

**TOWN OF RYE  
PLANNING BOARD – BOARD OF ADJUSTMENT  
JOINT WORK SESSION  
Tuesday, July 31, 2018  
7:00 p.m. – Rye Town Hall**

***Planning Board Members Present: Chairman Bill Epperson, Vice-Chair Patricia Losik, J.M. Lord, Jeffrey Quinn, Jerry Gittlein, Steve Carter, Selectmen's Rep. Keriann Roman and Alternate Nicole Paul.***

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

***Also Present: Town Attorney Michael Donovan, Planning/Zoning Administrator Kimberly Reed, and Telecommunications Consultant for Rye Ivan Pagacik.***

***Members of the Verizon Team; Attorney Victor Manougian, SAI Communications Rep. Chip Fredette, C-Squared Systems Rep. Keith Vellante, Chappell Engineering Associate Clem Salek, Wetland & Soil Scientist Audra Klumb and Structure Consulting Group Associate Todd White.***

**I. Call to order and Pledge of Allegiance**

Planning Board Chair Epperson called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Planning Board Chair Epperson explained that the meeting is a work session and is not a public hearing. No input from the public will be heard. The public was able to submit something in writing to the boards by July 26<sup>th</sup>. Information was submitted by:

- Kathleen McCabe
- Peter Crawford
- A resident submitted information about a cell tower issue in North Hampton.

During the course of the meeting, the questions submitted by the residents will hopefully be answered. It is anticipated that this will be the last joint meeting of the boards on this application. The boards will then schedule their own meetings on the matter, which will be held as public hearings.

Kathleen McCabe called for a point of order.

PB Chair Epperson opened up to Ms. McCabe for her comment.

Ms. McCabe stated that she would like to draw the boards' attention to an incident that happened at the joint site walk on July 27<sup>th</sup>. During the site walk, the Verizon representative, Chip Fredette, used a condescending term to refer to a resident, who politely asked a series of questions with regard to the proposed cell tower driveway/roadway. When answering a question, Mr. Fredette responded back by calling the resident "Bubba". Specifically, he said; "it's okay, Bubba". The name calling by Mr. Fredette was not done under his breath or whispered to a colleague. It was specifically addressed to Mr. Mason in response to one of his questions. Mr. Fredette pointedly insulted and disparaged a resident of the town in front of other members of the public, in front of three governing bodies that have decision making capabilities for this town and in a public meeting that are run by rules and order with expectations of ethical conduct. She asks that the board address the Verizon representative's egregious action so that this does not continue and residents are not further subject to bullying tactics.

PB Chair Epperson commented that he does not recall this conversation.

Mr. Fredette explained that he uses the term frequently. It was not a bullying tactic. If Mr. Mason was offended, he apologizes.

PB Chair Epperson stated that the Planning Board and the ZBA treats applicants and the public with a great deal of respect. The boards hear people and do not demean people. Everyone has a voice and everyone is respected. He would expect that the applicant would follow the same rules, regardless of who they are. Mr. Fredette has apologized and he thinks that should be sufficient. He asked Mr. Mason if they can put this behind them and move forward.

Mr. Mason replied yes.

PB Chair Epperson introduced Telecommunications Expert Ivan Pagacik who was hired to advise the town on this application.

**Attorney Victor Manougian, representing Verizon,** introduced the members of his team.

BOA Member Driscoll stated that he may have misspoken at the site walk when he said he and fellow BOA Member Shawn Crapo may disagree at the site walk and later on discuss the case. What was meant is discussing the case in the Board of Adjustment's deliberative sessions, not in private. He makes it a point not to discuss any case outside of the BOA's meetings.

BOA Acting Chair Crapo explained that this statement was questioned by someone who heard it and thought others might misinterpret what was meant. Member Driscoll wanted it to be clear that they do not discuss cases outside of meetings.

## **II. Discussion of coverage gap; search ring; alternate sites and related matters**

### **Key Documents:**

- **Verizon RF Report submitted with December applications.**
- **Supplemental Information on Alternate Site Analysis submitted by Verizon on 4/25/18.**
- **Response to Donovan request for more info submitted by Verizon on 5/8/18.**
- **June 14, 2019 Donovan memo on alternate sites.**
- **IDK Communications (Ivan Pagacik) July 23, 2018 Report.**

Attorney Donovan stated that the boards should talk about the coverage gap and the search ring. He noted that he also has questions to address. His suggestion is that they start with the applicant reviewing the area that they say is a coverage gap. The applicant should also describe in detail the area that was used for the search ring, which is not described in any of the reports.

**Keith Vellante, C-Squared Systems, representing Verizon,** stated that the original RF Report provides information on the areas it covers. The gap area is in northern Rye; Route 1A, east of Brackett Road, to Odiorne and south to Wallis Sands. The gap area covers Brackett, Parsons, Sagamore, Wallis Sands Road and surrounding neighborhood roads. Route 1A is also included. That is the general area of coverage this cell tower is intended to serve at 120 Brackett Road. The search ring has been established by Verizon's engineers. He reiterated that the gap is in the northern area of Rye. There is a large deficiency of coverage. The nearest sites are quite far off in the distance. There is not going to be one site that will fill in the whole gap in coverage.

Selectmen's Rep Roman asked if the gap in coverage is for cellular and data.

Mr. Vellante explained it is based on Verizon's LT Network. Verizon is licensed at multiple frequency bands, which are reflected in the plots. The lower frequencies tend to cover a larger area. The maps that show the coverage (submitted to the boards) is the best case scenario of the network resource that is available. The coverage area includes voice, as well as data communications.

Selectmen's Rep Roman asked if there is any analysis on the gap for just cellular.

Mr. Vellante replied that the gap would be larger.

Selectmen's Rep Roman stated that she is trying to get an idea of how many calls are dropped and how many can connect. Would that analysis change if it was able to be segregated? She noted that they have to decide if there is a significant gap in cell calls; people being able to make calls, receive and keep calls. Whether or not people have access to their data plans is different.

**Chip Fredette, SAI Communications, representing Verizon,** explained that cellular is one of four licenses that Verizon owns, upon which, voice and data can be transmitted and received.

Selectmen Roman replied that she is referring to “voice”. Is there a distinction between voice and data?

Mr. Fredette stated that he does not believe the federal government differentiates the differences between data and voice. It’s a network service in general.

Selectmen’s Rep Roman clarified that there is no separate analysis on just voice.

Mr. Fredette confirmed.

Referring to the map submitted by Attorney Manougian, PB Chair Epperson asked if the black line is the “dead zone”.

Mr. Fredette suggested that they compare the search ring map with the existing coverage map.

Attorney Donovan asked if this was the search ring that was used once the gap was identified.

Mr. Fredette confirmed. He explained that the search ring was created by Verizon’s radio frequency engineer, who says there is a gap coverage in northern Rye. If a site can be found in this area, that will help to serve the objective of covering the gap.

Referring to the search ring, Attorney Donovan asked why the area was not larger. He asked why it did not include some of the land on the west side of Brackett Road.

Mr. Fredette explained that presumably the further west it travels, the less apt it is to reach Route 1A and the coastal area.

PB Chair Epperson noted that the search ring goes out into the marsh where there is no one. It looks like this particular search ring is just merely along Route 1A. This doesn’t really do anything for the citizens of Rye.

Attorney Donovan asked Ivan Pagacik for his comments on the size of the search ring. He asked if it could be larger.

**Ivan Pagacik, Telecommunications Consultant, on behalf of the Town of Rye**, replied that it could be. The topography has a lot to do with this. The topography and elevation changes are going to dictate a lot of the coverage. The higher the frequency, the more the absorption by trees becomes an issue. Having an area along the coast that is flat, with not as much terrain differential clutter, (buildings, trees, etc.) might provide a bigger search ring. The physics can’t be changed. When a signal leaves the antenna, and it travels a certain distance, there is loss in that signal.

PB Chair Epperson clarified that the higher the frequency the more loss of the signal.

Mr. Pagacik confirmed. What can be adjusted is how the antennas relate to the surrounding area; how high above average terrain and how high above clutter. That will have an impact on coverage.

BOA Member Durkin asked the definition of a search ring.

Mr. Fredette explained that the search ring is an area defined by the engineer to say that if a site is found in a certain location, it will serve to either offload capacity or provide coverage where there isn't any.

Attorney Donovan stated that the work that has been done by both Mr. Pagacik and Verizon clearly shows that there are potential sites outside this search ring that cover almost the same service gap; 505 Ocean Boulevard, Lot 66 and 67 on the west side of Brackett Road.

Referring to 120 Brackett Road, BOA Acting Chair Crapo commented that this is one of the lowest locations, elevation wise. He continued that one of the discussion points was the height of the tower and whether there would be room for the minimum amount of required carriers. He is wrestling with why a low spot was chosen for a proposed tower that might not be tall enough.

PB Chair Epperson stated that every time there has been discussion about the tower it has always been 125ft. It is not necessarily true that the higher the tower the better it is. He asked if a tower at the elementary school, at 135 or 140ft, would impact the coverage area significantly. It may not reach Odiorne's Point but it would significantly cover a large amount of the population in the Town of Rye.

Mr. Pagacik explained that it is typically hard to see a noticeable difference in 10ft increments. He looks at 20ft changes to see a difference.

PB Chair Epperson asked if it is exponentially better to have a higher tower.

Mr. Pagacik explained that it depends on surrounding terrain. The tower will reach a point where it will clear the clutter and it will be noticeably better versus a mile and a half out shooting through trees.

PB Chair Epperson asked if it is fair to say that the higher the terrain the better it is, if it is above the tree line (clutter).

Mr. Pagacik commented if it is above tree line; however, it doesn't mean it should be on a mountain. The antennas have to be pointed to where it is needed. There also has to be consideration of handoff from one site to another.

Referring to the Portsmouth site, PB Chair Epperson asked if it is necessary for that site to be within "eyesight" of another tower in order to be effective.

Mr. Pagacik replied no.

Referring to Attachment B, PB Vice-Chair Losik asked if it is saying that there would be handoff between Rye point and Portsmouth. She asked if there is still a problem in this area.

Mr. Pagacik replied yes. There is still be gap in coverage.

Referring to the attachment that says 700 megahertz LTE, PB Vice-Chair Losik asked if they can tell how much is split between voice and data.

Mr. Vellante explained that it is looking at Verizon's link budget, which establishes the amount of RF power and the amount received with losses in-between. This is used to establish what is needed to have a reliable signal. That is what the map is showing; the received signal. It supports both voice and data. It doesn't distinguish between the two. LTE provides both types of services and that is what Verizon subscribers are looking for.

Selectman Roman stated that most case law talks about a significant gap in coverage and that deals with voice. To her knowledge, it is yet to deal with data.

Attorney Manougian replied that he agrees; however, there is a significant gap in voice here. The search ring is what Verizon has picked to fill this. He saw something from Attorney Donovan in his questions about New Castle. That would be in the future. All the sites cannot be done at once. There is a gap in coverage for north Rye and along 1A. Are there other areas within the search ring that could work? Yes, they have conceded that; however, they are not conceding that the sites are available. He continued that someone asked if they have dealt with other DRED properties. He has been dealing with DRED for two years on two New Hampshire sites that are going nowhere. Part of it is the funding issue that set up the park and part is that the State won't give permission to install. They have tried State properties in Rye and the opposition was immense.

Attorney Donovan stated that the information given to the boards about Odiorne was for 2009 or 2010. He asked if Verizon has made any recent contacts with the State with respect to Odiorne.

Attorney Manougian replied not to his knowledge.

Mr. Fredette noted that there is a funding restriction.

Attorney Donovan stated that the funding restriction was not mentioned in the original submission. It came up later. He continued that there was a similar rationale for the school about abutter opposition and them not wanting to go further. The School Board has obviously changed their minds and that is in the record. They are interested in looking at this idea. He noted that there is a new state administration with a new governor. He asked how they know DRED would not be interested at this point.

Attorney Manougian stated that it seems that the past history of public opposition won't change. He commented that he can approach the school but it is outside the search ring. He noted that Mr. Vellante ran plots that they will share with the boards.

Attorney Donovan commented that Mr. Pagacik also ran plots that are a little different.

Referring to Attachment A, BOA Acting Chair Crapo stated that there is an area that says there is no LTE coverage. He would venture to guess that people can make or receive Verizon phone calls in this range or there would be a much bigger group of people wanting coverage. The proposal and the proposed coverage is to enhance the higher end of coverage (LTE).

Mr. Fredette explained that LTE is the most robust signal of the four signals.

Mr. Vellante explained that the white area (on Attachment A) does not mean no service. It means it is below the threshold Verizon has established for their design criteria.

BOA Acting Chair Crapo stated they are trying to establish where that threshold desire meets up with a court mandated "you have to let them fill a gap". If people are making and receiving calls in this area then potentially the analysis shows there is no gap.

Mr. Fredette stated that Verizon considers it to be a significant gap in coverage.

Attorney Manougian noted that the white areas have never been challenged in any cases that he has taken to court.

Attorney Donovan asked why they feel it is a substantial gap. Why is it substantial if people have testified before the boards that they have gone all around that area and have no problem getting reception and or making calls?

Mr. Fredette stated that there are conflicting reviews. What matters right now to the boards is public sentiment.

Attorney Donovan asked why the gap in coverage is substantial in their view.

Mr. Fredette replied it is because Verizon can't provide the voice and data connectivity that they would like to provide.

PB Chair Epperson stated that everyone has an opinion. The board members cannot display their opinion. Their opinion is not influenced by emotion. It is influenced by Rye's Zoning, Land Use Regulations, Master Plan and facts.

BOA Acting Chair Crapo stated that he would like to see a map that shows the actual areas where there is no Verizon service. He guarantees there is a huge discrepancy between the map that was submitted and the criteria that was used to create it.

Attorney Manougian stated that they cannot do a map like that. There is going to be a signal everywhere in there. It may be half a bar or it might be two bars. It might be a bar like the guy had who was calling for rescue of a surfer and the calls kept dropping. That is not reliable service and that is a gap. That is not what the government wants when there is an emergency. They want everyone to be able to connect. A one bar signal is a gap.

BOA Acting Chair Crapo asked what the threshold would be.

PB Chair Epperson opened the question up to Mr. Pagacik.

Mr. Pagacik explained that cell service started out with 1G, went to 2G, 3G and now 4G is the latest and greatest. The carriers are turning down the 2G networks. Those networks are reaching their life expectancy and serviceability. The 3G networks are soon going to be turned down as well.

PB Chair Epperson asked how this is done mechanically.

Mr. Pagacik replied that it is separate equipment. They can build 4G while 3G is still running and then shut it down so 4G would be the only signal. Things are going that way. Actually, LTE is not full 4G, which is even faster. There are already tests being done on 5G. He pointed out the market demands it.

BOA Acting Chair Crapo stated that the court says that certain gaps have to be filled. He is trying to figure out at what point.

Mr. Pagacik stated that if Verizon came in with a 3G application, and the board saw the coverage for 3G, they may say it is not a lot of area that's not serviceable. However, they have a 4G application.

PB Member Quinn asked if there could be an ancillary smaller tower to pull the signal from a robust tower in town. He is thinking of the areas near the beach. He asked if there is a technology that could be boosted by other smaller poles.

Mr. Pagacik replied that this would be microcells, which can be seen in cities. On top of some street lights there are antennas to fill in a certain area where there may be a capacity problem, especially in an urban environment. The microcells target users to offload them from the macro-site (main cell site) and bring them into this microsite, which may only cover a block. The carriers look at statistics on business on a regular basis. They look at call volume and trends. Once it hits a certain point, the capacity is potentially going to be compromised and another site might have to be considered to offload that capacity. Microcells serve that purpose and it can also fill a coverage area. If a small coverage gap has to be filled, it can be fed from another Verizon site.



PB Member Quinn stated that Rye has a number of Seabrook sirens around town that are doing nothing ninety-nine percent of the time. It seems there ought to be a way to share signals with smaller structures.

Attorney Donovan stated that he thought he heard that one of the objectives was not to expand the coverage to New Castle.

Attorney Manougian clarified that he said it was a future site.

Attorney Donovan pointed out that the proposal shows there is coverage across the creek into New Castle. In looking at the elementary school site, one of the things that it does is solve most of the rest of the gap that exists in Rye. The only thing that it doesn't serve, as the proposal does, is the loop around Route 1A adjacent to Odiorne. He noted that neither sites serve the Breakers; however, as someone has pointed out, the inside of that loop is all wetlands. Would smaller antennas on poles, in the vicinity of Odiorne, combined with the elementary school essentially solve these problems?

Mr. Vellante stated not in his opinion. He noted that they ran an analysis of the school. At the end of the day, it shows a large gap leftover in northern Rye. The elementary school was part of a separate project in the past. Referring to a map submitted to the boards, he stated that this will give a sense of why the coverage areas are where they are. (He pointed out the existing sites in Rye, the proposed location, 505 Ocean Boulevard and the schools.) He noted that in looking at the topography key it can be seen that the school is at a higher elevation. That sets back on sort of a "shelf" that drops off heading into northern Rye. It is that topography that is going to limit the coverage from the elementary school to where the proposed site covers. It needs to be kept in mind that the elementary school is about 1.25 mile southwest of the proposed site. It is not going to cover that radius and another mile plus towards the coast.

Selectmen's Rep Roman asked for clarification on why the elevation is too high.

Mr. Vellante explained the topography is going to define what the site covers. If a site propagates out, then hits a ridge and valley, it is going to stop at the top of that ridge. As seen on the map, all of northern Rye is kind of in its own little depression. Any sites located outside that will be blocked by topography obstruction and coverage can't get in.

Selectmen's Rep Roman asked if lower sites give more coverage.

Mr. Vellante stated that in this lower line, yes. It has to be located based on topography.

Referring to the search ring on the table, PB Chair Epperson asked why they would not attack the search ring that affected the most people first. The vast majority of this area is either wetlands or uninhabitable. Essentially, most of the population in Rye lives south and west of this area.

Selectmen's Rep Roman stated that most people are not even driving that way. They are driving south.

PB Chair Epperson commented that he rides his bike on Ocean Boulevard and streams music almost the entire way.

Attorney Donovan noted that he was driving Ocean Boulevard and was driving behind someone that was going about 35 miles per hour. He asked how long it would take someone to drive along Ocean Boulevard from Parson's Road to Brackett Road, which is essentially the loop that would not be covered by the elementary school. He noted that it took three minutes and five seconds. He asked if that is really significant for someone driving along Route 1A to not have the download capacity that Verizon would like them to have.

Mr. Fredette stated that this is a hard question to answer. This is not how they are judging the need of the site. The site does more than just cover that three minute and five second strip.

Attorney Donovan stated that Verizon disagrees with Mr. Pagacik about the coverage coming from the Rye Elementary School because what was distributed is a lot different than Figure 3. In looking at Mr. Pagaick's Figure 3, that is the only area that is left out, as well as Odiorne State Park.

Mr. Fredette stated that the Rye Elementary School, from day one, was a different search ring. It was a different project in a different area of Rye. No matter what is built at Rye Elementary, it would not serve all of northern Rye, which is what Verizon wants to do.

PB Chair Epperson asked why they would want to serve the least populated area of Rye.

Mr. Fredette replied that he does not have the answer to that question. He continued that he believes that a tower at the elementary school would be equally as challenging from a public sentiment standpoint, as it is at this location. If they were to come before the boards with a new cell tower site at the elementary school, he might be asked to prove why a steeple co-location wouldn't work. He explained that they were asked to look at the church steeple in town, which Sprint has just vacated. He would submit that if they were to look at serving the main portion of Rye that would be looked at as a possible solution before building a new tower. However, neither the steeple nor a tower at Rye Elementary would serve the northern portion of Rye.

Attorney Manougian stated that they have shown the gap that Verizon's engineers have found. That is the gap that Verizon wants to fill.

PB Member Carter stated that the elementary school will serve more people and that is a critical need. The proposed site might serve some purpose Verizon has to offer; however, it is not serving the people of Rye. It may be serving some people travelling on Route 1A. The people of Rye, who would be serviced by cell service at the elementary school, have just as bad cell service and it is more critical.

Attorney Manougian stated that the application that is before the boards is for 4G on this site. That is what they are asking for the boards to approve or disapprove.

Selectmen's Rep Roman stated that if there are alternative feasible sites, Verizon does not get their site. She pointed out that the town's expert's map, which differs quite a bit from Verizon, covers nearly all that gap, except that one strip.

Attorney Donovan suggested that Mr. Pagacik comment on his Figure 3.

Mr. Pagacik explained the difference in the maps is really Route 1A, Parsons Road area, Brackett Road and 1B.

Selectmen's Rep Roman noted that a 120ft tower is being proposed with about four or five co-locations. Verizon will be at the top with others below in 10ft increments. According to their analysis, the folks on the top are not going to reach as well as the folks on the bottom, which does not make sense to her.

Mr. Pagacik explained that what he heard was that there is surrounding topography that has to be cleared. The Rye point location does not have that surrounding topography towards the east.

Selectmen's Rep Roman noted that the elevation difference is 20ft.

Mr. Pagacik stated that they have to look at what the elevation is and at what height the topography is cleared.

BOA Acting Chair Crapo stated that the stretch from Brackett Road, around to Odiorne's Point and back to Parsons Road, is being referred to as "northern Rye" with a bunch of citizens that need to be served. Odiorne's Point and a handful of houses are in that loop. The proposed site is to the west of the search ring that was just submitted. He noted that there is more population to be served by looking at the western sphere of coverage versus the northern. He asked why the search ring does not encompass the proposed site.

Attorney Manougian stated there is no question that Verizon wants to cover that corner. The search ring is the suggested place to look. A site was found 200ft out, that Verizon is happy with and will do what they want. A site 1.2 miles south will not do what they want.

PB Chair Epperson asked who did the analysis to figure out the search ring was really indeed in that part of northern Rye.

Attorney Manougian replied that it is done in-house with Verizon engineers.

PB Chair Epperson clarified that the engineers go out in cars to look at the area and look at the demographics of how many people will be served. He is really surprised that they missed this so badly on the population side of things. He agrees that there is a search ring there; however, there

is another search ring that covers significantly more people than this one does. There is only 5,500 people in Rye. Probably a third of the people are in the search ring around the school.

Mr. Fredette commented it will eventually be covered.

BOA Member Dibble stated that the question was asked why the location is outside the search ring. He had this notion that “search ring” is a radio frequency spot that phones are looking for a spot to attach to. It appears that “search ring” is what Verizon has determined that they would like to find a geographic location in to service this area. It has nothing to do with a customer’s phone making a connection. It has everything to do with providing much better coverage for everything along the seacoast.

Mr. Fredette agreed.

PB Vice-Chair Losik stated that she has heard that Verizon considers this a substantial gap in coverage. Verizon can’t provide the voice and data that they want. She continued that this is in a single residence district. The boards are guided by the zoning. In 505.2B, it says that the regulations are enacted basically to “balance the town’s responsibility to provide reasonable opportunities for wireless telecommunication facilities with other objectives of the zoning ordinance and with the goals and objectives of the Rye Master Plan”. When she looks at single residences and its permitted uses, 203.1, she does not see any of this. It seems that use is permitted by special exception and maybe it can get into the area under 203.2E, use necessary for public welfare. However, there is this big discussion about where the people are and the service being provided in an area where there is really not a lot happening. There was discussion earlier about microcells. She asked why they don’t focus on the school area where the population is located and put something smaller in that area. This will allow the boards to balance what the ordinance is saying, which was what the citizenry voted for in Rye, and it gives Verizon what they need.

Attorney Manougian explained that microcells are small cells. There needs to be a macro tower in order for those small cells to work. There cannot be small cell antennas if there is no macro tower nearby.

Mr. Vellante explained that the microcells, in a 4G world, are used to compliment Verizon’s macro network. A broad area of coverage is needed primarily to have service. The small cell solutions are more capacity driven solutions. They are called “hot spots” and are used mostly at strip malls or in an area where there is heavy usage. The cells do not cover very far and are entered by the same physical physics as the macro-sites, except they are on 25ft telephone poles in most cases. They are going to be channeled up and down the roadways in an open area. However, in a treed area they are not going to cover the roadway. Those cannot be deployed to cover such a large gap in coverage as there is in northern Rye.

PB Chair Epperson asked if the issue is that these are too expensive to serve a small amount of people.

Mr. Vellante replied no.

PB Vice-Chair Losik asked why the one in North Hampton works. It is along 1A, where there is heavy traffic and there was no service. Once that was installed, Route 1A, Church Road and Maple had service. In a small targeted area, why isn't there a solution which doesn't require a monopine to be put on single residence property.

Attorney Manougian stated that he is not familiar with the North Hampton site but there has to be a macro-site nearby in order for it to work. In going back to the question, there will be the zoning problem with the microcell. Whether it is a macro tower or a small cell, it is still in a residential zone and a variance is still needed to put it in that zone.

PB Vice-Chair Losik replied that she understands but it might be on a telephone pole or be a better way to do it.

Attorney Manougian reiterated that the big tower is still needed for the little antennas. He noted that they do smaller cells but never in rural communities, such as Rye. They are usually in major cities. Referring to the question as to why the proposed location, he explained that Verizon picked this targeted zone, it is a business decision and they are in it to make money. They need this to be competitive against other carriers and have this coverage gap filled. The 1996 Telecommunications Act had many aspects but the most important was to get rapid deployment, coverage nationally and promote competition amongst the carriers. This was a business decision by Verizon. There is a gap here that they want to fill and unfortunately, it is in a residential zone. If his gap argument wins, then federal law preempts the zoning that doesn't allow cell towers in a residential zone.

Selectmen's Rep Roman stated this is not entirely true if there are alternative feasible sites.

Attorney Manougian replied that this is true but he hasn't conceded that the landlocked parcel that the town owns is a feasible site. He noted that he is never going to concede that State owned property is a feasible site because they can't get a lease signed. He spoke at length at the last public meeting about the Theil property. For his client, that is not a feasible site because it went for two years and was a dead-end.

Attorney Donovan stated that Mr. Theil disagrees with that as it is shown in his letter. He asked if a judge will have to determine whether this is a feasible site.

Attorney Manougian replied absolutely. He stated the ultimate site analysis that was prepared by Mr. Fredette was submitted to the boards. He has emails that documents what happened between Mr. Fredette and Mr. Theil. If it goes to court, those will be submitted. It dropped dead after two years and Verizon has moved on. He reiterated that Verizon has picked this location. Under the Telecommunications Act, it is their right, as a competitor in this industry, to pick a gap and go to fill that gap.

BOA Member Durkin commented that they need a representative from Verizon to tell them why this is a good business decision. There have been a lot of viable arguments from the boards that this is not a very good business decision.

Attorney Manougian stated that he hopes this is a good business decision because these things aren't cheap. They cost anywhere from \$150,000 to \$200,000 depending on site work.

BOA Member Durkin stated it would make more sense to put it somewhere that services a lot more of the town.

Attorney Manougian stated that Verizon has determined, through their analysis, this is where it is needed right now. He cannot second guess it. His marching orders are on this site.

Selectmen's Rep Roman commented there are still gaps and there will have to be another tower.

Mr. Fredette pointed out that they could co-locate their antennas on an existing structure. At some point, when Verizon decides they do need to cover the area on that map, he will get another search ring of a new area where he will be looking for a site. The first thing he will do is look for existing sites in which to co-locate. Just like they did at Pulpit Rock Tower.

Selectmen's Rep Roman stated that this location would be covered with four co-locations. Verizon comes back and says there is another gap that has to be covered, there is no place to co-locate so another tower will be put in with four co-locations. It seems to her that is the business decision because co-location makes money.

Mr. Fredette stated that Verizon is not in the business of vertical real estate. They are in the business of building a network.

Attorney Manougian commented that Verizon would actually prefer not to own towers but in this case there is nobody else doing it so they will do it. Down the road they may sell the tower to a tower company.

BOA Acting Chair Crapo stated that they had heard the school doesn't want it but now the school is open to it. In this town, on the ballot at one point, was whether or not they add the school area and the voters voted it in by majority so it was added. There is already a prior town vote where people said that is one of the possible locations to put a tower. Any public arguments against that are kind of hampered. The abutters might think one thing but the general town voted for it. At this location (120 Brackett Road), it is looking at putting it in an area where the town's people voted to say that is not something they want in this district.

Attorney Manougian stated that he hopes it is true that if they did file an application for the school site that planning board and zoning board hearings would go smoothly.

PB Chair Epperson stated that he understands their position and what they are working at; however, he hopes that they respect what the boards are trying to convey. There has been a lot of testimony about the different locations, especially the school. The school would probably give about 85% of what Verizon is looking for. With the micro towers, or another solution, it certainly could be 100%. Also, the Planning Board went through a whole bunch of meetings to approve new netting at the Wentworth by the Sea Country Club with poles 90ft tall. (He pointed out the location on the map.) Those are in a prime location for something that could be used. He continued that everyone agrees that the cell service in Rye could use some help. The boards are trying to do the very best job for the people of Rye, give Verizon essentially what they want, and have it satisfy the folks who are so emotionally opposed to this.

BOA Acting Chair Crapo stated that there was information earlier about how part of the analysis gets into public safety. If this had been successful with the 'Friends of Pulpit Rock' and that was the proposed site, the radius of coverage would be covering a bunch of water and would not be covering as much of the land as what the Rye point facility is covering. In trying to determine the gap, is it geography or public safety? What is the criteria?

PB Member Carter asked if this has to do with adding coverage to New Castle. This site significantly improves the coverage in New Castle in addition to putting coverage on Wentworth Road.

Attorney Donovan noted that Attachment B shows that coverage.

Mr. Fredette stated that it shows it covering the coast.

Attorney Donovan stated that it was said that the objective was not to serve New Castle.

Mr. Vellante commented that it is going to property over water. It is a collateral benefit; however, that is not the objective. If that was the objective, the site would have been located in that area.

Attorney Donovan asked if they looked at whether they could put an antenna on the Wentworth Hotel that would come across the water and serve the Ocean Boulevard/Odiorne area.

Mr. Vellante replied that he did not look at this. Knowing where that is, yes, it will shoot across the water and cover the northern east/west stretch of 1A but it is certainly not going to cover south or cover Wallis Sands.

Attorney Donovan commented there is also the Rye Elementary School.

Mr. Vellante stated the elementary school is certainly not going to cover Wallis Sands and the Route 1A stretch along Ocean Boulevard.

Attorney Donovan pointed out that there is a difference between Verizon's and Mr. Pagacik's in that respect.

Attorney Manougian commented that New Castle is definitely out of the search ring.

BOA Member Dibble stated that considering all these alternative sites has nothing to do with the application before the boards.

BOA Acting Chair Crapo stated that part of the analysis is that no other feasible site is available.

BOA Member Dibble stated he is not sure he fully agrees. The board's analysis and responsibility is to benefit the citizens of Rye, not to help Verizon pick their best cell site. He continued that he is aware that one of Verizon's competitors looked at Star Island as a location to address the seacoast. He wonders if there has been any consideration about that opportunity. He is aware of a tall tower that UNH operates on Star Island. They have good Wi-Fi and good radio communication back and forth. This might be a solution for a lot of the seacoast roadways.

Attorney Donovan suggested that Mr. Pagacik review the alternates that he looked at and answer any questions.

Mr. Pagacik noted that he looked at Odiorne, Lot 66 (across the street from 120 Brackett), 505 Ocean Boulevard, Wallis Sands and the elementary school. He continued that they talked about the elementary school and Odiorne State Park. There was similar coverage to the proposed site, except on Sagamore, Clark and Parsons where there were some gaps that were not present with the proposed location. Lot 66, across the street from the proposed location, provides similar coverage.

Attorney Donovan commented that Lot 67 is just to the west and owned by the Roper Family Trust who came in for a conceptual subdivision last month. Someone at that meeting asked if they would be interested in a cell tower, knowing that the parcel was not very far from the proposed site. They said that they were interested and asked how they could get the discussion started about whether it would be possible. He continued that he spoke with Mr. Pagacik about whether it would make a difference if the cell tower was on Lot 67 instead of Lot 66, and he said "no".

Mr. Pagacik confirmed.

Attorney Donovan stated that the thing about that particular site (Lot 67) is that there is an old woods road that runs along the boundary between lots 67 and 68.

Attorney Manougian commented that there is also a wetlands crossing. The proposed site does not have a wetlands crossing, just minor wetland impact.



Attorney Donovan replied that the woods road may cross a wetland; however, it does not show that on the map.

Mr. Fredette asked for clarification on the location.

Attorney Donovan commented that Verizon has not looked at anything west of Brackett Road because it is not in the search ring.

Mr. Fredette replied that he did. Referring to the search ring map, he explained that the State property is about 100 acres; the extension of Wallis Sands State Park. That takes up a good “chunk” of the search ring. The Theil property was looked at, which is 32 acres. The Condon property was considered; however, there is no legal access. The town property is the same. Those are the large properties in that search ring based on the tax map. There are other landlocked parcels, inside the search ring, owned by the town that are equally as wet that can’t be accessed. He commented that they have really exhausted the properties that lie within the search ring. He was then forced to look outside the search ring remaining as close to the confines of the direction given by the engineer. In looking at Brackett Road, and the properties to the west side of Brackett Road, most of the houses are set back a fair distance from the road. With regard to the Roper property, it would push the site back to the skinny portion of the lot, across the wetland, and it would be a quarter of a mile west of Brackett Road. He asked where Mr. Pagacik specifically ran his plot so they can talk about feasibility. He reiterated that he looked at the properties west of Brackett Road. It is a reasonable expectation to think that if this was in someone’s backyard it would push it a quarter mile west of Brackett Road, which is significantly further outside the search ring. Not to mention, a lot of areas in Berry’s Brook Watershed hit the national wetlands mapping and there is a chance that there is other wetlands in that area.

PB Chair Epperson noted that the proposed property is also in the wetlands buffer.

Mr. Fredette replied “yes” but it is not in Berry’s Brook Watershed.

Attorney Donovan commented it is.

Mr. Fredette explained that they are in the buffer and trying to mitigate that impact. However, they are not crossing the wetland and impacting the wetland.

Mr. Pagacik stated that from an RF perspective, across the street (Lot 66/67) provides RF coverage. How the parcel is zoned and whether it is feasible, is not his expertise. He reiterated that from an RF perspective, it provides similar coverage as the proposed site. Referring to 505 Ocean Blvd, he noted that Sagamore Road and Parsons Road did not have as good of coverage as the proposed site. The other areas did have coverage.

Referring to Sagamore and Parsons Road in relation to 505 Ocean Blvd., Attorney Donovan noted that Attachment B shows that it seems they are about the same as the proposed site. He is

not sure there are any houses in the white area that is shown on the map. It seemed like the big difference was south of Wallis Road and down to Concord Point, which is not covered. There may not be more than 20 homes in that area. He commented there may not be much of a difference between Figure 6 (Pagacik's) and their Attachment B (Verizon's).

Mr. Pagacik noted that the impact is primarily southwest and south. At Wallis Sands, the impact is to the north. Route 1B and Odiorne State Park areas do not have as much coverage as proposed.

Attorney Donovan commented that he believes most of his questions have been discussed. They still have not addressed Selectman Roman's question as to what Verizon is really trying to accomplish. What is the most important part about the gap to Verizon and why? This is gap that covers a limited number of Rye homes, Odiorne State Park which is used sporadically throughout the year, Wallis Sands Beach which is used in the summer for the most part, and traffic on Route 1A for a three or four minute stretch.

Mr. Fredette stated it is best to look at the before and after plots that show the gaps in coverage and the footprint they are looking for in Rye.

BOA Member Dibble stated that during the summer months Rye has a very heavy vacation and tourist industry. There is a large amount of tourism along Route 1A. He perceives that people are using GPS equipment more than other devices that require bandwidth. He asked if Verizon has any data that speaks to the amount of that kind of traffic and the importance it would have to people utilizing the roadways around Rye. What kind of communication traffic is going on in that territory?

Mr. Vellante explained that their calculations show that the proposed site will provide coverage to the 17% of the population of Rye that does not have reliable coverage today.

Attorney Donovan commented that is based on Verizon's extrapolation of census block data. He asked why they don't go out and count the houses; a windshield survey.

Referring to Mr. Pagacik's analysis, BOA Acting Chair Crapo stated that not all the sites in the search ring cover the same as 120 Brackett. The only other site in Mr. Pagacik's analysis that covered the same scenario is Lot 66. He noted that both of those properties are west of the search ring. Why is the search ring where it is?

Mr. Fredette stated that Verizon is not only trying to provide coverage to residents in this area but also to people who use that State route.

Attorney Donovan asked for the percentage of Verizon customers who live and travel in this area who are having problems with coverage gaps.

Mr. Fredette replied that he does not have that information and he suspects they would tell him that is proprietary information.

Attorney Donovan pointed out that some of the cases that he has read suggest that this is important information.

Attorney Manougian stated that he is not sure that they can say they are only covering 17% of the residents and don't care about the traffic in the summer. That goes back to the Telecommunication Act. Everybody has to have rapid deployment and national coverage.

BOA Acting Chair Crapo asked if they are expecting to service 1,000 extra phone calls a day, 100 or 4. Verizon must have a goal of how many phone calls they want to service by this site.

In regards to the house count, Attorney Manougian explained that Mr. Vellante uses the data base that is available, which has been used in court. Counting houses can be done but it doesn't answer the question of how many people live there. The census is a better indication and it's a uniform standard. They have never been told by a court to go count houses. So far, in all the cases that he has been involved in, the statistics that Mr. Vellante used has been an acceptable way to count the population in a town or city.

Attorney Donovan stated that a standard planning survey is a windshield survey that counts the houses. Someone can go to the census, count the number of persons per dwelling unit in Rye and multiply one times the other to get how many people. Counting the dwelling units would take no more than two hours to do the area where Verizon is claiming there is a coverage gap. There was also employment information given based on census track data. He asked why they don't just give the list of employers this is going to solve problems for. There are hardly any employers in that coverage gap area.

Mr. Fredette commented that this is not going to change Verizon's position.

Attorney Donovan stated it is going to be different statistical data than what is now being presented to the boards. Verizon should not rely on statistical calculations that are questionable to begin with because of the mapping system.

Mr. Fredette asked how this information would change the face of the application.

Attorney Donovan explained that Verizon is saying that this would be serving a certain amount of people. If that was overestimated by 200% that becomes significant. It becomes a question as to the credibility of the information that was provided by Verizon.

**At 8:53 p.m., PB Chair Epperson called for recess.**

**So moved by Steve Carter and seconded by Patricia Losik. All in favor.**

**PB Chair Epperson reconvened the work session at 9:05 p.m.**

Attorney Donovan stated that one of the last items that he wanted to talk about are the parameters that make a site feasible. There was talk about some sites not having feasible access.

Mr. Fredette explained that the most obvious parameter would be legal access. Can Verizon gain legal access to the property? The wetland impacts and crossing on buffers are considered. Building setbacks might cause the site to be moved to an area that is unbuildable. Topography is considered because there is such a thing as “too steep”.

Attorney Manougian noted that the other parameter is whether a lease is able to be negotiated.

Attorney Donovan commented that expense was not mentioned.

Mr. Fredette confirmed.

Attorney Donovan asked if this is a factor.

Mr. Fredette replied to some degree but not in this case.

PB Chair Epperson noted that there were some questions submitted by the public. Selectman Roman has been tracking those questions that have been answered but there are a few that have not been.

Attorney Donovan explained that the questions from residents will be sent to Attorney Manougian to be answered in writing.

### **III. Discussion of alternate driveway layouts. Vote on which one is preferred.**

**Audra Klumb, wetland and soil scientist, representing Verizon,** stated that she and Mark West (on behalf of Rye) visited the proposed site. He reviewed the wetlands boundary. Mr. West moved the flag just south of the compound about 1.4ft towards the southwest. He also made some comments about the wetland in that area that the site is buffering. The buffer goes up to the edge of the compound where the tower is being built. It is fairly open beyond that. It is not a high poaching wetland. It is more of a transitional wetland. She noted that Mr. West reviewed her report that was submitted and did not have any views against what was stated. Mr. West didn't find that the project would have a large impact on the buffer.

PB Chair Epperson stated he saw the report and concurs that Mr. West moved the boundary 1.4ft to the southwest. There was not a lot of discrepancy on the wetlands between Ms. Klumb and Mr. West.

Ms. Klumb noted that Mr. West also reviewed the two driveway options.

Attorney Manougian stated that Mr. Fredette is going to present a third driveway option.

Referring to Sheet CO-3A dated July 18<sup>th</sup>, Mr. Fredette stated that they heard the concerns at the site walk and prior meetings. This third option would be the least amount of impact to the buffer area as possible, including cutting down as few trees as possible to construct the site. (He reviewed the third option on the plan before the boards.) He stated that in this configuration they would be cutting the least number of trees in comparison to the “blue” and the “pink” routes that were reviewed in the field.

BOA Acting Chair Crapo asked how this would affect the utility run.

**Clem Salek, Chappell Engineering, representing Verizon**, stated that a lot of that depends on where National Grid wants to put the Verizon pole. The intent is to have the location of the pole be next to where a vehicle would pull in on the third road option. The utilities would run alongside the road.

PB Chair Epperson asked the width of the proposed driveway.

Mr. Fredette explained that travelled portion would need to be 10ft. He is not sure how much additional space would be needed to the right side for underground utilities.

PB Chair Epperson noted this eliminates about 18 trees from being cut down.

Selectmen’s Rep Roman asked if this would be looking straight at the tower.

Mr. Fredette explained that it is straight and then makes a “J” hook. The site would be set a little off from the entrance.

Attorney Manougian explained that they would be planting arborvitaes in the location of the current driveway.

PB Member Lord asked why the existing driveway is not being used so no existing trees have to come down to cut in the new road. It seems that less trees would have to come down.

Mr. Fredette commented that it wouldn’t be that many more.

BOA Acting Chair Crapo stated the existing driveway goes in and heads south. There are rocks in that area. He asked if that is ledge.

Attorney Manougian explained there is ledge and roots coming up out of the ground in that area.

Mr. Fredette noted that option 3 will take out about half as many trees as the other two options.

Attorney Manougian commented that at least two of the trees that are being taken out are dead.

The boards reviewed driveway option 3.

PB Chair Epperson stated that the plans should be redone and each board will take a look at it individually.

**IV. Each Board set a date for their next, separate, hearing.**

- **For ZBA a continuance from August 1<sup>st</sup>.**

**Motion by Tim Durkin to continue the application to a Zoning Board Meeting on August 27<sup>th</sup>, place to be determined. Seconded by Burt Dibble. All in favor.**

- **For Planning Board a continuance from August 14<sup>th</sup>.**

Planning Administrator Reed noted that the application is on the agenda for the Planning Board Meeting of August 14<sup>th</sup> but it will not be heard. It will be continued at that meeting to a date certain, after the ZBA meeting.

Attorney Donovan explained that he suggested to the boards that the meeting on August 27<sup>th</sup> would be the final hearing of the ZBA. He suggests that the applicant make their final presentation as to why they believe all the applications before the ZBA be granted. He suggests that the abutters and the neighbors designate two people to make a closing presentation, as well. After that, the ZBA Public Hearing will be concluded and they will deliberate with a decision either at that meeting, or it may take more than one night for deliberations. It seems that all Verizon's information will be out there once the last set of questions are responded to.

A deadline for the additional information and plans to be submitted was set for Monday, August 20<sup>th</sup>.

Attorney Donovan stated that his recommendation to the Planning Board is that their meeting be scheduled some time after the ZBA meeting.

Attorney Manougian noted that he got permission from Verizon to extend the shot clock to September 30<sup>th</sup>. He continued that they are submitting new information on stormwater and wetlands for option 3. He asked if that information is needed before the meeting.

PB Chair Epperson noted that Sebago Technics has a whole laundry list of things that need to be addressed.

There was discussion on having the plans submitted to Sebago Technics in time for the ZBA to review the information on the drainage, as the BOA board members feel it is important to have as part of their decision.

Attorney Donovan pointed out that if they can agree that it is the ZBA's initial decision that has to be completed before the shot clock, they do not have to worry about the date of September 30<sup>th</sup> because a decision will be made by then. He continued that he heard that the applicant would prefer to not have the ZBA meeting on August 27<sup>th</sup> but the first part of September in order to get the drainage work completed.

Attorney Manougian confirmed.

The BOA members reviewed the calendar for a special meeting date for the application. After some discussion, it was agreed to move the meeting to September 4<sup>th</sup>.

**Motion by Burt Dibble to move the application to September 4<sup>th</sup> instead of August 27<sup>th</sup>.  
Seconded by Patrick Driscoll. All in favor.**

Attorney Manougian confirmed that the drainage study will be submitted to Sebago Technics by August 20<sup>th</sup>.

Planning Administrator confirmed that the ZBA meeting will be held on **September 4<sup>th</sup> at 7:00 p.m., Rye Town Hall.**

There was discussion and agreement on the applicant answering the abutters' questions by August 10<sup>th</sup> so the abutters can review before August 20<sup>th</sup>.

Attorney Donovan noted that back in January the Gemmetts submitted a memo and citations to different publications which had to do with property values. He suggests that those be provided for the board and be made part of the record.

Attorney Manougian commented that he had no problem with this but that it is not a certified appraiser's report that counters Verizon's certified appraiser's report.

## **V. Other Business**

- None

## **Adjournment**

**Motion by Nicole Paul to adjourn at 10:00 p.m. Seconded by Patricia Losik. All in favor.**

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

Respectfully Submitted,  
Dyana F. Ledger