

12 OCTOBER 2022

**TOWN BOARD SPECIAL MEETING
TOWN HALL, MAHOPAC, N.Y.**

A Special Meeting of the Town Board of the Town of Carmel was called to order by Supervisor Michael Cazzari on the 12th day of October 2022 at 7:02 p.m. at Town Hall, 60 McAlpin Avenue, Mahopac, New York. Members of the Town Board present by roll call were: Councilman Baranowski, Councilman Lombardi, Councilwoman McDonough, Councilman Schanil, and Supervisor Cazzari.

The Pledge of Allegiance to the Flag was observed prior to the start of official business. A moment of silence was held to honor those serving in the United States Armed Forces.

PUBLIC COMMENTS

Charlie Melchner, Jr. from Mahopac Marina asked if he could be provided with an update with regard to the questions he posed at a recent Town Board meeting in connection with the zoning changes proposed surrounding Lake Mahopac, and if not, if he could be directed to whom he should be seeking the answers from.

Supervisor Cazzari explained that the proposed zoning amendments have been forwarded to the Planning Board for their review and comment, and that the Town Board has not received a written report back from them yet. A discussion ensued regarding the proposed amendments.

Bert Melchner confirmed with Supervisor Cazzari that there would be no items added to the written agenda for tonight's meeting. He then held up a map which highlighted all of the properties along Lake Mahopac that will not be permitted to maintain their dock if the proposed zoning changes go into effect, and commented on the significant impact that the proposed changes would have on those property owners.

Councilman Lombardi stated that after that Town Board meeting was held, he was contacted by residents with lakefront property who indicated their major concern to be the safety of everyone who uses the lake, and the Town Board agrees. Discussion regarding the proposed amendments continued.

Charlie Melchner praised the article that appeared recently in one of the local newspapers regarding Town Planner Pat Cleary. Mr. Melchner went on to ask about the status of the Swan Cove property and reiterate the concerns of the business community in the area about the lack of adequate parking.

Supervisor Cazzari explained that the project will be completed in phases, commencing with the stabilizing of the parking area and the grass area. He noted that the funds are not available to construct it in its entirety at this time. Discussion was held regarding the parking aspect of the project.

Ken MacDonald asked if residents will be notified in advance when the Planning Board will be discussing the proposed zoning changes with respect to the properties along Lake Mahopac, and if their meeting will be open to the public.

Legal Counsel Gregory Folchetti explained that because the matter is not an application to the Planning Board, there will be no designated Public Hearing at which people can get up and speak. However, the meeting will be open to the public.

Supervisor Cazzari added that Mr. MacDonald can send his comments to the Town Board and they will ensure that that the comments are forwarded to the Planning Board along with those comments already received. Discussion briefly continued.

**“NEW YORK SMSA LIMITED PARTNERSHIP D/B/A/ VERIZON WIRELESS, AND
HOMELAND TOWERS, LLC V. THE TOWN OF CARMEL, ET AL.” - NEGATIVE
DETERMINATION MADE UNDER NEW YORK STATE ENVIRONMENTAL QUALITY
REVIEW (“SEQR”)**

WHEREAS the Town Board of the Town of Carmel has reviewed the short form environmental assessment form in regard to the proposed approval of an amended

12 OCTOBER 2022
TOWN BOARD SPECIAL MEETING

(Cont.)

stipulation of settlement and consent order in the matter entitled “New York SMSA Limited Partnership d/b/a/ Verizon Wireless, and Homeland Towers, LLC v. The Town of Carmel, et al.” as pending in the United States District Court Southern District of New York under Docket no. 19-cv-10793; and

WHEREAS, such proposed approval of the amended stipulation of settlement and consent order in the referenced litigation an Unlisted Action under 6 NYCRR Part 617 (State Environmental Quality Review Regulations); and

WHEREAS the Town Board has reviewed the Environmental Assessment form and assessed the possible impacts and their magnitude on the environment in accordance with the SEQR regulations and given due consideration thereto;

NOW THEREFORE BE IT RESOLVED, that pursuant to Part 617 of the SEQR Regulations, the Town of Carmel Town Board hereby designates its intention to serve as Lead Agency for the SEQR Review of this Unlisted Action, and in this capacity will conduct an Uncoordinated Review.

BE IT FURTHER RESOLVED, that pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law, the Lead Agency hereby determines that the proposed Unlisted Action will not have a significant effect on the environment; and

BE IT FURTHER RESOLVED that the Town Board of the Town of Carmel recognizes that any potential significant adverse environmental impacts of the construction of the proposed improvements contemplated in the amended stipulation of settlement and consent order will in fact be subject to a separate, additional, no less sensitive and no less detailed review under Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law by the Town of Carmel Planning Board, and/or Town of Carmel Zoning Board of Appeals and/or Town of Carmel Environmental Conservation Board; and

BE IT FURTHER RESOLVED that the Town Board of the Town of Carmel hereby determines that, based on the information contained in the Short Form Environmental Assessment Form and their analysis thereof, this proposed Unlisted Action will not result in any significant adverse environmental impacts under the SEQR regulations and hereby adopts a Negative Declaration in regard to the proposed action.

Resolution

Offered by: Councilman Schanil

Seconded by: Supervisor Cazzari

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>	
Stephen Baranowski	<u>X</u>	<u> </u>	
Frank Lombardi	<u> </u>	<u> </u>	Abstain
Suzanne McDonough	<u>X</u>	<u> </u>	
Robert Schanil	<u>X</u>	<u> </u>	
Michael Cazzari	<u>X</u>	<u> </u>	

SEQR
617.21
Appendix F
State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Project Number _____

Date October _____, 2022

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law. The Town of Carmel, Town Board as lead agency, has determined that the proposed action described below will not have a significant effect on the environmental and a Draft Environmental Impact Statement will not be prepared.

(Cont.)

Name of Action:

Authorization of an amended stipulation of settlement and consent order in the action entitled "New York SMSA Limited Partnership d/b/a/ Verizon Wireless, and Homeland Towers, LLC v. The Town of Carmel," United States District Court, Southern District of New York, Docket no. 19-cv-10793 relating to the proposed construction of certain telecommunications towers within the Town of Carmel;

SEQR Status:

Type I Unlisted

Conditioned Negative Declaration: Yes No

Description of Action:

Proposed authorization by the Town Board of entry into an amended stipulation of settlement and consent order in the action entitled "New York SMSA Limited Partnership d/b/a/ Verizon Wireless, and Homeland Towers, LLC v. The Town of Carmel," United States District Court, Southern District of New York, Docket no. 19-cv-10793 relating to the proposed construction of certain telecommunications towers within the Town of Carmel.

SEQR Negative Declaration

Location: Town of Carmel NY

REASONS SUPPORTING THIS DETERMINATION:

This proposed Unlisted Action will not result in any significant adverse environmental impacts under the SEQR regulations and hereby adopts a Negative Declaration and that any potential significant adverse environmental impacts of the construction of the proposed improvements contemplated in the amended stipulation of settlement and consent order will in fact be subject to a separate, additional, no less sensitive and no less detailed review under Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law by the Town of Carmel Planning Board, and/or Town of Carmel Zoning Board of Appeals and/or Town of Carmel Environmental Conservation Board.

If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed.

For Further Information:

Contact Person: Michael S. Cazzari, Town Supervisor

Prior to the roll call vote, Legal Counsel Gregory Folchetti explained that the negative declaration under the State Environmental Quality Review Act pertains to the Town's authorization of an amended consent order in connection with litigation that had been pending in the Southern District for about three years and corollary State litigation for the last two years.

Mr. Folchetti explained that it has been determined that the application for a particular telecommunications tower should go back to the Planning Board and the Zoning Board for review and therefore, the Town Board must authorize it to go back. Mr. Folchetti pointed out that when the matter goes back to the Planning Board, there will be an application, and when it goes back to the Zoning Board, there will be an application, as well as a full State Environmental Quality Review (SEQR) regarding the physical improvements in connection with the application. The SEQR determination at this time is only for authorizing the amended consent order.

Mr. Folchetti explained that because the Town Board is authorizing a new consent order, there is a SEQR implication and that a negative determination would be authorizing that the ministerial act does not, or potentially does not, have a significant environmental impact. It is done that way because there is going to be a separate, independent and no less sensitive review for the physical improvements that are contemplated, done by the Planning Board.

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At the request of Councilman Schanil, Legal Counsel Gregory Folchetti went on to provide a history of the litigation that commenced in 2019.

“NEW YORK SMSA LIMITED PARTNERSHIP D/B/A/ VERIZON WIRELESS, AND HOMELAND TOWERS, LLC V. THE TOWN OF CARMEL, ET AL.” - AMENDED STIPULATION OF SETTLEMENT AND CONSENT ORDER AUTHORIZED

WHEREAS there is currently pending in the United States District Court, Southern District of New York, a certain lawsuit entitled “New York SMSA Limited Partnership d/b/a/ Verizon Wireless, and Homeland Towers, LLC v. The Town of Carmel, et al.”, Docket no. 19-cv-10793 relating to the proposed construction of certain telecommunications towers within the Town of Carmel; and

WHEREAS a stipulation of settlement and consent order of the referenced litigation was authorized by the Town Board of the Town of Carmel on or about May 13, 2020 and thereafter filed with the United States District Court; and

WHEREAS, the parties to the referenced litigation have subsequently agreed to amend the parameters, terms and provisions of the stipulation of settlement and consent order referenced herein;

NOW THEREFORE, BE IT RESOLVED that the Town Board of the Town of Carmel hereby authorizes the amendment of the referenced stipulation of settlement and consent order embodied in the amended stipulation of settlement and consent order which is currently on file in the office of the Town Supervisor; and

BE IT FURTHER RESOLVED that Town Counsel Gregory L. Folchetti and/or Joseph A. Charbonneau are/is hereby authorized to sign, on behalf of the Town of Carmel, the amended stipulation of settlement on consent order.

Resolution

Offered by: Supervisor Cazzari

Seconded by: Councilman Baranowski

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>	
Stephen Baranowski	<u>X</u>	<u> </u>	
Frank Lombardi	<u> </u>	<u> </u>	Abstain
Suzanne McDonough	<u>X</u>	<u> </u>	
Robert Schanil	<u>X</u>	<u> </u>	
Michael Cazzari	<u>X</u>	<u> </u>	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NEW YORK SMSA LIMITED PARTNERSHIP d/b/a/
VERIZON WIRELESS, and HOMELAND TOWERS, LLC,

Plaintiffs,

DOCKET NO.:
19-cv-10793 (PMH) (JCM)

-against-

THE TOWN OF CARMEL, THE TOWN OF CARMEL
TOWN BOARD, THE TOWN OF CARMEL PLANNING
BOARD, THE TOWN OF CARMEL ZONING BOARD
OF APPEALS, THE TOWN OF CARMEL
ENVIRONMENTAL CONSERVATION BOARD, and
MICHAEL CARNAZZA THE TOWN OF CARMEL
BUILDING INSPECTOR (in his official capacity),

Defendants.
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12 OCTOBER 2022
TOWN BOARD SPECIAL MEETING

(Cont.)

STIPULATION OF SETTLEMENT AND CONSENT ORDER

WHEREAS, the plaintiffs New York SMSA Limited Partnership d/b/a Verizon Wireless, and Homeland Towers, LLC (collectively, “Plaintiffs” or “Applicants”), commenced this action against defendants the Town of Carmel, the Town of Carmel Town Board (“Town Board”), the Town of Carmel Planning Board (“Planning Board”), the Town of Carmel Zoning Board of Appeals (“ZBA” or “Zoning Board”), the Town of Carmel Environmental Conservation Board (“Conservation Board”), and the Town of Carmel Building Inspector (in his official capacity) (“Building Inspector”), (collectively, “Town” or “Defendants”), seeking *inter alia* a Judgment and Order finding that Defendants’ denial of Plaintiffs’ request to: (i) install and maintain a public utility wireless telecommunications facility consisting of a 140-foot monopole designed to resemble a tree and a fenced compound for related equipment (“Casse Facility”) at the property located at 254 Croton Falls Road in the Town of Carmel, New York (“Casse Property”); and (ii) a public utility wireless telecommunications facility consisting of a 110-foot monopole designed to resemble a tree and a

1

fenced compound for related equipment (“Dixon Facility”) at the property located at 36 Dixon Road in the Town of Carmel, New York (“Dixon Property”), violated Plaintiffs’ rights under the Telecommunications Act of 1996 (“TCA”), as codified at 47 U.S.C. § 332(c) and § 253(a) and directing Defendants to immediately issue any and all local approvals necessary for Plaintiffs to install and operate the facilities that are the subject of this action;

WHEREAS, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation, Plaintiffs and Defendants previously agreed to settle this action pursuant to the terms and conditions set forth in a Stipulation of Settlement and Consent Order, so-ordered by the Court on May 20, 2020 (the “Prior Consent Order”);

WHEREAS, the parties reaffirm their respective approval of the Prior Consent Order, and have now agreed to modify the Prior Consent Order to the extent it pertains to the Casse Facility and a separate public utility wireless telecommunications facility including a monopole, a fenced compound with related equipment, and all necessary access and utilities (“Glenacom Facility”) at the property located at Walton Drive in the Town of Carmel, New York (“Glenacom Property”), as set forth herein this Amended Stipulation of Settlement and Consent Order (the “Amended Consent Order”).

WHEREAS, Plaintiffs and Defendants, intending to be legally bound, have consulted with their counsel and the undersigned counsel herein have the requisite authority and approval to enter into this Amended Consent Order.

12 OCTOBER 2022
TOWN BOARD SPECIAL MEETING

(Cont.)

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY PLAINTIFFS AND DEFENDANTS, AND ORDERED BY THE COURT THAT:

1. The Town Board has the right to settle this action and to enter into this Amended Consent Order pursuant to federal law. *See Omnipoint Commc'ns, Inc. v. Town of LaGrange*, 658 F. Supp.

2

2d 539,552 (S.D.N.Y. 2009); *see also MetroPCS NY., LLC v. City of Mount Vernon*, 739 F. Supp. 2d 409, 419 (S.D.N.Y. 2010).

2. The Town Board represents that it diligently considered the terms of this Amended Consent Order, took a hard look at all potential environmental impacts and issued a negative declaration pursuant to SEQRA, by majority vote of Town Board members with no conflict of interest, to reaffirm its approval of the Prior Consent Order and to approve this Amended Consent Order.

3. The parties further acknowledge that Applicants submitted an application for site plan and special permit approval for the Glenacom Facility to the Planning Board, on or about January 24, 2020, and conducted the necessary visual analysis of the Glenacom Facility in February 2020 (the "Prior Filing").

4. The Town Board represents that it satisfied any and all Open Meetings Law requirements by posting on its website the Prior Filing documents prior to entering into this Amended Consent Order. All other documents related to Town Board's approval of the Amended Consent Order, if any, are confidential and/or attorney-client privileged.

5. Plaintiffs shall supplement the Prior Filing by submitting a radio frequency justification report and visual resource evaluation of the Glenacom Facility to the Planning Board in connection with the special permit and site plan applications, and file an application with the Zoning Board for any required variances for the construction of the Glenacom Facility pursuant to the Town Zoning Code. The Planning Board, Zoning Board, and any other Town agency, department or board required by the Town Zoning Code shall expeditiously conduct a SEQRA review of the Glenacom Facility and act on the site plan, special permit, variance applications or any other required application under the Town Zoning Code without delay and in accordance with federal law (47 U.S.C. § 332(c)(7)(B)(ii)) and as directed by the Court on October 3, 2022. The Building Inspector shall issue a building permit

3

12 OCTOBER 2022
TOWN BOARD SPECIAL MEETING

(Cont.)

for the construction of the Glenacom Facility within thirty (30) days of the issuance of the necessary Town approvals and Plaintiffs' submission of a building permit application. Construction of the Glenacom Facility may immediately commence upon the issuance of such building permit. Plaintiffs shall not be required to pay any additional application fees or escrow fees pertaining to any application to construct the Glenacom Facility. The Town shall not unreasonably delay its review of Plaintiffs' applications for the construction of the Glenacom Facility and shall not unreasonably withhold any approvals of the permits required for the construction of the Glenacom Facility. If the Town unreasonably delays and/or fails to approve Plaintiffs' applications or fails to issue any required permits or approvals for the construction of the Glenacom Facility in accordance with this Amended Consent Order, for any reason, Plaintiffs shall not be bound by the terms of this Amended Consent Order or the terms of the Prior Consent Order, to the extent that it pertains to the Casse Facility and the Glenacom Facility, and shall have the right to reinstate this action and/or to file an amended and/or supplemental complaint to add and/or modify any allegations and/or causes of action pertaining to the Casse Facility and/or the Glenacom Facility.

6. Plaintiffs agree to not construct any additional towers at the Glenacom Property beyond one tower at the Glenacom Facility. Homeland Towers represents that it has entered into a lease agreement with the owner(s) of the Glenacom Property, and that such lease agreement prohibits the construction of any additional towers at the Glenacom Property. Homeland Towers agrees to not amend such lease to remove the foregoing additional tower restriction contained in the foregoing lease.

7. This Amended Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Amended Consent Order.

8. Plaintiffs and Defendants acknowledge that this Amended Consent Order was the product of negotiation by all parties through their counsel, including negotiation as to the language

set forth herein, and as such, to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Amended Consent Order, the ambiguity shall not be resolved based on who drafted the Amended Consent Order. The obligations of this Amended Consent Order apply to and are binding upon the parties, and any successors and assigns or other entities or persons otherwise bound by law.

9. This Amended Consent Order shall be deemed a Type II action under the New York State Environmental Quality Review Act, as it is the action of a court. 6 N.Y.C.R.R. § 617.5(c)(46).

12 OCTOBER 2022
TOWN BOARD SPECIAL MEETING

(Cont.)

10. The Court shall retain jurisdiction over this matter and the Plaintiffs or Defendants may, upon notice, move this Court to enforce this Amended Consent Order against any other party or any non-party.

DEFENDANTS:

PLAINTIFFS:

Gregory L. Folchetti
COSTELLO & FOLCHETTI
1875 Route Six
Carmel, NY 10512
T. (845) 225-1900
Attorneys for Defendants

Robert D. Gaudio
SNYDER & SNYDER LLP.
94 White Plains Road
Tarrytown, NY 10591
T. (914) 333-0700
Attorneys for Plaintiffs

Dated: October ____, 2022

SO ORDERED:

The Honorable Philip M. Halpern
United States District Judge

ADJOURNMENT

All agenda items having been addressed, on motion by Councilman Lombardi, seconded by Councilwoman McDonough and Councilman Baranowski, with all Town Board members present and in agreement, the meeting was adjourned at 7:30 p.m. to the scheduled Work Session.

Respectfully submitted,

Ann Spofford, Town Clerk