

Please accept this letter in response to the letter Dated July 5, 2024 from Verizon's attorneys.

The attorneys start by re-submitting the photo-simulations, and argue that the proposed tower will be screened by "trees of similar height nearby in all directions."

First, there are no trees which stand 129 in height, and as such their statement to the contrary is simply without factual basis. Second, their photo-simulations are defective as a matter of law, because they have deliberately omitted any images taken from the perspectives of the nearby homes which will suffer the worse adverse aesthetic impacts. See Omnipoint Communications Inc. v. The City of White Plains, 430 F.3d 529 (2d Cir. 2005).

Next, the attorneys spuriously argue that we "vaguely reference adverse impacts" and merely assert "generalized concerns" about aesthetics, which do not rise to the level of "substantial evidence" sufficient to support a denial under the Telecommunication Act of 1996 (the TCA).

Nothing could be further from the truth. The letters submitted by the homeowners detail the specific adverse impacts each will sustain if the proposed tower is built, and letters of this precise type rise to the level of substantial evidence sufficient to support a denial of a cell tower application under the TCA.

As was explained by the Court in *Sprint PCS LLC. v. City of Palos Verdes Estates*, 583 F3d. 716 (2009):

"The City's decision was supported by such relevant evidence that a reasonable mind might accept as adequate.

1011 "While the term 'substantial evidence is not statutorily defined in the Act, the legislative history of the TCA explicitly states, and courts have accordingly held, that this language is meant to trigger 'the traditional standard used for judicial review of agency decisions.' "

A municipality's decision that is valid under local law will be upheld under the TCA's "substantial requirement" where it is supported by " 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' " *Id.* at 725 (quoting *Town of Oyster Bay*, 166 F.3d at 494).

The City's finding that the proposed WCFs would adversely affect its aesthetic makeup easily satisfies this standard. The Council reviewed propagation maps and mock-ups of the proposed WCFs and a report that detailed the aesthetic values at

stake. It had the benefit of public comments and an oral presentation from Sprint's personnel. From the entirety of the evidence one could reasonably determine, as the City did, that the Via Azalea WCF would detract from the residential character of the neighborhood and that the Via Valmonte WCF would not be in keeping with the appearance of that main entrance to the City. Consequently, we find that the City's decision was supported by substantial evidence and we reverse the district court."

*See Also* Voice Stream PCS I, LLC v. City of Hillsboro, 301 F.Supp.2d 1251, 1257 (20024

"Plaintiff nevertheless insists the evidence before the city in this case amounted to no more than unsupported and vague objections. See Plaintiff's Pre-Hearing Memorandum at 9. But a proper review of the record shows there was more than a scintilla of evidence "grounded in the specifics of the case." *Todd*, 244 F.3d at 61. For example, neighboring residents submitted letters objecting to the tower's proposed location because the tower would infringe upon the neighborhood's prized natural setting, comprised of fir and evergreen trees as well as a greenway. See, e.g., R. 191, R.195, R.197, R.205, R.207, R.220, R.222, R.407, R.420. At the site, there is no significant commercial development; nor are there existing commercial towers or above-ground power lines. R.26, R.205, R.407, R.420. In addition, on each side of the tower is a single-family residential zone; the record shows the tower would be surrounded by existing residences. See, e.g., R.247-58, R.769, R.816. Residents stated they relied on the natural, residential character of the neighborhood in purchasing their homes, which they would not have purchased had plaintiff's proposed tower been standing. R.191, R.199, R.205. The city properly relied on the evidence showing the tower would be incompatible with the character of this particular neighborhood."

See Also New Cingular Wireless PCS, LLC v. Board of Supervisors of Pima County, Ariz, 2011 WL 42683 (2011);

In response to the substantial evidence which has been provide to establish that the installation of the proposer tower will reduce the value of the adjacent and nearby homes, in the form of professional opinion letters from licensed real estate professionals, the attorneys argue that (a) such letters are a thinly veiled reference to concern over radio frequency emissions and (b) that property values "are not a factor in the codes findings" and are "irrelevant."

Once again, the attorney's objections are utterly nonsensical and without basis in law or fact.

The evidence of adverse impact upon the actual home-owners property values, and the adverse impacts those values will sustain are directly addressed within the professional opinion letters which have been submitted in support of the appeal. These professional opinion letters do not even remotely concern “radio frequency emissions concerns” as spuriously asserted by the attorneys.

Contrary to the attorneys’ argument otherwise, these adverse impacts are not only “relevant” to this application and appeal, but the County is required to consider them, pursuant to Sec. L-II 3.8(A) of the Code, which explicitly states that the purpose of Sec. L-II 3.8 is, among other things, to ensure that cell towers are required to be sited strategically to ensure their “compatibility with adjacent land uses.”

When determining whether the installation of the proposed cell tower will be “compatible” with the adjacent and nearby properties, the closest of which will be less than 200 feet away, evidence that its installation will reduce the value of each of those homes by amounts ranging from ten (10%) percent to twenty-five (25%) percent is both direct and substantial probative evidence that the proposed sighting for the proposed cell tower will be incompatible with the adjacent land uses. See the professional opinion letters submitted in support of the appeal.

Concomitantly, the application should be denied, and the current appeal granted.