curb cut to the tower site is in a poor location on Creek Road and relocation of the access point should be considered.	The curb cut is situated on the outside of a horizontal curve in Creek Road. Creek Road drops in grade as you head south to north across the curb cut. There is approximately 225' of sight distance in each direction from the curb cut factoring in the road slope and curvature. This adheres to NYSDOT standards for stopping sight distance for 30 mph roadways (minimum requirement is 200' per NYSDOT HDM Chapter 2, Exhibit 2-5).
Comment 2:	Applicants' Information/Response:
Since Zouky is the only one benefitting	The Applicants have reviewed this

<p>from the tower through lease payment why not place the facility behind the Zouky residence to reduce or avoid the visual impacts.</p>	<p>location. Please note that the ground elevation behind the Zouky residence is lower than the ground elevation at the proposed location of the 150' monopole tower. The VZW RF engineer prepared the RF plot and exhibit attached as <b>Exhibit A</b> hereto. The plot identifies that for a tower behind the Zouky residence, even with a height of 195' AGL, significant gaps in coverage will remain along NYS Route 2 and Pinewoods Avenue. To close these gaps in coverage, an even taller tower would need to be proposed behind the Zouky residence. This would require FAA obstruction lighting and painting. Based on the Visual Resource Evaluation that was prepared for this matter which evaluated a proposed 240 foot tall alternative location, the Applicants do not believe a tower in this location will be less visible.</p>
<p><b>Comment 3:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>The Environmental Assessment lists the incorrect school district.</p>	<p>The Applicants originally identified the school district as the Averill Park CSD. The Applicants were previously told that the school district should be listed as the Brittonkill CSD and made that change. A revised Full EAF will be provided that incorporates any requested project description and project setting changes, including this change.</p>
<p><b>Comment 4:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>The propagation study misrepresents need for the tower since it is based upon software analytics instead of actual field checking.</p>	<p>Due to the length of the response to this comment, the response is separately attached as <b>Exhibit B</b>.</p>
<p><b>Comment 5:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>Never had a dropped call while traveling through the area. Why is tower needed now?</p>	<p>The Applicants have submitted expert analysis by a trained RF Engineer documenting the need for a facility in this area. In addition, the Town has retained its own licensed engineer to review the application and he has concurred that a</p>

	<p>need for the facility has been substantiated. Additional RF information responsive to this comment is found in <b>Exhibit C</b>.</p>
<p><b>Comment 6:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>The coverage of the proposed tower exceeds that of the area where coverage is indicated to be poor.</p>	<p>The RF plots show the locations where RF modeling predicts that the coverage level is equal to or stronger than -105 dBm. While there are areas of existing coverage within the intended service area that meet this coverage threshold, there are also significant gaps in coverage. When a new site is put on air, the computer system picks the dominant facility and the handset connect to that location. The plot showing existing and proposed coverage acknowledges that when a new site goes on air, the coverage footprints adjust. Additional information responsive to this comment is located at <b>Exhibit D</b>.</p>
<p><b>Comment 7:</b></p>	<p><b>Applicants' Information/Response</b></p>
<p>Based upon studies, property values could be reduced by as much as 20 percent which is a significant impact to the property owners.</p>	<p>The Applicants have included an appraisal report that was prepared for locations with existing telecommunications sites and which identifies that the construction of a telecommunications tower had no negative effect on property values. See <b>Exhibit E</b>. As noted below, the setting of the proposed location also includes a major electric transmission facility and towers visible from many of the homes.</p>
<p><b>Comment 8:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>The tower is significant visual pollution as it will be tallest structure in the area.</p>	<p>The Applicants have submitted to the Town alternatives for locations at 80 feet, 90 feet and 150 feet (the 80 and 90 foot locations if designed as a stealth monopine require an approximately 15 foot additional ornamental cap). As noted above and below, the setting of this neighborhood contains a major electric transmission facility and towers visible from many of the homes.</p>

<p><b>Comment 9:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>The access road to the proposed tower will invite people to trespass on to the Zouky property for ATV use and similar types of recreational vehicles creating a nuisance for the neighbors.</p>	<p>The access road will have a gate in the vicinity of its curb cut with Creek Road. The existing parcel is large in size and already has existing access points and paths for agricultural equipment. The installation of a telecommunications facility and access road will not cause the use of ATVs or similar vehicles any more than any other use of this or similar unimproved properties.</p>
<p><b>Comment 10:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>Impact to Golden Eagle should be evaluated as part of the environmental assessment.</p>	<p>Impact to endangered species will be considered as part of the review. It is not expected that a field in active agricultural production is habitat for the Golden Eagle. The proposed tower complies with the US Fish &amp; Wildlife Service Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning last revised April 2018.</p>
<p><b>Comment 11:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>Generators will create noise pollution and be a nuisance, particularly at night during evenings where windows will be open.</p>	<p>The site is not operated by generators. The site operates off of the electric utility grid. The generators automatically exercise approximately once per week (or once every other week) and otherwise only run during a power outage to keep the networks in operation. An exercise cycle for a generator lasts approximately 20-30 minutes and occurs during business hours.</p>
<p><b>Comment 12:</b></p>	<p><b>Applicants' Information/Response:</b></p>
<p>The tower will have a significant impact on the view from the surrounding homes. The view from many of the homes is of the countryside and the tower will be completely out of place.</p>	<p>The Applicants have proposed multiple alternatives to the community in an effort to locate the facility in the least intrusive means possible. This includes a location for a tower of 80 feet and a separate location requiring a tower of 90 feet. In each instance, such a tower could be camouflaged as a stealth monopine tree (this would require an ornamental cap of</p>

	<p>approximately 15 feet to be added). Moreover, the Applicants note that the existing setting of the homes includes a large power transmission line with associated towers. A series of photos showing the power lines and towers next to the homes are included as <b>Exhibit F</b>. Accordingly, the Applicants submit that the proposed facility is consistent with the character of the neighborhood.</p>
<p>Comment 13:</p>	<p>Applicants' Information/Response</p>
<p>There have been articles concerning the health risk particularly to children. Shouldn't any tower be as far as possible from residential homes?</p>	<p>The Applicants have submitted an RF Safety FCC Compliance Letter from a NY State licensed Professional Engineer identifying that even at full power the facility would not exceed 1% of the FCC standard at any distance from the tower.</p>
<p>Comment 14:</p>	<p>Applicants' Information/Response:</p>
<p>The application states there is a dense wooded buffer between homes and tower site. This statement is not entirely true for all surrounding properties.</p>	<p>Comment noted. The Applicants have offered multiple alternatives, including stealth alternatives, to address concerns regarding visibility.</p>
<p>Comment 15:</p>	<p>Applicants' Information/Response:</p>
<p>When and how will the proposed flood light(s) shown on the plan be used?</p>	<p>There is a work light located on the VZW equipment pad at the base of the tower. It is not on a motion sensor. The light operates on a manual spring wound timer that can be turned on in the rare occasion a technician may be on-site during low light conditions. When the timer winds down the light goes off. This way the light cannot be left on inadvertently. AT&amp;T will have a similar installation.</p>
<p>Comment 16:</p>	<p>Applicants' Information/Response:</p>
<p>What are the maximum number of panels that can be on the tower?</p>	<p>The Town Zoning Law requires that a tower be designed to accommodate future shared use. The Application materials identify that the 150 foot monopole would be able to support four carriers. However the Visual Resource Evaluation modeled the towers with three carriers. While each carrier has different designs and antenna</p>

	<p>requirements, a typical three sided array for a carrier will contain four antennas per side (or sector) for a total of twelve antennas. Please note that the alternative locations for a stealth monopine would only support two carriers at the height proposed.</p>
<p><b>Comment 17:</b></p> <p>The report discussed ground RF exposure however what is the exposure to people at the same elevation as the panels? Many of the homes are at the same elevation as the panels.</p>	<p><b>Applicants' Information/Response:</b></p> <p>By letter dated May 5, 2020 the Applicants submitted drone fly footage from three locations. The drones were flown at the height of the antennas. The videos demonstrate that the antennas are well above the homes, not at the same elevation. In addition, the Applicants had previously prepared a site profile drawing to show the relative heights of the antennas necessary to overcome terrain blocking and maintain comparable coverage between locations. This drawing also shows the ground elevation profile and the first floor elevation of some of the nearby houses as well as the elevation of the road. While the houses and trees were not drawn to scale, the drawing illustrates that the antennas are elevated above the homes. Please see <b>Exhibit G.</b></p>
<p><b>Comment 18:</b></p> <p>Has a wind study been performed so the at the tower can withstand the strong winds at that location?</p>	<p><b>Applicants' Information/Response:</b></p> <p>A wind study is not required as structural design wind speeds for all new construction projects are determined by state and federal building and tower design codes and standards. The tower will be designed to the most current standard for towers, "Structural Standard for Antenna Supporting Structures, Antenna and Small Wind Turbine Support Structures ANSI/TIA-222-H" effective January 1, 2018 and adopted as part of the 2020 NYS Building Code on May 12, 2020. This national standard takes into account wind speed and other factors for the design of the tower structure. In this area of New York,</p>

	the basic wind speed for the design will be in excess of 110 mph.
<b>Comment 19:</b>	<b>Applicants' Information/Response:</b>
The EAF indicated the site is over a principal aquifer. What is the project's effect upon the aquifer? What is the effect of runoff from the site.	Many areas in the Capital District are located over a principal aquifer. There will be no effect on the aquifer. The construction of a telecommunications facility is similar to the foundation for a large single family home with respect to the excavation and concrete exposed to the soils. There will be little runoff from the site as there is little impervious surface. The majority of the runoff will be dispersed using swales and infiltration trenches along the access road. Additionally the runoff is clean, meaning there are no pollutants generated on site since the facility is uninhabited and generates no traffic.
<b>Comment 20:</b>	<b>Applicants' Information/Response:</b>
The fall zone of tower 3 will extend across the property line onto an adjacent parcel.	The location of tower 3 was designed to be a minimum of 240' away from the closest parcel boundary (to the north). The balloon for this tower location was flown at this setback distance. The fall zone does not extend across the property line.
<b>Comment 21:</b>	<b>Applicants' Information/Response:</b>
Will the 80 foot tall tower accommodate a third carrier in addition to the Verizon and AT&T?	It is expected that the 80 foot location, if selected by the Town, would be built as a stealth monopine tree (which would require an ornamental cap of approximately 15 feet). At the antenna centerlines available, it is likely that it will only hold the two carriers.
<b>Comment 22:</b>	<b>Applicants' Information/Response:</b>
The Comprehensive Plan and Zoning Ordinance intent is to preserve existing nature of the area. The application is not consistent with this intent.	The Applicants disagree with this assertion. As noted above, the character of this area includes a significant existing power transmission line and towers.  A Comprehensive Plan is designed to be the basis for the Zoning Law. It is not a substitute for the Zoning Law. The

	<p>Comprehensive Plan itself notes that “[i]t is not a strict guideline of what the Town must do over time but rather a general framework that must be reassessed from time to time.” Town of Brunswick Comprehensive Plan at page 1.</p> <p>The proposal to place a telecommunications facility on the Zouky property furthers several important goals of the Comprehensive Plan with respect to preservation of farmland and open space by providing a steady revenue stream that could temper development pressure that leads to the conversion of open space and farmland into residential uses over time.</p> <p>Arguably, nearly every comprehensive plan speaks in some terms to preserving the existing character and natural attributes of a town. Applied as suggested in this context, a telecommunications tower could never be authorized in any community because of aesthetic impacts. While we do not agree that such a criterion is applicable or appropriate, in this instance the terrain attributes allow for a proposed stealth monopine facility which addresses this concern to the extent practicable.</p>
<p><b>Comment 23:</b></p>	<p><b>Applicants’ Information/Response:</b></p>
<p>The current zoning does not allow towers as a use.</p>	<p>The Applicants concur with this statement. The application has always contained a use variance request for relief from this limitation. The materials supplied to date document that the Applicants have met the standard for a use variance for this public utility use.</p>
<p><b>Comment 24:</b></p>	<p><b>Applicants’ Information/Response:</b></p>
<p>Project will have a negative aesthetic impact which is significant and cause to reject the application.</p>	<p>The Applicants disagree with this assertion both as to the 150 foot monopole alternative as well as the stealth alternatives. As noted above, the existing</p>

	community character of this location includes a significant electric transmission line and towers.
<b>Comment 25:</b>	<b>Applicants' Information/Response:</b>
Rosenberg case indicates that cell towers are considered a public utility however it does not state towers can be placed anywhere the utility wants them.	The Applicants refer the Town to the Rosenberg case and its progeny for its full import. In this application the Applicants have demonstrated a need for the facility in the proposed location, an assertion with which the Town's Review Engineer has concurred.
<b>Comment 26:</b>	<b>Applicants' Information/Response:</b>
Application should be considered incomplete since options 1 and 3 do not have a fully developed plan.	The Applicants are not under an obligation to provide a fully engineered plan for each alternative considered. In each case, the Applicants have demonstrated whether or not a tower would work from an RF perspective at the location and height proposed and in the cases where the tower would work, have provided a visual resource evaluation to allow an evaluation of the location.
<b>Comment 27:</b>	<b>Applicants' Information/Response:</b>
Option 3 falls outside of search ring.	Option 3 and several alternatives that the Town requested be evaluated do fall outside the search area. The search area was defined to locate a tower on higher elevations thereby resulting in a shorter tower. Option 3 was included to demonstrate that maximizing the distance of the tower from the ridgeline would result in a tower that worked from an RF perspective but needed significant additional height to overcome the intervening terrain.
<b>Comment 28:</b>	<b>Applicants' Information/Response:</b>
The application did not include SWPPP and SHPO documentation.	This comment has been previously addressed with the Town. The TDE has concurred that these design matters and investigations should proceed after a preferred location is identified. There is no basis to require an applicant to design a full

	<p>SWPPP for three different alternatives. That is simply a significant expense from which little information will be identified. In each location, standard practices will be used to handle the minor stormwater that is generated. In a similar vein, there is no reason to conduct shovel tests on three different sites at this time. To the extent that anything of significance is found, there are procedures in place to address the materials.</p>
<b>Comment 29:</b>	<b>Applicants' Information/Response:</b>
<p>A sound assessment should be conducted due to the use of multiple generators on site.</p>	<p>Agreed. As noted above, the generators only run once per week (or every other week) for an exercise cycle and then only when there is a power outage. The Applicants will submit a sound analysis identifying that the occasional use of the generators to maintain the network in operation during a power outage will not impact nearby residences. However, the Applicants have previously identified that this and similar location specific information will be provided when a preferred location is selected.</p>
<b>Comment 30:</b>	<b>Applicants' Information/Response:</b>
<p>Why not install arrays on the existing towers owned by the power company?</p>	<p>The RF analysis originally submitted evaluated use of the existing power company towers (at an antenna centerline of 100') and found that the required RF coverage would not be provided from the towers.</p>
<b>Comment 31:</b>	<b>Applicants' Information/Response:</b>
<p>Will there be restrictive covenants in the deed regarding use of the driveway access to the site to prohibit other uses.</p>	<p>A restrictive covenant is not proposed limiting the use of the driveway. It would be expected that nearly any other use of the property would require site plan or special use permit review and approval from the Town of Brunswick. There is no reason to encumber the entire property with such a restriction. Any concerns about future</p>

	uses, to the extent one is ever proposed, can be addressed in a permitting process.
<b>Comment 32:</b>	<b>Applicants' Information/Response:</b>
Does the access road include the cutting of trees along the property line? If so it will increase the visual impact of the tower(s).	The construction of the access road is not proposed to be sited in a location that will require the removal of trees along the common property line.
<b>Comment 33:</b>	<b>Applicants' Information/Response:</b>
Will there be deed restrictions regarding setbacks and vegetative cover on the project site?	A deed restriction is not proposed.
<b>Comment 34:</b>	<b>Applicants' Information/Response:</b>
Is this tower part of a larger plan for a new cell tower grid in the area?	The Applicants have previously supplied information (Letter of November 18, 2019) that has identified that there are no plans for additional towers in the next two year period. The proposal is not part of a larger plan for a new tower grid in the area.
<b>Comment 35:</b>	<b>Applicants' Information/Response:</b>
There is an inadequate description of the fuel storage tank for the diesel generator.	The facility will have separate backup diesel generators located on the platform or pad for both VZW and AT&T. In the typical generator, diesel fuel is stored in a double walled belly tank. The fuel storage area has a leak detector in the interstitial space and is wired with an alarm system that transmits back to the carrier's operations center and which is monitored on a 24 hour basis. Fuel storage varies by make and model of the generator, but is typically in the 100 gallon range for a generator deployed at a facility such as this. The emergency generator and fuel storage tank are designed in accordance with all applicable laws, rules, regulations and safety requirements for New York State.

I look forward to reviewing these responses with the Planning Board and Zoning Board of Appeals.

Thank you for your consideration.

Planning Board  
Zoning Board of Appeals  
Town of Brunswick  
June 8, 2020  
Page 12

Very truly yours,



David C. Brennan, Esq.

Encl.

CC: Andrew Gilchrist, Esq. (via Fed Ex and e-mail - with encl.)  
Ronald J. LaBerge, P.E. (via Fed Ex and e-mail - with encl.)  
Elizabeth Thompson, Esq., Blue Sky Towers, LLC (via e-mail – with encl.)  
Karla Hanna, Blue Sky Towers (via e-mail - with encl.)  
Sara Colman (via e-mail - with encl.)