

CALL TO ORDER

Mayor Marc Laul called the meeting to order at 7:00 p.m. and stated that in compliance with the “Open Public Meeting Act” this is a Special Meeting of the Township Committee as published in the Hunterdon Review, the agenda has been posted at the Municipal Building and distributed to the Hunterdon Review, Courier News, the Express Times, the Hunterdon County Democrat and the Star Ledger.

ROLL CALL

Present – Marc Laul Thomas McKee Brian Wunder
 Mike Schmidt Beverly Koehler

Absent –

Also present – Clerk Karen Sandorse and 0 members of the public.

FLAG SALUTE

Mayor Laul asked everyone to please stand for the Flag Salute and for a moment of silence in honor of our Servicemen and Women.

RESOLUTIONS

Resolution No. 86-2017 – Cellco Partnership, d/b/a/ Verizon Wireless Request for Consent

Motion by Mayor Laul, seconded by Mr. Wunder and carried by favorable roll call vote, the Township Committee approved Resolution No. 86-2017 as written below pending legal advice on Item 17 to ensure that the Township is protected from external forces damaging the equipment.

**TOWNSHIP OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY
RESOLUTION NO. 86-2017**

WHEREAS, Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless") petitioned the Township of Lebanon to grant limited consent pursuant to N.J.S.A. 48:3-19 and N.J.S.A. 27:16-6 to install small-wireless-nodes known as outdoor Distributed Antenna System (“oDAS”) wireless communications facilities, as described in Exhibit A (“Facilities”), in the public rights-of-way of certain streets within the Township of Lebanon; and

WHEREAS, Verizon Wireless presented its proposal at a meeting of the Township Committee and, at the request of the Township Committee, at a joint meeting with the Township Committee and the Township Planning Board, and at subsequent meeting of the Township Committee at which testimony and evidence was provided; and

WHEREAS, the consent for the Facilities to be installed is limited to the locations described

in Exhibit A, but Verizon Wireless may apply to locate additional wireless communications facilities at any time; and

WHEREAS, with respect to the nine (9) proposed locations of the Facilities set forth on **Exhibit A** attached hereto, the Township considered various factors, including but not limited to:

1. Proximity to residential, business, or public buildings;
2. Number and density of existing and proposed facilities;
3. Visual impact;
4. Location with preference to non-residential areas and along major transportation corridors;
5. Noise impacts; and
6. Potential impacts on neighboring property owners.

WHEREAS, the Township Committee acknowledges that pursuant to 47 U.S.C. §253(a) “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service;” and

WHEREAS, the Township Committee acknowledges that notwithstanding the proscriptions of 47 U.S.C. §253(a), it has the authority to manage the public rights-of-way as provided in 47 U.S.C. §253(c); and

WHEREAS, the Township Committee acknowledges that wireless communications carriers may enter into written agreements with parties that have the lawful right to erect poles in the public rights-of-way pursuant to N.J.S.A. 48:3-18 and that the consent of the municipality is required pursuant to N.J.S.A. 48:3-19 if the party seeking to install such wireless communications facilities does not have an independent lawful right to construct such facilities or there are other lawful reasons for such consent; and

WHEREAS, the Township Committee acknowledges that in connection with the use of those public rights-of-way under the jurisdiction of the County of Hunterdon, municipal consent is required in addition to the consent of the County pursuant to N.J.S.A. 27:16-6; and

WHEREAS, Verizon Wireless has obtained a general consent of the County of Hunterdon pursuant to a Right of Way and Attachment Agreement dated June 22, 2016, a copy of which is attached as Exhibit B; and

WHEREAS, Verizon Wireless has represented that it has an agreement with Jersey Central Power & Light Company ("JCP&L") to attach its wireless communications facilities to the JCP&L utility poles and that if a new pole is required the same shall be set by either CenturyLink or SQF, LLC d/b/a Tilson ("SQF"), a CLEC if SQF is regulated by the New Jersey Board of Public Utilities ("BPU") as a public utility or is otherwise authorized by the BPU to set poles in the public right of way; and

WHEREAS, the Township Committee has determined that, subject to the conditions and limitations set forth in this Resolution, it is in the public interest to encourage the prompt deployment of wireless communications facilities in order to improve the efficiency and capacity of communications networks that serve the public; and

WHEREAS, the purpose of this Resolution is to allow the prompt deployment of the Facilities in the public rights-of-way while also effectively managing the rights-of-way in the interests of the public health, safety and welfare.

WHEREAS, this Resolution only effects the installation of Facilities in the public rights-of-way and shall have no effect on the application of Section 400-15 of the Township Code, entitled “Wireless telecommunications equipment and facilities;”

NOW THEREFORE BE IT RESOLVED by the Mayor and Township Committee of the Township of Lebanon, County of Hunterdon, State of New Jersey, as follows:

- A. The Township grants its limited consent to Verizon Wireless to install the Facilities in the public rights-of-way at the nine (9) locations set forth in Exhibit A; and
- B. The nine (9) Facilities shall be designed and installed substantially in accordance with the nine (9) exhibits (the "Facility Plans") collectively attached as Exhibit A and each individual installation shall hereafter be referred to as a "Node"; and
- C. The Township's consent is further subject to the following conditions and requirements:
 1. Verizon Wireless shall apply for zoning and construction permits, and engineering review if necessary, within one year of passage of this Resolution and complete all work and construction within eighteen months of the passage of this Resolution. If such tasks are not complete during the requisite time periods, this Resolution of consent shall automatically terminate; and
 2. As a condition to installing each Node, Verizon Wireless shall seek and receive approval of a Telecom Permit to Operate in the Right-of-Way from the Township zoning officer. The zoning officer shall issue the permit within ten (10) business days of receipt of the application if the criteria set forth herein is met. If the proposed Node involves the installation of a new utility pole or ground-mounted equipment, the completed application will confirm that Verizon Wireless has provided a notice (the "Notice") to each owner(s) of the property on which, or contiguous and adjacent to the right of way, where the proposed Node is to be located (each a "Notified Party"). Ownership of the property shall be determined by reference to the current tax duplicate on file with the Tax Collector. The Notice to each Notified Party shall be sent by certified mail, return receipt requested, or by a nationally recognized overnight carrier (such as Federal Express or United Parcel Service) for which a receipt is provided, and shall include: 1) a copy of the Facility Plan approved by the Committee applicable to such property in the form attached in Exhibit A hereof; 2) a description of the right-of-way (i.e. distance the right-of-way extends from the centerline of Route 513); and 3) a general description of the actions to be taken by Verizon Wireless to install the Node; and 4) inform the Notified Party that within ten (10) days of receipt of the Notice they may submit a request in writing to Verizon Wireless to meet on site with a Verizon Wireless representative to discuss the installation of the proposed Node. It shall be sufficient that such Notice is post-marked within ten (10) days of receipt of the Notice. Additionally, the Notice shall advise the Notified Party of at least one (1) date, which date shall be not less than fifteen (15) days subsequent to the date of the Notified Party's receipt of the notice, when, during normal business hours, a Verizon Wireless representative is available to meet at the proposed location of the Node. If the Notified Party does not respond to the Notice within ten (10) days, the requirement to meet with the Notified Party shall be deemed satisfied and Verizon Wireless may immediately make application to the zoning officer. The Notice will inform the Notified Party that if they request a meeting at the proposed Node location that the parties will discuss only reasonable adjustment to the location of the proposed Node within the necessary zone of coverage, as determined by Verizon Wireless, but that in no case will the proposed Node location be relocated beyond the extent of each Notified Party's property nor modified in a manner inconsistent with Verizon Wireless' requirements or the requirements of this Resolution. If there is no agreement at the meeting, or during any subsequent mutually agreed meetings or discussions between the parties, Verizon Wireless will provide written notice to the Notified Party that it will proceed to make application to the zoning officer. The

- Telecom Permit application will include a certification that the notice was sent to the Notified Party and whether the Notified Party responded to the Notice and the date of any meeting, as well as the final Node location and design, if different from the description in Exhibit A to this Resolution. The zoning officer shall issue the permit within ten (10) business days from the application submission date, or provide a written disapproval of the application setting forth the reasons for the denial of the application. If the zoning officer determines that any alterations agreed to between Verizon Wireless and the Notified Party(s) are substantial when compared to the Node Facility Plan provided in Exhibit A or are inconsistent with the requirements of this Resolution, the zoning officer shall refer the matter to the Township Committee within ten (10) days of the submission of the application for final determination by the Township Committee, with such decision to be rendered within twenty-one (21) days of the referral by the zoning officer. If the zoning officer or the Township Committee fails to act within such period, or such additional time as Verizon Wireless may agree to, the application shall be deemed approved; and
3. No ground-mounted equipment may: (i) exceed seven (7') feet in height above grade, (ii) occupy more than thirty-six (36 sf) square feet of ground area or (iii) be located more than fifteen (15') feet from the utility pole to be used by the Node; and
 4. All antennas and conduit shall be a color that blends with the utility pole on which it is mounted. Any cables or wiring attached to the utility pole shall be covered with an appropriate conduit and reasonably camouflaged so as to blend in with surroundings; and
 5. Verizon Wireless shall obtain any necessary permits required pursuant to the current Uniform Construction Code adopted in New Jersey prior to installation; and
 6. Verizon Wireless shall be solely responsible for obtaining any and all real property easements, rights-of-way, permissions, and consents, as are required in order to install, use, operate, and maintain the Facilities attached to the property of third parties and / or to perform any right or act contemplated under this Resolution. All costs associated, including but not limited to recording fees, legal fees, taxes and publication fees, with obtaining such easements, rights-of-way, permissions, and consents will be borne solely by Verizon Wireless; and
 7. Before attaching any Equipment to a pole, erecting a pole, or installing any ground-based equipment Verizon Wireless will obtain, at its sole expense, any required permits, licenses, certificates, and/or consents from governmental authorities, including, where required, from the County of Hunterdon. Verizon Wireless shall keep and maintain any and all required permits, licenses, certificates, or consents from governmental authorities as are necessary in order to continue to attach, use, and maintain such equipment and attachments to the property of third parties and to properly carry-out and fulfill any obligation(s) under this Resolution, and shall comply with all Applicable Laws in performing any act or fulfilling any obligation arising, directly or indirectly, from, this Resolution; and
 8. Verizon Wireless shall maintain an escrow account with the Township of Lebanon in the amount of \$2,000 to cover the cost of engineering and professional review fees incurred in connection with the Township Committee's review of its request to locate wireless communications equipment in the public right of way, location of equipment from a public safety standpoint and the review by Township professionals, the zoning officer or Code officials of the design, review or installation of the exterior characteristics of the Facilities, any replacement or modification of the exterior design or modification of the exterior layout. Such escrow will be replenished as necessary. It will be held and maintained by the Township in accordance with N.J.S.A. 40:55D-53.1 to 53.2a; and

9. Without limiting the generality of the foregoing or any other obligation set forth herein, Verizon Wireless shall comply with all requirements of the applicable electric code and the National Electrical Safety Code for proper bonding, grounding, clearances, guying, anchoring, and installing of the Facilities.; and
10. Verizon Wireless warrants that the Facilities will be maintained in good operating condition as defined by any applicable industry standards, and in accordance with any and all Applicable Laws;
 - i. Such warranty includes maintaining all ground cabinets free of graffiti, decals, stickers, posters, etc.;
 - ii. Verizon Wireless agrees that all required maintenance or repairs shall be performed by Verizon Wireless personnel or by contractors acceptable to Verizon Wireless. Except in the event of an emergency, maintenance work will be performed within ten (10) business days following the Township's notification requesting such maintenance;
 - iii. In the event of an emergency requiring maintenance by Verizon Wireless, Verizon Wireless may be contacted at 800-852-2671, twenty-four (24) hours a day, seven (7) days a week, and Verizon Wireless shall respond as promptly as reasonably possible in view of the nature of the emergency, but no later than ten (10) days after written notice;
 - iv. The Township reserves the right to review all substantial, exterior alterations to Facilities that involve the physical size, noise, location, aesthetics and other nuisance impacts;
 - v. In the event that Verizon Wireless substantially changes the exterior design or construction of the Equipment described in Exhibit A, Verizon Wireless shall seek amended approval from the Township Committee.
11. Verizon Wireless shall coordinate with the County of Hunterdon, the Township, if it is the right-of-way owner, or other rights-of-way owners regarding mowing and brush suppression near and around any ground cabinets. Any brush suppression shall be done in a way that is environmentally responsible; and
12. In the event that the Township undertakes a public improvement project necessitating the relocation of Verizon Wireless's Equipment, Verizon Wireless shall be solely responsible for all costs of relocating the Equipment. Verizon Wireless shall provide a reasonably prompt schedule for relocation of the Equipment upon the Township's request; and
13. If required, Verizon Wireless will register its Equipment with the New Jersey One Call System; and
14. Any underground work in the public right-of-way shall follow standard road opening permit requirements; and
15. This Resolution has been prepared based upon Verizon Wireless's proposal for the installation of Nodes at nine (9) specific locations. Any additional Nodes beyond the nine (9) Nodes set forth in Exhibit A shall require additional review and approval by the Township Committee; and
16. Verizon Wireless shall adhere to all applicable federal, State and local laws and regulations applicable to the installation of the facilities; and
17. Verizon Wireless shall indemnify and hold harmless the Township against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or by the willful misconduct of Verizon Wireless, its employees, contractors or agents, except to the extent such claims or damage may be due to or caused by the sole negligence or willful misconduct of the Township, or its employees, contractors or agents. The Township will provide Verizon Wireless

- with prompt, written notice of any claim covered by this indemnification; provided that any failure of the Township to provide any such notice, or to provide it promptly, shall not relieve Verizon Wireless from its indemnification obligation in respect of such claim, except to the extent that it can establish actual prejudice and direct damages as a result thereof. The Township shall cooperate with Verizon Wireless in connection with its defense of such claim. Verizon Wireless shall defend the Township, at the Township's request, against any claim with counsel of Verizon Wireless' choosing that is reasonably satisfactory to the Township; and
18. Verizon Wireless shall secure and maintain commercial general liability insurance with limits of \$2,000,000 for bodily injury (including death) and property damage or destruction each occurrence insuring the Carrier as named insured and including the Township as an additional insured as their interests may appear under this agreement on the general policies; and
 19. Verizon Wireless shall be responsible for the repair of any damage to the pavement or other structures existing in the right-of-way or any private property arising from the construction, maintenance or removal of its facilities; and
 20. Notwithstanding any Township Ordinances to the contrary, Verizon Wireless shall remove its facilities and restore the right-of-way when the permission herein granted expires, or when such facility is not operational for a period of ninety (90) consecutive days.
- D. Notwithstanding any provision contained herein, neither the Township nor Verizon Wireless shall be liable to the other for consequential, incidental (consequential and incidental damages does not include direct physical damages caused by one party to the physical property of the other, but does include any damages to the operations or business of the party damaged) exemplary or punitive damages on account of any activity pursuant to this agreement.
 - E. The consent and approval hereby granted shall be binding upon Verizon Wireless, its successors and/or assigns and shall continue for the same period of time as the grant to the parties whose poles Verizon Wireless is jointly using.
 - F. The Township hereby consents to the installation of new utility poles by Century Link and/or SQF (if it is regulated by the BPU as a public utility or has otherwise been authorized by the BPU to set poles in the public right of way) in the locations identified in Exhibit A.
 - G. To the extent technically feasible, readily available and legally permissible, Verizon Wireless (or any of its successors, assigns, subsidiaries, or subcontractors, including SQF, if it is regulated by the BPU as a public utility or has otherwise been authorized by the BPU to set poles in the public right of way) shall permit co-location of other wireless facilities on any poles or ground mounted cabinets owned by Verizon Wireless (or any of its successors, assigns, subsidiaries, or subcontractors, including SQF). The Township strongly encourages co-location and declares it to be the first approach for any additional carriers seeking to locate wireless communications facilities on or reasonably near poles occupied by the Facilities. Verizon Wireless shall cooperate, at no additional cost or expense to Verizon Wireless, to permit co-location with any other carrier seeking to install wireless communications facilities in the vicinity of the Facilities.
 - H. Any co-located facilities shall be subject to review by the Township Committee, zoning officer and Code officials in a manner similar the process described herein for the Facilities if co-location requires movement of, additions to or larger equipment.
 - I. The permission and authority hereby granted shall continue for the same period of time as the grant to the parties whose poles Verizon Wireless is jointly using.

- J. This Resolution shall be adopted on behalf of the Township of Lebanon by the Township Committee and attested to by the Township Clerk who shall affix the Township of Lebanon Seal thereto.
- K. Verizon Wireless shall provide in writing its consent to all terms and conditions of this Resolution.

STATEMENT

This Resolution authorizes Cellco Partnership d/b/a Verizon Wireless to install wireless communications facilities within the public rights-of-way.

ORDINANCE

Introduction – Ordinance No. 2017-06

Motion by Mr. Schmidt, seconded by Ms. Koehler and carried by unanimous favorable roll call vote, the Township Committee approved Ordinance 2017-06, on first reading, as entitled below subject to the modifications to the Zoning Officer terminology in Section 63.35 and clarification from the Township Attorney relative to Section 63.37; whether the compensation for the Zoning Officer should reference union contracts.

TOWNSHIP OF LEBANON
HUNTERDON COUNTY, NEW JERSEY
ORDINANCE NO. 2017-06
AN ORDINANCE AMENDING AND SUPPLEMENTING THE TOWNSHIP CODE IN ORDER
TO ALLOW FOR THE ISSUANCE OF TELECOM PERMITS

Public Hearing to be held on September 20, 2017

EXECUTIVE SESSION

Resolution No. 87-2017 –Executive Session

It is not anticipated that action will be taken when the public meeting is reconvened.

Motion by Mr. Schmidt seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 87-2017 and convened in to executive session at 7:19 p.m.

**TOWNSHIP OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY
RESOLUTION NO. 87-2017**

RESOLUTION AUTHORIZING EXECUTIVE SESSION

WHEREAS, the Open Public Meetings Act; *N.J.S.A. 10:4-6 et seq.*, declares it to be the public policy of the State to insure the right of citizens to have adequate advance notice of and the

right to attend meetings of public bodies at which business affecting the public is discussed or acted upon; and

WHEREAS, the Open Public Meetings Act also recognizes exceptions to the right of the public to attend portions of such meetings; and

WHEREAS, the Mayor and Committee find it necessary to conduct an executive session closed to the public as permitted by the *N.J.S.A. 40:4-12*; and

WHEREAS, the Mayor and Committee will reconvene in public session at the conclusion of the executive session;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Committee of the Township of Lebanon, County of Hunterdon, State of New Jersey that they will conduct an executive session to discuss the following topic(s) as permitted by *N.J.S.A. 40:4-12*:

_____ A matter which Federal Law, State Statute or Rule of Court requires be kept confidential or excluded from discussion in public (Provision relied upon:

_____);

_____ A matter where the release of information would impair a right to receive funds from the federal government;

_____ A matter whose disclosure would constitute an unwarranted invasion of individual privacy;

_____ A collective bargaining agreement, or the terms and conditions thereof (Specify contract: _____);

_____ A matter involving the purpose, lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed; Real Estate Acquisitions

_____ Tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection;

_____ Investigations of violations or possible violations of the law;

Pending or anticipated litigation or contract negotiation in which the public body is or may become a party; (The general nature of the litigation or contract negotiations is: Professional Service Contracts _____. The public disclosure of such information at this time would have a potentially negative impact on the municipality's position in the litigation or negotiation; therefore this information will be withheld until such time as the matter is concluded or the potential for negative impact no longer exists.)

_____ Matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his or her ethical duties as a lawyer; (The general nature of the matter is: _____

_____ OR _____ the public disclosure of such information at this time would have a potentially negative impact on the municipality's position with respect to the matter being discussed; therefore this information will be withheld until such time as the matter is concluded or the potential for negative impact no longer exists.);

_____ Matters involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining of any specific prospective or current public officer or employee of the public body, where all individual employees or appointees whose rights could be adversely affected have not requested in writing that the matter(s) be discussed at a public meeting; (The employee(s) and/or general nature of discussion is:

_____ Union Contract _____ the public disclosure of such information at this time would violate the employee(s) privacy rights; therefore this information will be withheld until such time as the matter is concluded or the threat to privacy rights no longer exists.;

_____ Deliberation occurring after a public hearing that may result in the imposition of a specific civil penalty or loss of a license or permit;

BE IT FURTHER RESOLVED that the Mayor and Committee hereby declare that their discussion of the subject(s) identified above may be made public at a time when the Township Attorney advises them that the disclosure of the discussion will not detrimentally affect any right, interest or duty of the Township or any other entity with respect to said discussion.

BE IT FURTHER RESOLVED that the Mayor and Committee, for the reasons set forth above, hereby declare that the public is excluded from the portion of the meeting during which the above discussion shall take place.

The Township Committee reconvened the Public Meeting at 9:40 p.m. No action was taken by the Committee.

PUBLIC COMMENTS –

There was no public in attendance.

ADJOURNMENT

Having no further business to come before the Committee a motion was made by Mr. Wunder, seconded by Mr. McKee and carried by unanimous favorable roll call vote to adjourn the meeting at 9:57 p.m.

Respectfully submitted,

Karen J. Sandorse, RMC/CMC
Municipal Clerk

Approved: September 20, 2017

Marc Laul, Mayor