

LONDONDERRY ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

MINUTES FROM 2/15/17 MEETING

The meeting was called to order at 7:00 p.m. Members introduced themselves. The following members were present: Neil Dunn, Chair; Jacqueline Benard, Vice Chair; Jim Tirabassi, Clerk; Suzanne Brunelle, member; and Allison Deptula, alternate member. Also, in attendance were Richard Canuel, Senior Building Inspector and Laura Gandia, Associate Planner. Chairman Dunn reviewed the hearing procedures and appointed Allison Deptula as a full voting member for the meeting.

I. APPROVAL OF MINUTES

J. Tirabassi made a motion to accept the January 2017 minutes as presented.

Motion was seconded by J. Benard.

Motion was granted, 5-0-0.

II. REPORT BY TOWN COUNCIL – N/A

III. PUBLIC HEARING OF CASES

- A. **CASE NO. 1/18/2017-1:** Request for a variance from LZO 2.3.1.3.C.2 to allow for the construction of a solar photovoltaic array that is setback 5 feet from the property line where 15 feet are required, 34 Parmenter Road, Map 003 Lot 138-2, Zoned AR-1, John & Joan Loker (Owner) & Revision Energy (Applicant)

J. Tirabassi read the case into the record, and noted that this case was continued from the January 2017 meeting. J. Tirabassi stated that the applicant, ReVision Energy, made a request to withdraw the application based on meetings with the building department.

J. Tirabassi made a motion to grant the applicant's request to withdraw its application.

J. Benard seconded the motion.

The motion was granted, 5-0-0.

- B. **CASE NO. 2/15/2017-1:** Request for a variance from LZO 2.3.1.3.B.1 to allow construction of a house on a lot with no frontage on a Class V or better road - 22

Gerry Lane, Map 18 Lot 5, Zoned AR-1, 4NH Homes, LLC (Owner & Applicant)

J. Tirabassi read the case into the record along with the previous cases pertinent to this application. Paul English, Esq., Law Offices of Paul C. English, PLLC, 57 Bay Street, Manchester, New Hampshire and John Marino, 22 Pendleton Lane, Londonderry, New Hampshire presented to the Board. Attorney English explained that this application is for the same variance which was granted on February 17, 2016, and that the surveying work caused a delay in the owner obtaining a building permit resulting in them appearing before the Board again. J. Marino added that there is additional work to be done (survey work will take about 1-2 more weeks, septic design, etc.) noting that they are very close to obtaining a building permit. P. English then reviewed the five criteria as outlined in his application. Upon conclusion of the five points, R. Canuel pointed to NHRSA 674:33 and its applicability to the application. He explained that this statute provides that variances are valid for two years after their issuance, and the 2016 variance is valid until February 17, 2018 with no further action necessary despite language in the Town's ordinance. He noted that the applicant should proceed within the allowed time to obtain the issuance of a building permit and any necessary approvals (review & comment) from the Planning Board.

J. Benard made a motion to accept the previously granted case under NHRSA 673:33-I-a and uphold the original granting of that variance with an expiration date of February 17, 2018.

The motion was seconded by S. Brunelle.

The motion was granted, 5-0-0.

- C. **CASE NO. 2/15/2017-2**: Request for as variance from LZO 3.9.1 and 3.9.4 to allow the construction of a wireless telecommunications facility in the AR-1 zone where otherwise prohibited and to allow construction of the wireless communication tower which is set back approximately 204 feet from the nearest property boundary where 300 feet are required, 76 Chase Road, Map 1 Lot 83, Zoned AR-1, Christopher Trakas (Owner) and American Tower Corporation (Applicant)

J. Tirabassi read the case into the record noting that there were no previous cases relating to the property. S. Brunelle recused herself from this hearing and stepped down from the Board. Elizabeth Kohler, Esq., Downs Rachlin & Martin, PLLC, 199 Main Street, Burlington, VT, representing American Tower, presented for the applicant. Chairman Dunn explained to E. Kohler that there is not a full member board and an affirmative vote of three members is necessary for any approval. He further explained that she had the opportunity to continue with a four member board or continue the

hearing until next month. She indicated that she wished to move forward. She reviewed a power point presentation (See attached Exhibit 1). Ryan Monte De Ramos, radio frequency engineer for T-Mobile, Mike Almada, real estate specialist for Tower Resource Management and consultant to American Tower, and Christopher Trakas, owner, of 76 Chase Road introduced themselves. E. Kohler explained that-Mobile is the primary tenant for this facility, and that the purpose of the project is to improve wireless coverage. She reviewed where the coverage area and the coverage after the facility is in operation. She stated that the tower is being designed to accommodate T-Mobile and future carriers with the intent to improve in-home coverage. She gave an overview of the project, the site location and access points to the tower. She stated that the basic elements of the project include a 50x50 fenced in compound, 145 foot monopole, and cabinets inside the fenced-in compound. She added that the location of the compound was reviewed in a design review process noting the environmental research performed with consideration to the wetlands, ponds and buffers - all resulting in the ideal presented location for minimizing environmental impacts. She then reviewed the variance criteria as follows:

- (1) The variance is not contrary to the public interest: the parcel is the ideal location for the facility with the goal of minimizing adverse impacts;
- (2) The spirit of the ordinance is observed: any adverse effects were minimized;
- (3) Substantial justice is done: this location is the only feasible means to close the coverage gap;
- (4) Special conditions of the property: the property is ideal and the only feasible location to close the coverage gap and other alternatives were explored; this is the least intrusive design to accomplish that objective;
- (5) There is no diminution in property values: she referenced a report from a real estate expert submitted in her application package which she contends demonstrates that there is no diminution in property values;

She then discussed alternatives evaluated to this site facility. She stated that seven other locations were evaluated to cover the significant coverage gap and other sites were reviewed. She stated that T-Mobile as the wireless carrier and American Tower as the developer worked to exhaust co-location opportunities or add to existing infrastructure. She added that there are no existing structures to co-locate with to achieve the coverage objectives. She stated that they look at zoning, environmental impacts, willing landlords, etc. Out of the seven only one was identified and evaluated which is an existing SBA tower which was rejected – she provided the Board with a list of alternate candidates. She then spoke of the aesthetic impact. She informed the Board that a balloon test was conducted on January 6, 2017, reviewed pictures from the test, and pointed out at which location the tower would be visible. She reviewed the view shed analysis and how the visibility testing was conducted. She noted that the balloon was most visible from Kendall Pond. She concluded her presentation and

welcomed questions from the Board.

Chairman Dunn asked E. Kohler to provide more detail on the five points of law. E. Kohler noted that there was quite a bit of narrative provided in the application. She added that for the public interest that it is paramount to focus on wireless coverage improvement which is critical for any thriving community and the safety need for coverage. She added it is not contrary to the public interest because it is the only feasible means to fulfill coverage gaps as demonstrated with the propagation maps and the material presentation. She stated that the spirit is observed because the facility helps strengthen the economic base of the town for residents and motorists. She added that there are no feasible alternatives for co-locations, and the facility will have a minimal impact on natural resources and the adjacent residential area. She stated that the facility does not threaten the public health, safety or welfare of the general public noting that the proposed location complies with all other criteria in the AR-1 district. She stated that substantial justice is done because the facility will alleviate the significant coverage gap, is the only viable means to do so, is the least obtrusive means to close the coverage gap, serves the public by improving T-Mobile service, will be constructed to accommodate future needs for public safety and first responders for co-location. She stated that the value of surrounding properties are not diminished as demonstrated by the report submitted by Andrew Lemay who concluded that both nationally and locally there is no evidence to suggest that the proposed project would diminish property values. The final point regarding hardship, she stated the all reasons previously described above apply to these criteria. She added that the proposed use is reasonable one because there is no undue adverse effect on the surrounding properties and there are no significant impacts to traffic, no undue nuisances, and no uses of hazardous materials or excessive sounds. She commented on the availability for additional carriers and coverage for that area. She concluded her presentation.

Chairman Dunn asked for the Board's input and questions. Chairman Dunn asked about the reference to the Daniels v. Londonderry case. E. Kohler responded that the case was referenced because it set the precedent for establishing the coverage gap criteria, and the importance of identifying a location with a focus on fulfilling a wireless network coverage gap. Chairman Dunn noted that the case involved whether the ZBA accurately performed its job in applying the five points of law. E. Kohler concurred that the case confirmed the importance of establishing the five criteria. Chairman Dunn asked about the location of the Windham alternative. E. Kohler stated that the Windham location was not an alternative considered for this location. R. Monte De Ramos responded that the Windham site encompasses a different coverage objective. E. Kohler stated that the Windham Kendall Pond Road location rejected for being located on a conservation parcel was evaluated as an alternative to this site, and is not the one in front of the Windham ZBA currently. J. Benard referenced E. Kohler's letter dated 1/16/17 to the ZBA and asked for an explanation for the meaning of paragraph (H) on

Page 2 of the letter. E. Kohler stated that the appurtenances refer to the utilities and equipment, antennas, co-axle cables contemplating future use for other carriers. J. Benard question the expiration date 4/28/2017 on the PCS Broadband License and E. Kohler stated that there is a simple administrative process to renew it. E. Kohler stated that if the tower was obsolete, then the tower would be taken down but she does not anticipate that happening.

Chairman Dun asked for public input.

Michael Finn, 68 Chase Road, addressed the Board in opposition to the application. He noted his concerns regarding infringement on private property rights, science and medical concerns, the location of the property in the 100 year flood plan, and the addition of carriers on the monopole. He stated he had a letter from his real estate agent regarding property values which is contrary to the applicant's report. E. Kohler responded that the property is located in the 100 year flood plan and the project will undergo design review with Planning Staff. She stated she is waiting for feedback from that process for construction criteria.

Peter Burnell, 75 Chase Road, addressed the Board in opposition to the application. He requested clarification on the Windham project at 105 Londonderry Road which he believes the ZBA application was withdrawn with no explanation. He requested more information about the conservation issues. He referenced other sites and towers as possible co-location and project sites. He questioned the co-location of other carriers. He requested another balloon test be conducted because the first one was done without this knowledge. He also questioned the applicant's report regarding the diminution in property values. He commented on the RF zone distances based on the height and proximity to the airport, and the necessity of a tower light. He expressed concerns and/or asked about the use of hazardous chemicals and batteries on the site, the existence of a generator, noise, limits to the time and number of work hours, the ownership of the property, concerns other property values, upgrades, traffic concerns, additional cables, the change of the residential area, and diminution in property values. E. Kohler reiterated that the property in Windham that was considered as an alternative to this site was the Kendall Pond Road conservation site. She stated that the T-Mobile 105 Londonderry Road project does not provide for the same coverage area as 76 Chase Road, and that the existing tower at the intersection of Route 111 and Route 128 is an existing T-Mobile location which would not serve as an alternative. She added that there is no backup generator being proposed, the FCC sets the standard for safety emissions and T-Mobile will broadcast within those limits, the project received clearance from the FAA adding that no lights or paintings are needed for this location, there are minimal road improvements, no improvements needed for entry to the project, an underground conduit will run along the existing driveway, and the tower will be available to other carriers. She added that the balloon test was very thorough. She further explained that they are not proposing any

additional poles on the subject property.

Rene Belanger, 58 & 64 Chase Road, addressed the Board in opposition to the application. He expressed concerns over medical issues resulting from the tower (cancer). He stated his property is 204 feet from the tower and that the property floods. He also noted that he could see the balloon from 58 Chase Road. He expressed concerns over the ponds and animals. E. Kohler offered to supplement the Board with a maximum permissible exposure report that will demonstrate that the project meets the FCC guidelines and does not require any physical barriers. C. Trakas addressed the Board stating that he purchased the 22 acre property in 2008 a second home and a home for his four horses where he spends numerous days and nights.

Tammy DeAngelis, real estate broker, One Verani Way, addressed the Board regarding the diminution of property values. She stated that she has been a broker for 25 years and appears on behalf of the owners 66 Chase Road. She expressed confusion over the applicant's report which she contended was just an absurd opinion. She stated that houses built near power lines are routinely discounted and people are afraid of EMFs. She added that the values will be affected with a tremendous amount of devaluation to the surrounding properties.

Richard Brooks, 66 Chase Road, addressed the Board in opposition to the application. He expressed concerns over the diminution in property values, the effect on birds and the environment, medical concerns, and impacts to the environment. He noted various studies which he presented to the Board regarding the effects of cancer, the effects on birds. He added that there are 17 towers within four miles of 76 Chase Road. He also added his concerns over the tower height as it relates to Rene Belanger's property and LZO 3.9.4.1.1. E. Kohler responded that the real estate report contains comprehensive data. R. Brooks also commented on a study that shows that cell towers affect property values. R. Belanger commented that he saw the balloon and did not know what it was because no one informed him that the test was being conducted.

Marsha Greenwood, 70 Chase Road, addressed the Board in opposition to the application. She noted her concerns as a direct abutter about the impact on her view. She commented on the diminution in property values and the effect it will have on her retirement. She stated she cannot afford to lose any value to her home. She reiterated the previous concerns adding that New Hampshire has a law prohibiting the use of cell phones in cars. E. Kohler stated that the safety of motorists in their vehicles is paramount and focused on the need for communication if a vehicle is in an accident or inoperable.

Colleen Thomas, 83 Chase Road, addressed the Board in opposition to the application. She stated she just moved to Chase Road about two weeks ago and would not have purchased her home if there was

a cell tower close by or if she knew of the plans to install a cell tower near her home. She expressed her concerns over environmental impacts particularly with the brook and the fact that Chase Road is a low salt, low sand road. She expressed concerns over health issues, particularly cancer.

David Belanger, 56 Chase Road, addressed the Board in opposition to the application. He expressed concerns over the visibility of the tower from his property. E. Kohler responded that the photo simulations were from public driving roads and not from private properties.

Matt Joubert, 10 Chase Road, addressed the Board in opposition to the application. He stated that he had the same previously addressed concerns. He commented on the transmission range. He added that he purchased his home in an AR-1, residential neighborhood where towers are not allowed. He reiterated the concerns over the diminution in value of his home and the surrounding homes. E. Kohler stated that the proposed facility is unmanned, maintenance is routine maintenance (one to two times a month), and the use is low impact on a 22 acre parcel. She noted that the construction of the facility is a way to keep the open space. Chairman Dunn asked about emergency repair. E. Kohler stated that during an emergency situation if light was needed then light would have to be used. J. Tirabassi asked what would be considered an emergency situation. E. Kohler stated a natural disaster, down antenna, power outages are examples of an emergency situations.

John Farrell, Town Council Chairman, 4 Hancock Road, addressed the Board. He stated that he is not taking a position on the project. He added that he was on the team who wrote the cell tower ordinance and the intent was not to have towers in situations where homes are so close. He also commented that there are other options available. He added that the Board is breaking away from the spirit of this ordinance and no one intended for cell towers to be located in residential neighborhoods. He stated that the homes in this neighborhood are people's livelihood. Regarding the fire department, he commented on the warrant article being presented to the voters.

Liane St. Laurent, 73 Chase Road, addressed the Board in opposition to the application. She reiterated all of the opposition's concerns. She added that the motor safety is not a valid argument.

Daniel Stagnone, 65 Chase Road, addressed the Board in opposition to the application. He commented on the amount of times that the applicant stated the word minimal which was concerning to him.

Jeremy Mague, Londonderry Fire Department Lieutenant, 2 Griffin Road addressed the Board in favor of the application from a public safety component. He stated that the tower would improve the overall communications for the town, a priority of the town. He noted the dead spot areas of the

town using a slide (See Exhibit 2) to illustrate the fire department communication coverage and the red areas as excellent and the blue areas as poor. He noted that the southern end of town is in a hole and 200 feet lower with poor communication. He added that the tower would be a benefit for police, fire and public works.

Laurie Belanger, 58 & 64 Chase Road, addressed the Board in opposition to the application. She stated that you could see the balloon from her house. She stated she does not want the tower there especially because of her children.

Ken Goduti, 73 Chase Road, addressed the Board in opposition to the application. He asked about ownership of the cell tower at Route 111. He requested that if another balloon test was performed that it be done on a Saturday. He also commented on visual disruption. He stated that the houses that can see the tower are being visually disrupted and perhaps those owners should receive some form of tax break. He compared it to a view tax.

Lindsay Flanagan, Four Sparhawk Drive, addressed the Board in opposition to the application. She stated that she had the same concerns already expressed.

Liane St. Laurent addressed the Board again and asked about the map presented by the fire department. She and J. Mague discussed possible other options for communications throughout the town such as renting space on other towers in other towns and the new communication system being proposed.

Matt Joubert, 10 Chase Road, addressed the Board. He expressed concerns over traffic and the flood plan.

Chairman Dunn asked R. Canuel about the flood plan issue. R. Canuel stated that there is a considerable portion of that property in the flood plan and the questions about construction would be within the purview of the Planning Board. He noted that the facility is located outside of the flood plan on the plans that he reviewed.

There was no other public input.

M. Almada, Tower Resource Management, addressed the Board. He pointed out that there is no area in the southern district of town that permits cell towers. He informed the Board that he called the Archdiocese for a possible location on St. Mark's property on two occasions, and never received a response. He described his efforts with locating parcels owned by the town and the schools. He

stated that there is responsible information of the FCC website regarding the health concerns that were raised. He noted that he looked at every parcel larger than 5 acres in that area and none were owned by the Town. He commented that parcels smaller than five acres lead to difficulties in meeting any setback requirement. J. Farrell commented that the town owns land in that area.

Richard Brooks, 66 Chase Road, addressed the Board and expressed concern over the location of the tower near South School and the lack of notification to all residents within a 2 mile radius.

Chairman Dunn asked for any other input. E. Kohler requested a continuance to supplement the application to provide the maximum permissible exposure report and possibly conduct a second balloon test with notification to the abutters. J. Benard asked why the Route 111 tower cannot be used and what the coverage was. R. Monte De Ramos explained the coverage issues are not met with the existing tower giving the terrain, trees, etc. and T-Mobile is maximizing the technology that it currently has. J. Tirabassi asked if the desire for the tower is consumer or T-Mobile driven. R. Monte De Ramos stated he does not have the information regarding the why the business decision was made and who made the decision. E. Kohler commented on the search ring which shows where calls are dropped which is part of the market research. She also commented on the FCC guidelines and anticipation of expanding coverage areas.

J. Benard made a motion to continue Case No. 2/15/17-2 at the request of the applicant to March 15, 2017.

The motion was seconded by J. Tirabassi.

The motion was granted, 5-0-0. The case is continued to March 15, 2017.

D. **CASE NO. 2/15/2017-3:** Request for a variance from LZO 3.11.6.C.8 to allow a temporary banner sign in excess of the allowed 30 days for a period of 180 days, 48 Perkins Road, Map 16 Lot 1, Zoned AR-1, Wallace Farms, LLC (Owner & Applicant)

J. Tirabassi read the case into the record noting that there were no previous pertinent cases. Heather Calcagni and Erin Rodrigues presented for the applicant. S. Brunelle recused herself from the hearing and stepped down from the Board. Chairman Dunn explained that there is not a full member board and an affirmative vote of three members is necessary for any approval. He further explained that the applicant has the opportunity to continue with a four member board or to continue the hearing until next month. The applicant stated that it wished to move forward. H. Calcagni stated that they are seeking to extend the amount of time to display their banner on the north side of a building facing

I-93 for 180 days. She noted that the banner has been displayed for 30 days and construction has been delayed which has resulted in the need to extend the time to display the banner. She stated that she is hoping for occupancy in April. She then reviewed the five points of law as follows:

- (1) The variance will not be contrary to the public interest: the banner is used to inform the audience of a brand new apartment home complex with a phone number;
- (2) The spirit of the ordinance is observed: the banner provides the public with knowledge of the new apartment homes and a contact for more information;
- (3) Substantial justice is done: banner provides information to the public who are looking for housing;
- (4) Values of the property are not diminished; the banner is for advertising purposes and the banner contains the property name and phone number, and there are no abutters that are viewing the banner;
- (5) Literal enforcement of the provisions would result in unnecessary hardship: the property is offering income qualified rates meant to target the workforce and is meant to strengthen community living arrangements, and the property is still under construction; and the proposed use is a reasonable one: to advertise.

Heather Calcagni also added that they have 33 of the 96 units preleased with applications and deposits but are waiting for certificates of occupancy for the units. E. Rodriques stated there are no leases signed because people are not able to view the space. She noted that there are 50% workforce and 50% market rate units. R. Canuel stated that temporary signs are allowed by permit for 30 days and you are allowed two permits per calendar year. E. Rodriques stated that they are hopeful to be finished in April but have been delayed several times before. The Board and the applicant discussed the time frame for the banner to be displayed and the look and the quality of the banner. J. Tirabassi asked about the construction delays. E. Rodriques stated that currently the building does not have electricity which limits the ability to conduct final walk throughs and perform other tasks needed to rent the units. She stated she is hoping to have power at the end of this month but added that the date to have power has changed several times. E. Rodriques stated that it will take six weeks from the power being installed to have people come on the site but in between meters need to be installed, elevators need to be inspected - these dates are aggressive and not guaranteed. The Board, the applicant and R. Canuel discussed options of how to limit the number of days that the banner is displayed while helping the applicant achieve its goals and focused on the issuance of certificates of occupancies as it relates to workforce housing units and the building.

Chairman Dunn asked for public input and there was none. Chairman Dunn closed public input and the Board went into deliberations. The Board reviewed the five points as follows:

- (1) The variance will not be contrary to the public interest: there were unforeseen construction delays that were out of the control of the applicant;
- (2) The spirit of the ordinance is observed: this type of housing serves the community and it is important to advertise this type of housing/service;
- (3) Substantial justice is done: allow the public to know of the availability of the housing;
- (4) Values of the property are not diminished; the banner is for advertising purposes and the banner contains the property name and phone number, and there are no abutters that are viewing the banner;
- (5) Literal enforcement of the provisions would result in unnecessary hardship: the banner faces I-93 and unforeseen delays caused the predicament; and the proposed use is a reasonable one: public notification.

J. Tirabassi made a motion in Case No. 2/15/17-3 to grant the applicant's request for a variance a from LZO 3.11.6.C.8 to allow a temporary banner sign in excess of the allowed 30 days for a period of 180 days or full occupancy of Building One whichever occurs first and at which time the banner is removed.

J. Benard seconded the motion.

The motion was granted, 5-0-0.

- E. **CASE NO. 2/15/2017-4:** Request for four variances from LZO 2.4.2.k.1-2.4.2.k.4 to allow two portable storage containers on a permanent basis where only one is allowed for no more than 45 consecutive days to be placed within 6 feet of the rear and side lot lines where 30 feet are required, and whose width, height and/or length exceed what is currently allowed, 33 Londonderry Road, Map 10 Lot 87, Zoned C-II, 33 Londonderry Road, LLC (Owner & Applicant)

J. Tirabassi read the case into the record noting that there were no previous pertinent cases. John Hayes, Esq., Alfano Law Offices, Four Park Street, Concord, New Hampshire, presented for the owner and applicant. He informed the Board that the property manager of the property left due to a medical emergency. He added that Derek Roma, contractor with the State as part of the Right of Way purchases for the I-93 widening project, was present with him for the hearing. He stated that the property abuts I-93 and a portion of the property was taken by eminent domain for the I-93 widening project. He noted that the portion of the land that was taken by domain contained the two storage containers which were on the property for 20+ years and predated the adoption of Londonderry's zoning ordinance are the subject of the requested variances. He stated the lot size and configuration

makes it very difficult to relocate the containers outside of all the setback requirements. He stated he is seeking to use the containers on a permanent basis and the containers are 40 feet in length which exceeds the length requirement permitted in the ordinance by 20 feet. He noted that the proposed location has the least impact to the abutters and will be shielded from view. He stated that the containers are used primarily for storage by the tenants and for management of the property. He reviewed the five criteria as follows:

- (1) The variance will not be contrary to the public interest: the use of these containers were grandfathered prior to the taking by the State, they will not be visible from the road or to abutters because of the shielding of the trees, they will not alter the essential character of the neighborhood (use has been in existence for years), and there is no threat to the health, safety, or general welfare of the public;
- (2) The spirit of the ordinance is observed: the use of these containers were grandfathered prior to the taking by the State, and the containers will not be within the view from Londonderry Road or the neighboring properties;
- (3) Substantial justice is done: the use of the containers is consistent with the area's current use, and there is no general loss to the public;
- (4) Values of the property are not diminished: the storage containers are there currently have been there for a very long time, and the proposed location best shields them from other properties;
- (5) Literal enforcement of the provisions would result in unnecessary hardship: unique circumstances of the property was the grandfathering of the use of these containers that would still be allowed but for the taking by the State, and the taking now limits the amount of property that the owner has to meet the setbacks; and the proposed use is a reasonable one: it is not expanding the current existing nonconforming use.

Chairman Dunn asked if the containers were within the setbacks before the taking and J. Hayes believed that they were. S. Brunelle asked if there was storage available inside the building and she was told there was not. S. Brunelle asked for more information about the fifth variance criteria. J. Hayes reiterated the unique situation of the property regarding the taking leaving the owner with less land. J. Hayes stated the containers will be in the northwest corner of the property. J. Benard asked about the ownership of the building. J. Hayes stated that the owner owns the whole building. J. Benard asked about relocating the containers to other areas of the property. J. Hayes described the drainage easement on the property as part of the taking and the removal of some of the trees on the other areas. J. Hayes explained that the location of the containers is limited. J. Hayes presented the Board with a letter dated 2/14/17 from the State of New Hampshire, John Johnson, Jr., Right-of-Way Agent Supervisor, an abutter, in support of the applicant's request (Attached as Exhibit 1). J. Hayes concluded his presentation.

Chairman Dunn asked for public input and there was none.

The Board went into deliberations and reviewed the five criteria as follows:

- (1) The variance will not be contrary to the public interest: the use is of the same character of the buildings and businesses and will not alter the essential character of the neighborhood (use has been in existence for years), and there is no threat to the health, safety, or general welfare of the public;
- (2) The spirit of the ordinance is observed: there is no change to the premise and the existing use is continued;
- (3) Substantial justice is done: the owner is allowed to continue his grandfathered use, there is no loss to the public but a benefit the owner and the tenants;
- (4) Values of the property are not diminished: the storage containers are there currently and have been there for a very long time in a location that best shields them from other properties;
- (5) The property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of it: The Board discussed both criteria 5a and 5b and felt that criteria 5b were best suited for this application. The Board discussed and concluded that that the applicant is here because he was forced to due to the taking and eminent domain by the State. The Board noted the special conditions of the property with the State's taking and the easements imposed by the taking. R. Canuel commented on the nonconforming use and when that use is terminated, and the intent of the ordinance to bring that property back into compliance. He discussed other options available to the owner. The Board provided that in response to 5b that the applicant did not initiate any change and he was in front of the Board due to the taking of the property.

J. Tirabassi made a motion in Case No. 2/15/2017-4 for four variances from LZO 2.4.2.k.1-2.4.2.k.4 to allow two portable storage containers on a permanent basis where only one is allowed for no more than 45 consecutive days to be placed within 6 feet of the rear and side lot lines where 30 feet are required, and whose width, height and/or length exceed what is currently allowed, 33 Londonderry Road, Map 10 Lot 87, Zoned C-II, 33 Londonderry Road, LLC (Owner & Applicant) with the restrictions that no trailers shall be replaced and the variance shall sunset upon the transfer of ownership/title of the property.

J. Benard seconded the motion.

The motion was granted, 3-2-0. The motion was granted.

IV. Communications and miscellaneous: None

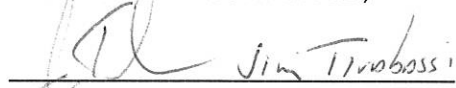
V. Other Business

J. Benard made a motion to adjourn at 10:55 p.m.

Allison Deptula seconded the motion.

The motion was granted, 5-0-0. The meeting adjourned at 10:55 p.m.

RESPECTFULLY SUBMITTED,


Jim Tirabassi

CLERK

TYPED AND TRANSCRIBED BY LAURA GANDIA, ASSOCIATE PLANNER.

APPROVED (X) WITH A MOTION MADE BY Jim Tirabassi, SECONDED BY Susan Brunelle.

Zoning Board of Adjustment
February 15, 2017

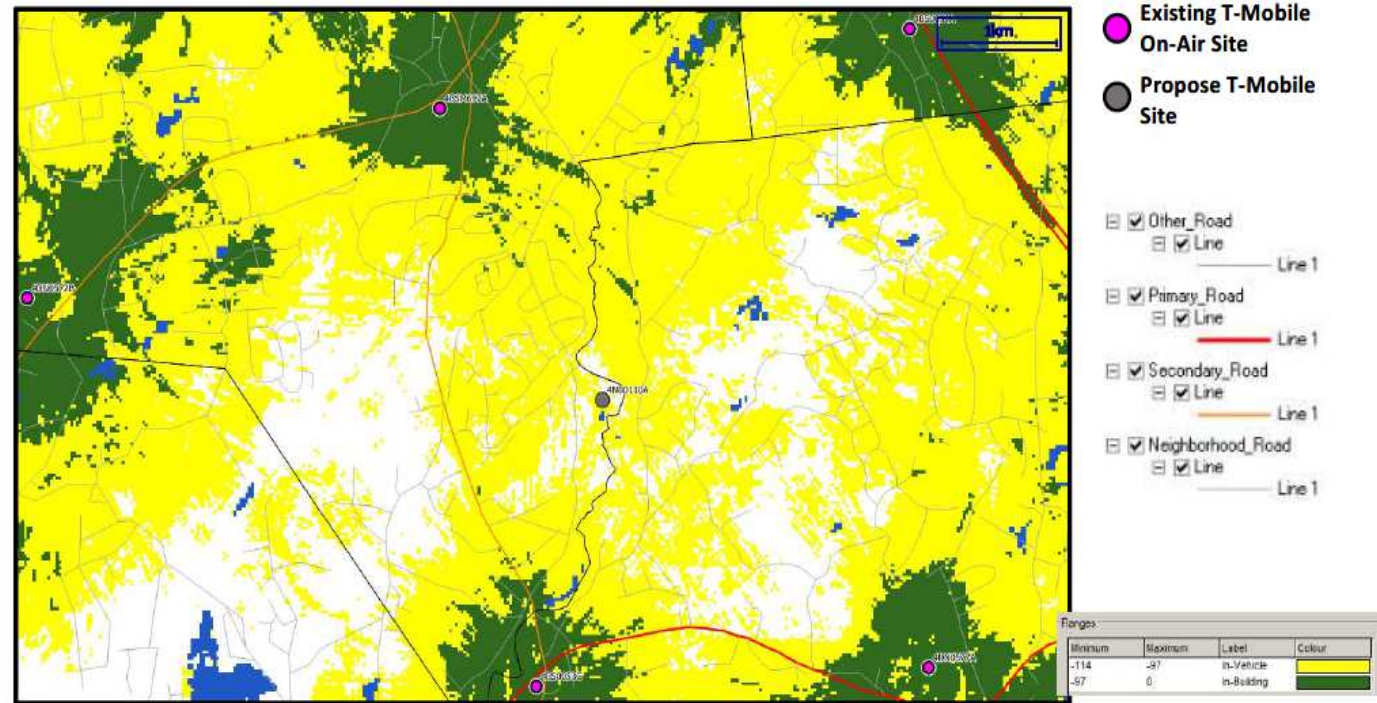


WIRELESS TELECOMMUNICATIONS FACILITY
76 CHASE ROAD

PURPOSE OF FACILITY

Improve wireless communications (AWS 4G LTE internet data and mobile phone) for T-Mobile and other future carriers in Londonderry.

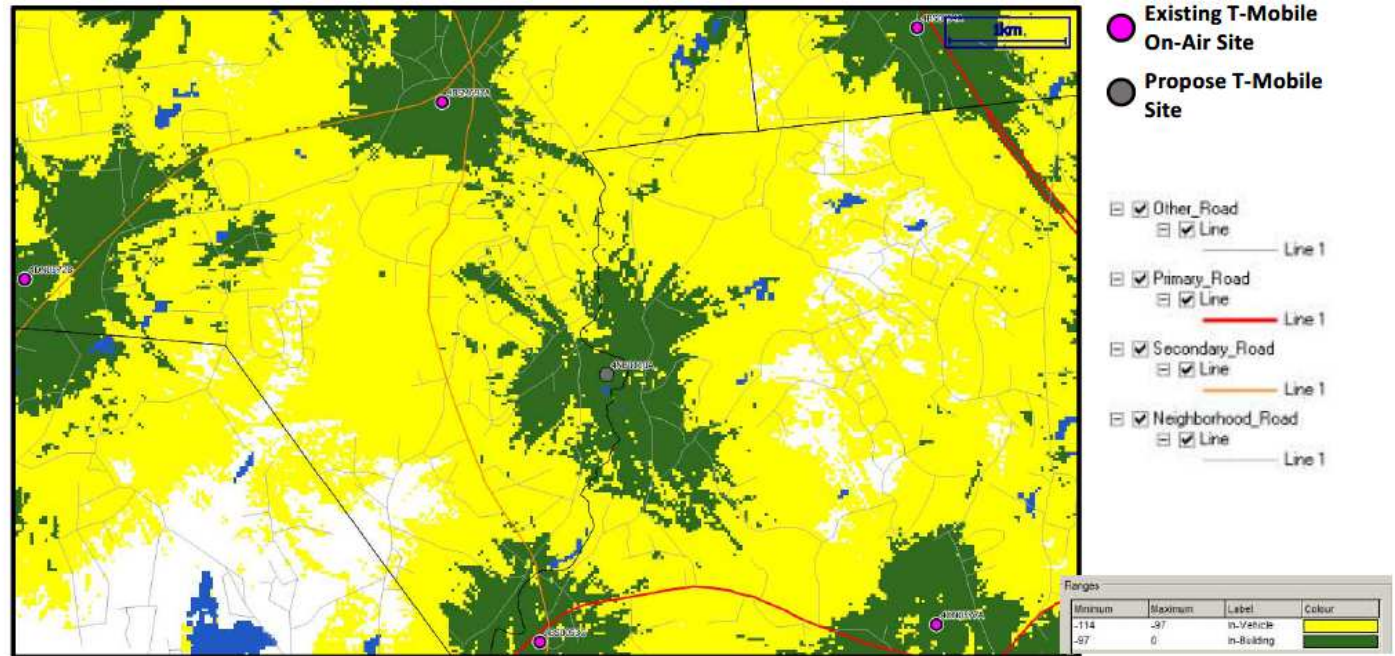
Existing LTE 2100 MHz Coverage in Londonderry, NH



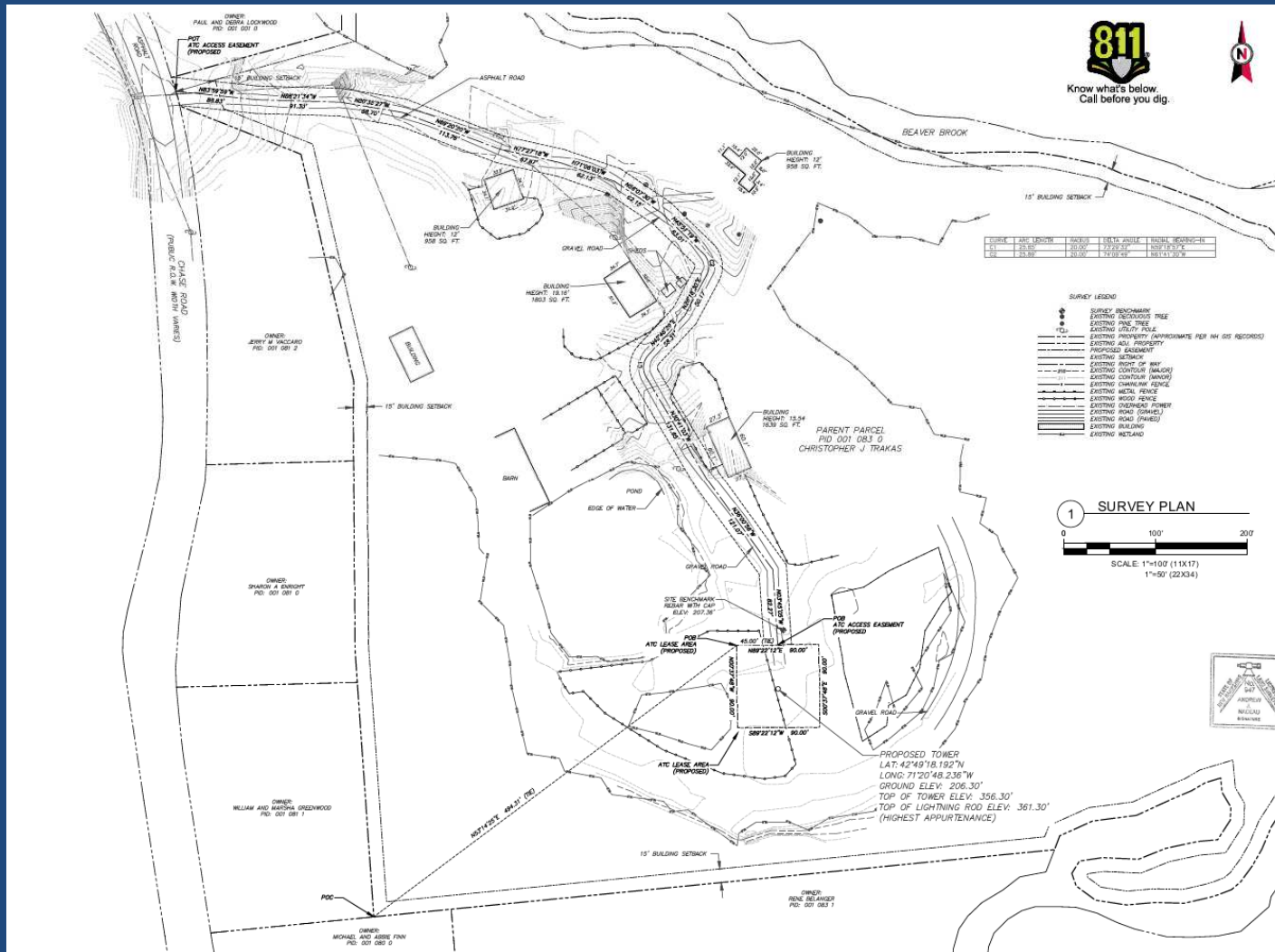
PURPOSE OF FACILITY

Improve wireless coverage in Londonderry, esp. residential areas around Mammoth Road, South Road and Morningside Drive.

Propose LTE 2100MHz Coverage with Primary Candidate at 76 Chase Road, Londonderry, NH at Height of 145 Feet



THE FACILITY



Variance Criteria

- Not Contrary to Public Interest - Serves the public interest of improved wireless service while minimizing environmental and aesthetic impacts.
- Spirit of the Ordinance is Observed - Improved wireless service strengthens the economic base of the town, no feasible alternatives for collocation, minimized impacts on natural environment and surrounding residential communities, does not threaten health or safety, and facility complies with other requirements for development in AR-1.
- Substantial Justice is Done – Granting variances provides only feasible means for T-Mobile to close the coverage gap.
- Value of surrounding properties are not Diminished – LeMay Report.
- Special Conditions of the Property Distinguish it from others – Only feasible means of filling the coverage gap; least intrusive design to accomplish the objective.

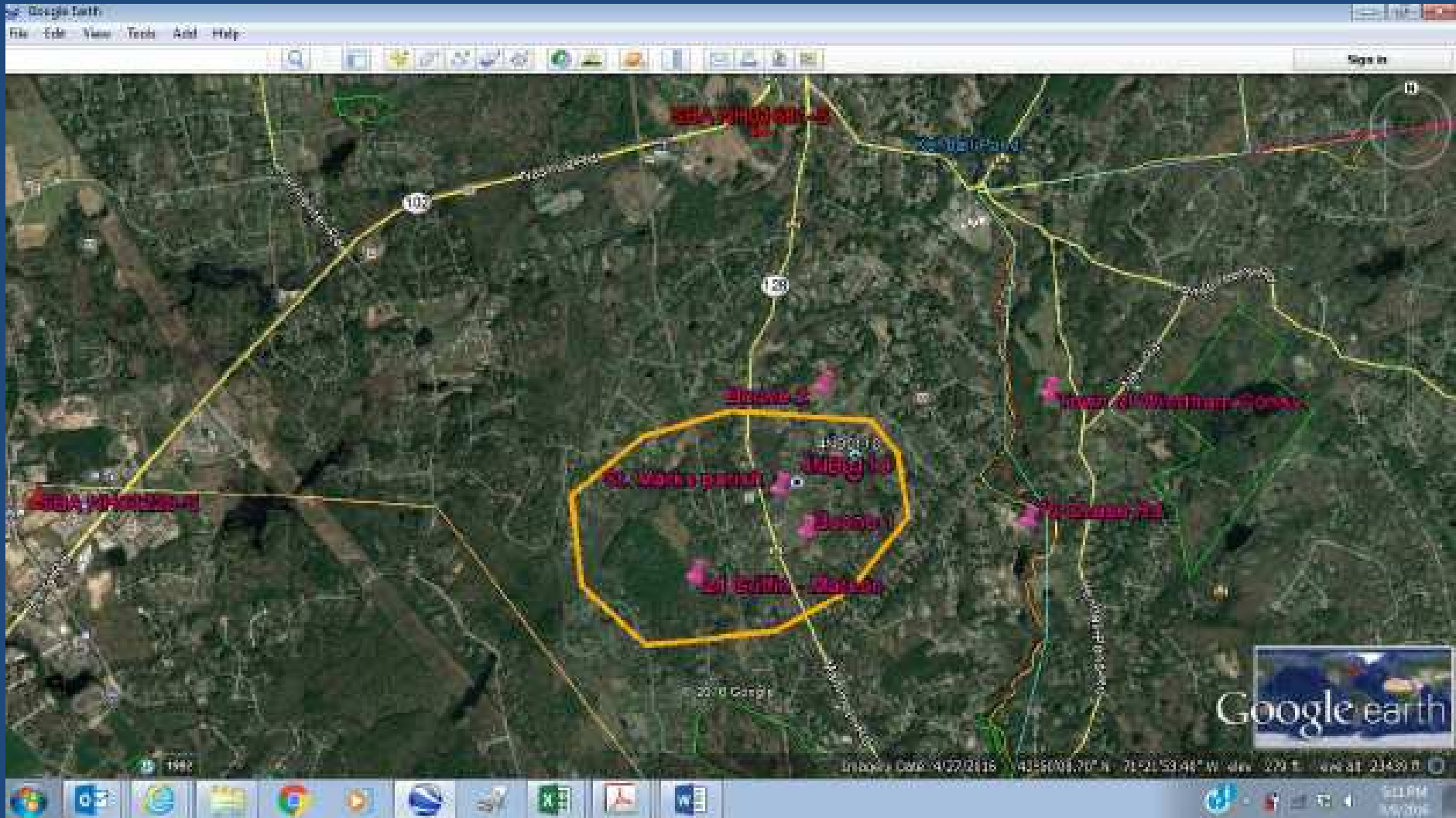


Alternatives: Considerations

- Significant gap in wireless coverage – generally 1.5 miles area for 2100 Mhz networks such as T-Mobile.
- Site locations necessarily determined by a combination of topography, roads, existing structure, population concentrations, existing coverage, distance to adjacent sites, public access, utility availability, natural resources considerations, and cultural heritage.
- Exhaust collocation first: only if nothing available will new towers be investigated.
- Check possible candidates with Rf engineers for feasibility; then gauge landowner interest, site conditions and zoning considerations.
- Once concluded, look at mitigation through the community lens, keeping in mind the need to remedy coverage gap.



Alternatives: 7 Potential Locations Identified

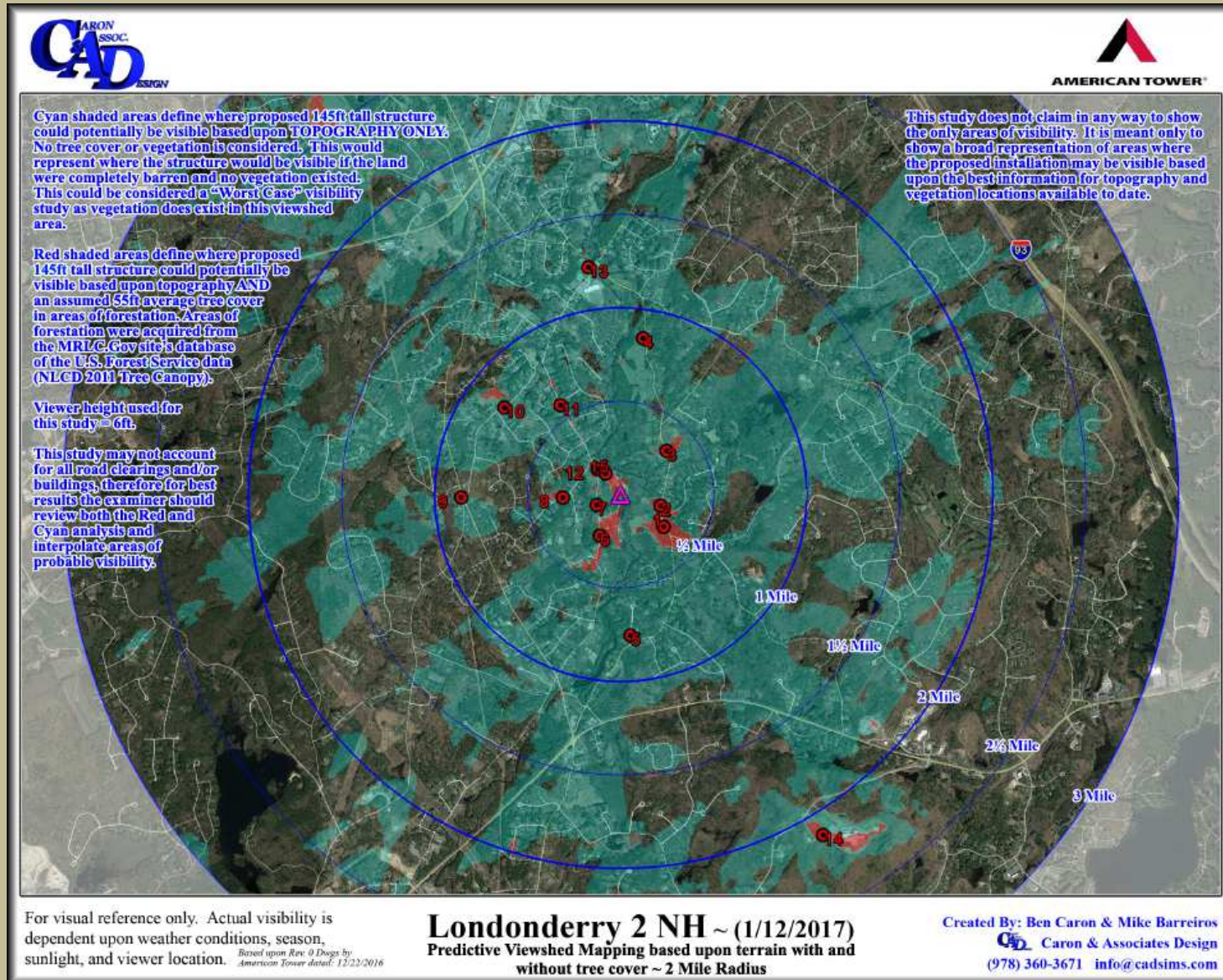


Alternatives: 7 Potential Locations Identified

Site	Address	Suitability
SBA Tower	135 Nashua Road	Too far from coverage objective
Matson Parcel	24 Griffin Road	Too far south, unresponsive landowner and extensive wetlands
St. Mark Parish	1 South Road	Unresponsive landowner, significant public views from Mammoth and South Road
Boone 1	6 South Road	Open field; exposed abutter views and substandard setbacks
Boone 2	33 South Road	Exposed views, and substandard setbacks
Kendall Pond Conservation	Town of Windham	Too far from coverage objective; conservation land
Horse Farm - Trakas	76 Chase Road	Acceptable range for coverage, large parcel, partially wooded for screening.



Visual Impacts of Facility: Balloon Test 1/6



Visual Impacts of Facility: Balloon Test 1/6



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AMERICAN TOWER

01/06/2017 07:32

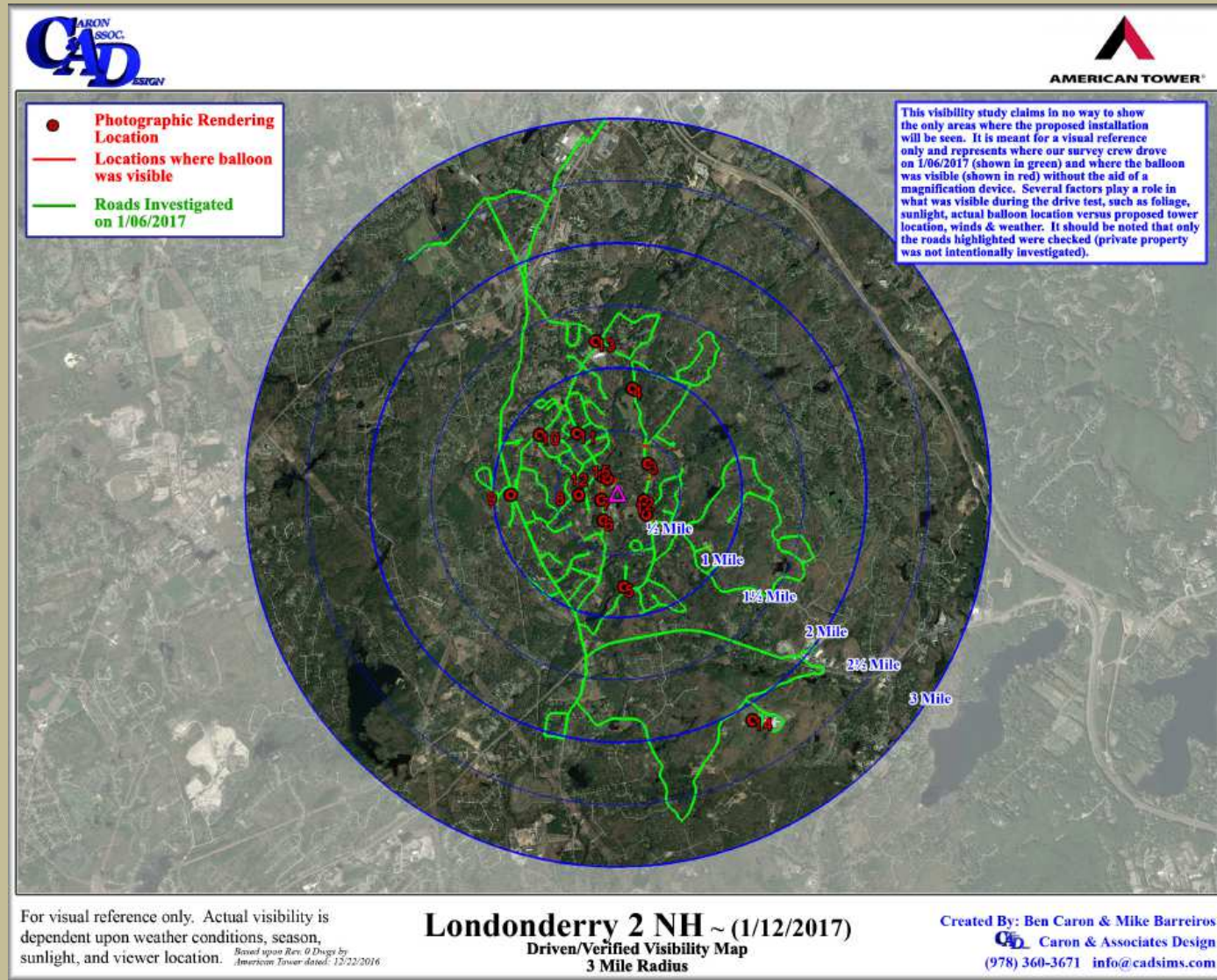
For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Based upon Rev. 0 Design by American Tower dated 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Balloon Flown on Friday 1/06/2017
Flown from 7:37am through 3:26pm

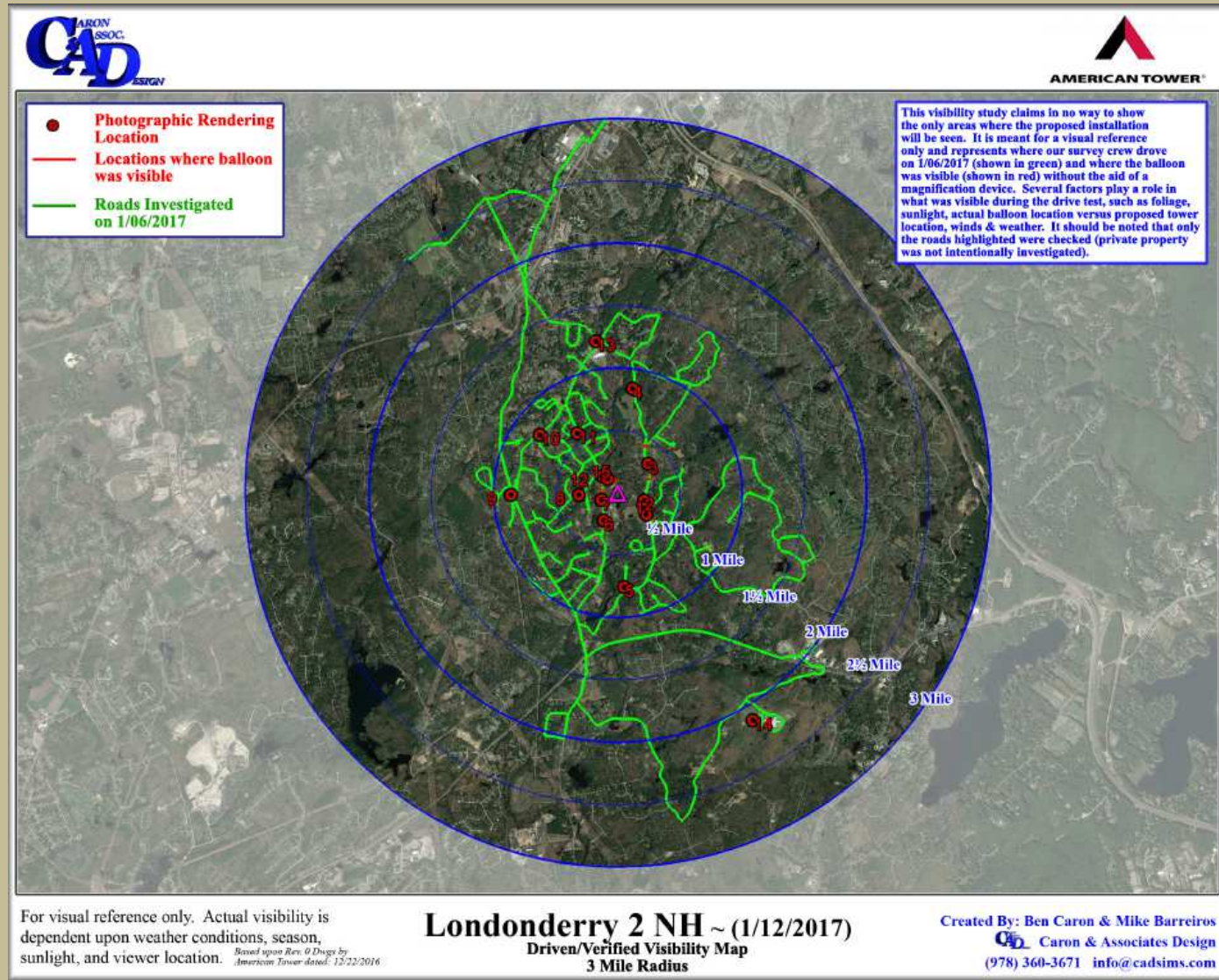
Created By: Ben Caron & Mike Barreiros
CAD Caron & Associates Design
(978) 360-3671 info@cadsim.com



Visual Impacts of Facility: Balloon Test 1/6



Visual Impacts of Facility: Balloon Test 1/6



Visual Impacts of Facility: Near 79 Kendall Pond Rd.

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Proposed Conditions

AMERICAN TOWER



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Based upon Rev. 0 Drawings by American Tower dated 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Photo Location 1 ~ 65mm ~ 1526'+/- (0.29mi) Away
Near 79 Kendall Pond Road

Created By: Ben Caron & Mike
CAD Caron & Associa
(978) 360-3671 info@ca





Visual Impacts of Facility: Near 79 Kendall Pond Rd.

CAD CARON ASSOC. DESIGN

Proposed Conditions

AMERICAN TOWER



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Londonderry 2 NH ~ (1/12/2017)
Photo Location 2 ~ 50mm ~ 1191' +/- (0.23mi) Away
Near 87 Kendall Pond Road

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CAD Caron & Associates Inc.
(978) 360-3671 info@cadsin



Visual Impacts of Facility: 110 Kendall Pond Rd.

CAD CARON ASSOC. DESIGN

Proposed Conditions

AMERICAN TOWER



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Londonderry 2 NH ~ (1/12/2017)
Photo Location 3 ~ 65mm ~ 1828' +/- (0.35mi) Away
Near 110 Kendall Pond Road

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CAD Caron & Associates Design
(978) 360-3671 info@cad sims.com



Visual Impacts of Facility: 14 Kendall Pond Rd. (Hiking Parking Lot)

CAD ASSOC. DESIGN

Existing/Proposed Conditions

AMERICAN TOWER

Balloon was not visible from this photo location.

For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Based upon Rev. 0 Drawings by American Tower dated: 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Photo Location 4 ~ 50mm ~ 4493' +/- (0.85mi) Away
Near 14 Kendall Pond Road from hiking parking lot

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(978) 360-3671 info@cadsims.com



Visual Impacts of Facility: Near 3 Magnolia Rd.

CAD ARON ASSOC. DESIGN

Existing/Proposed Conditions

AMERICAN TOWER

Balloon was not visible from this photo location.

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Londonderry 2 NH ~ (1/12/2017)
Photo Location 5 ~ 50mm ~ 3961' +/- (0.75mi) Away
Near 3 Magnolia Road

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Visual Impacts of Facility: Near Londonderry Auto Repair

CAD CARON ASSOC. DESIGN

Proposed Conditions

AMERICAN TOWER



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Based upon Rev. 0 Design by American Tower dated: 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Photo Location 6 ~ 50mm ~ 1267' +/- (0.24mi) Away
Near Londonderry Auto Repairs

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Visual Impacts of Facility: Near 70 Chase Rd.

CAD CARON ASSOC. DESIGN

Proposed Conditions

AMERICAN TOWER

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Londonderry 2 NH ~ (1/12/2017)
Photo Location 7 ~ 50mm ~ 710'+/- (0.13mi) Away
Near 70 Chase Road

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CAD Caron & Associates Design
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Visual Impacts of Facility: 15 Sparhawk Drive


CAD CARON & ASSOC. DESIGN

Proposed Conditions

AMERICAN TOWER

Proposed installation is almost completely obscured by intervening terrain and vegetation from this photo location.


Proposed installation outlined to show relative size and position.



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Based upon Rev. 0 Design by American Tower dated: 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Photo Location 8 ~ 65mm ~ 1616' +/- (0.31mi) Away
Near 15 Sparhawk Drive

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Visual Impacts of Facility: Intersection of Mammoth and South

CAD ASSOC. DESIGN **Existing/Proposed Conditions** **AMERICAN TOWER**

Balloon was not visible from this photo location.

For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Based upon Rev. 0 Design by American Tower dated 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Photo Location 9 ~ 50mm ~ 4501'+/- (0.85mi) Away
Near intersection of Mammoth Road & South Road

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Visual Impacts of Facility: 37 South Road

CAD CARON ASSOC. DESIGN

Existing/Proposed Conditions

AMERICAN TOWER

Balloon was not visible from this photo location.



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Londonderry 2 NH ~ (1/12/2017)
Photo Location 10 ~ 50mm ~ 4114'+/- (0.78mi) Away
Near 37 South Road

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Visual Impacts of Facility: Estey Drive & Chase Road

CAD ASSOC. DESIGN

Existing/Proposed Conditions

AMERICAN TOWER

Balloon was not visible from this photo location.



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Londonderry 2 NH ~ (1/12/2017)
Photo Location 11 ~ 50mm ~ 3060' +/- (0.58mi) Away
From intersection of Estey Drive & Chase Road

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Visual Impacts of Facility: 78 Chase Road

CAD ASSOC. DESIGN **Proposed Conditions** **AMERICAN TOWER**



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Londonderry 2 NH ~ (1/12/2017)
Photo Location 12 ~ 50mm ~ 980' +/- (0.19mi) Away
Near 78 Chase Road

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CAD Caron & Associates Design
(978) 360-3671 info@cadsim.com



Visual Impacts of Facility: Near South Londonderry School

CAD CARON ASSOC. DESIGN

Existing/Proposed Conditions

AMERICAN TOWER

Balloon was not visible from this photo location.



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Based upon Rev. 0 Design by American Tower dated 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Photo Location 13 ~ 50mm ~ 6512' +/- (1.23mi) Away
Near South Londonderry School

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Visual Impacts of Facility: Windham High School

CAD CARON ASSOC. DESIGN

Existing/Proposed Conditions

AMERICAN TOWER

Balloon was not visible from this photo location.



For visual reference only. Actual visibility is dependent upon weather conditions, season, sunlight, and viewer location. Revised upon Rev. 0 Design by American Tower dated: 12/22/2016

Londonderry 2 NH ~ (1/12/2017)
Photo Location 14 ~ 50mm ~ 11,192' +/- (2.12mi) Away From Windham High School

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(978) 360-3671 info@cadsim.com



Visual Impacts of Facility: Site Driveway

CAD ASSOC. DESIGN

Proposed Conditions

AMERICAN TOWER



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Londonderry 2 NH ~ (1/12/2017)
Photo Location 15 ~ 50mm ~ 745' +/- (0.14mi) Away
From site driveway

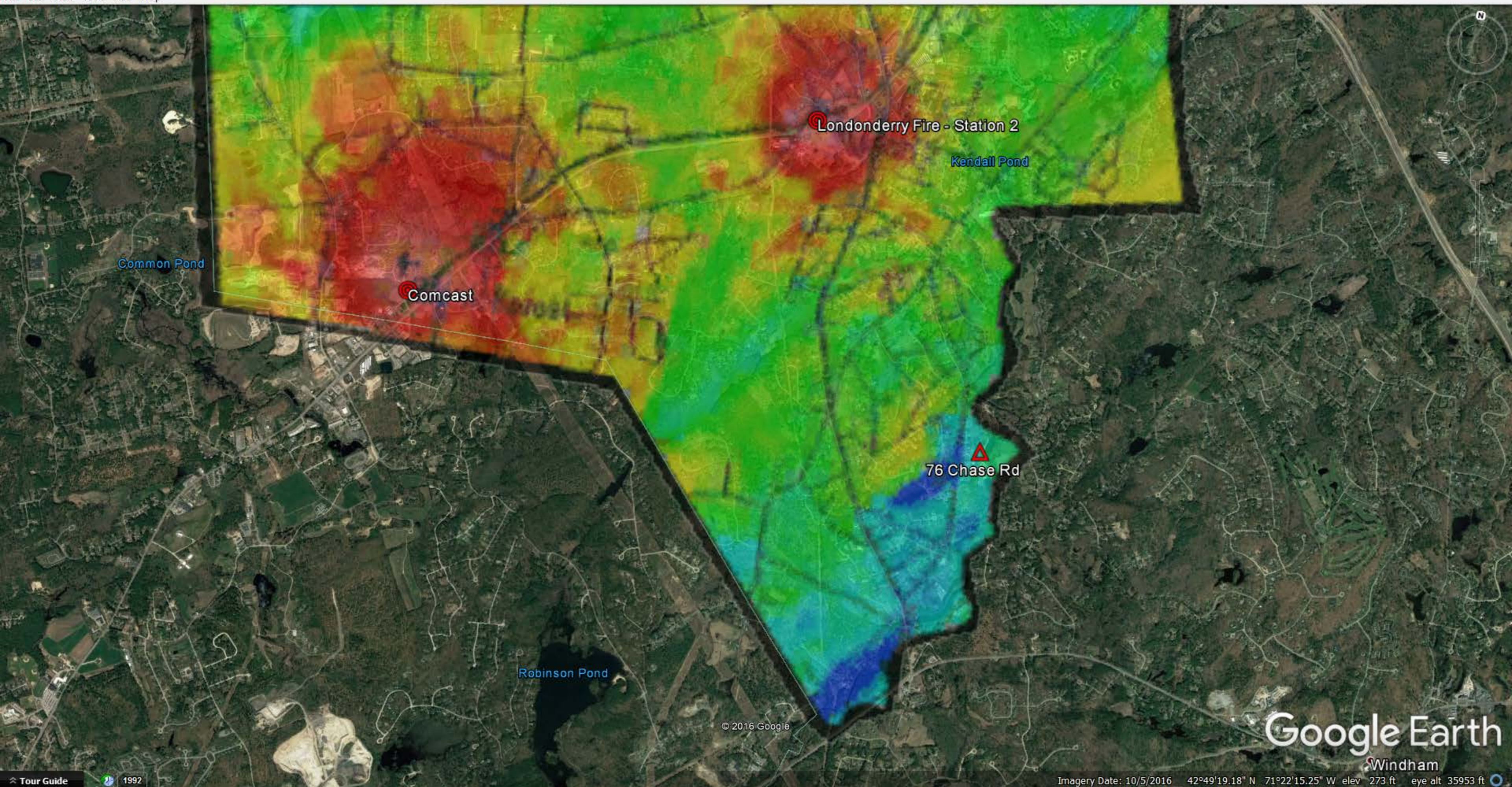
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Zoning Board of Adjustment
February 15, 2017



WIRELESS TELECOMMUNICATIONS FACILITY
76 CHASE ROAD



Google Earth

Windham

Imagery Date: 10/5/2016 42°49'19.18" N 71°22'15.25" W elev 273 ft eye alt 35953 ft



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

February 14, 2017

Alfano Law Offices

John F. Hayes, Esq.

4 Park Street

Concord, NH 03301

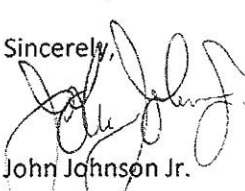
Re: Abutter Support for a Variance

Dear Attorney Hayes,

It has been brought to my attention that you are requesting a letter from the State of New Hampshire, supporting a variance application recently filed by one of your clients. That client, 33 Londonderry Road, LLC, applied to the Town of Londonderry for a variance, in order to successfully relocate two shipping containers to another location on his property. The relocation of these containers to a new location is required due to property impacts from the Interstate 93 re-construction project 14633D.

The State of New Hampshire is an abutter to the subject property and, as an abutter, has no objection to the granting of the variance by the Town of Londonderry. Therefore, please consider this letter to be in support of your clients' application for that variance.

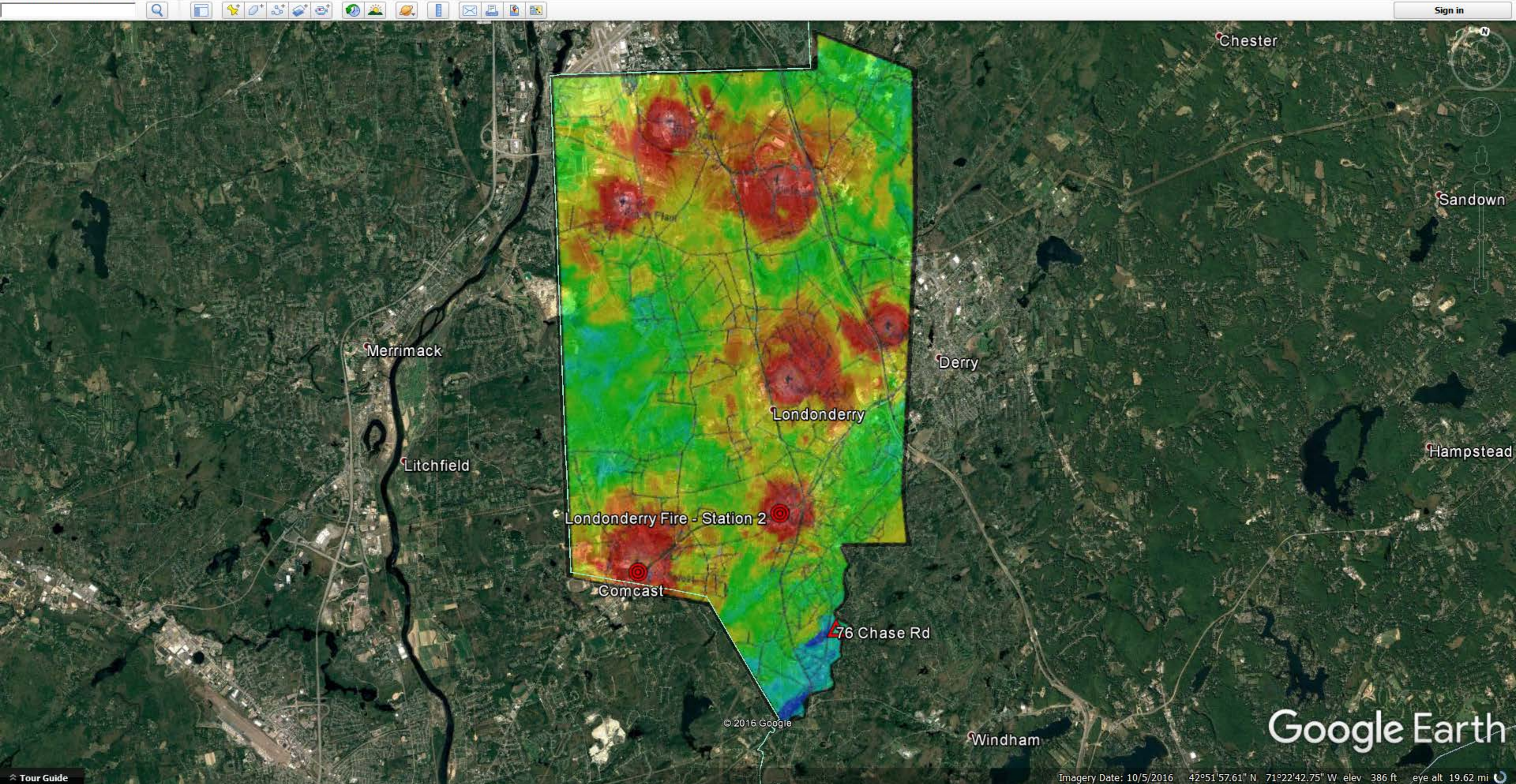
Sincerely,



John Johnson Jr.

Right-of-Way Agent Supervisor

Bureau of Right-of-Way



© 2016 Google

Google Earth

Imagery Date: 10/5/2016 42°51'57.61" N 71°22'42.75" W elev 386 ft eye alt 19.62 mi