Board of Selectmen Meeting
July 20, 2009
SBA Hearing Notes

Chairman, Fred Childs: Good evening everyone. Welcome to the Atkinson Board of Selectmen's meeting for July 20. This is a special public hearing. Before we start would you please rise and join me for the Pledge of Allegiance. Thank you. Please be seated. Ok, for the people that are here that know what we are here for, but for the general public, this is a public hearing for the Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc. has made an application to the Board of Selectmen and presented plans to locate on Hog Hill a tower with plans that are available to review at the Selectmen's office. SBA Towers [II] LLC, 10 High Hill Road, Map 18 Lot 14. I'll read off the list of the abutters. Would you please say if you are here or not? Patricia Cogswell, no? Brian Donnelly, Karen Donnelly, Woodside Drive, Richard Broderick, Jay Melvehaven, 7 Stonepound, [Pure] Realty, 3 Stonepound.

Background: here

Chairman, Fred Childs: And we've also granted abutter status to Sanford Carter

Background: here

Chairman, Fred Childs: So, gentlemen from Omnipoint would step up to the table please and state your name so we can put it to the record. Where's the chair? We didn't give'em a chair? My God, come on. [Roger] give me a chair for now take one after.

Selectman, Bill Bennett: The audience stole the man's chair.

Background: thanks Phil

Background: you can take that one up … that one

Chairman, Fred Childs: That's not, that's not good.

Background: How's this?

Selectman, Bill Bennett: Just broken ones I think.

Chairman, Fred Childs: Well the other guy got that meeting in the back

Selectman, Bill Bennett: We can probably scrounge some from him, from them; they are probably not using them.

Chairman, Fred Childs: We probably won't have [more than two…] at a time anyhow

Attorney Steven Grill: thanks chief, we'll switch this, ok, thank you very much

Chairman, Fred Childs: ok

Steven Grill: good evening

Chairman, Fred Childs: good evening

Attorney Steven Grill: My name is Steven Grill. I am an attorney with Devine Millemette in Manchester, NH. I represent SBA which is the owner of the tower and I'm here to speak

tonight on it's behalf as well as on the behalf of it's tenant which is T-Mobile/Omnipoint that's the one that is actually going to be, that is actually requesting the permission to change the antenna configuration on the SBA tower. So, I know that Chris [Kay] who is in the room standing, sitting rather, behind me to my left was before this board a few weeks ago I think and so between the two of us hopefully we can provide answers to whatever questions folks have. But this is, I have to say sort of as an introduction that this is probably the most unusual situation that I've been in in terms of an application for telecommunications facilities. These, you know, are often controversial, people are concerned about a number of issues and so therefore I get called into a bunch of them but I've never been before a Board of Selectmen for such an application and as we all, I think know, in this room the reason that we are here tonight is because of the history of this tower, the stipulation that was entered into when the people who originally built it were challenged by the town and then subsequently there were some modifications made and those were challenged and that resulted in what's called the addendum to the stipulation. My client, SBA, purchased the tower from Mariner who at the time was attempting to obtain permission under those two documents but this board with the advice of counsel referred it to the Zoning Board and that that wound up in court and that resulted in a decision in effect granting a special exception. So we have a lot of moving parts here and therefore it's not entirely clear to us what the process is because typically there is a zoning process so this is a little bit different, but I've tried in my letter to the Board of July 9 to explain what we think the issues are, and we think by virtue of the grant of the special exception in effect we now have a permitted use as well as a finding as a matter of law that there will be no detriment to the neighborhood caused by this proposal. So it kind of, because some of the issues were referred to the zoning board and then ultimately resolved by the court we are left with the other issues that that process didn't resolve. So at least that's our view of it and I know this is probably something that reasonable minds can differ about but that's where we're at. So assuming for the moment, without obviously requiring anyone to agree with me, assuming for the moment that that's correct, the issue is not whether this is going to be a detriment to the neighborhood or any of those issues but what's left in the stipulation and the addendum for this board to exercise it's jurisdiction on under those two documents. And as I put in the, I think the last paragraph on the first page of my letter, what we see are a limit on tower height and that's not an issue, we are not proposing to change the tower height. It's 160 feet at present and the stipulation allows it to go up to 175. Inspection and marking, we submitted to the zoning board, and if I may, I'll hand it up to this board, a June 19, 2006 structural inspection and I'll hand you three copies if that's sufficient.

Chairman, Fred Childs: Thank you

Attorney Steven Grill: I think I've given you the right number … Under the addendum, we have to do this every 5 years with the next year being 2010 but what we've offered to do in my letter and when I say this, I mean structural inspection, to make sure that the tower and guy wires are structurally sound. What we have proposed to do is to do that now as a condition of approval so that before we could actually put any changes to the site we would do a new structural about a year ahead of time just to satisfy any concerns that folks may have about the strength of this tower and it's ability to withstand the additional load that would be created by swapping out the antennae's as T-Mobile proposes. And then there's the certificate of insurance, an agreement to indemnify the town, and we're certainly willing to

work with legal counsel to, the town's legal counsel, to provide whatever documents are needed in that regard. And maintenance of a security fence, again, I think that's already done and in existence. So I think those are the issues. Again, I, it's an unusual case to put it mildly and so it's not clear to us what else this board would like us to discuss, but that's why we're here. So, I guess with that, the only other thing I would say is I try to take a practical view of these things in the sense that everybody wants the technology. For those of use that are blessed with teenage children, prying these devices out of there hands is a difficult thing, and, but it's not just the kids, it's all of us use these devices, that are used for public safety reasons, they are used for convenience. If someone goes to the grocery store and forgets, you know, the dozen eggs, you can call them and say don't forget the dozen eggs. People, more and more, are replacing their home phones, their landline phones with wireless phones. New services are coming available all the time, such as wireless internet thru the mobile phone network. So the devices are here to stay and the question is how do we, as a community, allow these devices to be used in a way that preserves as best we can, realizing these antennae's are not invisible, how do we, how do we balance all of those issues. Here we have an existing tower, so if we don't use the existing tower, as a practical matter the solution is to build another tower somewhere nearby, and to me at least, that just doesn't make a lot of common sense, because having two towers when you already have one, seems, just doesn't seem to make a lot of sense. Having said that, I don't have the whole history of this tower. I'm not from this town. I'm from Manchester and I understand there may be some sensitivities and some issues I'm unaware of but that's why we are here to discuss them and hopefully address them, so thank you.

Chairman, Fred Childs: ok, thank you. You want to ask him anything before we open it to the public?

Selectman, Bill Bennett: You know, I guess the question is if you can tell us what's on the tower from the stipulation and what you're proposing to change?

Attorney Steven Grill: I believe in the …

Selectman, Bill Bennett: What you just gave us?

Attorney Steven Grill: …materials that were submitted to the zoning board and also in the plans that were updated, the company updated plans… [prints]

Background: We have several sets of these

Attorney Steven Grill: Yeah… the … the

Selectman, Bill Bennett: Could I just ask a question on that point? Was a written proposal for the proposed plans changes presented to the Board of Selectmen as opposed to Zoning Board and Planning Board?

Attorney Steven Grill: I'm not sure what Mr. Kay presented to the Selectmen …

Selectman, Bill Bennett: you mean previously, Bill?

Attorney Steven Grill:… other than …

Selectman, Bill Bennett: hm?

Attorney Steven Grill: … what was …

Selectman, Bill Bennett: previously?

Attorney Steven Grill: … already before …

Selectman, Bill Bennett: yes

Attorney Steven Grill: … the zoning board

Selectman, Bill Bennett: Cause, you know, I've got, by reading the court documents, I can get third hand just what the changes are that you are proposing. You know, rehashing, you know, and the court decision rehashing the ZBA decision, but I haven't seen anything addressed to the Board of Selectmen as required in the addendum to the stipulation that says this is the written proposal of what you want to do.

Attorney Steven Grill: Well let me hand out, I'm not sure this is in the format you're asking for, and again, but let me hand out, if I may, to the chair three sets of plans, or I guess I have four here, that show exactly what we're proposing to do. I'm not sure it calls out where things are being removed as opposed to what we propose the end product to be. I think that was covered in the zoning …

Selectman, Bill Bennett You know what I'm talking about in terms of the amended addendum to the stipulation that any future proposals would be presented to the Board of Selectmen in writing.

Attorney Steven Grill: Right. And that was done, and again, because it's such an unusual procedure, and frankly also because I came in after my client purchased the tower, I may not have all the answers, but my understanding was that was done in October of 2006 and then the board, this board, decided that the zoning board ought be the one to at least address the issues, some of the issues, and that was under advice of the letter from counsel, from town counsel, of December something 2006

Selectman, Bill Bennett: Did we get that back in 2006? I'm the new kid on the block so…

Chairman, Fred Childs: I wasn't here then believe it or not.

Selectman, Bill Bennett: Bill, do you know, well …

Chairman, Fred Childs: I come on a year after.

Selectman, Bill Bennett: … you weren't here then, or did you come after?

Selectman, Bill Friel: I was on the zoning board at the time, I kind of went thru the zoning end of it, but I wasn't here. The only proposal that I had seen in the whole files that we have on this was the actual application to ZBA. I think it came in as a proposal from someone walking in the door and the selectmen went and got advice and then sent it to the ZBA.

Selectman, Bill Bennett: Well I certainly want to avoid the possibility of a misunderstanding of what you are asking the board of selectmen to approve

Attorney Steven Grill: Yup

Selectman, Bill Bennett: and I certainly know you provided all kinds of documentation to the ZBA but that wasn't us and so I don't want any confusion as to what we are approving.

Attorney Steven Grill: Well I think that's a fair comment and again, I think to the extent that we haven't done that it stems from the fact that this is such an unusual process. Normally there is a set of rules, site plan regs, or something we can look at that tells us exactly what the board requires and in what format.

Selectman, Bill Bennett: Could you take an action item to submit that as soon as possible.

Attorney Steven Grill: Yeah, I mean, I think that the plans that we've submitted show what we are proposing to do. But I'm …

Selectman, Bill Bennett: but more formally.

Attorney Steven Grill: More formally?

Selectman, Bill Bennett: Yeah

Attorney Steven Grill: ok

Selectman, Bill Bennett: and forgive me, I should have said what we are being asked to approve not what were approved.

Attorney Steven Grill: I understood that to be what you intended to say.

Selectman, Bill Bennett: These plans are 2007 so this is the most current change that what you are proposing?

Attorney Steven Grill: Correct and I believe they are what the zoning board had as well although there was a submittal I think to the ZBA in March of 07 with this. I believe that's correct. And I think probably…

Background: excuse me, just to point out, I happen to have from February 19th '07 a letter to the ZBA, Mr. Frank Pollito, with an attached plan and it's dated, it's the, the, there's a zero 1 and 2 issued and the latest is the 2 issue of 01-30-07 so I don't know if that's what you folks…

Attorney Steven Grill: You would have the 3rd revision but I don't believe there were any changes between rev 2, as we call it for shorthand, and rev 3

Selectman, Bill Bennett: Now, mine shows 02-21-07

Attorney Steven Grill: right

Selectman, Bill Bennett: which begs the question this has been revised since what the zoning board saw.

Attorney Steven Grill: I don't believe there are any substantial revisions. I think there were a couple of errors on the original plans for example Rev 1, the first submission to the zoning board called out a height of 150 feet which was incorrect. The height of the existing structure is 160. So there were things like that that were changed, but I don't believe there were any substitutive changes in terms of location, antennae height, or any, I know there were no changes in terms of location and height of the antennas. Basically what's being proposed is what we call flush mounted where you have the structure and as close as is possible to do they put brackets on and mount them more or less flush to the structure as opposed to what you sometimes see where they are on those triangular brackets and extend out for 4 or 5 or 6 feet in all directions.

Selectman, Bill Bennett: You're talking about ones resemble more an oil platform than an antennae tower right?

Attorney Steven Grill: Well I guess that's in the eye of the beholder, but if you take a look at the plans I've handed up on sheet Z as in zebra 1 you'll see

Selectman, Bill Bennett: I'm looking at the top view but I don't see any dimensions

Attorney Steven Grill: There should be on the next page showing the brackets, antennae mounting detail on page Z2. The lower left hand corner shows antennae mounting detail. And they need the brackets because the antennas have to be adjusted by the engineers to optimize their performance so they can't just bolt 'em permanently onto the tower. They need to be on a bracket that allows for some amount of adjustment but you can see that it's, I think, 4.5 inches of mounting and then whatever additional, it's just, it looks to me to be about 6-8 inches off the tower itself as opposed to the big triangular brackets that are a matter of several feet.

Selectman, Bill Bennett: Somehow I'm just not reconciling that view with the, the only dimension on Z2 that 4.5 inch pipe, and then on Z1 the upper left corner overhead view appears to be some hardware not shown on the other one. You see what I mean?

Attorney Steven Grill: I do see that. I think I understand what you mean.

Selectman, Bill Bennett: That overview shows it sticking out about a, more than, more than, once again the 4.5 inch diameter but that's not shown on Z2. I apologize. I'm an engineer and most attorney's when they hear that will roll their eyes, but I guess what I would like from an engineering point of view is that formal application in writing that the addendum calls for. Not before we can proceed further tonight but I would like to see that and a full listing, you know, the revision block says Rev 3 miscellaneous revisions. Can we get a complete listing of what the changes are?

Attorney Steven Grill: I think that's fair and (to an associate) are you taking notes?

Assoc: yes

Attorney Steven Grill: I think what we, from the sound of it what we ought to probably do is make sure we have as complete a list as we reasonably can get tonight so that we can come back. It sounds like we will be needing, necessary to come back another time. So, you know, let's get it all out there. What are the concerns? What's missing?

Selectman, Bill Bennett: Sure

Attorney Steven Grill: and let's for both of our sake's try to do this in a couple of steps rather than 5 or 6 or 10. So I think that's a fair request. We'll certainly work on that. What sheet is this? (speaks with associate in hushed tone)

Selectman, Bill Bennett: It's not our plan, certainly not mine, to put frivolous obstacles in your path just for the sake of doing it.

Attorney Steven Grill: Ok, so we want a formal application and one of the things you're definitely going to want to see is better detail, what's being removed and what's proposed to be installed.

Selectman, Bill Bennett: And the method of installation to be a little more informative that what I have on Z1 and Z2. And the, since the Rev 2 was what the Zoning Board of Adjustment heard and gave the special exception for, I just want a detailed listing of what the miscellaneous revisions were on Rev 3 since, you know, apparently it's a different animal, not, it may just be a notch on the ear but it's different in some way.

Attorney Steven Grill: Fair enough. What other concerns does the board have?

Selectman, Bill Bennett: I'd like to hear from the public.

Chairman, Fred Childs: ok, I think that pretty much covered theirs. Is there anybody that wants to speak in the audience and if you do I wish you'd step up to the table, give your name so the public can hear it.

Attorney Steven Grill: Well give me a second to get out of the way.

Chairman, Fred Childs: You can just move over a bit if you like. Ms. Killam?

Sue Killam, Westside Drive: For the attorney's benefit, I'm not an abutter or anything like that from my perspective from being on the Planning Board and working with the Planning Office quite a bit. And to give you a little bit of the history, I think that some of the things that have been lacking over the years with various owners is follow up, follow thru, and compliance to, not only our rules and regulations, but the stipulations that have been in place and you know, the simple kinds of physical mechanical things [about] inspections when work is done, permits when work is done, building things that are supposed to be in place, like fences, so I think that that the Select Board ought to hear something from you with regard to what this owner is going to do towards assuring compliance to the Town of Atkinson because I think this has been one of the hardest things over the years for this town to keep track of.

Attorney Steven Grill: I think that's fair and if I may respond to the comments. SBA is a public company, unlike some of the other owners who were private and maybe, I can't speak for the history of it or reasons why things may not have gotten done but I do know that SBA as a public company certainly has the resources to do whatever is required. And I think if we're, if a condition is imposed and we agree to it, we should be held to that. And I'm perfectly willing to discuss some kind of mechanism to make sure that our feet can be held to the fire with respect to anything that we're required to do. I think that that's fair. And again, we purchased this from Mariner, which was a company, a real company, but a small, much smaller company than SBA and I can't speak for Signal Tower or the previous owners, I believe they are individuals. So, you know, I do understand that we kind of acquired it with that history and maybe have some things to get over because of that, but I can only speak for SBA and it's commitment to be a good neighbor. And I think we are trying to be a good neighbor now but certainly anything that commit to do, we're going to make sure gets done.

Chairman, Fred Childs: thank you, anybody else?

Selectman, Bill Bennett: Toward that end that you were just talking about, of mechanisms to make sure that requirements of the agreements are fulfilled on your part. As part of your submission to us, that formal application that I was referring to, can you provide SBA's version of a draft amendment to the addendum …

Attorney Steven Grill: sure

Selectman, Bill Bennett: … with those mechanisms in place?

Attorney Steven Grill: yeah, I mean I hadn't gotten to the point in my thinking just having heard Ms. Kelly's (Killam) comments about sort of what kind of teeth we can build into it, but

Selectman, Bill Bennett: Well it's more like checks and balances. For example, and again I'm new to this, and there's been a lot of history but it seems that some things that were required haven't been done, some things, you know, for example, I guess we never got insurance certificates which were supposed to be provided until the town went looking for them last year or the year before. We didn't get written reports of the structural inspections, and I appreciate you giving us this one tonight. I would also like to add that in that detailed application that you provide all the detail. When I go back and just read the legal documents I find, for example, a reference to 7/8 feet co-ax. I have no idea what that means, but obviously something, some proposal before the ZBA was getting into the down and dirty and I would like to see that. Apparently there are three co-axes per flat panel? Do you know why we need three co-axes per panel?

Attorney Steven Grill: I have one of our technical guys here and going to have to stand up, state your name

Unk: […goes three per leg, the ZBA…]

Selectman, Bill Bennett: yeah, but it's three panels and it's three, it's total nine co-ax's being added, three per leg

Eng: Hi, my name is Denis Desani and I'm the RF Engineer for T-Mobile. We basically run one, one co-ax for transmitting and one co-ax for receiving. That's why we have two co-axes for the antennae and we have three sectors so that…

Attorney Steven Grill: Sounds like six.

Selectman, Bill Bennett: Ah but we were talking about, yeah but the court document referred to nine co-ax's. Three per sector.

Eng: Because we have two technologies currently operating; one is a GSM technology and one is a UMTS Technology. So we need separate co-ax's for different technologies.

Selectman, Bill Bennett: Is that, what, a shared receiver and two transmits or what?

Eng: yes

Selectman, Bill Bennett: What does 7/8 feet co-ax mean?

Eng: Feet, no, actually that's the inches. That's the size of the cable.

Selectman, Bill Bennett: 7/8 inch diameter?

Eng: yes.

Selectman, Bill Bennett: Ok, so that was a typo in the court document. Ok, but that kind of detail, Mr. Grill.

Attorney Steven Grill: Ok, understood.

Selectman, Bill Bennett: So that we know exactly what, it got down a no, and the ZBA it got down to the appearance changes to the tower or how the changes you want to make would affect the appearance of the tower and the fact that some simulated photograph showing the tower didn't show the co-ax and that was a bone of contention. I wouldn't have considered it so but I would like to see just what is running up there so that if we approve something we don't have [five inch hausers going up the links]. What happened to the shrubs that were supposed to be planted around the fence?

Attorney Steven Grill: No idea. I have to confess. I have not been out to the site but if the agreement says shrubs then there will be shrubs.

Selectman, Bill Bennett: You take the stipulation and the addendum to the stipulation and what's there now, it's night and day. There's been a lot of work on the tower with nothing ever coming to the town.

Fred That's right.

Selectman, Bill Bennett: And well, you know, and again, you bought that and you haven't been with it long enough to let that happen but a bunch of things happened out there without us being involved.

Selectman, Bill Bennett: As I understand it an equipment shed got built without a building permit and you're supposed to get, you know, have you read this addendum?

Attorney Steven Grill: Several times.

Selectman, Bill Bennett: Ok, so you know, and I presume…

Attorney Steven Grill: But I have not been to the site

Selectman, Bill Bennett: about the stipulation…

Attorney Steven Grill: ah, yes

Selectman, Bill Bennett: and you're supposed to, you know, you're supposed to come to us not the other way around to get an annual Atkinson electrical inspector's inspection and an annual Fire Department inspection of the tower. And I guess that hasn't been happening. At least I haven't seen anything that mentioned it. And, there was supposed to be originally a bi-annual structural exam, inspection, and I guess that never was done, and then the addendum to the stipulation requires every five years but with one to go off the bat which I presume is this one you just gave us, which I've already lost, but you know, the addendum, the addendum to the stipulation specifically says a qualified inspector chosen by you and acceptable to the Town of Atkinson. Did we ever approve the inspector that you chose?

Attorney Steven Grill: Again, it was chosen by Mariner, not by SBA, until…

Selectman, Bill Bennett: This is by 2006

Attorney Steven Grill: We acquired it at I believe I want to say June of 2007 when this zoning was already just about finished. I believe it was June of '07. I can double check. So anything before that while I agree that SBA buys it with all of those strings attached and has to live up to that, my knowledge of all of that is very limited.

Selectman, Bill Bennett: But you get a flavor of what's been honored in the breach rather than the performance.

Attorney Steven Grill: Yeah, and I think we want to stop that. We don't really want to come here and they don't really want to pay me to come here and go thru this again

Selectman, Bill Bennett: And we don't want to do this either…

Attorney Steven Grill: if we could get it right this time…

Selectman, Bill Bennett: So either of you, either you or the previous owners that used the words good neighbors

Attorney Steven Grill: yeah

Selectman, Bill Bennett: and, that's the kind of footing, however we leave this, in the end, whatever decision we arrive at, boy, I would really like you guys and us to be good neighbors and that is, you know, working on it from the same page and you guys not trying to scurry around in the dark and it's a game of hide n' seek for us to go and find ya to get the agreements lived up to.

Attorney Steven Grill: I think that's all fair and I wasn't aware of some of these issues. I knew there had been issues in the past but I was not aware that they had not been addressed other than the things that….

Selectman, Bill Bennett: Well, the shrubs either died so long ago that there's no trace of 'em or they never were planted.

Chairman, Fred Childs: This has been going on, like, 25 years. Bennice is exactly right about things getting done. We don't know about it. Things that were supposed to be done haven't been done. That's a lot of it.

Attorney Steven Grill: Yup.

Chairman, Fred Childs: Plus we've had trouble with the neighbors.

Selectman, Bill Bennett: So, Bill, moving forward then is it just then an application into us or is it a presentation back to the public of here's what's here now and here's what we're going to do? And that kind of what I thought tonight was?

Selectman, Bill Bennett: Well that's, that's what I understood Mr. King was telling us he was going to provide. We talked last time about a dog and pony show and I don't mean that to slight what we're looking for but that's just a common engineering term when you bring out all your troops and all your charts and you put up, you know, easels and white boards, and you show everything.

Attorney Steven Grill: Well, I think, and again I apologize for that I think that in those plans we were certainly able to call out what we propose to do. But I think from what I am hearing, that we're probably better off coming back fully prepared with me having a better understanding of what was not done that was supposed to have been done under the last set of owners and make sure that the steps are already underway to address those. Regardless of the outcome of this application, and because we bought it subject to those restrictions, etc. and I think we are bound by them. But the other thing that I need to apologize for because this is

unchartered water, for me at least coming before a Board where you don't have site plan regulations that has a 30 item checklist or we really didn't know and I represent the tower owner, Chris represents the applicant in effect or the proposed antennae owner, the tenant, so between us all we were trying to figure out exactly where we were going and what we needed so there may have been some miscommunication, so.

Selectman, Bill Bennett: I can clarify what I'm looking for.

Attorney Steven Grill: Yup

Selectman, Bill Bennett: By telling you what's probably obvious, that our allegiance is to the citizens of Atkinson and this subject certainly we want to consider all the people that live in that area and are affected by it so that we, to the, if we should wind up approving this we want to do it under such conditions that the abutters feel comfortable with it, or perhaps if the abutters have suggestions of their own of how this could be handled more copistedically to them.

Attorney Steven Grill: I think that's fair. Obviously, it's a balance; you know it's no secret that it's a commercial enterprise. It's also providing a service that many many people use and want. But so it's a combination of kind of our right to provide service and your right, and duty…

Selectman, Bill Bennett: exactly

Attorney Steven Grill: … to make sure we do it in a way that protects the town and its residents. Absolutely.

Selectman, Bill Bennett: and that's what we want to do.

Chairman, Fred Childs: That's what we'd like to see happen

Selectman, Bill Bennett: And you know, one of the bridges we going to have to cross, and I want to come back to this and have you or your technical people whoever, explain the exact, or if you can't explain it tonight, give us a submission in writing what the difference between class one and class two towers are. The court specifically addressed that and said that it would be better handled at this stage, so here we are. And I don't know, I'm not in your field, so I don't now what class one and class two towers are, but that's obviously something that we have to consider. And the ice loading and whether it should be considered or not. Things like, you know, either your company or the previous owners assertion that the tower was designed to collapse on itself instead of falling like a tree, yeah, you're talking to a mechanical engineer here. If the guy, if one guy wire breaks under excessive load from accumulated wind and ice then the other three on that side are going to break and it's just going to fall like a tree. However it is 170 foot tall tower in a 170 foot square property so it won't go far out of your property.

Attorney Steven Grill: 160 actually

Selectman, Bill Bennett: ok 160, I'm sorry

Attorney Steven Grill: yeah

Selectman, Bill Bennett: right

Attorney Steven Grill: I know with the monopoles, and I'm not all that, I'm certainly no engineer but they are built in… {makes hand motions showing heights}

Selectman, Bill Bennett: yes

Attorney Steven Grill: stages…

Selectman, Bill Bennett: and if you simply put too much load at the top of this thing, yeah, it would fail either by collapsing on itself hopefully. And I hope that Roan designed it so that would be it's first failure mode or it would fail by buckling but still it would limit the fall zone.

Attorney Steven Grill: correct

Selectman, Bill Bennett: But if a guy wire breaks, the other three are going to break and then the whole thing goes like a tree

Attorney Steven Grill: Well I believe the answer to that is structural inspection of the guy's

Selectman, Bill Bennett: right

Attorney Steven Grill: just to make that they remain, they are and remain sound

Selectman, Bill Bennett: yeah

Attorney Steven Grill: but again not being an engineer I'd rather defer rather than show my ignorance

Selectman, Bill Bennett: We would like some detail that we could look at with that regard because the only thing in the previous, all the references in the legal documents was just some engineer saying the stresses are 39% less that what they can handle. Well, you know, that doesn't give me warm fuzzies. Now another issue I would like to just bring out in the open. And I don't know honestly this, how we can reach a tripartite between you, us, and the people, not just the abutters, but the people in the neighborhood, but I think the court erred in saying that diminution of property values was not an issue because the changes were so small, and I agree that that, your change is probably not negligible in that respect but a whole series of negligible changes can turn into an elephant. And then, so, if we saw a proliferation all just baby steps of adding more and more to the tower and reinforcing it here because the loads were increased, and then adding some more, and reinforcing in some more, and putting heavier guys and more guys and gradually, yeah, it has an effect. So in that draft addendum, or modification to the addendum, if you could address how we can handle that creeping impact on property values.

Attorney Steven Grill: I just want to be clear, I just want be clear about a point, about a legal point and then I have a question. The legal point is I think that issue having been decided is kind of off the table having said that my question is I want to make sure you are asking about detriment about proposed future changes?

Selectman, Bill Bennett: Yes

Attorney Steven Grill: ok, I think that is something that is one the table.

Selectman, Bill Bennett: Yes

Attorney Steven Grill: and something that I can certainly deal with

Selectman, Bill Bennett: I understand what the court said on this change, I just, I would like to see that modification to the addendum with language in it that would be clear to you and to us as to what, if anything, would be allowed in the future.

Attorney Steven Grill: Yup

Selectman, Bill Bennett: And with mechanisms such that we don't have to drive up the hill and look at it everyday to see if you guys have done something overnight.

Attorney Steven Grill: ok

Selectman, Bill Bennett: And I don't want to impugn SBA but it's what the previous tower owners have done to us

Attorney Steven Grill: understood

Chairman, Fred Childs: very agreeable, anyhow, if he follows thru we'll be alright

Selectman, Bill Bennett: Just so I'm clear then so besides an application they are going to come in with a presentation that we can then have a public hearing, which that's what I thought this was.

Chairman, Fred Childs: Yes

Selectman, Bill Bennett: So we can show the public exactly what the changes are from what it is what they are going to be up there

Attorney Steven Grill: yup

Selectman, Bill Bennett: and you're in agreement with that and that'll probably be …..

Selectman, Bill Bennett: and I don't know how many people in this room are engineers but Atkinson's lousy with engineers and so it would, it would really be helpful if you had your structural inspection guy here so that he could answer any questions that might come because I know that that's certainly been a issue in the past that people in that vicinity have worried about a big tower coming thru their roof in the middle of the night so they will probably want some satisfaction and it, to the extent your report addresses everything that would be great but you know there's always things that nobody thought about.

Attorney Steven Grill: well we've already as I said in my letter agreed that we would do that ahead of schedule and the addendum so what I'll try to do is move that up if possible before the next meeting

Selectman, Bill Bennett: that would be great

Attorney Steven Grill: so we can have that, all that information available, you know, again, there are a lot of points here that I didn't know about so it's helpful for me to hear from you folks

Selectman, Bill Bennett: that's all I've got, though, you know if you wanted to give me your card with your email address I could just send you an email that basically goes over what my notes are

Attorney Steven Grill: I'm going to have to write it out cause when I looked right before I walked in for my cards I realized I had left them back at the office, so I'll just write it out

Selectman, Bill Bennett: I'll give you one of mine

Attorney Steven Grill: that's great

Selectman, Bill Bennett: here I'll give you a stack of 'em, I won't use these up in three terms of Selectmen and I don't think I'm going to want to know

Selectman, Bill Bennett: He's going for your record Fred

Chairman, Fred Childs: yeah I know. Is there anybody else that has any questions from the audience? Sir, would you come up here please? Give your name. Get you next Sandra, get you next and you're next.

Brian Donnelly: Brian Donnelly, Woodside Way. I look around. We talk about being good neighbors. I see friends. I see neighbors. I see representatives from out of state coming in all the time. I never know who they are, what they are doing, when they are coming or going. Most recently, we've had fencing put up. I believe it was October or November of last year around the footings of all those. I don't know if they came and sought your approval for that. They were the current owners. I'm not sure what's, you know, transpiring, and if you're aware of what's transpiring up there.

Selectman, Bill Bennett: I saw 'em and they look shiny new.

Attorney Steven Grill: around the footings of the guys?

Selectman, Bill Bennett: yes

Brian Donnelly: And that, I don't believe was part of the stipulation or even the type that was called for in the stipulation

Selectman, Bill Bennett: I thought it was a good idea from a safety point of view, but from a visible impact point of view it's probably obnoxious

Brian Donnelly: and agreement point of view as well, didn't [mumbles]

Selectman, Bill Bennett: and as far as I know nobody came to the town of Atkinson saying could they could do that

Attorney Steven Grill: One of the things I'd like to try to build in and I am throwing this out more for discussion is that we try to move some of this back into a more normal zoning planning process. I don't know how the feeling is on…

Selectman, Bill Bennett: the court dictated we're involved and we've…

Attorney Steven Grill: oh, I understand that but I mean going forward once we get past this round so that, you know, I mean typically we get thru site plan review, we have the mylars, you file the mylars and that's it, that's the governing document and everybody, and that's a fairly easy, then your code enforcement officer can come out and the statute says what he can and cannot do and what we can and cannot do and everybody's got the same rules. This seems to have gotten away from everybody and I'm, my job here, what my client has asked me to do is let's try to bring it back to a point where it's, admittedly, where it's not something

that everyone is going to love, we understand that, but at least we want it so that everybody understands, including us, what the rules are and if we sell it at some unknown point, there is no plan to, but if we were to do that the next owner would know what the rules are cause right now, I think it's kind of where everybody is making up a little bit as they go and everybody is interpreting it a little bit as they go and I don't think that's good for the town or for the tower owner or it's tenants so maybe, I'll put my thinking cap on about that one and see a way to do that.

Selectman, Bill Bennett: yes, I'm open to suggestions but as the, you know, under the stipulation and the addendum to the stipulation and any modification to the stip.. to the addendum that we might come up with, amendment to the addendum to the stipulation, SBA is not allowed to come up with something so grandiose as to justify a site plan. You really are kind of restricted to smaller changes that what a site plan might show. But certainly, you know, perhaps what we ought to do, and you're lawyers, and I'm an engineer so it not my field but it is yours, come up with some document that gets attached to the deed so that any future owners know exactly what they are dealing with.

Brian Donnelly: Just a couple of final comments before I step away. Thank you. Again, we seem to get representatives that just don't know. They purchased an item, they have an addendum, they have a stipulation, they have a legal document, yet they sit in front of you claiming they don't know constantly. And now again, we've got another strange gentleman in front of us who doesn't know. And just one correction to your commentary about the height of the tower. I believe it's 175 square foot piece of property…

Attorney Steven Grill: correct

Brian Donnelly: so if the tower is 160

Attorney Steven Grill: 160…

Brian Donnelly: you said it wouldn't fall too far onto someone's property well it would be half the distance of the

Selectman, Bill Bennett: right…

Brian Donnelly: size of the tower which can impact property

Selectman, Bill Bennett: so yeah I didn't say it wouldn't

Brian Donnelly: ok

Selectman, Bill Bennett: I don't think it would reach any heights

Brian Donnelly: I think the way you describe it kind of sounded like it wouldn't, you know, be falling

Selectman, Bill Bennett: … well I didn't mean by three inches I meant roughly 60 feet

Brian Donnelly: ok

Selectman, Bill Bennett: but, I don't think it would reach any of the abutters homes so to that extent, you know, that was another issue on insurance which you required and provide us the certificates which has been not done until we went asking for it, but I see in the stack of

paperwork I've got a copy of your most recent insurance certificate and it only allowed $5,000 medical payment per claim and I thought that was totally inadequate

Brian Donnelly: It would not impact our living space so much but it would impact our deck, etc. things that we do insure […], keep our dogs on, etc…..

Selectman, Bill Bennett: …. [talking at the same time]

Attorney Steven Grill: …just a couple…

Brian Donnelly: That's all{gets up and leaves}

Attorney Steven Grill: oh, I'm sorry. Just couple points on what the gentleman said and again, the tower is by virtue of the decisions it is there to stay so our job, I think on both sides of the table, is to make sure it's safe. There are towers all over the world, all over the United States, all over New Hampshire, and while there are, from time to time, you can find if you dig deep enough, instances of catastrophic failure, it really is, that concern should not be elevated, I mean, again, we need to be prudent…

Selectman, Bill Bennett: … that's why your insurance premiums are presumably low

Attorney Steven Grill: … and insurance is fine, and we will provide a reasonable amount, if it's not a specific amount we will have to agree with counsel and whatever both parties to this think is reasonable but we shouldn't allow sort of a, you know, worst case scenario to get elevated to the point where everybody's focused on it. These towers, as a general rule, are fine, I mean, we have them in Manchester right along the river, right near some homes, the WMUR has four of them, they are guy towers, they have not fallen down, etc. so you know, good engineers can make sure that that doesn't happen, I believe.

Selectman, Bill Bennett: and as far as elevating some concern beyond it's true importance, yeah, I too recognize the problem of that happening but engineers also dot i's and cross t's and make sure that every little detail is taken care of and to the extent of detail is not taken care of then it's important enough to be addressed without making a major brew-ha-ha out of it. The court stipulation was for, I can't remember what's in the original stipulation or the addendum but $500,000 of liability insurance, I notice that you're now carrying $1MM and I, you know, the $500,000 was some years ago and hasn't kept up with inflation so the $1MM is probably better and maybe it should even be more, I don't know, but you know, just the details of the coverage you're carrying and $5,000 limit on medical payments seems to be, you know, my daughter got pneumonia when she was living in another area, out of naivety went to the emergency room and the bill was $3,000 so $5,000 in medical pay doesn't cover more than a scratch on your figure.

Chairman, Fred Childs: Mr. Carter? Sanford?

Sanford Carter: Sanford Carter. I'm one of the abutters to the ROW. I guess I just wanted to attempt to refocus some of the conversation here this evening to the fact that what brought us to this room is the fact that it's not just one of those strange things or unusual or whatever. This property is encumbered with a stipulation in settlement of a lawsuit the first of which dates back to 1985 and I'm sure as counsel you're well aware and have read in detail before SBA ever signed on the dotted line and ever bought this property, but let's, you know, I'd like to avoid going over all of the detail of things that happened long ago but the bottom line was

that this totally inadequate property, 175 by 175 in the middle of a residential zone, well before cellular, it started life with a small antennae on it probably 6x6 inches, 50 feet tall for a trucking company has grown as you have aptly put out, mentioned Bill, bit by bit by bit the camel's nose has been in the tent many many times here and now we sit here and negotiating the details of the insurance rates and whatnot and I'm afraid I had originally intended so wait until all the cards were on the table before speaking to you folks but I really would, would appreciate the level of detail I'm sure you all share in going over this that you again refocus your attention on what brought us to this room. And what brought us here tonight is the fact that there is a stipulation, there was an agreement reached, a settlement of a lawsuit, in which the owner of the property at that time, relinquished substantial rights to how and what he did with that property and as we all know those agreements follow that land and they still exist today. Now there was a meaningful addendum which, you know, I guess none of us have a problem with that basically attempted to review again in settlement of a potential lawsuit issues as to how the tower was evolving but again we come back to the fact that the original stipulation and it's referenced, of course, in the addendum and the language says basically that you still have to conform to the extent of, to the original stipulation spelled out exactly what kind of a tower could be built there by branding, by size, by class, and it's a class one tower from a certain manufacturer, etc. and the intention of that, I can assure you, because I was party to that as an abutter back when that happened was to preclude exactly the kind of thing that has happened to that tower as it has gone forward. Certainly it's a nice location to consider for telecomm, it's a high spot in town, but we have other places for it and I can certainly understand how anybody like SBA, a large corporation, might was to take a flyer and see that as a great opportunity, but again, I'd like to refocus on why we are here, why those stipulations were signed in the original and whether or not all of the issues that Bill has brought out tonight speak to whether or not the actual terms and conditions that would support an affirmative vote on your part are in effect being met by this proposed use. Certainly Bill, it sounds like you read in detail the proceedings that occurred before the zoning board of adjustment and I sat here with personal knowledge because I was party to those proceedings as well and could have answered a lot of your questions for you, but I'm sure you're going to get to that and I welcome the opportunity to revisit the issue. At this point all I'd like to say is, again, don't loose site if you will with why we are here, the fact that there was an original stipulation, which their predecessor owner agreed to and a subsequent amendment to that, and as far as I'm concerned we are not just here to work out the details and thank you very much for your time.

Chairman, Fred Childs: Thank you Sandra

Attorney Steven Grill: If I may respond, the 1985, and again I don't have the history but based on what I've read the 1985 agreement called for 100 to 175 foot tower of a particular manufacturer and design and my understanding is that's what's there except that it's shorter by 15feet, or 8 or 9% that what was allowed of the 1985 and then when you read the 2005, I believe it was, stipulation, the addendum rather, to the stipulation, plainly it contemplates not only that more has happened and that that's now being accepted but that additional changes may be made and so there's you know and I understand that Mr. Carter's has strong feelings about this and has a history with it but I think we are where we are because of this addendum which does when my client purchased the tower and I was not involved in that transaction, I

came involved afterwards but just reading this one would see that there was a process to agreed upon by the parties to allow for changes from what was there as of that 2005 or 2006 date and that's what, that's why we are here and I would just respectfully disagree. I think we are here to work out the details within the confines of both of these documents and the federal court order and that's what we are trying to do and we are trying to address some of the things that were not done so to bring it into compliance with some of the previous stipulations and also to allow this one change that the federal court has found to be non-detrimental and to address Mr. Bennett's concern about no further changes without maybe a much more rigorous process that what was called for in these documents. So I think we're, you know, I think we are getting close to the end of this and I do view it frankly, you gentlemen disagrees, but I do view it as working out the details on some things so that the concerns of my client, and T-Mobile, which are legitimate and the concerns of the abutters which are also legitimate can be balanced and we can move forward.

Sandy Carter: If I may just mention again, I'm sure you're all familiar with it but for the benefit of those who may not be, in the addendum, and what we just both been addressing is for instance section 9 which reads that any and all proposed changes to the use of the Neil tower and any peripheral equipment or structures thereto must be consistent, emphasis added, with the stipulation dated January 22, 1985 and this addendum and abiding by and in accordance with federal state and local laws and again the previous paragraph basically gives you folks the authority and responsibility, I might add, to assure that the purposes and intent of the stipulation are balanced in their need. Thanks again.

Chairman, Fred Childs: thank you

Sheldon Wolf: Hi I'm Sheldon Wolf. I'm not really an abutter but I live up on the hill. I just have one concern or perhaps looking at this a little differently I haven't read the addendum or all the documents but I think that and living here since 1983 and seeing the tower I've noticed that over the years, and not to rehash it, but the tower has changed height and things have been done without proper per amity but the tower obviously is there, it's grandfathered, it was before zoning, alright, it is a residential area, it's there. The use has changed. I think that the it's a tower but it went from perhaps two-way radio CB radio, whatever it was, now it's cellular, it maybe still radio but I think it's definitely changed. The other thing is that don't consider it as a tower as such consider it as a building alright. I don't know how many tenants are on the tower right now, ok, it's just like a store front what cellular companies do is they lease space off of that. Take for example, if we had the village store here in town you, that has one purpose, our village store, you can't just arbitrarily throw another door in the back and start renting space off without going thru the proper permitting, ok. The way I look at the tower is it's in the residential area, the use has changed, the tenants, we may or may not be familiar with, I don't know how many people are on there, and then they put repeaters on, etc. so that you have different people using the tower. It's really a business entity, it's a commercial enterprise. It's storefront. Different type, but it's a storefront. Do you allow, if this town hall, if we ever decided to chop up every room into a different business, that's pretty much what the tower is. You have different people using the tower. I think that that's definitely, it's a commercial use, it's definitely non-conforming but now you really need to look at it from a different perspective I think. You know it's just a thought and I'm sure, you know, T-Mobile is a great company and you do everything properly on the other hand, it's not

the proper venue there. It's a residential area and it's a commercial application, numerous commercial applications. It's a storefront. That's what I'd like you to look into.

Chairman, Fred Childs: ok

Sheldon Wolf: Thank you

Chairman, Fred Childs: anybody else? Mr. Donnelly?

Karen Donnelly: Hi there, I'm Karen Donnelly. I live at 11 Woodside Way and I'm also an abutter. I just, I've been living in our home for over 11 years and this has been a constant battle from day one. I've sat here with many representatives who claim to not know the history, and beg forgiveness, but continue to expand, and put fences up, and do whatever they want to without coming before this board. I think that's very disrespectful and that we need to stop that. This is now the opportunity. The courts have given you folks the opportunity to make all this go away and to live by the addendum that was put in place in good faith with all of the neighbors. So again, I just wanted to say that I hope that you folks hold up the decision that was made by the ZBA and past boards as far as stopping this and not letting this expansion get out of hand. Something that we've talked about is if the tower falls, well, you know, something that you haven't considered is there are constant men at various times, we don't know who is there, we don't know what they are doing. It can be at night, it can be early in the morning. I am home occasionally, I don't know what these men are doing it's unfettered access to our backyards. Again, I thought at one point that there was going to be a process in place to monitor folks that were going up there and work that was being done, has never happened. Again, I've sat here for 11 years and heard, we'll do better, we'll do better and it's never happened. And for us to get them to do better we have to take them to court.

Chairman, Fred Childs: You're right.

Karen Donnelly: I really think it's time we just put an end to this for all of us residents. It's very important, this is my home, and again, I know that you folks will do the right thing and again, I just hope that you will. Thank you for your time, Sir.

Chairman, Fred Childs: Thank you. Anybody else? No? Anything you'd like to say in closing?

Attorney Steven Grill: No I think it's been informative for me and I think a lot of good information was presented by the board and by some of the folks who spoke and I'll do my best to address all of those points working with the team that we've put together for this and hopefully convince some of the skeptics that you know, this is not just more of the same, we are committed to doing this the right way and we have to take it from there. But I think, at the discretion of the board, obviously, we will need to reschedule this, give us enough time to address some of these points and you know come back when we are prepared with all of the different detail that's been requested, mostly by Mr. Bennett but by others as well.

Chairman, Fred Childs: How about August 10th?

Attorney Steven Grill: August 10th? Might be a little time but

Chairman, Fred Childs: It's our next regular meeting after the next one.

Selectman, Bill Bennett: We don't want to do this at a regular meeting

Chairman, Fred Childs: yeah we can

Attorney Steven Grill: Maybe the one after that, just to, I'm sorry

Chairman, Fred Childs: he was just questioning whether we wanted to do it at a regular meeting and it doesn't make any difference to me cause you know we have public hearings and then have a meeting afterwards so it doesn't make any difference but if you'd like to go to the next one and there available that's fine with me, that is not a regular night, it's an off night like tonight so, that would be the 17th

Attorney Steven Grill: the 17th… yeah, we might

Selectman, Bill Bennett: you might get back to us with how long you think your presentation will last in order to address all the details that I think you now have a better understanding of what we are looking for and so you would know, you know if it's going to take more than an hour, then we probably want to do it on a non-selectmen's meeting night, don't you think Fred?

Chairman, Fred Childs: the 17th is non

Attorney Steven Grill: yeah I think that makes sense, I think that there'd be a number of questions from some of the folks in the neighborhood and so forth so I think setting it out for a couple hours would be realistic

Selectman, Bill Bennett: I would just like to say that I've got no preconception as to where this process is going right now. The court's given us guidance but they haven't given us direction and I want to bring out into the light something that three of our citizens have alluded to now, such as the annual Atkinson electrical inspector inspections, the annual fire department inspections that the tower owner is supposed to come town to get and your assertion that you didn't know about that but I think that's a bit ingenuous if you've read the same things I've read. You did know about that, it's in the court documents. So I would like to see true good faith on your part and we will try to show the same.

Attorney Steven Grill: Yeah, I certainly, just to be clear what I said, was that I certainly read and was aware that those provisions were in there, I was not aware that certain things were not being done as no one has told me that and I have the ear of people, you know, they are an out of state company and, but I'll make sure there's somebody with their feet on the ground that understands these issues. That's why I'm here, so.

Selectman, Bill Bennett: And sufficient language going forward, should we go forward, that, well, sufficient language as a modification to this addendum, regardless of how this comes out, such that the town has some reason to believe that SBA will follow thru on requirements where other tower owners haven't. And then Mrs. Donnelly's, did I detect a southern accent there?

Karen Donnelly: You absolutely do Sir.

Chairman, Fred Childs: he's just looking to see if you might have been a neighbor but he's still [unclear]

Selectman, Bill Bennett: I'm an old country boy from Georgia

Karen Donnelly: I'm from North Carolina so howdy do

Selectman, Bill Bennett: When you talk about access to backyards, I understand your concern. If you and your other neighbors have any suggestions, if you want to email me that or call into Barbara or however you want, call me at my home phone, I'll give you my business cards if you like.

Karen Donnelly: Well actually we have had two thefts in our neighborhood in the last two months and we haven't had any thefts in our neighborhood ever so that concerns me even more. Because again, these folks come up, it can be 10 o'clock at night, all of a sudden you see headlights, I saw an SUV stop by and I swear they were looking in my window one night. That concerns me and I hope that it will concern you as well.

Selectman, Bill Bennett: pass those around to your neighbors

Karen Donnelly: absolutely

Selectman, Bill Bennett: well, you know, for example, a possible solution would be a chain link fence on the perimeter of the 175 foot square

Selectman, Bill Friel: oh that's interesting

Chairman, Fred Childs: what's that?

Selectman, Bill Bennett: Stipulation number 8 on the original stipulation

Selectman, Bill Bennett: I think that was around the tower

Selectman, Bill Friel: The original is a 12 foot high fence around the perimeter

Selectman, Bill Bennett: around the perimeter? Oh, I missed that

Attorney Steven Grill: But that was changed, I thought

Selectman, Bill Bennett: Yeah, well, I know it got reduced to

Attorney Steven Grill: … to around the base ….

Selectman, Bill Bennett: 8 foot or 6 foot because some of the abutters didn't like the idea, the sight of a 12 foot fence but you know, even six

Selectman, Bill Friel and Selectman, Bill Bennett: [unclear]

Selectman, Bill Friel: … it's pretty detailed; and it might be something that ah, you were going to send him a note?

Selectman, Bill Bennett: yeah

Selectman, Bill Friel: alright, I'll give you some stuff to add to it

Selectman, Bill Bennett: ok

Attorney Steven Grill: it might be helpful to, I'm not sure what your timing is on minutes, but it, when you get the drafts done, if I could get that just so I have, in case my note taking missed anything

Chairman, Fred Childs: of this meeting you mean?

Attorney Steven Grill: of this meeting

Selectman, Bill Bennett: you can even for not exactly a buck 85 but whatever we set the price at which I think is like $3.90 or I think if it's double layer a little more, you can get a DVD of this whole meeting

Attorney Steven Grill: yeah, you know it's easier to have it in writing so then I don't have to keep fast forwarding

Chairman, Fred Childs: … time to read…

Attorney Steven Grill: … my daughter can do that better than I can

Selectman, Bill Bennett: So if you're going to send him a note, I think we can add some amendments …

Kevin Paul: My name is Kevin Paul and I live on Woodside Drive

Selectman, Bill Bennett: Just one second, cans Kristin, can you, when you have the minutes in draft format if you can email them to me then I can email them to Mr. Grill

Attorney Steven Grill: I appreciate it

Kevin Paul: I have not been involved. I am an almost abutter but this seems and at the risk of over simplifying this, this seems to be very straightforward. We have an agreement; it's up to you folks to enforce the agreement. Nothing more, nothing less.

Selectman, Bill Bennett: Except the federal court did knock the last ZBA's ruling into a cocked hat

Kevin Paul: Explain that please.

Selectman, Bill Bennett: The ZBA turned down SBA Towers for making the changes that they are wanting to make and turned them down again on the appeal and the US District Court for New Hampshire ordered the ZBA to give them the special exception that they had denied.

Sandy Carter: Mr. Bennett, if I may, may I quote from that decision?

Selectman, Bill Bennett: Sure

Sandy Carter: the further relief of issuing all the necessary approvals in order for the plaintiff to proceed

Selectman, Bill Bennett: exactly, yes

Sandy Carter: with the installation of the PWS equipment for T-Mobile is denied based upon the stipulation and the addendum that govern the use of the tower at issue here 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 that's what brings us here and therefore, except for the fact that there was a lot of testimony and a lot of massaging of the facts and proposals and issues brought up and those records, obviously you've looked at, and they speak loudly to some of the issues relative to whether or not this represents expansion, unreasonable expansion or whatever, that's just my opinion, but clearly what brings us here is exactly what Mr. Paul has said. The ball is in your court to deal with the issue at the state level of the stipulation.

Selectman, Bill Bennett: excuse me

Kevin Paul: May I, Bill? I think you brought up many excellent points. I would strongly suggest that in plain simple English, it be put on a piece of paper what the changes are proposed. Not a pile of engineering drawings that then you have to dig through to figure out and then you can look at that and say this is reasonable, it's not reasonable, and you represent us and it just seems to be an affront to the town of Atkinson that we have an addendum, an agreement, and we're continuing to wiggle around that agreement and we're looking to you folks to enforce it.

Selectman, Bill Bennett: yeah, and I'm sure Town Counsel will have some advice to us as to what our options are and we may have an option to enforce the existing addendum letter for letter and we may not but that's, you know, we, after this hearing we have more information for that and the presentation that I've asked Mr. Grill to provide, yes, I assume he is going to have a summary as well as the engineering detail. I want both.

Kevin Paul: I would hope that whatever documents were provided became the absolute agreement so that there's no wiggle room on this where they say they're going to put up X and it turns out to be X plus something and they say well that's what we really meant.

Selectman, Bill Bennett: I thought I've given Mr. Grill fair notice that wiggle room is what I'm trying to eliminate.

Kevin Paul: Ok, thank you very much.

Attorney Steven Grill: If I could just clarify one thing for the record before we wrap up there was a letter October 19 and I was looking for this earlier my colleague handed it to me, to this board before it was referred over to the ZBA, ok

Selectman, Bill Bennett: on what date?

Attorney Steven Grill: October 19 of '06

Selectman, Bill Bennett: of '06?

Attorney Steven Grill: that did list exactly what was to be removed what was to be relocated and I agree that that should be redone and re-presented but I just wanted to clarify that that was in the record. It also included engineering drawings as an exhibit to the narrative summary.

Selectman, Bill Bennett: ok, somehow our excellent assistant in the office here failed to put that in our stacks. I didn't get to read that.

?: Would '06 indicate a different owner than SBA?

Attorney Steven Grill: Correct. That was our predecessor, Mariner. That was the actual applicant before we purchased….

Karen Donnelly: So you're application would be new and would require ….

Attorney Steven Grill: No, it's the same application. We acquired it while the application process was ongoing.

Karen Donnelly: No you …[unclear]… so you've got the same application but you don't know any of the history of anything that your client bought, very interesting…. [unclear]

Attorney Steven Grill: I'd prefer, with the chair's permission, not to get into a debate with the folks in the…

Chairman, Fred Childs: That's fine.

Sandy Carter: If I may, your suggestion to update is very valid, based on my experience there have been some changes that are somewhat substantial and this proposal for exterior equipment …[unclear]… was later represented to be, able to be brought inside, there are many many details, you folks need to….

Attorney Steven Grill: exactly I

Sandy Carter/Attorney Steven Grill: [unclear]

Sandy Carter: …were not hear at the time, but I'm sure, you know, Mr. Friel, for instance, probably has personal information based on his participation on the board that there have been sufficient changes and that that document definitely needs updating.

Attorney Steven Grill: fair enough

Chairman, Fred Childs: Gentlemen? All done?

Selectman, Bill Bennett: Pull the plug.

Chairman, Fred Childs: Yeah, you know, I just wanted to make sure you didn't want to say anything.

Selectman, Bill Bennett: No, I think that if Bill's going to put out a memo and [unclear] beyond that I'm looking for a presentation of what the changes are going to be at our next hearing for the public and then from there we can caucus.

Chairman, Fred Childs: I appreciate all you coming. We had good input. Mr. Paul we certainly will take that all into consideration. We have, before we even came here, I mean, we know what's there and what has to be done but we thought the public should have a say to be fair that it's a new company coming in so we wanted to hear both sides even though, you know, I have been here but 9 years but that one little period I wasn't hear. So…

Selectman, Bill Bennett: Cop out.

Chairman, Fred Childs: So, anyway, with that I will close the public hearing and do I hear a yes and a yes?

Selectman, Bill Bennett: yes

Selectman, Bill Bennett: yes

Chairman, Fred Childs: ok, closed, thank you all for coming, appreciate it

Selectman, Bill Bennett: did we pick a date?

Chairman, Fred Childs: Yeah, the 17th, right?

Attorney Steven Grill: 17th

Chairman, Fred Childs: The 17th, 7:30?

Selectman, Bill Bennett: Same time, 7:30?

Selectman, Bill Bennett: ok

Chairman, Fred Childs: I close the public hearing at 8:50pm