

Board of Selectmen Meeting
September 21, 2009
SBA Hearing Notes

Chairman, Fred Childs: Good evening again. Sorry for the wait, we had business to take care of. Sorry we are late, Mr. Grill, but a few minutes. Attorney Grill with SBA Towers, I'm glad to see you and let's see what you got.

Attorney Steve Grill Well it's nice to be back here and thank you for hearing us again this evening. I wanted first to introduce...

Background excuse me

Attorney Steve Grill I wanted first to introduce the gentlemen that have come with me tonight. Russell Putnam from SBA Towers, to his right is Denish Desani who is a radio frequency engineer with T-Mobile, and then to his right is Eric Pablanski (sp?) who is a construction manager for T-Mobile, and over my right shoulder is George Chianis (sp?) who is also with T-Mobile and he does the kind of overall coordination of the site. So the players have changed since the last time we were here but this is now the team that will be working for the duration.

Chairman, Fred Childs Ganging up on us now, huh?

Attorney Steve Grill What's that?

Chairman, Fred Childs I said you're ganging up on us now

Attorney Steve Grill Well I don't mean to do that, but we wanted to make sure that we have, you know all the questions answered. And I want to apologize to the board for a couple of things. And I wanted to apologize to the board for a couple of things, as I said the last time I was here, without the rules and regulations of a normal land use board like planning board in particular we have kind of struggled to figure out exactly what the selectmen want and it's not clear anywhere where that it so we've kind of fumbled a little bit along the way and so gotten a little frustrated, but that's the bad news, I think the good news is that I think we've made progress we are late getting you the materials and I fully expect we will come back because I don't think it's fair to anyone, let alone the three of you, to ask you to absorb that big packet that I delivered this morning, so what I thought I'd do however is take advantage of the fact that you were able to put us on the agenda for this evening and at least do a sort of status check of where we are, tell you where I think we are, and where I think we need to finish answering some of your questions, and then listen to any additional comments, concerns, etc. that you folks have. So one of the big things that I think has been dogging us and frustrating to me was the question I think Mr. Bennett asked the last time which was sort of this timeline, what's been on this tower, how did it get there, when did it get there, and I don't have all of that detail, but I want to spend a couple of minutes on that questions cause I think I can put some clarity to it. In the stipulation, the addendum rather, to the stipulation which was put in place in 2005 there's and exhibit to that, exhibit A and it lists six whip antennas, something called a grid antennae, and there's a dish something like a microwave dish down at 20 feet so that really doesn't concern us to much so there were two at 160 feet,

there was one listed, or actually, one at 157, one at 160, one at 140, one at 131 feet, one at 120, one at 105, then the grid at 97.

Selectman, Bill Friel excuse me one second, when was that?

Attorney Steve Grill that was the 2005

Selectman, Bill Friel ok, ok

Attorney Steve Grill stipulation

Selectman, Bill Friel ok thanks

Attorney Steve Grill the addendum. So that antennae existed according to the language in the addendum and it, although the addendum doesn't mention it there had to have been that equipment, that shelter, that shack at the base because that's where the electronics go, that service those antennae, so that was there. It certainly was there when my client SBA purchased the property a year after or two years after this stipulation or addendum rather. So what was there in 2006 when Mariner first brought this proposal to the board's attention is reflected in the June 2006, June 19 2006 report by Mr. Addair from Allpoints Technology. He actually took photographs and listed what he found on the tower. At that time there was still two up top at 160 feet, the 140 was there the 131 was there. All of the things that we listed in the addendum were, I believe, as best as I can tell comparing the addendum to what Mr. Addair wrote were still there in 2006. Since then some of that equipment has come off and these were things that were authorized by the addendum but have now been taken off in anticipation of hopefully getting some new equipment and in any event without that space to be relied on the owners of those whips have had to find other homes and so some of that has gone away. What's gone away in particular is the, one of the two up top, so one of the two at 160 have gone away. I think the 140 footer has been relocated down to 128 feet and I don't know if Mariner did that before we bought the tower. The one at 131 feet is still there and the one at 105 feet is still there. The 97 foot grid is gone and the dish at 20 feet has been moved to the top of the shack. So all those changes have been made and what I want to do because I didn't catch this in time to put this in my letter, I want to supplement that letter so that we all are working from the same very clear data because I think that, that we all need to know what's going there. You can see this, the information about what is still on the tower in the report that FDH did and I'll get to that in a minute, it's exhibit A to my letter, the structural report and we tried, and one of the reasons why everything was late getting to the board, was we have a new engineering firm, of course it has to be new we can't stick with anything it seems, but we have a new engineering firm. They prepared the drawings and they relied on what the previous engineers had done rather than double check with FDH so that the drawings I gave you on sheet Z2 the one I have up here on my left is actually inaccurate in terms of showing the existing equipment, it still, it actually it shows two whips and a lightening rod at the top and there's only one left. It shows the two at about 140, 130 rather, the 131 and the 128, those are staying and they it's, I don't know, there's another mistake on it, we're going to clean that up and do a new sheet Z2 which will be ready well in advance of the next time we meet.

Selectman, Bill Bennett How soon will we get that?

Attorney Steve Grill Well I think maybe at the end of the night we can get a new date and we can maybe work backwards from there, at least a week in advance of whatever new date you give us because we just all discovered this in the last couple of hours as we were pouring over this. These were done last week if you notice they are dated September 18th and so we have been kind of scrambling, I don't know, I haven't spoken with the engineers, I don't know when they can get to it, but presumably within a few business days and then you'll have them.

Selectman, Bill Bennett Yeah, I don't know about the rest of the board, I was hoping we could go from the other end and know when we were getting various pieces of information and study that and then come with a date for when we have a next hearing.

Attorney Steve Grill Alright we can talk about that but the only thing that's not accurate as far as I've been able to tell and we've spent a good deal of time today going thru all this, is this drawing and in terms of showing what is remaining on the tower. I believe everything else you have is accurate and it's not going to change and the reason this was the last piece is we wanted to make sure the structural assumptions used by the engineers worked their way into the drawings and not the other way around because that has to drive the structural integrity from our perspective and I think from yours is the most important issue. We don't want this thing falling down obviously anymore than the town or the nearby residents do. So now that the structural engineering work was done, I think on September 10th if I'm not mistaken we then gave it to these folks and they missed a couple things. They're, none of which is structural, none of their work is structural, they're work is to do construction detail and so they need to re-do that drawing and that will get done quickly. So I want to turn to the structural report and just tell you what in a capsule way

Selectman, Bill Bennett excuse me one moment, and it may just be lawyers speak versus engineers speak just make sure we're on the same wave length because you said you wanted to make sure the assumptions made by the structural engineers made their way into the drawings rather than the other way around, is that the same as making sure the drawings reflect what is ground truth and that the engineers analyzed the real tower rather than an assumed configuration

Attorney Steve Grill exactly, so that what the, well, the engineers had to make certain, the structural engineers had to make certain assumptions about the proposed equipment, once that was done

Selectman, Bill Bennett yeah but not about the tower itself or it guy-ing, right

Attorney Steve Grill no they climbed the tower, they actually inspected the tower, they actually inspected the existing equipment on the tower that's all in their report, they did foundation work which had not been done before and they found some need for correction which I'll get to and then, now that, now that that work was done the drawings, the construction drawings have to reflect that so that the assumptions that the engineers made in doing the structural are valid, if the construction drawings are different then the structural work is kind of meaningless so the construction drawings will follow what the structural guys used and once that's done and Z2 is revised and, assuming we go forward, it will become part of the lease with SBA so my client will tell T-Mobile, in it's contract, in it's lease, this is what you're allowed to built, you're not allowed if it's an 8foot antennae don't put up a 9foot antennae, it's part of the lease and so that's how we intent to police it at least and, that's the, at least

from my perspective, not being an engineer, but wanting to make sure we had the logical sequence that's how we've done it and again, the only thing that fell down, when they revised Z2 they did not catch the correct existing equipment, they used an old drawing and that needs to be changed, it's just not accurate, it's not what the structural relied on, they relied on what's actually out there, what they saw, and inspected, so if you go to that you'll find that everything passed with the exception of the foundations, they found that the foundations needs to be beefed up, it's settled, I think, and so they have proposed, and this is exhibit B to the letter, the exact work that would be done to bring the foundation up to the, the, the foundations I should say, plural, of the guy towers, of the guy lines, as opposed to the foundation of the tower itself need to be redone and the plan for doing that is exhibit B. Let me talk to that for just a second because I've learned a little bit about structural engineering getting ready for tonight. Evidently there's quite a bit of leeway among structural engineers in terms of what standards they can use and it's been an evolving discussion, I think in the industry and so when Mr. Addair did his report in 2006 and then supplemented it for the zoning board in 07, he used a certain set of assumptions and classified the tower in his mind as class one and we've touched on this before, he is a very reputable structural engineer, he does tower work throughout New England and I think his judgment call on that was within the bounds of his professional expertise and discipline and he was entitled to make that judgment. FDH, I think in part because we heard what this board was saying took a different tact they assumed it was a class two tower, the difference is in my understanding, not being an engineer, and we will have the engineer here the next time, so he can be drilled on this in more detail if necessary, but just in layman's understanding, class one assumes a lighter, not a lighter, I guess a less intensive commercial use than class two and therefore it sort of, the assumption is it's ok for a class two tower to fail under certain conditions. That's not acceptable to SBA and it shouldn't be acceptable to this board. So class two takes into account greater levels of stress, ice loading in particular, which is not taken into account in class one, again Mr. Addair was within his bounds, I think, to make those calls, but we have now taken the view that this is a class two tower we have taken ice loading into account all the calculations are in the FDH report so we know that once that foundation work is done and again, other than the work during construction it's not going to change the visual impact or increase, or fact I think it's going to shrink the footprint of where the guys are located. They are proposing to move some of the foundations a little bit closer to the base of the tower, so it's not going to cause any permanent impact it's just a question of going out, you know, excavating, pouring some new concrete and then reattaching the guys. It's a significant amount of work, I don't want to underestimate it but it's not the kind of work that should get anybody hopefully upset, once it's done, it's done and it doesn't increase the visual impact whatsoever. That's the only thing they found that they felt needed remedied. They also felt that the construction work, again, this is another reason why we delayed doing these until last, some of the construction detail has to be done a certain way because they base their calculation on the coax cable being run a certain way. Again, not being an engineer but evidently if you do it one way versus the other way you get greater wind loading so they are proposing to do it in the way that minimized wind loading and that, that, their calculations take that construction detail into account. So we will make doubly sure that before we get back here the next time that the construction drawings are in complete conformity with the structural analysis and when the structural engineer is here, he'll be able to be asked are you

satisfied that these construction drawings mirror the assumptions you used in your calculations and if we've done our job his answer will be yes. So, so that at the 40,000 foot level at least is where we are. A couple of other points, we did include photo simulations that show, and those are exhibit D to my letter, that show hopefully a little bit better than the last set that were done in 2006 what we think the tower will look like when it's done assuming the new antennae are installed. I took a crack at drafting a new addendum I think this still needs some work, in particular, I've tried to make it a little beefier but I'm not sure I hit all the points, in particular I'm not quite sure about there have been some notice issues, one of them in particular I haven't solved yet, or even proposed a solution is what do we do about the visits that take place both on a regular periodic basis and in emergencies to service the equipment on the tower. I know you Mr. Bennett had proposed some things. I don't know how frankly we can coordinate, but T-Mobile is here and maybe they have some ideas on it, but how we can coordinate it if they have to send a crew out, you know, who do they call, how does the guy out in the field know he has to make a call beforehand, I think, you know, I, part of me wants to say it's just not reasonable to expect that, you know, we don't do that with any other type of facility, on the other hand I want to be sensitive to the town's concerns about this facility. I took a drive earlier this afternoon and up High Hill Road, I wanted to see it for myself. I couldn't see the tower and I saw there were some dirt roads leading off the paved section, I chose not to go down them because I didn't know which was the tower right of way and which was maybe someone else's drive so I didn't want to do that so I could see why people would be concerned, it's kind of a remote little road up there but I don't really know how we solve that problem in a practical way. Plainly if there's scheduled maintenance that's easy, I mean, someone can say to the town we're coming the second Tuesday of each month, you know, whatever it is, but if there's an emergency and someone needs to go up there to find out why the network has gone down, I really don't have any thoughts on how we could do that in a practical way. Typically there's, and most phone companies, there a network operations center and they might get a call and so-and-so has gone down sent somebody out there and there're not thinking about, you know, about something we've agreed to in this room they've got a national [run and] emergency protocols and I have a hard time thinking that they are going to add to that protocol, but before you do anything, you know, call Mr. Bennett at home, or something to that

Selectman, Bill Bennett would it be T-Mobile's personnel coming to the site or T-Mobiles and other... Ms. Donnelly?

Karen Donnelly yeah I think we are jumping ahead of the gun we're already talking about when T-Mobile it up on the tower. What can they do about it today? we have a security problem with that area today, not tomorrow when there's cell service up there, based on the discussion this gentlemen is having, what can SBob Cantola (?) do about it today?

Attorney Steve Grill I would like to ask the chair if we could hold comments to the end so I can get thru my presentation without debating

Chairman, Fred Childs we'll here from anybody once, we'll hear questions after he gets done, so, thank you

Attorney Steve Grill I was talking just to re-orient so I was talking about the addendum Mr. Bennett asked me to draft and what he specifically asked me to put in these procedures on a forward

looking basis so if there's another concern and there's some why to address this of course we'll entertain it. The other thing I put in my letter is the certificate of insurance, someone, I forget who has mentioned, that the \$500,000 previously been required under the, it may have been under the stipulation, or the addendum, I forget which, was probably no longer adequate, SBA carries \$1MM plus some other coverages, which are all detailed in the certificate of insurance that is exhibit F to my letter that was delivered today. So I think it's \$25MM excess coverage but a million is sort of the first layer so there's hopefully there's plenty of insurance, I've included the certificate, I would ask the board to study it and you know, if there are issues about it or things that we need to address then we can certainly do that but I think you'll see that the coverage is more than adequate. Other issue that came up last time and Mr. Bennett and I had some correspondence about this is the fact that the planting that was required by the addendum, but the 2000, I think it was supposed to be done by 2006, it was in fact done, there was at least three arborvitae, I think it the pronunciation, planted but evidently the deer have found them to be good food so they really have kind of, there just, they've kind of just withered there so earlier this month I believe, being mindful that this thing was taking longer than we figured and that the planting season was coming to a rapid close, we went ahead and planted some spruce, they are much hardier, they are bigger and hopefully we will accomplish the screening that people want, didn't mean to do that as a way to say the discussion is over and I think I mentioned that in one of my emails, but we wanted to get this done now rather than waiting until the spring, because if we wanted any longer, and just, and at first I was waiting for guidance, I think the board said we don't really know what we want to tell you to plant so we planted something that we think will do the trick, it's an evergreen, obviously, it's spruce. So we think we've accomplished it but you know, if they're the wrong thing or if more needs to be done, it's certainly something we can discuss. So those were the main points that I tried to hit between last time and this time. I think where we are is again, we do need to revise this one sheet, it does, it's not completely wrong, it does have the mounting bracket which was one of the issues, it shows you the mounting will be flush mounted, the panel antennae will be mounted very close to the legs of the tower itself. And there's a couple of other things correct, but like I said, it needs to be revised. We will get you that probably within a week, George?

George a few days, three days

Attorney Steve Grill ok, so we could, let's say, just to be safe, by, shall we say by Friday

George certainly

Attorney Steve Grill by Friday we can revise that Z2 and then you'll have a complete package and so we'd like to go back and you know make sure we have the ability to get the engineer here on the structural stuff on the foundation stuff, other than that I guess I defer to the board on what other questions I might be able to address at this time

Selectman, Bill Bennett I was hoping to get more from you. It may be in this report here. Can you tell me if the structural analysis here includes an analysis of the guy anchors?

Attorney Steve Grill I believe so, I believe, let me double check that, Russ do you know that?

Russ yes that is the only work that is proposed on the guy anchors

Attorney Steve Grill yea

Selectman, Bill Bennett well you said the foundation so I thought you were talking about the footing under the tower but

Attorney Steve Grill so the foundation under the guy anchors, I'm sorry I misspoke them, the foundation under the tower itself it fine, it's the guy anchors that they are concerned about

Selectman, Bill Bennett as we are all aware the written record that will come out of this is crucially important. What coverage gap is T-Mobile trying to address with these antennae?

Attorney Steve Grill I think we are prepared to answer that, but I want to state for the record that that issue has been resolved by virtue of the federal case and is not really on the table. I'm just stating that position for the record. Mr. Desani can certainly address that. I know we have a couple of [cloths], very quickly, and I didn't submit those because, again, I didn't think that we'd be hitting that issue, but, and you can explain these, these are coverage [cloths], the top one being without and the bottom one being with

Background excuse me if I may interrupt would it be possible for ... turned around so those of us sitting back here

Selectman, Bill Friel I can't see it... I can't even see it

[unclear] camera has a zoom....

Attorney Steve Grill I'd prefer to take my direction from the chair rather than from the audience, need some water here

Chairman, Fred Childs why don't you

[unclear] I was thinking over there.....

Chairman, Fred Childs well you don't have to have the camera on it anyhow, but he's got the camera on it now. Can you reach over there [unclear] against the wall

[confusion]

[shuffling of the map]

Selectman, Bill Bennett and whatever you present here can we get copies?

Attorney Steve Grill absolutely, you should, and I also, you know, want to note as I have previously that it's apparent that there are certain people who are hostile to this application and they have expressed that hostility repeatedly. Their views, while, you know, the board can certainly consider them, this can be done by meeting, the Selectmen do not need to conduct a public hearing and we do object to the repeated interruptions and we don't think that the public has a right to speak, they have a privilege to speak if the board grants it them, but I would ask that they not interrupt and allow the presentation to go forward it's the second interruption this evening.

Selectman, Bill Bennett well we certainly want it to be an orderly meeting. I'll tell you that I certainly sympathize with, not your position personally, but the position of a cellular carrier in this country both trying to provide the service and meet with the kinds of the hoops that the town's put you thru but these are the people, these are the town, they are the ones you are asking to approve this, we're just the representatives, so we can't run roughshod over their interests in just the singular interest of being able to provide better cell phone service.

Attorney Steve Grill I certainly understand that, but at this point, we're in year four of this process. We have a federal court order that I believe resolves many of the issue, not all of them. I think the key issue is structural at this point, per the stipulation and addendum, so you know, and I assume that we can, no matter what we propose, we are going to have hostility. People don't want this project, they have made that very very clear, so you know, I think we can all move forward knowing that that is in fact the case. And so, I just don't, think you know, I won't interrupt when others are speaking and I would appreciate the same courtesy. In any event, George you want to handle it or you want us [to sign].

George yes, the tip of the first line shows the existing ...[unclear]

Selectman, Bill Bennett what is that the green

George yeah that's the green that's the coverage like inside of a car, like if you were driving on the road inside the car, that what the coverage is, it is existing right now

Selectman, Bill Bennett and I can't really see from here is that main diagonal,

Chairman, Fred Childs [unclear]

Selectman, Bill Bennett well, I mean, I can see the chart, I can see it as well there, I mean is that the main diagonal running from upper left to lower right, is that route 121?

George this one,

Selectman, Bill Bennett yes

George yes

Selectman, Bill Bennett ok, alright, can you point out route 111 to me?

George it's this one

Selectman, Bill Bennett ok, thank you,

George and then this is the proposed site and then after the site [preparation] this is the coverage. So this is like a before and this is an after

Selectman, Bill Bennett it really doesn't get you a lot does it?

Selectman, Bill Friel so is the pink T-Mobile?

George no, all this is T-Mobile, what we show now is coverage

Selectman, Bill Friel so the pink is just what you have for added coverage

George right, so that's after the site, and this is before the site, so yeah, we don't really get a lot that's the cell radius of the site because you're only allowed a certain percentage of power we cannot go more power

Selectman, Bill Bennett that is the highest location in town, I would have expected a lot more coverage to come from that

George of course this is computer simulation so you might get a little more, a little less depending on

Selectman, Bill Bennett what are the assumptions that go into that in terms of best versus average versus worst case receiver sensitivity transmitter power from the hand held unit etc.

George yeah there is transmitter power there is receiver sensitivity there is what do you call the, average

Selectman, Bill Bennett are these worst case conditions, average, or what?

George no these are average conditions

Attorney Steve Grill if I may, I haven't worked much with T-Mobile but with the other carriers I work with they drive test so that they, their model is constantly being tweaked so they actually, although it is computer generated, they are considered highly reliable in use throughout their industry

Selectman, Bill Bennett their modeling assumptions are tweaked all the time

Attorney Steve Grill but plainly there's a gap, this will not solve all of tmobiles issues in this part of New Hampshire but it will solve that big pink cluster that's shown on the lower photo which includes the heart of the town

Selectman, Bill Bennett now you said that this wasn't [your main] because of the federal court ruling took it off the table. I didn't read the federal court ruling that way. It turned it back to the Board of Selectmen to weigh the pros and cons of granting SBA and T-Mobile the permission that you're seeking and in many legal cases to date, the turning issues are the gap you seek to close and the feasibility of doing it another way.

Attorney Steve Grill well, I, you know, I really, I always say I don't like to debate the law with local boards because first it's hard to agree and the law is complex and has a lot of nuance but I'll say in terms of the federal court order it did say we are entitled to a special exception. Normally a special exception has the effect of turning the proposed project into a permitted use, I mean, that's the legal effect. So, I think, as I read, and I said this in my July 9 letter, what's left and plainly the structural issue is first and foremost and there's no disagreement from me that that's an issue in your purview. If there are things that can be done to make this permitted use more palatable we are also very open to discuss that and we think that's entirely appropriate, but I think in terms of, you know, is there a need for this facility, is there, those were all things that were covered in zoning as I understand it and therefore shouldn't need to be covered a second time. That's the way I look at it from a very basic level. Having said that, we want to answer your questions and plainly we wouldn't still be here if T-Mobile didn't make a decision that it needs the coverage and the best way to do it is this facility, you know, reasonable minds can disagree but we're still here and we still think it's the coverage gap that Mr. Desani identified.

Selectman, Bill Bennett you know pretty well, I think, that the crucial issues that you say are now settled, but those crucial issues that figure into cases of this nature are the need for a coverage gap to be covered, to what extent a particular site covers the gap, evidence that there's no other way to do that, no other feasible way to accomplish the same end or similar end.

Attorney Steve Grill well, there, and again, I mean

Selectman, Bill Bennett are you saying that with regard to those issues that T-Mobile and SBA stand on the record before the ZBA

Attorney Steve Grill We, as I said in my letter of this morning, we asked that all of the prior proceedings be a part of this record so that we don't have to go over things. We also think that the issue has been the coverage, the coverage gap issue and the need for a facility issue has been resolved as well as the visual impact issues have been resolved, but having said that, we will answer within reason, as we just did, whatever questions the board has as long as this doesn't, you know, drag out forever. Our goal in being here is to provide information so again, I don't want to adopt your statement of the law as my own because I think we could debate it.

Selectman, Bill Bennett I understand

Attorney Steve Grill but I think in a general way, yeah, there, there, if there's a need for coverage and it's more than de minimus, there's a coverage gap, I think we've just shown that and we'll stand on that. In terms of feasibility and a better way, I think all of those issues were resolved in the court case and I don't think it's appropriate to ask us to do a feasibility analysis.

Selectman, Bill Bennett I wasn't asking you to. I was just asking, if anything more in that area will be forthcoming.

Attorney Steve Grill No I don't intent to present anything more about alternatives.

Selectman, Bill Bennett can we get this engineering report in electronic form

Attorney Steve Grill I can certainly get it to you as a pdf or

Selectman, Bill Bennett a searchable pdf, not scanned as images, scanned as images doesn't do us much good but to be able to search it for certain terms

Attorney Steve Grill we can do that

Selectman, Bill Bennett like going back to reference, it's maddening to have read something 40 pages ago and then say where was that

Attorney Steve Grill that's fine

Chairman, Fred Childs if you can get all the information electronically, how soon do you think we'd have it

[background talking]

Selectman, Bill Bennett well is was prepared certainly on a computer so somewhere it's in a source document that can be

Unk yes I'm sure they can

Selectman, Bill Bennett output to pdf

Unk yes I'm sure we can, I'm sure we could have it before Friday

Attorney Steve Grill Friday, the close of business Friday

Chairman, Fred Childs the only reason I ask is it depends on when you have those when we'll have you back and give you an answer, if you get them into us right away I could probably do an Oct 5 which would be two weeks

Selectman, Bill Bennett I would like to hold off on that

Chairman, Fred Childs all right, well, that's, I'm just making a suggestion now but I think we should have a workshop

Selectman, Bill Bennett yes

Chairman, Fred Childs and go over everything we have

Selectman, Bill Friel I mean I'd like to have time to read this

Selectman, Bill Bennett exactly

Selectman, Bill Friel go over the court case, read the whole piece that they are requesting to make the ZBA file a part of this, that file, Sandy you probably know, is probably six inches thick, I mean there's some serious reading

Sandy Carter [unclear] I would be glad to say that a pdf is easily generated with the push of a button but it's not [unclear]

Selectman, Bill Friel sorry, I just want to limit you to what I actually started to say [unclear] yeah, ZBA file, do you remember any recollection of how thick this file is

Unk I have it right here

Sandy Carter [unclear] I don't believe there were pdf's but certainly they can be converted with the push of a button

Selectman, Bill Friel ok

[confusion]

Attorney Steve Grill this is the zoning file right here if I'm not mistaken

Chairman, Fred Childs what would work for you guys

[confusion]

Selectman, Bill Bennett here's a sequence of events

Attorney Steve Grill yeah, this is the record the Shirley Galvin certified to the federal court, it's the zoning record

Selectman, Bill Friel alright well that's more manageable

Selectman, Bill Bennett so well, I would like to see and it's really almost a preliminary but I'd like to get a roster with contact information for all your team, you read off the names but I wasn't quick enough to commit them to memory that way

Attorney Steve Grill probably easiest if I just email that to you in the morning

Selectman, Bill Bennett and so I think we need to get the minutes of this meeting, as well as the last one, in good form, certainly the last ones, didn't convey the flavor of the technical discussion and that's difficult but I think we can tackle that and then for us to get, have time

to look this report through and have a workshop on it and I think we would then generate some questions and a letter to you and get those answers back and have another workshop. I know this sounds like a very drawn out process but in reading through several court cases in recent time, and falling asleep, that we really need to dot our I's and cross out t's and I really want to make sure that we do that. So a second workshop after get to it, after you and your engineering team get to reply to our questions, and then we set a meeting date. I don't know how to set it any further, I don't know how to set it now to give time for all of that, we don't know how long each step will take.

Selectman, Bill Friel can I just interject here for one second, you need a second workshop or does it make sense to do the second meeting will all his team here with all the characters cause then we can keep going because it's one thing answering a set of questions we get answers and then we have more questions, I don't want to keep going back to 20 workshops and 20 meetings.

Selectman, Bill Bennett well I don't either but I didn't want to have the next meeting with all these attendees but particularly with Attny Grill and his team, you're not used to doing your business at this hour of the night, I presume

Attorney Steve Grill I've done a few of these

Selectman, Bill Bennett a big inconvenience for you and your people to be here at night so I didn't want to get to another public meeting and have yet answers and have more questions that then have to be answered

Selectman, Bill Friel I appreciate that I just don't think this thing needs to drag on for another six months, I mean see it heading, I can see where I haven't read any of this, I want to read this, I want to read the ZBA file I want to get it in front of me, I can see getting together for a workshop, getting all the information, debating it, I can see putting together a list of questions, but in my mind, it would be best to do that meeting after the list of questions, in person.

Selectman, Bill Bennett ok well...

Attorney Steve Grill well whatever moves it quickly it obviously, you know, bearing in mind this information, again, I would urge the board to consider that some of these issues that may, that are typically present before a land use board may not be present given this is a fairly unique situation, it's an existing tower, the tower is not going anywhere one way or the other

Selectman, Bill Friel but that might present itself once we get thru all the information

Attorney Steve Grill yeah and that's true

Selectman, Bill Friel we haven't really had a chance to dig thru that and you're right we might find that out on our own

Selectman, Bill Bennett so I suppose we could leave it, you know, the step of our reading all this new material and having a workshop and coming up with questions and then at that time deciding what the next step should be, whether it should be immediately into another public meeting or not

Selectman, Bill Friel we can include Mr. Grill in that question

[confusion]

Selectman, Bill Friel ... does he want to do it publically or does he want us to go another round of

Selectman, Bill Bennett once we have our questions then both from our point of view of what those questions turn out to be and from Mr. Grills point of view what would be the most expeditious way to proceed and it might be written answers to our written questions or it might be a public meeting, and yes, I want to move this, golly I don't want to be doing this

[confusion]

Chairman, Fred Childs ... because we're going to be getting into budget season and we're going to be pretty busy then, you know, we're going to have to review all the budgets

Selectman, Bill Friel I think we're going to have to get this as soon as we can

Chairman, Fred Childs the sooner you get it to us and we get working on it, I don't think we're going to set a date tonight, but we'll do it as soon as we can, you'll get everything to us and so we can look at it

Selectman, Bill Bennett well we can certainly start reading this it's just, as I said, I start reading and then something triggers, oh 40 pages ago something said this and

Selectman, Bill Friel ...what we need to do is put ourselves on a timeline, so why don't you Mr. Childs; pick a date now for our workshop so then we have that on our agenda

Chairman, Fred Childs whatever is good for you guys, I'm not

[confusion]

Selectman, Bill Friel ...we've got some dates certain that we're not just letting this thing slide

Selectman, Bill Bennett as long as it doesn't conflict with a planning board meeting that I have to sit in or a budget meeting that I have to sit in

Chairman, Fred Childs well that eliminates Wednesday and Thursday. Looks like Tuesday is the only night.

Selectman, Bill Friel so what about the 29th, can we move, they're saying we're gonna have the information on Friday, which is the 25th, can we meeting by the 29th?

Selectman, Bill Bennett aw golly that's just a week away, I've got to make a confession I've still got to do my 2008 taxes by ... I thought they were going to be done until I became a Selectmen but they're not done and I got to do them by October 15th.

Selectman, Bill Friel what is the earliest we can do a workshop being that if you can't do the 29th, can you do the 6th

Chairman, Fred Childs the 6th

Selectman, Bill Bennett the 6th would be good

Selectman, Bill Friel ok, so then Mr. Grill that gives you more time rather than pushing for Friday

Selectman, Bill Bennett Well we still

Attorney Steve Grill we'll get it to you by Friday

Selectman, Bill Bennett Well it's still in electronic format, we still want to get that as quick as possible because that is what we got to use to [unclear]

Selectman, Bill Friel I understand, but if you're not going to be look at them I don't want to ...

Selectman, Bill Bennett oh, I will be looking at it, I just don't want to be looking at it exclusively of everything else cause I got other things that I got to do

Selectman, Bill Friel ok, so 10/6 we're going to do a workshop on this, SBA and T-Mobile will supply the information we are looking for by the 25th

Attorney Steve Grill correct

Selectman, Bill Friel or the updated information that you're willing, you want to present to us to review, and then Phil can you ask Shirley to pull copies of the certified copies of the ZBA for the three of us

Chairman, Fred Childs We're still going to take questions from the audience

Attorney Steve Grill given the date being pushed out to the 6th if we could say Monday the 28th for our submissions rather than, just in case...

Selectman, Bill Bennett ok, all right

Attorney Steve Grill ...we get fouled up

Selectman, Bill Bennett get them by Friday if you can

Attorney Steve Grill yeah, we sure will, I just want to give us that..

Selectman, Bill Bennett I'd like to ask you, Attny Grill, do you have something that has been called, been referred to as Appendix A to, I believe, the original stipulation

Attorney Steve Grill I think Appendix A is to the addendum, no that's exhibit A, let me see

Selectman, Bill Bennett there's Appendix A and I've got to go back thru the stipulation and the addendum to see if there's a reference

Attorney Steve Grill If I can ...

Selectman, Bill Friel there's an exhibit A to the addendum

Selectman, Bill Bennett I know there's and exhibit A

Selectman, Bill Friel the certified record of the ZBA

Selectman, Bill Bennett yes, yes

Attorney Steve Grill I believe that's

Selectman, Bill Bennett to the stipulation, ok

Attorney Steve Grill that's to the stipulation

Selectman, Bill Bennett is called appendix A in your documentation, I got a bad copy, a bad copy

Attorney Steve Grill it's not, there's no legend on it

Selectman, Bill Bennett but it's part of the stipulation

Attorney Steve Grill exhibit A, yeah, exhibit A, and then the addendum also has [unclear]

Selectman, Bill Bennett right, yeah, ok, so this appendix A is Roan Tower data and so if you acknowledge if it's part of the stipulation which I was trying to run to ground then at least we know that part of the stipulation was defining in detail a roan 55 tower

Attorney Steve Grill right and if you look at the structural which is exhibit A to my letter they confirm that it's a roan 55G

Selectman, Bill Bennett it is a G, I thought it was an earlier model, I thought the G was fairly recent

Attorney Steve Grill this one is a 55G dated September 10, 1991 but it says in the structural

Selectman, Bill Bennett '91 but it says in the stipulation '85 right

Attorney Steve Grill yes but it says parts list 55G so

Selectman, Bill Bennett ok

Attorney Steve Grill in the stipulation too so

Selectman, Bill Bennett or maybe the G has just been

Attorney Steve Grill the specs that were looked at from '91 but it's the same model

Selectman, Bill Bennett ok and then are you considering there's the fence around the base of the tower

Attorney Steve Grill correct

Selectman, Bill Bennett of which the equipment shed forms the fourth side of that, were you considering a fence around the entire property

Attorney Steve Grill I think someone mentioned that, I saw it in my notes this morning, but it was, as often happens I just jot something down out of context and I don't remember whether people wanted it or didn't want it or...

Selectman, Bill Bennett it was part of the abutters security concerns in that when persons, with the abutters having no way of knowing if the persons whether the persons were legitimate technicians servicing the equipment or not but when persons came up to the property then there was no separation between those persons and the backyard of the abutters.

Attorney Steve Grill so the reason I went up there this afternoon was to try to get the lay of the land and I didn't succeed so I'm not really sure when you get up to the end of High Hill Road

Selectman, Bill Bennett I can take you up there Wednesday I can't take you up there tomorrow, you need a 4 wheel drive vehicle to get up that road, I wasn't going to take my Deville up there that's for sure

Attorney Steve Grill Russ, you're probably familiar with the ground, is it possible to fence the ground?

Russ: If I may answer, if the concern is about differentiating between technicians and say teenagers and whatnot, a simple access gate would solve that problem as far as vehicles going up there

Selectman, Bill Bennett an access gate with a lock

Russ an access gate on the road

Selectman, Bill Bennett but that presumes

Russ that would only allow the technicians to get up there

Selectman, Bill Bennett that presumes then fencing the property so that you have a place to put a gate then let authorized persons in, I think that would, you know, that's a concern that really has nothing to do with the potential application for a cellular antennae, it's just that is part of the problem now that the previous owners have not addressed and it's been a concern but I think that our citizens are legitimately concerned about people being up there at all hours of day and night and not knowing who they are and they are not restricted to the site whereas if there were a fence all around it, and there might be debate on how high and what color, I'm sure they don't want an eye-sore fence, but they want something that is not something that is easily hopped over, then it would then give them a little piece of mind. So you guys can think about that and get back to us. I guess, I'm concerned about the guy anchors and you say that's covered in this report so I'll be looking at that.

Attorney Steve Grill structurally yeah, it's absolutely the focus of the report

Selectman, Bill Bennett and again, that's an ongoing current concern because I know that the former structural engineer called it a class one tower, reading what I have of industry standards like this one is published by Roan, of class one versus class two, and a class one is a low hazard to property, life or property, as since this tower can fall outside its property, the fall zone extends beyond it, I don't think it could have ever legitimately been called a class one.

Attorney Steve Grill well, as I said I have a lot of faith in Mr. Addair, I've never spoken with him about this project but I know for a fact that his work has been used throughout New England and he's considered to be a top notch structural engineer when it comes to towers

Selectman, Bill Bennett well as you said the class one tower is one that can be allowed to fail but if this one fails in a fall down mode by a guy wire anchor failing, or a guy wire, and it reaches structures

Attorney Steve Grill I don't think that true but it's close

Selectman, Bill Bennett yeah it does

Attorney Steve Grill up to one, it would have to fall

Selectman, Bill Bennett I believe it reaches structures

Attorney Steve Grill exactly right.... no I think the closest one is more than the entire tower height so you're talking about a catastrophic failure

Selectman, Bill Bennett there one of our citizens wanting to debate you on that

[confusion]

Attorney Steve Grill the closest structure according to the plan we done on sheet C1 is the now or formerly Fewer Realty Trust, 3 Stonepound Lane at 167feet and the tower is 160feet

Selectman, Bill Bennett well we're calling it class two now so that goes

Attorney Steve Grill that will take care of that problem but I, even if, even if worst case, it fell, and even if it fell exactly from the base and exactly at that 3 Stonepound Lane it would still miss it by a few feet. I don't want to take that risk, nor does SBA but

Unk nor does the homeowner

Attorney Steve Grill but but it will be properly anchored and to class two specs so I think it's a non, it's a non issue once that work is done

Selectman, Bill Bennett all right well if you'll consider that boundary fence around the property and the security of who has access then, golly, I hate to lose access to those blackberries up there but I'll be satisfied and that's all my questions.

Chairman, Fred Childs all set?

Selectman, Bill Friel I'm good

Chairman, Fred Childs ok, we're going to let the audience if they want to speak, maybe you could answer some of their questions so if somebody wanted.. Mrs. Donnelly?

Karen Donnelly I just have a question about the drive, oh, I'm Karen Donnelly, I live at 11 Woodside Way. I have a question about your drive.

Attorney Steve Grill sure you want to [unclear]

Selectman, Bill Bennett are we picking up the voices adequately because I do want this for the record

Karen Donnelly this easement here goes over this property boundary, what does this mean?

Attorney Steve Grill which easement are you looking at

Karen Donnelly well your line goes across this property boundary right here and this is the easement that goes up and I guess you have it going around so this is going over the property line, is that correct

Attorney Steve Grill I didn't do a survey but that's what it shows

Karen Donnelly ok so basically

Attorney Steve Grill it's recorded so

Karen Donnelly ok so this plan looks as if it's taking part of someone else's property

Selectman, Bill Bennett it does, it's a deeded easement

Karen Donnelly um

Attorney Steve Grill yeah it's a matter of record

Karen Donnelly not if this is the property line because the easement doesn't go over into my property

Attorney Steve Grill it depends when you're property was subdivided, if it was subdivided after this easement was granted then it's subject to the easement and if not then it may or may not be

Karen Donnelly I don't believe it is

Attorney Steve Grill well I, I'm not prepared to address that, I don't have all the legal...

Selectman, Bill Bennett the easement is on one person's property, are you saying that it's drifted onto your property

Karen Donnelly mm-hm this shows it going over my property line

Attorney Steve Grill whoever drew it shows that but I have not researched the title so I have no, no comment

Selectman, Bill Bennett if you look at the easement it's only on that one person's property so it probably needs to shift over

Karen Donnelly I guess I'm concerned, I expected these folks to come in here a little more prepared than they are, this is the second time now, I guess I'm very surprised they don't have more information, they're not real sure what their drawings are saying, they're not real sure if it goes over someone else's property, those are really key things that I think these folks need to be educated on

Selectman, Bill Friel well it's us asking the questions so we'll take that motion so you can tell us what you're concerns are, but we're not asking to attack the applicant

Karen Donnelly Oh, I'm not attacking I'm just asking the question

Selectman, Bill Friel so if you have questions, you can come to us... I'm pretty clear what they are here with, I wasn't expecting them to come in with every answer in the world so that's part of this process, so, please

Karen Donnelly I've been very patient and I will continue to be patient

Selectman, Bill Friel thank you

Karen Donnelly I don't mean to be disrespectful

Selectman, Bill Friel thank you that's all I ask for

Karen Donnelly I'm just a little surprised that you know we are all here again and it looks like we're going to have to come back for another session and we still aren't getting to the root of what we need to be talking about

Selectman, Bill Friel and in your mind what is the root we need to be talking about

Karen Donnelly we need to be talking about what's there today, we need to talk about the security, I don't believe that we need to be going ahead and drafting new addendums for when T-Mobile is one there

Selectman, Bill Friel well that's up to us, that's not up to you

Karen Donnelly oh, I agree

Selectman, Bill Friel I'm listening to you so we talked about security, what else, what else are the concerns

Karen Donnelly again, I believe we've talked about the cell service, we talked about e911 and what happens when services get up there and this board loses control these are all things that concern me and I know enough about telecommunications to see where this is going if in fact this passes. T-Mobile's been here before, it's not going to increase coverage that much, it's all about dollars. That's really what I see, I mean, we've had this battle now for eleven years, we can continue to have it. The board has the opportunity to really stop this from going forward, you know, the agreement was put in place many years ago in good faith, to try to not let us get to the point where we're talking about cell service and here we are. So I, you know, in good faith, Sandy was here when initially that was, that agreement was put into place way back when before the second addendum, Sumner was here, if you want to talk about the nature of the agreement, I think these folks can elaborate on the spirit of that agreement and what it was intended for. So I just want to make sure we don't lose sight of that.

Selectman, Bill Bennett and the more clearly you can enunciate, because this will get reduced to, these minutes will get reduced to a written record that will be part of what we consider in reaching our decision and probably one side or the other is going to take it to court whichever way we go

Karen Donnelly I tend to agree at this point

Selectman, Bill Bennett and so we need to make a very good written record

Karen Donnelly and again, I don't mean to be disrespectful so I apologize if I came across that way but I tend to be a little emotional after 11 years of this same conversation so it's best to understand

Selectman, Bill Bennett I'm just saying enunciate your concerns and make sure you are hitting everyone that you are concerned about so that we can take those into consideration so that the FDA can consider ways to mollify, not mollify, to, I've lost the vocabulary word, but reduce your concerns

Karen Donnelly absolutely I understand and just in lieu of the security discussion we had you know something else to consider is normal businesses have normal hours and the first great weekend we had was the Labor Day weekend and I was subject to listening to chains from early in the morning until after 7pm at night, guys up on the tower yelling, industrial equipment, so if we could come to some sort of happy medium, I think that would be great.

Selectman, Bill Bennett yeah

Chairman, Fred Childs he was next Sandy, you'll be after him

Bob Cantola Bob Cantola I live at the, at the bottom of that little, I live on High Hill Road and my driveway basically

Selectman, Bill Bennett again, can you hold for a moment.. Adel, roger, are we picking up this audio so that this audio so that it's part of the record

Unk yes we are

Bob Cantola yeah so anyway, I have concern that basically goes to what Mr. Grill said, he's worried about the structure and I too am worried about the structure, more cell towers I see isolated by themselves and they are free standing towers, this cell tower, or possible cell tower, is in a wooded section, the guy wires go out into the woods basically, or close to it, and I'm not sure but there may be big pine trees, old pine trees get rotten to the core and they fall over, two of them just fell over on our, on High Hill Road about two years ago almost on our car so I think they should investigate what happens if a pine tree falls on a guy wire, I got a feeling that's a total disaster, I'm a mechanical engineer and I would worry about that and the second thing I would worry about is access to the tower in the winter usually requires them to block my driveway because there's no place to go and access to the tower in the winter has got to be by snowmobile, snow machine, whatever, snow shoes, and so I think you should consider those things too.

Selectman, Bill Bennett can you elaborate on the blocking of your driveway? I'm

Bob Cantola Well, I

Selectman, Bill Bennett ...

Bob Cantola let me borrow your map Mr. Grill

Attorney Steve Grill sure

Bob Cantola ok, let's see all right, this is High Hill Road right here and my driveway starts here

Selectman, Bill Bennett ok

Bob Cantola ok, and in the past people have come up there in the winter when the road is very narrow due to plowing and they park right here, you know, they basically block the road and I would think they block the road for just about anything including fire, health, safety

Selectman, Bill Bennett yes, we do have an ordinance Mr. Grill that doesn't allow blocking of driveways

Attorney Steve Grill well it's the first I'm hearing of this particular concern, Mr. Putnam is here and we'll be guided accordingly

Karen Donnelly if I could just add to that, one thing as well, as far as that path, one concern I have is if, ok say cell service gets up there are we going to have an eminent domain situation where those guys can't get up there with a generator so they're going to take part of my house or part of my yard to do that?

Attorney Steve Grill wireless companies don't have the power of eminent domain it's one of the tradeoffs that was made in 1996 when we, the Verizon's, the landlines of the world have that power, but they don't have to come here and go thru this kind of process, they, they have a trade off, we're not regulated by the PUC in exchange we are subject to all local zoning just like any other business, so we're not going to take anybody's property by eminent domain, if we could we wouldn't go thru these hearings, but that's not going to happen, we don't have that power, in any event, I forget what the question was, we have the earlier drawings the ones that we're not using show the right of way entirely within it's, there's another property line on the other side of the property line shown on the recent drawings. We will research that and we'll make sure that we're not trespassing on anyone's property.

Chairman, Fred Childs ok, Sandy?

Sandy Carter yeah, if I may

Chairman, Fred Childs Mr. Carter?

Sandy Carter first I'd like to thank the Selectmen for accepting input from the citizens, we much appreciate that, and I sympathize with Attny Grill's discomfort in having to accept input from those of us who are, basically are opposed to the further commercial development of this tower and re-characterizing it as an intense commercial use after all these years and further, to point out, again, in little bit of detail, if you would bear with me, the fact that this is a very unique situation, it is not typical and we've got here, as you folks know, you've got the records, Fred, by the way was party to the very first stipulation, I think would probably support the fact that that stipulation was in something of a lawsuit in which a more intense commercial use was built without the benefit of [unclear] and at that time the intention of that stipulation and specifically the specifying of at the time the tower by Roan which was the 55 and not the 55G, the 55G was an evolutionary design, more modern of it and if you'll refer to the stipulation originally you'll see modern 55. It was specifically done that way and the drawings were even included in the stipulation with the intention that this specifying of a light weight tower like that would automatically further limit any further expansion beyond the normal usage. Again, for a little background, it might be helpful to some of you, again Fred, I'm sure he knows all of this, but really the reason for the addendum to the stipulation was the fact that there were changes, understandable changes, made to the antennae arrays that had been part of the original stipulation over the years by the then owner. Because there was a stipulation the only way that that could be done was to go back to the courts and have both the town and the other party agree in court to a change to it, so I think one of the most driving forces of the addendum to the stipulation and why you folks now have the authority, and you have control over the issue and you all know that

Chairman, Fred Childs right, just so you know that

Sandy Carter but the reason the stipulation, or the reason the stipulation exists was so that something like moving an antennae from the 140foot mark to the 160foot mark, taking the dish down and putting another one up, was resolvable without going back to the state courts, that's where your power drives. I could read some of the verbiage, I'm sure Town Counsel has read that verbiage and I'm sure that Attny Grill has read that verbiage, but one thing I would like to point out, because I feel the characterization is perhaps not as accurate as I might call it, and again, my apologies, I'm not an attorney and I don't do this for a living, but if you'll bear with me I'll try to read this accurately, this is from the decision of the courts relative to the fact that the plaintiff, T-Mobile, did request that you, the selectmen, and the town, be ordered to give them all relief to allow them to go forward, and I quote, and I'll try to read this accurately "the further relief of issuing all necessary approvals in order for plaintiff to proceed with the installation of the PWS equipment for T-Mobile is denied based on the stipulation and addendum that govern the use of the tower at issue here, the plaintiff must first seek to obtain approval for the proposed changes to the tower from the selectmen and must otherwise adhere to the terms and conditions of the addendum and stipulation." And I understand from what we just heard here to tonight that you are considering changing the rules, it's your prerogative, it's your legal prerogative, you do however, as you admitted earlier represent the interests of

all parties here both commercial development, that chooses to try to do business in our town, as well as the citizens of our town, again, I hope not to bore you with why we are here, but the day that stipulation was signed by the then owner of that tower there were many substantial rights that were given up by that owner. The current owner of that tower and anybody that does business with them, stands in the shoes of that person who signed that document in 1985. You folks, on the other hand, have a prerogative, you can do what you will but you represent us and I only ask that you be sensitive to what the town's people, the selectmen, and those of us who were party to that, meant on the day when those signatures were put on that document and respect those. It's my humble opinion, and again, with apologies for not being a member of the bar, that you have that right and it's governed under the state courts and it's governed under the terms and conditions of the stipulation as it exists today. Ok, I'll get off the soap box, I apologize for that, but I did have a couple of other questions I think that might be relevant. One would be, I guess, what does Roan, the manufacturer of that tower, classify that tower as? And I'm talking about not the 55G, which is the current model, but the 55 and I believe that you will find that it was considered to be a light duty tower at the time. In the addendum to that stipulation where you got into the facts and figures as represented by Roan. Their assumption was that there would be 10square feet of antennae structure on that tower when they talk about their calculations for wind load and guy loading, ok, you're also aware of the fact that sure it's doable, but a normal guy'd tower, the highest guy usually runs at about a 45 degree angle, as we know, this is a taller tower, so the guy'ing is at a more acute angle, and that affects, of course, the loads, etc. etc. It's doable but you all know it's there. So I guess my question is, and relative to what Mr. Addair had to say, there was much dialogue and now, I was on the Zoning Board of Adjustment so certainly I sat thru, as did Selectmen Friel, all of the original proceedings of this case and Mr. Addair represented at that time that it was in fact a class one and after several back and forths and go arounds and the board asking him what would it take to be a class two or is it a class two, and why did you not analyze it with ice loads, etc. etc. He came back and said yes, well we could reinforce the tower and make it into a class two, ok, you can also take a Chevrolet and produce a fiberglass body of it and put 800 horsepower in it and put it on the track up at Loudon but it really isn't a Chevrolet anymore is it? It might look like one, but it isn't. So if that's where we're going, then all I can say is, in my view, having been there at the time, that's not the spirit and intent of the settlement that the town made to resolve a lawsuit, which would have been very expensive, for the then owner and for what it's worth, the parties on the other side here are well aware of what they spent for that tower, and you know, this is capitalism and we'd all like to make a dollar but they paid very very short dollar for that tower on the basis that if they can convert it from [unclear] into some gold or a silver purse as the story goes. I guess that's about all I have for now. Thank you.

Chairman, Fred Childs thank you very much

Attorney Steve Grill I'd like to response just very, if I may very briefly. First of all the exhibit A to the stipulation, the 1985 document, very clearly references both the 55 and a 55G so it's been my understanding all along that there is only one tower built at that site and it's a 55G per the specs that are attached to the stipulation. Similarly, Mr. Addair's letter in no way says you can strengthen the tower and make it into a class two that's just a misunderstanding of how those categories were, the rating depends on the use, and on the tolerance, if you will, for

failure, and so the assumption is made before you look at the structural integrity, the engineer decides class one or class two and that drives the calculation, it's not the other way around. What Mr. Addair said in his letter is in the Zoning Board record was that if, if I were to judge this by a class two, which I don't, I conclude it's a class one, but if I were because you're pushing me, the tower would need to be strengthened to meet the class two loading, that's all he said. And then only if the antennae were added. Now, he said there was one section that needed to be reinforced, he felt, FDH has come up with a different opinion, they've also looked at it as a class two, and they've said that it doesn't need to be reinforced but the guys need to be, the guy anchors need to be strengthened. And again, engineering is not precise, it's driven by science but there's some judgment that goes into it and those are the judgments that these professionals have made based on climbing the tower, doing all the things that engineers do, and putting their professional licensure on the line without any bias one way or the other and Mr. Carter, I believe it is, who for whatever reason is deadest again this project it taking a very argumentative adversarial view of the record, that's just not warranted by the facts, so that's why I said, or asked that the board consider limiting the input because we've heard these arguments before, they were made to the zoning board, they were made to this board on July 20th, and they're really not moving the ball forward, or we know he's hostile, we know he doesn't want it there, I'll stipulate to that fact, it doesn't change what's actually in the record.

Sandy Carter If I may just [unclear] ... adversarial process that's sort of inherent in the justice system, but I wouldn't characterize by position as hostile, I don't intent to be hostile but I am certainly opposed to this.

Chairman, Fred Childs ok, Mr. Donnelly

Frank Donnelly Frank Donnelly, Woodside Lane. I want to address the new fencing that was put up late last fall. I sent several emails to the town administrator, I think that he would pass it along to the Selectmen. I don't know if that work was approved or even requested.

Chairman, Fred Childs It probably wasn't, he's gone, we have a new one, Mr. Smith, so maybe if you want to stop and talk with him later on.

Frank Donnelly Well, was the work, was the work approved by the board, or?

Chairman, Fred Childs Not that I know of.

[confusion]

Frank Donnelly around the bases

Selectman, Bill Bennett around the bases of the guy anchors

Frank Donnelly yeah, I'm not sure if they requested that or

Karen Donnelly yeah they were new, they weren't part of the stipulation

Selectman, Bill Bennett I didn't know when they went up but they were obviously fairly recent cause they hadn't oxidized yet

Attorney Steve Grill yeah, I think I mentioned that in the email that I researched that and I found that there were new, that they were done by SBA as part of its normal protection of the guys

because we don't want people attempting to climb on them or fool on them and I said that we should have, arguable, although the stipulation and addendum are not crystal clear on this point, arguably we should have come before the board, arguably we didn't have to, I think you could argue it either way and we're going to address that on a going forward basis by being more clear that the facilities include

Selectman, Bill Bennett it's this board on the use, you know, where you want to go with it, but it's the planning board and the building permit process and you know, I thoroughly agree with you that putting the fences around the guy anchors is a great idea and someone updating the outlets on the outside of their house is a great idea but they still got to get a permit to do it.

Mark Donnelly it doesn't meet the stipulation either, it's bright galvanized as opposed to green coated

Selectman, Bill Bennett yeah, well the stipulation was referring to the fencing around the base of the antennae so this didn't even get covered in the stipulation

Mark Donnelly thank you

Chairman, Fred Childs [Mr.] Sapia?

Jack Sapia I think I'll sit on it for a minute

Chairman, Fred Childs ok, back there?

Unk I just have a couple questions..

Selectman, Bill Friel name please?

Sheldon Wolf oh, my name is Sheldon Wolf, I'm [unclear] and I been living there since 1983 and I've seen a lot of work and change to that tower over the years. My assumption is and that it's grandfathered and I know that T-Mobile or whoever owns it will do the right thing and have the property insured, reinforce the guy wires and the foundation so that it's not going to fall over not only for a safety factor but a cost factor for them to replace it, but there's been continual work on that where people would go up and change antennae, take them down without the proper permitting, what kind of is a puzzle to me is that it is a nonconforming use in a residential area, it is a commercial enterprise, we all know that, people look at this as perhaps just a tower, but there's a lot of tenants and I was kind of watching this on TV and didn't know if you were going to have an open session or not but there are a lot of tenants on that tower. I don't know what kind of zoning we have in our town but sometimes on, at late at night, I see the reruns of the ZBA and, I don't know, last month or a couple weeks ago they were trying to repave, I think the accountants building down the street on Main Street and they were going thru this whole big process just to repave a [unclear] or curb or something like that, yet the tower does all these things, you know, at will, where you have so many and the attorney here said there are leases and there are several tenants, antennae have come down, some have gone up, do we have something in place in this town where if you had a commercial building, which this is if you want to consider it's a commercial building, it's a commercial facility, that you have more than one or two tenants, you have a, I don't think we have, other than Lewis Apartments, but he has 50, not using Lewis, but he has 50 apartments, he has tenants, we know he has 50 tenants or 40 or whatever he has, there a two family on main street, there's two families there, you can't put three, the

ZBA, there is someone that was arguing because the house was built, the plans were lost, because they had a kitchen, ok, they can't sell their house, again, I don't know what the issues are but, I kind of flip thru when I can't sleep, yeah, I'm sorry, it's pretty interesting, ok

[confusion/laughing]

Selectman, Bill Bennett solves your problem right there

Sheldon Wolf You know, I guess everybody knows what's going on, I don't, I don't have any idea, [unclear] to the people who [had the] kitchen, irrespective, this is another portion that this board really needs to look at. You know, it needs to look at how many tenants are going to be on this particular facility. Sandy brings out a very good point where you know this was a light weight tower, when it was put up I think maybe CB radios were in their [unclear] two way radios, transmission, whatever that was for regular two way radio communication, not for cell phones and not for for repeaters, etc. I mean, you could literally have a hundred companies on there, you know, are we taxing this as an entity with over a hundred tenants. I'm not saying he shouldn't have a hundred tenants but on the other hand, where, where does the zoning come into effect with this particular commercial nonconforming, it's grandfathered, ok fine, but, but it is evolving from what it is, was, to what it is today, ok, it is continually changing, it is evolving, and you know, I don't have anything against T-Mobile, you know, on the other hand, although I did have at one time a blackberry and the service wasn't that great, and but I also have Verizon and I have AT&T on my iPhone, which is pretty cool, but, I don't have problems [unclear] with where their tower is, I mean, is that on that tower also? You know and looking at the pretty pink that you had there on the map, it really, it expanded a service, but it really didn't give them, in my own opinion, like a real footprint for service, I think there might be some other place. If this was in Atkinson's industrial area, you know, they'd put up 2000, well I wouldn't personally care, but I think that other than do we as a town, do we as a people care to regulate the tenancy on this commercial enterprise, I think that's a real factor in this decision, almost [unclear], that some of the points I'd like to bring up.

Selectman, Bill Friel thank you

Chairman, Fred Childs thank you, Mr. Sapia?

Selectman, Bill Friel can I, wait a minute, could I get one second before we go any further, Mr. Grill, on that line of questioning, the tower has structural limitations on how many things you can put on it

Attorney Steve Grill correct

Selectman, Bill Friel at some point, under the TCA, is there a requirement that if you give access to one cell carrier, you are then required to give access to all cell carriers.

Attorney Steve Grill no, I mean, there's a burden imposed on the town that it can't unreasonably discriminate against providers, so if you let T-Mobile come into the town, you can't say to AT&T or to Verizon, sorry we've already got T-Mobile here, you guys are out, but when you drill down to the level of a particular location there's a fair amount of discretion to the town as to how they allow everyone to come in so certainly a structural limitation on a particular tower would be a perfect excuse, if you will, for not allowing someone else to come in, you

would have to give them a reasonable opportunity to do something to provide service, which has been my point all along is that eventually if you don't allow this particular application, T-Mobile will be back with, or someone will be back with let's put a new tower up somewhere nearby and...

Selectman, Bill Friel we're going to be faced with that anyway

Attorney Steve Grill I mean, obviously we will face that if and when we come to it but at some point all the carriers need to be given a reasonable opportunity to provide service, that's the federal law in a nutshell, but you don't have to give them all space on the same tower, if I could tell a very quick war story that down in Cambridge Mass the Sonesta Hotel on the sign at the very top of the building are three or four sets of antennae for different carriers, Nextel went in and, about 10 years ago, and tried to hang signs much lower down because they wanted to serve the galleria which is across the street, it's a shopping mall and the Cambridge Planning Board turned them down and the federal court said that that was ok because it wasn't discrimination because the signs on the, the antennae on the side were different than the ones at 35 feet, so you have some discretion and as much as I'm an advocate for the industry I would never tell you that you have to allow antennae on an unsound structure, that would be silly of me and I would never say that so.

Chairman, Fred Childs Mr. Sapia

Jack Sapia [unclear]

Sheldon Wolf I'm sorry, just one other thought and not to delay anything it's just that as far as aesthetics go now I mean I think most people are used to the type of [unclear] antennae, again, I did not see the type of antennae that go up there but generally speaking you have those speaker looking pods which it does detract from the aesthetics of the area where it is and I don't know if that's the type it is but it does affect, being in real estate, it does affect property values in surrounding areas, ok, it's kind of like those high tension wires, etc. It's a whip antennae, it's there, it's unnoticeable, but when you start hanging things off there, it's definitely noticeable, it definitely, aesthetically affects the property values. I thank you for your time.

Karen Donnelly so Sheldon just to ask you on that, I mean since you are a licensed realtor, what percentage would you say that's going to devalue the properties surrounding that if in fact service goes up there

Sheldon Wolf I, I, you, beauty is in the eye of the beholder, it all depends, some people would think it's unsightly and walk away

Selectman, Bill Friel [unclear]

Chairman, Fred Childs yeah, I know, alright, alright, that's an altogether different subject, we don't want to get into that, Mr. Sapia, you ready now?

Jack Sapia yeah, I'm ready now

Chairman, Fred Childs good

Jack Sapia well first of all Sandy, I don't think you're hostile [unclear] distinguished men of our community

Selectman, Bill Bennett could you speak up Jack, I want to make sure you're getting on the mike

Jack Sapia yeah, I'm not worried about getting on the mike [unclear]

[confusion]

[clapping]

Jack Sapia [unclear] what I do find interesting is that this public hearing was very vehemently argued not to take place by representatives of people that want to change the tower that I find a little bit unusual and it throws up a red flag, I know as a former Selectman, what was represented to me was going to go up on that tower was not truthful as to what was actually going to happen. So you take a few things, we've got to be very, and I caution this board, when you partner with somebody, my dad had to say partners are for dancing, and be very very careful who you partner with because I've seen a couple of red flags going up here and I do find the desire to circumvent input, and then to [ridicule] that input to be somewhat concerning and I'm not too sure that that's a person that I want to partner with and I do know enough about the subject to know that there was an agreement put in place and it was put forth in good faith and with the best of intentions and it would be my opinion and I would urge this board to support that agreement that was agreed upon years ago and as many people stated this has been a long ongoing battle and everybody has rights, but you know what, there was a good faith agreement made and it's a legally binding agreement and it should be honored and I'd ask you gentlemen to consider what I just said.

Chairman, Fred Childs thank you, anybody else, Mr. Grill would you like [the last word]

Attorney Steve Grill well just, I'll never resist the opportunity to talk but just to the gentleman's point, I, my only point in using the word hostility as a synonym to opposed they are hostile to the application, I don't mean he's personally hostile and I apologize if my, any of my remarks were taken that way, it's not personal with me and I don't view it as personal with the opponents but there is a hostility towards this project that's all I meant, second point is that, in terms of a public meeting, versus a public hearing, I think the views of the opponents have been thoroughly aired and I repeat that I don't think we're hearing anything new that adds to the discussion and that was why I suggested that the public portion be limited so no offense intended at any individual.

Chairman, Fred Childs I can understand your thing but it's been our policy, and especially mine, that I will let the audience speak.

Attorney Steve Grill fair enough

Chairman, Fred Childs as long, and they've been very good about how they [bring it in] so I really believe in that, I like to hear both sides, although I've heard it 10 times now, so, is there anything else

Selectman, Bill Bennett I'd like a last word when you get around to it

Chairman, Fred Childs go ahead

Selectman, Bill Bennett ok, and I'd like to just address the people here and the people at home, that we are trying to look out for everyone's interest, let me just summarize the history, there

was a stipulation in 1984 with parts that just very rigidly defined what could be on top of Hog Hill with the idea that it would never change from that point in time, there was there federal communications act of 1996 which did not take away town's ability to regulate communications facilities but did put restrictions on it and we have to be careful not to step afoul of those limitations because we risk it, the control, being taken from our hands into a court, into a federal court. Then there was the re-application of SBA, a subsequent owner of the facility, to the ZBA to get permission to do this, and the ZBA denied that and that was taken to the federal district court of New Hampshire and they ruled, they overturned the ZBA. We want to protect the interests of the abutters and near abutters to that tower. We want to protect, first off, foremost, your security concerns, of risk of injury from personal property from the tower, and your concerns of the personnel up there that come to service it and that you are secure in your homes at night. And then we also want to protect your aesthetic interests and your neighborhood and your property values. We also realize that there are many other citizens in town who just want better cell phone service. I don't have T-Mobile so I'm not biased one way or the other right there. And then lastly, we have concerns that the succession of tower owners have never lived up to the letter of the legal agreement signed and we, I, I might as well drop the we, I'm really speaking for myself here and these two might not agree at all. I want to see whatever comes out of this that there be sufficient controls put on the tower owner such that they comply with the requirements that have been placed on them that they agreed to with their signature. And that hasn't happened in the past and I want to see it happen in the future. So we have a difficult job and we can't please everyone but we will try to weigh and balance everyone's best interests. Thank you.

Chairman, Fred Childs William? I guess we're all set?

Selectman, Bill Friel I reserve my comments.

Chairman, Fred Childs ok, thank you very much. As soon as you get that information to us, we'll get right on it quick as we can.

Attorney Steve Grill thank you all for your time.

Selectman, Bill Friel motion to adjourn?

Chairman, Fred Childs no, we've got a couple more things

Selectman, Bill Bennett Attny Grill? Could I ask you to do something? It's something I probably should do myself, but if I could get you to do it for me and that's to ask Roan whether that's a 55 or a 55G....

[unclear]

[confusion]

[adjourned]