



**Hyannis Main Street Waterfront  
Historic District Appeals Committee**

367 Main Street  
Hyannis, Massachusetts 02601

BARNSTABLE  
TOWN CLERK

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**MINUTES OF THE HYANNIS MAIN STREET WATERFRONT HISTORIC  
DISTRICT APPEALS COMMITTEE HEARING  
JULY 25, 2019**

Members Present: Alison Alessi, Mary Ann Agresti  
Members Absent: Sara Colvin

Others Present: Elizabeth Jenkins, Director Planning & Development, Paul Wackrow, Senior Planner, Karen Herrand, Principal Assistant, Planning & Development. David Houghton, Assistant Town Attorney.

**Verizon New England, Inc.**

v.

**Hyannis Main Street Waterfront Historic District Commission, Appellee**

(On application of Verizon New England, Inc. for a Certificate of Appropriateness for the communications tower extension at 49 Ocean Street, Hyannis – 2019-01)

(On application of Verizon New England, Inc. for a Certificate of Hardship for the communications tower extension at 49 Ocean Street, Hyannis – 2019-02)

To all persons deemed interested or affected by the Town of Barnstable's Hyannis Main Street Waterfront Historic District Appeals Committee under Chapter 112, Article III of the Code of the Town of Barnstable, you are hereby notified that a public hearing will be held at Town Hall, 367 Main Street, Hyannis, MA, Planning & Development Conference Room, 3<sup>rd</sup> Floor at **6:00 P.M.** on Thursday, July 25, 2019.

**The Public Hearing is opened.**

The meeting was called to order at 6:00 p.m.

Attorney Ford states that he would like to have a full Board of the three Board members for this matter. It is a two out of three vote. There are only two here tonight.

Attorney David Houghton confirms that a quorum is present and he thinks the matter could go forward.

Attorney Ford's objection is on the record that they are entitled and would prefer a full Board.

Chair Alison Alessi reads the Appeal(s) into record:

**Appeal 2019-01**

Verizon New England, Inc. has appealed the decision of the Hyannis Main Street Waterfront Historic District Commission (HMSWHDC) to disapprove the Appellant's request for a Certificate of Appropriateness for the communications tower extension at 49 Ocean Street, Hyannis as described in the application submitted on October 23, 2018. The HMSWHDC voted to disapprove the application

on June 5, 2019 and issued a determination of disapproval on June 11, 2019. The Appellant seeks reversal of the HMSWHDC decision and issuance of the Certificate of Appropriateness, consistent with proposed findings provided by the Appellant, or a remand to the HMSWHDC for further proceedings consistent with the Decision of the Appeals Committee. The subject property is located at 49 Ocean Street, Hyannis, as shown on Assessor's Map 326 as Parcel 025.

**Appeal 2019-02**

Verizon New England, Inc. has appealed the decision of the Hyannis Main Street Waterfront Historic District Commission (HMSWHDC) to disapprove the Appellant's request for a Certificate of Hardship for the communications tower extension at 49 Ocean Street, Hyannis as described in the application submitted on October 23, 2018. The HMSWHDC voted to disapprove the application on June 5, 2019 and issued a determination of disapproval on June 11, 2019. The Appellant seeks reversal of the HMSWHDC decision and issuance of the Certificate of Hardship, consistent with proposed findings provided by the Appellant, or a remand to the HMSWHDC for further proceedings consistent with the Decision of the Appeals Committee. The subject property is located at 49 Ocean Street, Hyannis, as shown on Assessor's Map 326 as Parcel 025.

Chair Alson Alessi confirms/clarifies the deadline to hear this matter and make a vote/decision.

Attorney Ford replies that Verizon would be willing to extend the time out. Verizon would like to submit additional information to the Committee, but not available/ready yet. Tests being done now. They would need additional time to finish this as well.

Chair Alison Alessi states yes, possible two weeks to continue and another two weeks in order to write up/make a decision. They are open to hearing more evidence.

Attorney Ford states that they may need 30 days. They will probably have substantial information at that time. He again states he would like to have a full Board, all 3 Commission members' attention.

Attorney Houghton directs to the Chair, asks what would the position be to take any evidence tonight?

Attorney Ford states that tonight it would be the same evidence that was presented at the Hyannis Main Street Waterfront Historic District Commission (HHDC), original evidence. Clarifies that the missing member could do the Mullin Rule for this meeting.

Attorney Houghton states that they could do a continuance.

Mary Ann Agresti confirms that the missing member can view the meeting and get the information.

Chair Alison Alessi and Attorney Ford review schedules/work on an anticipated 30 day date and continuance for hearing. Availability review of schedules.

Elizabeth Jenkins confirms that it has to be a date certain.

September 12, 2019, is agreed upon.

Attorney David Houghton suggests a motion be made to begin taking evidence this evening, then continue the Public Hearing to Sept. 12, 2019, and deadline to file a decision by Oct. 2<sup>nd</sup> 2019.

**Chair Alison Alessi entertains a motion, moved by Mary Ann Agresti to begin to hear evidence tonight and that the missing member, Sara Colvin will review per the Mullin rule and be prepared to attend a continued public hearing with full members of the Committee on September 12, 2019, where we will hear new evidence, and by October 2<sup>nd</sup>, 2019, have an agreement to render a decision with the understanding that between September 12<sup>th</sup> and October 2<sup>nd</sup> 2019, there's enough time to extend the hearing as well, possibly September 26, 2019, seconded by Alison Alessi, so voted unanimously.**

Elizabeth Jenkins clarifies/confirms that the public hearing will be continued to September 12, 2019, at 6:00 p.m.

Attorney Ford refers to Verizon COA/COH Application Materials, Exhibit A. Would like all of these documents be made of record. This does appear to be all the documents. He would like them all entered per this appeal. They don't want to be limited to only the highlighted blue documents. He would like all of the documents be entered not just the ones highlighted in blue.

He states that one of the issues was a justified warrant for dropped Nantucket calls. Verizon is in the process of collecting additional data on this issue, but this data was not presented/before the local commission HHDC, asks if this material will be considered for this appeal?

Chair Alison Alessi replies that they would be open to new evidence – tonight is just for what has already been presented to HHDC.

Attorney Ford gives a background/history.

1955 property that used to be a school. Board of Selectmen conveyed and New England Telephone and Telegraph obtained. The Bldg. used for switching station. 1962 the Zoning Board of Appeals (ZBA) approved to construct the tower, this was granted by ZBA Decision, need for secure communication/long distance at that time. This was not a historic district at that point. ZBA in 1998 granted a 4 ft. extension and some antenna authorized to be placed on tower. In 1998 HHDC approved this increased height, granted as a Certificate of Appropriateness (COA). In 2013 for additional antenna on tower granted by ZBA as a Special Permit and granted by HHDC for a COA.

The proposed 45 ft. increase and 5 ft. lightning rod, approximately 50 ft. in total, Verizon started back in 2017. Verizon sought Federal approvals required by FAA certificate of no hazard for aviation and national historic preservation act, because of national register districts that are encompassed/the area. Federal FAA rules they were required to file a section 106 under National Preservation Act. Also reviewed by Massachusetts Historic Commission. Section 106 was delivered to the Town and local commission and there were no comments – also sent to Barnstable Historic Commission (BHC) and other entities. Mass Historic stated that it would not adversely affect the area. Did application with Site Plan Review and Regulatory agencies – evidence approval no interference with aviation, structural integrity of the tower evidence was also submitted. Cape Cod Commission (CCC) had an informal opinion – not a mandatory referral. Special Permit application (SP) filed with the Planning Board (PB), not ZBA because the PB is now the Special Permit Granting Authority (SPGA)

for/within the Downtown Hyannis area. PB – potential mitigation re any negative effects of the tower. Verizon submitted the information regarding the inability to make 911 calls to Nantucket. The PB asked for peer review to be done by Verizon – this was done. Verizon was not pleased with the way the report was presented to PB. Certain parts of this report have been referred/relied on by the local Commission HHDC to support/make their denial decisions.

The PB voted 5 to 1 to grant the SP. Mitigation and conditions – Verizon agreed that they would fund certain improvements on the town owned lot, to the South of the Verizon property – sea shanties, Town wanted upgrade of the sidewalk as well – Pathway/Walkway to the Sea.

HHDC – there were many continuances when it came before this Commission. Only two Public Hearings.

In both of the Petitions for Appeal, 2<sup>nd</sup> pg., first and second bullets: Exhibit B and Exhibit C.

- *The Commission failed to consider extensive oral and written testimony provided by the Applicant at the public hearing, as acknowledged by the Commission in Paragraph 8 of its findings.*
- *Prior to the opening of the evidentiary hearing, the Commission caused staff to draft extensive negative findings, which were distributed to each Commission member before the opening of the hearing. These draft findings substantially became the basis of the commission's Decision of denial. It was clear from the proceedings that the Commission had prejudged the Applicant's request for a Certificate of Appropriateness.*

These findings seem to prejudge what the testimony was going to be.

One of the reasons that a decision can be annulled - if you find that they did something that exceeded their authority. Someone requested the extensive negative findings that were in the file before opening the public hearing, this is in excess of authority of the Commission and evidence that the application was being prejudged.

Refers to the first bullet, pg. 2, Exhibit A/B Petition for Appeal – Commission failed to consider oral and written testimony at the second public hearing.

Refers to the COA Decision, paragraph 8, Exhibit D,

*8. The applicant submitted evidence to the record at the public hearing on June 5, 2019, giving the Hyannis Main Street Waterfront Historic District Commission insufficient time to review evidence prior to the deadline for the Commission to make a determination June 12, 2019. The meeting on June 5, 2019 is the final regularly scheduled meeting before the deadline to make a determination on this application.*

This finding is there because already prepared, motions had been distributed previous. Attorney Ford suggests that this is an error in due process. Public Hearings the Commission needs to take into consideration.

HHDC was trying to decide whether to take a vote to refer and get a referral from the CCC, without the risk of a constructive grant. This came up very late in the process.

Exhibit B and C, pg. 2, bullets 1 and 2 apply to both appeals, COA and COH.

Third bullet - Verizon Appeal – Consideration of the fall zone of the tower. This has nothing to do with the determination of the Commission - HHDC. Structural issues were dealt with at Site Plan by the Bldg. Dept./Commissioner. Section 112 of historic properties, how does this fall under their jurisdiction. They have no expertise in the fall zone, didn't seek any advice/guidance, only public testimony. Suggests that this is error.

Fourth bullet – Verizon Appeal is that HHDC is unsupportive, refers to letter – George Jessop in the HHDC record, Exhibit E. This was quoting the peer reviewers report. HHDC relied on this peer review report. He encourages review of all letters submitted and supporting materials that they submitted to the PB as well.

Fifth bullet – Verizon Appeal - Section 106 report. There is substantial evidence here regarding the historic assets. Refers to George Jessop's testimony given at HHDC second hearing, brought in by HHDC – he had reviewed and stated that other than the view from the water, he did not see any new areas in the district that you'd be seeing this, it's already here/there.

Sixth bullet – Verizon Appeal – The existing tower was authorized back in 1961. Additional extensions and equipment have already been issued COA's by HHDC.

Refers to COH, Exhibit C, suggests again looking at 106 report. Ordinance under hardship states – *when a unique situation that does not permit applicant to construct something that's appropriate.* This fits into the hardship application criteria. They offered to repaint the tower as well. There isn't another way to construct this extension. Some suggested move the whole tower but cannot be done, it's a direct connection/tied to the switching building. There is a public need.

Attorney Ford refers to the editorial from Cape Cod Times “911 emergency”, Exhibit F - FCC must do more and make calling more sufficient for emergencies.

Mary Ann Agresti. – The third person report submitted to the PB in 2017 – Verizon did not agree with this report, what didn't they agree with?

Attorney Ford replies that they did not agree with the peer reviewer's conclusion– per him stating that he did not see a case for need for this. Not satisfied that Verizon had shown sufficient evidence to him that the increase was warranted. The PB did have evidence when they granted Special Permit. HHDC only had partial evidence/info that they relied on.

Elizabeth Jenkins – clarifies the accuracy of the proceedings; consultant's initial report to show review standards that the zoning information was referred to. Questions that consultant raised as a lack of information. Town staff, Verizon and Peer Consultant spent extensive time coming to the conclusions and information.

Attorney Ford states that one of the agreed upon statements was not that we had not shown a need; that was not an agreed upon statement. The consultant's conclusion is important here, HHDC has based their decision on this. Verizon did not agree with all that peer review and Town had. He thinks that it is important because based on this report and not sufficient evidence, first report before

PB, it was stated that this system was not used for 911 calls and that the height/extension was not needed.

Elizabeth Jenkins replies that there was some information that was needed originally, but there was an understanding that they believed was agreed upon and was ultimately issued to the PB.

Mary Ann Agresti asks regarding the last hearing of HHDC and the CCC and extension. What was it about that extension and the CCC's possible intervention that made it seem/feel as if Verizon was put in a corner?

Attorney Ford replied that this was two years in the making and had already been discussed at Site Plan review, and this came up last minute from HHDC, this was a substantial delay in the time. This is not what HHDC should have been looking at.

Mary Ann Agresti comments/refers to an example, Jersey City article, Exhibit G. Why do you think the local community would object to this/oppose this project?

Attorney Ford clarifies that we are not talking about a cell tower being placed, this tower performs a different function. This is an extension.

Elizabeth Jenkins, not speaking on behalf of HHDC, speaking as Staff – relative to the Section 106 findings issued by Mass Historic Commission – in response to some questions staff did provide a memorandum that summarized the scope of what goes into a Section 106 provision. This information is in a memo that was submitted to the Commission. Also, Draft Findings were provided in a positive and a negative prior to the HHDC hearing, both were provided to HHDC and to Attorney Ford.

The fall zone – “large portions of the fall zone are located outside of property which Verizon has legal interest” That was the finding that the Commission made relative to impact of the fall zone, made in consideration as it relates to the public welfare.

Offer of Town land - there were conversations between Verizon and the Town relative to the offer to negotiate for use of the facility.

Findings- by HHDC – the COH made all 3 required Findings for and in issuing a COH; 2 Conditions especially effecting the building structure setting or place substantial derogation to the intent and purpose of this chapter and the application may be improved without substantial detriment to the public welfare. The Commission has to make all those Findings/Conditions.

Atty Houghton asks for clarification if sets of findings were prepared before the hearings commenced and then a second set when HHDC was ready to make it's decision?

Elizabeth Jenkins clarifies both affirmative and negative were prepared.

Attorney Houghton suggests that any and all findings should be submitted.

Everyone is in agreement for this.

Deb Krau President of Greater Hyannis Civic Association in attendance. Verizon went out of order in the process, they should have gone through and per the HHDC's process so that the Planning Board could have the benefit of HHDC's comments/info. Scope – suggests looking at the fall zone information, got this from Geographic Information System (GIS) at the Town of Barnstable. There was an authorization of 4 ft. prior. 6 stories to be added on makes it even more visible. Other electronics to be added? Potential hazard. Other ways to connect to the building? Chamber of Commerce checked with Nantucket, no logs of dropped calls. What is the hardship? – opposed.

Milton Berglund of 21 Studley Rd., Hyannis. He doesn't understand the technical link between the building and the tower.

Attorney Ford replies that he has been advised that there is, directs to Ellen Cummings of Verizon to address.

Ellen Cummings, Verizon in attendance. She replies to Mr. Berglund. The tower is connected to the central office, switching station, brain, electronics in it, fed out to different avenues. Basic service is brought from Nantucket to the switching station. Cables go into the brain, underground that go into the central office. To move a central office is an extremely intense and difficult thing to do. It houses how the community's communications are dispersed out.

Milton Berglund asks what is the maximum distance to still keep the integrity of the station? Could the tower be located at different location, Hyannis near water dept.? Comments: urges the Appeals Committee not to permit the extension of this tower. This tower looks like a mistake and this tower should never been put there in the first place, suggests moving the tower to another location. – opposed.

Ellen Cummings replies, in theory yes, but this is not a cell tower, this is a microwave tower so it works at a direct line of site. The two towers have to have a direct line. One side or the other has to be raised.

Alan Feltham in attendance. The structure is on a 1960 concrete base, its steel that rusts and fatigues, stresses. Who did the structural analysis study? Any way to be assured that Verizon would not use this tower for any other means? Concerned re the intended use. – opposed.

Fred LaSelva of 358 Sea Street, Hyannis in attendance. He was the one assenting vote on the Planning Board when Verizon was before them. Unanimous vote against the Centerville T-Mobile tower. Does not think the process was above board. Citizens do not want this. Concerns re the fall zone. This is revenue for Verizon. Concerned with the height. - opposed.

Marina Atsalis, member of the HHDC. Citizens of Hyannis don't want this. How many people involved with this actually live in Hyannis?

Fred LaSelva re a recusal of Business Improvement District (BID) people, asking if any of the Appeals persons are in the BID. – opposed

Mary Ann Agresti (Neither member belong to the BID or are members of the BID). Also believes that Sara Colvin is not a BID member.

Taryn Thoman, Vice Chair of the HHDC in attendance. Concerns with new information being presented to this Appeals Commission by the Applicant/Verizon. Concerns with the public welfare/the fall zone. Suggests reading the GIZ (Growth Incentive Zone) regulations old and new rules. This application just made it in under the old GIZ rules. 106 and any National Registered properties, our district is much bigger. The Findings – they were given options affirmative and negative. Several unanswered legal questions. 1996 and 2003 town invested in the Walkway to the Sea/Aselton Park, a lot of investment here. Suggests watching the video of the HHDC meetings. Carefully consider any new evidence. – opposed.

Cheryl Powell, Chair of HHDC in attendance. Asks the Committee to please consider everything and all materials.

Attorney Ford looks forward to presenting some additional information to the Appeals Committee.

**Chair Alison Alessi entertains a motion to continue the public hearing and meeting to Sept. 12, 2019, at 6 p.m., moved by Mary Ann Agresti, seconded by Alison Alessi.**

**Chair Alison Alessi entertains a motion to adjourn, moved by Mary Ann Agresti, so voted unanimously.**

The meeting adjourned at 8:29 p.m.

Submitted  
Karen Herrand

#### **List of Exhibit Documents**

**Exhibit A** – Listing of Verizon COA/COH Application Materials – blue highlighted areas

**Exhibit B** - Petition for Appeal – Verizon New England, Inc. COA

**Exhibit C** - Petition for Appeal – Verizon New England, Inc. COH

**Exhibit D** – HHDC Decision- Disapproval of a COA

**Exhibit E** – Letter dated January 16, 2019 – George Jessop

**Exhibit F** – Cape Cod Times Article entitled “A 911 Emergency” as submitted May 1, 2019

**Exhibit G** – Article “When Historic Preservation and Cell Towers Collide” dated March 21, 2013