



TOWN OF RICHMOND

RICHMOND TOWN CENTER

203 Bridge Street, P.O. Box 285

Richmond, Vermont 05477



MEMORANDUM

Date: September 11, 2014

To: Selectboard

From: Geoffrey Urbanik, Town Manager

RE: Cell Tower Update for September 15, 2014

Since our last meeting, two important events have occurred regarding our continuing Cell Tower saga. First, the decision of the Hearing Officer for the SBA/VTel project was made to the PSB, recommending approval of the project. Second, the Public Service Board issued its decision on defining the terms "Good Cause" and "Substantial Deference." Unfortunately, both of these events are bad news for our fight in favor of local regulation, and against tower proliferation.

First, the decision to recommend approval of the VTel tower was written in a tone that carried from the hearing, which was sobering at the time. My suspicions at that time have been confirmed; that the Public Service Board believes our regulations are "pre-empted" and therefore nullified and fit to be ignored. Thus, without any further substantive objection, the project remains ripe only for approval by the PSB. This is not what we argued but our logic fell on deaf ears, apparently. We do have the chance to request oral arguments in this matter, but I recommend the fight be dropped, as explained later in this memo. Further action is futile and a clear waste of money when faced with what has been, and continues to be, a racket for wireless companies. The only point we could hope to make would be that our regulations might somehow matter more than they have been given credit for, but that would neither stop the application nor convince the PSB to modify the project.

Secondly, and most depressingly, the PSB fulfilled a recent legislative mandate to define the terms "Good Cause and "Substantial Deference." At issue is this paragraph in the relevant statute:

§ 248a(c)(2), ...unless there is good cause to find otherwise, the Board is required to give "substantial deference . . . to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans.

As we know, the vagueness of when good cause may be applied has led to some objection from around the state that the legal process is flawed and difficult to argue around. Thus, the legislation passed earlier this year to define these terms and sort of pin down when good cause to ignore towns' objections (based on their plans) exists and when it does not. Last week, the PSB released their definitions for these terms as follows:

Substantial Deference means to give significant and meaningful weight to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

This bit of news is not very good, but better than the bad news. This sounds like they might pay attention to our concerns. It ignores bylaws, which is what we sought to include, but we could still amend the town plan to be more regulatory in this case.

But that may be a waste, because of the bad news, since:

Good Cause means a showing that deferring to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively, would be detrimental to the public good or the STATES INTERESTS ARTICULATED IN 30 V.S.A. Section 202c (emphasis mine).

What this boils down to is that there can be no objection to 248a projects, since to raise any objection now means automatic disqualification of the arguments against, in favor of the State's interest. This is clearly against the legislature's intent. There now remains no option to argue for any local interest which may be detrimental (or the least bit contrary) to the State's, and the State's interest is so easily met by any random wireless project as to be inarguably fulfilling the legal objectives of 30 V.S.A. 202c. For this reason, it is useless to resist these projects and I urge the Selectboard to abandon any efforts to go before the PSB on 248a projects, until the law is changed to be friendly to the town's interests.

To date, we've spent \$15,344.60 on this battle, in excess of what was originally approved. At some point, we have to stick with the fight and that's what we did, but seeing now that any hope of success in defending our own plans has been written away we can't pretend that we could even make a point of defending our honor, let alone have any hope of real success. Unless something within the current 248a statutes changes, we should avoid legal battles with these projects entirely.