

ZONING BOARD OF ADJUSTMENT

**TOWN OF EASTON
1060 EASTON VALLEY ROAD
EASTON, NH 03580**

**PUBLIC MEETING
SEPTEMBER 16, 2015**

MINUTES

The meeting was called to order at 7:00 p.m. Present for the Board were Chairman Greg Sorg and regular members John Hynes, Dennis Ford and Ellen Pritham. Alternate member Kris Pastoriza, designated at the August 26th meeting to serve in the place reserved for the Select Board *ex officio* member, continued in that capacity. A quorum was therefore present and so declared. Also attending the meeting were approximately 20 members of the public.

The Minutes of the public meeting of August 26, 2015 were approved, with two amendments.

The Board then re-convened the adjourned public hearing on the application for a Special Exception under Article 6, Section 602.2 (12) and Article 8, Section 809 of the Easton Zoning Ordinance filed by Blue Sky Towers, LLC (Applicant) and T-Mobile Northeast, LLC (Co-Applicant), on behalf of T&T MTN Investments, LLC (Owner) for the construction of a 150 foot tall wireless telecommunications monopole tower facility at 3 Lost River Road (Tax Map 7, Lot 41-2).

Kris raised the question as to whether the 150 day “shot clock” had been suspended. John stated his belief that the Board’s request for additional information at the August 26th meeting had suspended it, besides which he was not willing to concede that the Application was yet complete, since until the Application could be reviewed by a qualified independent expert, the Board could and would not know whether anything was lacking that should have been included in order to make it complete. Attorney Earl Duval, representing the Applicant, asserted that the Application was in fact complete and that the Town had conceded that to be so by accepting it. He stated, in addition, that in view of the Application’s completeness, he could have objected at the August 26th meeting to the gathering of the supplemental information to be presented at this meeting, but that as a courtesy he had not. Following further discussion on the issue, Attorney Duval agreed to stipulate on behalf of the Applicant that the clock would be deemed to have been stopped for the period between the August 26th meeting and this one.

Roy Stever, Chairman of the Easton Conservation Commission, read and submitted a letter for the record on behalf of the Commission. The original was accepted and a copy was given to Attorney Duval.

James S. George, site acquisition manager for the Applicant, submitted additional documents and gave additional testimony based on them to re-enforce his previous testimony as to why - guided by the principles that the site selected must be “leasable, zonable and constructible” – the proposed site was the only feasible one. The principal problem to be overcome, he said, was that Easton’s topography made efficient networking with other towers difficult, which ruled out the other proposed locations. With specific reference to the gravel pit site owned by Graydon Peckett, he said that it being further east than the proposed site, coverage was reduced west and south on Route 112 and also east by reason of the site’s greater proximity to Kinsman Mountain. In contrast, he said, the proposed site melds seamlessly with the Woodstock tower. He also stated that neither the alternative Tunnel Brook Road, Cobble Hill trail, and Slide Brook Road sites propagated as well as the proposed site; and that changing the site to any location west or south of the one proposed would cause reduction or loss of coverage along Route 112.

Mr. George summarized by saying that the proposed tower, wherever located, must network among two or three others; that the Canon Mountain tower won't cover the south end of Easton; that no tower or other structure presently in existence will cover all of Easton; and that a tremendous effort was made to investigate all reasonable alternative sites before settling on the one proposed.

Kris stated to Mr. George had he not looked at locations on Tunnel Stream Road as had been requested. He responded that it was his understanding that Tunnel *Brook* Road had been the area requested, not Tunnel *Stream* Road. He did not offer to gather Tunnel Stream Road data to resolve this disagreement and resulting information deficiency.

Kris questioned the accuracy of the computer modeling used to create the propagation maps supporting the Applicant's conclusions. Mr. George responded that T-Mobile models per FCC rules, using models reflecting the latest technology. Attorney Duval added that the same propagation maps are used by all carriers; they are accepted and relied upon as expert; and that the Board would need a contrary opinion from its own qualified expert to overcome the conclusions the Applicant has made based upon them.

Kris asked whether T-Mobile can legally co-locate on other carriers' towers. Mr. George said it can, but that the propagation data generated by those carriers, which has been furnished to the Board, support the Applicant's position that the proposed site is the best.

Kris objected to the quality of the maps; in particular that they lacked adequate labeling and that their different scales prevented easy comparison by means of overlaying them. Mr. George responded that they showed what they needed to support the Applicant's case, in that they depicted area roads sufficiently to demonstrate coverage gaps from the different possible sites. Attorney Duval added that if the Applicant could avoid building a tower and accomplish what it needed to by co-locating on another tower or other structure it would gladly do so, and that the proposed tower's proposed height is the minimum necessary to enable interaction with the other towers; that less height equals less coverage. The Applicant, he stated, has shown what a 150 foot height accomplishes; that less would do less and more would do more; and that 150 feet is the minimum required to accomplish the necessary coordination.

John asked how the Board can judge whether the proposed 150 foot height is appropriate if the potentialities for height and location of other towers are ruled out. Mr. George responded that the Easton ZBA cannot dictate what other towns must require of the towers in their towns in order to mitigate perhaps 10 or 20 feet of the height of Easton's.

Ellen asked about the possibility of camouflaging the tower in order to mitigate its visual impact. Mr. George responded that such efforts tend instead to draw attention to the tower; it is clearly a tower no matter what is done to disguise it.

Kris said that at the last meeting she asked for propagation data for all existing transmission locations within a 20 mile radius. Attorney Duval responded that such data is irrelevant due to the topography of this region and that data for all facilities within a reasonable distance that could affect conditions here have been provided and discussed.

The floor was then opened up to members of the public with questions for Mr. George.

Jim Page of 53 Hummingbird Lane asked if Graydon Peckett had even been approached, as his gravel pit site is easily accessed. Mr. George responded that, for the reasons already stated, the Peckett site did not achieve the Applicant's coverage objectives, besides which that site is within a residential area - in fact, only 900 feet from the Page home - and that the Applicant tries to avoid locating towers in residential areas.

Campbell McLaren of 50 Gibson Road suggested that the Board get an impartial third party evaluation of the Application for purposes of verifying the Applicant's claims. Greg responded that the Board was not yet at that point on this meeting's agenda.

The floor was then given to Andrew Lemay, a real estate consultant engaged by the Applicant to address concerns expressed at the August 26th meeting about the possible diminution of values of properties from which the proposed tower would be visible. He stated that he held a B.A. in business administration and was a certified New Hampshire real estate appraiser. His testimony and supporting documentation was to the effect that, while it is generally believed that being in the viewshed of a cell tower will diminish a property's value, all the intrinsic data from actual sales all over the United States is to the contrary; that having a cell tower within sight does not affect sale prices. Whether it affects assessed values, Mr. Lemay pointed out, is an entirely different question, which he did not undertake to study. He said that the data show that while there are certainly many people who care about having a tower-free view, there are also many who do not, enough to prevent the overall market from being affected.

Kris asked whether Mr. Lemay had categorized by type of viewshed. He responded that he had not, because in every case the view of the tower concerned – of whatever type - had had no effect on prices between properties that in every other respect were substantially identical. There was thus no need to categorize the viewsheds.

Kris asked Mr. Lemay if he had incorporated lot size into his study, since differing lot sizes might affect the potential to ameliorate a tower's effect on a given lot's value. He responded that he had not.

Kris asked Mr. Lemay if he had taken into account the proposed Northern Pass transmission line, whose effects on local property values and sales prices might invalidate comparisons between them and other properties. He said he had not.

Ellen asked Mr. Lemay if he had visited the properties along Hummingbird Lane that had been the focus of the Board's concerns. He responded that he had not.

The Board then undertook deliberations.

John said that, in view of the evident fact that the Board could not make a decision either to grant or deny the Application that would stand up in court unless it was supported by expert opinion, he had contacted the North Country Council to learn whether it could refer the Board to an independent such expert who could perform a peer review of the Application and of the evidence gathered in the course of the public hearings on it. He said that he was referred to Ivan Pagacik, President of IDK Communications of Littleton, Massachusetts; that he had spoken with him; and that he had received a letter from Mr. Pagacik containing a proposal. John submitted the letter, dated September 16, 2015, to the Board, and a copy was given to Attorney Duval, who expressed the Applicant's willingness to advance to the Town IDK's estimated charges of \$3,500.00.

Greg then moved as follows: "That the ZBA retain IDK Communications to conduct, at the Applicant's expense, a peer review of the Application and all supporting materials, exhibits and other submissions, at a cost not to exceed \$3,500.00, said cost to be subject to further review as circumstances may indicate and as the ZBA and the Applicant shall agree at a subsequent public meeting." Dennis seconded the motion, which passed unanimously.

Attorney Duval asked if any Board member had any other requests of the Applicant for additional information. No request was made.

Following discussion with Attorney Duval as to when to re-convene, it was moved, seconded and unanimously voted to adjourn this public hearing to Wednesday, October 14, 2015 at 7:00 p.m.

Approved October 14, 2015.

Gregory M. Sorg
Chairman