

WARREN Update regarding Proposed Cell Tower in Warren & FAQ

TO BE CLEAR, THE JANUARY 9 MEETING HAS BEEN POSTPONED.

This is to notify the public that the meeting with Verizon that had been scheduled for January 9, 2023, has been postponed. Verizon notified the Town that it will be re-noticing the proposal soon. ("Re-notice" is jargon for sending out a new legal notice

that resets legal timelines.) Therefore, the dates and timelines in the initial proposal are no longer accurate. Once Verizon re-notices, the Planning Commission will schedule a public meeting to occur within 60 days.

Below are frequently asked questions regarding the proposed cell tower prepared by the Warren Planning Commission for the community.

Q&A

Verizon Cell Tower Proposal FAQ

Question #1: I heard that Verizon is proposing a cell tower. Where can I see the initial notice Verizon filed in order to learn more about the proposed cell tower? When is Verizon presenting their proposal to the Town?

Answer: Please note that Verizon has notified the town that it will be re-noticing the proposal soon, but the initial proposal can be found here. Therefore, the dates and timelines in the initial proposal are no longer accurate.

<https://www.warrenvt.org/wp-content/uploads/2022/11/Verizon-cell-tower-notice-Airport-Rd-11.02.2022.pdf>

Question #2: Since the meeting with Verizon scheduled for January 9 has been moved back to a date TBD, when will we get to have a chance to meet with Verizon, hear about the details of the proposal, and ask questions?

Answer: Once we receive Verizon's new notice, we will schedule a public meeting and announce the date. This will be your opportunity to hear Verizon explain the details of the proposed cell tower.

Question #3: How do we learn more about coverage improvements and visual impacts of the proposed cell tower?

Answer: Verizon has not yet provided any information beyond the contents of its initial notice. Still, there are a few key points within its notice:

CLARIFICATIONS:

- The current proposal from Verizon is for a 4G tower, not 5G.
- The cell tower proposed is for 140 feet
- The cell tower proposed is not proposed with any lighting. (note: The FAA does not require lighting on cell towers under 200 feet tall.)

Please come to the meeting with Verizon when the new date is announced. That is when Verizon will have a chance to provide essential details about coverage benefits, visual impacts, screening (landscaping), etc.

Question #4: Can the Planning Commission or Town of Warren prevent cell towers from being built in Warren?

Answer: To promote telecommunications throughout the state, the Legislature created a pathway for telecommunication providers like Verizon to seek approval for cell towers from the Public Utility Commission, bypassing local DRBs and zoning ordinances. This is the process under 30 V.S.A. § 248a ("Section 248a"). Neither the Selectboard or the Planning Commission has the authority to prevent cell towers from being built in Warren, although the Town Plan and input from the town will be given "substantial deference" by the Public Utility Commission. (See Question #7 for more detail.)

Question #5: Can we change our town plan (or zoning ordinances) to prevent future cell towers in Warren?

Answer: No, we cannot change the town plan or zoning ordinances to prevent future cell towers from being built in Warren. However, one measure the Planning Commission could consider in the future would be to identify very specific areas of Warren that are not suitable for visually intrusive development (e.g., cell towers, tall, multi-story houses, hotels, other buildings, etc.) For example, undeveloped sections of our iconic ridge lines could be suitable choices for such an approach. However, such an approach must reach all development, not just cell towers. And it will impact the entire town. Therefore, it will require a thoughtful, analytical process to identify those areas justifiably "off limits" for any tall, multi-story development -- and clear mapping, as well as a full public conversation. The process cannot be a rush job centered around keeping cell towers out of one spot. It must be a comprehensive, thoughtful, public planning exercise, not spot zoning.

Question #6: What is the Public Utility Commission?

Answer: The Vermont Public Utility Commission is a quasi-judicial board that regulates electric power companies, telephone service providers, cable television providers, pipeline gas companies, and some water utilities. The Board consists of three members, all of whom are appointed by the Governor for staggered six-year terms. As a quasi-judicial entity, the Board operates much like a court. The Board conducts evidentiary hearings and issues decisions, typically referred to as Orders. Orders are legally binding decisions that can be appealed to the Vermont Supreme Court.

Question #7: How does Warren's Town Plan factor into the Public Utility Commission decision making process?

Answer: In addition to considering factors such as "undue adverse effect" on aesthetics and floodways, and undue adverse impacts on wildlife or the natural environment (as raised by the Agency of Natural Resources), the Public Utility Commission must also give "substantial deference" to the land conservation measures in Warren's Town Plan and the comments and recommendations of the Planning Commission and Select Board, unless "there is good cause to find otherwise." "Good cause" means a showing that deferring to the land conservation measures in the Town Plan would be detrimental to the public good or

the State's interests articulated in 30 V.S.A. § 202c. Section 202c seeks to "direct the benefits of improved telecommunications technology to all Vermonters." It "support[s] the availability of modern telecommunications services along the travel corridors and in the State's communities" and "provides for high-quality, reliable telecommunications services for Vermont businesses and residents."

"Substantial deference" means to give significant and meaningful weight to the land conservation measures in the Town Plan and the recommendations of Planning Commission and Select Board and the Central Vermont Regional Planning Commissions regarding the Town and Regional Plans, respectively.

Question #8: Where does the Planning Commission stand on new cell towers in general?

Answer: Given the state policy and legal process for approving new cell towers, which, in general, promote better cell service in Vermont, the PC thinks it is essential to understand the details, costs and benefits of any proposed cell tower project before advising the Selectboard whether they should commit the town to a potentially expensive course of action, such as hiring lawyers, litigating before the Public Utility Commission, etc.

Question #9: Where does the Planning Commission stand on Verizon's proposed new cell tower?

Answer: Regarding the proposed cell tower, the PC believes we need to hear and see the details of the proposed project -- including understanding coverage benefits and visual impacts -- and fully understand the pros and cons, before taking a position on Verizon's proposal. And, again, whatever position we take, the ultimate decision-maker is the Public Utility Commission, not the Town of Warren.

Question #10: Can you further explain the state process for approving cell towers?

Answer: Verizon is filing its application under the provisions of 30 V.S.A. § 248a ("Section 248a"), for a Certificate of Public Good to allow the construction of a wireless telecommunications facility. This takes the application out of the hands of the Warren DRB and puts it in front of the Public Utility Commission.

Question #11: Please provide more details on the Section 248a process and how it relates to the proposed cell tower.

Answer: Under Section 248a, Verizon's proposed project is classified as a "limited size and scope" project since it is a new facility that does not exceed 140 feet in height. For such projects, the first step is a 60-day advance notice period that begins to run once the telecommunications provider (Verizon) gives official legal notice of the proposed project to the Town Planning Commission and Select Board, abutting neighbors, the Regional Planning Commission, etc. During this period, the Planning Commission can and will require that the telecommunications provider appear in a public meeting to discuss the details of the proposed project. After the conclusion of the 60-day notice period, Verizon can then file its application with the Public Utility Commission (PUC). Then there is a 30-day period to file public comments, requests to intervene and requests for a hearing before the PUC on the proposal. If significant issues are raised before the PUC, then a more robust administrative process (discovery, testimony, evidence gathering, filing legal briefs) will take place before the PUC makes its decision. If no significant issues are raised, then the PUC will make its decision without the fuller administrative process. By re-noticing, Verizon restarts the clock, beginning with the 60-day advance notice period.

See the following link for more information on the process and timeline: https://puc.vermont.gov/sites/psbnew/files/doc_library/wireless-communications-facilities-section-248a_1.pdf Another very helpful link is here, but note that it refers to the Public Utility Commission by its old name of the "Public Service Board": https://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Legislative_Reports/Public%20Guide%20248a.pdf

Question #12: I have heard that Verizon's notice to the town didn't meet legal requirements and was defective: Is that true?

Answer: It is up to the PUC, not the Town, to ensure a notice issued under 248a meets all the requirements. However, Verizon informed the town (via the Town's attorney) that the company will re-notice the meeting, so this issue is moot.

Question #13: I have seen a lot of frightening emails and petitions about this cell tower. What is the Planning Commission's take on these?

Answer: Given that Verizon has shared its intent without providing essential details yet, it's understandable that people may fill the vacuum of information with their concerns. Indeed, the public engagement around this issue has been impressive and we hope it continues past this specific issue into many other important issues on the Town's agenda. Unfortunately, petitions can stoke alarm through exaggeration or misinformation. This is an important reason why the Planning Commission is taking proactive steps to surface and provide all the information we

know - and what we don't know - as well as clear opportunities to receive public input.

The simple, and understandably frustrating, fact is we are still waiting for Verizon's full, on-the-record explanation about the coverage benefits, the visual impacts, and any other impacts that the cell tower project presents.

Question #14: I am very concerned about health risks from cell towers and/or the impact cell towers could have on my property value. Why isn't the Planning Commission focusing on these issues?

Answer: The Public Utility Commission doesn't consider concerns or arguments based on health impacts or claims that cell towers will hurt property values. These issues are just not relevant to the PUC's decision-making process (federal law prevents consideration of health impacts). Since the PUC doesn't factor these into its decision making, we need to focus on issues it does consider.

Question #15: So, what factors does the Public Utility Commission consider?

Answer: Before the Public Utility Commission issues a Certificate of Public Good, for a project of limited size and scope, it must find that the project will not have an "undue adverse effect" on aesthetics and floodways. The Agency of Natural Resources will intervene if it feels there are undue adverse impacts on wildlife or the natural environment. Please see Question #7 above for the role of the Town Plan and input from the Planning Commission and Select Board in the PUC's decision making process. See also: https://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Legislative_Reports/Public%20Guide%20248a.pdf

Question #16: What is the role of the Planning Commission in § 248a hearings?

Answer: Put simply, the Town of Warren's may participate in the § 248a review process in three primary ways. First, we have the right to request a public meeting with the petitioner (Verizon) and the Department of Public Service. Second, we can submit comments to the Public Utility Commission. Third, the Town has the right to intervene in the proceeding and become a formal party.

Question #17: What about local zoning?

Answer: Telecommunication providers like Verizon who apply through the § 248a process are not required to obtain a local zoning permit.

Question #18: What is the Warren PC currently doing about this?

Answer: We are working closely with the Select Board and the Town's lawyer to make sure the town's interests are represented, and to the extent the § 248a process allows, protected. We will ensure a public meeting takes place where Verizon answers our questions about the proposed project -- the date of this meeting has not been set yet and depends entirely on when Verizon re-notices the Town. We recently held public meetings with lawyers from the Public Service Department and Clare Rock of the Central Vermont Regional Planning Commission to better understand their roles in the § 248a process, and to make sure we fully understand our own rights. We have gathered a lengthy list of questions about the proposed project for Verizon.

Question #19: We heard that the Planning Commission "gutted" zoning regulations related to cell towers. Is that true?

Answer: No, it's not true. We have posted the telecommunications facilities section of the current regulation and the relevant section of the proposed regulations here for your reference

<https://www.warrenvt.org/documents/current-proposed-tower-regulations/>

The Planning Commission strongly disagrees with the idea floated by some opponents of the cell tower that the proposed LUDRs "gutted" zoning regulations about telecommunication towers. Given the thorough, lengthy and very public process by which these regulations were created, it's worth noting that this misinformation has only been spread after the proposed cell tower's specific location was made public.

Question #20: What is the status of Warren's proposed Land Use and Development Regulations?

Answer: After a three-year-plus public process, the Warren PC recently presented the Warren Select Board with its proposed update to the Warren Land Use and Development Regulations. The Select Board announced they will hold a public meeting on these regulations on February 14, 2023. Currently, the Select Board members are reviewing the document in its entirety to decide what changes they would like to make, if any.

Please forward further questions to
warren-planning-commission@googlegroups.com
And we will get back to you.

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