

MONMOUTH COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF COUNTY COUNSEL

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August 8, 2023

Via Email Only gmeese@pricemeese.com

Gregory D. Meese, Esquire
Price, Meese, Shulman & D'Arminio
50 Tice Boulevard, Suite 380
Woodcliff Lake, New Jersey 07677

Re: Verizon Wireless with County of Monmouth

Dear Mr. Meese:

Please accept the within correspondence as a follow-up to your May 10, 2023 letter to Joseph Ettore along with the subsequent phone calls and emails. Unfortunately, last week you had indicated you would be speaking with your client, Verizon, related to extending the asserted 90 day "shot clock" but never provided a reply in spite of an email and a phone call to your attention. As of August 7, 2023, you've not provided any response on behalf of Verizon, and accordingly, we are placed in the unfortunate position of having to respond.

Representatives of Verizon have taken the position that the "shot clock" began to run on May 11, 2023. The County of Monmouth does not agree with this position for a number of reasons as outlined below.

NO ROAD OPENING PERMIT HAS BEEN SUBMITTED

As Verizon is well aware, the County of Monmouth has a staid procedure which is initiated by making application through a "Monmouth County Highway Department Road/Bridge Permit Application", commonly referred to as a "Road Opening Permit". To our knowledge, no such road opening permit has been submitted for any 5G monopole at any time. We find this of interest as Verizon has, in the past, made application for "repeater stations" at seven (7) different locations. For every one of these locations, Verizon made application through a road opening permit and the road opening permits were in fact issued. A listing of the SEVEN locations (five antennas at existing wood poles and two installed on wooden poles at new locations) can certainly be provided; however, they are undoubtedly within the possession of your client.

The County's procedure is to handle a Road Opening Permit when it is received and act on the permit application appropriately. Verizon is both well aware of the procedure and has, as noted above, availed themselves of the same process in the past. To take the position that a letter from your office with attached plans (interestingly, carrying a last date of "dimensions added" of May 11, 2023) does not constitute an application by any stretch.

As you have kindly pointed out in the past, 47 USC Section 253(b) permits a governmental entity to "manage the public rights of way...". The process enumerated above is the procedure by which the County of Monmouth maintains the management of public rights of way.

THERE IS NOT AN AGREEMENT BETWEEN MONMOUTH COUNTY AND VERIZON

The County is also perplexed by the assertion by Verizon that an Agreement exists between the County and Verizon related to the siting of 5G monopoles. In the letter sent by your office dated June 29, 2023, you made reference to an Agreement dated December 12, 2016. The Agreement was attached to your previous May 10, 2023 letter to the County. "Exhibit A" specifically references five "Verizon wireless equipment sites", none of which are located in Belmar. As we have discussed, the same Agreement referenced contains a "Whereas" clause specifically related to "existing utility poles".

The information submitted with the May 10, 2023 letter is not related to existing utility poles nor does it relate to the five sites enumerated in "Exhibit A". Thus, the County is unsure of the basis upon which Verizon believes there is an "Agreement" related to the siting of monopoles.

MONMOUTH COUNTY WAS NOT NOTICED, NOR A SIGNATOR TO THE "CONSENT ORDER" FILED SEPTEMBER 8, 2022

Your June 29, 2023 letter to the attention of the Clerk of the Board of County Commissioners provided a copy of the Consent Judgment and Settlement Agreement between Verizon and the Borough of Belmar (ECF - Document 32). The County has two significant issues with reference to the subject Consent Order. Initially, the County of Monmouth was not a party to this Agreement nor was the County of Monmouth advised of the cause of action being filed initially. This is of interest to the County of Monmouth as the right of way which appears to be the subject of the Agreement is actually a County right-of-way yet, the County of Monmouth was not noticed of the litigation nor involved in the Consent Order. It is difficult to understand Verizon's assertion that the County is "bound" by a Consent Order to which they were not a party.

Basically, Verizon seeks to bind Monmouth County to siting of monopoles with no input from Monmouth County. Further, the County of Monmouth takes issue with paragraph 18 of the Consent Order which asserts that an Agreement exists utilizing the aforementioned December 12, 2016 document. Specifically, the County takes issue with the reference to the parenthetical reference to represent to the court that there was an Agreement "... Which allows the installation of small wireless facilities in the Monmouth County public rights of way...". In fact, the words "small wireless facilities" do not appear in the December 12, 2016 "Agreement" anywhere.

Arguably, the 90 day "shot clock" has not even begun to run as Monmouth County was not a party to any siting discussions.

THE SUBMISSION BY VERIZON, WHILE NOT COMPLYING WITH MONMOUTH COUNTY'S
USUAL PROCEDURE IS ALSO DEFICIENT

The letter of May 10, 2023 characterized as an "application" does not follow Monmouth County's procedure for application which is well known to Verizon. Further, it is apparent that Verizon assembled the attachment hastily in response to learning all prior discussions and litigation had failed to include the actual property owner. In fact, an informational meeting was held in Belmar, attended by County Commissioner Director Thomas Arnone, on May 8, 2023. At the meeting, Commissioner Director Arnone shared that the County was "surprised" to learn of a Consent Order since Ocean Avenue in Belmar is a County Road. It is not lost on the County that the "submission" is dated two days later with attachments which are dated May 11, 2023.

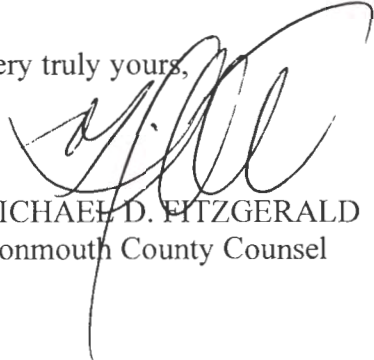
Getting to the point of the hastily assembled "submission" many items are either missing or deficient.

The denial letter, with a listing of the nine (9) comments is attached.

Verizon's conduct; specifically NOT including Monmouth County in litigation related to the siting of monopoles in rights-of-way owned by Monmouth County, not contacting Monmouth County prior to the May 10, 2023 letter "submission", not following the Road Opening Permit procedures Verizon themselves had previously utilized, and choosing to not respond to Monmouth's reasonable requests for discussion on the commencement of, and/or expiration of the 90 day "shot clock" clearly evidences a desire to place monopoles in Monmouth County via any means possible, including subterfuge.

The unfortunate turn of events has placed the interested parties in an adversarial position. The County of Monmouth is both well aware of and prepared to move forward in an orderly way to effectuate the deployment of the requisite 5G coverage for the protection of the residents of, and visitors to, the County of Monmouth. Sadly, Verizon's chosen methods makes a considered and responsible analysis nearly impossible.

Very truly yours,



MICHAEL D. FITZGERALD
Monmouth County Counsel

MDF: gsg

Attachment

cc: Board of County Commissioners
Teri O'Connor, County Administrator

The Board of County Commissioners of the County of Monmouth

DEPARTMENT OF PUBLIC WORKS & ENGINEERING

JOHN W. TOBIA
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August 8, 2023

Price, Meese, Shulman & D'Arminio
50 Tice Boulevard
Suite 380
Woodcliff Lake, NJ 07677
Attn: Gregory D. Meese

RE: Verizon Wireless Proposed 5G
deployment along County Route 18
(Ocean Avenue), Borough of Belmar
with County of Monmouth

Dear Mr. Meese:

In response to your letter of May 10, 2023 and attached plans, your submission is denied. Verizon is aware that any work within the County right-of-way requires the submission of a "Monmouth County Highway Department Road/Bridge Permit Application". Despite the lack of a complete submission, a preliminary review of the plans identified the following deficiencies:

1. The complete route/connection for all underground conduit(s) shall be detailed on the overall site plan. The plans currently detail the underground conduits between the 5G pole and nearest junction boxes but fail to include the conduit connections between the small wireless facility and utility providers (i.e., electric and telecom)
2. Junction boxes shall not be located in roads, sidewalks or pedestrian areas. Revise the plans accordingly.
3. Existing sidewalk widths shall not be reduced, and any pole mounted equipment/cabinets shall not extend into or overhang pedestrian areas. The 3'-0" minimum clearance detailed

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Re: Verizon Wireless

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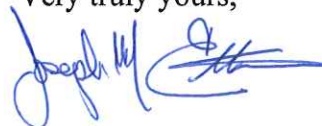
on the plans shall be increased to a 4'-0" minimum clearance. Revise the plans accordingly.

4. Poles shall be of a breakaway design and meet FHWA standards. Provide revised details and catalog cut sheets from the pole manufacturer.
5. Provide design calculations for all pole and foundation designs.
6. Provide details on the means and methods for the foundation installation.
7. Provide construction details for maintaining the stability of the foundation excavation and protecting adjacent structures.
8. The included details do not meet County standards for backfill and pavement restoration. Construction and restoration details meeting County standards shall be provided.
9. Site specific Maintenance and Protection of Traffic (MPT) details shall be provided for each pole/conduit installation.

To advance your project, please submit the above referenced permit application with revised plans which address the identified deficiencies.

Please do not hesitate to contact this office if you have any questions or require additional information.

Very truly yours,



Joseph M. Ettore, P.E.
County Engineer

Cc: Teri O'Connor, County Administrator
Michael D. Fitzgerald, County Counsel