

Amendment to § 809.4 of the Rockport Land Use Ordinance

Related to

Location of Cell Towers

Background

On July 22, 2021, representatives of an affiliate of US Cellular (hereinafter “Applicant”) had a pre-application meeting with the Planning Board to discuss the proposed placement of a 150-foot cell tower on a wooded lot in a rural district near the intersection of Routes 17 and 90. The stated purpose of the placement was to alleviate gaps in coverage and low capacity in their service for that area which could not practically be resolved otherwise. While the meeting was informative and cordial, the Planning Board told the representatives of the Applicant that placement of the tower was limited by subsection 804.4 of the Land Use Ordinance (hereinafter “LUO”) which does not include the parcel in question.

After the Planning Board meeting, local counsel for the Applicant followed up with an August 23, 2021 letter to the Town noting that the Federal Communications Act of 1996 (hereinafter “Act”) limits the ability of municipalities to deny telecommunications organizations the ability to place cell towers within such municipalities. This letter was presented to the Select Board on December 12, 2021 and eventually forwarded to the Ordinance Review Committee on December 21, 2021 for action. A review of the Act indicates that municipalities have the ability to regulate cell towers in the normal course but cannot “zone them out.”

LUO section 809 Wireless Telecommunications Facilities

This section, plus Chapter 1300 on Site Plan Review, gives the Planning Board extensive qualitative review of cell towers. The problem lies with subsection 809.4 which, with exceptions not relevant here, limits cell towers to “[w]ithin 1,000 feet of the top of Ragged Mountain.” Whatever the original theory behind this location, the Applicant has represented to the Town that its wireless customers are experiencing gaps in coverage and lower capacity in the area of the proposed cell tower. Thus the Ragged Mountain location is simply not adequate to alleviate this problem.

Recommended Fixes

Add Rural Districts to potential cell tower locations with no change in the very extensive Planning Board oversight. Add “wireless telecommunication facilities” to the definition of “structure” in section 301 entitled “Meaning of Words” to assure that such facilities are subject to the height elevation restrictions and performance standards for certain summits described in section 908.3 (o).

Thus subsection 809.4 (1) (a) would be amended to read (new language underscored):

809.4 Standards

1. Location. A wireless telecommunications facility may be permitted only in the following locations:

a. Within 1,000 feet of the top of Ragged Mountain or within a Rural District;

Also, the final sentence of the definition of “structure” in section 301 would be amended to read (new language underscored):

301 Meaning of Words (Structure Definition)

The term includes structures temporarily or permanently located, such as decks, patios, wind turbines, wireless telecommunication facilities and satellite dishes.