

Good evening Mr. Mayor and the Board of Trustees, my name is David Antwork. I am an attorney who is of counsel to the firm of Campanelli & Associates, P.C. The firm and its principal attorney Andrew Campanelli represent a group of concerned residents and property owners of the Village with respect to the Village's amendment of its zoning code, particularly Article VI entitled "Conditional Uses" Section 205-20(I)(24).

Section 205-20(I) governs the conditional use permit process with respect to high wireless telecommunications facilities. The section goes into great detail as to the standards and requirements an applicant needs to fulfill in order for the Zoning Board of Appeals to determine whether to grant or deny a conditional use permit for a high wireless telecommunications facility. Such standards and considerations include, location, co-location, setbacks, height limits, adverse impacts, among many other factors and requirements.

With respect to such applications, public hearings are held where those opposed to the application can speak, be heard and present evidence in opposition to the proposed installation of a wireless facility. Subsection (I)(1) expressly empowers the ZBA by providing that "no conditional use permit approval shall be granted unless the Zoning Board of Appeals makes the findings in writing that the application fulfills all of the purposes and meets all of the requirements of this Subsection I, or otherwise grants a variance for such permit to be issued."

An issue has arisen following the Village's amendment of 205-20(I)(24) which deals with applications for wireless facilities upon Village owned or leased property. Subsection 24, entitled "Waiver or modification of standards" provides that "in order to further the purposes of this chapter, the Board of Appeals may, upon just cause shown, waive or modify any of the conditional use permit standards and criteria contained herein." Then it goes on to provide that, "for applications by the Village involving property owned by or leased to the Village, the Board of Appeals *shall* waive or modify any of the conditional use permit standards and criteria in order to allow the erection and use of high wireless telecommunication at property owned by or leased to the Village."

This section's use of the word "shall" in order to allow the erection of a telecommunications facility on village property effectively strips the ZBA of its power to consider all of the standards and requirements of the code. The way this section reads and would be interpreted, the ZBA *must* grant any and all applications for wireless facilities upon Village property. Whether this was the intent or not, what the Board has done was exceed its powers under NYS Law and usurped the power of the ZBA in considering these applications which now must be granted no matter what.

What's more, this provision effectively eliminates the public's right to notice and to be heard in opposition to any such application. Now, when this amendment was being considered, residents and even neighboring Cove Neck mayor Tom Zoller expressed concern that the amendment would eliminate notice and an opportunity to be heard as to these such applications. Mayor Zoller and residents, at the time and since, have been assured that the amended code section does not eliminate notice and a public hearing before the ZBA where residents and neighbors can still be heard and express their concerns.

However, while the notice and public hearing requirements may *technically* remain, they are meaningless due to the language of subsection 24 and the use of the word "shall" which requires the ZBA to grant all applications upon Village property.

Again, it is unknown whether this was the intent of the Board when enacting this amendment and no one is accusing anyone of doing anything untoward. But we are here to demand that this subsection be further amended to restore power back to the ZBA with respect to applications upon Village property consistent with the rest of the section which would allow for proper notice and meaningful and substantive opportunity for residents to be heard.

If the Board is unwilling, then these residents are prepared to commence litigation seeking a declaratory judgment to void this subsection of the code. Please do not interpret this as a threat, no one wants to resort to litigation and no one will