

MICHAEL DONOVAN LAW, P.L.L.C

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MEMORANDUM

TO: Rye Planning Board
Rye Board of Adjustment

RE: Verizon Cell Tower Proposal/0 Port Way

DATE: August 28, 2018



Dear Board Members:

Verizon asserts that the town owned parcel at 0 Port Way (Tax Map 23/Parcel 1), while technically capable of providing coverage to its gap, is not feasible due to access problems. At one of the work sessions I indicated that I would review this assertion.

Town tax maps show Map 23/Parcel 1 as being bounded by Port Way. Holland Drive connects Port Way to Parsons Road. Port Way and Holland Drive were platted as part of the June 1921 Fair Hill Estates plan. The section of Port Way adjacent to 0 Port Way is either a private street or a paper street. It is not a town road. Because 0 Port Way was not part of the land platted as Fair Hill Estates, it probably does not have an implied access easement arising from the Fair Hill Estates plan.

I have reviewed some title research provided by Attorney Manougian and records in my archives from the circa 1995 when the Condons tried to build on Tax Map 23/Lot 2. The ZBA denied their application due to a lack of access. The Condrons appealed to court but eventually dropped the appeal, conceding a lack of access.

A 1975 deed in the chain of title to 0 Port Way indicates that the parcel has “a right to pass through the same [back field] over the usual cart path to Odiorne Neck and to other parts of the Wallis Farm so-called.” RCRD B2266/P1875. This right of passage runs back to an 1845 deed. RCRD B314/P265. Part of the former Wallis Farm is now Tax Map 20.2/Lot 21 on Parsons Road. Affidavit of Urban A. Beane, 9/21/1995. It appears that the June 1921 platting of Fair Hill Estates may have platted Holland Drive and several lots over the area covered by the above quoted right of passage.

In my opinion it would take a Quiet Title Action in court to re-establish the access rights to 0 Port Way, which most likely would be re-established over Holland Drive. Alternatively, the town could pursue having the board of selectmen layout an access pursuant to RSA 231:8 *et. seq.* or RSA 231:28, *et. seq.*

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Rye Planning Board
August 28, 2018
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Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MLD', with a horizontal line extending from the end of the signature.

Michael L. Donovan

Cc: Victor Manougian, Esq. (By Email)

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