

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 26-0574-PET

Application of	)
Industrial Tower and Wireless, LLC	)
for a Certificate of Public Good,	)
pursuant to 30 V.S.A. § 248a, authorizing	)
the construction of a wireless telecommunications	)
facility in Enosburgh, Vermont.	)

**PETITIONER’S RESPONSE TO PUBLIC COMMENTS AND MOTIONS TO
INTERVENE**

NOW COMES Industrial Tower and Wireless, LLC (“ITW” or “Petitioner”), by and through its counsel, MSK Attorneys, and hereby submits this response to the public comments filed by Victor Tirrito, Philippa Fourie (aka Dorfman), Chris Bruhn, Adam Woods, Carol Crawford, Barbara Aldrich, Sandra Bruhn, Stephen C. Tonra, Debra Hastings, and Stephanie Tonra (the “Commenters”) and Motions to Intervene filed by Colleen Shepard, Derek Jones, Bordoville Seventh Day Adventist Church, Chris Bruhn, Sandra Bruhn, Victor Tirrito, and Philippa Dorfman (the “Movants”).

PRELIMINARY STATEMENT

The Petitioner maintains none of the public comments filed in this case raise a significant issue with respect to the applicable criteria under 30 V.S.A. § 248(a). The Petitioner opposes the motions to intervene on the basis that no personal particularized interest has been raised with respect to applicable criteria. To the extent the Commission disagrees, the Petitioner requests that the Movant’s intervention be limited to aesthetics and that the Movants be required to coordinate their participation as set forth in Commission Rule 2.209(C). To the extent that the Commission

finds a significant issue is raised, the Petitioner asks that the Commission so identify the issue and convene a conference and set the matter for a hearing on those issues.

I. Public Comments

a. Public Comments in Support

This response is intended to address the comments in opposition to the project. The Petitioner requests the Commission take notice of the numerous comments filed in support of the project by members of the public such as Andrew Holt, Shania Goss, Katherine Bennett, Todd Jon Cosgrove, Jessica Dewes, Kevin C. Marvin, Shawna Lovelette, Fairfield Volunteer Fire Department, Matt Hull, and Warren and Mary Hull.

Notably, both the Town of Enosburgh Selectboard and the Northwest Regional Planning Commission filed recommendations in support of the project, as will be discussed further below.

b. Public Comments in Opposition

The Commenters concerns as to these issues are not based in sound fact and law. They are generalized and fail to raise a significant issue.

On April 13, 2026, Victor Tirrito commented indicating his opposition to the Tower for the following reasons: 1) too close to adjoining properties where property owner has 720 acres to less intrusive location for the tower; 2) independent review by Vermont Dept of public safety/radio technology task force necessary to ensure less intrusive solution/recommendation before proceeding; 3) how a single cellular provider addresses the general public good needs to be determined and at this time no carrier has been identified.

As to the first comment, this is not meritorious. The Petitioner reviewed the totality of the subject landowner's land for possible tower locations. The present site was chosen to balance the

impact on aesthetics, natural resources, and historic resources. Its location limits environmental impacts and avoids any wetland impacts. This comment fails to articulate or identify an alternative location that be more suitable or mitigate any impacts. Further, the “Vermont Dept of public safety/radio technology task” is not a party to this proceeding, nor are do they have the authority to make any such determination.

Petitioner cannot determine what Mr. Tirrito intended with the final comment. As the Petitioner has previously stated, it is its experience that additional carriers will not commit to co-location on a facility until it has received a Certificate of Public Good due to the uncertainty in the permitting process. The facility as proposed would host antennas for the Petitioner and St. Albans Dispatch, it will have space available for additional public safety whip antennas as well as at least one additional carrier to co-locate and is structurally able to accommodate additional carriers.

Philippa Fourie (aka Dorfman) comments and claims that the project will result in the destruction of the rural hamlet and argues that there are better locations. She makes these generalized grievances without identifying these locations or providing any evidence. She also states that “repeaters can go on silos along 108” however she fails to identify any such locations or provide evidence that these would provide coverage to the identified gap.

Chris Bruhn similarly states that there are many other locations that would be better, however, he fails to identify any such locations. There is no evidence to support this assertion. It is a generalized grievance without any basis in fact.

Adam Woods states that the location is inappropriate and feels it “could better be placed elsewhere” but does not indicate where this location would be. Again, this is a generalized grievance without any supporting facts.

Carol Crawford – states that she is “sure there is another location” however, she once again fails to identify one or articulate how any hypothetical other location would have a lesser impact on the “potential loss of habitat.” Nor does she indicate how a loss of habitat would result from the development of an unmanned facility in a previously cleared field outside of any significant natural community or critical wildlife habitat.

Barabara Aldrich states she is opposed to the project due to proximity to historical sites and homes. Her comment does not identify with specify the historical sites or homes at issue.

Sandra Bruhn cites from the previous proceeding for this project at 140’ AGL for the position that the present project will not allow the Petitioner to achieve its objectives to provide coverage to the area in question. This is contradicted by the prefiled testimony and exhibits filed in the present case. The reduction in height to the current proposed height is a direct response to the decision of the Second Circuit, and this Commission, which was based on their determination that adequate public good would be served through less intrusive means – a 120’ tower. Ms. Bruhn also requests a balloon float but is just a delay tactic. No request for one was made during the advance notice period, or by the Town or Regional Planning Commission. There were also three previous floats conducted at 140’ upon which extensive aesthetic analysis were completed by the Petitioner, the Department of Public Service, and Ms. Bruhn in her capacity as an intervenor in the previous proceeding. She has access to all those reports and an additional balloon float is unnecessary.

Stephen Tonra is not a resident of the area. His comments do not raise a personal interest in this proceeding. It is unclear what a “spot where no one can see it” is nor how that hypothetical facility would be able to provide coverage.

Debra Hastings similarly calls for the exploration of “more suitable locations” but fails to articulate what would be more suitable. It is also unclear what homeowners she refers to as the project is proposed within a rural, relatively sparsely populated, area of Vermont.

Stephanie Tonra, once again is not a resident of the area and accordingly, her comments do not give rise to a personal interest in this proceeding. Her questions on health concerns are without merit nor are within the jurisdiction of this Commission, as are the concerns regarding property values¹, especially as she does not own property in the vicinity of the project.

In the totality, the comments argue that there is some hypothetical location that would address concerns around aesthetics, historic resources, and natural resources. However, no commenter provides any indication of where this location *is*. Nor do they articulate whether such a location actually would serve the public good. As numerous other commenters have stated, the area to be served by this project has no coverage today. It is a public safety problem and first-responders regularly report inability to communicate critical information that this tower will address. In short the opposing comments amount to simply a “not here; somewhere else” approach and provide little beyond that.

II. Motions to Intervene

¹ See, e.g., *Petition of VTel Wireless, Inc.*, Docket No. 8352, Order of 11/24/14 at 7-8 (“The [Commission’s] review of petitions filed pursuant to § 248a is required to consider several criteria enumerated in the statute. However, the statute does not require that the Commission consider private property interests of neighboring landowners”); *see also* *Petition of Danyow Road Solar, LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, for a 5 MW ground-mounted solar array located in Sheldon, Vermont*, Case No. 22-3427-PET, Order of 10/3/22 at 3 (“the Commission has long held that concerns over individual property values are not within the scope of a Section 248 proceeding.”)

The Movants generally seek intervention with respect to aesthetics, historic resources, and the municipal and regional plans. The motions, to the extent they contain any evidence, fail to demonstrate the project has at the potential to raise a significant issue with respect to the applicable Section 248a criteria and accordingly, they should be denied.

As to the Movants desire for permissive intervention with respect to the project's conformance with the Town and Regional Plan, there is no basis to grant such intervention. First, it is the Movant's burden to establish a right to intervene and none of the motions provide evidence to demonstrate the potential for a significant impact as to any non-compliance with the Town and Regional Plans. As demonstrated by the support of the Town and regional planning commission, along with the pre-filed testimony and exhibits, the project complies with both plans.

Further, with respect to the Town and Regional plans, the Enosburgh Selectboard and the Northwest Regional Planning Commission have filed recommendations indicating that the project complies with their respective plans and both support approval. Pursuant to 30 V.S.A. § 248a(c)(2) the Movants must establish good cause to overcome these recommendations and the rebuttable presumption created by the recommendations. The Movants do not do that. They do not provide any credible evidence or argument supporting any claim of good cause. If the good cause standard is rigidly applied to petitioners when a town or regional planning commission recommends denial of a project, then it must rigidly apply when either supports a project.

In addition, the Selectboard of Enosburgh and Northwest Regional Planning Commission are best situated to speak to compliance with their own plans. They represent the interests of the towns people in seeing the duly adopted town and regional plans be enforced. It is their. As they

have spoke here, and as that recommendation is afforded deference, there is no reason to grant permissive intervention as the interests the Movants have in seeing the town and regional plan upheld is being represented by existing parties. *See* Rule 2.209(A)(3).

With respect to aesthetics, the Movants, who were all granted intervention in the previous proceeding for a prior version of this project (*see* 22-2120-PET), fail to present any evidence to establish a significant issue with respect to aesthetics may result. First, this tower would only be visible from 2.7% of the viewshed. That is an astoundingly small area impacted by views of this tower. At this level of visibility, the Department of Public Service determined that no undue adverse impact would result. *See* Exhibits LH-7 and LH-8. In the proceeding for the 140' tower, the hearing officer found that based on such evidence, the tower would not result in an undue and adverse impact. The Movants – who were parties to that proceeding – fail to explain how this lower tower has any significant viewshed impacts such that there will be a significant issue as to whether the tower has an undue and adverse impact.

Further, the Movants provide no analysis as to how a significant issue could arise under the applicable *Quechee* test. They fail to address it all. As the Movants are aware, whether a proposed project satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), is determined by the so-called “*Quechee* test.”

The first step of this two-part test is to determine whether a project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony 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. If the Project does not have an adverse effect on aesthetics because it is in harmony with its surroundings, then the project satisfies the aesthetics criterion.

If a project would have an adverse effect on aesthetics, such adverse impact will be found to be undue if any one of the three following questions is answered affirmatively:

- (a) [w]ould the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area;
- (b) [w]ould the project offend the sensibilities of the average person;
- (c) [h]ave the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.

The Movants bear the burden of proof with regards to this analysis. The Motions to Intervene provide no articulation of the *Quechee* test nor explain where or how this project fails that analysis. Assuming in arguendo that the tower would have an adverse effect on some aesthetic (a low bar), the movants would have to establish this effect is undue. They cannot and do not articulate how such impact is undue.

The Project does not violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area. This conclusion is supported by the Prefiled Testimony of Louis Hodgetts and Exhibits LH-6, LH-7, and LH-7, and further reinforced by the recommendations of the Town of Enosburgh Selectboard and Northwest Vermont Regional Planning Commission, which are afforded substantial deference. They do not assert there is any clear community standard, and in fact support approval.

Further, the Project will not offend the sensibilities of the average person. The overall visibility of the Project tower will be very limited due to the screening provided by existing topography and vegetation. Viewshed analysis of the area within a two-mile radius indicates that

the tower will be visible from only 2.5% of the viewshed area. Visibility of the tower is predominately from a narrow corridor at the base of the valley near the Project. Views of the tower within a half-mile radius will be discrete and short in duration. See Prefiled Testimony of Louis Hodgetts at Page 13; see also Exhibit LH-8 at Page 27. Given the facilities limited visibility and the presence of similar facilities throughout the state, it would not be offensive or shocking to the average viewer. In addition, as demonstrated by the number of supportive public comments, a large number of people, with average sensibilities, who all seem to use and enjoy the area around the project have no issue with the “aesthetics” of the tower.

Finally, the Petitioner has taken all generally available mitigating steps. First, the Petitioner has taken generally available mitigating step of siting of the tower on the downslope of a hill to minimizes its visual effect on ridgelines and long-distance views. Second, the tower is lowered to a height found to be the least intrusive means to provide coverage. Third. The base is screened by existing natural vegetation and tree cover. Fourth, the lattice work tower blends in with the prevailing grey or muted grey sky in northern Vermont. Fifth, the proposed tower is made of metal that weathers such that it will have little glare. *See* Exhibit LH-7 at Page 4. These are the general available mitigating measures that any reasonable applicant would take.

At most, the Movants reference general provisions of the Town and Regional plans. These are no clearly written community standards that create a legal mandate. Nowhere have the Movants cited to any specific language in either plan which would limit, much less prohibit, this project. Nor do they identify any mitigating measure that is available to the Petitioner that has not been employed here. Because they offer no evidence or argument that there is an undue and adverse impact, the Movants should not be granted intervention on the criteria for this project.

The Movants concerns with respect to Historical Resources do not arise to a personal particularized interest supporting intervention. The concern is essentially a repackaged aesthetic concern as well. They merely make conclusory arguments that since the tower is visible from a historic resource it has undue adverse impact on that resource. This is not the rule, nor supported by any facts. As discussed above, the visibility of the facility will be extremely limited. If it were visible from a historic property, the view is limited and distant. It is screened by intervening trees and the tower is lowered to the least intrusive means to meet the coverage needs and support public safety. That there is the mere potential visibility of a telecommunications facility does not create undue adverse impact to a historic resource and none of the Movants present any basis to conclude otherwise. Notably, the State of Vermont Historic Preservation Office concurred with the Petitioner's expert that even at 140' AGL, the project would not have no adverse effect on historic properties in the area.

Overall, none of the parties who filed Motions to Intervene have demonstrated a personal, particularized interest with respect to any of their issues, or explained why other parties in the case will not adequately protect these interests (for example, the Department of Public Service as concerns co-location and need for coverage, or the ANR as concerns wildlife impacts). They mostly voice generalized grievances which do not reflect a particularized interest conferring standing. *See Brod v. Agency of Nat. Res.*, 2007 VT 87, ¶ 9, 182 Vt. 234, 239, 936 A.2d 1286, 1289 (2007) (“For standing, plaintiffs must present a real—not merely theoretical—controversy involving “ ‘the threat of actual injury to a protected legal interest’ rather than merely speculating about the impact of some generalized grievance.”)(citations omitted). Nor do they

assert any basis to conclude that there is a significant issue on the issues they seek intervention to prosecute. For these reasons, intervention should be denied.

If intervention is granted, it must be limited to aesthetics and historic resources. The Town Selectboard and Regional Planning Commission have made recommendations and are best situated to protect the Movants' interests in protected Town and Regional resources. Lastly, the Petitioner asks if Intervention is granted, the movants be required to coordinate and file through one representative.

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Burlington, Vermont

Respectfully submitted,

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