



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 3/5/13

Planning Board Meeting Minutes November 19, 2012

Members Present: Rick Leif, Michelle Gillespie, George Pember, Leslie Harrison, Theresa Capobianco

Others Present: Kathy Joubert, Town Planner; David Maxson, Istrope; Mary Jo White

Continued Discussion with David Maxson, Isotrope, LLC
Re: Wireless Communications Facility Bylaw

David Maxson was present and distributed a set of 6 updated WCF coverage maps he created using data found in the Town of Northborough Planning and Building Departments, dated by November 19, 2012. The sheets were identified as follows: Current WCF Sites, 11/7/12; Estimated Coverage from ATT Sites, 10/25/12; Estimated Coverage from MetroPCS Sites, 10/25/12; Estimated Coverage from Sprint Sites, 10/25/12; Estimated Coverage T-Mobile Sites, 11/7/12; and Estimated Coverage from Verizon Sites, 11/7/12.

Mr. Maxson stated he and Steve Riggs looked at a lot of public records. They tweaked some coverage maps and some towers were identified they hadn't seen. He looked at the bylaws for Boylston and Berlin. He stated if a property is available and strategically located, there is the possibility a wireless company might put a tower across the border. He stated he will do an analysis of Shrewsbury, Boylston and Berlin for WCF siting. He has to look at neighboring towns to determine where a wireless company might want to locate in that town, and if it would have any bearing on coverage in Northborough.

Mr. Maxson stated every town is unique regarding land use and topography. He stated he is not a fan of wireless bylaws because they back boards into a corner. It's easier to have rules in place and make adjustments through the public process. When a lot of towns created wireless bylaws in the 1990s, they forgot about other existing forms of communication. It's helpful to have language in a bylaw that addresses other types of towers. In the Northborough bylaw, there are places where "WCF" is used as a synonym for a tower and in some places they are specifically for a facility. Some of the language has been edited to arrive at that distinction. A tower is a tall structure. Some towns have been concerned about having them in residential areas, and allow them only in industrial districts, because they are so ugly. Some towns have small industrial areas and those towers do not cover the whole town. WCFs come in many different forms, and so do towers. WCFs can be small structures, cabinets, sheds, antenna mounted on rooftops, for example. The question is how to write rules to be clear on towers for the variety of their uses. Another reason for separating a WCF from a tower is the WCF enjoys the FCC laws that say it cannot be regulated out of an area where it is needed. It gives boards the ability to adjust some dimensional criteria if there is good cause to do it.

The board reviewed Mr. Maxson's memo with his comments on the Town's existing WCF bylaw.

Mr. Maxson stated many town WCF bylaws have limited purposes and he was encouraged to see the concerns listed in Northborough's bylaw. It shows reasonable regulation of soft qualities that protect scenic and aesthetic values. Mr. Maxson stated a dozen years ago, WCFs were not regarded as a public utility but as a nuisance. However now, with the broad use of wireless communications, they are as important as all other utilities. He stated these facilities go up because we rely on them, and he thinks the purpose section is good because it includes amenities. It is information and is the language that enables the rest of the language.

Mr. Leif reviewed the purpose section of the current WCF bylaw for Ms. Capobianco. He stated it is the Planning Board's job to implement what is in the other sections of the bylaw.

Mr. Maxson pointed out some places in the existing bylaw in which some of the definitions were capitalized and some were not.

Regarding building heights, Mr. Maxson stated the board should beware of certain kinds of antennas that might not be covered under the 10-foot rule.

Amy Jo White, 23 Brigham Street, asked what kind of antenna wouldn't be covered.

Mr. Maxson stated some types of antennas, such as ham radios, 2-way radios and pagers, would need to have a modicum of height, but are not as ubiquitous as WCF towers. The language says the height doesn't include where the pole comes from the building.

Mr. Maxson stated it is a sober and constructive approach to look at the siting of a WCF as a planning concern, therefore a special permit and site plan approval should be required.

Mr. Leif stated the section on special permits in general could be left as is, and suggested language could be modified in the WCF section to say the applicant would have 24 months to start the project.

Mr. Mason stated requests for heights of towers have gone way down over the few years. If a really high tower was approved and the applicant had 24 months to start it and didn't, the board could bring the applicant in to a meeting and ask that the tower be made to look nicer with the new approach.

Mr. Leif suggested drafting language for a WCF that would specifically address a lapsed special permit and what the board would like the applicant to address before the board extends the permit. It may be that the project would require a semi-start over due to the new requirements.

Ms. Capobianco stated the board is bound to a minimum standard and the standards are defined by state standards.

Mr. Leif stated it will be different because of the change and pace of the technology.

Ms. Capobianco stated if someone says they need to do something different after 2 years because of technology, the board should be able to consider it.

Ms. Joubert stated if the applicant hasn't done anything in 2 years, they will have to come back to the Planning Board and explain that the technology has changed and they want to amend the application and change the special permit.

Mr. Leif stated one standpoint is that someone comes back because they figured out it is more beneficial to the town to do it and that's fine. The other standpoint is that for whatever reason the applicant couldn't get the project started in 24 months, in 18 months they could say they need another year and are going to do the same thing as was proposed. If the board is not crazy about the project and there is new technology that the town likes more, the board could make a change to it.

Mr. Leif posed the question that if an applicant needs to build another tower in another part of town for the required coverage and that has been agreed to, but in the meantime, a rooftop installation at a lower height would satisfy the need, could the board put wording in to grant an extension with the new technology even if the applicant just wants to do the project.

Mr. Maxson responded there is the reasonable request, a reason why it hasn't been done and a solution where everybody benefits. The other side is if there's a situation where a request for an extension is not in the public interest. That would be that a facility is proposed – perhaps a big tower – on which a lot of companies want to locate, but the developer hasn't started it because he doesn't have the money. It's not so much a matter of defining good cause as it would be defining criteria for renewal that would make it less impactful.

Mr. Pember stated he agreed with Ms. Capobianco that the board has to have flexibility and it can't be black and white.

Continuing with his review, Mr. Maxson stated he has recommended in the Radio Communications Facility section that the site plan approval and special permit steps should not be allowed to be separated when a radio/wireless facility is involved.

Mr. Pember asked if an applicant would not do it at the same time.

Ms. Joubert stated it is not unusual for an applicant to file for site plan approval after they have gone to the special permit granting authority for approval of the use.

Mr. Pember stated he has no problem if an applicant files them separately, as long as they know they have to file for both site plan approval and a special permit.

Regarding Design Review, Ms. Joubert stated there haven't been any applications in the business district. There have been rooftop installations, but not a tower. She explained the Design Review Committee will review a site plan and send their comments/recommendations to the Special Permit Granting Authority (SPGA).

Mr. Maxson questioned what is gained by having site plan and design review together. He stated the WCF site plan usually includes every last detail. It looks at the style and the type of building. He stated he is just concerned about duplication of effort.

Regarding the Table of Uses and defining towers, Mr. Maxson stated the definitions be in the definitions section so they only appear once. Because of cellular and the repetitive nature of wireless in communities, with multiple sites and competing characters, there needs to be more careful oversight and clear objectives for those facilities. A tower for a specific type of communication may be regulated less stringently than a WCF.

Ms. Joubert stated if you were to put it in the definitions section, then the classification of uses section would have to be moved. It could be called a definition section. Our definition section is very small in the bylaw. She stated they could move all of them, not just what Mr. Maxson is reviewing.

Mr. Maxson stated then uses section clarifies things more than the definitions do. He noted he found some definitions that are not consistent in the WCF sections.

Ms. Joubert explained they did not change anything in the WCF bylaw in 2009, but they should match what is in the zoning bylaw.

Mr. Leif stated he agrees they want to propose changing the bylaw for this particular reason, specific to a WCF, and to change the general format of the bylaw. Either all definitions should move or stay where they are. He stated he would go with keeping them where they are because they just did the bylaw over.

Referring to Section 7-05-040, Table of Uses, under Public Service or Public Utility, Mr. Maxson stated the language "Communication tower (including wireless communication facility)" would be for a tower for supporting antennas. It could be a bird house or a windmill design, but the primary purpose is the antennas.

Ms. Joubert stated Mr. Maxson is suggesting to separate "communication tower" from "wireless communication facility", both would be in the table of uses, and both would require a special permit from the Planning Board.

Mr. Leif noted it would not change the method of approval.

Mr. Maxson stated the permitting criteria for a communication tower should be separate from that of a WCF, and it would be more clear to have two specific entries in the use table for them. The current definition of a WCF mixes a lot of things up.

Mr. Leif stated National Grid wanted to construct a tower on their property at 55 Bearfoot Road a few years ago for their own use, with the purpose of communicating directly with a Paxton facility. They tried to permit it under the current bylaw. When asked by the board, they said they could not use a WCF tower that existed near them because it would have mixed a personal tower with a WCF.

Mr. Maxson stated microwave towers are different, so there could have been a question of compatibility.

Mr. Leif asked if the board should have different rules for siting microwave requests than for WCF requests.

Mr. Maxson stated communities should not be concerned with micro-managing, but should have broad rules that apply to everything. A board should have a way to give waivers, but the rules should basically be generalized. He stated when trying hard to protect residential areas, a microwave tower would not be something to be as concerned with as a WCF. He stated a wireless company has some power to insist that a new tower be located in a residential area, where a microwave company doesn't have that power.

Mr. Leif asked if the board needs to craft another section of the bylaw for specific towers or have it in the WCF section.

Mr. Maxson suggested making a distinction so there would be a set of rules for communication towers that apply to any tower use, then in the WCF section, have more rules/criteria that specifically apply to WCFs. General rules would apply to all applicants. As with National Grid, there would still be those concerns when the proposed location abuts a residential district, a pond, etc. That has to do with the look of the facility in the tower section, which is different from the look of the facility in the WCF section.

Mr. Leif stated if it was done that way, and an applicant proposed a WCF, the bylaw would require a special permit from the Planning Board for a new WCF.

Mr. Maxson agreed, stating it would be a single application for dual relief. In addition, it creates a hierarchy because the application will be less complex.

Mr. Leif stated he feels communication towers and WCFs should be separated.

Mr. Maxson stated a primary concern in the WCF section is there are places where it uses the term "WCF", but should read "communication tower". He suggested the two could be comingled or separated, depending on the kind of surgery they want to do.

Ms. Joubert said comingling is fine with her. The ultimate end is how it will be presented at Town Meeting. It shouldn't be confusing, and it makes more sense to split the one section.

Mr. Leif stated he doesn't care how the distinction is made in the bylaw, just as long as there is a distinction.

Regarding his comment #16, 7-05-040C, environmental performance standards for noise, Mr. Maxson noted WCFs are not classified as industrial uses. He stated there is a noise criteria in the bylaw and a different one in the WCF section. He suggested they should make them consistent.

Regarding his comment #18, 7-07-030 D(f), Overlay Districts Use Regulations, Mr. Maxson stated the intent is not that a WCF would become an accessory use. He stated a WCF or a communication tower might be construed as an accessory use under Section 7-05-020(j), but they are permitted by special permit, so clause (f) probably does not apply to a WCF or communication tower. He explained there was a situation in another town in which two applicants filed for towers. The first tower, not the principle use, was allowed and the second one sued because the bylaw didn't say a WCF could be a secondary use.

Mr. Leif stated the bylaw could say any use relating to a WCF or Communication Tower as part of the Major Commercial Development Overlay District (MCDOD) requires special permitting, and call out that section.

Mr. Maxson stated he is trying to remove conflicts or duplications.

Ms. Joubert stated this section promotes MCDOD and was written for the Southwest Cutoff portion of town. The intent was that anything other than stores, restaurants and hotels would be accessory. She stated she believes it would be a good place for a cell tower.

Mr. Leif stated a case could be made that a WCF is an accessory use to many particular uses, and those uses could make a case that they need a WCF.

Ms. Joubert stated the MCDOD does not call it out specifically, but if allowed, they would not be the principle use.

Mr. Leif stated he believes an accessory is not just anything, but rather something that supports the principle use. He asked if it would be possible for a WCF to be constructed in the MCDOD without being permitted because it is an accessory structure.

Ms. Joubert noted that Page 38, Section 7-05-020J(1)(b), Non-residential accessory uses, does not list WCFs.

Mr. Maxson stated the question is if there is a primary use, could there be a secondary use. The court case determined it was an accessory use and an allowed use and the bylaw had to stipulate that a WCF could be an accessory use.

Mr. Leif stated the way the bylaw is constructed, he doesn't see that as a problem.

Regarding Section 7-07-040D(7), Residential Open-Space Planning Overlay District, Mr. Maxson suggested adding a new item (k) to address service for indoor phones in developments capable of having 10 or more dwelling units. It would include an assessment of how the development would receive adequate personal wireless services and how new WCFs would be integrated into the development if the need arises. He stated wireless companies are trying to get high speed, high quality service to indoor phones.

Mr. Leif asked Mr. Maxson if he has seen this happening.

Mr. Maxson stated he has, and the services are now designed into large buildings for tenants who have those demands.

Mr. Leif stated it would have to be done in a way that would allow some general facilities to be built for different companies in order for them to get in there to service their customers. If it's for a new building, the developer is not going to know who's coming in, but will plan for it.

Mr. Maxson stated there are two models. One is colocations and the other model includes putting in little antennas with a neutral host to which wireless companies would pay to connect. Nothing would be above-ground.

Ms. Joubert asked Mr. Maxson if this would change their coverage map.

Mr. Maxson stated the white areas on the map are where they are today because of signal strength and the other is capacity. There may be areas in which more bandwidth for TVs and other electronics needs to be provided. He stated the bylaws should have the flexibility to respond to new white space in the future.

Mr. Pember asked if the white space on the map will change as technology changes.

Mr. Maxson replied it will change, but not on the special permit level.

Regarding Section 7-10, Special Regulations, Mr. Maxson asked if there are any large tracts in town where new residences under this regulation might be counted in the dozens.

Ms. Joubert stated there is only one area left in town that, at some point, would be large enough. It's the only space where there could be hundreds of lots that could be developed.

The board discussed Section 7-10-040D, Radio Communications Facilities, Application Process. Mr. Maxson suggested removing the requirement that all co-locators and all mounted WCFs would need to file for site plan approval with the Planning Board.

Mr. Pember stated co-locators should just go to the building inspector to get their permits. The board doesn't need to see multiple applications for co-locators.

Ms. Joubert stated the decisions are written for up to 3 co-locators. Any additional co-locators would have to file with the Planning Board.

Ms. Gillespie suggested the board would want them to come back to the board each time if it was a rooftop installation

Mr. Maxson stated he wasn't clear on how to interpret it, and of what the board customarily keeps control or sends to the building inspector. The bylaw indicates the first pole gets the benefit of 3 co-locators and, after 3, applicants have to go to the building inspector to make sure the pole has the structural integrity for another co-locator.

Ms. Joubert stated that, if it's in full accordance with the decision, a co-locator will have to come back for a special permit to locate on a tower. All roof-mounts require site plan approval.

Mr. Maxson stated if that is sufficient control, that's fine.

Mr. Leif stated the bylaw doesn't say what Mr. Maxson is saying now.

Ms. Joubert stated that is because it doesn't distinguish between the different types of towers. They are all called WCFs.

Mr. Maxson stated the first part of the clause says that every applicant for a WCF must meet the requirements of Section 7-03-050.

Mr. Leif asked where the bylaw says after 4 they need a special permit.

Mr. Maxson stated one tower plus 3 co-locators is based on 1999 models. Now towers are handling one or two.

Mr. Maxson stated there are two ways he can proceed with the bylaw re-do. If he's crafting the language and then re-crafting it, he's taking the point role which is fairly time consuming. The other way is for him to proof the gist of it, people are taking notes and someone on the team or subcommittee is

working the language based on the discussions so he's not writing and rewriting. He asked how the board envisions making the changes.

Ms. Harrison said she likes the first way.

Ms. Joubert stated it is not an option. The remainder of money from the mitigation account is what they have with which to pay Mr. Maxson.

Mr. Maxson stated he will give the board the best he can.

Ms. Joubert stated the scope of Mr. Maxson's contract includes attending one or more meetings with the Planning Board, and one or more public hearings.

Mr. Leif stated they should meet on December 4th to finalize the changes.

Ms. Joubert asked the board what they want to change. She stated Mr. Maxson has made comments and has changes that make sense. She suggested the members should go through Mr. Maxson's draft to determine what they want.

Mr. Pember stated the distance from an installation to the 500-foot and 1000-foot property lines is why they are looking at the bylaw. The rest of the changes are good, but that's not what the board has to get through.

Regarding the 1,000 foot distance from a school property line, Mr. Maxson stated a lot of the time there is a ton of open space around schools, so the WCF itself could be 2,000 feet from the school. That could eliminate WCFs that could be of great benefit to the schools.

Mr. Pember stated these setbacks were arbitrary in the 1990s and he feels they are arbitrary today. He asked Mr. Maxson if he agrees.

Mr. Maxson stated they are not based on the land use in the area and this creates large tracts of land where facilities cannot go.

Mr. Leif stated he has a general feeling of well-being with these setbacks. He stated that, at Town Meeting, they could say there are some tracts of land that could not have WCFs but that would be a good place for them.

Mr. Maxson stated some towns do it on school grounds because it's profitable and the town has the land. It is also a safety thing to know they have good service and, from an emission standpoint, there is less exposure when a facility is overhead.

Ms. Gillespie stated people were very against the cell tower proposed on the property across the street from St. Bernadette's school. She suggested reducing the setback from a school would set themselves up for failure.

Ms. Harrison stated she thinks Mr. Maxson should go to Town Meeting.

Mr. Maxson asked the board if they think it is going to be controversial, it might be a good thing to have him standing by. If GIS tools are available and staff is available to map these zones, they can see what the setbacks do to exclude what otherwise might be a sensible place for the use.

Ms. Joubert stated there are very limited places to put another cell tower in town. She stated she mapped out 1,000 feet from 8 schools in town and that took care of pretty much anywhere else for a new cell tower.

Mr. Pember stated there is no reason why there should be a special distinction for schools. He stated it should be 1.5 times the height of the structure.

Mr. Maxson stated they might do a flow chart of how the bylaw has been working and is expected to work currently, and maybe he can put together a flow chart that memorializes the decision-making process. They can try to lay out their intentions with the existing bylaw and how they want to change it with a picture and not words.

Next Meeting: The next meeting will be held on December 4, 2012.

The meeting adjourned at 10 pm.

Respectfully submitted,

Debbie Grampietro
Board Secretary