

Rodney C. Collins

From: Patrick Costello <pcostello@lccplaw.com>
Sent: Monday, September 24, 2018 4:49 PM
To: Rodney C. Collins
Subject: RE: Cell Tower - Mashpee Firestation

Town Manager Collins:

Per your request, I submit the following summation of the basis for my opinion that the subject Town property on Red Brook Rd. is included within the Wireless Facility Overlay District defined in the Town Zoning Bylaw. My reading of the Zoning Bylaw, §174-5.C.2, which provides that "The Wireless Facility Overlay District shall include..... all other lands in the Town *which are not located within the boundaries of the Mashpee National Wildlife Refuge....* (emphasis added)" would exclude from the Overlay District only those lands which have been acquired in fee by a Refuge partner or otherwise duly restricted by a record easement or other restriction imposed by a Refuge partner for compatible wildlife-dependent recreational and other uses. The subject parcel has not yet been so acquired or restricted, thus, it is not yet "within the boundaries of" the Refuge. As such, I believe it is located within the Wireless Facility Overlay District.

The intent of the key language of the subject Zoning Bylaw ("within the boundaries of the Mashpee National Wildlife Refuge") could, arguably, be subject to varying interpretations. The Bylaw could well have specified "within the acquisition boundaries of the Mashpee National Wildlife Refuge" (to the extent that "acquisition boundary" is an otherwise specifically defined term) to avoid any ambiguity, but it doesn't do so. Construing the terms of the Bylaw by their plain language would warrant the position that the boundaries of the Refuge are determined by the boundaries of those protected lands acquired or secured by Refuge Partners.

Pat

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