



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers, City Hall – 288 Central Ave., Dover, NH 03820
Meeting Date: Thursday, September 25, 2019
Meeting Time: 6:00 pm

1. ATTENDANCE

Members Present: Rich Onufry (Alternate), George Reagan (Vice Chair), Anthony Sillitta (Alternate), James Burdin (Alternate)

Members Absent (Excused): Frank Landford, Chris Prior (Chair), Nick Couturier

Members Absent (Un excused): Otis Perry

Staff Present: Christopher Parker (Assistant City Manager), Joshua Wyatt (City Attorney)

The Chair called the meeting to order at 6:00 PM.

2. OLD BUSINESS

- A. Industrial Tower and Wireless v. City of Dover: ongoing litigation report, dispositional recommendation, and action upon same

The Vice Chair stated James Burdin, Anthony Silliitta and Rich Onufry will vote, if needed.

Christopher Hilson, representing the City, updated the ZBA on the lawsuit filed by ITW. He summarized the Telecommunication Act of 1996, including its implications, the hearings and process the ZBA utilized in 2018 and the resulting law suits. He explained that the main reason the Board denied the application was the lack of information documenting that alternative locations, specifically 101 Back Road, had been reviewed. In discovery over 1,000 documents were subpoenaed and upon review materials did bring to light the review of that property and it was clear that the site was not a reasonable alternative.

In light of that, Attorney Hilson strongly believes that the City is not in a positive position in Federal Court should the case move forward, and has negotiated a settlement. The settlement will provide that:

- The tower will not exceed 150 feet, whereas the original request was 180 feet.
- ITW agrees to forgo the allowance to automatically increase the height by 20 feet
- ITW agrees to go through site plan approval with the Planning Board

Discussion ensued regarding the facts available to the Board, during the hearing, and how the discovery did not validate the facts, case law and precedents in Federal cases of this nature, and the concerns of abutters.

Motion: Anthony Sillitta moved in light of the documents received in discovery, but not available in connection with the underlying hearings, that would strongly support the suggestion that no feasible alternative exists to the proposed facility, and in order to minimize the height of the facility and impact to the neighborhood, that the board authorize counsel for the City to enter into the agreement presented here tonight. James Burdin seconded.

Vote U/A

3. HEARINGS



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None

4. OTHER BUSINESS

Christopher Parker noted that the Superior Court upheld the ZBAs decision in the Littletree V City of Dover case regarding the variance granted at 301 Durham Road.

5. ADJOURN

Motion: Anthony Sillitta moved to adjourn at 6:36 PM. Seconded by James Burdin. Vote U/A