

PUBLIC STATEMENT~~FINAL (12/17/2021)

After careful consideration and considerable deliberation, the Select Board has determined it would be in the best interest of the town to resolve the litigation titled New Cingular Wireless PCS, LLC d/b/a AT&T Mobility v. Town of Heath, et al. This litigation involves an application by AT&T for a special permit to construct a 180 foot telecommunications tower at 0 Rowe Road and the Planning Board's decision denying that special permit. The Planning Board's denial was based upon the application of the Town's Zoning Bylaw, which allows for telecommunications towers at a height up to 110 feet. The litigation challenging that decision was brought in federal district court, alleging that the denial violates the provisions of the federal Telecommunications Act. That Act prohibits the Town from taking action that would effectively prohibit the expansion of telecommunications service. While the Select Board respects the decision of the Planning Board in seeking to enforce the provisions of the Town's Bylaw, the Select Board also recognizes the burden this litigation would place upon the Town's financial and administrative resources, and the risk to the Town, especially in light of the clear mandate of the federal law.

The Select Board, with input from the Planning Board, entered into settlement discussions with AT&T. Those negotiations centered on reducing the proposed tower height, obtaining data demonstrating an actual gap in cellular communications coverage, arranging for installation of the Town's public safety transmitters on the tower, payment of outstanding consultant fees, securing a removal bond should it be necessary to remove the tower, and compliance with other laws and regulations. AT&T has already provided the requested data and agreed to reduce the base tower height to 120 feet, pay for installation of the Town's public safety transmitters, pay outstanding consultant fees in the amount of \$2500, provide a removal bond, and comply with applicable laws, codes, and regulations.

It is important to note that the federal law (the so-called "Spectrum Act") allows for an increase in tower height of 10% or up to 20 feet, whichever is greater, above what is otherwise allowed. Thus, a 110 foot tower height, as already allowed by the Town's Zoning Bylaws, may be immediately increased to 130 feet. AT&T has agreed to a tower height of 120 feet, limiting the total height to 140 feet, meaning that the compromise resolution allows for an increase of only ten feet above what is effectively allowed by the Zoning Bylaws, and avoids the possibility of a 180 foot tower at that site. The additional benefits in the resolution address public safety needs as well as reimbursement for some of the Town's costs in the application process.

The Select Board thanks the Planning Board for its efforts in seeking to protect the interests of the Town in accordance with the Zoning Bylaw. Resolution of the case recognizes the impact of federal law on local law, and the emphasis of the federal law on assuring wireless service coverage throughout the Town, the Commonwealth, and the nation. The negotiated resolution takes into consideration the Town's Zoning Bylaws allowing towers of up to 110 feet, minimizes impacts on the Town under federal law, brings recognizable public safety benefits, and eliminates the cost and uncertainty of ongoing federal court litigation.