

Zoning Board of Appeals

From: Alex Elvin <elvin@mvcommission.org>
Sent: Friday, December 10, 2021 1:54 PM
To: Kimberly Revak; Ryan Burgdorfer
Cc: inspect@westtisbury-ma.gov; Pam Thors; joanmalkin@gmail.com
Subject: 12 New Lane Cell Tower approval

Hi Kimberly,

This is to confirm that the MVC approved DRI 640-M (21 New Lane Cell Tower Modifications) on Dec. 9, with the conditions listed below. Because of the difficulty in preparing a written decision on the spot (as would have been required to meet the assumed deadline for approval under the Federal Middle Class Tax Relief and Jobs Creation Act), and with your agreement last night, the commission will review the written decision for approval at the MVC meeting on Jan. 6, and the decision will be filed with town clerk as soon after that as possible. Once the decision is filed with the town clerk, it will be considered official, and the required town permits may be issued.

MVC conditions:

1. *As offered by the Applicant:*

- *The cleanup of existing fallen faux branches and needles within the compound and surrounding area will be completed at the time of the installation of the proposed extension.*
- *Replacement of existing weathered branches that are not affected by the extension design will also be completed at the time of the extension installation.*

2. *The decision as to whether to remove the faux branches from the pole as it currently exists, or to continue with the use of faux branches, will be left to the West Tisbury ZBA. If the ZBA decides to continue with the faux branches, then the following condition applies:*

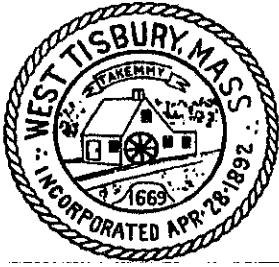
3. *The Applicant shall remove all fallen artificial branches and needles from the property, including within and outside the compound, prior to the completion of the project. The Applicant shall also conduct semiannual inspections of the property, with cleanup as necessary inside and within 200 feet of the enclosure. Recovered materials shall be recycled, and if that is not possible, the applicant shall advise the commission as to the intended disposal.*

Please let me know if you have any questions.

Thanks,

Alex

Alex Elvin
Development of Regional Impact (DRI) Coordinator
Martha's Vineyard Commission
The Olde Stone Building
33 New York Avenue



Town of West Tisbury
PLANNING BOARD
P. O. Box 278
West Tisbury, MA 02575-0278
508-696-0149
planningboard@westtisbury-ma.gov

December 14, 2021

West Tisbury Zoning Board of Appeals
P.O. Box 278
West Tisbury, MA 02575

Dear Board Members:

At our meeting of December 13, 2021, the board reviewed an application referred by your board under Section 9.2-1D, for the property located on Assessor's Map 31, Lot 48, 21 New Lane, for colocation of new equipment on an existing cell tower monopole.

The board encourages the clean up of the fallen plastic debris that surrounds the monopole prior to the installation process. We refer this application back to the Zoning Board of Appeals for their consideration.

Thank you.

Sincerely,

Virginia C. Jones
Virginia C. Jones, Chairman *Jones*

Zoning Board of Appeals

From: Harriet Bernstein <harrietjbernstein@icloud.com>
Sent: Monday, December 13, 2021 3:39 PM
To: ZBA
Subject: ATT - 5G

Hello Pam,

Just wondering if the ATT installation will make it easier for anyone to install a 5G network there in the future. I have some concerns about 5G.

Also, less germane to your discussion, but, could a 5G network emit more detrimental waves from a cell phone point of use than what we have now? I understand ATT states that the emission from a 5G network at the site of a tower is negligible.

Many thanks,
Harriet

12.14.2021

To: West Tisbury zoning board of appeals

West Tisbury town hall

Re: DOANE CELL TOWER

Dear Members,

My wife, Lucy Mitchell and I attended the hearing before Town boards some years ago regarding the initial application for a cell tower on the property of Robert Doane. Although not direct abutters, we see the cell tower directly across the field belonging to the late Richard Doane, Bob's brother. We understood then the need for a cell tower and had then as now no objection to it's being permitted.

We did object to the silliness of disguising the feature as a giant aluminum phony redwood tree with plastic leaves and suggested duplicating the simple, elegant thin grey painted uni-pole that has been in place off Old Courthouse Road. Instead, the Town permitted the proponent's plans for the phony tree, probably thinking it would mollify most people and look more "natural".

Now, we understand there are plans that the MVC has delegated for your approval to extend the height of the tower-- and again we have no objection.

We STRONGLY object to the use of plastic "pine needles" in any further construction. Over time, these plastic thin "needles" disintegrate and fall from the tower individually and in clumps. They fall continuously, year round. As such, they become embedded and hidden in the surrounding leaf litter and impossible to remediate, much less find. The proponent must be aware of this problem because (like plastic grass) he claims to replace these "needles" after a certain time. Despite Covid excuses, no such kind of "maintenance" to my knowledge has ever taken place. Furthermore, we're not aware of any binding enforcement.

Our well is being tested for PFAS contamination. We don't want to see any more plastic pine needles, Astro Turf or other plastic non degradable contaminants in our environment or in our oysters.

Can you condition this project to not only have no further "foliage" installed but also to have the existing "foliage" removed and disposed of properly?

Thanks for your work and attention to this matter,

Lucy Mitchell, Rez Williams (M31 L15)

34 Runner Road
P. O. Box 1652
West Tisbury, Massachusetts 02575
December 14, 2021

Zoning Board of Appeals
Town of West Tisbury
P. O. Box 278
West Tisbury, MA 02575

VIA EMAIL AND FIRST-CLASS MAIL

Re: Application for a Special Permit
AT&T Mobility Cell Tower

Ladies and Gentlemen:

My brother Christopher C. McIsaac and I own the property at 34 Runner Road, directly across Town Cove from the Doane family's property on which the existing Verizon Wireless cell tower is located. We are writing to object to AT&T's application to increase the height of the tower. Our objection is on several grounds: (1) that the added height would be an eyesore; (2) that the original permit granted by the ZBA, granted pursuant to Section 6409, expressly defines any future increase in height as a "substantial change" under Section 6409; (3) that 47 CFR 11 §1.6001 does not require your approval, but instead allows you to consider the proposed modification as a "substantial change"; (4) that the Applicant has expressly denied any relationship to Verizon Wireless, the existing permit holder; and (5) that, even if the Applicant's interpretation of 47 CFR 11 §1.6001 were correct, only the current permittee Verizon Wireless, not the Applicant, would be entitled to seek a change in the permit. I will address each of these points in turn.

1. **We believe the proposed height would be an eyesore.** At both the original MVC hearing and the original ZBA hearing in 2013, strong public opposition was raised to the 80 foot height as originally proposed. A photosimulation of the proposed 80 foot tower, taken from our property and submitted with the original 2013 application by the original applicant Verizon Wireless, is attached. (We apologize for the poor image quality. At the 2013 MVC and ZBA hearings, we also submitted our own additional photosimulations from other vantage points on Town Cove. You may be able to find both our and Verizon's original images in your files.) As a result of the public opposition, the MVC reduced the allowable height from the proposed 80 feet to 71 feet. At the ZBA hearing, in response to continued opposition, Verizon Wireless verbally offered to accept a further height reduction to 66 feet. Accordingly, with Verizon's concurrence, the final permit was limited to a height of 66 feet.
2. **Contrary to the Applicant's assertion, we believe the proposed height is a "substantial change" under both Section 6409 and the existing permit.** The existing permit was filed with the West Tisbury Town Clerk on June 28, 2013, and recorded at the Dukes County Registry of Deeds on August 15, 2013, at Book 1326, Page 553. In its Finding 6, the permit acknowledges the need to blend the tower with its surroundings and "minimize the appearance of the tower as an emergent pine". In Finding 8, the permit further explicitly states: "To minimize the 'emergent

pine' characteristics of the monopine, the overall height of the monopine, including the tapered crown, shall be limited to 66 feet rather than the 71 feet allowed by the Martha's Vineyard Commission; further, because of the critical nature of the visual impact of the facility based on its height, any future increase in height for any purpose, including without limitation the applicant's expansion needs or the use of co-locators is hereby designated a substantial change in the physical dimensions of the tower pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012." [Underline in original.] By accepting the permit with this express definition of "substantial change" within the meaning of Section 6409, Verizon Wireless indicated its consent and intent to be bound by it.

3. **Contrary to the Applicant's assertion, we believe the proposed height increase qualifies as a "substantial change" not only under Section 6409, but also under 47 CFR 11 §1.6001.** Several years after the ZBA issued the Verizon Wireless permit, to further define "substantial changes" to existing cell towers under Section 6409, the FCC adopted 47 CFR 11 §1.6001. In relevant part, 47 CFR 11 §1.6001 (b) (7) provides that "A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria: (i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater... [or] (v) It would defeat the concealment elements of the eligible support structure." Significantly, it says "if", but does not say "only if". The Applicant argues that the proposed alteration cannot qualify as a substantial change under this regulation because it increases the height of the existing tower by less than twenty feet. We disagree, and believe the proposal does in fact qualify as a substantial change, for two reasons. First, the definition in 47 CFR 11 §1.6001 (b) (7) is inclusive, not exclusive: it identifies certain changes that *must* be deemed substantial, but it does not declare that no others *may* be. Here, the ZBA granted a permit, well before 47 CFR 11 §1.6001 took effect, with an express recitation accepted by the original permittee that any future proposed height increase *should* be deemed substantial for the purpose of Section 6409. The additional conditions listed in the subsequent CFR regulation that also qualify as "substantial" therefore have the effect of supplementing the definition of "substantial" accepted by Verizon Wireless in the original permit, but do not limit the ZBA's authority to enforce it. Second, even if the new definition of "substantial change" under 47 CFR 11 §1.6001 were construed to invalidate rather than supplement the definition in the existing permit, the proposed modification would still meet the definition of a substantial change under 47 CFR 11 §1.6001 (b) (7) (v): the goal of limiting the height in order to conceal the tower was clearly expressed in both the original MVC and ZBA permit deliberations and the original permits, and the proposed 80 foot height if built just as clearly "would defeat the concealment elements of the eligible support structure."
4. **We do not believe the Applicant has shown the necessary authority from the existing permittee to seek an amendment to the existing permit.** The land on which the existing tower sits is owned by the Doane family and leased to Verizon Wireless. The existing cell tower approvals were granted by the MVC and the ZBA to Verizon Wireless. However, the Applicant is not Verizon Wireless or the Doanes, but a competitor, AT&T. It is not clear by what authority or right AT&T is entitled to apply for modifications to Verizon Wireless's permit. AT&T has submitted a letter to the MVC naming it as the agent of American Tower Corporation, which claims to be the "operator" of the tower. However, in response to a request by MVC staff for clarification, AT&T described ATC as the "owner" of the tower and Verizon Wireless as merely a "tenant" of ATC, and expressly stated that "AT&T and Verizon should not be considered co-applicants." (Emphasis in original). To our knowledge no evidence has been submitted demonstrating the relationship between Verizon Wireless, as lessee of the site and permittee for the tower, and ATC as ostensible owner and/or operator of the tower. If ATC has been granted

any right in either Verizon's leasehold or its tower permits that would allow it to install future improvements on Verizon's property, especially improvements belonging to competing carriers, that apparently has not yet been disclosed. In the absence of such evidence, it seems reasonable to suppose that AT&T is applying without proper authority. Verizon Wireless might be reluctant to allow competitors to avail themselves so casually of its proprietary business assets.

5. **We believe any claim of right to a non-substantial height increase under 47 CFR 11 §1.6001, even if valid, should be available only to the current permittee Verizon Wireless or its designated agent.** As noted above, AT&T has expressly denied that the current permittee Verizon Wireless should be considered a co-applicant, and has described Verizon Wireless only in the capacity of a "tenant" of ATC. However, the existing tower and ancillary facilities stand on land leased to and held by Verizon Wireless, not ATC. Neither AT&T nor ATC has demonstrated a valid interest in Verizon's leasehold that would grant them the right to further improve the property, nor in Verizon's present 66 foot permit from which a fourteen foot height increase might arguably be permissible. Unless they hold a valid interest in the property and the permit, they should not be entitled to rely on the 66 feet presently permitted to Verizon Wireless to demand their own independent right to make any further property improvements as a non-substantial change. That right should properly belong only to the existing lessee and permittee Verizon Wireless or its duly designated agent. As to any other applicant, twenty feet higher than nothing is at most only twenty feet – assuming that the applicant even has a right to occupy and improve the property. The application should be denied for that reason alone.

For all these reasons, we believe you have the authority to deny the application, and we urge you to do so.

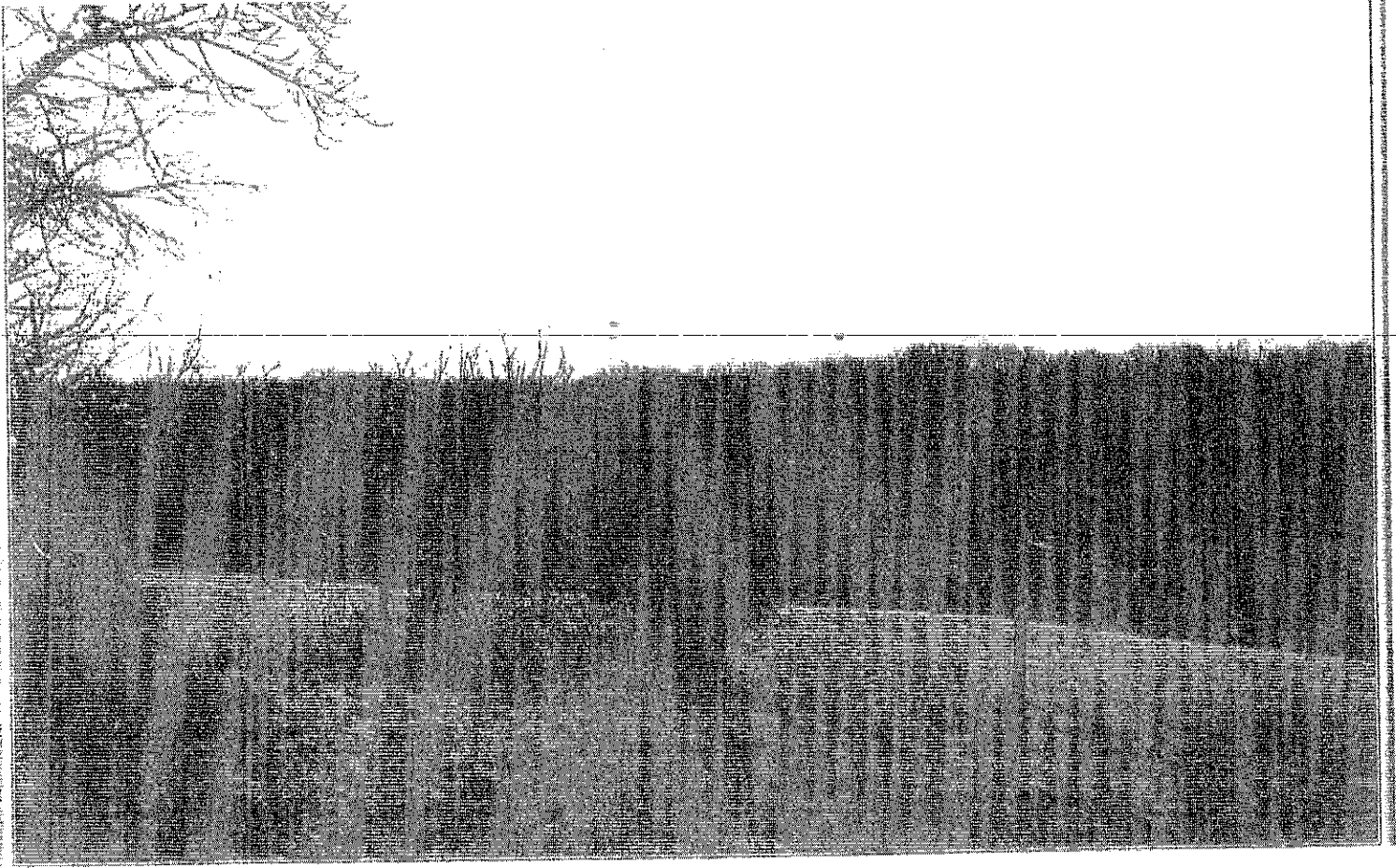
Very truly yours,



Ian S. McIsaac

cc: Christopher C. McIsaac

Attachment: Verizon Wireless photo simulations of 80 foot monopole and monopine



CAO
Construction Administration Office

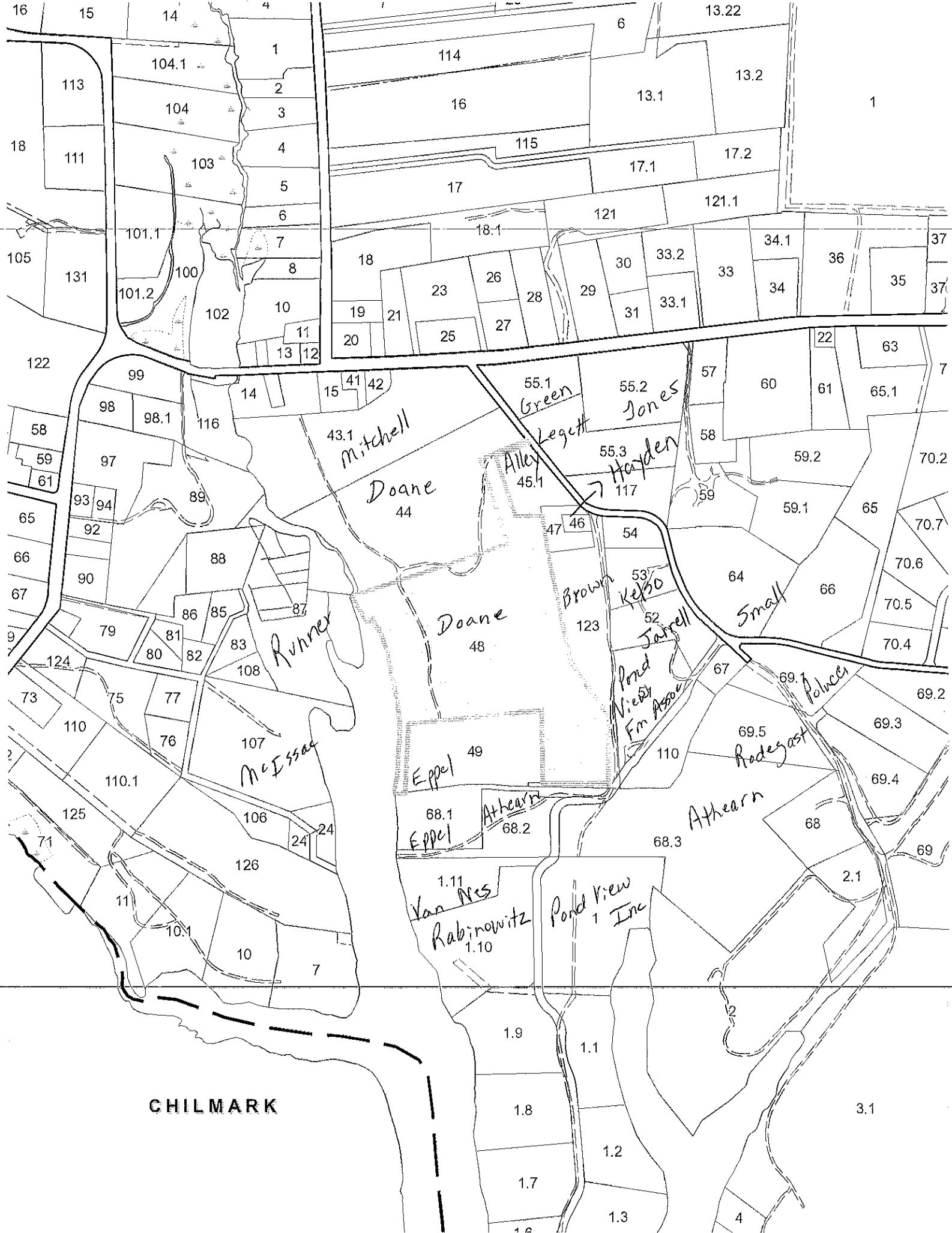
Prepared
for

verizonwireless

and
Houston

Prepared
Location 4





CHILMARK

1.11
Van Nes
Rabinowitz
1.10

Pond View
1 Inc

43.1
Mitchell

Doane
44

Doane
48

Eppel
49

68.1
Eppel

Athearn
68.2

68.3
Athearn

55.1
Green

55.2
Jones

Alley
45.1

55.3
Hayden

Brown
53

Kelso

52
Jarrell

Pond
View
Fm Assoc

Small

69.1
Palmer

69.5
Rodegast

