

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-3345-PET

Petition of Bell Atlantic Mobile Systems, LLC and Vertex Towers, LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, for the installation of wireless telecommunications equipment at 410 Hunter Park Road in Manchester, Vermont	
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Order entered:

PROPOSAL FOR DECISION

I. INTRODUCTION

This case involves a petition filed by Bell Atlantic Mobile Systems, LLC and Vertex Towers, LLC (“Petitioners”) requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, for authorization to install wireless telecommunications equipment in Manchester, Vermont (the “Project”). In this proposal for decision, I recommend that the Commission grant the cross motion for summary judgment filed by the Town of Manchester and deny the motion for summary judgment filed by the Petitioners.

II. RELEVANT PROCEDURAL HISTORY

On November 1, 2024, the Petitioners filed the petition.

On November 14, 2026, the Town of Manchester Selectboard and Planning Commission (“Town”) jointly filed comments on the petition recommending that the petition be denied because it does not comply with the Town Plan or the Manchester land use and development ordinance.

On November 14, 2024, the Town filed a notice of intervention in this case pursuant 30 V.S.A. § 248a(m).

On December 2, 2025, the Petitioners, the Town, and the Vermont Department of Public Service filed a joint stipulated scheduling motion. The motion states, in part, that the case does not involve “a dispute of material fact requiring a hearing” and the matter may be resolved through summary judgment.

On December 15, 2025, the Petitioners filed a motion for summary judgment and a statement of material undisputed facts (“Petitioners’ Facts”).

On January 13, 2026, the Town filed a memorandum in opposition to the Petitioners’ motion for summary judgment, a cross motion for summary judgment, and a statement of material undisputed facts (“Town’s Facts”).

On February 13, 2026, the Petitioners filed a reply memorandum in support of their December 15 motion for summary judgment, opposition to the Town’s cross motion, and a response to the Town’s Facts.

On February 26, 2026, the Town filed a reply memorandum in support of its cross motion for summary judgment.

Based on the filings in this proceeding, this matter is ready for decision. The following documents are admitted as if presented at hearing: the Petitioners’ Facts and the Town’s Facts.

III. FINDINGS BASED ON THE UNDISPUTED MATERIAL FACTS

Pursuant to 30 V.S.A. § 8(c), and having reviewed the Petitioners’ Facts and the Town’s Facts, and the evidence in the record to support them, I present the following proposed findings of fact to the Commission:

1. Petitioners propose to construct the Project on a parcel of land located at 410 Hunter Park Road in Manchester, Vermont. Town’s Facts at 1.
2. The Project will include a 130’ monopine tower within a 50’ by 50’ fenced compound. Town’s Facts at 2.
3. The Project will be located in the Town’s Mixed Use 2 Zoning District (“MU2”). Town’s Facts at 1.
4. The Town has provided its recommendation that the Project should not be approved because it does not comply with the Town Plan or the Manchester land use and development ordinance (“Town Land Use Ordinance”). Town’s Facts at 2.
5. The MU2 zoning district does not list new telecommunications facilities as a permitted or conditional use. Town’s Facts at 3.

6. The Town Land Use Ordinance allows for telecommunications facilities to be constructed in the Office Industrial (“OI”) district that abuts the MU2 district.

Petitioners’ Facts at 7.

7. The Petitioners have identified a gap in its cellular coverage in an area generally located over the center of the Town. Petitioners’ Facts at 4.

8. The Petitioners have examined a number of potential alternative properties for siting the Project in the area, but all were deemed unworkable by the Petitioners due to site specific issues including: lack of property owner interest, coverage issues, title issues, conservation easements, and/or environmental limitations that would prevent development of a facility on the property. Petitioners’ Facts at 4-5.

9. The Petitioners have not identified any collocation opportunities in the Project area that would satisfy their coverage goals. Petitioners’ Facts at 6.

IV. LEGAL STANDARD

Pursuant to Commission Rule 2.219(A), 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.” The standard for summary judgment is stringent.¹ When seeking summary judgment, the movant has the burden of proof, and the party opposing the summary judgment motion is to be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue exists.² Summary judgment “provides a mechanism for the disposition of issues, claims, and defenses which do not merit a full trial.”³ Disputes over irrelevant or unnecessary facts do not preclude the entry of summary judgment.⁴ However, a trial is “necessary where there is a genuine issue as to any material fact.”⁵ A fact is “material” when it affects the outcome of a case.⁶

¹ *Wesco, Inc. v. Hay-Now, Inc.*, 159 Vt. 23, 26, 613 A.2d 207, 209 (1992).

² *Price v. Leland*, 149 Vt. 518, 521, 546 A.2d 793, 796 (1988). Even where there is no opposition to a motion for summary judgment amongst the parties, the Commission has its own regulatory duty to determine whether a genuine issue exists.

³ *Gore v. Green Mountain Lakes*, 140 Vt. 262, 264 (1987).

⁴ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

⁵ *Sykas v. Kearns*, 135 Vt. 610, 612, 383 A.2d 621, 623 (1978).

⁶ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Pursuant to Section 248a(c)(2), the Commission must find that “unless 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.” The statute also 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.”

Section 248a(b)(5) states that “substantial deference” means that the plans and recommendations referenced under Section 248(c)(2) are presumed correct, valid, and reasonable.

Pursuant to Section 248a(b)(3), “good cause” is defined 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 interest in section 202c of this title. Section 202c broadly supports “the availability of modern mobile wireless telecommunications services along the State’s travel corridors and in the State’s communities.”

V. POSITIONS OF THE PARTIES

The Petitioners argue that the Town Plan does not contain any “clear mandatory provision prohibiting the Project.”⁷ The Petitioners maintain that the provisions of the Town Plan cited by the Town in its motion are simply broad policy statements that cannot be interpreted as barring or regulating the placement of telecommunications facilities. The Petitioners also contend that because the Town Plan does not specifically bar the Project, the Commission cannot apply substantial deference to the Town Plan. Therefore, the Petitioners argue, the Town’s recommendation regarding the Plan is a “subjective and arbitrary position – the epitome of improper governance to which deference cannot be given.”⁸

⁷ Petitioners’ Memorandum in Support of Motion for Summary Judgment at 11.

⁸ *Id.* at 17.

The Petitioners also maintain that good cause exists to set-aside the Town's recommendation. The Petitioners argue that the Project height is consistent with Town zoning regulations and, moreover, there is "nowhere else the Project could be built" and still achieve its coverage goals. The Petitioners concede that the Town may base its recommendation regarding the Project on its zoning regulations.⁹ However, the Petitioners contend that because zoning regulations are preempted under §248a(h), strict compliance with the zoning standards is not warranted.¹⁰ The Petitioners also maintain that good cause exists to set-aside the Town's recommendation based on its zoning because "there is no other property available" to build the Project.¹¹

The Town has recommended that the Project be denied because it does not comply with the Town Plan or the Town Land Use Ordinance. The Town also argues that the Project will have an undue adverse effect on aesthetics and should be denied on that basis as well.¹² The Town contends that the MU2 zoning district does not allow for telecommunications facilities and that the Petitioners have failed to demonstrate that the Town's recommendation to deny the Project based on its zoning is incorrect. The Town maintains that provisions in the Town Plan require telecommunications facilities to be sited "in a manner that protects the scenic, cultural, and natural resources of the Town."¹³ The Town contends that the Project is in violation of the Town Plan because it is not sited in a manner that protects views from recreation paths and surrounding parks. Further, the Town argues that the Petitioners have not shown that the Town's recommendation based on the Plan is "incorrect, invalid, or unreasonable."¹⁴

The Town also maintains that the Petitioners have not shown how deference to the Town's recommendations regarding compliance with the Town Plan or zoning would "create a substantial shortcoming detrimental to the public good or the State's interest in section 202c and the public good."

⁹ *Id.* at 23.

¹⁰ *Id.*

¹¹ *Id.* at 24.

¹² Town's Memorandum in Opposition to the Petitioners' Motion for Summary Judgment and Cross Motion for Summary Judgment ("Town's Memorandum") at 9-10. Because I recommend that the Commission grant the Town's Cross Motion for Summary Judgment, I have not made recommendations addressing the other Section 248a criteria.

¹³ *Id.* at 11 (citing the Town Plan at 37.)

¹⁴ *Id.* at 12.

VI. DISCUSSION

This case presents the question of whether the Commission must give substantial deference to the Town's recommendation that the Commission deny the application because the Project does not comply with the Town Land Use Ordinance. The undisputed facts show that the Project is located in the MU2 zoning district and that the ordinance prohibits telecommunications facilities in that district. Therefore, I am not persuaded by the Petitioners' argument that the Town's recommendation is arbitrary or improperly relies on vague language in the Town Plan because the statute explicitly allows the Town to base its recommendation on local zoning ordinances and the Town's recommendation is consistent with the zoning ordinance.¹⁵ Therefore, I conclude that the Town's recommendation is reasonable and recommend that the Commission give it substantial deference.

The Petitioners' argument that strict compliance with local zoning is not required under Section 248a(h) is misplaced. The 2014 case cited by the Petitioners predates changes to Section 248a in which the Legislature directed the Commission to presume that local recommendations are "correct, valid, and reasonable" as part of giving substantial deference to such recommendations.¹⁶ Therefore, that case does not reflect the substantial deference to local recommendations that is required by law today. Section 248(h) exempts the Petitioners from having to also obtain a permit through the local zoning process. However, Section 248a(c)(2) requires the Commission to give substantial deference to the recommendations of a municipality and explicitly permits those recommendations to be based on zoning ordinances. Therefore, a municipal recommendation based on a zoning ordinance can control the outcome of a Section 248a proceeding, subject to the Commission's ability to override such recommendations for "good cause" as defined in the statute.

¹⁵ The Petitioners have argued that various portions of the Town Plan are vague and unenforceable. It is not necessary to reach these arguments because, as discussed below, the Town's recommendation based on its zoning ordinance is a sufficient basis to grant summary judgment.

¹⁶ Compare *Petition of SBA Towers IV, Inc., and Vtel Wireless, Inc., for a certificate of pub. good, pursuant to 30 V.S.A. § 248a, for the installation of telecommunications equip. in Richmond, Vermont*, Docket No. 8162, Order of 10/24/14 at 12-14, with Public Act No. 130, § 5a (2016 Vt. Bien. Sess.).

Accordingly, I turn next to whether good cause exists to set aside the Town's recommendations. The Petitioners argue that good cause exists because the Petitioners have identified a gap in their coverage located generally over the center of the town. The Petitioners have identified the subject property as the only feasible site upon which a facility intended to address this gap can be located. The Petitioners argue that denial of the Project would frustrate the Petitioners' ability to address its self-defined coverage goals. However, this is the case in every application for approval of a facility under Section 248a. The construction of a telecommunication facility to address a company's self-identified coverage gap is generally consistent with the State's broad interests under Section 202c and in the public good. But this does not necessarily mean that failure to construct the facility will result in a substantial shortcoming detrimental to the public good or the State's interests under Section 202c.

For example, the Petitioners have not alleged that there are no other wireless service providers that cover the area, or that a lack of the Petitioners' service creates a safety risk for Vermonters. The Petitioners have not explained how a gap in their coverage creates a substantial shortcoming detrimental to the public good or the State's interests. The Commission has previously rejected the idea that consistency with Section 202c alone is sufficient to demonstrate good cause to override a local recommendations: "[T]he notion that §202c always preempts the recommendations of town or regional planning commissions" would render "the substantial deference standard found in § 248a(c)(2) virtually meaningless."¹⁷ Therefore, I recommend that the Commission find that there is not good cause to override the Town's recommendation and that judgment for the Town is appropriate as a matter of law.

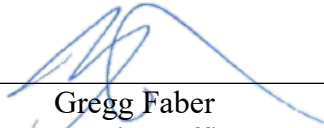
Accordingly, I recommend that the Commission deny the Petitioners' motion for summary judgment and grant the Town's cross motion for summary judgment to deny the petition.

¹⁷ *Petition of Indus. Tower & Wireless, LLC*, No. 22-2120-PET, Order of 8/3/23 at 9.

VII. CONCLUSION

This Proposal for Decision has been circulated to the parties pursuant to 3 V.S.A. § 811.

Date: March 31, 2026



A handwritten signature in blue ink, appearing to read 'GF', is written over a horizontal line.

Gregg Faber
Hearing Officer

VIII. PROPOSED ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission that:

1. The findings, conclusions, and recommendations of the hearing officer are adopted. All findings proposed by parties, to the extent that they are inconsistent with this order, were considered and not adopted.

2. The cross motion for summary judgment filed by the Town of Manchester, on January 13, 2026, is granted.

3. The motion for summary judgment filed by Bell Atlantic Mobile Systems, LLC and Vertex Towers, LLC on December 15, 2025, is denied.

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*Notice of appearance to be filed.