

# RESOLUTION FOR APPLYING MONROE BALANCING TEST

## Option 2 1 of 3

At a regular meeting of the Webster Town Board of the Town of Webster, Monroe County, New York, held at the Town Board Meeting Room, 1002 Ridge Road, in the Town of Webster, New York on the 3rd day of July 2025, at 7:30 p.m., there were present:

Supervisor Thomas J. Flaherty  
Councilwoman Patricia T. Cataldi  
Councilman John J. Cahill  
Councilwoman Ginny L. Nguyen  
Councilwoman Jennifer S. Wright

**Resolution No. \_\_\_\_:** MOTION by \_\_\_\_, seconded by \_\_\_\_, declaring governmental immunity from zoning of the proposed project at 1209 Creekside Trail, Town of Webster, State of New York

**WHEREAS**, the Town of Webster (the "**Town**") is the owner of the property located at 1209 Creekside Trail in the Town of Webster, Monroe County, New York, Tax Map No. 065.05-1-47 (the "**Property**"); and

**WHEREAS**, Bell Atlantic Mobile Systems LLC d/b/a Verizon Wireless ("**Applicant**") desires to construct a 135' communications monopole (and associated equipment) on the Property (the "**Facility**"), in order to accommodate the wireless coverage needs of various Town Departments, provide capacity for the collocation of private-public utility wireless communication facilities to provide wireless service to portions of the Town for emergency services, businesses and individuals who rely on the service every day, and to provide additional network capacity relief to the existing Verizon Wireless network for benefit of public access to wireless communications; and

**WHEREAS**, the Town desires to lease a portion of the Property to Applicant for the Facility; and

**WHEREAS**, the Town and the Applicant negotiated a Lease Agreement ("**Agreement**") for the purpose of constructing the Facility, which provides for collocation by the Town for its antennae for its communication needs, and the collocation of commercial wireless communication facilities; and

**WHEREAS**, the Agreement between the Town and the Applicant is for Town property not presently being utilized by the Town and is not anticipated to be needed by the Town over the term of the Agreement, and the Agreement is for fair market value and is in the best interests of the Town and its residents; and

**WHEREAS**, the Facility will provide an important public utility service to the citizens of the Town of Webster as a modern reliable system of wireless communications is a necessary and desirable part of modern public infrastructure; and

**WHEREAS**, the Town Board has considered whether development of the proposed communications Facility may be afforded exemption from the Town's zoning and land development regulations under applicable law; and

**WHEREAS**, the Town Board has carefully considered the "balancing of interests" test established

by the New York State Court of Appeals in the 1988 case of *Matter of County of Monroe v City of Rochester*, 72 N.Y.2d 338 and related subsequent caselaw; and

**WHEREAS**, in connection with the Lease, the Town Board (the “**Board**”) has conducted a full and comprehensive single agency review of potentially adverse environmental impacts from the Project pursuant to the State Environmental Quality Review Act (“**SEQRA**”), and by resolution dated the same date as this Resolution duly issued a Negative Declaration pursuant thereto; and

**WHEREAS**, for the reasons set forth below, and after careful and deliberate consideration of all information and comments provided with respect to this matter, the Town Board has determined that the Applicant’s Facility will not be subject to the Town’s zoning regulations.

**NOW THEREFORE BE IT RESOLVED**, that the Town Board makes the following findings in accordance with the Town of Webster Zoning Code and New York State Law:

**Section 1. Findings:**

The Town Board had considered the nine (9) factors established by the *County of Monroe* case, has balanced the public interest, and makes the following findings:

- a. *The nature and scope of the instrumentality seeking immunity* – The Town of Webster is a municipal corporation duly organized under the laws of the State of New York.

The Facility involves installation of a new communications tower/monopole on the same parcel as the Town’s existing Millcreek Pump Station. The Facility will be able to accommodate Verizon Wireless’ transmitting equipment and antennae, as well as current and future needs of the Town Departments, thereby reducing the unnecessary proliferation of additional towers.

The Town of Webster is a political subdivision of the State of New York and is tax-funded and self-governing with elected officials. The Town provides emergency response for such things as fires, accidents, medical emergencies and natural disasters and so is a governmental entity that provides an essential public service.

The Town is the owner of the Property, and pursuant to New York State Town Law Section 64(2), the Town has the power to lease the Property for such purposes as the Town may deem appropriate, which in this case includes a wireless Facility which has been designed to support Town public safety communications antennae and equipment.

- b. *The encroaching government’s legislative grant of authority* – In general, New York State Town Law confers on the Town the power to manage Town property and finances. The Project is located on Town property and the Town has authority to lease the space to Verizon.

The Town of Webster Town Board has the power and is the appropriate agency to consider the factors set forth in *County of Monroe* and make the determination that this application is exempt from its own zoning regulations. There is no other governmental

entity with a potentially greater interest in the project because the Property is owned by the Town and is wholly located within the boundaries of the Town, and the important public safety, communications and public utility service provided by the Facility serve primarily the emergency services, businesses and individual citizens of the Town.

- c. ***The kind of function or land use involved*** – The construction of the proposed Facility will allow for collocation of Town owned equipment to improve its local public safety wireless communications network. Overall, the proposed land use is not an intensive use and will not require municipal services as part of its general operations. The Facility will serve the public interest, in that it will offer the general public a modern reliable system of wireless communications, including for responding to accidents and natural disasters and for reporting medical emergencies and other dangers such as potential criminal activity. The Town Board notes that federally licensed wireless services have been deemed to be essential public services in New York State.
- d. ***The effect local land use regulation would have upon the enterprise concerned*** – The legislative intent in enacting the Town's land use regulations, as with other municipalities, was to ensure orderly development in the Town and to further health, safety and welfare interests. The proposed Facility will promote these interests and will provide reliable wireless telecommunications service in the coverage area proposed to be served.

Local regulations, if applied, would not be more protective of Town land use policies or the environment. The Facility has been carefully reviewed by the Town and its representatives, including its professional planning staff, and the layout of the proposed site has been properly planned with regard to the safety of vehicles and pedestrians, as well as those on neighboring properties and streets. Imposing local land use regulations on the proposed Facility would have the effect of unreasonably delaying an essential public need for immediate and effective emergency response and reliable wireless communications, and would yield no meaningful additional protections or benefits.

- e. ***Alternative locations for the Facility in less restrictive zoning areas*** – The proposed Facility is located on a Town owned parcel of land which is currently developed with a municipal water system facility/public utility/essential service. The proposed location is unique since it is ideally located to remedy a gap in wireless services and resolve existing capacity issues for federally licensed carriers and emergency service entities, while causing a minimal intrusion on the community. Locating the communications Facility at the proposed location will mitigate impacts to nearby residential neighborhoods since any potential alternative location would be closer to neighborhoods and/or less desirable from a land use standpoint. After careful evaluation, the Town and Applicant have determined that viable alternative locations to the proposed location are not available and/or any potential alternative would have greater impacts on the community.

- f. ***The impact upon legitimate local interests*** – There is no adverse or negative impact to legitimate local interests as the application is for a public utility and the Applicant has demonstrated a need for this Facility to: (i) fill significant gaps in service and/or (ii) provide capacity relief to the existing wireless network in the Town.

The Town Board notes that the Facility has been designed in accordance with the applicable structural requirements of the Building Code of New York State, and all other applicable local, state, and federal codes and regulations. The proposed communications Facility will have a harmonious relationship with the existing and planned development of contiguous lands and adjacent neighborhoods, is an important part of the community infrastructure, and would have no material adverse effect upon the desirability of adjacent and nearby property for development.

The Town recognizes that wireless communications service is essential in modern day life. With the majority of 911 emergency calls generated from wireless phones and the current trend to terminate landline telephone service in favor of wireless service, the Town desires to ensure that safe and appropriate wireless service exists within the Town for its residents. The proposed Facility will assist with achieving such goal, and the only local impact will be a positive one.

- g. ***Alternative methods of providing the proposed improvement*** – The proposed location of the Facility is the most preferred alternative. After careful investigation there are no existing tall structures capable of accommodating the antennas at the required height. A new structure is, therefore, required. With respect to the current location, it is important to note that the Facility will generate certain benefits that it will not be realized from other sites. First, the Town will receive fair market value rent for leasing the land. Second, the Town will be able to utilize a portion of the Facility for its communications needs rent free. Additionally, the land upon which the Facility is located is currently surplus/unused land.
- h. ***The extent of the public interest to be served by the improvements*** – As noted above and in meetings with the Town officials/Town staff, the Applicants' Radio Frequency (RF) Design Engineer has demonstrated that there are significant gaps in coverage and/or capacity issues in the Town and that construction of the Facility as proposed will provide safe and adequate coverage in portions of the Town.

Moreover, the Facility will benefit legitimate local, state and federal interests by providing safe and adequate wireless service to the areas in question, which is a critical component with respect to public safety/emergency response. The proposed Facility will also be able to accommodate future additional wireless service providers without compromising service, and will help avoid unnecessary proliferation in the Town. It will also provide a no cost platform for Town communication needs.

- i. ***Intergovernmental participation in the project development process and an opportunity to be heard*** – In this case there is only one municipality involved (Town of Webster). The Town and its professional planning staff has held several meetings

and discussions with representatives of the Applicant in an effort to ensure the proper design and location of the proposed Facility. The project has also been discussed at the Town Board meeting at which this resolution was considered, and at which public comment was permitted.

**RESOLVED**, that the Facility meets the balancing test in In Re Monroe County for exemption from local zoning; and

**RESOLVED**, that based upon the foregoing balancing of interests, it is not in the public interest nor necessary to subject the Facility to local zoning and land use regulations; and

**RESOLVED**, that the Facility shall be exempt from local zoning and the Town Supervisor is authorized to take any and all other acts reasonably necessary to accomplish the purposes of this Resolution.

**RESOLVED**, that this Resolution is expressly conditioned on compliance with the following:

- a. Development of the wireless Facility shall be in substantial accordance with the approved plan set;
- b. The Applicant shall obtain and shall keep current and comply with any and all other required approvals from any other regional, state, or federal agency.

Vote on motion:

Supervisor Flaherty.....Aye  
Councilman Cahill .....Aye  
Councilwoman Wright.....Aye

Councilwoman Cataldi..... Aye  
Councilwoman Nguyen ... Aye  
Motion carried ..... 5-0

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State of New York :  
County of Monroe : §§  
Town of Webster :

This will certify that this is an exact copy of the original which is filed in the Office of the Webster Town Clerk.

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Danene M. Marr, Town Clerk

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Dated: July 3, 2025

