



SPECIAL MEETING MINUTES

TOWN OF NORTH HAMPTON
ZONING BOARD OF ADJUSTMENT
Tuesday, February 21, 2006

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 arrived at 7:10pm.

Alternates present: None

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

Mr. Simmons convened the meeting at 6:25pm.

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

Mr. Simmons addressed the following correspondence received by the Board:

- 13 Annual Spring Planning Conference, if any member is interested in attending, please let Ms. Chase know.
- PSNH Transmission line easements procedures and survey requirements manual, which is on file at the Town Office.
- Invoices received by Attorney Hilliard regarding legal services

Mr. Simmons moved and Ms. Peckham seconded the motion to accept the invoices submitted by Attorney Hilliard.

The vote was unanimous in favor of the motion (4-0). Mr. Turchan was not present for this vote.

Mr. Simmons swore in Witnesses.

OLD BUSINESS

2005:14 Gridcom/Cingular Wireless, 25 Research Drive, Westborough, MA 01582, requests a Variance (1) from Article IV, Section 415.3 to locate a 120-foot telecommunications tower on 22 Woodland Road; (2) from Article IV, Section 415.6.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.

This session is a continuation from the January 24, 2006 meeting.

The following letters were submitted to the Board regarding Case 2005:14 and were assigned docket numbers by Attorney Russell Hilliard:

- A letter submitted by David Della Penta of 6 Dancer's Image Lane, North Hampton in support of the proposed Gridcom/Cingular wireless cell tower at 22 Woodland Road, North Hampton; docket number E-25.
- A letter submitted by Ramon F. Baez of 31 Squier Drive, North Hampton in support of the proposed Gridcom/Cingular wireless cell tower at 22 Woodland Road, North Hampton; docket number E-26.
- A letter submitted by Chet Mehta of 33 Squier Drive, North Hampton in support of the proposed Gridcom/Cingular wireless cell tower at 22 Woodland Road, North Hampton; docket number E-27.
- A letter submitted by Attorney Daniel Klasnick of Duval & Associates, LLC in support of and interest in, collocating with, the proposed Gridcom/Cingular wireless cell tower at 22 Woodland Road, North Hampton; docket number E-28.
- A letter submitted by David and Terri Donsker of 8 Shiprock Road, North Hampton in opposition of the proposed Gridcom/Cingular wireless cell tower at 22 Woodland Road, North Hampton; docket number K-15.
- A letter submitted by Denis and Donna Kokernak of 10 Shiprock Road, North Hampton in opposition of the proposed Gridcom/Cingular wireless cell tower at 22 Woodland Road, North Hampton; docket number P-48.
- A letter submitted by Chris Ganotis, Co-Chair of the North Hampton Conservation Commission stating several concerns with the proposed construction of the Gridcom/Cingular wireless cell tower at 22 Woodland Road, North Hampton; docket number S-4.
 1. The first issue is a discrepancy in the property line adjacent to the Boise Conservation land.
 2. The liability the Town would face if the tower fell.
 3. Wetlands issues

There were no other letters submitted by the Audience.

Mr. Simmons read a letter from Attorney Field requesting that the Board grant the Abutters permission to respond and offer rebuttal comment and contrary evidence to any "new" information that may be presented on behalf of the Applicant. (Attorney Hilliard assigned the letter docket number K-16).

Mr. Simmons read a letter from Attorney Springer responding to Attorney Field's letter stating that it would be patently unfair to deny the applicants the opportunity to rebut after sitting through months of presentation by the abutters and that it was up to the Board to allow the abutters to "rebut the rebuttal". (Attorney Hilliard assigned the letter docket number A-23).

Mr. Simmons stated that he agreed with Attorney Field's comment that if new testimony is presented that the Abutters should have the right to rebut.

Mr. Simmons ruled that this meeting was for rebuttal only and that no new evidence shall be submitted. He asked that if Mr. Donsker or any other member of the audience heard any new testimony to please inform the Board.

Mr. Simmons also stated that he agreed with Attorney Springer in that it would be unfair not to let him rebut, but also reminded him that it was rebuttal only.

Attorney Springer began his rebuttal with an explanation to the lot line issue. He reviewed the plan with the Board (exhibit A22, sheet number Z1, of the permanent record). He stated that the Surveyor was instructed to add both lines to the plan and delineate them. The Surveyor identified the lot lines as “line of occupation” and “Assessor’s line”. He explained that the “line of occupation” is in fact the property line and it is shown in the legend on the plan. He stated that he feels they had met the Zoning Board’s requirements when they submitted the survey stamped plan. Attorney Springer also stated that this is not the correct forum to dispute boundary issues.

The second topic of discussion Attorney Springer referred to was the DAS and RF issues. He submitted a copy of a Position Statement dated October 20, 2005 from Attorney Klasnick representing Verizon Wireless in regards to the Chapel Road cell tower site. Attorney Springer pointed out statements within the letter where Verizon has implemented DAS in airports; tunnels and buildings to extend “macro” service in to coverage challenged areas and believes a DAS network would not provide the seamless wireless coverage in larger geographic areas similar to the proposed coverage objectives in North Hampton. (Attorney Hilliard assigned this letter docket number A24). Attorney Springer stated that Cingular shares the same opinion regarding DAS in North Hampton as Verizon.

Attorney Springer submitted a letter from David Tivnan, Site Acquisition Consultant for Verizon Wireless, expressing Verizon’s interest in collocating onto the proposed Gridcom/Cingular tower at 22 Woodland Road. (Attorney Hilliard assigned this letter docket number A25).

Attorney Springer comment on the Questions and Answers document, docket number P34, submitted by Thera Research Inc. in November 2005. Attorney Springer referred to question #3 *why aren’t there more DAS networks today?* Attorney Springer responded with the following:

1. The Town’s wireless ordinance is not weak and they are not “chipping away” at it.
2. He feels there is nothing “quick and easy” in obtaining tower approval.
3. He feels that there has never been threat of legal action under the TCA.
4. He feels it has been a well thought out process.
5. He feels that the reason Verizon and Cingular have not used DAS in North Hampton is because they feel it just doesn’t work here.

Attorney Springer introduced RF Engineer, Arvin Sebastian. Mr. Sebastian conducted a PowerPoint presentation titled, North Hampton, NH Coverage Enhancement Proposal by Cingular. Attorney Springer handed out hard copies to the Recording Secretary, Board members and some members of the Audience. Attorney Hilliard assigned the hard copy docket number A27.

Mr. Sebastian explained that the minimum level requirement for a signal is –82dBm. He presented colored maps depicting areas of wireless coverage and lack of wireless coverage in North Hampton. Referring to slide 5 it showed the existing wireless coverage in North Hampton and it stated that Broadcast Signal Lab (BSL) accepted it as accurate. Mr. Simmons asked Managing Partner of BSL, David Maxson if he agreed with the statement. Mr. Maxson replied that he was not comfortable with another Company putting words into his Company’s mouth.

Mr. Sebastian went on to explain that 66.72% or 9.5 sq.mi. is covered with equal or greater than

-82dBm and only 5.39% of that is covered by the existing site in North Hampton, the remainder is supplied by neighboring towns cell towers. Cingular's target is to supply coverage of 88.45% or 12.6 sq. mi.

Attorney Bassett requested that he and Mr. Maxson be able to review the information being presented and given a chance to respond because he felt it was new testimony. Attorney Bassett stated that he does not wish to stop the Applicant from his rebuttal.

After consulting with the board members, Mr. Simmons ruled in favor of the Applicant to proceed with his presentation.

Attorney Bassett stated that the *Gun Club* was new material and the abutters should be able to respond.

Mr. Simmons ruled that the *Gun Club* information is part of the rebuttal and if there were any questions regarding it in the future the Board will deal with it then.

Mr. Roelofs of Anderson and Krieger, representative for Cingular Wireless and Mr. Sebastian explained macro cells, pico cells and micro cells. It is in their opinion that a macro site, which is high-powered and used to cover wide areas would best suit North Hampton and that micro sites and pico sites which are used to cover small areas are not best suited for North Hampton.

Mr. Sebastian concluded his PowerPoint presentation by stating the following:

1. Cingular has explored other options and none of the ones evaluated met the requirements other than the proposed site.
2. Cingular does not deny the benefits of DAS, they have several DAS installations.
3. Cingular feels DAS is not an appropriate solution for North Hampton.

Attorney Springer entered the Planning Board minutes of November 7, 2005 into evidence as exhibit A28. He referenced page 7 of the minutes stating that the Planning Board granted a change of use and not approval to implement DAS.

Attorney Springer voiced his opinion on the proposed North Hampton Wireless Telecommunications Facilities Ordinance stating that he felt it was slanted more towards DAS networks.

Attorney Loughlin stated that the draft wireless ordinance should not be part of the Applicant's rebuttal. He further stated that the Planning Board minutes of November 7, 2005, page 7, which Attorney Springer referred to, does in fact grant conditional approval of the DAS network.

Attorney Springer referred to a colored map submitted by Thera Research depicting North Hampton property owners who are against the proposed Woodland Cell Tower. Attorney Springer stated that if the same Residents depicted on the map were asked if they would like an 80' telephone pole in view of their home with no fall zone, landscaping, fencing or a reason why a pole was placed there would probably be against it.

Mr. Vern Gardner of Horizon Associates presented a response to Louis C. Manias' presentation of January 10, 2006 regarding negative impact in property values with the presence of cell towers. Attorney Hilliard assigned Mr. Gardner's document with docket number A-29. The document includes page-by-page rebuttal of Mr. Manias' report with supporting photographs.

Mr. Simmons recessed the meeting at 9:29pm.
Mr. Simmons reconvened the meeting at 9:32pm.

Attorney Hilliard stated for the record that exhibit A29 is commenting on review P35, which commented on review A15.

Mr. Mcquade of National Gridcom stated for the record that the cell tower in Kennebunkport Maine is 275'. He also stated that the decision letter for Cellco Partnership d/b/a Verizon Wireless incorrectly states Gridcom/cellular it should read Gridcom/Cingular.

Mr. Mcquade stated that in his opinion Verizon and Cingular have exhausted all avenues regarding cell tower location sites.

Mr. Springer rested his rebuttal and asked that the Zoning Board grant the requested Variances.

Attorney Loughlin requested permission to submit photos on DAS and information that has already been submitted to the Planning Board.

Attorney Springer stated his objection to the requested submission.

Attorney Hilliard asked Attorney Loughlin if the material submitted to the Planning Board was in regards to Thera Research or the zoning amendments. Attorney Loughlin response was the zoning amendment.

Attorney Hilliard said it was up to the Board whether or not to accept the submission.

Mr. Turchan moved and Ms. Lermer seconded the motion to accept Attorney Loughlin's submission.

Attorney Hilliard suggested that the Board might accept Attorney Loughlin's submission and allow Attorney Springer ten days to respond.

Mr. Simmons reminded everyone that it was made very clear at the beginning that the meeting was for rebuttal only.

The vote was unanimous against the motion (5-0).

Mr. Simmons ruled that the record is closed for Case #2005:14.

It was determined that the Board will hold there deliberations on Case 2005:14 at the next regularly scheduled Zoning Board meeting, Tuesday, March 28, 2006.

Attorney Loughlin asked the Board if he would be able to request findings of fact.

Attorney Hilliard welcomes the request but does not demand it.

Mr. Simmons stated that the Board would deliberate the way it did in the previous cell tower application, which meant that parties are welcome to submit requests for findings of fact but that the

Board would most likely have its attorney draft the decision letter for review by the Board members.

Attorney Springer will request in writing findings of fact. He asked if it would be sufficient to have that into the Board in three weeks. The Board agreed that would be fine.

The signage of the decision letter will be no earlier than the April 25, 2006 meeting.

The Board members signed the amended Rules of Procedure. Ms. Chase will hand deliver the original copy to the Town Clerk.

Ms. Lerner moved and Ms. Peckham seconded the motion to approve the minutes of January 24, 2006.

The vote was unanimous in favor of the motion (5-0).

Mr. Simmons moved and Ms. Peckham seconded the motion to adjourn at 10:55pm.

The vote was unanimous in favor of the motion (5-0).

Respectfully submitted,

Wendy V. Chase
Recording Secretary