

**TOWN OF RYE  
PLANNING BOARD – BOARD OF ADJUSTMENT  
JOINT PUBLIC HEARING  
Thursday, June 21, 2018  
6:00 p.m. – Rye Public Library**

*Planning Board Members Present: Chairman Bill Epperson, J.M. Lord, Jeffrey Quinn, Steve Carter, and Alternate Nicole Paul*

*Board of Adjustment Members Present: Acting Chair Shawn Crapo, Patrick Driscoll, Tim Durkin, Charles Hoyt and Burt Dibble (arrived 6:30 p.m.)*

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

**I. Call to order and Pledge of Allegiance – Planning Board Chair**

Planning Board Chair Epperson called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Planning Board Alternate Nicole Paul was seated for Jerry Gittlein.

**II. Minutes**

- **April 16, 2018**

**Motion by Jeffrey Quinn to move the approval of minutes to the end of the meeting.  
Seconded by J.M. Lord. All in favor.**

*Kathleen McCabe, 135 Brackett Road, made a request to address public testimony after Verizon's complete presentation. There was discussion with the board and the public in regards to this request. It was agreed, (by all), this would be the best order of events for the meeting.*

**III. Verizon presents the photos of the balloon float. Questions from board limited to balloon float, neighborhood impact.**

**Attorney Victor Manougian, representing Verizon,** presented and reviewed photos taken, from six different locations, of the balloon float held on May 6, 2018, along with simulations prepared from those photos showing proposed conditions. (*Simulations dated: June 18, 2018*)

PB Chair Epperson noted that Planning Administrator Kim Reed did an independent study (photos) of the locations which will be put into the record.

PB Member Quinn stated that there was some discussion about the actual height of the structure.

Attorney Manougian commented it is 129ft.

PB Member Quinn stated that he saw a figure of 135ft.

Attorney Manougian explained the balloon was floated at 130ft. The actual tower top is going to be 126ft with some branches above.

**Attorney Michael Donovan, representing Rye,** noted that at the previous meeting there was a lot of discussion about the top of the balloon. Is the bottom of the balloon at 130ft or the top?

Attorney Manougian replied the top of the balloon is at 130ft.

PB Chair Epperson stated that his request was for the balloon be flown at the highest possible point that it could be.

Attorney Manougian commented that the height included the branches.

Board of Adjustment Acting Chair Crapo stated that at the previous meeting it was said that a denser cap was going to be used. Since that meeting, he has seen a tower near Boothbay Harbor that “sticks out like a sore thumb” but it’s a “tree”. He is hoping that it can be checked and verified that this proposal will be a more advanced cover.

Attorney Manougian stated that those are the old school designs. This one will not only be denser at the top but will also go lower into the tree canopy.

Attorney Donovan asked if the Board could be provided a couple of locations where this fuller type of monopine has been used by Verizon. That way the members could go out on their own to take a look.

BOA Acting Chair Crapo asked if they could also get the heights of those towers for comparison.

Verizon's engineer joined the meeting at 7:15 p.m.

Attorney Manougian confirmed that the top of the balloon was at 130ft (for the float test).

Referring to the location map, which shows a yellow band from which the monopine is visible, Attorney Donovan stated that he is wondering why there were not more arrays along Brackett Road, versus just one (#1). He asked if #1 is representative of the entire run along Brackett Road. Referring to the photo, he stated that he assumes that is the landowner's house in the foreground.

Attorney Manougian confirmed.

Attorney Donovan stated that there are other houses along Brackett Road. He asked why they did not provide similar photos for other locations along Brackett Road.

**Clem Salek, Chappel Engineering Associates, representing Verizon**, explained that packets of photos were taken and this was one of the more visible locations.

BOA Acting Chair Crapo stated that he thought photos were going to be taken from every abutters' property.

Attorney Manougian explained that it would not be visible from the abutters' house. He commented that he can have them do more photos sims if the Board would like to see more. He explained that they usually go around public ways and give representations of where it is visible to show what it would look like.

BOA Acting Chair stated that he was not available on Sunday for the test. He was relying on this presentation to see what the abutters were going to see.

Attorney Donovan suggested that the Board should also carefully review the photos that Planning Administrator Reed took of the balloon as well. She took photos from a lot of locations along Brackett Road and those may be helpful to the Board.

Speaking to Mrs. Reed, PB Chair Epperson asked if she shared the photos with Verizon.

Mrs. Reed confirmed.

Referring to the photo sim showing the monopine, BOA Member Hoyt stated that it shows the fake canopy going pretty far down the pole. In looking at Sheet AO2, it is one-third of what is shown in that photograph. He asked which is more accurate.

Attorney Manougian asked the date on the plan that he is referring to.

BOA Member Hoyt replied May 7, 2018.

Attorney Manougian pointed out that there is a newer plan that was submitted this week and is dated June 5, 2018. This shows the design that was used on the sims. This was done in response to a request at the site walk.

PB Chair Epperson asked BOA Acting Chair Crapo if he has a request.

BOA Acting Chair Crapo stated he feels it is the applicant's burden to show the boards these locations. It may be discovered later that the abutters took their own photos and submitted them. He thought the photo array was going to be from all the abutters' properties.

Attorney Donovan suggested that after the Board has heard from all the abutters, the Board may want to decide whether they want to take Attorney Manougian's offer to do more photo simulations or not.

No further questions were heard from the boards with regard to the balloon test.

#### **IV. Public Testimony**

*(moved per public request)*

#### **V. Rebuttal from Verizon**

*(moved per public request)*

#### **VI. Verizon presents the new submittals since April 16<sup>th</sup>:**

- a. **Revised drawings. Identify changes. These were revised on May 10 and June 5.**
- b. **Emissions report submitted on April 25.**
- c. **Drainage study submitted on May 8.**
- d. **Wetlands written report submitted on April 25.**

Referring to the Revision (Rev) 5 drawings dated February 26, 2018, **Clem Salek, engineer for Verizon**, stated that these were revised to add a note (CO2 note 18) regarding the septic system, which was inspected by Jones & Beach Engineering. This note was added to address the question of whether the septic system could be replaced in-kind at the same location or if it would need a new location. Also, the Rev 5 drawings show a 10ft wide access drive and a front facing pole. There was a revision to move the equipment to the back and the compound stayed 30x40. This is the difference between the Rev 5 plan and the Rev 4.

Mr. Salek continued that Rev 6, dated April 27, 2018, showed that the monopole was moved the rear of the facility because there was some discussion about it being so close to Brackett Road. The pole was moved to the rear of the facility and the equipment was moved to the front. The

trees that were proposed to be removed were flagged and noted on the plan. An option for a second access road was added, along with four monopoles and compound elevations. He stated that Rev 7 was dated May 7, 2018. A landscape buffer was added along the edge of Brackett Road to provide more screening. Also, no trees are being proposed to be planted in the immediate vicinity of the Verizon compound. All the plantings are along Brackett Road. The Rev 8 plans, which are dated May 11, 2018, have five changes. The plan now shows a triangle in the area which depicts the center of the foundation hole. This identified additional trees, which may or may not, need to be removed because the size is yet to be determined. Those trees were also marked on the plan based on the open hole. He noted that future co-location areas are also shown on Rev 8 for the 30x40 compound. That was done to demonstrate that this is a realistic co-location possibility, knowing some of the traditional spaces the carriers require. There was also discussion on whether a wood or chain link fence would be better for the compound. The plans are noted as either wood or picket fence option. The last change was that the monopole branch layout was revised to show a more realistic depiction of what the pole will look like.

Mr. Salek stated that the most recent set of plans are the Rev 9 plans, which are dated June 6, 2018. The only change was that the most northerly access road, which used to come in and take a sharp right, now comes in normal to Brackett Road with a dead-end at the shelter. It is very similar to the southerly access.

BOA Member Durkin asked why this was done.

Mr. Salek explained this was done for less site disturbance. It makes for a tighter site.

BOA Member Durkin stated that it looks like more trees will be removed with Rev 9. He continued that he was at the site visit. He specifically asked if trees were going to be removed between the location of the tower and the road. The plan is showing trees that are being removed. At the site visit, it was said that the trees weren't going to be removed. To him, that would have a material and visual impact on the site. The access road has changed. Based on the result of that change, there are more trees slated to be removed on Rev 9.

Mr. Salek explained that the size, height and caliber of the trees has not been done.

BOA Member Durkin stated that he thinks there would have to be another site review to see what trees are being removed.

Mr. Salek stated that if the boards decide that they want to go with a certain option, and want to see which trees are coming out, they can do that. Whereas, if they were to flag all the options, basically every tree is going to be flagged and it will be confusing.

Referring to Rev 9, Attorney Manougian stated that they did that design because they heard at the site walk that they would rather the road come in this way and impact less wetlands. On the day of the site walk, the trees that were being discussed were not with this design.

BOA Member Durkin commented that they need to schedule another site walk.

Attorney Manougian continued that the boards asked for the road to come in straight so they did that option. It is a different tree impact but it is less wetland impact and less disturbance impact.

BOA Member Driscoll stated that he was one that thought this road would be less invasive than the proposed road. He asked if the road changes the site at all.

Mr. Salek replied no. The site stays exactly the same.

BOA Member Driscoll commented that he has Rev 7 and Rev 9. When he looks at those next to each other, there are some trees that will be taken off on Rev 9 that are shown as kept on Rev 7 around the site, not around the access road. When he looks at the plan, he takes it as fact as to what trees are going to be removed and what trees are going to stay. When the access road on the other side is changing from Rev 7 to Rev 9, it makes him wonder where that progression is going to go as they continue down this road.

Mr. Salek stated that the trees that are shown in Rev 8 and Rev 9 as being removed, are ones that may or may not need to be removed because it is based upon an assumption of the soil parameters. An assumption of how deep the foundation is going. An assumption of how big the pad is going to go.

BOA Member Driscoll stated that he understands this point. He hopes that it is understood that he is trying to make a decision now on something that has a high variable to it.

PB Chair Epperson asked if they can assume for the moment that the trees on Rev 9 are a representation of the trees that are there.

Mr. Salek explained that it is an accurate representation of the trees that are there. It might not be an accurate representation of the trees that need to come out. He pointed out that the biggest impact is the monopole footing.

BOA Acting Chair Crapo stated that it was said that the geo study has not been done. In an area where there is readily observed ledge, when it comes time to dig for the poles and ledge is hit, how will it affect all of this? He asked why there is still this type of variable with nine revisions being done. He asked why something hasn't been done to show where the pole can go.

Attorney Manougian stated that this was discussed at the site walk. They do not excavate and do geo-tech until there is an approval.

BOA Acting Chair Crapo stated that this is Verizon's potential investment and risk. He asked why they should grant approval for a site where this cannot be done and then have to go through this entire process again for a different site.

Attorney Manougian reiterated that the impact is not known without geo-tech and that is not done at this stage.

BOA Acting Chair Crapo pointed out that the relief being requested is based on impact. The board is being asked to guess at the impact and give relief of something that might change later.

Attorney Manougian clarified that Mr. Salek's company has shown the maximum impact in regards to the tree removal.

Mr. Salek stated that based upon the poles that have been put up, and the depth that they go, those trees would be considered as the most that would come out.

BOA Member Driscoll stated that he likes the fact that there will not be any digging until there is an approval, especially in the buffer area. He asked what they would do if they hit ledge. He asked if they have ever abandoned a project based on what is found on the geo.

Mr. Salek replied no.

BOA Member Driscoll asked if there has been any blasting at other sites.

Mr. Salek replied not any site that he has been involved with.

BOA Member Hoyt asked how many sites he has been involved with for Verizon.

Mr. Salek replied 304.

BOA Member Dibble stated that in looking at the northerly and southerly entrances and counting the marked trees that are shown on the plans, it looks like it is close to the same number of trees. That would suggest to him that there is validity in the comment that there should be another site walk.

Attorney Donovan asked if the wetlands scientist's report will be updated to reflect the second layout. It would appear that it would have less wetland impact.

Attorney Manougian replied that this will be done either before the next site walk or after.

Attorney Donovan stated that he is not sure what the status is of Mark West's peer review; however, he will be reviewing this for the boards as well. Basically, it looks like a trade-off between trees and wetlands with the two alternatives.

PB Member Carter stated that it shows two leased sites inside the fence but three location on the pole. It looks like there can be four companies on the pole. He asks where the fourth location is going to be.

Attorney Manougian reviewed the four spots on the plan. He stated that the fourth spot is below the canopy line so technically it is drawn in but he does not think that is a viable spot. The ground equipment has locations for three. As it was mentioned at the site walk, it will be three if the merger goes through between Sprint and T-Mobile.

PB Member Carter commented that Verizon takes up a fair amount of space on the site. He asked if the other companies have smaller equipment. They do not seem to take up as much space.

Attorney Manougian explained that the other companies don't have backup generators. The other companies rely on small cabinets. One is used for the equipment and the other cabinet is a backup battery, which can run for about ten hours.

PB Member Carter asked if they would have to go outside the 30x40 pad if the other carriers were added.

Attorney Manougian replied that they do not think so. The equipment has shrunk a lot. The cabinets do not have to be in a building or have separate HVAC. He believes there is plenty of room for three.

PB Chair Epperson asked what would happen if it is not.

Attorney Manougian stated that they would have to come back to the board and to the landlord.

Attorney Donovan noted that the ordinance requires four spots.

Mr. Salek stated that the lowest carrier right now is shown at only 80ft. He is not sure that anyone would want to pay rent for anything lower than that or the tower would have to be made bigger.

Attorney Donovan commented that this may need to be another waiver request from the terms of the ordinance.

PB Member Lord asked the finished grade elevation for the compound.

Mr. Salek stated that the finished grading hasn't been done. He is guessing that it will be between elevation 13 and 14. (He referred to AO2 – Elevation Sheet)

Referring to ECO1, Infiltration Details, PB Member Lord stated that it looks like the infiltration trench will be dropped into the existing ground. The infiltration trench on CO3 is elevation 11. It seems that the infiltration trench will be above the ground. In looking at CO3, it shows the width of the infiltration trench and the edge of the impact. It looks about the same distance. In looking at ECO1, infiltration trench detail, it shows the trench and 10ft of impact beyond that. There seems to be some discrepancy.



Mr. Salek asked where the elevations are listed.

PB Member Lord pointed out that the infiltration trench is shown on CO3 at about elevation 11. He noted that if this is at elevation 13, the infiltration trench would be above the ground. The infiltration trench detail cannot be correct. Also, the detail for 10ft beyond where it is tying in is not depicted on CO3. That only shows 4ft of impact beyond the infiltration trench but the detail shows it's out 10ft.

Mr. Salek asked if he is talking about the infiltration trench that runs east of the compound.

PB Member Lord confirmed.

BOA Member Hoyt commented that this is existing grade. The proposed grades have not been put on the plans.

Mr. Salek responded that this has not been graded. The infiltration trench detail that is shown is a standard detail. It hasn't been custom made for the site and the grades haven't been put out.

Referring to A301, PB Member Lord stated that if the compound is at 13.01, and the infiltration detail that is shown on ECO1 is applied to CO3, the impacts are going to be much greater. The detail does not work with the plan on CO3. Based on that detail, the infiltration trench is going to be above the ground. He is wondering if the infiltration trench is going to be in fill or is going to be deeper than what it shown. What is the total impact? He does not see it on the plan but he sees they have all the information to be able to put it on the plan.

Mr. Salek stated that this is noted and is something that can certainly be addressed with more detail added with respect to grades. An infiltration trench is important for the long term. He thinks people are more concerned about what the overall pole is going to look like, how many trees are going to be cut down and the overall impact.

PB Member Lord commented that he is also concerned about the wetland impact.

Attorney Donovan stated that there are several variances and permits that are being requested. The Planning Board Regulations clearly require the submittal of a grading plan. A final grading plan needs to be submitted in order to be complaint with the regulations. That is part of the peer review that the Planning Board engineer does. He commented that he sees there is a drainage plan. He is not sure how there is a drainage plan without a grading plan. It should be noted that a final grading and drainage plan will need to be produced as required by the Planning Board Regulations.

BOA Acting Chair Crapo noted that the boards are present for a joint presentation and are then supposed to split up into separate meetings to review the relief requested for the proposed site. This is not a consult of whether or not Rye wants a cell tower. There are a lot of variables that have been left out. At this point, the information is needed. He is insulted that the process is not

being respected. There is a wetlands application for this to go in a wetlands buffer and there are other criteria for variances. He understands that Verizon does not spend money and time if they don't have too; however, the boards need the complete picture in front of them. He thinks the application is a little premature. They have received stacks of information that is basically useless without the key variables that have been left out for convenience sake.

PB Member Quinn asked if there is a larger issue about whether or not a waiver or variance is going to be granted to even consider a cell tower in this location.

PB Chair Epperson replied that this is part of the whole discussion.

PB Member Quinn stated that they need to get by that before they can get to the detail because everything becomes new. It hasn't even been figured out if they are going to be given permission to put this in an area that is not even designated.

Attorney Manougian requested another site walk. He continued that they really need direction, which is what he thought was what the first site walk did.

BOA Acting Chair Crapo stated that no one asked for anything to be changed at this meeting. The boards are asking for the information to be provided so they can know whether or not it needs to be changed. There is an overall concept of whether or not a cell tower will be allowed in this area. If the variances could not conceivably be approved for this site, a cell tower would not be approved for this area. Right now, it can't be said what elevation the pad is going to be at and that is a pretty simple process. He is not sure how this application can continue without this information.

PB Member Quinn asked if the height of the pad really makes a difference whether or not a variance is granted for the overlay district. He asked why they do not wrestle with the problem of whether or not they are going to allow this variance to move forward and then they can get to the detail. If that is approved, they can then get to the detail later.

PB Chair Epperson stated that the application is before the boards and it has to be dealt with as it is written. There has to be due diligence with the application itself.

PB Member Quinn stated that he is looking at the letter from Attorney Donovan of April 19<sup>th</sup>, which lists a number of things that have to be granted and relieved for this to move forward. At the very top of the list it says that a variance has to be granted from the ZBA because it is located outside the wireless telecommunication overlay district.

Attorney Donovan stated that he agrees. This is a threshold determination that the ZBA makes, not the Planning Board. When the applicant submitted applications to both boards concurrently back in December, and because so much of the information would be repetitive, he suggested, and the two chairs ultimately agreed, to do a joint meeting process. All the information would go out to the boards and the neighbors all at one meeting. Once the boards get to the end of the

basic presentation and the neighbors' testimony, then the boards are going to break up. His suggests that the Zoning Board is going to have to make the first set of decisions. The Planning Board may not do anything for a while until that happens. However, the boards will all have the same set of information in front of them when they get to that point. That point may be one more joint meeting away.

BOA Acting Chair Crapo stated that they are in uncharted territory because they have not done this. He agrees that they first decide if one is going to be allowed in that zone. However, part of evaluating that is whether or not they are going to allow this one there. They have a proposed tower. In some respects the ZBA is not saying a tower go in that area. It's **this** tower.

PB Member Quinn stated that they are asking Verizon to project whether or not there is ledge and that would require a test pit. He pointed out that they are not even down to that level yet. If there is ledge, is that going to affect the decision on the overlay district?

Attorney Manougian stated that the next two out of the three items, the drainage study and wetlands report have been submitted. Those are garbage if the boards do not want it coming in the way it was proposed originally so there is probably no use in hearing that tonight. He continued that they would rather figure out if the town wants a cell tower there and how it should come in. They will then modify the reports for one final report to review. He noted that his team has done this a lot and they do not do geo-techs. They will do their best but construction drawings will not be submitted until it is time to pull a building permit. He stated that he has seen this situation a lot in New Hampshire towns. When it is this big in opposition, with a new project in an area not currently zoned for towers, they do have joint meetings to see conceptually what is going on and then they break up. He agrees with Attorney Donovan that the Zoning Board should decide first. If they do not want to grant a variance that is the end of it and Verizon can decide if they want to appeal.

Attorney Donovan stated that he thinks it is a fair request of the applicant to have the boards determine which of the two driveway schemes is the best, or least worse. If the boards like the new one, coming in at 90 degrees, the applicant has to redo their drainage studies and wetland reports. He thinks there is also a suggestion to hold another site walk, which seems like a reasonable request. Then a decision can be made on which of the two driveway are preferred if this is going forward.

PB Chair Epperson agreed.

PB Member Lord stated that it is very difficult to make a determination of which driveway is best, until the impacts are shown on a grading plan. He is not asking them to go out and do geotechnical work. He does not see how they did a drainage study without a grading impact plan. The plan that is before the boards does not seem to be viable from the grading to do a drainage study. He goes back to just having good basic information on the layout. That is what he is looking for to make a determination on which driveway is better and to perhaps see if this will or will not be a big impact on the wetlands. The boards do not have that information.

BOA Member Hoyt stated that there are a lot of negatives to the site. He is not convinced it is a viable site. In a perfect world, he would love to see a site walk on a half a dozen viable sites to see which one is the best one. That site walk would be more important than looking at a site that is in the middle of a residential area 50ft from the road. There are better sites in town. He reiterated that this would be a better site walk than just looking at this site. He is not convinced that this is a viable site. Talk in town is that people want the coverage because there is a problem. A big one. There have been emails from the Chief of Police and the Fire Department about the concern for safety. There are residents who conduct business with their cell phones and can't get coverage. He does not think the problem is that they do not want the tower. The problem is this is probably not the best site for Verizon. For him personally, he thinks it would be a waste of time to have another site walk on this site. He thinks it would better serve this town to look at other sites.

PB Member Epperson stated that he agrees that looking at alternative sites, which may or may not be better than this one, may be more productive than going to this site again.

BOA Acting Chair Crapo stated that he thinks they need to look at alternative sites. He continued that this meeting could be put on pause and maybe there should be a meeting just on the use variance. If the variance is denied for this site, Verizon will be searching for other sites with a completely different set of plans or appealing the decision. The boards could be wasting their time talking about this elevation because it may never come to be.

PB Chair Epperson stated that they can forget about discussing the drainage study and the impacts on the wetlands tonight.

PB Chair Epperson opened to the public in favor of the proposal.

**Tom Meinke, 19 Elwyn Road**, stated that he would see the tower right out his backyard. He has lived in this area since 1985 and lived in Rye for 9 years. He is a practicing anesthesiologist at Portsmouth Hospital and has been there for over 20 years. He continued that when he first moved here there was no cell type service. There were pay phones and pagers. He noted that his cell phone does not work at the beach and pagers are ancient history. If someone was to get hurt at the beach they would not be able to use their cell phone. He commented that he has better coverage when he goes hunting in South Dakota and he doesn't see people for days because it is so desolate; however, the cell phone works but it doesn't work at the beach. It is a public risk. He would not care if he saw that out his back door. He noted that he is 300ft from that land spot. There needs to be a cell phone tower. He does not care about all the minutia stuff. The point is being missed that all these people are at risk and have been since 1985. It is now 2018 and there needs to be a cell tower. This is neglecting a huge health risk.

**John McNair, 35 Brackett Road**, asked the order of the decision making. He asked if Attorney Donovan's letter of April 19<sup>th</sup> is available.

Attorney Donovan noted that the letter outlined the number of permits that are required. He explained that at some point the joint meetings of both boards will end. The joint meetings are only information gathering meetings so everybody hears the same information. Each board has different permits that they have to decide. The zoning permits are threshold permits. If they don't get the variances they need from the Zoning Board of Adjustment, then the Planning Board, who is charged with a more technical responsibility, does not need to get involved. He will probably advise the boards after the joint meetings, for the Zoning Board to deliberate and make its decisions and the Planning Board wait until that's done. If the Zoning Board denies any one of those permits, there is nothing more for the Planning Board to do.

PB Member Quinn stated that from the beginning he has been wrestling with the issue about the overlay district. He is assuming that the town did the overlay district in some collaborative fashion over some time. Making a decision to deviate from that decision would open up a lot of arbitrary decision down the road. In the documents that he reviewed for this meeting, there are several other sites that there is a desire to revisit and consider. All the discussion about this particular site versus perhaps some public land, and looking at it simultaneously with this, seems to be the proper way to address this whole problem. The master plan states that communication is highly important in time of emergency. Statements can't be made like that with nothing done to solve the problem. Some compromises have to be made somewhere. When someone needs the phone, or the police needs the phone, it should work.

**Wesley Pike, 190 Brackett Road**, thanked both Boards and Attorney Donovan for their deliberation to this point. The history of legal cases regarding the burden on the Town to make an appropriate decision is very procedural. As painful as it is, the boards have to go through this process of looking at this particular application in a procedural way with Attorney Donovan's counsel. He continued that he does not think the proposal is appropriate. It is a 130ft tower, 50ft from the road, with six or seven variances requested in the town, in a single family residential area. Common sense would dictate that it is not an appropriate site. Verizon clearly mentioned in their application sites that were feasible. There is no question there needs to be better service but there are alternate sites that are available that can be pursued and should be looked at. The issue is that it would be more expensive for Verizon. They got a pretty nice deal with the lease that was recorded at the registry right away, even though it didn't have town approval. All the residents have a tremendous amount of information. To sit and worry about all that has been accumulated is not appropriate. It could certainly be provided to the boards in their decision making process but no one wants to get sued, which is a standard practice of the telecommunication companies. It is adversarial and it shouldn't be. Everybody wants to get the right thing done. He has great faith in the boards as representatives to him, anyone on Brackett Road and the whole town. He has the ultimate respect for what has gone on but it is very difficult, in looking at the law, what has to be done. Also, it just chews up emotions, resources and time but it is what has to be done with that law. Maybe that law will be appealed sometime in the future so people don't have to go through this. It reminds him of eminent domain.

**Sally Welch, 60 Brackett Road**, stated that she has lived in her home for almost 30 years. She never saw this coming and is very surprised. She continued that she is not really concerned about what the top looks like. She is way more concerned about what she has to drive by every day. She commented that she does not spend a whole lot of time looking up but she drives by this site every day. She is really concerned about what the bottom looks like. She asked what will happen when this technology becomes obsolete. When something better, and hopefully smaller, comes along, will there be a plan for removal? She noted that there were a couple of quotes that were said; "Verizon compound". That doesn't fit in the neighborhood. She completely agrees with Member Quinn that this needs to go to zoning first because it could all stop right there. She continued that she is a teacher at the elementary school. This has come before the school board. She is not sure why the school board would be deciding on this. She commented that she agrees that she would like to go to the beach and be safe.

Attorney Donovan explained that the town regulations require that a cell tower owner post a bond or surety of some type so if that if it is abandoned it is taken down. That guarantees that it is taken down. He continued that Verizon presented some information that indicated that they met with the school board about 10 years ago and talked about a cell tower. The school board was initially receptive to it and then became less receptive for fear of abutter opposition. It never went any further than that. A couple of weeks ago, he and the town administrator met with the current school board, and asked them whether they would be amendable to having the town's consultant look at it to see if it would technically be a feasible alternative. They were agreeable and gave permission for the town's consultant to look at it, which he understands is okay with Verizon but they feel it won't address the service gap they are trying to address. Verizon feels that the tower they proposed 10 years ago was different and was designed to serve a different coverage gap. The thirty acres that the school board owns next to the elementary school, which is mostly wetlands, will not serve the gap that they are intending to serve at 120 Brackett Road.

**Kathleen McCabe, 135 Brackett Road**, stated that the meeting minutes from the school board meeting in April or May 2009, show the actual reason the project was shelved was because the school board members said that they had a lot of other pressing issues that were school board related to deal with. It wasn't due to resident or abutter opposition.

Attorney Donovan asked if she would be able to provide those minutes to the Planning Administrator.

Ms. McCabe agreed.

Attorney Donovan stated that one of the things that the town administrator pointed out to the school board is that the Town of Rye receives \$50,000 a year in lease payments from the Johnson Road tower.

**Diane Mason, 115 Brackett Road**, commented that she lives across the street from this site. She stated that she is not so worried about the top, she has to look at the bottom of this every day. If the road is relocated, the lights from the trucks will be right in her house. She continued

that there were no pictures shown from her perspective. It is a very dangerous location. It is a bad location because it is 35 miles per hour on that road. There have been numerous accidents in this location. She stated the town should get the money from this. If it was on another site there would be many more trees protecting the site of this. The base is the horror of it. She knows the town needs this but it should be put in an area where there is a thicker area of trees. She knows there are alternative sites where it would be hidden. She noted that her property has been her home for thirty years.

**Dante Tosi, 165 Brackett Road**, stated that he has been a Verizon customer for 20 years. His reception is okay, as far as he is concerned. In thinking about an Emergency 911 call, shouldn't there be something on the tower that picks that up immediately? 911 calls should be on a direct line to wherever it has to go, even if it is coming from a Portsmouth tower. It shouldn't be cluttered with the rest of the calls. An emergency call should be separate.

**Donna Ferret, on behalf of her mother at 165 Brackett Road**, stated that they agree with what all the neighbors have said. They do not want a cell phone tower. She never thought that a cell phone tower would go in on that road. She continued that she looked from her mother's house during the balloon test, and there is a clear view from the front yard, and probably from the back, of the cell phone tower. If she was someone looking to buy a house, she would not buy one next to a cell phone tower. She knows this will depreciate the property values.

Mr. Tosi stated that there are houses being built on Brackett Road and the wetlands are being impacted now. This will just be the "icing on the cake" for Brackett Road.

**Aidan McDonough, 140 Brackett Road**, commented that he appreciates all the site walks and preparations the boards have made in order to prepare for this case. He continued that as his neighbor has said, he can walk out onto his porch and make a phone call. It is certainly not a safety concern on his street. In regards to emergencies at the beach, there are trained lifeguards and they all have radios. They are in constant contact with the police. He agrees that it would be better if people could reach out to them on their own but it is certainly not a life or death situation. There are people in place who can reach the police at any time. He continued that he feels the boards have been intentionally misled on a few different things through this presentation. The first thing was mentioned by the real estate expert that a list price doesn't sway a home buyer. If a house is listed at fifteen million dollars, and he can only afford a quarter of a million, he is not going to put an offer in on that house. The real estate agent provided a picture of a listed home that was next door to a cell phone tower. The agent then said the house sold in seven days. That seven days was in July, when there is full foliage. To argue that the foliage is the same as what it would be in January is just not true. Additionally, the final point he heard from the network engineer at the original meeting, was that a benefit this tower would relief is a bandwidth burden on the WHEB tower. That tower services the Greater Seacoast area not just Brackett Road and all the people at the beach. This is to alleviate the amount of stress and traffic that is coming in from everywhere. This is not necessarily **for** Rye. This is incredible precedent that the boards would be setting. This is a very incomplete argument that Verizon is trying to provide. The citizens are not here to provide what they want Verizon to do. It is

Verizon's job to come here and present the facts as they will be. There has been nothing but alternating variable facts.

**John McDonough, 140 Brackett Road**, stated that he has lived in his house for 28 years. He commented that the gap is the key. He asked if the town will stand up and fight, if they go federal on the town. This could go \$500,000. If there is another site, maybe the town and Verizon could come to an amicable solution. He is prepared to get counsel but he needs help from the town because he is not going to do this alone. He needs information from Verizon that they are going to go federal. He pointed out that there are others who are willing to help with this funding because they are not going to take this lightly.

**Murray Mason, 115 Brackett Road**, stated that it is all about compromise. This is a lousy site. He thinks Verizon even knows it's a lousy site. He pointed out that there are seven houses within 300ft of the site. If those homeowners want to sell, they are going to be looking at some pretty lousy customers, who will be looking for a chance to get a house for a song. He continued that this is 80ft from a residence and it could fall down. If a tree that did not get cut comes down in a nor'easter and glances this thing, it could go over.

PB Chair Epperson noted that this is one of the variances that they are looking for.

Mr. Mason stated that this is a safety issue. They are asking the town to take on the ramifications if it did fall on a house.

Speaking to Mr. Mason, Attorney Donovan asked if he is directly across the street from the proposed site.

Mr. Mason replied that he is as direct as it can get.

**Mike Thiel, 34 Brackett Road**, noted that he wrote the board a letter back in mid-February. He will try to summarize that letter. There was a misconception in the filing where they said that all other private abutters or private sites for the cell tower were unwilling. It boiled down to unwilling on what terms. He stated that he owns forty-one acres and it is probably the ideal site for this particular cell tower, in terms of technically for their coverage and variances. He is not overly enthusiastic about having a cell tower on his property. He continued that he has gone "to the mat" three times with Verizon. The most recent time was last summer. He thought they were really close to some agreements at that time. He noted that he is very possessive about his land and one of the things he was insisting on was that they not duplicate facilities. If there is going to be a generator, it will be one generator for all three or four co-locators. There seems to be an issue as to how much land they need as well. When they first approached him, they wanted 100x100ft. That would be about four times what they are asking for now. That was rejected and it was reduced to 50x50ft and Verizon said that was as small as it could be. Now, they are asking for 30x40ft. He thinks this leads to the question of what will happen when the co-locators come. How much more land are they really going to need? He thinks it would behoove the board to look into the contract between Verizon and the landowner to see if there is



an option to expand already written into the lease. He feels sorry for the abutters because they will certainly be impacted and so will the people who are traveling back and forth on Brackett Road. There was mention about the removal of the tower if technology should change. He asked if the town had mandated that the pad be removed as well. That was an issue that he dealt with. At first, Verizon did not want to remove the pad.

Attorney Donovan stated that he would suspect that he did require it but he would have to go back and check the regulation.

Mr. Thiel commented that the footprint issue is one that should be dealt with more and this is not a great location. This land sets down about 10ft. His land is about 20 or 30ft above that. He commented that he would rather see it on town land so the town could benefit. If the boards would like to conduct a site walk on his property, he would be happy to accommodate.

PB Member Quinn asked if Mr. Thiel's property is in the overlay district.

PB Chair Epperson replied no.

Ms. McCabe stated that in going through the application, she believes there is a fair amount of zoning ordinances that they should require additional variances for. She noted that she has copies of the list of those ordinances for the boards to review. (She submitted that information to the boards.) She continued that this speaks to the bigger picture of the multiple applications that Verizon has submitted from December until now. Her concern is whether or not they provided the additional documentation they said they would be bringing, which was requested by Attorney Donovan and others at the April 16<sup>th</sup> meeting. She didn't see any mention of other things that were asked for. She didn't see the scaled elevation drawings on the agenda for tonight. Setback to adjacent users was not on the agenda for tonight. At the previous meeting, it was asked that Verizon clarify where and how they got their numbers for how many people would be impacted. She continued that her concern is whether or not the application is complete. She is also concerned about whether any of these delays that Verizon has imposed upon this process are going to create a tolling of the shot clock so time does not run out on making this decision. She stated that there has been a lot of misinformation. Everyone is talking about the Telecommunications Act of 1996; however, it doesn't give them carte-blanc as it has been portrayed. As long as it is timely, is not arbitrary and a detailed response is provided, the board has the right to say "no" and that should stand. It is crucial to note that many towns, including Bedford, N.H., has said "no" and stood up to Verizon in Federal Court and have won. Good documentation is key. She continued that one of the things that Verizon has cited is 203.2, saying that it is allowed by special exception because it is a public utility. Rye Zoning Ordinance specifically states that wireless cell towers are not considered public utilities. She thinks it was misleading to put that ordinance forward. As far as the placement of the property, it has been stated by a number of people that there is not a magical number around why Verizon wanted it at this site. They have given misinformation about what the site ring that they are looking for. Why is it needed at that site? Why couldn't it be at Rye Elementary School? It was mentioned last time that it wouldn't fit their site ring; however, it worked before. What is their

site ring? That needs to be clarified. She is concerned that they are playing “hardball” in not telling what the site ring really is and what the purpose is for putting it in that place. She does not think it has to do with coverage. As was discussed previously, the same level of coverage exists per the radio frequency that exists at the beach. It is the same level of coverage, -95 DBM. That level of coverage, based on Verizon’s own testimony, is scattered throughout Rye. Again, why does it need to be at that site, 120 Brackett Road, outside the wireless overlay district, in order to meet the need (or the gap)? It doesn’t make sense on its surface. She noted that they also provided contrary information in regards to the site plan. Those are apparently generic site plans. At the site walk, it was incredibly frustrating for people when they asked what it was going to look like and how tall it was going to be. How high is the tower actually going to be? It needs to be known where it is going to start in order to know how tall it is going to be. That was supposed to be the reason why the balloon was supposed to be flying at over 140ft. That was supposed to be the height, including however much they were going to raise it up. That did not happen. Verizon was also asked to show, and they agreed, what the tower compound would look like with photo shopping. That did not happen. Verizon was asked to take photos from any place the balloon was visible. Obviously, that did not happen. The count on the trees is up to 70 on the latest site plan. It was originally 28. It is a moving target that keeps changing. It doesn’t allow anyone to make a sound decision if it is not known what is to be decided on. She stated that one of the criteria for the variances is whether it is in the public’s interest. The public is saying what they want. Here the public is the same public that has a gap on Washington Road, as well as at the beach. Verizon is deciding where they want to put it. It has nothing to do with the public interest. One of the reasons she suspects they are so keen on having it on private property is so they can expand from a co-location base rather significantly. The Middle Class Act Tax Relief Act of 2012 6409(a), allows them to move up to a significant increase in both size and footprint without having to get approval from the town boards. If it were on town owned land that would not be the case. There is another reason besides the fact that the town would have more income to have it on town land. The town could control the sprawl of the compound. She would implore the town to look into that when they are considering this.

**Peter Crawford, 171 Brackett Road**, stated that he thinks Member Quinn “hit the nail on the head”. The issue of whether they get the special exception needs to be addressed first. He noted that he looked at Second Generation versus Town of Pelham, First Circuit Case of 2002. It seems to apply and is pretty supportive of the towns. Pelham had an overlay district and they wanted to go outside that district with a cell tower. It was denied but the court sustained the ZBA of Pelham. The court said that the Telecommunications Act preserved the local authority. The one thing that cannot be done is effectively prohibit cell towers within the town. In order to invoke that, it would have to be demonstrated that this application was rejected and that reasonable efforts are likely fruitless such that they would be a waste of time. Basically, it has to be shown that there is no other site in town. The TCA focuses on the protection of the consumers and residents, not the carriers and developers. It seems that what should happen is first the ZBA needs to deny the special exception. Then this project needs to be done collaboratively. He thinks that everyone agrees that cell coverage is needed. Also, everyone agrees that this is not the best site in town. The Planning Board should work with Verizon, expand the overlay district

if necessary, and find the best location for the cell tower to go. Verizon is willing to put their money on the line to help the residents with their cell service and that should not be taken lightly.

Hearing no further comments or questions, PB Chair Epperson closed the public testimony at 8:12 p.m.

Attorney Manougian stated that he is hearing that a cell tower is wanted. He is also hearing “not in my backyard”. He continued that they have tried since 2006. In 2006 to 2007 it was Pulpit Rock, which was shot down because of the heavy abutter opposition. Rye Elementary School was shot down in 2008-2009 during a time when there was a search ring in that area and Verizon had an interest in that. That search ring has since gone away; probably because it is now served by other sites. That area does not serve the search ring for north Rye. That lack of coverage (gap) cannot be served by the elementary school and will not solve the problem.

BOA Acting Chair Crapo stated that at the previous meeting the gap was identified and it was discussed how many people this tower was going to serve. There was reference to a census and it was stated that 20 or 30% was in this coverage zone. He commented that those numbers are absolutely flawed. He asked if the numbers have been corrected. Part of what needs to be evaluated, is this proposal covering that gap. In addition to just Town of Rye people, what is the criteria in trying to figure out a gap? What determines that gap?

Attorney Manougian explained that Keith Vallente submitted a supplemental report based on the U.S. Census, which will answer this question.

Attorney Donovan stated that the question goes a little deeper than that. What is it that Verizon is trying to do with this coverage gap circle? Is Verizon trying to serve just the volume of traffic on Ocean Boulevard? Are they trying to serve residents? Is there a problem with capacity rather than a problem of coverage? Is it a coverage problem or a saturation problem?

Attorney Manougian replied that it is coverage, gap and capacity. He continued that they moved on to 2009 to 2010 with Odiorne State Park. Besides the State funding restrictions, it was shot down because of the heavy opposition. He noted that Verizon has tried many different sites in north Rye and now they are trying this one. He commented that he would love to go to public land first. However, he is pretty sure it would be a tough to get town meeting approval in this town to lease public land for longer than five years, which is what is required on a lease for a cell tower with a carrier. Based on what he has seen since 2006, he is pretty sure it would not pass vote and it is not a rapid fulfillment answer. Verizon has been trying to fill the gap in northern Rye since 2006. That would add several years of negotiating leases with the Selectmen followed by town meeting vote, which happens once per year.

Addressing the comments from the public, Attorney Manougian stated that Dante Tosi and another person spoke about their reception being okay now but it was bad before. He suggested that they let the town’s consultant, radio frequency expert, say whether in fact this site is needed. He stated that he takes exception with people in this town attacking his experts or himself. He

noted that he is a licensed professional. The real estate expert is a licensed professional. In looking at the studies that are out there, some people will not live near a cell tower but others will not buy a house if there is no signal. He continued that Mr. Thiel spoke eloquently; however, Verizon has tried to work with him since March 3, 2015. Negotiations with him disappeared on August 11, 2017. Mr. Thiel talked about American Tower being Verizon's intermediary. American Tower is the tower company. Verizon leases space from them but is not represented by them in any way. He stated that one of the standards for alternate sites is if it is feasible. Is there an alternate site that is feasible? He thinks it is elementary to say that when negotiations have gone on for three years, and a lease can't be entered into, it doesn't matter if that site works. He noted that they started negotiations in March 2015 and tried to enter into a lease that was satisfactory for Mr. Thiel. On August 11, 2017, Mr. Thiel sent the Verizon representative an email stating that it made more sense for him to do a conservation easement. The email also stated that while he was pursuing the conservation easement, if Verizon wanted to pursue or investigate other prospects that meet the needs for coverage in this area, he would certainly understand. For Mr. Thiel to say now that he is not unwilling, does not really go along with all the negotiations. With respect to the tower, the impact and the count, that is something that can be addressed by Mr. Vallente. He noted that they do owe a variance request for tree removal in the wetlands; however, it was put off because he knew they were going to have a couple of joint meetings before going before the zoning board. There is time to get that variance request in, along with one more that came up today about reducing the co-locators to two not three in addition to Verizon. He pointed out that the case mentioned by Mr. Crawford's is a good case. If that is going to be argued before the zoning board, he is going to cite the Daniels versus Town of Londonderry Case for effective prohibition if this site is denied, which would trump what was cited by Mr. Crawford.

Mr. Thiel stated that they were fairly close to an agreement last year, although they changed a number of things that were previously negotiated in the first two rounds. American Tower did come on Verizon's behalf because at the time Verizon was not interested in owning towers. Apparently, that has changed. He continued that what he said in August was that he has always wanted to put his land in a conservation easement. What he needed to understand was the economic impact of putting the rest of the land in a conservation easement. Verizon would be given a "cut out" that would not be in a conservation easement. They would have a lease and that part would obviously not be in a conservation easement. He wanted to know what they would do to the value of the conservation easement. Beyond protection of the land in perpetuity, his major interest in putting it into a conservation easement would be the tax benefit. If there was not going to be a tower, a conservation easement was going to be put on the whole property. He noted that he needed several months to work that out and this was indicated to Verizon at the time. He went back to Verizon in December to let them know it was a very complex situation. At that time, Verizon had already gone on to 120 Brackett Road.

Mr. Crawford stated that Attorney Manougian referred to 'Daniels vs. Town of Londonderry' and said that trumped the Pelham Case. The First Circuit is one level below the Supreme Court and over all the Federal Courts in Massachusetts, New Hampshire and a number of other states.

To say that the New Hampshire Supreme Court trumps the First Circuit on an issue of federal law is just plain wrong.

Speaking to Mr. Crawford, Attorney Donovan stated that he is wrong. The Daniels Case sets the New Hampshire standard for unnecessary hardship on cell tower applications. When a case gets to the Federal Court and they have to look at the substantial evidence on whether the state criteria for variances are met, they will defer to the New Hampshire Supreme Court's standards in Daniels in how they review the denial of the variance. He continued that there are hundreds of cases on cell towers. He noted that he has already advised the Boards about the effect of Daniels on other cases.

Referring to Ms. McCabe's comment, Attorney Donovan stated that one of the things that he had asked Verizon for was more documentation on the number of homes served and the traffic counts. He pointed out that this was provided and has been in the town files for several weeks now.

**Keith Vallente, C Squared Systems, LLC**, stated that after the last meeting they received a letter from Attorney Donovan requesting some items. A letter was submitted dated May 3<sup>rd</sup> in response to Attorney Donovan's letter. There were three questions that were asked. One was to clarify the population counts that were referenced in the first meeting. The second was to substantiate the vehicle and traffic counts. The third was to verify the number of dwellings that were actually covered on the six roads. For the residential counts, the methodology that was used is based on the U.S. Census Data, which is the lowest resolution data available in terms of geographic area. The coverage that proposed site provides is looked at in addition to what already may be provided by sporadic outlining sites. That information is looked at with the U.S. Census Block Data to come up with a population count of how many residents in that area it would serve. At the meeting, it was said that it serviced 1100 people in Rye. The letter clarified that it is 1100 people total. Within Rye itself, it is 897 people, which is 17% of the population and is fairly substantial in terms of the proposed area that this site serves. With regard to the vehicle traffic data, the resources that were used is from the New Hampshire Department of Transportation. Reports were provided that support those figures. With respect to the dwelling counts, the information that is available is limited. He was unable to find specific outlines in a GIS Data Base. He pointed out that they looked at Google Earth and the town's GIS to provide a count for the number of dwellings the site will cover.

BOA Acting Chair Crapo clarified that they didn't necessarily differentiate between a cabin and an actual home.

Mr. Vallente replied that it goes back to the information that is available.

In regards to the U.S. Census Block Data, BOA Acting Chair Crapo asked if this is a percentage per square foot or the actual census for that map.

Mr. Vallente explained that the maps (in the information submitted to the boards) show the actual census blocks. In each block is two numbers, the population number within the block covered and the total population within that block. If Verizon covers the entire population within that block, 100% of the population within that block is used. In many instances, Verizon does not cover the entire population within a block and an estimate has to be made. He pointed out that they assume an even distribution across the block. For instance, if Verizon covers 50% of a block that is 200 total people, it would be 100 people used for the count.

Mr. Pike asked what the radius coverage is.

Mr. Vallente explained that it varies based on the topography.

Ms. McCabe asked if it can be clarified what the 897 in Rye represents.

Mr. Vallente explained this is 17% of the total town population. In this geographic area, the site proposed will provide coverage, in an area where coverage is not currently provided, to 897 people. He commented that he does not know the number of Verizon customers in this area. It could be argued that it is 897 potential Verizon customers. This is for a point of information.

BOA Acting Chair Crapo commented that there are a lot of homes in that area that are vacation homes. Those people are here in the summer when the population is more like 10,000 or 12,000 or they are never here and it is rented. The 5,000 registered voters, compared to the actual people who are here in the summer, makes it a different sliding ratio in terms of how much benefit it is to people.

Attorney Manougian stated that they could not get that information if they tried.

PB Board Chair Epperson stated that to be fair this is probably the best job they could do.

BOA Acting Chair Crapo stated that geographically, most of the footprint of the tower is a marsh. It is tough to try to “swallow” that it is servicing 17% of the town’s people.

## **VII. Discussion of alternate sites for Consultant Pagacik to review.**

Attorney Donovan stated that the town’s radio frequency consultant is going to be reviewing Verizon’s reports and will be providing his own report by July 18<sup>th</sup>. One of the things that the town’s arrangement with him provides for, is looking at other sites that are feasible with respect to addressing the coverage gap the proposal at 120 Brackett Road is intended to address. The consultant’s analysis only gets into whether the sites are “technically” feasible to serve the coverage gap. There may be arguments as to what the other parameters of feasibility will or will not be. The radio frequency consultant’s role is only whether a certain alternate site is technically feasible. Will a tower on a site hit the same coverage gap Verizon is trying to hit at 120 Brackett Road? Speaking to Attorney Manougian, he stated his understanding is that

Verizon's position is that the site at 0 Port Way (which is a piece of town owned land taken by tax deed), the Tower at Pulpit Rock, Odiorne State Park (anywhere within the 137 acres of the park, not just the site at the edge of the parking lot that was the concern 10 years ago), and the Thiel property are all technically feasible. The reason Verizon feels they are not technically feasible have to do with something other than radio frequency. Technically those sites are reasonable alternatives.

Attorney Manougian replied yes with one clarification; not all the acreage of Odiorne State Park. Verizon knows where they were looking at Odiorne works but he is not going to blanket say for the rest of the 137 acres. He continued that for 0 Port Way, he does not see the town having any access rights to grant to Verizon for both vehicular traffic and utilities. Aside from that, it is a great site.

Attorney Donovan commented that the board will be getting his opinion on that at some point. He continued that it is clear that the town owned land at 0 Port Way, Pulpit Rock, the Thiel property and the Odiorne site that was withdrawn 10 years ago, are all technically feasible alternatives.

Attorney Manougian noted that they would have loved to have been at Pulpit Rock but it didn't work out and the other two didn't work out.

Referring to Odiorne State Park, Attorney Donovan clarified that they do not have any opinion on any area other than for the area which is right next to the parking lot at the Seacoast Science Center.

Attorney Manougian confirmed.

Attorney Donovan asked if the town's radio frequency consultant could look at other spots at Odiorne, which is 137 acres.

Attorney Manougian replied that he could look at it but he would like to remind the boards of the financing restrictions for that park.

Attorney Donovan clarified that there are no objections to looking at the Rye Elementary School; however, it is believed that a tower there is not going to hit this coverage gap.

Attorney Manougian confirmed.

Attorney Donovan stated that as he understands it 505 Ocean Boulevard is going to be looked at by Verizon. Maybe the town's consultant can look at what they come up with on that.

Attorney Manougian confirmed that they will submit something for the town's consultant to review. In regards to doing site analysis, he stated that he is not interested in doing site walks on other sites. He is interested in what the experts are going to say about other sites being feasible;

however, he does not want to do site walks on other people's land. He wants a decision on his application only.

PB Chair Epperson asked if he would refuse to go out on a site walk if he was asked by the board to do that.

Attorney Manougian replied that he would never refuse but there is one application before the board.

BOA Acting Chair Crapo stated that there was a comment that there was back out because of public opposition to Odiorne Point. He is pretty sure there was a meeting where half the presentation was presented, a bunch of questions were raised, the information wasn't there, the application was continued and that is when it disappeared.

Attorney Manougian explained there was a lot of public pressure to preserve that park. The other thing that happened is that the State shut it down and would not talk to Verizon.

Attorney Donovan summarized that the town's consultant is going to review:

- Rye Elementary School – 30 acre parcel that is identified in the overlay district – adjacent to the site of the elementary school and owned by the school board
- Remainder of Odiorne
- Review the report of Verizon RF Engineer in regards to the property located at 505 Ocean Blvd. – Former Ralph Brown property

BOA Acting Chair Crapo stated that they talked before about how this site might be at elevation 20 and another site might be at elevation 40. If it is a 120ft tower, how much larger does the coverage zone get? It was already alluded to that there may be another variance added to have less than four total carriers because the bottom position is "too low". If it is going to be considered to allow this in a non-overlay district, wouldn't it best serve the town to make sure they don't end up with a second application a mile away by the fourth carrier who comes in for another tower. He asked why this is not being proposed 10ft or 20ft taller to meet the other part of the zoning which requires the ability for four carriers. If the tower is moved to some place 10ft taller, or is made 10ft taller, how does that green area on the map change?

Mr. Vallente explained that when a height analysis is done they look at 20ft increments. The key threshold with regard to height, is to get the antennas above the surrounding obstructions. In this case, it is the tree line that is the predominant factor. Height is mainly critical at the first threshold, which is "seeing around the surrounding clutter". The second instance where a little more height helps is when there is some sort of obstruction within a half mile or so. Getting over that will cover substantially better beyond that particular obstruction.

BOA Acting Chair Crapo asked at what height Verizon's antennas are on the WHEB tower. The tower is listed at 163ft tall. The footprint from that taller tower does not look as big as what this



120ft tower is going to provide for a footprint. Verizon is at the top spot of this 120ft tower and the other co-locators would be lower.

Referring to the maps included in the original report, Mr. Vallente stated that there is a height listed. This is the height of Verizon's antennas not the tower.

Attorney Manougian stated that for this site they are proposing a height that they thought would carry forward; however, it is not working with the tree line which is shown in the latest drawings. Because of that, he does not see a choice but to go for a variance for three carriers. He is not sure if there will be four carriers in the future. Right now, it does not seem that four carriers are going to survive.

BOA Acting Chair Crapo asked if the coverage area would be increased by going 20ft taller. Some of the abutters are more concerned with the compound, versus whether it is 50ft tall or 120ft tall. Those abutters are so close that it will be lost up in the trees and another 20ft might not matter. The board is being asked to vary the overlay district to allow coverage, which needs to have its merits. Part of that merit is trying to be sure it is the best solution.

Referring to sheet AO2 of the plans, Attorney Manougian commented that it shows the fourth carrier is below the tree canopy height. The tree canopy height being 95ft. Most cell antennas are 6ft to 8ft in height. In order to get above the tree canopy line and add another carrier, an additional 20ft would need to be added to this tower. He does not know what this does to Verizon's coverage.

Attorney Donovan asked if they could provide the information on the height of the tower for the Thiel property.

BOA Member Driscoll asked if that could be along with the elevation height.

Attorney Manougian agreed.

PB Member Quinn asked if conservation land throughout the town is an option.

Attorney Donovan explained that is too broad for them to look at. A specific parcel would have to be identified, which would have to be generally in this area of town.

PB Member Quinn stated that in looking at the problem, he starts with a goal of providing cellular service throughout the town.

Attorney Donovan replied that he understands; however, they are dealing with this particular application. The Planning Board and the Board of Selectmen should be working with them on ways to address more coverage in parts of Rye. However, this is dealing with a specific application and alternatives to that.

BOA Acting Chair Crapo asked if the overlays were developed using radio frequency input. What kind of methodology was used? He pointed out that when the overlay district was created there was different technology and towers broadcasted farther.

Mr. Vallente commented that as technology has progressed the density of networks has grown.

Attorney Donovan explained that at that time the Planning Board had a person advising them who claimed to have some expertise in this area. They focused on public land, in identifying parcels of land, because of the benefit of the lease revenue. In Rye center, the steeple in the church had already been proposed so that was put in because of the proposal. They thought that the Breakfast Hill water tanks would be good because they are owned by the Rye Water District and are up high. They identified the site beside the Rye Elementary School. They included all the Rye Water District land along Garland Road. They thought that they had the middle to southern part of Rye pretty well covered with those sites. He thinks they knew there was a problem in the northern part of town but they didn't go any further than identifying the elementary school site. He continued that an applicant came in for a site off Grove Road that was not in the overlay district. The Board of Adjustment gave that applicant a use variance and the Planning Board gave them the permit. The abutters challenged that in court. In the meantime, the Planning Board talked the tower company (not Verizon) into another site, which was also not in the district. That was approved and was taken to court. At that time, Mel Low and the Conservation Commission got involved and managed to persuade the tower company that the site where there is now a tower, which is conservation land, was a better site than anything that had been proposed. There was a special town meeting, which can be done on a zoning article, to add that parcel of land to the overlay district so a zoning variance was not needed. Voters voted it in and the Planning Board approved the special use permit. That is why there is a cell tower on that site. Since then, there have been co-locators added to it. It was a process. The voters voted to amend the ordinance to allow the tower on that site because there were no objections to that tower. Admittedly, that site does not have any close abutters in proximity to it.

Referring to Mr. Thiel's letter, Mr. McNair stated that Mike Thiel's tower was proposed at 115ft total height. He asked if the additional sites included the sites that were mentioned by Hugh Lee in his letter.

Attorney Donovan replied yes. Mr. Lee's suggestion was the 0 Port Way site, which is a town owned piece of land.

Mr. McNair noted that a second property that was cited was 023-004.

Attorney Donovan stated that this is the Condon property and was considered. The town has a history with that property and negotiations were discontinued because of access problems. He has a whole file about a court case that verifies what Verizon is saying that there would not be access to the Condon lot for a cell tower. He is not sure he agrees with the conclusion with respect to 0 Port Way but he does agree with the conclusion with respect to the Condon property.

**VIII. Set next meeting date: Boards need to determine whether a 3<sup>rd</sup> joint hearing is required or whether the next meeting should be a joint work session. Also, at what point the joint meetings can stop and each board can proceed on its own.**

The boards agreed to set a date for a joint work session.

Attorney Donovan explained that for a work session the board members are asked to prepare questions in advanced that they would like the applicant or the town's consultants to answer. Those questions are gathered a few days in advance of the meeting and sent to the applicant. The work session will focus on those questions.

- **Joint Work Session scheduled for Tuesday, July 31<sup>st</sup>, 7:00 p.m., Town Hall. Questions from the board members and public must be submitted to the Planning/Zoning Administrator by Thursday, July 26<sup>th</sup>.**

Board of Adjustment Member Burt Dibble made a motion to continue the public hearing to the August 1, 2018 Board of Adjustment Meeting. Seconded by Tim Durkin. All in favor.  
*(Voted: Burt Dibble, Patrick Driscoll, Tim Durkin, Charles Hoyt and Shawn Crapo.)*

Planning Board Chair Epperson made a motion to continue the public hearing to the August 14, 2018 Planning Board Meeting. Seconded by J.M. Lord. All in favor.  
*(Voted: J.M. Lord, Steve Carter, Jeffery Quinn, Nicole Paul and Bill Epperson.)*

**Adjournment**

**Burt Dibble made a motion for the BOA to adjourn at 9:32 p.m. Seconded by Charles Hoyt. All in favor.**

**Steve Carter made a motion for the PB to adjourn at 9:32 p.m. Seconded by Jeffrey Quinn. All in favor.**

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

Respectfully Submitted,  
Dyana F. Ledger