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**Town of Norton
Zoning Board of Appeals
Minutes of Meeting Held on June 8, 2022**

The June 8, 2022 meeting of the Zoning Board of Appeals was held in person at the Norton Media Center and remotely via the ZOOM platform, provided for interested parties and members of the public as noticed.

The meeting was called to order at 7:00 p.m. by Tom Noel, Chair. Members participating were Mr. David Wrenn and Mr. James Tenore. Mr. Lukas Wasiak the alternative member was not present. Also, in attendance is Town Planner, Paul DiGiuseppe and Building Commissioner, Nicholas Iafrate.

The meeting was recorded and made available to the public on the Norton Media Center YouTube page.

Public Hearing – Variance

ZBA File No. 14087

Property Address: 0 King Philip Road

Applicant: Timothy Infante

Owner: Mary Kullas

Mr. Elliott Brais, the applicant's attorney is present to speak on the application. Mr. Noel reads the application stating that the property is an undeveloped pre-existing non-conforming residential lot in a R-80 zone. It is undersized in terms of frontage and total area of 35,000 square feet. The proposed use is going to be a single-family home residence. The applicant cites the square footage of the area of the lot and the side yard setbacks in which it would need variance relief. The application, a few plans, and a couple of addendum memoranda by the owner Mrs. Mary Kullas. Mr. Brais states that there were problems with uploading the documentation and offers a copy to the Zoning Board of Appeals. Mr. Noel states that one copy of the addendum refers to plans dated February 16 as written on the plan while the other addendum refers to April 20. Mr. Brais states that the addendum with the later plan should be the one looked at. Mr. Noel states that the two plans are different and wanted to make sure. Mr. Brais shows that the property had to be moved back from the February to April meeting.

Mr. Noel shows the ZBA the two memoranda and indicates in pen the difference between the two documents. Mr. Noel reads the memoranda that states the applicant will have a reduction if necessary square footage of the lot in the area zone and also there are side yard setback encroachments for which it would need a variance for. Mr. Noel states that the application will

most likely have a finding under 175-1.5e if approved.

Mr. Brais states that the present applicant Mr. Infante is currently living in Colorado and has permission from them to speak on their behalf. It is a long narrow lot that is substantially longer than the abutting lots in general and the abutting lots are about 1/3 the depth of the property. All the properties in the immediate area have some type of non-conformity. Initially the house was going to be closer toward King Philip Road which was found to be impractical due to the wetlands in the area. On the plan it shows the wetland flags and the drainage ditch so Mr. Lucas of, Lucas Engineering identified the building dimensions that could be built in. The house is 252 feet from the street. On the western side there is a need for a 23.5-foot variance and the other side needing 11.8 feet. Mr. Brais states that he feels based on the other houses in the neighborhood being non-conforming that this house would fit into the neighborhood. Mrs. Kullas has property on the other side of the street on a different parcel which is separated by King Philip Road. Mr. Noel asks if Mrs. Kullas is presently owning both properties. Mr. Brais states that it is the Estate of Mrs. Kullas that currently owns the property. Mr. Noel asks when Mrs. Kullas or the state acquired both properties. Mr. Brais states that he ran a title search by Mr. Philip Serrado, a Land Court Title examiner who submitted an opinion that identified the fact that there was a roadway with two takings, the two properties were taxed separately and there were many plans that referred to both lots which is determined to be a pre-existing, non-conforming lot. The one across from 0 King Philip is developed land with a house built in 1962. Mr. Noel asks if it was the same homeowner then as well. Mr. Brais states that it was when they had bought the property. Mr. Noel if King Philip Road was there when the property was bought. Mr. Brais states that it there is documentation that shows the road was there at that time. Mr. Noel asks why there is a deed dated from February 27, 2002 if the deed that shows the road is an earlier deed, which is among the other files. Mr. Brais states that 2002 was when Mrs. Kullas had added her son to the deed and received her life estate. Mr. Noel asks if it is structural ownership. Mr. Noel asks if the deed covers both parcels. Mr. Brais confirms that it does cover both. Mr. Noel asks if the two lots merged under the small lot in the bylaw. Mr. Noel reads what the small lot bylaw is stating that it is more than five thousand square feet more than 50 feet of frontage at the implementation of zoning can be built upon. 13-foot side yard setback is what is being asked of by the applicant for the variance, part B of the bylaw states that the lot at the time of adoption adjoined other vacant lots or lots of non-vacant lot or lots of the same order. Part C states that non-conforming adjoining lots held in single ownership prior to zoning are to be combined. Mr. Noel explains to the ZBA that the lots would normally be next to each other and since there is a road between them, they have been treated differently. Mr. Noel states that he feels that the merger doesn't apply and that these two lots are separate although undersized with little frontage. Mr. Brais agrees with Mr. Noel on that it doesn't apply.

Mr. Wrenn asks if King Philip Road is a Town road. Mr. Brais states that King Philip Road is a private way with sewer. Mr. Brais restates that the property is separately taxed. Mr. Noel states that as a private road it goes around Lake Winnecunnet. Mr. Brais states that the street was approved up to Samoset Street at Town Meeting but Norton still maintains all of King Philip Road up to the water well access is on the back side of Winnecunnet. Which is why there is a sewer line in the town at one point ran the water line. The Lincoln family back in the 1950's

gave the original roadway easements to all the residents on the backside of Lake Winnecunnet. The easement had been in the deeds following the original easement and in 1962 when the property was purchased by Mrs. Kullas and her husband Mr. Frank Kullas it separated by deed into two separate parcels. Mr. Noel asks if the road existed then. Mr. Brais states it was there and maintained by Norton. Another issue that had come up was the Conservation Commission in Norton did various orders of conditions for the installation and notice of intent of the sewer from the lift station on Bay Road to the corner of King Philip Road and those were done with certificates of compliance being issued. The individual homeowners as their pump systems are repaired or replaced individual septic systems issued by Norton.

Mr. Noel states that the two properties were seen as too different and were not merged by the small lot bylaw they should be considered as different lots as they are divided by King Philip Road. Mr. Wrenn states he doesn't think the people living on the private way own the road and instead have an easement. Mr. Noel agrees with Mr. Wrenn in how he understands the situation. Mr. Brais states that going back to 1950 when the easement was made by the Lincoln family who owned that land all the way up to 495 that the initial deeds for the cottages had an easement for the roadway. So, there couldn't be a merger as this happens to be the only house that had ownership since 1962 on both sides of the road. The ZBA agree that this property should not be treated as an adjoined small lot.

Mr. Noel asks about the if the wetland delineation is the buffer delineations. Mr. Brais states it is the Watering Vegetated Wetland done by vegetation as well as the hydraulic conditions of the soil. Mr. Noel asks how close someone could disturb. Mr. Brais states that Norton doesn't have a local bylaw for Conservation on the vegetated wetlands distance and is in the process of getting the application for the Conservation Commission finished and has met on-site with Mr. John Thomas, the Conservation Director. The file will be given to Conservation open the completion of Zoning approval. Mr. Noel states that it isn't the purview of the ZBA to look into wetlands but wanted to make sure as he thought that was close to the wetland area. Mr. Brais states that is the reason that the plans were changed from the house being upfront to having the driveway there and the house further in. Mr. Noel states he doesn't know what the conservation rules are and can subject the applicant to Conservation Approval. Mr. Noel states it is an undersized lot and asks for confirmation on the acreage of the property. Mr. Brais states it is 35,000 square feet. Mr. Noel states this is an R-80 lot which requires 80,000 square feet. Mr. Noel asks if the distance from the property line is 11.8 feet. Mr. Brais confirms that it is 11.8 feet on the eastern side and 23.5 feet on the western side. Mr. Noel states it would be a large reduction in a R-80 zone but because of the language of the statute of the particular site and not generally the area in which it sits. Mr. Noel states that the purpose of the bylaw would be upheld even with the granting of this application even if the dimensions are departures from a R-80 zone after the lot was there. Mr. Noel asks if there has every been a residence on the lot. Mr. Brais states there has been no residence there. Mr. Noel states that it is a pre-existing non-conforming use and not a structure but would suggest if the Board were to say yes, the Board should do a finding under 175e for it not being more detrimental and conforming to the zone and the variance for the two side yards and lot size. The frontage of the property is 102 feet and also would require a variance as it

requires 150 feet of continuous frontage. Mr. Wrenn asks if the driveway will be mostly wooded. Mr. Brais states that is correct and won't touch the wetlands that are on the property. Mr. Noel asks if that is part of the bylaw. Mr. Brais states that they will build a driveway and stay away from the wetlands. Mr. Noel asks if plants can go in that area. Mr. Brais states that they cannot but can ask for relief.

Ms. Barbara Brady of 82 King Philip Road is against the construction of the property due to the small amount of frontage. The driveway would go into her neighbor's yard. There are all wetlands there along with a brook that Mr. Kullas blocked off years ago that ran from the lake to the wetland area. Ms. Brady states she used to fish in the brook before the pipe was blocked up. Mr. Noel states that it is a conservation issue and suggests to Ms. Brady to state this at their Conservation Commission meeting and tell the Conservation Commissioner as that is their jurisdiction. Mr. Noel asks for clarification on the driveway going over the neighbor's yard. Ms. Brady states that the driveway will be close to the neighbor's house. Mr. Noel asks who lives there. Ms. Brady states Manny Lawrence. Mr. Noel asks if they are present. Ms. Brady states no he is working. Mr. Noel asks what Ms. Brady means as the property on the plan is not on Mr. Lawrence's property. Ms. Brady states it would be on the line. Mr. Noel asks what their address is. Ms. Brady states that they would be 72 King Philip Road. Mr. Noel asks where Ms. Brady is. Ms. Brady states she is on the other side at 82 King Philip Road. Mr. Noel restates that the Conservation Commission would be the ones who would deal with this concern as it pertains to the conservation concerns.

Mr. Tenore asks if there is an ordinance for a driveway. Mr. Iafrate states that he doesn't believe the bylaw has rules for the distance a driveway has to be to another. Mr. Noel states that because there is no bylaw that there are no grounds for the ZBA to object to the driveway. Mr. Noel asks if a driveway has to be a certain width on a private parcel. Mr. Iafrate states it is usually is twelve feet. Mr. Noel asks if the driveway could be thinner. Mr. Iafrate states that the driveway could be altered as there is no set driveway width. Mr. Wrenn states that he thinks it is recommended twelve feet as a safety measure. Mr. Brais states that in his experience a house doesn't need a paved driveway such as gravel for this property and left it wide for safety to allow firetrucks and ambulances. Mr. Brais states that the house is 16.5 feet from the side yard and the driveway is under four feet from the property line. The driveway will be pushed to the left by the wetlands with the driveway, the initial plan had the driveway in the middle.

Mr. Wrenn motions to close the public hearing and is seconded by Mr. Tenore. Roll Call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes.

Motion to grant a variance to allow no closer than on the right-side setback of 11.8 feet and on the left side setback of 23.5 feet, frontage relief down to 100.72 feet as shown on plan, and lot size relief to allow 35,000 square feet as shown on the plan of record is motioned by Mr. Wrenn and seconded by Mr. Tenore. Roll Call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes.

Motion for a finding under 175e that the proposed construction dimensions as shown on the plan of record will not be substantially more non-conforming than the present use which is unconstructed at this point in terms of the factors stated in the bylaw including noise, lights, and other impacts to the surrounding area will not be substantially more detrimental is made by Mr. Wrenn and seconded by Mr. Tenore. Roll Call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes.

Motion to condition the approvals on all proper permits and approvals being received from the Conservation Commission is made by Mr. Wrenn and seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

CONTINUED PUBLIC HEARING – Variance

ZBA File No. 12873

Property Address: 182 South Washington Street

Owner/Applicant: McDonough Family Limited Partnership

Ms. Amy Kwesell, Town Counsel is present to speak for legal counseling on this application. Mr. Henry Sousa is present to speak on the application representing the applicant. Mr. Noel asks if the new plans sent to the Zoning Board today were changed plans from the May set of plans as they share the same engineer stamped date. Mr. Sousa states that the date may not have changed but believe since last meeting that the plan would be updated to show the distance to the lot line of where the residential use continues at 180 South Washington Street. Mr. Noel states he does see the difference of that line to the corner of the lot. Mr. Sousa states he changed the date on the attachment and not on the plan itself. Mr. Noel states he looked at the table updates first for the engineer stamp change. Mr. Sousa states that it wasn't in his purview to change that date.

Mr. Noel asks Ms. Kwesell to help answer a few of the ZBA's questions. Mr. Noel fills some information in for Ms. Kwesell that the newly updated plans are dated June 7, 2022 with the only change being on sheet C02. The change being the distance from the tower to the edge of the residential lot. Ms. Kwesell asks what the distance is. Mr. Noel states it is about 101 feet from the tower to the corner of the non-conforming residential lot in an industrial zone. Mr. Noel reads the bylaw 175-17.4c2 which says the setback of a free-standing wireless communication facility from a residential structure or property line of the lot on which it is located shall be the height plus twenty feet. Mr. Noel explains that Mr. Sousa was asking how there is an or situation in the bylaw where it says a residential structure or property line. The distance as stated is 101 feet from the property line. Mr. Noel asks won't the residential structure always be further than the property line, so why is there an or option. Ms. Kwesell states that in her opinion it would be the 300 feet. Mr. Noel states that the tower is not 300 feet away. Ms. Kwesell states her opinion that there is a residential structure and then you have a residential lot. Mr. Noel states that the lot is an industrial zoned lot and the residential structure is in the industrial zone. Mr. Noel states that Ms. Kwesell had answered the question and said that the zone didn't matter for it to be considered a residential structure in an industrial zone so it does implicate the bylaw. Ms. Kwesell states that the bylaw has to be read and given the most reasonable interpretation and

thinks the situation is addressed in the bylaw which is you have a residential lot with a residence on it and they are proposing to remove that residence. At the time of permitting however the lot is still seen as residential so they have to be 300 feet from the residential lot. Mr. Noel states that the house on the left is not the one that will be removed after the tower it will be the residential structure on the parcel the tower will be built on. Mr. Noel continues that the parcel to the right is a business that will be removing the residential structure. Ms. Kwesell states that there is a residential lot next door. Mr. Noel states his understanding was that the 300-foot distance applied to residential zoned lots because this is a residential lot in an industrial zone which he feels doesn't apply here. Ms. Kwesell states that is the opinion she had previously given in her email and asks what the height plus twenty feet is currently. Mr. Sousa states the proposed tower currently will be 140 feet. Ms. Kwesell states that would be 160 feet and asks what is the distance from the house. Mr. Noel states the house is 166 feet from the tower and the existing lot line is 101 feet from the tower. Ms. Kwesell states that this is something the ZBA would have to interpret the or in the statement but Ms. Kwesell states her opinion is that it applies to residences whether they're a residential zoned area or not if there is a property with a residential dwelling on that property you have to be height plus twenty feet and thinks the or refers to a lot within a residential district. Mr. Noel reads the first sentence of the tower bylaw and states that the bylaw works for the residential structure but not the property line.

Mr. Tenore asks if the interpretation should be if it is not considered a residential lot line then after the or the property line goes away so if it is determined that it an industrial lot where it says property line goes away because it is not a residence and then you revert back to the residential structure. Mr. Sousa states that is his argument. Mr. Tenore asks Ms. Kwesell if that is reasonable to conclude. Ms. Kwesell states there are two ways to look at the bylaw the first way is the setback from a residential structure or the property line of which it is located shall be at least equal to the height of the structure plus 20 feet meaning if there is an improved residential lot there is a chance you only need be within height plus twenty feet of the residence or the lot line. The second sentence would then be the setback of any such facility shall be a minimum of 300 feet from a residentially zoned lot line. Ms. Kwesell states that there is a bit of a conflict because why is the first sentence there because if the second sentence means any residential lot is 300 feet, we don't need the height plus twenty so the thing to consider is the first sentence. Mr. Noel states that the residential structure is always going to be further away from the lot line on which it is located plus the structure is encroaching on the lot lines. Mr. Noel states that his thought was to be the most restrictive with distance because this is a safety issue. Mr. Noel asks if the bylaw is referring to the lot in which it is located as the lot that has the WCF for the setback of a free-standing tower and that the tower has to fall within the parcel. Ms. Kwesell states that she and the ZBA have come to the same problem with the or statement having the house be further than the property line. Mr. Noel asks if the first sentence could be interpreted as the setback of the tower from a residential structure on this lot or the property tower has to be height of tower plus twenty feet because then the tower on a completely different sized lot would have to clear both the residential structure on the parcel and the property line of the parcel on which it is located. Mr. Tenore states it doesn't say and which doesn't work with that statement. Mr. Sousa agrees with Mr. Tenore. Ms. Kwesell states Mr. Noel's reading is fine because you

could have a lot that has a tower on it with no residential structure on the tower but you still have to be the tower plus twenty from the lot line or you have to be the tower 's height plus twenty feet from the residential structure on your lot. Mr. Noel asks what should be done in a situation like this as the tower would have to be denied as it doesn't meet the distance requirement and the tower reduction in height wouldn't work as intended. Mr. Sousa adds it wouldn't benefit the Norton's communications.

Mr. Noel explains to Ms. Kwesell that this would benefit the Fire Department and Police Communications and states they were present over Zoom for a meeting to express that the tower would be good for Norton communication equipment as well. Mr. Noel continues stating that the tower would help an immediate problem as shown by the engineer with the telecommunications gap. This application then enters the telecommunications act territory as it is a federal law could overrule the local bylaw where there is a need or where it is substantial need. So, under the TCA the ZBA wouldn't be able to say no to it as the applicant has shown there is a substantial need. Mr. Tenore asks Ms. Kwesell if the ZBA are to make the leap to the Telecommunications Act, is that in the ZBA's purview. Ms. Kwesell states that the applicant needs a variance from the ZBA as they do not meet the tower height plus 20 feet from their own lot line. Under the Telecommunications Act the ZBA is allowed to grant a variance if shown a hardship that would not degradate from the bylaw. There are case laws out there that say variances should be granted sparingly, the federal act allows a Zoning Board to issue a variance if a significant gap in coverage is shown. Unfortunately, with the federal Telecommunications Act nine circuits are being dealt with and each circuit interprets the Act differently. Norton is in the First Circuit who interpret it currently as a substantially gap in coverage or substantial lack of capacity. After an FCC determination came out in 2018 that another parameter to consider is there any material that would inhibit the tower and the setback will inhibit the tower and the question is the safety regarding the setback more important than the coverage. The TCA gives you flexibility on issuing a variance for cell towers however. Ms. Kwesell states she has only seen the plans and a google map radius, nothing that is a report that states that there is a gap in coverage, capacity issue, or legal briefing about the tower being inhibiting standard would apply. Mr. Noel states that there is an engineering report but does not recall the limits of that report and that one of the factors of approval is having the applicant demonstrate that there is no other parcel available nearby. Mr. Noel states his discomfort with this project is that he doesn't remember sighting the tower when if it were to fall it could fall on an adjoining parcel. Mr. Noel states another issue is the bylaw only says monopole towers are allowed and the tower proposed is a lattice. Mr. Noel asks what the Board can do in regards to the type of tower. Ms. Kwesell states that it could be given a variance. Ms. Kwesell continues stating that it would be a design variance and not a use variance for the tower as it is the same use but a different design. Ms. Kwesell states she doesn't know the reasoning to just have a monopole tower as monopole and lattice have both been permitted. In the TCA cases Ms. Kwesell has had all three towers fall zone are within their own lot. Mr. Noel states that is the reason why he wanted to talk with someone with a higher degree of questioning and scrutiny as it still bothers him that it can fall onto an adjoining lot. Mr. Noel it makes sense to him that a residence is given more safety measures than a business. But is not comfortable with a tower that could fall onto another parcel.

Mr. Sousa states that going back to previous meetings wanted to remind the ZBA that the original proposal the applicant has reduced the height of the tower in an effort to meet the safety requirements of not falling onto the residential structure on the adjacent property and reduced the tower from the original 190 feet to the current proposed 140 feet. The tower cannot meet the setback requirement from the property line but met the requirement that it will not fall on the residential structure. The two variances are for the size of the tower being 15 feet taller than in the bylaw and a lattice tower instead of the monopole that is in the bylaw. The tower is designed to handle microwave communications as well as cellular communications that lattice towers as told by the engineer are more stable and provide for better microwave communications. Mr. Noel states that you couldn't put two microwave transmitters to a monopole, a structure is needed. Mr. Sousa states they have tried to meet as much of the zoning bylaw as possible and are asking for relief and are asking for relief as the Zoning Board of Appeals and by virtue of the additional authority given to the Board from the Telecommunications Act to allow the three variances. With the variances the applicant would be able to go forward with their project and will be able to fix a communication gap in Norton for Municipal communications.

Mr. Wrenn states the only the only problem he has with this application is how the Telecommunications Act interplays with this application. Mr. Wrenn states that he hasn't seen a legal argument for how much the ZBA have to make the assessment and feels uncomfortable without some analysis. Mr. Noel asks if the application is under the TCA to Mr. Sousa. MR. Sousa states it was not, it was a request for a variance. Mr. Noel asks if Mr. Sousa thinks it would fall into the Telecommunications Act. Mr. Sousa believes that it would and believes Ms. Kwesell also thinks it would fall under the Act. Ms. Kwesell states one of the questions she had was if the application was filed under the TCA because if it was the ZBA would have a shot clock and since this was not filed with the TCA this is a standard variance filing. Ms. Kwesell adds she only brought up the TCA as it could apply. If the applicant wants to file for relief and wants to file under the TCA everything changes the ZBA would have 30 days to decide whether it is complete or not complete. There are also requirements on the applicant including showing how the tower meets the requirements of the TCA such as filling in a gap, improving a capacity issue, or materially inhibiting towers which Ms. Kwesell thinks will be hard for the applicant to prove because all the federal cases have to do with the height being too high and land within their own lot and one on a roadway. Mr. Noel states he didn't understand the technical difference that it could be filed under TCA or not and thought the TCA would always be applied. Mr. Noel asks if the ZBA would know if it applies. Ms. Kwesell states that you cannot comply with the TCA. Ms. Kwesell brings up questions for the TCA if a cellular service is the applicant, what is the purpose of the tower, and will the tower meet the requirements of the TCA. Mr. Noel states that there were statements that the tower was going to be used for telecommunications but wasn't told if it would meet the additional requirements with the TCA. Mr. Noel asks if the TCA have to be met even if it is not applied for under the TCA. Ms. Kwesell states that her opinion is that if it is not applied for under the TCA and relief can change during a hearing process provided the project stays the same. Ms. Kwesell is unsure if the Board has reached the step where the relief can be changed because there isn't enough information as to whether this is being filed under the

TCA or not. Mr. Noel states that they are not as Mr. Sousa has stated that he hasn't filed under the TCA and Mr. Noel explains he thought all applications would come under the TCA that it overlaid and asks Mr. Sousa if that is something the applicant looked at initially. Mr. Sousa states he doesn't think it was looked at.

Mr. Chris Olson the representative of the McDonough Family Limited Partnership states the Telecommunications Act was made in 1997 the FCC Auction Spectrum and they created federal to prevent towns from having a say in where towers went and spent billions to spectrum to carriers to create infrastructure which was deemed essential to society. The application was brought in as a proposal because there is a need for a tower to locate carriers in that location as well as other private companies that are in the area at the same time it was discovered that the police and fire had a significant hole in their communications. The cost of the construction and the infrastructure that was committed to the town will be well in excess of a quarter million dollars. The objective is to build a tower to provide services to carriers and could go back and apply to the TCA. Mr. Olson states his understanding was one of the points of the Telecommunications Act was not to allow towns to zone them out and then not be able to fulfill the obligations of building out their network because if they don't build out, they could lose their licenses. Mr. Noel states he isn't disagreeing with Mr. Olson, the question is what the ZBA is proceeding under and thanks Ms. Kwesell for clarification for the difference of with and without TCA involvement. Ms. Kwesell asks if there was any report such as a RFI done regrading radio frequency, coverage, or capacity. Mr. Tenore and Mr. Noel state that there is a report that shows the gap in coverage and the increase the tower would give to communications.

Ms. Kwesell states that the applicant is not a tower company or a telecommunications company asks Mr. Noel to confirm that the landowner is the applicant. Mr. Noel states that it is the trust that owns the land and that is the applicant and is unsure if they have a contract with a company. Mr. Noel asks Mr. Olson if there is a contract with a carrier at this point. Mr. Olson states that they're not signed but there are carriers. Mr. Noel states that there are no contracts with carriers at this time. Mr. Olson states that if it is a concern there can be a clause in the decision which states that the tower cannot be built without a carrier. Mr. Noel states that a time limit could also be put on for it. Mr. Tenore states that it sounds like the Telecommunications Act shouldn't be jumped onto at this time because the application wasn't filed under it. MR. Wrenn states that it sounds like the ZBA can't use the concepts within the Telecommunications Act which would encourage to build the towers. Mr. Noel states that the Act overrides bylaws when necessary. Mr. Wrenn states this isn't the case since the application is not under the Telecommunications Act and is unsure if they need to worry about the parameters within the act. Mr. Noel states that if the ZBA does decide to push forward with the application than the applicant should either amend the application or fulfill the obligations under the TCA and give the applicant the opportunity to do that. Mr. Noel asks Ms. Kwesell if she is would be willing to look at the files or is there no use to that if the application is not under the TCA. Ms. Kwesell states that no they can just refile the application and withdraw which since the hearing has opened the applicant would need the ZBA's approval to withdraw without prejudice then refile under the TCA. Ms. Kwesell states that even if the applicant is denied they could file under the TCA within two years and because

of the allowances in the TCA they probably could. Ms. Kwesell states she doesn't see any benefit in having the applicant refile and instead could ask for is asking for information regarding the TCA. What Ms. Kwesell is looking for is a legal memo from the applicant stating how the TCA applies to the tower because the tower is not being proposed by a tower company or telecommunications company. The TCA applications from the first circuit are all either a tower company or a telecommunications company. With a homeowner it is harder to justify a variance if it is not known what it is for and Ms. Kwesell suggests giving the applicant time to get a legal memo and whatever else is needed those states the application is pursuant to the Telecommunications Act with the standards shown.

Mr. Olson states he is the applicant and that the tower would benefit Norton and the needs the carriers are more important than the needs of the Town being now on the table is that the applicant has to show there is a need for carriers when they've demonstrated that there is a need for the Town. Norton will have the top of the tower and the next carrier will be 10 feet lower. Norton's needs are higher than the tower will go but they'll still have a benefit and, in the proposal, they will stop at the current height and allow in the future for the tower to be built taller if there is a further need, it will structurally build to go higher, and circumstances could change in the future like everything being industrial including the still remaining houses. Ms. Kwesell asks if Norton is the primary carrier. Mr. Olson states Norton would be at the top. Ms. Kwesell states that Norton would be a co-locator not the primary carrier. Mr. Olson explains that the need is demonstrated with Norton taking top priority on the tower. Ms. Kwesell states that Norton is not the applicant. Mr. Olson asks if the main provider was Verizon for example Norton still has a need to be on the tower and restates the communication needs for the Fire and Police Departments in that area. Mr. Olson states that if needed the decision can have language that would require carriers to order to have the tower be constructed. Mr. Noel states that what Mr. Olson states is one of the concerns that Town Counsel is expressing and is saying it doesn't fit into the application process under the TCA unless there is a carrier involved and understand that there is a want and need better communications for emergency services in Norton. Mr. Noel states he is not speaking against the tower but there are a lot of spaces in Norton where a tower could go and the process is that it is filed and will make determinations based on that but at this point it is legally speculation unless a carrier is required to be on Board. Mr. Noel states he that he sees why carriers are the applicants for the TCA as homeowners could have the plan but not go forward with the construction of the tower.

Mr. Sousa asks how the application got involved in the Telecommunications Act and legal briefs and understand the ZBA was looking for guidance for what additional authority they may need for a determination. Mr. Sousa finds this to be three simple requests, one instead of a 125-foot tower a variance for a 140-foot tower be made, second instead of monopole a lattice tower be built, and the third variance is for the setback requirement for the tower. Ms. Kwesell states that the applicant is not meeting the variance standards and the lot is currently occupied by a residential structure so there is no hardship. The hardship isn't there and the application is not meeting the purpose of the bylaw because they are asking for three variances rather than one. Ms. Kwesell doesn't see under the variance standards of Massachusetts under chapter 48 section

10 and the local bylaw how the applicant can meet the variance standards without the TCA. Mr. Noel states he was the one who brought up the TCA because it was an overlay from past applications and asked Town Counsel if the questions are relevant.

Mr. Tenore states the more the ZBA talk about this the further into a rabbit hole they are going with talking about the Telecommunications Act when it is not presented in front of the ZBA. Mr. Noel asks Mr. Tenore if the Board should wrap up as a variance application and take a vote and states that he understands what Town Counsel has been saying about while this is a hardship for Norton this tower could be put up anywhere. Ms. Kwesell adds that Norton isn't the applicant. Mr. Noel states that if it were decided now that they would say no to the variance relief requested. Mr. Noel states that he asked Counsel for help to find if the TCA applied and asks the ZBA if the application should be considered as simple variances and is not sure if it passes.

Mr. Sousa states that he would like to withdraw the application without prejudice. Mr. Noel asks if it is with the intention to file under the TCA. Mr. Sousa states that the applicant need to explore that possibility and respects the time that the ZBA took in reviewing the application and doesn't want to push the application in a direction that will require the ZBA to vote no. So, it is in the best interest that the application is withdrawn so it can go forward for both the applicant and the municipality as well. Ms. Kwesell asks Mr. Sousa to confirm that they are withdrawing without prejudice. Mr. Sousa confirms that is the case.

Mr. Wrenn motions to let the applicant withdraw their application without prejudice and is seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

Ms. Kwesell states she will work with Mr. Sousa to secure the support for Norton communications if the applicant does decide to come back if filed under the TCA.

General Business

Mr. Noel tells Ms. Kwesell that the Mr. Wrenn will be leaving the Zoning Board and is expecting potential future problems with quorums. Ms. Kwesell states that all three members would have to be present to have a quorum and let people know that the Zoning Board needs a new member. Mr. Noel asks what will happen if the Board is unable to proceed. Ms. Kwesell states that is a narrow requirement. Mr. DiGiuseppe states that he'll push out more for the Zoning Board to get a new member. The ZBA is given a Sun Chronicle bill to sign to allow the ZBA side of the overdue Sun Chronicle bills to be paid.

Mr. Wrenn makes to motion to approve the payment of overdue Sun Chronicle bills and is seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

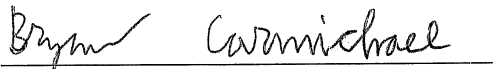
Mr. Noel thanks Mr. Wrenn for his time on the ZBA and presents a certificate of appreciation for his time on the Board. Mr. Wrenn appreciates the gesture. Mr. DiGiuseppe recaps the events of Town Meeting of June 7, 2022.

Adjournment

Motion to adjourn at 9:03 by Mr. Tenore and seconded by Mr. Noel. The Zoning Board of Appeals all vote unanimously to end the meeting.

Minutes contemporaneously typed by: Bryan Carmichael, Administrative Secretary for the Planning and Zoning Board of Appeals.

Edited and Respectfully Submitted,



Bryan Carmichael

Administrative Secretary, Norton Zoning Board of Appeals

Approved by Committee on: September 14, 2022