



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 9/15/09

## Planning Board Meeting Minutes August 4, 2009

**Members Present:** George Pember, Leslie Harrison, Daniel Lewis, Michelle Gillespie

**Others Present:** Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Buildings/Zoning Enforcement Officer; Fred Litchfield, Town Engineer; Leslie Githens, Dr. Lyna Watson, Peter Valberg, David Graves, National Grid; Patrick Burns, National Grid; Michael Maljanian, National Grid; Michael Lamphier, Deborah Campana, Kathryn Milton, Ed O'Rourke, National Grid; Megan Tipper; Michelle Burtchell, Adam Spector, Deb Blasko, Tom Blasko, Stephen Madaus, Mary Archibald, Janet Sandstrom, Faten Ramadan, Jean Rogers, Laura Ziton, Stacy Archibald, Alan Archibald, Larry McLeod, William Donovan, Robert Rowe, Michael Mc, Bruce de Graaf, Kathryn de Graaf, Kim Henderson-Lee, Tom Kieler, Amy Capuano, Stacey Crane Chaulk, Linda Abusamra, Fred Dolan, Michelle Gallivan, Kamala Guthrie, Bryan Guthrie, Michelle Bemis, Jonathan Shek, Lisa Gardner, Patti Stackhouse, Chris Stackhouse, Yvonne Shelton, Maria Tessier

### Public Hearing for Wireless Communications Facility @ 55 Bearfoot Road

Applicant:	Massachusetts Electric Company/DBA National Grid
Engineer:	Aerial Spectrum, Inc.
Date Filed:	July 7, 2009
Decision Due:	90 days from close of hearing

Vice Chairman George Pember opened the hearing and read the legal notice into the record. Mr. Pember explained the process for the hearing, stating the applicant will give the presentation, staff will comment, Planning Board members will comment and then comments from the general public will be heard. Anyone commenting should identify themselves by giving their name and address.

Attorney Robert Longden, Bowdith & Dewey; Brian Allen, KJK Wireless; and Scott Gardner, National Grid, presented the project. Mr. Longden explained he will give a brief overview, Mr. Gardner will address why this facility is needed by National Grid and how it fits in with National Grid's operation, and Mr. Allen will speak on the installation of the facility, why National Grid needs it and will explain telecommunications issues with facility.

Using a large version of the site plan for 55 Bearfoot Road, Mr. Longden explained the site is 28.3 acres in size and is located in the Industrial zone, which is the preferred location for a WCF per the zoning bylaw. In the area in red on the site plan, National Grid is proposing to construct a 125-foot high monopole with one 30-inch dish and a 12-foot by 10-foot communications building. The location of the proposed monopole on the site meets all required setbacks of the zoning bylaw, which are that the monopole be set back 500 feet from the nearest residential property line and must be located on the lot a distance of 1.5 times the height of the monopole from all property lines. The proposed monopole is located

in the parking lot on a very small area of the site (shown as a triangle on the plan) that allows it to meet these requirements. Everything outside of that would not meet zoning setback requirements.

Mr. Longden stated another requirement of the bylaw is the monopole must be set back 1000 feet from a school and there are no schools in the area. A home daycare is located on Pond View Way and is less than 1000 feet from the proposed monopole. Per the zoning bylaw, a home daycare is defined as a home occupation, not a school. Also, there is a daycare located at the same address of the wireless communication facility at 348 Church Street.

Mr. Longden stated issues have been raised as to whether the proposed facility will have any potential health impacts to those close to it. The application for a wireless communication facility is subject to the Telecommunications Act of 1996. Mr. Longden explained Town staff asked Town Counsel for an opinion on health concerns associated with cell towers and Town Counsel's response on August 3, 2009 included a reference to the Telecommunications Act of 1996, which states as follows:

*"No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's [the FCC] regulations concerning such emissions."*

Mr. Longden stated he has submitted a letter from the NEC Corporation of America which conducted an analysis of potential emissions from this facility and which clearly shows that any proposed emissions are at the low end of what is permissible under FCC regulations. Mr. Longden stated the Fire Chief had no problems with the proposed monopole. In addition, both the Fire Chief and Police Chief have asked if they can co-locate and National Grid has said that will not be a problem.

Mr. Gardner stated that, as part of their consolidation plan, National Grid plans to move 370 new jobs to the site sometime in the spring. The plan includes a long-term capital investment in the program which will solidify their commitment to the town and offer employment opportunities.

Mr. Gardner explained the proposed monopole will allow National Grid to meet their goals for reliability in respect to emergency action and dispatching. It will allow for better emergency action in storms such as the ice storm of last December. They have agreed to allow any emergency department of the town to co-locate free of charge. The job function at this site will be open 24/7 and will require secure access and fencing.

Brian Allen, wireless consultant from KJK Wireless, stated an important factor of the tower is the height. This tower installation is part of a point-to-point communication link to Boylston and the site and tower height offer a clear path to receive and transmit with Boylston. In addition, the parking lot is able to house the tower. The impervious cover will not change and drainage will not be affected.

Mr. Allen explained the bylaw requires photo simulations of the proposed tower from various angles. He has provided the required pictures to the board and believes they are fair representations of what the tower will look like in that location. Mr. Allen reviewed the 12 photo simulations with those present.

Mr. Allen stated the zoning bylaw requires poles to accommodate 3 additional carriers, 4 in total. The monopole had to be designed to safely hold all carriers. There are also sound and light requirements. The proposed facility will have only one small light. Any back-up power would come from the structure.

Mr. Allen explained they are unable to locate on the tower at 119 Colburn Street because they already have 5 carriers. That tower is owned by AT&T Towers, part of AT&T Mobility, a wireless company. Their understanding from dialog with AT&T Towers is that the tower is structurally at capacity. A few years ago OmniPoint made structural changes to allow their location on that tower. AT&T owns the pole and would own the vertical real estate. Carriers go down the pole to available unleased spots and right now, the available spot would be below 90 feet. Mr. Allen stated he does not believe that tower would accurately see the tower in Boylston and make the necessary connection. They would still have to have a 60-foot tower on the roof of 55 Bearfoot Road to have a dish to get to the Colburn Street tower and then to get to the Boylston tower.

Regarding the possibility of co-locating on the Southwest Cutoff tower, Mr. Allen stated it would be impossible. They need to be able to see directly from one tower to another, and with wind, ice and snow loads, the branches shift and can get in front of the communications dish. As far as internally mounted antennas, such as the flag pole at 300 West Main Street, Mr. Allen explained the nature of point-to-point communication does not fit inside the canisters.

Mr. Allen stated the board has received a copy of the Maximum Permissible Exposure Report, included in the 93-page document from NEC Corporation. The result of the analysis shows the proposed tower to have a maximum level of Radio Frequency (RF) energy radiating from the site of .0025%. The maximum allowed is 100. Mr. Allen noted the bylaw requires them to provide a report to the town on an annual basis that will be kept on file.

Mr. Longden summarized by stating the facility complies with all dimensional and design requirements and the applicant has complied with other requirements. They have attempted to find a co-location on an AT&T facility, but found that facility to be structurally at capacity and unable to take additional carriers. The security for the proposed facility, as indicated by the materials submitted, will include fencing of the entire site and 24/7 security, as well as National Grid's on-going operations at the site.

Ms. Joubert gave a brief summary of the addresses at which existing cell tower facilities are located. She stated prior to the adoption of the Wireless Communication Facility bylaw, the Zoning Board of Appeals approved 2 towers, one located at 119 Colburn Street (now 119 Bearfoot Road) and the other at 348 Church Street. Both of these towers are 150 feet in height. After 1998, the Planning Board approved 2 cell towers; a flag monopole at 300 West Main Street and a tree monopole at 273 Southwest Cutoff, and both are at capacity. The Planning Board has also approved 3 roof-top installations in town which are located at 4 West Main Street, in the steeple of the church at 40 Church Street and the side-mounted antenna array at 456 Main Street.

Ms. Joubert also read Town Counsel's response of August 3, 2009 which explains the Planning Board's authority regarding wireless communications facilities, as follows:

*"As we discussed, I am providing you with a summary of the legal principles applicable to the consideration of health effects regarding wireless communications facilities.*

*The Federal Communications Act, 47 U.S.C. §332(c)(7)(B)(iv), prohibits a municipality from denying a permit to locate a wireless communications facility, including a cell tower or an antenna installation, based on "environmental effects." The statute provides:*

*No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's [the FCC] regulations concerning such emissions.*

*The courts have interpreted this provision uniformly to mean that municipalities are barred from considering any potentially adverse health effect of a personal wireless communications facility. In considering an application for a personal wireless facility by a local zoning board, the courts have consistently ruled that a zoning board may not consider the environmental effects, including health effects, of radio frequency emissions from a wireless communications facility so long as those emissions are within the limits established by federal law. The courts also have uniformly held that environmental and/or health effects of a wireless communications facility may not be a reason for regulating the placement of a facility. See, for example, Telecorp Realty, LLC v. Town of Edgartown, 81 F.Supp. 2d 257 (D.Mass. 2000).*

*It is therefore my opinion that a permit for a wireless communications facility may not be denied or conditioned on the health effects associated with radio frequency emissions from the facility. I note, however, that permits for facilities often include a provision requiring monitoring and notice to the municipality that the radio frequency emissions are within the limits established by the FCC."*

Ms. Joubert noted the Wireless Communications Facility bylaw was approved by Town Meeting in 1998 and specifically addresses the jurisdiction of the Planning Board.

Ms. Joubert read the Fire Chief's letter of July 27, 2009 in part as follows:

**Subject: Wireless Communication Facility Special Permit – 55 Bearfoot Road**

*"I have reviewed the application for a Wireless Communications Facility Special Permit for Massachusetts Electric Company/dba National Grid, dated July 1, 2009, and I have no concerns as they relate to fire or life safety and site access to the building or location.*

*I have also been assured that the fire department will continue to be allowed to utilize the helicopter landing pad for air evacuation of medical patients, and Massachusetts Electric has further agreed to provide room, within reason, on the mono pole for one antenna and cable each for the Northborough Fire Department, the Northborough Police Department, and Massachusetts Fire District Fourteen for future expansion of communications. In addition, the applicant has agreed to provide racking space, within reason, for radio equipment and emergency generator power to the town's and to the district's radio equipment.*

*Should you grant this Special Permit to the applicant, I would ask that these stipulations be included in your decision."*

Ms. Joubert stated the town's emergency services departments always request co-location on towers in town and this is no different from any other tower.

Ms. Harrison asked if co-location on the 119 Colburn Street pole had been completely investigated.

Mike Maljanian, Senior Telecommunications Engineering with National Grid, responded they did investigate and also ran some tests to see if it would work. They looked at all types of possible options with that facility. There is not a straight sight path between the AT&T tower and their facility. They looked at fiber optics, but it did not meet their requirements. The line of sight path is the way point-to-point communication works. One tower has to physically see the other tower. Colburn Street does not meet that requirement.

Ms. Harrison asked if the trees could be removed.

Mr. Maljanian stated it would include a substantial amount of trees, some on private property, and is not usually a valid option as they don't own the property.

Ms. Gillespie confirmed the pole is 187 feet from the property line and over 500 feet from the closest residential property line.

Mr. Longden stated that is correct. The bylaw requires the pole to be located a distance of 1.5 times its height so if the pole should fall, it would fall within the site. He explained the nearest property is on Pond View Way and the closest distance to a property line of that parcel is 580 feet. Two other of the three closest distances to that property on Pond View Way are 590 feet and 600 feet.

Ms. Gillespie asked if they could use a tree monopole like the one on Southwest Cutoff. Mr. Longden stated it doesn't work because the branches weigh too much and for their purposes, there would be no branches on one side.

Mr. Pember explained to the audience the correct procedure for asking questions and making comments on the proposed project.

Stephen Madaus, Attorney for Tom and Debra Blasko, 18 Pond View Way, stated the proposed monopole is a specially permitted use that is allowed only by local discretion according to the zoning bylaw. The purpose is to minimize the adverse impacts of the structure and keep the rural qualities of the town. He stated this does not satisfy the subjective standards. It abuts residential districts, is very visible and is contrary to the bylaw. The bylaw requires co-location also. He asked if AT&T has said their pole is not available. He stated the bylaw says to the maximum extent possible and feasible, all shall be co-located. He asked if some existing facilities could be removed due to industry consolidation or co-location leases or if the tower could be improved. The standards in the bylaw state no wireless communication facility shall be located within one mile of an existing wireless communication facility unless it not feasible or one is not available. The application does not satisfy the bylaw but satisfies the need of National Grid at a great cost to the residents. The bylaw discourages saturation of poles in one area of the town. He asked the Planning Board to side with the zoning bylaw safeguards and not with corporate growth. Mr. Madaus stated he will submit his comments in writing.

Larry McLeod, 5 Howe Lane, asked the applicant to address the issue of lighting and if there would be more than one 30-inch dish on the pole. He also asked if the facility will employ more people.

Mr. Allen stated the facility is on private property and there is no requirement by the Federal Aviation Administration (FAA) for lighting. He explained that, as the applicant, they are putting up one communication dish. That is all the applicant wants to install on the pole. Public safety may have some future desire to be on the pole, and it is not known what they will put up. If the town allows it, National Grid will allow them to co-locate at no charge. The bylaw states the pole needs to be designed for the benefit of three other carriers. When other carriers are permitted by the Planning Board they could co-locate. Right now, National Grid is proposing only one dish.

Mr. Gardner, National Grid, stated they will have a little more than 600 employees.

Mr. McLeod stated the presentation was excellent and he would have no objection to a single pole with one dish. He wouldn't want to see a big pole with blinking lights and co-locators.

In response to a question from Ms. Gillespie, Mr. Allen stated they have no desire to light the facility. If the Planning Boards wants it, they will.

Tom Blasko, 18 Pond View Way, submitted some photographs to the board showing what the crane would look like from his property. He stated that although the photo simulations from the applicant look nice, they weren't taken during winter when the leaves are off the trees. He is opposed to requiring three other co-locators. He's concerned with the impact this will have on his wife's in-home day care and his son's health.

Ms. Joubert stated the bylaw requires towers to have the ability to support three co-locators. This was required so there would be fewer towers in town. She stated if the board wanted to make it a single monopole, she would explore that option with town counsel as to whether or not the Board could override their own requirement for co-locators.

Faten Ramadan, 15 Edmunds Way, stated he was concerned with lighting and helicopter flights. He asked how they would prevent lighting from shining on their properties and wondered if there will be an increase in emergency lift-offs due to co-location of the town's fire, police and emergency services on the tower.

Mr. Allen stated the FAA has requirements regarding lighting of towers within a certain distance from an air field and this tower does not fall under their jurisdiction because it's on private property. The only way they would light the tower is if the town required it. All communication towers are registered with the FAA. It's not proposed to be lit because it's on private property and not part of a generic flight path.

Dr. John Stevenson, 19 Edmunds Way, stated he has many concerns. He stated he is a private pilot and he doesn't believe they're not going to light it. It's a public pad for Life Flight. FCC regulations do not allow health concerns to be used to deny the tower, but it says nothing about the board using it for a special exemption for health. Electromagnetic waves from cell antennas very well may have a significant issue with development of children's brains. His two children's bedrooms are level with the tower. Behind his house it's a clear look at the tower. He stated he also has significant concerns with a decline in property values due to the tower. Right now he has an unobstructed 180-degree view from the back of his house. If the tower goes up with antennas on it, he will move. He has financial resources and doesn't have to take the risk. Dr. Stevenson asked if National Grid has shown they have adequate parking for the employees. He suggested National Grid should be required to post a bond that would be taken if health risks are found.

Mr. Farnsworth stated Life Flight uses the pad on occasion as it is an approved landing zone. Any Life Flight helicopter coming in would be aware of the tower and there would not be a lighting issue. Regarding parking for the facility, Mr. Farnsworth stated part of the building permit submitted is a review of the site plan and the number of parking spaces required. It is being reviewed but is not part of the application before the Planning Board, however the parking they have proposed is completely adequate.

Dr. Lyna Watson, 3 Howe Lane, was concerned with Solomon Pond and the tower's effects on water and wildlife.

Mr. Longden stated the tower has no effect on pond wildlife or water. It doesn't trigger a review from the Conservation Commission because there is no impact on any resource area. The level of radio frequency waves generated is so low - less than 1% of what is permissible - that it won't affect anyone.

Ms. Watson asked about the tree line and using the tower at 119 Colburn Street.

Mr. Longden stated they cannot use the Colburn Street tower because there are too many trees in the way. Also, the trees are on private property. The towers have to be above the tree lines to reach other antennas so the height of the tower couldn't be any lower. The AT&T tower doesn't work for what they need. They couldn't communicate at the height they would be at and the tower can't handle it structurally.

Leslie Gibbons, Board of Health member, Town of Ashland, stated that, although health issues can't be considered, she found research stating the International Association of Fire Fighters have said they don't want fire fighter's exposed to this because it's an occupational health problem. There's a day care right there and many families for many hours of the day will be exposed to this. Deb Blasko's day care is a school. She teaches and presents a curriculum to the five children she has in her home. The school was started in 1999 and she teaches, reads with them and does crafts with them. Children's skulls are thinner and more susceptible to this radiation. This could be something like lead, mercury and cigarette smoke. She urged caution with children close by.

Janet Sandstrom, 1B Pond View Way, asked if the rays from the 30-inch dish go directly to the tower in Boylston.

Mr. Maljanian stated they go to the tower in Boylston.

Bruce deGraaf, electrical engineer, 23 Edmunds Way, asked about the likelihood of additional co-locators on the monopole. He also asked if the pole would have to be raised in the future if the trees grew and what type of dish will be used for the town's emergency services.

Mr. Farnsworth stated they would be whip antennas and not very large. They don't need much of a range and that's why the town asks to have dishes in various places around town. The town has asked for the ability if needed, but there's no guarantee they will co-locate there.

Mr. Maljanian stated they allow for future tree growth.

Mr. Longden stated National Grid would like to keep it for its own use, but the town requires they accommodate three others. They would be willing to restrict this use to National Grid and would be happy to waive any rights if possible.

Mr. deGraaf asked if it would be another 30-inch dish and if it would emit alpha, beta, gamma rays and if they would restrict it to one dish.

Mr. Maljanian said the radiated power for the other directional antenna is usually 100 watts.

Mr. Longden stated they would not restrict it to one dish, but would restrict it from other co-locators and have no intention of adding another dish of their own right now. Anything else that goes up has to go through permitting with the town.

Ms. Joubert explained that if the decision is written to allow up to three co-locators, then those co-locating companies apply to the building department for a building permit. If additional companies wanted to co-locate, they would need to apply to the Planning Board.

Mr. Farnsworth stated a building permit is required for the tower and the co-locators. Each individual carrier needs a building permit. Every time an applicant comes in, a structural review of the tower is done, as well as a review of all regulations associated with the building permit.

Michelle Rayburn, 16 Colburn Street, asked if taxes will reflect the decrease in property values.

Ms. Joubert suggested she check with the Assessors office on that.

Tom Blasko, 18 Pond View Way, proposed the town hire an independent wireless expert. National Grid already has eighteen (18) towers registered with the FCC. With technology today they must be able to have their network.

Mr. Maljanian stated they did hire an independent consultant to do a feasibility analysis and his findings are what they're proposing tonight.

Ms. Blasko submitted a petition signed by abutters in opposition to the project.

Mr. Allen stated that, as far as a bond for removal of the towers, they would abide by the bylaw. He stated that four-five parking spaces will be taken for the tower, but it's unmanned so there will be no additional traffic on the site.

Mr. Longden stated there has been a lot of talk about health issues. He asked the Board if they are going to consider health issues in their decision because Town Counsel has advised the Planning Board and the law is clear, if in fact the emissions are within permissible levels for the FCC.

Ms. Harrison questioned whether or not a day care is considered a school.

Mr. Farnsworth stated there have been many similar legal cases. A home day care is not a school. A school is very clearly defined as kindergarten through 12<sup>th</sup> grade under the state building code. There has been a lot of discussion on this over the years and that's the way the legal decisions come down.

Ms. Blasko asked Mr. Longden if he would have his children live there. Mr. Longden replied that, at the proposed levels, he would.

Ms. Harrison stated she would like to know more about the analysis done for National Grid.

Ms. Gillespie stated she would like to have written communication from the AT&T stating the tower at 119 Colburn Street is full and also something written from National Grid that they would limit the pole to no co-locaters.

Mr. Longden stated his client, if permissible by law, would not allow co-locaters but National Grid would want the ability to add to the tower in the future. If it is possible to waive it, they would not be seeking other commercial locaters.



Mr. Lewis asked about the possibility of a fiber optic connection.

Mr. Maljanian stated fiber optics are not feasible.

Ms. Gillespie moved to continue the hearing to Tuesday, September 2, 2009 at 7:30 pm. Mr. Lewis seconded the motion and the vote was unanimous.

#### **8:40 pm - Continued discussion for 73-85 West Main Street**

Mr. Lewis recused himself for this discussion.

Steve Poole, Lakeview Engineering, stated he talked with the board about the original concept, which included a single building located fifty feet back from the street with traffic flow around the building. They took the board's comments and concerns and have come back with a conceptual plan showing two 6500 square-foot buildings, one for restaurant use and one for retail use, located closer to the street with a twenty-foot wide double-lane entrance/exit, better traffic flow and parking to the rear of the site. Handicapped parking directly to the buildings is proposed, with the bulk of the parking behind the buildings.

Mr. Pember stated concern was expressed at the last meeting regarding the angle of the entrance/exit.

Mr. Poole stated the revised entrance slopes up about two feet relatively quickly and then it flattens out. It comes up off the street with a little bump and then stays flat. Retaining walls are proposed on the side of the lot and the slope will be graded with 10-foot contours in the back.

Ms. Gillespie and Ms. Harrison were happy with the revised plans.

Mr. Pember asked about sidewalks.

Mr. Poole stated they have two options for sidewalks. One would be to have a sidewalk off the right of way directly in front of the buildings and the other would be to have a sidewalk down closer to the street.

Mr. Pember said he also liked the plans.

Mr. Poole noted they will be presenting the revised plans to the ZBA at their August meeting.

Ms. Joubert stated they have seen no architectural renderings, so she hasn't scheduled a Design Review Committee yet. She suggested the Planning Board follow their July 20<sup>th</sup> memo to the ZBA with a memo stating they are in favor of the new conceptual plan.

#### **ANRs**

The board signed an ANR plan for 168 South Street, which splits the lot into two lots. One lot will retain the existing house and a two-family home is proposed for the second lot - Lot 2.

The board also signed an ANR plan for 600 West Main Street which showed the addition of an easement for the New England Forestry Foundation.

Mr. Lewis returned to the meeting at 8:55 pm.

**Assabet Farm Estates Bond:** Ms. Joubert stated the insurance company holding the bond for the Assabet Farm Estates subdivision is National Grange. National Grange has hired an independent engineering firm to inspect the site and determine whether they should do the work or release the bond to the Town for the Town to do the work. The independent engineering firm has talked with the Planning and Engineering departments and also with the DPW.

**Judi Barrett:** Ms. Joubert noted Judi Barrett, Community Opportunities Group, will be meeting with the board on September 1<sup>st</sup> at 6:00 pm.

**55 Bearfoot Road WCF:** Ms. Harrison asked if National Grid not being able to add to the pole at 119 Colburn Street was valid. Ms. Gillespie stated they hired an independent engineering firm for Stop & Shop. Mr. Pember stated they could, but that would cause another continuation and the directive from Town Counsel was pretty clear. Mr. Lewis stated if AT&T says they can't accommodate National Grid, that's it. Ms. Joubert and Mr. Farnsworth stated the AT&T tower is full. Mr. Farnsworth stated he did an inspection of the tower and it's full.

**Zoning Bylaw Changes:** Ms. Joubert stated the changes to the zoning bylaw approved at 2009 Town Meeting have not yet been approved by the Attorney General. The deadline for approval is August 24<sup>th</sup>.

The meeting adjourned at 9:10 pm.

Respectfully submitted,

Debbie Grampietro  
Board Secretary