



Town of Mount Desert
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**ZONING BOARD OF APPEALS
OFFICIAL RECORD & REPORT
MEETING OF August 7, 2013**

PRESENT AT HEARING:

FOR THE ZONING BOARD OF APPEALS:

Members:

Kevin Walls, Jerry Suminsby, Chairman Bill Ferm, Edie Dunham, James Bright, Julie Reddish

FOR THE TOWN:

Diane O'Connell, Attorney for the Zoning Board of Appeals
James W. J. Collier, Attorney for the Planning Board
Heidi Smallidge, Recording Secretary

PUBLIC:

Donna Beals, John Fehlauer, Wendy Fehlauer, Kay Tracy Moore, Robert J. Moore, Jack Wright, Ted Bromage, Owen Craighead, Sheila Swanson, Bill Swanson, Larry Stabile, C. Keith Martin, Elliott Potter, Carol Martin, Candace Potter, Joe Tracy, Joe Williams, Deborah L. Williams, Ruth Mitchell, Robert Mitchell, Diane Watson, Jason Watson, Jean Travers, Bob Gashlin representing ATT/Cingular, Mary Bacon, Wells Bacon, M. Christine Breedlove, C.H. Breedlove, Thomas Walker, Katherine Harrington, Ruth Brunetti, William C. Fernald, Michael Deletetsky of Amec, Margaret Burden, Audra Klumb of A&D Klumb Environmental LLC, Blaine Hopkins of Global Tower Assets, Andy Hamilton of Eaton Peabody, Mariah Mitchell of Eaton Peabody, Anita Madeira, Barbara Williams, Thomas J. Fernald.

- I. **CALL TO ORDER:** The meeting was called to order at 6:00 pm by Chairman Bill Ferm. It was confirmed there was a quorum. Adequate public notice was confirmed and it was reiterated this was a continuation of the August 1 2013 meeting.

With regard to potential conflict of interest, Chairman Ferm disclosed that he has done legal work for the Williams and Watson families. He has had no direct communications with them with regard to this particular issue. He did not feel

this was a conflict. No objection was made by any of the parties involved. No further potential conflicts of interest were found.

It was noted the June 13 2013 Minutes were approved at the last meeting.

II. **Applications for Appeal(s):**
Administrative Appeal

- A. **OWNER(S):** Herbert A. and Diane L. Watson
APPLICANTS: Barbara L. Williams
LOCATION: Village Park, Somesville
TAX MAP: 010 **LOT(S):** 151 **ZONE(S):** Village Residential 1
PURPOSE: Appealing the Granting of a Conditional Use Approval Permit #001-2013 by the Planning Board for a Wireless Communication Facility (AB# 003-2013)

Chairman Ferm explained the type of appeal the Zoning Board of Appeals can hear. Specifically, the Board of Appeals can no longer hear de novo appeals and may only act in a purely appellate capacity in reviewing Planning Board decisions.

Attorney Collier objected to the procedure. He stated the applicant had no standing in the appeal; they have not demonstrated a particularized injury, nor did they appear before the Planning Board to make any argument there. Maine case law demands that these be demonstrated to establish standing. It was Mr. Collier's feeling that the Board of Appeals should not hear from the appellants at all and that the Board did not have jurisdiction over this appeal. Attorney Diane O'Connell agreed that the question of standing should be taken up first. If it is agreed that the appellant has no standing, it makes the rest of the hearing moot.

In a statement submitted by Barbara Williams, she stated she had standing due to a letter signed by the Watsons naming her as their agent, they being the owners noted on the deed of the property in question. Ms. Williams noted the land was purchased by her and Jason Watson, however the deed fails to reflect the change of ownership. Therefore, she was not sent notice of the meetings.

Attorney Andy Hamilton, representing the appellee, noted that no one from the Watson or Williams family were present at any of the 5 meetings discussing the conditional use review of the proposed tower. He noted Ms. Williams did attend an October 2012 subdivision review meeting for the tower lot, and that the Williams and the Watsons therefore had both constructive and actual notice of both the subdivision review and the conditional use review proceedings regarding the wireless communication facility. Mr. Hamilton stated that neither the Watsons nor the Williams have standing because, in their appeal, they must meet both of two criteria for standing, that of appearing before the Planning Board in the conditional use review proceedings that they now appeal and by demonstrating a particularized injury; of the two criteria, the Watsons and Williams have failed to demonstrate participation in the Planning Board's conditional use review of the

wireless communication facility, the Planning Board review that is the subject of the Williams' and Watsons' July 5, 2013 appeal.

Ms. Dunham noted there is nothing in the form used in applying for an appeal that requires Planning Board participation. Nowhere does it say in the rules and procedure that there has to be participation before the Planning Board. Ms. Williams added that she had not been told as much by the CEO when she applied for the appeal nor did she find it in any Town ordinance. In response, Attorney Diane O'Connell explained that State case law provides an overlay on local ordinance and requires participation before the Board in the proceeding from which the appeal is brought.

Lengthy discussion ensued regarding the issue of standing, with comments from the Board, appellant, appellee, and the public.

MR. WALLS MOVED THAT MS. WILLIAMS HAS STANDING SO THE BOARD CAN HEAR THE APPEAL. CHAIRMAN FERM SECONDED THE MOTION.

After more discussion, Chairman Ferm called for a vote. MOTION WAS DEFEATED 1 – 5 (FERM, REDDISH, BRIGHT, WALLS, SUMINSBY OPPOSED).

Ms. O'Connell noted the motion didn't pass, so a new motion needs to be made.

MR. SUMINSBY MOVED TO DISMISS THE APPEAL FOR LACK OF STANDING. MOTION WAS SECONDED BY MR. BRIGHT. MOTION APPROVED 5-1 (DUNHAM).

Approval of Minutes:

August 1, 2013: MR. BRIGHT MOVED TO APPROVE THE MINUTES AS PRESENTED. MR. WALLS SECONDED. MOTION APPROVED 6-0.

IV. Adjournment

CHAIRMAN FERM MOVED TO ADJOURN THE MEETING. MR. WALLS SECONDED. MOTION APPROVED 6-0. MEETING ADJOURNED AT 7:45 PM.

THE ZONING BOARD OF APPEALS
TOWN OF MOUNT DESERT
21 SEA ST/PO BOX 248
NORTHEAST HARBOR, MAINE 04662

NOTICE OF DECISION OF THE ZONING BOARD OF APPEALS

APPELLANT: Barbara L. Williams – AB # 003-2013

APPELLEE: Town of Mount Desert, Planning Board

The Zoning Board of Appeals, at a Public Hearing held the August 7, 2013, on the above described request, decided as follows:

Because no one from the Watson or Williams family were present at any of the 5 meetings discussing the conditional use review of the proposed tower they don't have standing. They must meet both of two criteria for standing, that of appearing before the Planning Board in the conditional use review proceedings that they now appeal and by demonstrating a particularized injury; of the two criteria, the Watsons and Williams have failed to demonstrate participation in the Planning Board's conditional use review of the wireless communication facility.

MR. SUMINSBY MOVED TO DISMISS THE APPEAL FOR LACK OF STANDING. MOTION WAS SECONDED BY MR. BRIGHT. MOTION APPROVED 5-1 (DUNHAM).

- ~~1. The Appeal is sustained and the matter is remanded for action consistent with this decision.~~
- 2. The Appeal is DENIED.**
- ~~3. The Appeal is remanded for further proceedings.~~

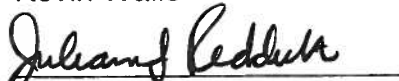
Voting in Favor:



William Ferm, Chairman



Kevin Walls




Julianna Reddish

Voting Against:

William Ferm, Chairman

Kevin Walls

Julianna Reddish


Jerome Suminsby

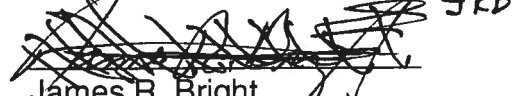
Ernest Coombs



James R. Bright

Eddie Duhnam

Jerome Suminsby

Ernest Coombs


James R. Bright


Eddie Duhnam