

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-1679-PET

Petition of Industrial Tower and Wireless, LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, authorizing the installation of wireless telecommunications equipment at 402 Route 140 in Tinmouth, Vermont	
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Order entered:

PROPOSAL FOR DECISION

I. INTRODUCTION

In this proposal for decision, I recommend that the Vermont Public Utility Commission (“Commission”) deny the application filed by Industrial Tower and Wireless, LLC (the “Petitioner”), pursuant to 30 V.S.A. § 248a and the Commission’s Amended Standards and Procedures Order (“Procedures Order”).¹

II. PROCEDURAL HISTORY

On August 8, 2025, the Petitioner filed a petition and prefiled testimony requesting that the Commission issue a certificate of public good (“CPG”) authorizing the installation of a wireless telecommunications facility in Tinmouth, Vermont (the proposed “Project”). A copy of the petition was filed with all required State agencies and the host municipality pursuant to § 248a(e). Notice of the filing of the petition was provided to all adjoining landowners of record.

On September 9, 2025, Adam Guettel, Nelson and Beatrice Jaquay, and Chris Carabeau (together the “Intervenors”) filed separate motions to intervene and requests for a hearing to be held in this proceeding.

On September 9, 2025, the Town of Tinmouth Select Board and Planning Commission (together the “Town”) filed separate notices of intervention pursuant to 30 V.S.A. § 248a(m).

¹ Investigation into revised standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a, Case No. 22-5122-INV, Order of 1/18/23 at Attachment.

The Town also filed a recommendation that the petition be denied due to its non-compliance with the town plan and zoning bylaws without hearing (“Town’s Recommendation”).

On September 9, 2025, the Vermont Department of Public Service (“Department”) filed comments on the Project stating that the petition does not contain sufficient information upon which to make a recommendation regarding its approval (Department’s Comments”).

On September 23, 2025, the Department filed a response in support of the motions to intervene filed by the Intervenors.

The Commission has also received over thirty public comments in this case, all opposed to the Project.

No other comments on the application were received by the Commission. The Petitioner has not filed a response to any of the filings.

The following are admitted as if presented at the hearing: the prefiled testimony of Kevin Delaney and exhs. KD-1-3; the prefiled testimony of Louis Hodgetts and exhs. LH-1-8; the Town’s Recommendation, and the Department’s Comments.

III. MOTIONS TO INTERVENE

Rule 2.209 governs intervention in proceedings before the Commission. Rule 2.209(A) provides that upon timely application a person is entitled to intervene in a proceeding:

- (1) when a statute or Commission rule confers an unconditional right to intervene; or
- (2) when the applicant claims an interest in the matters that must be resolved in the proceeding and the applicant is so situated that the disposition of the proceeding may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis:

- (1) when a statute or Commission rule confers a conditional right to intervene; or
- (2) when an applicant’s claimed interest shares a question of law or fact in common with the matters that must be resolved in the proceeding.

In exercising its discretion under Rule 2.209(B), the Commission must consider whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Rule 2.209(C) further provides that the Commission may impose certain restrictions on an intervenor's participation in a proceeding. Specifically, the Commission may restrict that party's participation, may require that party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters, and may otherwise limit that party's participation, all as the interests of justice and economy of adjudication require.²

The Intervenors all argue that they will be negatively impacted aesthetically by the installation of the Project because they will be able to view the Project from their respective properties. The Intervenors also contend that the Project will conflict with provisions of the town plan and will negatively impact surrounding natural areas.

The Department has no objection to granting the Intervenors permissive intervention with respect to aesthetic impacts. However, the Department maintains that issues regarding compliance with the town plan and environmental issues are more appropriately addressed by the Town, which has intervened in the proceeding, and the Vermont Agency of Natural Resources. Accordingly, the Department recommends that the scope of the intervention be limited to aesthetic impacts.

The Intervenors have adequately demonstrated through the visual-aesthetics allegations in their motions to intervene that their claimed interest in the Project's aesthetic impact shares a question of law or fact in common with the applicable criteria included in 30 V.S.A. § 248a(c)(1), which must be resolved in this proceeding. I also find that intervention on the basis of aesthetics will not unduly delay the proceeding or prejudice the interests of existing parties or of the public. Therefore, I grant the Intervenors permissive intervention with respect to the Project's aesthetic impact under Section 248a(c)(1), pursuant to Rule 2.209(B)(2). Because I recommend denial of the petition the requests for hearing are moot.

I deny the Intervenors' request for intervention on compliance with the town plan and environmental impacts. The Intervenors have not demonstrated a personal, particular interest with respect to these issues, or explained why other parties in the case will not adequately protect these interests. In such a situation, granting intervention risks undue delay of the proceeding. Based on these considerations, I decline to grant permissive intervention to the Intervenors under Rule 2.209(B) for issues related to the town plan and environmental issues.

² The Commission may not require a State agency to be represented jointly with any other party to a case.

IV. FINDINGS

Pursuant to 30 V.S.A. § 8(c), and based on the record and evidence before me, I present the following proposed findings of fact to the Commission.

1. The Project involves the construction of a telecommunications facility at 402 Route 140 in Tinmouth, Vermont. The objective of the Project is to expand and improve wireless coverage in the surrounding area. Kevin Delaney, Petitioner (“Delaney”) pf. filed at 2-3.

2. The Project is intended to provide mobile radio service to subscribers to the Petitioner’s network in the surrounding area and potential collocation opportunities. Delaney pf. at 3.

3. The Project includes the installation of a 160’ lattice tower with six whip antennas mounted at the top of the tower and extending to a height of 173’, and one whip antenna reaching downward from the top of the tower approximately 13’. The Project also includes the installation of an equipment cabinet on a 10’ by 10’ concrete pad, underground utilities, and ancillary operating equipment within an 80’ by 80’ fenced compound. Louis Hodgetts, Petitioner (“Hodgetts”) pf. at 1.

4. The Project would be located in the Conservation District as identified in the Town Plan and zoning bylaws. The Project is inconsistent with the goal of requiring preservation of scenic and natural characteristics in that district. Town’s Recommendation at 1.

5. The Town voted at a special meeting to find that the Project does not comply with town plan or zoning bylaws. Town’s Recommendation at 1.

6. The town zoning bylaws at section 409(C)(4) limit the height of telecommunications towers to 130 feet and no more 20 feet above the average tree line. The average tree line height in the Project area is 59 feet. Delaney pf. at 7-8; Town’s Recommendation at 3; exh. LH-1.

Discussion

Pursuant to 30 V.S.A. § 248a(c)(2), before the Commission issues a certificate of public good under this section, it shall find that:

[u]nless there is good cause to find otherwise, substantial deference has been given to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding

the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan. Nothing in this section . . . shall prevent a municipal body from basing its recommendations to which substantial deference is required . . . on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located.

“Substantial deference” means that the plans and recommendations referenced under subdivision (c)(2) are presumed correct, valid, and reasonable.³ Section 248a(b)(3) defines “good cause” as a “showing of evidence that the substantial deference required under subdivision (c)(2) of this section would create a substantial shortcoming detrimental to the public good or the State’s interests in section 202c of this title.” In this case, the Town has recommended that the Commission find that the Project, due to its height and location, does not comply with the town plan or zoning bylaws.

The Town contends that because the Project would be located in the Conservation District it will not comply with the requirement to preserve the scenic and natural characteristics of that district. The Town also argues that the Project would be visible from an area designated as a scenic resource in the town plan. In addition, the Town maintains, that the Project tower height of 160 feet is in violation of the 130-foot limitation established in Section 409(C)(4) of its zoning bylaws.

The Department maintains that the Petitioner has not provided the necessary information regarding whether the Project can be reasonably collocated at an existing facility as required under 30 V.S.A. § 202c. Accordingly, the Department states that it “cannot recommend approval” of the petition.⁴

The Town has recommended that the petition be denied without hearing in this case for the reasons described above. Pursuant to Commission Rule 2.206(E), “[u]nless otherwise directed by the Commission, responses to motions are due 14 days after the motion is filed, and replies are due 14 days after responses are filed.” The Petitioner has not filed an objection or any response to the Town’s Recommendation. The Petitioner has also not filed a response to Department’s Comments or the motions to intervene. Therefore, I conclude that that there is no good cause to reject the Town’s recommendation. Accordingly, I recommend that the Project

³ 30 V.S.A. § 248a(b)(5).

⁴ Department comments at 3.

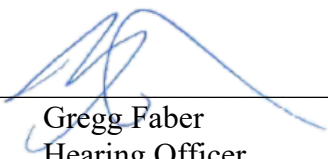
application be denied on the grounds that it is not consistent with the Town Plan and zoning bylaws, with substantial deference accorded to the recommendation of the Town pursuant to § 248a(c)(2).

V. CONCLUSION

Based upon all of the above evidence, I recommend that the Commission conclude that the petition be denied because the Project does not comply with the recommendations of the Town regarding the town plan and zoning bylaws and therefore does not qualify for a CPG under 30 V.S.A. § 248a(c)(2). Because I recommend finding that the Project fails to comply with 30 V.S.A. § 248a(c)(2), and because that recommendation, if accepted by the Commission, is dispositive, I have not made recommendations addressing the other Section 248a criteria.⁵

This proposal for decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Date: September 29, 2025



Gregg Faber
Hearing Officer

⁵ See *In re Application of Derby GLC Solar, LLC*, 2019 VT 77, ¶19, 211 Vt. 144, 221 A.3d 777 (holding that in Section 248 proceedings where all relevant criteria must be met, when the Commission finds “that a project fails to satisfy one or more criteria,” that finding “is fatal to the project,” and there is therefore “no need” for the Commission to address any other criteria).

VI. PROPOSED ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

1. The findings, conclusions, and recommendations of the hearing officer are adopted. All findings proposed by parties that were not adopted in this order are expressly rejected.
2. The application for the installation and operation of a wireless telecommunications facility at the location specified in the above findings, by Industrial Tower and Wireless, LLC, in accordance with the evidence and plans submitted in this proceeding, is denied.

PUC Case No. 25-1679-PET - SERVICE LIST

Parties:

LaRosa Alexander
MSK Attorneys
275 College Street
Burlington, VT 05406
ajlarosa@mskvt.com

(for Industrial Tower and
Wireless, LLC)

^Cris Carabeau, *pro se*
61 East Road
Tinmouth, VT 05773
larrycris@aol.com

*Catherine Gjessing, General Counsel
Vermont Agency of Natural Resources
anr.notice@vermont.gov

(for Vermont Agency of
Natural Resources)

Gail Fallar
Tinmouth Town Clerk & Treasurer
515 North End Road
Tinmouth, VT 05773
tinmouthtown@vermontel.net

(for Town of Tinmouth)

^Adam Guettel, *pro se*
3130 Plainview Rd.
Pineland, TX 75968
skyvermont@gmail.com

William Cooper Hayes
MSK Attorneys
275 College Street
Burlington, VT 05401
chayes@mskvt.com

(for Industrial Tower and
Wireless, LLC)

^Nelson and Beatrice Jaquay, *pro se*
456 Rt 140
Tinmouth, VT 05773
jaquay@vermontel.net

Alexander Wing
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
alexander.wing@vermont.gov

(for Vermont
Department of Public
Service)

*Notice of appearance to be filed.

^Motion to Intervene pending.