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3 **KENSINGTON, NEW HAMPSHIRE**
4 **KENSINGTON PLANNING BOARD**
5 **WEDNESDAY, May17, 2023, 6:30 P.M.**

6 **At Kensington Town Hall 95 Amesbury Road, Kensington, NH**
7 **Meeting – Meeting Minutes Draft**
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9 *I believe that the below minutes depict what each speaker intended to relay to the board and the public,*
10 *it is not exactly verbatim as some of the comments were hard to hear on the recording. I do believe that*
11 *the minutes are a true recollection of the meeting.*

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13 **In Attendance: Vanessa Rozier, Chairwoman, Justin McLane Vice Chairman, Mary Smith, Carly**
14 **Fenton, Marty Silvia, Robert Solomon, ex officio member, Glenn Greenwood, Town Planner**

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16 V. Rozier opened the meeting at 6:30 pm.

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18 **Introduction of Planning Board Members and other meeting Participants**

19
20 **PUBLIC HEARING**

21 **Continued Public hearing from April 19, 2023.**

22
23 **PUBLIC HEARINGS:**

- 24
25 • V. Pozier stated that the Planning Board (PB, or the board) would be holding a continued public
26 hearing for the conditional use permit and site plan review for the construction of a cell phone
27 tower on Moulton ridge. Also on the agenda were checklist and master plan survey update,
28 which she stated the PB might not get to at the meeting.
29
30 • V. Rozier reviewed the process for the public hearing. She stated that the PB would be
31 reviewing, discussing, deliberating, and potentially making a decision on the application. She
32 stated that the PB would be applying Article 5 of the PB regulations. The PB would deliberate on
33 how the Telecommunications Act of 1996 applies to the application decision. V. Rozier stated
34 that the public comment portion of hearing is closed. V. Rozier reminded those present of the
35 rules of decorum.
36
37 • V. Rozier stated that the PB would be holding a continued public hearing for the
38 telecommunications tower by Vertex towers tax map 10 lot 1 and entertained a motion to open
39 the hearing.
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42 **MOTION:** M. Smith motioned to open public hearing. C. Fenton seconded. All in favor, none
43 opposed, no abstentions.
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- 45 • V. Rozier stated that they are on day 63 into taking jurisdiction of the application and said that
46 NH RSA requires a decision be made within 65 days to make a decision from receipt of
47 application, unless there is a mutual agreement between the applicant and the PB to extend that
48 time.
49
- 50 • V. Rozier stated it has been brought to her attention that there is a so-called “shot clock”, which
51 requires a decision be made within 150 days from submission of application. V. Rozier
52 confirmed the date of application submission to determine 150 days. J. McClane stated it should
53 be around mid-May. V. Rozier stated that the PB is running into the shot clock timeline.
54
- 55 • V. Rozier asked G. Greenwood to address questions submitted by P. Decaprio. The questions
56 were submitted to the PB at the last meeting (Addendum 1).
57
- 58 • V. Rozier interjected and stated that municipalities do not have jurisdiction or the means to apply
59 jurisdiction to address potential health concerns. She stated that the PB should not be
60 commenting on any health-related studies, as PB members are not public health professionals.
61
- 62 • V. Rozier asked if there are any further questions regarding the application before the meeting
63 goes further. J. McClane asked if in accordance with section 5.1.10 of the zoning regulations,
64 does the PB feel that they have enough information to say that they feel in favor of the way that
65 the applicant presented the bond. V. Rozier stated that maybe they should review the bond to
66 ensure that there are adequate funds available for demolition in the event that the site goes vacant
67 and wants the PB to consider if the bond is in accordance with the boilerplate agreement in the
68 site plan regulations.
69
- 70 • J. McClane stated this is something they can discuss going forward. V. Rozier stated that there is
71 no other interaction with the applicant nor opportunities to ask questions once the public hearing
72 is closed. She stated that she has a list of potential conditions that have come up in the course of
73 previous meetings. M. Smith raised a question about conditions for the Rosencrantz tower. V.
74 Rozier stated that as they discuss the conditions of this application, they can note whether that
75 was a condition implemented for the Rosencrantz tower.
76
- 77 • V. Rozier asked F. Parisi if he would be ok with proof of financial ability to pay being a
78 condition of approval. F. Parisi stated that rather than proof of financial ability, acceptance of the
79 bond could be what they should be considering. He stated that last time they had a formal
80 estimate. V. Rozier asked F. Parisi if the bond matches the boilerplate template mentioned
81 earlier. He stated that it does.
82
- 83 • J. McClane asked if Vertex would be willing to conduct independent testing to ensure that RFR
84 is within acceptable legal limits. He also asked how the industry stays within RFR limits. F.
85 Parisi stated that the FCC requires them to certify compliance, not monitoring. He stated that
86 what some towns do is to say that within 90 days of first operations, and 30 days of a building

87 permit for any additions, they submit a new certification to show that they are still within FCC
88 RFR limits. V. Rozier asked about the difference between a certification and an actual test in the
89 field. F. Parisi that they can conduct actual testing if the board prefers, and that a certification is
90 based on scientific calculations based on the RF engineering. He stated that the engineers can
91 certify based on power output and. F. Parisi stated that method is better because they can test at
92 different times. For example, they can test on a Sunday when there is less output than on a work
93 day. He stated that it is difficult to test because it is based on usage, but that engineers can certify
94 based on FCC regulations.
95

- 96 • J. McClane asked if testing is done routinely. F. Parisi said that it is not done routinely, but it is
97 not an elaborate process. He stated that even with heavy usage, the tower would be well below
98 FCC regulations.
99
- 100 • V. Rozier asked if there were any other questions regarding testing, or the town's ability to
101 ensure that the applicant and the tower are meeting the FCC guidelines. She stated that one of the
102 biggest concerns that she has heard from the public has been concerns regarding RFR. There are
103 certain federal laws in place that guide what the board can and cannot do, but in the interest of
104 validating that the facts in the application are true about the tower being two tenths of a percent
105 of the maximum, she wanted F. Parisi to confirm. He stated that it's usually routinely under one
106 percent of the maximum RFR exposure limits. V. Rozier stated that they could validate that at
107 certain points with recertification. She didn't want to get too much into deliberating, but she
108 wanted to know if that prompted any other questions for the applicant from other board
109 members.
110
- 111 • M. Smith stated that she wanted to know about how they do the testing based on the radio waves.
112 F. Parisi stated it's based on exposure standards. He said that they calculate where the highest
113 exposure would be based on benchmarks.
114
- 115 • C. Fenton stated that F. Parisi had stated that the testing is a snapshot in time. Would they be
116 willing to conduct testing at multiple times. F. Parisi stated that they would.
117
- 118 • V. Rozier stated that she thinks F. Parisi had mentioned the possibility of adjusting the tilt of the
119 antenna to ensure greater coverage. F. Parisi stated that they are going down a slippery slope
120 with that issue because he is the owner of the tower, not the antennas. What they predicted based
121 on software, the town would be on the edge of really good coverage at the school. There will be
122 good coverage at the playground, and outside the school, but inside the school they would have
123 less than perfect coverage. They can remedy that inside the school with Wi-Fi, etc. He stated that
124 he had not seen the letter G. Greenwood read into the record, but that it's plainly obvious to him
125 that people are concerned based on the proximity of the school. He stated that it's a common
126 dilemma, and that is why they take a holistic approach to this. He said it's not perfect, but it's the
127 best they can do with everything they have to consider.
128
- 129
- 130 • V. Rozier raised concerns about tower maintenance. She stated that she knows they will have the
131 bond in place in the event the site goes vacant. She asked F. Parisi if he could share a bit about
132 the maintenance of the tower. F. Parisi stated that the tower itself is galvanized steel, and that it

133 really doesn't weather over time. He stated that the biggest issue is maintaining the fence. From
134 the town perspective, maintaining the integrity of the fence as a safety issue is important. The
135 tower is designed to be maintenance free. J. McClane asked if there are any requirements within
136 the telecommunications industry required to conduct structural inspections. F. Parisi stated that
137 they provide a structural analysis to the building inspector at the time of construction, and when
138 anything is added on. This is going to be built with Verizon, and as AT&T adds antennas, they
139 will provide the building inspector with proof that the tower is capable of handling additional
140 requirements. J. McClane stated that it's just based on design, not a field inspection, and asked
141 again if there are field inspection requirements within the industry. F. Parisi stated no, but that if
142 something was noticeably wrong, they could conduct an inspection. V. Rozier stated that it's
143 important to note that there is a building permit associated with the construction. If approved,
144 there would be a certificate of occupancy that it was constructed per plan. The initial inspection
145 would be conducted by the building inspector. J. McClane asked that if new carrier comes on or
146 equipment is changed out, is a building permit required at that time. F. Parisi confirmed. F. Parisi
147 stated that to be fair to the building inspector, he is not doing inspections. He is taking
148 certifications from engineers.

- 149
- 150 • V. Rozier asked if there were any other questions from the board, and if there are no further
151 questions, she envisioned closing the public hearing and moving on to deliberation. J. Preneta
152 asked that for the answers that Glenn provided, are those intended to be the voice of the planning
153 board. G. Greenwood stated no, and that it was simply his take on answering the questions.
154
- 155 • Someone in attendance asked if there would be public comment. V. Rozier stated that there was
156 very rigorous public comment during the last meeting for about two hours. There were a lot of
157 questions answered, as well as letters read into the record. The public comment sign-in list was
158 left open for the entirety of that session. At the end of the meeting, it was asked if there were
159 further questions, and there were none. At that time, the board motioned to close public
160 comment.
161
- 162 • A person in attendance stated that it was said that there would be public comment. V. Rozier
163 clarified that she said they would open the public hearing. Attorney Cory McDonald was in
164 attendance and stated that the board may have gotten a letter from residents that had some
165 concerns and asked for time to seek counsel to address those concerns. He stated that they
166 approached him and asked him to represent what their concerns were tonight. C. McDonald
167 stated that they were under the impression that they would be able to make public comments,
168 otherwise they would not have brought him to the meeting. V. Rozier stated that the board had
169 an extensive public comment period in the last meeting (sign in sheet, motion to close public
170 comment, opportunity for attendees to state that they had further questions). She stated that the
171 board cannot let public comment go on meeting after meeting. She stated she appreciates that
172 people have questions but said that the board has done everything they can to allow for ample
173 opportunity for public comments. C. McDonald asked if he were to avoid any public comment,
174 could he bring to light some procedural questions. V. Rozier stated that if there are procedural
175 concerns it should have been submitted prior, and that she has no record of anything being
176 submitted. C. McDonald stated that he assumed the town would want to know that there are
177 procedural concerns, and stated that he would limit himself to two minutes.
178

179 • V. Rozier stated that she was going to take feedback from the board, then make decision on
180 whether to allow it. M. Silvia stated that he was not in favor, and that the board was very open
181 last month. J. McClane added that the same was true the month before, and that he believes they
182 have been very fair with providing time. C. Fenton agreed. J. Prenetta stated that he doesn't see
183 the harm. B. Solomon agreed, as it's two minutes. J. McClane asked if it had been determined
184 that the letter had not been received in advance. K. Felch stated that a letter was received from
185 Karen Parker Feld. C. McDonald confirmed that was the letter he was referring to. J. Preneta
186 asked about procedural limitations for opening public comment. J. Preneta asked if the board was
187 concerned that they would be opening public comment for two hours. B. Solomon stated he
188 heard 2 minutes. J. McClane asked if it was possible for the board to review the letter without
189 opening public comment. C. McDonald stated that he'd met with residents who were in
190 attendance, and they put together a brief, and that if he wasn't going to be able to make
191 comments, could he leave the board with the brief. C. Fenton asked if the board could ask
192 specific questions without opening public comment. V. Rozier said no. She stated that the town
193 has its own counsel, and that C. McDonald was representing whoever prepared this letter. V.
194 Rozier stated that she was open to everyone's opinion, and said that she suggested the board take
195 a copy of the brief, take two minutes to review it, and then determine whether or not the board
196 would like to enter a non-public session to discuss it. She stated that legal counsel for the town
197 was present. She said that might be a way to proceed, unless the board wanted to open public
198 comment.

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200 **MOTION:** J. Preneta made a motion to receive the briefing from counsel. J. McClane seconded.
201 6 in favor, 1 opposed, no abstentions.
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203 • F. Parisi stated that he believed the public hearing had been closed. V. Rozier stated that the
204 board had not closed the public hearing. The board had closed public comment. If the public
205 hearing was closed, there would be no back and forth. She stated that the board went through
206 what we were going to do, including the board asking further questions. V. Rozier reiterated the
207 process for this meeting. G. Greenwood asked if the board should the board should hear from
208 legal counsel representing the town. G. Greenwood stated that he would like to know legal
209 counsel's perspective on opening public comment to accept testimony from the present abutters.
210 Will Warren, town legal counsel, stated that it would be more appropriate in a nonpublic session.
211

212 **MOTION:** J. Preneta made a motion to enter a nonpublic session to hear legal counsel. Roll call
213 vote: J. Preneta: aye, B. Solomon: aye, V. Rozier: aye, J. McClane: aye, M. Silvia, aye, M.
214 Smith: aye, C. Fenton: aye.
215

216 • V. Rozier stated she would entertain a motion to exit the nonpublic session.
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218 **MOTION:** M. Smith made a motion to exit the nonpublic session. J. Preneta seconded. Roll call
219 vote: J. Preneta: aye, B. Solomon: aye, V. Rozier: aye, J. McClane: aye, M. Silvia: aye, M.
220 Smith: aye, C. Fenton: aye.
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222 **MOTION:** J. McClane motioned to rescind previous motion to review the brief from C.
223 McDonald. J. Preneta seconded. All in favor, none opposed, no abstentions.

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- V. Rozier stated that the board will not be reviewing the memo and will not be opening public comment. J. McClane stated that despite the previous motion to accept and review the brief from C. McDonald, the board did not receive or review any info. V. Rozier stated that the information was not submitted in time for the meeting. She asked if there were any further questions for the applicant. V. Rozier asked if the board felt that it would be a productive exercise to review the site plan. She stated that she thought it would be a good idea to review the site plan so that the board could ask questions of the applicant before the public hearing is closed.
 - V. Rozier asked O. Corcoran to display the site plan on the projection screen.
 - V. Rozier asked G. Greenwood if, based on his review, he had any recommendations as far as landscaping, compliance with all setbacks, and any site plan considerations that the board should be considering. G. Greenwood stated that the only consideration he asked for is that the applicant met the requirements in Article 5.1.11. He stated that the applicant amended the plan to cover that comment. G. Greenwood stated that they did ask for the waiver of the NEPA information and stated that the board should act on that waiver. V. Rozier confirmed that Article 5.1.11 covers the removal of abandoned antennas and towers.
 - V. Rozier asked the board to review the site plan and provide comments. V. Rozier read Beals and Associates letter supporting the plan. V. Rozier did not see any concerns and went through site plan with the PB. J. McClane mentioned the letter from the town fire chief, regarding a request for VHF antenna space on the tower. F. Parisi stated that Vertex would agree to reserve space for VHF antenna but will not provide the antenna itself. V. Rozier asked the board if they felt the letter from Chief True should be read into the record. K. Felch stated that the letter is an addendum to the previous meeting's minutes.
 - V. Rozier asked if F. Parisi be willing to report tier ½ hazardous items reported annually. F. Parisi said yes. V. Rozier stated that she would like to make it a condition that any fuel tanks, to include generators and heaters, will require permits through fire and building inspectors. F. Parisi stated that the company will comply with town regulations.
 - V. Rozier asked G. Greenwood if there was anything he felt needed to be reviewed before the public hearing is closed. G. Greenwood stated that he did not believe so. V. Rozier stated that she would entertain a motion to close the public hearing.
- MOTION:** M. Smith made a motion to close the public hearing. M. Silvia seconded. All in favor, none opposed, no abstentions. Public hearing closed at 7:53pm.
- V. Rozier stated that the board would take a 5-minute recess at 7:51. The board reconvened at 7:56.
- V. Rozier stated that the board would commence deliberation. The board would be deliberating in 3 phases: the waiver for NEPA requirement of Article 5, which requires an archeological study. V. Rozier stated that the applicant requested a waiver of the requirement archeological

269 study. V. Rozier stated that the NEPA requirement requires an archeological study to be
270 conducted before construction, and that it is not practicable to do that before approval. She stated
271 that it would have to be a condition of approval if the board were to waive the NEPA
272 requirement. V. Rozier stated that the board waived it for the Rosencrantz tower. She stated that
273 this would be a condition of the building permit, and that the applicant must receive the NEPA
274 report and submit it to the town. V. Rozier stated that first the board must approve the waiver and
275 take note of the condition of the site plan approval. The board will issue the waiver, issue
276 conditional use permit, and then issue site plan the site plan approval. V. Rozier stated she would
277 entertain a motion to grant the waiver.
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279 **MOTION:** J. Preneta made a motion to grant the waiver to section 5.1.8.C2 of the
280 Telecommunications Act. M. Silvia seconded. All in favor, none opposed, no abstentions.
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- 282 • V. Rozier asked G. Greenwood if he saw anything in the application that did not comply with
283 section 5 of the town zoning regulations not already discussed. G. Greenwood stated that there
284 were two things he thought should occur in order to be in compliance that he listed in his letter
285 on page 2. J. Preneta confirmed that the two items were colocation on the tower and proof of
286 financial liability.
287
- 288 • The board discussed the condition of proof of financial liability. B. Solomon asked if it is usually
289 reviewed by an attorney. V. Rozier stated that she would feel more comfortable with it being
290 reviewed by an attorney and the board make it a condition that the proof of financial liability
291 cannot be cancelled. J. McLane suggested the condition state that it must be drafted and renewed
292 annually as required by the town. G. Greenwood stated that he feels that the language that J.
293 McLane stated was sufficient.
294
- 295 • The board continued to discuss the conditions of approval. G. Greenwood stated that the board
296 must include facts and findings for the approval or denial, and he would prefer to prepare that.
297

298 **MOTION:** J. Preneta made a motion to grant a conditional use permit for Vertex Towers LLC to
299 construct a telecommunications tower at 70 Moulton Ridge Rd, Map 10, Lot 1, with the
300 following conditions:
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- 302 *1. Obtain all required variances from the Zoning Board of Adjustment*
 - 303 *2. Allow for co-location of multiple users at a reasonable rate*
 - 304 *3. Per fire department letter dated 2-15-23*
 - 305 *4. Amend fence plan to include Knox box*
 - 306 *5. Reserve space on the tower for a VHF receiver, to be clear not to include the receiver
307 itself but only the space*
 - 308 *6. Any tier II hazardous items shall be reported annually*
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7. *Complete and submit to the town a report of the findings consistent with the National Environmental Policy Act prior to submitting an application for a building permit*
8. *The bond be reviewed by town counsel to confirm it is fully compliant with the town's standard*
9. *Provide certification of compliance within FCC regulations within 90 days of the certificate of occupancy and within 30 days of any subsequent antenna installations*
10. *At the tower owner's expense, provide to the town field test results with 90 days of certificate of occupancy, and within 30 days of any subsequent antenna installations and no more than one additional time per year, at the town's request, on dates selected by the town certifying that the results demonstrate compliance with all FCC regulations, This testing shall be completed by a qualified testing agency that the town may select at its discretion*
11. *Provide insurance as required by town regulations*

M. Smith Seconded. All in favor, none opposed, no abstentions.

- V. Rozier asked G. Greenwood if he had any comments. G. Greenwood stated that it is a great site plan, and it meets all the town’s requirements. V. Rozier stated that aside from the Zoning Board of Adjustment (ZBA) appeal, are there any other conditions the board should be considering. G. Greenwood stated not on the site plan side. He stated that it doesn’t hurt to say that the site plan is still contingent on approval by the ZBA. V. Rozier stated that she would entertain a motion to approve the site plan submitted by Vertex Towers LLC for a property located at 70 Moulton Ridge Road, Map 10, Lot 1 with a condition of approval that it be subject the granting of the variance at the Zoning Board of Adjustment rehearing.

MOTION: J. McLane made a motion as stated by the chairperson. C. Fenton seconded. All in favor, none opposed, no abstentions.

- The board discussed the approval of minutes from previous meetings. The board will approve minutes at the next meeting to give everyone a chance to read them.

MOTION: C. Fenton made a motion to close the public meeting. All in favor, none opposed, no abstentions.

Meeting adjourned at 9:11pm.

Next Planning Board Meeting is on June 21, 2023 at 6:30pm

Respectfully Submitted,

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Owen M. Corcoran
Land Use Administrative Assistant.