

**TOWN OF RYE  
PLANNING BOARD and ZONING BOARD OF ADJUSTMENT  
MEETING**

**Wednesday, December 18, 2019  
6:30 p.m. – Rye Public Library**

*Planning Board Members: Acting PB Chair JM Lord, Steve Carter, Tim Durkin, Jeffrey Quinn, Selectmen's Rep Bill Epperson and Alternate Jim Finn*

*Zoning Board of Adjustment Members: Acting ZBA Chair Shawn Crapo, Rob Patten, Charles Hoyt, Patrick Driscoll and Gregg Mikolaities*

*Others Present: Town Attorney Michael Donovan and Planning Administrator Kim Reed*

**I. Call to Order: Planning Bd. Chair**

PB Acting-Chair Lord called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance.

**II. Introduction of PB and ZBA Members present**

The members of the Planning Board and the Zoning Board of Adjustment sitting for the application introduced themselves. JM Lord will be sitting as acting chair for the application. PB Alternate Jim Finn was seated.

ZBA Acting-Chair Crapo noted that he is sitting as chair for the Zoning Board, as Patricia Weathersby has recused herself from the application.

**Applications:**

**III. Submittal of Applications for Determination of Completeness – Action Required by the Planning Board:**

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

**Case #20-2019.**

PB Chair Lord opened to the applicant.

**Attorney Victor Manougian, representing Cellco Partnership d/b/a Verizon Wireless,** addressed the boards. He stated that an application for zoning relief was submitted on November 15<sup>th</sup>. There was an initial meeting with the Planning Board on December 10<sup>th</sup>. At that time, the application was still missing full size drawings, which were submitted on December 11<sup>th</sup>. The drawings were the final piece of information that was missing. He asked that the Planning Board find the application complete.

Attorney Donovan explained the shot clock begins when they make their submittal, which was November 15<sup>th</sup>. The Town had thirty (30) days, unless the Town tells them during that time that things are missing. Because the 30 days would expire before this meeting, Planning and Zoning Administrator Kim Reed, on behalf of the Town, told the applicant that they were missing the full size drawings and report from the wetland scientist. Those were supplied on December 11<sup>th</sup>. The shot clock began on December 11<sup>th</sup> and 150 days takes it to May 8<sup>th</sup>.

PB Chair Lord asked the Planning Board Members if they have had a chance to review the packet.

Planning Board Members confirmed. There were no questions from the Board.

**Motion by Bill Epperson to accept the application as complete and to take jurisdiction. Seconded by Tim Durkin. Planning Board Vote: All in favor.**

#### **IV. Public Hearing:**

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

**Case #20-2019.**

Variances from Sections 505.6 (A)(4) for construction of a wireless telecommunications facility within 100' wetlands buffer 301.8B(1) and 301.8B(7) to construct a driveway within the 75' buffer to access wireless telecommunications facility. Property is in the Single Residence District. **Case #47a-2019.**

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

Attorney Manougian stated they are before the boards to ask for approval of the various relief that has been requested. Earlier this year, the Town approved adding this lot (Tax Map 23, Lot 1) to the Wireless Telecommunication Overlay District and authorized the Selectmen to enter a lease with Verizon Wireless. That passed overwhelmingly by about 1300 for and 300 against. He continued that an application for a building permit was filed with the Building Inspector on September 6<sup>th</sup>, which was denied on September 30<sup>th</sup>. With that denial, the applicant received a list of the relief that was needed in order for the proposal to move forward. Subsequent to that, an application was filed with the Zoning Board of Adjustment and Planning Board on November 15<sup>th</sup>. With the help of the staff, a balloon float was scheduled for December 7<sup>th</sup>; however, due to weather conditions, it could not proceed that day. The following week

was the initial meeting with the Planning Board and two days later the proposal went to the Conservation Commission on December 12<sup>th</sup>. A preliminary presentation was given to the Conservation Commission. The project does not have a direct impact on the wetlands; however, the driveway is close to the wetland boundary necessitating a Special Exception to install the driveway. The Conservation Commission asked for another meeting and are also interested in attending the site walk. The application will be back before the Commission as the process moves forward.

Attorney Manougian noted several forms of relief are needed from both boards. A variance is needed from the Zoning Board of Adjustment because the cell tower and the compound are within the wetlands buffer. A Special Exception is also needed because the driveway is going to be in the wetlands buffer. A Special Use Permit is needed from the Planning Board for the proposal, as well as Major Site Plan review. He noted that some of that relief is needed because the tower meets all the lot line setbacks.

Attorney Manougian continued that Verizon is building a 126' monopole accessed by a gravel driveway leading to the 100'x100' lease area. Within that area, will be a 50'x50' compound which will house Verizon's equipment, as well as other future carriers' equipment. He commented that he would like to go through the submissions, followed by a review of the RF Report, market analysis review and wetlands report.

**PowerPoint presentation of zoning drawings:**

Attorney Manougian stated the project is called 'Rye 2 NH' and is proposed for 68 Port Way. (He reviewed the location of the property on the plot plan. He also pointed out the proposed location on the plan for the tower.) He noted that Port Way ends and then touches State property. Unfortunately, it is next to impossible to get access to State-owned land. The applicant felt compelled to stay off the State property and meander over to the town parcel, hugging the wetland line to the left, then going straight back to the existing woods road. (He showed the path the gravel driveway will take on the plan before the boards. He also showed the proposed location for the equipment compound and lease area.) He reiterated the lease area is 100'x100' and within that is a 50'x50' fenced-in compound with a 6' chain-link fence surrounding it. The slide shows the proposed equipment for both Verizon and AT&T, who is also in need of a site. An RF Report has been submitted from AT&T's perspective, as well as Verizon's perspective. (Attorney Manougian pointed out on the plan 100' wetland buffer.)

Attorney Donovan clarified that the announcement on the agenda does not describe it correctly but the legal notice does. The driveway requires only a Special Exception from the wetlands buffer requirement. It is the compound and the tower that require a variance from the buffer.

Referring back to the presentation, Attorney Manougian stated the last slide shows the 126' monopole with Verizon at the top and AT&T right below. All equipment is on the ground. All standup equipment cabinets and generators are within the enclosed 6' chain link fence. He noted there is barbed wire added to the top of the fence to deter anyone from trying to get into the compound.

ZBA Chair Crapo stated that previously they were looking at a completely different site and it was going to be 126' based on the RF. He does not think this site is at the same elevation. He asked why 126' is still being proposed.

Attorney Manougian stated he will let Keith Vellante address this and go over his RF Report.

**Keith Vellante, C-Squared Systems**, presented the RF Report to the boards. He noted the RF Report was prepared by C-Squared Systems and is dated October 24, 2019. The report addresses the network in and around Rye and why the proposed facility is needed. Within the report, there are five maps that show

what the need is and gives a good understanding of how the tower fits within the network. (He presented one of the maps on the projection screen and reviewed the area of Rye and its surrounding communities. He also pointed out the location of surrounding Verizon facilities.) He noted the site off Grove Road is the only facility that Verizon has in the Town of Rye. (He went on to show the areas on the maps that are covered by Verizon's 4G-LT coverage.) He pointed out that all of northern Rye has a gap in coverage, which is what Verizon is trying to fill with the proposed site at Port Way. He continued this is a busy area relative to the Town of Rye because of Route 1A, which serves about 4200 cars per day just west of Brackett Road. Brackett Road itself serves 1800 cars per day. There is also the influx of summer visitors into the area. This section of Rye has Wallis Sands, The Seacoast Science Center and Odiorne State Park. There is a lot of activity in this part of Rye and there is severe lack of coverage to serve the residents who live in this area, as well as any visitors.

PB Member Finn commented this site is right on the coast. He asked how much consideration was given to putting the tower on a site closer to Sagamore Road, which would be a more central area than right by the coast.

Mr. Vellante conformed that they have looked at other sites in the area.

PB Member Finn commented the elevation on Port Way is quite a bit higher than the first proposed site on Brackett Road.

**Chip Fredette, Verizon Site Acquisition Specialist**, explained the ground elevation of the previous site owned by the Lintz on Brackett Road was 13.9'. The ground elevation here is 14'.

Mr. Vellante continued with his presentation showing the coverage with the integration of the proposed site. He noted that it covers 4.2 miles on Route 1A, 1.2 miles on Brackett Road and almost a mile on Parsons. In terms of people, it would serve roughly 950 people in the area. With the growth in wireless dependency for business, personal use and emergencies, it has really become an indispensable part of daily life. With that, comes an increase in usage and Verizon has to manage the increase in demand on their network. Right now, any service in northern Rye is certainly not reliable, as it is served by far off sites on Route 1. With the integration of a site dedicated for northern Rye, it will also allow the far off sites to better serve the areas they were intended to serve along Route 1.

PB Member Finn asked if Verizon would be willing to lower the height of the tower.

Mr. Vellante explained that for Verizon's needs, 120' is really the minimum. Modeling has been done at lower heights and there is a sharp roll off at 100' to 80' for coverage to the south, due to the knoll on the property. He continued they do their best to minimize the height, as they understand it is a concern of many people. At the same time, they are trying to build a structure that serves Verizon's needs and promote co-location on the tower. From Verizon's standpoint, they would not want to go any lower.

Attorney Manougian reminded everyone that when this was submitted at town meeting, the tower was 150' tall. When Verizon came back, he spoke with Attorney Donovan and said it was going to be able to be 126'. He stated they can't go any lower and provide what Verizon wants for their customers.

ZBA Chair Crapo commented he does not want to be here in a year and half for tower number two a mile away. He asked what the coverage map would look like with a tower at 150'. He asked if it would solve

more of an issue. In this location out in the middle of the woods, 10' or 15' may or may not be grotesque. He would like to see if it would serve a bigger area if it was slightly higher.

Attorney Manougian stated they did not do calculations on 150' because 126' was exactly what worked.

**Attorney Will Dodge, representing AT&T**, stated he is present to support the project and it is AT&T's intention to co-locate. He noted that in the RF Report prepared by C-Squared, there is a map showing AT&T coverage with a co-location at 109' center mark. It can be seen that AT&T has coverage that they need to provide service, similar to Verizon's but not as good. In some areas, there are some gaps for AT&T along Route 1A. He noted AT&T's engineers would love to be at the same height as Verizon and feel those issues would not exist. He continued they can work at 109' but will have to do a lot of fine tuning and creative work to make sure the customers are not prejudiced for signing up with AT&T. He commented they would not be supporting the application if 109' did not work; however, AT&T cannot go lower.

Attorney Donovan stated the Planning Board has hired a peer reviewer, David Maxson of Isotope, who has looked at the application. Mr. Maxson prepared a draft; however, Attorney Donovan pulled it back because there was inaccurate information on some issues. The point that Shawn Crapo raised, is a point that was raised in Mr. Maxson's report. If it is marginal or weak at 109', third and fourth carriers are probably not going to want to locate on the tower. The question that Mr. Maxson raised was what about it being taller so Sprint does not come in on a Brackett Road site because they cannot co-locate effectively. The present ordinance requires an applicant to show four spaces. However, the proposed new ordinance, eliminates that requirement and leaves the number of co-location quads to the discretion of the Planning Board.

ZBA Chair Crapo stated the tone and purpose is the Town would rather see co-location on the same pole, rather than multiple poles within the same grid.

Attorney Donovan stated the Town has a committee looking at other sites around town for towers. The site the committee and Mr. Maxson recommended be added to the district is 14 acres at the recreation area. As part of Mr. Maxson's report, he prepared sight line drawings and examples of how a tower at the recreation area would look in the neighborhood. (He passed around the drawing for people in attendance to look at.) He stated that he suggested to Attorney Manougian to submit information like this for some of the closer houses on Parsons and Holland, in addition to a balloon test. He pointed out a lot of that neighborhood is heavily wooded. It seems that some people that are worried about the view, are not going to be able to see if from their lot because of how high the trees are surrounding their lot.

BOA Member Driscoll asked for clarification on the actual height of Verizon on the tower.

Mr. Vellante replied they are at 121' and AT&T is at 109'.

ZBA Member Driscoll commented it is 12' from each carrier. If it was to go up to include one more, it would not necessarily need to be at 150'. It could be at 133'.

Mr. Vellante agreed.

Selectman Epperson asked if 126' with two co-locations is a finite number. He asked if there could be three co-locations.

Attorney Donovan pointed out the application says it is designed for four. However, if AT&T is marginal at 109', will anyone be able to use anything lower?

Attorney Manougian suggested flying two balloons during the balloon test; one at 126' and one at 150'. They will also submit photo sims for both.

**PowerPoint presentation on wetlands:**

**Audra Klumb, A&D Klumb Environmental**, stated she did the wetlands delineation on the property in April 2019. She continued the wetland boundary is a forested scrub shrub wetland at the edge. Heading westerly into the wetlands, it becomes more of a scrub shrub emergent wetland. (She reviewed the area on the PowerPoint presentation for the wetland area and boundary. She also reviewed the location of the access road.) She noted that coming down Port Way, the access would come in around State land, which gets fairly close to the wetland boundary but does not touch it. A silt fence would be installed near the edge of the wetland and all the construction would be on the opposite side, avoiding any direct wetland impacts. She noted the road is primarily all within the 75' buffer, except for when it gets really close to the compound. The predominance of the road would follow the existing woods road, which is fairly wide open. Part of the road will not be on the existing woods road and there will be some disturbance in that area for the access road. It will then go on to rejoin with the existing woods road.

PB Member Durkin asked the condition of the road for it to support vehicles and equipment.

**Mark McClusky, Senior Engineer Hudson Design Group**, replied it will be a gravel driveway. It will support construction equipment and service vehicles.

PB Member Durkin asked if the road would have to be significantly altered from its current state.

Mr. McClusky replied it would not. It is a 12' gravel driveway.

PB Member Carter asked about the impact to the wetlands during construction. He asked if it can be done without disturbance to the wetlands.

Ms. Klumb stated that is how it is designed. It is designed to not cause wetland impacts. The plan is to keep out of the wetlands and keep them intact as they are. Erosion control will be installed and act as a construction barrier.

ZBA Member Driscoll asked for further information about maintenance vehicles on the gravel path and any effect it would have on the wetlands.

Ms. Klumb explained the vehicles will be on the road so they will not be in the wetland. The usage of the road for maintenance is minimal and not a high traffic situation.

ZBA Member Driscoll asked if there would be any benefit to the wetland by creating a new road, as far away from the wetlands as possible, as it continued to the compound.

Ms. Klumb explained it is always desirable to not make a new disturbance because that changes the landscape. She would lean towards using an existing road, as opposed to making a new footprint. In this

case, there would be a lot of grading and topography changes that would be needed to get farther away. There is already a nice flat surface used as a road and she would not move it. ZBA Member Driscoll asked about the possibility of the compound being located further away from the wetlands.

Ms. Klumb noted the tower location was based on the setbacks in the ordinance. That dictated where the tower could go and is within the 100' buffer.

PB Member Carter asked how the swale is going to work.

Mr. McClusky explained the driveway will be graded to pitch any runoff into the swale, which will infiltrate into the ground. With the limited visits the tower gets by maintenance vehicles after the site is constructed, the driveway will probably be leaf covered and will actually slow down any runoff situation. It will be a favorable condition after the fact.

PB Member Carter asked about access in the winter.

Mr. McClusky replied there would be no access. Emergency access would be snowmobile or ATV. It was noted that there would be no snowplowing.

Referring to Sheet C-5, PB Chair Lord stated it looks like the elevation of the bottom of the swale is the same elevation of the wetlands.

Mr. McClusky reiterated the driveway will be pitched toward the swale. The runoff will go into the swale and simply infiltrate into the ground.

PB Chair Lord stated it seems that it is going to fill up over the road and go back into the wetland.

Mr. McClusky explained the existing driveway path is there as well. It is not going to affect the general flow patterns. The drainage swale is really just to slow down the amount of runoff that would be generated by the slightly increased impervious surface by the gravel road. That runoff would go into the swale and infiltrate into the ground.

ZBA Member Mikolaities stated a road profile needs to be done. The driveway grades go from 10, 9, 8, 7 and up to 14 with the swale at 10.

Attorney Donovan commented the Planning Board has often asked for profiles and cross sections even on driveways.

Mr. McClusky stated they will show a cross section on the details page and they can do a road profile.

ZBA Member Mikolaities stated he is going to want to see a profile for the road when it comes before the ZBA.

Speaking to the Mr. McCluskey, Attorney Donovan asked if it is agreed that a profile will be done with cross-sections at 50'.

Attorney Manougian and Mr. McClusky agreed.

Attorney Donovan continued that the Planning Board members have seen the report from Sebago. They did an extensive review of drainage. One of the things Sebago recommended follows up on the concern about soil and infiltration. They had suggested a test pit to confirm the ability of the soils to take the infiltration. He asked if it is felt that all the concerns that Sebago raised can be satisfied.

Mr. McClusky replied that Sebago's review was pretty reasonable. As far as the test pit, that might be saved for a conditional approval. He is not sure it can be done because they are in the middle of NEPA permitting.

Mr. Fredette explained that concurrently with this process, a National Environmental Policy Act (NEPA) screening is also being performed. It is Verizon's policy that until NEPA approval is received, they will not allow soil to be disturbed whatsoever. In this case, the Tribal Preservation Office had weighed in on the property. He noted the NEPA permitting is a 6 to 8 month process.

PB Chair Lord noted that soil could not be tested until April.

Mr. Fredette confirmed.

ZBA Chair Crapo commented he feels the application is incomplete and premature. The application puts the shot clock on the boards with half the information needed.

Speaking to the applicant, PB Chair Lord commented that it is being heard that a lot of information is needed before some of this can be digested.

Mr. Fredette replied it is a risk management position the company takes.

Attorney Manougian stated it is not just Verizon. AT&T does it the same way. They are tied to federal regulatory. This is what is done in the industry. In regards to the comment about shifting the site further away from the wetlands, he noted there is a lease executed by the selectmen for the 100'x100' lease area and driveway. If that is altered, a new lease would need to be executed with town meeting approval. Also, the Town has conveyed property to the Conservation Commission subject to the lease executed by the select board with Verizon and subject to the easements. If things were going to be shifted, not only would town meeting approval be needed for a new lease, approval would also be needed from the Conservation Commission because they own the land outside the 100'x100' lease area.

Regarding the idea of moving the compound, Attorney Donovan stated it might place it so it would need a yard variance from the boundary on the right, which abuts State property.

PB Chair Lord explained the boards are not saying it has to move. They are saying the information is not before the boards to judge if the driveway, as designed and where it is located, is going to function properly or not. The boards are looking for basic information to see if this is going to work. It sounds like the boards will not have that information until May.

Attorney Donovan stated he thinks the application is complete. It is not unusual to require additional information. It appears they are not going to be able to do the test pits to confirm the soils. He noted that Sebago's report states that if the soils are as represented by the SCS Soils Maps, it should work. They are just suggesting the test pit to confirm the data that is present. In his opinion, the absence of that should

not stop the board's review of these applications. Maybe it can be a conditional approval and if they don't meet the condition, they don't have the approvals.

PB Chair Lord asked if the board should spend the time to go through all the details if the soils are not going to support what they are saying. The boards would have to start all over. Sebago had a lot of issues to address. The applicant does not seem to have an issue addressing those, except for the test pits. He would like to see something more complete.

Speaking to Ms. Klumb, PB Member Carter asked if the soils on the other side of the road were examined.

Ms. Klumb replied that she went to the wetland edge and worked her way out to find where it changed. In looking at the drawing which shows a wetland "finger", that is poorly drained wetlands. Moving towards the west, it becomes more poorly drained turning to very poorly drained. It is not a saturated standing all year long wetland. It is an area that has water within 12" of the surface to make it a wetland but does not have standing water for long periods of time. She stated she was there in April and questioned whether to even delineate it as a wetland, by what was found there right after melt when water levels are high. That area is not a super wet wetland.

ZBA Member Mikolaities stated he is confident the gravel road can be built. Relief is being asked from the wetland buffer. In looking at Sheet C-5, there is 16'10" from the property line to the wetland. A 12' road is going to be built at elevation 7. The flood elevation is 8.2. He is wondering if wetlands are going to be disturbed. Once the profiles and cross-sections are done, is it going to be up at elevation 9 and not be able to fit in that 16'? He does not want to have all these debates and find out in six months there needs to be a new design.

Attorney Donovan noted the Town is the owner of the land and are not bound by any regulation. One possible solution would be for the Town to use the escrow and have Sebago retain someone to do the test pits. The boards would then have the test pit data. The applicant has already committed themselves to doing the profile and the cross-sections. That might be one way to proceed. The boards could ask for this to be done before the next meeting.

Attorney Manougian stated they have had the Sebago report for eleven days and are working on it. This is the first meeting. There has been great feedback and they will address it but they do not have all the answers today.

PB Chair Lord stated that if they can work out a way to get the test pits done, it would be a way to move this forward.

Mr. McClusky stated he has no problem with doing the profiles. He has no problem with the test pits if the Town can make it happen. He had to do the drainage analysis on the soils that are available through NRCS. The perk rate was 1" per half hour so that is pretty conservative. He did not find Sebago's peer review onerous at all. He found it reasonable.

**Presentation on impact to real estate values:**

**Mark Correnti, Fair Market Advisors**, stated he prepared a real estate analysis report, which addresses the impact on value of surrounding properties if a cell tower is in view. There are eight properties analyzed in that study. He is going to speak to the properties specific to Rye. In measuring a unique variable in a property, other similar properties that would be considered comparable are looked at to see what they sell for. The property with a unique features is looked at and it is determined, by looking at sales prices and how the market reacted, if there is a measurable difference; appreciation in value or depreciation in value. That is how this analysis was done. He continued that he drove through Rye and identified properties that had a view of a cell tower and measured the impact on value those properties had. He noted there is a cell tower on Grove Road and that is the area he drove around. He also noted this report was presented to the boards at an earlier time. He has amended the report because he found new sales to present. He pointed out this is not an appraisal, which would be an opinion of value for a specific property. It is a market analysis.

Referring to the report, Mr. Correnti stated the property at 21 Garland Road had sold in 2012. The property has a view of the cell tower that is in Rye. It is clearly visible. It is obstructed somewhat in the summer but is visible year round. The property at 21 Garland Road listed for \$895,000 and sold for \$845,000 within seven days. The sold price is comparable to other homes of similar size in that timeframe, which is six months before and after that sale date. Its peers listed for \$897,000 and sold for \$845,000. This particular property, at 21 Garland Road that has a view of a cell tower in Rye, sold in seven days at the same price as its peers. Mr. Correnti continued that a home at 113 Grove Road was identified, which was new construction. This home at 113 Grove Road speaks to the qualitative side. This is a situation where the cell tower existed but new construction was built with a view of that tower. This property listed for \$799,000 and sold for \$799,000 at 270 days on the market, which is quite long. He noted with new construction there is very little “haggle” room and the number of days on market is usually the time it takes to build the home. In this situation, the tower existed, the home was built and sold at a price that was competitive with its peers.

Mr. Correnti stated he revisited the market in October to see if there were any new sales. There is a lot of new construction going on around the Grove Road tower. Right across the street from Garland Road, there is new construction. It is yet to be determined what that house is so he analyzed the land sale. In the year prior, there were thirteen sales of vacant land in Rye for single-family residential development. The median sales price for vacant land in Rye for single-family residential buildout is \$442,000 with 139 days on market, which is typical. He noted this particular lot sold for \$450,000 which is \$8,000 more than the median. Based on the analysis, there is no measurable impact on value to properties. The buyers of these properties are the market makers and the ones that are making purchase decisions. Their purchase decision is showing they are not paying any more or any less.

PB Member Finn asked if the last example given was comparable in acreage.

Mr. Correnti replied the lot was just over 2 acres. The median was 1.06 acres.

ZBA Chair Crapo asked if there was an analysis on the distance from the house to the cell tower.

Mr. Correnti noted the tower was 190' at 1600 feet. The point is it can be seen. What is being measured is a reaction to that view.

ZBA Chair Crapo asked if this was compared to the distance from the proposed tower to the surrounding properties.

Mr. Correnti replied no. He explained he was comparing a property with a view of a cell tower to properties that do not have a view of a cell tower. The only tower with single-family residences having that view is the one on Grove Road.

Attorney Donovan stated he passed around a sheet that showed information used by a consultant on the Recreation Road site. That type of information is what is needed here. Which houses on Holland Drive and Parsons Road will be able to see this tower, if any? Attorney Manougian has a copy of this so a similar analysis can be done. When the lease for this was being worked on, his recollection was that there isn't a house closer than about 800' at the top of Holland Drive, which is surrounded by tall trees. The houses that are on Parsons Road will be 900' to 1200' away. That specific information is needed.

ZBA Chair Crapo stated someone might be trying to sell a house that can see the tower. However, it might be a different situation if it is 800' away versus a quarter mile across the valley. It can be seen but it will have a varying effect.

PB Member Carter asked if there is any information on whether a bare cell tower versus one that looks like a tree has any change in how people view the cell tower.

Mr. Correnti stated he has not had the ability to find data that granular. He reiterated that he drives around, finds cell towers within view and identifies the sales that have occurred. To find a cell tower that has monopine on it is rare.

ZBA Member Driscoll asked if there has been any analysis between the existing homes and the appraisals done on them for refinancing and how they correlate to values in the area.

Mr. Correnti replied to his knowledge "no". If an appraiser is going to make a mathematical adjustment to a property because of a unique feature, they have to do their homework. His report presents the data on sales that occurred in Rye.

PB Chair Lord opened to the public for comments.

**Hugh Lee, 220 Pioneer Road**, stated he has been following the issue of a cell tower in town for quite a few years. He would like to see this get done sooner rather than later. In regards to the question of the swale, it seems it is on the side of the road and is taking drainage from an existing condition. It is not as if the swale is being created to handle runoff from something these folks are doing. In the worst case, if this swale fills up, it will run across the gravel road just as it does now without a problem. He suggested that the boards should do a site walk to see what the site looks like. He noted his advice to the Selectmen was to locate the tower on the high point of this land, some 20' higher. There would not be a need for wetland encroachments, variances and buffer zones. The Selectmen chose to put it down near the swamp resulting in a need for much more effort. It seems the Selectmen has exacerbated the problem by conveying the land to the Conservation Commission. He suggested to the Selectmen that if they were

going to designate the lower portion of the land for the tower that they include in the lease a provision to allow the relocation of the site; however, they chose not to do that. He stated that even where it is, it is a pretty good site. It is virtually going to be invisible to anyone in the surrounding area. The people on Parsons Road who may have an issue are not going to be able to see it through the trees. He stated they should get this done and not over analyze this. Clearly, there is a need, and has been a need, for better cell coverage in this part of town. He spoke with a member of the Police Department who is definitely interested in having better coverage. Mr. Lee stated the tower could and should be made higher so that not only Verizon and AT&T but other carriers can have a reasonable chance of coverage from that tower. He urges the boards to act, move forward and not over analyze the details. He urges the boards and the Town to get it done as soon as possible.

Attorney Donovan stated that the Building Inspector and Mr. Lee were the ones who pointed the Town towards this 14-acre parcel, as an alternative to the Brackett Road site. When this was looked into in the fall of 2018, it was determined by himself, as town counsel, the Town did not have legal access to that 14-acre parcel. That was basically going to “kill” any prospect of a cell tower on that site. He noted that Port Way is a private road owned by four property owners who abut it. One of those property owners went to the Town Administrator and said they would like to see cell tower service in town improved. At that time, the thinking was that it would go on the high spot that Mr. Lee has referenced because it is about 20’ higher than what is being proposed. That is very close to one of the property owner’s homes who owns part of the right-of-way. Attorney Donovan continued that he and the Selectmen negotiated an agreement with the four property owners by which there is now limited access to a cell tower site on that parcel. It was a give and take. The folks that have given the Town the right by deed to access the cell tower site did not want it on that particular part of the parcel. The deal was that it would go in the southeastern corner of the parcel. That is why it is there.

Attorney Donovan stated he took care of the negotiations with the lease. If Mr. Lee suggested something about having a flexibility clause to move that 10,000 square foot area around, that is something he was not aware of. He continued the Selectmen have done a responsible thing and the Town Meeting has approved it. To change the location of that 10,000 square feet would now require an amendment to the lease.

Mr. Lee stated he sent a letter to each of the Selectmen to their homes advising them of the better location on the high point of the land and the alternative clause, to be included in the lease, for the Selectmen to have the ability to relocate the site and that would not require an additional town meeting. Back at that time, he understood there may be a possibility of laying out the road and it would be a quick, simple process. That is why he advocated using Holland Drive, which would be a less impacting layout of the road. He reiterated that it is not a bad site so they need to get it done.

Attorney Donovan noted the conveyance of the parcel to the Conservation Commission was part of the agreement with the property owners. The Town Meeting specifically voted for the Selectmen to convey that parcel to the Conservation Commission subject to the lease. It was not some arbitrary decision on the part of the Board of Selectmen. It was vented at the Town Meeting.

**Wesley Pike, 190 Brackett Road**, stated the boards are asking for engineering information for the road on that site. Verizon has their rules and policies of what they will and will not do. He asked why there cannot be a little bit of bending to get this thing done. The Town has voted on it and approved the site. He thinks the boards want to work with Verizon they just need the information.

**Michelle Tyminski, 121 Parsons Road**, stated that in regards to Verizon saying there is information they need to digest for the road height, this is not something knew that they were not aware of. Chuck Marsden's letter advised that the driveway be elevated to prevent flooding. They should have been aware of this and is not a new issue. She is not sure why they were not prepared to address the road height. In regards to the wetland issues, in April someone gave a presentation to the select board about sea-level rises. Maps were shown and the presenter stated the fact that by 2050 there is going to be a 2' sea-level rise in New Hampshire. The presenter put together some maps of Parsons Creek marsh area. The marsh in question is a tidal wetland; however, in 30 years, with the 2' sea-level rise, is going to become a full on saltmarsh. The transitional saltmarsh is going to be impacting the road and tower pad quite a bit more. She is hoping the boards will take that into consideration. Ms. Tyminski continued this is an area where there is marsh land with a lot of scenic views. This is not a secluded wooded area where the tower is not going to be seen. There will be a lot of places where the tower will be seen from and is not something most people want to be looking at. At the Grove Road site, there are no houses within 1000' of that tower. In talking about property values, most of them take into account proximity to the tower, not just within the tower view. This needs to be considered. She continued that in this particular area, in looking at the 1,300' buffer zone, there are between 36 and 50 property owners that will be affected. The 1,300' zone is what all the health studies talk about for health impacts. To her, that is going to affect property values. If it affects health, people will think twice about living in that area. She would also like to resubmit all the same arguments that Mr. Gemmett had submitted for the Brackett Road site in regards to health and diminishing property values.

Regarding the comment about wetlands, Ms. Klumb explained it is a freshwater wetlands. It is not currently a tidal wetland.

**Joanne Hardin, 32 Shoals View Drive**, stated she bought her house 22 years ago because she loves the rural character of Rye. She believes she will be able to see this tower. Her understanding is that the Brackett Road tower was at 125'. She thinks this application should match that. She stated that her land abuts New Hampshire wetlands. The road is being built to have the runoff go to the east. There is wetlands to the east. She is concerned the water is going to drain down into the water that is already 10' from her house.

**Jeff Knapp, Parsons Road**, expressed his concern that the portion of the buffer the access road will go through is the low point, which floods in the spring and during bad storms. He suggests that any work that is done through the marsh be done carefully. Perhaps, some of the wetlands can be mitigated somewhere else.

**Kathy McCabe, Brackett Road**, stated she appreciates the amount of work that was done in looking for this site. There was a lot of detailed work done when looking for alternative sites for Brackett. There are immense differences from the Brackett Road site to Port Way. On the Brackett Road site, there was a house in the fall zone. So, the distance is quite a dramatic difference, as well as other circumstances. She continued that Attorney Donovan did a great job in maneuvering everything around to find a site that might be accommodating to everyone while still giving cell coverage. This site has been approved by the Town and should happen.

Hearing no further comments, PB Chair Lord closed public comment at 8:21 p.m.

Attorney Donovan summarized information requested by the boards for the applicant to provide:

- Profiles and cross-sections for the driveway. Cross-sections should be every 50ft.  
Note: Applicant to make a determination on whether the access road will be raised by 2ft, as recommended by the Building Inspector.
- Provide information similar to what the Town's consultant has provided for the Recreation Road site; view sight lines from residences which may be impacted and triangulation diagram for 126' and 150' towers.

Attorney Donovan reviewed the drawings being requested. He noted it is a Google Map with sight lines drawn from the houses. It would provide information on the distance from the homes. There is also a triangulation profile based on the heights.

- There was also discussion about an arrangement to possibly get the test pit done through the Town with reimbursement from Verizon. This is something Attorney Donovan will work on with the Planning Administrator.
- Balloon test at two levels.

PB Chair Lord asked the board their thoughts about the idea of 150' for a height.

ZBA Chair Crapo stated that he thinks they should look at it to see if it makes sense. If having a higher tower allows another co-location site and gives a better coverage map that would avoid a clustering of towers, it may make sense.

PB Member Durkin asked if the approval of this site specifies a tower height.

Attorney Donovan replied no. However, the question was asked at the Deliberative Session. He explained that he had asked Attorney Manougian how high it was going to be because he knew someone would ask at the Deliberative Session. The information that was provided to him and the Selectmen, prior to the Deliberative Session, was that it was going to be 150'. It may have not been stated at the Deliberative Session that it was going to be 150' but it certainly wasn't said it was going to be 126'. He noted the minutes are silent on anyone talking about height at the Deliberative Session. His recollection was that he told the group it was going to be 150'.

PB Member Durkin stated Verizon's request is 126'. He wonders why they are "screwing" around with 150' if Verizon's request was 126'.

ZBA Chair Crapo stated that half the discussion the last time is that this is application 1, to attack area 1, in an area that has been identified to have other sections that need to be covered. If the Town is going to add one other area on Recreation Road, he bets the coverage does not quite overlap.

PB Member Durkin stated he is not inclined to support anything above what Verizon is requesting.

PB Member Finn stated what Shawn is suggesting is a fair question from the point of view of the Zoning Board; however, he does not think they should consider more than 126'.

Attorney Donovan stated all the boards are doing at this time is gathering information, not making decisions. Getting information on 150' is not going to hurt. Speaking to Ms. Tyminski, Attorney Donovan asked if she would submit the Gemmett submittals that she spoke about.

ZBA Member Mikolaities stated he wants to be sure that when this is approved, in six months when all the details are done, that Verizon is not coming back for an incremental approval. He stated that when he looks at an application on the Zoning Board, with regard to the five criteria, these are the things he thinks about:

- Equipment is in the compound for Verizon and AT&T but there is potentially four carriers on the tower. Is there room in the fenced compound for four carriers? (Attorney Manougian confirmed.)
- Noise testing for the generators.
- Are there any environmental concerns with free standing equipment that may not be noticed for six months?

ZBA Member Mikolaities commented that he did not understand the comment about State funding made in the presentation.

Attorney Manougian explained that the access road cannot be straight from Port Way onto the State land. The State owns the land and it is too difficult to negotiate easements because they received L-Chip Grant funding for that land so there are restrictions on what can be done.

Attorney Donovan explained when they were going through the alternate site analysis for Brackett Road, he and Attorney Manougian approached the State Department of Parks about putting the tower on the State land because it was a good place for it and had access from Holland Drive. Because of the federal grant restrictions on the 100 acres that was added to Wallis Sands State Park around 1980, the State was really pushing back hard. It was felt that the State wouldn't even give permission to use the portion of the road they own without all kinds of bureaucratic hoops. That's a real constraint in terms of anything to do with the State land. He noted the land is used as open space with some walking trails. He also noted at the top of Holland Drive, about 80' beyond the paved end, there is a gate and an old road. It is that road that he thought would be great for access to the tower on the State land.

Information requested:

- Profiles and cross-sections for the driveway. Cross-sections should be every 50ft.
- Provide information similar to what the Town's consultant has provided for the Recreation Road site; view sight lines from residences which may be impacted and triangulation diagram for 126' and 150' towers.
- Test pits.
- Balloon test at two levels.
- Documentation of room for equipment for other carriers in the compound.
- Noise information for the generators.
- Address environmental concerns regarding free standing equipment.
- Address Sebago's comments.
- Propagation maps at higher and lower levels. (Done at 20' increments)
- Tree line missing from the elevation drawing.

**V. Scheduling of balloon test and a joint site walk**

There was discussion about scheduling a site walk and balloon test. Property owner Arik Jones gave the group permission to park at his property for the site walk.

Public is welcome to attend the site walk. The balloon test will start at 9 a.m. and will go till noon (3 hours). The group will be meeting and parking at 10 Port Way.

There was also discussion about scheduling a second joint meeting.

**Motion by Bill Epperson to continue the application to Tuesday, February 18<sup>th</sup>. Seconded by Tim Durkin. All in favor.**

**PB Vote: All in favor ZBA Vote: All in favor**

**Motion by Bill Epperson to conduct a site walk on January 4<sup>th</sup>, 9a.m. with a backup date of January 11<sup>th</sup>. Seconded by Jim Finn.**

**PB Vote: All in favor ZBA Vote: All in favor**

**Motion by Jeffrey Quinn to approve escrow for \$12,400 for four consultants. Seconded by Steve Carter. PB Vote: All in favor**

- **Site Walk and balloon test scheduled for Saturday, January 4<sup>th</sup>, 9 a.m.**
  - ❖ **Backup date Saturday, January 11<sup>th</sup>**
- **Second joint meeting scheduled for Tuesday, February 18<sup>th</sup>, 6:30 p.m.**

**VI. Adjournment**

**Motion by Shawn Crapo to adjourn at 9:00 p.m. Seconded by Steve Carter. All in favor.**

*\*All corresponding files and documents may be viewed at the Building Department, Rye Town Hall.*

Respectfully Submitted,  
Dyana F. Ledger