

**TOWN OF RYE
PLANNING BOARD and Board OF ADJUSTMENT
SITE WALK**

**Tuesday, February 18, 2020 – 6:30 p.m.
Rye Public Library**

Planning Board Members Present: JM Lord, Steve Carter, Jerry Gittlein, Jeffrey Quinn, Tim Durkin, Jim Finn and Selectmen's Rep Bill Epperson

Board of Adjustment Members Present: Shawn Crapo, Rob Patten, Patrick Driscoll, Gregg Mikolaities and Burt Dibble (arrived 6:45pm)

Present on behalf of the Town: Attorney Michael Donovan and Planning/Zoning Administrator Kim Reed

Present on behalf of Verizon Wireless: Attorney John Weaver, Site Acquisition Specialist Chip Fredette, Keith Vallente C-Square Systems, Audra Klumb A&D Klumb Environmental On behalf of AT&T: Attorney Will Dodge and Frank Kelley

Note: JM Lord sat as planning board chair and Shawn Crapo sat as board of adjustment chair for this meeting.

I. Call to Order

PB Acting Chair Lord called the meeting to order at 6:30 p.m. and led the pledge of allegiance.

II. Approve the minutes of December 18, 2019

Motion by Steve Carter to move the approval of the minutes to after the public hearing. Seconded by Bill Epperson. All in favor.

PB Chair Lord seated Jim Finn for the application.

III. Applications:

A. Public Hearing:

Conditional Use Permit and Major Site Development Application by Cellco Partnership d/b/a Verizon Wireless, with AT&T for property owned by the Town of Rye and located at 68 Port Way, Tax Map 23, Lot 1, to install a wireless telecommunications facility in

the form of a 126' monopole at the property, which shall include twelve (12) panel antennas, six (6) remote radio heads, one (1) junction box at a centerline 121' and nine (9) panel antennas, fifteen (15) remote radio heads, six (6) surge arrestors at a centerline of 109' and ground based equipment to be housed within 50'x50' fenced enclosure.

Property is in the Single Residence District. Case #20-2019.

Variances from Section 505.6 A(4) for construction of a wireless telecommunications facility within 100' wetlands buffer; Section 301.8 B(1) and 301.8 B(7) to construct a cell tower and compound within the wetlands buffer; and Section 301.8 B(5)b(2) for cutting trees greater than 4.5" in diameter, measured at a height of 4.5" above ground level, within the wetlands buffer. **Property is in the Single Residence District. Case #47a-2019.**

Special Exception from Sections 301.8 B(1) and 301.8 B(7) to construct a driveway within the 75' buffer to access wireless telecommunications facility. **Property is in the Single Residence District. Case #47b-2019.**

Attorney John Weaver, representing Verizon Wireless, stated that his former colleague Victor Manougian submitted most of the applications that are before the boards. The one that is new is one that was submitted January 31st for a variance from Section 301.8 B(5)b(2). This variance would allow Verizon to cut trees greater than 4.5" in diameter measured at a height of 4.5" above ground level within the wetlands buffer. He asked the boards how they would like to proceed.

BOA Acting Chair Crapo stated that it is anticipated that this will be the last joint meeting. There will be a presentation at the Board of Adjustment more specific to the variance request. He suggested going over it however, as there are members of the public present and there may be questions that will need to be addressed at the BOA meeting.

Attorney Weaver stated he will address the supplement and the questions that the members had at the last meeting. If there are further questions at a higher level for the subsequent BOA and Planning Board meetings, he will take those at this meeting in order to prepare to speak to those. He stated that he will go through the requests as they were presented in Attorney Donovan's letter from December. The first request was for a profile drawing and cross section drawing for 50' of the proposed driveway to be sure it could be built without impacting the wetland. (He presented revised zoning drawings addressing a number of issues identified by the boards.) He continued that Attorney Donovan mentioned that the elevations were not addressed sufficiently because the site walk showed the access way was pretty level. He noted that if the board would like to see that addressed with a revision of the zoning drawings, they would be happy to provide that information.

BOA Chair Crapo stated that at the site walk the group consensus was that perhaps the proposed swale would be counterproductive and potentially disturb even more, while not really helping the runoff situation. He asked if the swale has been removed from the plans.

Attorney Weaver replied that the plan for the swale is gone. It is going to be crushed gravel along the side of the road. He believes that the Town and Verizon are both on the same page that the swale will be removed and replaced by crushed gravel. He pointed out this has been addressed with Sebago.

PB Chair Lord asked Attorney Weaver to show Sheet A-2 which shows how the road will basically look. It seems that the left-hand side going towards the wetland will be flush. There might be some minor variation on the right-hand side as it gets to the upland. The swale is seemingly all gone and there is a roadway system that just allows water to transfer across.

PB Member Carter stated that there was some discussion about how at 150' it is the low point of the road. There was some question about whether or not fill will be needed or if it was going to be left at elevation 7. He commented that it looks like there is not going to be any fill. He asked if there are any concerns about it flooding because it is such a low point.

Chip Fredette, SAI, replied not at this point. He noted that the cross section shown in A-2 is intended to show the improvements to the road.

PB Member Carter asked if fill will be coming in.

Mr. Fredette replied not any more than what is shown to build up the road.

Attorney Donovan stated that the Building Inspector, in his letter, had expressed a concern that the 150' area might flood. He noted that the flood ordinance does not say that driveways have to be outside the flood area. In fact, both of the boards have recently approved a development where the driveway off Wallis Road is under water more than this will ever be.

Attorney Weaver stated that comment #2 asked for view shed information similar to what was in the Isotrope report for a proposal at the town recreation area. Photoshims were requested showing sight lines from nearby residences, which may have a view of the tower. He noted that they have submitted those views, as well as a general photo simulation. He commented that the boards may want to save those for later, as there may be a lot of questions. He continued that comment #3 requested information about the noise levels that will be generated from the compound and the effect on nearby residences. He noted that they submitted the manufacturer's specifications for the generators that Verizon and AT&T are proposing, as well as some information from the 'American Speech, Language, and Hearing Organization' about what different decibels sound like to the human ear. Given that the nearest property line is 150' away and the nearest residence is 700' away, the effect is the same. Over that distance, sound dissipates about 6 decibels with each doubling of distance. By the time it gets to 700' away, those generators are going to have a sound somewhere between a quiet room and a whisper to the human ear. He noted this would be over open ground. Given this is a forested area and there are some hills and other obstacles in the way, the noise is going to be reduced even further. Additionally, the generators only operate once a month for thirty minutes to make sure they are operating correctly. By condition of the board, that can be done whenever, in order to minimize impact on people who live nearby.

Selectman Epperson stated the documents note that the generators run thirty minutes each week.

Attorney Weaver confirmed that he had misspoken in saying once per month.

BOA Chair Crapo asked if this was per carrier.

Attorney Weaver confirmed.

BOA Chair Crapo pointed out that could be a possibility of four carriers.

Attorney Weaver replied that the board could make it a condition that the generators run at noon on Tuesdays. So, the generators would sync up and run at the same time to minimize the impact.

PB Member Quinn asked if these are fueled by propane.

Attorney Weaver confirmed.

PB Member Quinn asked how much of a fuel supply would be needed if the generators had to run continuously. He asked if there would be a need to bring in more fuel during inclement weather.

Mr. Fredette stated that he knows there is enough fuel in the tanks to get through a weekend. He has been told by technicians that there is about 48 hours of heavy use before a fill-up is needed. That would be about two or three days of solid use. He cannot think of a time where this has ever been a problem.

PB Member Quinn commented that it seems like a challenging site to get to. There have been discussions about being able to access that site for general maintenance.

Mr. Fredette replied that he is not concerned about access to the site as it is level ground. Sites are typically at higher elevations with 10% to 15% grades. He pointed out that if a propane truck needed to get to the site, the road would be cleared if necessary.

PB Member Quinn noted that in some of the materials he read, it said that this area seems to be plagued with power outages. He can see how this could happen because it is a heavily wooded area.

Attorney Weaver stated it is possible that the road would be cleared more frequently than other sites where potential power outages are less of an issue; however, this is not seen as an operational problem.

PB Member Durkin asked the elevation of the generator pads.

Mr. Fredette replied the finished grade of the compound is 15'.

Selectman Epperson asked if the four carriers will have individual generators.

Mr. Fredette replied not necessarily. Verizon and AT&T are proposing to use backup generators. Not all carriers use them.

Selectman Epperson asked if one generator could be installed that would be capable of servicing all four carriers.

Mr. Fredette pointed out it is a matter of liability.

Selectman Epperson asked if AT&T and Verizon will be sharing a generator.

Attorney Weaver replied no. The specs for the generators are in the information provided to the boards. If there is a concern about the weekly tests running at four different times, there could be a condition that all generators on site must run at a certain time.

PB Member Quinn asked if there is room for more generators and tanks in the compound.

Mr. Fredette stated this would have to be looked at. A carrier would have to work with the code enforcement officer to be sure they met the requirements if they wanted to use propane.

Referring to page C-6, Attorney Weaver noted the compound map shows space for two additional carriers. Whatever the carriers put in would have to fit in within the existing compound.

Selectman Epperson clarified there would not be any plans to increase the compound based on a carrier.

Mr. Fredette explained if another carrier needed to expand the compound because they needed more space, they would need to go before the Planning Board and Zoning Board to do so.

PB Member Carter stated that if there were four generators during a power outage, he would assume the sound would be four times 37.7, which would be 160 decibels and quite noisy.

Attorney Weaver replied that sound does not actually work that way. It would not double and would still dissipate quite a bit over that space.

Mr. Fredette commented there is a different calculation for two or more generators. With having them more than 700' away, this is a non-issue.

Member Carter stated he is trying to get a sense of how much noise will be produced with four generators running. He does not think it is going to be a "whisper".

Attorney Weaver stated that functionally speaking, people who live in residences nearby are not going to notice the generators even when they do run.

PB Chair Lord stated that he is hearing that these decibel levels are basically 0 at that distance away.

Mr. Fredette confirmed. The ambient noise at that particular location that is receiving the noise is 0.

Referring to comment #4, Attorney Weaver noted this was in regards to whether the compound is sized to fit more carriers, which is shown on Sheet C-6.

BOA Chair Crapo pointed out that it does not appear there is enough room for their generators and propane tanks.

Attorney Weaver explained it is not known what generators are going to be used by other carriers. Future carriers may introduce different equipment than Verizon. With the propane tanks that Verizon and AT&T are proposing for this site, there would be enough room to fit two more of them in the compound.

BOA Chair Crapo commented the burden of showing there is room for four carriers is not met.

Mr. Fredette asked if the standard in the ordinance requires an applicant to show the compound will suit four carriers or is it the tower and foundation will be structurally built to suit one plus three? He thinks it speaks to the tower.

With regards to the available ground space, Attorney Weaver stated that other carriers could operate there without generators. Even if the ordinance spoke to the ground and tower space, it is shown that there is sufficient space for future carriers to co-locate on the tower with equipment to operate located on the ground.

Attorney Will Dodge, representing AT&T, stated that from AT&T's perspective regarding burden of proof, they have built compounds just like this one that all have these exact same dimensions. They are all designed to allow four carriers on the tower. Most times, no more than 50'x50' is needed for the compound. Normally, it is a 100'x100' leased area with a 50'x50' compound, except for those large tower farms or mountaintop sites. There are few compounds that don't have these dimensions through all of northern New England.

Referring to Sheet C-2, PB Chair Lord stated that it seems that on the right there is plenty of highland if there was a need to expand the compound a little bit more to the south without getting into any wetland. There is probably enough room there to expand without too much of an issue.

Attorney Weaver replied this is true but they would also have to come back to the board.

PB Chair Lord agreed.

BOA Member Patten stated that there looks like there is more than enough room to fit two more generators and two more tanks. He asked if there will be additional equipment beyond the propane tank and the generator.

Mr. Fredette explained that at some point the NFPA regulates for propane in terms of volume. The greater the volume, the greater the setback would be. He thinks the concern is that if another carrier was added, will they meet the setback from the emission source? He reiterated that if another carrier wanted a generator and wanted to use propane and there was not enough space, they would have to come before the board to expand the compound to make that happen.

Attorney Weaver pointed out if they wanted to avoid that they would operate on the tower with ground equipment that would be sufficient for that area. He continued that comment #5 asked for information on any environmental issue that might arise from all the freestanding equipment located in the compound, particularly if it is not monitored regularly in the winter. He stated that the actual equipment that is being proposed is limited. The impact on stormwater flow is essentially nonexistent.

Selectman Epperson asked if there are any carriers that use diesel generators.

Attorney Weaver replied that all carriers use them but they do not use them everywhere. They only put them in locations where it is appropriate.

Selectman Epperson commented that would be the only possibility of any pollution.

Attorney Weaver agreed.

Selectman Epperson asked if it would be the purview of the board to require any other carriers to use propane.

Attorney Weaver confirmed. He continued that comment #6 addresses the swale and stormwater runoff. Comment #7 asks for the tree line to be depicted on the elevation drawing.

Referring to the environmental impact, BOA Chair Crapo asked if the transmitters are cooled with liquid. He asked if there is any equipment that have liquids for cooling.

Attorney Weaver replied no. Referring back to the tree line, Attorney Weaver pointed out on the plan the top of the tree line canopy.

In regards to the issue of the height of the tower, Member Quinn stated the balloon test showed it at 126' and 150'. There were some ideas suggested that perhaps this pole could be expandable and could be raised to 150' if need be. He asked what would happen at that point. He asked if Verizon and AT&T's equipment would stay attached to the top and just move up. He asked if supplemental carries could come in and attach reasonably.

Attorney Weaver explained that what typically happens is the third and fourth carriers would attach to the top spots. Verizon is here at the top at 126' and AT&T is below it at 109'. AT&T has a lease interest in being at 109'. He noted that the antennas could be rearranged. Leases would have to be redone and the equipment would have to be moved. Typically, the carriers incorporated the height calculated into their operating pattern and network. Usually, it is the third and fourth carrier that would go on top.

PB Member Quinn commented there is a tree line and a carrier could be below the tree line and one just above. He assumes the signals will be less effective for those carriers.

Mr. Fredette stated there are two pine trees the surveyor shot out in the field. One is at 91' and the other one is 94'. The average tree canopy is not quite 90' tall. It is much shorter. He is guessing that the tree line would not inhibit the fourth carrier. He thinks people are trying to get to what it is going to look like and how tall it will be above the trees. In that case, he would point to the photo simulations of the view shed. This can be put on a 2-dimensional plan but it does not do anything, as far as further information.

PB Member Quinn asked if it is safe to assume that higher is better.

Keith Vallente, C-Squared Systems, stated that in terms of getting more coverage, yes. In general, there will be a broader coverage area. It is definitely a balance of not being too high or too low.

BOA Chair Crapo stated that Verizon's letter said that a lower location would not work for them; however, AT&T says they are happy at that height. He asked if there is a drastic difference in technology between the two carriers.

Mr. Vallente explained that in looking at the AT&T level at 109', the map shows a much more pronounced difference in the drop. There is a severe loss of coverage to the south of Route 1 and the Wallis Sands area.

BOA Chair Crapo commented that it seems like the ideal spot is the top spot. He wonders about the tower being higher.

Mr. Vallente explained that they are trying to not ask for too much height because of the visual concerns and so forth. The height that is proposed is satisfactory to both carriers. That is not to say that additional height would not be beneficial because it would be to a certain extent. Dropping the height would be more detrimental.

BOA Chair Crapo stated that months from now, a potential carrier may come in and fully demonstrate that position 3 does not work for them and they want a tower in another location or another one in this location. To him, once the sanctity of the view shed is broken, looking at the tower at one height versus another might not make that much difference. He commented that it is probably desirable to not have the tower there at all. However, once it is there, having the tower at an extra 20' doesn't seem to break the bank versus another tower down the road. He asked why they would be building a tower with the third and fourth positions not really being viable.

Selectman Epperson stated that the literature on the tower explains how the tower could be expanded. He asked if this tower could be expanded to accommodate another carrier at some future date.

Mr. Fredette replied yes. Towers are routinely expanded.

Attorney Donovan asked if a condition of approval could be that the tower is structurally designed so it can be expanded to 150'.

PB Chair Lord stated that if this was designed so another pole could be added on top, it would eliminate the need for a second tower because they would have the option to rework this tower to make it work.

Selectman Epperson asked if it would be in increments of 10'.

Mr. Fredette replied that it would depend on the design itself. The tower manufacturer would be asked to design a foundation and monopole for 150' and it would be designed for that exact location. With a 150' monopole, there may be 40' sections, which is the longest sections he has seen.

Selectman Epperson asked if there is a difference in infrastructure for a 126' tower versus 150'.

Attorney Weaver replied yes.

Selectman Epperson commented that the pad would have to be built to accommodate a 150' tower.

Mr. Fredette confirmed. He noted that if the third and fourth carrier come along and say the locations are not sufficient, in the past, they have had to modify foundations.

PB Acting Chair Lord noted that the whole inside of the compound would have to be rearranged.

BOA Chair Crapo commented if it was made a condition then Verizon would be designing the base.

Member Quinn clarified that they are talking about 24'.

Selectman Epperson commented that it could potentially be higher with the wind load.

Mr. Fredette noted that it is not just the pole but also the panels.

Selectman Epperson stated that if this is going to be done, it should be done once.

Mr. Fredette stated that if another carrier came along, they would have a really tough case proving the need for a second tower.

Attorney Weaver noted that if they have to make a choice between the third or fourth position versus a variance and planning board hearing, the carrier will go for the third or fourth position.

Member Carter stated that it sounds like there is only going to be three carriers. He asked if there is a fourth carrier out there that is going to be on the pole.

Mr. Fredette replied there could be. He pointed out that the code requires 1 + 3.

Attorney Donovan stated that the new telecommunications ordinance, which is before the voters in March, eliminates the requirement that there be four positions and leaves the number of positions to the discretion of the Planning Board. This application will probably not be approved until after March 10th so that would become the standard. There will no longer be the requirement in the ordinance that there be four positions.

Attorney Weaver reviewed the maps showing the coverage at the proposed co-locations on the tower.

Selectman Epperson asked if the tower covers the Isles of Shoals.

Attorney Weaver replied no.

Member Carter asked if Verizon would take the top position if the tower were 150'.

Attorney Weaver confirmed. Everyone would move up on the tower. He continued that there was also a question on whether AT&T is a co-applicant on this application. AT&T is an interested party and would like to co-locate on the tower but they are not an applicant. In the event the tower is approved, AT&T will apply for a building permit and go through the permitting process, just like any future carrier.

Attorney Donovan pointed out that the process will not involve coming back to the land use boards, unless it trips one of the substantial modification thresholds.

Attorney Weaver reviewed the photo sims. He pointed out the area on the map where the photos were taken to give a general idea of what the tower will look like.

PB Alternate Finn asked if this is for the 126' tower or the 150'.

Attorney Weaver explained that two balloons were flown. One at 126' and one at 150'. In these sets, there are usually three pictures showing the balloons for the towers at both heights.

Mr. Fredette clarified that the maps show 150'.

Attorney Weaver continued to review the photo sims from Holland Drive, Parsons Road and Pollock Drive. He also presented photo sims looking over from Marsh Pond.

Attorney Donovan stated that this is the view shed where some people had concerns that the compound would be visible from this area.

Attorney Weaver commented the photos speak for themselves. Getting further and further from the site to the southwest, more and more trees get in the way. He thinks it would be hard pressed to see the compound there.

Mr. Fredette stated that at the boards' request, lines of sight modeling was submitted. From the intersection of Brackett and Parsons, using Google Earth view, it can be seen that the trees in the near ground are not the same trees seen on the site walk. It is a separate island of trees. He commented that in looking at the view it is pretty clear that it won't change.

Attorney Weaver reviewed the photo sims showing the view from Ocean Boulevard to the southwest, south of Wallis Road and north from the beach. He also reviewed photo sims showing the site from Pioneer Road and the Little Harbor Bridge looking south.

Alternate Finn noted that the 150' tower is definitely more noticeable across the board. Referring to the 126' tower, he asked how big of a deal it would be to take 10' off and bring it down marginally lower. He knows it would impact AT&T. He asked if there would be much reduction in coverage.

Mr. Fredette stated that this has been considered. They have come with the lowest height it could possibly go. The supplemental report that Mr. Vallente filed for both companies shows a loss in coverage. Verizon cannot go lower than what is being proposed. He has been told that AT&T cannot go any lower either.

Mr. Vallente spoke to the loss of coverage as shown in his table presented to the board. He noted that the modeling has its limitations, as all modeling does. This is a unique situation in that it has been done for both AT&T and Verizon. He noted that in going up 20', Verizon gains about 15% more of the population. If it was to drop 20', they would be losing 17%. On the AT&T side, they are already starting at 10' lower. It is a balancing act to build a site that meets the needs of the community. He noted that they have come in with the lowest height that they could possibly get by with for this location. If it were to go any lower, it would put the value of the site at risk. It would put the operability of the network for both AT&T and Verizon at risk. It would create a higher chance that it would need to be supplemented with some other solution down the road.

Member Quinn asked if the cost of going up to 150' were balanced against the usage or the population that is going to be served by an increased height. He asked at what point do they decide it is just too expensive to go up 150'.

Mr. Fredette replied they have not directly correlated the cost of building a tower that is 20' taller to the demand. In talking about height, this application is in stark contrast to the Grove Road application. That was brought to the board by a tower company who came in looking for the tallest tower possible because their one goal was to lease space on that tower to carriers. In this situation, Verizon's goal is to provide network service and 190' is not needed. Verizon is coming in with what is needed and they can't go lower. If this is chiseled down lower, it would be impacting AT&T's service as well.

Member Quinn clarified that an additional 24' is not needed.

Mr. Fredette replied that it would be helpful; however, that is correct. He pointed out that at some point, higher is not always better. With the need for data, and the amount of information that is being passed through wirelessly, one site can't afford to cover too much of an area because it would be grabbing too many users all trying to use that same site. He reiterated that there could be a disservice in going too high.

Attorney Weaver noted that as wireless carriers continue to improve their networks and install more facilities, it is not being driven by their own internal desires. It is being driven by customer demand, as they are using more data. Part of what this facility is intended to do, is not only accommodate data now but to cover data in the future.

Member Gittlein stated that earlier in this process there was discussion about giving the police and fire increased coverage in the Town. He asked if this has been addressed.

Mr. Fredette stated this would be up to the Town's communication engineer to model it and show that map.

Attorney Dodge stated that both Verizon and AT&T are both competing to try to work with local first responders. AT&T has a mandate with the federal government through First Net to try to meet the needs of first responders. All the funding AT&T has been given for this site is to help address those requirements. One of the reasons that AT&T cannot go below 109' is because it is going to affect their ability meet the First Net mandate. AT&T would be back to the drawing board and coming back in to ask for a new tower. He noted that AT&T can live with 109' and that will satisfy the First Net mandate; however, they would love to be higher and the points that have been raised make good sense.

Attorney Donovan stated that when the Selectmen were negotiating the lease, they wanted to be sure the Town's public safety departments would be able to put their equipment on the towers and Verizon was willing to put that in the lease.

Speaking to the boards, Member Quinn stated that it seems they need to keep their eyes fixed on the end goal. The end goal is to take care of this emergency communication gap. In his mind, a higher tower translates to better service. He commented that the board should think about that.

PB Chair Lord stated that this proposal is for 126'. He thinks the one thing they might be able to do is to condition this to be designed to go to 150' and let time take its course. It may never have to get beyond 126'.

PB Member Quinn commented the base will be built differently if it is 150' versus 126'.

PB Chair Lord stated there could be a condition on the design and base in order to get to the 150' height.

BOA Member Driscoll stated that proposal that was before the boards previously had monopine and this one doesn't. He asked how the decision was made to not have monopine here.

Mr. Fredette explained the distance of the site from the nearest home is greater than on the Brackett Road site. He also noted that with this design it is not going to work.

Hearing no further questions from the boards, Chair Lord opened to the public.

Bill McHale, 110 Parsons Road, asked for a rough timeline for Verizon to be operational.

Mr. Fredette replied that the goal is to have this on-air by the end of the calendar year. A lot of that hinges upon the NEPA regulatory process. He explained the NEPA process and review.,

Howard Kalet, 90 Colburn Road, chair of the Telecommunications Committee, stated that sound is measured in decibels. To go from 40 to 50 decibels is ten times the sound. Having two generators running at once, going from 40 to 50, would be more than what the two generators would be individually. He noted that when the police staff goes around with their tablets, basically, they can't use it for the majority of the Town. They are not really able to protect the Town as best as possible for that reason. In speaking about the tower height, he would encourage the boards to consider the highest height that AT&T and Verizon would consider, for some of the reasons discussed already; public safety and allowing co-location with other carriers, which potentially means better coverage for the Town. It would also allow additional funds to come into the Town for the rental of those facilities. He noted that many residents are unhappy with their Comcast service these days. It is unknown what the future will bring in technology but it may be that Verizon will bring high stream cable to homes and create some competition so the rates would go down for those services. In looking at the maps that were presented, it can be seen that this does not cover all the parts of the Town. It just covers one chunk that is roughly 3 square miles. Rye is 9 miles long. It is not covering the whole town but it is a major step for one part of the town.

Joanne Hardin, 32 Shoals View Drive, stated that the application for Brackett Road was 125' high and this tower is replacing that application. She does not know why this has to be 126' versus 125' which was the original application.

Attorney Weaver explained that depending upon the particular location, the needs will change for the tower height.

Ms. Hardin commented that on the site walk it was said that there was software that could tell how many feet the tower site is from her home.

Attorney Weaver replied that they have that information for her.

Ms. Hardin stated that she understands there is some sort of service that is underground. She asked why this could not be a solution.

Attorney Weaver explained that it is based on the nature of the roads and infrastructure. The report that was prepared for the Town indicated that it would not be an appropriate solution here. For this area of Rye, that this facility seeks to provide coverage for, it would not be an appropriate solution.

Selectman Epperson asked if this is a population and density issue.

Attorney Weaver confirmed.

Ms. Hardin stated that at the previous meeting there was some discussion about the real estate values, as compared to the Grove Road site. She does not agree. She is concerned about her property and having a different valuation. She continued that she understands there is some lawsuit where Verizon is suing the Town of Rye.

Attorney Donovan replied there is no lawsuit. The Brackett Road application is on hold while this application moves forward. He reiterated there is no lawsuit or threat of one.

Ms. Hardin stated that she has been to a Selectmen's meeting where a lawsuit was discussed.

Attorney Donovan stated that he cannot speak to what may have been said by someone at a Board of Selectmen's meeting. However, someone might have said that if the Brackett Road application was denied and there was no other alternative for Verizon, there might be a lawsuit. He noted that Verizon has been very careful about not threatening the Town.

Ms. Hardin commented that the concern is the threat of a lawsuit.

Attorney Donovan replied that there could be a lawsuit if Verizon, or any other carrier, was foreclosed from any opportunities to cover gaps in this part of Rye.

Michelle Tyminski, 121 Parsons Road, stated that on the site walk there was a question about how many trees were expected to be cut down. She was hoping that this information would be available at this meeting. She asked how many trees will be taken down for the road way and the site.

Attorney Weaver explained that the survey has been commissioned and the information will be available for the next meeting.

Attorney Donovan asked if the trees were going to be flagged.

Attorney Weaver and Mr. Fredette both confirmed.

Attorney Donovan noted that the trees will be flagged similar to how it was done at Brackett Road. He assumes the boards will go out and look at that before making any decisions.

Mr. Fredette explained that the reason for the flagging is because a variance is required. The variance is for a certain measure of tree within the wetland buffer. The trees that meet that standard within the wetland buffer will be flagged. The wetland buffer almost bisects the compound through the middle. There will be flags on the west side of the compound. He continued that any area of the access road within the 75' wetland buffer where trees will be cut will be flagged as well. He noted that they will not flag the trees outside of the wetland buffer.

BOA Chair Crapo asked if every tree that is going to be cut could be flagged with a color code showing the ones in the buffer versus easement. That way the boards will understand the extent of what is being cut.

Mr. Fredette stated they are happy to do whatever the boards would like them to do.

Attorney Weaver clarified that all trees being removed should be marked with the ones in the buffer marked a different color.

Attorney Donovan confirmed. He noted that there will only be two different colors. He suggested using the 4.5" diameter test for the trees outside the buffer.

Referring to the noise of the generators, Ms. Tyminski asked if there are other locations that may be similar to this where people could go to see what it sounds like.

Arik Jones, Port Way and Rye Water District Superintendent, pointed out that Water District has similar generators that are located at two points that could be clearly listened to; Washington Road and Garland Road. He noted that the generators are similar to what is being discussed. One of the generators has noise suppression and one is without. There is a drastic difference during operation.

Mr. Fredette noted that Verizon uses the sound attenuated enclosures.

Ms. Tyminski asked if there was more information on NEPA's evaluations.

Mr. Fredette explained that NEPA will send notice to the local Historic or Heritage Commission asking for any comments or input. A response has not yet been received and it has been about 45 days since that notice was sent. That inquiry is sent to the State Preservation Office, as they work through Section 106.

Attorney Donovan stated this is one small piece of the NEPA process. If there is a potential impact on a historic site, Section 106 provides a mechanism to allow the parties to mitigate. It is very unlikely that anything here will be tripped.

Ms. Hardin stated that she was told that right under the tower there is a circumference where there is no service. She asked if this was true.

Mr. Vallente explained that the panel antennas that are used on the site direct the energy outward. There is less energy going down but there will be plenty of service at the base of the tower.

Referring to the 150', Ms. Hardin stated she is strongly opposed. She understands the need for the first responders to have service. However, she felt the balloons showed that 150' really destroys one of Rye's precious resources. The coast of Rye is something that differentiates the town from other towns. She supports the shorter tower.

Jaci Grote, 144 Washington Road, Conservation Commission Member, asked if the map that was shown to the Conservation Commission could be shown, which shows the wetland delineation.

Attorney Weaver presented the map and reviewed the area of the wetland and wetland buffers. There was some discussion about the trees that are being cut.

Attorney Donovan stated that at the first site walk there was discussion about how wide the tree clearing would be beyond the fence. He thought it was said that it would be 20'; however, he is hearing tonight that it will only be 10' around the perimeter of the compound, so it has been scaled back.

Attorney Weaver commented 20' total.

BOA Chair Crapo asked if there would be trees beyond that might need to be taken down. He asked if those trees could be marked.

Mr. Fredette confirmed.

Attorney Donovan stated that he had suggested that a condition of approval be that after everything is built, Verizon and the Town hire a forester to go out there and agree on which ones pose a hazard. There was a question of whether the Town would be liable if a tree falls and takes out Verizon's equipment. He noted that he had previously said "probably not", as he was thinking more of plan review liability. However, he overlooked the fact that the Town is the lessor and the Conservation Commission is now the owner of the 14 acres. He thinks there is a liability issue there, which could be addressed with a condition of approval to have a forester mark the trees that pose a hazard.

Bob Gemmett, 100 South Road, asked if there is going to be any effort to conceal the exposed tower.

PB Chair Lord replied there is no monopine.

Mr. Gemmett stated there are alternatives to monopine that would make it more tree like and have it blend in with the environment.

Bill McHale, 110 Parsons Road, asked if they are anticipating to implement 5G technologies.

Mr. Fredette stated that he is not sure. He knows they are planning for 4G.

Mr. McHale asked what the thinking is on safety relative to people living near the tower.

Mr. Fredette stated that all sites are required to meet the FCC mandated level of maximum exposure. Verizon will come in well under that threshold.

Attorney Donovan noted that the document with that information is part of the application.

BOA Chair Crapo stated that in the initial installation a crane will be used and equipment will need to be brought in. In the event of a technology upgrade, would that equipment also be required?

Mr. Fredette explained that a crane is needed to stack the pole. Future equipment modifications are done more manually.

Attorney Weaver noted that antennas are swapped out frequently and it is really not noticed, as there is no difference.

Hearing no further questions, PB Chair Lord closed to the public at 8:30 p.m.

Attorney Donovan stated that there has been discussion about each board breaking up after tonight and making their own decisions by way of their jurisdiction. It might be helpful, while the boards are together, to have a preliminary consensus on the 126' versus 150' issue, as to how the boards would like to see it resolved and whether the two carriers are in agreement. There are a couple of options. One would be to build the tower so it can be expanded in the future, which would force Verizon to incur the expense now to build a sounder structure. The other option is to just ask them to go to 150' and 126' respectively, and just raise the tower. The other option is to just leave the tower as it is proposed at 126'.

PB Member Quinn stated that it makes no sense to build the minimum. It seems that they should design in as much flexibility that is reasonable. In his mind, that means 150'.

PB Member Durkin stated that he is in favor of 126'. Verizon and AT&T have said that this meets their needs. In listening to the residents' concerns about the height and the visual impacts, he would support the 126'. If Verizon wants to spend the money to potentially go to 150' that is up to them, but he does not think it should be a condition.

PB Member Gittlein stated that as long as the Town can be taken care of, what they have for a minimum of 126' is passable.

PB Alternate Finn stated that he would reluctantly agree to 126'. He would still like to hear more discussion about going a little lower. He absolutely does not support 150'. He thinks it is very objectionable and it has been stated that it is not needed.

PB Member Carter stated he would support the 126'. They are not asking for 150'. He would also like them to explore some sort of camouflage possibility. There may be some options that may make it a bit less of a visual impact.

BOA Chair Crapo stated he has supported 150' all along. In looking at the heights, it is not that much difference. Why build it to the minimum? Why not build it to cover as much area as possible? By going higher, it would cover more of the coast. Why not cover as much of the public area as possible to address the safety issue? He would like the application amended to 150'. If not, he might still consider a condition of approval for anything that is voted on moving forward.

Selectman Epperson stated he likes the idea of 126' but with the condition that the tower be designed in a way that it could be expanded to 150'. However, that would mean the infrastructure would have to be different. He would be happy with 126' but he agrees that 150' would not make much difference.

BOA Member Mikolaities stated that he would support the tower at 126' with the expansion capacity to go to 150'. He would rather see another 24' than to see another tower.

BOA Member Driscoll stated he is comfortable with the 126' and is not as comfortable with the 150'. It did make a bigger difference to him over the crown of the trees further away. He pointed out that it has been shown that it is effective at 126' and 109'.

BOA Member Patten commented that he echoes Selectman Epperson's sentiments. The 126' is the favorable way to go but if they have to go higher, the design should be built in and they should have the board's permission to do that.

BOA Member Dibble stated he agrees with Selectman Epperson's idea. He did not hear a representation that making the tower taller would increase the coverage meaningfully. There are coverage areas in town that are going to have to be solved another way. They are not going to be solved by making this tower taller.

PB Chair Lord stated he agrees with Selectman Epperson as well. He does not see the need for the 150' right now. He thinks it would be wise to plan for it and see what the future brings.

Selectman Epperson asked what the final consensus is on building the structure at 126' that could support 150' at some future date.

PB Chair Lord noted that the 126' with the expansion option has six in favor. There are four people for 126' and two people that really want to see the 150'.

Mr. Fredette commented that they will revise the drawings if there is a final consensus.

PB Member Quinn stated that Selectman Epperson's idea addresses his and Shawn Crapo's concerns. As long as there is flexibility, he thinks it meets the goal.

BOA Chair Crapo asked if they would have to come back if they had to go beyond the 126'.

Attorney Donovan explained that the condition should be that the tower be designed so it can be expanded to the 150' level, which is actually 146.7'. Someone may or may not come in with an application to do that. If it is not more than 20', it is not going to come back to the board. If it goes up more than 20', it will come back before the board. If not, it will be a building permit only.

Mr. Fredette clarified if it goes up more than 20' or the fenced compound needs to be expanded it will come back to the board.

Attorney Donovan stated the condition would be that it be designed to go up to an array with a center of 146'.

PB Member Durkin stated that ultimately it is being voted to approve the tower up to 147'.

Selectman Epperson explained he is trying to avoid someone coming in to build another tower.

BOA Chair Crapo pointed out that a successful argument in front of federal court is going to be that the third spot is no good, hence another tower is needed.

PB Member Durkin asked what would give the board the ability to opine on that, instead of just giving the green light for them to go to 147' if it is designed that way. He thinks they are putting themselves in a box to not have that discussion.

Attorney Donovan explained that if this condition is not put on and the 126' is approved for Verizon and 109' for AT&T, someone can walk in next year and add 20' to that tower and it will not be back before the board, regardless of how it is designed. It will just be between them and Verizon. That is federal law. If it is more than 20', it would come back to the board. He continued that if they are not asked to make the infrastructure stronger to support an eventual extension and next year someone comes in and wants to do Brackett Road, it is going to be more difficult to sustain a denial if Verizon was not asked to build the infrastructure to support 150'. If the board has asked Verizon to do it, they could probably force a carrier to go to 68 Port Way and have the tower be extended. If not, it will be more difficult to sustain a denial for a tower at Brackett Road.

BOA Chair Crapo questioned the center line versus top of tower.

Attorney Dodge explained if it is at 126' that would mean that 20' would bring it to 146'. The center of the 8' antennae is at the 146' mark and there will be 4' of antennae sticking over that pole. That would bring the top to 150'.

Attorney Weaver asked if the plans should be revised to show 126' with an extension option.

Attorney Donovan asked how much of a revision will be needed for the plans. He asked if it could be a condition that could be dealt with when it comes in for a building permit.

Mr. Fredette stated that he would like some clarification because if the drawings are revised for an extendable pole, when it goes for foundation and tower design, they are going to ask how many carriers.

Attorney Donovan stated that if it goes up to 146' there is going to be five. He suggested taking the one below the tree line off the plan and show three with a note that the supporting structure has to be able to support an extension to the 146' level. He is assuming that the new ordinance is going to be adopted, which eliminates the requirement to have four spaces shown on the drawing.

It was noted by the applicant's representative that the board may want to specify how many antennas. If twelve antennas are going to be required at the top spot, it will be a lot more loading and a different design for the foundation. There could be a note that it be designed for a certain amount of loading.

Attorney Donovan suggested to the applicant that they draft Sheet A-1 and draft a note they are comfortable with; however, do not show the one below the tree line. He thinks this level of detail would fall more within the jurisdiction of the Planning Board than the ZBA.

B. Next Steps:

Following the joint hearing the two boards may decide to continue the applications and convene separately to consider the applications within their respective jurisdictions.

- **Site Walk scheduled for Saturday, March 14th, 9:00 a.m.**
- **Board of Adjustment Meeting scheduled for Wednesday, March 18th, 7:00 p.m., Rye Town Hall**
- **Planning Board Meeting scheduled for Tuesday, March 10th, 6:00 p.m., Rye Public Library – (Regular scheduled meeting)**

Motion by JM Lord to schedule a site walk for March 14th, 9:00 a.m. Seconded by Bill Epperson. All in favor. (Vote by PB and BOA)

Motion by Tim Durkin to continue the application to the Planning Board meeting on March 10th. Seconded by Jerry Gittlein. All in favor. (Vote by PB)

Motion by Burt Dibble to continue the application to a Board of Adjustment meeting on March 18th. Seconded by Rob Patten. All in favor. (Vote by BOA)

BOA and PB draft meeting minutes of 2-18-2020

- Approval of Minutes of December 18th

Motion by Tim Durkin to approve the minutes of December 18th. Seconded by Jeffrey Quinn. All in favor.

- Approval of Minutes of January 4th

Motion by Tim Durkin to approve the minutes of January 4th. Seconded by Jeffrey Quinn. All in favor.

Adjournment

Motion by Shawn Crapo to adjourn at 9:30 p.m. Seconded by Steve Carter. All in favor.

Respectfully Submitted,
Dyana F. Ledger

RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant: Cellco Partnership d/b/a Verizon Wireless

Owner: The Town of Rye

Property: 68 Port Way, Tax Map 23, Lot 1
Single Residence District

Case: Case #20-2019

Application: Conditional Use Permit and Major Site Development Application by Cellco Partnership d/b/a Verizon Wireless, with AT&T for property owned by the Town of Rye and located at 68 Port Way, Tax Map 23, Lot 1 to install a wireless telecommunications facility in the form of a 126' monopole at the property, which shall include twelve (12) panel antennas, six (6) remote radio heads, one (1) junction box at a centerline 121' and nine (9) panel antennas, fifteen (15) remote radio heads, six (6) surge arrestors at a centerline of 109' and ground based equipment to be housed within 50'x50' fenced enclosure. Property is in the Single Residence District. Case #20-2019.

Date of Decision: Tuesday, February 18, 2020

Decision: The Board voted to continue the application to March 10, 2020.

2-20-2020
Date


JM Lord, Acting Chairman
Rye Planning Board

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

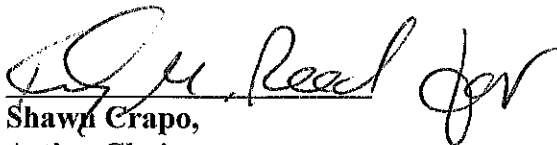
Applicant/Owner: Cellco Partnership d/b/a Verizon

Property: 68 Port Way, Tax Map 23, Lot 1
Property is in the Single Residence District

Application case: Case #47-2019

Date of decision: February 18, 2020

Decision: The Board voted 5-0 to a site walk and balloon test on Saturday, March 14, 2020 at 9am to view the trees that to be cut and to continue the application to the March 18, 2020 meeting.


Shawn Crapo,
Acting Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.