



SPECIAL MEETING MINUTES
TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, January 10, 2006
North Hampton Elementary School Music Room

These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a transcription. All exhibits mentioned in these minutes are a part of the Town Record.

Attendance

Members present: (1) John Anthony Simmons, Chairman; (2) Michele Peckham, Vice Chairman; (3) Jennifer Lerner, (4) Susan Smith and (5) Ted Turchan.

Alternates present: None

Staff present: Richard Mabey, Code Enforcement Officer and Wendy Chase, Recording Secretary.

Mr. Simmons convened the meeting at 6:10pm.

Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report

Mr. Simmons went over preliminary matters. Mr. Simmons directed Ms. Chase to copy the memo she wrote to Mr. Pardue concerning the ZBA's proposed budget and Mr. Pardue's response and circulate a copy to each Board member.

Mr. Simmons read a letter from Gerry Billadeau, President of the CCE Homeowners Association. On behalf of the Homeowners Association Mr. Billadeau requests proposed changes to the zoning specifications associated with buried utilities. Mr. Mabey discussed the letter with Road Agent, Bob Strout and it was determined that the work being done, which involves digging up the road, is in the Town's right-of-way. The Town owns four feet from the edge of the road. Mr. Simmons suggested that the Planning Board would be the proper Board to discuss this issue and, since they were copied on the letter, it will be left to their discretion.

Mr. Simmons stepped down from the Board. Ms. Peckham read correspondence regarding a ZBA decision appealed by Giant Elevator Company. The Court ruled in the Town's favor that the ZBA was correct in finding for the Variance and there was no appeal filed. The matter is now settled.

Mr. Simmons rejoined the Board. Mr. Simmons stated that each member should have received an updated copy of the Rules of Procedures. The copies were distributed to members on November 9, 2005. A copy has been filed with the Town Clerk.

Mr. Simmons stated that there is an appeal from a Planning Board decision scheduled for the January 24, 2006 ZBA meeting. Case #2006:1 – Rich Skowronski, 142 Mill Road.

Mr. Skowronski is appealing the Planning Board's decision to take jurisdiction of a 4-lot subdivision application submitted by Leonard and Mary Saunders. This was mentioned since one party had requested a special meeting in December. With the passage of time, the issue is now moot.

Mr. Simmons announced that the Rules of Procedure were available for review and that if any member of the audience had a question to please raise their hand.

Mr. Simmons swore in witnesses present.

Ms. Chase stated that notice of the meeting was properly posted at the (1) Library, (2) Post Office, (3) Town Clerk's Office and on the (4) Town's website.

The minutes of November 22, 2005 were discussed. Attorney Field requested clarification of the November 22, 2005 draft minutes on page 4, the 3rd column from the right, which listed xs in the yes vote column. Mr. Simmons determined that the xs should not be present in that column.

Mr. Simmons moved to accept the minutes as is with removal of the letter x in the 3rd column from the right up to page 7 due to the fact that Mr. Simmons recused himself to the material after page 7.

Mr. Simmons withdrew his motion since he preferred not to vote on one portion of the minutes.

Mr. Turchan moved and Ms. Smith seconded the motion to approve the November 22, 2005 minutes.

Ms. Peckham moved and Ms. Lerner seconded the motion to amend the motion made by Mr. Turchan and seconded by Ms. Smith to remove the letter x from the 3rd column from the right on page 4 of the draft minutes.

The vote passed to accept the minutes of November 22, 2005 as amended (4 yes, 0 no and 1 abstention from Mr. Simmons).

Old Business

2005:14 GridCom/Cingular Wireless, 25 Research Drive, Westborough, MA 01582, requests a Variance (1) from Article IV, Section 4 15.3 to locate a 120-foot telecommunications tower on 22 Woodland Road; (2) from Article IV, Section 4 15.6.A.1 for relief from the fall zone setback requirements; (3) from Article IV, Section 409.9.B for relief from the 100-foot wetland setback. Property location: 22 Woodland Road, R-2 zone district, Tax Map #002-050-000.

Mr. Simmons confirmed that this meeting is a continuation from the November 8, 2005 continued meeting specifically concerning Case 2005:14 – GridCom/Cingular Wireless and that all attendees were there for the sole purpose of listening or speaking regarding that concern.

Mr. Simmons introduced and swore in Jeffrey Roelofs of Anderson and Krieger representative for Cingular Wireless.

The Board received a letter from the North Hampton Heritage Commission stating their opposition to both the Verizon and Gridcom/Cingular applications. Attorney Hilliard assigned docket number S3 to the letter to be added to the Gridcom file.

Attorney Robert Field presented the following documents to the Board:

- A copy of the July 25, 2005 letter written by John Sokul and submitted by Attorney Klasnick in support of Verizon's variance application with added responses to some of the statements made by Attorney Field.
- A letter from resident David Glendon of 41 Chapel Road requesting the Board denies the applications for variance.
- A copy of the draft ZBA minutes of November 22, 2005
- A news article from the San Jose Mercury News dated October 31, 2005 regarding mesh networking where transmitters are installed on light poles.
- A news article from the Boston Globe dated December 20, 2005 regarding wireless fidelity (WIFI), which allows devices to connect to the internet at high speeds via radio waves.

Attorney Hilliard assigned the documents presented by Attorney Field numbers K10 through K14 to be added to the Gridcom file.

Attorney Field stated that he would not be questioning Witnesses.

Attorney Field formally requested that the Board deny the application on grounds that he has previously submitted. Attorney Field stated that the application does not conform with the telecommunication act and that it is inconsistent with the standards of our ordinance itself and it violates the five principles of zoning, violates the ordinance and the telecommunications act.

Attorney Peter Loughlin representing Denis and Donna Kokernak, explained that his theme from the beginning is that the applicant does not meet conditions of the variance. He stated that David Maxson, Denis Kokernak, Attorney Bassett and Mr. Manias would be summarizing some of the evidence presented and submitting additional exhibits and additional testimony.

David Maxson from Broadcast Signal Lab presented the following:

- Aerial photo of limited pine tree coverage in Eastern North Hampton.
- Scale of comparison of vegetation penetration for signal paths from two antenna heights.
- A letter from Bret and Lori Devenport owners of Runnymede Farm describing interest in hosting a well-camouflaged or concealed wireless facility at their farm.
- Notice of Decision from the North Hampton Planning Board for an approval for a conditional use permit and site plan review for a wireless telecommunications facility, a Distributive Antenna System.
- Question and Answers on Distributed Antenna Systems.

Attorney Hilliard assigned docket numbers P30 through P34 for these documents.

Mr. Maxson explained that Thera Research has been investigating the poles and there is room for fiber optic cable. There is enough flexibility in the ordinance so that they can replace a pole as high as 70' instead of cutting vegetation.

Mr. Maxson also explained that DAS would like one or two wireless carriers on board, but as long as there are tower applications out there wireless carriers will not commit to DAS.

Mr. Maxson stated that DAS could work around area with dense growth. A pine tree issue is a non-issue.

Mr. Simmons recessed the meeting at 7:00pm.

Mr. Simmons reconvened the meeting at 7:12pm.

Mr. Manias presented his written opinion of an appraisal report submitted by Appraiser Vern Gardner. He stated he found many errors in Mr. Gardner's report.

He also presented a written report on his determination of whether the construction of a 120' monopine wireless telecommunications facility on Woodland Road would have any effect on the value of adjacent and surrounding properties. His conclusion was that in his opinion that the negative impact to the unimproved surrounding residential properties is 20% to 30% or greater as a result of the presence of a cell tower.

Attorney Hilliard assigned docket numbers P35 and P36 for these documents to be added to the Gridcom file.

Mr. Simmons stated that there are other factors with sales that cause negative impact in values.

Mr. Manias agreed and concluded that a good portion of negative impact is derived from the presence of cell towers.

Attorney Hilliard assigned docket numbers to the material presented by Denis Kokernak.

Mr. Kokernak presented a photo presentation. He provided computerized pictures of how the tower would look if erected. He showed different view sheds with and without foliage. He showed a copy of North Hampton Tax Map 2, which showed delineated properties, opposed to the cell tower. It concluded that 34 properties were against the cell tower and 2 properties were for the cell tower. Denis also referred to a petition submitted into evidence in May 2005 with 57 signatures opposed to the construction of a wireless communication tower at 22 Woodland Road.

Mr. Simmons recessed the meeting at 8:15pm.

Mr. Simmons reconvened the meeting at 8:25pm.

Attorney Bassett presented pictures of towers that collapsed and the destruction it caused.

Mr. Bassett requested that the Board deny the Use Variance, Section 415.3 and the two Area Variances, Section 415.6A.1 for relief from the fall-zone setback requirements and Section 409.9.b for relief from the 100-foot wetland setback requested by the applicant. He stated the following reasons:

- Granting the variance would not be in the best interest of the Public.
- Reiterated testimony provided by Appraiser Louis Manias that view of a cell tower diminishes property values.
- Safety concerns referring to graphic photos presented of a collapsed tower.
- The applicant never provided wetlands information requested from the Conservation Commission.
- Failure by the applicant to certify the property line.

Attorney Springer stated that if the Conservation Commission requested wetlands information from them that he was not aware of that. He stated that a wetlands report was submitted months ago.

Attorney Springer requested a continuance to next month. Mr. Springer stated that due to the amount of material submitted they would need more time to review it all.

Mr. Springer estimated that it would take three hours for his rebuttal.

Mr. Simmons moved and Mr. Turchan seconded the motion to continue this application to a special meeting in February to provide the applicant and the applicant only the opportunity to rebut and therefore finish out submittal of evidence of this case so that the Board could begin deliberations.

Attorney Field voiced concerns that the Board would deny the abutters to speak at this special meeting especially if new information is submitted by the applicant.

Ms. Smith suggested that the Board designate the meeting as a rebuttal only meeting.

Mr. Simmons stated that the abutters have had enough time to submit information and a lot of the information has been accumulative.

Attorney Field stated that they have submitted all of their information but would like to be given the opportunity to respond to any new material submitted by the applicant at the special meeting.

Attorney Springer stated the applicant's intention is for rebuttal only.

At Mr. Simmons' inquiry, Attorney Hilliard suggested that the Board wait until the time of the meeting before they decide to let the abutters respond to Attorney Springer's rebuttal.

Mr. Simmons suggested that the applicant put together written memorandums and summaries or bullet point itemizations of what they would like to cover and distribute them to the ZBA members prior to the meeting.

**Mr. Simmons moved and Mr. Turchan seconded the motion to hold the special meeting for a continuation of the Gridcom application on Tuesday, February 21, 2006 at 6:00pm.
The vote was unanimous in favor of the motion (5-0).**

Attorney Loughlin asked if Witnesses should be present. Mr. Simmons stated it was up to all those involved.

**Mr. Simmons moved and Mr. Turchan seconded the motion to adjourn at 9:28pm.
The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,

Wendy V. Chase
Recording Secretary