

1 ANTRIM PLANNING BOARD

2 Meeting

3 Thursday, May 2, 2024

4 MINUTES

5 Members & Planning Staff present:

6 Mark D. Murdough (Chair), John Anderson (Vice Chair) Bob Edwards (Ex-Officio), Lynne Rosansky
7 (Member), Michael Devine (Member), William Fluhr (Member; Ken Rubin (Member), Dennis Young
8 (Alternate Member), Carol Ogilvie (Planning Consultant)

9 **Present over ZOOM:** Donna Hanson, Town Administrator; Kevin & Elizabeth Seaver; Leslie
10 Zebrowitz; Janice McCarthy

11 Members/Staff Absent: Rebecca Hull (Alternate Member)

12 Others present: Steve Grill, representing ITW; Madeline Osbon, representing the Town of Antrim; Art
13 Kaufman, Hillsboro resident; John Hanson, resident; Lawrence Nesbitt; Michael Marston; Joyce Davis;
14 Jean DeBrine; and Stephanie Martel.

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16 **CTO:** Chair Murdough called the meeting to order at 7:00 PM.

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18 **I. ITW Pierce Lake Cell Tower**

19 **Background:** On September 17, 2015 the Planning Board granted ITW approval for a 150-foot cell
20 tower on Pierce Lake Road, subject to a condition that nine (9) months from start of construction the
21 facility must be operational. Since that time several abutters to the property and residents around Pierce
22 Lake within view of the tower have expressed to the Town officials that the tower is not “operational” in
23 the sense that it has no cell service providers, and they still have no cell service, as they were assured they
24 would during the application process.

25 In February of 2024 the Antrim Select Board sent ITW a Notice of Non-Compliance, stating that unless
26 this is remedied, the Town will deem the facility abandoned and seek removal. In March of 2024 ITW
27 responded to this letter challenging the assertions of non-compliance. In April of 2024 ITW sent a letter
28 to the Planning Department describing the equipment and service on the tower to document its assertion
29 that ITW is in compliance with its prior approval. ITW has been invited to this Planning Board meeting
30 to discuss the issues and hopefully resolve the question of whether the company is in compliance or not.

31 Chair Murdough explained that the purpose of this meeting is an inquiry for the planning board due to
32 concerns about cell service not being available from this facility. He recognizes that members of the
33 public and abutters will have questions and that this is a sensitive topic, but please keep it civil. He then
34 invited Mr. Grill to speak to the complaint.

35 Mr. Grill stated that ITW has sent letter to the Town certifying that it is in compliance. He described the
36 equipment that has been installed as “ESMR” – enhanced specialized mobile radio; while it is not the
37 typical cell service to which people are accustomed, it does meet the federal definition of a personal
38 wireless service facility and is therefore protected by the FCC laws. The equipment was timely installed
39 and has been regularly updated and maintained since the installation. It is part of a network that has
40 operated for decades and does connect with a larger telecommunication system. His client had certainly
41 anticipated that some major carriers would locate on the tower, but unfortunately that hasn’t happened,
42 and these are business decisions over which his client has no control. Nevertheless, given that there is
43 still a gap in coverage, his client is confident that they will come to Antrim. Therefore, it would be

44 unfortunate if the tower were to come down when a carrier should decide to locate there. His client
45 stands by the record from the approval and believes it is within its right to be there and to continue to be
46 there.

47 Chair Murdough stated that he would now entertain questions from residents and recognized Art
48 Kaufman, who had a submission for the Board. Chair Murdough reminded him that the focus of this
49 meeting is whether the tower has been abandoned, not any of the other concerns the abutters have about
50 the tower.

51 Mr. Kaufman expressed that ITW has not provided the service they promised during the application
52 process, at which time they made specific promises. They claimed they needed the height in order to
53 provide the service and coverage which was important for public safety. They did not look for other
54 places to co-locate, and now Verizon and AT & T have gone elsewhere in town and will not go onto this
55 tower, so he and his neighbors will not get service from these providers. Further, ITW has made no
56 attempt to market this tower; he has contacted other providers who have told him they didn't even know
57 this tower existed. The remedy he and his neighbors propose is that if they can't get the cell service they
58 were promised, the tower should be taken down.

59 Joyce Davis stated that she agrees with Mr. Kaufman, but said that the residents don't want the tower
60 taken down, they just want service and they are asking that the town do its due diligence and follow
61 through so that they have cell service. She asked what kind of businesses use the service that is on the
62 tower now? What is the benefit to Antrim?

63 Mr. Grimm stated that he can't answer that question. He does know that it is available to businesses in
64 the area. Mr. Anderson stated that this equipment is primarily for dispatch and it is covered under the
65 1996 Telecommunications Act. He does have specific comments on that, but he will save them for later.

66 Larry Nesbitt stated that his concern is also public safety. He spends between \$400-\$500 a year for a land
67 line so that he has a telephone in the event of an emergency because there is no cell service. How many
68 other people are incurring that cost?

69 Keven Seaver (over Zoom) agrees with other the commenters. Convenience and safety are issues. Even
70 the marine patrol has concerns about lack of service. ESMR is not practical for most people.

71 Mike Morison is also mainly concerned about safety. There is no coverage if anyone is injured. Safety
72 on the lake is his main concern.

73 In response to these comments, Mr. Grimm is in agreement that safety is a priority. His client fully
74 expected that providers would sign up, but ITW cannot force anyone to do that. He disagrees with Mr.
75 Kaufman that ITW has done nothing to market the tower, and suggested that people who want service
76 should contact the carriers and let them know. He believes that Verizon is very committed to providing
77 coverage in New Hampshire, but is limited by business constraints. He remains confident that they will
78 come. ITW would like to recoup its investment and believes that it will. It is not fruitful to take the
79 tower down. His client has met the conditions of approval and did not promise more than they thought
80 was reasonable. The investment is sitting there and ITW has an interest in getting providers to sign up.
81 He envisions a scenario where a representative from the town works with ITW to facilitate this solution.

82 Leslie Zebrowitz stated that she complained to the FCC about Verizon and the letter Verizon sent to the
83 FCC said that she should get a booster. This is not a feasible solution for her. This is definitely a safety
84 issue and agrees that everyone was misled.

85 Mr. Grimm stated that the letter she received is a form letter and contends that a concerted effort from the
86 Town and ITW should be considered. Ms. Zebrowitz stated she simply wanted to make clear that she did
87 contact the carrier and it did no good.

Mr. Kaufman stated that he had spoken to the ITW Vice President twice and with AT & T, and was told that AT & T is not doing anything else in Antrim. Mr. Kaufman asked what they – residents, could do and was told they should try social media. ITW made promises that weren't kept.

John Anderson stated that he would like to close the public comment portion of the meeting.

On a motion by John Anderson/seconded by Mike Devine, the Board voted to close public comment at 7:35 P.M., with all in favor.

Mr. Devine asked Mr. Grimm what efforts were made to contact carriers, to which Mr. Grimm responded he couldn't answer that question. He did state that common sense dictates that the tower was not built exclusively for ESMR, it was built to bring service to this area. Mr. Devine asked if he could demonstrate these efforts or not, to which Mr. Grimm stated that he could not, but his client could, although some information is proprietary and would not be shared.

Mr. Anderson stated that he would like to focus on the issue of deciding the question of abandonment. ITW intended to located ESMR on the tower, that was made clear in its application. In his view, this service does meet the federal definition, but does it meet the needs of the residents. Does it meet the letter of the law? Yes. Does it meet the spirit of the law? No. While there was mention made of ESMR, there was also much discussion of public safety. An argument could be made that the presentation was disingenuous, but he also realizes that ITW can't force carriers. He then asked Ms. Osbon if she agreed that it met the letter of the law. Ms. Osbon replied that if the Board is asking for advice, they need to go into a non-meeting.

Mr. Rubin asked Mr. Grimm what percentage of ITW towers constructed have ESMR on them, to which Mr. Grimm replied he did not know exactly, but knows that some of them do. Mr. Rubin then asked what percentage of towers have something other than ESMR on them, to which Mr. Grimm replied that he believes that all of them do. He further stated that he feels somewhat under attack this evening; that ITW was asked to be here and he was the only representative available and had very little time to prepare.

Chair Murdough stated that this is definitely not an attack, but a meeting to find a solution. Mr. Grimm stated that ITW has already been forced into litigation over this issue, and it feels a bit adversarial to come into this forum under these circumstances.

Mr. Edwards stated that he is extremely disappointed in the lack of service. He would think the company would have done research to justify the expense. H assumed that ITW would have done research that would have been adequate to sign up one or two carriers. The argument that the carriers can't be forced rings hollow. The promise of coverage for life safety purposes was so compelling. He is also disappointed in the bond being in default.

Mr. Grimm stated that the entire economy was in freefall in 2020 due to COVID. He is confident the tower would not have been built if there was not a high probability that carriers would sign on. ITW clearly wants carriers on the tower; they would not still be in business if that were not the case. Of course, they did their research and are disappointed by the results. He pointed out that the paperwork was overlooked by the Town for five years, that the certification has been addressed, and assured the Board that the bond will be taken care of. He also assured the Board that ITW is very concerned about these issues, seeks a solution, and welcomes a dialogue toward resolving them.

Mr. Anderson noted that ESMR is not used by emergency services. During the application process there was a lot of emphasis on safety, yet ESMR does not address that. The application showed potential tower locations and identified Pierce Lake as the only feasible location. If that is true, Antrim has no way to rectify that.

Mr. Grimm stated that this gap is different from other service gaps. The ordinance allows boards to require that applicants talk to other tower owners before getting approval for a new tower. Mr. Anderson asked if the preference is to build/own or to lease. Mr. Grimm replied that US Cellular is the only carrier

that builds and owns its own towers. Everyone else leases because they are not in the real estate business. The idea that ITW needs to relitigate its right to exist is not reasonable. Real estate rights are recognized and protected. ITW will work with the Town to get carriers motivated to locate in the tower.

Chair Murdough summarized the concerns as being the lack of service, the bond being reinstated, and the certification of compliance.

Mr. Rubin asked about coverage area and rights of ownership, to which Mr. Grimm responded that a tower owner/carrier does not own the rights of that radius of coverage – there can be other carriers that share that radius.

Chair Murdough stated that the Board will wait for a response from ITW and then provide an opinion to the Select Board.

Mr. Kaufman stated that there are 130 households in the Association and they should be involved in any discussions. Chair Murdough replied that all discussions will take place at a public meeting. Mr. Kaufman asked if ITW is only going to have dialogue at a public meeting. Mr. Grimm stated that he is not interested in having dialogue with Mr. Kaufman.

On a motion by John Anderson/seconded by Lynne Rosansky the Board moved to table the discussion, with all in favor.

On a motion by John Anderson/seconded by Lynne Rosansky, at 8:17 P.M., the Board moved to recess for 30 minutes, with all in favor.

II. Review Draft Minutes

Chair Murdough asked the members to review the minutes of 3/21/2024 and the minutes of the 4/18/24, and note if there are comments/corrections to the minutes.

On a motion by John /seconded by Bob, the Board voted to approve the minutes of 3/21/24 with all in favor.

On a motion by John /seconded by Mike, the Board voted to approve the minutes of 4/18/24 with all in favor.

III. Discussion of Proposed Amendment to RSA 674:76

The Town of Hanover is sponsoring a petition to amend RSA 674:76 by eliminating the exemption from zoning and site plan review regulations for religious facilities. The Board has been asked by Riche Colcombe from Hillsboro to support this petition. Religious exemption from zoning and site plan review regulations. Following a brief discussion about the meaning of the petition, Mr. Devine made a motion to support.

On a motion by Mike Devine/seconded by Ken Rubin, the Board voted to support the petition, with all in favor.

Chair Murdough will contact Ashley and ask her find out if the petition is still valid, and if so to add Antrim to it.

IV. 2024 Planning Board Work Program

- a. Housing. Continue to May 16, 2024

175 **V. Reports**

- 176 a. Planning Consultant. Ms. Ogilvie reported that she is collecting the excavation reports from last
177 year and will have that information for the next meeting.
- 178 b. Complete Streets. Chair Murdough reported that the next meeting is May 8th at the Police Station.
- 179 c. TIF. Mr. Anderson reported that the committee has been appointed and that Donna Hanson is the
180 Administrator. He is hoping to get a meeting scheduled for next week.
- 181 d. CIP. Chair Murdough stated that two members from the Planning Board are needed to serve. Mr.
182 Devine and Ms. Rosansky both volunteered. Mr. Edwards stated that the first meeting will be
183 scheduled, and that it is for organizational purposes. Chair Murdough will ask Ashley to set up the
184 first meeting.
- 185 e. Correspondence. None

186
187 **VI. Other Business**

- 188 a. Community Fair. Chair Murdough, Mr. Rubin and Mr. Edwards will be there. The Board
189 discussed promotion of this event.
- 190 b. Administrative Assistant. Chair Murdough reported that he and Mr. Anderson have
191 continued to research and draft a job description for this position. Mr. Edwards commented
192 on the last meeting's discussion and the need for a minute taker. He introduced Stephanie
193 Martel as a potential minute taker. She described the work she currently does as a minute
194 taker and expressed interest in helping out should that be called for.
- 195 The Board reviewed the issues around this position and discussed the components of the draft
196 job description. All agreed that there is a need for this and that it is urgent. The draft job
197 description will be put on Google Drive so that the other members can review and comment.
198 Once the Board has agreed on the job description, it will be presented to the Select Board.
- 199 c. Chair Murdough noted that the first meeting in July is the 4th, and if no one has any
200 objections, he would like to move that to the 11th. No objections noted.
- 201 d. Mr. Edwards reported that he had heard nothing back on Thompson Crossing. There is no
202 bond yet in place, but work is being done. It is unclear whether a cease and desist has been
203 issued.

204
205 **Motion to adjourn:**

206 *At 9:26 P.M. on a motion by John Anderson/seconded by Lynne Rosansky, the Board voted to adjourn,*
207 *with all in favor.*

208
209 Respectfully submitted,

210 Carol Ogilvie

211
212 **Approved**