

ZONING BOARD OF ADJUSTMENT

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

**PUBLIC MEETING
AUGUST 26, 2015**

****DRAFT** MINUTES **DRAFT****

The meeting was called to order at 7:05 p.m. Present for the Board were Chairman Greg Sorg and regular members John Hynes, Dennis Ford and Ellen Pritham. Alternate member Kris Pastoriza was designated to serve in place of Ned Cutler, who had disqualified himself, having in his capacity of Selectman voted to deny Blue Sky's application for a building permit. A quorum was therefore present and so declared. Also attending the meeting were approximately 20 members of the public.

The Minutes of the Board's public meeting of July 28, 2015 were approved unanimously.

The Board then convened the 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). It was noted that notice of the hearing was published in the August 19, 2015 issue of *The Littleton Courier*; that all the abutters on the list submitted by the Applicant with its Application were properly notified by certified mail; that notice was mailed by first class U.S. mail to each of 22 surrounding towns in New Hampshire and Vermont; and that notice was properly posted.

Attorney Earl Duval, representing the Applicant, objected to the seating of Kris Pastoriza, based on a conflict of interest arising from her seeking Section 106 (historical resources assessment process) consultant status with the Federal Communications Commission. Chairman Greg Sorg, citing a lack of clear standards for disqualification on the ground alleged, left it to Kris to determine whether she could serve impartially, but agreed to note Attorney Duval's objection in the Minutes. Kris chose to remain seated as a voting member of the Board.

Blue Sky's presentation was coordinated by Attorney Duval. He testified that the Applicant's presentation was directed towards showing the Board that: (1) T-Mobile has a significant gap in its local cellular telephone service coverage; (2) the proposed monopole tower's planned height is - in coordination with other existing or planned towers - the minimum necessary to remedy this gap; (3) a tower is necessary because there is no building within the radius of the system's geographical constraints high enough to enable elimination of the coverage gap; (4) no other less visually intrusive technology is presently available; and (5) the monopole as proposed is the best solution to the problem of limited coverage in this area.

Making presentations on the Applicant's behalf were Jesse M. Moreno, PE, who testified about the design of the infrastructure to be constructed and installed on the proposed site; Ryan DeMonte, a radio frequency engineer for T-Mobile, who testified about the tests and simulations, both in isolation and in relation to other contiguous sites, that led to the choice of the proposed site; and James S. George, site acquisition manager, whose testimony concerned how he - guided as he said by the principles that the site selected must be "leasable, zonable and constructible" - reviewed all reasonable alternative sites before settling on the proposed site as the only feasible one.

Tom Adross, Director of Communications for the Grafton County Sheriff's Department, testified on the desirability of expanding cellular communications capabilities in the area for purposes of Emergency 911 service, making the points that already 80% of its calls are wireless, and that federal law requires cellular towers' owners to accommodate Emergency 911 service.

Attorney Duval concluded the Applicant's presentation by citing and elaborating on the content of the Applicant's Exhibits 11 through 15.

The floor was then opened to questions from the Board.

John Hynes' question concerning the possibility of increasing the height of the tower further, even if the special exception specified the requested 150 feet, elicited from Attorney Duval the response that the tower's height could in the future be increased by 20 feet without further ZBA approval. John's follow-up question as to why the ZBA should not then approve only a 130 foot high tower, since the Applicant apparently could increase it to the desired 150 feet without further ZBA approval, received no answer.

Ellen Pritham asked why the Applicant did not co-locate on existing towers in the area, rather than build the proposed Easton and all the other proposed new towers, since some appeared to be only 7.5 miles apart. Mr. Moreno answered that the existing cell towers either were not tall enough to overcome local topography or were too close to necessary proposed new towers, the proposed site of the Easton tower being planned as part of a coordinated system of towers whose overall goals are to eliminate all gaps in local coverage and to have direct line coverage with one another so as to enable the relay of communications. He answered further that while the proposed site may not necessarily be the best for the Town of Easton or all its people viewed in isolation, it is – in coordination with the other existing and planned towers - the best site for the towns and people of the region as a whole. Mr. Moreno later acknowledged that co-locating on the existing tower atop Cannon Mountain was under consideration.

Dennis Ford elicited the Applicant's understanding of the effect of the Telecommunications Act of 1996 on the ability of localities to limit or prevent cellular tower construction. According to Attorney Duval, federal law requires licensees to obtain full coverage in their regions, which in turn makes it inevitable that all towers deemed necessary to enable full cellular communication coverage will be erected regardless of the wishes of the people of any particular town, and that the role of local land use boards such as the Easton ZBA is limited to trying to influence the accomplishment of this goal as agreeably to their respective towns as possible.

Kris Pastoriza's questioning concerning the Applicant's consideration of alternative sites elicited the response that Exhibit 9 shows that the effect of using any of the alternative sites in Easton would be the failure to close the coverage gap and detriment to the overall tower network plan. Attorney Duval objected to the scope of her request for data on existing and planned monopoles located or to be located within a twenty mile radius of Easton on the ground that it does not affect Easton and is therefore irrelevant to the Application before the Board. Kris disagreed that the Application's exhibits showed conclusively the effect of alternative sites on the full picture of the proposed tower system, and wanted clarification of what constitutes the "significant gap" in coverage used to justify rejection of each of those alternatives. Not satisfied that the Application, exhibits and testimony were conclusive on these issues, Kris made a motion that the Board retain an independent expert at the Applicant's expense to review the Applicant's investigation, methodology and conclusions, and report his or her findings to the Board. The motion was not seconded, so no action was taken on it.

When asked what would happen if the Board were to deny the Application, Attorney Duval said the Applicant would sue the Town, and that, because the court would compare the Applicant's conclusions, which would be based upon expert opinion, with the Town's conclusions, which would be coming from non-expert opinion of the Board members, it would rule in favor of the Applicant.

The Board having no further questions, the floor was opened for testimony from members of the public.

Dennis Lancaster and Steve Sabre testified in favor of expansion of cellular service coverage generally, citing danger to the public and costs to businesses of coverage gaps and temporary losses of service.

Jim Page and Alma Jean Boisvert testified in opposition, citing in particular loss of value to properties on and in the vicinity of Hummingbird Lane that will be caused by the high degree of visibility of the tower from them, and the degrading of the scenic values of an historic corner of the Town of Easton. Jim Page also asserted that the specifications the Applicant submitted to the Grafton County Commissioners differ from those submitted with its special exception application to the Easton ZBA.

Deborah Stever pointed out that Easton has defeated the proposed installation of wind towers in Easton and appears to be on its way towards defeating the proposed ultra-high utilities towers of Northern Pass, and that the Board should consider Blue Sky's Application in that light. She stated that the Conservation Commission has concerns about erosion control, and the Selectmen have concerns about safety of residents and reduction of property values in the vicinity. She said that since she, as a Verizon customer, gets consistently good cellular telephone service, she wonders whether the proposed tower and tower network system would benefit Easton at all, or would simply benefit other communities at Easton's expense. She also questioned the accuracy of the Applicant's assertion that it cannot utilize a site less harmful aesthetically than that proposed.

There being no further testimony from the public, the public hearing portion of the meeting was closed.

Pursuant to procedural rules announced at the beginning of the meeting, the Applicant was given the opportunity to make a summation.

Jesse Marino stressed that the use proposed is a permitted special exception use rather than a non-conforming use; that that being the case, the Easton Zoning Ordinance specifies what is to be provided in order to qualify Blue Sky to exercise that use; and that Blue Sky has provided what the Ordinance requires. He stated further that the Application provides more construction detail than required; that the landowner will run its utilities lines through underground conduit, through which the Applicant will run its own; that the Applicant will make provision for emergency electrical outage backup, upon which other tower lessees may improve; and that in addition to steps the Applicant will make, the landowner can be expected competently to conduct proper landscaping and road construction on the land purely in its own interests.

John Hynes asked the Applicant to evaluate the three alternative sites proposed by Jim Page. Greg Sorg, after noting the apparent conflict between James George's testimony as to his sensitivity towards preserving local property values in the process of the Applicant's site selection and Jim Page's testimony as to the serious impact that construction of the tower where proposed would have on the value of his and his wife's home on Hummingbird Lane, asked Attorney Duval to be prepared at the next meeting to elaborate on this aspect of the application process, which implicates Section 809(A)(2) of the Easton Zoning Ordinance. He agreed to both requests, and to have responses ready at the next meeting. He indicated that the Applicant's appraisal information would show no diminution in real estate values from telecommunication towers.

Kris Pastoriza made a second motion: that the Town hire at the Applicant's expense an independent expert to review and report to the Board as to: the coverage gap and any practicable alternative means of eliminating it; alternative sites; the Applicant's decommissioning cost estimate; the Applicant's specifications; and the effect of the proposed tower on real estate values. This motion also was not seconded.

The Board and Attorney Duval agreed that Wednesday, September 16, 2015 at 7:00 p.m. would be a suitable date and time to reconvene consistent with fulfilling the Board's requests for additional information. Accordingly, at 10:20 p.m., it was moved, seconded and voted to adjourn the public meeting on the Application of Blue Sky Towers, LLC for a special exception until Wednesday, September 16, 2015 at 7:00 p.m.

**Gregory M. Sorg
Chairman**