



# TOWN OF EAST HAMPTON

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East Hampton, New York 11937-2684

Planning Department  
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Director

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## WIRELESS SITE PLAN INITIAL EVALUATION New Cingular Wireless @ Northwest Fire Station Personal Wireless Service Facility (PWSF) – Site Plan/Special Permit SCTM# 300-135-2-15.2, 19 & 34.2

Prepared by: Eric Schantz *E.S. JS*  
Senior Planner

Date: December 31, 2019

### 1. APPLICATION INFORMATION

**A. INFORMATION RECEIVED:** Applicant submission; cover letter re: (14) Fourteen copies of Exhibit A: - Site Plan, Exhibit B: - RF Affidavit and Plots, Exhibit C: - Alternative Analysis, Exhibit D: - Special Permit Application, Exhibit E: - Survey, Exhibit F: - Part 1 of the Full Environmental Assessment Form, Exhibit G: - FCC Compliance Certificate, Exhibit H: - Structural Analysis, Exhibit I: - FCC License and Exhibit J: - Equipment Specification.

**B. DATE SUBMITTED:** December 18, 2019

**C. TYPE OF APPLICATION SUBMITTED:**

- Tier One  
 Tier Two  
 Tier Three

**D. OWNER:** Town of East Hampton

**E. CARRIER:** New Cingular Wireless PCS, LLC (aka AT & T)

**F. APPLICANT/AGENT:** Phillips Lytle LLP

**G. SCHOOL DISTRICT:** East Hampton

**H. STREET NAME:** 12 & 18 Old Northwest Road, 105 Bull Path

**K. TYPE OF STREET:** Town

**L. ZONING DISTRICT:** A2 & A3: Residence, Water Recharge Overlay District

**M. SEQRA - TYPE OF ACTION:** Unlisted

**N. INVOLVED AGENCIES:** Architectural Review Board, Zoning Board of Appeals,  
New York State Department of Environmental Conservation

**O. OTHER REVIEW:** Office of Fire Prevention

## 2. DESCRIPTION OF PROJECT

- A. **AREA OF PARCEL (SQUARE FEET):** 708,721 sq. ft.
  - B. **MOST RECENT CERTIFICATE OF OCCUPANCY (date & description):** N/A
  - C. **DESCRIPTION OF EXISTING STRUCTURES:** Vacant
  - D. **DESCRIPTION OF PROPOSED STRUCTURES:** A Personal Wireless Service Facility consisting of a 185' tall monopole with twelve (12) panel antennas at a centerline height of 155' along with fifteen (15) remote radio heads and associated equipment, and a diesel generator and equipment shelter on a 264 sq. ft. concrete slab within a 2,500 sq. ft. fenced-in equipment area, along with a gravel access road from Old Northwest Road.
  - E. **EXISTING LOT COVERAGE:** 0%
  - F. **EXISTING & PROPOSED TOTAL COVERAGE:** 0%, 1.5%
  - G. **HEIGHT OF PROPOSED STRUCTURES:** 185'
    - HEIGHT OF EXISTING SUPPORT STRUCTURE:** N/A
    - CENTER LINE OF PROPOSED ANTENNAS:** 155' AGL
    - HEIGHT OF PROPOSED CABINETS:** N/A
  - H. **NUMBER OF EXISTING PARKING SPACES:** None on-site
  - I. **NUMBER OF PARKING SPACES REQUIRED:** To be determined
  - J. **TOTAL PARKING SPACES PROVIDED:** 2
  - K. **VARIANCES REQUIRED:** Yes, see issues for discussion
  - L. **DOES EXISTING & PROPOSED LIGHTING COMPLY WITH BOARD POLICY?** N/A
  - M. **NUMBER OF ACCESS POINTS:** 1
  - N. **IS SIGHT DISTANCE ACCEPTABLE?** To be determined
  - O. **ARE THERE OTHER CARRIERS USING THIS SITE:** None currently
  - P. **DOES PROP. FACILITY COMPLY WITH FCC STANDARDS?** It appears that it does comply.
3. **SUBMISSION REQUIREMENTS PURSUANT TO CHAPTER 255 NOT SUBMITTED:** See issues for discussion
4. **SITE ANALYSIS:**
- A. **SOIL TYPE:** Gp: Gravel Pits
  - B. **FLOOD HAZARD ZONE:** X
  - C. **DESCRIPTION OF VEGETATION:** Nearly 100% cleared
  - D. **RANGE OF ELEVATIONS:** Not provided
  - E. **NATURE OF SLOPES:** Gentle to flat
  - F. **TYPE OF WETLANDS WITHIN NRSP JURISDICTION:** N/A
  - G. **SETBACK FROM ANY WETLAND OR WATER BODY:** N/A
  - H. **ARE THERE TRAILS ON SITE?** No
  - I. **DEPTH TO WATER TABLE:** Information not provided.
  - J. **DOES THE SITE CONTAIN HISTORIC OR ARCHAEOLOGICAL RESOURCES?** None have been identified and the parcel has been previously disturbed by construction.
  - K. **SITE CONTAINED WITHIN:**

NYS Significant Coastal Fish & Wildlife Habitat	No
Local Significant Coastal Fish & Wildlife Habitat	No
US Fish & Wildlife Significant Ecological Complex	No
PEP CLPS list	No
Town Community Preservation Fund List	No
Recommended Scenic Area of Statewide Significance	No
Suffolk County designated Pine Barrens	Yes
South Fork Special Groundwater Protection Area	Yes
Town Overlay District	WROD

**Other Background Information:**

Application has been made to construct a Personal Wireless Service Facility consisting of a 185’ tall monopole with twelve (12) panel antennas at a centerline height of 155’ along with fifteen (15) remote radio heads and associated equipment, and a diesel generator and equipment shelter on a 264 sq. ft. concrete slab within a 2,500 sq. ft. fenced-in equipment area, along with a gravel access road from Old Northwest Road.

The parcels are zoned A2: Residence and A3: Residence and are situated between Old Northwest Road and Bull Path in the northwest area of East Hampton. They have historically been used as a brush dump (from between roughly 1973 to 1982) and a mostly cleared of naturally-occurring vegetation.

The property was issued a site plan approval in December 2017 to construct a 3,800 sq. ft. fire sub-station and associated parking and accessory structures along Old Northwest Road. A building permit for this project has been issued.

**Issues for Discussion:**

**State Environmental Quality Review Act (SEQRA)**

Pursuant to SEQRA and Chapter 128 of the Town Code the proposed project is an unlisted action. The Planning Department recommends that the Board declare lead agency status.

**Settlement Agreement**

The subject application has been submitted as a direct result of litigation pertaining to the AT&T @ Iacono Farms PWSF SP/SP application, which was required to prepare an Environmental Impact Statement (EIS) after a positive declaration under SEQRA and Chapter 128 of the Town Code made by the Planning Board as lead agency. This application was subsequently denied by the Planning Board.

The EIS considered alternatives to the Iacono proposal, including the potential to provide a wireless facility at the subject property as opposed to the Iacono Farm property. However, the settlement agreement contains strict time limitations on how long the Town (including the Planning Board, Zoning Board of Appeals, Architectural Review Board, Building Department, etc.) can take before granting any required approvals or permits. Specifically, a 60 day time limitation governs the Town’s review process of the application. Should all required approvals

and permits not be granted within this time frame then the applicants may locate their equipment, as previously proposed, on the Iacono Farm windmill.

The Board should consult Counsel with regard to questions about the terms of the settlement agreement as their impact on review of this application.

### **Special Permit Standards**

The Planning Board should review the attached special permit standards for a personal wireless service facility. The following is a summary of standards which the Planning Department feels the Planning Board should focus its review on:

#### Location Standards:

Section 255-2-90 of the Town Code contains a set of **directory**, not mandatory, location standards.

*“A. Opportunity sites. A personal wireless service facility should be located at one of the following opportunity sites:*

- (1) Public rights-of-way utility poles, including telephone poles, utility-distribution poles, streetlights and traffic signal stanchions.*
- (2) Religious institutions.*
- (3) Rooftops.*
- (4) Tree masses.*
- (5) Town-owned properties (except designated open space), depending upon siting and design standards.*

The proposed location represents an opportunity site as it is within tree masses and on Town-owned land. It does not appear to meet any of the criteria for an avoidance area.

#### Siting Standards:

Section 255-5-50 of the Town Code contains a set of **directory**, not mandatory, siting standards. It appears that the facility will not meet a number of these standards, most notably:

*“To the greatest extent possible, personal wireless service facilities should be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.”*

The antenna mounts are a series of protruding arms and the design of the tower does not allow for equipment concealed within the pole itself. However, the proposed location of the monopole is setback significantly from adjacent roadways and surrounding residential properties and is well-concealed at its base by existing vegetation.

*“Placement within trees should be encouraged, but no antennas should extend higher than 10 feet above the average tree height.”*

Average tree height is roughly 50'. The proposed monopole is 185' in height with the applicant's equipment situated at 155' AGL.

Design Standards:

Section 255-5-50 of the Town Code contains a set of **directory**, not mandatory, design standards. It appears that the facility will not meet a number of these standards, most notably:

*“Color. All personal wireless service facilities should be painted or complementary with natural tones, including trees and sky.”*

The Planning Board has made it past practice on many applications to paint all equipment the same color as the mounting structure. The Planning Department would recommend the same for this application. The applicants have submitted information to the Architectural Review Board providing for a variety of colors to be chosen from.

Fall Zone and Setback Requirements:

*“No habitable structure or outdoor area where people congregate should be within a fall zone of two times the height of the personal wireless service facility or its mount.”*

Two (2) variances from Section 255-5-50 of the Town Code will be required due to the proximity of the proposed monopole to a habitable structure to the south and an outdoor area where people congregate (as well as a habitable structure) to the north. This application has been submitted to the Zoning Board of Appeals and a public hearing is pending.

The Board should note that the settlement agreement addresses the potential for a 160' tall pole at this site rather than a 185' tall one as currently proposed. New Cingular Wireless only proposes to mount its equipment at 155' AGL. A 160' pole would not require any relief given the proposed location. The additional height was added to the tower of the request of the East Hampton Police Department for space for emergency services equipment. The monopole, as proposed at 185' in height, will exceed the 2X setback by roughly 10' from the properties to both the north and south.

**Structural Analysis**

The applicants have submitted a structural analysis prepared by Sabre Industries dated December 10, 2019 which verifies that the tower will be structurally capable of carrying equipment for the carrier as well as East Hampton Police Department.

**Radio Frequency Engineer's Report**

An RF engineer's report prepared by Pinnacle Telecom Group dated March 5, 2019 has been submitted. It appears that the proposed electronics are in compliance with all applicable FCC regulations

**Visual Analysis**

The applicants have submitted elevations, site line drawings and visual renderings (See Sheets Z2, Z3, Z8 & Z9 under tab A). The before and after drawings are difficult to see at smaller scale but can be seen on the full scale sets of plans submitted by the applicants. Given the pole’s proposed location well within the interior of the wooded property, it does not appear that it would be particularly conspicuous from the immediate surrounding area, but more so from a distance as it is well taller than the surrounding trees. It is anticipated that the tower would be only partially visible to the abutting residential properties to the north and south.

**Parking & Access**

The applicants propose 2 additional parking spaces which appears to be sufficient.

A 20’ wide gravel access road from Old Northwest Road has been proposed. The plans do not specify paving details but provided clean, local quartz gravel is utilized the Planning Department has no objection to this design.

**Landscaping**

No landscaping has been proposed. The location of the pole and equipment area within the interior of the property would appear to obviate the need for any additional screening but the Board may wish to discuss this with the applicants.

**Conclusion**

In conclusion, the Planning Department recommends that the Planning Board first declare lead agency status and then discuss the aforementioned issues. In order to meet the required time frame, a resolution to schedule a public hearing should be adopted. The property is an appropriate one for a personal wireless service facility as it represents an opportunity site and can provide substantial concealment due to existing vegetation.

ES

**Planning Board Consensus**

*Declare lead agency?*

Additional comments: \_\_\_\_\_  
\_\_\_\_\_

*Does the Board wish to send comments to the ARB or the ZBA?*

Additional comments: \_\_\_\_\_  
\_\_\_\_\_

**Additional comments:** \_\_\_\_\_  
\_\_\_\_\_

### **Section 255-5-40 General Special Permit Standards**

No special permit shall be granted unless the issuing board shall specifically find and determine that:

A. Nature of use. The use proposed will be in harmony with and promote the general purposes of this chapter as the same are set forth in § 255-1-11 hereof.

B. Lot area. The lot area is sufficient, appropriate and adequate for the use, as well as reasonably anticipated operation and expansion thereof.

C. Adjacent properties. The proposed use will not prevent the orderly and reasonable use of adjacent properties, particularly where they are in a different district.

D. Compatibility. The site of the proposed use is a suitable one for the location of such a use in the Town, and, if sited at that location, the proposed use will in fact be compatible with its surroundings and with the character of the neighborhood and of the community in general, particularly with regard to visibility, scale and overall appearance.

E. Effect on specific existing uses. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater recreational area or other place of public assembly.

F. Use definition. The proposed use conforms to the Town Code definition of the special permit use where such definition exists or with the generally accepted definition of such use where no definition is included in the Code.

G. Circulation. Access facilities are adequate for the estimated traffic generated by the proposed use on public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion; and, further, that vehicular entrances and exits shall be clearly visible from the street and not within 75 feet of the intersection of street lines at a street intersection, except under unusual circumstances.

H. Parking. There is room for creation of off-street parking and truck loading spaces at least in the number required by the applicable provisions of this chapter, but in any case adequate for the actual anticipated number of occupants of the proposed use, whether employees, patrons and visitors; and, further, that the layout of the spaces and related facilities can be made convenient and conducive to safe operation.

I. Buffering and screening. Adequate buffer yards and screening can and will be provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use.

J. Runoff and waste. Adequate provision can and will be made for the collection and disposal of stormwater runoff, sewage, refuse and other liquid, solid or gaseous waste which the proposed use will generate.

K. Environmental protection. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or disruption of important natural features, systems or processes and without significant negative impact to groundwater and surface waters on and off the site.

L. Compliance with other laws. The proposed use can and will comply with all provisions of this chapter and of the Code, including Chapters **180** and **185** thereof, which are applicable to it, and can meet every other applicable federal, state, county and local law, ordinance, rule or regulation.

M. Conformity with other standards. The proposed use can and will meet all of the general standards for special permit uses in particular districts set forth in § 255-5-45 and also meets all of the specific standards and incorporates all of the specific safeguards required of the particular use, if any, by § 255-5-50.

### **Section 255-5-50 PERSONAL WIRELESS SERVICE FACILITIES**

All personal wireless service facilities shall require a special permit and shall be reviewed pursuant to the following standards or make provisions for the following requirements:

(1) Location standards, as set forth in § 255-2-90 of this chapter.

(2) Siting standards. Personal wireless service facilities should meet the following siting standards. These standards are directory, not mandatory.

(a) To the greatest extent possible, personal wireless service facilities should be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.

(b) Placement within trees should be encouraged, but no antennas should extend higher than 10 feet above the average tree height.

(c) Placement on existing roofs or non-wireless structures should be favored over ground-mounted personal wireless service facilities.

(d) Roof-mounted personal wireless service facilities should not project more than 10 additional feet above the height of a legal building, but in no way above the height limit of the zoning district within which the personal wireless service facility is located.

(e) Side-mounted personal wireless service facilities should not project more than 20 inches from the face of the mounting structure.

(f) These standards apply regardless of RF engineering considerations.

(3) Design standards. Personal wireless service facilities should meet the following design standards. These standards are directory, not mandatory.

- (a) Color. All personal wireless service facilities should be painted or complementary with natural tones (including trees and sky).
- (b) Size. The silhouette of the personal wireless service facility should be reduced to the minimum visual impact.

(c) Personal wireless service facilities near residences should either:

- [1] Provide underground vaults for equipment shelters; or
- [2] Place equipment shelters within enclosed structures approved by the Town of East Hampton.

(d) Equipment. The following types of equipment should be discouraged:

- [1] Roof-mounted monopoles, lattice towers or guyed towers.
- [2] Ground-mounted lattice towers.
- [3] Ground-mounted guyed towers.

(e) Height should be kept to a minimum.

[1] Heights of personal wireless service facilities should be no higher than the height of the uppermost height of nearby buildings (within 300 horizontal feet when measured along the ground) of the proposed personal wireless service facility, regardless of prevailing height limits in the zoning district.

[Amended 12-5-2003 by L.L. No. 40-2003]

[2] In the event there are no nearby buildings (within 300 horizontal feet when measured on the ground) of the proposed site of the personal wireless service facility the following should apply:

All ground-mounted personal wireless service facilities (including the security barrier) should be surrounded by nearby dense tree growth for a radius of 20 horizontal feet (when trunk center lines are measured on the ground) from the personal wireless service facility in any direction. These trees can be existing on the subject property or installed to meet the twenty-foot requirement as part of the proposed personal wireless service facility or they can be a combination of both.

Ground-mounted personal wireless service facilities should not project more than 10 feet above the average tree height.

(f) These standards apply regardless of RF engineering considerations.

(4) Safety standards. Personal wireless service facilities should meet the following safety standards. These standards are directory, not mandatory.

(a) Hurricane and tornado design standards should be those of the local building codes used in the Town of East Hampton or EIA-TIA 22 (latest version), whichever is stricter.

(b) Roof mounts on buildings should have railings to protect workers.

(5) Fall zone and setback requirements.

(a) Fall zone.

[1] No habitable structure or outdoor area where people congregate should be within a fall zone of two times the height of the personal wireless service facility or its mount.

[2] No adjoining property line may be within the fall zone of a radius equal to the height of the personal wireless service facility or its mount.

(b) Setback.

[1] All personal wireless service facilities, including mounts and equipment shelters, shall comply with the minimum setback requirements of the applicable zoning district as set forth in the Town of East Hampton Zoning Code, depending upon whether any structure is considered a primary use or an accessory use.

[2] The antenna array for an attached personal wireless service facility is exempt from the setback requirements of this section and from the setback for the zoning district in which they are located, provided that no such antenna array shall extend more than five feet horizontally from the attachment structure at the point of attachment.

[3] On parcels with a principal building housing a primary use, all components of the personal wireless service facility shall be located behind the main building line.

[4] No portion of any personal wireless service facility shall project into a required setback more than the maximum projection permitted in the zoning district in which the facilities are located.

(6) Alternatives analysis and comparison.

(a) Each application for a personal wireless service facility should also contain at least two alternatives that differ from the personal wireless service facility proposed in the application.

(b) The alternatives need not be totally different from the proposed personal wireless service facility; however, the alternatives should contain measurable differences, such as:

[1] Height. An alternative can be identical to the proposed personal wireless service facility except to be for a shorter height.

[2] Number. An alternative could be for two or more personal wireless service facilities that are shorter than the proposed personal wireless service facility.

[3] Location. An alternative could be located on a different property than the proposed personal wireless service facility.

[4] Siting. An alternative could be in a different place on the same property as the proposed personal wireless service facility.

[5] Design. An alternative could be of the same height, location and siting as the proposed personal wireless service facility, but be designed to appear differently.

(c) Submittal requirements for alternatives. The materials submitted for each alternative should show only the differences between each of the alternatives and the proposed personal wireless service facility.

(d) Department of Planning provision of alternatives.

[1] If the applicant has not submitted two alternatives, the Town of East Hampton Department of Planning staff shall prepare at least two alternatives.

[2] If the applicant has submitted two or more alternatives, the Town of East Hampton Department of Planning staff shall prepare at least one alternative.

(e) Comparison of proposed personal wireless service facility and alternatives. The Town of East Hampton Department of Planning staff shall compare the proposed personal wireless service facility to the alternatives on the basis of the following:

[1] Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within its proposed surroundings.

[2] New visible elements proposed on a contrasting background.

[3] Different colors and textures proposed against a contrasting background.

[4] Use of materials that are foreign to the existing built environment.

[5] Conservation of opportunities to maintain community scale, not compromising buffering areas and low-lying buildings so as to start a trend away from the existing community scale.

[6] Amount and diversity of landscaping and/or natural vegetation.

[7] Preservation of view corridors, vistas, and viewsheds.

[8] Continuation of existing colors, textures and materials.

(f) Ranking of proposed personal wireless service facility and alternatives. The Town of East Hampton Department of Planning staff shall rank the proposed personal wireless service facility and each alternative based on the criteria listed in Subsection 255-5-50(6)(e) above. The ranking of the proposed personal wireless service facility and each alternative shall be submitted to the Planning Board along with each application for review by the Planning Board. The Planning Board shall consider the alternatives along with the proposed personal wireless service facility.

(7) Radio frequency radiation emissions.

(a) FCC Guidelines. A statement certifying that as proposed, the personal wireless service facility complies with the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines) concerning radio frequency radiation and emissions shall be provided at the time of final site plan review, or building permit application for facilities not requiring site plan review.

(b) No contravention of FCC Guidelines. A personal wireless service facility that meets the FCC Guidelines shall not be conditioned or denied on the basis of radio frequency impacts.

(8) Noise.

(a) No equipment shall be operated at a personal wireless service facility so as to produce noise in excess of the applicable noise standards under § 255-1-90, except for emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis until such emergency has passed.

### **Section 255-2-90 Location Standards**

The approval of personal wireless service facilities shall be subject to meeting or exceeding the following standards:

A. Opportunity sites. A personal wireless service facility should be located at one of the following opportunity sites:

(1) Public rights-of-way utility poles, including telephone poles, utility-distribution poles, streetlights and traffic signal stanchions.

(2) Religious institutions.

(3) Rooftops.

(4) Tree masses.

(5) Town-owned properties (except designated open space), depending upon siting and design standards.

B. Avoidance areas. A personal wireless service facility should not be located in the following avoidance areas:

(1) Open spaces, including:

(a) Woodlands.

(b) Wetlands.

(c) Moorlands (dwarf forest).

(d) Meadow/old fields (open or formerly farmed areas).

(e) Downs (prairie).

(f) Duneland/beach.

(g) Farmland (active agriculture).

(2) Other areas attendant to water bodies and shorelines.

(3) Flood-prone areas.

(4) Historically and culturally significant resources, including historic sites, historic districts as well as structures.

(5) Areas identified in the Scenic Resources Study and Scenic Areas of Statewide Significance, not otherwise classified above.

C. These location standards shall be considered directory but not mandatory. Interpretation of opportunity sites and avoidance areas shall be based on the Town of East Hampton Department of Planning maps or aerial photographs provided by the applicant.

D. Personal wireless service facilities may also be permitted in areas that are not opportunity sites subject to the siting, design and safety standards in § 255-5-50 and permitted in avoidance areas subject to the siting, design and safety standards in § 255-5-50.

E. These standards apply regardless of radio frequency (RF) engineering considerations.

PLANNING BOARD OF THE TOWN OF EAST HAMPTON  
EAST HAMPTON, NEW YORK

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In the Matter of the Application

of

SITE PLAN/  
SPECIAL PERMIT  
APPROVAL

Northwest Fire Sub-Station Site Plan/Special Permit  
SCTM#300--135-02-15.2, 19 & 34.2

ADOPTED: \_\_\_\_/\_\_\_\_/\_\_\_\_

**FINDINGS AND DETERMINATION OF THE BOARD**

The findings of fact, conclusions, and determination set forth herein are made after consideration of the application, any presentations, memoranda or correspondence made or submitted to the Board by staff or interested parties, comments taken at any public hearing on the application, and inspection of the subject property.

**A. PROJECT DESCRIPTION**

**1. TYPE OF APPROVAL SOUGHT:**

(a) Site plan approval pursuant to Article VI of Chapter 255 (Zoning) of the East Hampton Town Code.

(b) Issuance of a special permit pursuant to Article V of Chapter 255 of the Town Code.

**2. USE REQUIRING SPECIAL PERMIT:** Semi-Public facility

**3. DESCRIPTION OF PROPOSED WORK:** Construction of a one story, 3,800 sq. ft. building having four bays, a 250 sq. ft. (13' x 19') office, and a small kitchenette and no basement. Additionally, seventeen parking spaces, a 1,000 gallon propane tank, a generator, and an enclosed dumpster are proposed.

**4. SIZE OF PROPERTY:** 30,000 sq. ft. leased site

**5. OWNER OF PROPERTY:** Town of East Hampton

**6. APPLICANT:** Village of East Hampton

**7. PROPOSED SITE PLAN C1 Site Plan prepared by D. B. Bennett, P.E and dated revised July 27, 2017**

**8. DATE OF PUBLIC HEARING ON APPLICATION:** October 25, 2017

**B. PROPERTY LOCATION AND DESCRIPTION**

**1. SUFFOLK COUNTY TAX MAP DESIGNATION:** #300-135-2-15.2, 19 & 34.2

**2. STREET LOCATION:** Old Northwest Road

**3. CONTIGUOUS WATER BODIES:** N/A

**4. HAMLET OR GEOGRAPHIC AREA:** East Hampton

5. **SITE DESCRIPTION & EXISTING IMPROVEMENTS:** The property is the site of a former municipal solid waste landfill and is largely cleared and presently vacant.
6. **FILED MAP NAME:** N/A
7. **FILED MAP NUMBER:** N/A
8. **DATE OF MAP FILING:** N/A
9. **BLOCK NUMBER IN FILED MAP:** N/A
10. **LOT NUMBER IN FILED MAP:** N/A

### **C. ZONING CLASSIFICATION**

1. **ZONING DISTRICT:** A3 Residence
2. **ZONING OVERLAY DISTRICT:** Water Recharge

### **D. SEQRA REVIEW**

1. **SEQRA CLASSIFICATION:** Unlisted
2. **LEAD AGENCY:** Planning Board
3. **DETERMINATION OF SIGNIFICANCE:** Negative declaration
4. **DATE OF DETERMINATION:** December 6, 2017

### **E. COUNTY COMMISSION REVIEW/ADDITIONAL FINDINGS OF FACT**

1. Pursuant to the inter-municipal agreement between the Town of East Hampton and the County of Suffolk, the subject application does not require referral to the Suffolk County Planning Commission (SCPC).
2. By letter dated December 4, 2017, the East Hampton Fire Marshal has informed the Board that no additional fire protection devices are needed for this project.
3. My memorandum dated September 15, 2017, the Town Engineer found the engineering elements of the project to be satisfactory.
4. The active landfill and the closing of this landfill are under the jurisdiction of the New York State Department of Environmental Conservation (NYSDEC). A letter dated April 13, 2017 from the New York Department of Environmental Conservation, states that it has reviewed the plans for the Northwest Fire Substation and has no objections provided that the following conditions are met.
  1. Prior to the beginning of construction, the existing groundwater monitoring well on the subject property must be maintained until it is decommissioned in accordance with 6 NYCRR Part 360-2.11 (a.) (8)(vi). Prior to decommissioning, the well needs to be sampled for Baseline parameters outlined in 6 NYCRR Part 360-2.11 (d) (6). In the event sampling is scheduled, it must be coordinated with the Department to offer Department staff the opportunity to witness the sampling.

2. Within 30 days of project completion, a certification report shall be submitted to the Department demonstrating construction was done in accordance with the approved plans, and copies of the scale receipts for disposal of any wastes removed from the landfill as a result of the construction.
  
5. A Landfill Gas Monitoring Report dated January 20, 2017 prepared by D. B. Bennett and dated February 3, 2017 at the request of the NYSDEC was submitted for the project. The report provides information on levels of methane, carbon dioxide, and oxygen gas in monitoring wells for the former landfill. In the narrative on Landfill Gas Potential from D.B. Bennett, P.E dated July 28, 2017, no methane was detected during the survey. The Landfill Gas Protection Plan (Sheet C6) dated February 1, 2017 and prepared by D. b. Bennett depicts safety measures that have been incorporated into the project that are designed for any potential landfill gas that is encountered during or after construction of the project.
  
6. Water quality tests performed by EMSL Analytical, Inc. on May 2015 indicate that no volatile organics were found in the groundwater. According to the applicant's representative, the samples exceeded drinking water standards with regard to iron and manganese and were slightly over the limit for chromium. If resampling indicates high levels of these elements, the Suffolk County Department of Health will require water treatment as a condition of their approval.
  
7. A soil test boring report prepared by Slacke Test Boring dated February 27, 2007 indicated that subsoil test borings conducted on the site revealed soil conditions that included fill and surficial water that could be potential project factors during construction. The report makes recommendations for construction that are designed to mitigate these factors.

**F. COMPLIANCE WITH TOWN CODE OR OTHER REQUIREMENTS OF LAW**

Based upon the foregoing, the Planning Board finds that the application as approved, subject to any conditions or modifications specified in § H below, meets the following requirements:

1. The application contains all necessary elements of a site plan as enumerated in § 255-6-50 of the Town Code.
  
2. The application meets the standards enumerated for review of site plans in § 255-6-60 of the Town Code.
  
3. The application meets the general standards required for the issuance of a special permit by § 255-5-40 of the Town Code, in that:
  - (A) Nature of use. The use proposed will be in harmony with and promote the general purposes of Chapter 255 of the Town Code as the same are set forth in § 255-1-11 thereof.
  
  - (B) Lot area. The lot area is sufficient, appropriate, and adequate for the use, as well as reasonably anticipated operation and expansion thereof.

(C) Adjacent properties. The proposed use will not prevent the orderly and reasonable use of adjacent properties, particularly those which are in a different zoning district].

(D) Compatibility. The site of the proposed use is a suitable one for the location of a semi-public facility in the Town, and the proposed use will be compatible with its surroundings and with the character of the neighborhood and of the community in general, particularly with regard to visibility, scale, and overall appearance.

(E) Effect on specific existing uses. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater, recreational area, or other place of public assembly.

(F) Use definition. The proposed use conforms to the Town Code's definition of "semi-public facility" as that definition is used in § 255-1-20 of the Town Code.

(G) Circulation. Access facilities are adequate for the traffic estimated to be generated by the proposed use on public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion; and vehicular entrances and exits are clearly visible from the street and are not within seventy-five (75) feet of the intersection of street lines at a street intersection.

(H) Parking. The seventeen off-street parking spaces proposed for this application satisfy the requirements of the applicable provisions of Chapter 255 of the Town Code, and are in any case more than adequate for the actual anticipated number of occupants of the proposed use. Furthermore, the layout of the spaces and related facilities will be convenient and conducive to safe operation.

(I) Buffering and screening. Adequate buffer yards and screening have been provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use.

(J) Runoff and waste. Adequate provision has been made for the collection and disposal of stormwater runoff, sewage, refuse, and other liquid, solid, or gaseous waste which the proposed use will generate.

(K) Environmental protection. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or disruption of important natural features, systems, or processes and without significant negative impact to groundwater and surface waters on or off the site.

(L) Compliance with other laws. The proposed use can and will comply with all provisions of the Town Code which are applicable to it, and can meet every other applicable federal, state, county, and local law, ordinance, rule, or regulation.

### **G. DISPOSITION OF APPLICATION**

The application is approved as described herein, subject to any conditions or modifications specified in § H below.

**1. TYPE OF APPROVAL GRANTED:**

(a) Site plan approval pursuant to Article VI of Chapter 255 of the Town Code.

(b) Issuance of a special permit pursuant to Article V of Chapter 255 of the Town Code.

**2. NATURE OF APPROVED USE:** Fire Substation classified as a semi-public facility

**3. DESCRIPTION OF APPROVED WORK:** Construction of a one story, 3,800 sq. ft. building having four bays, a 250 sq. ft. (13' x 19') office, and a small kitchenette and no basement. Additionally, seventeen parking spaces, a 1,000 gallon propane tank, a generator, and an enclosed dumpster are proposed.

**H. CONDITIONS OF APPROVAL**

The approval hereby granted is contingent upon full compliance with the conditions set forth in this section. The property may not be used except in accordance with this conditional approval, and all improvements shall be made, built, or installed in accordance with the plans described below.

1. **APPROVED SITE PLAN:** C1 Site Plan prepared by D. B. Bennett, P.E and dated revised September 14, 2017;

2. Survey prepared by George Walbridge Surveyors dated revised August 16, 2016.

**2. APPROVED BUILDING OR CONSTRUCTION PLANS:**

- C2- Civil Details dated revised July 27, 2017;
- CO – Title page,
- C3 Elevations,
- C4 First Floor Plan,
- C5 Pile/Grade Beam Plan,
- C6 Landfill/Gas Protection Plan,
- C7 Section,
- C8 Foundation Details,
- C10 – General Notes, all prepared by D. B. Bennett, P.E. and dated revised February 1, 2017; and
- C9 – Landscape & Lighting Plan; prepared by D. B. Bennett, P.E. dated revised November 3, 2017.

**3. ADDITIONAL CONDITIONS AND TIME LIMITATIONS:**

3.1 No building permits may issue, nor may clearing, grading, or construction activities be commenced, until and unless the conditions enumerated in sub¶ 3.2 and 3.3 below have been met, as evidenced by the report of the Planning Board Chair.

3.2 The applicant shall obtain the approval of the Suffolk County Department of Health Services. One copy of the approved map containing an original stamp of approval from this agency, not a photocopy, shall be submitted to the Planning Board as well as a copy of any Covenants & Restrictions required by that agency.

3.3 The applicant shall obtain the final written approval of the Architectural Review Board.

3.4 The applicant shall perform the parking, access, drainage, and landscaping improvements

shown on the approved site plan and approved building or construction plans described above.

3.5 All landscaping shall be maintained by the applicant in accordance with the approved site planting plan for so long as the improvements approved as part of this site plan are in use. This requirement shall be a continuing condition of this approval, and the applicant and any successors in interest shall replace and replant the landscaping on the site as may be necessary to satisfy this condition.

3.6 The areas to be planted with native grasses and labeled "lawn" on the approved plans will not be mowed or cut, but will be allowed to reach and be maintained at their natural height.

3.7 The parking, access, and drainage improvements required by this site plan approval (including any devices for delineating parking spaces or directing traffic flow) shall be maintained by the applicant for so long as the improvements approved as part of this site plan are in use. This requirement shall be a continuing condition of this approval, and the applicant and any successors in interest shall repair, replace, and maintain these improvements as may be necessary to satisfy this condition.

3.8 Applicant shall submit to the Planning Board a copy of its certification report to the New York State Department of Environmental Conservation (NYS DEC) upon project completion, demonstrating construction was done in accordance with the approved plans, and copies of the scale receipts for disposal of any wastes removed from the landfill as a result of the construction.

3.9 No Certificate of Occupancy shall be issued for this site or for the improvements thereon until and unless all of the foregoing conditions have been met.

3.10 The applicant shall apply for and obtain a building permit no later than three (3) years from the date of this resolution.

3.11 The applicant shall apply for and obtain a Certificate of Occupancy no later than four (4) years from the date of this resolution.

#### **I. VALIDITY OF APPROVAL**

If any condition of this resolution is not met, or is not met within the prescribed time period, all approvals, permits, or authorizations granted hereby shall be deemed void and of no effect.

DATED: December 6, 2017

cc: Village of East Hampton  
Planning Department  
Building Inspector  
Architectural Review Board

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereafter "Settlement Agreement") is among New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T"), and the Planning Board of the Town of East Hampton ("Planning Board"), and the Town of East Hampton ("Town") on behalf of itself and its boards, agencies, departments and instrumentalities, in particular, defendants Town of East Hampton Architectural Review Board, and the Town of East Hampton Building Department (collectively, "Defendants"). Defendants and AT&T are also referred to individually as a "Party" and collectively as "Parties."

### RECITALS

**WHEREAS** AT&T commenced Civil Action No. 2:18-cv-00242 (the Action) arising out of the Planning Board's denial of an application to erect a personal wireless facility on an existing wind turbine tower at 100-06 Long Lane, East Hampton, NY (the "Iacono Farm Facility");

**WHEREAS** Defendants admit the existence of the gap in personal wireless services alleged in the Action and their obligation to permit AT&T to remedy that gap;

**WHEREAS** a material premise of the Planning Board's denial of the application for the Iacono Farm Facility was the belief that location of a personal wireless facility on Town-owned property (SBL 135.-2-19, SBL 135.-2-15.2 and/or SBL 135.-2-34.2) located between Bull Path and Old Northwest Road (the "Brush Dump") would be both feasible and preferable to the Iacono Farm Facility;

**WHEREAS** AT&T filed the application for the Iacono Farm Facility on January 26, 2015, and the gap has remained without remedy since at least that date;

**WHEREAS** AT&T and Defendants desire an amicable resolution of the Action consistent with the obligations imposed by the Telecommunications Act of 1996, in particular, 47 U.S.C. § 332(c)(7) (the "TCA"), to resolve applications for personal wireless facilities in a reasonable period of time and conclude litigation concerning such applications on an expedited basis;

**WHEREAS** the Town Board finds that, as part of an amicable resolution of the Action, it would be just, reasonable and in the interest of the Town and the parties' rights and obligations under the TCA to lease, on mutually agreeable terms, a portion of the Brush Dump to AT&T for use as a personal wireless facility;

**WHEREAS** AT&T is amenable to resolving the Action if it can construct, on an expedited basis and subject to mutually agreeable lease terms, a personal wireless facility at the Brush Dump of a height sufficient to permit AT&T to locate its highest antenna at a height of at least 160 feet above ground level (the "Brush Dump Facility"); and

**WHEREAS** all Defendants find that it would be just, reasonable and in the interest of the Town and consistent with the Town Code and the parties' rights and obligations under TCA

for AT&T to be permitted to construct the Iacono Farm Facility if AT&T is unable to construct, on an expedited basis, the Brush Dump Facility;

WHEREAS In anticipation of this settlement, on March 8, 2019, 2019, AT&T filed an application requesting FAA approval of the Brush Dump Facility (the "160 Foot FAA Application"), and an alternate application for a facility at the Brush Dump of sufficient additional height to accommodate Town Public Safety Communications Equipment (the "Alternate FAA Application") (collectively, the "FAA Applications") and on April 30, 2019 FAA approved the Alternative FAA Application;

NOW THEREFORE, the Parties agree as follows:

#### **AGREEMENT**

In consideration of the foregoing Recitals, which expressly are incorporated by reference herein and in further consideration of the covenants, representations, terms and conditions contained below, the sufficiency of which is acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

##### **1. Brush Dump Facility Lease.**

The Town shall Lease property at the Brush Dump to AT&T, upon terms consistent with the term sheet set forth in Appendix A to this Agreement and conditioned on AT&T securing all variances, approvals and permits necessary and within the time periods set forth in this Settlement Agreement, to construct the Brush Dump Facility.

##### **2. Required Application Materials.**

Defendants agree that all materials AT&T is required to submit to complete all application(s) necessary to permit the Town and its boards, agencies, departments and instrumentalities to review and approve the Brush Dump Facility, and to permit AT&T to construct the Brush Dump Facility, are set forth in Appendix B.

##### **3. Terms of Order Resolving Action.**

Upon execution of this Agreement, the parties shall submit to the Court for entry the Order Resolving Action set forth in Appendix C. As set forth in that Order:

A. The Town, and its boards, agencies, departments and instrumentalities shall accord AT&T all reasonable cooperation and assistance, including access to the Brush Dump, necessary to facilitate AT&T's submission of the materials agreed upon in Appendix B. Said cooperation shall include responding, within seven business days, to any request by AT&T for a written confirmation that a submission, or a proposed submission provided in advance for review (collectively, "submission"), is sufficient to be deemed materially complete for the purpose of proceeding with the application. The response to the request shall consist either of a confirmation the submission is sufficient to be deemed materially complete or a complete description of any and all deficiencies requiring remedy to permit the materials to be deemed materially complete. The failure of the Town or the responsible board, agency, department or instrumentality to respond in writing within seven business days to such a

request shall be an admission that the submission satisfies any and all requirements to be deemed complete and a waiver of any right to request additional information with respect to that submission.

B. The Town, and its boards, agencies, departments and instrumentalities shall, by the "Date for Approval" as defined below, reach a final decision on those applications and issue all approvals required for construction of the Brush Dump Facility. The "Date for Approval" is the first business day 60 (sixty) days after submission of the applications described in Paragraph 3.B., extended only by agreement of the parties, or for good cause shown, for a period no longer than 21 (twenty one) days after the expiration of the 60 day period, if necessary due to unforeseen and unavoidable circumstances (e.g. force majeure).

C. If AT&T receives, by the Date for Approval, all variances, approvals and permits necessary to construct the Brush Dump Facility, the Action will be dismissed pursuant to the Order Resolving Action, which under the circumstances set forth in this Paragraph 2.C. would permit AT&T to construct the Brush Dump Facility.

D. 1). If any board, agency, department or instrumentality of the Town should fail to grant any variance, approval or permit necessary to construct the Brush Dump Facility by the Date for Approval, or affirmatively denies any such variance, approval or permit, Defendants shall be deemed to have granted all variances, permits and approvals necessary for construction of the Iacono Farm Facility, and AT&T immediately shall be authorized to construct the Iacono Farm Facility without any further action by AT&T.

2). The following shall also permit AT&T, at its sole option, to deem the application for the Brush Dump Facility to have been denied for purposes of this Settlement Agreement:

a). Issuance of a positive declaration under the State Environmental Quality Review Act ("SEQRA");

b). The Town's failure to agree, in the manner set forth in Appendix A, to include in the Lease Rent Abatement defined in Appendix A any increase in cost of developing the Brush Dump Facility due to any need, arising after execution of this Settlement Agreement, for AT&T to incur increased cost to address physical conditions present at the Brush Dump or satisfy requirements imposed as conditions of federal, state or local approvals; or

c). The need, arising after execution of this Settlement Agreement, for AT&T to address physical conditions present at the Brush Dump, or satisfy requirements imposed as conditions of federal, state or local approvals, that would result in an estimated cumulative delay of more than 90 days in the completion of the Brush Dump Facility.

E. If the authority of any Defendant to enter into this Settlement Agreement, or to have approved the Brush Dump Facility, is subject to legal challenge and that challenge is not resolved within 90 days of the Date for Approval, AT&T, at its sole discretion, may deem the application for the Brush Dump Facility to have been denied and Defendants immediately shall be deemed to have granted all variances, permits and approvals necessary for

construction of the Iacono Farm Facility and AT&T shall be authorized to construct the Iacono Farm Facility without any further action by AT&T.

**4. Authorization to execute this Settlement Agreement.**

Each Defendant shall take all steps required by the laws of the State of New York to be authorized to enter into and be bound by this Settlement Agreement and, by designating a representative to sign this Settlement Agreement on its behalf, affirm, certify and warrant that the persons signing this Settlement Agreement has been duly authorized to do so. If the authority of any Defendant to enter into this Settlement Agreement or to approve the Brush Dump Facility is subject to legal challenge and that challenge is not resolved within 90 days of the Date for Approval, at AT&T's sole discretion, for purposes of this Settlement Agreement the application for the Brush Dump Facility shall be deemed denied and Defendants shall be deemed to have granted all variances, permits and approvals necessary for construction of the Iacono Farm Facility and AT&T immediately shall be authorized to construct the Iacono Farm Facility without any further action by AT&T.

**5. No Admission.**

This Settlement Agreement is the result of a compromise settlement of disputed claims and defenses. Nothing in this Settlement Agreement may be construed as an admission of any issue of law or fact, an admission or concession of liability or wrongdoing on the part of any Party, an acknowledgement as to the validity or invalidity of any claim or defense asserted, or an acknowledgement as to the validity or invalidity of any relief or damages sought. This Settlement Agreement may not be used as evidence in any proceeding other than a proceeding to enforce its terms.

**6. Costs, expenses and attorneys' fees.**

Except as otherwise noted, each Party will bear its own costs, expenses, court costs, and attorneys' fees arising out of or related to this Settlement Agreement, the Lawsuit, and the underlying disputes.

**7. Severability.**

In the event that any provision hereof is found unenforceable or invalid, the objectionable provision shall be revised to comport with law and preserve intact as nearly as possible the intent of the Parties as expressed herein, or if not feasible or permissible, severed so as not to affect the Settlement Agreement as a whole and the remaining provisions hereof. To the fullest extent permitted by law, the Parties waive any and all statutes, regulations, rules, judicial decisions and other legal authorities that render any provision of this Settlement Agreement wholly or partially unlawful, invalid, void or unenforceable.

**8. Modification, waiver.**

This Settlement Agreement may not be modified and no provision, term or condition hereof may be waived, except by a writing signed by the Parties. Any failure by the Parties to enforce their rights under any provision of this Settlement Agreement shall not be

construed as a waiver of such provision or the right of a Party to enforce such provision. No course of dealing, custom or usage between or among any persons having any interest in this Settlement Agreement shall be deemed effective to modify, amend, or discharge any part of this Settlement Agreement or any rights or obligations of any Party under or by reason of this Settlement Agreement.

**9. Effective Date.**

This Settlement Agreement is effective as of the date it is fully executed.

**10. Successors and assigns.**

This Settlement Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and assigns. This Settlement Agreement is assignable upon written agreement by all of the Parties, said agreement not to be unreasonably withheld.

**11. Governing law.**

This Settlement Agreement is made pursuant to, and shall be construed and enforced in accordance with, the laws of the State of New York, without giving effect to otherwise applicable principles regarding choice of law or conflicts of law.

**12. Entire Agreement.**

This Settlement Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements, understandings and negotiations, whether written or oral.

**13. Joint Preparation.**

This Settlement Agreement is the result of a negotiated compromise between the Parties and was jointly prepared. This Settlement Agreement must in all cases be construed as a whole according to its meaning and not strictly construed for or against either of the Parties.

**14. Reading, understanding, judgment, reliance on counsel.**

The Parties represent and warrant that they have carefully read this Settlement Agreement and that the terms and conditions of this Settlement Agreement are fully understood and voluntarily accepted by them. The Parties further represent and warrant that they have relied upon their own judgment and that of legal counsel of their own choosing regarding the proper, sufficient, and agreed upon consideration for this Settlement Agreement and that no statement or representation by any of the Parties influenced or induced them to execute this Settlement Agreement.

**15. Captions.**

The captions to the paragraphs of this Settlement Agreement are illustrative only and will not be deemed to affect the construction or interpretation of the provisions hereof.

**16. Notice.**

All notices required by this agreement, including requests for written confirmation of completeness of submissions and written responses to those requests, shall be made by e-mail and overnight mail. If to AT&T the notice shall be directed to Kimberly R. Nason, Phillips Lytle, LLP, One Canalside, 125 Main Street, Buffalo, NY 14203-2887, [knason@phillipslytle.com](mailto:knason@phillipslytle.com), and if to Defendants, or any board, agency, department or instrumentality thereof, to Kelly Wright, Picciano & Schahill, P.C., 1065 Stewart Ave. - Suite 210, Bethpage, NY 11714, [kwright@psnylaw.com](mailto:kwright@psnylaw.com)

**17. Execution.**

This Settlement Agreement may be executed in multiple counterparts, each of which shall constitute an original. A facsimile or electronic signature (e.g., PDF) shall be deemed an original for all uses and purposes.

[Signature Page Follows]

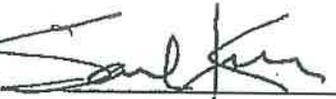
[Signature Page to Settlement Agreement]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Settlement Agreement on the latest day and year below written.

New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation, its Manager

By:  Date: 10/8/19

The Planning Board of the Town of East Hampton

By:  Date: 8/1/19  
SAMUEL KRAMER, CHAIR

The Town of East Hampton

By:  Date: 8/1/19

