

WHEREAS Crown Castle NG East LLC (“Crown”), a NYS PSC holder of a Certificate of Public Convenience and Necessity (“CPCN”), has proposed the use of Village of Wesley Hills (“Village”) rights-of-way (“Public Ways”) for the deployment of antennas, fiber and other telecommunications equipment (collectively “Equipment”) as part of a neutral host Distributed Antenna System (“DAS”);

WHEREAS the DAS will be used by wireless carriers to provide their services to the public;

WHEREAS Crown representatives communicated with Village officials and staff and discussed the process of obtaining municipal consent for its Equipment to be located in various Village Public Ways;

WHEREAS Crown has proposed entering into a right-of-way and use agreement (“RUA”) to incorporate Village compensation and other standards for management of Crown’s installations in Wesley Hills’ Public Ways, and in the absence of a specific Village Code Chapter that regulates franchises or municipal consents for various utility installations in Public Ways;

WHEREAS Crown identified for the Village its planned Equipment installations throughout the Village and which were specifically designed to meet Orange & Rockland pole attachment requirements and the Village’s zoning requirements for “minor” facilities which are defined as:

“A wireless communications services facility located within a public right-of-way in which a cluster of antennas is structurally mounted to an existing utility pole, roadway sign, bridge or other similar type of structure, not exceeding the height of such structure by more than three feet, together with associated equipment to be located on the ground.”

WHEREAS the Village utilized its Technical Advisory Committee (“TAC”) as a procedural means to preliminarily review Crown’s RUA and the specifics of Crown’s proposed Equipment to be installed in Village Public Ways;

WHEREAS Crown met with TAC to go over the RUA and its Equipment plans at which time TAC determined:

- 1) That Crown’s proposed Equipment installations involved “Wireless Communications Services Facility (Minor)” as that term is specifically defined in Section 230-5 of the Village Zoning Code; and
- 2) That Crown’s Equipment installation plans are principally permitted uses as set forth in Section 230-26(M)(1) of the Village Zoning Code and as such, no special permit or related submission requirements were required pursuant to the Village Zoning Code; and

- 3) That Village Board of Trustees review and approval of the RUA would be required consistent with the Trustees' prior reviews and approvals of cable and other telecommunications franchises involving use of the Village's rights of ways.

WHEREAS the Village Board of Trustees initially considered the Crown RUA and Crown's request for municipal consent under New York State law;

WHEREAS, the Village Board of Trustees elected to conduct a public hearing on notice to the community to review the Crown RUA and for the purpose of considering comments related to Village consent under New York State law to Crown's proposed use of Village Public Ways for the installation of Equipment to be used in the provision of wireless services to the public;

WHEREAS a duly noticed public hearing was held by the Village Board of Trustees on July 26, 2016;

WHEREAS the Village Board of Trustees received comments from the public at the July 26, 2016 hearing;

WHEREAS at the July 26, 2016 hearing, the Village Board of Trustees' sought further advice and counsel from its outside technical consultant, Mr. Ronald Graiff, P.E. and Benjamin Selig, Esq. the Village Attorney and further resolved to retain special counsel for further advice and review of the Crown RUA;

WHEREAS the Village Board of Trustees thereafter retained special counsel to assist in the negotiation of the RUA with Crown representatives and further support the Village's ongoing consideration of the terms and conditions associated with the request for municipal consent for Crown's access to Village Public Ways under New York State law;

WHEREAS subsequent to the July 26, 2016 hearing, Crown supplied the Village Board of Trustees with additional information at the Board's request including:

- 1) Crown August 18, 2016 Responses to Questions from the Village's consultant Mr. Graiff;
- 2) Crown August 19, 2016 Responses to Public Hearing Questions and Comments; and
- 3) A Short Environmental Assessment Form in furtherance of the State Environmental Quality Review Act.

WHEREAS in August and September of 2016, the Village's representatives and consultants reviewed the project further, negotiated the terms and conditions of the

RUA and sought changes to Crown's initially planned Equipment installations in Village Public Ways including but not limited to:

- 1) A reduction in the number of installations proposed by Crown; and
- 2) Aesthetic options for street light replacements.

WHEREAS Crown has agreed to remove three installations proposed from its initial plans that are located in and around an existing rooftop wireless facility located at 7 Mark Drive in the Village and numbered locations N130, N131, N135 and to shift node numbered N26 west one or two pole locations on Willow Tree Drive;

WHEREAS Crown has provided the Village with various aesthetic options for Equipment locations that may require replacement in kind of existing street light poles;

WHEREAS a revised draft RUA has been prepared and presented to the Village Board of Trustees with a recommendation from the Village's counsel to enter into such an agreement with Crown to manage Crown's access to Village rights of way over the next ten years;

WHEREAS a revised draft RUA has been prepared and presented to the Village Board of Trustees with a recommendation from the Village's counsel to enter into such an agreement with Crown in order to manage Crown's access to Village rights of way over the next ten years;

WHEREAS the Village Board of Trustees has considered the comments of the public and on _____, 2016 closed the public hearing;

NOW THEREFORE, the Village Board of Trustees hereby finds and resolves as follows:

- 1) The Board of Trustees hereby finds that Crown's request is a Type II action for SEQRA purposes in that it involves Village consent under New York State law related to the installation of telecommunications utilities where utilities already exist above and in Village streets (See 6 NYCRR Sections 617.5(c)(7, 11, 31). This finding is consistent with Village Board of Trustee review of other telecommunications agreements involving Village streets and any related work in rights of way by telecommunications companies and the electric utility.
- 2) In the alternative, in the event the action taken by the Board of Trustees were deemed an "unlisted" action for SEQRA purposes, the Board of Trustees has reviewed a Short EAF Part 1 and hereby answers all the questions in Part 2 of the Short EAF in the negative because this project is limited to standard utility poles and equipment attached to utility company distribution poles in the right-of-way of neighborhoods with above-ground utilities with no adverse visual impacts as

compared and in context with such existing utility installations in the Village such as Orange & Rockland poles, lines, transformers, Verizon FIOS boxes, Cablevision wires and WiFi nodes and other traffic structures routinely installed for services in Wesley Hills. The Board of Trustees has also been advised by its counsel that radiofrequency energy associated with antennas in compliance with FCC regulations cannot be a basis for an adverse environmental impact finding as a legal matter. See 47 U.S.C. § 332(c)(7). Based on all the foregoing, the Board of Trustees in considering the action and criteria in 6 NYCRR § 617.7(c)(1-3) adopts a negative declaration to the extent the action were an “unlisted” action and finds that no Environmental Impact Statement is required under SEQRA prior to issuing its consent to Crown under New York State law for access to Village streets and entering into the RUA to manage same.

- 3) The initial Equipment deployments proposed by Crown for installation on existing Orange & Rockland utility poles and replacement in kind of existing street light poles in Wesley Hills are “Minor” as defined by the Village’s Zoning Code and will not interfere with vehicular, pedestrian or other uses in the rights-of-way.
- 4) Replacement of any existing wood utility poles that only support “cobra arm” street lights in the Village of Wesley Hills shall utilize a decorative street light structure that is substantially consistent with the design of the pole and light shown in those certain drawings prepared by Crown for another municipality in New York (City of Rochester) dated October 30, 2015 and referenced as Beechwood # _____. To the extent Orange & Rockland requires any further Village consents, agreement or approvals for such decorative street light installations, the Mayor is authorized to execute same subject to the Village Attorney’s review and approval as to the form of any such consent, agreement or approval required by Orange & Rockland.
- 5) The Mayor is hereby authorized to execute the RUA with Crown on behalf of the Village of Wesley Hills which RUA is made in reliance upon the node locations being placed as discussed by Crown and the Village
- 6) The Village Engineer is the Village official with authority and responsibility for reviewing and approving any future Equipment installations by Crown in Village Public Ways in furtherance of Sections 3 and 5 of the RUA, so long as such installations are Minor as defined by the Village’s Zoning Code and do not require other permits.
- 7) In overseeing any work in the Village’s Public Ways by Crown, now or in the future, consistent with current Village practice for other similarly situated utility companies, a street excavation permit shall be required for any Equipment installation that involves at grade construction and shall be issued by the Village

Engineer on a per location basis in furtherance of Section 187-8 of the Village Code (with the RUA satisfying the fee, surety and insurance requirements of Chapter 187).

- 8) The Village Board of Trustees further conditions this resolution granting consent under New York State law for access to Village rights of way on the following:
 - a. Crown shall reimburse the Village as part of the escrow account previously set up by the Village for the costs of its consultant's review of Crown's request within 30 days of the date of this resolution;
 - b. Crown shall remit a review fee of \$2,500 associated with the Village Board's review of Crown request for access to Village Streets within 30 days of the date of this resolution;
 - c. Crown shall execute the RUA with the Village prior to any installation of Equipment in Village Public Ways