

Minutes of the Joint Virtual Executive Session of Heath Planning Board and Board of Selectmen

November 8, 2021

Planning Board Members Present: Doug Mason, Bill Gran, Bob Viarengo, Peter Charow, Jo Travis

BOS members present: Brian DeVries, Sue Lively, Robin Provost-Carlson

Town Counsel present: Mark Reich, Robin Stein

Town Coordinator: Hilma Sumner

Board of Selectmen open virtual meeting began at 1:03; Planning Board open virtual meeting began at 1:05 with call to order.

Motion for entrance into executive session (BOS) made by Sue Lively at 1:06, seconded by Brian.

Roll call vote – members of BOS voted yes unanimously.

Per Doug: Doug proposed entrance into Executive session pursuant to G.L. c. 30 A, Sec. 21(a)(3), to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body, as the chair so declares. For deliberation and strategy in New Cingular Wireless PCS, LLC d/b/a/A T&T Mobility v. Town of Heath Planning Board.

Motion for entrance into executive session (Planning Board) made by Peter Charow at 1:08, seconded by Bob Viarengo.

Roll call vote – members of Planning Board voted yes unanimously.

Executive session begins at 1:10.

Items discussed:

- 1) BOS has decided to use town Counsel to represent the town during an executive session of the BOS. Response to the complaint is due on Thursday, November 11, to be filed on November 12. An extension would be obtainable, but not deemed necessary by town counsel. A 44 count complaint has been issued in the lawsuit, stating that the town will cause prohibition of service by AT&T by denying permit to erect cell tower. AT&T is claiming that the town has lack of substantial evidence to deny building permit.
- 2) Battlelines of the case would include the issue of prohibition of service, failure to provide alternative site options, lack of data to support gap in service. Court would allow AT&T to present more data or information concerning these issues, even though they did not supply said information to the Planning Board during their decision process. These cases can be difficult,

rarely go to trial because they are difficult to win. Often, compromises are made. Reply to the complaint will include denial of allegations, actions of the town were supported by their bylaws.

- 3) Discussion ensued about the need for dropped call data or drive test data to better delineate how much coverage is actually increased above a cell tower height of 110 feet, since these two methods of data collection are not computer generated or subject to as much manipulation. Counsel feels that AT&T is likely to prove a gap in coverage since no cell tower currently exists in Heath. AT&T can add 20 feet of height to an approved tower without consulting any entity. Data we have received indicates that almost all of the coverage AT&T is trying to achieve occurs at a height of 136 feet compared to data at higher tower heights. Most of the dense population areas in Heath are not covered by this tower. Head count of actual people that will gain coverage is likely small. Advantage of additional height is to allow co-locators and revenue to AT&T.
- 4) Town counsel supports the position that AT&T may not be able to support a gap in coverage. Stronger argument may be the lack of proposed alternative sites.
- 5) Planning Board requested the town counsel talk to Attorney Campanelli in the course of their research; town council agreed to do so.
- 6) AT&T's contract with FirstNet allows for a lower cost of erecting a tower in Heath, so it is more desirable to erect a tower and get co-locators for revenue.
- 7) Town council plans to prepare answer to 44 allegations in complaint. They will discuss with Doug before filing, also with Maxson and Campanelli if necessary. Town counsel has had cases that did not result in tower being erected, and alternate sites were never offered. Town council agreed to work with Planning Board in executive meetings for strategy after filing response. They will also put together a litigation outline. Compromises can occur outside of court proceedings if the town desires. Pretrial conferences do occur for mediation and opportunities for resolution. Town council can talk to AT&T lawyers or the judge at any time in process. Town council recommended to communicate with both boards in executive sessions. Planning Board input is needed for responses. Ultimate decision is made at the court level; depending on court's judgement, permit is granted or not granted. Court will look at the issue of whether or not the Planning Board exceeded its legal boundaries or not.

Motion made to adjourn executive session and not to reconvene open session with roll call vote by Bill Gran. Motion seconded by Bob Viarengo. Roll call vote – board voted yes unanimously. Meeting adjourned at 2:35 p.m.

Respectfully submitted,

Jo Travis