



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 1/19/16

Planning Board Meeting Minutes November 12, 2015

Members Present: Theresa Capobianco, Amy Poretzky, Michelle Gillespie, George Pember, Leslie Harrison

Others Present: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Ziad Ramadan, David Maxson, Christopher Swiniarski

Chairman Capobianco opened the meeting at 7:10 pm.

BOND REDUCTION REQUEST FOR NEWTON STREET

Ziad Ramadan was present. He stated the new 9 poles are in place on Newton Street. The next step is to contact the utilities to move the wiring. First will be National Grid and he has been in contact with them. Two days ago they said they would start on November 16th.

In response to a question regarding the state of Newton Street from Ms. Capobianco, Mr. Ramadan stated when the trees came down, it created some ruts and holes in the road and the DPW has repaired them. Mr. Ramadan stated he replaced the culvert, but after seeing the work he had done on the culvert, the DPW Director did not want him to do anymore work and revoked his drain-layer's permit. The culvert work will be redone in the spring when Mr. Ramadan finds a certified drain-layer to do it.

Fred Litchfield, Town Engineer, prepared a bond reduction letter for Newton Street at the request of Mr. Ramadan, which was distributed to the Board. He reviewed the letter with those present, as follows:

1) Section I, Tree cutting was estimated at \$11,500 to cover the cost of cutting all trees within the limits of Phase I and it does seem all trees proposed to be cut within the both phases of this project have been cut.

In response to a question from Ms. Capobianco, Mr. Litchfield stated this portion of the estimate is just for the tree cutting. Removal of stumps is a separate issue.

2) Section II, Bonding for the utility pole relocation was estimated at \$60,000 to cover the cost to have Verizon relocate of all of the utility poles and transfer the wires for each pole within the limits of the project. While it does appear the new poles have all been set, there is an outstanding issue as to whether or not a guy wire will be required for pole #23, which is directly in front of house #331, and no wires can be moved until this issue has been resolved.

Mr. Litchfield explained the poles are in place, however there has been a concern about a guy wire which could result in additional poles being needed. He stated he doesn't see that and doesn't think it will be the case, and a person at National Grid has told Verizon there may have been a mistake. Mr. Litchfield noted he has been trying to contact the person Mr. Ramadan has spoken to, and it may be that it's all set.

Responding to a question from Ms. Capobianco regarding the utility bond and removal of the old poles, Mr. Litchfield stated it is his belief it included installing the new poles, removing the wires and removing the old poles.

3) Section III, Right of Way clearing was estimated at \$94,000 to cover the cost of clearing and grubbing within the right of way, removal and resetting stone walls as needed, and removing stumps and any ledge or rock encountered within the right of way. While the most of the clearing has been done and some of the stone walls have been reset, none of the ledge has been removed and none of the stone wall work has been approved.

Mr. Litchfield noted Town staff has inspected the stone walls and have not confirmed the work is aesthetically acceptable. They went out to discuss with Mr. Ramadan what has been done correctly and what has not. The town reserves the right to accept or reject the work done on the stone walls within the limit of the right of way when the project is done.

4) Section IV, Roadway preparation was estimated at \$63,500 to cover the cost of pulverizing the existing pavement, loam and seeding the edges of the roadway and installing the new pavement. None of this work has been done to date.

5) Section V, Easements and As-built drawings was estimated at \$17,500 to cover the cost for preparing easements and record drawings of the work completed within the right of way and none of this work has been done to date. Although the approved plan did not require any easements from land not under Mr. Ramadan's control, no easements have been provided for the land which is under his control to date.

Mr. Litchfield noted the board agreed to a plan that did not require easements on private property other than those of which Mr. Ramadan has control over. No easements have been provided and Mr. Ramadan has just been doing the work in those areas.

Although some of this work has been completed and some money could be released, there have been a number of issues requiring staff to meet with Mr. Ramadan to explain his various obligations as the responsible party for this project and violations of the regulations relevant to construction within a public road. As a result of Mr. Ramadan's construction practices and performance his Drain Layer's Authorization has been revoked by the Public Works Director.

Therefore after reviewing the current state of the project and consulting with the Public Works Director, I am recommending the Planning Board not release any money at this time to the Developer.

Mr. Litchfield stated he does agree some work has been done, but staff has significant concerns as to the way the work is progressing in the Town's right of way and feels that releasing any of the bond money would send a message that Mr. Ramadan's work is acceptable, and to date, the work is not acceptable.

There were no comments or questions from the board members.

In response from questions by an unidentified person in the audience, Ms. Capobianco responded the decision rendered by the board included a timeline for the project and the Town Planner, Kathy Joubert, may be contacted for that information.

Kathleen Temlak, Newton Street, asked if Mr. Litchfield could address the issues she has with Mr. Ramadan's project, and Ms. Capobianco reminded her he could be contacted in the Engineering Department. Ms. Temlak asked if Mr. Litchfield, the Planning Board or Mr. Ramadan was responsible for the project.

Ms. Capobianco stated the Planning Board rendered a decision, Mr. Ramadan is required to build according to the decision, Mr. Litchfield is the Town Engineer, and works with other departments of the town when things aren't done right, the appropriate personnel will address the issues.

Ms. Harrison motioned to not reduce the bond money. George Pember seconded the motion. And the vote was unanimous.

Mr. Ramadan stated the board is going back on their word when they said at a meeting that he would get the bond money back when he gave the money to the utilities for the bond.

Mr. Litchfield stated there was a discussion about releasing of the bond; he and the board confirmed it could be reduced from time to time; and money could be released for the work on the poles. However, the work is not complete and Mr. Ramadan still has a question as to whether or not more poles may be needed. Ms. Joubert will check the decision and Ms. Capobianco suggested Mr. Ramadan could come back to the board if he finds written verification regarding releasing of the utility bond money.

DISCUSSION AND VOTE ON 386 WEST MAIN STREET WCF SPECIAL PERMIT & SITE PLAN APPROVAL

Ms. Joubert discussed the documents she distributed to the board this evening, including email messages to and from Michael Villa from SBA, from herself and from Attorney Christopher Swiniarski, representing the Applicant. In addition, the most recent memo from David Maxson, consultant for the Town, in regard to the conversations she and Mr. Swiniarski had with Mr. Villa.

The board read the referenced most recent letter from David Maxson, dated November 12, 2015.

Ms. Capobianco confirmed with Mr. Maxson that, in his report regarding 300 West Main Street, he discussed the visual impact and because they will be constructing antennas on the exterior of the pole, it will give the pole a completely different look.

Mr. Maxson apologized for not getting his information to the board earlier, he stated if the board finds any one or combination of the project is in favor of the applicant, it could be decided tonight.

The board discussed the possible visual impact to the 300 West Main Street tower if the Verizon were to use it. Mr. Maxson stated Verizon would probably try to get as much of their equipment on it as possible in order to maximize its effectiveness, which would change the tower from a straight pole to something with bump-outs. The cable for raising and lowering of the flag would have to go around a thicker part of the pole and therefore it might be prudent not to have a flag on the pole. Ms. Capobianco stated it would change the aesthetics of the pole. Right now, people don't know it's there because it looks like a flag pole.

In response from a question from Mr. Pember regarding the time period to issue a decision, Ms. Joubert stated Town Counsel calculated it and the time runs out on November 27th, as the application was filed on June 30th. It's a different time period in the Telecommunications Act, called the shot clock, and it is 150 days from the date the application was filed. It was noted there is another meeting scheduled for November 23rd.

Mr. Swiniarski stated he believes today is the 149th day, but would sign an agreement to extend the hearing to November 23rd. He noted the decision has to be done by the shot clock deadline. Looking at his calendar, he stated it would be 6 business days to their next meeting and he reminded the board that time is getting tight.

Ms. Poretsky asked if they could look at the options for 300 W Main Street after voting on the decision. Ms. Capobianco responded the application for 386 West Main Street is what they will be voting on, not what they may or may not want to do with the 300 West Main Street tower.

Mr. Maxson explained if the board has a good faith belief that there is an alternative that is more consistent with the bylaw and requires a little more attention, there are times when the first application is put on an agreed to hold in order to vent out the boards preferred alternative rather than issuing a denial.

Mr. Swiniarski stated on November 2nd he gave the board a very substantial and informational explanation on why 300 West Main Street is not viable. He offered to go over it again if the board needs to.

Ms. Capobianco replied she read it and it was well-written. She stated she feels the Board has received all the information they're going to get, but wanted to make sure she understands Mr. Maxson's information regarding the "significant gap" in coverage – that it was his opinion a few meetings ago that the Applicant has demonstrated the need for this facility.

Mr. Maxson replied that he is very careful not to say there is or isn't a significant gap in coverage because that is up to the courts to decide and the boards to interpret the court's meaning, but based on the coverage map presented, they show areas in the vicinity of the proposed tower where their existing LTE service is below their reasonable threshold for provision of service.

Ms. Poretsky stated that Mr. Maxson also mentioned that this new location will not help offload from the others towers such as N4. Mr. Maxson replied that there are two questions: 1.) gap in coverage and 2.) functionally a "gap" in capacity and I don't see enough evidence to support a claim in the capacity question but the coverage maps do show information about the coverage question.

Ms. Poretsky stated she referred to Town Counsel's memo, dated 10/5/2015, and their definition of a "significant gap" and in her opinion, this proposal does not meet it. Ms. Poretsky stated as a board we need to decide if there is a significant gap on size of gap; population of the area; and heavily commuted thoroughfare.

Ms. Gillespie referred to a discussion regarding trail head parking from the November 2nd meeting, and asked Mr. Swiniarski if he could explain it again. She noted people had questions about parking on private property.

Mr. Swiniarski stated they are not changing the parking, as they've said all along. The existing parking will remain. There was a meeting at which there were some people who were concerned about the possible towing of cars, and he reiterated they are not altering the parking.

Ms. Joubert explained the use of the parking, and the town's use of it for parking for the trail head, is all done in good faith.

Ms. Poretsky asked for clarification regarding the hearing and voting procedures before they close the hearing. Ms. Capobianco responded the members will discuss conditions for the decision at tonight's meeting. Ms. Harrison will not be able to vote on the decision because she missed the first meeting when the hearing was opened. Ms. Joubert noted that all four members who have been present at all the meetings for the hearing would have to vote in favor of the project in order for it to be approved.

Ms. Capobianco offered Mr. Swiniarski the opportunity to address the board once more before they close the hearing.

Mr. Swiniarski responded and summarized the five reasons why the 300 West Main Street tower (SBA monopole) is not viable.

He stated the SBA tower is not a viable alternative to the proposed tower because any installation there would require additional ground space, which is not presently available. If the ground space was

available, the resulting installation would be a make-due situation and would result in a deficient network. Any attempt to utilize it would not achieve the purposes of the Telecommunications Act. Any attempt to utilize the SBA monopole to create a facility consisting of more than three antennae would involve the variables of securing additional ground space, if possible, or if allowed by SBA. If these factors were to fall in the Applicant's favor, the possibility of which is remote, the result would be a visually distasteful facility that would have a greater visual impact than that which is proposed at the expense of losing years of planning and development. In addition, there are hurdles and variables with the location of the SBA monopole within wetland resource areas. The 300 West Main Street development went through Site Plan Approval and went before the Conservation Commission for approval. There are two lease relationships with which they are dealing. One is SBA states there is no room on which for them to locate, and the other is the property owner. The main point is that there is not sufficient room on the flagpole. As Mr. Maxson said, it would be a make-do situation. Mr. Swiniarski stated it comes down to what is legally practical and feasible. They would be moving heaven and earth to accomplish something that would be extremely insufficient.

Before closing the hearing Ms. Poretsky referred to MassDOT traffic studies that talked about heavily-commuted thoroughfare. She stated she compared the Applicant's figures, 8,392 trips on West Main Street, to the MassDOT studies on I-290 (74,000 trips) and I-495 (99,000 trips) and she doesn't believe West Main Street is a heavily-commuted thoroughfare.

Mr. Maxson stated the Applicant's coverage analysis shows that this area is currently not served by the appropriate level of service. It's not just whether or not traffic is heavy and either one of them could be a reason for the gap.

Mr. Pember motioned to close the hearing, Ms. Gillespie seconded the motion and the vote was unanimous to close the hearing.

The board discussed the information regarding the significant gap in coverage.

Ms. Capobianco stated the question is if the significant gap is real or anticipated. They heard a lot of information from the Applicant and hired Mr. Maxson, as he is an expert in this field, to review the information presented by the Applicant. The information brought forth from both the Applicant and Mr. Maxson confirms that, in terms of meeting the standard of demonstrating standards for a significant gap, this Applicant has done that. Part of it is determining whether the location of the perceived gap is residential or commercial, but we do have West Main Street there. In terms of servicing people using data and cellular service and looking at the expert's opinion, she stated she believes the Applicant has met that particular standard.

Mr. Pember stated the Applicant wouldn't spend a large sum of money to locate a tower there unless there is a gap and they need to fill it. The board hired the expert and he says there is a gap and that the Applicant has demonstrated the need to fill it. Mr. Pember stated he agrees there is a gap.

Although she is not able to vote on the decision, Ms. Harrison offered her opinion, stating she agrees with Mr. Pember.

Ms. Gillespie stated she doesn't think there is a gap today, but as the Applicant stated, going forward she can see there could be a need and a potential gap in the near future. She stated she agrees it meets the criteria of a gap.

Ms. Poretsky is not in agreement. She stated Mr. Maxson said there is a gap, but the board has to determine if the gap is significant. There are three criteria that determine a significant gap. She stated the open space and forestry land can never be developed and, compared to the existing coverage map, it shows that any residential coverage is very minimal. The population of the area is low and the

Application states 700 people will benefit from the proposed tower, which is less than 5% of the population, and she doesn't think it is significant. The third criteria is that the tower is near a heavily-commuted thoroughfare, and she doesn't believe West Main Street is a heavily-commuted thoroughfare. She stated she looked at case law regarding heavily-commuted thoroughfare and it talked about Route 2 and other bigger highways.

Ms. Poretsky also said that the application doesn't comply with three of our towns zoning bylaws. 1. located less than a mile from the closest Wireless Communication Facility; 2. Less than 500 feet from the closest residential structure; and 3. Less than 1000 feet from the closest property line of a school.

Mr. Maxson stated it's just one of several different tests. The Applicant's coverage analysis is not served with the appropriate level of signal. It's not just the commute.

Ms. Capobianco stated it's not just 700 residents located to the north and west of the site. The east and south usage will be much higher and the need will be for data.

Ms. Capobianco responded to Ms. Poretsky, asking her if she thought about future planning. Ms. Capobianco stated there may not be a need today, but there will be in the future. As planners, they should look at the future and what Mr. Swiniarski presented. She stated she doesn't believe the 300 West Main Street tower would work. If the project is denied today, the Applicant could come back and apply again. She asked Ms. Poretsky if planning for the future makes a difference for her.

Ms. Poretsky stated she overlaid the maps and with the amount of open space and forestry land the development in the future is very limited (at 52 minutes on tape). The amount of people it will service is so limited on the map she thinks it is less than 700. Ms. Capobianco stated it's not just the residential part they have to look at. Ms. Poretsky responded she thought they don't look at the future for the vote you have to decide if there is a significant gap today and she gave examples on how we, as planning board members, don't know what the future of technology holds.

Ms. Harrison and Mr. Pember reiterated they believe there is a significant gap. Ms. Poretsky stated she doesn't see it as a significant gap and read some quotes from Dave Maxson's memo. Ms. Capobianco stated Mr. Maxson's analysis indicated that Verizon got it right; that there is not sufficient coverage for Verizon's business; and that's their standard. There is some proprietary information the board cannot know. At a certain point, the determination is whether it's a significant gap. Their Applicant has given them directives and has found a significant gap.

Ms. Poretsky talked about the 1996 TCA stating that it doesn't give the service providers coverage for every small white spot on their maps it has to be significant and she feels this is a small spot. She stated she looked at this lot and a 100-foot tower in that area doesn't even cover all the streets in the area just a small strip of W Main St. Ms. Harrison stated it's not just for people driving around with their cell phones. This is for data, as well. Ms. Capobianco noted they would have to talk to 20,000+ people to get an accurate idea of the coverage.

Ms. Joubert stated dropped calls were addressed at the last meeting and the board agreed reviewing the number of dropped calls is not an accurate method to determine if coverage is adequate. Also, there has been a lot of emphasis on what the Telecommunications Act says. In the Town's bylaw, there is no reference to a significant gap. The questions are if the Applicant has met the bylaw and should a special permit be granted. She stated that, looking at the bylaw, those have been met. Ms. Poretsky asked how is the bylaw being met? The Applicant is looking for waivers, 1. Less than a mile from another cell tower, 2. 500 feet from residential, 3. Less than 1000 feet from a school. Ms. Joubert and Ms. Capobianco state it's been met because they asked for waivers. Ms. Poretsky would feel more comfortable granting the waivers if there was a proven "significant gap."

Ms. Capobianco stated they have enough information to address the project. Her interpretation is that what they learned from Mr. Maxson is that there is a gap in coverage that would justify the Applicant seeking tower space in town. The term “significant gap in coverage” is something the courts would determine. There is significant ground to approve the Application based on the data the Applicant has presented. She asked Ms. Poretsky if there is any additional information she would like in order to make a determination of a significant gap and Ms. Poretsky stated there is not.

REVIEW OF GENERAL REQUIREMENTS FOR WCFS

At the suggestion of Ms. Joubert, the board members reviewed the sixteen (16) items listed under General Requirements for Wireless Communication Facilities in Section 7-10-040E of the Zoning Bylaw, as follows:

There were no discussions on items #1, #5, #7, #9 and #11 through #16.

#2: regarding the feasibility of locating on the existing tower at 300 West Main Street, Ms. Capobianco, Ms. Gillespie, Mr. Pember and Ms. Harrison felt the Applicant has demonstrated it has made a reasonable effort to co-locate the proposed Wireless Communication Facility (WCF) upon an existing structure or WCF. Ms. Poretsky believes the Applicant has not demonstrated this. Ms. Capobianco stated the pole at 300 West Main Street is old and is not going to work for what Verizon needs now. Mr. Pember stated more people would object if the flagpole was changed than to the proposed location. It would change a nice-looking flagpole into something awful. Ms. Capobianco stated the Applicant made it a flagpole design at the request of the Planning Board and they required a flag on it. Ms. Gillespie stated they just need a lot more on it now for data. Ms. Poretsky felt that more people would see a new 100 ft monopine than if they add white antennas to the outside of an existing pole.

#3: regarding the requirement of space for three co-locators on the proposed WCF, Mr. Pember noted this pole may contain potential future co-locators.

#4: regarding zoning district preferences for location of a WCF, the proposed location for the WCF is Business West and the criteria has been satisfied.

#6: regarding the location of the proposed WCF that is closer than one mile from the any other WCF, Ms. Gillespie, Ms. Capobianco and Mr. Pember were in favor, and Ms. Poretsky was not in favor, of granting a waiver to allow the proposed WCF to be located closer than one mile from the WCF at 300 West Main Street.

#8: regarding the location of the proposed WCF in the Business West District that is less than 500 feet from the lot line of the nearest residential structure, Ms. Gillespie, Ms. Capobianco and Mr. Pember were in favor of granting the waiver to allow the subject WCF to be 430 feet from the lot line (it is 430 feet from the residence but only 240 feet from the lot line) of the nearest residential structure, because the Applicant cannot move the location 70 feet as it would be on state-owned land and might encroach on wetlands on that property. Ms. Poretsky was not in favor of granting the waiver.

#10: regarding the location of the proposed WCF that is less than 1000 feet from a school, Ms. Capobianco, Ms. Gillespie and Mr. Pember were in favor of granting the waiver. Ms. Poretsky was not in favor of granting the waiver.

DESIGN PROVISIONS FOR WCFS

The Board reviewed the design standards for WCFs, as follows: #1 and #4 do not apply.

#2: the Board determined the proposed WCF complies with the applicable signage regulations.

#3: the Board was in favor of the monopine design for the proposed WCF.

#5: the Board members were in favor of granting a waiver to allow the unmanned equipment and/or building, per carrier, to have a gross floor area of more than 200 square feet.

#6: it was noted by the Board that there is plenty of parking available.

#7: the Board determined the proposed WCF will be fenced in with either green or black chain-link fencing, and meets the requirement for protection against unauthorized climbing or other access by the public.

#8: the Board determined proposed lighting for the facility is in compliance with zoning and FAA regulations.

#9: the Board agreed a crane test was held to show the height of the proposed WCF and the required photographs of the proposed WCF were submitted with the Application.

#10: the Board determined the Applicant provided landscape plans, as required.

#11: Ms. Capobianco, Ms. Gillespie and Mr. Pember agreed, and Ms. Poretsky did not agree, the proposed WCF meets the design requirement that it shall be located in such a manner as to minimize visibility from abutting street and structures; limit the need for removal of existing vegetation, and all equipment will blend into the structure and/or landscape.

ENVIRONMENTAL STANDARDS FOR WCFS: It was agreed there is no hazardous waste involved with the project and there will be no noise issue.

Ms. Harrison stated their decision has to be legally defensible. She asked the two attorneys on the board, Ms. Capobianco and Mr. Pember, if they thought their decision would be defensible if they voted to deny the project.

Mr. Pember responded, stating if it went to court, Verizon would present their witnesses and show that they met the criteria. Verizon would also show that the board's expert, David Maxson, would say it meets the criteria. Mr. Pember questioned how the board would prove there is not a significant gap and how the board would get an expert to say there is one.

Ms. Poretsky stated the project does not fit any of the criteria and Mr. Maxson has not said it is a significant gap, only that it's a gap.

Ms. Capobianco stated their expert has said they have meet the criteria and as an attorney, it is appalling to her that the Application would be denied, and that the Town would then have to go to court when the Applicant appeals their decision.

Ms. Harrison and Ms. Capobianco stated the board has to go by the zoning bylaw and the information presented by the expert consultant they hired. Ms. Poretsky stated she believes she is going by the bylaw. Mr. Pember stated this is in the best interest of the town, it will allow others to co-locate, and will save the town money in legal fees.

Ms. Gillespie motioned to grant the Special Permit, Site Plan Approval and requested waivers for the proposed WCF at 386 West Main Street. Mr. Pember seconded the motion. Ms. Capobianco, Ms. Gillespie and Mr. Pember were in favor of the motion and Ms. Poretsky was not in favor of the motion. The Special Permit, Site Plan Approval and requested waivers were not granted.

A request to extend the deadline for completing the decision to Wednesday, November 25, 2015 was agreed upon by Mr. Swiniarski and he submitted a signed letter stating the same.

Ms. Gillespie motioned to grant an extension for the deadline for completing the decision to Wednesday, November 25, 2015. Mr. Pember seconded the motion and voted was unanimously to grant the extension.

The meeting adjourned at 10pm.

Respectfully submitted,

Debbie Grampietro
Administrative Assistant
Planning, ZBA, Conservation