



**Hyannis Main Street Waterfront
Historic District Appeals Committee**

367 Main Street
Hyannis, Massachusetts 02601

APPROVED AS AMENDED MINUTES
**HYANNIS MAIN STREET WATERFRONT HISTORIC
DISTRICT APPEALS COMMITTEE HEARING
OCTOBER 24, 2019**

20 JAN 27 P 30

BARNSTABLE
TOWN CLERK

Members Present: Alison Alessi, Mary-Ann Agresti, Sarah Colvin
Members Absent: None

Others Present: Paul Wackrow, Senior Planner, Karen Herrand, Principal Assistant, Planning & Development and First Assistant Town Attorney David Houghton.

To all persons deemed interested or affected by the Town of Barnstable's Hyannis Main Street Waterfront Historic District Appeals Committee under Chapter 112, Article III of the Code of the Town of Barnstable, you are hereby notified that public hearings on two items will be held at Town Hall, 367 Main Street, Hyannis, MA Selectmen's Conference Room, 2nd Floor at **6:00 P.M.** on Thursday, **October 24, 2019.**

Please note that this meeting will be recorded and broadcast on Channel 18 and, in accordance with MGL Chapter 30A §20, anyone taping this meeting please make their presence known.

Call to Order

Verizon New England, Inc.

v.

Hyannis Main Street Waterfront Historic District Commission, Appellee

(On application of Verizon New England, Inc. for a Certificate of Appropriateness for the communications tower extension at 49 Ocean Street, Hyannis – 2019-01)

(On application of Verizon New England, Inc. for a Certificate of Hardship for the communications tower extension at 49 Ocean Street, Hyannis – 2019-02)

Continued Business

Appeal 2019-01

Verizon New England, Inc. has appealed the decision of the Hyannis Main Street Waterfront Historic District Commission (HMSWHDC) to disapprove the Appellant's request for a Certificate of Appropriateness for the communications tower extension at 49 Ocean Street, Hyannis as described in the application submitted on October 23, 2018. The HMSWHDC voted to disapprove the application on June 5, 2019 and issued a determination of disapproval on June 11, 2019. The Appellant seeks reversal of the HMSWHDC decision and issuance of the Certificate of Appropriateness, consistent with proposed findings provided by the Appellant, or a remand to the HMSWHDC for further proceedings consistent with the Decision of the Appeals Committee. The subject property is located at 49 Ocean Street, Hyannis, as shown on Assessor's Map 326 as Parcel 025. *Continued from July 25, 2019, September 12, 2019.*

AND

Appeal 2019-02

Verizon New England, Inc. has appealed the decision of the Hyannis Main Street Waterfront Historic District Commission (HMSWHDC) to disapprove the Appellant's request for a Certificate of Hardship for the communications tower extension at 49 Ocean Street, Hyannis as described in the application submitted on October 23, 2018. The HMSWHDC voted to

disapprove the application on June 5, 2019 and issued a determination of disapproval on June 11, 2019. The Appellant seeks reversal of the HMSWHDC decision and issuance of the Certificate of Hardship, consistent with proposed findings provided by the Appellant, or a remand to the HMSWHDC for further proceedings consistent with the Decision of the Appeals Committee. The subject property is located at 49 Ocean Street, Hyannis, as shown on Assessor's Map 326 as Parcel 025. *Continued from July 25, 2019, September 12, 2019.*

Chair Alison Alessi states the summary list of the documents that have been submitted/received since the last meeting;
October 10, 2019 – Attorney Houghton documents - representing Hyannis Main Street Waterfront Historic District Commission (HHDC).

October 11, 2019 – Peer Review report submitted by Isotrope, LLC.

October 17, 2019 – Additional Draft Findings for Appeals Committee – Attorney Houghton

October 18, 2019 – Additional Draft Findings Attorney Ford/Verizon

October 18, 2019 – Attorney Ford submitted documents to Appeals Committee in response to the peer review

October 22, 2019 – Attorney Ford submitted "Space Diversity Explanation – Hyannis Tower" document

Attorney Ford in attendance, Verizon's representative. He reviews the documents submitted from the Peer Review. Refers to Verizon response to Peer Review, Exhibit A – (No. 16 index binder). Technician at Verizon, Joseph Baker, previous affidavit submitted regarding the increased height and the necessity for and height, is here tonight. Peer reviewer indicates that there was not enough information. They have been monitoring this system for many years, multiple experts have been consulted as well. None of the vendors will profit or make any compensation in any way re this tower.

The Planning Board was concerned with Isotrope's Finding on pg. 6 of their report/new facility would be designed – this is the right height. Verizon stated that this statement runs counter to conclusion on pg. 9 of report – counter to the central theme of the report.

Anecdotal approach/Verizon has tried other upgrades but didn't work. Applicant has tried other things besides increasing the height, included trying different upgrades to the system.

Always certain tower height concerns/problems with signal strength, that wasn't there for satisfactory service.

Antenna separation – some alternatives suggested – switch out cell system, this is not Verizon, it's an AT& T system. Put one antenna there and then bring other antenna up 30 ft. You would have to put main antenna where it will work, needs to be at 145 ft. – basic misunderstanding of what a radio system is.

This Peer Reviewer – not sure what depth of experience this person has. They disagree with the theories and suggesting, these are not alternatives. Design calls for 145 ft.

Power – Verizon has utilized the maximum of power and ATC to its full capability for this microwave system.

Main antenna placement – Limited data criticism and signal drop out.

The Affidavits of the technicians – they have now submitted the new data, since the appeal, getting software package and putting it into a graph form. Did not have this data at the Planning Board point. This shows signal strengths. They have brought in an expert.

HHDC had suggested that they had no evidence.

Comment read into record: *"the Peer Review appears is in theory only, limited knowledge and characteristics, many contradict, not only Verizon team but many others that they have consulted to analyze that. Speculative and theoretical. Verizon continues to maintain the height be increased to supply reliable service to customers"*

Sarah Colvin asks if there are reports/data available for other information / supportive.

Attorney Ford checks with Verizon/client regarding this question. There are 4 other path studies and are in the record.

Mary Ann Agresti comments/clarifies these drawings. Did one indicate the Nantucket side height of tower? Clarifies that it is not in downtown Nantucket, it is outside of town.

Attorney Ford replies that the tower in Nantucket is over 200 ft.

Chair Alison Alessi asks about other material suggested/moving the site?

Attorney Ford replies that no, they have not looked at another site. The Hardship really is about the structures and the site which are different from other structures. Hardship provision. Doesn't think that analysis fits within the appeal for the purpose of the Committee. Also there is a connection between the tower and the switching bldg., there is a trunk/connect if tower in another location you have to move the tower as well. This was originally done because switching station was in this spot, that's what make it unique situation.

Attorney Ford refers to Verizon's response, Exhibit B – (No. 1 of item no. 19 index/ binder). History of what's happened since 2000. Various teams worked over the years, continue to have problems, Alcatel did study in 2012, stated problems. Verizon worked with NEC to replace radios, hoping to improve transmission property, ultra-high performing – ultimately to get a height increase.

Joseph Baker, Verizon technician in attendance. There have been decades of seeing these problems. We have looked for a hop/advancement in technology so that the problem could get a little bit better, radio hardware better. Did path studies each time got new equipment. The main dish is to low and therefore the diversity dish isn't performing. It is not good enough, still loss of signal and drop outs. Can't get past the path issue and in order to get over this and fix this problem need to increase the height. He works on several towers and weather patterns and the islands. They know when drop out/signal fades.

Mary Ann Agresti asks about the weather path/patterns.

Joseph Baker explains – path design, calculate for weather and geographical location and design. Over water you have to use different quotients. Peer reviewer gave info re radio, but he doesn't have any experience with this hop. Other islands have had this same issue, we've had to raise towers in order to get right. This is a tough path, because Hyannis is to low, and Nantucket is up higher, so the signal doesn't get there. 26 miles to Nantucket from here. They do have long hops that work. If tower to short will have drop outs. If a fade/which is fog or rain the radios give more power when problem. Radio compensates, microwave radio is not linear, there are several, multiple variables that effect the signal. The radio on one side can't hear, but if raised up they can communicate. Radio technology is there but limited by the path design.

Attorney Houghton states that he is refraining from making any comments until Verizon done.

Chair Alison Alessi asks for explanation re the graph data.

Attorney Ford replies that they don't have hard data regarding dropped calls.

Ellen Cummings, of Verizon in attendance. She explains what happens is that you loose the call or trying to make call and not working, then there is a re dial to get through. Trouble reportings/tickets for repair are how they keep track of the problem and provide data. This type of lost data does not apply to this type of loss of signal.

Public Comment.

Allan Feltham, Hyannis. The existing tower in Nantucket, how far from water? Elliptical signal, the closer to water the better off you'd be, possibly moving Nantucket tower closer to water.

Joseph Baker replies to this. He explains that the tower is less than ½ mile from the water in Nantucket, but we are talking about height. The ellipsis you need to have line of site, that's why we talk main dish to main dish. Stretched out over 26 miles as signal spreads there are different zones of intensity. It's a great idea but moving the Nantucket tower will not help, this/Hyannis is the problem side, no clear line of site with this tower this low, the two main dishes can't do what they are supposed to do, supposed to be complimentary. Nantucket is up there, free and clear. We have curvature of the earth and other factors, this is for line of site to get the signal proper.

First Assistant Attorney David Houghton in attendance, representing HHDC. He states that there is something simple in the middle, at least the technical part. This applies mainly to the Certificate of Hardship (COH) application.

Dropped calls/any log of dropped calls? HHDC and Hyannis Historic District Appeals Committee (HHDAC) has heard none. The loss of 911 calls has been mentioned. The Police and other officials would be raising the issue, no such evidence of this being reported. Has not heard addressed in Isotrope's report to Planning Board, Sept. 18, 2018, this report indicates that based on 2014 study that the link had 98.8999 responsibility. This results in 34 seconds per year, pg. 4 of 2018 Isotrope report. Average dropped calls would be 15 seconds per year. This does not show a substantial risk that service is interrupted.

The data of the link performance, Oct. 11, 2019, reviewed the first link performance studies that Verizon presented, 12 slides references made to them. Isotrope review, data spread over a month, refers to the graph slides, July 9 to Aug. 18th, three lines, blue line represents an average. Showing that no prolonged/significant fading at all. Red line indicates fades, deep fades, but month long study doesn't go below -40 on the chart. That data shows that on average there is no indication of how long they last the quantity or quality.

Technical data – doesn't rise to the level that would constitute a substantial hardship. Yes, there's a risk, not a perfect system. This is not a new system. Isotrope refers to the fingerprint for the link. Weather, graph of Sept. 12th, weather events don't show any serious or substantial loss. Graph doesn't show the duration, the graphs show a 3 hour period, from 21 to 23 hundred hours. The blue lines are not as deep as the -70 level. Isotrope makes the assumption that -70 is the threshold, this is an assumption. Isotrope accepts that this amount does indicate a deep enough fade to constitute a signal drop. This does not constitute a hardship for Verizon.

Chair Alison Alessi asks for any additional Public Comment.

Alan Feltham in attendance. He refers to his letter of Oct. 22, 2019, Exhibit C.

Original report – he is concerned that the foundation of the tower was not addressed, it was stated as unknown, no information reported for this. This is structural steel subject to rust/decay. We don't know how the base looks like/how safe. The first report for Verizon avoids this piece. The information tonight is all based on new materials/math presented/flawed/immaterial it is based on as built and not by today's standards. Wind loads are predicated on a 40 mile an hour wind. Ice and wind load factor. He is concerned about the way this tower is today, without any extensions. If there would be ever a future use for this, i.e., 5G, Verizon is a huge corporation, what is the real intent as microwave technology goes away. – opposition.

Jane Caputo in attendance, Hyannis. She asks if someone on Nantucket has to call 911 does that call go to Hyannis and back again – confirms that this is a landline. If Verizon doesn't have data how can a decision be made, how do we know/need the facts. She talks to Nantucket a lot and doesn't have any issues.

Ellen Cummings replies that the state controls e911 traffic. Verizon land line provided through the microwave. It goes off the island and then over here then sent to the tandem that tells it where to go.

Attorney Ford replies to Alan Feltham. The permitting path, had to do several studies/procedures. They went to Site Plan review and Bldg. Commissioner. It was indicated to do a structural analysis and stamped by structural engineer and make sure up to date. If problems they can take this up with the Bldg. Dept. This is not an issue that should come before this Committee and/or the Commission. The Bldg. Commissioner should look at this and address as needed.

Chair Alison Alessi confirms that the Committee has the most current Findings from all parties.

Attorney Ford and Attorney Houghton both confirm yes.

Attorney Houghton – final argument subject to the Committee review/preference.

HHDC hearing all draft findings were submitted to the Commission and Attorney Ford when it came before them, June 5th 2019, hearing, Planning & Development developed pro set of findings to approve and to deny, not one or the other. Presented on June 5th, and attempt to submit material on May 1st, a lot of material that needed to be reviewed.

Parts/areas, exhibit submitted on June 5th that showed what the fall zone would be and if collapse. Chapter 106 report, Environmental Assessment (EA) about the effects within the municipal district, there is a depiction of the fall zone. June 5th wasn't the first time this was mentioned.

COA – question for HHDC is re the extension is not supported by substantial evidence. Finding No. 2. Commission found that the extension would raise to almost 150 ft., this is close to 80 ft. increase over the height of the Town Hall Bldg. This is a towering increase, the evidence supports that it is incompatible for major streets and the visual analysis in that was incorporated. view no. 2 to South Street/St. Francis the existing barely clears the view and lower dish not visible at all. The view from Old Colony Rd., in that visual top of tower is visible, but the lower with extension, both dishes visible. Tower is incompatible, view no. 5 of the visual analysis, Bismore Park, within the district, the top of tower visible, but lower screened from view, the extension would be incompatible with the view from the harbor. George Jessop, AIA testimony was that that was the most detrimental, the views from the waterfront. This is part of the district. The increase in the proposed tower height is incompatible and would degrade the view. 106 report to determine whether the tower extension would have any effect in the national historic preservation report - this was limited to 500 ft. radius, it did not take into consideration. The National Historic Preservation Act has a different standard than the Hyannis Historic. The tower was inappropriate for the district. HHDC did not improperly rely on the conditions presented.

Attorney Ford replies that the standard review for this Committee is to determine whether the Commission's action is unsupported by the evidence or exceeds the authority of the Commission; Anul the decision or remand back to HHDC. Verizon – refers to additional Finding, deals with whether or not the matter was prejudged. The final motion that was read by Mrs. Atsalis which parets the first staff report that was drafted and sent to the Commissioner's before public evidence ever opened, Exhibit D (No. 10 index/ binder). The only changes on the motion COA and COH, were placed in highlight yellow to see what was added. The main Findings were in that initial staff report. Is it regular procedure for staff to present draft findings, yes, they are used for direction, this is the first time he has encountered a set of detailed negative findings – there were positive also , but detailed negative findings, this is not generally common or customary to come to a hearing and see a long list of negative findings. He suggests respectfully that there was a pre judgement. There were various reasons for delaying the hearings with HHDC, from both sides. During that course of time the Town of Barnstable there was another matter with a cell tower and there was a lot of focus on that subject/case. The additions made, refers to draft motion. Insufficient time to make a determination, this was drafted before the meeting. There was detailed information given re the graphs submitted. This finding was drafted before this information was presented. There was a finding added before June 5th hearing, this night an exhibit was entered into record by the Greater Hyannis Civic Association. Possible referral to the CCC. There was a decision drafted before the evidence and further in the final form, they weren't going to take into consideration anything Verizon had. They also had information re the fall zone that they wanted to address.

Please go back and look at what the HHDC Commissioners have said, review the minutes and comments made by Commission members/inappropriate comments. He suggests respectfully that they didn't look at evidence and things were already drafted for them. Suggested general findings that Verizon filed – The Act - District defined as "the historic area containing buildings, structures, settings and places established in accordance with the article". EA (Federal Environmental Assessment) submitted, letter from Mass Historical, he asks Committee to take a look at that information.

COA - HHDC - testimony from George Jessop/minutes (Exhibit K, 5/1/2019 approved minutes) - the extension increases the height , not the mass. The areas that can't see it now won't be able to see in the future. Not an imposition of sight from any other view, the waterfront area would be impacted the most. You can already see the whole tower from the harbor. This historic commission (HHDC) has previously/already allowed more/larger antennas and an increase in height for this same tower, not a hardship condition but appropriate.

COH – we have to show conditions specially affecting the building structure or setting or the place involved, but not affecting the district generally. This was authorized by ZBA. There are unique conditions, this is the only structure of its kind in the historic district.

Peer reviewer and Verizon agree that 145 ft. is needed for this tower to work. Unique conditions. He doesn't think that the act requires us to look at another location. Are there condition that would create a hardship, under hardship you have to find that it can be approved without substantial derogation from the intent and purpose of the chapter. If meet the requirements of this section it's not deviating from the intent and purpose. You also have to find that it can be approved without substantial detriment to the public welfare.

Refers to Exhibit 24 Verizon (Exhibit L of 5/1/2019, HHDC minutes) January 6, 2019, Cape Cod Times editorial article submitted, (current Exhibit E). This was about cell service lost and 911 service not working. Article stated that this should not happen, we should have back up systems for 911 calls.

Verizon is not making any revenue for this. Planning Board Special Permit states that no additional equipment to be added on this structure/tower. Why are we taking a risk? The Hardship provision should be employed, he thinks they meet all the requirements, this is just to make the system work.

If more time needed to review material Verizon does not have a problem with this.

Chair Alison Alessi clarifies the two options.

Sarah Colvin would like more time to review all the information.

Mary Ann Agresti will support this.

Discussion regarding continuing and keeping public hearing open.

Chair Alison Alessi confirms that the material they have has final findings from both sides.

Chair Alison Alessi entertains a motion to continue Appeal No. 2019-01 and 2019-02 to Wednesday, November 13th, 2019, at 6:00 p.m., Selectmens Conference Room, with deadline to do written decision by November 27th, 2019, moved by Sarah Colvin, seconded by Mary Ann Agresti, so voted unanimously.

Approval of Minutes: January 18, 2018, July 25, 2019, September 12, 2019

Chair Alison Alessi entertains a motion to approve the minutes as amended for January 18, 2018, moved by Sarah Colvin, Mary Ann Agresti abstains. The motion passes.

Chair Alison Alessi entertains a motion to approve the minutes for September 12, 2019, moved by Sarah Colvin, seconded by Mary Ann Agresti, so voted unanimously.

Chair Alison Alessi entertains a motion to approve the minutes of July 25, 2019, minutes, moved by Sarah Colvin, seconded by Mary Ann Agresti, so voted unanimously.

Chair Alison Alessi entertains a motion to adjourn, moved by Sarah Colvin, seconded by Mary Ann Agresti, so voted unanimously.

The meeting adjourned at 8:15 p.m.

Respectfully Submitted
Karen Herrand

List of Exhibit Documents

Exhibit A – No. 16 Index Binder (Verizon response to Peer Review)

Exhibit B - No. 1 of Index Binder (19)

Exhibit C – Letter from Alan Feltham, dated October 22, 2019

Exhibit E – Cape Cod Times Article dated Jan. 6., 2019 (Exhibit L of May 1, 2019, HHDC minutes)