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Ashland Cell Tower_20 Pondarosa Road

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Tue, Dec 8, 2020 at 3:43 PM

Peter,

Thank you. I have reviewed the initial filing of the Applicant by Attorney Daniel Klasnick as well as his recap of his client's position dated December 4, 2020. Please know I have also reviewed the applicable regulations as well as interpretive case law and in addition an opinion of the Attorney General of Massachusetts.

It is my opinion that Attorney Klasnick appropriately sets for the standards by which the Board must act. Further his comparison of the application against those standards are also accurate.

While I am sure it is confusing for the Board to be reviewing this item under a special permit which provides discretion to the Board, typically, they are doing so in light of the overlay of federal regulations on the local bylaw. Please know the "Federal Middle Class Tax Relief and Job Creation Act of 2012" (the "Act") is very clear that while a local permitting agency "may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base stations." 47 U.S.C. sec. 1455(a)(1). The sole focus on a modification is on dimensions and no other extraneous potential consideration such as health.

In fact, preceding the Act the FCC was very clear that it prohibited local permitting agencies to deny permits for applications for cell towers based upon the environmental and health effects. This FCC order was upheld in the case of Cellular Phone Taskforce v. Fed. Communications Comm'n, 2000 WL 228230 (2nd Cir. 2000). Factors or alleged factors such as the environment and health impacts are not to be considered as a basis to deny a permit. Of course, with the Act, the factors are very clear for modifications – and health and the environment are not included in those factors.

Finally, the Massachusetts Attorney General was clear in her review of a proposed bylaw which put forth that those modifications which are protected under the Middle Class Tax Relief Act may not be subject to discretionary special permits.

As a result, if the Board finds that the proposed modifications are deemed not to be a substantial change under the Act, the Board must approve the permit.

Please let me know if you have any further questions.

Lisa

Lisa L. Mead

12/9/2020

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