

Kristin Alexander

From: Roland Bartl
Sent: Tuesday, February 22, 2005 4:10 PM
To: Planning Board
Subject: FW: Proposed Amateur Radio Bylaw



PRB-1 Article
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More on amateur radio towers. Please be aware that the litigation mentioned in this forwarded e-mail should not be discussed at the hearing tonight.

Roland Bartl, AICP
Town Planner, Town of Acton
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978-264-9636

-----Original Message-----

From: Fred Hopengarten [mailto:klvr@juno.com]
Sent: Monday, February 21, 2005 6:18 PM
To: Board of Selectmen
Cc: whitleycj@comcast.net; kaw@hanify.com; renesq@comcast.net; kltwf@arrl.org
Subject: Proposed Amateur Radio Bylaw

Dear Mr. Selectman:

I write to you as a Volunteer Counsel of the American Radio Relay League, the national association for amateur radio.

I understand that you are the Selectman assigned to proposed Zoning article 3.8.3.6.

Having read the cover memo on this proposed zoning article, I can see that Roland Bartl, Town Planner, appears to feel that the present bylaw will not withstand the scrutiny of litigation, in light of the many court cases mentioned in the attachment, as well as the Chedester case he cites. (I was counsel at the hearing level for Mr. Chedester, and advisor to the litigation attorney.)

At present, Acton is engaged in unusually similar litigation, also bound to result in a defeat for the Town. Given the Town's awareness that its position is not arguable with a straight face, I shall urge counsel for the litigant, Mr. Whitley, to seek costs against the Town -- for litigating the matter in bad faith. You may not be aware of this, but his able counsel is his wife, an attorney with Hanify and King, a renowned Boston firm. There is no room for doubt in my mind that the outcome of the case will not favor the Town.

I write to you with two things in mind.

First, I urge the Planning Board and the Selectmen to consider modifications to the bylaw. Examples:

* The 80 foot height limit is a reasonable height limit for the grant of a permit by right. Actually, 90-100 feet, in order to assure that antennas can be just a little bit higher than (and not blocked by) 80-90 foot white pine trees would be better. However, after that, greater height should be available by special permit, especially if a party lives on a large lot, there is natural screening, and so forth.

* Requiring anchors and guy wires to land within the building envelope is bad public policy, as it forces an antenna system to be placed in the most visible portion of the yard, or requires an applicant to use a wider, sturdier, more visible structure in his attempt to avoid a conflict with setback requirements. It would be better public policy, and more aesthetically pleasing, to allow some flexibility in such matters, with a special permit process.

* By limiting the number of antenna support structures to one, the bylaw forces the applicant to build the tallest, strongest, widest, most visible structure she can afford, in order to hold the antennas for a variety of frequencies that she intends to use. A better solution would offer some flexibility in such matters, perhaps two antenna support structures and more by special permit would be a good practical solution.

I should say that, in many respects, Mr. Bartl has done an admirable job of recognizing and drafting to accommodate most standard issues that come up in these matters. He is to be congratulated. We are only discussing details here, though they are details that are very important to licensed radio amateurs.

The second issue which comes to mind is that Acton should do the right thing and end the present Whitley litigation, which will have only two results: significant agony to the family that has been forced to litigate to take enjoy the federally enforced rights involved, and significant legal costs to Acton which are totally unnecessary and can no doubt be better spent on other Town matters.

Mr. Whitley has applied to erect a 52 foot tall structure on a 1.87 acre property. When the present Acton bylaw is amended to comport with Federal and Massachusetts law, his proposal will be granted as a matter of right. Why wait and spend money defending an untenable position? I urge the Planning Board and the Selectmen to do the right thing, and end the litigation now, before losing.

If it is of any help to you, I provide herewith a short essay citing the requirements of law that bind a municipality. If it is of any comfort to you, there is no height limit in Lincoln, and it doesn't seem to have hurt property values at all.

I have a 100 foot tall antenna support structure in my backyard, visible from Route 126. It has been there since 1982. I suspect you've driven by it many times, heading South from the intersection of Routes 117 and 126, toward Wayland, and never seen it. People just don't spend time looking up.

Thank you for considering these points of view, and feel free to share them with the Planning Board, other Selectmen, or anyone with whom you care to share this information. Atty. Michael Raisbeck, Vice Director for New England of the American Radio Relay League, may also contact you in regard to these matters.

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P.S. As a courtesy, I would have copied this letter to Mr. Bartl, but I do not have his e-mail address. Please do forward it to him.