Declaratory Judgment Action (DJA) Suit

On 10/6/20 the Board of Trustees (BOT) of the Village of Upper Brookville made a one-word code change establishing total control over how the Zoning Board of Appeals (ZBA) must always vote YES to a cell tower application on Village-owned property. (VOP) We are asking a Nassau County Supreme Court Judge to rule that the BOT "exceeded its authority" by making this change. At the same time, the BOT is maintaining the appearance of a traditional ZBA hearing which is a charade.

In other words, the BOT cannot fix the vote one way and tell us that our considered feedback regarding a cell tower in our neighborhood will be taken seriously at a hearing. This is disingenuous when, in fact, the hearing is in name only, and of no real consequence in terms of affecting the ZBA's power to vote NO on our behalf, based on the evidence.

We maintain that the Village cannot lawfully maintain its current position B (see below) which is a hybrid of A and C. It must either revert its position to A or transparently assume C. Position B is deceptive and misleading to Village residents. We either have full say with legal clout at a ZBA hearing, as in A or we have no say at all, as in C.

The diagram below depicts the reasoning behind our DJA suit, taking Municipal law into account:

Position A

RE: <u>Village-Owned</u> <u>Property</u> Before Code Change

Under New York State Municipal law, the ZBA had the power to grant or deny a cell tower application on Village-owned property, based on the merits of the application. Village Code empowered the ZBA to consider resident opinions regarding a cell tower installation and to factor this input into a decision for or against a permit. Resident input at a Zoning Board hearing was meaningful and had clout in terms of the outcome.

Since its inception, the ZBA has operated without interference from other Village Boards for Village-owned, public, and private property. This is according to the Separation of Powers provision in NYS Municipal law.

Position B (hybrid)

RE: Village Position on VOP's After Code Change on 10/6/20

ZBA Vote Sewn Up as an Automatic

YES

(from Position C)

HEARING RETAINED

(from Position A), but a Charade!

Position C

RE: Village Option for Total Control Over Cell Tower Application Process

In some NYS Municipalities, a Village Board of Trustees takes total control over all cell tower applications and their approval without factoring in evidence harvested from a good code or considering resident input at scheduled hearings. They do this by exempting their Village properties from all zoning requirements altogether, which gives them total control over every facet of the decision-making process. NYS Municipal law affords Village Boards this option, however, some elected officials in NYS may avoid assuming this potentially unpopular political position with their constituents. Many boards choose to retain Position A, which is the most democratic and participatory option.

