

STATE OF VERMONT PUBLIC UTILITY COMMISSION

Case No. 24-3345-PET

Limited Size and Scope Application
Of Bell Atlantic Mobile Systems, LLC
d/b/a/ Verizon Wireless and Vertex Towers, LLC.
For a Certificate of Public Good,
Pursuant to 30 V.S.A. § 248a, authorizing the
Construction of a telecommunications facility
in Manchester, Vermont

**TOWN OF MANCHESTER’S MEMORANDUM IN OPPOSITION TO
PETITIONER’S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION
FOR SUMMARY JUDGMENT**

NOW COMES the Town of Manchester (“Town”) and, pursuant to Rule 2.219 of the Vermont Utility Commission’s Rules of Practice (Commission Rule 2.200 – Procedures Generally Applicable), hereby files its (a) opposition to the Petitioner’s motion for summary judgment; and (b) cross motion for summary judgment. The Town’s Statement of Undisputed Facts and related exhibits, affidavit, and declaration accompany this memorandum.

Factual Background

Petitioner proposes to construct a telecommunications facility on a parcel of land located at 410 Hunter Park Road in Manchester, Vermont, for the initial use of Verizon and subsequent use by other telecommunications providers. (SUMF, ¶ 1). The coordinates for the proposed tower are latitude 43°11’25.80 north and longitude 73°02’57.37” west (“Site”), which is in the Mixed Use 2 zoning district (“MU2”). (SUMF, ¶ 2). Petitioner proposes a 50’ x 50’ “Compound” enclosed by an 8’ high

chain link fence, with a locked gate, and topped with barbed wire. (SUMF, ¶ 3). The proposed telecommunications tower will stand 130 feet above ground level, and will be disguised as an artificial pine tree referred to as a “Monopine,” all to be constructed within the Compound (“Facility” or “Project”). (SUMF, ¶ 4).

The Town of Manchester re-adopted a municipal plan on May 9, 2017, pursuant to 24 V.S.A. §§ 4381 *et seq.* (the 2017 version of the Town plan herein referred to as the “Town Plan”). (SUMF, ¶ 5).¹ The Town Plan identifies Recreation Pathways as part of a “greenway network of pedestrian, cross country ski, and bicycle paths that would link the outskirts of town with the downtown.” (SUMF, ¶ 12.) The Town Plan states that it has developed one such Recreation Pathway, which is the “spur” “from MEMS through Dana Thompson Memorial Park and on to Riley Rink. . . .” (SUMF, ¶ 13). Though not referenced by name, the “spur” of developed recreation path referenced on page 30 of the Town Plan runs through Hunter Park, near downtown Manchester. (SUMF, ¶ 14). The Town Plan also recognizes the Dana L. Thompson Memorial Park as a “heavily used” community asset for residents and visitors alike. (SUMF, ¶ 15).

The Town Plan requires that telecommunication facilities be sited “in a manner that protects the scenic, cultural, and natural resources of the Town.” (SUMF, ¶ 16). The Town Plan also specifies that:

In order to enhance the aesthetics and visual character of the downtown area, public utilities (including . . . telecommunications

¹ A revised Town Plan has subsequently been readopted on May 6, 2025, however because the present Petition was filed on November 1, 2024, the 2017 version of the Town Plan is controlling.

facilities) should be relocated from public view along main streets whenever possible. This may include behind buildings, away from the street, along streets, or underground. Where this is not possible, these should be screened from adjacent properties with dense coniferous plantings.

(SUMF, ¶ 17). The Town Plan further provides that where a proposed telecommunications facility is presented through the local zoning process, it is subject to conditional use review, with careful consideration by the Development Review Board of all “[v]isual impacts, lighting, noise generation, natural resource impacts, and site screening.” (SUMF, ¶ 18).

The Project would be visible from portions of Main Street and Bonnet Street, both of which are main streets in downtown Manchester. (SUMF, ¶¶ 19–21). The Project would also be visible from various locations along the recreation paths within Hunter Park, the Riley Rink property, and the Dana L. Thompson Memorial Park. (SUMF, ¶¶ 22–24).

The Town has also adopted a land use ordinance pursuant to 24 V.S.A. ch, 117 (“Land Use Ordinance”). (SUMF, ¶ 6). Communications towers are prohibited in the MU2 Zoning District under Manchester’s Land Use Ordinance, which zoning district also falls within the Design Review Overlay District. (SUMF, ¶ 10).

The Town of Manchester’s Selectboard and Planning Commission have together provided their recommendation that the Project does not comply with the Town Plan or the Land Use Ordinance, and should therefore be denied. (SUMF, ¶ 9).

Legal Standard

Commission Rule 2.219(A) provides that the Commission may grant summary judgment if the moving party demonstrates “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Summary judgment “provides a mechanism for the disposition of issues, claims, and defenses which do not merit a full trial.” *Gore v. Green Mountain Lakes*, 140 Vt. 262, 264 (1987). Disputes over irrelevant or unnecessary facts do not preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When considering cross-motions for summary judgment “both parties are entitled to the benefit of all reasonable doubts and inferences’ when being considered as the nonmoving party.” *Vermont Coll. Of Fine Arts v. City of Montpelier*, 2017 VT 12, ¶ 7, 204 Vt. 215, 219, quoting *Montgomery v. Devoid*, 2006 VT 127, ¶ 9, 181 Vt. 154.

Legal Framework

To grant Petitioner’s Certificate of Public Good, the Commission must find, as relevant here, 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.” 30 V.S.A. § 248a(c)(2).²

² A letter from the municipal legislative body or municipal planning commission is sufficient to trigger the deference due under § 248a(c)(2) (“A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an effected municipal legislative body or municipal planning commission concerning compliance with the municipal plan . . .”).

The statute also expressly provides that “[n]othing in this section or other provision of law shall prevent a municipal body from basing its recommendations to which substantial deference is required under this subdivision (2) on an ordinance adopted . . . under 24 V.S.A. chapter 117 by the municipality in which the facility is located.” 30 V.S.A. § 248a(c)(2).

In other words, the Commission is *required* to give substantial deference to the provisions of the Town Plan and the Town’s recommendations, unless the Petitioner can show *good cause* not to.

“Substantial deference” is defined by statute to mean that “the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.” 30 V.S.A. § 248a(b)(5). As explained *supra*, the statute expressly provides that such deference applies to both municipal plans and land use regulations under 24 V.S.A. ch. 117. To overcome the statutory presumption, the Petitioner has the burden of showing, by clear and convincing evidence, that the Town’s recommendation as to compliance with the municipal plan and/or applicable ordinance is incorrect, invalid, or unreasonable. *See e.g., In re ANR Permits in Lowell Mountain Wind Project*, 2014 VT 50, ¶ 15, 196 Vt. 467, 473; *Plum Creek Maine Timberlands, LLC v. Vermont Department of Forests, Parks, and Rec.*, 2016 VT 103, ¶ 31, 203 Vt. 197, 209–10.

“Good cause” is also defined by statute, and likewise presents a very high burden to overcome the substantial deference otherwise due the municipality’s plans and recommendations—including those based on the provisions of its zoning

ordinance. “Good cause” means “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 interest in section 202c* of this title.” 30 V.S.A. § 248a(b)(3) (emphasis added).

It is important to note that 30 V.S.A. § 248a was substantially revised in 2016, strengthening the impact of municipal recommendations under § 248a. Act No. 130 (2016); Town Ex. MB-2. Prior to the 2016 amendment, 30 V.S.A. § 248a(h) provided that municipal ordinances adopted pursuant to 24 V.S.A. § 2219(19) were preempted. Act 130 struck the preemption of ordinances adopted under § 2219(19). Neither version of the statute provided for the preemption of statutes adopted pursuant to 24 V.S.A. chapter 117.

In 2016, the phrase “to which substantial deference is required under this subdivision (2)” was added to the provision of § 248a(c) allowing a municipality to base its recommendations on ordinances adopted under 24 V.S.A. § 2219(19) or bylaws adopted under 24 V.S.A. chapter 117. *Id.* Similar language was added to 24 V.S.A. § 4412(8)(C) (“This exemption from obtaining approval under this chapter shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under 30 V.S.A. § 248a(c)(2)”). *Id.* Moreover, prior to the 2016 amendment, the statute did not contain definitions of “substantial deference” or “good cause.”

These changes mean that cases decided prior to 2016—under the prior version of the statute—are of limited value with respect to application of the current

§ 248a(c)(2). Post-2016, the Commission has expressly declined to conclude that § 202c always preempts the recommendations of a municipality, because that conclusion would render the definitions in the statute meaningless. *Petition of Indus. Tower & Wireless, LLC Requesting a Certificate of Pub. Good, Pursuant to 30 V.S.A. § 248a, Authorizing the Installation of Wireless Telecommunications Equip. of Bordoville Rd. in Enosburgh, Vermont*, No. 22-PET-2120, 2023 WL 5125080, at * 7 (Aug. 3, 2023). The Commission must apply the unambiguous provisions of the statute as the legislature enacted it, according to its terms, without reading in language that is not there. *See e.g. State v. Kerr*, 143 Vt. 597, 605, 470 A.2d 670, 674 (1983), citing *State v. Baldwin*, 140 Vt. 501, 509, 438 A.2d 1135, 1139 (1981).

A finding that a project does not comply with the recommendations of the municipal legislative body or planning commission and therefore does not qualify for a CPG on that basis is dispositive; accordingly, the Commission need not address the other Section 248a criteria where a project does not conform to the town plan or bylaws and the Petitioner fails to demonstrate good cause to overcome the deference due the municipal recommendation. *Petition of Indus. Tower & Wireless*, No. 22-PET-2120, 2023 WL 5125080, at * 6, citing *In re Application of Derby GLC Solar, LLC*, 2019 VT 77, ¶ 19, 211 Vt. 144.

Were the Commission to find that a petition demonstrated good cause to overcome the substantial deference due to the municipal recommendation, to

approve a CPG, the Commission would also need to find (as relevant to this motion) that:

The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety. . . . However, with respect to telecommunications facilities of limited size and scope, the Commission shall waive all criteria of this subdivision other than . . . (a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat).

30 V.S.A. § 248a(c)(1).

In determining whether a project will have an undue adverse effect on aesthetics, the Commission applies a modified version of the two-part *Quechee* test.

The first part of the test asks:

whether a project will have an adverse impact on aesthetics and the scenic and natural beauty. In order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

Petition of Vermont RSA Ltd. P'ship & Cellco P'ship, for A Certificate of Pub.

Good, Pursuant to 30 V.S.A. S 248a, for the Installation of Telecommunications

Equip. in Waterbury, Vermont., No. 8601, 2017 WL 4419262, at *7 (Sept. 21, 2017).

If the Commission finds that the project would have an adverse impact on aesthetics, the second part of the test is to determine whether the effect is “undue.”

The adverse effect is considered undue when a positive finding is reached regarding *any one* of the following factors:

1. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?

2. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
3. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

Id. at *8 (emphasis added).

“For a provision to be considered a clear, written community standard, it must be ‘intended to preserve the aesthetics or scenic beauty of the area’ where the proposed project would be located and must apply to specific resources in the proposed project area.” *Petition of Indus. Tower & Wireless, LLC Requesting a Cert. of Pub. Good, Pursuant to 30 V.S.A. § 248a, Authorizing the Installation of Wireless Telecommunications Equip. off of Toppin Rd. in Ira, Vermont*, No. 22-PET-2442, 2023 WL 3151215, at *9 (Apr. 20, 2023).

Argument

The Town of Manchester’s Selectboard and Planning Commission have provided a recommendation on behalf of the municipality that the Project does not comply with the Land Use Ordinance or the Town Plan, and should therefore be denied. Petitioner has failed to show that the Town’s recommendation as to compliance is incorrect, invalid, or unreasonable, and has failed to establish good cause to overcome the substantial deference due the Town Plan and the Town’s recommendation. Accordingly, the petition should be denied.

Even if the Commission found that Petitioner showed good cause to overcome the substantial deference due the Town’s recommendations, the Project would have

an adverse effect on aesthetics, which effect is “undue” because it violates clear, written community standards intended to preserve the aesthetics or scenic beauty of the area. Accordingly, the petition should also be denied because it would have an undue adverse effect on aesthetics within the Town of Manchester.

A. The Project Violates Manchester’s Land Use Ordinance

The Town’s Land Use Ordinance was adopted pursuant to 24 V.S.A. chapter 117, and regulates the construction, alteration, and development of wireless telecommunications facilities. Land Use Ordinance, Section 7, pp. 91–96.

It is undisputed that the Site of the Project is in the MU2 Zoning District under the Land Use Ordinance. Communications Towers are expressly prohibited in the MU2 zoning district. Land Use Ordinance Section 4.17 (Use Table), p. 58. The Project meets the definition of a Communications Tower under the Land Use Ordinance (“A structure used to support on or more communication antennas and related structures and equipment.”). Accordingly, the Project violates the Land Use Ordinance, and should be denied on that basis.

Petitioner fails to demonstrate by clear and convincing evidence that the Town’s recommendation of noncompliance with the Land Use Ordinance provision prohibiting Communications Towers within the MU2 District is incorrect, invalid, or unreasonable. Indeed, Petitioner concedes that the Project is within the MU2 District, and that the MU2 District prohibits such structures. (Pet. MSJ, at 23).

B. The Project Violates Manchester's Town Plan

Section 3.3 of the Town Plan addresses Power & Telecommunications Facilities. Town Plan Section 3.3, pp. 37–38. The Town Plan requires telecommunications facilities to be sited “in a manner that protects the scenic, cultural, and natural resources of the Town.” *Id.* at p. 37.

The Town Plan further requires that:

In order to enhance the aesthetics and visual character of the downtown area, public utilities (including . . . telecommunications facilities) should be relocated from public view along main streets whenever possible. This may include behind buildings, away from the street, along streets, or underground. Where this is not possible, these should be screened from adjacent properties with dense coniferous plantings.

Town Plan Section 3.3, pp. 38.

The Town Plan identifies Recreation Pathways as part of a “greenway network of pedestrian, cross country ski, and bicycle paths that would link the outskirts of town with the downtown.” Included among these recreation pathways is the “spur” trail constructed through the Dana Thompson Memorial Park and on to Riley Rink, passing through Hunter Park—all of which are scenic and cultural resources within the Town. Town Plan, pp. 30, 43.

It is undisputed that the Project would be visible from various locations along Main Street and Bonnet Street, both of which are main streets in the downtown. It is further undisputed that the Project would be visible from the recreation paths within the Dana Thompson Memorial Park, Hunter Park, and on the Riley Rink property. The proposed Project is not sited in a manner that protects the scenic and

cultural resources of the Town, including recreation pathways and the aforementioned parks, and is also not located away from public view along main streets or screened from adjacent properties with dense coniferous plantings.

The Petitioner fails to establish by clear and convincing evidence that the Town's recommendation of noncompliance with the Town Plan is incorrect, invalid, or unreasonable. The petition should be denied because the Project violates the Town Plan.

C. Petitioner Has Not Shown Good Cause to Overcome the Town's Recommendation

Petitioner recites the "good cause" standard once on page 6 of its Memorandum of Law, and thereafter makes no reference to or articulation of that standard. None of the arguments Petitioner presents as "good cause" reflect the applicable statutory standard—they focus on other, nonapplicable standards. Petitioner only "broadly summarize[s]" the state's interests in 202c once, also on page 6, but thereafter make no mention of how substantial deference to the town plan or municipal recommendation would "create a substantial shortcoming detrimental to the public good or the State's interest in section 202c." While "the construction of telecommunications facilities is, in general, consistent with the State's broad interests pursuant to § 202c and the public good," general consistency with that interest alone does not establish good cause to overcome substantial deference. *Petition of Indus. Tower & Wireless*, No. 22-2120-PET, 2023 WL 5125080, at *7. Such conclusion would render the definitions in the statute "virtually meaningless." *Id.*

i. Petitioner Has Not Shown Good Cause to Overcome the Town's Recommendation Based on the Land Use Ordinance

With regard to the Land Use Ordinance, the Petitioner argues that good cause to overcome the Town's recommendation exists because the Land Use Ordinance is preempted. (Pet. MSJ, at 23–25). This argument contradicts the plain language of the statute. 30 V.S.A. § 248a(h), cited by Petitioner, merely exempts applicants under § 248a from having to obtain a local zoning permit from the municipality. It places the authority for siting approval with the Commission, but nonetheless requires that substantial deference be given the municipal plan and the municipality's recommendation, which can be based on a municipal town plan *and/or* applicable land-use ordinance. The statute expressly provides that “[t]his exemption from obtaining a permit or permit amendment under 24 V.S.A. chapter 117 *shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under subdivision (c)(2) of this section.*” 30 V.S.A. § 248a(h)(1) (emphasis added). This is consistent with § 248a(c)(2) which states that “[n]othing in this section or other provision of law shall prevent a municipal body from basing its recommendations *to which substantial deference is required under this subdivision (2)* 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.” 30 V.S.A. § 248a(c)(2) (emphasis added).

Petitioner relies on a decision in *Petition of Sba Towers IV, Inc. & Vtel Wireless, Inc. for a Certificate of Public Good, Pursuant to 30 V.S.A. § 248a for*

the Installation of Telecommunications Equip. in Richmond, Vermont for the proposition that the Town's Ordinance is preempted, and strict compliance is not required. (Pet. MSJ, at 23). *SBA Towers IV*, No. 8162, 2014 WL 5493886, at *7-8 (Oct. 24, 2014). However, *SBA Towers IV* was decided in 2014, prior to the substantial amendment to the statute that occurred in 2016, which eliminated the use of the word "preempted," emphasized the substantial deference due municipal plans and recommendations, and provided a specific definition for "good cause" to overcome such deference.

Accordingly, the case and legal framework upon which Petitioner relies is not only inapposite, it is contradicted by the statutory provision now in effect. The statute requires the Commission to presume that the Town's recommendation as it relates to the Land Use Ordinance is "correct, valid, and reasonable," and to apply it unless the Petitioner demonstrates that application of the recommendation would "create a substantial shortcoming detrimental to the public good or the State's interest in section 202c." 30 V.S.A. § 248a(c)(2).

Petitioner argues that deference should not be given the prohibition against communications facilities within the MU2 because "[t]here is no other property available" following an "exhaustive" search for alternatives. (Pet. MSJ, at 24). Whether there is an alternative site is not the standard under 30 V.S.A. § 248a(c)(2). Petitioner has not shown that application of the municipal recommendation as to this telecommunications tower will cause a "substantial shortcoming detrimental to the public good or to the State's interests in section 202c

of this title.” 30 V.S.A. § 248a(b)(3). That is the showing Petitioner would have to make to overcome the substantial deference due to the Town’s recommendation. It is not, as Petitioner suggests, the Town’s burden to prove the existence of alternative sites. *See Petition of Vtel Wireless, Inc. for a Certificate of Pub. Good, Pursuant to 30 V.S.A. § 248, for the Installation of Telecommunications Equip. in Rochester, Vermont*, No. 8548, 2015 WL 9425796. At *6 (Dec. 14, 2015) (“The burden of proof to demonstrate ‘good cause’ rests with the Petitioner”).

Because Petitioner has not shown that application of the Land Use Ordinance provision would cause a “substantial shortcoming detrimental to the public good or to the State’s interests in section 202c,” the Commission must give the municipal recommendation based upon the Land Use Ordinance substantial deference, apply the prohibition on telecommunications facilities within the MU2 District, and deny the petition.

ii. The Petitioner Has Not Shown Good Cause to Overcome the Town’s Recommendation Based on the Town Plan.

With respect to the Town Plan, Petitioner does not assert that affording substantial deference to the municipal recommendation will cause a “substantial shortcoming detrimental to the public good or to the State’s interests in section 202c of this title.” 30 V.S.A. § 248a(b)(3); *see also See Petition of Vermont RSA*, No. 8601, 2017 WL 4419262, at *13. Instead, the Petitioner asserts that there is good cause to set aside the Town’s recommendation on the premise that “[t]he Town Plan contains no specific mandatory language as concerns telecommunications towers.” (Pet. MSJ, at 10). This “no specific mandatory language” argument cannot meet Petitioner’s

burden because (a) it does not meet the statutorily defined “good cause” standard, and (b) it is counterfactual.

As in *Petition of Vermont RSA* (No. 8601), the Town’s recommendation to deny the petition *is* based on specific provisions articulated in the Town Plan:

- That telecommunications towers be sited in a manner that protects the scenic, cultural, and natural resources of the Town; and
- That telecommunication facilities in the vicinity of the downtown area should be relocated away from public view along main streets *or* screened by dense coniferous plantings.

Although it is not the statutory standard for good cause, both of these provisions are, nonetheless, specific and mandatory. Use of the word “should” does not automatically mean a provision is not mandatory, as Petitioner contends. (Pet. MSJ, at 8–9, 12). In the case Petitioner relies on, the Regional Plan at issue contained an express definition of the word “should” as “identifying that a requirement is encouraged but not mandated.” *In re MBL Assocs.*, 166 Vt. 606, 608, 693 A.2d 698, 701 (1997). The Manchester Town Plan contains no similar definition. Just as in *In re Green Peak Estates*, distinguished by the Court in *MBL*, the Town Plan provision at issue articulates a specific policy that telecommunications towers (and other utilities) must either be relocated away from public view along main streets, or screened by dense coniferous plantings. *See In re Green Peak Estates*, 154 Vt. 363, 577 A.2d 676 (1990).

Because Petitioner has not shown that doing so would cause a “substantial shortcoming detrimental to the public good or to the State’s interests in section 202c,” the Commission must give the Town Plan and the municipal

recommendation based upon the Town Plan substantial deference, apply the Town Plan provisions, and deny the petition.

D. The Project Would have an Undue Adverse Impact on Aesthetics

Because a finding that a project does not comply with the recommendations of the municipal legislative body or planning commission in the absence of good cause to overcome such recommendation is dispositive, the Commission need not address the other Section 248a criteria. *See In re Application of Derby GLC Solar, LLC*, 2019 VT 77, ¶ 19, 211 Vt. 144; *Petition of Indus. Tower & Wireless, LLC*, No. 22-2120-PET, 2023 WL 5125080, at *6. Should the Commission conclude that the Petitioner has established good cause to overcome the substantial deference due the Town’s recommendation, it nonetheless must be denied because it would have an undue adverse effect on aesthetics.

There is no question that the project would have an adverse effect on aesthetics because the 130’ tall “Monopine” will be out of character with its surroundings—which include scenic recreation paths within local parks, and the picturesque main streets in downtown Manchester. Petitioner makes no argument to the contrary. The Project also fails the second part of the modified Quechee Test because it would violate multiple clear, written community standards, found in the Land Use Ordinance and the Town Plan.

The Land Use Ordinance does not allow telecommunications facilities to be located within the MU2 District. The MU2 District is found within the Design Review Overlay District, the purpose of which is (among other things) to

“[p]reserve, maintain, and enhance the . . . aesthetics of streetscapes and buildings, and walkability that support Manchester’s visitor-based economy and the vitality of the town core.” Land Use Ordinance, Sections 5.1.1 and 5.1.2, at p. 63. The prohibition on telecommunications facilities is intended to preserve the aesthetics of the area in which the proposed project is to be located—and therefore constitutes a clear, written community standard. Indeed, there can be no clearer articulation of a community standard than an outright prohibition on a particular use within the proposed project area. Siting the Project within the MU2 District would violate this clear, written community standard.

The Town Plan provides that “[i]n order to enhance the aesthetics and visual character of the downtown area, public utilities (including . . . telecommunications facilities) should be relocated from public view along main streets whenever possible.” Town Plan, at 38. Where such relocation is not possible, they must be “screened from adjacent properties with dense coniferous plantings.” *Id.* It further provides that telecommunications facilities are to be sited “in a manner that protects the scenic, cultural, and natural resources of the Town.” *Id.* at 37. These provisions state specific policies, which as explained *supra*, are intended to preserve the aesthetics and scenic beauty of the area where the proposed project would be located. Both provisions also apply to specific resources in the proposed project area—namely main streets in the downtown area, and the recreational resources such as the hiking/bicycling paths at the Dana L. Thompson Memorial Park, and Hunter Park. *See Indus. Tower & Wireless, LLC ... Ira, Vermont*, No. 22-PET-2442,

2023 WL 3151215, at *9. Both provisions provide specific guidance in project design as it relates to the siting of telecommunications facilities. The Project's visibility from downtown Main Street and Bonnet Street, and from Thompson Park, Hunter Park, and the Riley Rink property, would violate these clear, written community standards. It would be impossible for screening to mitigate this undue adverse effect due to the 130' height of the tower.

Petitioner relies on the Commission's decision *Petition of Mgh Solar LLC* for the proposition that the Commission has already determined that the Town of Manchester's Town Plan contains no clear, written community standard. (Pet. MSJ, at 25). In *Mgh Solar* the Commission found that there was no clear, written community standard that would prohibit the project at issue *in that case*, which was on Richville Road—an entirely different area of the town, subject to entirely different considerations. The standard cited by the neighbors in *MgH Solar* was that “public or private actions which would impact these roads must be carefully evaluated, and development must be planned to minimize adverse impacts.” This provision is general. The provisions applicable to this Project are specific to the siting of telecommunications towers, requiring that they be sited in a manner that protects the scenic, cultural and natural resources of the Town, and either located away from public view along main streets or screened by dense coniferous plantings.

Because the Project violates these clear, written community standards, the Commission need not consider the other factors in Quechee step two. A positive finding on any one of the three factors requires a finding that the adverse aesthetic

effect of the Project is “undue.” Accordingly, the Petition should be denied because the Project would have an undue adverse effect on aesthetics within the Town of Manchester.

Conclusion

Because the Town Plan and the Town’s recommendation based on the Town Plan and Land Use Ordinance are entitled to substantial deference, and the Petitioner has failed to show good cause to overcome affording that deference, the Petitioner’s motion for summary judgment should be denied, and the Town’s cross motion for summary judgment should be granted.

Dated this 22nd day of January, 2026.

/s/ Merrill E. Bent

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