

ZONING BOARD OF ADJUSTMENT

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

**PUBLIC MEETING
NOVEMBER 19, 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, Ellen Pritham and Kris Pastoriza. A quorum was therefore present and so declared.

Attending the meeting on behalf of the Board were Attorney Robert Ciandella of Donahue, Tucker & Ciandella, PLLC; and Ivan Pagacik, President of IDK Communications. Attending on behalf of the Applicant were Attorney Earl Duval of Duval, Klasnick & Pastal, PLLC; Jesse M. Moreno, PE; Ryan Monte De Ramos, radio frequency engineer for T-Mobile; and James S. George, Site Acquisition Manager. Also attending were State Representative Susan Ford and approximately 12 other members of the public.

The Minutes of the Board's public meeting of October 28, 2015 were approved with an amendment to reflect the appointment of Tom Boucher as an Alternate Member of the Board.

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).

The Chair recognized Attorney Ciandella, who gave a summary of the applicable law. He noted that the federal law does not entirely supplant local land use regulatory law or boards, but limits federal pre-emption to requiring a local board decision in a reasonable time, based upon the evidence, that remedies the coverage gap, and does not discriminate among providers. He said the law adopts the competition model rather than the public utility model. Attorney Duval responded briefly.

The Chair then recognized Ivan Pagacik, who summarized his seven-page Report of November 12, 2015, which, together with its 13 exhibits ("Figures 1 through 13") have been entered into the record. He concluded that no one site he and the Applicant examined covers all of Easton, but would be one piece of the "jigsaw puzzle" of coverages of several tower sites that among them would eliminate all coverage gaps. He said that in general constructing higher towers will allow fewer of them and constructing lower towers will require more of them in order to bring about the desired coverage; that constructing further east or further south than the proposed site would affect coverage to the west and south, respectively, just as constructing at the Applicant's proposed site would impact coverage to the south and east; and that every alternative involves trade-offs and reflects competing values and objectives.

Asked specifically about the site on Lot 3 suggested by Jack Portinari at the October 28th meeting, he said that, as long as the elevation remains the same, the distance between that site and the Applicant's proposed site would be so slight that there would be no significant difference in propagation.

Asked about the Grayden Peckett's William's Pit Road gravel pit site, he said that at the same height, there would slight losses of coverage to the west in vehicles traveling on Route 112 and to the north in vehicles traveling on Route 116. He emphasized, however, that the specific site proposed by the Applicant will not solve the local propagation problem totally; that it would be but the first in a network from which - and based on which - others will be constructed.

Kris asked Mr. Pagacik whether all the possible tower heights and locations he mapped eliminated the serious gap, and he replied in the affirmative. John said that it was his understanding of Mr. Pagacik report's findings that the Applicant's proposed site was the best option for T-Mobile, and asked if he was correct in that assessment. Mr. Pagacik responded in the affirmative.

The Board declared a recess at 8:10 p.m. for the Applicant's representatives to confer. The meeting resumed at 8:35 p.m.

Ryan Monte De Ramos, radio frequency engineer for T-Mobile, showed the T-Mobile network presently existing in order to demonstrate that the proposed site was not randomly selected. He said that even at a height of 150 feet the local coverage gap would not be eliminated in its entirety; that even that height represents a compromise, but that T-Mobile could accept a further compromise to 130 feet, and address the resulting increased coverage gap through coordination with present and future structures.

Attorney Duval acknowledged that the Easton tower was indeed a piece of a puzzle, but that it was not the first piece overall but only the first in Easton. He said there are several existing structures upon which T-Mobile is in the process of co-locating, and that the proposed Easton structure will fill a gap in coverage that exists even taking into account the on-air reach of all those existing structures. John asked whether whatever height the Board approves means *de facto* approval of a height 20 feet higher, since a carrier can make such an increase without further approval. Attorney Duval responded that whether that increase takes place will depend upon the circumstances of other carriers that may wish to co-locate on the tower, but that T-Mobile has no intention of inducing BlueSky to increase the approved height based upon T-Mobile's own circumstances. John expressed skepticism, suggesting that the only way the Board could ensure a 130 foot height limit would be by approving a 110 foot height; that only in that way could the Board ensure that the Town won't wind up with a 150 foot high tower without Board input.

Kris raised the question of how responsible Easton is for eliminating coverage gaps in Landaff, Benton and/or Bath. Attorney Ciandella responded that no appellate court has yet decided whether a town has a duty to consider the effect of a tower's height upon adjoining towns if the approved height accommodates the town's own needs. He cited a recent New Hampshire federal trial-level decision that held that the Town of Hopkinton had no such duty. Greg wondered whether such a view, if generalized, would not constitute a frustration of the basic federal objective of bringing about complete coverage. Dennis observed that it is certainly T-Mobile's purpose - and a perfectly legitimate one - to close the coverage gap beyond Easton. Ellen observed that an important part of the testimony at the August 26th public hearing was the desire to eliminate the coverage gap along Routes 112 and 116 for Emergency 911 purposes.

Kris made a motion that IDK Technologies determine the shortest height the proposed tower could have in its proposed location and at each of the other four locations that had been suggested that would, in conjunction with the existing Cannon Mountain site, close the coverage gap in Easton. Greg seconded. John asked, what is the use of this? We already know that lower heights cause losses of coverage. Ivan Pagacik responded that no one tower would, in conjunction with the Cannon Mountain site, close the gap unless it were unreasonably high, which would create coordination problems with other locations.

He repeated the tradeoff: the lower the height, the less visually objectionable each tower would be, but the more towers would be required; and the higher the height, the more visually objectionable each tower would be, but the fewer towers would be required. Ellen moved the question. The motion was defeated 4 to 1.

John returned the discussion to the Lot 3 site suggested by Jack Portinari at the October 28th meeting, and asked the Applicant to cause a balloon test to be made of that site. He said that the residents of the area, who had endorsed the suggestion, might be mistaken about the effect of this location on their respective viewsheds, but that it ought to be tested. Attorney Duval agreed to present the request to his client and report its response to the Board tomorrow.

The Board then voted to adjourn the meeting until Thursday, December 10, 2015 at 7:00 p.m.

Approved December 10, 2015.

Gregory M. Sorg
Chairman