

July 20, 2022

Via email (westernsuburbs@crowncastle.com) and via Certified Mail

Samuel Franklin
Supervisor, Network Permitting & Utilities
Crown Castle
8020 Katy Freeway
Houston, TX 77024

**Re: Village of Clarendon Hills
Crown Castle Application
Small Wireless Facility on Replacement Wood Utility Pole North of the Intersection of Ruby Street and Western Avenue
Location: On the west side of Ruby Street approximately 110' north of the intersection of Ruby Street and Western Avenue.**

Mr. Franklin,

The Village of Clarendon Hills is in receipt of a small wireless facility application submitted by you on behalf of Crown Castle Fiber LLC ("Crown Castle"), postmarked on June 17, 2022, and received by the Village on June 22, 2022 (the "Application"). The Application proposes the installation of a small wireless facility and related equipment on a replacement for an existing wooden ComEd pole. Pursuant to the Illinois Small Wireless Facilities Deployment Act (50 ILCS 840/1 *et seq.*) (the "State Act"), within 30 days after receiving an application, the Village is required to determine whether the application is complete and notify the applicant of the missing information. Village staff, along with the Village's telecommunications consultant, have reviewed the Application and found it to be incomplete, deficient and/or not in compliance with Village requirements based on the following:

I. APPLICATION and DOCUMENTATION REQUIREMENTS: The documents provided by Crown Castle show basic schematic diagrams of the site, site plan documents, and site photos. In order to complete the Application and review process, additional information is required. The following supplementary information will be needed per the requirements of the State Act, the Village's Small Wireless Facilities Ordinance (Chapter 60 of the Village Code), the Village's Chapter governing construction of utility facilities in the right of way (Chapter 56 of the Village Code), and the Village's adopted Small Wireless Facility Design Standards:

1. The Application includes no information on whether, to the extent commercially available, technologically compatible with the local network system and already used in its national or regional wireless network system, the equipment has the smallest visual profile. Crown Castle asserts that local governments cannot dictate wireless technology choices under federal law. The requirement in question is an aesthetic regulation within the power of local governments under both State and federal law. The New York case you cite is not binding on Illinois State or federal courts. The information must be provided.

2. Section 60.5 (Permits; Application Process) of Chapter 60 of the Clarendon Hills Village Code (the "Small Cell Ordinance"), at subsection A.7., requires inclusion in the Application of a "(c)ertification that, to the best of the applicant's knowledge, the collocation complies with the written design standards established by the Village, and with the various other requirements set forth in this chapter and code." The Certification of Compliance included with Crown Castle's Application certifies to compliance with the Village's written design standards (the "Design Standards") and other Village Code requirements, "to the extent they do not conflict with State or federal law." Crown Castle's statement suggests that it can "pick and choose" those requirements that it believes are in conflict with State or federal law. The Village asserts that its requirements do comply with State and federal law, and the certification should attest to compliance with all Village requirements.
3. The Application and associated construction drawings do not include drawings or plans illustrating the route by which power lines and conduits will be extended in order to serve the site. The proposed location of the small wireless facility is on the west side of the right of way along Western Avenue. It is unclear as to whether any water or sewer facilities are buried beneath the west right of way along Western Avenue as no drawings showing utilities are provided. Crown Castle should provide its power and fiber routes identifying water, sewer, gas and electric utilities if such routes are to be located underground.

Although Crown Castle's plans (Page SWF-1) indicate "Fiber and power cables in new conduit (under separate permit submission)," no application for the fiber and power cable conduit permit for use of the right of way has been filed with the Village. Crown Castle should provide its drawings for the fiber and power conduit route and apply for the right of way permit.

The absence of plans indicating the extension of power to the proposed cell site also leaves open the question of whether power will be supplied aerially, or if it will be extended by way of directional boring.

Crown Castle must indicate if directional boring or aerial installation, or both, are contemplated for extension of power and fiber lines to the cell site. Also, if directional boring is used, Crown Castle should identify any and all driveways that will be disturbed by open cutting, and state that it will repair and replace the affected portion of the driveway(s) with the same or substantially similar materials.

4. Crown Castle should provide an FAA 1-A Certification of the location of the cell site, or a legal description. The FAA 1-A Certification is commonly provided with small cell applications and as a public document, and the Village is within its rights to request it.
5. Crown Castle does not provide a statement that the frequencies of the Small Wireless Facility will not interfere with those used by public safety providers, including the Village of Clarendon Hills Police and Fire Departments, in accordance with Section 60.9 of the Village's Small Cell Ordinance.
6. The Application is required to include copies of all licenses, permits and approvals required by or from the Village (i.e. zoning approval, where required), other agencies and units of government with jurisdiction over the design, construction, location and operation of the small wireless facility. The Application does not include such information, and Crown Castle has asserted that the request exceeds the authority granted to the Village by the State Act. Proof that you have authority for the installation from any necessary entity is basic information that is clearly necessary for issuance of a permit, is consistent with the State Act, and may clearly be requested pursuant to the Village's police powers. The information must be provided.

7. The Application is required to include, where a small wireless facility is proposed to be attached to an existing utility pole or wireless support structure owned by an entity other than the Village, legally competent evidence of the consent of the owner of such pole or wireless support structure to the proposed collocation. The Application does not include such information, and Crown Castle has asserted that the request exceeds the authority granted to the Village by the Illinois Small Wireless Facilities Deployment Act. Proof that Crown Castle has a right to locate on personal property owned by an entity other than the Village is basic information that is clearly necessary for issuance of a permit, is consistent with the State Act, and may clearly be requested pursuant to the Village's police powers. The full ComEd collocation agreement must be provided, as well as proof that ComEd has approved this particular collocation.
8. The Application includes no information on whether a pre-application review was conducted by or with Village staff, and Crown Castle asserts that the request exceeds the authority granted to local governments by the State Act. We note only that a pre-application review is encouraged but not required by the Village Code, and that requesting information on whether such a review was conducted is a very basic and innocuous thing to request in an application. No pre-application review was conducted in this case, which is unfortunate, as the process is designed to facilitate cooperation between the parties and allows the parties the opportunity to identify potential utility conflicts, consider possible alternative locations, and other related issues.
9. The Application includes no detailed information on compliance with FCC standards, including compliance with radio frequency emissions, technical data reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC, and a monitoring plan relative to radio frequency emissions, and asserts that requesting such information exceeds the authority of a local government under the State Act. Requiring information designed to ensure the installation will comply with applicable FCC Codes, including radio frequency emissions, is consistent with the State Act and federal law, and is basic health and safety information which a local government may seek pursuant to its police powers. The request is also consistent with subsection 50 ILCS 840/15(d)(6)(G) of the State Act, and Section 60.9.G. of the Village's Small Cell Ordinance, both of which require that wireless providers comply with applicable codes and local code provisions or regulations that concern public safety. The omission of this important safety information is troubling; it must be provided.
10. The Application includes no proof of all applicable licenses or other approvals required by the FCC, including but not limited to information showing the small wireless facility has received any required review (e.g., environmental assessment and review) by the FCC pursuant to the National Environmental Policy Act ("NEPA"), or is exempt from such requirements. While an applicant may claim the small wireless facility is exempt, it must state the basis for the exemption and provide proof, including supporting documents that establish that the proposed facility meets such exemption. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. Again, information designed to ensure the installation will comply with applicable FCC Regulations and has had required federal reviews and approvals, is consistent with the State Act and federal law, and is basic health and safety information which a local government may seek pursuant to its police powers. The request is also consistent with subsection 50 ILCS 840/15(d)(6)(G) of the State Act, and Section 60.9.G. of the Village's Small Cell Ordinance, both of which require that wireless providers comply with applicable codes and local code provisions or regulations that concern public safety. The information must be provided.

11. The Application does not include a written report that analyzes acoustic levels for the small wireless facility and all associated equipment, for the purpose of demonstrating compliance with generally applicable Village noise regulations, including, but not limited to, subsection 44.8.C. of the Village Code, which sets forth noise standards generally applicable to all utility equipment located in Village rights of way. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The Village disagrees – requiring compliance with generally applicable acoustic regulations is clearly within the authority of a local government under the State Act as amended by Public Act 102-0009. The information must be provided.
12. The Application does not include a written description and/or map identifying the geographic service area for the small wireless facility. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The Village request for this information is a reasonable one designed to, among other things, help the Village better understand the nature and need for additional small wireless facility installations going forward, and to help the Village plan for, and minimize, the visual aesthetic impacts of future installations. The information must be provided.
13. The Application does not include information indicating whether the proposed small wireless facility is claimed to be located in an “easement for compatible use” as referred to in the State Act, and proof of Crown Castle’s right to install a small wireless facility at this location in conformance with the State Act. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The requirement that an applicant demonstrate a legal ability to locate a small wireless facility at a proposed location fits squarely within the intent of the State Act to allow such installations as permitted uses in the public right of way, but not elsewhere. The information must be provided.
14. The Application does not include a master plan which identifies the location of the proposed small wireless facility in relation to all existing and potential locations in the Village that are reasonably anticipated for construction within two (2) years of submittal of the application. Crown Castle asserts that this request exceeds the authority granted to local governments by the State Act. The Village request for this information is a reasonable one designed to, among other things, help the Village better understand the nature and need for additional small wireless facility installations going forward, and to help the Village plan for, and minimize, the visual aesthetic impacts of future installations. The information must be provided.
15. The Application does not include the name of the wireless service provider on whose behalf the proposed installation is being performed, and any additional parties proposed to be involved in the installation. Crown Castle asserts in the Application that this request exceeds the authority granted to local governments by the State Act. The State Act defines “wireless infrastructure provider” as any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the authority.” Assuming Crown Castle is acting as a wireless infrastructure provider for purposes of submitting the Application, it is then necessary for the Village to ascertain the actual wireless service provider on whose behalf the work is being performed and to be provided with proof of such agency. Wireless infrastructure providers cannot build small wireless facilities on spec. Please provide signed agreements or other documentation clearly establishing what wireless services provider Crown Castle is acting on behalf of in this application and the scope of its authority to be an applicant.

16. The Application does not include a proposed notice for mailing by Crown Castle as the applicant to owners and occupants of nearby properties, and the Village has received no supplemental proof of the mailing of such a notice as required to take place within three (3) days of the submission of an application. Crown Castle asserts in the Application that these requests exceed the authority granted to local governments by the State Act. The requests do not exceed the Village's authority under the State Act. They implement neither a zoning process, nor impact the timelines for decision-making on the Application. The Code provision in question merely requires proof that reasonable notice was made to nearby property owners, so that they have an opportunity to comment on the aesthetics of the proposed installation, and an opportunity to communicate any comments and suggestions to the applicant and Village for purposes of achieving the best possible aesthetic results. The proposed notice must be provided, and the mailing must be performed.
17. Crown Castle should provide a statement of compliance with local, federal and state regulations and safety standards, including certification that it complies with paragraph 6 of 50 ILCS 840/15(d)(6) of the State Act.
18. Crown Castle should provide information on the contractor for the project, including contact information. All contractors and subcontractors working on the project shall be registered with the Village of Clarendon Hills.
19. Crown Castle should identify the entity providing the backhaul network for the small wireless facility. In the event that Crown Castle is providing the backhaul network, it should so identify that on its plans.
20. Crown Castle should complete the FCC Office of Engineering and Technology (OET) Bulletin 65 Appendix A forms showing that the proposed project is exempt from FCC RF regulations and requirements. These forms may be found at: http://wireless.fcc.gov/siting/FCC_LSGAC_RF_Guide.pdf on page 18.
21. Crown Castle must affirm that it will comply with the various building codes adopted by the Village.

II. DESIGN REQUIREMENTS: Crown Castle has indicated that it complies with the Village's design standards for small wireless facilities. However, Crown Castle's plans do not meet the following standards:

1. Crown Castle's photo simulations do not show the equipment to be painted the same color as the proposed pole.
2. Crown Castle has not indicated placement of a 4" x 6" plate with the wireless provider's name, location, identifying information, and emergency telephone number.
3. Crown Castle's proposed pole does not minimize the visual or aesthetic impact of the new vertical element and its associated small wireless facilities upon the surrounding area and does not blend in with the surrounding streetscape.
4. Crown Castle's plans do not indicate how the pole will be supported. The Village's design standards require a "... reinforced concrete foundation designed, stamped, sealed, and signed by a professional engineer licensed and registered in the State of Illinois, and subject to the approval of the Director of Public Works or his or her designee." Crown Castle's plans do not include a reinforced concrete foundation, or any other identified means of support.
5. Other than painting the equipment to match the proposed wooden pole, Crown Castle proposes no other concealment measures that would minimize adverse aesthetic and visual impacts upon the right of way or nearby properties or buildings. Crown Castle should propose alternative and/or additional measures for concealment.

6. Crown Castle proposes concealing an underground power conduit and connection in a Quazite box and handhole adjacent to the proposed pole, however, it does not propose or illustrate a similar box and handhole for an underground fiber conduit and interface.
7. Crown Castle makes a general assertion that any design standards that do not apply to other occupiers of the right of way are preempted by the State Act. We disagree with your reading of the State Act. Compliance with the Village's adopted Design Standards is required.
8. The following additional information relative to compliance with the Village's Design Standards must be provided:
 - Confirm various equipment has UL listing that provides for painting without voiding listing.

III. OTHER:

1. The Certificate of Liability Insurance should include limits that meet or exceed the requirements set forth in Section 60.8 of the Village's Small Cell Ordinance.
2. The Certificate of Insurance and policies reflected therein, should name, as additional insureds on a primary and non-contributory basis: "the Village of Clarendon Hills and its appointed and elected officials, officers, president and trustees, employees, attorneys, engineers and agents."

Once you have resubmitted your application with the requested information, we will be in a position to further review it for compliance with the Village's requirements. Pursuant to the State Act, the processing deadlines for the Application are tolled from the date of this notice to the time you provide all missing information.

Please do not hesitate to contact me, should you need clarification or have any other questions.

Sincerely,



Jonathan Mendel
Community Development Director

cc: Kevin Barr, Village Manager (via email)
Stu Chapman, MSA (via email)
Jason Guisinger, Village Attorney (via email)