

Acton Wireless Communications Facilities Bylaw Committee

Minutes for August 22, 2007

Acton Town Hall, Room 126

Committee members present: Peter Berry (Chairman), Bill Flood, Joe Higgins, Bob Johnson, Sidney Johnston, Alan Mertz and Bruce Reichlen. Also present Town Planner Roland Bartl and observers Dave Wilson and Joe Conoby

Peter Berry called the meeting to order at 7:35 PM

The minutes of the July 25, 2007 were discussed and approved with minor changes to a Bob Johnson statement regarding suitable places for cell towers and the variance discussion.

Discussion followed regarding use variances. Roland pointed out that does not allow use variances, and there are certain places where you cannot place a WCF tower: in village districts and Kelly's Corner (in addition to the historic districts).

Sidney suggested in the commercial areas of the villages that we might want to rescind that restriction.

Map Review: Bill Flood said the Maps appear accurate and we should work from them. Roland pointed out that the blue was still available for cell sites at the transfer station. Roland will make a blow up of the town transfer station area for the next meeting without the internal parcel boundaries and corresponding setbacks.

Visitor: Steve Tryder of North Andover will come to our next meeting and Peter Berry has allotted him 15 minutes.

Inventory of Cell sites: how do we do it?

A discussion followed on how we can get the carriers to give us an inventory of where they have cell sites in the town. Our interest is learning about current coverage and capacity. Bruce said if we don't need a permit then the carriers don't need to come to us.

Sidney suggested we might be able to charge an annual license fee. Bruce was not sure we could do that under FCC regulations.

Roland and Alan pointed out why we would want to know where every carrier is in town so that when new towers are proposed we can see where they are relative to other sites in town. Alan talked about how we go about maintaining a database of cell sites in town. Alan said on the planning board it was frustrating when applicants came in for cell towers because we did not know where all the other sites in town were. Bruce said there was not a permit required now if you were put a site on the side of a building. The consensus seemed to be that the town doesn't

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need to maintain a database. We should be able to get that information from other public sources including putting the burden on the applicant to get it (perhaps from the FCC data base).

Roland suggested that we require the applicants to identify where they are and to check out sites where tall building exists.

Roland thinks we can ask applicants to identify where they are in town and all sites in abutting towns within ½ mile of the Acton town line.

Sidney raised the concern about measuring the health effects. Joe pointed out that Concord's bylaw requires a P.E. to inspect the sites every three years for radio frequency and other issues. Alan likes the way Concord monitors it.

Bill said that the Concord Bylaw was extremely good and very comprehensive. Bill suggested we break the bylaw up into a number of sections and that we each become experts in that section of the bylaw. Bill said that one designated person would be responsible for making the changes to the main document on the database. Joe volunteered to set up a document management system however we wanted. Sidney said that a read only document would make a lot of sense.

Peter brought Concord's rules and regulations for WCFs and passed them out. On page 71 of the Concord Bylaw there is a 1000 foot setback from schools. Roland said there is a 125 foot height limit. On page 73 Peter said that Concord has the ability to grant relief from the general requirement. Concord has a monitoring protocol on file.

Bruce suggests that we start with the Acton By Law and add changes as needed, rather than starting from the Concord by law to replace the existing Acton by law. Bruce pointed out a philosophy difference between Acton's approach (a by law with no latitude allowed by the planning board) versus Concord's by law (an overreaching by law with considerable ability for the planning board to waive requirements). Bruce also suggests that introducing some limited latitude for Acton's planning board to allow waivers may be positive.

Alan is concerned that if you grant the board flexibility within a broad enough scope within the purpose and intent of the bylaw.

Roland does not want to grant them too much flexibility. Strict criteria is very helpful to a board – if a Board has great flexibility applicants will consistently push the boundaries of the Board's comfort zone.

Sidney asked about the zoning act and what you can grant exceptions for.

Bruce would prefer to start with the Acton Bylaw, figure out the holes and see if we can plug them with other bylaws we like.

Bruce suggested that there appears to be consensus that we want to add flexibility to the bylaw. Sidney asked about and Roland explained the statutory criteria and differences regarding variances and special permits.

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Bob suggested that we want to have the flexibility to do what was done in Carlisle where two landowners put a tower on or near their property line.

Sidney presented his draft principles of zoning for cell towers. Sidney suggested we could put a tower at 111 and Rt. 2 in the wooded triangle at Kelley's Corner. Roland suggested that might be Mass Highway land.

Alan pointed out that from looking at the maps almost all the residential properties in Acton are protected.

Sidney wants to protect residents from surprises and pointed out that we might reduce setbacks from Route 2 and the active rail line.

Roland said the we need to be careful with waivers.

Sidney said that if deed restrictions are not recorded, at least one case (Town of Hanson) says they don't count.

Roland would like to stop using his department resources to search the deeds for restrictions. The consensus was that this would be fine, at least for now.

Sidney said that he understood that the principle reason that we are here as a committee is the concern by some who objected to Article 39 at Town Meeting on the grounds that prohibiting cell towers in residential districts is "effective prohibition", and therefore doing so would put Acton on the losing side of such a claim made by a cell tower provider. Acton is about 65% residential, 15% ARC zoned land, and about 20% other. In the event those persons with concerns about the insufficiency of Acton land are judged to be correct, then the next largest amount of acreage in Acton where cell towers could be placed is zoned ARC. Some of the ARC land may have protection under the Constitution of Massachusetts as conservation land recorded at the registry of deeds, and so be unavailable for construction of cell towers. Other acreage zoned ARC may not have any such conservation restrictions recorded at the registry of deeds, and so (as is consistent with the Acton Table of Principle Uses), be available for construction of cell towers. Sidney reference a case in the Town of Hanson.

Accordingly, the debate which citizens of Acton may be forced to have is whether to put cell towers in residential land or out in the woods in ARC zoned land. Peter's response was hopefully the debate will not be this stark and there was a consensus that there would be strong opposition to putting cell towers on conservation land.

In response to a point raised by Sidney, Roland also suggested that the town may not want to make conservation land available for cell towers.

Alan said that from reviewing the maps the consensus was that there is enough land available in Acton to provide coverage to prevent a claim of effective prohibition.

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Deadlines:

Peter had talked to the Selectman and thought the bylaw protected the town residents. There is a special town meeting in late September or October. If we can make our presentation then fine, but, if not we'll present it at April's town meeting and just give an update in October.

Peter agrees with Bruce that we ought to work off the Acton bylaw.

Roland will put the Acton Bylaw and rules and regulations on the website for access by all.

Assignments and Next steps: look at various sections of the Acton bylaw:

monitoring (Joe);

facility safety and appearance aesthetics; (Sidney)

inventory; (see Lincoln bylaw)

waiver circumstances and wavier criteria due to proof of no available site (Peter and Alan);

definitions of adequate coverage;

technical regulations coverage (Bob, Sid and Bruce);

crisping up the existing bylaw, including define a what WCF is; (Roland and Bill)

Bruce and Roland want to be cautious about requiring certain technical specs in a bylaw as that can make the bylaw dated. They suggest that the rules and regulations may be a better place for technical specifications.

There was a discussion about the difference between what's in a bylaw, and what's in Rules and regulations. Rules and regulations include what is needed in a permit application as well as other things, and the bylaw covers the specific requirements the boards / town must ensure are met.

Peter: How is a significant gap in coverage defined?

The meeting was adjourned at 9:40 pm

Next meeting is Sept. 5th and September 19th

Respectfully submitted.