

**SEEKONK ZONING BOARD
REGULAR MEETING**

**MINUTES
August 3, 2009**

Present: Ch. Edward F. Gourke, Gary Sagar, Keith Rondeau, Robert Read, and Ronald Blum

6:30 Chairman Edward F. Gourke called the meeting to order.

Work Session

- Roger Hatfield Fire Chief from Foxboro, Ma, advised the Zoning Board he is relocating from New Hampshire and is looking at a house on Cross Street. Mr. Hatfield and his wife breed German Shepherds and are researching the potential for a kennel license for breeding dogs. Mr. Hatfield mentioned that he has spoken to neighbors and it does not appear there would be any opposition. The gun club and recycling business across the street had not been contacted. Because Mr. Hatfield needs to enroll his children in the school system in September, he is requesting feedback from board before purchasing property.
- K. Rondeau You still need to go through the whole (ZBA) process. At this point, if you are considering purchasing this property, you should do it considering approval. We can't give you a yes or no tonight.
- R. Hatfield I understand that, I have spoken to the building commissioner, and she will let me know if there are issues for me to deal with now so I can deal with.
- E. Gourke The animal control officer will give feedback or she could just give us information about the breed.
- Ch. Gourke This is the meeting of the Town of Seekonk Zoning Board of Appeals, August 3, 2009. First I am going to read the Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. We will hear from anyone in the

audience to speak either in favor of or against the petitioner or with any questions. At the close of the evidence, we will close the hearing. Usually we have a discussion and we also usually make a decision on the same night although we are not required to do that. We may take a petition under advisement and give a decision at a later date. It is our practice to decide it on the night of the hearing. There is an appeal that is available to the Superior Court by the petitioner or other parties who have standing. That appeal is governed by very strict time limitations. If anyone is considering an appeal, they have to be very careful to meet the time limitations that are set forth in the law.

2009-15 2295 Management, LLC, 80 Fairhaven Way, Cumberland RI and 375 Broadway St., Menards, NY, owner, by James Haseotes petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary a **Variance** under Sections 7.1 and 7.7, to allow a rear yard setback of 27.5' for a gas station located at 822 Fall River Avenue, Plat 8, Lots 7, 7A & 113 in a Highway Business zone containing 70,250 square feet.

Continued from June 30, 2009 continued until September 21, 2009 7:00pm

2009-16 2295 Management, LLC, 80 Fairhaven Way, Cumberland RI and 375 Broadway St., Menards, NY, owner, by James Haseotes petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary a **Variance** under Sections 7.1 and 7.7, to allow a rear yard setback of 10' for a car wash located at 822 Fall River Avenue, Plat 8, Lots 7, 7A & 113 in a Highway Business zone containing 70,250 square feet.

2009-17 2295 Management, LLC, 80 Fairhaven Way, Cumberland RI and 375 Broadway St., Menards, NY, owner, by James Haseotes petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary a **Special Permit** to allow a drive thru at a proposed convenience store at 822 Fall River Avenue, Plat 8, Lots 7, 7A & 113 in a Highway Business zone containing 70,250 square feet.

Atty. John Mancini Speaking for 2295 Management LLC, asked for a continuance until the next meeting because they are still waiting for Planning Board's approval of a site plan.

G. Sagar made a motion to continue the public hearing until September 21, 2009 at 7:00 pm, seconded by K. Rondeau and so voted unanimously by: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, and Ronald Blum.

VOTE: (Approve 5-0)

2009-12 Domenic Cassisi, 31 Oakland Avenue, Johnston, RI, 02919, owner; Omnipoint Communications, Inc. a Wholly Owned Subsidiary of T-Mobile USA, 15 Commerce Way, Suite B, Norton, MA. 02765, petitioner, by Brian S. Grossman, Prince, Lobel, Glovsky & Tye, LLP, 100 Cambridge Street, Suite 2200, Boston, MA 02114, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary, a **Special Permit** and/or **Variance**, under Section 6.2 to allow the installation and operation of a wireless communications facility consisting of an 80' unipole and 6 wireless communication antennas within a 25' x 25' compound, at 2 Olney Street, Plat 6, Lot 9 in a Local Business zone containing 298,821 square feet.

(Continued from June 30, 2009)

Atty. Simon Brighenti, O'Connell, Flaherty & Attmore, LLC, 1350 Main Street, Springfield Ma, represented Omnipoint. Muhammad Ibrahim, Radio Frequency Engineer, 15 Commerce Way, Norton, MA and Jacqueline Murray, Site Acquisition Specialist, sworn in

Atty. Simon Brighenti Omnipoint is seeking zoning relief for a monopole facility to be located at an area where we are experiencing a gap in service at the 2 Olney Street location that is the shopping area in the neighborhood. The last time we were here information was requested from us. We do have a compilation of E911 calls received, and strengthening service to the area will also allow for greater reception of E911 calls, which are used for emergency calls to the facility, and then transmission of those to proper authorities. For the month of June of 09, total calls received on surrounding sites were 592. To break that down, the facility on the existing water tank, there were 196 calls. Down on the site to the lower west, into East Providence, there were 133 calls. Over to the southeast a little bit there were 137 calls and 126 calls to a site further to the east in East Providence. The high volume site was the water tank, with just under 200 calls. The other two items that came up was the power density or emission of electromagnetic energy and noise factor. We sent out a packet Thursday but it was received today. (read a letter from C Davis Associates dated July 28, 2009 into the record) We use the term worst-case scenario, when all antennas are on high power. When you see graphically, pointed out there, is power density greater than the FCC's uncontrolled (inaudible) what that means is the MPE is a point where a sign should be posted above the 58' level we are proposing. The third prong of the follow-up is in regards to the location of the site itself. We have determined the site is necessary for us to provide service to the residents to Seekonk and individuals passing through in a vehicle and the surrounding area of the site. We are proposing a tower facility because it is a last resort for us. We try to use cupolas, church steeples, schools, rooftops, water tanks, roadside electrical towers, a lot of different types of structures. To cover this area without service, no such towers or structures are available and the only area we could find that would allow for coverage for this area and that would close

the gap in coverage and would comply as closely as possible in the bylaw meaning we tried to find a large piece of property as close too the proper zoning as we could is the site we have chosen. We did do our diligence in that, what I would like to do at this point is I would like to turn it over to Jackie Murray to explain a little more about her activity since our last meeting we had.

J. Murray As you are aware at the last hearing, there was some discussion of members of the residents looking for alternative locations for our facilities. I provided Representative D'Amico with the search frame coordinates essentially the center of where we are looking and the radius that we are interested in and provided him with that information. I did receive some correspondence but I am not aware that other sites were located. To reiterate, we utilize the utmost care in trying to utilize existing structures when we search for locations for our facilities. This is particular search frame is located within a heavily residential area. This particular site was chosen because it has a commercial connotation and will fill our need for coverage while providing the best area to blend in with surroundings.

Ch. Grouke You use the term search ring, what was the size of that in this case?

J. Murray The search ring was ½ mile radius, the center is just south of where the proposed facility is.

Atty. Brighenti One more point, there was a question regarding the representation of the service that we have as showing being needed in this area. This representation is what we have for existing coverage and what is not included is the area that was recently approved. We did show that last time but we are showing here, the area based on the calculations of actual coverage and this shows the area we need, it shows the coverage that there is not coverage, the marketing website shows some coverage between fair and good coverage and the reason for that is these models here are more precise taking into account the existing topography and buildings, the area we are looking to cover does not presently have coverage.

M. Ibrahim I want to make sure (inaudible) that the other questions came up that the coverage from PCS band short distance and other sites cover 1-2 miles depending on height, this 80' we can cover about 1 mile, based on June '09 models with +/- (inaudible) more reliable, marketing tools being used we don't know what their tools are to show on their website, this is much more accurate, I don't know how they (marketing) come up with their information, we don't know their tools.

Ch. Grouke You don't know their tools?

- M. Ibrahim We don't know their tools, we don't know what they do to show the coverage on the other side. (inaudible)
- Ch. Groucke You don't know how the marketing people arrive at their coverage for the website?
- M. Ibrahim That I don't know.
- G. Sagar Wouldn't they rely on an expert like yourself?
- M. Ibrahim Yes, they do rely on us but we don't know (inaudible)
- G. Sagar Is it your testimony that the marketing people's information may be wrong?
- M. Ibrahim No, I cannot say they are wrong but it is different, we don't know what they are doing.
- G. Sagar That makes no sense to me.
- M. Ibrahim They have their own way to sell their service (inaudible). The application we are talking about doesn't guarantee that we have good service in this area (inaudible).
- G. Sagar Would it be important that we talk to the marketing people too because they have to be getting their information from somewhere? With all due respect, that makes absolutely no sense to me. That would be like me being a salesman trying to sell a product that I can't deliver to a certain section of the country.
- Atty. Brighenti What is happening with marketing is they take the bird's eye view of things and we take street level view. If you look at the coverage area, it is very similar to the last facility that was approved through the courts, on any of these sites within this area you will see gradations of service shown on the marketing website from good to excellent to fair coverage. I think what Muhammad is trying to say is when they say, when the marketing people say fair or good coverage, he means there is nothing on there that would indicate exactly what parameters (inaudible) For instance what the engineers talk about negative 85 or negative 91, those kind of things, what happens is that when you are a salesman and you are selling a lawnmower to an average individual or consumer, there is a certain number of those customers who want to know a lot of the technical details about it but essentially the question is going to be whether or not it works. Here, the marketing people say within these areas you are going to have fair coverage but they don't want to come out and say, we are looking at it as a "neg" 91 or "neg" 85 or 86, a lot of times a customer is going to say "well, what does that mean?" What we do here is this again is where the rubber

meets the road, this is where when these sites get approved, eventually the marketing people will show good coverage in these areas. This is going to happen with the other site that was approved, when you get into the situation of what is in compliance with the FCC, that also is a requirement as to what is reliable coverage and what is not reliable coverage and we are trying to attain the goals of what the FCC shows as reliable service on these sites, that basically is why we are here for this. If you were to take the coverage of what is shown on the website and bring it down to this scale as Muhammad is saying, it would show these gaps exist, although as you get further up above it and show it at a different scale, you are showing good coverage in these areas but that doesn't mean there aren't spots that don't have coverage that goes below that and that is what we are looking at there. Whether we are talking about (inaudible) what we are saying here is essentially the requirement we have showing what is reliable service is what we are looking to attain. What we are looking to attain is essentially what you see on these plans here showing acceptable service in those green areas. That is what we are looking for and again, we define that as being a significant gap.

- G. Sagar I find it unique that marketing does not talk to engineering.
- Atty. Brighenti This is a worldwide operation, when you get down to a street level like I said...
- K. Rondeau Mr. Brighenti you stated that in the report done by CD Associates there would be signs posted above the 58' level, is that correct?
- Atty. Brighenti That is the requirement, again, the signs are small signs, 8 ½ x 11 and that is a requirement, the only people going to observe those signs are the workers going up there.
- K. Rondeau I just want to be clear on this, the number of signs, approximately as many as what is shown here all around the top of the cell tower
- Atty. Brighenti The only people observing the signs are the workers. There will be signs 8 1/2 x 11 inside the compound, inside the fence a sign showing an FCC registration contact number necessary for anyone needing to contact but it would not be visible from the street. Well, if you were standing at the gate, there won't be any arborvitaes in front of the gate, there will be a stockade fence that is essentially what we are looking to do, we are looking to surround it with a stockade fence and arborvitaes at the base of it.
- Ch. Grouke The search ring was a ½ mile radius and how was that arrived at?

What happens is that the need for the service is determined first, and again, we kind of went through that last time as far as the number of dropped calls and such. Once an area is determined that you do not have sufficient service is what you do is look at where there is sufficient service in nearby areas. In this case and you see where there are areas, then the radio frequency engineers and the design team would analyze the areas that do have good coverage and then would determine what is the most reasonable area to search within to cover that gap with the least intrusive means possible. When you start looking at the height that is needed, most towns have bylaws regarding wireless and a lot of those bylaws talk about requirements of collocations and they give you a certain height that is allowable. There was not one applicable in town at the time, so we looked at the minimum height necessary for T-Mobile to cover the gap that is needed. So the site acquisition people are armed with a ring of the area that needs to be covered and here is the height that we think we can cover it at and if you can get something close to the center of the ring. If you go too far north, south, east or west from the center of the ring you lose coverage to the other converse areas and would end up with redundant coverage, adding to existing coverage and would be a waste of coverage, the search ring showed we needed coverage. Within those parameters, we come up with search rings and within that area shown in green, some search rings are larger and some are smaller.

Ch. Grouke Is there anyone who wishes to speak?

Rep. Steve D'Amico (Fourth District State Representative) 81 Briarwood Drive, Seekonk, MA. sworn in. I was here two times ago, and I talked to a number of attorneys who work with cases like these. The first thing I did was I talked to Kopelman and Paige who is our Town Counsel, they assured me that our new zoning bylaw that include cell towers will apply in this case and I have an email to that effect. Taking a look and talking to a number of attorneys we took a look at a case Pelham, New Hampshire where a cell tower could not be built because failed to show that no other feasible sites existed within the zone. First, I would like to say that Omnipoint has not demonstrated that a site taller than 80' or an area in the new Telecommunication Overlay District area, would not work for them and Jackie (Murray, site acquisition specialist) communicated to me this was the only site they looked at. I have looked at potential sites within the district are: Showcase Cinemas or the Showcase Shell (gas station) which has a 90' sign on in, which would be good for collocation perhaps; those were not considered. Only 6 Olney Street was considered. The back of Seekonk Square which is up against Route 195, there is the possibility of locating a tower taller than 80 feet there. As you can see, even by their maps, this area shows no coverage there at that site. A site here would be very close to this densely populated area and reaching here possibly. These are potential sites that exist. Also, there are three pieces of

property; this piece is landlocked and would be a good area to put a tower, this piece of land the owner has already expressed interest in placing a tower; this land is owned by the Town's Conservation Land and another off County Street, the last two being at top of hill. The Conservation Land area, owned by the Town of Seekonk is 74' higher than the Olney Street site, it could potentially offer wider coverage than the Olney Street Site, and the tower could potentially be disguised as a tree. The County Street site is 37' higher than the Olney Street site and it is important to know that according to their maps, this site that they are proposing does not close the entire gap in coverage; it only closes a portion of it. This one is a private owner off Chestnut Street. I would suggest that there are several sites than would provide coverage in this area. Also, there are two pieces of land we feel would work and they are within the Overlay District. I have pictures. Showcase Cinema does not fall within the Overlay District; only the back part of Fall River Avenue would fall within the Overlay District. Right next to that is the Shell Station, then there is Seekonk Square and a tall tower there would provide better coverage in the Commerce Way Area. I am not advocating this is where we want them located but I am indicating that other sites have not been considered. In all of these cases the courts have made it clear that the burden is with the cell tower company making the presentation and not with the ZBA to offer sites, we need to show that there are alternative sites which gives us a level of comfort that would hold up in an appeal. If the applicant cannot justify a claim (inaudible) it is solely on the efficiency of transmission, well, what does that mean? It means just because the most efficient area for them to locate the tower is Olney Street, it does not give them the right to preempt the jurisdiction of this Board. First, it says that if they show that if they show there are no alternative sites available and second, if an existing carrier used by that owner (inaudible) these cases also site that even though there might be roaming, some of these sites are closed by roaming, it is not sufficient to consider it as "no service" because there is roaming. Also, there will always be some gap in service. The fact that I have AT&T and I have good coverage in this area, it means that somewhere close by, there is a tower that is providing me with a very strong signal. The fact that it might not be the ideal place for TMobile to locate their tower, the courts are clear, it does not carry any weight there, it is not based on their efficiency of the service, it is based on their ability to provide service within the guidelines, within the authority of this Board and the town bylaws. I would argue that there are other carriers that can provide service; even of they collocate on their towers. It is sufficient reason to find that this tower should not be allowed within 80' of someone's back yard.

Ch. Groucke

Thank you Representative D'Amico.

R. Blum

Did you have to contact the Land Conservation Trust?

- S. D'Amico No but it is not our responsibility to find a site for them, it is theirs. It is only enough to show, that they did not make a diligent effort and as long as we can show that. It is not our responsibility to check into the sites for them. It is only enough for us to show that they found one site and stuck with it and did not do any further research. You have an Overlay District now, the first responsibility is to ensure that these towers are in the Overlay District, the secondary sites should be less intrusive, further away from homes, in heavily treed areas, or designed like a tree so they are not an eyesore. It is not our responsibility; it is only our responsibility to show that they did not make a diligent effort, there are many more available choices, and I think that is clear. Again, it is not the most efficient; it is not the fact that this is in the middle of the gap that is not part of the Federal Mandate. Nor is it in the Federal Mandate to show that there shall never be any gaps in coverage, there will always be gaps in coverage. We are not really talking about a gap in coverage here; we are talking about coverage that is not ideal perhaps. But again, I live in this area and I get very good coverage with AT&T, showing that there are alternatives regarding telecommunication signals within this neighborhood that is in compliance with the bylaws.
- R. Blum You had mentioned Commerce Way or Seekonk Square, what about behind the fields abutting Route 195 behind the school?
- S. D'Amico That is a possibility too. I was looking for things that fell within the Overlay District because that is the first priority. If it is within the Overlay District, it is in compliance, we have no problems, if it is not, then things get a little sticky. The courts have been pretty clear that the ZBA is not powerless and the burden of proof is on me or you, it is on them to show due diligence to check every possible other alternative.
- R. Read You have done your homework Mr. D'Amico. Did you discuss any of these sites with Miss Murray?
- S. D'Amico Not these spots, I asked her what sites they considered and she said it was only this site they looked at.
- R. Read I guess you are assuming in some of these spots that you delineated, which may not be as close to their circle as they would deem, you are suggesting perhaps a taller tower would overcome that problem.
- S. D'Amico I am suggesting a taller tower elsewhere is a possibility. I am suggesting in other cases, the courts have ruled just that.
- R. Read Maybe would could get an opinion on that from Mr. Ibrahim.

You might want to do that, I would like to argue that they have not made that part of their application or part of their case. It is line of site, and I know on a fall day, from a good portion of this area you can see the Shell sign. I am requesting the Board reject this application as not being in compliance with our town bylaws.

Atty. Brighenti

These sites were just shown to us and Mr. D'Amico said he got an opinion from Town Counsel that the new overlay district applies to this application. This application was filed in March of this year, so it has been on file here. At that time, the Zoning Enforcement Officer stated that a variance was needed for the height; there was no mention of the Overlay District. We would have to look at the opinion from Attorney Cantor. We would have to get an opinion as to why she feels the Overlay District would apply. Moreover, as Mr. D'Amico pointed out, the sites he showed, at the Showcase Cinema, we have a site in that general facility which was shown on our map earlier. We do have coverage from that facility. Whether there was any radiofrequency analysis done on any of those sites to determine if in fact they comply with our need for coverage, we don't see that. There are a number of sites here that are pointed out, there are some town sites, as the recent court case, Omnipoint vs. The Town of Seekonk decision, is that the public procurement act would have to be followed to make town properties available, there may have been an overlay set out, but as far as if there have been any request for proposals those properties, I don't know. Those properties are in conservation land and our restrictions, it is a policy with most companies not to work in conservation area, there are a lot of issues that come up with species and wetlands and those types of issues, that is one issue and another issue is that the Overlay District sites that have been pointed out, this is the first time we have been notified as your email alluded to that your Overlay is in affect. The town has had several months to get us an opinion other than the Building Inspector. (inaudible) What Mr. D'Amico pointed out, the issue that he has another carrier and he receives service, that is specifically one of the areas that the Federal Telecommunications Act wants to look at and what they talk about is a three prong test; a denial of service, effective prohibition of service or discrimination among and between providers of functionally equivalent service and it has been ruled that several Federal cases that all carriers even though you have an 800 band or a 2000 band, that all Federally licensed carriers in the FCC are functionally equivalent and you cannot discriminate against them. If one carrier has coverage in an area that does not mean the board necessarily rely upon that fact to deny another applicant and that goes along with the legislative history of the theory behind the Federal Telecommunications Act that tries to encourage competition among providers. If you look at your cable television provider, there is some competition between the satellite and those kinds of things but a lot of areas you have one cable television provider and there is very little alternative so you are at the mercy in those

kinds of situations but as far as the Telecommunications Act, that is part of it but a different part of it. In this situation here specifically, what came out was that you can't base a denial on the fact that there is one carrier that provides service to an area that another carrier is looking to cover. As far as providing a higher tower in someone else's neighborhood as Mr. D'Amico was suggesting, we would be essentially in a similar situation here. We again, most bylaws, you look at the minimal height necessary and we determined that in this case, to fill that gap the minimal height necessary was 80'. You do get situations when a tower can be too tall and overshoot its objective and we could have Mr. Ibrahim talk about that. A taller tower does not give you more bang for your buck, there are areas in the west where initially they had a boomer site on the top of a tower or a hill and that if more service was needed as the areas beneath developed a need, you started needing another tower and you were getting interference from the boomer sites so that is why you have to be careful putting them up on a hilltop. Elevation does help but again, it is a consideration that has to be done, at this point, we are unaware of the email from Attorney Cantor, the first we heard of it that she is claiming that the Overlay does apply. The application that was submitted by my predecessor Counsel didn't address the Overlay; the overlay was not in effect at the time. Again, if you need more time, I don't want to drag out the hearing but with the information that was provided here with no science behind it to show whether or not these sites will work and also to show whether or not the Overlay District is in effect is something we are just being presented with this at the eleventh hour. (Inaudible)

G. Sagar I am surprised to hear that the Overlay District does apply, if it does, I think it changes everything.

Board The Board members simultaneously stated agreement.

Atty. Brighenti I would agree, when there is an Overlay present you analyze your Overlay sites one by one, you do them by radiofrequency, you do them by compliance with the bylaw, setbacks and tower heights as such, and the only thing we don't do is sometimes the towns still require that town property get a higher priority. The Attorney General has turned those requests down because it violates the discriminating clause in Chapter 40A, meaning that the town can't say we have one piece here that is owned by the Town and one piece here that is owned by a private individual, you can put the tower on the town property but you can't put the tower on the individual, other than that, if there is an overlay district that does apply that is the procedure and we do the analysis piece by piece. In this case, there was none at the time of the application.

G. Sagar Would it be in your best interest if we helped you out to continue so you can research this more?

Atty. Brighenti That is fine with us. Again, I know that the last time we spoke you were looking to bring this to a conclusion. I understand that, but I would consider this to be an extraordinary situation that they presented here. This is new information being presented to us and we would like to examine this and come back.

K. Rondeau So, you basically agree with the statement that the zoning bylaw as far as applications for special permits, and building permits that have not been issued as of the date of the first publication of the notice for the Planning Board hearing on the proposed bylaw amendment, in other words, the amendment applies to any application for special permits and building permits.

Atty. Brighenti Again, I would have to analyze what you are telling me. My interpretation is that it would not apply to a pending application, it would apply if the notice was published, in the period of time in which the notice was published, in the period of time in which the notice was published and adopted, if the application was brought in within that period, there may be an argument that the Overlay District would apply but if an application is pending, it is my understanding that it would have to be grandfathered.

K. Rondeau It also states “under state law, General Law Chapter 40A,§5, a zoning bylaw is effective as of the date of the approval but not withstanding subsequent requirement of approval by the Attorney General, so in other words, would you agree that the zoning bylaw is effective as of the date of approval vote?”

Atty. Brighenti Again, I would have to look at her whole statement (inaudible) I would have to see when the bylaw was published and when the application was filed and all that to determine that, but again, at this point the application has been in the Town since March and this is the first I have heard from Town Counsel. (Inaudible).

G. Sagar We are willing to take the consideration from Mr. D’Amico but they might be a redundant area. Would you be willing to look at the sites regardless of the Town Counsel’s opinion?

Atty. Brighenti We would do an analysis and would request that the Overlay District bylaw be made available. If it turns out that one of the Overlay Sites does work, we would withdraw the current application and present a new application to the Zoning Enforcement Officer and you can get an opinion from Atty. Cantor.

G. Sagar Would it be in our best interest Mr. Chairman to request a formal opinion from Town Counsel on that? I know she has alluded to that in an email

but I would like to address the full question to her and have her respond with a detailed explanation of why, just so that we know.

Ch. Grouke

Certainly.

S. D'Amico

The Showcase site is ½ mile away, the fact that I have AT&T service does not mean we don't need T Mobile it means that there must be a tower available, when we were here April 30 I made a suggestion that the land at the top of the hill might be a good location and you asked the applicant to check for tonight that it would work and they did not, also, with the Overlay District they did not do due diligence. I would suggest that whether or not the overlay district applies, there is still sufficient cause to find that the applicant has not met their obligation to present this Board with an application they could approve.

G. Sagar

Also, just because land is owned by Conservation Trust does not mean it is wetlands.

S. D'Amico

It is up to the petitioner to provide you with an application you can approve.

Ch. Grouke

It looks like we are heading for a postponement to see if the bylaw does apply and to see if a taller tower in a different location would be better

Rachel Fisher

65 Eleanor Dr. We have been there for 40 years, I feel I am a stone's throw to where this tower is going to be, it will be noisy and unhealthy, I am very disheartened, this will be forced on us, it is not fair.

Atty. Brighenti

In direct response, we have provided a statement for compliance with FCC compliance and sites that comply.

K. Rondeau

A question I brought up at the first meeting and the next one, T Mobile is not as effective.

Atty. Brighenti

It is not as effective because of the room on the spectrum. Earlier carriers have lower spectrum.

K Rondeau

But you could improve the technology.

Atty. Brighenti

You can't swap spectrum. It is cheaper to build one tower than three, we have the gaps in service and we are looking to cover them. It may be that one of the overlay sites will work.

Paul Francis

24 Arrowhead Road Seekonk sworn in. I'm surprised there is nothing to discuss I am more interested in the radio waves; I am surprised that one antenna would not affect a heart monitor. I was reading that six antennas

would exist. From the technical aspects from a heart pacer the radio waves of one antenna the heart monitor person I know but six antennas

Ch. Groucke The courts have said that we have very little authority with health matters, if the Board votes to postpone until September 21, 2009 for the purpose of looking into a higher tower at a site that might provide coverage without being as intrusive.

P. Francis I am near the Briarwood Plaza and I am hoping the antennas will not be built there, also the 90' tower, will that affect in regards to the tower, if it is less than 90' will that affect the heart pacemaker

G. Sagar **Mr. Chairman, I move that we postpone, continue this hearing until September 21 for the purpose of the applicant to do due diligence to research other areas as mentioned.**

R. Blum **I'll second that.**

K. Rondeau I have a real problem, it is not our job to find them a site.

G. Sagar We are not.

K. Rondeau And it's not our job to give them opportunity after opportunity to find another site. Our job is to review this proposal only. We need to stick to those standards. I don't think we can start straying to "go find another spot where it will be amenable to everybody else". That would be a whole new proposal, we have tried that on other occasions and I have been against it every time, it does not work. They have had three bites at the apple, before they came to the board, after the first meeting and at the last meeting. I am ready to set forth a motion before the Board to deny this proposal as presented for several reasons. If the Chairman will entertain that motion, I would like to present it to the Board.

G. Sagar **I think I made a motion and it was seconded by Mr. Blum.**

K. Rondeau If we are going to continue this just to resolve whether the new bylaw applies or not, that is one thing, but to add on letting them look at additional sites, etc. and give them a fourth bite at the apple, I am not prepared to do that, I don't want to do that and I think it is bad precedent, I don't think that is what we need to be doing here. That is not what we are hearing here, we are hearing this one site.

Ch. Groucke I think it is the nature of these types of petitions too because so often they end up in the courts. If we were to deny the petition, chances are it is going to be appealed and a lot of times those appeals are victorious. In the long run, it might be advantageous for us to continue this, especially if this

leads to a tower being built in another site in the Overlay District with height that is allowed in the Overlay District that provides the coverage and it could be a win-win situation where we don't have to go through litigation and end up with a tower there.

K. Rondeau Show me any instance, anywhere, on any cell tower or any other issue where going and looking for other sites has resulted in an amenable situation where it was put through without a subsequent appeal.

Ch. Groucke I know we tried it before and it didn't work out but now we have the Overlay District.

G. Sagar I think the Overlay District is another two bullets in our chamber and if in fact it is applicable to this case, it puts us on a much more solid ground than if we made a decision now.

K. Rondeau If you want to do it solely for the purpose to get Town Counsel review on the overlay district, that is one thing but to add in anything else...

G. Sagar I am sorry Keith, I strongly disagree because as the Chairman said, if we could find that site that is in the Overlay District, and it is a win-win for everybody...every one that we denied has...

K. Rondeau Then let them start a whole new application.

R. Blum They are not going to do that.

G. Sagar Would you rather we deny it now and then the court says they can build it?

K. Rondeau They would have to go through the whole process anyway, so why would we grant them a location in another area without it being proposed before us first? Or proposed before the Building Inspector, it may not even have to come to us it may have to only go before the Building Inspector.

R. Blum That is their choice.

Atty. Brighenti It could turn out that one of these Overlay Sites does work and then...I am assuming there are other sites in the Overlay District, if one of those sites does work, perhaps on an existing structure which again we would prefer, we would withdraw the current application and prepare a new application for the Building Inspector or if our science shows a 120' tower would work and your limit is 100' we would come back perhaps for a variance and say this is a better site in the eyes of the Board but we need the extra height. That would be the process. If one of those other sites in the Overlay District worked, we would not fight for this one, because that is a

site that would work by right. We are respectfully requesting that you take the advise from Mr. Sagar and we can look at the Overlay District and in the mean time if you want to get an opinion from Attorney Cantor as to whether or not it applies but we are willing to look at the Overlay District Sites regardless of Attorney Cantor (inaudible) in that regard we could look at it and say we would look at the Overlay District to see if it will work for us.

K. Rondeau If it is going to apply no matter what, why do we have to do the legwork, why do we have to pull these people out of their homes for another meeting, a fifth meeting, waste everybody's time and aggravation when the process is going to have to take its course anyway? That is exactly my point. They will have to apply for a new application to the Building Inspector to have it approved and it may not get this far.

Ch. Groucke We have a pending petition, if we act upon it, it is either going to be granted or denied. If it is denied it may be appealed and we may lose the appeal. Why risk it when we can continue it and check out another site?

K. Rondeau But again, strictly to ask for, I would be in favor strictly to ask for the review of Town Counsel on the Overlay District whether or not it would apply.

G. Sagar I think we need to make it a separate motion because we have to get permission from the Town Administrator to approach Town Counsel.

Ch. Groucke Your motion is?

G. Sagar **That the applicant is agreeable to continue this till September 21, 2009. He will do due diligence on all site in the area for an alternative to this. I say grant him a continuance till the 21of September.**

Ch. Groucke You were going to make a separate motion on Town Counsel.

The first motion that we continue this hearing until September 21 for the purpose of the applicant to do due diligence to research other areas as mentioned. Seconded by R. Blum and so voted by: R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

Vote: Approved (5-0)

The second motion is that we get permission from the Town Administrator to approach Town Counsel for the purpose of seeing if the Overlay District will apply in this case. Seconded by R. Blum and so voted by: R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

Vote: Approved (5-0)

2009-18 Thomas L Wright, 1149 Division Rd., Warwick, RI, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary a **Variance** under Section 12, to allow one additional building sign measuring 4'3" x 13' at 965 Fall River Avenue, Plat 8, Lots 103, 101 and 20 in a Highway Business zone containing 100,580 square feet. **(Continued from June 30, 2009)**

S. Navega This abuts Route 195 a public way, and I believe is an allowed use. The Alpert's building did this years ago and when the issue came up the appeals court said Alpert's fronts on Route 6 and Route 195. This also abuts on two roads. There is a distinct hardship, as I took Exit 1, I was amazed to realize there is no signage until you come right around the corner with the exception of a marked cruiser. There is a hardship due to the size, shape and topography of the lot.

R. Blum Is an exit ramp part of the roadway?

S. Navega Yes, it is on the Assessor's map as being owned by the State.

Ch. Groucke Is there anyone in favor of the petitioner? None. Is there anyone to speak against the petitioner? None. I am inclined to go with the 195 case.

K. Rondeau I can see how the Building Inspector would think that an off ramp would not be a street. I do believe the off ramp is part of the highway.

R. Read The existing sign there now is in very good taste.

G. Sagar made a motion to overturn the zoning determination of the Building Inspector as it is allowed by right and to grant the petition for the additional sign. Seconded by K. Rondeau and so voted by: R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

VOTE: Approved (5-0)

2009-19 Bocada Enterprises, Timberlane, Hope, RI, owner, by Stephen E. Navega, Esq., 447 Taunton Avenue, Seekonk, MA, petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary a **Variance** under Section 12.4.2.1 and 12.3, to allow a wall mounted sign, directional sign and pylon sign at 176 Fall River Avenue, Plat 14, Lots 80, 81, and 95 in a Highway Business zone containing 593,200 square feet. **(Continued from June 30, 2009)**

Attorney Representing Bob Tasca III. He has been a good neighbor to the town. The Tasca family has been in town 37 years. They are committed to the town and hope to have a continuing relationship. They recently spent 2 million dollars on acquiring this property. This section of Route 44 has always been actively commercial. The area is highway business and available to a multitude of businesses, the use of automobile sales/service is the least intrusive and I hope the Town feels the same way. It is 3 ¾ acres; I believe they are entitled to have a sign on the building per Section 12.4.2. The quick-lane business is a new and separate business under 12.3.2.8 this is a directional sign. They will take down the sign of "Tasca Used Cars" and replace it with a "Quick Lane" sign. I believe under Section 12.4.2 and 12.3.2.8 it is allowed. Stop and Shop had directional signs for fish, meat, vegetables; the Board considered those to be a form of directional sign in nature and a sign with an arrow is directional. As far as a variance goes, you need to show a hardship. This is similar, they are willing to take down an existing sign to allow the variance for a free standing sign. I know it is not a concern of the Board but is part of the franchise agreement. The franchisor does not care what the Towns say; the Tasca family does care what the Town has to say.

Bob Tasca III Sworn in. I think this is a show of the times. Our business has been under pressure sales are down. Service, especially quick service has been working. We need to generate service. We have used a van and there is no sign on the street or property, without signage there would be a significant hardship. This would promote a business we have expanded; we have five bays on the property.

Ray Dion We were involved with an interim Building Inspector and they were looking at one sign per wall and considering the Mazda dealer ship as part of the same building, as far as the free standing sign, they are viewing that as two free standing signs which are not allowed but we are removing one sign, the big sign will be coming down and we will put up a new sign.

K. Rondeau I applaud that you are willing to take one down and put the other up. Other than the quick-lane auto center, doesn't the rest of it apply?

Bob Tasca I think from a business standpoint, you are asking to identify what Quick Lane is and the average person driving by can see who we are and what we do.

K. Rondeau Are there other signs in town that are similar to this style?

B. Tasca Pep Boys offers various services and has signs for them.

S. Navega The Tire Pros have it on their building.

What about the liquor stores who have them all over the windows

Ch. Groucke Is there anyone who wishes to speak in favor of the petitioner? No response. Anyone who wishes to speak against the petitioner? No response.
So for discussion on the first building sign the issue is whether or not it represents a second sign.

K. Rondeau The sign on the building if you look directly across the street, there is a sign that lists all the businesses.

Ch. Groucke This is strictly whether or not they need a second sign on the building.

Ch. Groucke The second sign is the directional sign.

B. Tasca The reason why that one is significant is because we have three entrances; one where the old the bank was, another entrance to get into that building and there is a third entrance on the end that abuts the Honda dealership. So it is confusing what entrance to go in whether you are interested in used cars, quick service or a new car and because of the quick lane will hopefully generate the most traffic coming into the site we are proposing a directional sign off the middle entrance.

Ch. Groucke What is the size of that middle sign?

S. Navega 21 1/2'.

K. Rondeau I am usually not in favor of things like this but there are three entrances and it is abutting one of the most dangerous intersections around, this could be a safety issue.

G. Sagar Do we agree with the decision of the Interim Zoning Enforcement Officer?

S. Navega The sign we are taking down is 32' and the one we want to replace it with is approximately 20'.

G. Sagar I feel it will compliment the business. They have been there a long time and went through an expenditure and I think we should support the petition.

K. Rondeau They have gone through the expense to keep it from looking like a bargain basement that could occur through the years with multiple signs. It's all there with a much smaller sign.

Ch. Groucke Any further discussion? Ready for a motion?

K. Rondeau made a motion to uphold the Building Inspector's decision seconded by G. Sagar and so voted by: R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

VOTE: (5-0)

K. Rondeau made a motion to approve wall sign as submitted and approve directional sign as submitted with rationalization that we are doing it for public safety and approve pylon sign as submitted provided old pylon sign is taken down and provided this is the only sign in the future. Seconded by G. Sagar and so voted by: R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

VOTE (5-0)

2009-21 Sanders Realty, LLC, 911 Taunton Ave., Seekonk, MA, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary a Variance under Sections 9.3.2, 9.3.3, and 9.3.4.2.8 for signage at 911 Taunton Avenue, Plat 17, Lot 106, in a Mixed Use/R-2 zone containing 3.352 acres.

John Burdy Cranston (Sworn in) I am a tenant in the building located at 911 Taunton Avenue. There are five businesses at the location and because it is a mixed use we have to come before the Zoning Board. I represent Eagle Nationwide Mortgage, there is no sign in front of the building and it makes for a hardship on a tenant. The sign will not be lit, the businesses close at 5:00pm it will be wood with a rustic look. The sign will be for Atlantic power and Eagle Nationwide Mortgage, We went by a previous letter from Building Inspector that said it could not be larger than 6' so we made it 6' x 4'.

Ch. Groucke The sign will be wood and painted white with black letters, and will not be lit?

J. Burdy Yes.

Ch. Groucke Is there anyone in favor? None. Anyone against? None.

K. Rondeau Given the fact there are several signs similar and rustic in nature on Fall River Ave. I'll make a motion.

G Sagar made a motion to uphold the Building Inspectors decision seconded by K. Rondeau and so voted by: R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

VOTE: (5-0)

K. Rondeau made a motion to approve the petition as presented, that the sign be rustic or colonial in nature and under the dimensions presented. Seconded by G. Sagar and so voted by: R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

VOTE: (5-0)

G. Sagar made a motion to adjourn meeting K. Rondeau seconded and so voted by R. Blum, G. Sagar, Ch. Groucke, R. Read, K. Rondeau

VOTE: (5-0)

Meeting adjourned at 9:45 pm

Respectfully Submitted by,

Christina Testa, Secretary