

OTISFIELD PLANNING BOARD
Findings of Fact and Conclusions of Law

**Regarding Application of Maine RSA #1 (a.k.a. US Cellular) represented by KJK Wireless for a
Permit to Construct a Telecommunications Facility at 0 Scribner Hill Road (Map R2, Lot 8A)**

This document is intended to serve the purpose of detailing the findings, evidence, submittals, oral testimony, and public input regarding an application under consideration by the Otisfield Planning Board. It is the Board's goal to establish that the applicable project does or does not meet the requirements of the Town of Otisfield's ordinances, as interpreted by the Town's Planning Board and Code Enforcement Officer. This document fulfills the Board's obligation to provide written "findings" and "conclusions" when preparing a decision.

On remand from the Oxford County Superior Court in Friends of Scribner Hill, James Gregory, Kristin Roy, Joseph Brown and John Poto v. Town of Otisfield and Maine RSA #1, Inc., Docket No. AP-2012-3, the Planning Board finds and concludes as follows:

.....

I. MINUTES OF PLANNING BOARD MEETINGS AND HEARINGS

All Planning Board (PB) meeting minutes are available for public review. Planning Board minutes are not intended to be a verbatim recording. Board members are encouraged to request that the topics, basic discussions, motions, seconds, and votes are so noted prior to voting for approval of said minutes. Any and all letters and submittals to the Board are available to the public. The following proceedings were used as a basis for the Planning Board's decision to grant the applicable permit on January 17, 2012:

1) Planning Board Meeting Minutes: December 20, 2011

- A. US Cellular: Map R2, Lot 8A - Application for a permit to construct a telecommunications facility at Scribner Hill Road. KJK Wireless represents the permitting interests of US Cellular in Otisfield. The property owner has agreed to lease a 236' x 119' area to applicant to construct a facility that will include a 75' x 75' fenced in compound, a 180' tower, 9 antennas, a 12'x20' equipment shelter and associated equipment. Applicant also proposes to construct an access road and add utility lines for telephone and electric service. Bob Gashlin, US Cellular, Maine RSA # 1 Inc. reviewed site plan w/ the PB. Radio frequency plots were sited and their criteria included 1) coverage, 2) connectivity and 3) capacity. Bob met w/ CEO in October. No application is required but CEO recommended he provide a letter according to the Town of Otisfield Wireless Telecommunications Facility Siting Ordinance. (submitted into public record) *FCC license needs to be submitted. * A gate at the beginning of the gravel driveway will be put in place for safety concerns. * Motion to deem this complete upon CEO receiving the check and the FCC license. HO/DP – Unanimous

Public meeting will be January 17th at 7:00 PM, then regular meeting to follow. TT will notify abutters. If mailing cost is more than \$100.00, the applicant has agreed to pay the difference.

2) Planning Board Public Hearing Minutes: January 17, 2012

APPLICANT: Bob Gashlin – US Cellular: Map R2, Lot 8A – Application for a permit to construct a telecommunications facility at Scribner Hill Road.

Application status: Voted complete at last meeting upon CEO receiving required application fee & the FCC license. Applicant has provided both items tonight. Plus, pending final PB vote of acceptance or denial.

Bob Gashlin: The property owner has agreed to lease a 236' x 119' area to applicant, to construct a facility that will include a 75' x 75' fenced-in compound, a 180' tower, top two spots are for Us Cellular at 15' feet each the lowest future carrier is 135' feet to accommodate co-location, required per the ordinance, 9 antennas, a 12'x20' equipment shelter and associated equipment. Applicant also proposes to construct an access road and add overhead utility lines for telephone and electric service. 105% set-back requirement for tower has been met. Tower space will be provided to the Town of Otisfield Fire Department free of charge once the contract is signed and details are worked out amongst them. State Historic Preservation Commission is required and once they get the final approval from them, applicant will pass it on to CEO. Visual presentation provided. All agree most viewable locations include; Ivory Hill Road, Scribner Hill Road, Pleasant Lake Boat Landing and Heniger Park.

PUBLIC:

CEO: What color will tower be? Bob Gashlin: The Tower will have galvanized gray finish. John Poto, Cobb Hill Road: is this the only spot in town it will work? Hard time grasping how this lives in the spirit of the Comprehensive Plan. He doesn't think anyone involved in developing plan envisioned something so far out of character as this tower. As you see it, it stands out and does not fit the character of the town. Can color be changed? What about a camouflaged / tree look? Bob Gashlin: Galvanized steel will eventually blend in more against the light gray sky backdrop as do the ones in your community such as Poland, Oxford and Mechanic Falls. Otherwise it looks like a huge tower trying to look like a tree. The option of making the tower appear as a tree has its dangers, because the "limbs" of the tree design are susceptible to "falling off", creating a potential hazard when they fall to the ground". Dean Raymond, Kilby-Edwards Road: All for this and is hoping it reaches to his area so that he can have better cell phone service. Bob Gashlin: It will blanket Route 121, should reach most of Otisfield (except the Bolsters Mills side of town), and hopefully provided much improved coverage to almost all areas having zero-to-limited previous coverage. Susan Fellar, Scribner Hill Road: How much land will be cleared? Storage? Lighting? Bob Gashlin: DEP says buffers are needed and only allows a percentage of trees to be removed. Ground and vegetation have to be left in place to let water runoff. DEP is requiring as few trees as possible. Approx. 20 feet wide for road. 12 ½' perimeter around fence. There is a Diesel generator. The fuel tank is less than 188 gallons. The tank is in the compartment on a pad and is self contained. Increase in coverage, see Exhibit 2 & 3: There will be no lighting on the tower. FAA ruling determined no light necessary. Motion activated light for emergency situations, on the building, about 8' high. Quen Henderson, Bean Road: what will the town get from this in revenue? Bob Gashlin: We will pay taxes on this; usually they get assessed for approx. \$140,000, so approx. \$1,300 – \$1,500 a year in taxes. Plus it's providing a public service for free to town. Neal Wooley, Oak Hill Road: Will it reach Oak Hill Road, currently no service. Bob Gashlin: Looking at exhibits, it looks like it will reach your area.

Kate Brent, Scribner Hill Road: Health concerns and home resale values? Bob G: The Health Impact, Telecommunications Act of 1996. Municipalities cannot deny an application based on health factors. Because the FCC is in charge of any type of exposure and they know if the town had to make judgments on health, it would not be factual. Overwhelming data provided by U.S. studies showing no health impacts. David Hyer, Loop Road: Is it in the helicopter flight path of Life Flight. Bob Gashlin: It may indeed be, but falls to FAA's jurisdiction, but FAA says, they are not to put lights on the tower. Cindy Arntsen, Ivory Hill: Will it ruin good service if abutters are too close to the tower. Bob Gashlin: No. There can be different frequencies coming from same location w/ no interference. Peter Arntsen, Ivory Hill: How will your road affect his re; storm water? Bob Gashlin: working w/ DEP should produce 0 affect, hence the reason for buffers/ditching/plunge pools/etc... Dean Raymond: Kilby-Edwards Road: Will this tower help his cell phone provider? Bob Gashlin: Yes, because they will share frequencies. Quen: what is target date: Bob Gashlin: not on construction radar until building permits are issued, posted roads, etc. but maybe looking at sometime this summer. Lenny Adler, Bolsters Mill Road: All for this and hoping it will improve his cell service. The people on the lake are already looking at other towers. As a FD member he thinks it will improve communications. Bob Gashlin: Statistically 33% of all emergency calls come from cell phones. Public safety is significant.

3) Planning Board Meeting Minutes: January 17, 2012

A. US Cellular: Map R2, Lot 8A - Application for a permit to construct a telecommunications facility at Scribner Hill Road. KJK Wireless represents the permitting interests of US Cellular in Otisfield. Public Meeting was held tonight. At last meeting this application was deemed complete upon CEO receiving the check and the FCC license. TT confirmed receipt of both items. FAA approval submitted into public record stating marking and lighting are not necessary for aviation safety. Bob reiterated that the State Historic Preservation Commission is required. Without this SHIPO no construction can take place.

Discussion: All board members agree that there was a good crowd tonight with good questions and concerns. The FD and the Town are requesting that a repeater be added at a height to be negotiated for public safety and public works. All Planning Board members agreed. SB: Asked the board if they wanted to review the ordinance point by point and all board members felt it was not necessary as it was done in December's meeting.

*Motion to accept this application w/ (4) conditions of approval listed below. BD/DP – Unanimous.

- 1) Provide a final plan to the CEO showing a gate located at the entrance of the access road / at the Scribner Hill intersection.
- 2) Provide a bond acceptable to the town in the event of removal
- 3) Applicant will only test the generator during business hours of 8 AM – 5 PM on a Tues, Wed. or Thur.
- 4) With the condition Public Safety can utilize the tower contingent upon mutual agreeable contract.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact and conclusions of law were developed and voted by the Planning Board at its August 7th, 2012 meeting. These findings and conclusions of law were then reviewed and adopted by the Planning Board at its August 21, 2012 meeting.

Section 6.1 – Pre-Application Conference

All persons seeking approval of the Planning Board under this ordinance shall meet with the CEO no less than 30 days before filing an application. At this meeting the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

Testimony of Richard St. John, Code Enforcement Officer:

Mr. St. John met with Bob Gashlin at the Town Office on October 25, 2011. Mr. St. John noted that there is no formal application form required under the ordinance, and then reviewed the Town of Otisfield Wireless Telecommunications Facility Siting Ordinance line by line with Mr. Gashlin. Mr. St. John suggested Mr. Gashlin submit a letter responding to the ordinance line by line in lieu of a formal application. Mr. Gashlin submitted his letter/application on December 20th, 2011 which addressed all elements of the Wireless Telecommunications Facility Siting Ordinance.

Receipt of the letter is recorded in the 12/20/2011 Planning Board minutes.

FINDING: The Board finds that the above requirement of Section 6.1 was **met** to the CEO's and Board's satisfaction. Motion: Beth Damon; Second: Dave McVety.
Discussion:

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 6.2 – Application

All persons seeking approval of the Planning Board under this ordinance shall submit an application to the Planning Board. The application must include the following information:

- 1) Documentation of the applicant's right, title or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.

FINDING: The Board finds that the above requirement of Section 6.2(1) was **met** to the Board's satisfaction. Motion: Herb Olson; Second: Karen Turino.

Discussion: The Planning Board reviewed a copy of a letter from Colleen M. Vallee dated 11/15/2011 that was submitted as an attachment to the applicant's letter to the Planning Board on 12/20/2011, and also reviewed a survey of the property included in the applicant's letter.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- 2) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with the current FCC regulations.

FINDING: The Board finds that the above requirement of Section 6.2 (2) was **met** to the Board's satisfaction. Motion: Dave McVety; Second: Beth Damon.

Discussion: All agree that an FCC license for Maine RSA #1, Inc. was submitted as part of the application package before the board.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

3) SGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.

FINDING: The Board finds that the above requirement of Section 6.2 (3) was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Herb Olson.

Discussion: A copy of the USGS 7.5 topographic map with the location of structures and wireless telecommunications facilities above 150 feet in height above ground level was submitted in the application packet.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

4) A site plan:

a) prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land used, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;

b) certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and

c) a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

FINDING: The Board finds that the above requirements of Section 6.2 (4) (a, b, & c) were **met** to the Board's satisfaction. Motion: Karen Turino; Second: Herb Olson.

Discussion: a) A site plan dated 10/28/11 prepared and certified by an engineer registered in Maine (Michael S. Deletetsky) indicating the location, type, and height of the proposed facility was submitted as an attachment to the application package; b) A certification that the proposed facility complies with all FCC standards for radio emissions was included in the application packet; and c) the submission included a boundary survey dated October 21, 1991 by certified surveyor (John A. Belding) and also a plot plan dated 10/28/11 by a professional land surveyor (Jerome B. Watts). Date of application and required attachments was December 20, 2011.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- 5) A scenic assessment, consisting of the following:
- a) Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 - b) A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure and the proposed lighting method.
 - c) Photo simulation of the proposed facility taken from perspectives determined by the Planning Board, or the designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
 - d) A narrative discussing:
 - i) the extent to which the proposed facility would be visible from or within a designated resource,
 - ii) the tree line elevation of vegetation within 100 feet of the facility, and
 - iii) The distance to the proposed facility from the designated scenic resource's noted viewpoints.

FINDING: The Board finds that the above requirements of Section 6.2 (5) (a, b, c, d) were **met** to the Board's satisfaction. Motion: Beth Damon; Second: Dave McVety

Discussion: a) The elevation drawings are included in the application packet as sheet C-6 in the plans; b) landscaping plans are included in the application packet as sheets C2, C3, & C4 in the plans; c) 12 photo simulations were submitted in the packet as attachments to the A&D Klumb Environmental, LLC letter dated November 14, 2011; RJ noted that the Ordinance states that the date taken should be imprinted on the photograph; DP noted that the photos are dated with the label right under the photo; Bob Gashlin testified that he submitted 2 packages of color photos with the rest as copies; CEO stated that the color photos are in the record in the file along with the environmental letter; d) a narrative is included in the A&D Klumb viewshed report letter dated November 14, 2011 included as an attachment to the application packet provided by applicant.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- 6) A written description of how the proposed facility fits into the applicant's telecommunication network. This submission requirement does not require disclosure of confidential business information.

FINDING: The Board finds that the above requirement of Section 6.2 (6) was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Herb Olson.

Discussion: A written description satisfying this requirement was included in the application letter submitted by the applicant dated 12/20/2011 which also contained references to Exhibits 1 (Existing USCC Cellular Coverage- Network View), 2 (Existing USCC Cellular Coverage- Otisfield), and 3 (Aggregate USCC Cellular Coverage with Proposed Otisfield Site).

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- 7) Evidence demonstrating that no existing building site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following;
- a) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,
 - b) Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
 - c) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
 - i) Planned, necessary equipment would exceed the structural capacity of the existing facility considering the existing and planned use of these facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - ii) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
 - iii) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
 - d) For facilities existing prior to the effective date of this ordinance, the fees, costs or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;
 - e) Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure and has been denied access;

FINDING: The Board finds that the above requirements of Section 6.2(7) (a, b, c, d, & e) were **met** to the Board's satisfaction through the submission of evidence meeting at least one of the required submissions demonstrating that no existing building site or structure can accommodate the applicant's proposed facility. Motion: Beth Damon; Second: Herb Olson.

Discussion: As noted in the application letter of 12/20/2011, the Bell Hill Church steeple is the only existing structure in the area that could be used as a cell site but that it would not adequately fulfill its network objectives. Application also included radio frequency plots showing existing cellular coverage in Otisfield, coverage that could be achieved with antennas on the Bell Hill Church, and coverage achieved with the cell tower in the proposed location. DM and RJ noted that the Planning Board discussed in great detail at the 12/20/11 and 1/17/12 meetings that if it was at a lesser height there would be less coverage. There was also significant discussion about coverage at the 1/17/12 Public Hearing.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- 8) Identification of districts, sites, buildings, structure or objects, significant in American history, architecture, archaeology, engineering, or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

FINDING: The Board finds that the above requirements of Section 6.2 (8) were **met** to the Board's satisfaction. Motion: Karen Turino; Second: Herb Olson.

Discussion: Identification of historic sites is included in the application packet through a letter provided by Earle G. Shettleworth Jr., State Historian. The complete file has all of the photos and the locations from the State Historic Preservation Commission which provides detail for all of the listed areas. The CEO testified that the full report submitted with the application from A & D Klumb Environmental includes photographs, areas of historic significance, and a resume for the person who prepared the historic preservation report. The letters conclude that this project will have no adverse visual effect on historic resources.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- 9) A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
- a) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - c) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
 - d) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

FINDING: The Board finds that the above requirements of Section 6.2(9)(a, b, c, & d) were **met** to the Board's satisfaction. Motion: Karen Turino; Second: Beth Damon.

Discussion: A statement meeting this requirement was included as part of the the application letter dated 12/20/2011 on page 3, number 9(a – d) and the letter was signed. The Board also noted that this was reviewed at the 12/20/11 and 1/17/12 meetings.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- 10) A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

FINDING: The Board finds that the above requirement of Section 6.2(10) was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Dave McVety.

Discussion: A copy of a sample bond for \$25,000.00 which satisfies this requirement is included in the application packet. The CEO testified that the actual amount should have been \$21,900.00,

but in a bond agreement the applicants used in another town the amount submitted was \$25,000.00 and the CEO asked they do the same for Otisfield.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 6.3- Submission Waiver

Submission Waivers: As per the ordinance, is the Applicant requesting (in writing) any waivers?

FINDING: The Board finds that the above requirement of Section 6.3 was **met** to the Board's satisfaction. Motion: Beth Damon; Second: Karen Turino.

Discussion: The applicant's letter dated December 20, 2011 states that they are not requesting any waivers at this time on page 3, Section 6.3.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 6.4 - Fees

Fees: Has Applicant provided any and all applicable fees and/or escrows as per the Board's request?

FINDING: The Board finds that the above requirement of Section 6.4 was **met** to the Board's satisfaction. Motion: Dave McVety; Second: Herb Olsen.

Discussion: The CEO testified that Bob Gashlin provided the Town with a \$100.00 check per the requirements of the Ordinance. The Planning Board also confirmed receipt at the 12/20/11 and 1/17/12 Planning Board meetings as evidenced through the minutes.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 6.5 – Notice of Complete Application

Notices: Did the Board deem the application complete or incomplete and in writing?

FINDING: The Board finds that the above requirement of Section 6.5 was **met** to the Board's satisfaction. Motion: Beth Damon; Second: Dave McVety.

Discussion: As discussed above, since there is not a formal application the CEO asked Mr. Gashlin to submit a letter that addresses each of the requirements of the Town Of Otisfield Wireless Telecommunications Facility Siting Ordinance line by line. In the Planning Board minutes of December 20, 2011 and of January 17, 2012, it was noted that the Board deemed the application complete upon CEO receiving the check and the FCC license. The Planning Board also noted that the CEO testified during the 12/20/2011 meeting that this application was deemed complete upon receiving a check and the FCC license. Ms. Taft confirmed receipt of both items @ 01/17/12 mtg. The Board found that the application was complete.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 6.6 – Public Hearing

Public Hearing: Did the Board schedule a Public Hearing?

FINDING: The Board finds that the above requirement of **Section 6.6** was **met** to the Board's satisfaction on 1/17/12. Motion: Beth Damon; Second: Herb Olsen.

Discussion: The Board found that they held an initial meeting on December 20, 2011 to review the application for completeness (see Planning Board minutes of 12/20/2011). The minutes of the Planning Board's December 20, 2011 meeting noted that a public meeting for the project would be held on January 17th, 2012 at 7:00 pm, with a regular meeting to follow. The Board also reviewed an invoice from the Sun Journal showing that a notice was posted in the 12/29/11 edition of the paper advertising the 1/17/2012 public hearing. Per testimony from the CEO, the Board found that notice of the public hearing was also posted on the Town bulletin boards and website. Finally, notice of the public hearing was mailed to abutters within 500 feet of the proposed project. The Board noted that at the January 17th, 2012 public hearing 12 people were present with 10 in favor and 2 opposed.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 6.7 - Approval

Approval: Did the Board fully comply with Section 6.7 regarding approval, approval with conditions, or denial of a completed application in writing together with findings within 90 days of receipt?

FINDING: The Board finds that the above requirement of **Section 6.7** was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Herb Olsen.

Discussion: The application was submitted on December 20, 2011 and was deemed complete with two exceptions noted above. The Planning Board deemed the application complete on January 17, 2012 and approved the application with 4 conditions listed below:

- 1) Provide a final plan to the CEO showing a locked gate located at the entrance of the access road- at the Scribner Hill intersection.
- 2) Provide a bond acceptable to the Town in the event of removal.
- 3) Applicant will only test the generator during business hours of 8 AM – 5 PM on a Tues, Wed. or Thur.
- 4) With the condition Public Safety can utilize the tower contingent upon mutual agreeable contract.

The approval, findings and conditions were printed in the January 12, 2012 minutes.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 7. Standards of Review

To obtain approval from the planning board, an application must comply with the standards in this section.

A. Priority of Locations. Wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

- 1.) Colocation of an existing wireless telecommunication facility or other existing structure.
- 2.) A new facility on public or private property in an Industrial District, or permitted as an Industrial Use.
- 3.) A new facility on public or private property in a Commercial District, or permitted as a Commercial Use.
- 4.) A new facility on public or private property in a Rural District, or permitted as a Rural Use.
- 5.) A new facility on public or private property in a Residential District, or permitted as Residential Use.

FINDINGS OF FACT: After reviewing the record and testimony from the 12/20/11 meeting and the 1/17/12 public hearing and regular meeting, the Planning Board finds that there are no existing wireless telecommunications facilities in Otisfield. Further, the applicant has shown in the narrative and in Exhibit 4 (Aggregate USCC Cellular Coverage with Alternate Bell Hill Church Site) attached to the application that the Bell Hill Church is the only existing structure that could provide a location for the facility but that the Church would not reasonably accommodate nor adequately fulfill its network objectives. The Planning Board also finds that the application included radio frequency plots showing existing cellular coverage in Otisfield and coverage that could be achieved with antennas on the Bell Hill Church which would not be adequate to fulfill the applicant's network objective as licensed by the Federal Communications Commission as noted in Section 6.2(6) & (7) of the application. The Applicant provided a coverage map included in the application showing approximately 50% less coverage at the Bell Hill Church site than at the proposed cell tower location. Further, upon review of the ordinances and testimony from the CEO, the Board finds that the Town has not adopted any zoning districts nor uses except for the state mandated shoreland zoning district and thus subsections 2-5 do not apply. The Board also finds that since there are no zoning districts in Otisfield, the entire Town is considered general rural residential with the exception of the shoreland zone.

Motion to accept the Findings of Fact: Beth Damon; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement **Section 7(A)** was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Beth Damon.

Vote: 5 voting members YES and 2 alternates YES – Unanimous

B. Siting on Municipal Property. If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, the applicant must show the following:

- 1) The proposed location complies with applicable municipal policies and ordinances.
- 2) The proposed facility will not interfere with the intended purpose of the property.
- 3) The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

FINDINGS OF FACT: The Board finds that this provision is not applicable because the proposed wireless telecommunications facility will not be located on municipal property. The facility is proposed to be constructed on property owned by Colleen Vallee at 0 Scribner Hill Road as noted in the application.

Motion to accept the Findings of Fact: Beth Damon; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirements of Section 7(B)(1, 2, & 3) are **Not Applicable** since the facility will not be located on municipal property. Motion: Herb Olsen; Second: Karen Turino.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- C. Design for Colocation.** A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunication facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.

FINDINGS OF FACT: The Board finds that as shown on Site Plan C-6 submitted as an attachment to the application, the elevation shows that there is space on the tower to accommodate at least three additional repeaters/antennae plus a space for the Town's emergency antenna in addition to the two antennas proposed for US Cellular. Space was offered to the Town to colocate a telecommunications facility on the tower, the terms of which will be negotiated at a future date.

Motion to accept the Findings of Fact: Beth Damon; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(C) was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Beth Damon.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- D. Height.** A wireless telecommunications facility must be no more than one hundred eighty (180) feet in height.

FINDINGS OF FACT: The Board finds that: Site Plan C-6 submitted as an attachment to the application shows that the height of the tower will be 180 feet tall, and that this height is also noted in the narrative of the application and in various other attachments. The height of 180 feet was also noted in the previous minutes during discussion of the application.

Motion to accept the Findings of Fact: Beth Damon; Second: David McVety.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous.

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(D) was **met** to the Board's satisfaction. Motion: Beth Damon; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates YES – Unanimous

- E. Setbacks.** A new or expanded wireless telecommunications facility must comply with the set back requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement.

FINDINGS OF FACT: The Board finds that pursuant to Site Plan C-1, the tower will be set back at 189 feet from the property line (or 105% of its height). Per the applicant, Mr. Gashlin's testimony, there is no easement associated with this proposal. This requirement was discussed in detail during the January meeting and it was determined that the tower would not land on the adjacent property if it fell and there was a minimal danger of ice falling on the adjacent property since it was set back a distance further than its proposed height.

Motion to accept the Findings of Fact: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(E) was **met** to the Board's satisfaction. Motion: Beth Damon; Second: Karen Turino.

Vote: 5 voting members: YES; 2 alternates YES – Unanimous

- F. Landscaping.** A wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practical. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

FINDINGS OF FACT: The Board finds that pursuant to Site Plans C-2, C-3, C-4, and C-5(b), no landscaping is proposed since the land surrounding the parcel is forested and will be adequately screened from adjacent properties through the existing natural vegetation. There are limited trees and vegetation on the property where the tower will be located since it is significantly covered by bare rock and many trees will not succeed if planted. The Board finds that the berms adequately address any runoff on Ivory Hill, and per discussion noted that DEP regulations only require buffers. The existing ground cover and vegetation will be left in place to address any water runoff.

Motion to accept the Findings of Fact: Herb Olsen/Beth Damon.

Vote: 5 voting members: YES; 2 alternates YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(F) was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- G. Fencing.** A wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

FINDINGS OF FACT: The Board finds that pursuant to the application narrative dated 12/20/2011 and Site Plans C-4 and D-2 attached to the application, the facility will be enclosed by an 8 foot chain link fence with barbed wire for security purposes as referenced in Site Plan C4. The fencing requirement was also discussed in detail at the 12/20/2011 meeting as shown in the minutes. The Board placed a condition to add a gate to the beginning of the driveway, one of 4 conditions placed on the approval at the January 17th, 2012 meeting.

Motion to accept the Findings of Fact: Beth Damon; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(G) was **met** to the Board's satisfaction with the condition that a gate at the beginning of the gravel driveway be put in place for safety concerns. Motion: Beth Damon; Second Karen Turino.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- H. Lighting.** A wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down directional to retain light within the boundaries of the site, to the maximum extent practicable.

FINDINGS OF FACT: The Board finds that pursuant to the application and testimony, there is no lighting associated with this facility with the exception of security lighting on the lower portion of the facility and on the motion detector. Additionally, a letter was submitted with the application from the FAA entitled "Determination of no Hazard to Air Navigation" dated 9/14/11 stating that lighting is not necessary for aviation safety. The Planning Board also noted that there was substantial discussion regarding this requirement at the January 17th, 2012 meeting. Although there was some concern from two Board members who are former pilots that there could be a safety issue if the tower does not have lighting in bad weather, the Board found that the FAA does not require lighting. The letter from the FAA expires on March 14, 2013 unless the letter is extended, revised or terminated, or if the construction is subject to the licensing authority of the FCC and application for a construction permit has been filed within 6 months of the date of the determination. Thus the applicant would need to submit an updated letter if the tower letter is not

extended or revised by that time. Additionally, the FAA letter requires the applicant to submit a form to the FAA within 5 days after the construction reaches its greatest height.

Motion to accept the Findings of Fact: Beth Damon; Second: KarenTurino.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(H) was **met** to the Board's satisfaction. Motion: KarenTurino; Second: Beth Damon.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- I. Color and Materials.** A wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment to the maximum extent practicable. Unless otherwise required, muted colors, earth tones and subdued hues shall be used.

FINDINGS OF FACT: The Board finds that pursuant to the application narrative and on Site Plan C-6, the equipment shelter will have neutral pebble grained finish and the tower will have a galvanized steel grey finish. The Board finds that the color and materials of the equipment shelter will blend in with the natural environment given the neutral color, and that the tower will blend in with the sky and trees to the best extent possible. The Board notes that there was considerable discussion of this requirement during the January 17th, 2012 meeting and the Board received testimony from the public hearing on January 17th, 2012. The Board reviewed alternatives for disguising the tower and determined that given the location the proposal as submitted would best blend into both the natural and built environment. Further, the Board was concerned that if artificial limbs were attached they could become dislodged during ice storms or high winds which could be more dangerous than the tower as proposed. The Board also noted that a 180 foot tower is difficult to disguise and that the applicant's proposal would blend in with the trees and the sky better than if it were disguised as an artificial tree.

Motion to accept the Findings of Fact: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSIONS OF LAW: The Board finds that the above requirement of Section 7(I) was **met** to the Board's satisfaction. Motion: Beth Damon; Second: Karen Turino.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- J. Structural Standards.** A wireless telecommunications facility must comply with the current Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

FINDINGS OF FACT: The Board finds that pursuant to the application narrative on page 4, section 7(J) and pursuant to the Codes text 1-4 on Site Plan D-3 attached to the application, the

tower will comply with EIA/TIA 222-G standards. It is further found that the plans were stamped and signed by Michael S. Deletetsky, a State of Maine professional engineer.

Motion to accept the Findings of Fact: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(J) was **met** to the Board's satisfaction. Motion: Dave McVety; Second: Beth Damon.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

K. Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the town, as identified either in the municipally adopted comprehensive plan, or by a State or federal agency.

1) In determining the potential unreasonable adverse impact of the proposed wireless telecommunications facility upon the designated scenic resources, the Planning Board shall consider the following factors:

- a) the extent to which the proposed wireless telecommunications facility is visible above tree line, from the view points of the impacted designated scenic resource;
- b) the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
- c) the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
- d) the amount of vegetative screening;
- e) the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
- f) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

FINDINGS OF FACT: The Board finds that after reviewing the evidence submitted with the applicant's package and after considering the above factors, there would be no unreasonable adverse impact upon the designated scenic resources in the Town. Specifically, the Board reviewed each of the photographs attached to the application as part of the 11/14/2011 A&D Klumb Environmental, LLC (AKDE) Viewshed Report for each of the designated scenic resources listed in the National Register of Historic Places and scenic resources listed in the Otisfield Comprehensive Plan (which included a map showing each of the resources) and found that there would be minimal visible impact from the various viewpoints. The ADKE report noted that a balloon test was performed on November 1, 2011, and photographs in the Viewshed Report contained a 180 foot lattice tower simulation from various views. The Board also reviewed the A&D Klumb Environmental, LLC letter from Audra L. Klumb included in the packet, including a copy of the Section 106 review on file with the CEO which also included the locus map and tower simulations created from photographs taken during the balloon test. The Board again reviewed the photographs and noted that the issue of visual impact was also discussed during the 12/20/2011 and 1/17/2012 meetings as noted in the minutes. The Board found that it would not be possible to construct a tower that would not be visible, and based on the evidence submitted and the

photographs attached to the application and report the visual impact would be minimal on designated scenic resources in the Town.

The board further found that although the tower was visible as shown in the photographs, it was not a negative impact given the minimal amount of the tower that would show above treeline from the view points of the impacted designated scenic resources. The Board also found that there are utility poles and wires along Ivory Hill Road (approximately 2200 feet east of the tower site) which are just as visible as the proposed tower based upon photographs submitted and could be deemed as having a greater visual impact. The CEO also testified that the Comprehensive Plan designates three scenic resources, and the proposed tower is behind the view line of all three resources. Pursuant to the evidence submitted with the application, the tower would not be visible in most of the photographs of the scenic resources.

Regarding the vegetative screening, the Board reiterates its findings in 7(F) above and finds that the land surrounding the parcel is forested and will provide adequate screening from adjacent properties through the existing natural vegetation.

Finally, regarding the presence of alternatives that allow the facility to function consistently with its purpose, the Board reiterates its findings in Section 7(A) above that there are no existing wireless telecommunications facilities in Otisfield where the project could be co-located and that the alternative site at Bell Hill Church would not reasonably accommodate nor adequately fulfill its network objectives since a coverage map included in the application showed approximately 50% less coverage at the Bell Hill Church site than at the proposed cell tower location. Further, the Board reiterates its findings in Section 7(F) above regarding alternative designs and finds that a 180 foot tower is difficult to disguise and that the applicant's proposal would blend in with the trees and the sky better than if it were disguised as an artificial tree.

Motion to accept the Findings of Fact: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(K)(1) was met to the Board's satisfaction. Motion: Beth Damon; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

- L. Historic and Archaeological Properties.** The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

FINDINGS OF FACT: The Board finds that pursuant to a letter submitted by the applicant from Mr. Earle Shettleworth, Jr, State Historian, Maine Historic Preservation Commission, dated 11/17/11, there would be no significant adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places. The Board noted the substantial Shettleworth report submitted to the CEO. The Board also noted that the Town's historical society had noted there was no impact on any historic structure. The Board did find that there was an old cellar hole to the left of the proposed driveway, but that pursuant to the plans and testimony from the applicant the cellar hole would not be impacted by the facility.

Motion to accept the Findings of Fact: Karen Turino; Second: Dave McVety.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 7(L) was **met** to the Board's satisfaction. Motion: Herb Olsen; Second: Beth Damon.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

7.3 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan and shall include:

- 1) The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - a) Respond in a timely comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b) Negotiate in good faith, for shared use of the wireless telecommunications facility by third parties;
 - c) Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation.
 - d) Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.
- 2) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

FINDINGS OF FACT: As noted in Section 6.2(9) above, the application letter dated 12/20/2011 included a statement on page 3, number 9(a–d) that the applicant would meet this requirement and the letter was signed. The Board noted that these standard conditions were reviewed at the prior meetings. The Board also found that the applicant would certify compliance with FCC emission regulations upon request by the Town, as noted on page 4 of the application.

After further discussion the Board determined that the following additional (4) conditions of approval listed below should be part of any approval of this application. (note that these conditions were also placed on the approval on January 17, 2012 as reflected in the minutes):

- 1) Provide a final plan to the CEO showing a locked gate located at the entrance of the access road -at the Scribner Hill intersection.
- 2) Provide a bond acceptable to the Town in the event of removal.
- 3) Applicant will only test the generator during business hours of 8 AM – 5 PM on a Tues, Wed. or Thur.
- 4) With the condition Public Safety can utilize the tower contingent upon mutual agreeable contract.

Motion to accept the Findings of Fact: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of **Section 7.3** was **met** to the Board's satisfaction, subject to the above noted four additional conditions of approval.
Motion: KarenTurino; Second: Herb Olsen

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 8. Amendment to an Approved Application

Any changes to an approved application must be approved by the Planning Board, in accordance with section 5.

FINDINGS OF FACT: The Board found that there have been no changes or amendments submitted to this application; confirmed through testimony by the CEO who also confirmed there are no pending changes or amendments.

Motion to accept the Findings of Fact: Herb Olsen; Second: Beth Damon.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 8 was **met** to the Board's satisfaction. Motion: Herb Olsen; Second: Beth Damon.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Section 9. Abandonment

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed

necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

FINDINGS OF FACT: The Board found as noted in Section 6.2(10) above, a \$25,000 bond was submitted to the CEO which is also one of the conditions of approval voted on as noted in Section 7.3 above. The Board also notes that this requirement was addressed during the January 17th, 2012 meeting as reflected in the minutes.

Motion to accept the Findings of Fact: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

CONCLUSION OF LAW: The Board finds that the above requirement of Section 9 was **met** to the Board's satisfaction. Motion: Karen Turino; Second: Herb Olsen.

Vote: 5 voting members: YES; 2 alternates YES – Unanimous

DECISION

For the foregoing reasons and upon considering the full review as detailed above, the Town of Otisfield Planning Board affirms its decision of January 17, 2012 to approve RSA #1's Application. The Board also adopts these Findings of Fact and Conclusions of Law. The Board further reaffirms its decision of January 17, 2012 to add the following four conditions to the approval:

- 1) Provide a final plan to the CEO showing a locked gate located at the entrance of the access road at the Scribner Hill intersection.**
- 2) Provide a bond acceptable to the Town in the event of removal.**
- 3) Applicant will only test the generator during business hours of 8 AM – 5 PM on a Tuesday, Wednesday or Thursday.**
- 4) With the condition Public Safety can utilize the tower contingent upon mutual agreeable contract.**

Motion: Beth Damon; Second: Herb Olsen.

Discussion: The Chair asked the Board if they were all in agreement or had any other comments. All agreed that they would meet back at the next meeting scheduled for August 21, 2012 at 7:00pm to accept and/or edit the Findings of Fact and Conclusions of Law.

Vote: 5 voting members: YES; 2 alternates: YES – Unanimous

Date: August 21, 2012

Dan Peaco, Chairman
Town of Otisfield Planning Board

TAFT 08.22.12