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June 9, 2020

Larry Spector, Chairman  
City of Rochester  
Zoning Board of Adjustment  
31 Wakefield Street  
Rochester, NH 03867

**Re : Request for Rehearing – Case No. Z-20-9  
Application for Special Exception of EIP Communications I, LLC  
133 Blackwater Road, Rochester, Map 27, Lot 24**

Dear Chairman Spector:

Our office represents Eleanor M. McIver who owns 115 Blackwater Road which abuts 133 Blackwater Road. On her behalf, Betty Watson submitted written comments in opposition to the application for special exception of EIP Communications I, LLC (“Applicant”).

During the video conference meeting held on May 13, 2020, the ZBA heard and granted the application for a special exception of EIP Communications, LLC. While the manner in which the meeting was conducted may have been in accordance with the Governor’s Emergency Order #12, it deprived abutters and other members of the public from meaningful participation in this meeting. For this reason alone, the Board should rehear this application to permit minimally adequate participation by the public in this decision that will have a marked impact on numerous neighboring properties and the neighborhood.

The Board should rehear this application for the following reasons:

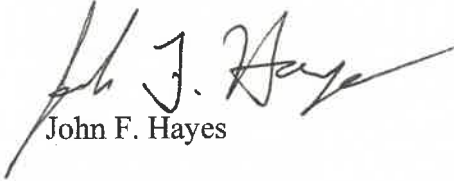
1. The public notice provided did not comply with the bylaws of the Zoning Board of Adjustment. The bylaws of the Zoning Board of Adjustment provide that notice of a meeting shall be placed in City Hall and the Rochester Public Library. As both the City Hall and the Rochester Public Library were closed to the public at the time of posting notice, the ZBA’s Bylaws regarding notice could not be followed. There was no vote to waive or amend the Bylaws to permit an alternate form of notice. As a result, there was inadequate notice of the meeting because the normal places to post public notice of the meeting were closed to the public due to the Coronavirus Emergency.

2. A substantial portion of the public was unable to participate in the meeting because they either lack internet access or they do not possess the technical skills necessary to participate in a meeting conducted through video-conference. While the ZBA made attempts to provide alternate means, i.e., telephone, for many people this is not an adequate substitute for a public hearing in which all members of the Board, the Applicant, and members of the public may attend in-person. Given the importance and long-lasting impact to surrounding properties, the members of the public should be given an opportunity to provide public input on this application.
3. In an application to obtain a special exception from a zoning board, the burden of proof is on the applicant to present sufficient evidence to support a favorable finding on each of the requirements for a special exception. *Barrington East Owners' Association v. Town of Barrington*, 121 N.H. 627, 630 (1981). The Applicant failed to meet all of the requirements of special exception. In particular the Applicant failed to meet the following criteria:
  - a. Pursuant to Rochester Zoning Ordinance §275-22.3(N), the Board is required to make a specific finding that the telecommunications equipment planned for the site cannot be located either in a zoning district where it is permitted by right, on an existing or approved antenna structure in the City of Rochester, or any prospective alternative structure in the City of Rochester. The Board failed to make a specific finding that the proposed telecommunications equipment planned for the site could not be located at another site.
  - b. There was a lack of evidence that it was an appropriate site. In particular, the Applicant failed to present evidence of alternate sites that were considered or why the site selected was the most appropriate site. While the applicant presented evidence that existing Verizon Wireless sites would not meet the coverage objective, it failed to present evidence as to why co-location sites would not meet the coverage objective and which co-location sites were considered.
  - c. The Applicant failed to present evidence that the cell tower would not be injurious or offensive to the neighborhood. The Applicant did not present evidence on this point, but made unsupported conclusions that cell towers did not adversely affect property values. In particular, the Applicant failed to present evidence from which or how many properties the tower would be visible. An accepted method of demonstrating where a cell tower would be visible from is a balloon test. The Applicant did not conduct a balloon test or any other method to demonstrate from which neighboring properties the tower would be visible. This information is necessary in order to determine whether the cell tower will be injurious or offensive to the neighborhood.

We respectfully request that the matter be scheduled for a rehearing as soon as possible.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Hayes", with a long, sweeping horizontal stroke extending to the right.

John F. Hayes

cc: clients  
JFH/jl