



REGULAR MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
July 18, 2005
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The Town of North Hampton Zoning Board of Adjustment met on Monday, July 18, 2005 in the Cafeteria of the North Hampton School.

Attendance

Present: (1) Jennifer Lerner; (2) Michele Peckham, Vice Chairperson; (3) John Anthony Simmons, Chairman; (4) Susan Smith
Alternates Present: None
Absent: (1) Ted Turchan
Staff Present: (1) Richard Mabey, Building Inspector/Code Enforcement Officer [BI/COE]; (2) Carla Bonney, Recording Secretary

Mr. Simmons, Chair called the meeting to order at 6:18pm.

Preliminary Matters

Mr. Simmons noted that Board Member Ted Turchan was late due to a work emergency. Council and audience were asked if they had a preference as to starting the meeting. Attorney Robert B. Field requested the meeting wait 15 minutes for Mr. Turchan's arrival.

Mr. Simmons stated that the time would be used to submit previously requested and/or new exhibits for **Gridcom & Cingular Wireless Application – Case #2005-14**;

Robert B. Field, Jr., Attorney for David B. and Terri E. Donsker, presented exhibits #101 through #109;

101. Patricia & Stephen Gianotti; Letter of Objection dated July 18, 2005;
102. Sandra E. Danks; Letter of Objection received on July 18, 2005;
103. Plan of Parcel, Conservation Restriction, Purchase Agreement(s);
104. Memorandum of Law; from Gridcom & Cingular, presented by Bosen & Springer, LLC;
105. John Dick, P.L.S. - Hancock Associates; report on wetlands in the form of a letter dated July 18, 2005;
106. Curriculum Vitae; John G. Dick, P.L.S., Certified Wetland Scientist;
107. Curriculum Vitae; Donald L. Haes, Jr., PhD, CHP;
108. Curriculum Vitae; David Choate;
109. Vern J. Gardner, Jr., MAI, SRA; Real Estate Appraisal - Supplemental Report, dated July 15, 2005

Peter Loughlin, Attorney for Denis and Donna Kokernak, presented exhibits #110 through #118;

110. Map; color-coded to represent residents who have written letters to the North Hampton Zoning Board or Adjustment;
111. Map; survey hi-liting property line boundary issue;

- 112. Set of 8 plan sets; showing subject property and the Kokernak lot;
- 113. James Verra; Letter dated July 13, 2005 summarizing title information and boundary line issue;
- 114. Bound Packet of Photographs and Maps; supporting documentation for letter dated July 18, 2005 submitted to Zoning Board of Adjustment;
- 115. David P. Maxson, Broadcast Signal Lab; Folder containing Mr. Maxson's curriculum vitae, wireless coverage review and evaluation;
- 116. Curriculum Vitae; James Verra, Land Surveyor;
- 117. Curriculum Vitae; Frank Shirley, Architect;
- 118. Bound report on Wetland and Soil Issues; from Gove Environmental Services;

16:01 on cd

CRB – unsure of who presented the following;

- 119. Parcel Summary; provisional - compilation of tax information for all homes on Ship Rock Road;
- 120. John H. Sokul, Jr.; provisional – previously submitted Letter of Objection dated June 28, 2005. Attorney Sokul is with Cleveland, Waters and Bass P.A. representing Michael and Kathleen Megna;
Mr. Simmons clarified “provisional” as meaning the above 2 exhibits not be part of the record until it was moved that they be part of the record. Council confirmed that these exhibits may or may not be referred to at a later date.

Deborah Minassian of 6 Woodland Road, North Hampton, NH 03862 presented exhibit #121;

- 121. Packet of Articles on EMF Exposure; 8 articles printed from various sources. Ms Minassian detailed briefly the contents of the packet, and stated that she wanted to make them available for public viewing.

Mr. Simmons asked if anyone else had any written testimony to submit. *CRB – unsure of who* stated that they did have 1 or 2 more reports, but didn't have it coordinated.

20:23 on cd

Mr. Simmons made the statement that it is his intent, as Chairman of the hearing, to make sure that anyone that has anything to submit for the Board's consideration or for part of the Public Record is strongly encouraged to both attend the meetings and/or submit written materials to the Board's attention at Town Hall. He requested any and all evidence that might be deemed relevant or important to the issues that might need consideration by the Board. He referred to the large volume of evidence submitted already, and indicated that it will be increasingly important to have written documentation of concerns. He encouraged anyone to speak at the proceedings as well as or instead of submitting written material and offered assurance that they would be recognized. Stressed the importance of cumulative information, even if it was just a case of standing up, speaking your name and agreeing/opposing previous comments.

6:45pm, Mr. Simmons noted that Mr. Turchan still could not be reached. He proposed continuing on to other preliminary matters before deciding on whether to proceed with the hearing specific to Case #2005-14. Asked Counsel for any objections; none given.

24:40 on cd

Mr. Simmons asked that Board Members turn to their blue binders and find the June 20th letter from Attorney Robert B. Field. He noted several issues he wanted to address.

Insufficient time to review the new application. Attorney Field stated that they had had opportunity to go over the application in detail since his June 20th letter, but still wanted to raise the procedural objection originally stated that the second application should have been treated as a new application by the Board. He requested that the issue be reserved for future discussion, although he is prepared to go forward in this case.

Mr. Simmons put the issue to the Board, asking if they felt a new application should have been made, as well as re-notification to abutters as if it were an entirely new matter. (Referenced previous meetings' exchange with Mssrs. Loughlin and Field). Mr. Simmons clarified that his understanding was that it were the same piece of property, same land owners, etc. and so his opinion was that it were still the same, despite relocation of the tower. Attorney Loughlin interjected that he had not agreed; that he considered the repositioning constituted a substantially different application. Mr. Simmons invited Board discussion to avoid future problems, asking if anyone thought proceedings should be closed down until a new application was submitted and abutters could be re-notified.

After some discussion Board agreed to move forward with the current application.

Attorney Field asked that, in the case of any opinions contrary to the issues he raised, his lack of response not be viewed as agreement/compliance. Mr. Simmons noted for the record that it was understood that Attorney Field was not changing his written position unless specifically noted.

Incomplete Information in the Application. List of requirements on pages 3 & 4 of the June 20th letter. Mr. Simmons asked Attorney [Springer](#) if they were willing to provide those requirements.

Attorney [Springer](#) stated that he was not in agreement that the 5 issues listed are indeed issues. He believes they are procedural issues and not necessary requirements to move forward. Attorney Field proposed going over the list of issues for public record.

For the record, typographical error on page 4 of the June 20th letter should read 415.7 instead of 414.7.

Issue A – *missing page 4 from binder 39:50 on cd*

Attorney Loughlin stated that he does not agree that section 415.7 applies; his understanding is that a variance is needed from the Zoning Board before the Planning Board would get involved. Attorney Field defended his point, saying the ordinance was not clear, and in the absence of clarity more information was needed for the Zoning Board. Mr. Simmons interjected that he agreed that conditional use permits are under Planning Board jurisdiction and should not affect Zoning Board requirements. The Board was asked for any objections; none were given. Mr. Simmons issued that it would not be a requirement in this case.

Attorney Field pointed out that sub-divisions of provision 415 are specific to it, and required certain information to be filed and presented. It is his opinion that the Zoning Board can not discharge its duties without much/all information listed in those sub-divisions. As an example there was some discussion as to whether information on feasibility of other leases/sites although it was not part of 415.7.C would apply as it was included under 415. ** (Example to note; 415.4.D4, a – m).

Issues B and C - missing page 4 from binder 44:45 on cd

Missing signatures of proper authorities/engineers; not enough information given to Board/abutters that they may educate decisions. Mr. Simmons asked Attorney Springer if he were prepared to supply additional information if the Board required, Attorney Springer replied in the affirmative. Mr. Simmons explained his understanding that a signature is proof that a certified persona had prepared X report (as opposed to the poolboy) and asked Attorney Springer if he were representing to the Board that properly licensed people had prepared the reports. Attorney Springer replied in the affirmative.

Mr. Simmons moved and Ms. Peckham seconded the motion that revised plans with the proper signatures be submitted at Town Hall within 10 days of the next scheduled meeting Unanimous vote (4-0)

** (Example to note; 415.4.D4, a – m).

48:44 on cd

More discussion as to protocol, Zoning Board/Planning Committee. Mr. Simmons stated that he considered the bottom line to be that since the Planning Board had not wanted a joint meeting with the Zoning Board, so any Planning Board issues would be considered “gutted out” of Zoning Board proceedings until/if the Planning Board should choose to include the Zoning Board.

Mr. Field voiced his opinion that since the Planning Board had not wanted to share information with the Zoning Board, it should be the obligation of the Zoning Board to get the information on their own. Asked that his exception be noted.

Issue D- missing page 4 from binder 51:00 on cd

Abutters’ opinion that material is replete with conclusions. Mr. Field stated that he does not feel the fact that a conclusionary statement is made in an application does not preclude the fact that it is submitted for discussion by the Board before moving forward. Mr. Simmons concurred with sections 2 & 3, but not with 1. (or section A, as it was noted A, 2, 3).

Mr. Simmons segued into ownership of the property and the fact that it is going up for sale, potentially changing permissionary status. Mr. Springer replied that at current Mr. Morton owned the property, they are authorized to go forward and intended to do so with the assumption that things would be resolved favorably in their decision.

Mr. Simmons moved and Ms. Smith seconded the motion that a – applicant be required (within 5 business days of transfer of ownership) to provide in writing to the Town of North Hampton proper authorization from whomever the landowner may become and that b – the applicant within 5 business days of now (July 18, 2005) provide a redacted copy of the current lease.

Ms. Peckham opened discussion as to whether 5 days was enough, motion amended that documentation be provided by the next meeting after ownership actually changed.

Mr. Field asked for clarification on the redaction. Stated that Federal Courts observe that once a private landowner is involved, there is little incentive for the landowner/lessee to look for alternative sites. Questioned the fact that with no specific date, how is the extent to which this is a pre-determined site be decided. Voiced that to allow an applicant to come in and “take the meat out of the lease” will not do anybody any good.

Attorney Bassett representing Denis and Donna Kokernak stood to comment that if the applicant were to redact the financial terms of the lease, they should be willing to waive making the argument of financial undesirability or infeasibility of alternate sites/technology.

Mr. Simmons asked Attorney [Springer](#) if he would be willing to provide a redacted copy with nothing but the financial terms redacted. Attorney [Springer](#) confirmed that that was exactly what he proposed to do. There was discussion as to the incentives/disincentives to seeking other types of technology, of making redactions other than financial and the best way to compare original with redacted copies.

1:03:22 on cd

Mr. Simmons asked that either/both party submit information substantiating as to what “normal” practice would be and/or what law would require for further disclosure. Topic to be left open as to whether a unredacted copy be required. Mr. Field agreed to have a copy of the notice of the original lease to Town Hall within 5 business days.

Steve Minassian of 6 Woodland Road, North Hampton, NH 03862 stood to ask if participation from abutters was encouraged. He was informed that although this meeting had not gotten past preliminary matters, comments from other parties would indeed be recognized once a decision as to how to proceed with the Board down a member was decided upon, and after both parties had had opportunity to present their cases. Mr. Minassian stated that in the interest of being forthright to the Town of North Hampton and the residents affected, that full disclosure be provided; that the more secrets that were kept the less support would be received from those residents.

Issue E - *missing page 4 from binder 1:12:12 on cd*

Abutters were invited onto the property to view balloon tests; there were no allegations that the Mortons had violated anything, used inappropriate fill, etc. The Gove report (exhibit #118) did say that there may have been some violations since 1969. The Mortons did not take title until 1980.

Attorney [Loughlin](#) countered that the point being raised was not whether the Mortons had violated any laws, rather that they currently own land on which there does appear to be debris in wetlands and there does appear to be a driveway that appears to have changes made to it that were not in compliance. It may be up to the Board to decide whether the applicant is or is not in compliance as to when the violations happened.

Mr. [Field](#) brought up that he felt that the Board should hire legal [counsel](#) before hearing any additional arguments. Materials are still being presented that may require expert legal advice and

he does not want to waste time going over material that will have to be gone over again once expert advice/counsel is secured. Discussion including all parties ensued.

Mr. Simmons asked Mr. Springer if the Applicant agreed to pay for the Board's Legal Counsel. Mr. Springer said yes.

Mr. Simmons moved and Ms. Smith seconded the motion to a) hire specialists and/or legal council at the applicant's expense to advise the Board; b) the Board would decide who would be consulted/engaged; and c) that/those people be hired and in their own chairs by the next scheduled meeting.

Unanimous vote (4-0)

Mr. Simmons asked that any recommendations as to appropriate experts/council be given to the Town Hall by the close of the business day on Wednesday, July 20th. He then asked if there were any additional procedural issues to be addressed. Hearing none, a 5 minute break was called.

End of first track on cd

Mr. Simmons re-opened the meeting. Asked Counsel how long they thought their presentation would take. Attorney Field recommended the meeting adjourn, since a) they would not have the opportunity to present their complete presentation, and b) there would be additional legal counsel brought in who would benefit from hearing that information first hand anyway.

Attorney Field proposed they address the lot on the corner of Atlantic Avenue and Woodland Road. (referenced exhibit #103). A previous statement that there were no alternative parcels of land to take under consideration that were not encumbered by conservation issues had been met with a July 13th recommendation of this lot. Exhibit #103 shows a boundary discrimination showing why the applicant felt they could not use that lot. Mr. Simmons recommended the two sides exchange information and try to resolve the issues and present the solution at the next meeting. Attorney Loughlin joined in that he did not feel either side would be able to change the other's mind, and that he would be willing to address their side at this meeting or future meetings; he also thought it a debate best heard by whatever additional council would be joining the hearing..

Mr. Simmons recommended again that the two sides work towards a compromise between themselves so not to waste the public's time. Made another call for procedural issues.

Attorney Loughlin recommended (and mentioned that Attorney Springer had agreed) that the Board take Rob Ciandella under consideration as having knowledge of both telecommunications and land conservation. He then wished Mr. Simmons a happy anniversary. Returning to the property boundary issue of exhibit #103 (*feedback until 10:24*) he mentioned a plan had been submitted showing the line off by approximately 25 feet, putting the base of the tower too close to abutting lot. Mr. Simmons repeated his recommendation that the two sides take time between them address the issue.

Discussion as to when the experts could be consulted by all sides; benefits of asking questions during presentations vs. during rebuttals. It was mentioned that the applicant had already made their presentation uninterrupted; it was fair that the next set of presentations also be uninterrupted.

Call for any additional information anyone might consider applicable/important. Call for recommendations as to what the public might feel necessary. **Steve Minassian of 6 Woodland Road, North Hampton, NH 03862** stood to ask for clarification as to how much additional information had been submitted and how the public could view that. Mr. Simmons consulted with the board and told the audience that 21 new submissions had been made and would be available to view at the Town Hall (in addition to information submitted previously).

Chart of new Drive Tests results were posted, date to be added to the package. Mr. Simmons asked if this would confirm prior tests and was informed to the affirmative.

Mr. Simmons asked for suggestions/objections as to the next meeting date, time and location. Acoustics and climate were brought into discussion as to why the North Hampton School would not be suitable again. The date decided upon is Tuesday August 15, 2005 at 6pm. Location to be determined and posted on the town web site (www.north-hampton-nh.gov).

Mr. Simmons asked that the remaining Board members leave it to him and Vice-Chair Peckham to follow up with suggestions made, determine and hire legal council for the Town of North Hampton. He cited the fact that both are in the legal profession and have vested interest in the outcome.

Ms. Smith moved and Ms. Lerner seconded the motion that the Board leave the choosing of legal council for the Town of North Hampton to Chairman Simmons and Vice-Chairwoman Peckham.

Unanimous vote (4-0)

It was requested that any recommendations be turned in to the Town Hall to be added to the list before the end of the business day on Wednesday July 20, 2005.

Hunter Owen stood to ask about other locations (i.e. school grounds) for the tower. Mr. Simmons apologized that Mr. Owens had not been given opportunity to speak earlier, and requested he write the Town Hall a letter and come to the August 15th meeting to speak. Mr. Owen will be on vacation on August 15th so Attorney Field offered that someone would be available to read that letter out loud.

33:30 on cd

Other Business

Acceptance of June 20, 2005 minutes; postponed until next meeting.

Rules and Procedures Meeting Notification notification of meeting requires use of Hampton Union Sunday edition, but deadlines have been prohibitive on a number of occasions. It was suggested that the option of using the Portsmouth Herald be left open.

Mr. Simmons moved and Ms. Peckham seconded that in the Rules of Procedure III; G “and/or Portsmouth Herald if necessary” be added to the list of acceptable publications.

Unanimous vote (4-0)

Mr. Simmons asked that a new draft of the Rules of Procedure be brought to the next meeting to be notarized.

Question raised as to number of votes needed for any type of action; procedure when the Board finds itself down a member – Mr. Simmons asked that statute be presented in writing to the LGC in order to clarify/establish for future reference. |

Adjournment

Mr. Simmons moved and Ms. Smith seconded the motion to adjourn at 9:03pm.

Unanimous vote (4-0)