

TWILIGHT PARK CELL TOWER COMMITTEE REPORT MAY 12, 2016

I. Introduction and Scope of Work / Committee Goals & Priorities

In response to a request by the Park's Board, John McCarrick agreed to chair a Cell Tower Committee (the "Committee") composed of Park Representatives appointed by the Board who brought diverse areas of expertise and points of view to the Committee.

The Committee's goal, as directed by the Board, was to represent Twilight Park in negotiating the most favorable lease agreement terms with Centerline Communications, ("Centerline"), an intermediary company which identifies, secures and operates cell tower sites on behalf of wireless phone companies, which are also referred to as "carriers." The Committee members were asked by the Board to set aside their personal views on the question of a cell tower within Twilight Park, and to remain neutral on the issue of whether the Cottagers should ultimately support or reject the construction of a cell tower on Park property. The Board's objective in securing specific lease agreement terms is related to its desire to provide specific and complete information to support each Cottager's voting decision to support or reject any cell tower proposal.

At its inaugural meeting, the Committee members agreed that each of us would remain impartial to the cell tower decision in our actions as Committee members. In addition, it was proposed that two subcommittees be formed: 1) a negotiating subcommittee, and 2) a subcommittee to explore the potential for the Park to construct and own a cell tower without involving an intermediary party, such as Centerline. After four months of exploring both options and actively negotiating with Centerline Communications, the Committee now has a final draft lease agreement for presentation to the Board.

II. Explanation of Role and Economics of Centerline Involvement

- When the need and desire for the construction of a new cell tower is contemplated by one or more of the major carriers (AT&T, Verizon, T-Mobile and Sprint), it is common for an intermediary vendor to be involved in securing the necessary ground lease, construction and physical ownership of the tower.
- Centerline (www.centerlinecommunications.com) is a commercial entity dedicated to the full-service operation of cell tower installations (i.e., development, construction and maintenance). In this role, Centerline expects to generate revenues and profits from the cell tower rental agreements it establishes with interested carriers.
- In the specific example of the cell tower contemplated for the Twilight Park site, Centerline has assumed the leadership role in negotiating the lease terms

with Twilight Park, and if accepted, would be responsible for the construction of the cell tower. Once constructed, Centerline would establish rental agreements with interested carriers. Initially, AT&T and Verizon have expressed interest, as well as Greene County for emergency communication services. Centerline's involvement in a cell tower arrangement involving Twilight Park impacts the overall economics of the project because Centerline, understandably, expects to derive revenues and profits from the rental fees paid by the participating carriers before paying Twilight Park a fee for the lease of Twilight Park's land.

- According to Centerline, AT&T and Verizon have been searching for a solution to cover the Route 23A corridor for close to a decade. At this point, the carriers are fully engaged and ready to move forward. Additionally, Centerline's Director of Site Development, Bert Stern met with Director John Farrell of Greene County Emergency Services in April 2016. Farrell reportedly advised Stern that Greene County has a clear public safety issue on its hands and must find a way to improve communications. Centerline will not execute lease documents with the carriers and Greene County Emergency Services until it first has secured a land rental lease with Twilight Park for the cell tower site. In response to our query, Centerline has assured us that it would not spend the capital to build the site without the prior commitments of both Verizon and AT&T. Without both carriers paying rental fees, it would not make financial sense for Centerline to construct the tower.

III. Consideration of Ownership Alternative

- The "Build vs. Lease" Subcommittee was charged with exploring the potential option of Twilight Park building and owning the cell tower, and then renting access to this tower to various carriers (e.g., Verizon and AT&T).
- This Subcommittee conducted exploratory meetings to determine the costs and process that would be required to pursue a "build" strategy. This Subcommittee concluded that ownership by Twilight Park would require an investment in excess of \$150,000 to construct the tower. As part of its investigation, this Subcommittee obtained cost data from "Steel in the Air," an independent construction firm specializing in tower installations.
- In the end, the "Build vs. Lease" Subcommittee recommended to the broader Committee that the "build" strategy be abandoned in favor of the lease negotiation underway in parallel with Centerline. The key reasons supporting the Subcommittee's recommendation included the significant investment required of both time and money by Twilight Park, the liability to the Park, the risk of obsolescence and the cost associated with tower removal, and the likely need in any event to involve a third party (e.g., Centerline) to secure rental agreements with various carriers.

IV. Variables Impacting Aesthetics/Placement, Liability and Revenue

- In its discussions with Centerline, the Negotiating Subcommittee sought to reflect the priorities and concerns expressed by the Twilight Cottagers and the Board in all of its deliberations. Specifically, our focus centered on the following critical areas of considerations:
 1. **Aesthetics/Placement**
 2. **Liability**
 3. **Revenue**
- Our specific goals at the outset of negotiations with Centerline in each of these areas were expressed to Centerline as follows:
 - **Aesthetics/Placement - GOALS**
 - Minimize the physical impact that a cell tower would have on the scenic beauty of our mountainside by minimizing tower height/appearance and physical tower pad site size.
 - Select a cell tower placement site that provides significant distance (greater than 1,100 feet) from the closest Cottager homestead.
 - Minimize the access/egress effect on Twilight Cottagers associated with both construction and service maintenance of the tower by external representatives.
 - Minimize the physical impact on Twilight Park associated with access road and pad site construction for the proposed tower.
 - **Liability - GOALS**
 - Minimize (i.e., eliminate, save for gross negligence by the Park or a Cottager) legal liability for both Twilight Park and individual Cottagers within the Twilight Park community.
 - **Revenue - GOALS**
 - Maximize revenue derived from ground lease rental fees collected by Twilight Park from Centerline.

V. Summary of Negotiations with Centerline

- **Aesthetics/Placement - OUTCOMES**
 - The height of the proposed tower was negotiated to the minimum height required to accommodate AT&T, Verizon and Greene County Emergency Services. To build the proposed tower, Centerline requires a minimum height of 125 feet, with an option to increase the height to 145 feet should one or two additional carriers elect to join (e.g., Sprint and/or T-Mobile). NOTE: Centerline has repeatedly stated that these two points are non-negotiable: a minimum height of 125' and the option to subsequently increase the height to 145.' The Committee

understands that the tree line at the tower site was measured at an average height of 80 feet. (See Appendix for visual diagrams)

- The proposed size of the tower pad was negotiated to the minimum size required for the proposed carriers, and will be 70' x 70' of cleared land, with a 60' x 60' fenced cell pad area.
- Finally, Centerline has agreed to paint the tower either very dark green or black to minimize visual impact, particularly from Route 23A.
- The placement of the tower will be approximately 1,100 feet from the nearest Cottager homestead, and above the Broward property.
- Access and egress during construction will be via the third level entrance via Sunset Road to the full extent that this is possible. Should the Haines Falls Bridge be required for any access/egress during the construction phase, Twilight Park will be notified in advance for approval. All cell tower service and maintenance requirements can be managed via the third level entrance via Sunset Road.
- The road that will be used for construction is the same road currently leading to what some Cottagers refer to as the "fifth" level road, which roughly parallels Squirrel Road (i.e., the fourth level road) a bit further southwest and above Squirrel Road. This "fifth" level road runs from the tank farm past the Meyer through Hirsch Cottages to the upper gate, and extends all the way to the "Broward plot," where it connects with the road up from the fourth level, just inside the upper gate. This road will be improved for the construction process and built with crushed stone. All utilities for the cell tower will be buried beneath this road and hidden from view. Weekly generator testing will be done on a scheduled, non-weekend day and should have no impact on Twilight residents.

- **Liability**

- The most recent version of the Limitation of Liability is as set forth below. The most recent provision substantially meets our goals, shielding the Park and Cottagers from claims by Centerline. The sole exception is in regards to indemnity (i.e., the obligation to make a party whole for damages). Two obligations to make Centerline whole for damages – resulting from the Park's own negligence, or from pre-existing or Park-caused environmental contamination – remain in the Agreement. In return, we have secured more general indemnification obligations from Centerline for damages resulting from its activities on Park property, the use and operation of the tower, environmental hazards caused by Centerline, Centerline's failure to comply with environmental regulation, or Centerline's breach of the Agreement. Centerline will have an obligation to make the Park whole in the event of an action against the Park in these instances.

- “Limitation of Liability. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to indirect, consequential, incidental or special damages, however caused, based on any theory of liability. Interruption or malfunction of any utility, telephone or other service shall not constitute a breach by Landlord, nor shall it cause an eviction or disturbance of Tenant, release Tenant from any obligation hereunder, or grant Tenant any right to an offset against rent or rent abatement, and neither Landlord nor its agents, employees, or members are liable for related damages (consequential or otherwise) It is expressly understood and agreed that: (i) except to the extent prohibited by law, Tenant waives any liability of Landlord hereunder (including any successor landlord) and any recourse by Tenant against Landlord or its agents, members, or employees for any damages, including but not limited to direct damages, under breach of contract, tort, or any other theory of law; and (ii) neither Landlord, nor any of the Landlord’s agents, employees, or members shall have any personal liability therefor, and that Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.”
 - NOTE: These terms are pending finalization in the Agreement, though we expect the final terms to substantially reflect those outlined here.
- The Board has requested that Centerline provide a performance bond that would ensure payment for removal of the tower in the event of a termination of the Agreement. Centerline stated that it would submit to a bond if required by Greene County as part of the approval process, but would not obligate itself to a bond in the Agreement. However, the Agreement does contain a provision allowing the Park to require removal of the facilities and restoration of the premises after termination of the lease (Section 13). While this does not obligate Centerline to set aside money to provide for restoration, it does give the Park a contractual right to compel Centerline to restore the property, or to restore the property ourselves at Centerline’s expense. Further, section 7.8 of the Hunter Town of Hunter Cell Tower Law specifically requires that the applicant for the tower post a performance bond to pay for the tower’s removal as part of the

approval process with a \$100 per day fine for failure to remove the tower in a timely fashion.¹

- Our negotiations have been conducted with Centerline; however, the counterparty on the lease would be TowerNorth Development (“TND”). We asked about the distinct roles of these entities and understand that TND holds and manages the vertical real estate, and Centerline has the contracts to build, service and maintain carrier networks. Although subtle, the business objectives and purposes are very different. Each company carries its own insurance to cover its business operations. TND does not have any employees and any construction activities on site would be undertaken through a general contractor hired by TND or by the carriers themselves. TND and Centerline’s sublease and contractor agreements all state that any general contractor or carrier representatives undertaking construction work on the cell tower must name TowerNorth Development, LLC and Twilight Cottagers as additional insureds on their insurance policies.

- **Revenue**

- The Negotiating SubCommittee made it very clear to Centerline from the outset of our discussions that maximizing the revenues received by Twilight Park for making the tower site available was a top priority for our community.
- Understanding this priority, Centerline provided the Negotiating SubCommittee with a comprehensive list of recent tower rental agreements in order to provide us with a realistic understanding of competitive market rates and relevant “comparables.” (See Appendix for list of comparables)
- We explored a variety of rental fee structures and concluded that a “revenue-sharing” model would optimize Twilight Park’s revenue position. In a “revenue-sharing” model, Twilight Park and Centerline would agree on a percentage (e.g., 20%) for the sharing of carrier rental fees. This revenue-sharing amount would then be added to a base ground lease rental fee (e.g., \$1500/month) from Centerline to result in a total monthly rental payment due to Twilight Park. The

¹ Section 7.8 Removal: The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in the interest, to notify the building inspector within thirty (30) days of the discontinuance of use of the tower. Obsolete or unused towers and accessory structures shall be removed from any site within four (4) months of such notification. This letter will also give the Town authority to remove the tower at the applicant’s expense if it is removed within six (6) months of the time of discontinuance. This letter shall be filed with the building inspector prior to issuance of a building permit (assuming the telecommunication tower is approved according to this section). At that time, the applicant will post a bond in an amount sufficient to cover the costs of removal of the tower. Failure to notify and/or remove the obsolete or unused tower in accordance with these regulations, shall be a violation of this Local Law and shall be punishable by a fine of \$100 per day until the violation is remedied.

arrangement the Committee proposes to the Board is a 20% revenue-sharing agreement combined with a \$1500/month ground rental fee. Under this arrangement, the estimated total revenue from the expected carriers (i.e., AT&T and Verizon) plus the ground rental fee from Centerline would be \$2,260/ month, or \$27,120/year.

VI. Final Deal Terms Available to Twilight Park

- The Committee has concluded that the most advantageous financial deal terms currently available to Twilight Park provide \$2,260/month (\$27,120/year) in rental income.
- NOTE: This figure could increase if T-Mobile and/or Sprint elect to join the tower. If both additional carriers elected to join the tower, rental income would climb to \$3,060/month, or \$36,720/year. In that event, Centerline would have the contractual option to increase the tower height to 145 feet to accommodate these additional carriers.

VII. Conclusion

The Committee, appointed by Twilight's Board, believes it has negotiated the most favorable available terms in order to achieve the goals set forth by the Board. Matters of aesthetics and impact on the scenic beauty of the mountainside, as well as revenue maximization, were primary considerations in our negotiation deliberations. Protecting Twilight Park and its residents from liability risk was also a top consideration in constructing the lease agreement. Importantly, matters related to the long-term safety effects of having a cell tower proximate to Twilight Park Cottagers was not an issue that the Committee was in a position to evaluate or address.

APPENDIX:

Rental Comparables Provided by Centerline

Address	City	State	County	Ground Rent	Rev Share	Lease Area	Site Type	Height
1831 Route 739	Dingmans Ferry	PA	Pike	\$ 1,375.00	-	60x40	sst	280
5231 Frankford Ave	Philadelphia	PA	Philadelphia	\$ 1,500.00	\$350/sub	40x60	Monopole	55
2880 Summit Bridge	Bear	DE	New Castle	\$ 2,000.00	-	50x50	Monopole	130
1601 Dutton Mill Road	Aston	PA	Delaware	\$ 2,000.00	-	1200 sq ft	Monopole	120
5160 E Trindle Road	Mechanicsburg	PA	Cumberland	\$ 1,800.00	-	100x100	Monopole	120
1110 Township Line Road	Swedesboro	NJ	Gloucester	\$ 1,500.00	\$200/sub	50x50	Monopole	120
950 North South Road	Scranton	PA	Lackawanna	\$ 3,000.00	-	100x100	Monopole	120
5400 Pennel Road	Media	PA	Delaware	\$ 3,500.00	-	40x40	Monopole	150
1359 Ridge Road	Queensbury	NY	Warren	\$ 1,400.00	-	40x60	Monopine	130
730 Route 40	Melrose	NY	Rensselaer	\$ 1,500.00	20%	50x50	Monopine	105
Charlotte Valley Road	Summit	NY	Schoharie	\$ 800.00	10%	100x100	Monopole	130
2127 Route 206	Southampton	NJ	Burlington	\$ 1,400.00	\$350/sub	50x50	Monopole	150
80 Eayrestown Road	Medford	NJ	Burlington	\$ 1,500.00	20%	60x60	Monopole	151
2165 Delsea Drive	Franklin Twsp	NJ	Gloucester	\$ 1,250.00	10%	75x75	Monopole	140
133 Forest Street	Peabody	MA	Essex	\$ 1,800.00	15%	60x60	Monopine	120
40 Chimney Hill Road	Petersham	MA	Worcester	\$ 1,500.00	10%	100x100	Monopole	95
13411 Shire Lane	Ft Myers	FL	Lee	\$ 1,100.00	15%	80x80	Monopole	149
30 Highland Drive	Bradford	PA	McKean	\$ 1,100.00	10%	100x100	Monopole	199
Pine Grove Road	Pennsylvania Furnance	PA	Huntingdon	\$ 800.00	\$100/sub	100x100	sst	300
7342 Newport Road SE	Uhrichsville	OH	Tuscarawas	\$ 800.00	\$100/sub	100x100	sst	250
174 Municipal Road	East Providence Twsp	PA	Bedford	\$ 800.00	-	100x100	sst	190
Atsion Road	Shamong	NJ	Burlington	\$ 1,800.00	15%	75x75	Monopole	190
			AVERAGE	\$ 1,555.68				
Contracts drafted by AT&T								
Centerline contracts								