



TOWN OF DARTMOUTH  
Office of the Zoning Board of Appeals  
400 Slocum Road, Dartmouth, MA 02747  
(508) 910-1868

## ADMINISTRATIVE MINUTES

DATE OF HEARING: February 26, 2015

*6:30 P.M. Chairman Jacqueline Figueiredo opened the meeting, Pledge the Flag, Moment of Silence*

PRESENT: Chairman Jacqueline Figueiredo, Robert Gardner and Dr. Rahim Aghai  
Associate Members: Michael Medeiros  
Director of Development Deborah Melino-Wender and Principal Clerk Michelle Vieira  
ABSENT: Halim Choubah and David Dore

Chairman Figueiredo announced next meeting date for the Zoning Board of Appeals will be March 10, 2015 @ 6:15 in room 304 at Town Hall.

### ADMINISTRATIVE

The Board unanimously voted and approved the following Minutes as amended:

- Minutes from Case (1/20/15)#2014-22 300 Gulf Road-Special Permit/Variance

A motion was made by Robert Gardner to accept the Minutes as amended, seconded by Dr. Rahim Aghai and unanimously voted.

Robert Gardner made a motion to close the Administrative Meeting, seconded by Dr. Rahim Aghai, passed unanimously.

6:35 P.M. Adjournment

*Michelle Vieira*

Michelle Vieira, Principal Clerk  
For the Zoning Board of Appeals  
Date of Approval:

DARTMOUTH TOWN CLERK

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## MINUTES

DATE OF HEARING: February 26, 2015  
CASE: SPECIAL PERMIT/VARIANCE CONTINUANCE  
CASE NO: 2014-22  
Petitioner/Applicant: NEW CINGULAR WIRELESS PCS, LLC (AT&T™)  
Property Owner: THISTLE TRUST LLC, TENANT AND CONCORDIA COMPANY LLC, LANDLORD  
Representative: ELISABETH RUTKOWSKI OF TRM AND EDWARD PARE, JR., Esq.  
Subject Property: 300 GULF ROAD  
Registry of Deeds: BOOK 7917 PAGE 343  
District: MARITIME/MARINE INDUSTRIAL

### ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Robert Gardner, Dr. Rahim Aghai  
ASSOCIATE MEMBERS: Michael Medeiros, Esq.  
Director of Development Deborah Melino-Wender and Principal Clerk, Michelle Vieira  
ABSENT: Halim Choubah, P.E. and Dr. David Dore  
ALSO PRESENT: Assistant Town Counsel Brian Cruise, Attorney Pare, Dan Goulet C2Squared, Elisabeth Rutkowski,, and Many Residents

*6:35P.M. Chairman Figueiredo opened the hearing introducing Assistant Town Counsel Brian Cruise who will be representing the Town and asked if the Board or Attorney Pare had any objections to having Attorney Cruise substitute for Attorney Savastano. There were none so the hearing would not need to be postponed.*

*Chairman Figueiredo stated that this case is being continued from January 20, 2015 for several of reasons. Dr. Aghai had asked Mr. Santos is he was willing to hire his own experts relating to his property and he said yes. Also, Mr. Gardner wanted more time to review information related to the gap coverage and alternate sites.*

### NEW CORRESPONDENCE AND DOCUMENTS RECEIVED SINCE JANUARY 20, 2015

- January 21, 2015 e-mail from Michael & Pauline Pope
- January 30, 2015 letter from Massachusetts Historical Commission
- February 5, 2015 letter from Attorney Pare to Conservation Commission
- February 6-10, 2015 e-mail communications among Chris Hesse from US Wireless, Inc, to Attorney Pare, Attorney Savastano regarding a site at 243 Bakerville Road. Mr. Hesse provided documents related to that property.
- February 9, 2015 letter from William McQuiggan and Peter Rhys Jenkins
- February 13, 2015 letter from Diane Gilbert
- February 16, 2015 letter from Peter Rhys Jenkins
- February 21, 2015 letter from Michael & Pauline Pope
- February 22, 2015 letter from Alexandra Whitney Obilensky, whose child attends DELC

*Chairman Figueiredo also stated that in anticipation of the Board requesting information regarding the feasibility of either the Santos site or the site at 243 Bakerville Road (Brehaut property) AT&T (Attorney Pare) and Attorney Savastano met with Conservation Commission on February 10, 2015.*

Attorney Pare updated the board on what had transpired since the last meeting. He stated that at the last meeting Mr. Santos stated he had a potential lease with US Wireless. Mr. Hesse from US Wireless contacted Mr. Pare and informed him he did have a lease, but not with Mr. Santos. At the Conservation Commission meeting, Conservation Commission stated that there is not an application before them. Both sites (Santos and Brehaut) were discussed, and it was clear that a wetlands crossing for the Santos and also for the Brehaut site work in the buffer zone would probably not be approved. Both Attorney Pare and Attorney Savastano had the same opinion that those sites would be challenging and difficult to grant wetlands relief. Mr. Hesse attended the meeting, Mr. Santos did not.

*Attorney Cruise stated that Attorney Savastano relayed to him what transpired at the Conservation Commission meeting. The Conservation Commission minutes had not been finalized and have not been voted on. Attorney Savastano concurred with Attorney Pare and the Conservation Board that there would be significant issues with allowing any development of the Santos and Brehaut parcels.*

*Chairman Figueiredo stated that the Santos and Brehaut sites were not feasible or viable sites and asked the Board Members their opinion. Both Dr. Aghai and Mr. Gardner agreed with Chairman Figueiredo.*

*Chairman Figueiredo said she is comfortable that a significant number of sites have been investigated, and feels there is no other site that is feasible or viable. Both Dr. Aghai and Mr. Gardner agreed with Chairman Figueiredo.*

*Chairman Figueiredo reviewed the information that has been presented to date regarding the Concordia property. Different plans have been submitted, and the plan submitted January 6, 2015 reflects the unipole design at 100' and lease area at 40 x 50 (1970 sq. ft.). Chairman Figueiredo reviewed the zoning summary from the plan of record dated December 17, 2014. She stated that at the hearing of January 6, 2015, she, Dr. Aghai and Mr. Choubah felt that AT&T met the burden of the significant gap based upon what AT&T had presented and what Isotrope had confirmed.*

Attorney Pare clarified that the coverage area is greater than the area around the four roads that the opponents had focused on, as shown in all the maps that had been previously presented. He stated that the system is designed at 4G LTE voice over data and the gap coverage maps show that there is also a gap in the 3G coverage.

Dan Goulet, of C2Squared, submitted his report along with a map titled "Comparative Coverage-Proposed @96 Ft. vs. 147 Ft. Over Existing Coverage Gap" which showed the targeted gap for this project. He relayed information related to the residents' questions, and he explained that the coverage gap was not specific to just four roads.

*Chairman Figueiredo invited public comments regarding this petition.*

Mr. Pope stated he thought the area to be covered was Gulf Road, Rock O'Dundee Road, Bakerville Road and Smith Neck Road areas. His group focused on those roads, and they were not informed differently. He said he is not convinced that there is a gap in coverage. He also questioned population counts and stated that TCA requires voice coverage not data.

Christine Hubert, owner of Dartmouth Early Learning Center, voiced her concerns regarding, (1) the effect the tower will have on her business, (2) the issue of potential emissions, and (3) the issues of an exemption to the town by-law. She also stated she didn't think a gap existed.

Nicholas Obilensky, parent of a student who attends DELC voiced his concerns regarding the health risks with a cell tower so close to the school and his concern of the effect it will have on student attendance at DELC.

*Mr. Medeiros asked Attorney Cruise what factors need to be considered in order to determine if there is a significant gap? Attorney Cruise responded that the courts will want to see expert reports.*

*Diane Gilbert voiced her concerns regarding the impact on the scenic road, the farm district, and she requested the recent letters from the Mass. Historical Commission. She expressed her concern about the location of the tower and stated that the tower would be visible above the tree line.*

*Greg Pimental expressed his opinion that there wasn't a significant gap in coverage.*

*Chairman Figueiredo stated that any decision the board makes is conditional upon the applicant receiving any other required approvals. She also stated the board has done its due diligence, has received expert information and testimony and has look at alternative sites. She stated that the Board has to remove the emotional component and follow the applicable laws and regulations.*

*Ray Oswald expressed concerns about the aesthetics.*

*Attorney Pare responded regarding Mr. Pope's numbers and other questions/comments by the opposition. He said that AT&T relies on the US Census data. AT&T has provided evidence based on science as to what those numbers will be, the size of the gap (acreage & mileage) and Mr. Goulet's reports. Regarding precedence, he said that all carriers have to come in and prove their cases. With respect to the historic concerns, every site is subject to review by the State's Historic Preservation Office. When AT&T received the letter from MHC January 30<sup>th</sup>, Mr. Pare discovered that MHC had not been updated with the photo simulations. Mr. Pare made the request to be put on the Dartmouth Historic Commissions agenda for March 2<sup>nd</sup> and he will be attending. With respect to the gap coverage issue, he noted the findings of AT&T's consultant had not been questioned by any other experts, and Mr. Maxon, consultant for the ZBA has confirmed the gap.*

*Mr. Pope stated that he does not believe that there is a significant gap and believes in the population numbers that his group had presented.*

*Attorney Pare responded the plots were never limited to the four roads as identified by the residents.*

*Chairman Figueiredo commented that the coverage maps and the gap presented by AT&T has never changed.*

*Robert Gardner made the motion to close the public hearing which was seconded by Dr. Aghai. The motion passed unanimously.*

*Chairman Figueiredo asked the Board members for any comments.*

*Robert Gardner stated that after listening to experts, the tapes of previous meetings, and reviewing information over the past few days, his opinion is that AT&T has not demonstrated or proved to him that their stated gap coverage exists. He said he will vote no.*

*Dr. Aghai stated if AT&T provides all answers to all questions he will vote yes.*

*Chairman Figueiredo stated she is convinced that the gap exists and she supports this petition.*

*The Board discussed that they would take a vote tonight subject to the findings and conditions that would be drafted and presented at the meeting scheduled March 11.*

*Attorney Cruise advised the committee that due to shot clock issues and the federal law relating to cell towers, if the applicant appeals a no vote, it is likely that the courts will just make a decision. If the decision is overturned, then no conditions by the Board of Appeals will apply.*

*Robert Gardner made a motion to deny the petition, Dr. Aghai seconded the motion*

*The Board voted as follows:*

*Chairman Figueiredo voted No*

*Robert Gardner voted Yes*

*Dr. Aghai voted No*

*Town Counsel recommended that the Board restate the motion as a motion to approve in order to make appropriate findings.*

*Robert Gardner made a motion to rescind prior vote, Dr. Aghai seconded the motion. The motion passed unanimously.*

*Dr. Aghai made a motion to approve the petition, Robert Gardner seconded the motion.*

*The Board voted as follows:*

*Chairman Figueiredo voted Yes*

*Robert Gardner voted No*

*Dr. Aghai voted Yes*

*The motion failed due to a lack of unanimity.*

*Robert Gardner made a motion to close the hearing, Dr. Aghai seconded*

*Robert Gardner made a motion to adjourn, Dr. Aghai seconded, motion passes unanimously*

*8:40 P.M. Hearing adjourned*

*Michelle Vieira*

*Michelle Vieira, Principal Clerk*

*Zoning Board of Appeals*

*Date of approval: \_\_\_\_\_*