

## M E M O R A N D U M

TO: Members of the House Committee on Commerce and Community Development

FROM: Charles Storrow, KSE Partners, LLP, on behalf of AT&T

DATE: February 16, 2015

SUBJECT: AT&T/Permitting of Wireless Telecommunications Facilities/30 V.S.A. § 248a

The purpose of this memorandum is to respond to the Chair's question concerning AT&T's experience with the permitting of proposed wireless telecommunications facilities under 30 V.S.A. § 248a subsequent the changes made to that statute under Act 190 of 2014.

Act 190 made various changes to section 248a that were effective upon passage (June 16, 2014). Among those changes were the following:

1. Upon request of a Selectboard or Planning Commission the applicant is to attend a public meeting with either or both of those bodies within the 45 day notice period preceding the filing of an application for a Certificate of Public Good ("CPG"). If requested the Department is also to attend and consider the comments made and information gathered in formulating its position on the application and determining whether to retain experts to assist it in reviewing the project.
2. A Selectboard and Planning Commission have an absolute right to appear and participate in the proceeding before the Public Service Board.
3. The Public Service Board is to consider the comments and recommendations submitted by a Selectboard and Planning Commission. The PSB's decision is to include a detailed written response to each recommendation.
4. Once the 45 day notice period has commenced the Department may retain experts to provide information essential to the full consideration of an application for a CPG and bill the expense of the same back to the applicant. A Selectboard or Planning Commission can ask the Department to retain experts, but granting such a request does not require the Department to agree with the position of the municipality concerning the application.
5. The Public Service Board was directed to define the terms "good cause" and "substantial deference" for the purpose of section 248a(c)(2) per a specified process. The Board did

that on September 5, 2014 in its Second Amended Implementation Order.

Since the enactment of Act 190 and the Board's adoption of its Second Amended Implementation Order AT&T has been involved in the following section 248a proceedings:

- **Bennington/Middle Pownal Road Site.** AT&T's representatives met with Town and regional planning staff in mid- September 2014, at those staff members' request, to address certain items and speak more broadly about upgrade plans for the Bennington area. The town issued a qualified but ultimately positive recommendation concerning this project prior to AT&T filing its application for a CPG. AT&T filed its application on October 24, 2014. The Department subsequently filed a letter recommending issuance of a CPG. The town did not participate in the docketed proceeding. The Board issued a CPG on December 18, 2014.
- **Burlington/Lakeside Avenue Site.** AT&T applied for a CPG on October 13, 2014. The City of Burlington expressed no position on the application at the end of the 45-day period. AT&T had attended a meeting of the Burlington Planning Commission to discuss the project, but the Planning Commission pushed the project off its agenda. After AT&T filed with the Board, the Department subsequently filed a letter recommending issuance of a CPG. The city filed a notice of appearance on the day the comment period expired and indicated that it might wish to subsequently file substantive comments, but it did not do so. The Board issued a CPG on November 12, 2014. At the request of the City attorney, AT&T's representatives met with City in late November to discuss the project, the 248a process, and AT&T's larger plans for improvement of service in Burlington.
- **Killington/Roaring Brook Site.** On its own initiative AT&T's representatives met with the Town Administrator and Zoning Administrator prior to applying for a CPG to work on a special purpose stealth tower design. AT&T modified its project in response to comments from the town. It filed an application for a CPG on October 23, 2014. The Department subsequently filed a letter recommending issuance of a CPG. The town did not participate in the docketed proceeding. The Board issued a CPG on December 18, 2014.
- **Morristown/Cadys Falls Site.** On its own initiative AT&T's representatives met with the Town Administrator and Zoning Administrator on October 31, 2013. The town raised concerns about the project's location within the "source protection area" for a well serving a private water supply system for approximately 12 residences. The town expressed its concerns in a letter to the Public Service Board before AT&T applied for a CPG. A long running dialogue ensued which resulted in an agreement with the town concerning the water supply issue. AT&T then applied for a CPG on October 14, 2014. The Department subsequently filed a letter recommending issuance of a CPG, partially based on the memorandum of agreement with the town. The town did not participate in the docketed proceeding. The Board issued a CPG on November 25, 2014.
- **Morristown/Vanesse Road Site.** The discussion at the above mentioned meeting between AT&T's representatives and the Town Administrator and Zoning Administrator

also related to this site. AT&T filed its application for a CPG on October 24, 2014. The Department subsequently filed a letter recommending issuance of a CPG. The town did not participate in the docketed proceeding. The Board issued a CPG on December 18, 2014.

- **Richmond/Cochran Road Site.** On its own initiative AT&T's representatives met with the Richmond Selectboard and Planning Commission at a noticed meeting held on the evening of March 24, 2014. At this meeting, AT&T's representatives described the project and the coverage it would provide, and answered questions from Selectboard and Planning Commission members, and from the public. Representatives of the Department of Public Service attended this meeting. AT&T's representatives also had a number of separate meetings and email exchanges with neighbors to the proposed project, and with the Town manager. As a result of the foregoing, AT&T changed the location of the project twice, ultimately moving it further away from certain neighbors, to an area that the neighbors' aesthetics representative had identified. The town issued a negative recommendation before AT&T filed its application with the Board on December 5, 2014. After the application was filed, the town did not intervene in the docketed proceeding. The Department filed a letter recommending that the Board issue a CPG. The Board issued a CPG on January 23, 2015.
- **Richmond/Jericho Road Site.** The above described pre-application meeting with the Richmond Selectboard and Planning Commission also related to this site. AT&T filed its application on April 30, 2014. The Department filed a letter asserting that the project raised aesthetic issues and asked that the Board not issue a decision until the Department filed additional information on that issue. The Department subsequently hired an aesthetics expert, who concluded that while the project would have an adverse aesthetic impact, that impact was not "undue." In May 2014 the town made a filing questioning the project's conformity with its zoning regulation and sought to intervene in the proceeding. However, in October 2014, the town withdrew its request for intervention and a hearing. The Board issued a CPG on November 13, 2014.
- **Stratton/Stratton Ski Area Site.** This is a joint project with Verizon Wireless. Although there were no meetings with the Town, Verizon and AT&T worked very closely with ski area representatives, who in turn kept the Town informed. The applicants applied for a CPG on August 5, 2014. The Department subsequently filed a letter recommending issuance of a CPG. The town did not participate in the docketed proceeding. The Board issued a CPG on October 1, 2014.
- **Townsend/Route 30 Site.** AT&T filed its application for a CPG on July 29, 2014. The Department subsequently filed a letter recommending issuance of a CPG. The town did not seek to intervene in the docketed proceeding; however, the Town manager expressed a concern to the Board regarding public safety due to the use of helicopters in the area for medical transportation. AT&T's representatives asked the Board to postpone further deliberations until the public safety could be addressed, which ultimately AT&T's representatives were able to work out with the Town manager. After AT&T supplemented its application with information regarding the public safety measures, the

Board issued a CPG on November 25, 2014.

### **Summary/Conclusion**

Except for the Richmond/Jericho Road Site case, in all of the above described cases none of the affected municipalities actively participated in the proceeding subsequent to AT&T's filing of an application for a CPG with the Public Service Board. In the Richmond/Jericho Road Site case, the town sought to intervene (it should be noted that its request to intervene was made before Act 190's enactment), but it later withdrew its request. As a result, in none of the above described cases did the Public Service Board have the occasion to apply its new definitions of the terms "good cause" and "substantial deference" with respect to section 248a(c)(2).