



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

Zoning Board of Adjustment Minutes April 20, 2010

Board Members

Mark Samsel – Chairman
Tom Murray – Vice-Chairman
Dianna Fallon – Secretary
Elizabeth Dunn – Member
Heath Partington – Member
Jim Tierney – Alternate
John Alosso – Alternate (Absent)

Staff:

Michael McGuire – Building Inspector
Patricia Kovolyan – Administrative Assistant

Lot #2-A-76 Case #6-2010 (Continued from February 23, 2010 & March 23, 2010)

Applicant – Cellco Partnership d/b/a Verizon Wireless, John Weaver, Agent
Owner – John & Emilia MacDonnell
Location – 111 North Lowell Road
Zone – Rural

A variance is requested from Section(s) 602.1 of the Zoning Ordinance to permit the construction of a wireless telecommunication tower and support structures.

The Chairman addressed inquiries that had been received by staff.

- Does a change from the application relative to height constitute a change in the application? The Board in its authority will not exceed requested relief without a new posting. The Board can require an applicant to meet certain conditions as described in RSA 674:33 II. Conditions must be reasonable.
- Reading correspondence. Because of its judicial capacity members are required to take extreme care in discussing cases or aspects of cases in public. The Board relies on staff to answer procedural questions and collect correspondence. The control is necessary because one statement from a Board Member can invalidate a case or its results. Members do have access to case files anytime the office is open, however, Members are not required to read correspondence but it is their duty to do so.



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The Chairman informed the audience that the public input phase that was in progress at the March 23, 2010 meeting was continued. Because there was a balloon test, since the last meeting, those who spoke at the March 23, 2010 meeting could speak again. The five-minute rule will apply but could be expanded if requested.

Mrs. Dunn motioned and Mrs. Fallon seconded the motion to change the rules to allow for additional testimony from interested parties after the applicant has had a chance to make a rebuttal. **Motion passed 4-1.** Mr. Murray voted against the motion because changing the by-laws would not be helpful to either party and he would like to move the case along to get into Deliberative Session.

Mr. Joel Dube of 4 Beacon Hill Road said that there was no independent validation of the height or position of the crane during the balloon test. The test was scheduled to start at 9:00 AM but did not start till 9:30 AM and the crane that was not supposed to move was moved.

Mr. Bryan McDade of 6 Beacon Hill Road said that the crane was moved between 2:45 and 3:05 PM.

Ms. Marie Hebert of 6 East Nashua Road said that Verizon was not supervised.

Ms. Lisa McDade of 6 Beacon Hill Road presented a slide show, submitted photos and a current market analysis of her property, all marked as Exhibit #1.

Mr. Joel Dube of 4 Beacon Hill Road said that Laura Scott, Director of Community Development, sent an email at 10:06 AM stating that she had measured the height of the crane with a tape measure and that the crane would remain in place till 5:00 PM. Please note that the measurement was taken with a tape measure in 40 mph winds.

Mr. Frank Hebert of 6 East Nashua Road submitted a letter addressing who wins and who loses if the variance is approved. Mr. Hebert also submitted an estimated property value impact study of the proposed cell tower at 111 north Lowell Road, marked as Exhibit 2.

Mr. Michael Carpenito of 2 East Nashua Road submitted photos and the policy for identification of historic properties for Telecommunications Projects from Elizabeth Muzzey, Director of the NH Division of Historical Resources/State Historic Preservation Officer, marked as Exhibit 3.

Mr. Vance Poteat of 9 Fine View Road, a Windham resident and former AT&T employee, currently a Telecommunications Professor, explained his difference in opinion of the intensity of RF energy.



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Mr. Ross McLeod of 4 Nottingham Road who worked for AT&T in Ohio read part of the Telecommunications Act of 1996 into the record and submitted 6 pages of notes marked as Exhibit 4.

Mr. Bob Coole of 20 Morrison Road said that the State of NH Department of Transportation was not notified as an abutter.

Mr. Dave Simmons of 119 North Lowell Road said a cell tower would destroy the view from his home.

Ms. Jennifer Simmons of 119 North Lowell Road worried about health risks affecting her family if the tower is built.

Ms. Susan Hoey of 4 Eastwood Road is in opposition to this request because it would devalue property.

Mr. John Mangan of 1 Depot Road would be able to see the tower from his yard and asked the Board to deny the petition.

Mr. Phil Robbins of 12 Bedros Street shared his perspective as a neighbor and psychologist. Mr. Robbins asked the Board to visualize a cell tower in the middle of a rural oasis.

Mr. Andrew Dickinson of 117 North Lowell Road said that there are several older houses near 111 North Lowell Road that show up on historic maps dating back to the 1850's. Mr. Dickinson went on to say that he is a cell phone user but would not want a strong signal at the expense of having to look at an unsightly cell tower from his kitchen window. Mr. Dickinson submitted his notes and a history of 117 North Lowell Road marked as Exhibit 5.

Mr. Joseph Salafia of 14 Beacon Hill Road is a Verizon customer and has never had a gap in the coverage and asked the Board to deny the request.

Mr. Eric Schwegler of 28 Beacon Hill Road would be able to see the cell tower from his home.

Mr. Paul Redmond of 2 Beacon Hill, a Real Estate Broker, was asked to do a market analysis of Mr. Joel Dube's home and Mr. Redmond gave a figure of what the property would sell without a cell tower and that the property would sell at approximately 10-20% less if the cell tower was constructed.



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Mr. Charles Hannon of 8 Beacon Hill Road, a Verizon customer who has not experienced a gap in coverage asked the Board to protect the neighborhood.

Mr. Bob Leonard of 88 Meetinghouse Road said Verizon has not demonstrated a need for the cell tower.

Ms. Marie Hebert of 6 East Nashua Road submitted a petition having 849 signatures from Windham residents and a total of 945 signatures marked as Exhibit 6. Ms. Hebert said that the Kraft Report introduced by Verizon was useless. The Balloon Test should have included a helium balloon so that everyone could see the extreme height of the tower.

Mr. David Dube of 59 Meriam Street, Wakefield Ma. (Mr. Joel Dube's brother) submitted a DVD that included research and data behind his report.

Mrs. Fallon read into the record the following letters of opposition.

- Paul Richter of 2 Beacon Hill Road
- Kimberly Ackerson of 12 East Nashua Road
- Ellen Thibodeau of 5 Fine View Road

Letters of opposition were also submitted by the following:

- Justin Richardson of Upton & Hatfield on behalf of Joel and Diane Dube.
- Rocco & Josephine Conticchio of 7 East Nashua Road
- Kelley Gage of 12 Fordway Extension
- Dan Guttman of 20 Heritage Hill Road
- Marjorie Dastous of 22 Bear Hill Road
- Kathleen Howard of 4 Fine View Road
- Lee Malone of 15 Stacey Circle
- Val Munoz of Prudential Verani Realty
- Annette & Majid Charmchi of 5 Coachman Road

The Chairman granted a ten-minute recess.

The Chairman called the meeting back to order.

Attorney Hildreth requested that Verizon Wireless be permitted to withdraw its application from further consideration. Attorney Hildreth said that either Ross McLeod or Dave Dube quoted from the '96 act that was intended to create a collaborative process between carriers, communities, and



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residents searching for the least intrusive site while fulfilling the mandate of the act to deploy a nationwide wireless network. This process at times seemed to be more confrontational than collaborative and Verizon would like it to be a collaboration. Verizon intends to come back with a proposal and will review alternative sites but will probably be back with a proposal for the same site. A revised application will probably be ready in thirty days.

Mrs. Dunn said the applicant has the right to withdraw his application and having withdrawn it, it is no longer within the Zoning Board's jurisdiction. Mrs. Dunn went on to say that the abutters have put significant effort and finances into this application and the applicant intends to return. Mrs. Dunn had concerns about the burden on abutters when there are repeated applications. The applicant should be cautioned about that concern.

The Chairman said that when the application comes forward the process will start all over again and testimony will need to be submitted.

Mr. Murray would like an opinion from Town Counsel on a resubmitted application for the same property.

The Chairman recommended that the Board contact Attorney Campbell and ask him to speak at a Zoning Board meeting in order to include the public.

Mr. Joel Dube of 4 Beacon Hill Road said that he has invested thousands of dollars into this fight and has a seven year old daughter at home who is scared to sleep in her bed because she is afraid that the tower is going to fall on her. Mr. Dube said his wife and child are looking for answers from him, now he has to go home and tell them this atrocity is still hanging over their heads. Mr. Dube asked how is having to wait another 30 or 60 days being collaborative. Mr. Dube went on to say as long as he owns his home he will fight this *tooth and nail*. Mr. Dube apologized for his loud voice.

Mrs. Dunn motioned to adjourn. Mrs. Dunn withdrew her motion.

There was discussion on whether to accept the withdrawal or continue the case to the next meeting. The Chairman said if there are questions regarding the withdrawal the Board should talk with Town Counsel.

Mr. Murray motioned and Mr. Partington seconded the motion to continue Case 6-2010 until the Board meets with Town Counsel to get an opinion concerning the withdrawal. **Motion passed 5-0.**



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Mrs. Dunn motioned and Mr. Murray seconded the motion to adjourn. **Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for April, 27, 2010 at 7:30 PM in the Community Development Office.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.