

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Martinsburg

RECEIVED

DEC 12 2023

VB BTS, LLC,

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

Plaintiffs,

v.

Civil Action No. 3:23-CV-171
Judge Bailey

JEFFERSON COUNTY, WEST VIRGINIA
and THE JEFFERSON COUNTY
PLANNING COMMISSION,

Defendants.

ORDER


On November 15, 2023, the parties filed a Joint Stipulation of Dismissal Without Prejudice [Doc. 23]. Therein, the parties stipulate to dismissal of all plaintiff's claims against defendants in this matter without prejudice, parties to bear their own costs and fees.

Upon consideration, this Court hereby **DISMISSES WITHOUT PREJUDICE** the above-styled case. The Clerk is **DIRECTED TO STRIKE** the above-styled case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: November 16, 2023.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE

MUTUAL SETTLEMENT AGREEMENT

This Mutual Settlement Agreement (“Settlement Agreement”) is made and entered into as of the date of the last signature to this Settlement Agreement (hereinafter the “Effective Date”), by and between, on the one hand, VB BTS, LLC (“Vertical Bridge”) and, on the other hand, the Jefferson County Planning Commission (the “County”) (collectively, the “Parties” or individually, a “Party”).

RECITALS

WHEREAS, Vertical Bridge desired and applied to construct a telecommunications tower on property located at 1329 Lakeside Dr., Jefferson County, WV (the “Tower”). The specifics of the Tower are set forth in an application Vertical Bridge previously filed with the County seeking the issuance of a permit (the “Application”). The Application included a concept plan as called for in Section 4B.7 of the County’s Zoning and Land Development Ordinance (the “Ordinance”). The issue of approval of the Concept Plan was the sole issue before the Planning Commission.

WHEREAS, the County denied the Concept Plan (the “Denial”) on or about June 13, 2023;

WHEREAS, Vertical Bridge filed a lawsuit against the County related to the Denial; said lawsuit is captioned VB BTS, LLC vs. Jefferson County, West Virginia, et al., Federal District Court for Northern District of West Virginia, Case No. 3:23-cv-171 (the “Lawsuit”);

WHEREAS, the Parties engaged in settlement communications following the filing of the Lawsuit. As part of those efforts, Vertical Bridge proposed certain modifications to the Tower and Application in conjunction with direction from the County, including (but not limited to) shifting the Tower compound further back on the property, painting the tower, and providing

additional landscaping around the Tower compound. These modifications are reflected in information Vertical Bridge provided to the County, which is collectively attached hereto as Exhibit A.

WHEREAS, the County has considered the information and proposed modifications presented by Vertical Bridge, public comments at multiple public meetings, and all information contained within the administrative record.

WHEREAS, the County approved the Concept Plan submitted (and as modified) by Vertical Bridge, as stated in the September 26, 2023 Jefferson County Planning Commission Meeting as follows;

Mr. Knott made a motion to accept the terms of the settlement which met the conditions of the concept plan with the condition that Vertical Bridge provide a sketch reflecting the coordinates of the new location of the monopole with the original proposed location. Mr. Stolipher seconded the motion, the motion passed with the vote 5 to 1 (Mr. Hefestay opposed).

WHEREAS, the County hereby finds that pursuant to Section of 4B.7(B)(3)(d), the Concept Plan application “complies with this Article, and ... the [Concept Plan] is consistent with the Comprehensive Plan.”

The sole condition of the September 26, 2023 approval was that Vertical Bridge provide a sketch reflecting the coordinates of the new tower. Vertical Bridge provided that sketch on October 2, 2023 thereby fulfilling all remaining conditions for the Concept Plan.

WHEREAS, the Parties desire to resolve finally and in good faith their disputes regarding the Concept Plan, the Denial, and the Lawsuit, in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed to by the Parties as follows:

TERMS OF AGREEMENT

1. This Settlement Agreement embodies the entire terms and conditions of the Settlement Agreement described herein, and it is the complete agreement among the Parties hereto.

2. The parties hereby desire to memorialize the approval of the Concept Plan (as modified) submitted by Vertical Bridge (the "Approval") and finalized by the fulfilment of the final condition of approval by Vertical Bridge on October 2, 2023.

3. The County represents and warrants that the Approval constitutes the first step required of Vertical Bridge to proceed with the Tower (excluding any Additional Approvals and Permits, defined below).

4. The Parties acknowledge that approval of a site plan which includes posting a construction bond for site improvements, a maintenance and removal bond, a building permit and any other approvals required by Jefferson County ordinances will be needed before Vertical Bridge can construct and operate the Tower ("Additional Permits"). The Additional Permits are done administratively and without further public hearings. The Parties shall address and handle the Additional Permits in the normal course of business and nothing in this Agreement or the Parties' past dealings shall affect said Additional Permits. Further, Vertical Bridge reserves all rights regarding the Additional Permits.

5. The Parties agree that all filing periods and deadlines related to any deadlines Vertical Bridge may have related to the Denial shall be tolled from June 13, 2023 through issuance or denial of the Additional Permits, to the extent allowable by law. .

6. The Parties shall take reasonable steps to effectuate the terms and intent of this Settlement Agreement.

7. Neither the execution of this Settlement Agreement nor the taking of any action pursuant to the provisions hereof shall be used or claimed by any Party in any proceeding whatsoever to constitute an admission of liability or fault against another Party, except an action to enforce this Settlement Agreement.

8. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective officers, agents, employees, insurers, attorneys, heirs, administrators, representatives, executors, parent companies, subsidiaries, affiliates, successors and assigns.

9. The Parties represent and acknowledge that, in executing this Settlement Agreement, they do not rely and have not relied on any representation or statement made by any of the Parties or by any of the Parties' agents, representatives, or attorneys, with regard to the subject matter, basis, or effect of this Settlement Agreement or otherwise, other than those specifically stated in this written Settlement Agreement. This Settlement Agreement constitutes the entire agreement between the Parties, there are no other understandings or agreements, written or oral, between them on this subject matter, and this Settlement Agreement may not be modified in any manner except by written agreement signed by all of the Parties hereto.

10. Each Party represents and warrants to the others that it and its signatory to this Settlement Agreement are duly authorized to execute and deliver this Settlement Agreement and to perform the obligations hereunder, and this Settlement Agreement is a legal, valid and binding obligation of each Party, enforceable against such Party in accordance with its terms.

11. This Settlement Agreement is made and entered into in the State of West Virginia, and the laws of the State of West Virginia shall govern its validity and interpretation and the performance by the Parties hereto of their respective duties and obligations hereunder.

12. The provisions of this Settlement Agreement are severable, and if any of its provisions are declared void in whole or in part, the decision so holding shall not be construed as impairing any other provisions unless such remaining provisions, standing alone, cannot fairly be regarded as reflecting the Parties' original mutual understanding as to the complete resolution of all matters described.

13. Each of the Parties hereto agrees to pay its or their own attorneys' fees and any other costs or expenses associated with this Settlement Agreement and the matters giving rise to this agreement.

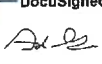

14. The drafting and negotiation of this Settlement Agreement has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Settlement Agreement shall be deemed to have been drafted collectively by all of the Parties with no presumption in favor of one Party over another in the event of any ambiguity.

15. This Settlement Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original, but which together shall constitute only one instrument.

16. Once this Settlement Agreement is executed by the Parties, they agree to file a joint stipulation to dismiss the Lawsuit without prejudice.

In witness whereof, the Parties have executed this Settlement Agreement, effective the day and year of the last signature below, having read and fully understood the provisions hereof.

VB BTS, LLC

DocuSigned by:  

By: _____
BB240BB9AA154G7...

Title: VP

Printed Name: Adam Ginder

Date: 11/8/2023

JEFFERSON COUNTY PLANNING COMMISSION

By: R. Michael Shepp

Title: President

Printed Name: R. Michael Shepp

Date: 11/07/2023

EXHIBIT A
(Modification Documents – 9/22/23 Letter and Site Drawing)

Law Office of
F. Samuel Byrer, PLLC

202 West Liberty Street
P.O. Box 597
Charles Town, WV 25414

Telephone: (304) 724-7228
Facsimile: (304) 724-7278

F. Samuel Byrer

Writer's email:
fsamuelbyrer@frontiernet.net

September 22, 2023

Nathan Cochran, Esq.
124 E. Washington Street
2nd Floor
Charles Town, WV 25414
ncochran@jcpawv.org

Via E-Mail

**SETTLEMENT COMMUNICATION
NOT FOR USE IN COURT**

Re: Settlement Proposal for Cellular tower at 1329 Lakeside Drive, Harpers Ferry, WV 25425

I write on behalf of my client, VB BTS, LLC ("Vertical Bridge"). As you are aware, Vertical Bridge has been in a dispute with Jefferson County and the Planning Commission (collectively, the "County") regarding Vertical Bridge's application to build a wireless communications tower at 1329 Lakeside Drive, Harpers Ferry, WV 25425 and has filed a lawsuit, *VB BTS, LLC v. Jefferson County, et al.*, Northern District of West Virginia, Case No. 3:23-cv-171 regarding the same (the "Dispute").

SETTLEMENT TERMS (NOT FOR USE IN COURT)

I write to respond to settlement terms raised by the County at the August 29, 2023 hearing and in your email dated August 31, 2023. Please note that these terms are provided for purposes of settlement of the Dispute and may not be used in court. Each of the below terms is contingent upon the County's prompt approval of Vertical Bridge's application.

I. Vertical Bridge will use a painted monopole tower design.

County's proposed term (from email): "Agree to place a monopole without faux tree branches (i.e., the one originally proposed); and "Explore painting the proposed monopole for additional camouflage."

Vertical Bridge's response: Vertical Bridge will use a painted monopole design. Vertical Bridge will be responsible for painting the tower, and the County may choose the paint color in consultation with Vertical Bridge and the landowner. Painting the tower will minimize aesthetic concerns.

II. Vertical Bridge will use evergreen landscaping to visually screen the equipment compound.

County's proposed term (from email): "Add buffering where there are few or no existing trees (ie, you are not requested to remove mature trees to add buffering, only to agree to fill in mostly open areas)."

Vertical Bridge's response: Vertical Bridge will use natural landscaping (i.e., evergreen trees) that will grow together so as to hide the equipment compound. Vertical Bridge shall be responsible for planting the trees. Below, please find a photograph depicting an example of evergreen screening. (Please note that the other features of this photograph, such as the pink fence, are not part of Vertical Bridge's proposed design.)

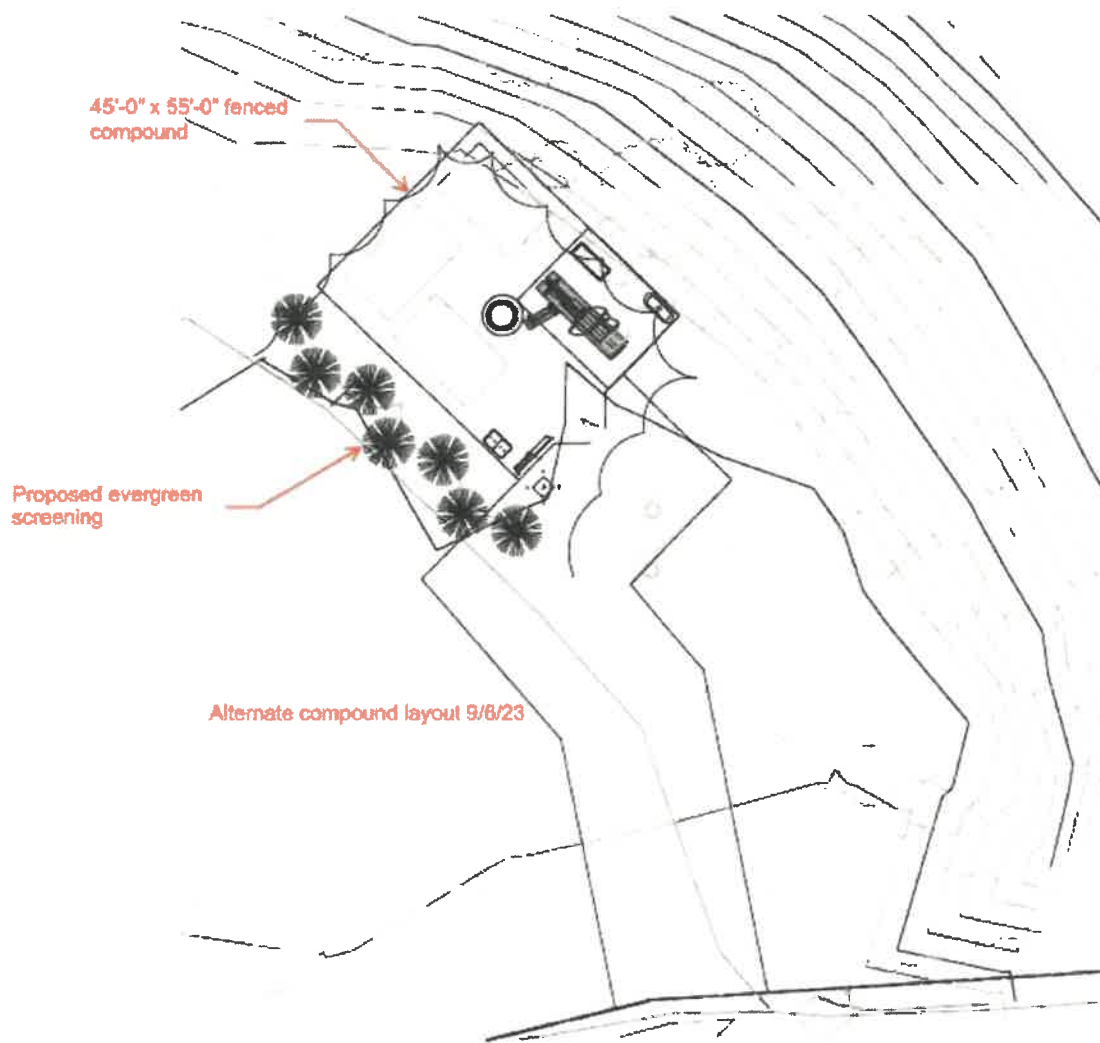


Please note that the trees will need to mature and grow together in order to fully screen the fence and pole compound. Using evergreen screening will soften the design and aesthetics of the compound.

III. Vertical Bridge will move the fence and tower compound to a new location further back in the leased site.

County's proposed term (from email): "Explore moving the monopole farther away from the purported helipad."

Vertical Bridge's response: We understand that the County has requested Vertical Bridge move the fence and tower compound as far back as possible into the lease site. It is important to note that the location of the compound is limited by the tree line and the steep terrain towards the back of the site. The below proposed location is as far back as Vertical Bridge is able to locate the compound:



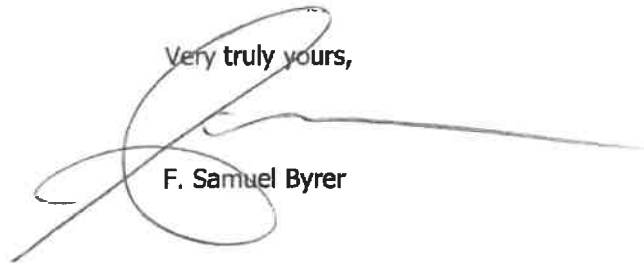
Please note the location of the compound relative to the topographical lines in this drawing. Under this proposed design, the compound will abut the steep terrain (i.e., where the topographical lines are close together). The tower cannot feasibly be built upon the steep terrain, and a further back location would

also require cutting trees. Further details concerning the site layout can be found in the enclosed Exhibit A.

CONCLUSION

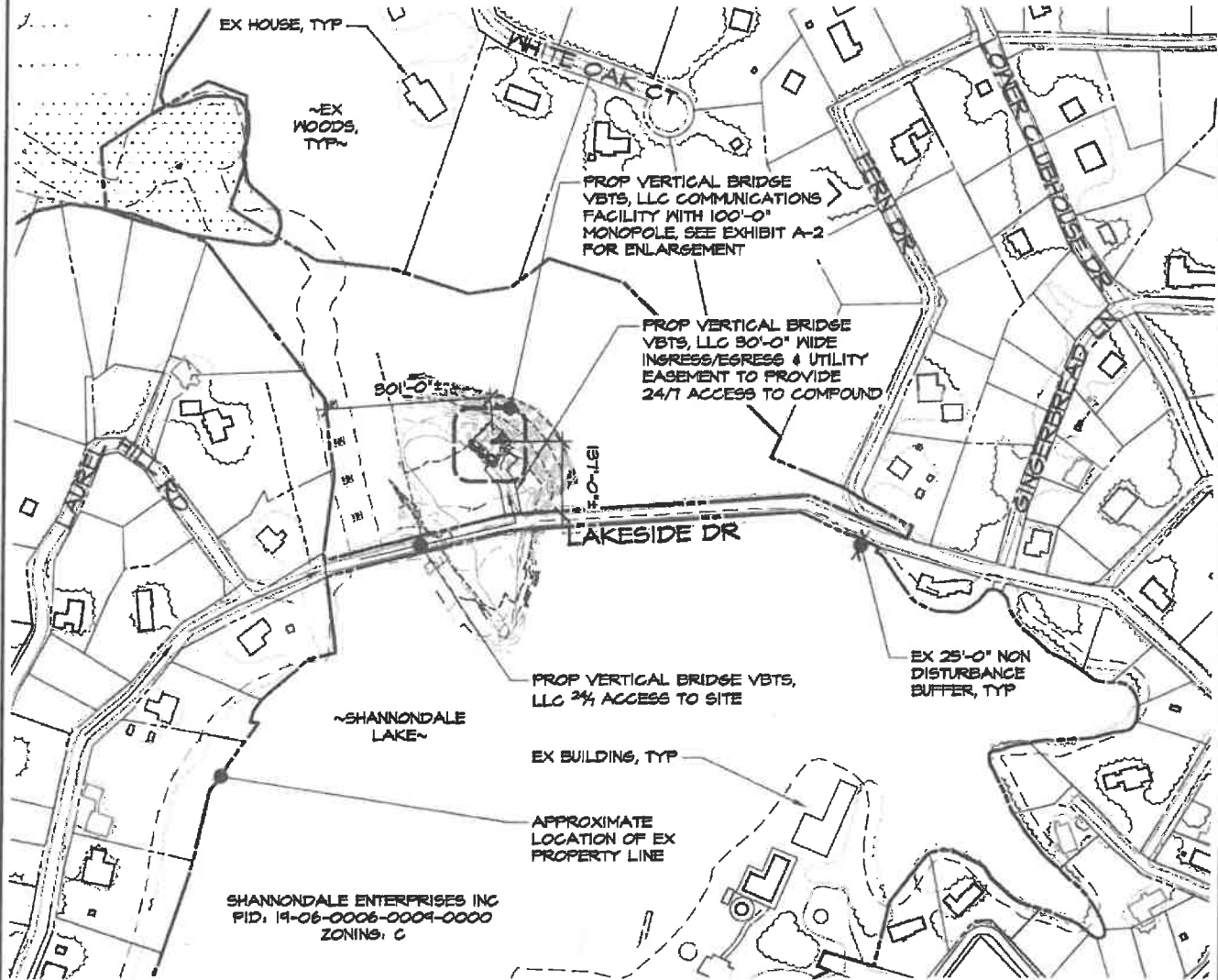
Please note that settlement on the above settlement terms is contingent upon the parties' agreement to a written, formal settlement. Please let me know if the County is agreeable to the proposed terms.

Very truly yours,

A handwritten signature in black ink, appearing to read 'F. Samuel Byrer', with a long horizontal flourish extending to the right.

F. Samuel Byrer

EXHIBIT A-1



SHANNONDALE ENTERPRISES INC
 PID: 19-06-0006-0004-0000
 ZONING: C

SITE PLAN

SCALE: 1" = 300'



MRA

MORRIS & RITCHIE
 ASSOCIATES, INC.

1220-B EAST JOPPA ROAD, SUITE 400K
 TOWSON, MARYLAND 21286
 TEL (410) 821-1690
 FAX (410) 821-1748

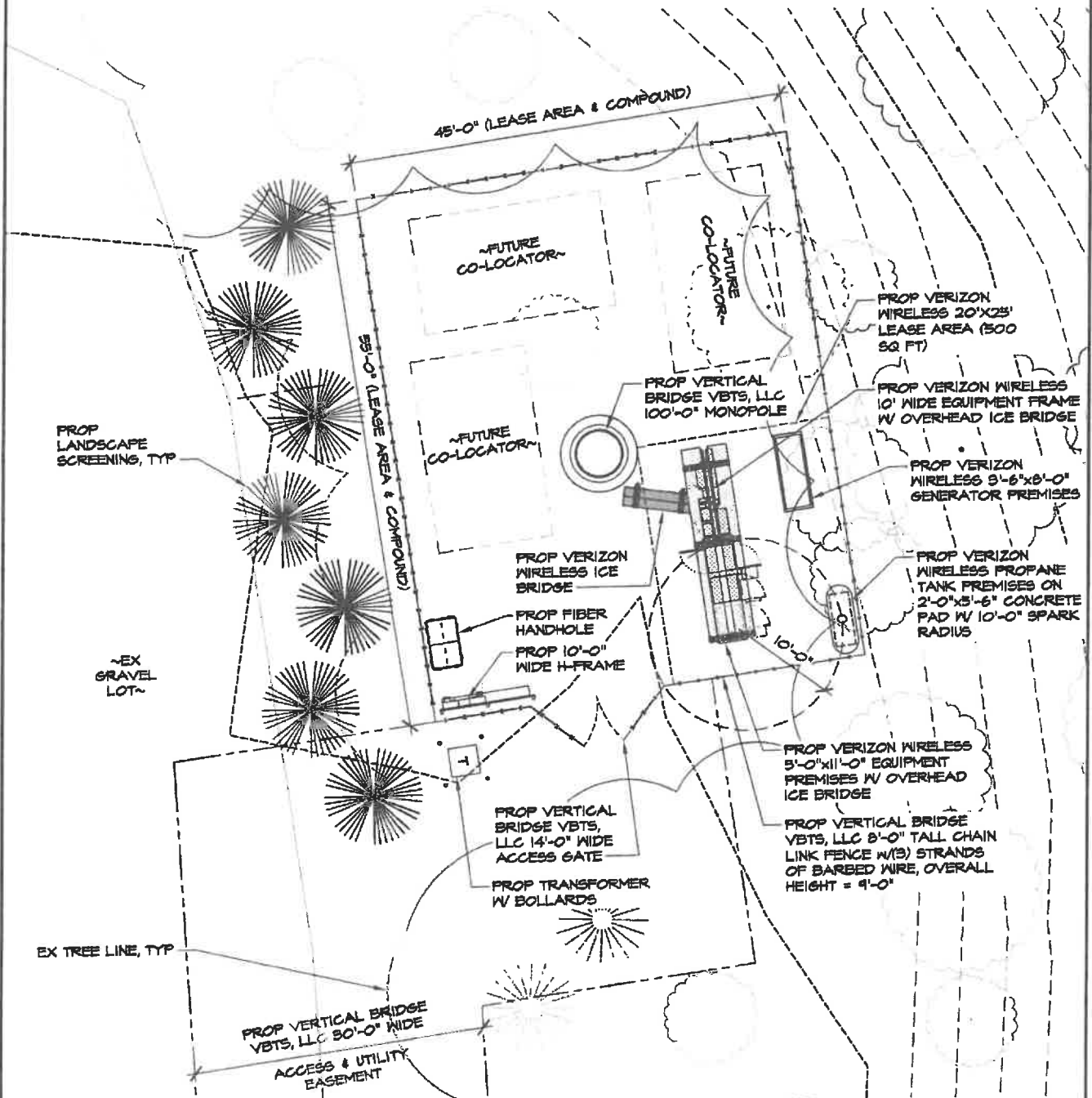
verticalbridge

VERTICAL BRIDGE VBTS, LLC
 750 PARK OF COMMERCE DRIVE
 BOCA RATON, FLORIDA 33487
 TEL: (561) 948-6367

**US-WV-5095
 SHANNONDALE
 1329 LAKESIDE DR
 HARPERS FERRY, WV 25425
 JEFFERSON COUNTY**

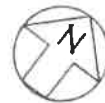
SCALE: AS NOTED	DATE: 09/13/23	DRAWN BY: EO	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19847.007
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EXHIBIT A-2



COMPOUND LAYOUT

SCALE: 1" = 15'



MORRIS & RITCHIE ASSOCIATES, INC.

1220-B EAST JOPPA ROAD, SUITE 400K
TOWSON, MARYLAND 21286
TEL (410) 821-1690
FAX (410) 821-1748

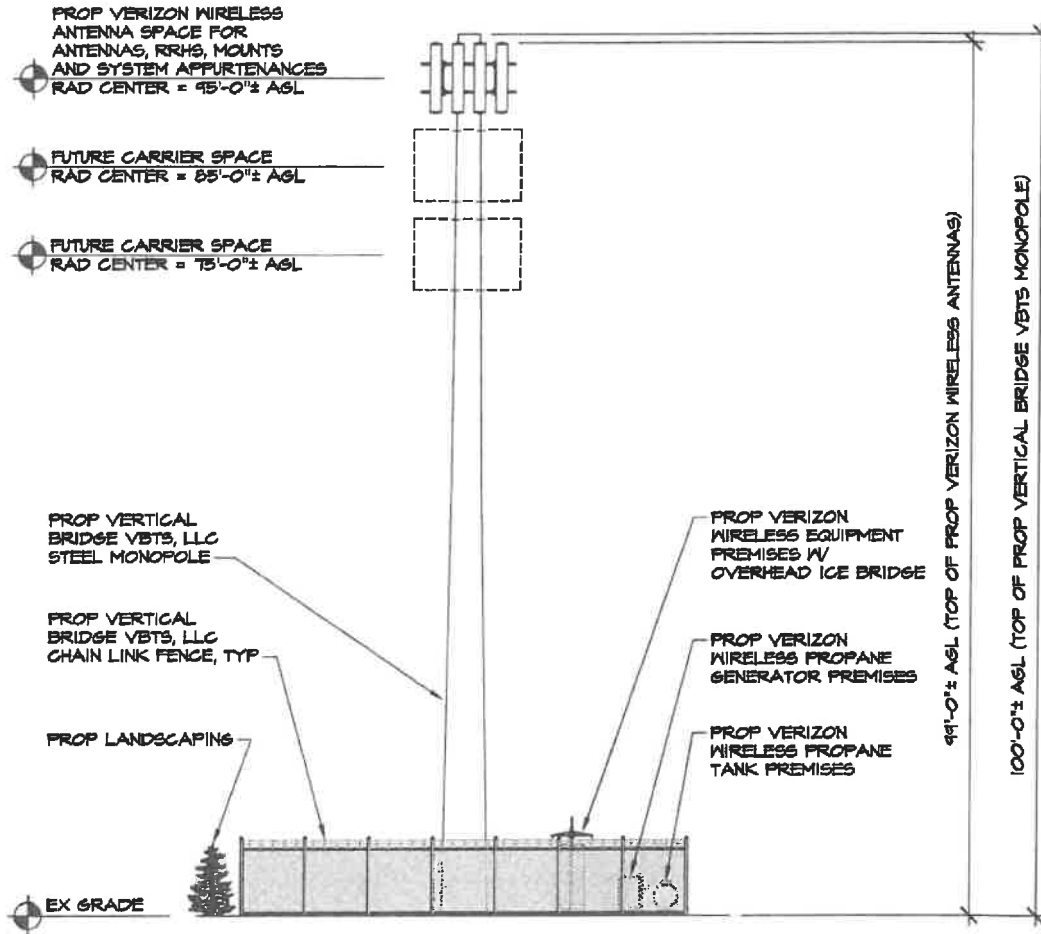


VERTICAL BRIDGE VBTS, LLC
750 PARK OF COMMERCE DRIVE
BOCA RATON, FLORIDA 33487
TEL: (561) 948-6367

US-WV-5095
SHANNONDALE
1329 LAKESIDE DR
HARPERS FERRY, WV 25425
JEFFERSON COUNTY

SCALE: AS NOTED	DATE: 09/13/23	DRAWN BY: EO	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19847.007
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EXHIBIT A-3



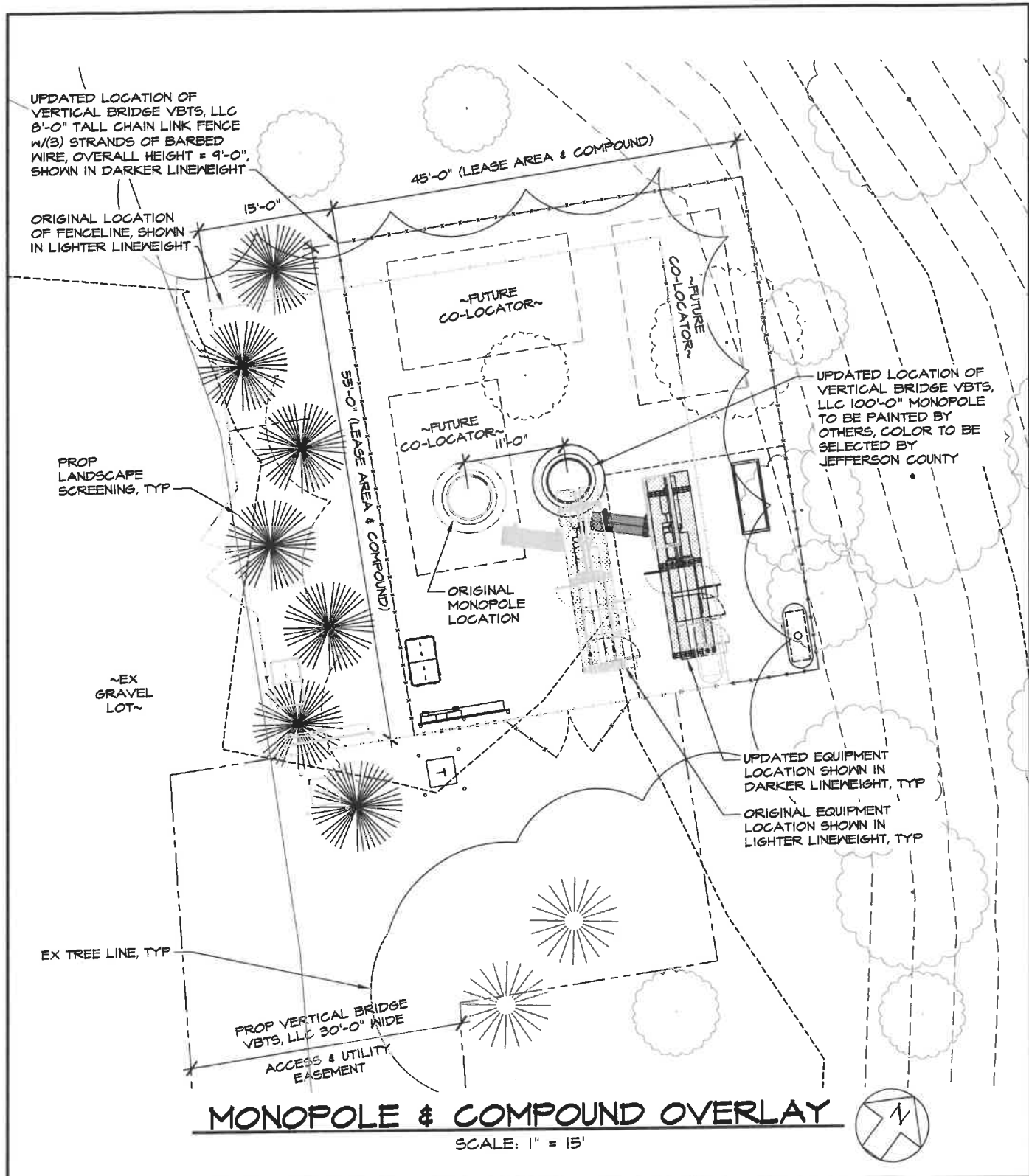
TOWER ELEVATION
SCALE: NTS

MRA MORRIS & RITCHIE
 ASSOCIATES, INC.
 1220-B EAST JOPPA ROAD, SUITE 400K
 TOWSON, MARYLAND 21286
 TEL (410) 821-1690
 FAX (410) 821-1748

verticalbridge
 VERTICAL BRIDGE VBTS, LLC
 750 PARK OF COMMERCE DRIVE
 BOCA RATON, FLORIDA 33487
 TEL: (561) 948-6367

US-WV-5095
SHANNONDALE
1329 LAKESIDE DR
HARPERS FERRY, WV 25425
JEFFERSON COUNTY

SCALE: AS NOTED	DATE: 09/13/23	DRAWN BY: EO	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19847.007
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	MORRIS & RITCHIE ASSOCIATES, INC.		US-WV-5095 SHANNONDALE 1329 LAKESIDE DR HARPERS FERRY, WV 25425 JEFFERSON COUNTY		
1220-B EAST JOPPA ROAD, SUITE 400K TOWSON, MARYLAND 21286 TEL (410) 821-1690 FAX (410) 821-1748	VERTICAL BRIDGE VBTS, LLC 750 PARK OF COMMERCE DRIVE BOCA RATON, FLORIDA 33487 TEL: (561) 948-6367				
SCALE: AS NOTED	DATE: 09/28/23	DRAWN BY: EO	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 19847.007