



Fwd: Letter in Opposition to the Settlement of the Homeland Tower Litigation

Mindy Jesek <villageclerk@nelsonvilleny.gov>

Tue, Jan 21, 2020 at 5:32 PM

Reply-To: villageclerk@nelsonvilleny.gov

To: Village Board of Trustees <villageboard@nelsonvilleny.gov>

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From: **Harold E Akselrad**

Date: Tue, Jan 21, 2020, 5:29 PM

Subject: Letter in Opposition to the Settlement of the Homeland Tower Litigation

To: Mindy Jesek <villageclerk@nelsonvilleny.gov>

Dear Mayor and Trustees,

I submit this letter to urge the Board of Trustees to reject the proposed settlement at this time. The settlement is premature and does not respect the hard work performed by our Zoning Board of Appeals. After many hearings and consideration of voluminous evidence adduced at the hearing, our Zoning Board rejected the application for the variance. It is incumbent on our Board of Trustees and our Village to defend that decision as a reasoned and proper one. Instead, after some pre-trial discovery and prior to any adjudication on the merits and with no new facts, the Board of Trustees is proposing to stop defending the ZBA decision and approve a fake tree design.

Of the 3 designs submitted by Homeland to the ZBA, the faux pine tree ("frankenpine") was the least acceptable, drawing only 1 vote among the 5 Board members. The solitary pole proposal drew 2 votes and was less esthetically damaging to the SASS than the frankenpine. Nevertheless, without any new evidence or reconsideration by the ZBA, this Board is simply surrendering to Homeland's will. Homeland has negotiated in bad faith throughout this process including in the recent negotiations by demanding the right to erect 2 solitary poles, even though SHPO in its April 16, 2018 letter specifically rejected that design.

I know this is a long, arduous and expensive process that this Village wishes it never had to deal with. However, as with the 17 year battle over Storm King, there are times a community has to step up to preserve its legacy and future. That challenge has been put to Nelsonville. We have been confident that our ZBA's prior decision was the right one and would ultimately prevail if we had the fortitude to defend it. In time, another cell solution would present itself and resolve this issue favorably for all.

The timing for a settlement is particularly poor now because the current state of the law is temporarily in Homeland's favor. The recently issued guidelines by the FCC represent another attempt by the Trump Administration to deregulate businesses across the board from regulations that were wise when adopted and would continue to be good public policy, all without hearings and a public process, just as they are doing on ecological and environmental issues, health care issues, and more. The FCC regulations are currently being challenged in Federal Court in the Ninth Circuit and it is virtually certain that those regulations will not withstand judicial scrutiny. I would urge the Board to continue the litigation until such time as the law is clarified and the Village is in a position to negotiate for a better solution.

This Board has stated that it would continue to defend the ZBA decision if it saw a clear legal path and the resources to do it. The legal path is clear: Continue to defend the ZBA ruling on the merits. The Village has retained expert counsel in Todd Steckler and as a solo practitioner, he is particularly cost-efficient and effective. Homeland has no clear path to victory over Nelsonville in the courts; it only has deeper pockets to continue to wear our Mayor and Trustees down. With public office comes public accountability and then public support: This community has quickly raised over \$30,000 to continue to litigate and I would urge the Board to plumb public support to see if additional resources would be forthcoming to do so. I would also urge the Board to reach out to Cold Spring and Philipstown for additional support as their residents will be deeply impacted as well.

This decision is so important to the esthetic future of the Village that I would urge the Board to put it to the citizens in a referendum as it did with the Secor easement so that the informed and expressed will of the people can guide this Board in its decision. There was no support in the last election for capitulating to Homeland and absent support in a referendum, I suggest the Board is not reflecting the sentiment of the community, despite its sincere desire to do what is best for our community.

Finally, if the will of the community is to end this litigation, rather than simply capitulate to Homeland's mostly non-negotiable demands for this frankenpine, I would reconvene and empower the ZBA to find the least offensive solution, adopt it and then defend it. Perhaps our ZBA would consider adopting conditions on that frankenpine to look more like faux pine trees utilized in the Adirondacks or perhaps the ZBA would prefer a pole, decisions that would be easily defended if Homeland mounted another challenge in Federal Court. I have personally inspected a number of Homeland installations and found they are mostly a sad blight on their surroundings and not well-maintained. Simply taking the easy path of being done with this litigation and letting Homeland encroach on our SASS by building this frankenpine (that will be there for most of our natural lives) without additional conditions will prove to be a short-sighted solution this Board and community will come to regret.

Sincerely,

Harold Akselrad
Resident of Nelsonville
Moffat Road