

Project NSB” prepared by Hudson Design Group LLC and last revised on 6/23/21 (the “Plans”) at 0 Rowe Road, Heath, Massachusetts (the “Site”).

5. The Planning Board denied AT&T’s Application (the “Decision”) based upon its good faith interpretation and application of the Town’s Protective Zoning Bylaws (the “Bylaws”).

6. AT&T subsequently commenced the present lawsuit, alleging that the Decision violated the Telecommunications Act of 1996 (the “Act”) by effectively prohibiting the provision of personal wireless services and because it was not based on substantial evidence in the record.

7. Following the commencement of this litigation, AT&T and the Town, both represented by legal counsel, engaged in arms-length negotiations to potentially resolve the parties’ dispute.

8. The Select Board requested that AT&T conduct a drive test regarding Plaintiff’s claims of existing significant gaps in its network coverage in the Town of Heath around the Site and along state highway 8A.

9. AT&T conducted the requested drive test and delivered the results to the Select Board.

10. The Select Board also requested that AT&T consider and analyze an alternative location in the Town of Heath to determine whether the alternative location could resolve the significant gaps in AT&T’s network coverage.

11. AT&T provided the Select Board with its analysis of the alternative location.

12. Upon reviewing the results of the drive test and analysis of the alternative location, and balancing the best interests of the Town of Heath as a whole against the realities and cost of litigation and perceived odds of success in defending the Decision of the Planning Board, the Select Board determined that settling this litigation pursuant to the terms of the proposed Agreement for Judgment, Dkt. 19-1 (the “Agreement”), would be a fair and reasonable resolution of the case.

13. Through the parties' arms-length negotiations, the Town obtained significant concessions from AT&T for the benefit of the Town.

14. First, the height of the Facility will be reduced from 180 feet, as proposed in the Application, which could result in a 199 foot tower in accordance with the provisions of the Act, to 120 feet, allowing for a maximum of 140 feet. *See* Agreement, § 3(a). This compromise allows for an increase of only ten feet above what is effectively allowed by the Town's Zoning Bylaws. The Town will also maintain the authority to review any potential extension of the height of the Facility. *Id.*

15. Second, the Town will be permitted to install equipment for public safety agencies, which will provide safety benefits to the residents of the Town of Heath. *See* Agreement, § 3(b). AT&T has agreed to pay the costs of installing the Town's equipment when the Facility is constructed, saving the Town significant costs. *Id.*

16. Third, the Town will be reimbursed for consulting fees expended in connection with the Application. *See* Agreement, § 3(c).

17. Finally, in addition to these concessions, the Town and its taxpayers avoid the costly expense of continuing to litigate these proceedings.

18. The Board is aware that a group of abutters to the Site have filed a motion with the Court seeking intervener status in this case; however, the Board, in representing the Town as a whole, has determined that the Agreement is in the best interest of the Town.

19. The above statements generally represent the discussions had by the Select Board and its counsel on the Agreement for Judgment, which resulted in a vote to authorize its execution.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

EXECUTED this ^{21st} 10th day of January 2022.


Robyn Provest-Carlson


Commission expires
5/12/22