

**TOWN OF RYE
PLANNING BOARD – BOARD OF ADJUSTMENT
JOINT PUBLIC HEARING
Monday, April 16, 2018
7:00 p.m. – Rye Public Library**

Planning Board Members Present: Chairman Bill Epperson, J.M. Lord, Jerry Gittlein, Jeffrey Quinn, Steve Carter, Selectmen's Rep Priscilla Jenness, Alternates Nicole Paul and Anne Richter-Arnold

Board of Adjustment Members Present: Acting Chair Shawn Crapo, Burt Dibble, Patrick Driscoll, Tim Durkin and Charles Hoyt

Also Present: Attorney Michael Donovan and Planning/Zoning Administrator Kimberly Reed

I. Call to order and Pledge of Allegiance

Planning Board Chair Epperson called the meeting to order at 7:03 p.m. and led the Pledge of Allegiance.

II. Designation and appointment of alternates

Chairman Epperson seated Alternate Nicole Paul for Patricia Losik on the Planning Board.

III. Overview

Attorney Donovan stated that he would like to list the various applications for relief that are in front of both Boards. He asks that the applicant's attorney correct him if he is not planning on pursuing any of these. The relief is what was contained in the legal notice that was published in the newspaper and sent out to the abutters. There are eight (8) variance applications, which are the purview of the Board of Adjustment:

- **203.1, 305, 505.3** – Use variances requested to put the cell tower on a site that is not within the overlay zoning district which provides locations for cell towers.
- **505.6 A (3)** – Variance requested that the cell tower not be within 120% of its height from a residence.
- **505.6 A (4)** – Variance from the requirement that the cell tower be 100ft back from wetlands.

He continued that the zoning ordinance requires a driveway that crosses the wetlands or wetlands buffer must have a Special Exception granted by the BOA. The applicant is asking for variances to that requirement, which is **301.8 B (1)** and **301.8 B (7)**. The applicant is also seeking the

Special Exception required for the driveway to cross the wetlands buffer. If the applicant is not granted the variances for that provision, the applicant would ask for the Special Exception.

For the Planning Board, Attorney Donovan stated that the applicant is asking for a Special Use Permit for the wireless telecommunications facility, which is required by the zoning ordinance. There are several pages of standards for that in the zoning ordinance. The applicant is asking for approval of the site plan for the cell tower development, called a Major Site Development approval. The applicant is also asking for waivers to **Sections 505.6 A (3) and 505.6 A (4)** for the provisions involving 120% of the height setback from a residence and 100ft setback from wetlands. Speaking to the applicant's attorney, Attorney Donovan asked if he is still seeking both variances and waivers to those two provisions.

The applicant's attorney stated that if they do not receive approval on one they will go for the other.

Attorney Donovan explained that those provisions are before both Boards. Also, the applicant is asking for waivers from some of the information submittal from the Rye Land Development Regulations:

- **403.1 E** – Topographic & Soils Mapping
- **403.1 F** – Stormwater Drainage Management Plan

IV. Request for continuance from Kathleen McCabe (ZBA Matter)

Chairman Epperson turned the meeting over to Acting Chair Crapo for the ZBA.

Attorney Donovan explained the continuance request was made because of a sign posting requirement by the Board of Adjustment. It is only the BOA members that can decide on the continuance.

Kathleen McCabe, 135 Brackett Road, stated that she wrote to the Planning Administrator this week and stated that the applicant and its representatives did not place the sign noticing the public hearing on the property, as required seven (7) days in advance. That requirement is clearly stated on the application; **RYE PUBLIC HEARING SIGN MUST BE POSTED ON THE PROPERTY SEVEN DAYS PRIOR TO THE HEARING. FAILURE TO POST SHALL RESULT IN THE APPLICATION NOT BEING HEARD.** Having seen that the posting was not within 7 days of this meeting, she wrote and presumed that the meeting would not be held. She continued that Verizon has disagreed that this requirement has to be met. Verizon responded to her letter to the BOA to have this continued and postponed. She reiterated that Verizon is stating that they do not need to comply with that requirement. It is the requirement that is the biggest and boldest on the application. The basis for non-compliance, as stated in Verizon's letter is that if the Board of Adjustment cannot conclude in the time available it may vote to continue a hearing at a specified time with no additional notice. What is being referenced is the January 3rd meeting that never took place. It is hard to say that there is no time allotted to be available to be concluded and carry forth when there was absolutely no meeting.

The meeting tonight is for the said purpose of evaluating whether this application is complete in order to proceed with a hearing. There was no hearing and it could not have been continued. She does not believe his facts support that pleading. There was never a meeting. It was Verizon that requested that meeting be cancelled and pushed out. It is also important to note that on one other date the meeting was moved due to inclement weather. She commented that Verizon was the one that was not prepared on January 3rd. The January 3rd meeting is the basis for this argument that they do not need the sign. The sign was posted 7 days prior to the January 3rd meeting that never took place. She continued that even if that meeting did occur on January 3rd, the application was incomplete. In looking at the December filing, they submitted two variance requests not the eleven that are here today. They were not prepared for the meeting. To say that they do not need to comply with this requirement because they placed the sign 7 days before the January 3rd meeting, which never took place because they in fact cancelled, seems to be unfathomable at best. Her concern and contention is that the applicant was well informed about the requirement to post the public hearing sign. It was on every signature page that was signed for every application. Every time that was submitted they knew that a sign had to be posted 7 days before a meeting was held. It is important to the residents because a lot of people are substantially impacted by this. It is important that the sign is present in the neighborhood. It is important that the people see it who will be directly impacted. She noted that the residents are trying very hard to follow the process in an organized fashion and follow the rules in all the proceedings. The residents of this Town would be following this rule if they had a request. The residents do not have a stable of internal lawyers, external counsel, site specialist or staffers to do all of the paperwork for them. The residents of Rye succeed or fail mostly at their own peril if they do not meet the requirements of the Board. It is disingenuous of Verizon to declare any sort of hardship saying they didn't know they had to meet this requirement. It is hard to argue the fact that it doesn't apply to them because they did it once, kind of, and they did it again, kind of. If they felt it did not apply to them completely, she thinks they would not have done it all. She does not think that their argument to say that it shouldn't be done and is not necessary is fair. They're also asserting that the BOA had no authority to tell them they have to comply with this. They are questioning the Board's authority and this makes her a little nervous for things to come.

Ms. McCabe stated the history of why this requirement was put in place was because of two chair-persons of the Zoning Board saying there was not adequate notice and there were ways to better the BOA process. One of those was to post signage on the property that was being impacted. In fact, there was a working session on this to make this change happen. The current chair-person noted specifically that there was a challenge because people wouldn't know that these meetings were being held and would show up to speak out against the proposal when they heard about it and it would be too late to affect the process. She noted that the sign is very important. This requirement was voted on unanimously by the BOA. It was carefully crafted with every applicant since then. Verizon knew it was their obligation and everyone is held to that standard. She thinks it is a dangerous precedent to say that Verizon is not going to be held to that standard. She stated there are people that she knows of who applied for development, or additions to their homes, and followed that requirement and were told that they couldn't do it in a timely fashion. These people were exposed to additional bills, delays and payments to pay for their lawyers for an extra month.

Acting Chair Crapo asked for clarification. He asked if she is saying these people were turned away from the Board hearing them because they did not put their sign out. Or did they fail to meet a filing deadline for their application and therefore, had to wait?

Ms. McCabe explained that there is a risk of someone saying that in the past they thought they had it posted within 7 days but did not make it, therefore the project was delayed.

Acting Chair Crapo pointed out the filing deadline is well before 7 days prior. He continued that the BOA has heard applications where the sign has not been posted. He believes they are yet to turn someone away on the evening of a hearing because their sign was not posted properly.

Ms. McCabe stated that they need to look at what this requirement is or means if people are not going to be held accountable for it.

Acting Chair Crapo stated that to say that someone has been denied, has cost extra money and has delayed their project because of this sign posting is not correct.

Ms. McCabe commented that she said there is “potential risk”. There are risks to changing the rules later in the game. If it is not a risk, she stands on her other statements that it is a requirement and it is on the application. There is no reason to not comply with it. Verizon knew about it and did it the first time for a meeting that never took place. Verizon cancelled the meeting prior to the sign going out. That is their out, saying that the sign was posted for the meeting that was continued. She does not think there is any valid reason for Verizon not to have posted the sign. She does not think it is a difficult requirement or a high bar to meet. There are a group of people in the neighborhood that are extremely concerned about this. They have been watching and looking for signs for four months. They have been trying to get information on whether this thing is dead or not. There are people who did not know this meeting was taking place. That sign is very important. It is important to notice the people who live on the road who will be substantially impacted. That is more than just the abutters. It is the rest of the people on the road for something as major as this site development. She does not think it is a hardship for them if this does not go forward. They had an obligation and knew the consequence of it. They decided that they weren’t going to comply.

Attorney Victor Manougian, representing Verizon, stated that the joint meeting with the BOA and Planning Board is important to them. The Boards are all volunteers. In looking at the audience, he does not think there is a lack of notice issue. Everyone is here. He would hate to see the efforts of the volunteer positions go to waste tonight and everyone go home. He noted that he serves on the Zoning Board in York, Maine, and he frowns upon having to go back another week for something that was not his fault. He requests that the meeting proceeds. He continued that he personally posted the sign on the lawn because it was short notice, he had no one else to do it and he was not planning to post the sign on the lawn. His opposition gives the reasons why he was not planning on posting the sign. He explained that they posted the sign the first time. He does not agree that they posted the sign after the meeting was cancelled. He

personally posted the sign on the lawn, even though he didn't think it needed it, because he wanted to go by the rules. The Board said put the sign up, even though he didn't think it was needed and it was 5 days before the meeting, he put it up. Having said that, he has no doubt that Ms. McCabe does not like the proposal and will oppose it. He respects that position; however, this isn't the way to do it. Wasting everyone's time and sending everyone home to come back another night, is not the right way to approach this. The better way is to let the hearing go forward and let everyone have the opportunity to be heard. The original date of the hearing was January 3rd. The sign was posted 7 days prior to that. Since then, the application was continued twice and delayed once due to inclement weather. To continue the public hearing on this application, would be contrary to the spirit and intent of the rules. The spirit and intent of the rules is to give the public notice about the application and he believes this has been done. He noted that in his opposition he argued about the BOA's authority because he was relying on the Zoning Board Rules of Procedure that are online. The online version does not have Sections 8.31 and 8.32. That was brought to his attention after opposition was filed. He reiterated that this requirement is not on the Town's website. It is just on the application. That is why he questioned it. His position is because the first meeting was properly noticed, people are present and if they want an opportunity to be heard they can be heard. Finally, the subject of the hearing has not changed. There will be no surprise to anyone present what Verizon wants to do. They want to build a 126ft monopine cell tower. That has been the same since the beginning. There are no surprises. Because of that, he does not think this should be continued. He requests that the Board deny the continuance.

ZBA Member Durkin asked why he felt it was not necessary to post a sign for this meeting.

Attorney Manougian stated that it was continued by notices.

ZBA Member Durkin asked why that would make a difference.

Attorney Manougian stated that anyone who was interested would have shown up on January 3rd to a meeting that did not happen.

ZBA Member Durkin pointed out that this is now more than three months later.

Attorney Manougian stated that there were continuances back to back.

ZBA Member Durkin stated that people who were planning to attend the January meeting would not necessarily be aware of these continuances.

Attorney Manougian explained if they were interested they would have shown up at the location where the meeting was supposed to occur, with no meeting, and would have gone on the Town website to see if it was continued or called town staff to see if it was continued. He pointed out that when the notice for this meeting went out from staff, it went to the abutters again. That alone gave all the abutters notice that there was a meeting. Between the notice being sent by the

Town, publishing in the newspaper and the sign being posted 5 days in advance, if someone followed the chain they would know the meeting is tonight.

Acting Chair Crapo asked if he agrees that the application from January changed from what is currently applied for.

Attorney Manougian agreed.

Acting Chair Crapo explained that the Board voted to continue it on the agenda. Normally, by statute, the abutters would not need to be re-noticed. However, since the application changed, he is sure that is why the staff had new abutter notices sent out. It “renewed” the statutory notice requirement. The RSA requirements repeated for this current application.

Attorney Manougian stated he agrees with the change based on feedback from the town because of the additional relief requested from the BOA. He would be glad to come back next month if that is what the Board wants.

Ms. McCabe stated that per Attorney Manougian’s email Verizon posted the sign 7 days prior to the meeting of January 3rd, which would be December 26th. An email, from December 21st, sent from Attorney Manougian to Kimberly Reed said that they would like to continue the application. She pointed out that they cancelled the meeting prior to the sign being posted, according to his own words. To her, this seems to be in bad faith, to claim that there was a meeting in January that didn’t take place and there was a sign 7 days before when it was actually cancelled.

Acting Chair Crapo pointed out that the meeting is not officially canceled or continued until the Board votes on it at the meeting. Procedurally, if the Board declined the continuation, the application could have been ruled on right then. The December 21st email did not technically cancel the meeting or the application requirement for the 7 day sign.

Speaking to Ms. McCabe, ZBA Member Driscoll asked what she is looking to get out of continuing this.

Ms. McCabe stated that she would like more time for the residents. She continued that thousands of hours have been spent. She has done tons of research and read every zoning ordinance. This is her first time before a zoning board. She can tell what variances they should have requested and have not. She does not think the application is complete. Many people have spent an exorbitant amount of time going through this and with the ever changing applications that have come through, it has been very difficult to keep it straight. The residents are trying very hard to follow the rules. All they are asking for is that there is notice. The reason why there are people present is because the residents did the leg work and went around and talked to each other. She reiterated that they want time to be significantly prepared so they can be active participants in a fair and compliant public hearing process.

ZBA Member Dibble asked what hardship the people, who care about the signs, would face. Clearly, there is a significant hardship to twelve town volunteers and many people who have informed themselves about this subject that are in the audience. He is sure those people would like to see this application proceed. He is trying to understand what the hardship is on waiting to go forward. He noted that there were four sets of minutes from the BOA to be reviewed. The sign issue really revolved around the ability of the BOA members to find the property and review the site effectively. In looking at the Zoning Board's Rules of Procedures, effective October 1, 2014, it actually says the Zoning Board "may" postpone but it is not required to postpone. He sees this as a balance of trying to find a hardship between everybody that showed up to move ahead and what the real hardship is to not moving ahead.

Ms. McCabe stated that the hardship is that they want more time to respond. She continued that people have spent weekends and previous days at meetings, trying to prepare and read all the ordinances to try to make sense out of this and be properly informed to participate properly in this. She commented that they are trying to be an effective group and more time would be helpful.

Acting Chair Crapo asked when she started her work.

Ms. McCabe replied December.

Acting Chair Crapo pointed out that at that point there was notice this matter was coming before the Boards.

Ms. McCabe replied for a while. At some point, the application was pulled down and there was no signage. She was thinking "thank god it's over". She stated that the minutes from the Zoning Board it specifically called out that in regards to some of the bigger projects, in the first few meetings, hardly anyone comes to speak against. Once word gets out, then everyone comes and it is really too late to affect the process. Other towns have signs and signs are posted. She would say that part of the motivation for doing this is to have local signage.

Hearing no further questions from the Board, Acting Chair Crapo closed the public meeting at 7:41 p.m.

Speaking to the BOA members, Acting Chair Crapo stated that they need to come up with a vote as to whether or not the request to continue by Ms. McCabe should be granted and the meeting continued. He continued that he reviewed everything. The select reading from the minutes omitted one key aspect. When Patricia Weathersby (BOA member/current chair) first proposed this at the June meeting, in the minutes of 6/4/14, the second sentence says "***many other towns do this and it provides more notice***". He reiterated it gives **more** notice. The statutes require that the abutters' notices go out within a certain time frame in the mail. The legal notices are posted in conspicuous places, usually the newspaper, online, the bulletin Board in town. He has been on the Board since 2004. Had this matter come up five years ago, the sign thing would not have existed but miraculously people still showed up for meetings. The abutters still received

their notices. He reiterated that the signs provided additional notice. It is not statutory but does provide additional notice to abutters and people going by the property. He does not believe the spirit of this was to ever deny an applicant the ability to show up. He does not believe the Board has ever denied an applicant based on the sign. An applicant has never been stopped and told they have to come back the next month. He continued the abutters knew this application was going on. On its current status, all they had to do was contact Mrs. Reed. From a legal standpoint, the only notice that had to go out was to the abutters. This sign is extra. The set of minutes from October 2014 state that the Board ***“may not hear the case”***. On 9/17 it says ***“will not hear the case”***. The online application says ***“shall not hear the case”***. The online rules do not even include this rule. Obviously, the Board needs to have this as one of its business points and clean it up going forward. However, he does not see anything procedurally that should cause this meeting to not go forward or that there is any kind of lack of notice and ability for proper people to show up.

ZBA Member Durkin stated it is more than just the abutters. In looking at the audience, there are a lot more people than just abutters to the property. He does not want to be inconvenienced or other people to be inconvenienced; however, 7 days’ notice is 7 days’ notice. He respectfully disagrees with Acting Chair Crapo.

ZBA Member Hoyt stated that he has no comment.

ZBA Member Driscoll stated that Member Dibble took his question and clarified it a little bit more. He was trying to balance the hardship between the two. A couple of weeks ago at the monthly BOA meeting, there was an applicant that did not post a sign at all and the Board heard the applicant. The Board has done that every single time since he has been on the Board. He thinks he was on the Board when this requirement was made. In this situation, they posted it 5 days ahead. If they did not post it at all it might be a difference story. His hardship goes with the people who are sitting in front of the room and also with everyone that is present. He has done a lot of research on the application. He is sure that everyone else has too. He would like to hear the application while it is still fresh in his head.

ZBA Member Dibble stated the points that have been raised are that there has not been enough time for the abutters and other citizens to evaluate this proposal effectively; the sign not having been posted timely, interfered significantly with people being able to get prepared for the hearing; and judging by the website it is hard to know when meetings are occurring and when people can plan on showing up for town activities. He stated that agendas are timely posted on the town website. He does not think there is any problem figuring out when meetings are going to occur and what the agenda is going to be. He is pretty convinced by the fullness of the room that after three months this is a very well-known issue around Town. The posting of the sign is really neither here nor there. He thinks that everybody knows about this matter. It is a serious and important issue to many people in Town and the time has come to attend to it. He does not think a clear hardship, in terms of failure of notice, has been demonstrated. It would be a much greater hardship to ask everyone in the room to come back at a later time, including the people in the front of the room. He noted that at the last BOA meeting, the Board did not leave until after

midnight because they try hard to serve everyone before them. The people at the front of the room have spent a lot of time and effort. It would not feel right to him to ask all these people to come back and hear this on another occasion.

Acting Chair Crapo reiterated that no one has testified that the statutory requirements, for notice of this meeting, were not met. There has been plenty of testimony that prior to 4/11/18, the sign was acknowledge as going up. There were actions by abutters to start preparing their counter arguments. Procedurally, in general, a typical application the abutters get notice 5 or 10 days ahead of time. The Board contentiously added the sign to try and spread the word so others would be noticed. The Board is not about to cut-off non-abutters on this but the legal notice really only pertains to direct abutters. He does not see any procedural reason why this needs to be forced to a continuance. He would entertain a motion to either grant Ms. McCabe's request for a continuance or to deny.

Motion by Burt Dibble to deny the request for continuance. Seconded by Patrick Driscoll. Vote: 4-1. Opposed: Tim Durkin

Acting Chair Crapo stated there is a second request. It is not a public hearing item. Attorney Manougian, in order to cover his bases on the sign request, has asked (page 4 of submittal) for a request for a waiver from the obligation to have posted the sign for seven (7) days, in order to not create a continuance. Under the BOA's Rules of Procedure Section 12.2 Exceptions, it reads;

“Any portion of these rules of procedure may be waived in such cases where in the opinion of the Board strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.”

He reiterated that Attorney Manougian is requesting a waiver to the sign requirement, under Section 8.

Referring to Section 8, ZBA Member Dibble pointed out that it states “the Board may choose to”. It doesn't say that it is required to. He read 8.3.2; ***“The sign shall be posted at least seven (7) consecutive days. If the sign is not so posted, the Board may disqualify the application without prejudice”.***

Attorney Donovan stated that when he developed the ten point agenda for the chair to consider, he also was using the version of the Rules of Procedure that was on the website that did not have that language in it. Knowing that the language is there, he does not really think the Board needs to rule on this waiver. It is discretionary and the Board has used its discretion. He thinks the request is moot.

Motion by Burt Dibble to consider the waiver request moot. Seconded by Charles Hoyt. Vote: 4-1 Opposed: Tim Durkin

The meeting was turned back over to Planning Board Chair Epperson.

V. Planning Board Determination of Completeness/Acceptance of Public Hearing - Escrow Setting - Site walk scheduled if application is complete.

Chairman Epperson stated that the members of the Planning Board have seen the application and have had a chance to review.

Attorney Donovan stated that he has identified a few things that are required for the Special Use Permit that have not yet been provided. In his opinion, these are not things that cannot be provided later or should preclude the Board from accepting jurisdiction. These are things that should be on the record that the applicant needs to provide:

1. **505.5 A (1)** - Co-location certification
2. **505.7 C (5)** – Co-location agreement
Documents that say the applicant is committed to allowing co-location on this tower in the future.
3. **505.5 A (1)** – Professional Engineer Certification for the structural integrity of the tower.
4. **505.7 B (1)** – Scaled Elevation View
5. **505.7 B (5)** – Setbacks to adjacent uses of 250ft
6. NEPA application approval
7. **505.7 C (1)** - Proof of FCC radio frequency guidelines

Regarding the waivers to the Land Development Regulations (LDR), Attorney Donovan stated these are informational submittals; topo & soils plan and stormwater management plan. He thinks the Board needs to discuss whether they want to waive those before the application is accepted as complete.

Motion by Jeffrey Quinn to accept the application as complete. Seconded by J.M. Lord.

Planning Board Vote: 7-0

Motion passed

Chairman Epperson stated that in regards to the two LDR's they are looking for relief from, **403.1F** and **403.1E**, one of them is a Stormwater Management Plan. His recommendation is that this is needed. They are requesting a gravel driveway and according the town and state statutes it is not permeable, it is impervious. They are also requesting a substantial concrete pad, which water is going to roll off of. For that reason, he would respectfully deny the waiver request to 403.1F. The Topographical Plan, 403.1E, is something the Board could waive. He asked for the thoughts of the Planning Board.

The Planning Board Members agreed with Chairman Epperson.

Motion by J.M. Lord to deny the waiver request to 403.1F for a Stormwater Management Plan. Seconded by Steve Carter. Planning Board Vote: 7-0

Motion passed

Motion by Jeffrey Quinn to grant the waiver request to 403.1 E for a Topographical Plan. Seconded by J.M. Lord. Planning Board Vote: 7-0
Motion passed

Chairman Epperson stated that he would like to discuss scheduling a time for a balloon test and also a site walk.

Attorney Donovan suggested that the Boards spend enough time at the site to view the balloons in a lot of different places on Brackett and Pioneer Roads. He asked the applicant how long the balloons will be left up because the viewing does not necessarily all have to be done on the same day as the site walk.

Chip Fredette, Verizon Wireless, explained the purpose of the balloon float is to give people an idea of the vantage points from where they might be able to see the tower. The balloon is a red weather balloon inflated to be 6ft in diameter. The string from which is tethered is measured to the height of the tower. The balloon will be above tower height. The balloon will be flown and tethered on the ground at the location of tower center. The balloon is typically flown in the morning when the winds are calm. It is rare that a balloon will stay up beyond 12:00 in the afternoon. Typically, it is scheduled for a weekend when people are not working and they have time to drive around and view it. As a matter of process, Verizon will drive all public roads, within 1 to 1.5 miles, and photograph the site from wherever it can be seen. With those photographs, they are able to accurately simulate a monopine cell tower on Photoshop. He reiterated that these are typically scheduled for a Saturday with a backup day of Sunday. The balloon will be set up at 8:00 in the morning. It will be noticed that the balloon will stay up till noon, if it will stay up that long.

Chairman Epperson asked why the balloon would not stay up.

Mr. Fredette explained that the winds pickup as the day warms. With the trees there that are 70 to 80ft in height, a little bit of wind will blow it over. Either the balloon will simply pop when they hit the pine trees or it will get caught up in other branches and will no longer be floating at the right height.

There was discussion amongst the Boards on a date for the balloon test. The members of both Boards agreed to a joint site walk on Wednesday, May 2nd, 5:30 p.m. for a joint site walk and Saturday, May 5th, 8:00 a.m. to noon, for the balloon test. (Sunday, May 6th is a backup date for the balloon test.)

Wesley Pike, 190 Brackett Road, asked if the public is welcome to these events.

Chairman Epperson explained that the site walk is a public meeting.

Attorney Donovan stated that there is no meeting with the balloon test. Everyone is on their own to go and look at it; however, there will be a notice of the balloon test. The site walk is a public meeting, which will be noticed. The public is welcome to attend. It is not a hearing so testimony will not be heard from the abutters on May 2nd.

Selectmen's Rep Jenness stated that the bottom of the balloon is going to be the height of the tower but it is not the height when the pine is added.

Mr. Fredette explained that they are proposing to build a monopine cell communication tower. That branch makeup starts at the top of the tower and goes down about 40ft. The plans show something much higher. On the top of the pole is a branch cap. Some of those are 5ft and some are 6ft tall. That will be about where the balloon is.

Kim Berry, 21 Brackett Road, asked if a sign could be posted about the balloon going up so people who are not present would see that. This would be a courtesy to post something like that.

Chairman Epperson stated he does not see an issue with something like that. It would be up to the BOA.

Murray Mason, 115 Brackett Road, asked what the distance is from the ground to the top of the balloon.

Mr. Fredette replied that it would be about 133ft. The string would be 126ft, plus the balloon which is about 5 to 6ft in diameter. The string will be attached to the ground and measure to 126ft. The 6ft weather balloon will be on the top of that.

Chairman Epperson clarified that the bottom of the balloon will be the actual representation of the height.

Mr. Fredette confirmed.

Speaking to Mr. Fredette, Acting Chair Crapo asked if they are okay with posting a sign 7 days prior to the balloon test.

Mr. Fredette agreed to post the sign.

Sally King, Wallis Road, Conservation Commission Chair, stated that there is some misconception here. From the base to the top of the balloon is not 125ft. It is 133ft, which is the actual height of the cell tower with the top that is 5 or 6ft.

Mr. Pike asked if the top of the balloon represents the height of the installation.

Acting Chair Crapo explained that the top of the metal will be 126ft, which is the structure. To disguise it is the fake tree on top, which might be 5or 6ft tall depending on the manufacturer. He asked what the maximum height would be.

Mr. Fredette replied 120 to 132ft with the fake top.

Attorney Donovan clarified that the top of the balloon will be at 133ft.

Mr. Fredette confirmed.

Chairman Epperson reviewed that it will be 133ft to the top. The sign will be posted on or before April 29th for the balloon test on May 5th. The site walk will be on May 2nd at 5:30 p.m., prior to the BOA meeting.

Attorney Donovan explained that Verizon will be taking pictures from all around the neighborhood of the balloon when it is floating. They will do a photoshop of how the tower will look from those same locations. It would be important for the Board to emphasize that the photos should include photos from each home along Brackett Road that will have a view of the tower. The Board should expect that the photos will be from most of the homes along Brackett Road that will be able to see the top of the tower. The Board may want to have those graphics presented to them several days in advance of the next meeting so people who are interested can look at them.

Mr. Pike asked if they could be provided drawings of what it would look like from the road in photos (the facility and the tower). It would be very helpful. That would give a holistic picture of what is going in.

Chairman Epperson asked if the facility can be seen from the road.

Attorney Manougian replied that from across the street it probably could be seen. He continued that at the request of the Board, they will take pictures from everyone's house on Brackett but from the street. They will not go on private property.

Chairman Epperson agreed. He asked if they will provide a picture of the driveway going in and the facility as it is proposed.

Ms. McCabe stated that the intent is to get a Photoshop view of the compound and the industrial compound underneath it, as well as the tower in that wooded spot.

Mr. Pike stated that he asked for the base and the tower. The tower in height is only one aspect of the installation.

Attorney Donovan stated that about an hour ago he went over the list of things that are required to be submitted that have not yet been submitted. Section 505.7 B of the Zoning Ordinance, Plan Requirements, states that each applicant shall submit a scaled elevation view, this shall be a three-dimensional perspective color rendered drawing of the proposed site and abutters' properties up to a radius of 500ft.

Mr. Fredette stated that to the best of their ability they will provide the Board a view of the tower and the compound as well. He noted that they are not proposing to cut out all the trees between Brackett and the site itself. In fact, they are proposing to plant some trees. The artist who is working on the Photoshop, has to be able to draw and superimpose these elements behind trees that will remain. It won't be an easy task but they will do their best. It will be easier when it is a clear shot of the balloon with only sky behind it. Here, there is a backdrop of trees behind and trees in the foreground. They will take the photo and do the rendering. He hopes it will come out as good as some of the ones he has seen.

Mr. Pike asked if there is a chance that they might have photos that could be provided, from other installations that might be 50ft feet from the road.

Mr. Fredette confirmed. He noted that no two sites are alike; however, they do have photos of sites that are in close proximity to homes and businesses.

Member Dibble stated that he was looking at the radius analysis and there are a number of roads; Pioneer, Route 1A, Sagamore, Brackett, Clark and Washington. He would suggest having photo documentation from every roadway that this might be visible from.

Chairman Epperson commented that where the balloon can be seen the Board wants a picture from the road.

Mr. Fredette agreed.

Chairman Epperson stated that they need to set an escrow for the expenses for the application.

Attorney Donovan noted that these expenses are for peer reviews so the Planning Board and the Zoning Board can have experts review some of the technical items. It includes;

- **Sebago Technics** – Planning Board's Engineers – To review the engineering aspects of plan. Tentatively using an estimate of \$2,500. This may not include a review of the structural certifications. This may involve another consultant.
- **Attorney Donovan** – Town Counsel – To review the applications as both a planner and a lawyer - \$2,500.
- **Ivan Pagacheque** - Telecommunications Consultant - To review the frequency aspects, the gap coverage studies, the analysis of alternative and all information that has been provided by the applicant - \$5,000.

He summarized that the escrow will be \$10,000 which may increase if the structural engineer is more than the \$2,500 allocated for Sebago.

Attorney Manougian agreed to the escrow.

**Motion by Jerry Gittlein to take jurisdiction over the application. Seconded by J.M. Lord.
Planning Board vote: 7-0
Motion passed.**

**Motion by J.M. Lord to set a preliminary escrow of \$10,000. Seconded by Jerry Gittlein.
Planning Board Vote: 7-0
Motion passed.**

Chairman Epperson asked for a presentation from the applicant.

Attorney Victor Manougian, representing Verizon, spoke to the Boards. He stated that when he started on this project, the first thing he looked at was the Rye Master Plan to see if there was anything that would help him sell this project to the Board. Under the 'Introduction' of the Master Plan, the statement of the way the Town should operate, there was a bullet that talked about complying with all State and Federal laws. He noted that they operate under federal law regarding the installation of cell towers. There are some regulations that were created under the Spectrum Act that talks about if there is a gap in an area, and it is proven that this is a feasible spot to cure that gap, the town should grant the request under federal law, regardless of what the local zoning law says. It includes residential areas, even if the town's ordinance doesn't allow it. He noted that federal law preempts radio frequency emissions analysis. A Board cannot look at, in granting or denying an application for a cell tower, the emission levels that are coming off the tower. That is preempted by the FCC. Every wireless carrier, including Verizon, operates under their own frequency under their FCC License and they have to comply with the emission level allowed for them, otherwise, they will be severely fined. He continued that the Master Plan also talks about the 'Vision for the Future' and steps the administration might take to get there. It talked about lifestyles that should recognize all ages, economic strata and valued activities. The groups listed are full-time residents, part-time residents with ownership interest, and tourism that brings economic value to the town. He would submit that as unpopular as the cell tower is, having wireless communication, that is efficient without gaps and is reliable, would help that Master Plan thought. He continued that he submitted a copy of what was highlighted after a selectmen's meeting, which was spotlighted in the December 2017 Town of Rye Newsletter. It talked about how town wide cell service continues to be a goal for coastal areas in general and the northern portion of Rye in particular, with little or no cellular service. In the past 10 to 15 years, several searches for available property for cell tower installation have been undertaken to no avail. He continued that they know where the wireless district is but it doesn't work to cure the gap that is in this part of Rye. If there is one reason to put in a cell tower, it would be that it could save someone's life. Today, seventy percent (70%), documented by all of the wireless providers, of 911 calls come through a cell phone and approximately 45% of households nationally have disconnected their landlines. With that in mind, they met on January 11th with Police Chief Walsh and Firefighter Klanchesser to discuss issues in Town.

Chairman Epperson asked who scheduled the meetings with the public officials.

Attorney Manougian noted that he met with them along with Chip Fredette and Keith Vellante. The reason the meeting was requested was to talk about what issues they have with gaps and dropped calls with their communications equipment.

Chairman Epperson pointed out that the proper procedure would have been to notify the Board for permission to talk to them.

Attorney Manougian stated that the areas they pointed out were Sargent's Point, Odiorne's State Park, Wallis Sands State Park and Wallis Road Beach area. Because of the high tourism traffic in the summer, the need to have service for cell phones was very important. The Police Chief also talked about an incident on Pioneer Road and the Route 1A boat launch where the officers did not want to use their dispatch radios for privacy issues. They wanted to use their cell phones because people can hear what they are talking about on the public radio frequencies; however, their cell phones didn't have a signal. That is an example of why they would want coverage. Lastly, Firefighter Klanchesser talked about the rescue of a surfer on the beach. They could not locate the surfer who had a person helping him, who called it in on their cell phone. The rescue vehicle drove by the surfer several times because they could not find their location due fact that they signal kept dropping. After several attempts, dispatched called and they were able to hone in on the signal long enough to get the coordinates. The final point is that the Police Department uses Verizon tablets in their vehicles and they advised they are having signal issues in the areas along Route 1A. Firefighter Klanchesser said that the Fire Department will soon be purchasing the same tablet. For those reasons, it is important to have wireless coverage in this section of Town. Attorney Manougian stated that he is not going to go through all the relief that has been requested. Attorney Donovan has recapped the relief exactly. He stated that the Telecommunications Act of 1996 had one main goal and that was for rapid deployment of wireless services nationally. He noted that they have been working for many years, and this is probably the fifth site, on trying to get coverage to this section of Rye.

Chairman Epperson clarified that the Telecommunications Act does not eliminate town Boards and town regulations. It is there to overlap and be in conjunction with. He opened up to questions from the Boards.

Referring to Section 505.7 C, Attorney Donovan stated that this says the applicant shall submit written proof that the proposed use facility complies with the FCC Regulation on radio frequency exposure guidelines. He asked if this is being said that this is something the Board cannot ask for.

Attorney Manougian stated that this is something he can get. He continued that he did not have any problem with the checklist, except for NEPA, which will not be complete. The NEPA process starts and then it waits until the local zoning Board issues a permit. If a permit is issued, the permit is submitted to that agency and Verizon regulatory continues with the NEPA process. He noted that they always ask that this be a condition of approval if the application is granted.

Acting Chair Crapo stated the in looking at the March 7th letter, on pages 2 and 7, it is argued that there will be no increase in traffic as a result of the facility.

Attorney Manougian explained that the most traffic it will have post-construction is one or two visits per month by a small pickup truck.

Mr. Fredette stated that to say there would be no visits is not true. To say there would not be any undue burden on traffic in the area is a true statement. There will be one to two visits per month. Similar to all the other sites in Town. The Grove Road tower sees one to two visits per month for each carrier that is on that tower. He believes there are four carriers on that tower. He pointed out that they do not need to plow it. If they need to get out there in the wintertime the technician can walk in. Mr. Fredette stated that NEPA stands for National Environment Policy Act of 1969. The NEPA screening is finalized and submitted to state and federal regulatory agencies once there is some sense of what will be approved by local Boards. If this becomes close to being approved, he would finalize the submissions and he would ask that the building permit be conditioned upon the approved NEPA.

Keith Vellante, C Squared Systems LLC, stated that he is present on behalf of Verizon's Radio Frequency Engineering Department to give a brief overview of their network and why a facility is needed in this area of Rye. He noted that he submitted a report, dated December 4, 2017. In that report, it discusses Verizon's need in this area. It included five maps at the end. (He brought the maps up on the projector screen to review for the Boards. The maps show the Town of Rye, surrounding communities and Verizon's existing facilities in the area that provide service to Rye. The subject facility was also shown on the map, along with the facility on Grove Road which is currently the only Verizon facility in Rye.) Referring to northern Rye, he noted that because of the topography of the area and the distance between the existing facilities adequate service is not able to be provided for that area of Town. That is why the proposed facility is before the Boards.

Referring to the map, Chairman Epperson stated that it looks like this particular site is north and east of the major gap. He asked why this would be the best spot.

Mr. Vellante stated that the topography of the area and the dense trees really determine what the sites cover. He noted that the effective goal is Route 1A. It is heavily travelled along the shoreline and there are a lot of visitors to that area. It is a busy area and it is not effectively covered.

Selectmen's Rep Jenness asked if height relates to coverage.

Mr. Vellante replied yes.

Selectmen's Rep Jenness asked why this is 125ft. The tower in the southern part of the Town is 190ft. She asked if this height means they'll be seeking a second site soon

Mr. Vellante stated that the height does matter. The tower needs to be clear above the tree line. The next threshold is the topography of the area. By the shore, naturally it is going to drop off. The obstacle has to shadow on the coverage area from sites that are further inland. Topography and tree density really defines coverage. (He showed on the screen what the coverage will be with the site being proposed.) He noted that it fills in three miles along Route 1A, covers Odiorne State Park, Wallis Sands, Brackett Road, Sagamore Road and Wentworth Road. Verizon has identified this area of Rye as a priority.

Attorney Donovan asked if taller towers were considered for this site, which might have increased the coverage and decreased the need for a second tower somewhere. He is thinking that a taller tower might pick up the elementary school, which does not have good service as he understands. Certainly, this is one way of looking at alternatives because one concern is the shorter towers lead to more towers in other people's neighborhoods.

Mr. Vellante explained that as part of the analysis, they did consider what the effective height would be.

Acting Chair Crapo asked about a taller tower **at** the elementary school to cover the whole area.

Mr. Vellante explained that when Verizon designs these areas they take a look at their existing network. They make a decision on where there is priority and need for coverage. As part of that, they issue a search range. That gives some direction to a real estate team to go out and find a location within a limited area.

Acting Chair Crapo stated there is town owned land at the elementary school. There is more population in that area and view wise it would be less impact, even with a taller tower.

Attorney Donovan stated that back in January, he exchanged emails with Attorney Manougian about what sites were looked at. Attorney Manougian's response was in 2008/2009, with no other optimum location, they opted for a new tower on town owned land. A proposal was submitted to the Rye School Board for a new site alongside the elementary school. Initially, they were interested. Ultimately, the School Board rejected the proposal for fear of abutter opposition. That was ten years ago. He continued that the elementary school site is in the overlay district. It was put in the district because it is a pretty big piece of land.

Mr. Fredette agreed that it is a large parcel of land. He continued that his predecessor, who had been working on this project since 2006/2007, had made an initial proposal to the School Board in 2007 for a different project. It would have served the center of town more than the beaches and the areas that Verizon is trying to serve now. The School Board and superintendent rejected the initial proposal. It was tried again in 2009 and it was rejected again for a second time.

Chairman Epperson asked how this particular proposal got before the Board now.

Mr. Fredette explained there is a large area of unreliable coverage. Unfortunately, it can't be solved with one site. At some point, something else will need to be done for the center of town. Right now, the highest priority is the north Rye area.

Chairman Epperson stated that the citizens of Rye should have every opportunity to weigh in on where the service should be, not Verizon.

Mr. Fredette stated that he respects this. He would take those comments back to the engineers to see if it was worth creating another project to serve more of Rye. However, it does not take away from the fact that this area is on Verizon's priority list.

ZBA Member Durkin asked whose interests Verizon is serving. It was said that there are tourists going up and down Route 1A. In looking at the map, that is the green area. Is this in the interest of the residents of Rye or is it in the interest of the tourists who happen to have Verizon cell service? It would seem that by locating it in the center of Rye it would be serving the needs of the Rye residents. He does not see this serving the residents by having this sitting at Brackett Road with a big marsh to the left of it all the way to the seacoast.

Referring to the maps submitted by Verizon, Vice-Chair Crapo stated that the green area says 95 DBM. It looks like the area in white has no coverage (listed as -95 DPM) but in reality, it's reduced coverage. He asked what the thresholds are to make and receive a call, send an email and make an emergency call.

Mr. Vellante explained that DBM is a power measurement. The -95 value comes from Verizon's engineering department based on reliable LGT service in an area such as Rye. The signal does not stop when going from green to white. It is going to continue to fade and get lower, to the point where it becomes unreliable and does not meet the standards that Verizon is striving to provide its customers. He noted that the site would serve over 1,100 residents in the area. Rye's population is about 5,300 so this is about 20%. This is substantial. It is not just servicing the tourists.

Mr. Vellante continued to review the maps for the Boards showing the existing surrounding sites.

PB Member Paul asked if they looked into other places where they could co-locate that would not require the additional structure. In looking at the map, she has cell service in a lot of area that is white. Someone is providing the service because it is fine.

Mr. Fredette stated that this is an area that does not have a reliable coverage level for its customers. He continued that they did look at alternate sites. In order to serve northern Rye, there are no existing structures where they can co-locate. This is a testament that Verizon will only build a tower if they have to. This is the first time Verizon has tried to build in Rye. He noted that they did not build the site on Grove Road. That was built by National Grid. Verizon co-locates on that tower. He pointed out that all the sites that are shown on the map are co-location sites. They were asked to look at the church steeple (Congregational Church,

Washington Rd). He commented that this would be a good site but not for that location. It is not an area that would provide coverage for north Rye.

PB Member Quinn pointed out that cell phone coverage is very poor in the area that he lives, which is down near the beach. For a time, Verizon was trying to sell a booster to homeowners. It was going to pull from the cell tower and boost the signal in the home so there would be more adequate coverage. He asked if this kind of technology still out there and if it is progressing. He asked if the satellite boosters would help to mitigate the problem.

Mr. Vellante stated that these are network extenders and they are offered by Verizon. They don't replace the need for a macro-site. They are usually used in remote areas for homes with poor coverage. They rely on the homeowner's internet connection to operate. If there is a power loss it will go down as well. It is not a replacement for the cell site.

PB Member Quinn stated it would seem to mitigate the need for multiple towers throughout the Town. He asked if this site has been chosen because it is the best site or the best site that could be found where Verizon could make an agreement with the property owner.

Mr. Fredette explained that the first thing that they look at are co-locatable opportunities; co-location structures, existing towers, water tanks, church steeples and the lookout tower (Pulpit Rock Tower). He noted that the lookout tower did not work out so they were forced to consider raw land for a new tower. There were a number of properties that were looked at in the area. Some people may remember their efforts to secure a lease at Odiorne State Park for a facility, which did not work out because they felt the income from the site would be contrary to an agreement for grants they had to maintain the park.

PB Member Quinn stated that if there is a goal to create good reliable communication throughout the town, a broad view should be taken to locate the best sites. Once it is identified where the best coverage will be then go to the most reasonable closest two sites to find a solution. He is trying to determine whether this site on Brackett Road answers that call or if it answers the call that Verizon was able to get an agreement with someone for that tower.

Mr. Fredette stated this is his job. He tries to find the best balance for Verizon needs and what the Town spells out in its ordinance. He also knows this is never a popular application. He wants to make this tower as invisible as possible; however, it has to work as well so they are never truly invisible. He continued that he also looked at land owned by Mike Thiel, 34 Brackett Rd, and also Condon, on Port Way.

PB Member Paul asked if they considered doing distributed antenna systems.

Mr. Fredette replied that they do not do them in this type of location because it is a rural area, as opposed to a densely populated area; such as a city, downtown area or college campus.

Mr. Vellante stated these are generally located on utility poles. By that nature, the antennas are 35ft high. In an area like this the trees are substantially taller. Locating a small cell on a utility pole is really only going to cover up and down the roadway.

PB Member Lord pointed out that the area has a lot of open marsh. He asked if using a series of existing utility systems would work well in this area.

Chairman Epperson pointed out that they also have the Seabrook alert poles that are 90ft tall already.

Mr. Fredette explained that there is not competing technology to the proposed site. The goal in this area is to provide a broad area of coverage because it is so lacking in northern Rye.

Vice-Chair Crapo stated that the map is lacking in an area right at the base of the tower that is going to have no coverage, which is where a lot of the people present at this meeting live. From his experience, being right in front of the Fairpoint building in downtown Portsmouth, is the worst coverage in town because the person is standing under the coverage. He asked if there will be down antennas at the location or if the signals will radiate out from the pole to gain its maximum span.

Mr. Vellante explained that the antennas that are used are called panel antennas. The energy is sent up the cable to the antenna. The antennas functions somewhat like a flashlight where it focuses the energy in a narrow vertical pattern. Someone in front of the site is going to have coverage. Another reason the same cells don't provide a broad area of coverage is they are smaller antennas and have much less gain. They don't provide the same output as the macro-sites.

PB Member Lord asked if it is possible to get a map showing all the carriers and their coverage. It is being said there is a need here because there is no coverage. He noted that he has coverage in this area. If there is coverage there, why does the Town need someone else providing coverage as well? He asked if there is a tower that could service Verizon as well. The map is just for Verizon. Obviously, there is a lot of coverage in the white area. It is very misleading to say there is very little coverage.

Attorney Manougian stated that Verizon is not a utility company. They are a wireless provided. What is being shown is what Verizon's needs are and that is why they want this area.

PB Member Lord stated that in the beginning there was a lecture about how this almost could not be stopped because there was no service here; however, there is service here.

Attorney Manougian explained that he was only speaking to Verizon. The carrier has no coverage in this zone. Whether T-Mobile or AT & T will be on this tower will be up to them. In regards to other carriers' coverage, he does not have that information and he does not believe the carriers share.

Attorney Donovan stated that the when the Telecommunications Act talks about gaps, it entitles carriers to have their gaps filled, regardless of whether other carriers are meeting that need. It is specific to the right of individual carriers to provide the service. That is part of the federal act.

Acting Chair Crapo stated that Verizon is identifying an overall gap. He asked how much of a gap is acceptable, under the FCC license, before it needs to be filled.

Mr. Vellante pointed out that this area is covering Route 1A. It is a very heavily travelled road for the Town.

Attorney Donovan pointed out that they are probably getting into the legal analysis before the Boards have even heard the presentation of what they are asking for. The basic analysis is “does a significant gap in coverage in the area exist?” There are all sorts of court cases that tell how to flush out whether it is a significant gap in coverage. This is why the Board would have their own consultant to help with some of these issues. Secondly, “if there is a gap, do alternatives to the proposal exist or have you effectively prohibited closing the gap?” These are legal questions. He suggested that they get into the specifics of the application.

Chairman Epperson stated that part of the TCA says that “an applicant is not entitled to perfect service with absolutely no areas of dead cells or dead spots”. The FCC Regulations explicitly permit such small gaps or dead spots. He asked the applicant to continue with the presentation.

Mr. Vellante finished reviewing the maps for the Boards on the projector screen.

Mr. Fredette gave a presentation on the projector screen showing the limits of the 5-acre property. He pointed out the location of the boundaries and the proposed facility. There is a 10ft wide gravel access drive that goes to Brackett Road and is located close to the sideline of the property. He pointed out the edge of the surveyed wetland boundaries. Utilities will be underground to the site. There will be no water and no sewer to the site. The access road is a private drive and can be gated if the Board chooses. The lease area is 30x40, which is the boundaries of the compound. The compound will be surrounded by a 6ft tall stockade fence. On the western and southern edge of the compound will be arborvitaes that will be planted at the Board’s discretion. Inside the compound is a 12x17 concrete pad, upon which will set the radio cabinets and an emergency backup propane generator. The tower will set just to the left and a 500 gallon propane tank will also sit within the compound. The generator will run one time a week for a 20 minute cycle at the discretion of the Board. The generator will only power the site in the event of a power outage. The site will see a visit from a technician once or twice per month. He showed a proposed monopine design on the screen. The design will have branch makeup going down to about the 40ft elevation.

PB Member Quinn asked why they chose a wooden stockade fence.

Mr. Fredette stated that they felt this best fit the nature of the neighborhood.

PB Member Quinn stated that in his mind this is a security issue. It is better to see what is going on in the compound, rather than to try to obscure it.

Mr. Fredette state that they initially proposed an 8ft chain-link fence with wire across the top. He stated that he felt that the wooden stockade fence would look nicer.

PB Member Quinn commented that the wooden fence would cause a maintenance issue.

Mr. Fredette pointed out that this is part of maintaining the site.

PB Member Carter asked why the tower is in front and not in back so it would be another 15ft from the road.

Mr. Fredette explained this was done to gain a greater setback from the wetlands.

Member Carter asked why the driveway is so long.

Mr. Fredette explained that they were attempting to avoid a four site view of the compound. He was asked to take photos from each driveway head along Brackett Road to see if the compound could be seen. If the road was cut in anymore directly, it would be increasing the views of the compound for those living nearby than if the road comes off from the side. This is what has always been done to decrease the view impact of the site; however, if the Board would like to have something more direct that is fine.

Selectmen's Rep Jenness stated that she was interested in the letters from realtors stating that the facility would not reduce the values of properties surrounding it. It seems to her, cell tower sites are not all created equal. For instance, the one in the southern end of Town is 1200 to 1300ft into the woods. There is no sight of most of the tower and the equipment that is needed to run the tower cannot be seen from any road from anywhere. It makes a huge difference. If someone was to walk down Johnson Lane to the site of the tower, they would see a building that is bigger than what was expected and it is ugly, to say the least. It is a good thing it can't be seen from the road. She knows that Verizon is working to make this site more presentable but it in only 40ft from the road. It is not very deep. She is not sure that there could be enough plantings around it to put it out of view and arborvitaes make a wonderful lunch for deer. She does not see how these realtors can make a blanket statement when the sites can be so different.

Mr. Fredette explained that the fence compound off Grove Road is 75'x75'. The equipment inside that compound is a 12'x30' shelter. At this site, it will be a 12'x17' equipment pad with cabinets placed on top. He noted that they are not proposing the giant building that is on the Grove Road site. That tower is also 190ft tall. He pointed out that the real estate report looked at many sites across N.H.

Mark Parente, Real Estate Consultants of New England, stated that he has been a real estate appraiser for over 20 years. He has held a real estate sales license for over 10 years. The question before the Boards is how granting the application will affect property values. How they determine the impact in value to a neighborhood, a match pair or group pair analysis is done. The one who is making the determination of value is not the appraiser or the seller, it is the buyer. The buyers are the market makers and are the ones who determine value. If the buyer is not willing to pay for it, the market has spoken and that is how value is determined. He continued that the analysis that was done in Rye was based on how the introduction of a cell tower in a neighborhood impact values. Rye does have a cell tower and it is in a neighborhood. The cell tower is on Grove Road, is 190ft tall and is not camouflaged at all. (He reviewed his report for the Boards, which had data from homes sales in the area of the cell tower on Grove Road.)

Referring to the photos in the report, Selectmen's Rep Jenness stated that this is exactly what she was talking about when she said not all sites are created equal. The top of the tower can be seen but the equipment and generator cannot be seen on the Grove Road site. That makes a lot of difference.

Mr. Parente stated that he would leave it to the photoshops that are being done to make a better comparison of the two.

Referring to page 13, (which showed a photo of the Grove Road tower), Acting Chair Crapo stated there is a quarter to half a mile of dense trees between the tower and the homes. The nearest home is way in the distance. The folks that are at the meeting tonight are all next door to this tower. That perceived value is going to be completely different than this analysis.

Mr. Parente noted that Brackett Road is a pretty well treed road. What he is presenting are photos where there are instances when the tower can be seen (Grove Road tower). (He continued to review the home sales comparables from his report.)

Chairman Epperson pointed out that the nearest house to that (Grove Road tower) is 1600ft away.

Mr. Parente stated that a house could be 100ft away from a tower and not see it, due to the height of 80ft trees right in front. What counts is the view. He asked if they agree that the view is the variable they are trying to solve.

Chairman Epperson agreed.

PB Member Paul stated that it is more than just the view of the top of the tower. The view encompasses the mechanics on the ground that are only 40ft from the road.

Mr. Parente agreed. (He continued to review his analysis for the Boards.) He stated that an appraiser does not determine value. An appraiser will measure value. He reiterated that the buyers are the market makers. He has been an appraiser for over 20 years and has been in over 5,000 homes. He has seen things that he would wonder who would ever pay for that feature. However, he has learned that it is not what he thinks or how the buyer feels. If the buyer does not have a problem with it then it is not a detriment to value. In these cases, the buyers did not have a problem with seeing the tower in the distance.

Mr. Parente completed his presentation.

Audra Klumb, Wetland Scientist, A.D. Klumb Environmental, stated that Verizon asked her to visit the property late last fall to evaluate the existing buffer situation and any proposed impacts. When she visited the site, the wetlands had been delineated already by another wetlands scientist, Arthur Allen. She viewed the flags and did not have any disagreements with the flags. The wetland area is part of the Berry's Brook Watershed. The wetlands cover much of the parcel and the 100ft buffer continues beyond the property line. The area of the tower site is forested with a fairly open understory. The tree canopy is White Pine, Oak and Spruce. Moving closer to the wetlands, the buffer becomes thicker and more of what someone would consider a natural wetland buffer. The area immediately adjacent to the road is very open. (She reviewed the wetland area on the site plan shown on the projector screen.) She pointed out that if they were out of the wetland buffer, it would be right next to the road and there would be other setback issues.

Chairman Epperson asked if it is essentially 100% in the buffer.

Ms. Klumb replied yes. (She showed the buffer location on the site plan and the clearing limits for the trees.) She noted that twenty-six trees will be cut. They will be planting some trees in the foreground to replace some of those to provide more visibility coverage. As far as the buffer, due to the proximity of the road and the open understory, it is not an intact wetlands buffer, as far as all the functions and values of what a buffer might be in the middle of a forested area or wetland neighborhood. Immediately adjacent to the wetland is a very dense wetland buffer. It takes in stormwater flow. During a heavy rainstorm, the water will flow into the soils within the wetland buffer and then flow to where they meet the wetlands soils. There is some wildlife habitat that would be affected by the tower construction. This was addressed in the report. As far as stormwater infiltration, the compound base is going to be crushed gravel. She commented that she has been to numerous cell tower sites. The water will go right through that. Within the footprint of the compound, it will still function as a pervious surface allowing water infiltration.

Acting Chair Crapo asked why they did not bring the road straight out from the entrance of the enclosure towards the road. There are four trees in this area to remove, as opposed to nine along the length of the road. It will still impact the buffer some but it looks like a significant decrease in square footage.

Ms. Klumb stated that they could make this change if everyone was in favor. This one is set up on purpose to come around so it is not seen specifically when driving by. She understands why this was done; however, if it went straight in there would be fewer trees cut and it would be less square footage in the buffer.

Acting Chair Crapo commented that it could be curved and still have fewer trees cut and less impact in the buffer by a significant amount. One of the things they have to look at is the road going right through the buffer. On previous applications, the BOA has not been too keen on that.

Chairman Epperson stated that the Planning Board has put a significant amount of effort into refining the Wetland Ordinance. Rye is a relatively small town and most of it is wetlands. It is critical to preserve and protect the wetlands. He noted that the Boards did not receive a copy of her report.

Speaking to Ms. Klumb, BOA Member Driscoll asked if she had any input on the tree removal.

Ms. Klumb replied that she was not asked to comment on the tree removal. The proposal is to cut twenty-six trees that are greater than 6" in diameter.

Acting Chair Crapo stated that it was asked earlier why the tower could not be on the ocean side of the site. In looking at the CO-3 drawing, the tower is on the road side, where it doesn't show any trees that are slated to come down for the tower; however, where the building and the pad are located there are a slew of trees. He asked if those trees would stay or be cleared out regardless of whether these were flip-flopped.

Mr. Fredette explained that all trees need to be removed within the compound. It will be excavated for the foundation and it will be a crushed gravel surface. He continued that the 10ft width on the access drive is the narrowest width he has ever seen. It is usually a 12 to 14ft width. The utility easement is an underground easement, not aerial, which would have required more cutting. They took as much of a conservative approach as possible to prevent cutting as many trees as possible. The goal is to minimize the impact coming in; however, if it is the Town's preference to go straight in that's fine. If it is the Town's preference to switch the tower with the equipment compound that is fine as well.

Selectmen's Rep Jenness asked if there is a reason why the mechanicals for the tower have to be on an open pad. She asked if they could be in an enclosed space.

Mr. Fredette explained that Verizon used to use enclosed spaces. They are 12'x30' shelters. Verizon has switched now to using outdoor radio cabinets. It is a much less obtrusive approach than the former shelter.

Referring to page 4 of the real estate consultant's report, Selectmen's Rep Jenness stated there is a shed in the background of the photo that looks like it could be on anyone's property. It looks like it belongs there more so than what is being proposed.

Mr. Fredette stated that Verizon once used the prefabricated shelters. In those instances, the room, like the radio equipment, had to be heated or cooled depending upon the season. There would be two 3-ton HVAC units on the back of the shelter. It is debatable on whether these would be a noise nuisance. He would submit that this proposal, with the outdoor cabinets with a small fan inside, will not be heard. This is a much less obtrusive approach. In terms of the visual aspect, that is why the stockade fence and plantings are proposed, to hide the views of the cabinet from the road.

Selectmen's Rep Jenness asked what the noise will be like when the generator runs once per week.

Mr. Fredette explained that at 23ft generator would operate at 63 DB, which would be like the sound of a window a/c unit in a house from outside in the yard. He noted that they will adhere to the Noise Ordinance in Rye.

Attorney Donovan stated that the tree cutting is another variance that would be required to Section 301.8 B (5) (b) (2); for cutting of trees in the wetland buffer greater than 4.5" in diameter.

John McDonough, 140 Brackett Road, read a prepared letter expressing his concerns and opposition to the proposal.

Kendra Gemmett, 150 Brackett Road, spoke in opposition to the proposal to the Board. (*Not all parts were audible.*)

Mel Low, Washington Road, stated that the original zoning was created by the Planning Board. The Board needs to be very careful because this is setting a precedent to even consider this. He continued that years ago a man came in and said if zoning was not created, cell towers would be going in all over town. A committee was formed to zero in on town owned property where it would be away from residents and everyone would benefit. A lot of work went into it. There have been two in the church and no one realizes it is there. He pointed out that the land at the school should be considered because it is a large portion of land that would not affect any neighbors. Rye is a residential town. This would be setting a precedent if it was put in a residential neighborhood, where the town won't benefit. He suggested that the Board set up a committee to look at town owned property to find a site.

Aidan McDonough, 140 Brackett Road, stated that his interpretation of the Rye Master Plan is in stark contrast to Verizon's interpretation. He read from page 15 of the Master Plan, "***The Master Plan guides and governs the members of the Planning Board in their deliberations for the best and most appropriate future development of our community, consistent with the vision of the citizens of Rye that they have for their community.***" This is not about what the Town needs. It is about what Verizon wants. In paragraph 4 of the Master Plan it says, "This document is comprised and characterized by the respect for neighbors", which is in clear contrast

to, *“the common good for the natural environment. Land use policies are to be fair by supporting balances of choice, convenience, safety, conservation and a sense of community”*.

The only sense of community he knows is from the people who have banded together to fight for what they feel is right. He asked the Boards to think long and hard on this. Is this the right thing to do?

Steve Borne, 431 Wallis Road, stated that he does not understand putting a commercial property in residential. This is wrong. Verizon talks about the gap. This is a business issue. Parson’s Creek is already polluted with septic systems. Berry’s Brook is already catch and release. One of the drivers of cancer is all the things in the body; the combination of the radiation, cells and radon, which is forcing things to go bad and causing so much cancer. Regarding the issue of safety, if the tower is not going to work underwater it should not be located there because a big storm is going to put this under water. If this does go forward, there should be a list of all the things they need to do. What are they doing? What is the response? This is so people can see all the variances, the waivers and other things they are requesting. It should be comprehensible so everyone can really understand the impact of what is going on.

Sally King, Conservation Commission Chair, stated that this is within the 100ft buffer. It was said that because it is residential it is not pristine. It is more pristine without a cell tower there. Nobody can question the wildlife habitat that will be affected. The Rye Conservation Commission is not in favor of the proposal.

Attorney Donovan stated that the statement was made that filling this gap would benefit 1100 residents based on the census track. He recommended that the Board get more documentation in support of how this will benefit 1100 residents.

Acting Chair Crapo stated that they should also have information on where this is located in relation to the proposed FEMA Maps.

Motion by Priscilla Jenness for the Planning Board to continue the application to May 16, 2018. Seconded by J.M. Lord. All in favor.

Motion by Burt Dibble for the Board of Adjustment to continue the application to May 16, 2018. Seconded by Patrick Driscoll. All in favor.

- **Site Walk to be held on Wednesday, May 2nd, 5:30 p.m.**
- **Balloon Test will be held on Saturday, May 5th, 8:00 a.m. to noon**
(Sunday will be the backup day)
- **Joint Meeting – Wednesday, May 16th**

Adjournment

Motion by Jeffrey Quinn for the Planning Board to adjourn at 11:15 p.m. Seconded by J.M. Lord. All in favor.

Motion by Burt Dibble for the Board of Adjustment to adjourn at 11:15 p.m. Seconded by Patrick Driscoll. All in favor.

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

Respectfully Submitted,
Dyana F. Ledger