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ACTON PLANNING BOARD

Minutes of Meeting
February 2, 2010

Acton Town Hall, Faulkner Room (204)

TOWN CLERK, ACTON

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 funds recommended for the Annual Town Meeting (ATM).

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

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

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 (i.e. transportation). She stated the deadline for new 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 the plans 3 times and the comprehensive permit had fallen through there permit processing procedures and now 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., representative for the applicant, SBA Towers, LLC; Mr. Anoop Jaikumar, Radio Frequency (RF) Engineer for Clearwire US LLC; Mr. David Maxson from Broadcast Signal Lab LLC (town consultant) were present.

Mr. Bettez explained to the residents the Federal Telecommunications Act of 1996 and Massachusetts Zoning Act, MGL Ch. 40a which contain mechanisms to override local resistance. 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 site

is Light Industrial (LI) and consists of 3.65 acres. 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. The applicant is requesting waivers of the following section of the Acton Bylaw, Sec. 3.10.6.4. Mr. Eriksen stated revised plans and modifications were delivered to the Planning Department after the Planning Board packet had been created and the balloon test report was delivered at the public hearing. Staff and Board members would not have adequate time to review and it will be placed into docushare and will be reviewed for the continuation hearing. Mr. Eriksen stated the tower location was moved due to the 100' buffer zone due to wetlands. 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 with barb wire and additional material brought to the site will consist of concrete for equipment foundations and 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 addressed on his applicants' plans and an existing parcel is a housing facility for multiple handicapped residents. Mr. Eriksen explained how the applicant choose this site within their affidavit. He stated it was more ideal than other sites but are looking at 4 other additional sites.

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 (and paid for by the applicant) to provide technical/expert review of the proposal to the Planning Board. Mr. Maxson explained the wireless communication regulations and potential impacts of the proposal. Mr. Maxson explained a carrier can sue in court, if permit is denied. It is within the Federal Law TCC 1996 section. He explained he ensures that their signal safely meets all federal levels of standards. Mr. Maxson commented the tower is being measured from the ground elevation and the average tower elevation is from the base. He stated, lately, cell towers are at a 120-140' height. This tower is a little unusual for this height, if they need all the carriers. Mr. Maxson stated that if T-Mobile and Clearwire doesn't need much height, the tower could be lowered to 130' of height with 3-4 carriers. It might be better aesthetically, neighbors would like it and it would be more suitable. Mr. Maxson stated their safety emissions will comply with radio signals and they have provided data of the "Official Determination of No Hazard to Air Navigation from Federal Aviation Administration (FAA) and "Aeronautics commission Request for Airspace Review" from Mass. Aeronautics Commission of Mass DOT.

Mr. Niemyski asked what is the existing coverage of sites or future sites from your map? Why can't you use that site? Mr. Jaikumar state there is a gap in coverage; signal strength, down and uplink coverage. It is not the technology, it's the use.

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 the application is a merger doctrine due to the Town's codification. The applicant should not 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.

Mr. Bartl commented on Mr. Jussaume's statement regarding their principal use and stated that there is no reason why this site can't be used for a cell tower. It has multiple principal uses.

Mr. Freeman Chen-Shi Lin, 284 School Street, had asked why set a location at the lowest point of the area? What other sites are there? Will it disturb cordless phones and home alarm systems. Mr. Maxson stated the FCC regulates interference electromagnetic problems. There is no known interference with those items or home televisions.

Mrs. Kathy Quinn, 299 School Street, stated 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 and it is occupied by multiple handicapped residents and must be taken into consideration and wants the applicant to be aware of the residents that live within that area. Worried the property values will decrease. Mrs. Quinn stated she thinks the applicant is misleading the Board members.

The Planning Board should deny the request for the special permit.

Mr. Eriksen stated there was no intention to leave any residents off the map. The said property was listed a DPW building from the Town Assessor's Office. The map was done by aerial view and the home that consists of the handicapped residents has been corrected with the revised plans.

Mr. Maxson stated there are certain case laws we have to follow. If it continues to court, the final ruling is up to 1 judge.

Young gentleman with eyeglasses stated there is no significant gap. Why do we need the cell tower? It is ridiculous to install a cell tower to fill a gap. No coverage is needed at the residential area. He stated he has a cheap \$30 cell phone and it works well, even in his basement.

Mr. Maxson explained the difference in signal levels.

Mr. Jaikumar explained that customers want the high speed levels and it will be in the choice of the consumer.

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

Mr. Eriksen stated he does not have that information. Mr. Maxson stated can not discriminate against competing companies.

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

Pamela Harting-Barrat, 27 Oneida Road, stated the properties within the Light Industrial (LI) Zoning District are occupied by multiple residences. It can not be looked at as just LI.

Mr. Bartl stated that some properties are no confirming and some were filed under special permits and/or comprehensive permits.

Mr. Jim Quinn, 299 School Street, stated there is a very close facility at 40Y Annursnac Hill Road, Concord, MA. He stated the multiple monopole towers can be seen from Craig Road. 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.

Mr. Fred Tipton, 311 School Street, stated he has submitted pictures to staff on the balloon test and what the image would look like at full scale. Mr. Tipton stated there is a copper theft issue and it could affect the abutting properties and putting citizens at risk.

Mr. Richard Jussaume, had stated the applicant needs to proof grievance regarding the claimed gag. He had asked when will the meetings be over?

Mr. Bettez stated this is a process and there will be more than 1 meeting, it needs to be continued for further discussions and submissions.

Mrs. Kathy Quinn asked if the Historical Commission commented?

Staff stated the indicated the Historical Commission would comment after the balloon test but we have not received anything from them and 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 the decision deadline to June 14, 2010. The Planning Board voted in favor 6-0.

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 initial of the Economic Development Committee (EDC) but at this time, there is no hurry to add to zoning. They have not dealt with the merchandising side of it. 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 signs and enforcement. Board members discussed Ms. Isabelle Choate's submitted comments and Mr. Tindal explained and agreed with the changes. Would like to see it simple, lessen the friction and find a balance. Mrs. Pam Hardt-Barrett had asked by extend the display dates. It is a difficult issue to enforce and 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 even and it" from Article ZB, Mr. Bourdon moved to recommend. Mrs. Busse 2nd; all in favor

Mr. Niemyski motioned to decrease the display time from 90 days to 28 days, Mr. Bourdon moved to recommend Article ZB, Mrs. Busse 2nd,

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

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

Motion did not carry.

Mr. Clymer motioned to have the display time to 45 days, Mr. Clymer moved to recommend Article ZB, 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.

Staff stated he will work finalize Article ZB and work with Ms. Choate's comments.

Mr. Niemyski moved to recommend Article ZC, 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.