



ACTON PLANNING BOARD

Minutes of Meeting

February 2, 2010

Acton Town Hall, Faulkner Room (204)

Planning Board members Mr. Ryan Bettez (Chairman), Mr. Jeff Clymer (Vice), Mr. Greg Niemyski, Mr. Roland Bourdon, Ms. Leigh Davis-Honn, Ms. Margaret Woolley-Busse, associate members Ms. Kim Montella and Mr. Derrick Chin attended. Also present was Planning Director, Mr. Roland Bartl and Planning Board Secretary, Ms. Kim DelNigro. Absent was Mr. Ray Yacouby (Clerk).

Meeting was called to order at 7:30 PM.

I. Citizens Concerns

None raised.

II. Consent Agenda

Consent Item A. Minutes of 1/19/10, Mr. Niemyski moved to approve the consent agenda; Mr. Clymer 2nd; all in favor.

III. Reports

CPC: Mr. Bourdon reported the committee is deliberating and reviewing what projects to recommend for the Annual Town Meeting (ATM).

EDC: Mrs. Davis-Honn reported the committee has been working with town staff in getting the business survey mailings in the mail and placing the survey online on the Town's website.

Open Space: Mr. Clymer stated their discussion was regarding the Caouette Land.

MAPC: Mrs. Montella stated she will be attending the upcoming meeting on 2/4/2010.

CCPC: Mrs. Busse reported she is working on certain areas of the Comprehensive Community Plan. She stated we are looking for volunteers to serve on the CCPC and the deadline for applicants is 2/5/10. At this time, we have received 1 application. She stated they are trying to pass the word around to boards and committees.

Other Reports: Mr. Bartl reported a site walk was done at the proposed site of the Highgrove Estates. The project is a 40B, with 8 units in Acton and 56 in Stow. Access is from both Acton and Stow streets. The Stow Planning Board has turned down subdivision development plans on the property 3 times previously. They had not involved Acton. With the 40B proposal the matter is out of the Stow Planning Board's hands but now brings in Acton for access and eight housing units. The matter is before MassHousing for preliminary 40B project site approval. The Town of Acton has been asked to comment.

IV. Wireless Comm. Facility Special Permit – 5-7 Craig Road – Public Hearing

Mr. Bettez opened the public hearing at 7:45PM. Mr. Kevin S. Eriksen, Esq. from Deschenes & Farrell, P.C., represented the applicant, SBA Towers, LLC; Mr. Anoop Jaikumar, Radio Frequency (RF) Engineer attended for Clearwire US LLC, which is one of the carriers interested to locate on the facility.

Mr. David Maxson from Broadcast Signal Lab LLC attended as the Board's consultant.

Mr. Bettez explained to the residents the Federal Telecommunications Act of 1996 , Massachusetts Zoning Act, MGL Ch. 40A, and FCC Regulations which contain mechanisms to override local bylaws, rules, and decision that thwart the Federal objective for seamless personal wireless communication, and for competition in the personal wireless services market place. The Chair also referred to the Zoning Bylaw, Section 3.10.

Mr. Eriksen reviewed and explained the application of the special permit to allow installation of a wireless telecommunication facility to be located at 5-7 Craig Road. The current zoning for the 3.65 acre site is Light Industrial (LI). The applicant seeks to construct a 170' monopole tower, designed to accommodate a maximum number of technically feasible co-locators. The proposed monopole tower is necessary to service a significant gap in the wireless coverage in the Town. The tower as proposed is a monopole tower with external standard antenna mounting frames in order to maximize co-location potential. The applicant is therefore requesting a waiver as provided in section 3.10.6.4 of the Acton zoning bylaw. Mr. Eriksen stated that revised plans and modifications were delivered to the Planning Department late in the week before the public hearing. He also submitted the visibility report from the balloon test at the public hearing. He stated that he understands that staff and Board members would not have had adequate time to review these documents and that a continuation of the hearing is in order. Mr. Eriksen stated the tower location was moved slightly towards the front to keep it out of the 100' wetlands buffer zone. He stated it would decrease the impact. The proposed location of the tower facility is currently a gravel covered lot. There would be a security fence around the tower and equipment compound with barb wire; additional materials brought to the site would consist of concrete for the foundation, mulch for landscaping on 3 sides, and a row of 4' cedar trees. Mr. Eriksen stated Town staff had contacted him and provided knowledge that certain homes were not shown on his applicants' plans and specifically that there is an existing State facility that houses several handicapped residents. Mr. Eriksen briefly explained how the applicant chose to bring this site to bring forward to an application before the Board and referred to their affidavit in this regard. He stated it was more ideal than the four other sites they had considered. He promised to bring the applicants site acquisition agent to the next hearing session.

Mr. Jaikumar explained and showed a map of coverage gaps as of today. He discussed existing coverage and what the new tower will cover. He stated there is still a significant gap of 1.5 miles.

Mr. Maxson of Broadcast Signal Lab explained he has been hired by the Town (paid for with funds provided by the applicant) to provide technical/expert review of the proposal to the Planning Board. Mr. Maxson explained the laws and regulations on personal wireless communication. Mr. Maxson explained a carrier can sue in court, if a permit is unreasonably denied, as provided in Federal Law, Telecommunications Act of 1996. He also explained that the Federal law preempts local jurisdictions to regulate personal wireless facilities on the basis of radio frequency emissions. He explained that one of his duties as Planning Board consultant is to review the applicant's proposal and supplemental data to ensure that their signal strength does not exceed federal limits. He further explained that a proposal for a personal wireless facility, must show that there is a significant gap in a carrier's network that the facility is capable of filling, in order to have standing before the local special permit granting authority. Therefore, another of his important functions is to examine the evidence and advise the Board whether or not there exists a significant gap.

Mr. Maxson noted that the bylaw allows two ways for measuring the tower height, one is measured from the ground elevation at the tower base and the other is measured from the mean ground elevation in a 500 foot radius circle from the tower base. The application is not clear how the proposed tower height is measured. He stated that, lately, many cell towers come in at a 120-140'

height. This tower is a little unusual for its height, especially given that there are only two proposed carriers at this time. Mr. Maxson stated that if T-Mobile and Clearwire do not need as much height, the tower could be lowered to 130 feet or so with 3-4 additional carriers to be mounted on an extended tower at a later time. The applicant should show coverage diagrams with indication of minimum signal strength at various antenna heights for both proposed carriers to determine what the minimum critical height would be below which coverage area is being lost or significantly reduced. A lower tower might be more acceptable to the Town and the neighborhood.

Mr. Maxson stated that the applicant has provided sufficient documentation to proof that their radio frequency emissions will comply with federal safety limits, that they have provided an "Official Determination of No Hazard to Air Navigation" from Federal Aviation Administration (FAA) and a corresponding determination from the Massachusetts Aeronautics Commission. Both indicate that the tower as proposed can be installed without lighting on the tower.

Board questions

Mr. Niemyski asked what the coverage area for the site will be in relation to existing and/or future sites noting existing towers on Great Hill, at Post Office Square, and in Concord? Why can't the proposed carriers use existing sites?

Mr. Jaikumar state there would be a gap in coverage when using the existing sites; signal strength would be too weak.

Mr. Niemyski asked that the applicant clarify exactly on which surrounding facilities the proposed carriers have antennae, on which they have rights to place antennae, and on which they would like to locate antennae but do not yet have secured the rights.

Ms. Montella stated the coverage maps were confusing.

Abutters in attendance raised questions and concerns regarding:

Mr. Richard Jussaume, 8 Russell Road, stated the special permit for the cell tower should be denied because a cell tower is not an accessory use to a warehouse and the lot's principal use is as a warehouse. He stated that because of the merger doctrine due to the Town's codification the site is already used by the warehouse. In his opinion, the applicant cannot build on this lot and no variance should be granted. There is not enough area, square footage, frontage and parking. Mr. Jussaume stated he also had issues with Clearwire's coverage map for their future sites of cell towers. Specifically, Clearwire claims to want to provide in-home service, while the proposed location has vast open areas surrounding. Therefore, the location is a misfit and should be denied. Mr. Bartl commented on Mr. Jussaume's statement regarding zoning, noting that two principal uses are permitted on a commercial or industrial site and that there is no reason why this site can't be used for a cell tower, at least from that perspective of zoning.

Mr. Freeman Chen-Shi Lin, 284 School Street, asked why to set a tower location at this lowest point of the entire area? What other sites are there at a higher elevation? Will it disturb cordless phones and home alarm systems?

Mr. Maxson explained that the FCC regulates electromagnetic interference problems. He is not aware of known interference issues between the applicant's equipment those items that Mr. Lin mentioned, although there is no absolute guarantee.

Mrs. Kathy Quinn, 299 School Street, stated that she is upset. She stated that many residential homes were left off the maps. One property was listed as a Department of Public Works (DPW)

building when it is really occupied by handicapped residents. This must be taken into consideration and she wants the applicant to be aware of the residents that live within that area. She is worried that the property values will decrease as result of a tower in the proposed location. Mrs. Quinn stated she thinks the applicant is misleading the Board members by not showing all residences on their plans. The Planning Board should deny the request for the special permit.

Mr. Eriksen stated that there was no intention to leave any residents off the map. The said property was listed as a State DPW property at the Town Assessor's Office. The map was done by aerial view and the home that houses handicapped residents has been shown on the revised plans.

Mr. Maxson noted that there are Federal Rules and quite a bit of case laws that the Board will have to consider when weighing an approval or denial of a proposed personal wireless facility. If a local Board's decision or denial continues to court, the final ruling is up to only 1 judge.

Young gentleman with eyeglasses alleged that there is no significant gap. Why do we need the cell tower? It is ridiculous to install a cell tower to fill a gap when other existing services provide the same or better service already. No coverage is needed in this area. He stated he has a cheap \$30 cell phone and it works well, even in his basement.

Mr. Maxson discussed the differences in signal levels for different types of wireless communication, voice, text, data, etc.. He also noted, that the Federal law requires that local jurisdictions allow competition between providers of identical or similar services.

Mr. Jaikumar explained that customers want the high speed communication levels which requires certain signal strengths, and that it will be in the choice of the consumer which service to utilize.

Mr. Scott Rose, 295 School Street, asked what is the number of customers? Why this cell tower carrier in this location?

Mr. Eriksen stated he does not have that information. Mr. Maxson restated that a local jurisdiction cannot discriminate between competing companies.

Mr. Christopher Shea, 303 School Street, stated he opposes this special permit; the proposed tower is too high and will be ugly. Can the cell tower be camouflaged?

Pamela Harting-Barrat, 27 Oneida Road, stated some properties within the Light Industrial (LI) Zoning District may have residences on them. Therefore, it can not be assumed that all LI zoned land is free of residence.

Mr. Bartl stated that residences are not allowed in industrial districts. However, some preexisting nonconforming residential properties in Town may be located in industrial district. He does not know of any in the LI District at Craig Road. In other parts of Town there are some residential uses in industrial districts that were established under special permits and/or comprehensive permits.

Mr. Jim Quinn, 299 School Street, stated there is a very close personal wireless facility at 40 Annursnac Hill Road, Concord, MA. He stated the multiple monopole towers can be seen from Craig Road in that location. He knows that they have existing capacity because he has visited the Concord Planning Board and Metro PCS is proposing to install new wireless telecommunications antennas on an existing 120' monopole tower there.

Mr. Fred Tipton, 311 School Street, stated he has submitted pictures to staff on the balloon test that show what a tower would look like at full scale. Mr. Tipton also cautioned that copper theft is a serious issue, and that the proposed tower therefore could attract copper thieves and thereby affect the abutting properties and putting citizens at risk.

Mr. Richard Jussaume asked when will the hearing be over?

Mr. Bettez stated that this is a process and there will be more than 1 hearing session. At this point the hearing needs to be continued for further discussions and submissions.

Mrs. Kathy Quinn asked if the Historical Commission commented?

Staff stated that the Historical Commission would comment after the balloon test but that no comments had been received to date. Staff will follow up with them.

The motion was made to continue the public hearing on March 16, 2010 @ 7:45pm in the Acton Town Hall, Room 204 and to extend the decision deadline to June 14, 2010. The Planning Board voted in favor 6-0. The applicant agreed. The Board chairman and Mr. Eriksen signed a mutual extension agreement to that effect.

V. Proposed Zoning Articles for 2010 Annual Town Meeting – Public Hearing

Mr. Bettez opened the public hearing at 9:40PM. Copies of the proposed zoning changes were provided to the public. Present for the hearing were members of the public. Board members discussed and reviewed the draft zoning articles to amend:

Article ZA) Outdoor Retail Sales: Mr. Doug Tindal, Chairman of EDC, noted that this was an initiative of the Economic Development Committee (EDC) but at this time, there is no hurry to codify it into zoning. They have not discussed this with Acton merchants. They want to be careful and have no conflicts. More work is needed to be done and will need more time. Mr. Tindal stated EDC does not support this initiative at this time and asked to withdraw the article and for EDC to work further on refinements.

Article ZB) Special Event Signs: Board members discussed the history of temporary signs and sign enforcement. Board members discussed Ms. Isabelle Choate's submitted comments. Mr. Tindal stated that he generally agreed with the proposed changes. Overall, regarding all sign regulations, he would like to see it simplified, causing lessen the friction. There is a need to find a balance. The proposed article is a step in the right direction. Mrs. Pam Harting-Barratt questioned the proposed extended time for displays of temporary signs. She noted that while the bylaw maybe difficult to enforce, it is also difficult to look at all the signs.

Article ZC) Flood Plain District: The public had no questions. Board members had no changes.

The Board voted unanimously to close the public hearing.

The Board voted not to recommend Article ZA at this time.

Mr. Niemyski motioned to recommended to remove "such as plastic or sheet metal" and "shall not be erected sooner than 7 days before the event and it" from draft Article ZB. Mr. Bourdon 2nd; all in favor.

Mr. Niemyski motioned to decrease the display time from 90 days in the draft Article ZB to 28 days. Mrs. Busse 2nd.

Vote: Mr. Niemyski, Roland Bourdon and Mrs. Busse in favor.

Mrs. Bettez, Mr. Clymer and Mrs. Davis-Honn opposed.

Motion lost.

Mr. Clymer motioned to have the display time reduced to 45 days, Mrs. Davis-Honn 2nd.

Vote: Mrs. Bettez, Mr. Clymer, Mrs. Davis-Honn, Roland Bourdon and Mrs. Busse in favor.

Mr. Niemyski opposed.

Motion carries 5-1.

Mr. Bartl stated he will work finalize Article ZB and work to address Ms. Choate's comments.

Mr. Niemyski moved to recommend Article ZC as written, Mrs. Busse 2nd, all in favor.

Vote: Mrs. Bettez, Mr. Clymer, Mr. Niemyski, Mrs. Davis-Honn, Roland Bourdon and Mrs. Busse in favor

Motion carries 6-0.

Motion was made to close the meeting, 2nd; all in favor; meeting adjourned at about 10:15 PM.

DRAFT