

Ethan Croce

From: Ethan Croce
Sent: Wednesday, August 23, 2017 5:09 PM
To: Amanda Stearns
Subject: Verizon Conditional Rezoning Request and Spectrum Act

Hi Amanda,

I understand that Verizon will be appearing before the Town Council next week to discuss their conditional rezoning request for a new Tier III wireless tower off Falmouth Road. Recognizing that the Town's Wireless Ordinance includes a strong focus on mitigating the visual impacts of wireless towers, I feel that it is important to make the public and the Council aware of the potential implications of the federal Spectrum Act on this, and future, wireless facility applications. The Council could consult with the Town Attorney to explore whether there might be legally binding ways to structure a conditional rezoning in a way that would require future tower modifications to continue to be governed by the Town's duly adopted ordinance standards and procedures notwithstanding the Spectrum Act.

Below, I have excerpted a portion of my July 2017 staff review notes to the Planning Board in which I summarize staff's understanding of the Spectrum Act's implications.

Ethan

Implications of the Spectrum Act – Lack of Town control over certain future tower modifications

Stemming from a recent request by Verizon for a wireless facility colocation at an existing tower off US Route One, in which Verizon invoked the US Spectrum Act of 2012, staff have become aware that the Town's Personal Wireless Service Facilities Ordinance may no longer be adequate to address the Town's expectations for wireless facility siting and design. This is because the Spectrum Act of 2012 seems to preclude municipalities from applying many of their ordinance standards to modifications to existing towers if the proposed modifications fall under certain thresholds.

The Spectrum Act states, in part, "...a State or local government 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 station." Staff have not performed an exhaustive legal analysis of the Spectrum Act, however, it appears as if an "eligible facilities request" includes, without limitation, such things as:

- increasing the height of a tower by up to 10% or 20 feet, whichever is greater;
- adding antennas or other equipment that may protrude from the tower by up to 20 feet;
- adding additional equipment cabinets to a site;

These types of wireless facility design components (tower height, antenna protrusion distance, etc) are all governed by the Town's Wireless Ordinance. The Wireless Ordinance contains very specific and detailed standards for minimizing the visual impact of wireless towers, in part by regulating tower height and requiring "stealth" design to minimize the protrusion of antennas. The Spectrum Act, however, seems to eviscerate the Wireless Ordinance's ability to regulate these design features if an applicant proposes a tower extension or antenna/equipment additions that fall under the Spectrum Act's thresholds for tower modifications.

This creates a scenario where the Town Council and Planning Board could spend months of time reviewing and approving a wireless tower application under the Town's ordinance standards, and holding public hearings on the same, only to have an applicant utilize the Spectrum Act shortly thereafter to modify the tower in a way that does not conform to the Town's ordinances and design standards. Since the Spectrum Act only applies to existing towers, and not to new towers, it is important that the permitting of new towers be done carefully and with the recognition of the Spectrum Act's implications.

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