

**THOMSON ROGERS**

**LAWYERS**

c26 Communication	
COUNCIL: Oct 19/16	
Referred	Item 2

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**SENT BY E-MAIL**

October 18, 2016

Mayor and Members of Council  
City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, Ontario  
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Dear Sirs/Mesdames:

**Council Meeting - October 19, 2016**  
**City of Vaughan - Telecommunication Facility Siting Protocol**  
**Comments Concerning City of Vaughan**  
**Policy Relating to Telecommunication Facilities**  
**Our File No. 050739**

We are the solicitors for Bell, TELUS and Rogers Communications (the "Wireless Carriers") in connection with the City of Vaughan's ("Vaughan") Telecommunication Facilities Siting Protocol ("Protocol"). We are writing to you further to our correspondence of September 6, 2016, our deputation to Committee of the Whole on September 7 and our meetings with your Planning Staff since that time.

At the outset, and on behalf of the Wireless Carriers, we wish to thank Council and its Planning staff for allowing us to continue the dialogue related to our issues of concern. While the revised Protocol addresses many of our issues, we remain concerned with the manner in which the Protocol deals with the Department of Innovation, Science and Economic Development Canada's ("ISED") mandatory exclusions as they relate to the reconstruction of towers and new requirements for towers proposed in New Community Areas which are not yet the subject of Block Plans. We trust the comments which follow are of benefit to Council's deliberations.

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**Block Plan Coordination**

Council may recall from our earlier deputation that the Task Force considered the circumstance where Antenna Systems are developed in rural areas before block planning has occurred. The Task Force recommended that staff be directed to consult with telecommunication facility proponents and report back to Council on opportunities to promote unobtrusive siting using the Block Plan process. Staff responded to that recommendation with Protocol policy 5.3.

The Wireless Carriers are concerned that Protocol policy 5.3 will have the unintended result of shifting the cost of relocation onto the Wireless Carrier in circumstances where the financial benefit of relocation is enjoyed by another party. Such a result would be unfair. No other land use in Vaughan is the subject of such a harsh requirement.

During our discussions with Planning staff the Wireless Carriers agreed that they would agree to relocate their towers approved in the New Community Areas in advance of the approval of Block Plans provided preconditions were met to ensure they were not prejudiced including that:

- a. Municipal Concurrence has been granted, a lease/license secured for the replacement Antenna System, and the new replacement Antenna System is built and in service in order to ensure that service is not disrupted in the affected area;
- b. Reasonable commercial terms are in place to reimburse the owner of the Antenna System for the costs associated with the relocation in recognition of the fact that the costs associated with relocating an antenna system is significant. Given the nature of the New Community Areas we believe that relocation will likely be triggered by the local land owners cost sharing group's requirements. If that is the case then the cost sharing group ought to be responsible for the costs of relocation consistent with the principal that the entity benefitting should pay for the relocation; and,
- c. The owner of the Antenna System has determined that the replacement site is technically acceptable in order to ensure no network degradation.

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It was our submission to Planning Staff that Policy 5.3 Subsection (1) ought to contain a third criteria for the condition of concurrence which reads:

“Reasonable commercial terms are in place to reimburse the owner of the Antenna System for the costs associated with the relocation;”

We believe that our addition to the policy meets Vaughan’s objectives while ensuring no undue prejudice to the owner of the Antenna System.

Please note that Policy 5.3 anticipates two alternate processes. In New Community Areas municipal concurrence for a new antenna system located in an area without an approved Block Plan would be subject to conditions of concurrence dictating how and when relocation would occur. Our proposed language would be part of that process and is necessary because it anticipates a circumstance where no pre-existing financial arrangement is in place as a result of a lease or other agreement.

The second process accommodates a circumstance where the Wireless Carrier’s landlord has required a relocation clause in the lease. Relocation clauses are rare. However, when they occur we believe it is reasonable for the protocol to defer to the financial arrangements made between the Wireless Carrier and the private landowner.

**We request that Council add to policy 5.3 Subsection (1) the aforementioned language requiring reasonable financial terms as preconditions to relocation.**

#### **ISED’s Exclusion Related to Tower Reconstruction**

The municipal consultation process governing the siting of Antenna Systems is set out in ISED’s regulatory document CPC-2-0-03 (“CPC”). Compliance with the CPC is a condition of the Carriers’ licenses and overrules municipal protocols.

While the ordinary rule is that proponents of Antenna Systems consult with both the local municipality and the nearby affected public, the CPC contains a number of exclusions that permit construction without consultation or municipal concurrence in recognition that they have little or no land use impact. One of those exclusions permits proponents to replace an

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*80 years*

existing tower with one that is similar to the original design and location. An extract of the relevant portion of the CPC can be found at Schedule 1 with emphasis added.

In our discussions with Planning staff we identified that while the Protocol purports to carry forward the ISEDC exclusions, it does not carry forward the exclusion for replacement of an existing tower. Rather, it appears that the draft Protocol has relied on a Task Force recommendation which was based on an earlier version of the CPC. As a result, the Protocol is out of step with ISEDC's requirement and does not recognise replacement towers.

In our view the tower replacement exclusion is important in the context of Vaughan for two reasons. First and foremost the Protocol directs proponents to consider co-location on an existing tower as a priority. Co-location often requires that the structural integrity of the existing antenna support system be improved. Over time, as infrastructure is added, an antenna structure will no longer be able to be reinforced and will instead have to be replaced. Requiring a proponent to undertake a municipal consultation process to comply with the City's preference for co-location would amount to a significant disincentive to do so. This is particularly true when there is no additional land use impact.

Second, wireless technology has been available in Canada since the early 1980s. Some of the original towers are now reaching the end of their useful service life and should be replaced. It would be unfair for a proponent to have to consult with the municipality in such a circumstance.

**We request that Council direct staff to replace the current language related to exclusions for existing antenna systems with the exclusion for existing antenna systems found in the current CPC in order to bring it into compliance with ISEDC's requirements.**

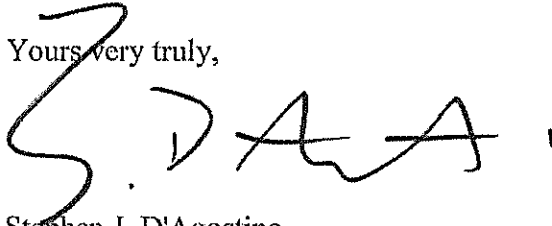
### **Conclusion**

We trust that these comments are useful in Council's deliberations leading to a protocol that meets the need of all stakeholders. To that end, the Wireless Carriers are committed to working with your Planning Staff in order to clarify these comments and answer questions as required.

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Yours very truly,

A handwritten signature in black ink, appearing to read "S. D'Agostino". The signature is fluid and cursive, with a large initial "S" and a distinct "D'Agostino" following.

Stephen J. D'Agostino

*Stephen Joseph D'Agostino Law Professional Corporation*

SJD/aph

cc: Clients

**Schedule 1****6. Exclusions**

All proponents must satisfy the General Requirements outlined in Section 7 regardless of whether an exclusion applies to their proposal. All proponents must also consult the land-use authority and the public unless a proposal is specifically excluded. Individual circumstances vary with each antenna system installation and modification, and the exclusion criteria below should be applied in consideration of local circumstances. Consequently, it may be prudent for the proponent to consult even though the proposal meets an exclusion noted below. Therefore, when applying the criteria for exclusion, proponents should consider such things as:

- the antenna system's physical dimensions, including the antenna, mast, and tower, compared to the local surroundings;
- the location of the proposed antenna system on the property and its proximity to neighbouring residents;
- the likelihood of an area being a community-sensitive location; and
- Transport Canada's marking and lighting requirements for the proposed structure.

The following proposals are excluded from land-use authority and public consultation requirements:

- New Antenna Systems: where the height is less than 15 metres above ground level. This exclusion does not apply to antenna systems proposed by telecommunications carriers, broadcasting undertakings or third party tower owners;
- Existing Antenna Systems: where modifications are made, antennas added or the tower replaced Footnote 10, including to facilitate sharing, provided that the total cumulative height increase is no greater than 25% of the height of the initial antenna system installation Footnote 11. No increase in height may occur within one year of completion of the initial construction. This exclusion does not apply to antenna systems using purpose built antenna supporting structures with a height of less than 15 metres above ground level operated by telecommunications carriers, broadcasting undertakings or third party tower owners;

- Non-Tower Structures: antennas on buildings, water towers, lamp posts, etc. may be excluded from consultation provided that the height above ground of the non-tower structure, exclusive of appurtenances, is not increased by more than 25% Footnote 12 and
- Temporary Antenna Systems: used for special events or emergency operations and must be removed within three months of the start of the emergency or special event.
- No consultation is required prior to performing maintenance on an existing antenna system.