

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
March 31, 2021  
(Conducted via Google Meet)**

**RECEIVED**  
MAY 24 2021  
WESTPORT ZONING  
BOARD OF APPEALS

**Members Present:** Roger Menard, Chairman  
Gerald Coutinho, Vice-Chairman  
Constance Gee  
Peter Borden  
Raymond Elias

Chairman Menard called the Zoning Board of Appeals meeting to order at 6:30 p.m. with the reciting of the Pledge of Allegiance.

**Chairman's Announcement** - Under MGL Chapter 30A, Section 20(f) - Meeting being recorded.

**Governor Charlie Baker's Mandate**

Chairman Menard opened the hearing by reading the provisions mandated by Governor Charlie Baker's guidelines regarding the congregation of people at the Town Hall and the manner in which municipal boards should meet and hear matters on their agenda. The Board of Selectmen had, a week ago, distributed a memorandum to all Town Departments and Boards that the Town Hall would be closed to the public as of Monday, November 16, 2020 and, therefore, this hearing would be conducted remotely.

Chairman Menard also noted that Town Departments and Boards had received a recent mandate from the Governor regarding deadlines within which the Board would be required to make determinations as to land use applications.

Chairman Menard advised that the meeting was being conducted remotely by accessing Google Meet. A roll call of the members' votes will be conducted for each motion. The Board would receive information and documents from the petitioners and, then, accept comments from anyone in attendance before closing the hearing and making a decision.

1. Chairman Menard read the public hearing notice on the petition of Frank Epps/Westport Sand and Solar LLC, for a 12-month extension of commencement of the project pursuant to General Conditions, Number 3 of the Special Permit granted February 5, 2019. The subject property is located at 536 Old County Road, Westport, MA, shown on Assessor's Map 34, Lots 7, 8 and 52.

Chairman Roger Menard read the letter that the Board had received from Frank A. Epps of Westport Stone & Sand Solar, LLC.

John Schroeder of Energy Development Partners (EDP) provided the Board with a chronological list of events, as follows. The project development cycle began in June 2018 with the filing the required application with Eversource for interconnection. That was deemed complete in July 2018. Eversource did not communicate with EDP for several months. In December 2019, EDP filed a timeframe compliance request. In early 2020, EDP received a response from Eversource. In October 2020, EDP received a distribution system and back study from Eversource. With that system impact study receipt, it was conveyed to EDP by Eversource that the affected system operator meeting would occur in December 2020, which was later delayed until May 18, 2021. EDP anticipates the project being approved at that meeting, with EDP receiving a final impact study, as well as an interconnection service agreement. EDP anticipates approval in June 2021, at which time, the project will move forward. Mr. Schroeder assured the Board that EDP has been awaiting approval by Eversource, causing months of delays in commencement of the project.

Chairman Menard stated that, in 2020, due to the COVID-19 health crisis, it was difficult to follow through with any project bound by deadlines. Accordingly, Chairman Menard believed that there was no major issue with granting a 12-month extension.

Mr. Coutinho stated that he understood the situation and agreed to an extension as well.

Mr. Elias said he had no issue with the extension.

No one from the public expressed a comment.

Mr. Elias made a motion to close the hearing at 6:40 p.m. Chairman Menard seconded the motion and all members voted aye, unanimously, to close the hearing.

Mr. Coutinho made a motion to approve the request for an extension to February 5, 2022 for the reasons noted in Mr. Epps' letter dated February 18, 2021, as well as the reasons outlined by Mr. Schroeder. Chairman Menard seconded the motion and all members voted aye, unanimously, to approve the request for extension.

2. Chairman Menard stated that the second matter on the agenda was a continued hearing on the petition for special permit and

variance of Municipal Communications LLC, Applicant, and Brian J. Giblin, Owner, with site plan approval for a wireless communications facility to be located within a residential/agricultural district, to construct a 150-foot monopole-style tower, with minimum of 12 panel antennas and related equipment, in compliance with Article 6.3 as Recodified. The subject property is located at 67 Masquesatch Road, Westport, MA and is shown on Assessor's Map 58, Lot 173G.

In attendance was Attorney Brian Corey, Jr., 519 American Legion Highway, Westport, MA, who represents the Applicants.

Chairman Menard gave a brief summary of the evidence presented to the Board at the last meeting on February 24, 2021. He stated that Attorney Corey detailed the benefits of 5G service versus 4G service. He also presented an overview of the site. The Board posed several questions to Attorney Corey, some of which were answered. The Board requested other documents and information, which Attorney Corey assured he would submit to the Board prior to the next hearing.

Chairman Menard stated that the Petitioners' representatives would make their presentation; the Board would then ask questions; correspondence received by the Board would then be read into the record; and the Board would entertain questions and comments from the public.

Attorney Corey addressed the Board, stating that:

The site abuts Route 88, Drift Road and Masquesatch Road. The applicant has proposed installation of a stealth monopole, with attributes of a pine tree.

Photos published in the Shorelines were not the creation of the Applicants; they are not part of the application; and are not an accurate representation or photogrammetry of the site. The Board has been provided with accurate representation to scale with accompanying photographs, showing limited visibility of the actual monopole at different viewpoints and directions.

Photographs were presented, depicting views from Drift Road, from the top of Main Road, and from the cemetery on Main Road, seen barely in the distance. The stealth monopole would be a camouflaged pole to look like a large fir tree. The largest trees in the area are between 80' and 90' tall. The monopole would be above the existing tree line, but would blend in at different times of the year.

Applicant is looking for relief from the Bylaws in order to install the cell tower in a residential/agricultural district. The Town's current zoning is restrictive and confines all telecommunications facilities to business districts, and to the unrestricted districts of the Town. The business district stretches in this area as far south as the corner of Cornell Road which is inadequate for AT&T, in that, it does not have the necessary transmitting distance to comply with the Telecommunications Act of 1996.

The application states that the tower will provide coverage through this area as shown on coverage maps featured in exhibits submitted by the Applicant. Correspondence dated March 11, 2021 from Municipal Communications gives an update pursuant to the Board's direction to include details of the process that was undertaken to locate the site. The nearest flagpole monopole discussed at the last hearing is .97 miles from the proposed site and outside the search area required by AT&T. The flagpole is 60' tall and 38' closer to sea level than the proposed site. AT&T would be required to place their equipment below those of the current carriers, resulting in more than 100' difference in equipment elevation. This, combined with the distance from the search area makes this location unacceptable as it would provide no meaningful coverage improvement. The tower is a short tower and built for one tenant only. It is not registered to the Federal ASR Database, which would allow for more than one carrier.

The parcel in question was part of an extensive search conducted by the Applicants. The agreement for the location was reached with the prior owner, John Snyder. This was done in anticipation of increased need in technological means.

During the summer months, the general population doubles and on weekends and heavy summer usage, the nearby beaches see increase of approximately 30,000 to 35,000 people visiting each day. That would be combined numbers for campground and all beaches. Additional scope and stress on existing network caused by other covered areas, including Acoaxet and east side of Westport off of Horseneck Road. Those areas in particular, have deficiencies in coverage.

Chairman Menard questioned the coverage maps that were being illustrated that showed deficiencies that AT&T would provide with the proposed tower. He said that he reviewed the AT&T web site, which showed 100% coverage in the noted areas, a substantial difference than what is being shown on the coverage maps. It seems that, when AT&T wants to sell a phone, it shows a map of 100%

coverage; when AT&T wants to install a cell tower, a different map is shown. To make sense of this, Chairman Menard, whose cell phone provider is AT&T, drove all around the Westport Point, Horseneck beach, Drift Rd, and Cornell Road areas. He indicated that he was able to have service in most of the areas, including the beach, Horseneck Road and most of Drift Road. Reception was minimal in the Westport Point area as well as across the bridge, to Cherry and Webb beach and the marina.

Attorney Corey discussed the roaming feature that most cell phones have, which allows service to continue, even in areas that experience poor service. He said that, in the Masquesatch area, there are three (3) cell phone amplifiers for residents who have AT&T cell service.

On the corner of Route 88 and Drift Road, on the side of the roadway, there is an area where the grass has been flattened. That is an area where people frequently stop to make a phone call. The area along the beach that is benefited from a roaming feature -- and possibly by a different carrier -- the nearest tower is 2.72 miles from the current location. To establish signal prior to entering into this Route 88 valley, that signal may be maintained. During the summer months or high usage times, you may not be able to gain a signal or maintain a signal. These maps are calculated based on the strength of the nearest signal and the location of the nearest tower.

Regarding the tower at Tripp's Boatyard, Attorney Corey stated that this location would be inadequate for AT&T, which would be an additional tenant. It was built as a single operator pole.

A site plan showing the wetlands was shown to the Board, to answer questions regarding the actual location of the monopole and the reasons why it could not be placed elsewhere on the site due to wetlands. The location of the monopole minimizes the disturbance and impact of the wetlands area. The Conservation Commission has approved the plan.

Additional questions were posed in the prior hearing regarding the design of the monopole. It has a fall zone radius of 25' and any possible structural failure is more likely to occur within the top 25'. The monopole is designed to collapse so that it does not affect any other area. Attorney Corey noted that the Applicant's belief is that these types of monopoles are built to withstand strong winds in excess of hurricane winds (e.g. Hurricane Sandy) and designed to fall within a designated area. The site plan further details the location and the clearances involved with

regard to the site. Everything is designed with the fall zone and radius of the fall zone in mind. Some of the mechanical components are not susceptible to damage as they will be installed outside of the fall zone. The design utilizes a 20 kilowatt Generac generator. This location is slightly in excess of 300 feet from the closest occupied dwelling.

Attorney Corey submitted an addendum (Exhibit A) to the original application, which indicated the relief being sought, including, but not limited to, setback requirement variances as follows: the tower base would be 25' from the western of the property shared by the Commonwealth of Massachusetts. The area to the west is wooded and part of the Route 88 layout. The pole will be 179' from the southern property line shared with Abutter Maulk, where wooded area exists. The pole will be 39' from the northern property line shared with the Town of Westport/layout of Drift Road and the area in between will remain naturalized; and 302' from the eastern property line abutting Masquesatch Road.

The area in question is wooded, which would be maintained as a viable woodland system. The Applicant does not plan to disturb the fence line, fully enclosed with a fence and visited twice a month for maintenance purposes.

Sohail Usmani, RF Engineer for AT&T through C Squared Systems, explained the process by which AT&T performed its search for the appropriate site. He said that customer complaints typically drive the carrier to find a viable site to install a tower. The engineers utilize industry standard design tool, which takes into account accurate drive test data and coverage actually is in the field. These are used to produce the coverage maps.

Mr. Usmani also stated that the increased numbers of users cause a decrease in data speed because the towers in existence are designed for a certain number of users. For example, during the summer months, data speed and those accessing the network will experience significant delay in data speeds, as well as dropped calls.

Mr. Usmani further discussed the proposed coverage, which relies on height of the monopole, as well as placement of buildings or trees in the areas. The maps shown were solely AT&T areas. If there a site that is closeby, then the phone will pick that signal from that site. The proposed site is the ultimate location to provide full coverage to those areas not typically covered with service. Mr. Usmani stated that the height of 150' for the

monopole is needed to get as much out of the site as possible so that more sites will not be needed in town.

Attorney Corey stated that he had been contacted by the Point Methodist Church, who was interested in offering the location for an antenna site. The Applicant studied that location, however, the necessary height cannot be reached there. Additionally, an internal pole would only be adequate for one carrier. The roof line/steeple line of the church would need to be extended by 40 feet.

There was a question regarding whether other sites were researched for this tower. Attorney Corey stated that AT&T has a specific metric with regard to locating the monopole and the transmitting devices. This area was located many years ago as being one of the ideal locations and it was available. There have been no other advertised sites available and no other sites on the database for available locations. The Point Association suggested that a property owner on Main Road, where a solar array is currently located, offer up her property for a possible location for this tower. This location, however, is out of the geographic area and would not meet the goals of providing coverage as required. All other areas were researched and none are viable options, with the subject site being the least objectionable for the Historic District and meeting the goals of the Telecommunications Act of 1996.

Mr. Usmani explained the term "clutter," which is anything protruding above the natural land. If there are buildings or trees or anything that will impact the propagation of the signal, this is considered clutter. Clutter may impact the cell phone service in the area; the height of the proposed tower will minimize the effect of clutter on the proposed service area. The tower must be higher than the tree line. He said this is a primary site because it covers the beach areas, particularly in summer months, and would cover the gaps in a northerly direction.

Ms. Gee inquired about the property a mile north of this site, which already was degraded by solar installations. This property was offered, but Attorney Corey dismissed it as untenable. She suggested this site be revisited.

Attorney Corey stated that none of the public's concerns have been dismissed out of hand. In fact, he noted, the engineers conducted a study and it was determined that the property does not offer sufficient coverage for southern Westport and including the gaps between towers currently in existence. He further stated that the

Applicant has considered other sites, however, none are viable locations to provide the necessary coverage.

Chairman Menard stressed the point that "optimum" location is nice, but other locations may provide a significant benefit.

Attorney Corey noted that the Telecommunications Act of 1996 mandates certain requirements. The proposed site has been studied extensively; whereas, other areas may not be available (e.g., the Methodist Church). He noted that, in the past, some residents were opposed to the existence of wind turbines because they would hinder the sight line. He stated that the proposed site is designed to disappear into the local environment and not an obvious sight line, not a traditional tower.

Chairman Menard disagreed, stating that the monopole would be at least 50' higher than the existing trees, which would make it an obvious point of view. Ms. Gee agreed, noting that she has seen one that is in Little Compton and is visibly seen, even with its camouflage.

Ms. Gee asked whether there it would be possible to install two (2) separate poles, one for the honeycomb area and one for the other areas that would not stand out and be so unattractive.

Mr. Coutinho noted that the Board will continue to listen to the presentation; however, he suggested that the Board select its own engineer at its own choosing to represent the Board, which would be paid for by the Applicant. This request, he said, is not unusual under these circumstances, and the Board would have an independent and objective survey. Also, Mr. Coutinho suggested a balloon test be conducted, whereby the Board and the public attend and observe.

Attorney Corey stated that he has no authority to approve the expense of an independent engineer and would need to discuss this with his client. He also said that he would be happy to schedule a balloon test, which is dependent on weather and winds, so that the Board and the public can view it. The balloon test that was conducted forms the basis for some of the photos presented.

Attorney Corey stated that small cell technology is applicable; however would require a macro pole in this location. Small cell technology serves a 200-foot radius. Responding to Ms. Gee's inquiry, Attorney Corey stated that the height of the pole that is requested here is the lowest available to provide the coverage necessary here.



Chairman Menard opened up the discussion to the Board members. He stated that he remains of the opinion that, because the Applicant believes that the proposed site is considered optimum, he does not understand why the tower could not be placed elsewhere or less height, and still provide sufficient coverage.

Attorney Corey said that the Applicant understands that the location is a sensitive area; however, this site provides the necessary coverage and minimizes any perceived impacts to view with the camouflaged tree structure to the pole.

Chairman Menard stated that his main concern would be emergency services, not whether someone is capable of downloading a movie or utilizing 5G service as opposed to 4G service. This would not be a reasonable ground for a variance. He said this was the main reason for driving through the area to monitor his own AT&T cell service.

Attorney Corey stated that the Town has restricted the areas where the cell towers may be placed, i.e. business districts and unrestricted area off of Highland Avenue in the far north of the Town. The closest tower to the proposed site is 2.7 miles away. Attorney Corey also raised the subject of FirstNet (built with AT&T) to provide first responders unfettered access during emergency times.

Chairman Menard stated that several variances are being requested. One of the criteria for the granting of a variance is that the Board must find that a hardship exists. He asked Attorney Corey to explain the hardship that exists with this site.

Attorney Corey said that, in this instance, the Applicant is required to provide coverage under federal mandate. Due to Town regulations, the provider is being prevented from providing such coverage in certain areas. The geographic location of the proposed tower is unique and there are no other locations that would meet the necessary means to provide such service.

Chairman Menard noted that this reason has nothing to do with a variance. The Bylaw for a variance requires that the characteristics and topography of the land be such that, without a variance, the proposed tower could not be installed. That is not the case here.

Attorney Corey disagreed, stating that the land itself and the nature of the requirements that towers be in certain areas form

the hardship. Further, he stated that this site is outside of the restricted district. He further stated that, if AT&T is unable to install the tower on this site, it would not be able to fulfill the federal mandate.

Chairman Menard mentioned that there was evidence that the tower and its equipment must be placed on a particular spot on the property due to wetlands. If not for the wetlands, would the tower be placed anywhere else on the property without seeking a variance?

Attorney Corey said no. Under current zoning requirements, the site is not within the telecommunications district. He noted that this is not contrary to current public interest. There are special conditions that exist that create reasons for a variance -- for example, setback requirements, overly restricted districts. He said that the Applicant has attempted in good faith to comply with the spirit of the area, and that granting the variances would not affect the other residences.

Chairman Menard asked Ralph Souza, Zoning Enforcement Officer, about the plan, where the access point and egress point attach directly to Drift Road, rather than to Masquesatch Road, which is where the driveway is now. Mr. Souza said he had not reviewed the plans (the Clerk stated that all the documents had been submitted to the Building Department, however, Mr. Souza believed the documents may have been placed in the file without his knowledge).

Attorney Corey stated that there is only one 12' access driveway, which leads onto Drift Road. Mr. Souza indicated the Fire Department has a requirement of 20 feet wide for purposes of allowing fire apparatus.

Ms. Gee inquired about the setback issue, noting that the Applicant asserted in its filing documents that the pole would be 130' from the property line; however, Exhibit A, submitted for the hearing this evening, makes a notation that the monopole will be set back from the nearest property line the distance of 179.6'. The Bylaw mandates the setback be as much as the height of the tower, which is 150'.

Attorney Corey stated that the pole will be 179' from the southern property line; 39' from the northern property line shared with the Town of Westport/layout of Drift Road; 25' from the western side of the property shared by the Commonwealth of Massachusetts; and 302' from the eastern property line abutting Masquesatch Road. He also noted that the 130' noted on Exhibit A is inaccurate.

Mr. Elias stated that he talked with both the Fire Chief and the Police Chief about this matter. Neither one expressed approval or disapproval of the project; however both Chiefs stated they each have their own individual systems, which work well, and are located on other towers in the Town, specifically, on Route 177 for which they pay no fees. At the time the new police station was being constructed, there was a pole installed and the Police Chief said it would cost \$12,000 annually to place the police system on it. Mr. Elias asked whether the Fire Department and Police Department would be eligible to place their equipment on this pole at no cost to the Town. Attorney Corey said he did not have an answer to this question, but would discuss it with his clients and report back to the Board at its next hearing. He said that FirstNet is available and more advanced than what the Town currently has.

Mr. Elias further stated that, after reading all the correspondence, his opinion is that he would like that the entire Town have better coverage, not only in one particular area. Therefore, he noted that other cell service providers be on this pole as well. Attorney Corey said that the pole would have capacity to include three (3) other providers, and that Verizon had already inquired about this issue.

Mr. Elias also noted that, at the prior hearing, the Board was informed that a site plan review would be required by the Planning Board; however, since that time, the Planning Department has indicated that it will not need to review the site plan. Attorney Corey said it does not. Chairman Menard confirmed that the Planning Board will not be reviewing this plan. The Zoning Board will be conducting the site plan review.

Mr. Coutinho inquired about the chat comments that appear very briefly during the video. Chairman Menard said that, once all the correspondence has been read into the record, the hearing will be open to the public for comment.

Mr. Borden said there was mention of a 60' pole over at Tripp's Boatyard. He stated that the trees are 75' or 80' and above the sand dunes. The trees are not very high there, and it's Town property.

Attorney Corey said the Town should explore this with the Beach Committee, as there would be parking spaces lessened as a result. He said that his client is committed to the Masquesatch site and has done the research for this site.

Chairman Menard read the correspondence and e-mails that the Board had received prior to this evening's hearing, as follows (including a brief summary of the comments):

Mark Strauss, address not listed - objected, stating that he believed AT&T did not take the Town and neighborhood into consideration and is being disingenuous about this site being the only location possible.

Dale Weber and Frank McDonough, 1687 Drift Road - opposing: concerns with safety to residential traffic; aesthetics, that the pole would look like a fake tree; other areas should be explored.

Betty Slade, 2037 Main Road - opposing: does not believe the Applicant has met its burden of proving it requires a use variance; safety concerns; other sites should be explored.

Rich Smith, Main Road - other sites should be explored; objects to the height of the tower; concerns regarding FirstNet, which does not need a 150' tower; does not believe AT&T has done its due diligence in researching other sites; understands better telecommunications are needed; understands the role of the Zoning Board.

Nils J. Bruzelius, 1973 Main Road - strongly objects; monopole disguised as a tree is "ugly" and the assertion that it would not be visible is not credible; have other sites been evaluated; installing equipment on existing tower at Tripp's Boatyard; T-Mobile service works well at the Point.

Robert Daylor, 1800 Drift Road - he is a member of the Planning Board and felt the need to comment on this project; this tower is not being proposed in a Telecommunications Facilities Overlay District where such towers are allowed with a Special Permit from the Zoning Board; other large undeveloped parcels available; the Applicant's continuous claim that it is allowed to place the tower at the proposed site is not credible; aesthetically unattractive; safety issues to traffic, pedestrian traffic; and those bicycling; Applicant has not met criteria for use variance or Special Permit.

Maurice E. May, 1878 Main Road - supports the project; construction of the tower at the proposed site would not have an adverse impact on the Westport Point Historical District; there is a need for better cell phone service in this area.

Celeste Prothro, 220A Fisherville Lane - this monopole would fundamentally change the nature of Westport Point; suggests alternative sites.

Paul Schmid, 236 Fisherville Lane - this industrial-sized structure would desecrate the landscape and history of the Point and the beaches; suggests alternative sites.

Cindy Scheller, 4 Beach Road - impact of this tower at the proposed site would be anything but pleasing; solar farm areas would serve as better location for this tower.

Rud Lawrence, Chairman, Westport Historical Commission - this monopole would significantly intrude and mar the historic fabric of the Historic District; significant adverse impact.

Chris Capone, Conservation Agent, Town of Westport - commenting about some information that was not correct in the prior hearing on February 24, 2021; this tower would also impact protected fishery habitat.

Linda Santoro, Preservation Planner at the Massachusetts Historical Commission - received a proposal for the monopole at 67 Masquesatch Road, which is directly outside the boundaries of the Westport Point Local Historic District.

Phil Adams, 1794D Drift Road - Applicant should research other sites; proposed tower is too high, where other towers in Town are shorter and work well; T-Mobile has good cell service in the Point area.

David Cole, 2037 Main Road - submitted some images of what he believes the proposed tower would look like from various viewpoints.

Chairman Menard opened the hearing to public comment.

Buzz Brownlee, 77 Masquesatch Road, Westport, MA - said that, a few years ago, there was a microburst wind that came through the exact location where this tower is being proposed and there was significant damage to many trees, including strong oak trees. A neighbor mentioned to him that this tower is so close to Route 88 that, if it were to go into the direction of Route 88, even in pieces, it would obstruct Route 88 in a storm and thereby strand people south of the highway, presuming that East Beach Road would also be blocked by a storm. That is a real concern. As for visibility, you can see the wind turbine and it can be viewed from

the harbor. The proposed tower will be considerably higher than that wind turbine. Tested his own very old T-Mobile cell phone and traveled towards Cornell Road and tested the cell phone every once in a while. At strategic points, had cell service all the way down Cornell to Adamsville -- then Old Harbor Road and Howland Road to the southwest corner of town, with coverage; through Central Village, to Hixbridge Road, across the river to Division Road with continued service; to Horseneck Road. Only questionable area was in low land of Cross Road off of Division Road/Horseneck area. He made a call and could be heard by the other party. There is good service with T-Mobile and most in the area have T-Mobile and pleased with the service. Perhaps, T-Mobile could be given a contract as a tenant on this pole. Lastly, if there is a balloon test, those in Masquesatch area would like to be notified as to the date.

Dan Kilpatrick, 9 Juniper Road, Westport, MA - stated that he is a new resident to the Masquesatch area. He understands that AT&T needs to provide adequate coverage, however, questions whether it is necessary for such a high pole at 150 feet to provide that coverage. He said there are other cell services that provide very good coverage in the area. And would be interested to know whether AT&T would be able to locate more than one tower to provide the coverage.

David Cole, 2037 Main Road, Westport, MA - stated that it was his understanding from last meeting that Chairman Menard had AT&T cell service and had visited various areas with adequate phone service. He suggested that the Applicant visit Cindy Scheller's site. He said that Attorney Corey stated that AT&T explored sites on Main Road, but Ms. Scheller's property is not on Main Road and is over on the east side of Route 88, near the top of a hill. He urged the Applicant to look there, as the area is 100 feet higher than the proposed site, with no hills between it and areas they want to serve. With regard to the balloon test, the balloons were from the site on the north side of Drift Road. There are a series of photos taken during the season when trees were fully bloomed; the Applicant chose sites for photos that precluded seeing where the tower might have been; and positioned where they could not see what might have been there. He believes there are flaws in the report.

Attorney Corey asked to rebut this information. Chairman Menard indicated that, most likely, there will be another balloon test conducted, witnessed by the Board, as well as the public.

Attorney Corey rebutted Mr. Cole's statements and stated that the Mr. Cole's pictures are not accurate, not to scale, and not done by a photogrammetist. The package presented to the Board by the Applicant shows photos to scale; actual representations of the pictures or balloon test on that day. The Applicant has offered to do another balloon test. Attorney Corey also said that Ms. Scheller was approached by David Cole and his wife to offer up her property for the tower, without being aware of coverage issues and accessing the site. Other organizations have contacted the Applicant to have the tower placed on their property.

Mr. Cole responded that he and his wife did not approach Ms. Scheller, that she brought it to their attention, since she knew the Coles were interested in this project. Mr. Cole asked whether the balloons had been flown on the south or north side of Drift Road.

Attorney Corey said he would ask his client but did not have the information at this time.

Chairman Menard stated that the issue was irrelevant because none of the Board members were present to witness the test.

Betty Slade, 2037 Main Road, Westport, MA - stated she opposes the project. She said it was her understanding that the church tower originally was much higher and it did blow down in storm a while ago; it was historical landmark; it is in the Historic District under supervision and review of by the Historical Commission. She believed it would not be a major problem in increasing the height. Valerie Turner, lives in Masquesatch - she and her husband and family have lived in that area for many years. She opposes the project as the land is zoned residential and agricultural, not commercial. She enjoys driving through the area every day and enjoys seeing the Black Angus bulls. Her family visits her because they enjoy the area. The Applicant is based out of Atlanta, Georgia and, therefore, does not understand Westport and its community, the farm land and historical heritage. She said she visited the Applicant's web site, and the mission noted is to assist wireless carrier clients by developing much needed wireless facilities in a manner that avoids friction to the communities it serves. Most of the people do not want this tower; most residents have T-Mobile and Verizon with fine coverage. This tower has a minimum of 12 panels, which will give access to more carriers. The collapsible design is not failproof. Corrosion is more likely guaranteed by the water, hurricanes, other storms. Debris from the tower could potentially cause serious damage and block the road. There is only one (1) egress/ingress in that area.

Electronic equipment and antennas transmit with radiofrequency waves and there are concerns about the health effects. She did not believe the Applicant had pursued other possible locations.

Cindy Scheller, 4 Beach Road, Westport, MA - stated that the Coles did not approach her. She read the article in the Shorelines and thought that, perhaps, her property would be a reasonable alternative. However, she said she has not been approached by AT&T about this possibility and understands that the Applicant was committed to the proposed site. She said she remains open to discussing the possibility of her property being used.

Attorney Corey said that the Applicant has looked at alternative sites; the Applicant has not contacted Ms. Scheller because the site is not appropriate.

Phil Adams, 1794D Drift Road, Westport, MA - stated that the pictures and balloon test were accurate to scale, but were taken from an area to look more favorable. There are other areas where pictures were not taken. The Applicant is not giving a fair picture of all the consequences. The trees are not 80 ft tall there. They are about 10-15 feet above the telephone poles and poles are 45 feet tall. So, this monopole will be 2 to 3 times higher than the trees. The pictures showing the monopole near the trees is misleading. He also believes that the Scheller property would be appropriate. There is one area, at Drift Road and Masquesatch Road where coverage is terrible. Even though he would be one of the main beneficiaries of the tower, he believes the proposed site is ridiculous. The pole will be too tall, in the wrong place and for Attorney Corey to represent that it will not be visible is wrong. A 150-foot tower at the corner of Route 88 and Drift Road will be visible by everyone driving by there; it will not look like a tree; and will be way above the tree line. He enjoys the quiet of no cell phone while at the beach; and believes the church would work just as well. He does not believe the Applicant is pursuing any other sites. He wondered whether there had been pictures taken from the top of Hotel Hill.

Attorney Corey stated that he appreciated all the comments, and said that, when he referenced 80-foot trees, he was adopting the thoughts of the Masquesatch community. He said that he never said the pole would not be visible; clearly it is visible from certain areas. In this vein, the Applicant has attempted to mask the pole; the location or look of the tower were not mischaracterized; it is not a perfect situation; but alternative sites/areas, as well as the church area, were researched. He said that raising the steeple height is not feasible. The photographs gave the largest and



clearest site lines as possible. The Appellant has offered to do another balloon test.

Chairman Menard stated that it is possible that another balloon test will be conducted and, therefore, anyone commenting should limit their comments to issues unrelated to the balloon test.

Garrett Stuck, 1998 Main Road, Westport, MA - Understands that the Applicant is requesting a variance. The nature of this commercial venture is to build a 150-foot tower on which they can rent cell phone transmitters to other companies. The Applicant's justification is that there is poor service provided by AT&T. He wondered whether AT&T had a role in this tower, in that the height of the tower is not dictated by needs of AT&T alone, but also by needs of being able to rent nine (9) other transmitters to other cell phone companies. Using lack of AT&T coverage is a "red herring;" building a tower tall enough that it can have twelve (12) antennas that can be rented to as many as four (4) different cell phone companies. He believes there has been no evidence presented what the coverage would look like if tower were only 70 feet tall. This tower does not need to be 150' tall to have better coverage for AT&T.

Attorney Corey said that one of the requirements to be met by any Applicant under the Bylaw is to have multiple carriers per tower and that is a town requirement.

Alexandria and Parker Mauck, 69 Masquesatch Road, Westport, MA -- They are direct abutters. They reinforced and echoed prior comments. They oppose the project as they will be the most impacted. They would like other sites pursued that would be suitable as alternatives and ask those get explored sufficiently before any decision is final. He would like to be notified of the date for the balloon test.

Mark Chardon, whose mother resides at 1838 Drift Road, Westport, MA - said the property is where Angus cows live. His brother, sister, mother and he have owned the farm since 1800s. He strongly opposes the tower for many of the same reasons already mentioned. He said there has been no mention about the 55-foot long chain link fence with three (3) rows of Concertina wire that everyone will have to drive by every day, with no barriers between it and the road, in terms of vegetation. The tower will be completely out of character with the area. And, again, no one has mentioned the storage of diesel fuel for the generator; the sensitive wetlands. Other sites should be considered. The property north of Drift Road has a couple very large lots, not far away from where

the proposed site is. He said the Chardon family owns one of those sites and no one has ever contacted them, so he believes there has not been an exhaustive search for alternative sites.

Rita Gardent, 75 Masquesatch Road, Westport, MA -- Besides the height of tower, she said she is more concerned with what the land will look like with the fence and generator. The beautiful woods would need to be cleared and would like knowledge of the specific information as to what will be cleared and where the equipment will be placed.

Annie Perlick, 1814 Drift Road, Westport, MA - She echoed what had been said. She appreciates the cows and the beautiful pastures that the Chardon family maintains. She said there is not enough discussion about the structures that will be at the base of the tower. She said that Attorney Corey made a comment about the Town not wanting to lose 2,400 square feet of parking if the cell tower were located by the beach. She would be interested to know what that 2,400 square feet is going to look like off of Drift Road. She has safety concerns for many people who bike and walk there. The crosswalk and beautiful sidewalk over Route 88 gives access to the harbor and historic Westport Point. She said she would like to see artist renderings and/or staked-off areas of what that site will look like for anyone passing by there (e.g. building, generator, fence).

Nicky Lucky - She states that she has been a resident of Masquesatch over 30 years. She worked in telecommunications for over 20 years. She questioned the balloon test and the height, etc. The crux of the application is for the variance, and there is compelling evidence that a variance should not be granted. If they operate under least amount and least invasive and lowest height, then other providers may require more height. AT&T's RF Engineer discussed poor service during high peak times, but that information has not been submitted. There are coverage gaps, but overall, year-round residents will be encumbered so that AT&T can give peak-season residents and visitors better service. She believed there is no reason to make an exception for a variance.

Chairman Menard reiterated that the Zoning Board of Appeals is tasked with hearing all applications for variances and make a decision.

Attorney Corey said he had communicated with his client about scheduling another balloon test. He stated that the only issue would be weather and wind; however, his client is available for whenever the Board can schedule.

Ms. Gee questioned whether another balloon test was really needed, as she believes that the granting or denying of the variances being requested do not depend on a balloon test.

Mr. Coutinho said he understood all the concerns that were mentioned, and thought that many people are not understanding what the Board is tasked to do in these hearings. He said that it is not a matter of just denying the requests. Certainly, there are issues; but the Board has to do listen to all the information, review all the documents, look to the Bylaw and the federal law in rendering a considered decision. The decision must be based on good information and, more importantly, must be defensible should this matter be appealed. The Board must be completely ready for any justification of its decision and it is not simply because of the way the tower looks, the height of the tower, the fence. Although these are all important issues, the Board must look to the need for such a tower. The Telecommunications Act of 1996 regulates what the Board can and cannot do. The Board cannot unreasonably stop an application, simply because of aesthetics. He believes the balloon test will not be very satisfactory to many people. He also suggests that the Board seek legal counsel to assist in making its decision, as well as a professional engineer to work for the Board. It is not unusual for the Board to retain a professional to be paid for by the Applicant. Mr. Coutinho noted a concern about the size of the fall zone, as very inadequate. The height and view are terrible as seen at this moment at this location. The Board must render its decision in an effort so the Town does not have a proliferation of towers. At some point, he said, the Board may very well be required to seek legal advice to ensure any decision made by the Board is clearly defensible in court.

Ms. Gee appreciated the explanation given by Mr. Coutinho. She said that, if the Board has its own engineer to look at this, other sites may be researched as well.

Mr. Coutinho stated that, although he does not know the legal answer, but it would seem that an engineer could look at other sites, which can also be presented, should this matter reach litigation.

Chairman Menard asked Attorney Corey if his client would be willing to do as recommended, which is to allow the Board to hire an independent engineer and pay for that expense. Attorney Corey said that he was not authorized to give that consent, but would discuss the request with his client.

Chairman Menard suggested that this hearing be continued to a later date, so that a balloon test can be scheduled, as well as the hiring of an independent engineer to review the plans, should the Applicant agree.

Attorney Corey said that if the Board is looking for third-party verification, that would make sense; however he did not believe his client would pay for a study on someone else's property.

Mr. Coutinho said that the engineer would basically verify and back up all that has been presented, including an opinion as to whether or not the proposed site is the only site feasible for this tower.

Attorney Corey said that this is the only site that is available, although his client may consider a third-party review.

Mr. Coutinho suggested that the Board hold an informational meeting -- where there would be no discussion of the issues -- to discuss the hiring of an engineer.

At 9:51 p.m., Ms. Gee made a motion to continue this hearing to Wednesday, May 12, 2021 at 6:30 p.m. Mr. Elias seconded the motion, which passed by unanimous vote with each individual member of the Board voting aye in a roll call.

Betty Slade asked whether the chat would be viewed in the video. The Clerk said this is the first time the chat has come across a video, and not sure whether it will be seen on the video.

#### **Administrative Items**

Minutes of February 24, 2021 - Ms. Gee made a motion to approve the minutes. Mr. Elias seconded the motion and the Board voted unanimously to approve the minutes of the February 24, 2021 meeting, with Chairman Menard, Mr. Coutinho, Ms. Gee, Mr. Borden and Mr. Elias voting aye on a roll call.

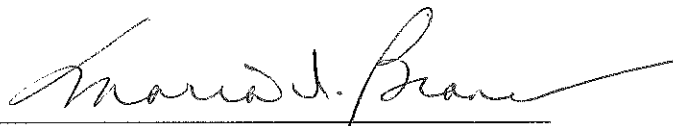
Next meeting is scheduled for April 7, 2021 at 6:30 p.m.

**9:03 p.m.**

**Motion** made by Mr. Elias to adjourn the meeting. Seconded by Ms. Gee. The Board voted unanimously in favor.


Adjournment.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Maria I. Branco", written over a horizontal line.

Maria I. Branco, Principal Clerk  
to the Zoning Board of Appeals

APPROVED:

A handwritten signature in dark ink, appearing to read "Roger Menard", written over a horizontal line.

Roger Menard, Chairman