

**Town of Otisfield
Board of Appeals
Meeting Minutes
Community Hall
April 19, 2012**

1. Call to Order: The meeting was called to order at 7:05 PM at the Otisfield Community Hall.

2. Attendance: Members present were: Interim Chair-Marianne Izzo-Morin, Interim Vice Chair - Sharon Matthews, Recording Secretary- Anne Pastore and Alternate–Don Mixer *Don Mixer moved up as a voting member for tonight’s proceedings.

(Chairman-Don Verrill & Vice Chair-Janet Douglas sat in the audience, per prior agreement)

Richard St. John – Code Enforcement Officer – Absent

Tanya Taft – Secretary

BOS: Chairman -Hal Ferguson, Rick Micklon and Lenny Adler

Town Attorney – Philip Saucier, Bernstein Shur,

Bob Gashlin, KJK Wireless/ US Cellular - Attorney – Richard L. Trafton, Trafton & Matzen, LLP

3. Quorum: Board had a quorum.

4. Secretary’s Report:

A. Meeting Minutes from March 26, 2012. *Motion to accept minutes. AP/SM – Unanimous.

5. Administrative Appeal

A. Request for Reconsideration of the 3-20-12 Appeals Board decision of denial; regarding the PB approval of the cell tower. This request is coming from a group of residents calling themselves “Friends of Scribner Hill”. BOA Interim Chair Marianne Morin has called a meeting for tonight. This meeting is for the BOA to decide to approve or deny this request to reconsider their prior decision. A letter went out to all the abutters (within 1000 feet of Map R2 Lot 8A) and also to the individuals listed as the “Friends of Scribner Hill”. This meeting was posted in the newspapers, posted on Town Office signage and posted on town website.

Chair opened the meeting with an overview & introduction: (provided to Secretary and as follows:)

I’d like to inform everyone of the outline for tonight’s proceedings. This is not our typical Board of Appeals meeting and it’s imperative that we’re all clear regarding the agenda and the Board’s handling of this proceeding. Following my remarks, we are going to review the minutes from our previous meeting. We will then immediately begin the Board’s consideration of the request by The Friend’s of Scribner Hill, for the Request for Reconsideration of our decision of denial, held here on March 20, 2012.

As you can all clearly see, we have a new face at our table tonight. I’d like to introduce you to Mr. Phil Saucier from the law offices of Bernstein Shur, legal counsel for the Town of Otisfield. Phil has been asked by the Board of Selectmen to assist the Appeals Board in tonight’s proceedings. He has a thorough understanding of the cell tower application process that has unfolded to date, and he has the necessary legal ability to lead us through the next steps.

Following the Board’s review of the minutes of our last meeting, I will open the discussion for Reconsideration and ask that Phil give a brief overview of the reason we are here tonight and how we will conduct the meeting. Please know that Phil is only here to assist the Board and ensure the town’s compliance of our obligations surrounding this issue. Should you ask to be recognized to speak tonight, or offer evidence that you wish to be

entered into the public records, please go through the Chair. I will then allow Phil to offer guidance to the Board as to how we should or should not address a specific issue.

I need to be very clear that the Board is NOT here to engage in discussions or opinions as to the Planning Board's review of the Cell Tower application process. That time has since passed. We are also NOT here to hear support or opposition of the cell tower itself. Whether you are for or against a cell tower on Scribner Hill or any other location in town, this Board will NOT take further oral testimony or evidence.

We are here for a very specific and limited review regarding this Board's prior decision. I know this may seem a little confusing but Mr. Saucier will address this further and in more detail. Should anyone present need further legal clarification, we suggest you seek legal counsel following tonight's meeting. Mr. Saucier is here to protect the legal interests of the town, and moving forward, will represent the town regarding this issue.

Town Attorney – Philip Saucier, Bernstein Shur: (directed to BOA) I want to give you a brief overview of what you have in front of you tonight. This is kind of an unusual request, this is not a traditional appeal and it's not a new hearing, this is a request for reconsideration. This Board has the authority to conduct meeting as you would like. You can hear from the applicant/appellant and perhaps the original applicant, (US Cellular) you can have public input or not. Two things need to be considered 1) Is there a significant error due to fraud or mistake, and not because someone didn't get their evidence or testimony into the record before or 2) did the Board misinterpreted the appeals ordinance and/or acted beyond your jurisdiction. You are not reviewing PB decision again, unless you decide to reconsider and only then remand it back to the PB. Again, you can make a motion to reconsider, or you can decide there is not a reason to reconsider; you then vote and you're done. This is tonight's process: You have the authority to conduct the meeting and allow people to speak or to not allow them to speak. You can limit peoples' comments as you like. You can ask the applicants/appellants to consolidate their facts and have one person represent them all, or allow several people to speak. You can allow US Cellular a rebuttle; it's up to you. It's only limited to whether or not you want to reconsider. I cannot help you with the decisions, but I am here if you have questions.

MIM: Board discussion: what are your thoughts on hearing the applicant, time limit? Number of people representing the group?

SM: I don't think we need to hear anything new, unless there is something considered fraudulent or we misinterpreted our ordinance. **AP:** I do not think we made any mistakes, but I am open to allowing 5 minutes from applicant and appellant also, just on the two specific reasons. All BOA members agree.

MIM: John Poto, are you going to speak for the group? **John Poto:** I'm not representing the group, but I will speak as the appellant. I thought long and hard on what to say if I was asked to speak. The facts are out there, no sense to talk about that, there are more facts in the reconsideration letter. Didn't do much good the first time. You had the facts and chose to ignore them. I will read something that you should hear. It's a quote: (The following may not be the verbatim quote. It could not be verified because Mr. Poto left the building before it could be verified. TT-Secretary)"While the ordinance allowed for a 180' tower, AT&T made the lower tower work; to show good faith. Most towers are 18 to 20 feet at the base. This mono-pole is 60 inches at the base and 24 inches at the top, and a 12 foot wide antenna can be bolted on. It creates a better visual by utilizing this design". Do you know who said this? Mr. Gashlin made that statement to the Town of Casco Planning Board a year ago. He told us that a steel tower 180' tall, blends over our New England sky. In Casco they must have a different sky line? Someone got lied to, either Otisfield or Casco. We have a steel tower. These are the facts that we have been giving, that have been ignored. I'm angry that the town hired an Attorney to fight us and we only wanted help. We wanted to give the town PB another chance to reconsider it. We got it over with, within 3 hours. Someday you should read what happened in the Town of Casco. Make your decision, do what you want to do, I hope you all sleep well. This whole thing is a shame. Good luck, good night. I don't want to be here right now. (Mr. Poto yelled again that he was not happy and left the building)

MIM: Mr. Gashlin. Do you wish to reply or respond to this?

Attorney – Richard L. Trafton, Trafton & Matzen, LLP an attorney for Bob Gashlin, KJK Wireless/ US cellular: My office has participated since the appeal has been filed. I will speak briefly on behalf of the applicant.

We urge the Board **not** to reconsider the decision of March 20th.. I was there for that meeting for the appeal process. Mr. Saucier is correct about the limits on the scope of review for reconsideration. Looking at article 12 which Mr. Saucier refers to, we heard nothing of further misinterpretation. Mr. Poto himself said earlier, “there are no new facts” and I urge you to simply stand by the March 20th decision.

Request from abutter Kristen Roy to address the Board.

MIM: Asked BOA members if they wanted to listen to new testimony? **AP:** is it relevant to the 2 criteria.

Kristen Roy said yes. **MIM** repeated, it is new information based on either 1) a significant error due to fraud or mistake or 2) We misinterpreted the ordinance and acted beyond jurisdiction. **Kristen Roy** again stated yes.

Rick Micklon, Selectman: To avoid confusion as to her standing, RM pointed out to the Mr. Saucier that Kristen Roy is an abutter / interested party.

MIM asked if any others wished to speak other than Kristen Roy. Joe Vaillancourt raised his hand.

Kristen Roy: At the prior appeal, I asked several times if you would ask Mr. Gashlin about how the accumulated towers would affect the RF mapping. I brought the RF mapping that shows his mapping is incorrect. **MIM:** are you saying we made a mistake due to fraud or mistake. **Kristen:** Yes I am saying that the town is being fraudulent. I never got an answer. I asked the Board to ask Mr. Gashlin about the RF mapping and to ask the Planning Board the same question. It was never redirected. In the ordinance the Chair is supposed to redirect the question. **MIM** asked Mr. Gashlin, Do you feel you answered her question. **Mr. Gashlin:** We did answer the RF map questions. I simply submitted the RF maps to the PB to explain why we were in town. The RF maps are not required by the ordinance. **AP:** I don’t think this is fraudulent. **Kristen Roy:** I was a direct abutter who was not notified and should have been. I think that the ordinance is considered law and the fact that they didn’t follow exact procedures, means they didn’t follow the ordinance and take that into account. **SM:** Disagrees, she and **AP** both feel they asked Mr. Gashlin the question for her several times. **Kristen Roy:** The procedure was they didn’t redirect my question as I stated it. **MIM:** For record KR stated her concerns about the RF map and stated her concerns about the tower. It was put in the record along with her not being notified. **AP:** Kristen had been given a lot of time to speak and the reason about her saying her question was not redirected bothers me, we worked very hard to listen to what everyone had time to say and took it all into consideration.

Joe Vaillancourt: Thank you Mr. Saucier for explaining the two criteria. The only reason I am here is because when the hearing was held, I spoke as a former Chair of the BOA. Mr. Micklon and the CEO said in that hearing they had made mistakes and Mr. Micklon said that future mistakes would be prevented. He wants to be sure that the Board is clear, that his question was “ Why not remand it to the PB since they admitted mistakes were made”. When you did your articles of consideration on April 12th, you quoted my concern. However, I’m not going to say you intentionally omitted what I said, but that you inadvertently omitted what I said, “because of the omission of mistakes of the CEO and BOS, this should be remanded to the PB; without the reason being made. **MIM:** The error was that abutter notices were sent out for the PB Public Hearing, with the distance of 500 feet. It should have been 1,000 feet. The 2nd time, for the Appeals Hearing we sent it to 1,000 feet, and it only needed to be 500’. We did that to involve more people and show an attempt to make up for the prior mistake. **Joe Vaillancourt:** I’m not here to address that. The (2) (Rick Micklon & Richard St. John) made the comment that an error was made, and “that” was left off from my quote in the BOA minutes. I would like to have my comment corrected in the event that this moves forward.

MIM: This closes all public comment.

Town Attorney – Philip Saucier, Bernstein Shur: For clarification, the Board now has to vote to reconsider or not reconsider.

Discussion: **MIM** asked the BOA members if they thought they made a mistake, were presented fraudulent evidence, and what they would like to do at this time.

DM: Doesn’t feel we did anything wrong. He wishes to not reconsider. .

SM: I don't feel we did anything wrong or heard anything to change her mind. I think we learned a lot, but no mistakes were made.

AP: I will not have any trouble sleeping tonight. I put a lot of effort into this, went by the ordinance and do not feel I did anything wrong.

*Motion to NOT reconsider. DM/AP – Unanimous.

6. Appeal for a variance

A. None.

7. Discussion and comments from Board:

A. None.

8. Miscellaneous:

A. None.

9. Upcoming Dates:

A. Board of Appeal Meetings are held on an “as needed” basis

10. Adjournment:

With no further business, the meeting was adjourned at 7:40 PM. AP/SM Unanimous.

Respectfully submitted,
Tanya Taft, Secretary.

Approved by: _____

Marianne Izzo-Morin, Interim -Chair
Otisfield Board of Appeals

Approved on: May 29, 2012