



TOWN OF NORTHBOROUGH PLANNING BOARD

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

Approved 11-9-10

Planning Board Meeting Minutes September 21, 2010

Members Present: Rick Leif, George Pember, Daniel Lewis, Leslie Harrison

Others Present: Kathy Joubert, Town Planner, Kim Henderson-Lee

Chairman Leif opened the meeting at 7:00 pm.

Continued discussion RE: WCF bylaws

The board reviewed information from Attorney Barbara Saint Andre, Petrini & Associates, P.C., entitled "Local Regulation of Wireless Communication Facilities", dated August 5, 2010.

Mr. Leif reviewed the three limits in the Federal Telecommunications Act of 1996 (TCA) as to how a town can regulate a WCF, as follows:

1. Local or state government cannot discriminate among providers. All carriers have a right to be in a town and they have the right to get the best coverage for themselves. He noted Ms. Saint Andre's letter quotes a few cases in which one town tried to deny a company a special permit to co-locate on an existing tower and was eventually told to by the court to approve it.
2. Local or state government cannot prohibit the placement of a WCF.
3. Local or state government cannot deny a WCF on the basis of environmental effects of radio frequency emissions as long as each provider's equipment complies with FCC regulations.

Mr. Leif stated the spirit of the ATC seemed to be to encourage the spreading of WCFs. It says the towns have the right to regulate them and place them where they see fit, but the three limits place a burden on towns as to how they can regulate them. He stated the Planning Board will have to be careful as to how the bylaw is changed, if they decide to change it. There is some sentiment in town that, if addressed by the Planning Board, will get the board in trouble because that sentiment goes against what the ATC has dictated.

Kim Henderson-Lee stated item #3 has been overwritten by an amendment.

Mr. Leif stated Ms. Saint Andre's directive does not say that, and she quotes from 2009 changes. It references 2009 changes that explain there was a ruling that a decision has to be made within a reasonable amount of time. Ms. Saint Andre was clear in her directive that local regulatory agencies could not make decisions based on radio-frequency effects.

Mr. Leif noted Ms. Saint Andre also stated that a WCF bylaw should put the burden on the applicant to make a case as to why there are gaps in coverage. In addition, she states the bylaw should require the applicant to demonstrate there are no feasible alternative sites if the proposed site does not meet the

criteria for a favorite site. In this case, the bylaw should request information that would show the applicant searched diligently for alternative sites.

Mr. Leif noted Ms. Saint Andre advised boards should carefully consider setbacks and other restrictions so they do not prohibit WCFs. Mr. Leif stated that, if the board is going to consider a 1,000-foot setback, some sort of mapping would have to be done.

Ms. Joubert stated the Town of Bolton has a random 1,000-foot setback, which is not based on science, but rather on the conclusion of the group who created the bylaw at the time. The town then distributed an Request for Proposal (RFP) for a WCF to be sited on the town dump, but were not able to do so because it was within 1,000 feet of a residential structure. They could not site one on their own property. They found 1000 feet to be too restrictive and are considering changing it at a future town meeting.

Mr. Leif stated Ms. Saint Andre suggested a WCF bylaw consider prioritizing zones from least to most favorable.

Mr. Leif stated their bylaw should express that they are looking for co-location and the applicant has to make a case as to why they cannot locate somewhere else and that there is a significant gap in coverage.

Ms. Joubert stated the current bylaw does ask for this and T-Mobile, the latest applicant to apply for a WCF in town, submitted the info to the ZBA.

Ms. Harrison noted someone else submitted information showing T-Mobile's coverage maps were wrong.

Ms. Joubert stated as staff, their review was submitted by the applicant. If the Board has questions on what was submitted at a hearing by a member of the public, the Board should ask for sources of the information and ask the applicant to either confirm or deny the information.

Mr. Leif noted there are some specific items that need to be provided for in site plans. Ms. Joubert agreed. She also noted the bylaw encourages co-location.

Mr. Leif stated that for the most part the existing bylaw does a good job. He questioned whether the board wants to consider strengthening the bylaw as far as what the applicant submits to them.

Mr. Leif noted Section 7-10-040E(8), on page 128 of the Zoning Bylaw, talks about the setback calculations for placement of WCFs in non-residential districts, which is different from the setback calculations for placement of WCFs in residential districts in Section 7-10-040E(9), also on page 128 . He stated the proposed WCF at the Police Station is well within 1000 feet of a school.

Ms. Joubert stated it is 1000 feet from the actual school at its closest corner, but it does not meet the requirement of the bylaw that requires it to be 1000 feet from the property line of a school.

Mr. Lewis stated perhaps the bylaw should be consistent in the way the setback is measured. Mr. Leif asked if it would be an issue to change the bylaw to be consistent with how setbacks are measured. Ms. Joubert responded the Board needs to determine if the setback should be from the property line or the actual structure.

Mr. Leif stated the letter from Barbara Saint Andre helped him to better understand what the ATC is trying to communicate to towns and the balance that must be struck to make sure they do not get themselves into a situation in which town counsel would be defending the town in court.

Mr. Pember stated if there is an amendment (Amendment 56) that specifically talked about aggregating radio-frequencies – about areas where there is more than one source of radio frequencies (RFs) (ambient RF) – he would like Ms. Joubert to give them that information in writing.

Regarding the town comparison spreadsheet, Mr. Leif noted more information has been added.

Ms. Joubert stated the Town of Westborough does not have a bylaw. Setbacks are determined by height, not location. The applicant applies to the building department for a building permit. There are four towns on the chart that have 1000-foot setbacks which were all randomly done. Again, the Town of Bolton is changing their 1000-foot setback because it is too prohibitive.

Ms. Joubert stated town staff just met to review the Police Station WCF proposal but the chosen applicant has not been notified yet. It is subject to a lease agreement.

Mr. Leif stated the next step is to schedule a “cell tower 101” meeting in October to help them decide what they need to consider.

Discussion RE: Planning Board Rules & Regulations

The board reviewed the third draft of the proposed Planning Board Rules & Regulations and had the following comments and/or changes:

- Section 6 is missing in the Table of Contents
- Site Plan Regulations page numbers need to be changed in the Table of Contents,
- Suggestion was made that Subdivision Rules & Regulations could be combined with this document
- Page 1 – 2.0, Definition of Applicant: remove the words “and notarized” from second sentence.
- Page 3 – 3.1A, Membership & Officers: add the words “and may also elect a Clerk,” at the end of the paragraph
- Page 4 - 3.4, Roles & Responsibilities: add another item as follows: “Act as Site Plan Approval Authority when so designated in the Zoning Bylaw”
- Page 5 - 3.6A, Meeting Schedule: change to read “(but not Saturday, Sunday or legal holidays)”
- Page 5 - 3.6B, Meeting Schedule: remove “or at the meeting by a quorum (3 members) of the Board. Public hearings will only be scheduled by vote of the Board at a posted meeting.” at the end of the paragraph.
- Page 7 – 4.1C, Special Permit Regulations, General: change “6.0” to “7.0”
- Page 8 – 4.3E, Special Permit Regulations, Submission Requirements, Scope of Review: change “Board” to “Planning” in first sentence and delete last sentence
- Page 12 – 5.2A, Concept or Master Plan Special Permits, Submission Requirements: after the word “Team” add the wording “(see Chapter 7-02, Section 7-02-040)”
- Page 12 – 5.2C(1), Concept or Master Plan Special Permits, Submission Requirements: change “6.0” to “7.0” at end of paragraph
- Page 12 – 5.2C – Concept or Master Plan Special Permits, Submission Requirements: add item #4 as follows: “A traffic analysis of, including but not limited to, traffic circulation, street capacity, and proposed transportation Demand Management (TDM) provisions.”
- Page 15, 6.2, Contents of Common Driveway Plan: after 6.2N, add “Common driveways servicing three or more lots, the following additional is required:”

- Page 15, 6.2, Contents of Common Driveway Plan: move items K, L, M & N to under “Common driveways servicing three or more lots, the following additional is required”, and designate as A, B, C & D, respectively. (Items O, P, Q & R then become items K, L, M & N)
- Page 19, 7.2E, Site Plan Regulations, Submission Requirements, Number of Copies: change “6.0” to “7.0”
- Page 22, 7.4A(3) – Site Plan Regulations, Application Review and Decision Procedures: change “6.2E” and “6.3” to “7.2E” and “7.3”, respectively
- Page 22, 7.4A(6)(c), Site Plan Regulations, Application Review and Decision Procedures, Decision: change “6.5” to “7.5” at the end of sentence
- Page 23, 7.5A(1), Site Plan Regulations, Site Plan Decision Criteria: delete the word “this” and replace with “the zoning”
- Page 23, 7.5A(2)(h), Site Plan Regulations, Site Plan Decision Criteria: remove “and” at the end of the sentence

Ms. Joubert stated she will attempt to have the changes made for the next meeting, which will be held on October 2nd. She noted the Wind Committee will make a presentation at that meeting.

The board’s regularly scheduled meeting on October 19th was changed to November 9th because Mr. Pember will be away on October 19th.

The meeting adjourned at 9 pm.

Respectively submitted,

Debbie Grampietro
Board Secretary