

Town of Bristol

Zoning Board of Appeals

Minutes of March 8, 2016

Including Joint Meeting with Planning Board
Regarding the Crown Castle/Verizon Tower Application Buckelew Road

Members Present: ZBA-Chairman Marty Snyder, Jennifer Sanford, Steve Smiley, Donna Beretta, John Krebbeks

Planning Board-Chairwoman Patti Giordano, Joann Rogers, Robert Raeman, Robert Stryker, Robert Drayn, Secretary Sandra Riker representing both Boards

Others Present: Andrew Leja, Shaun Logue, J. R. Lynch, Justin Kellogg, Fran Morgante, Mary Ann & Keith Maynard, Amy Force, Mike & Deborah Sweeney

The meeting was opened with the Pledge of Allegiance.

Chairman Marty Snyder opened the Zoning Board of Appeals meeting for March 8th, 2016 and Patti Giordano opened the Planning Board Special Meeting being held in conjunction with the ZBA meeting.

Minutes: The minutes of February 16, 2016 were reviewed and accepted with a motion by Jennifer Sanford with a second by John Krebbeks. All Board members agreed.

Richman Area Variance:

Justin Kellogg is here from Meagher Engineering to present the area variance application to provide an additional 5'4" to the height of the proposed home to be built at 7311 Evert Road for Rose Richman. The maximum height for a single family home in the Bristol A-C district is 30'.

The factors considered for this application are as follows:

- They do not feel it would create an undesirable change to the neighborhood or be a detriment to nearby properties as much of the surrounding lands are either undeveloped wooded lots or being used as farmland, the existing woods on the parcel known as map #137.00-2-52.000 would block the proposed residence from neighboring homes.
- Can the benefit sought by the applicant be achieved by a feasible alternative to the Variance? The majority of the site is on a hillside and the owners would like to place the home at the rear of the lot for privacy. They would like to take advantage of the sloped topography, so the house would be built with a walk out lower level eliminating the need for additional fill brought in to make the area level and reduce the height of the house. They realize the disadvantage is the height of the house has to be averaged out using the sloped topography which creates the increase of the 5'4" in height to make it 35' 4" tall.

- Is the Variance substantial? The applicant thinks not because the increased height will not be noticeable from the road due to the fact it will sit back 1000' from the front lot line so it should not impact the neighboring views.
- Would the Variance have an adverse impact upon the physical or environmental impact of the neighborhood? The applicant again feels this should not be a problem as it will not be seen from the road and is in a heavily wooded area of the lot. They would like to minimize the number of trees to be removed, disturbance and fill brought in to reduce the physical and environmental impact on the land.
- Is the difficulty self-created? The applicant is aware that it is self-created but feels it is minimal and the proposed residence fits in better with the sloped topography thereby reducing the impact to the surrounding area.

The setbacks for this home are 1660' from the front lot line, 197' from the rear, and the side lot lines are 1459' from one and 1506' from the other.

Justin mentioned that he had been to the Planning Board meeting last evening for a site plan review and they had questions regarding the outside lighting proposed for the home. He said the lighting will be shielded fixtures and will only face downward. They will be dark sky complainant as well.

The Board inquired about the ceiling heights in the home. He did not know the answer to this question. The Board asked if the roof could be lowered to below the required 30' height and Kellogg answered he did not think this is possible based on its design is what the homeowner has chosen. The Board advised him that it is the ZBA's duty to allow the minimal amount of variance needed to satisfy the application. The Board agreed that the roof slope makes the additional height and asked if this could be reduced to mitigate the need for a variance. Kellogg said even if it was reduced in height they would still probably need a variance of a couple feet to allow for the design of the home.

The public hearing was opened by Chairman Marty Snyder. Fran Morgante a neighbor of the Evert Road parcel had some questions: Would the additional 5' in height create a larger potential issue for water damage to neighboring landowners? There is a stream on the parcel that runs through this parcel to the west onto her property and the Harloff lands as well. She mentioned the Pepper lands would likely be affected as well.

She inquired if the guidelines for steep slopes in the site plan review mentioned in the zoning regulations had been addressed as she did not see any mention of calculated run off from the stream either before or after construction.

The ZBA Chair advised Ms. Morgante the ZBA Board is only addressing the height of the proposed dwelling and her questions should be addressed to the Planning Board at their next meeting. The Chair is aware that the site plan was not granted but tabled so the Planning Board could be provided some additional information regarding the site plan. He mentioned that the Planning Board had received comments from the Ontario County Soil and Water Conservation District as well as the DEC and the Ontario County Planning Board with regard to the erosion plan provided with the Site Plan application. There were no other comments.

He asked the Board how they would like to proceed with this application. They agreed that the question of whether the roof line can be changed to reduce the variance request needs to be answered.

A motion to leave the public hearing open and table the application to the ZBA next meeting was made by Jennifer Sanford with a second by Steve Smiley. All Board members agreed.

Crown Castle/Verizon Wireless Buckelew Road location tower application:

Patti Giordano as Chair for the Planning Board opened the public hearing for the Site Plan portion of this application and Marty Snyder as Chair of the ZBA stated this is a continuation of their public hearing regarding SEQRA, Special Use Permit and Area Variance associated with this application first opened on December 8, 2015.

Amy Force asked if the questions from last night's PB meeting had been addressed and if the comments from OCPB were available as well. The Chair said all of this would be included in the rest of this meeting.

Andrew Leja addressed the questions raised at the Planning Board meeting last evening.

- Foundation depth? He said that has not been finalized but there are two options shown on the site plan information provided. At the time of the building permit application the soils are sampled and the better choice of the two will be used. Typically with towers of this type a hole is drilled in the ground and filled with concrete and rebar and filled with more concrete for the anchor bolts for the tower to be attached to the foundation. This is called a caisson and it provides a firm structure to anchor the tower and also serves as a counterweight to provide stability for the tower. The caisson is usually 6 to 10' in diameter and depending on the soil, bedrock, etc. generally 25' to 30' deep. Planning Board asked the Town Engineer Shaun Logue if this type of foundation should have effect on the neighboring water supplies. He said the ground water depth is greater than 6 feet and until such time as soil analysis is provided cannot say definitely but given that, a concrete foundation or caisson will be used it should not have any effect on neighboring wells. If there was a significant amount of blasting involved it could create a problem but that cannot be determined at this point. The other option is for a more spread out foundation that would not be as deep.
- Structure of the building? It is a 12' x 30' pre-fab shelter. The building will be trucked in and craned on to the concrete foundation. It will be then covered with Steni façade panels which are made of fiberglass-reinforced polymer composite with a surface of crushed natural stone. It comes in many different colors and the applicant is choosing an earth tone to blend with the surroundings. It is water-resistant, eco-friendly and UV-resistant.
- Lighting? Mr. Leja presented the Boards with a flyer showing the type of lighting to be used on the equipment shed. It is called an Acuity Lithonia LED area light to provide downward facing light, this will be over the man door on the shed, and it is dark sky compliant and will be powered by a manual switch at the building to be operated only when a crew is present.
- The Planning Board felt there was a problem with the coordinates for the tower. Mr. Leja said they are not problems with the coordinates as the coordinates mentioned on Site Drawings and Site plans are the same. The coordinates are the same on everything we have provided designating a W (west symbol) at the end of the numbers to reflect its location in relationship ship to the Greenwich

Meridian line. The coordinates that came in from SAFESITE had a negative in front of the numbers but no W at the end. He suggested that SAFESITE assumed everyone would be aware this was the location on the Ward property and not half way around the world. He went on to say in Exhibit 13 the SAFESITE determination by the FAA of what is acceptable in height for the tower is based on the original coordinates given which is a distance of 32' to the North West of where the tower is to be placed. It is still within the same elevations necessary for the tower to provide optimum coverage for the Verizon equipment. He said the FAA study is more concerned with the elevation being the same whether than the actual latitude and longitude coordinates and given the terrain in the area the 165' tower is necessary to provide the optimum coverage Verizon is looking to achieve.

Mrs. Maynard expressed a concern that additional carriers could be placed on the tower. Will that effect the traffic, people coming and going, noise, property values, health concerns, esthetics, and how it will affect the enjoyment of the property owned by them and the other neighbors? She wanted to know what recourse they would have if problems arise after the tower is in place if the application is approved. The ZBA Chair advised her that while many of her questions cannot be addressed by the ZBA Board because they are in the mandates set forth by the Federal Government the Boards will be addressing all parts of the application and where possible will provide conditions that the Applicant will need to follow to make the Tower fit with the area.

Sweeney inquired as to how the tower would get its power. Leja replied the utilities will be brought in underground through the easements provided on the leased parcel. Sweeney also inquired how much of the foundation will be above ground and will that add to the height of the tower. Leja replied the tower is designed to be 165' tall from the ground level to the top. Leja also assured the group there would not be a need for blasting to put in the foundation for this type of tower.

Amy Force referred to the local law regarding towers, etc. and her concern that the health, public safety, and welfare of the Town of Bristol. She is considered about the radiation effects generated by the equipment placed on the Tower will affect the health of Mr. Maynard in particular not to mention the other surrounding neighbors. Chairman Snyder said with regard to these issues the FCC has rules and regulations govern the operation of the facility.

To wrap up the comments Marty Snyder, Chair for the ZBA said the Boards have received and reviewed all of the comments presented by the public along with the petitions circulated by the Maynards and the reply from the FCC that was generated with the Maynards call to Representative Collins' office.

The public hearing was then closed by Marty Snyder for the ZBA and Patti Giordano for the Planning Board.

Mr. Leja acknowledged the applicant had addressed the regular 5 part criteria for an Area Variance or 4 parts for a Use Variance but said as a public utility it is not necessary to respond to those questions and instead it follows a 2 part criteria Board must use.

1. Necessity: This is done through the propagation maps provided in the application.
2. The ability to prove there is no other site available to achieve the optimum coverage needed for the applicant.

He referred the Boards to exhibit 4 of the application that provides the search ring used to determine the location for the tower. There is no other tower or building for the applicant to co-locate on within the search

ring. As shown in exhibit 9 Greg Ward was the only one willing to lease a portion of his lands to Crown Castle. The applicant has placed the tower to the North West corner of the Ward parcel as requested by Mr. Ward and also making it 800' from Buckelew Road to reduce the visual impact from public roads. Leja is aware that this does not hide the tower from the neighbors but this is a balancing test needed to still have a 165' height necessary to satisfy the propagation study.

Town Attorney Kenyon explained that the 2 part test for public utilities goes back to accepted procedure into the 1990s and within the last 10 years the Federal Gov't. has ramped up the process to make it easier for public utilities to be put in place where needed. Chairman Marty Snyder still expressed a concern for not following the 5 part test required by Town Law. Kenyon's comment was if the Board really wanted to look at the 5 points for an Area Variance they could but that information as all been provided in exhibit 4 of the application supplied and it is really only necessary to follow the 2 part test of need and proving there is no other place to put the tower to satisfy the applicant's needs.

Even though the public hearing was closed Keith Maynard made the comment that several months ago when this application was first presented Attorney Bill Kenyon advised the Board he has been friends with the Ward family for a number of years and has done work for them in the past. He stated he did not believe this would affect his ability to deal with the current application fairly for the Town. He asked if the Board wanted him recused and the Board said they did not think it was necessary. Maynard is now asking the same question of Russ Kenyon, Attorney. Kenyon replied he did not have a conflict of interest with this application and the Board agreed.

Amy Force said she did not understand why we are dealing with this application as a public utility and not just a cell tower. The Board advised her that the tower had been determined as a public utility since it was resubmitted in August of 2015.

Comments from the OCPB meeting were read into the minutes as follows:

COMMENTS:

- According to ONCOR data:
 - No State or Federal wetlands are present on the property.
 - The property is not located within a FEMA floodplain.
 - The property is not located within 500 ft. of an Agricultural District.
- Soil Characteristics:
 - Darien Silt Loam
 - 3-8% slope
 - Permeability: Moderately High
 - Erodibility: High
 - Drainage Condition: Somewhat poorly drained
 - Importance: Prime farmland if drained
- Erodibility of the soils on this parcel is listed as high. Though the amount of area to be disturbed is listed as less than an acre, Erosion and Control details should be created and utilized.
- The plans submitted in the referral document show that the monopole tower is located on the far Northeast corner of the parcel. Why was this location selected by the applicant? There are areas of the parcel that are higher in elevation elsewhere on the property. Relocation to a more central point in the property would increase the base elevation of the tower thereby reducing the amount of the variance needed, decreasing the capital cost associated with the towers high and increasing the buffer distance between the proposed tower and the adjacent land owner.

- Local Law No. 1-2007 **Promote and Protect the Public Health, Safety, Welfare & Aesthetics of the Town of Bristol by Regulating the Installation of Antennas, Parabolic Dishes, Towers, Windmills & Energy – Creating Devices**, references that towers and commercial broadcast and communications facilities should only be erected in A-C zoned districts. However, the Town code seems internally inconsistent as it references public utilities/facilities as a permitted use within the Light Industrial (L-I) district.

Town code references;

Sec. II Definitions (Page 10)

94. Public Utility. *A regulated private enterprise with a franchise for providing public service.*

95. Public Utility Facilities. *Telephone and electric lines, poles, equipment and structures; water or gas pipes, mains, valves or structures, sewer pipes, valves or structures; pumping stations; telephone exchanges and repeater stations; and all other facilities, equipment and structures necessary for conducting a service by a government or public utility.*

ARTICLE TEN – USES PERMITTED IN USE DISTRICTS

Section I. Agricultural Conservation (A-C) Use District

C. Special Use Permits Required: (Pg. 30)

10. Public Utilities/Facilities.

Section V. Light Industrial (L-I) Use District

A. Permitted Uses:

No structure or part thereof shall be erected, altered or used, and no lot shall be used except for one (1) or more of the following uses: (Refer to Article Three, “Definitions”)

- 1. Production and assembly operations.*
- 2. Public Utilities/Facilities.*
- 3. Research and Development laboratories.*
- 4. Retail sales, excluding drive-in restaurants and vehicle sales and services.*
- 5. Wholesaling and warehousing.*

- According to the New York State Public Service Commission - Office of Telecommunications, Crown Castle is listed as a utility company with an active status.
- Erodibility of the soils on this parcel is listed as high. Though the amount of area to be disturbed is listed as less than an acre, Erosion and Control details should be created and utilized.

COMMENTS FROM CPB MEETING:

- The fall zone for the tower was discussed. The Town of Bristol Local Law 1-2007 requires a setback of 1.25 times the height of the tower. It appears that the applicant is meeting this requirement with a buffer of only a few additional feet more than what is required.
- The referring Board is *strongly encouraged to grant the minimum variance necessary*. In order to ensure that alternative locations are explored (as referenced above) the Board should request that Crown Castle / Verizon run coverages analysis for different locations on the subject parcel. Higher elevations on the parcel should be explored as they have the potential to achieve the same equipment elevation with a smaller tower (i.e. the natural rise in the landscape provides a higher base elevation for the tower to begin with). Coverages should be reviewed in the context of the balancing test, acknowledging that there may be a different tower location that still provides acceptable levels of coverage on the property. An alternate location on the site could help to buffer adjacent properties. A location picked solely at the direction of the landowner, without taking into account/exploring the coverage potential of other alternatives should be considered as a factor in the balancing test (per NYS Town Law Section 267-b(3));
 - Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance,
 - Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant

to pursue, other than an area variance,

- Whether the request is substantial,
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Board Motion: Referral #19-2016, #19.1-2016, #19.2-2016 be retained as Class 1s and returned to the local board with comments.

Motion made by: C. O'Brien

Seconded by: L. Wildman

Vote: 14 in favor, 0 opposed, 0 abstentions. Motion carried.

Mr. Leja said he had addressed the OCPB comments in a letter to Carla Jordan on February 19th as follows:

BARCLAY DAMON ^{LLP}

Andrew J. Leja
Partner

February 19, 2016

Carla M. Jordan
Senior Planner
Ontario County Planning Department
20 Ontario Street
Canandaigua, NY 14424

Re: Application of Crown Castle to Construct a Monopole Telecommunications
Facility at 7912 Route 20A, Bristol, NY (Tax Map No. 123-1-56.111)
Response to Feb. 10, 2016 Comments from Ontario County Planning Board.

Dear Ms. Jordan:

I was pleased to attend the Ontario County Planning Board's ("CPB") February 10, 2016 meeting on behalf of my client Crown Castle ("Crown") and answer questions from CPB members and Planning Staff regarding the above-referenced application. I have received CPB's report to the Town of Bristol from that meeting, and respectfully offer the following responses keyed to those comments:

1. **Tower Fall Zone:** As noted, the proposed tower location exceeds the Town of Bristol's setback requirements for such structures from the closest neighboring property lines (to the North and West).

2. **Alternative Locations:** Crown Castle commissioned a site selection process to determine all potential tower alternatives and locations that would enable Verizon to meet its coverage and capacity objectives and allow integration with neighboring cell sites. See Crown Application, Exhibit 9. The evaluation of potential sites is confined to a geographic area identified by a computer analysis and known as a "search ring". Once the search ring is established, Crown's first consideration is whether any existing telecommunications towers or tall structures capable of hosting antennas are located within that ring (this is known as "collocation"). Where, as here, no collocation opportunities are available, Crown must secure rights to construct a new tower on private property within the search ring. In this case, Crown contacted several property owners; Greg Ward was the only owner amenable to hosting a new tower on his property. As part of its contract with Mr. Ward, Crown agreed to site the tower on the northwest corner of the Ward property, which allows him continued use of the balance of his property with minimal intrusion.

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Also Admitted in: Massachusetts

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The CPB noted that other areas within the Ward parcel are higher in elevation than the proposed tower site, and suggested they be considered as an alternative. As I noted during my appearance, those areas of the parcel were already rejected from consideration because: (a) they conflicted with Mr. Ward's stated preferences as landowner; (b) they are located within the Town of Bristol's L-I Zone, and there is an internal conflict in the Town's laws as to the zoning status of telecommunications towers in the L-I Zone that would inject uncertainty and delay into the approvals process; and (c) they are located closer to US Route 20A and, by virtue of their elevation, would increase the tower's visual impacts from that public highway to a degree that would offset any decrease in overall tower height (which may be 30 feet at maximum).

3. **Applicable Area Variance Test:** The standard 5-part area variance test contained in NYS Town Law Section 267-b(3) is not applicable to Crown's application, because telecommunications facilities are considered to be public utilities in New York State. As such, Crown must demonstrate compliance with a different test for the requested variance for tower height.

A municipality must afford special treatment to a public utility when considering its zoning application. In New York State, "it has long been held that a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities." Matter of Consolidated Edison Co. v. Hoffman, 43 N.Y.2d 598 (1978). This special treatment of public utilities stems from the essential services they provide and because a public utility facility must be located in a particular area in order to provide service.

[Public] utility services are needed in all districts; the service can be provided only if certain facilities (for example, substations) can be located in commercial and even in residential districts. To exclude such use would result in an impairment of an essential service.

Anderson, New York Zoning Law Practice, 3d. ed., p. 411 (1984). See also, Cellular Tel. Co. v. Rosenberg, 82 N.Y.2d 364 (1993); Payne v. Taylor, 178 A.D.2d 979 (4th Dept. 1991).

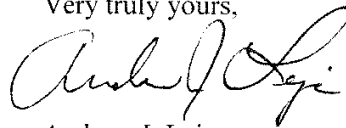
In 1993, the New York Court of Appeals determined that wireless telephone facilities are public utilities. Cellular Tel. Co. v. Rosenberg, 82 N.Y.2d 364 (1993). The court held that proposed cellular telephone installations are to be reviewed by zoning boards under the traditional standard for public utilities rather than the standards typically required for the necessary municipal approval. The court stated that cellular telephone companies, as public utilities, "may not [be] exclude[d]...from a community where the utility has shown a need for its facility." Rosenberg, 82 N.Y.2d at 372 (citing consolidated Edison Co. v. Hoffman, 43 N.Y.2d 598 (1978)).

Public utilities seeking variances must demonstrate that the proposed site is necessary to enable the company to render safe and adequate service, and that no alternative sites are available which could be used with less disruption of the community's zoning plan.¹ Where the public utility proves the requisite public necessity, the board must grant a variance although the proposed use will impose inconvenience and some loss of value on the lands adjacent to it. The community may not be denied an essential service simply to preserve the zoning scheme or to protect certain owners from alleged loss of value.²

Here, Crown has demonstrated the necessity of the tower's location for coverage and capacity purposes via propagation maps and related studies. Crown has further demonstrated its inability to collocate on another tower and its inability to find other willing property lessors within the search ring besides Greg Ward. *See* Crown Application, Exhibits 8-9. By virtue of its SEQRA submittals and its voluntary address of the (otherwise inapplicable) statutory area variance criteria (*see* Crown Application, Exhibit 4), Crown has also demonstrated that its proposed site causes the least disruption with the Town's zoning, particularly in terms of visual impact (*e.g.*, using monopole construction versus a lattice tower, setting the tower as far back from US Route 20A and Buckelew Road as possible, and offering future collocation opportunities for other carriers). Finally, the proposed tower's location in the A-C Zoning District clearly makes it a specially permitted use, avoiding any confusion with the Town's laws that would come with location in the L-I District that covers higher-elevation areas of the Ward parcel.

Thank you for your consideration of the above. Please feel free to contact me should you have any questions. Thank you.

Very truly yours,



Andrew J. Leja

cc: Town of Bristol Zoning Board of Appeals
Town of Bristol Planning Board

¹ *Bell Atlantic Nynex Mobile, Inc. v. Lonergan*, 251 A.D.2d 660, 676 N.Y.S.2d 603 (2d Dep't 1998); *see also* *Cellular Telephone Co. v. Rosenberg*, 82 N.Y.2d 364, 604 N.Y.S.2d 895, 624 N.E.2d 990 (1993); *see also* *Zagoreos v. Conklin*, 109 A.D.2d 281, 491 N.Y.S.2d 358 (2d Dep't 1985).

² *Northport Water Works Co. v. Carll*, 133 N.Y.S.2d 859 (Sup. Ct. 1954).

The Boards then addressed the SEQRA, the Full EAF, Area Variance, Special Use Permit and Site Plan:

Full EAF parts 1, 2, and 3

The full EAF parts 1, 2, and 3 were reviewed by the Zoning Board of Appeals and the following points were made in a resolution with regard to that document.

- The proposed application is classified as an Unlisted Action under SEQR Regulations
 - The proposed development is subject to a single agency review pursuant to Part 617.6(b) (4) of the SEQR Regulations
 - The ZBA is most appropriate agency for making the determination of significance
 - The ZBA declared itself as lead agency for the proposed development
 - The ZBA has given consideration to the criteria for determining significance as set forth in SEQR Section 617.7(c) (1) and the information contained in the Full EAF form part 1 and arriving at the following conclusions:
- (i) there will not be a substantial adverse change in existing air quality, ground or surface water quality or quantity, aesthetics, traffic noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
 - (ii) there will not be large quantities of vegetation or fauna removed from the site or destroyed as the result of the proposed Action; there will not be substantial interference with the movement of any resident or migratory fish or wildlife species as the result of the proposed Action; there will not be a significant impact upon habitat areas on the site; there are no known threatened or endangered species of animal or plant, or the habitat of such species; or, are there any other significant adverse impacts to natural resources on the site;
 - (iii) there are no known Critical Environmental Area(s) on the site which will be impaired as the result of the proposed Action;
 - (iv) the overall density of the site is consistent with the Town's Comprehensive Plan land use recommendations; the project site (property) is not within an archaeological sensitive area
 - (v) there will be an increase in the use of either the quantity or type of energy resulting from the proposed Action; however, the existing infrastructure and substations are sized to handle the increase;
 - (vi) there will not be any hazard created to human health;
 - (vii) there will not be a change in the use of active agricultural lands that receive an agricultural use tax exemption or that will ultimately result in the loss of ten acres of such productive farmland;
 - (viii) there will not be a larger number of persons attracted to the site for more than a few days when compared to the number of persons who would come to the site absent the Action;
 - (ix) there will not be created a material demand for other Actions that would result in one of the above consequences;
 - (x) there will not be changes in two or more of the elements of the environment that when considered together result in a substantial adverse impact; and
 - (xi) there are not two or more related Actions which would have a significant impact on the environment.

BE IT FURTHER RESOLVED, based upon the information and analysis above and the supporting documentation referenced above, the proposed Action **WILL NOT** result in any significant adverse environmental impacts.

BE IT FINALLY RESOLVED that the Zoning Board does hereby make a Determination of Non-Significance on the proposed development, and the Zoning Board Chairman is hereby directed to sign the Full Environmental Assessment Form Part 3 and issue a Negative Declaration as evidence of the Zoning Board's determination.

The above Resolution was offered by **Jennifer Sanford** and seconded by **Donna Beretta** at a regular scheduled Zoning Board Meeting held on March 8, 2016. Following discussion, a voice vote was recorded:

Jennifer Sanford -yes
Donna Beretta - yes
Steve Smiley - yes
Marty Snyder - yes
John Krebbeks -yes

Area Variance:

The Board was referred back to exhibit 4 in the application. This is the Area Variance application and the responses by Crown Castle to the 5 part criteria necessary to grant an Area Variance. This was reviewed again and then the Town Attorney asked if the Board agreed that the standards for a public utility should apply to Crown Castle and their application.

The Board agreed that it should be considered as a public utility and polled as follows:
Marty aye, Steve aye, Jen aye, Donna aye, and John aye

The question was then asked if the Board believes this is the only proposed site possible for the tower and answered as follows:
Marty aye, Steve aye, Jen aye, Donna aye, and John aye

The applicant has shown there are no alternative sites available for this tower, and it is not possible to co-locate on another tower or building at this location. The studies provided demonstrates this is the only site that works to provide the service level the applicant needs to achieve their goal.

The following resolution was made with regard to the Area Variance for Crown Castle/Verizon Wireless Buckelew Road application:

WHEREAS, the Town of Bristol Zoning Board of Appeals, (hereinafter referred to as Zoning Board) is in receipt of an area variance application, in accordance with Local Law #1-2007 IV (A) from Crown Castle for the property located at 7912 Route 20A, Town of Bristol, Ontario County, Tax Map ID# 123-1-56.111, to allow a tower to be constructed to a height of 165 feet; and

WHEREAS, a public notification was submitted and a public hearing conducted for this application, and public comments were received; and

WHEREAS, this application was referred to the Ontario County Planning Board for review as required under NYS General Municipal Law, Article 12-B, Section 239-1, M and N; and

WHEREAS, the Ontario County Planning Board provided recommendations based on their review of the Class 1 application, dated February 10, 2016; and

WHEREAS, the Zoning Board has reviewed the subject variance request, originally dated August 24, 2015, with later revisions dated February 19, 2016; and

WHEREAS, the Zoning Board declared the original application dated August 24, 2015 complete at the September 8, 2015 Zoning Board meeting; and

WHEREAS, the Zoning Board declared this to be an Unlisted Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations and made a SEQR Determination Non-Significance at the March 8, 2016 Zoning Board meeting; and

WHEREAS, the Zoning Board determined the Special Use permit to be consistent with the provisions of Article 10, Sec. I (C); Article 18, Sec. I of Local Law No. 3 of 2011, and Local Law #1-2007; and

WHEREAS, the Zoning Board determined the applicant to be a Public Utility, and

WHEREAS, the Zoning Board determined that the applicant has shown the proposed site is necessary to provide safe and adequate service, and

WHEREAS, the Zoning Board has determined that the applicant has shown that no alternative sites are available.

NOW, THEREFORE, BE IT RESOLVED that based upon the preceding findings, the Town of Bristol Zoning Board of Appeals hereby grants the application for an area variance to the requirements found in Local Law #1-2007 IV (A), allowing the height of the tower to exceed the 60 foot height requirement, to a requested 165 feet in height with the following conditions:

1. Construction of the proposed telecommunications facility must commence within one (1) calendar year from the date of the granted variance or said variance shall become null and void.
2. The granting of the area variance in no way obviates the need for the applicant to obtain additional permits and approvals including but not limited to Planning Board Site Plan approval.
3. Local Law #1-2007 §IV (J), the existing facility may be inspected on a periodic basis by the Fire Marshal, Code Enforcement Officer or other person appointed by the Town Board to ensure compliance with Local Law #1-2007.
4. In compliance with Local Law #1-2007 §IV (F), the existing facility shall not be modified in any way which will result in any substantial increase in the level, intensity, or direction of any non-ionizing electromagnetic radiation (NEMR) emission.
5. Before beginning operations, the subject property will be subject to inspection by the Town Code Enforcement Officer and/or Town Engineer to determine compliance with NYS Building Code requirements and Town Code requirements and conditions of this approval.
6. In accordance with Local Law #1-2007 §IV (G), if the owner or lessee of the existing facility ceases for a period of six (6) months to use or operate the said facility, then in that event, such facility shall be dismantled and removed from the site and the site shall be restored to its natural state by the owner. Failure to dismantle or remove and restore to its natural state within thirty (30) days after said facility has been declared abandoned by the Town Board will result in forfeiture of a Letter of Credit or cash bond posted by said owner or lessee of the facility in an amount approved by the Town Board.
7. Said area variance for the monopole telecommunications facility located at 7912 Route 20A, Town of Bristol, Ontario County, Tax Map ID# 123-1-56.111 is granted up to a height of 165 feet, and any increase in height will null and void said area variance.
8. The Applicant agrees to allow the placement of any needed facilities by police, Bristol Fire Department, EMT and other emergency response teams on this communications tower, and further agrees to assist in placement.

The above Resolution was offered by Jennifer Sanford and seconded by Steve Smiley at a regular scheduled Zoning Board Meeting held on March 8, 2016. Following discussion thereon, the following roll call vote was taken and recorded:

Jennifer Sanford -aye
Donna Beretta -aye
Steve Smiley - aye
Marty Snyder - aye
John Krebbeks -aye

Special Use Permit:

After some conversation the following resolution was passed for the Special Use Permit necessary to this application:

WHEREAS, the Town of Bristol Zoning Board of Appeals, (hereinafter referred to as Zoning Board) is considering an application for a Special Use Permit for a 165' telecommunications tower (monopole) located at 7912 Route 20A and within the Agricultural Conservation (A-C) zoning district , which is permitted upon the issuance of a Special Use Permit by the Zoning Board; and

WHEREAS, a public notification was submitted and a public hearing conducted for this application, and public comments were received; and

WHEREAS, this application was referred to the Ontario County Planning Board for review as required under NYS General Municipal Law, Article 12-B, Section 239-1, M and N; and

WHEREAS, the Ontario County Planning Board provided recommendations based on their review of the Class 1 application, dated February 10, 2016; and

WHEREAS, the Zoning Board has classified the above referenced Action to be an Unlisted Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, on March 8, 2016, in compliance with NYS Town Law, the Zoning Board held a public hearing on the current application and completed a formal review of the application; and

WHEREAS, the Zoning Board does hereby determine the proposed Special Use Permit to be consistent with the provisions of Article 10, Sec. I (C) and Article 18, Sec. I of Local Law No. 3 of 2011 (hereinafter referred to as Zoning Ordinance); and

WHEREAS, the Zoning Board does hereby determine the proposed Special Use Permit to be consistent with the provisions and standards set forth in Local Law #1-2007; and

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board does hereby approve the requested special use permit with the following conditions:

1. In accordance with Local Law #1-2007 §IV (G), if the owner or lessee of the proposed facility ceases for a period of six (6) months to use or operate the said facility, than in that event, such facility shall be dismantled and removed from the site and the site shall be restored to its natural state by the owner. Failure to dismantle or remove and restore to its natural state within thirty (30) days after said facility has been declared abandoned by the Town Board will result in forfeiture of a Letter or Credit or cash bond posted by said owner or lessee of the facility. The applicant shall prepare a Letter of Credit or cash bond in an amount to be approved by the Town Board.
2. Local Law #1-2007 §IV (J), the proposed facility may be inspected on a periodic basis by the Fire Marshal, Code Enforcement Officer or other person appointed by the Town Board to ensure compliance with Local Law #1-2007.
3. In compliance with Local Law #1-2007 §IV (F), the proposed facility shall not be modified in any way which will result in any substantial increase in the level, intensity, or direction of any non-ionizing electromagnetic radiation (NEMR) emission.
4. Before beginning operations, the subject property will be subject to inspection by the Town Code Enforcement Officer and/or Town Engineer to determine compliance with NYS Building Code requirements and Town Code requirements and conditions of this approval.

5. In the event of any complaints about the proposed Special Use Permit operations being filed with the Code Enforcement Officer and failure to take corrective action by the applicant shall be brought to the attention of the Zoning Board.
6. There will no more than one telecommunications facility located on Tax Map Parcel 123-1-56.111 (hereinafter referred to as Locating Property).
7. The Locating Property is to be free of all property violations.
8. There shall be no outdoor storage of any equipment, materials, or supplies associated with this Special Use Permit.
9. A separate Area Variance approval from the Zoning Board, in accordance with the Town of Bristol Local Law #1-2007, Section IV (A) to permit the tower to be constructed to a height of 165', as needed.
10. This application requires separate Site Plan approval by the Town of Bristol Planning Board.
11. Construction of the proposed telecommunications facility must commence within one (1) calendar year from the date of the granted special use permit or said special use permit shall become null and void.
12. The Special Use Permit will be reviewed in five (5) years.
13. The Applicant agrees to allow the placement of any needed facilities by police, Bristol Fire Department, EMT and other emergency response teams on this communications tower, and further agrees to assist in placement.

The above Resolution was offered by Jennifer Sanford and seconded by Steve Smiley at a regular scheduled Zoning Board Meeting held on March 8, 2016. Following discussion thereon, the following roll call vote was taken and recorded:

Jennifer Sanford -aye
Donna Beretta - aye
Steve Smiley - aye
Marty Snyder - aye
John Krebbeks - aye

Site Plan:

The Planning Board agreed that the questions from last evening have been addressed by Mr. Leja. They asked to have some additional conditions added to the ones stated on the Resolution for the Site Plan and the final resolution is as follows:

WHEREAS, the Town of Bristol Planning Board, (hereinafter referred to as Planning Board) is considering Site Plan approval for the construction of a 165' telecommunications tower (monopole) owned and operated by Crown Castle and the collocation of twelve (12) panel antennas used by Verizon Wireless and place its ground facilities onto the leased parcel located at 7912 Route 20A within the Agricultural Conservation (A-C) zoning district and detailed on the site plans dated February 12, 2016 and all other relevant information submitted as of March 8, 2016 (the current application), and

WHEREAS, a public notification was submitted and a public hearing conducted for this application, and public comments were received; and

WHEREAS, this application was referred to Ontario County Planning Board for review as required under NYS General Municipal Law, Article 12-B, Section 239-1, M and N; and

WHEREAS, the Ontario County Planning Board provided recommendations based on their review of the Class 1 application, dated February 10, 2016; and

WHEREAS, the Zoning Board of Appeals (hereinafter referred to as Zoning Board) has classified the above referenced Action to be an Unlisted Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations and issuing a Negative Declaration; and

WHEREAS, the Zoning Board determined the Special Use Permit to be consistent with the provisions of Article 10, Sec. I (C) and Article 18, Sec. I of Local Law No. 3 of 2011 (hereinafter referred to as Zoning Ordinance); and

WHEREAS, the Zoning Board determined the Special Use Permit to be consistent with the provisions and standards set forth in Local Law #1-2007; and

WHEREAS, the Zoning Board has determined the subject area variance originally dated August 24, 2015 with later revision dated February 19, 2016 request in accordance with Local Law #1-2007 IV (A) be approved; and

WHEREAS, the Zoning Board determined the applicant to be a public utility, and

WHEREAS, the Zoning Board determined the applicant has shown the proposed site is necessary for safe and adequate service; and

WHEREAS, the Zoning Board has determined that the applicant has shown that no alternative sites are available, and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby approve the requested site plan with the following conditions:

1. Site Plan Approval with conditions specified above herein is valid for a period of 180 days from today. Once all conditions of Site Plan Approval have been met and shown on revised drawings including the revision dates, the Planning Board Chairperson will then sign the Site Plans.
2. Pursuant to Local Law #1, Section IV (G), a letter of credit or cash bond is to be prepared by the applicant and provided to the Zoning Board for review and accepted by the Town Board prior to the issuance of any permits. The applicant shall prepare said Letter of Credit or cash bond and present it to the Zoning Board for their review and they will make a recommendation to the Town Board to accept or deny a Letter of Credit or cash bond.
3. A soil stabilization and erosion control surety estimate is to be prepared by the applicant and provided to the Zoning Board for review and accepted by the Town Board prior to the issuance of any permits.
4. Said site plan for the monopole telecommunications facility located at 7912 Route 20A, Town of Bristol, Ontario County, Tax Map ID# 123-1-56.111 is granted up to a height of 165 feet, and any increase in height will null and void said site plan.
5. In accordance with Local Law #1-2007 §IV (G), if the owner or lessee of the proposed facility ceases for a period of six (6) months to use or operate the said facility, then in that event, such facility shall be dismantled and removed from the site and the site shall be restored to its natural state by the owner. Failure to dismantle or remove and restore to its natural state within thirty (30) days after said facility has been declared abandoned by the Town Board will result in forfeiture of a Letter of Credit or cash bond posted by said owner or lessee of the facility.
6. Local Law #1-2007 §IV (J), the proposed facility may be inspected on a periodic basis by the Fire Marshal, Code Enforcement Officer or other person appointed by the Town Board to ensure compliance with Local Law #1-2007.
7. In compliance with Local Law #1-2007 §IV (F), the proposed facility shall not be modified in any way which will result in any substantial increase in the level, intensity, or direction of any non-ionizing electromagnetic radiation (NEMR) emission.
8. Before beginning operations, the subject property will be subject to inspection by the Town Code Enforcement Officer and/or Town Engineer to determine compliance with NYS Building Code requirements and Town Code requirements and conditions of this approval.
9. There will be no more than one telecommunications facility located on Tax Map Parcel 123-1-56.111 (hereinafter referred to as Locating Property).
10. There shall be no outdoor storage of any equipment, materials, or supplies associated with this Site Plan.
11. Construction of the proposed telecommunications facility must commence within one (1) calendar year from the date of the granted special use permit or said special use permit shall become null and void.
12. The Applicant agrees to allow the placement of any needed facilities by police, Bristol Fire Department, EMT and other emergency response teams on this communications tower, and further agrees to assist in placement.

13. The outdoor lighting fixture to be placed on the equipment shed will be either Acuity Lithonia LED Area Light, 53W, 120-277' or similar. It will be dark sky complainant and operated manually to ensure that it is only on when crews are on site.
14. The hours of operation for the tower are 24/7.
15. Whatever choice of generator fuel be it diesel or propane will be contained in a storage tank that will be compliant with all regulations and standards as applicable.
16. All vegetation shall be maintained per the design submitted and replaced as necessary to maintain that level of design.
17. Approval will be contingent on the submittal and review of the grading plan and proposed contours.
18. Foundation plans will be selected and submitted to the CEO and Town Engineer prior to any permits being issued.

The above Resolution was offered by **Robert Raeman** and seconded by **Robert Stryker** at a specially scheduled Planning Board Meeting held on March 8, 2016. Following discussion thereon, the following roll call vote was taken and recorded:

Patti Giordano -aye
Robert Stryker -aye
Robert Drayn Jr. - abstained
Joann Rogers - aye
Robert Raeman - aye

Robert Drayn recused himself from the vote because he is related to Greg Ward and as a lifelong resident of the Town of Bristol he is a friend to many of the neighbors.

The Planning Board was adjourned from the meeting with a motion by Robert Raeman.

Question from the CEO:

Russ Kenyon told the Board he had inquired to the CEO about whether it would be possible for a person to have a winery with tasting room and eventually a restaurant added to it in the A-C district of the town. The CEO has asked the ZBA to weigh in on this question.

A winery would be accepted as a permitted use under general or specialized farming. Permitted accessory uses refer to Artisans.

The definitions of Artisan and Artisan Use were looked at by the Board. They are as follows:

Artisan: A person manually skilled in making a particular product, such as, but not limited to, glassblowing, art studios, pottery/ceramics, ornamental works, etc.

Artisan Use: An accessory use is unique to the A-C District, permitting an artisan to manufacture and/or sell products of his/her creation. Such use shall be in conjunction with the artisan's residential use and may employ one person who is not a member of the artisan's immediate family. Only goods manufactured on premises shall be sold. An artisan use existing in the C-B District shall be deemed a commercial use and not subject to these provisions.

The Board agreed that a winery would be an acceptable agri-business in the A-C district of the town and the tasting room could be viewed as an Artisan Use run by an Artisan under our current zoning regulations and definitions. Under Artisan Use only one additional employ is allowed, that would require a variance if more employees other than family members were to be used. If a restaurant were to be added this would require a special use permit-this currently is not a permitted use. The restaurant would present more of a challenge but given the fact the Town is reviewing their current Comprehensive Plan and zoning regulations to be more proactive to new business in the town perhaps it would be doable in the future.

The Secretary added that under the Ag & Market laws the rules for Agri-based businesses are less stringent than the Town regulations and if the land being used for that purpose were in the Ag District #1 of the Town the ZBA would need to look to Ag & Markets for advice on how to proceed with such an application.

The meeting was then adjourned with a motion by Jennifer Sanford.

Respectfully submitted,

Sandra Riker

Secretary for the ZBA

Town of Bristol

At the April 4th meeting of the Planning Board the minutes of March 8th involving Site Plan were approved by the Planning Board with a motion by Bob Drayn and a second by Bob Stryker. All Board members approved.

At the April 12th meeting of the ZBA the minutes of March 8th were approved with a motion by Steve Smiley and a second by Jen Sanford. Board polled as follows: Snyder aye, Smiley aye, Sanford aye, Krebbeks aye, and Beretta was excused from this meeting.