



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 10-20-15

Planning Board Meeting Minutes September 22, 2015

Members in attendance: Theresa Capobianco, Chair; Leslie Harrison; Amy Poretzky; George Pember; Michelle Gillespie

Others in attendance: Kathy Joubert, Town Planner; Elaine Rowe, Board Secretary; Chris Swinarski, Verizon Wireless; Paul Gallagher

Chair Theresa Capobianco called the meeting to order at 7:10PM.

Continued Public Hearing – Proposed Wireless Communications Facility at 386 West Main Street

Applicant:	Verizon Wireless
Engineer:	Chappell Engineering Associates, LLC
Date Filed:	June 30, 2015
Decision Due:	Within 90 days of close of hearing

Ms. Joubert noted that all board members were provided a copy of the applicant's formal waiver request dated September 16, 2015 (copy attached). Mr. Swinarski noted that the board had requested that the formal request for section 7-10-040 E(10) requiring that a wireless communications facility be a minimum of 1000 feet from a school property line. He also provided the following viable reasons for granting this waiver:

1. The term "school" does not apply to The Goddard School. Mr. Swinarski noted that the bylaw does not define "school" or "child care facility". He explained that the section pertaining to adult book stores has a similar setback restriction and voiced his opinion that the town legislature that drafted this bylaw does make a distinction between schools and child care facilities. He reiterated that, even though it is called a school, he does not think the term applies.
2. "School" under state law is very much defined, and as such must be licensed by the Department of Elementary and Secondary Education. Mr. Swinarski indicated that he has provided a list of schools in Northborough who have such license and Goddard School is not on that list. He reiterated his opinion that the facility is a daycare and not a school.

3. Under The Federal Telecommunications Act, this would qualify as an effective prohibition of wireless service, which is not allowable under the regulations.

Ms. Poretsky stated that, in reviewing the Telecommunications Act, there are many different cases where parties discuss how a significant coverage gap was determined. She emphasized that the coverage gap must be “significant” to justify waiving all three of our rules stated in the wireless communication section of the Town of Northborough bylaws. She state that that the 700 people who may be affected as stated in the application, is not considered significant in a town with a population of over 14,000 residents. It is under 5% of the population. She also noted that the Act states that it does not guarantee coverage for every single white spot on a map and the applicant must prove that the gap is significant. Mr. Swiniarski asked Ms. Poretsky if she had read the criteria in the Act, and reiterated that significance is not validated by coverage maps. Ms. Poretsky state she did read the criteria in the TCA (Telecommunications Act).

Mr. Swiniarski commented that the Sprint vs Palos Verdes Estates case is not controlling law. Ms. Capobianco asked how far the case went in the courts. Ms. Poretsky noted that it went to the 9th Circuit Court, which Mr. Swiniarski stated is not controlling in this situation. He stated that the preeminent case for the 1st Circuit Court is that of Omnipoint vs Amherst NH. Mr. Swiniarski explained that federal law gives carriers latitude by promoting competition and the entire point behind the law is to make carriers seek to continually improve.

Ms. Poretsky reiterated her position that a significant gap has to be proven by the applicant. She commented that the law was designed to promote competition but not allow Verizon to have a monopoly, which seems relevant here given the fact that Verizon has 4 other wireless facilities in town. In response to further comments made by Ms. Poretsky about upload speeds and signal strength, Mr. Swiniarski stated that the goal is to provide signal strength that will ensure adequate service. He emphasized that walking around with a personal cell phone to test signal strength is irrelevant and reiterated that federal law seeks to allow providers to build a network to provide service for the market. Mr. Swiniarski asked if Northborough was against cell towers. Ms. Poretsky stated that this “white zone” is mostly open space and forestry land and this particular cell tower is not filling a significant gap. The applicant is asking for a waiver of all 3 rules in the wireless communications section of the Northborough bylaws and Ms. Poretsky stated there needs to be a significant gap to allow that.

Ms. Capobianco expressed concern, specifically because the Omnipoint case required the carrier to demonstrate a present substantial gap in coverage but, as Verizon’s representative, Mr. Swiniarski came before the board saying that they anticipate that they are going to need this tower. She asked Mr. Swiniarski how the two can be correlated. Mr. Swiniarski explained that this is a business that must anticipate future needs and build accordingly. He suggested that building a tower today to meet the

demand today is shortsighted. He indicated that demand has grown by 1000% in the past year, and has even increased since the first hearing on this petition. Ms. Capobianco asked if a significant gap in coverage exists today. Mr. Swiniarski indicated that it does. Ms. Poretsky stated that she had asked residents in this area of town about their cellular service and they indicated that service is fine. Mr. Swiniarski stated that Verizon will not disclose competitive market information, so will not be providing dropped call data. Ms. Capobianco reiterated the board's question about whether the coverage gap is truly significant. Mr. Swiniarski emphasized that Verizon would not spend this amount of money unless there was a need. Ms. Capobianco noted that Mr. Swiniarski had originally stated that Verizon anticipated that there would be a need for this tower. Mr. Swiniarski stated that Verizon has established a level of service that is needed for a reliable network, and that is what is shown on the plots that were provided. Ms. Poretsky voiced her opinion that the expense to install this tower is not exorbitant. Mr. Swiniarski stated that the cost to determine where to cite towers is in the millions of dollars, whereas the actual installation is not the costly piece. Ms. Gillespie stated that it is not yet clear if the tower is really needed now. Mr. Swiniarski reiterated that service is not adequate in this location.

Mr. Swiniarski noted that, in a 2013 study, it was determined that 50% of the population was using a mobile device as their primary means of communication, and it is expected that this number will grow. Ms. Poretsky commented that technology is also advancing. She also noted that most of the area to be covered by the proposed tower is open space. Ms. Capobianco asked if the applicant is projecting that they are going to need excessive coverage for people using cell service within open space. Mr. Swiniarski stated that, in reality, Verizon has an existing site that cannot provide the coverage that is needed. Ms. Capobianco reiterated that the proposed tower will be Verizon's fifth cell tower in Northborough, and the map in attachment C shows that only a small area covered by other towers will be picked up by the new tower. Mr. Swiniarski stated that the area is not small as far as Verizon is concerned. Ms. Capobianco stated that, without data to back up their claims, the map requires a subjective not objective interpretation.

Ms. Joubert explained that the bylaw allows the board to ask for an independent review, which would be paid for by the applicant. She also suggested that any questions the board may have about their jurisdiction and/or the Telecommunications Act can be submitted to Town Counsel before the hearing is closed or a decision is rendered that may or may not involve Town Counsel at a future date.

Ms. Capobianco asked if the town has a consultant to do an independent review. Ms. Joubert noted that the town has used David Maxson in the past. Ms. Poretsky voiced her understanding that Verizon has used Mr. Maxson to help cite towers. Ms. Joubert indicated that there are a very limited number of consultants who do this type of work, and Mr. Maxson does the vast majority of the reviews for municipalities. Mr. Swiniarski expressed frustration and asked why the board had not opted to do this from the beginning. He noted that, at the last meeting, he had asked for a vote at this meeting

and left confident that he would get it. Ms. Capobianco explained that more issues have come up and the board needs to know everything it should know in order to make the right decision. Ms. Capobianco voiced a desire to ask for an independent review.

Ms. Poretsky noted that Ms. Gillespie had asked the applicant to provide a letter confirming that the nearby pole at 300 West Main Street is full. Mr. Swiniarski stated that he has attempted to do so several times with no success. Ms. Gillespie asked if the town has the ability to request such a letter directly from the owner. Ms. Joubert confirmed the Building Department has on record which companies have pulled permits to locate on the pole but the Town does not receive notification if a carrier leaves.

Ms. Capobianco asked Ms. Joubert to have Town Counsel provide input about verification of the "significant gap". Ms. Poretsky voiced her opinion that the laws were written to allow for provision of service in a substantial dead zone, but that really needs to be proven. Ms. Gillespie asked if the board members were comfortable with the waiver request letter. Ms. Poretsky commented that preschools are accredited by a different agency, and noted that the bylaw does not stipulate that it applies only to state approved schools. Ms. Capobianco requested that Town Counsel provide an opinion about whether Goddard School would qualify as a school. Mr. Pember suggested that Town Counsel be asked to comment on the waiver request letter. Ms. Poretsky stated that, since the applicant is seeking waivers from all of the criteria in the Northborough bylaws, the coverage gap should be significant. She also noted that, since this was discussed at great length a few years ago, it is imperative that the board do its due diligence. Ms. Gillespie suggested asking Town Counsel about changing the bylaw as it pertains to schools. Ms. Capobianco suggested that, for this hearing, the board should ask Town Counsel to comment on the waiver request letter and the reasoning provided by the applicant to justify granting of the waiver.

Ms. Capobianco reiterated her request for Ms. Joubert to arrange for an independent review. Ms. Poretsky also asked about timeline constraints for rendering a decision, and questioned whether hiring the independent consultant will prevent the board from complying with those constraints. Ms. Joubert explained that the board has 90 days from the date that the hearing is closed to render a decision. Mr. Swiniarski disagreed, and voiced his understanding that the board must render a decision within 90 days of the opening of the hearing. Ms. Capobianco asked Ms. Joubert to clarify the matter with Town Counsel. She also asked how likely it is that the board will have feedback from the consultant in time for the next meeting (October 6, 2015). Ms. Joubert agreed that it might be challenging.

Mr. Swiniarski asked if the board needs anything further from him. Ms. Poretsky agreed to contact Ms. Joubert if she finds anything else of concern.

Ms. Poretsky asked if the applicant had looked at alternate locations (not just from the 2 from the previous meetings as there are other areas nearby). Mr. Swiniarski stated that

much of the first meeting was spent discussing that issue, and noted that other landowners were approached.

Ms. Capobianco stated that the applicant has the ability to waive the 90 day requirement. Ms. Gillespie asked if they would be willing to do so. Mr. Swiniarski indicated that it would depend on what the board asks of the applicant, and voiced his preference to address all issues as soon as possible. Ms. Capobianco commented that the hearing will take as long as is necessary for the board to do what is right for the town's residents.

Ms. Poretsky asked if there were only two other locations that were considered. Ms. Joubert noted that there had been some discussion by the Applicant about property on Spring Street in Shrewsbury. Ms. Poretsky voiced her understanding that Verizon is looking at the Spring Street location in tandem with the West Main Street location. Mr. Swiniarski stated that there are provisions of the bylaw that are not germane to this discussion, and will not stand up against federal law. Ms. Poretsky indicated that local bylaw can be overridden only if the applicant can prove there is a significant gap. Mr. Swiniarski encouraged the board to discuss the issue with Town Counsel.

Ms. Capobianco noted that the board needs to have a better understanding of what constitutes a significant gap, and whether it applies to current conditions or anticipated future conditions. Ms. Gillespie noted that the applicant is seeking three waivers, and voiced her desire to have Town Counsel address all of them. Mr. Pember asked for confirmation that federal law pre-empts our local bylaw.

Ms. Capobianco reiterated the board's request to hire a consultant to provide an independent review. She expressed a desire for the consultant to be prepared to attend the meeting on October 6, 2015 and to have a response back from town counsel for that meeting as well. George Pember made a motion to continue the hearing to October 6, 2015 at 7:00PM. Michelle Gillespie seconded; motion carries by unanimous vote.

Mr. Swiniarski reiterated his desire to address any and all concerns so that a decision can be rendered at the next meeting.

Right to Farm bylaw – Ms. Joubert indicated that she has provided board members with a copy of the Right to Farm bylaw and noted that she has not yet had the opportunity to review it. Amy Poretsky notes she also has not had time to read it.

Covenant and lot releases for Sterling Court – Ms. Capobianco asked Ms. Joubert to clarify the effects of signing the covenant. Ms. Joubert noted that, in order for the building permit to be issued, the lot needs to be released from the covenant. Mr. Pember noted that the roadway would still fall under the covenant so even though the lots are released, the developer will still not get his bond returned until the roadway is completed and accepted. Ms. Joubert explained that the covenant is a standard contract that the Planning Board has always signs. She noted

that the covenant is prepared by Town Counsel and references the date of the plans, stipulates the work that the developer must do, the road name, and any waivers. Ms. Capobianco asked if the waiver pertaining to the landscape buffer affects any of the lots. Ms. Joubert indicated that the back two lots are affected by that waiver. Ms. Capobianco asked about impacts of signing the release with that waiver in the covenant. Ms. Joubert stated that the developer is still required to abide by the decision, which contains the conditions. Ms. Capobianco stated that she is comfortable with signing the covenant and the lot release.

Other Business

85 Newton Street - Ms. Joubert noted that the board has previously asked Mr. Ramadan to come to the first meeting in October to provide an update on his project, and asked if they are still interested in having him do so. Mr. Pember asked if Mr. Ramadan has anything new to report. Ms. Joubert stated that he had installed the culvert but it was done incorrectly so will have to be fixed. Members of the board requested that Mr. Ramadan appear at the meeting scheduled for October 20, 2015, where he should be the first order of business.

16 East Main Street, Citro Electric - Ms. Poretsky asked about the status of this project. Ms. Joubert indicated that she has no information and does not know that status of the demolition permit.

ZBA Hearings - Ms. Poretsky asked about the U-Haul project before the ZBA at their next meeting as she had heard from neighbors with concerns. Ms. Joubert noted that she had mentioned the project at the last Planning Board meeting. Ms. Gillespie asked if 40 Bearfoot Road is in an industrial zone. Ms. Joubert confirmed that it is. Ms. Gillespie asked if the project will go before the Design Review Committee. Ms. Joubert indicated that it will, but noted that the applicant is seeking use variances before doing so.

1C Belmont Street - Ms. Gillespie asked about the sign proposed for 1C Belmont Street. Ms. Joubert explained that the property owner is proposing to put a pylon sign on his land to advertise some of the smaller businesses in Northborough Crossing.

In response to a question from Ms. Gillespie, Ms. Joubert stated that the proposed sign will be similar to what is already in use at the Northborough Crossing development. She noted that the ZBA had several questions about the sign and asked the applicant to do some additional follow-up. She explained that the owners of the Northborough Crossing development are concerned about a sign that they have no control over.

Signs – Ms. Poretsky noted that she had seen a real estate sign attached to a stop sign with zip ties near the Honey Farms store. She also saw a similar sign stapled to a pole on Davis Street. Ms. Gillespie commented about other signs posted on poles and trees and asked if the town has the ability to remove them. Ms. Joubert indicated that the town cannot remove them if they are not on town property.

Subdivision Rules & Regulations – Ms. Joubert stated that she has met twice with the DPW Director and Town Engineer to discuss changes to the subdivision rules and regulations. She noted that the DPW is currently working with a consultant to update the Water & Sewer and DPW regulations, so this will dovetail nicely with that project. She also noted that, as the DPW moves along through their project, proposed changes to the subdivision rules and regulations will be written to reference the new DPW regulations.

Ms. Joubert also noted that the DPW project is expected to take 18 months to complete, and she agreed to provide the board with updates along the way. Ms. Gillespie requested that town staff provide details of changes that will affect Planning Board regulations. She expressed particular concern about the issue of curbing, which Ms. Joubert indicated will come back to the Planning Board. Ms. Joubert stated that the DPW Director will appear before this board to present his preferences, but the final decision about any changes to the Subdivision Rules and Regulations will be made by the Planning Board.

Master Plan Update – Ms. Gillespie asked Ms. Joubert if she will be sending a letter to the Board of Selectmen about forming a subcommittee, and reiterated the Planning Board's desire to have two members sit on that subcommittee.

Consideration of Minutes – Amy Poretsky made a motion to approve the Minutes of the Meeting of June 2, 2015 as amended. George Pember seconded; motion carries by unanimous vote.

Members of the board agreed to defer consideration of the Minutes of the Meetings of July 7, 2015 and August 4, 2015 to the next meeting.

Right to Farm bylaw – Ms. Harrison expressed an interest in pursuing adoption of the Right to Farm bylaw. Ms. Capobianco stated that Bolton is a Right to Farm community, and indicated that her sister and some of her neighbors have been able to benefit from it. She also commented that it comes at no cost but appears to offer tremendous benefit. Mr. Pember voiced support, even though he has no experience with it. Ms. Capobianco asked if the board should hold a public meeting to determine if residents would be interested. Ms. Joubert explained that she does not yet know the pros and cons of why Northborough may or may not need the bylaw. She also suggested checking with other town boards to determine if the subject has ever been proposed. Ms. Capobianco asked Ms. Joubert to do so.

Ms. Joubert asked the members of the board what to put forth as to why the Planning Board is in favor of this bylaw. Ms. Harrison voiced her opinion that education and conflict resolution would be a beneficial result of such a bylaw. Ms. Capobianco noted that it would also provide notice to anyone coming into town that we are a farm-friendly community. Ms. Harrison asked if anyone felt there was a downside to this idea.

Ms. Joubert asked the board if they would like to host discussions about the proposal prior to addressing it with the Board of Selectmen. Ms. Gillespie voiced a desire to have the proposal

ready for consideration at Town Meeting 2016, and requested that the board send a letter to the Board of Selectmen to get the matter on their agenda as soon as possible. Ms. Poretsky suggested that board members read the Right to Farm bylaw before moving it forward to any other boards. Members of the board agreed.

Ms. Joubert voiced her impression that the Board of Health was not ready to go forward with this bylaw. Ms. Harrison stated that, while she did not think they were enthused about it, she did not believe they were opposed to it.

Ms. Capobianco asked Ms. Joubert to clarify the Board of Health's position on the Right to Farm bylaw. Ms. Joubert expressed a desire to do further research before jumping ahead. Ms. Harrison noted that both Berlin and Bolton are Right to Farm communities, and suggested soliciting input from officials from those two towns.

Meeting adjourned at 8:42PM.

Respectfully submitted,

Elaine Rowe
Board Secretary