

CASE STUDY:

Keeping Cobble Hill Scenic While Improving Service

The problem.

In order to improve service along an area of Interstate 89 that the Vermont Telecommunications Authority designated as a “target corridor” because of the general absence of reliable cellular and wireless broadband internet service, our client sought approval to construct a telecommunications facility on Cobble Hill in Milton, Vermont. The site selected for the proposed facility presented a number of challenges, including the presence of a rare indicator species of a significant natural community, the inability use a shared private road without consent from an association of adjoining landowners, the Town’s designation of Cobble Hill as a scenic ridgeline on which no structure should be visible above the tree line, and a dispute over the ownership of a portion of Cobble Hill itself. Even after developing solutions to these issues, at the eleventh hour, after the petition was filed with the Public Service Board, an adjoining landowner raised concerns about noise, erosion and aesthetics.



Our approach.

Having utilized Section 248a in a number of similar situations, we knew the so-called 45-day pre-filing period would be an effective way to address the various concerns in advance of submitting the petition to the Public Service Board. Reaching agreement with interested stakeholders in advance of the petition avoided the potential for protracted proceedings and afforded the client greater control over the facility’s final design. Because it presented a gating issue for the client, our first order of business involved engaging the association of landowners to reach agreement over use and maintenance of the shared private road. We were able to put aside a history of disagreement over competing property rights in the area by focusing the parties on the prospective use of the road. We then turned to designing a project that avoided the sensitive natural resources on Cobble Hill and the area of the property under disputed ownership, while also minimizing its aesthetic impact and preserving the existing land uses on the landowner’s property. Engaging the interested stakeholders not only avoided litigation before the Public Service Board, but it also demonstrated the proper use of the Section 248a process and supported the summary dismissal of untimely concerns raised by the adjoining landowner who did not participate in the 45-day pre-filing period.

The outcome.

Working with the Agency of Natural Resources, the landowner, the association of landowners, the Town of Milton, and a number of consultants during the 45-day pre-filing period, we were able to propose to the Public Service Board a facility that achieved our client’s coverage objective without unduly impacting the relevant interests at stake. First, we reached a road maintenance agreement with the association of adjoining landowners, thereby ensuring our client’s access to the site. We then secured support of the Town. Although the height of the facility exceeded the tree line on Cobble Hill by 15’, the facility was the minimum height necessary to achieve our client’s coverage objective. The Town of Milton ultimately recommended that the Public Service Board approve the project because of its minimal aesthetic impact, so long as our client agreed to preserve future vegetation in the area. Following a site visit with the Agency

Natural Resources, the project was also revised to minimize disturbance and avoid the sensitive natural resources in the area, while also ensuring safe access to the facility and the preservation of existing land uses on the property. The access road was shifted to an existing cleared area and network of existing trails, and the compound was repositioned to the other side of Cobble Hill. The shape and configuration of the compound was also redesigned to avoid encroaching on the disputed property boundary. By working with these stakeholders throughout the 45-day pre-filing period, we addressed all apparent concerns in advance of submitting the petition to the Public Service Board.

With the support of the Town, no objections from the association of adjoining landowners, and confirmation from the Agency of Natural Resources that the project did not affect any rare or significant natural communities on Cobble Hill, the Public Service Board approved the project within 85 days of filing the petition. It discounted the untimely objections from the landowner who did not participate during the 45-day pre-filing period because of the efforts taken by our client to engage the interested parties and reach resolution prior to filing.