

RYE ZONING BOARD OF ADJUSTMENT
Tuesday, September 4, 2018
7:00 p.m. – Rye Town Hall

Present: Acting Chair Shawn Crapo, Burt Dibble, Patrick Driscoll, Tim Durkin and Charles Hoyt.

Others present on behalf of the BOA: Attorney Michael Donovan and Planning/Zoning Administrator Kimberly Reed and Telecommunications Consultant for Rye Ivan Pagacik.

Members of the Verizon Team; Attorney Victor Manougian, Site Consultant Eric Campbell, SAI Communications Rep. Chip Fredette, C-Squared Systems Rep. Keith Vellante, Chappell Engineering Associate Clem Salek, Attorney Will Dodge representing AT&T, Site Expert for AT&T Frank Kelly.

I. Call to Order and Pledge of Allegiance

Acting Chair Crapo called the meeting to order at 7:03 p.m. and led the Pledge of Allegiance.

II. Approval of Minutes:

- **April 16, 2018**
- **May 2, 2018**
- **June 21, 2018**
- **July 27, 2018**
- **August 31, 2018**

TABLED

III. Applications:

- **Cellco Partnership d/b/a/ Verizon Wireless** for variances and a special exception to install a wireless telecommunications facility in the form of a 125 ft. monopine at 120 Brackett Road, (Tax Map 22, Lot 95 A), owned by Dolores F. Lintz, and located in the Single Residence (SR) District. The following variance requests will be heard:
 - (1) From Rye Zoning Ordinance (RZO) § 305, § 505.3 and § 203.1 to permit a wireless telecommunications facility at a location within the SR District that is not within the Wireless Telecommunications Facilities Overlay District;
 - (2) From RZO §505.6, A.3 to permit a wireless telecommunications tower to be located less than 120% of tower height from a residential building;

- (3) From RZO §505.6, A.4 to permit a wireless telecommunications tower to be located less than 100 feet from wetland soils and marshes;
- (4) From RZO § 301.8, B.1 and § 301.8, B.7 to permit a wireless telecommunications facility to be located within the 100 ft. wetlands buffer; and
- (5) From RZO § 301.8, B.5(b)(2) to permit cutting of live trees greater than 4 ½” in diameter.

The ZBA will also hear a request for a Special Exception pursuant to RZO § 301.8, B.6 and § 301.8, B.7 to permit a driveway within the wetlands buffer.

Resident Kathleen McCabe called for a point of order.

Acting Chair Crapo opened up to Ms. McCabe for comment.

Ms. McCabe asked if there was a way to get more chairs for the people who are coming in to the meeting.

Acting Chair Crapo stated he does not control the chairs in the building. Occupancy wise, he does not think they can fit any more people in the room (courtroom) without creating a fire hazard. He pointed out that the meeting is being livestreamed for people to view. He opened to the applicant for presentation.

Attorney Victor Manougian, McLane Middleton Professional Association, Manchester, NH, representing Cellco Partnership d/b/a Verizon Wireless, presented to the Board. He noted that he received a lot of emails just before the meeting. One was 46 pages long and others were 10 to 12 pages long. He scanned the emails quickly; however, he is not in a position to opine or answer questions relative to those emails. He continued that he did comply with the board's request to submit anything to be reviewed by the board no later than five days before the meeting. He stated that the initial filing for this proposal was filed on December 7th. He would like to spotlight what started this amongst the town, as well as his client's needing a site in this area. (He read from the December 2017 Edition of the Town of Rye Newsletter):

“Town wide cell service continues to be an allusive goal for the coastal areas in general and the northern part of Rye, in particular, have little to no cell service. In the past 10 to 15 years cellular searches for available property for cell tower installation have been undertaken to no avail. Although, the old World War II observation tower at Pulpit Rock might have been ideal, opposition due to proximity to residences has eliminated that from future consideration. Safety issues related to emergency calls for service or evacuation remain. Senator Innis was advised that there are areas of land in Rye which are owned by the state that might provide a solution to this problem. A private initiative by one of the cell phone companies may be needed to solve this public safety problem.”

Attorney Manougian stated that his client tried to do what this article has suggested, starting around 2006 to 2007, with the Pulpit Rock location. He noted that the goal is to get coverage in this section of Rye.

Referring to his email submitted on February 8, 2018, he stated this email confirms what he, Keith Vellante, C-Square Systems, and Chip Fredette, SAI, had discussed with the Police Chief and Firefighter Klanchesser. The email addresses why this site is needed. Both the officer and the firefighter talk about problems at Sargent's Point, Odiorne State Park, Wallis Sands State Park and the Wallis Road beach area. There was also discussion about the rescuer who had a hard time finding the surfer because of a lack of a signal. Police Chief Walsh stated that the Rye Police Department uses Verizon tablets for their cruisers and they have signal issues in this and other areas along Route 1A. Firefighter Klanchesser stated that the fire department would be purchasing the same Verizon tablets. He pointed out it is not just about the Telecommunications Act. It is not just about his client and their needs but it is about public safety.

He read emails in support of the proposal from:

- **Edward Bowser, 211 Brackett Road**

Attorney Manougian stated that he has mentioned in the past that a certain percentage of calls originate from cell phones. That percentage has gone up from his last report. It is currently 76% of 9-1-1 calls that originate from cellular devices. Verizon currently serves 70% of the public safety market in New Hampshire. Almost 50% of households are disconnected and rely exclusively on cell phones. A really important public safety issue that this board should consider when it looks at whether or not this request will be granted is the submittal from AT&T, which has a letter of intent in their RF report citing their need for this site, along with the coverage plots. AT&T has FirstNet which will create a national wireless emergency communications network for use by all first responders. AT&T is a competitor and is going to cut into Verizon's market but that's fine because it is a public safety issue. He noted that he has never had a carrier call him to say that they want the second spot on the tower at 110ft before the shovel is in the ground. Most of the time, a few calls are received or the tower company has to solicit carriers to go on the tower. To him, this speaks a lot to what this site means to two national carriers.

Acting Chair Crapo noted all documents that have been submitted, and minutes of all the meetings, are part of the record of this meeting. It has been a continuation all along. Prior submittals for both sides are all part of one master record.

Attorney Will Dodge, Downs Rachlin Martin, representing New Cingular Wireless PCS, LLC (aka AT&T), stated AT&T was awarded a grant from a new federal agency called FirstNet. The purpose of that grant was to address a problem that arose on September 11th. Throughout most of the country, many of the first responders (fire, ambulance and police) do not have a single means of interagency (first responder) communication. Congress identified that as a major priority to be addressed. Whether it be a local, regional or national emergency, all first responders across the state lines are able to communicate with one another effectively having a reserved network to essentially be given priority in the state. He continued that AT&T won that award. As part of that, over the next three years, AT&T is trying to deploy a spectrum that is used precisely for public safety use all across the country, which includes New Hampshire. They have started to work on a number of different search rings all around the state where presently AT&T does not have reliable coverage or its coverage needs to be improved. He continued that

they identified this particular site on Brackett Road early on as being potentially compatible with the network. The center of the search ring is closer to the Wallis Sands State Beach. However, they looked at what Verizon had already done and spoke with AT&T's RF engineers who believe that the second rung of the tower, at a height of 110ft, will serve the FirstNet needs in the area. Once the project is approved, they would file for a building permit application to take the second spot and use the areas in the site plan reserved for a second carrier to put in a generator, an equipment shelter and antenna array. He urges the board to move forward with the proposal. It is a great site. In looking around, there is not another obvious place for AT&T to co-locate because there are no other support structures in the area. The state properties that AT&T was looking at as other possible candidates, all have deed restrictions or L-Chip restrictions that effectively preclude them from renting those properties.

Attorney Manougian stated that he would like to briefly touch on Rye's Zoning Ordinance for wireless communications facilities followed by the Telecommunications Act of 1996. His reading of ordinance 505.3, Wireless Telecommunications Facilities District and Map, seems like effective prohibition of wireless service. Wireless facilities are allowed on six parcels that are referred to as an overlay district. None of the parcels are in northern Rye where the gap and problems are, which are being sought to be addressed by Verizon and AT&T. All six sites are controlled by the town, which would require a vote at town meeting, to approve the Selectmen to lease the land for more than five years, and a carrier entering a mutually agreeable lease for the property. Knowing the history in Rye, it would be hard to get both of those in line. The other thing that struck him about the ordinance, is that there is no order of hierarchy. A lot of the ordinances he has seen in New Hampshire, Maine and Massachusetts give zones and then have a preference of hierarchy. Its town owned land, the Water District, Rye School or Conservation Commission land. To him, that struck as a problem right off the get go for what his client has to do to comply with local and federal laws. He continued that the Telecommunications Act of 1996 is "*to promote competition and reduce regulation in order to secure lower prices and higher quality services for American consumers and encourage rapid deployment of new telecommunications technologies*". The act talks about quality of services for American consumers. It doesn't differentiate between drive-by consumers or local consumers. He noted there was a question that came up at the last work session from the board as to whether or not the TCA limits protection to all types of wireless service, including data service. His reading of the law says that it does not favor voice services over data services.

47 U.S.C § 332(c)(7)(B)(i)(II):

"Municipalities shall not provide or have the effect of prohibiting the provision of personal wireless services. Personal wireless services is defined in 47 U.S.C. § 332(c)(7)(C)(i) as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services."

He stated that in reading those two services of the U.S.C, the word "voice" or "data" is not used separately in either of those sections. That would suggest that Congress did not envision prohibiting wireless services and its provision is not just to voice but to voice and data.

Referring to OmniPoint Holdings v the City of Cranston, he stated that in this case the wireless carrier was denied a variance and a special use permit by the Cranston Board of Review to build a wireless communications tower. The carrier had applied to remedy a significant gap in coverage. In that case, the court held that the city's denial of the permits constituted an effective prohibition in violation of the Telecommunications Act. They found that this was the only feasible option and therefore, should have been granted the permits they were requesting. In that case, one of the alternate sites they rejected was because it was redundant. There was some discussion about sites in Rye that were not in the search range but off in another area. Redundant would be a location that was too far away and it covering some place that another tower already covers. The case also talked about how much negotiation would have to be done. There was negotiation taking place that failed because an agreement couldn't be reached and a contract was never signed. That is the same relationship Verizon had with Mr. Thiel and his property. Verizon tried negotiating. AT&T tried and then gave it back to Verizon. It failed after about two years. In his mind, this property now becomes unavailable and can't be a feasible site. Lastly, they talked about an area, Phoenix Avenue, where OmniPoint showed a significant need for coverage. It was well known and established that Phoenix Avenue was a heavily travelled and important route that connected Cranston to its neighbors. That case highlights the fact that because a cellular carrier has a problem with an area that they want to serve, it can't be said that not enough local people or businesses are being served. It's what the carrier has a demand for and what their needs are in order to be competitive under the Telecommunications Act. Under alternate solutions, they said that effectively the prohibition clause does not stand alone. It is also part of the TCA's larger goal of encouraging competition to provide the customers with cheaper higher quality technology. The question is the availability of alternatives. Verizon has submitted several times, both in writing and verbally, that a lot of the alternative sites work from an RF perspective but do not work from an availability situation.

Referring to Daniels v the Town of Londonderry, Attorney Manougian stated this was a case in which the court looked at whether the Telecommunications Act could be incorporated into state law when analyzing effective prohibition and how the variance standard should be looked at. If the hardship is that the ordinance would not allow this feasible site, it could be looked at as effectively prohibiting wireless service. ***“When applications to build a wireless telecommunications tower are designed to fill a gap in coverage, the suitability of the specific parcel of land for that purpose should be considered for the purposes of determining hardship. The fact that a proposed location is centrally located within the gap, has the correct topography or is of adequate size to eliminate the gap in coverage, are factors that may make it unique under the umbrella of the TCA. Similarly, that there are no feasible alternatives to the proposed site may also make it unique. Although a parcel may be similar to surrounding properties, in terms of its general characteristics, it may be unique for the purposes of hardship when considered in light of the TCA”.*** He can say one word that will exemplify that and that is “Thiel”. That is a similar property that may have worked but the proposed property is unique because a lease was able to be signed. The lease with the private landowner is in place where that was not able to be done before.

Attorney Manougain stated that as part of the alternate site analysis, the boards had asked why this search ring was chosen. He continued that no one can dictate to a carrier where their search ring should be. This is a proprietary decision they make based on demand, uses and issues with coverage and capacity in that area. That is why Verizon had focused on Rye Point, between Brackett Road and Ocean Boulevard, without going farther south than Parsons. Unfortunately, the state owns most of the land in this area and most of the land is wetlands. There was discussion about the Rye Elementary School area. That proposal was done in 2008/2009. The School Board voted to not enter into a contract with Verizon in 2008. Chip Fredette contacted the School Board again in 2009. The School Board said at that time they did not want to start negotiating a lease again. Verizon's current needs are in the search ring that they are currently working on. The Condon property does not have access. The parcel at 0 Port Way, Map 23, Lot 21, confirmed that the lot does not have access. Attorney Donovan did suggest two solutions, which may work down the road, but it doesn't promote rapid deployment of wireless services. Also, there is a question of its availability. The property at 505 Ocean Boulevard was also considered at the request of the boards. It is state owned and has deed restrictions. Aside from that, there will be trouble with the amount of walking trails. There is an old cemetery and two old buildings. If the other obstacles could be overcome, there would be a problem when the State Historic Preservation looked at the buildings and old cemetery on the property.

Attorney Manougian stated that since the last site walk it became clear that the first driveway option was not favored because of the amount of disturbance within the 100ft buffer to a wetland. There was also a second option but there was a sense that this was not preferred either because of the impact to the buffer area, as well as the tree count that had to be removed. Chip Fredette went back to the landowner to negotiate and explained what Verizon would like to do. The new approach would be straight in. (He pointed this out on the site plan before the board.) This would minimize the impacts. Currently, the landowner has a gravel driveway that comes in and goes to their backyard. As part of this, Verizon will also eliminate the existing gravel driveway and replant the area. Both the wireless service providers and the landowner will be using the one driveway. This was felt to be the best solution and the landowner agreed to the proposal. Attorney Manougian noted that at the request of the board they did photosims to show the compound. (He reviewed the photosims for the board.)

Acting Chair Crapo opened to the Board for questions.

Member Dibble asked if the near fence could be made a little taller so it could better shield the equipment cabinets. Could it be taller than 6ft?

Acting Chair Crapo commented a variance would be needed. What is shown matches the 6ft restriction in the zoning.

Speaking to Attorney Manougian, Attorney Donovan asked for an explanation of the tree cutting (as shown on the presentation slide).

Acting Chair Crapo opened to the public who wished to make a statement in regards to the plan that Attorney Manougian had presented before the board.

Diane Mason, 115 Brackett Road, noted the proposed driveway is right across the street from her driveway. Anything coming and going will be right in the kitchen window.

John Welch, 60 Brackett Road, stated that it was said that AT&T was going to be bringing in another generator and an antennae array. He asked the location of the generator.

Attorney Dodge, representing AT&T, stated they have not put together a site plan for this proposal; however, it will be somewhere within the compound.

Acting Chair Crapo stated he would like to save the specifics of the compound for later in the meeting. He would like to keep the conversation to the new driveway proposal at this time.

Wes Pike, 190 Brackett Road, pointed out they have asked for renderings from meeting one, as to how this would look from different points of view. He asked if this is the only rendering that has been provided from Verizon. He asked if this rendering is the best that Verizon could give. He wonders what is being withheld and how it really will look. It appears deceitful.

Hearing no further public comments at this time, Acting Chair Crapo asked Attorney Manougian to continue his presentation.

Attorney Manougian stated that he would like to address all the variances in one lump sum. He stands with his submittals of December 8, 2017, February 9, 2018, March 7, 2018 and August 10, 2018, where the flowing requests were made. It has been a work in progress. There have been 10 to 12 renditions of the plan. The rendition that is before the board is the one that Verizon wants the board's support on. He noted that the August 18, 2018 revision 12 is Verizon's final request. He is surprised by the comments he has heard that there are many iterations of plans and they are all wrong. The plans are flowing based on comments from the town's people and the boards. They are flowing and change. He does not think there is one tower site that had plans submitted, stamped and approved the day they were submitted on day one. He noted that the last version shown on the screen (projector screen) is the third driveway access scenario and this is what they are requesting to be voted on.

Attorney Manougian reviewed the five criteria standards for the variances:

(1) Cannot be contrary to the public interest:

He submits it is in the best interest of the people of New Hampshire in general, not just Rye, to encourage rapid deployment of broadband range of quality telecommunications to serve the public. If the tower is located at this property, it will substantially improve wireless telecommunications capabilities in the area. Stats have been given of how many people work from home and how many new generation people will not buy a house if they drive by and don't have a signal.

The facility will not adversely affect the health and safety of the surrounding neighborhood. Once it is completed, there will be no increase of traffic as a result of the facility beyond the usual one pickup truck per carrier visit to the site to see if everything is working correctly.

(2) The proposed use is not contrary to the spirit of the ordinance:

He stated the spirit of the ordinance is to promote the health, safety and welfare of the community without unduly impacting the quality of life, congestion, visual impacts, overcrowding of land and municipal resources. The photosims were the mildest photos that he has seen blend into the background. The installation will not have any impact on municipal resources. It will not create any congestion, it's unmanned and it will reduce any perceived negative impacts due to its location setback from the coastline, while providing coverage to northern Rye and the coast.

(3) Granting the variance would do substantial justice:

He stated the general public is going to benefit whether they are residents of Rye, passersby, summer tourist, police or fire. They will benefit from the granting of this variance to help eliminate the significant gap in this communication network in northern Rye. It will improve the integrity of Rye's telecommunications infrastructure during emergency times when it is needed the most.

(4) The proposed use will not diminish surrounding property values:

In the initial filing he mentioned there have been numerous appraisals and surveys prepared during buildouts of wireless networks across the U.S. in the past two decades that have shown consistently that facilities, such as the one being considered by the board, have no measurable impact on values of surrounding properties. In fact, such facilities can have a positive effect on property values. They increase the local tax base without creating additional demand for services. To bolster that, the real estate valuation report has been submitted (1/12/2018), which was prepared by Andrew LeMay. That is the expert's opinion and to date, there have been no other expert reports to counter that opinion.

(5) Hardship criteria:

He stated this is the one that is always hardest, whether it be an addition to a house or what Verizon is doing. The only added feature that will help Verizon that will not help a homeowner is the Telecommunications Act and such cases as Daniels versus Town of Londonderry. In that case, the court held that when an application to build a wireless telecommunications tower is designed to fill a significant gap in coverage, the suitability of the parcel of land for that purpose should be considered for the purposes of determining a hardship. He cited the alternate site analysis report, the dealings with people within the search ring (Condon and Thiel properties), looking at 0 Port Way and looking at state owned land. Verizon having a contract and a lease on this parcel (120 Brackett) makes this property unique. In addition to looking at the present coverage needs, the geography and the availability of existing structures in Rye, which Verizon would normally place but there aren't any here. The ones that are here, Verizon tried and failed. He submits that under the Telecommunications Act, which its main goal is to facilitate rapid deployment of telecommunications infrastructure in the United States, a state or local government may not prohibit or

have the effect of prohibiting any entity to provide any intrastate telecommunications service. Verizon has identified this as the most feasible site. In terms of the search ring, it is inches over the line but it still works. RF confirmed that it works.

(6) Proposed use is a reasonable one:

He stated the proposed use is a reasonable one. There is a high expectation amongst the population at large today to have reliable cellular and data service. It is an important thing. He asks that the board support the granting of the variances.

Attorney Manougian continued that with respect to the special exception that was read into the record earlier, granting the special exception would not be injurious or detrimental to the neighborhood. The declarations purpose which accompany the passage by the State Legislature in New Hampshire in RSA 326:2 states, "*it is in the best interest of people in New Hampshire to encourage the rapid deployment of the broadcast range of quality telecommunications services to the public*". This is bolstered by the article read earlier from the Town of Rye Newsletter. The facility is going to enhance emergency communications that are critical in times of crisis, such as severe winds, car accidents, ice and snow storms, and related power outages. It is not contrary to the public interest. It is completely the opposite. It is very much in the public interest to provide better wireless service to meet the growing demand and necessity for such a service in Rye. Granting the proposed use would not be contrary to the spirit of the ordinance. The spirit of the ordinance as it is set forth in Article I, Section 102 and Article IV, Section 505, is to promote health, safety and general welfare of the community without unduly impacting quality of life, congestion, visual impacts, overcrowding of land and buildings and municipal resources. Furthermore, it seeks to ensure a proposed telecommunications facility compatibility with the visual and environmental features of the town. He submits that this facility promotes public safety by enhancing the sole means of communication used by residents outside their homes and for many their only means of communication inside their homes. Again, it will have no impact on municipality resources or create any congestion because it is unmanned. The facilities location outside the Wireless Overlay District is necessary to maximize the effectiveness of the facility and to fulfill the substantial coverage gap. Unfortunately, all Rye's Wireless Overlay Districts are located in southern Rye and do not help. This site is private, residential, is available, is leased and is not covered by state restrictions on what can be done with the property. It won't be dragged out or slowed down by possible votes at town meeting or selectmen entering or not entering the lease with Verizon. It gets the job done that Verizon has been trying to do in Rye since 2006/2007.

Acting Chair Crapo pointed out that the science and case law was read from. He asked if either define what rapid deployment is. According to the government, rapid deployment could be 15 or 20 years. Is there any case law that determines what is rapid?

Attorney Manougian replied that he does not know of any case law but 2006 to 2018 is not rapid by any standard.

Acting Chair Crapo pointed out that 2006 was in a different location.

Attorney Manougian replied that they are trying to get a site in northern Rye.

Acting Chair Crapo commented there have been discussions about how not every site would cover the same gap. Several different gaps were being looked at over that period, not the same search ring.

Attorney Manougian stated as far as he knows, the only one in a different search ring was when they were looking at the Rye Elementary School. The other sites were part of this northern search ring. That would be Odiorne State Park, Pulpit Rock, Condon, Thiel, more recently 0 Port Way and 505 Ocean.

Referring to Holland Drive and 0 Port Way, Member Hoyt asked how far the discussions went with the town.

Attorney Manougian explained there have been no discussions with the town. The Code Enforcement Officer (CEO) brought it up when this application was filed. Also, a resident, Hugh Lee, told them about it. He continued that they looked at it. Whenever he looks at a site, before he starts talking to selectmen or public officials, he looks at the title. They do not lease land with anyone, (public, private, state, municipal, etc.), until a title is done. The research of the title showed there were no access rights that the town had that they could pass to Verizon.

Member Hoyt stated that he thinks he read an email that said some quiet deed action could be taken to help this to be a viable site.

Attorney Manougian stated this is what Attorney Donovan recommended in his memo to the board last week; a quiet title action or the Selectmen doing something with the road.

Speaking to Attorney Dodge, Attorney Donovan asked what AT&T's options are for FirstNet if the town does not approve Verizon's application.

Attorney Dodge explained they have been working on this particular search ring as long as Verizon has. They have been watching Verizon's progress, or lack of progress, and where that is taking them. AT&T has looked at state owned properties. Some of them have either deed restrictions or L-Chip restrictions in the ones that have been looked at so far. He would anticipate that they would be at "square 1".

Attorney Donovan asked if the Selectmen were interested in 0 Port Way, which is 13 acres of town owned land and has been admitted is technically feasible, and the access issues could be resolved within the year, would it be something that AT&T would be interested in pursuing?

Attorney Dodge replied that he cannot commit to that but would certainly bring it back to the company to evaluate and he is sure Verizon's engineers would do the same. He noted that both Verizon and AT&T use C-Squared as its consultant.

Member Hoyt stated that it struck his interest when it was said “may work down the road”. Some light was shown on that particular site if the Rye Point site fell through.

Attorney Manougian commented it will be a year or so to either deal with the street layout or do quiet title action, followed by the Selectmen signing a lease, followed by a town meeting vote, which could be two years down the road, unless a special town meeting was called, and then seeing where it falls. He does not have a rapid deployment case but that is a long time away to solve northern Rye’s problems versus a site that is ready to go.

Attorney Donovan noted court takes a long time too.

Member Hoyt stated that it is being said that this site is “ready to go”. He does not see it as “ready to go”. There are a lot of hurdles that the board has to be convinced of. It is a residential site. He knows of sites where the tower worked because it was 1000 plus feet away. This is 50ft away from the road.

Attorney Manougian replied they do not have the luxury of dry land to push further back within the search ring. Verizon is asking for this site and that has been the request all along.

Member Hoyt commented that he is one of the guys in Rye that is fed up with his coverage being really lousy. However, he does not want to sacrifice the rights of the residents of Rye. He does not see the hardship case or the spirit of the ordinance quite yet.

Attorney Manougian asked if his thoughts are taking into account the Selectmen’s position from last year, the Chief of Police’s, the firefighters’ positions and what the TCA says about public safety.

Member Hoyt replied he is completely convinced that there needs to be something done about the cell phone coverage in this town.

Acting Chair Crapo pointed out there are gaps everywhere. He cannot make a cell phone call in the center of Hampton. Speaking to Attorney Dodge, he stated that it was referenced that AT&T would be a co-locator. In fact, one of the town’s requirements is that they provide for multiple co-locations. However, it went from 100x100 compound, to 50x50 and this is 30x40. Part of the presentation was they were going to save room because this was not going to have the traditional stone sided pillbox. There was mention of a second generator and equipment shelter. It was the understanding that this was all going to be minimized. He asked why there would be a need for multiple generators. Could one larger generator be put in and others feed off it?

Attorney Dodge explained the AT&T facility is not yet designed; however, there would be an antennae array at 110ft, which would look very similar to Verizon’s. There would be somewhere between 9 and 15 antennas on a triangular rack 10ft below Verizon. It looks very similar to any other cell site. Of course, this would be somewhat obscured by the monopine. For a location that is sort of below sea-level, there will be a concrete box 6.11x7.11. That is where

the antennae equipment is stored for AT&T and FirstNet. There will also be a 20kw generator. In regards to a shared generator, this is something that has not yet been discussed. It has been done before and is something they would be willing to talk about.

Acting Chair Crapo commented that if there are four locators and four generators with four separate propane tanks running them, it would be increasing the hazard with the propane and over bulking the site.

Member Hoyt asked what type of noise will be generated from these machines.

Attorney Dodge explained it depends on the type of generator. This is a Generac Generator. A lot of them have an aluminum enclosure and an exhaust that can be pointed away from neighborhoods and sensitive areas. It will depend on the kilowatts as to how loud it will be. He continued that the generator they are looking at is 71db unmitigated but when it is put in the enclosure there will be some mitigation.

Member Dibble asked how this would compare to a residential generator.

Attorney Dodge replied it is bigger but it really depends on how big the house is and how many units are in the house. He can provide some information to the board if they get to that point. He noted that a typical generator will have a test of some kind, usually about once per week for 20 minutes. That is usually programmed to go off during the day. If there is a prolonged outage that generator can be on until power is restored. Precisely, part of the purpose of FirstNet is to allow first responders to have total reliable service of every kind, data and voice, during those exact kinds of emergencies that cause the greatest amount of stress on everyone.

Member Hoyt asked about the RF (radio frequency) radiation that is emitted.

Attorney Dodge stated that radio frequency emissions will be somewhere in the order of 1% or less of the level that the FCC considers to be unsafe for the general public. He continued that radio frequency has an exponential falling off as it gets further from the source. The 1% is generally measured immediately around the outside of the compound.

Member Hoyt asked if he is saying that by the time it hits the nearest abutter it is not hazardous to their health.

Attorney Dodge stated that all the facilities comply with the FCC standards. As a zoning board, that is all that should be looked at. It is not something the zoning board regulates.

Acting Chair Crapo opened to Mr. Pagacik for comment.

Ivan Pagacik, Telecommunications Consultant for Rye, stated that the board may want to ask about alternative backup power on batteries. Carriers in some remote locations, where they cannot get propane to the locations, have battery backup. Sometimes there is a concern about

long outages and batteries will only last a certain amount of time. That can be supplemented with a portable generator hookup where a generator could be brought in and could connect off. Certainly, with the battery option there will not be that noise situation. It is true that once per week they are going to test the generator for 20 or 30 minutes. It can be decided what time during the day that should be done but the more carriers, the more generators and the more multiple tests.

Acting Chair Crapo asked the applicant to address this question. He also commented it was also stated that the outside cabinets (pillbox building) did not have to have a heating or cooling area. He asked if the AT&T box have fans constantly running to cool the box.

Attorney Manougian explained that Verizon's system has a backup battery cabinet and generator. Both the systems, have about an 8 hour backup battery capability. When the power goes out, the generators do not kick on until the backup battery gives out. When the backup battery gives out and it is going into the 10th or 20th hour, people will want a generator to back up their cell phone service. He continued that the equipment is the cabinets. They do not have HVAC units. The equipment shelters are the sheds because the equipment that is needed is inside the building. There will not be that noise but there will be generator noise. Verizon does not do a site without a generator.

Attorney Donovan asked about the portable hookup option. When it gets close to the 8 hours a generator could be brought in so there is no testing once per week.

Attorney Manougian explained this is done but not on a macro-site that is going to be in the middle of nowhere. He has seen it more often on rooftop sites with a generator plug at the base of a building. Maybe it is a residential housing complex, where all the equipment is on the roof, and putting a generator on the roof would have different issues than on the ground. A hookup would be done with a generator coming in on wheels; however, Verizon does not do this on their macro tower sites. It's too problematic to get equipment out there. If it is a bad snow storm and trees are down, they won't be able to get there. Referring to Acting Chair Crapo's question about time, he does not have a set answer other than the shot clock gives the board so long, which has already been extended to the end of the month. Regarding 0 Port Way, part of the one, two- or three-year process to get something going there, that is also not zoned for telecommunications so it would be before the board as well.

Attorney Donovan pointed out the town meeting is in March. It could be rezoned in March. There is precedent for that. The present tower in town was rezoned. Similarly, it has been insinuated that because variances might be required for a site outside the district, it might be problematic. He stated that the only time a cell tower had gone before this board for a variance, and gone to a hearing for a variance, it was approved. It is the one where McLane Middleton represented the abutters who took it to court. He believes that is the only time this board has actually heard one. The board has not had a pattern of denying variances, which is what is being implied would be the outcome of other applications.

Attorney Manougian commented that he wasn't implying a pattern. He was talking about what federal law looks at, if it is denied.

Attorney Donovan asked if he is aware of this board hearing any other cases.

Attorney Manougian replied no.

Attorney Donovan stated that the case went to state court. The board granted a variance and McLane Middleton was representing an abutter who took it to court. The town resolved it with the outcome being the tower that is there now. The carrier was convinced to go to a different site, even though it was approved by the town for a different site. He continued that the other applications that were cited in report were all withdrawn by Verizon before the board got to hear them.

Attorney Manougian agreed. He stated that one of the variances they are asking for is for the setback of 120% from any building used for residential services. He noted that is the landlord's building. A lot of ordinances say residential property from the boundary line. It usually does not include the house on the property.

Attorney Donovan asked if it is true that the tower itself would hit the residence on the property without even putting the 20% on it.

Attorney Manougian replied that it would but he is not conceding that they fall.

Regarding the question on whether there would be any ambient noise from the equipment that AT&T would propose, Attorney Dodge noted there would be a cooling fan. It would be designed so the fan exhaust is on the building away from the neighborhood, pointing toward the wetland. It's a very limited amount of noise. They would be willing to submit and work with the planning board on a plan to determine whether it is appropriate based on the two generators or a single generator plus ambient noise. They will look at residences and use standards that the state uses to determine if that noise is not acceptable.

Acting Chair Crapo stated that if there are two locators in there, in addition to Verizon, the ability to point things in a different direction will run out because the equipment has to be in a different place. He commented they have not heard that the proposed tower needs to be within a certain distance of other towers. If a cell phone call is going to be received off this tower, is the signal that went to the tower going through the air from another tower or is it coming through a landline into the compound? Is it coming in through fiber? He asked what exists at this site for underground fiber. That end of town is pretty well known for its trees getting knocked down and lines being lost.

Attorney Dodge stated what will typically happen, unless it is a very remote mountain top location, is that new fiber will be brought to the site.

Eric Campbell, representing Verizon, stated that if there is no fiber available they work with the utility companies to bring it in. Usually, there is fiber coming in from various places so there are multiple paths. In this case, they will do the best they can with what they have.

Acting Chair Crapo clarified that at this point Verizon does not know what is out there for fiber.

Mr. Campbell replied they have to walk it and work with the designer.

Acting Chair Crapo commented that in all the planning that has gone into this no one has even determined that one fiber even goes to the site.

Mr. Campbell pointed out that they work with multiple companies. When it goes out to construction is when that will be determined.

Speaking to Mr. Dodge, Member Driscoll asked if he said that this site is potentially compatible.

Attorney Dodge stated if he misspoke he apologizes. They are certain it will work at that site.

Member Driscoll asked if AT&T's site maintenance is typical to what Verizon does.

Attorney Dodge replied it is entirely typical. It will be one site visit per month, usually during daylight hours and not generally on the weekend. The only time there would be more traffic than that would be during an emergency situation where someone was maintaining a prolonged power outage to make sure there is sufficient fuel on the site.

Member Driscoll asked how invasive it will be if AT&T comes in six months after Verizon sets up the tower to do their install.

Attorney Dodge explained that once the site is fully constructed, it would take roughly two weeks for a co-locator to come in and set up. It will take two weeks to a month, depending upon the materials and availability. Probably the longest lead time is making sure that fiber is there.

Acting Chair Crapo asked if FirstNet requires additional security that is not included in the present plan. Does the present plan need to change to allow for that?

Attorney Dodge replied no. The security on the facility doesn't change just because it is being used by first responders. The only level of security that changes is with the network operations itself. There is nothing physical that changes at the site as a result of FirstNet.

Speaking to Attorney Dodge, Attorney Donovan asked if he and Attorney Manougian would agree that there is not going to be a second "bite of the apple" for this board or the planning board on co-location and questions as to what additional cabinets or additional generators, etc., are needed and the impact those have on the site. Those questions have to be addressed now because the board will not have a second "bite of the apple" on co-locations.

Attorney Dodge stated that if they were to proceed with filing a building permit then those questions would be address.

Attorney Donovan noted the time for these boards to review that is now.

Attorney Dodge commented that what is being dealt with tonight are variances, which are about needs. Although, AT&T's needs are different, they are ultimately compatible with Verizon's level of need. It seems like the planning board impacts of having AT&T come as well could be dealt with. In other words, there could be discussions about noise and how the shelter will look if the facility is approved. Either AT&T works together with Verizon as part of the planning board application, or they submit an application contemporaneously.

Attorney Donovan asked if AT&T met with state officials recently regarding Odiorne.

Frank Kelly, representing AT&T, explained there have been a number of meetings with the state about a number of their properties. Odiorne State Park does not work for AT&T for this ring. There were discussions about all the different state parks, including Wallis Sands which would work for AT&T. He reiterated Odiorne Point does not work for AT&T.

Attorney Donovan pointed out that it works for Verizon. Why does it not work for AT&T?

Mr. Kelly explained they have a different ring. It is a different hole that they are looking to fill and it doesn't work for AT&T RF.

Speaking to Attorney Manougian, Attorney Donovan asked what part of Odiorne is subject to L-Chip.

Attorney Manougian replied that he believes it is all the state owned park land. That was the funding restriction.

Attorney Donovan noted Odiorne was acquired in World War II.

Attorney Manougian pointed out it is covered by DRED. There are restrictions. It is the same as Mt. Washington and Mt. Cannon. All state owned properties have that deed restriction. If a lease can be negotiated, it is a huge hurdle to do what needs to be done under the deed restriction.

Acting Chair Crapo commented that sometimes the deed restriction can be lifted by the granting party. How etched in stone are these restrictions?

Attorney Manougian stated he is not sure. It is the funding mechanism that created those state owned lands. There are a lot of restrictions on what can be done and it is part of funding.

Attorney Donovan noted the town had to go through a process of getting an L-Chip restriction removed on a piece of property that the Conservation Commission had acquired. It does take time to get the legislature to approve it. He continued that he does not believe there was L-Chip money used to purchase land out there. The land has been owned by the state for a long time. He is trying to get at what deed restrictions are, but have not been produced for the board, that makes Odiorne not feasible for Verizon.

Attorney Manougian stated it is also not feasible according to the alternate site analysis report. Verizon tried to go back to speak with them and they stopped talking because of public pressure. Referring to site plan sheet C-02, he stated it shows a circle entitled '150ft tower fall zone. 120% of pole height'. That zone shows that the only house within that area is the landlord's house. The other homes are not within that fall zone. A variance is requested for that but it is strictly limited to the landlord's house on the landlord's property.

Acting Chair Crapo asked if this is from the most current version of where in the compound the tower will be. There have been a couple of versions of the location of the tower within the footprint of the compound.

Attorney Manougian replied yes. The version dated August 16, 2018, which is the last and final version that has been submitted to the ZBA and the Planning Board.

Acting Chair Crapo commented this is a site that is super tight. All these efforts have been made to make the driveway compact and everything less impactful. It was his interpretation that the arrays were being dropped in by a helicopter to get attached. He asked if this is going to be done or if it will be a crane with further site disruption because it will not fit through the driveway.

Mr. Campbell replied it would be a crane. It is going to operate from the side of the street or the entrance to the property. There will be a flatbed truck to bring it in and a crane to lift it up in place.

Acting Chair Crapo asked how long the construction period will last in order to get the tower up.

Mr. Campbell explained they do it as quickly as possible. They prep everything, do the foundation and then do the tower in one day. It depends on weather and access. There are a lot of things that go into it. There is a disruption but they try to minimize it as much as possible.

Member Dibble stated that he thought the selectmen's layout procedure is a selectmen's action, not a warrant article action.

Attorney Manougian suggested it would be a requirement for it to go to a warrant article.

Attorney Donovan explained that if a carrier and the town wanted to pursue 0 Port Way as an option, which has been admitted as being technically feasible by Verizon, it would take two things. It would take a town meeting vote to put that piece of land into the overlay district,

which could happen in March. It would also take a layout proceeding, by the Board of Selectmen, to layout an access way from Parsons Road into that site. That is a process that could be concluded fairly quickly. It is subject to some court appeals, which have to do with the price paid for the access way but that doesn't prevent it from going forward.

Member Dibble stated that it looks like such a procedure would require a wetlands crossing.

Attorney Donovan replied he does not believe there are any wetlands in that area.

Hugh Lee, 225 Pioneer Road, commented that there is an extension of Holland Drive that has no wetland impact for the entirety of that parcel.

Acting Chair Crapo clarified there is some potential court action over the access. Would the town need to take some additional land by eminent domain?

Attorney Donovan stated the layout proceeding is in essence an eminent domain proceeding. If properties involved in the layout suffer damage, there would have to be payment to compensate those properties for damage. However, Holland Drive is a platted street. It is a paper street and part of it is plowed by the town. He continued that the property owners could go to court to challenge the amount of the damages. In an eminent domain proceeding that does not hold up the project. It is also subject to the Eminent Domain Procedure Act where they property owner can challenge the public benefit of the layout. However, when discussing the cell tower, there has been a lot of testimony about the public benefit. That challenge would likely not go very far.

Attorney Manougian asked if a town meeting vote is needed to lease the land.

Attorney Donovan replied it may take a town meeting vote to lease the land. He continued that he compared Attachment B with the town's consultants Figure 5, which is Lot 66 on Brackett Road. He determined that Lot 66 does not pick up what Attachment B picks up. It picks up about 30 homes on Ocean Boulevard, roughly from Petey's running south. Some of those are seasonal, probably half. Figure 5, by the town's consultant, picks up more of Sagamore Road, more of Wallis Road and Long John Road. It involves 60 to 70 homes. It picks up 60 to 70 more than Attachment B. The rest of the coverage gap is picked up by Figure 5. Admittedly, they are two different models that are being used. The one by Verizon doesn't have as large an area of coverage that the town's consultant is using. He noted for the record there are differences. If it is picking up twice as many residents, and these are not seasonal residents, isn't that a better solution? It is covering everything Verizon wants to cover, except the 30 homes south of Petey's.

Attorney Manougian asked if the owners have said they want to lease the land because they have not approached Verizon.

Attorney Donovan pointed out that the town's consultant testified (7/31/2018) there is no difference between Lot 66 and Lot 67. The Roper Trust indicated to the Planning Board that

they would be interested in talking about a tower on Lot 66. He does not believe Verizon has produced any drawings on that. It probably involves some wetland relief but five or six wetland reliefs are required here (120 Brackett).

Attorney Manougian asked if there is any indication of where the owners want the tower on that property. He commented there are a lot of wetlands. They will probably want the tower shoved in the back, which will go way out of the search area.

Attorney Donovan commented it is clear that the site has not been investigated by Verizon, in terms of where the owner might want it. He thinks it can be determined that nothing has been investigated west of Brackett Road.

Attorney Manougian commented not since it came up at the last meeting.

Attorney Donovan stated that according to the town's consultant's coverage drawings that lot is going to cover 30 or 40 more homes in Rye than the other site. It doesn't cover stuff around Concord Point and Petey's south for a short distance; however, it has at least 70 dwellings on Sagamore, Orchard Drive, Liberty Commons, Wallis and Long John Road. It seems that this would be an even better coverage solution, unless there is something special about the 30 homes on Ocean Boulevard that make them more important than the other 70 homes.

Mr. Campbell asked the location.

Attorney Donovan explained it was all covered at the last meeting. The coordinates were provided to Keith (Keith Vellante C-Squared Systems). He continued that he asked Ivan the difference between that location and Lot 67. It was asked if moving it over would significantly affect the coverage and he said "no".

Mr. Campbell commented it appears to be a lot of wetlands.

Attorney Donovan replied yes; however, there is a lot of non-wetland there too.

Attorney Manougian stated it is going to need a lot of relief. Maybe not as much as here, but close, as far as not an allowed use, wetlands and fall zones. Frankly, Verizon has not looked at it since the last meeting. There is case law that says preferring a house down the street that needs similar relief doesn't justify the town not granting this one.

Attorney Donovan stated the case law, that has to be established in court not necessarily with this board, is that other alternatives have been thoroughly investigated.

Attorney Manougian commented that 2006 to now is "thoroughly". He is willing to bet that will stand up.

Keith Vallente, C-Squared Systems, asked if this is something that was in Ivan Pagacik's report.

Attorney Donovan explained it was his own analysis, looking at tax maps and counting the houses that are on Sagamore, Long John and Wallis Road that are not included in Attachment B but are included in Ivan's Figure 5. There are 70 homes in that general area, which is probably conservative. On the other end, there are roughly 30 homes south of Petey's Restaurant that are covered by Attachment B that are not covered by Ivan's Figure 5. His covers 70 more in the southwest corner. This is just based on going to the tax maps and counting the houses.

Mr. Vallente stated his first concern is they are comparing two different coverage mapping models and programs to make this conclusion.

Member Dibble asked if the tax maps reveal anything about the occupancy of the households. Are they seasonal, year round or properties that have been vacant for long periods of time? How can that be converted into how many citizens of Rye get served by one model over the other? That would be an important question. There are two other issues that have been raised in the past. One is that these facilities catch fire. How many of these facilities in the New England States have caught fire in the last ten years?

Mr. Campbell stated he only knows of one in Massachusetts, which was created by poor workmanship from the installation. This was about 10 years ago.

Member Dibble stated there was also a concern about these towers falling down. He asked if there is any data about the last tower falling down.

Attorney Dodge noted that he can only think of one tower that has fallen in northern Vermont. That was because of a derelict owner, not a power company. Ever since the ice storm of 1996, the standards keep getting tougher and tougher for dealing with ice and wind loading. It is almost certain that the building standards are going to keep getting stronger so future towers get reinforced. Even though there is so much more stuff on all the mountain top sites, none of those have fallen. The engineering is such that it is not getting more lax. It is going the other way.

Member Dibble clarified that he is hearing that the likelihood that this tower will fall down is virtually zero.

Attorney Dodge stated there was a recent hurricane in Hawaii, which was a category 3 or 4. Not one tower fell on the whole island. The same is true for all the devastating hurricanes that have been going through Florida, the southeast and the ones during Hurricane Irene. There are all kinds of structures that get damaged but never towers.

Member Hoyt stated that he was in St. John, U.S.V.I, about two months ago. He saw the path of destruction a tower caused when it fell over. Of course, there were about 200 mile per hour winds.

Attorney Dodge commented it is not impossible but the likelihood is very, very slight. That would be a totally out of the ordinary event.

Acting Chair Crapo asked how many are monopine with the attachments versus straight towers.

Attorney Dodge stated that in Vermont most of the towers are monopines. The monopine that is at Mount Cranmore is one of the earliest ones that were permitted. The joke is that it looks like a monopine with 'Dutch Elm Disease'. All the pine needles have fallen down to the ground. He believes it was taken down about two years ago because it was realized that it was not built to last. Again, it did not fall over. The camouflage materials had not been totally perfected. Now they are all over northern New England.

Acting Chair Crapo called for a recess at 9:08 p.m. The meeting was reconvened at 9:15 p.m.

Acting Chair Crapo opened to the public asking that comments and questions be kept to zoning with no repeats.

Jaci Grote, on behalf of the Rye Conservation Commission, stated the commission attended a site walk, where many of the neighbors were there as well. The commission's job is to protect the wetlands in Rye. Rye is 60% wetlands and that is the town's legacy. It is as much a legacy as the stonewalls and the tree lined streets. She does not have a comfort that this plan is worth the destruction of the wetland buffer. The current cell tower is on conservation land so there is precedent for that. It is the commission's request that the board seriously consider the impact on the wetland buffer that this structure will make. Also, it was said by the Attorney that these things are beneficial to the tax base. It would be a lot more beneficial to the tax base if it was on town land.

Acting Chair Crapo clarified the current cell tower is on conservation land but not in the wetland area.

Ms. Grote confirmed.

Attorney Donovan asked if it is within the wetland buffer.

Ms. Grote explained the buffer was smaller at the time the tower was built. She is not sure if it is within the new buffer standards. She is not able to answer that question right now.

Member Driscoll clarified the Conservation Commission is not in favor of this application.

Ms. Grote confirmed. The commission is not in favor of destruction within the wetland buffer.

Vern Gardner, Certified N.H. Appraiser, on behalf of Kathleen McCabe, 135 Brackett Road, stated he has been appraising property for over 48 years, specifically in Rye. He is

present to speak about the fourth prong for a variance. It is with full confidence that he says the proposed tower at 120 Brackett Road will have a negative effect of \$40,000 on the property across the street at 115 Brackett Road owned by Mr. and Mrs. Mason. The reason for the negative effect is that the proposed cell tower will loom over Mr. Mason's house, due to its proximity, and be within his primary view; two criteria that are important in appraising cell towers and their adverse effect on property. In determining this \$40,000 loss, he drew on materials located in Stratham and used a method called paired sales. The same method cited in the Verizon report as the preferred method. There are two appraisals in the material that is being submitted. One is titled 'Before' and the other is titled 'After'. The before and after method is an accepted method in determining the potential impact of any potential adverse feature. In this case, the damage to Mr. Mason's property is \$40,000. The interesting part in the Verizon report is that it is not an appraisal. It is known as a valuation service or a market study. As such, it will not be useful to them in a court proceeding. In order to proceed to Superior Court, they have to have an appraisal.

Mr. Gardner continued that the Verizon report does not identify a specific property, such as Mr. Mason's property, as the subject; but rather, provides a global reference that "no house" is effected by the cell tower. He would agree with Verizon that if the cell tower is ought of view, from Mr. Mason's property in this case, it would not adversely affect it. If it cannot be seen it does not impact the value of the property. In this case, common sense tells us that if a cell tower is looming over a house it is adverse. As part of the analysis, he interviewed John Rice who works at Tate and Foss, Cathy Youngs and Nancy Beverage, who have all been in the business a long time. Each supported the finding that this particular cell tower would adversely affect value. He noted that he is not only depending upon their view. This is just secondary data. He went to two primary locations that had towers and determined paired sales; property that is impacted, property that is not impacted and what is the value difference. That material is available in the appraisal. He also provided two articles that include the adverse effect on property values due to cell towers. One was a Wall Street Journal recent publication and the other is a very comprehensive study done on residential properties.

Mr. Gardner stated that Attorney Manougian spoke at length about public safety. The proposed cell tower will look like an inverted toilet bowl brush. The artificial limbs will break and will fall to the ground. In the event the cell tower collapses, it could fall on Mr. Mason's property or Mr. Larson's property. Although his main concern in all of this is, if the cell tower fell to the south, (and they do fall), it would crush Mr. Lintz's house. (The presentation concluded)

Attorney Donovan asked Mr. Gardner to leave his written comments with Planning/Zoning Administrator Kimberly Reed.

Attorney Manougian asked if the five day rule is being waived. He has not gone over this and does not know anything about this. He asked if the information is being taken in by the board.

Attorney Donovan replied yes.

Attorney Manougian stated that he was told there was a five day rule that all submissions had to be in five days before the public hearing.

Attorney Donovan replied from the applicant.

Acting Chair Crapo stated that the legal process, even on a shed, is someone will get a legal notice there is a hearing. They can show up at the hearing to argue. He was trying to shorten this meeting by getting questions out there but there is no hard and set rule on submissions.

Kathy McCabe, 135 Brackett Road, stated it was Attorney Manougian's speech at the last meeting that actually prompted this interest. He is the one who took some of the findings that the residents in the neighborhood put together on impacts on property from cell towers. He held it up and said this is not going to matter at all unless there is a certified appraiser to rebut. That awakened the need and the residents went out to get this.

Speaking to Attorney Manougian, Attorney Donovan stated it is not atypical to make sure the applicant's final submittals are in by a certain date. It is not atypical for abutters to come in the night of the hearing with additional evidence.

Hugh Lee, 220 Pioneer Road, stated that in the past he has spoken in support of having better cell coverage in the north end of Rye. On June 6th, he sent a letter to the board outlining his position. Basically, he supports the concept of a cell tower. He questions whether this particular site is the best site. A better site would be Mike Thiel's property; however, preferred negotiations did not proceed with that. A better site still would be the extension of Holland Drive or what is known as 0 Port Way. That is a very good site in that there would be no wetland impacts. The town owned land does have quite a bit of wetland but none that would need to be impacted in order to access the site or build a tower on it. It would eliminate a large number of the requested variances; for example, the tower height variances from the road and other properties. The only variances that would be required presently, revolve around communication zone. That would be the case with any parcel not within the overlay district. As Attorney Donovan has indicated that could presumably be resolved favorably at town meeting in March. If that were the case, clearly there would be a way to get access to that property; either through action of quiet title or road layout. Perhaps, by the fact that the parcel lies on a paper street, maybe the abutters would not object. Some of the abutters have multiple parcels that would then be increased in value due to a proper road access. The board has a daunting task ahead of them. There are a series of variances that have to be acted upon. He does not envy the board's position; making hard decisions, weighing the interest and needs of public good with those of private property owners who abut and are adjacent to the proposed tower.

Member Driscoll asked if he would be able to see this proposed tower or a tower on Holland Drive from his house.

Mr. Lee stated he would not see the one on Holland Drive. He might be able to see the one on Brackett Road through the crack of the trees.

Mike Thiel, 34 Brackett Road, noted he had a lot of negotiation and discussion with Verizon about locating a tower on his property. It is probably, and even their admission, an ideal place to put it. He has not denied them and said he would not have a tower there. In fact, the last time it was discussed he asked to suspend the discussion for a month or two so he could investigate what the impact would be on his property of putting the tower there versus putting it into a conservation easement, which he ultimately wants to do with this property. The question was how much it will impact valuation basically for tax deduction purposes with a conservation easement. The particular site that has been chosen, does not impact him other than when he drives up and down Brackett Road. He won't see it and will get better cell coverage. He thinks everybody in this area wants better cell coverage. This site, in his estimation, is really awful. He commented he is not pitching his own site. He is not wildly enthusiastic about having a cell tower on his property. He does not particularly need the money. In this particular case, he thought it was really interesting how quickly Verizon was able to move off of his property, and in a month or two, come up with this alternative. He noted that Chip Fredette called him in January. In the course of the discussion, Mr. Fredette said that this particular site would be coming to them a lot cheaper than what his site would be. It's clear there is a wide variation on what they are willing to pay for a site. He continued he would love to see it at Port Way. If the town could make some revenue off of it, that would be great. To correct the record, at some price would he be interested? Not wildly enthusiastic but certainly; however, Port Way sounds like a great alternative.

Kathy McCabe, 135 Brackett Road, stated Verizon's application has been incomplete, inaccurate and contains false or misleading information. Tonight has not changed her mind at all about that. It is a constant moving target with the submissions that Verizon has made both with their applications, amendments and their now 12 site plan submissions. This pattern of withholding, re-submitting, redirecting and misleading is disruptive and delaying. Its impact is to cripple a time period, such as the shot clock, and to impair the board's efforts to thoroughly assess their proposal. There are parts of the application that Verizon has refused to submit. It is information that provides the board with a holistic view of any additional coverage that Verizon might have with other towns. Verizon claims this is proprietary information, although it is clearly required by the zoning statute RSA 505.7 C 4(h). They not only failed to disclose any negotiating, they refused to say why the site is so important to them. Tonight, she heard that the reason this all started was because of the town newsletter. If that is the case, in the next town newsletter there should be an article about the lack of coverage and coverage gaps in other areas of the town. Presumably, based on what Mr. Manougian said, they would be searching in those areas. Other than that, at the last meeting alone, they were asked by the boards 14 times why it is so important to have this in that area and they refused to answer. Essentially, their response was they didn't know and it shouldn't matter. The boards just need to vote. She finds it challenging that Verizon and their site engineers don't know why they are being asked to put forth an application at a particular site, especially after knowing how many variances are needed and the level of concern this particular proposal has generated. Absent an actual reason for this proposal, everyone is left to speculate why the tower must be sited 50ft from a historic roadway, at sea-level or below sea-level, that provides coverage for only a mile and a half radius, extending to

some of New Castle, Kittery and Portsmouth, and to a few Rye residents and a lot of marshland. Verizon also refused to provide information, as required by the application, on future technology that would eliminate the need for a tower or tall antennae. It was talked about a few times but it was only in direct response to questioning as to whether DAS (Distributed Antenna Systems), but it is more rapidly developing systems and future technology, which they refused to talk about. Their own industry, the CTIA, and their own CEO has talked about how they are moving away from towers and moving to 5g, which are “pizza sized boxes” in front of a home. Aside from that, both of these failures to disclose, as part of the application process and in accordance with the ordinances, has a bearing on the boards’ decision making and violates their signed attestation to provide complete and accurate information.

Ms. McCabe stated that on the subject of the co-locators, initially it was proposed to be three co-locators. At the June meeting it came out that there would be no room for a third locator. It would be below the tree canopy and there wouldn’t be any coverage provided for them. She finds it interesting that they are stating that and it is just arriving in June, 7 months after their original submission. She questions why they were not able to actually know this before. The bottom line is, they did not submit a variance for the extra co-locators and their information changes. The site plans have also changed. Mr. Manougian wants to say they have changed because they are accommodating options. They have changed because of errors. At the June 21st meeting, one of the board members asked how they could get an infiltration trench below ground actually above ground on their site plans. This shows the quality of the work they have done. They have actually not detailed that or finalized site plans. It is imperative that the boards have accurate information before them. Their other site plans contain a large amount of descriptive information on them that say “typical” and “customary”. Verizon has referred to the site plans themselves as speculative as late as August 10th. It is pretty tough to have the boards and the boards’ experts decide on how this is all going to be built when they are not admitting to what a final product will be. As late as August 10th, they said they do not know essentially the tower type, height and location. It seems incredulous that after 9 months or so, they are asking the board and the board’s experts to review plans that are never final.

Ms. McCabe stated that in Verizon’s application in December and the amendment in February they talked about the sites they had done extensive research on. The sites go back to 2006. The sites were Rye Elementary School, Pulpit Rock and three private parcels. Verizon continued to say this was part of the search ring. They repeatedly said how hard they worked and exhaustive that had been. In these repeated discussions, because of that, the boards took it upon themselves to formally approach Rye Elementary School again and some of the other sites Verizon had said they had worked so hard to try and negotiate for. The town’s intent was to have them be explored as viable alternatives. The Town Manager and Mr. Donovan made a plea to the SAU. She would like to correct a misstatement that was made earlier. The Rye Elementary School, the first time, did not reject the proposal. They never brought it forward because they were busy doing other things and did not feel the need at that point. They never rejected it on any descriptive purposes of it. But now, all of a sudden, after the board does all their extensive alternative site analysis, in the meeting of July 31st, Attorney Manougian says it basically doesn’t matter where they are looking because it is not in the site ring that they are looking at. He

disclosed that the site ring did not include those other properties. That is what he has said all along in the application and the amendment. It included all those other properties. That's the long and extensive search that they have been doing. While everybody is out searching for alternate sites, Verizon came back and said that doesn't matter because those sites are not within their search ring. The site ring that has been apparently stimulated because of the Rye Newsletter. There has been a lot of time spent on unknown actualities and a wild goose chase and it ate up the shot clock. Even though Verizon has stated twice, at the April and June meetings that they would grant any extension the town wanted, at the last meeting Verizon stated they were not sure if they could get an extension beyond September 30th. The town worked in a good faith effort with Verizon. In her opinion, Verizon did not reciprocate. The town is left with an immutable shot clock, a lot of information on alternate sites that supply much better coverage to Rye and Verizon's implied and direct threats of lawsuit, which was brought up 11 times at the July meeting, if they don't get what they want.

She stated it is also important to note that Verizon's repeated misinformation regarding the sites is their basis of relief for all their variance requests. Any reliance on the uniqueness and special characteristics of the property at 120 Brackett Road, must now be evaluated in context, knowing that Verizon only looked at two other sites within their search ring to consider a unique site. She thinks that is a remarkably un-hardy assessment of uniqueness. Those characteristics that make it special are central to their request for relief, in terms of public interest and hardship, and renders their arguments unsupported.

Ms. McCabe stated that granting the variances will not be in the public interest. Verizon failed to establish that it wouldn't be contrary to the public. Verizon's entire argument in asking for these variances focuses on the benefits of wireless communication at large. Verizon is supposed to prove that each specific use variance, sought for this particular site, will benefit the public interest. Verizon's argument is far too general to substantiate this criteria. It actually makes the argument that any cell tower coverage at any site would enable the "rapid deployment of the broadest range of telecommunications services to the public". However, their documentation does not justify any advantages to the public from placement at 120 Brackett. Verizon has provided coverage maps that show the same level of coverage across a broad area of Rye. The town has investigated other sites that would provide a much greater cross section of the public with coverage. Verizon has been asked to justify why they wouldn't consider it again. "That is what Verizon wants." "These are our marching orders".

Ms. McCabe noted that when looking at alternate sites, Chip Fredette stated that he didn't know why Verizon wouldn't follow the path of least resistance, when asked about alternate sites needing less variances. Mr. Manougian cited that he is never going to concede that state owned property is an alternate feasible site because they can't get a lease signed with the state. He cited two locations for his troubles. Mr. Manougian's emphatic statement that he will never consider state owned property further supports the myopic approach that Verizon has channeled in this entire process and its unwillingness to explore sites that could support the public interest. Verizon, at the end, only looked at three private properties within their search ring. It was in that, that they concluded this was a unique property. Three sites and they settled on one outside

of their search ring. They are now providing a blanket refusal to consider state property. They have not supported their position that this property is unique to warrant variance relief. Verizon's placement is contrary to the public interest. While some of the public may have an interest in wireless communications in general, it is clear the public has a strong interest in seeing the Town's zoning and land use requirements enforced. It is also clear that the public's intent is protect and preserve the character, and quality of that land use and to be sure it is not undermined or destroyed by granting such significant exceptions as proposed here. The public, through its support for the establishment of the Wireless Overlay District, and through its ballot votes to include a specific site with the district, has clearly demonstrated an interest in respecting the established ordinances for the town. Verizon asserts the selected property is not contrary to the public interest because of its topography and geography. In fact, the placement of that tower and industrial compound so close to the road is extremely contrary to the public's interest in their community aesthetics, safety and property valuation, which was just heard. The location of the tower is on a substantial down-hill grade from the road and in fact a 6ft tall, and now an 8ft tall, fence around the compound will do little to prevent a very clear view of the compound from the street level or from abutters. The large noise industrial compound with multiple generators, heating, cooling, fans, cabling, and propane tanks, is noxious, noisy and completely out of character with the quiet, single residential neighborhood. The site so close to the road is unique and will devalue the property and create an attractive nuisance as well. The proposal provides a horrible front view to anybody walking, biking or driving that road, which is one of the oldest, most historic roads in Rye and the State of New Hampshire. It will also be the primary view of the abutters (the Masons, and their family) going forward. Instead of looking at a forested stand of trees, their view will be corrupted and restricted to an industrial complex. It is also important to consider that this tower and compound is not a transient endeavor that can be readily undone. It will forever alter the character of the Rye neighborhood and is a point of no return. This can evolve from a very visible tragic eyesore into an aging, rusting and eroding blight upon the town that directly conflicts with the intention of the Master Plan. Verizon has stated "it seeks to ensure compatibility with the visual and environmental features of the town". If so, then placement of this structure so close to homes, the road and wetlands is a significant contradiction of their words.

She continued that the public interest in preserving the semi-rural community and wetlands is served by and documented in the Rye Master Plan and the citizens' handbook. The Town of Rye itself, through its website, Master Plan and handbook, compels its official and residents (aka the public) to preserve the semi-rural environment and open spaces.

"Residents take pride in the degree of civic engagement demonstrated by means of participation in local activities and are dedicated to preservation of a semi-rural environment." – (Town of Rye Website)

"Rye is a beautiful sea-side town. Each of us who lives and works here has a stewardship to ensure that Rye remains the wonderful rural community it has been for 230 years." - (Rye Handbook)

Ms. McCabe stated the proposed specific location directly conflicts with the public's repeatedly stated interest to preserve the semi-rural community of Rye. Verizon also states that its *"proposal is modest in impact. A small parcel of leased land and a structure not much taller than surrounding trees"*. That is complete unfounded. This construction requires a major site development as defined by Rye's land use boards. Also, as Chip stated at the May site walk, the tower is about 50ft taller than the tree canopy. This specific location creates more safety risk and by definition is more contrary to the public interest. Placement of it entails risk of the tower failing, falling, (in 2014, in North Adams, MA, a Verizon cell tower fell. Verizon is being sued for it), burning or dropping its fake tree branches onto a historic well-travelled road. Mr. Manougian said that he doesn't concede that towers fall. She would say that this is an alternate fact one can easily Google. (She noted that she has pictures) These are monopine. They also burn. Bob Gemmet submitted a letter to the board on August 17th enumerating facts and numbers of how many have. There have been 22 cell tower explosions reported and many cell towers have collapsed. Notwithstanding the safety issues, Verizon has requested a variance for setback requirements which provide a safety buffer. This is obviously also contrary to the public interest.

Referring to the photos, Acting Chair Crapo asked Ms. McCabe the source of the photos.

Ms. McCabe replied she does not have it delineated on the photos but can get them. Her recollection is that most of them came from actual cell tower safety companies. This is her representation and she has not changed the pictures in any way. The photos were taken from the internet.

Ms. McCabe continued her presentation. She stated that Verizon is well aware that their own applicant's home resides within the fall zone. Mrs. Lintz's willingness to have a 133ft tower, with its appurtenances, and industrial compound adjacent to her home does not change Verizon's accountability to comply with the ordinances. Town ordinances and our land use boards are designed to promote public policy, safety goals and to even protect residents themselves in their own actions. She noted that she can't re-wire her house with whatever materials she wants, as an unlicensed electrician. There are rules to protect her from herself. Just because it's Mrs. Lintz's house, the town certainly doesn't want it to crash nor have a fire that could potentially spread. Even if the applicant could choose to forego the adherence to regulations, she cannot waive the rights of visitors, town safety personnel, business service contractors, postal delivery persons and others that visit the property, and in fact use the driveway directly adjacent to the compound. None of these people have waived their rights to public safety. The town should give due consideration to these 3rd party interests and any potential liability it may incur due to the granting of this variance in such close proximity. Verizon has stated that their *"extensive fall zone is obsolete and none of these towers fall"*. (She thinks they are beyond that at this point.) *"Any potential danger to habitable buildings is eliminated"*. This is a false statement and it will create substantial risk.

She continued that the other big prong Mr. Manougian puts forth is that this is all about public safety. While Verizon states their application supports public safety, and cites information from

Police Chief Walsh and a firefighter, it is important to note the Verizon met with them without informing the ZBA or Planning Board. As such, there was nobody there to help guide the conversation. During their conversation, Verizon asked them for their experiences with communication within their proposed search area. That is what the email says. They did not request incidents outside of that area or within the board range of Rye that has the same level of cell service as the area that is proposed. Verizon's presumed purpose in asking about the incidents in the area of the proposed tower was to demonstrate that the Police Chief was somehow on their side and would prefer the tower be placed at the proposed site. That cannot be further from the truth, as that would imply the Police Chief would care more about the public and lives in one area of town but not about the public in another area. Chief Walsh has no stated interest in any specific location in Rye for a tower. Overall he notes "*cell coverage in Rye is poor*". He is for increased cell coverage in general. He noted "*if the proposed cell tower were moved three inches to the left and provided more coverage, he would support it*". He does not have the education, as he states, or job knowledge to say which location is the best. He would refer the decision back to the Planning Board. Chief Walsh has also raised concern for the need for coverage at Rye Elementary School, due to the growing public safety concerns. The Town has also proposed an alternate site near the school that would ensure coverage for teachers in classrooms should ever an emergency or tragedy arise. Verizon has stated that at one time they were interested in putting in a cell tower at Rye Elementary School; however, they are no longer interested in doing so. It is not in their consideration for this application and they do not consider it feasible for their site ring. It is of note that since Verizon met to discuss the placement near Rye Elementary School in 2009, the number of school tragedies has escalated to 295 (TIME Magazine, 2/18). Despite the growing numbers of school shootings and the obvious public safety benefits, and the fact that a location proposed by the town near the Rye Elementary School would provide greater coverage to more Rye residents than the Verizon site proposed, Verizon has flatly refused to consider the Rye Elementary School location in 2018. In summary, Verizon has not demonstrated that this particular site is in any way in the public interest.

Ms. McCabe stated that from a wetlands perspective, wetlands are critically important, as stated previously. There is a conservation commission established to support this; established in 1965. The construction of it and its unique placement is actually contrary to the public interest. Regarding the environment and the wetlands in particular, their plan calls for multiple concrete slabs impervious in nature, excavation, blasting, deep drilling and use of impervious substances. As noted previously, there is a downhill slope, and as they noted previously, that is very rare to have a downhill grade. As such, water will tend to erode the driveway of its surfacing (whatever that may be because that is one of the things they have cited as "typical" and have not provided the kind of surface). Verizon admitted at the July site walk, when there is erosion they will resurface the driveway with their crushed aggregate product. The concern is that these fines, or fine particles, from these multiple repairs, as they keep continually getting washed out, are small enough to find their way into the wetlands buffer, alter the water and tender ecosystem of the wetlands by clogging it with particles of stone and concrete. She requests that the board hold the applicant to a stringent burden of proving that construction and maintenance of this tower and compound siting would have no adverse impact on the important wetland buffer areas. It is important to note that the Conservation Commission, representing the public's interest, does not

support this proposed location due to the environmental impacts. The negative and long term impacts from this are staggering. A decision to support it decimates long standing land use law for both single residential and wireless overlay districts. It creates a precedent for placement of a tower on private property. It creates an untenable risk of safety due to damage cause by the tower. Its effect and impact to the public are enduring.

Attorney Donovan asked Ms. McCabe to provide Mrs. Reed with a copy of her prepared statement.

Ms. McCabe agreed.

Attorney Donovan noted that for anyone with a prepared statement, it would be helpful to provide a copy to Mrs. Reed to assist with preparation of the minutes.

Peter Crawford, 171 Brackett Road, stated that he submitted at 10:30 today a document that was basically a legal memorandum with exhibits. He asked Mrs. Reed to email it to everyone right away. He believes she did. He dropped off, around 1:30, a hard copy.

Acting Chair Crapo noted all members are in receipt of the email. He read through it earlier. There were two attachments that did not seem to be “email friendly”. However, a lot of it was regurgitation or reentering of stuff into the record that has already been submitted. He asked Mr. Crawford to stick to what is novel versus prior submissions. He does not want to get into the finite math. He noted that he read through the entire section and if any math formulas are thrown out, he is sitting him (Mr. Crawford) down. He does not see that the math part is germane to the questions the board needs to answer tonight. Getting into “frequency drops” does not really hit the criteria for the variances.

Mr. Crawford asked if he is referring to his earlier questions to the applicant.

Acting Chair Crapo confirmed. He reiterated they are not going to get into the questions that were about mathematical frequency drops.

Mr. Crawford replied that is not in his brief. He wanted to note the fact that they only answered 8 out of the 29 questions and those they didn’t really respond to. In regards to the criteria for the variances, which is right in RSA 674:33. The hardest to meet, as Mr. Manougian has said, is unnecessary hardship. The section says, “Literal enforcement of the provisions would result in an unnecessary hardship”. The purpose of that is showing that “special conditions of the property exist that distinguish it from other properties in the area”. Ignoring for a second the Daniels Case, which there is a “tweak” on that, there are no special conditions on this property. None of the properties in the single residence district, anywhere outside of the overlay district, can just put up a cell tower. It is not because they have wetlands on them or anything else. This is a general prohibition that applies to the whole single residence district. There is nothing unique about this property, again not considering Daniels, which would allow a case of unnecessary hardship to be found. The general public purpose of the ordinance is not to ensure

the safety of the public. The reality is any cell site in town would do that. There is a substantial relationship between the purposes of the ordinance regarding cell towers in a single residence district. One of the key things about an ordinance, is it segregates things by use. There is a commercial district, an industrial district and a single residence district. He would call this an industrial like facility in looking at the pictures. It looks absolutely horrible. There is nothing residential about this compound they are proposing. As he argued in his papers, this actually meets the criteria for a commercial establishment, as they are in business and making money. It belongs in a commercial or industrial district, not a single residence district. With that said, the board has allowed one variance before to allow a tower in a single residence district (Grove Road). By not allowing it in the single residence district, the board is not effectively prohibiting cell towers so there is a fair and substantial relationship. He would argue that some of the cases that were argued, the most important thing about the zoning ordinance when it gets down to the districts, is segregating by use. The proposed use is a reasonable one? How can anyone say that what was shown on the screen, and what was in Tab 1, is reasonable. This is not reasonable. He is not opposed to improving cell service. He probably has the worst service in town. His driveway is the worst point in town. He would love to have a cell tower but not 50ft from the road. It doesn't have to be 50ft from the road. There are huge areas of backland in Rye, especially in this part of town, on which this tower can go. Some of the alternate sites have been discussed tonight. Do what was done with the Grove Road tower and the Congregational Church facility. A lot of people did not even know there was a cell facility there. Those were the two that got approved by the ZBA and Planning Board in prior years. Those were great. Nobody complained. They were back in the woods and completely invisible. That is the way to do it. It does not need to be 50ft from the road.

Referring to the other variance criteria, Mr. Crawford commented "not contrary to the public interest". The argument on that is it is in the public interest to have cell towers in general. Sure, everyone wants cell service. However, this is contrary to the public interest because it goes against the ordinance. The public interest is enforcing the zoning ordinance and segregating things by use. That can't be outweighed by a general statement that cell towers are good when there is an alternative of putting it further back in the woods away from the road. The spirit of the ordinance is observed? No, the spirit is not observed here. The spirit of the ordinance is segregation by use; avoiding blight on the neighborhood. He cited case law, "the aesthetics are a very important thing". Yes, a general aesthetic argument cannot be made that says "cell towers look ugly so they should be banned all over town". That can't be done but if an aesthetic determination is made by the board that is specific to the site; yes, that will fly and the courts will uphold that. The spirit is not observed here. In substantial justice has been done, if the board believes the appraiser, there is a \$40,000 reduction in value of a person's house. Maybe it will benefit the cell service but that is not really a good argument because it can go anywhere. It doesn't have to go 50ft from the road so that does not fly either.

Mr. Crawford read from the Daniels Case:

“The fact that a proposed location, essentially located within the gap, has the correct topography or is of an adequate size to effectively limit the gap in coverage are factors that may make it unique under the umbrella of the TCA. Similarly, that there are no feasible alternatives for the proposed use may also make it unique.”

He continued that in looking at the three prongs of the first sentence, “*proposed location essentially located within the gap*”; in looking at the search map, this is outside the search ring. It is not essential to the gap, even as they define the gap. There are other sites that are much closer to the center of the gap; Thiel property and 0 Port Way. Regarding the correct topography, evidence was heard that this thing is below sea-level. He pointed out it is actually 10ft above; however, the Thiel property is about 10 or 20ft higher. Tab 3 is the topo map that AT&T did, which he assumes is the same as Verizon’s. It is based on elevations. There is a little 40ft spot over by Parson’s Way that might block some signals but this part of Rye is pretty much level and slopes gradually. There is not going to be, other than that one spot, a topographic limitation to the cell phone coverage. This site is certainly worse than the others if anything. The third prong is “*of adequate size to effectively eliminate the gap in coverage*”. He is not quite sure what they are talking about here. He thinks they are thinking about a tightly packed suburb, like Portsmouth. A 30x40ft compound on a ¼ acre lot is probably not going to fit. It is certainly not going to be viable if there is a fall zone that has to be abided by. He noted this part of Rye has large lots. Most of them are above an acre, except the ones off of Parsons. Some of them have wetlands and things that might reduce the availability but it could go on any of those lots. There is nothing unique about this property because it happens to be a larger size in total that would cause that law to apply. In fact, the effective size is tiny once the wetlands behind is cut off. The back part of this property is all wetlands. The last one, “*no feasible alternatives to the proposed site may also make it unique*”. That is basically incorporating the Telecommunications Act into the zoning considerations. The Daniels Case only further explains the unnecessary hardship prong. Remember, all the criteria need to be met. Daniels only deals with one. The others still have to be met.

In regards to the issue of the noise, Mr. Crawford stated that came up briefly. There was a statement that the noise would be minimal because all they need is a little tiny pad. Then they talk about 20kw generators. In fact, the picture even shows a 30kw generator. AT&T is saying they need 20kw. When they used to build houses that had 100amp service that is about 22kw. That is a big enough generator to power a house. The heat from the electricity that comes out of that 20kw generator is about 66,000BTU. That’s the size of a boiler that would handle a medium size house. Assuming the generator is off, the power that is being drawn out of the power mains, has to be exhausted somehow. Imagine on a hot day and a little fan in the window of a house with the boiler turned up full board. That defies credibility to believe that a tiny fan is going to cool this equipment, unless maybe they oversized the generator by some huge factor. To him, this is one of the quietest areas of Rye. Those that don’t live there may not realize that the waves on the beach can be heard on a quiet night. Even during the day, announcements from Wallis Sands can be heard from a half a mile away. A pin drop can be heard in this neighborhood. He submits that this noise, even when it is operating off the mains, is going to be a lot more significant

than they admit. What they said was highly speculative. They didn't "think" the noise would be an issue.

Regarding the Telecommunications Act, Mr. Crawford stated there are a lot of really good questions from Attorney Donovan. There are alternate sites. He does not think there is any question about that. AT&T has passively admitted that they have been talking to the state. They have said the state has rejected the Odiorne Point site. Tab 7, shows the coverage maps. In looking at the elementary school, it goes down and fills in just about to where the tower on Grove Road fills in. The only problem with the elementary school is Odiorne Point isn't covered. Taking Mr. Pagacik's assumptions, which is a much more significant radius, it is in pretty good shape. In looking at the Amherst Case, it says the town is in the driver's seat in these minuet decisions. In Amherst the residents stood up and said they did not want the tall towers. They wanted a bunch of shorter ones. Those would be less obtrusive. They sued under the Telecommunications Act. The First Circuit would be the law that would be binding on any decision made under a court hearing. That case basically said no. This is the sort of decision that is reserved for the towns. All of the options need to be taken into account. The town gets to look at all the feasible options. Service cannot be prohibited. However, service is not being prohibited by asking about other options, even when talking about facilities that would be outside the district. In the case of Willoth, Second Court Circuit Case, not binding precedent here, but highly respected by the First District Court of Appeals. The case says the Telecommunications Act applies to voice only. In looking at the language of the statute, it talks about mobile common carriers. In looking at some definitions, it talks about tying in with the public telephone network. When talking about data, it is not tying into the telephone network. So, there is a question as to whether that is even applicable. In looking at the coverage maps, they haven't assumed anything from their existing technology. When he and Ms. McCabe went around town and made calls, a lot of those were connecting via CDMA with Verizon. CDMA is still active in the town. The maps that show the big white spots does not show the whole picture. It didn't even include their CDMA coverage. How can it be said there are significant gaps when the maps don't even show the other sorts of coverage that they offer. CDMA is not just voice coverage. It is data, too, but at a lower speed. They want their 4G LTE so everybody gets access to this high speed data. That is very nice but there does not need to be a tower 50ft from the road in order to accomplish that.

Mr. Crawford stated that he couldn't get answers to his questions regarding the methodology. One of the answers to his questions basically was "*we have proprietary models. We can't describe for you how it was computed*". Mr. Pagacik did some calculations. He came up with a little bit bigger range but there are still some white spots on his maps. He assumed the same -95dbm minimum. He and Ms. McCabe were making calls down to -120dbm. Verizon provided the data on the effective radiated power from their antennas that Mr. Pagacik used to construct his plots. In looking at that, it is +30dbm. It works out to 55mw. There is something wrong because another submission shows 120w of power going into the antennas. Something doesn't make sense with the way these maps were constructed. Finally, he and Ms. McCabe gathered signal strength data using his AT&T cell phone, which is an old phone and connected by 3G, and Verizon's service, which is a new phone. In both cases, out of 16 sites, (all the major

intersections in Rye), 15-16 sites connected with AT&T and 15-16 sites connected with Verizon. He noted that they listened to the messages and there were three. One was inaudible completely out of 15, one was partially inaudible (which was the one from his house), and there was a third one that was just okay.

Acting Chair Crapo asked if he was leaving messages or listening to previously properly recorded messages.

Mr. Crawford explained they were leaving messages as they went around town. They would each make a call from their cell phones and leave a message on Ms. McCabe's home answering machine. He noted that he captured the calls and they are now on his laptop. (He submitted the calls as part of the record.)

Speaking to Mr. Pagacik, Acting Chair Crapo asked if he sees any flaws in his (P. Crawford) math. He submitted a lot for the board to review.

Mr. Pagacik stated these things (holding up an I-Phone) are very low power. They can even adjust power based upon the received power from a cell site to conserve battery life. The transmitter site has a transmitter with power but there's the intent to gain and increase the effective rate. Also, taking measurements around an area, he is not sure if it is in a building measurement or on a street, but those are two different things. There is more loss that has to be taken into account in a building. All of that gets factored in with respect to reliability. He noted that 3G is around but 3G is going to go away. 4G is here and 5G is coming. It's all about faster speed and more bandwidth, streaming, content, video content, etc. That is where the market is going.

Mr. Crawford commented the -95dbm is an outdoor number.

Mr. Pagacik stated that LTE is a little different with how someone propagates with 3G. The speed of the transmission increases with signal strength. The more strength the faster the speed. When someone is closer to a site, it would be better than 95. It would be better speed. It would be better bandwidth. 95 is that point where it is dropping off to not getting that 4G effect. Something might still go through at a 2G or 3G speed but it's not 4G quality. He asked the applicant if this is the threshold they entail.

Mr. Vellante stated the -95dbm is a threshold. The coverage area shown on the map is not to say there is uniform coverage across that map. It is all going to vary and be greater than that - 95dbm. Closer to the site will be stronger better service.

Acting Chair Crapo stated that at one of the initial meetings Verizon picked a threshold. The white area represented that threshold. Choosing a different threshold may change were existing coverage was. There was discussion that people could still get calls in those areas but it's not at the quality that Verizon wants.

Mr. Vellante stated that is the threshold that Verizon has defined for their network.

Mr. Crawford commented that Mr. Pagacik stated the closer someone is the faster they are going to be able to communicate data. He agrees. However, that is inconsistent with what was said at the last meeting by Verizon, which was data and voice are kind of the same issue and -95dbm for both. He thinks what they really want is a nice strong signal so all kinds of data can be blasted and the customers will be happier. Unfortunately, it is not even clear the TCA applies to data. For there to be a substantial gap, but yet there is still the ability to make voice phone calls, he does not think there is any case law that would support that. Someone can't say they are trying to download a document and it is taking forever so this is a significant gap. He does not think there is any case law to support that.

Acting Chair Crapo stated that at the last meeting, Verizon's representation was asking for the right coverage for their 4G. They are not asking for 1X or 2G. There was already the discussion that there could be all different size propagation maps. In this application, they are asking for what they are saying is needed to fill a gap in their 4G.

Mr. Crawford noted they haven't submitted any maps showing their existing CDMA coverage. When trying to figure out if there is a significant gap, why shouldn't those be included? He continued he had additional comments on the alternatives but that has been covered pretty well. There are alternatives out there, clearly. There is no question about that. There is a possibility that Daniels would kick in as kind of a substitute TCA and cause the board to grant the variance. There is no basis for that because there is no demonstration and the burden is on the applicant to demonstrate that they have exhausted all of the other possibilities that could service this. It is not an issue of them coming up with something they want and forcing the town to do it. It is an issue of the town deciding where they want the tower, as long as there is a feasible site that Verizon has not exhausted the possibility of. That clearly exists with Port Way, which would be a potential March or April time frame, according to Attorney Donovan, to get it through town meeting and passed by the Selectmen to get a road back there. If that happens, that is rapid deployment.

Diane Mason, 115 Brackett Road, stated it will be a hardship for her and her husband to lose \$40,000 off the price of their house. She knows that they all talk about it and it would seem like common sense that it would be a hardship. However, no one has made that statement and she would like to make that statement now.

John Welch, 60 Brackett Road, stated he will see the top of the tower and hear whatever noise is generated. First, he would like to thank the board, as this is not an easy task. The first thing that struck him was the "need for public safety". No one here is against public safety. What was heard was the public safety at the State Park at Odiorne and the State Park at Wallis Sands. It is a state problem. Put it on state land. That makes sense to him. Second, he is convinced this is the path of least resistance. This is close to the road and is going to make it easy for them. The third thing, the TCA of 1996 says that once they get approval they can increase the footprint 2,400sf and they can increase the height of the tower. He continued the Masons have to look at

this thing. To say this is not a hardship for them is ridiculous. When they do expand, and they will expand, where are they going to go? Back towards the road. They can't go into the buffer any more. Where is the plan for that? What are the caveats that are not being considered here? He has one question which he does not know if it is a myth or misconception. His understanding is that people who are right under the tower won't get any coverage. Someone within 100ft of the tower will not get that signal. The people who are going to have to deal with it the most get the least benefit.

Acting Chair Crapo stated he had asked that question at an earlier meeting. He commented that he has been beneath the AT&T tower in downtown Portsmouth and have not been able to make a call. He believes their answer was it is reduced. It has to be angled out like a cone of reception. It doesn't necessarily come straight down but it does go off on an angle.

Mr. Welch asked if the people who have to suffer with it will get any advantage from it. He does not think so.

Mr. Thiel stated he has learned a lot about these cell towers. He would like to refresh the board's memory that when Verizon first approached him they wanted 100'x100'. That's a quarter of an acre. He has no clue as to what they were planning to do with that. That came down to 50'x50', which is 2,600sf roughly a quarter of what they originally asked for. That was to presumably handle a total of 3, possibly 4, co-locators on the tower. This is 30x40. His understanding is that they will not have to come back to the town. What they can squeeze on 30x40ft, when they were first asking for 100x100 and then 50x50, it seems inevitable that they are going to expand this. He has a big problem with this being so big, so close to the road, close to the wetlands and they can expand it freely. That is a serious problem. He added that he was fighting "tooth and toenail" in the last go round that they have one generator for everybody (all co-locators) and that was a stumbling block. He pointed out he is very protective of his land. They were also not going to cut anymore trees along the driveway and any buried utilities were going to go in the middle of his road. They didn't like that much either. Although, they did want to cut more trees around the 50x50 to protect the tower from trees falling, which is still an issue here. Trees could still fall into their compound. They haven't talked about a buffer outside that 30x40. He commented he didn't mind giving them more buffer because he has enough land. In fact, he is looking at a management plan from a certified forester to open up patches for wildlife enhancement. He commented it does raise issues on this other site where that can't be done.

Speaking to Attorney Donovan, Ms. McCabe asked him to clarify the reference from the Middle Class Tax Relief Act, as far as allowing them to increase the footprint and how that would be different if it was on town property.

Attorney Donovan noted that he summarized this for the Board of Adjustment in a memo. Basically, the co-locations do not come back to the land use boards, for variances with this board, unless it results in a substantial modification of an existing tower or mount. There is an elaborate definition of "substantial modification" one of which is increasing the square footage of the compound by more than 2,500sf. He read, "*Adds or modifies a camouflaged tower that*

would defeat the effect of the camouflage”. He commented if they modify the monopine in a way that no longer made it look like a monopine that would be a substantial modification. He continued the other one is it doesn't increase or result in an increase of the permitted vertical height of the tower by either more than 10% or the height of one additional antennae array, the separation from the nearest existing antennae not too exceed 20ft, whichever is greater. What AT&T has proposed, does not meet the definition of “substantial modification” but it is unknown what the third co-locator might, or might not, propose. If it doesn't exceed any of those parameters just summarized, then all it requires is building inspector's review, which would be conforming to building code requirements and so on. Essentially, that is what it comes down to.

Acting Chair Crapo asked if he is saying that if a third co-locator came in, and needed 200 more feet on the ground, they could move the fence without having to go for further site review.

Attorney Donovan stated that is what it seems to say. Where he think there may be a question is dealing with the wetland buffer. If it was just a piece of raw land that wasn't in the wetlands buffer it would not come back here. He thinks that if it is in the wetlands buffer it may have to come back for a variance.

Aidan McDonough, 140 Brackett Road, asked if that can be answered in certainty.

Attorney Donovan replied not at this point. That is why his advice to the board was when they review this to remember that the co-locators may not come back to the board.

John McDonough, 140 Brackett Road, stated he is also very grateful for the hard work the board has done. For him, it is a much more emotional reaction. He has lived here longer than the Lintz's (55 years). He listens to TKR every night out his bedroom window. The light from the lighthouse flashes in his trees. The thought of looking out the bedroom window and seeing a tower is just so foreign to living in Rye, N.H. This is Rye, not the Town of Verizon. He cannot believe they are even talking about this. The Lintz's have the right to do what they want on their property but not when it is going to effect the Murray's, Kathy, himself and everybody else in the neighborhood. Yes, he would like to have better cell coverage but his phone works just well in the house. He does not need to download videos. This is all about money and has nothing to do with the public safety. He is just incensed that he even has to sit and listen to this.

Murray Mason, 115 Brackett Road, stated this started about a year ago. The surveyors had already been on the property. They signed a lease in November and the surveyors came out in December. If they had gone with the Thiel property, it would be in the ground now and the thing would be up and running. The Thiel property was perfect and the surveyors even told them they didn't know why they were jumping over to 120 Brackett because the other property is perfect; no wetlands, no fall zone. What happened is they got the Lintz property really cheap. These are elderly people. He thinks they could be talking elder abuse. Mrs. Lintz does not really know what is going on here. She thinks this is going to be out in the woods. The drop zone thing, they say that she doesn't care about that and they are signing up for this. They might want to take another look at it. He noted that now he is in the drop zone. He trusted Verizon's plan. He

thought they must be right. He went out and measured very carefully from their stake to his house and it is not 150ft. It is 133ft plus a concrete pad and 120% of that is like 168ft. He commented that he is not going to be able to enjoy his front yard.

Acting Chair Crapo asked what stake he was measuring from because there are a lot of stakes out there. The requirement is from the base of the tower, not the enclosure.

Mr. Mason commented it was from where the tower is actually going to be. He commented that he is a surveyor so he knows how to read stakes.

Regarding the right to extend the compound, Mr. Crawford stated that if they decided they didn't want to go towards the wetlands but needed more room, the logical thing to do would be to expand it more towards the road. It might not be 50ft from the road. It might be 25 or 30 after they end up adding another 2,500sf.

Acting Chair Crapo commented there is still some court interpretation as to what, and what wouldn't be, allowed under those different sections of the tax law and the acts.

Attorney Donovan explained the building code actually requires conformance to a certain extent to the zoning ordinance. There may be a question on this site, if the compound had to be expanded, as to whether they would have to come back to the ZBA or not. They may well have to come back to the board if they go into the buffer more or if they go into the setback more. He continued that what they are hearing is that the drawing does not accurately represent the distance to the Mason house. The drawing shows the 150ft Tower Fall Zone, which is on C-02.

Speaking to Clem Salek, Acting Chair Crapo asked if the placement of the houses on the drawings were taken from a tax map or from actual measurements.

Clem Salek, Chappell Engineering, replied they are from aerial imagery. It could likely be from GIS as well. If they jive then there is no reason to feel they are grossly inaccurate.

Member Dibble asked if the ring on C-02 is the height of the tower or the height of the tower plus 20%.

Mr. Salek replied it is the height of the tower plus 20%.

Speaking to Mr. Mason, Acting Chair Crapo asked if the map is inaccurate as to the location of his house.

Mr. Mason responded that he is sure they put their stakes in right because they did them with GPS. They didn't locate his house that way. They used aerials or tax maps.

Acting Chair Crapo pointed out that it shows his house is 10 to 20ft beyond the 150ft. He is trying to figure out the discrepancy.

Mr. Mason commented his house does not look like that so he doesn't know what is going on.

Acting Chair Crapo asked if he is saying that his house is in a closer location than what is represented on there.

Mr. Mason replied it must be. This must be wrong. What they've done a lot of times is "fudge" the scales. In other words, they take the scale from one plan, put their drawing in and then all of a sudden there is a little problem with the scale but they let it go.

Mrs. Mason commented that from the beginning of time they have tried to pretend their house just isn't there. Whenever they show a picture or show the balloon test, they pretend the house isn't there.

Speaking to Mr. Mason, Member Driscoll asked the exact measurement he got.

Mr. Mason replied 150ft on the nose from the stake.

Mr. Crawford asked if the applicant could be asked what they believe is the accuracy of the methodology they used and where the support is for that accuracy for the measurement that is on the drawing.

Attorney Manougian asked why he would have to answer that if Mr. Mason just said 150ft. If it is 150ft it's good.

Acting Chair Crapo pointed out that one is saying 170ft and one is saying 150ft.

Mr. Salek explained the information that is shown on the plans is based on the full survey of the Lintz's property and Brackett Road, which is a public right-of-way. Beyond that, they use whatever data is available; GIS and aerial imagery. They are superimposed on the drawings and from that, the distances are set to show the fall zone. He is not sure this answers the question of the level of degree of accuracy. He does not know how to answer that question, other than to say what was done.

Member Dibble asked if the ring is the height of the tower itself or the height of the tower plus 20%.

Mr. Salek replied that on Sheet C-02 the radius is listed as a 150ft fall zone, which is 120% of the tower.

Mr. Mason commented it is not because the tower is higher than that and the concrete pad elevation has not been determined. If the elevation is not known, how can the height be determined?

Acting Chair Crapo clarified the tower is at 133ft so that would be the basis for the 120%.

Attorney Manougian explained the permit is for a 126ft tower. That is what Verizon is asking for. They never count tree branches or whip antennas for fire departments.

Acting Chair Crapo pointed out that those are something that could hit a house.

Attorney Manougian replied they could but that is not something that is counted in the fall zone. They do not count the actual metal over the tower. He continued he is really getting frustrated with people becoming RF experts. Now, they are challenging an engineer with a tape measure. He thinks this is getting a little out of hand.

Acting Chair Crapo stated a meeting or two ago it was said that the appraisal was not to be challenged. It was learned tonight that it is not an appraisal. It is a market analysis because they challenged it. Verizon is allowed to present items and put forward exhibits and submissions. The abutters are allowed to contest those.

Attorney Manougian replied that he said no one has submitted any other expert opinion.

Acting Chair Crapo commented the public doesn't have to be experts. Maps and surveys can be wrong.

Member Dibble noted that people with measuring tapes, strings and stuff can be wrong too. If this is going to be contested it has to be certified by someone.

Acting Chair Crapo pointed out this is why he is not just saying Mr. Mason is right. He was trying to see if they can figure out, if there is an error, where it may exist.

Attorney Donovan stated that the surveyor said that he couldn't go on the Mason property, which is correct. The plan that he could survey, which is the Lintz property, is 75ft according to plans stamped by a surveyor, from the tower itself to the easterly property line of Brackett Road. He reiterated there is a stamp on that plan. The question seemed to be, from the easterly boundary of Brackett Road to the Mason house, is it more than 75ft? If the board doesn't make a decision tonight someone could ask the Public Works Director to take a measurement.

Mr. Thiel stated he is somewhat fixated on this issue of expansion and the fact that they don't seem to have to come back to the board. He continued that there was no discussion on them going length wise along Brackett Road to expand. More importantly, the petitioner should be asked whether the contract with the Lintz's includes an option to lease more land.

Speaking to Attorney Manougian, Acting Chair Crapo asked if there is an option to lease more land.

Attorney Manougian replied he is not going to answer any contract questions. They are proprietary. He is not saying if they do or they don't. That is the answer across the board. They do that with every application. They don't disclose terms.

Acting Chair Crapo asked if the existing compound is the end all/be all that would ever be asked for, or has it already been contemplated that there may be a need to expand for future uses? Based on what he has heard tonight, he is going to suggest a condition that it be limited to the size asked for. Then if it needs to come back, it would be trying to reverse a condition of approval. If Verizon is comfortable with that approval, then it is already known that it will not go beyond what is asked for. If it has been contemplated that in the future it will need to expand, Verizon will probably not want that condition.

Mr. Salek commented it meets Verizon's needs.

Attorney Dodge stated he would testify that for AT&T the compound size that is proposed is sufficient for what is needed to co-locate if this is approved. AT&T does not need additional space outside that compound.

Attorney Manougian stated they don't know what other carriers are going to do. He is torn, like Attorney Donovan, on what happens if the compound does have to expand.

Acting Chair Crapo stated that in a sense they do know what other co-locators do because there are thousands of co-locators around this country.

Attorney Manougian explained things keep switching. They all had equipment shelters and now they have cabinets. Now there is talk about going back to equipment shelters. They do not know what carriers will do. One carrier starts and then on January 1st new equipment comes out. It happens all the time. He is not convinced they can expand the ground compound without coming to the boards because of where it is. He had not thought of that because they are not planning that far ahead. They are trying to get the tower going.

Ms. McCabe asked if Verizon or anyone considered whether the state is going to have any say if this is a state road and not a Rye public road they are building this on and the fall zone that it falls across. Mr. Manougian said there was no state encumbrance that would prevent him from doing anything. She wonders if he investigated that or if he got a permit for the driveway on the state highway.

A member of the public noted it is a state road going from Odiorne Point to where it meets Parsons. As Brackett continues it becomes a town road.

Acting Chair Crapo stated this tower has been publically well noticed. If the state had an interest in this, they would have shown up.

Ms. McCabe pointed out that in essence they are putting in a third driveway, which requires an exception. Or as it says, “*no construction permit shall allow for more than two driveways*”. There are additional encumbrances that they haven’t adhered to.

Acting Chair Crapo stated his understanding is this is eliminating the other leg of the horseshoe. Earlier it was mentioned that it was a gravel drive but the circle is paved. He asked if pavement is coming out.

Attorney Manougian explained it is a gravel driveway. They are eliminating the existing gravel drive and putting in a new gravel drive. The Lintz’s use that gravel driveway to get into their backyard. They are not going to use that gravel driveway anymore.

Acting Chair Crapo noted he specifically asked this at the site walk. When coming in to the paved portion of that end, the end closest to the proposed structure of the Lintz’s paved driveway, if someone was not to turn their wheel to the right, there is a huge amount of ledge there blocking from going into the driveway. He asked what was going to be done with that and it was said that it would be all set if they come in from off of here. Now it is being said that it will be going 15 or 20ft beyond that.

Attorney Manougian commented the ledge was in the gravel driveway. There is ledge in that driveway back there.

Attorney Donovan stated he thinks the point Ms. McCabe is trying to make, in looking at Sheet C-02, is that there are three driveway entrances there. There is a u-shaped one now in front of the Lintz’s residence. It is a circular driveway so there are two driveway entrances there and then there is going to be a driveway into the cell tower. If this is a state road, her observation is correct, it is going to take a state driveway permit and the state regulations are going to prohibit three driveways on a piece of land like that, unless they get a waiver. He commented that this is the first he has heard this is a state highway.

Acting Chair Crapo stated when he looks at C-03 and C-02, in terms of the scale difference, the perceived distance of the northern most part of the circle in front of the Lintz’s and the proposed driveway on C-03, looks to be about 5 to 10ft distance. On C-02, it’s looking more like a 40ft distance but yet the compound is supposed to be in the same place. He asked how both maps can show the same thing but double the distance apart.

Mr. Salek stated there are two different driveway entrances. (He approached the table to review the plan with the board.) He stated from what he understands, this (noting on the plan) is paved. (He pointed out the two stone wall cut-ins and pointed out what people are calling the gravel entrance.) There is no hill there or big abrupt change. The gravel driveway is being eliminated by moving the existing stones and blocking the existing driveway off. It will be pushed 10 or 15ft. (He showed the location for the proposed driveway on the plan.)

There was review of the plan by the board with Mr. Salek.

Attorney Donovan clarified there are three cuts there now and one is being eliminated.

Ms. McCabe commented the “gravel driveway” is not a gravel driveway. It is a pile of gravel. It is not even a driveway. It is a trodden down part of the wooded area. There is also a real horseshoe driveway. There is not an existing driveway in there that are they are talking about.

Attorney Dodge stated he would like to address two points that Mr. Crawford made for clarification. Odiorne Point does not work for AT&T on an RF basis. AT&T is having no discussions with the state on that particular site. AT&T has spoken with them about Wallis Sands and that is not going to work because of all the reasons already explained. He reiterated that Odiorne Point is not an option for AT&T. The second point, he is not sure how familiar Mr. Crawford is with Second District jurisprudence, but he would hate to think the board would make decisions on the idea that TCA only applies to phone service and not data service. The law in the Second Circuit is otherwise. He is correct in saying that the First Circuit relies on that. Frankly, the First Circuit has plenty of jurisprudence that applies to sites that are providing both voice and data service.

Acting Chair Crapo asked if a different standard applies in the Second Circuit.

Attorney Dodge stated the point is that in neither circuit is there this idea that data doesn't count when it comes to the TCA. Data is as much a part of TCA as cell phone service.

Acting Chair Crapo asked if the same Telecommunications Act applies to both territories.

Attorney Dodge confirmed.

Attorney Manougian stated he was misunderstood by what he said at the beginning of the night. What he meant to say was the first thing he quoted in his December 2017 filing was the Rye Article about the Selectmen talking about the problems in town. That is not what started Verizon looking for a site in Rye. He continued that Ms. McCabe stated the Rye School didn't stop and they were still interested, or something to that effect. He noted that he has the Rye School District approved minutes from their December 17, 2008 meeting. On page 4, there was discussion about if it could be done. In the end, Mrs. Balboni agreed that “*we do not want people to assume we are moving forward with this idea*”. Ms. Anderson made a motion to deny having Verizon do a tower height test at this time. Seconded by Mrs. Moynahan. Mr. Grant added that “*we should ask them to come back with a financial package first*”. Unanimously approved. It was dead in the water. They want to see a financial package.

Acting Chair Crapo asked how this is “dead in the water”.

Attorney Manougian explained that Chip followed up with the School Board with Dr. Cushing. Dr. Cushing replies on April 20, 2009; “*Good Morning Chip. At its April meeting, the Rye School Board voted to deny Verizon's request to submit a revised school district plan lease proposal. Sincerely Yours*”. That means it's done. They do not want to talk about a lease.

Member Durkin stated that Dr. Cushing is not a member of the School Board. He finds it somewhat unusual that the superintendent is saying that the School Board is not interested. It should come from the chairman of the School Board.

Chip Fredette, SAI Communications, stated this was the contact that they were given.

Attorney Manougian stated the last point he wants to make is about RF and phones. He listened when Mr. Crawford spoke about their drive-around tests with Ms. McCabe. Frankly, if they want to drive around with a “dinosaur” that is their option but that is not what Verizon is here for. They are here for 4G. That is not what the TCA contemplated when it said “higher quality services”.

Acting Chair Crapo pointed out that 4G didn’t exist when TCA was passed.

Attorney Manougian explained it envisioned going forward with future progress. He asked the thoughts of the board.

Acting Chair Crapo stated he is thinking that they should close the public hearing. The board has the recent submittal of the appraisal. He does not think the members have had a chance to read it, nor do they have copies in front of them. He does not think that at 11:28 they should start going through 8 different variances with 8 different votes. The board has heard from both sides. He is in favor, if the board agrees, of closing the public hearing and closing the record. He would like Attorney Donovan’s opinion on the expansion. He can see that being valuable to the board as to evaluating the criteria.

Attorney Donovan noted that closing the record does not preclude the board from asking his opinion.

Attorney Manougian asked if closing the public record precludes him from filing a response in opposition to the report he hasn’t seen or read yet; the report that was testified to for the first time tonight from the real estate appraiser. If the answer is yes, he is going to ask for a continuance and he will deal with the shot clock with another extension. He wants to see what he (Mr. Gardner) did because he also testified if the tower falls it hits their house. That means he didn’t look at the plans.

Attorney Donovan stated he said it would hit their property, which it does. Whether it hits the house or not is the issue. He said “property”. He was very careful to listen to that. He said “property”. He didn’t say “house”. In looking at Verizon’s own surveyor’s plan, it does hit the property. The issue is whether it hits the house.

Acting Chair Crapo stated the record is the record as of 11:30 right now. He is in favor of closing the record and closing the public hearing but deliberating on another night.

Attorney Donovan stated if the board wants to rely on the appraisal in their deliberations and decision making, the members should read it. Otherwise, it should not be considered. If the board moves forward tonight, he does not think the board should consider an appraisal they haven't read. That is why he suggested that the hearing and record be closed, which means the applicant and all the neighbors do not get to submit anything more, then schedule a night just to deliberate, which does not preclude the board from asking him for advice.

Acting Chair Crapo stated he does not want stuff showing up in his mailbox, randomly, in unmarked return envelopes.

Member Dibble stated if the board is going to consider new information for its deliberation, it seems to be appropriate that Attorney Manougian would be able to see that too and respond to it.

Acting Chair Crapo pointed out the board has their report (Verizon's) and a report they have not had time to read that was presented tonight. The board has not read what the gentleman said to weigh the evidence. There are 7 or 8 different variances that have to be gone through individually with deliberations and a vote.

Attorney Manougian stated before the board closes, he would like to officially request a continuance so he can respond to the report. He will extend the shot clock to do that.

Attorney Donovan asked his intent. Is the intent to come in with another appraisal report? Verizon had their chance to submit an appraisal report and they did not.

Attorney Manougian replied he did submit one.

Attorney Donovan noted it is a market report.

Acting Chair Crapo stated it says "market study". On the second page of the report it says, *"Because of this report, we are not required to give further consultation, testimony, depositions or be in attendance for any legal proceedings regarding the subject property, unless prior consent was previously made"*.

Attorney Manougian commented that unlike other people, he is not going to be an expert and decide if this expert is right or what his guy said is right. He would like his expert to look at it. There is now another report and his expert did not have a chance to see it.

The board agreed to close the public hearing and record.

At 11:35 p.m., Acting Chair Crapo closed to the public and called for a motion to close the record.

At 11:35 p.m., Charles Hoyt made a motion to close the public record. Seconded by Patrick Driscoll. All in favor.

At 11:36 p.m., Charles Hoyt made a motion to close the hearing. Seconded by Patrick Driscoll. All in favor.

Acting Chair Crapo stated that what is left is deliberation on the matters.

The board discussed a date for the next meeting. It was agreed to schedule the meeting for Tuesday, September 18th, 7:00 p.m.

Acting Chair Crapo commented the minutes will be table until the 18th.

Motion by Shawn Crapo to continue the deliberation for this application to Tuesday, September 18th, 7:00 p.m. Seconded by Tim Durkin. All in favor.

Adjournment

Motion by Tim Durkin to adjourn at 11:43 p.m. Seconded by Burt Dibble. All in favor.

**All corresponding documents and files may be viewed in the building department, Rye Town Hall.*

Respectfully Submitted,
Dyana F. Ledger