

February 2nd, 2015

Town of Boxford, MA  
Zoning Board of Appeals  
7 Spofford Road  
Boxford, MA 01921

**RE: Substantial Evidence In Support of Denial of 12 Mortimer Application: Boxford Master Plan**

Dear Boxford Zoning Board of Appeals:

As the ZBA may be aware, one of the fundamental components of the Telecommunications Act of 1996 is that any decision of denial must be supported by substantial evidence, contained on the written record. 47 U.S.C. 332 (c)(7)(B)(iii). As stated, "The TCA's substantial evidence test is a procedural safe-guard which is centrally directed at whether local zoning authority's decision is consistent with applicable zoning requirements." Town of Amherst, NH v. Omnipoint Communications Enterprises, INC 173 F. 3d 9, 14 (1st Cir. 1999). Additionally, "Substantial Evidence, 'does not mean a large or considerable amount of evidence, but rather such evidence as a reasonable mind might accept as a adequate to support a conclusion.' Cellular Tel, Co v. Zoning Board of Adjustment of Ho-Ho-Kus, 197 F.3d 64, 71 (3rd Cir. 1999). The Zoning Board of Appeals should consider that inconsistency with our Master Plan in addition to specific aesthetic concerns would be "more than a scintilla of evidence". Cellular Tel Co. v. Oyster Bay, 166 F. 3d 490, 494 (2nd Cir 1999). In addition, legal precedent has been established in the First Circuit Court, which affirms decisions made by local zoning board specific to aesthetic concern, which directly correlates to the Boxford Master Plan intent and language. Note, Green Mountain Realty Corp v. Leonard 688 F.3d 40 (1st Cir. 2012) and Southwestern Bell Mobile Systems v. Todd 244 F.3d 51 (1st Cir. 2002). In testimony heard before the Zoning Board on 1/22/15, Ms. Thompson suggested that the Zoning Board may not deny a permit based upon aesthetic concerns that are general in nature and do not take into account the needs of the carrier. What is omitted by Varsity Wireless' counsel, is that aesthetic concerns may be considered and upheld if they are grounded in specifics of the case. "Because 'few people would argue that telecommunications towers are aesthetically pleasing' a local zoning board's 'aesthetics judgment must be grounded in the specifics of the case." (Quoting Sw. Bell, 244 F.3d 61). I will demonstrate that the Boxford Master Plan clearly and expressly supports a denial based upon substantial evidence, in that the proposed structure would flagrantly and egregiously attack and degrade the aesthetic values of our neighborhood and directly contradict the goals sets forth in the Master Plan. Furthermore, the Zoning Board is called upon in Boxford bylaw 196-1 to consider the recommendations of the Master Plan and to encourage the most appropriate use of land throughout the Town.

Each of us that calls Boxford home, understands the intrinsic values which we cherish and seek to protect. The sentiment is aptly recapped by Sideny Perley in his 1880 book entitled: *The History of Boxford, Essex County, Massachusetts*. He writes, " As a whole, Boxford is a fine old farming-town; pleasant to live in, healthy, and the many natural beauties of her landscapes, with the sweet warbling of the native songsters, that inhabit the glades, and the exquisite ferns in the spring unrolling from their woolly blankets, the cardinal-flowers of the late summer, the golden-rod and asters of the autumn, and all the lovely sisterhood of flowers which adorn our hills and meadows, give a continual glow of pleasure to the heart which loves the truly beautiful and the wonders of creation," Boxford has an unparalleled understanding and appreciation of our legacy, natural resources and surroundings; which requires a heightened sense of sustainable practices and neighborhood stewardship. In a way, the Boxford Master Plan is a nod to our history, but most importantly, summarizes who we are as a town, what we stand for as a community and how our shared values shape progress and development.

The first stated goal of the Boxford Master Plan is to "Maintain Boxford's unique character and rural feel as a community". The Policy resulting from that goal is to protect Boxford's natural resources, such as ponds, wetlands, water resources, buffer zones and critical habitats. Additionally, the policy indicates that we must continue to preserve woodlands, fields and other open space resources while protecting wild animal species, native fauna and flora and their habitats. It would seem that a 156 foot structure, contained within a 12,000 square foot intrusion area, bordering wetlands and critical wildlife habitats, in clear site of protected trails and visually intrusive to numerous neighboring homeowners would be in direct and offensive contradiction to our first goal. Town residents by way of survey indicate expressly in the Master Plan that "the highest priority of planners should be the continuation of the current rural character of the Town and protection of natural resources. The expansion or creation of new commercial zones is not welcome..."

Our Master Plan also includes Land Use Recommendations for Planners. The Plan suggests that the town should continue to investigate the possibility of municipal development of Town land at Spofford and Ipswich Roads, in addition to a refrain from relaxing existing zoning rules and regulations. Providing a special permit for this type of excessive, obnoxious and injurious commercial structure in residentially zoned land, would be a gross example of relaxing our bylaws and not in the spirit of these recommendations. Additionally, the Master Plan indicates that our town survey concluded that, "the Town's population does have a desire for additional services, but not at the cost of changing the character and feel of the community. An approval of this structure would directly contradict the requests of our residents, by compromising the character and feel of our town's natural resources for commercial development.

Another key consideration contained in our Master Plan, is the importance of our residential tax base. The Plan indicates that "No other area town has such a small contribution from its commercial tax base. This indicates that residential property owners almost fully support the annual municipal budget." Two important points arise from this commentary. First, land owners in Boxford should enjoy more standing with the zoning board legally than outside interests, as our tax contributions almost fully support municipal operations. And second, the Zoning Board should not make any decisions which seek to materially degrade highly valued residences, as this negatively impacts the property tax base and resulting town revenues. Our Master Plan additionally indicates that Boxford has some of the highest property values in the Commonwealth, almost doubling over the past decade. A logical conclusion is that residents of Boxford have much more to lose financially, based upon the relative and comparable values of our homes. Additionally, the Town Survey indicates that, amongst other reasons, people move to Boxford for the "quality of life". Any zoning decision that allows an intrusive structure in close proximity to residential neighborhoods would result in degradation and a reduction in quality of life, with a strong negative correlation to our future buyer pool. Additionally and in consideration of Mr. Lemay's erroneous testimony of 1/22/15, the abutters will respond in kind with more complete and accurate information at some point forthcoming.

The Boxford Reconnaissance Report is supplemental in nature to the Boxford Master Plan. This document includes planning bylaws and other trends which state that "All of Boxford's Roads except the numbered routes have been designated as Scenic Roads in accordance with the Scenic Roads Act - M.G.L. Chapter 40-15C. It would appear obvious to this abutter, that a 156 foot faux pine tree structure and commercial compound visible from Main Street, Mortimer Road, Lawrence Road, Berry Patch Lane and numerous high elevation sites across Boxford, would be wildly inconsistent with the Scenic Road Act, and would degrade the scenic vistas residents and visitors enjoy as they traverse Boxford's roadways. The Reconnaissance Report also reviews the important of Village Character as a specific Boxford value. The document states, "Nearly all preservation strategies address village or neighborhood character in some manner. Boxford's concern about the preservation of historic dwellings and the secondary buildings is a concern about neighborhood and village character." The proposed site at 12 Mortimer is within close

proximity to three historic homes, of which two of those would experience adverse visual impacts. Wendy Perkins, the Chair of our Historical Commission, has expressed six concerns pertaining to this in her letter to Varsity Wireless dated 12/10/14. "The proposed site is within a half mile of three significant historic properties. The Peabody Sherrill House at 166 Main Street. Berry Patch Farm at 186 Main Street and the Simpson House at 327 Main Street. All three properties would be eligible for inclusion in the National Register of Historic Places. Erecting a cell tower at this location could have an adverse effect on these historic assets and would be an intrusion upon the nature of the community. There would be a change in the character of the visual setting, for instance, the artist's rendering shows a "faux tree"/tower that is clearly visible from 186 Main Street. There would be an audible impact of a generator on the rural setting of the three properties and the surrounding neighborhood and it would be inconsistent with the environment. These adverse factors could have a future impact on any prospective purchasers considering investment into one of these properties." This commentary by Mrs. Perkins could alone suffice as substantial evidence under the TCA, and further serves to fully summarize the values articulated in both our Master plan and Reconnaissance Report.

In the case, New Cingular Wireless PCS v. Fairfax County Board of Supervisors, F.3d 2012 WL 922435 (Fourth Cir, 2012) district court concludes and the Circuit court affirms the following: "The Fairfax board reached a reasonable decision to deny AT&T's application on the basis of determination that the proposed telecommunications facility was not in harmony with the local Zoning Ordinances and the County's Comprehensive Plan..." The intent of and language contained within the Boxford Master Plan does not support the construction of a wireless communications facility at 12 Mortimer Road for the reasons expressed in this letter. Our Master Plan does not effectively prohibit wireless services, but rather permits the Zoning Board to strike a balance between progress and maintaining our values as inferred in Boxford bylaw 196-1. "Those are the sorts of choices and trade-offs which the Act permits towns to make in the first instance. See Amherst, 173 F.3d at 15; Aegerter v. City of Delafield, 174 F.3d 886, 891 (7th Cir.1999). In this situation the heavy artillery of federal preemption is simply unwarranted."

Thank you,



Mike Cassidy  
25 Berry Patch Lane

Cc  
Boxford Selectmen  
Boxford Planning Board  
Boxford Conservation Commission