

INCORPORATED VILLAGE OF MILL NECK
BOARD OF ZONING APPEALS

RESOLUTIONS DENYING THE APPLICATIONS OF
EASTERN SHORE TOWERS, LLC, NEW YORK SMSA LIMITED PARTNERSHIP d/b/a
VERIZON WIRELESS, NEW CINGULAR WIRELESS, PCS, LLC, d/b/a AT&T, T-MOBILE
NORTHEAST, LLC and SPRINT SPECTRUM REALTY, LLC, AS APPLICANTS, AND MILL
NECK MANOR SCHOOL FOR THE DEAF, AS OWNER
AND
MILL NECK MANOR SCHOOL FOR THE DEAF, AS APPLICANT

WHEREAS, a duly-noticed, joint public hearing was held by the Village of Mill Neck Board of Zoning Appeals (“BZA”, or the “Board”) was opened on May 18, 2021, and continued on July 29, 2021, at the Mill Neck Manor Deaf Education Center - Auditorium, located at 40 Frost Mill Road, Mill Neck, New York, on the applications of:

1. **Eastern Shore Towers, LLC, New York SMSA Limited Partnership d/b/a Verizon Wireless, New Cingular Wireless, PCS, LLC d/b/a AT&T, T-Mobile Northeast, LLC and Sprint Spectrum Realty, LLC, as Applicants, and Mill Neck Manor School for the Deaf, as Owner (collectively, “Eastern Shore Towers”)**, pursuant to Ch. 129, Art. IX of the Code of the Village of Mill Neck (“Village Code”), for a new special permit for a conditional use and waiver relief to allow the construction, operation and maintenance of a proposed High Wireless Telecommunication Services Facility on the property owned by the Mill Neck Manor School for the Deaf (“Mill Neck Manor”), located at 40 Frost Mill Road (NCTM: 29-N-12B, 12C), in the E-1 Zoning District of the Village of Mill Neck (“Village”).
2. **The Mill Neck Manor School for the Deaf**, seeking to amend its existing special permit, pursuant to Ch. 129, Art. IX of the Village Code, for a conditional use to allow the installation and use of a proposed High Wireless Telecommunication Services Facility on its property, located at 40 Frost Mill Road (NCTM: 29-N-12B, 12C), in the E-1 Zoning District of the Village.

The foregoing parties are hereafter referred to collectively as the “Applicants”; and

WHEREAS, the applications seek a special permit and amendment of an existing special permit to allow the construction, operation and maintenance of a High Wireless Telecommunication Services Facility consisting of a 125-foot¹ “unipole” tower, base station, and three (3) emergency electric generators surrounded by a 60’ x 29’ “level 2” sound enclosure. The application includes a request for three (3) waivers from the specific standards for High Wireless Telecommunication Services Facilities set forth in Section 129-68(J) of the Village Code to allow:

¹ At the presentation before the Mill Neck Planning Board on June 23, 2021, the Applicants’ representative, Gregory Alvarez, Esq., stated that the Applicants would voluntarily eliminate the two “whip antennas” at the top of the proposed tower, reducing its height to 122.6 feet above grade. However, in its supplemental submission to the Board on July 28, 2021, Amato Law Group stated that it was withdrawing its offer to reduce the height of the tower in response to the Planning Board’s negative recommendation of the project (*see* Amato Law Group Ltr. 7/28/21, p. 2, FN 2).

1. A High Wireless Telecommunication Services Facility 423' from the southern boundary line of the subject property, and a proposed High Wireless Telecommunication Services Facility base station/enclosure 396.5' from the southern boundary line of the subject property, whereas 1,000 feet is required pursuant to Village Code Section 129-68(J)(4)(a)[1].
2. A proposed High Wireless Telecommunication Services Facility 872'5" from the nearest dwelling, and a proposed High Wireless Telecommunication Services Facility base station/enclosure 847'11" from the nearest dwelling, whereas 1,000 feet is required pursuant to Village Code Section 129-68, J(4)(a)[1].
3. A proposed High Wireless Telecommunication Services Facility 423' from the southern boundary line of the subject property, and a proposed High Wireless Telecommunication Services Facility base station/enclosure 396.5' from the southern boundary line of the subject property, whereas 700' is required pursuant to Village Code Section 129-68, J(6)(a).

No exterior lighting is proposed on the tower or base station; and

WHEREAS, the BZA held an initial hearing on the applications on May 18, 2021, and on that date, referred the applications to the Village of Mill Neck Planning Board ("Planning Board") for review and report in accordance with Section 129-70 of the Village Code; and

WHEREAS, on June 23, 2021, the Planning Board returned a report and recommendation against granting the applications for the reasons set forth in the Board's Minutes of Meeting, dated June 23, 2021; and

WHEREAS, the following Board members and individuals were present during the BZA hearings:

Present: Paul McNicol, Chairman
 Paul Annunziato
 Roberta Murray
 Kathleen Gregori

Absent: Terrill Barnard (7/29)
 Also Present: Peter B. Colgrove, Esq., Village Attorney
 Anthony S. Guardino, Esq., Special Counsel
 Philip A. Butler, Esq. Special Counsel
 Michael Crites, CTC Engineering
 Al Amato, Esq., Amato Law Group
 Gregory Alvarez, Esq., Amato Law Group
 David Wortman, VHB
 Michael J. Lynch, R.E. Appraiser
 Andrew Campanelli, Esq., Campanelli & Associates
 Richard Comi, Center for Municipal Solutions
 Sarah Kautz, Preservation Long Island

and

WHEREAS, the Board members have reviewed and considered all of the documents and other written evidence submitted in support of and in opposition to the applications, including, but not limited to, the following:

1. Documents and correspondence listed in the attached "Hearing Exhibit List" prepared by Amato Law Group, PLLC, dated July 28, 2021, a copy of which is appended hereto for reference.
2. Memorandum in Opposition by Campanelli & Associates, P.C., submitted June 21, 2021.
3. Exhibits in Opposition from Campanelli & Associates, P.C., submitted June 21, 2021.

4. Letter from Preservation Long Island, dated June 22, 2021.
5. Minutes and Resolution of the Village of Mill Neck Planning Board, dated June 23, 2021, and filed June 29, 2021.
6. Report from Cityscape Consultants, Inc., dated May 14, 2021.
7. Email correspondence with Cityscape, dated September 25, 2020, March 22, 2021, April 1, 2021, and April 15, 2021.
8. Review of Wireless Application (Report), with Appendix A, dated July 2021, by CTC Technology & Energy.
9. Letter from Frank Ciotta & Associates, Inc., dated July 28, 2021.
10. Letter from Center for Municipal Solutions, dated July 29, 2021.
11. Letters from residents received July 29, 2021.
12. Letter from Preservation Long Island, dated July 29, 2021.
13. Letter from Lynch Appraisal, Ltd., dated July 29, 2021.
14. Maps submitted by Andrew Campanelli, Esq., on July 29, 2021.
15. FCC Petition (partial), with exhibits, submitted by Andrew Campanelli, Esq., dated July 29, 2021.
16. Letter from Amato Law Group, dated July 30, 2021.²

and

WHEREAS, the Board members have reviewed and considered the written and verbal comments and testimony provided by the Applicants and their consultants; the Board's consultants; and the members of the public and their consultants; and

WHEREAS, the Board members are all long-time residents of the Village, are familiar with the Mill Neck Manor property, including the historically and architecturally significant buildings and the surrounding gardens and grounds, and have reviewed and considered all of the evidence against the backdrop of their personal knowledge of the Village and the Mill Neck Manor property; and

WHEREAS, prior to the adoption of this resolution, the Board adopted a Negative Declaration of Environmental Significance for purposes of SEQRA review on the project, and accordingly, no environmental impact statement shall be prepared.

NOW THEREFORE, BE IT RESOLVED, that the BZA makes the following initial findings:

1. **Planning Board Recommendation.** The Planning Board's negative recommendation with respect to the project triggers a super-majority requirement under Section 129-70(B)(1) of the Village Code. Accordingly, a minimum of four favorable votes is required to approve the applications.
2. **Shot Clock.** Pursuant 42 U.S.C. §332(c)(7)(B)(ii) of the Telecommunications Act of 1996 ("TCA"), and regulations of the Federal Communications Commission ("FCC"), the BZA is required to decide the applications under its consideration prior to expiration of the FCC-mandated shot clock. Ordinarily, the shot clock runs for 150 days from the submission of a *complete* application for the approval of a new wireless telecommunications facility, subject to certain tolling provisions. The deadline for expiration of the shot clock with respect to the Applicants' applications was mutually extended by agreement between the Applicants' and Board's counsel to and including the date of August 2, 2021. However, it is the Board's understanding that the Applicants would not

² The Applicants' legal counsel was permitted to make a final submission post-hearing for the limited purpose of responding to PLI's letter of July 29, 2021, and the attached email of the same date from the State Historic Preservation Office, on the basis that PLI submitted its letter less than two hours prior to the hearing. The Applicants' submission of July 30, 2021, is considered strictly for that purpose. No other matters set forth in the letter are considered or granted weight.

agree to further extension beyond that date. Accordingly, the BZA has no option but to render a decision on or before August 2, 2021, to comply with the shot clock deadline.

3. **Substantial Evidence.** The Board understands that, in accordance with Federal law and judicial precedent, it is the Applicants' burden to demonstrate based upon substantial evidence in the record that there is "public necessity" for the proposed facility in that: (i) there are significant gaps in coverage within the geographic range to be served by their project; and (ii) that the proposed High Wireless Telecommunication Services Facility in the specific location chosen is the least intrusive means of providing coverage within the affected area. It is through this lens that the BZA reviews the Applicants' project and all documents and testimony received in support. While the BZA recognizes that the Applicants' do not need to guarantee that the facility will provide perfect coverage within the Village, the Applicants' must demonstrate that coverage will be significantly improved.
4. **Community Concerns.** The hearing process before the BZA and the referral to the Planning Board have included robust comment from members of the public opposed to the Applicants' project. Overall, public participation has been beneficial to the hearing process by bringing to light many issues for the Board's consideration. However, the Board cannot validly consider any comments received to the effect that Village residents simply do not want the project, do not see the need for the project, or that they are satisfied with the existing coverage in the Village; nor can the Board consider comments regarding the perceived health effects associated with human exposure to "RF" (radio frequency) emissions. The former sort of commentary is commonly regarded as generalized community opposition, or the "NIMBY" mindset, which state and Federal courts have consistently rejected as a valid basis for Zoning Board decisions. Furthermore, as a matter of Federal law, local boards are preempted from basing their decisions on the perceived health effects of human RF exposure, provided that a project under review complies with the FCC's "maximum permitted exposure" (MPE) standards. There was no dispute on the record before the Board that the proposed facility would comply with the FCC's MPE standards. The financial interests of the Mill Neck Manor School for the Deaf and the other Applicants in the project are, likewise, irrelevant to the Board's charge of determining whether the project should be allowed under the Village zoning code. Therefore, while the BZA does not admonish residents for their feelings concerning the project, it is constrained to reject such comments and grant them no weight in its consideration of the applications before it.

and be it

FURTHER RESOLVED, that the application of **Eastern Shore Towers** is hereby **DENIED** because the project **FAILS TO MEET** several of the specific standards for High Wireless Telecommunication Services Facilities set forth in Section 129-68(J) of the Village Code:

(2) *Purpose. The purpose of these conditional use regulations is to reasonably control the location, construction and maintenance of high wireless telecommunication services facilities in order to:*

...

(b) *Minimize the **impact of such facilities on residential properties;***

(c) *Encourage the siting of high wireless telecommunication services facilities on properties and areas which are not used for residential purposes or would adversely affect residential property;*
and

(d) *Protect, to the maximum extent practicable, **aesthetic qualities, the open space character of the Village, the property values of the community, the health and safety of citizens and a citizen's ability to receive communication signals without interference from other communication providers, while not unreasonably limiting competition among communication providers.***

(7) *Freestanding structures. The type of freestanding high wireless telecommunication services facility shall be **disguised to minimize its visibility and impact** to the satisfaction of the Board of Appeals. High wireless telecommunication services facilities which require the use of guy wires are prohibited.*

(9) *Visual mitigation.*

(a) The applicant/provider shall prepare a visual impact assessment of the proposed high wireless telecommunication services facility based upon appropriate modeling, photography and other pertinent analytical techniques as required by the Board of Appeals, including but not limited to a map identifying the zone of visibility.

(21) *Application procedure.*

(b) Demonstration of need and master plan. The operator(s) of the wireless telecommunication service shall submit a copy of the relevant FCC licensing and shall demonstrate to the satisfaction of the Board of Appeals that there is a public need for each such facility at the location(s) proposed by the applicant to provide adequate coverage in the Village. Such demonstration shall include the preparation of existing and master effective service area plans which:

[1] Demonstrate that existing or other planned or approved facilities or structures do not and cannot be modified to accommodate the applicant's antenna, or that alternative technologies cannot be used, to provide adequate coverage to the Village without the need for new or additional facilities in the Village. In no case shall the provision of adequate coverage constitute a public need for a new or additional wireless telecommunications services facility in the Village unless the applicant demonstrates to the satisfaction of the Board of Appeals, in consultation with its engineer, that:

[a] The provision of adequate coverage unreasonably discriminates against the applicant in comparison to other wireless telecommunication services providers in the Village where imperfect coverage and inequities between competing services are unavoidable; or

[b] For other technological reasons and considerations, the criteria for determining a public need should be waived or modified to further the intent and purposes of this chapter.

[4] Identify all existing and proposed wireless telecommunication facilities which impact the service area covering the Village and identify all proposed and other locations considered for such facility(ies); and

[5] Analyze feasible alternatives, including alternative sites, construction and transmission technologies, to reasonably minimize the visual and other adverse impacts.

The Board takes these considerations out of order for purposes of discussion as follows:

1. Demonstration of Need, and Alternatives.

The Applicants submit that they have produced substantial evidence of significant gaps in wireless coverage in the Village, and that the proposed 125-foot tall tower on the Mill Neck Manor property is the only viable means of addressing those gaps. They further contend that they have demonstrated that no feasible alternatives exist other than the solution proposed. The Board finds the Applicants' proof fatally insufficient.

At the outset, the fact that the Applicants previously offered to reduce the height of the unipole as a failed bargaining chip in exchange for a favorable recommendation by the Planning Board is undeniable proof that the requested height of 125 feet is *not* the minimum height necessary for this project.³ Beyond this, the Board has taken note of several sources in the record that cut against both the stated need for the height of the unipole, and the “public necessity” of the project overall.

The Board received a highly detailed report from the Center for Municipal Solutions (CMS), dated July 29, 2021, in which CMS particularizes numerous deficiencies in the materials furnished on behalf of each of the carriers (Verizon, AT&T, and T-Mobile). Their findings are substantial.

With respect to Verizon, CMS observes that:

- The Applicants failed to provide propagation maps for all frequency bands on which Verizon operates. They provided a map for 700MHz service while Verizon operates on 746, 869, 1900, and 2100 MHz frequency bands as well.
- Verizon also failed to provide drive test data maps for all frequency bands on which it operates, having inexplicably omitted a map for the 850 MHz frequency band.

(CMS Report p. 2). Consequently, the Board cannot determine Verizon’s true existing signal strength in the Village, or whether there are significant gaps in coverage using the missing frequency bands. CMS also observes that:

- Verizon did not perform a Continuous Wave (CW) drive test, which would have provided “more accurate representation of the different signal frequencies that would propagate from the proposed new facility at varying heights...” (CMS Report p. 3).
- Verizon contends that the project is necessary to achieve signal strength in the Village of -80 dBm and -85dBm. Not only is this strength many times stronger than that deemed necessary by Verizon’s co-applicants (T-Mobile is seeking signal strength of -97dBm for in-building coverage, and -114 dBm for in-vehicle coverage), it is also many times stronger than the signal strength Verizon has represented as reliable in other communities, such as Shelter Island and Hamlin, New York, where it sought coverage signal strength of only -95 dBm.

(CMS Report, pp. 2-3). Thus, it is unclear to this Board whether the proposed facility is necessary to fill gaps in coverage, or simply to augment signal strength in the Village beyond Verizon’s actual needs. CMS makes additional findings with respect to Verizon that compound these open issues.

With respect to AT&T, CMS observes that:

- Like Verizon, AT&T failed to provide propagation maps at all frequency bands on which AT&T operates. Specifically, AT&T operates on the 700, 850, 1900, and 2300 MHz bands, but provided maps for only 700 and 1900 MHz frequencies.
- AT&T also fails to provide drive test data maps for the 850 and 2300 MHz frequency bands.

(CMS Report p. 4). Consequently, the Board cannot determine AT&T’s true existing signal strength in the Village, or whether there are significant gaps in coverage using the missing frequency bands. CMS also observes that:

³ See FN 1.

- Also like Verizon, AT&T is seeking signal strength many times stronger than its co-applicant, T-Mobile. AT&T seeks in-building coverage of -87 dBm and in-vehicle coverage of 97 dBm, whereas T-Mobile seeks only -97 dBm for in-building coverage and -114 dBm for in-vehicle coverage. This translates to a requested signal strength for AT&T that is 10 times stronger for in-building coverage and 53 times stronger for in-vehicle coverage than T-Mobile without any explanation why. Again, this raises the question whether the facility is necessary to fill coverage gaps, or merely to raise AT&T's signal strength above its actual needs.

With respect to T-Mobile, CMS observes that:

- Like Verizon and AT&T, T-Mobile does not provide propagation maps or drive test data for all frequency bands on which it operates. Specifically, T-Mobile operates at 600, 700, 1900 and 2100 MHz frequencies. However, the propagation map for 700 MHz is missing, and so is the drive test data for 1900 MHz PCS service.

(CMS Report p. 5). Once again, the Board is unable to determine T-Mobile's true existing signal strength in the Village, and whether significant coverage gaps exist using the missing frequency bands. CMS also observes that:

- The Applicants' materials indicate that the proposed location of the project is outside of T-Mobile's search ring, and the Applicants have failed to explain how a facility outside the search ring will remedy purported coverage gaps outside of it.

These deficiencies weigh heavily against the Applicants' demonstration of need. Furthermore, as a general statement, the Board finds the apparent selectivity of the information provided to it deeply concerning. It suggests that, rather than provide the Board with the full picture of existing coverage in the Village, the Applicants have perhaps put forth only the data and evidence that best makes their case, and have omitted other data that could potentially undermine their claim that the proposed facility is necessary to fill significant coverage gaps.

The Applicants attempt to rebut CMS' findings in their letter to the Board of July 30, 2021, which was to be limited exclusively to responding to the late-hour submission by PLI. Accordingly, their rebuttal of CMS is untimely and outside the record. Even if it were not, the only point the Applicants challenge in their untimely submission is whether Verizon actually "agreed" that the lower signal strength of -95 dBm (versus -80 or -85 dBm) provided reliable in-building coverage in the other communities noted in CMS' report (*see* Amato Law Group Ltr. 7/30/21 p. 2). They do not even attempt to address the multitude of other findings in CMS' report, nor do they request further opportunity to do so.

The Board acknowledges receipt from Andrew Campanelli of color "coverage maps" purportedly taken from the carriers' respective websites (*see* Campanelli Exhibits in Opposition, Exhibit "D", "E", and "F"). Mr. Campanelli presents these maps as an undeniable admission by the Applicants' regarding existing coverage in the Village. The Board also acknowledges, however, the disclaimers also taken from those websites (*see* C2 Systems Second Supplemental RF Report, Exhibits "A", "B", and "C"), all of which expressly state that the maps are not accurate depictions of actual coverage. The Board additionally notes that the maps do not provide specific data concerning things such as signal strength or in-building versus, in-vehicle and open-air coverage. Nevertheless, for the reasons above, the Board finds that there are overwhelming inadequacies in the Applicants' evidence, even without the coverage maps.

The Applicants make much of the fact that the two consultants retained on the Board's behalf – who were not selected by this Board – made findings that the Applicants have demonstrated a need for the project, as proposed. However, to the Board's disappointment, neither consultant performed independent

drive-tests or other field work to confirm the existence of significant coverage gaps, and only CTC prepared its own propagation maps rather than relying on the maps provided by the Applicants, as Cityscape did. Moreover, the detail and analysis of both consultants' reports is considerably lacking. Therefore, while the Board does not mean to disparage these consultants for the work done on behalf of the Board, it finds that both Cityscape and CTC have failed to provide the Board sufficient information to grant their findings substantial weight.

The foregoing notwithstanding, it is notable that even CTC finds that the proposed height of the unipole likely exceeds the Applicants' legitimate needs. Specifically, in Appendix A to its report, CTC finds that between the range of 80 and 110 feet above grade, the facility will be no less capable of providing Village-wide signal strength for in-building coverage. The report states,

As part of our methodology, CTC looked at how the height of the antenna's radiation center affects coverage provided. We examined the coverage areas for in-building, in-vehicle, and open air with the radiation center at 80, 90, and 110 feet.

As you can see in the maps and keys below, in-building coverage (>85 dBm) does not significantly change based on the height of the radiation center.

Thus, contrary to the Applicants' assertions, the CTC report does not corroborate their case for the approval of the project proposed.

The lack of need for the 125-foot height of the unipole is corroborated by the CMS Report, and the Applicants' own materials. On page 4 of its report, CMS quotes AT&T's representative where he stated on the record "[t]he proposed antenna RAD center of 108 feet is the minimal based on the coverage simulations calculated on the latest drive test." Likewise, AT&T's own propagation maps (based on 700 MHz frequency band) show minimal change in coverage when the pole height is adjusted between 93 and 108 feet above grade (CMS Report p. 4), thereby contradicting statements by the Applicants' consultants that in-building coverage would be reduced by up to 50% due to the reduced height. At the very least, further explanation of this claim should have been provided based on the apparent discrepancy between AT&T's representations and its proof.

The Board also finds that the Applicants have not ruled out alternatives to the construction of a new 125-foot unipole tower and base station on a significant historic property where no wireless telecommunications facility presently exist.

The Applicants' own materials acknowledge the existence of at least four existing macro sites in Bayville, Locust Valley, Matinecock, and just outside the Village border in Oyster Bay. The Applicants have not offered the Board sufficient explanation why these sites cannot be raised taller or otherwise modified to provide greater geographic coverage or enhanced signal strength within the Village. CMS suggests several alternatives that have not been explored, or for which the Applicants have not provided technical data ruling them out (*see* CMS Report p. 6). While the Applicants might counter that only the Mill Neck Manor property would allow the Applicants to fill all coverage gaps with a single-site solution, the Board finds that the modification of one or more existing sites is preferable to the issues discussed elsewhere in this decision that would be created by constructing a new macro site on the Manor property.

The Applicants have also not fully addressed the feasibility of other technologies, such as the deployment of an Outdoor Distributed Antenna System (ODAS). The Applicants claim that a system of 39 ODAS structures would be needed, and still would not provide the same coverage as the proposed project. However, their materials contain no technical reports or data supporting this claim. The Applicants' also

fail to address existing ODAS systems in the area (such as on Oyster Bay Road and Mill Hill Road) that might be modified to help resolve coverage issues.

For all these reasons, the Board finds that the Applicants have not met their burden of demonstrating the overall public necessity for the project, the need for the specific height of the facility proposed, or the absence of available alternatives other than the construction of a new, 125-foot tall unipole.

2. Impact on Village Aesthetics and Character.

The Village of Mill Neck is a unique place among the suburban sprawl that has come to define much of Long Island, and Nassau County in particular. It is a quiet, heavily-wooded community defined by large estates, winding roads, and its crown jewel: the Mill Neck Manor property, formerly the Sefton-Dodge Estate. There is no downtown in the Village, no business district, and no industries. Thus, the Board has no hesitation in finding that the placement of a 125-foot unipole tower extending far above the tree line is out of character with the bucolic setting of the Village. However, as indicated below (*see* Point 3), the Applicants have not provided the Board adequate materials to fully assess the visual impact of the project, particularly with respect to its potential impact on surrounding residences. On the other hand, it is readily apparent that the proposed facility will drastically and permanently diminish the Village's most significant historical and cultural asset, again, the Mill Neck Manor property.

Included in the record before the Board are submissions by Preservation Long Island ("PLI") and Campanelli & Associates detailing the historical, architectural, and potential archeological value of the buildings and grounds that make up the Manor property (*see* PLI Ltr. 6/22/21; PLI Ltr. 7/29/21; Campanelli Petition [partial] submitted 7/29/21). As detailed in these submissions, the Manor property includes a trove of historically and architecturally significant resources, including, but not limited to:

- Sefton Manor, listed on the National Register of Historic Place in 1979 (90NR01952);
- Landscape architecture designed by Charles Wellford Leavitt, a predominant American landscape architect; and
- Two midcentury modernist-style buildings: the gymnasium (1967), and the Samuel J. and Evelyn L. Wood Memorial Building (1971), both designed by Knappe & Johnson.

It is also possible that the property contains archeologically valuable artifacts associated with the Matinecock people; however, to date, no archeological survey of the property has been performed.

The property is also culturally significant to the Village as a gathering place for certain events, including the Apple Festival that takes place on the grounds each year. The site is regularly toured by the public on account of its rich historical and architectural value and its undiminished beauty.

At the hearing before the Board on July 29th, Ms. Kautz, representing PLI, explained how the original estate was designed taking into account the interplay of both the manmade structures and cultivated landscape. As an example, it was pointed out during the hearing that, from the vantage point of the Manor house, certain features within the garden outside form a sun dial. The layout of other features, including the driveways, hardscapes, and gardens also have significance and were thoughtfully designed to optimize the aesthetics of the property (*see* PLI Ltr. 6/22/21). Ms. Kautz explained that the unipole will be visible from both the interior of the Sefton Manor and will tower above the gardens and grounds surrounding the manor and estate. The Manor will no longer be the pinnacle of the Mill Neck Manor property, which will then be dominated by the presence of the unipole. Moreover, views from inside the Manor itself will be forever obstructed by the unipole, which will be visible from at least two sides of the Manor house.

Significantly, on July 29, 2021, just hours before the hearing, the State Historic Preservation Office (SHPO) emailed PLI to notify the organization that it was formerly rescinding its prior letter of October 7, 2019, in which SHPO indicated that the project *would not* adversely affect the historic resources on the Manor property. According to the email, a copy of which is appended to PLI's letter of July 29, 2021,

Based on new information our office has received regarding what were previously noted as non-contributing buildings in the 1979 National Register nomination [the Knappe & Johnson buildings], we are rescinding our letter dated October 7, 2019, and continuing consultation regarding the adverse impact of the project. Our previous review did not acknowledge the post-1949 buildings as contributing and did not take into account the effects the proposed tower would have on the historic landscape, which remains largely intact.

In other words, SHPO has unresolved concerns about the project's impact on both the historic buildings on the Manor property and the historic landscape architecture surrounding them. This issue is particularly sensitive given the project's even closer proximity to the gymnasium building, which is less than 100 feet from the location of the proposed unipole and enclosure according to the Applicants' plans. While SHPO's ultimate findings with respect to the project's impact do not divest this Board of its independent fact-finding role or obligation, the Board weighs SHPO's (and PLI's) input heavily on these matters, as they are admittedly beyond the expertise of the individual members of the Board.

On July 29, 2021, the Village Clerk received an e-mail from the FCC containing a "Section 106 Notification of New Comment," formally advising the Village that SHPO rescinded its previous letter, dated October 7, 2019. This is the state of the present information before this Board. While the Applicants begroan the "secret effort" by PLI and others for their possible role in securing this reversal, and further question the procedural correctness of SHPO's reopening of the matter, such matters are irrelevant for purposes of this Board's review.

For all these reasons, the Board finds that the presence of the facility on the Manor property, and in such close proximity to the Manor house and other historically and architecturally significant buildings, will significantly and adversely impact their setting and value. Accordingly, the project is not consistent with the existing Village aesthetics or character.

For these same reasons, the Board finds that the project is not sited or designed in a manner that will minimize its visibility and impact.

3. Impact on Residential Properties.

The Board is in receipt of numerous letters from Village residents asserting that the presence of a 125-foot tall unipole atop the Mill Neck Manor property (roughly 150 feet above sea level) will fundamentally alter and degrade the views from their homes (*see* Campanelli Exhibits in Opposition, Exhibit "A"). Presently, virtually no structure in the Village rises above the predominant tree line. Thus, it is undeniable that the proposed tower will have some impact on the otherwise undisturbed, natural skyline of the Village.

The Applicants submitted to the Board a Visual Assessment & Photo Simulation, April 2020, prepared by APT Engineering, a visual impact study conducted by VHB, and a "Supplemental Assessment of Potential Visual Impacts", dated July 27, 2021, also prepared by VHB. First, with respect to the original visual impact study by VHB, the Board notes, as did the Planning Board, that the study was conducted from street level in the Village. It is substantial to note that the Village is dominated by hilly terrain with most public roads situated at the bottom of hills. While the Board also acknowledges that the Applicants cannot

freely access private property or take photographs from residents' homes without their consent, no apparent effort was made to take photographs from differing elevations throughout the Village that might have provided some form of visual comparison to how the proposed unipole will look from surrounding residences. For example, there are several roads in the Village, including Cleft Road, Mill Hill Road, and Feeks Lane, that are hilly and could have provided elevated vantage points. Moreover, with respect to the photographs that were provided, the Board finds that the series presented to the Board is too limited, if not intentionally selective.

The Applicants also conducted a crane study in February 2019. Inexplicably, however, the crane was on the Mill Neck Manor property for only a few hours on a single day, which deprived the residents of the opportunity to personally assess the visual impact of a structure above the tree line. Consequently, the only visual representations of the crane study are the photographs selected by the Applicants and presented by VHB, which again, are too limited to accurately assess the visual impact of the unipole. The Board further notes that there are absolutely *no* photographs of how the crane appeared from the vantage point of the subject property. While this does not speak to the potential impact on surrounding residences, such photos are certainly relevant for purposes of assessing the potential impact of the project on the historic Mill Neck Manor property.

The Supplemental Assessment from July 27, 2021, is even less illuminating. From the vantage point of 125 feet above the location of the proposed facility, VHB took several aerial photographs of the surrounding landscape, which it offers as proof that the unipole will not result in a significant visual impact on surrounding homes. First, the Board notes that the view looking down from the top of a 125-foot tower atop a 150-foot tall hill is not the same as the view from homes on the ground looking up at the tower. Second, the photographs were taken during leaf-on conditions, which do not reflect visibility between the unipole and surrounding homes during a significant portion of the year.

Based on these materials, the Board finds that the Applicants have failed to provide substantial evidence that the proposed 125-foot unipole at the Mill Neck Manor property will not significantly and adversely affect views from homes and public spaces in the Village.

4. Impact on Property Values.

The Board is in possession of conflicting appraisal reports, one from Lynch Appraisal Ltd., for the Applicants, dated February 9, 2021, and one from Frank Ciotta & Associates, dated June 17, 2021, representing the Village residents (Mr. Ciotta himself resides in the Village and near the project site). Over the last few weeks, both appraisers have made supplemental submissions to this Board responding to one another's comments regarding the accuracy of their respective reports and opinions. These submissions include the Lynch R.E. Report Supplemental Letter, dated July 14, 2021, the Ciotta letter of July 28, 2021, and a final letter from Mr. Lynch submitted at the hearing on July 29, 2021. Ultimately, it is incumbent upon this Board, as the finder of fact, to decide which report, if either, holds weight.

Ciotta criticized the Lynch report for utilizing decades old sales data, and he presented sales that appear to demonstrate a correlation between proximity to and/or visibility of a tower with correspondingly lower home sale prices (*see* Ciotta Report 6/17/21). Lynch responded claiming that Ciotta omitted sales examples that would have nullified his conclusions, and he responded with recent home sales data from a Southampton neighborhood in close proximity to an existing wireless macro site (*see* Lynch Supplemental Report 7/14/21). Mr. Ciotta responded that he intentionally omitted sales data for certain properties that were renovated, and therefore, would have artificially skewed his analysis of comparable home sales (*see* Ciotta Ltr. 7/28/21). He also attempted to distinguish the commercial and industrial character of the area surrounding the Southampton neighborhood studied by Lynch from the character of the Village of Mill Neck (*see* Ciotta Ltr. 7/28/21). And finally, Lynch responded that the character of the area surrounding the Southampton neighborhood is neither commercial nor industrial, but residential (*see* Lynch Ltr. 7/29/21).

Cutting through all the back-and-forth between these two appraisers, it remains that Ciotta has submitted sufficient evidence to this Board suggesting that there is a correlation, if not clear causation, between the proximity to and/or visibility of a “cell tower” and lower home values. The BZA agrees with the Planning Board’s finding in this regard. Furthermore, the Board accepts Mr. Ciotta’s explanation why homes that have been substantially improved since their construction must be omitted to avoid skewing the sales data. That luxury homes in the Hamptons are selling for luxury prices – as noted in the Lynch Supplemental report – does not preclude the possibility that those same homes would sell for even more, if the wireless facility were not present. For these reasons, the Board finds that the Applicants have not proven, upon substantial evidence, that the installation of the proposed unipole will not significantly and adversely affect the value of homes in proximity to the project site.

Finally, it does not escape the Board’s notice that Mr. Ciotta is a Village resident and that he resides within 900 feet of the project site. The Applicants have accused Mr. Ciotta of inherent bias based on this fact. However, Mr. Ciotta is – to this Board’s understanding – a professional and experienced real estate appraiser of 38 years (*see* Ciotta Ltr. 6/17/21). In publicly offering his report and subsequent submissions to this Board, which is a quasi-judicial body, he risks his professional integrity and livelihood, if the information he provides is intentionally distorted or false. While the Board will unapologetically question the data and conclusions of the consultants on both sides of this debate, it will not summarily dismiss an otherwise qualified professional based solely on the fact that he lives in the Village. To do so would mean that the commentary of every Village resident should be similarly dismissed on the presumption that they are inherently biased in one way or another against the project. That is not how resident input is treated before this Board.

and be it

FURTHER RESOLVED, that the Applicants’ request for waivers from Sections 129-68(J)(4)(a)[1] and 129-68(J)(6)(a) of the Village Code is hereby **DENIED** as moot; and be it

FURTHER RESOLVED, that the application of **Mill Neck School for the Deaf** is hereby **DENIED** upon the same findings set forth above. The Board further denies the application on the basis that the project is not part of the Mill Neck Manor School for the Deaf, but is instead a separate commercial enterprise that violates the spirit and intent of the special permit issued to the School in 1999, which the School now seeks to modify by this application.

The Decision of this Board, dated September 28, 1999 (BZA No. 6/1999), a copy of which is a part of the record (*see* Amato Law Group Hearing Exhibit 19), contains the following finding:

14. The use is, and with the addition of the proposed Deaf Education Center building will be, of such location, size and character as to be in harmony with the appropriate and orderly development of the E-1 District in which it is situated and will not be detrimental to the orderly development of adjacent property or inconsistent with development shown on the Master Plan of the Village.

(*see* pp. 3-4). This same general standard concerning special permits still exists in the Village Code today (*see* Village Code § 129-66(C) [1992]).

The Decision continues on to impose the following condition:

2. The special permit for the conditional use is granted **based upon the use of the *entire property* for the nonprofit academic school for deaf children and, so long as the premises shall be used**

pursuant to the special permit herein granted, there shall be no use of any portion of the premises except for such conditional use.

(see p. 5) (emphasis added).

While this Board has the inherent legal authority to modify or to remove entirely a condition imposed under a prior decision of this Board. It nevertheless declines to do so here.

The above-quoted condition of the 1999 Decision is consistent with the feeling of this Board that the Mill Neck Manor property is an invaluable historical and cultural resource of this Village and the fabled "Gold Coast", one that can only be put to so many adaptive uses that will not impair or destroy its character and quality. A 125-foot tall cellular tower and ground facility is not one such adaptive reuse, and once these resources are destroyed, they are gone permanently. Accordingly, this Board declines to depart from the wisdom of its former members and finds that the development of the Mill Neck Manor property and the Mill Neck Manor School for the Deaf shall only continue to be "in harmony with the appropriate and orderly development of the E-1 District ... and will not be detrimental to the orderly development of adjacent property or inconsistent with development shown on the Master Plan of the Village" if the buildings and grounds continue to be put solely to use as part of the nonprofit educational institution that has been the faithful steward of the estate for the past +70 years.

WHEREFORE, upon motion by #1 R. Murray #2 K. Gregori, seconded by #1 R. Murray #2 P. Annunziato the Village of Mill Neck Board of Zoning Appeals adopted the foregoing findings and resolutions at a duly notice public meeting held on August 2, 2021, by a vote of 4 to 0 as follows:

VOTING:	Paul McNicol, Chairman	<u>Aye</u>
	Paul Annunziato	<u>Aye</u>
	Roberta Murray	<u>Aye</u>
	Kathleen Gregori	<u>Aye</u>
	Terrill Barnard	<u>Absent</u>

Signed: Paul McNicol
Paul McNicol, Chairman

Dated: August 2, 2021

Filed in the Office of the Village Clerk
this 3 day of August, 2021

Donna M. Harris
Hon. Donna M. Harris
Village Clerk