

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES September 21, 2009

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

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

This is the meeting of the Town of Seekonk Zoning Board of Appeals, September 21, 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.

Ch. Grouke I am going to address that there are three matters on the agenda tonight that are going to be continued, 2009-15, 2009-16 and 2009-17

The first petition is:

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.

There has been a request from the Attorney representing that petitioner to continue until the October calendar.

G. Sagar That request has to do with the Planning Board wanting more time to work on this petition. Chris Testa what dates would the Planning Board be meeting in October.

C. Testa October 13 and 27, 2009.

G. Sagar The Town meeting is at the end of the month

Ch. Grouke Just try and make sure it is done by November 2

B. Read I won't be here.

Ch. Groucke We will discuss that later. So to go back to the agenda any one who is present on the 2009-15, 2009-16 and 2009-17 there is not going to be any testimony taken today on those. So to go back to the beginning of the agenda the first matter on the agenda is:

2009-23 Gil M. Diniz, 1700 GAR Highway, Somerset, MA, owner, by Roger Hatfield petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and, if necessary a **Special Permit** under Section 6.2.5 to allow a private kennel at 188 Cross Street, Plat 28, Lot 135 in an R-4 Zone containing 90,136 square feet.

R. Hatfield My name is Roger Hatfield 1 Victoria Lane (inaudible) New Hampshire

G. Diniz My name is Gil Diniz 6 (inaudible) Somerset MA

Ch. Groucke Both of you swear to tell the truth the whole truth and nothing but the truth so help you God? Sworn in.

R. Hatfield I am in the process of relocating I am the new Fire Chief in the Town of Foxboro and one of the locations my wife and I have found is 188 Cross St. in Seekonk. My wife and I have show dogs; we show them all over the country. We are also breeders our dogs have about 4 to 5 litters a year, average about 5 puppies to a litter. The majority of them stay with us as we continue to show our dogs (inaudible) we basically go around to different dog shows and show our dogs. It's a passion; it's a hobby I guess you could call them our children. They do live in the house but in New Hampshire we don't need a kennel license but Massachusetts law you need one. So we are in front of you looking to get your approval due to the fact that I can't go forward and purchase this home if I don't have the blessing of this Town.

Ch. Groucke So do I understand then that 4 to 5 litters of 5 puppies each is that correct?

R. Hatfield They don't all stay with us we had 12 we now have 10 we are still moving downward our goal is to have between 6 to 8 adult dogs. They are all show dogs we actually have a pretty large operation the kennels they live in is better than most houses. I have spent some time with Sharon your Animal Control Officer she has spent time on our web site to see the type of living arrangements our dogs have. We traveled down here with 5 of the dogs to give her an opportunity to meet the dogs and see what type of temperament they have we had a great time she was suppose to send you a letter I don't know if she had time or not. We had time to spend with residents in that area looking for their support. They understand the dogs are not going to be in the buildings all the time that they are part of the household we have a play area that is all fenced in they actually have

some play time. My wife is at home all day; she trains them getting them ready for shows.

Ch. Groucke I'm not clear are you going to have a structure for them?

R. Hatfield No, we are actually going to utilize, the residents at 188 Cross St. has 3 bays we actually going to design 2 of the bays to be the dogs night- time living quarters and then they will actually have an area outside that is fenced in to play during the day. They are always in it at nighttime.

Ch. Groucke So it is your intention to keep 6 to 8 adult dogs more or less at all times?

R. Hatfield Yes.

Ch. Groucke Then the litters will be somewhere between 20 and 25.

R. Hatfield Our litters are spread apart, in most cases they do end up going to other folks that are actually into this hobby and our showing dogs as well. Right now we have 16 folks that are part of what we call the (inaudible) team like NASCAR for dogs.

Ch. Groucke Any questions any one who wish to speak in favor of petitioner?

M. Lallier 9 Appaloosa Ct. I have no objections I welcome them with open arms.

G. Sagar I move that we approve this.

K. Rondeau I might suggest we put a time limit on it for the first time because there have been direct abutter within 50 to 60 feet (inaudible).

G. Sagar I think in this application it is set in a more rural setting. One of the biggest concerns has always been noise and this being right next to a gun club that becomes a moot point. With any special permit we issue (inaudible) if there were any problem down the road we can always rescind it. So you are right we have put time limitations on it but I think in this application everything has been satisfied.

Ch. Groucke Are you making any stipulations on numbers or anything like that?

R. Hatfield Right now there is no way I will let my wife go past 10 adult dogs. If there are any complaints we will obey any rulings you folks feel fit.

G. Sagar Do you want to put a maximum of 20 dogs?

B. Read I don't think it is necessary.

R. Blum I agree I don't think it is necessary.

K. Rondeau He presented to us between 8 to 10 adult dogs, 4 to 5 litters, that is his presentation I think we should accept that presentation.

G. Sagar Alright then I will go back to my original motion.

G. Sagar made a motion to grant the special permit. Seconded by R. Blum and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Grouke

VOTE (5-0) Approved

Ch. Grouke Board voted 5 in favor to grant the petition as presented.

Ch. Grouke The next item on the agenda is:

2009-22 Marguerite Williams, 14 River Street, Seekonk, MA, owner and petitioner, requesting an appeals of the Zoning Enforcement Officer's Decision and if necessary a **Special Permit** under Section 4.3 to allow construction of a new dwelling unit and continued occupancy of the existing dwelling during construction at 14 River Street, Plat 24, Lots 15-19 & part of lots 14-20 & record lot 3, in an R-2 zone containing 28,575 sq. ft.

M. Williams Sworn in. I am appealing to stay in my home until the new home is built. It would be a hardship to make 2 moves and it is in the contract to demo the home (inaudible)

Ch. Grouke What time frame do think you have for completing the construction of the new home?

H. George 5 to 6 months.

Ch. Grouke Can you state your name and address please.

H. George Herbert George 14 Patricia Dr. Bristol Sworn in. 5 to 6 months.

Ch. Grouke You would take care of demolishing the old home?

H. George Yes, it is contracted demolishing the existing home and building the new home.

Ch. Grouke How long will that take to demolish that home?

H. George Probably 6 to 8 weeks after.

Ch. Grouke When do you anticipate beginning?

H. George Within a few weeks, hopefully.

Ch. Grouke Any questions?

K. Rondeau How old is the home?

M. Williams Close to 100 years.

Ch. Grouke The whole issue is the demolition and time frames.

K. Rondeau I think in the past we have looked for a more aggressive timetable but just to be consistent with every other decision we have given in the past it has been that it has been 6 months from the date of the occupancy permit. There are issues we learned from a couple of others where materials had to be disposed of. So I think to be consistent we set a 6- month time limit.

Ch. Grouke Anyone wish to speak?

J. Alves John Alves 25 River St. Sworn in. My family moved to Seekonk in 1947 the Wells/Williams family was there and there word is their bond and if she says she is going to tear it down it is going to come down within the correct time frame. Our house is almost across the street. I am absolutely in favor of it.

Ch. Grouke Thank you.

Anne Miller 25 River St. Sworn in. I also give support to this project and having watched (inaudible) we are in full support that this comes true. It would be a financial hardship to have to move twice and find a house to rent while this one was being built and I think this is a reasonable approach.

Ch. Grouke Anyone wish to speak against? No Response. Questions?

G. Sagar I agree with Keith's thought on the time line I would only like to see if it would be offered to the Fire dept. before the house is demolished to see if they have any training needs.

R. Blum I would also talk to the local Historical commission and see if needs to be documented. I would vote to approve as submitted.

R. Blum made a Motion to approve with following stipulations that demolition of old house be completed 6 months after the occupancy permit has been granted and historical commission makes a review. Seconded by G. Sagar and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Grouke

VOTE (5-0) approved

**G. Sagar made a motion to close the public hearing and uphold the Building Inspector
Seconded by R. Blum all voted in favor**

VOTE (5-0) approved

Ch. Grouke Can you state your name

Eric Brainsky Eric Brainsky 128 (inaudible) Providence, RI

Ch. Grouke We did take that out of turn to discuss the postponing of it from tonight's hearing we didn't set on a new date yet. We were talking about Nov. 2 as a possibility to allow for our Planning Board to have a couple more meetings and one of our members is not available on Nov 2 so we stop short of scheduling actually scheduling for that day.

E. Brainsky Would it be possible to continue until the next meeting that would allows us to get back to the Planning Board I think we have resolved most of the issues but there is on issue at hand (inaudible)

Ch. Grouke Alright we should have them sign a continuance we can do that now and have it continued to Nov. 2, 2009. Now we are going onto the third item on the agenda:

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.

S. Brighenti Sworn in. We are back before this Board based on some questions that came up and some requests last time for additional explanation and research. What we did at the last meeting we were provided with a number of properties by some members of the Board and by Representative D'Amico regarding the potential alternative that we could look at to cover this gap in coverage that we are showing in this area of Seekonk. This is a map showing existing coverage in green the white being coverage that is not at the level that we are looking to provide and this right here shows the site that we have proposed to help perpetuate the coverage in that area. So what did we do again we put these suggestions that were given to us and provided similar plots here showing what coverage would come from each of these sites and I will then go about explaining a little bit about each site. What I was going to do now is show graphically how we analysis these sites

that were given to us and again these were sites that were originally we (inaudible) level mainly because of that reasons I will explain as we go forward. So if you will excuse me going back and forth here.

Also on the 11 of this month Attorney Maria provided a narrative of this research that we have done along with copies of these forms. The first here that was given to us was this new Showcase Cinema site and that is at 100 Commerce Way and that can be seen here it is south and slightly west of the coverage area we need to cover here and it is also to the southeast of the existing site. So what happens here is that this does not provide coverage to the area that we need to cover which is in this area here. It provides a little bit of extra coverage down in here but it is mainly redundant coverage meaning that there is sufficient coverage in that area from existing sites, so a site down there would not be necessary and would not help to fill the gap for service here. So that is the site for coverage of the Showcase Cinema again this is a process by a computer program that is very industry sensitive to propagation of radio waves within the existing terrain and territory.

The first example was the site at the new showcase cinema it was at about 80 feet this showed that at about 120 feet it gave a little bit more coverage up to the north up again there is a substantial gap here. 120 feet would be higher than the 100 feet that is the limit on your new overlay district. It is 40 feet higher than what we are proposing here so at 120 feet this is the coverage you would get.

We were also given the possibility of 738 Fall River Ave., which is the Shell Station. That one is just on the southwest corner of Town here and it is very close to the existing site it does shot some coverage up here but again we get this gap remaining in this general area here of Rehoboth and into Seekonk so it leaves a gap in coverage if you have the facility at the Shell station. (Inaudible) Shell station at 80 feet which is at the height we are proposing this one is at 120 feet brings a little more coverage up here but still again leaves this area here with no coverage. What we are looking at is a 120- foot structure here.

Another site the Town designated was 0 Chestnut St. and this is the property that is owned or was referred to as the Conservation Commission property. We went with a C C T here and as you can see this would effectively provide coverage it would leave a little bit of a gap in coverage over here but it would be an acceptable coverage and it would connect to the site we have down here. The reason those sites to the south here the Shell and Showcase is because those general areas were reviewed as I said before it was (inaudible) to specific properties and the sites from those properties were looked at. Now up here in the Conservation property one of the reasons why this wasn't presented earlier or in the application or stated, as a potential site was in fact that usually when there is Conservation property there are one or two issues, one, the potential that the commission would have jurisdiction over the property the second is what we found that this is property that falls into a property that has a restriction that it remains conservation property and this property in particular was deeded to the

Town and in that deed the property was made with this restriction so conveyance was made subject for the express condition and limitation that the premises herein conveyed shall forever be held as a natural preserve and shall be kept entirely in a natural state without any disturbing of the habitat or plant or animal population. There shall be no hard surface, no black top or building constructed on said premises. So when we look at that kind of a restriction on a property we find that to be incompatible with what we need to do on that property so we have to rule that property out because of the restrictions.

The next property, again like we did with the 80 and 120 foot analysis coverage (inaudible) that is why we ruled that property out.

The next property is the old showcase cinema and that is at 800 Fall River Ave. Again that is to the north and east of an existing facility here over the line in East Providence and the Southwest of the area we are seeking to cover so again it would leave this particular area uncovered so again we did rule out that property as well.

We were also told of a property at Chestnut St. again it is called 0 Chestnut rear according to town Assessor records. What happens on this is that it is directly north of our property and is southeast of an existing facility and to the southwest of an existing facility again it leaves this area to the south and east open as not having coverage so that is why that property didn't (inaudible) 120 analysis on that and then (inaudible) because of the fact again it does not cover the area needed to cover.

This is the coverage of 120 feet and it doesn't bring down the coverage that is needed here.

There is one more property that was suggested it was 0 County St. and we analyzed that at 80 and 120 and would barely give us the coverage that we are looking for here to provide a coverage gap for people that are not in this area to the Northeast of 195 and to the south of that Only St neighborhood get the coverage we are seeking to provide in that area but again it covers a lot of the area we are looking to cover so it would be something that would be usable especially at the right height. Which is right here, again the issue with this property it is actually owned by the Seekonk Land Conservation Trust and the Land Trust is part of the Land Trust alliance which is a Nation wide organization of land trusts and these land trusts are not compatible with the uses that we are looking to do because again the purpose of the land trust as they say on the land trust website is; to acquire land for purchase for the purpose of preserving open space promoting environmental awareness in the local community by awarding grants and programs. They do a lot of work with conservation to allow for easements to run (inaudible) with land (inaudible) so that is why that property was not pursued because again it is owned by the land trust and I don't believe we have ever worked with any of the land trust that are in that alliance.

So that what was brought up last time as far as these particular property that were suggested my second point here is another issue is another item that came up last time was also I do also have copies here of the statement regarding the overlay district that was enacted during the tendency of the application here and I know there was an opinion from Attorney Kantor I believe, stating that in their opinion the overlay district does apply and at the last meeting I had said that I wasn't sure because

I hadn't gotten back to review the time line (inaudible) state law so we could determine what was going on here it does appear the argument Atty. Kantor makes is a strong one that the overlay would fly so what we doing here is providing you with a statement for the record here as to what in addition to our original application which talked about the application in terms of a statement by the then the Zoning Enforcement Officer who stated at the time that since there was not a wireless bylaw in affect that what we would be looking at was a public utility essentially a private utility and that would be allowed and that we would be looking at height variance within the district of 35 feet we were looking at 80 so what we are looking is the fact that because you are applying this overlay the overlays 100 foot towers we are looking at and 80 foot tower proposal so we will be at the height limit but it is also said that the towers would only be in allowed in a highway business or industrial zone, this is a business district but I believe it a (inaudible) the property is so we are seeking a variance on that and also the fact that the overlay talks about the property being located a distance equal to the height of the tower and then the distance shall be increased one and half times the vertical height of the tower (inaudible) zoning district abutter resident zoning district with an 80 foot tower you would need a 120 feet of set back. We would be at 112 feet so we are 8 feet short of the requirement so that set back and the set back from a public way would be one and a half times the vertical height of the tower so again that would be 120 feet and in this case for a public way we are measured at 61 feet so we are looking for a reduction in that set back as well. So that memo was submitted today. So for the record we are looking for those differences between what we are proposing and the overlay district even though the application submitted was based on prior bylaws. Those were the issues that were remaining from last time again I am available for questions.

G. Sagar Mr. Chairman today I had a discussion with the Chairman of the Land Trust and he informed me their property would not be available. I also had a discussion with the conservation agent and based on language and the deed on the property she indicated that that property would not be available either.

R. Blum I remember a conversation at the last meeting about the fields behind the Martin School area. I thought that was mentioned at that meeting.

T. Grouke Apparently that was not on the list. Other questions for Mr. Brighenti? I am going to open the meeting to the public. Anyone who wishes to speak in favor of the petitioner? No response. Anyone wish to speak against the petitioner? We will invite people to come up recognizing the fact that there has been already a fair

amount of public discussion and people have voiced their concerns already. We just don't want to say everything all over again.

Eric DiBiase 60 Jean Dr. sworn in. One of the concerns I have is for me and the people behind me is the property values. There have been studies done and I will sum them up for you it was over a 10 year period the houses go down 650 in diameter of the tower, all people which is like two and a half football fields, you loose 15% on your house. So if your house is worth 300,000 dollars you are loosing 45,000 dollars, so lets put this in real economic terms, right now things are bad a lot of people in my neighborhood are as old as me or older, 401k's are gone, you know people's home are their retirement, if you do the simple quick math you know, two and a half football fields worth, that's a lot of people that's a lot of homes, 10 homes at 300,000 each that is a lot of money at 45,000 for each home, 10 homes that's a 450,000 dollar loss for Seekonk residents. If you go 20 homes that is 900,000 dollars. This is what people are looking to retire their home is there retirement. I hope I am being clear I think if it affects 25 homes people will lose over a million dollars. How many people here live within 650 feet of that tower based on this study? So this is another thing to think about. They will be making money and we will be losing over a million dollars. If you would like a copy of this study I would like to give it to you.

B. Read How far is that proposed tower from your house?

E. DiBiase I believe I am the closest, it is in my back yard, it is about 90 feet from my backyard. Now they are coming in to get this through they want more variances that is asking for a lot. I have my house for sale.

B. Read Why is your house is for sale?

E. DiBiase There are a lot of reasons and the cell phone tower was defiantly one of them.

B. Read I drove up to the water tower where there are antenna's and electronic boxes on the ground and you can drive in to where there is a chain in the road I paced that off at about 100 yards from those boxes and you can hear the hum of the boxes at 100 yards away so if I were Mr. DiBiase I would be concerned about that.

Ch. Grouke Anyone else want to speak?

Victor Couto 68 Jean Dr. Sworn in. I have a copy (inaudible) in here it states you don't have to give them total coverage there can be a gap here and there it says in the rules. They are looking for 4 to 5 variances; I mean how many variances do we have to give them to put up a cell phone tower? They can put a cell phone tower and have it overlap that is not our fault and they don't have to have one (inaudible) I personally have T Mobile. I get service and I am in the middle of where they are saying is a dead zone. I'm probably 120, 140 feet away from where the tower is

going. This is ridiculous there is no reason to build it there. They shouldn't be getting 4 to 5 variances to build this thing.

Ch. Grouke Thank you Sir. Anyone else?

William Fischer 65 Eleanor Drive. Sworn in. I live probably about (inaudible) this is the fourth meeting we have had and I have here a summary written by Joseph C. Colt Esq. (Inaudible) MA he specializes in cell towers in it he states that there has to be substantial evidence, which is something the board would have to provide, it is a legal term which means the (inaudible) is a reasonable (inaudible) that excepts support (inaudible) the good news for local boards which is you, is that the (inaudible) characteristics that has to be satisfied, I will read them off 1) neighborhood comment, 2) evaluate the strengths and expert opinion crediting one experts opinion over another. 3) Esthetic judgments and loss of property value. In my mind there is only one that is a bit of a questionable and that is evaluating the strengths and expert opinion. I can't understand how he can put that tower where he is proposing and the coverage is going to complete these gaps. If you go a quarter of a mile from here it's not going to do it.? That doesn't make any sense. Anyway, I think if you were to reject this you could use all five of these points. If you would like a copy I would be happy to pass it out.

Ch. Grouke Anyone else want to speak?

Edward Brady 10 Rosemarie Dr. Sworn in. I wanted to say I have had T Mobile for years if you are familiar with Rosemarie Dr. I live at the bottom of the valley of that plat I can get T Mobile coverage most of the time. So I'm not sure I understand the need for a tower in that area. I don't understand the concept of (inaudible) why can't they check to see for themselves what they cover. I know this computer map does say that there is no coverage but I am living proof. So I don't understand why they say there is no coverage when there is coverage.

Ch. Grouke Thank you anyone else.

Larry Havrylik 56 Eleanor Dr. Sworn in. the whole point of this (inaudible) When we went to the Zoning Board to protect us to protect the esthetics protect the property values I don't know what arguments came out earlier but (inaudible) to put an industrial structure of this nature within 100 feet of houses if that's not (inaudible) nothing is. I can't argue the technological merits of this case but it will definitely affect the property values (inaudible) that was why I moved to Seekonk I was hoping you people could protect us.

Ch. Grouke Thank you anyone else.

Colleen Francis 24 Arrowhead Rd. Sworn in. What about the environment and people with pacemakers. There are a lot of people with pacemakers some people have special

devices for nerves if they set this tower up all the people walking in and around the area just one antenna could hurt one person but they are proposing 6 antennas in this one unit. I had an experience where I drove a car up to a friend of mine's house I was going through downtown Providence I drove down (Inaudible) I saw one of the towers and it was very close to me as I drove by the tower it caught me on my pacemaker I became more, it affected my mood. For a half a day it affected my mood so I don't want that tower there in the Briarwood Plaza area. I don't know if environmental or government workers are aware of this or not but I hope they will wake up to this issue.

Ch. Grouke Thank you.

W. Fischer Mr. Read I know you mentioned about the noise level. I had brought that up previously and they had promised to bring a study I don't remember what the result was I believe it was 60 decibels. At night it would be disturbing. I don't think that should be something that should deter you from making a proper decision on this when it is something we can discuss.

Ch. Grouke Mr. Brighenti I believe there was something in a letter that addressed the noise level, do you have that?

Mr. Brighenti Yes, in a letter dated July 28, 2009 we discussed in that letter radio frequency emissions on the proposed site and how we are (inaudible) the FCC levels and we also spoke noise that would be (inaudible) from the cabinets. (read from the letter). If you like we could provide you with the whole study again. When we are proposing an area that does have residential we try to do what we can to try to eliminate the sound.

Ch. Grouke The nature of the sound is it a hum or a buzz?

M. Brighenti It is similar to the noise like an air conditioner, it has cycles.

B. Read I'm not an engineer those decibels number don't mean much to me but I'm sure Mr. DiBiase and people across the street would like to know what sound they are going to get at there house.

Mr. Brighenti The manufacturer is saying that they are talking 40 DBA at a distance of 46 feet and they are talking about 63 DBA is a normal conversational voice level for two people communicating within a few feet of one another. The other thing we did was address the Town of Seekonk's anti-noise bylaw. And we will respect that bylaw.

B. Read Why would the water tower site be so much louder? Which I think is T Mobile.

Mr. Brighenti T Mobile is on the tower and I think another carrier ATT&T? It maybe a combined noise output but also it's not wooded, no fences. (Inaudible).

Ch. Grouke Anyone else?

Carole Hayes 67 Olney St. Sworn in. (inaudible) across the street. (inaudible)

Mr. Brighenti I guess the last point that was brought up, T Mobile does not operate in the 1,900 to 2000 range as stated some carriers operate in that range, some operate in the 800 range and again when you get a 800 signal it travels a lot further distance than a 1,900 signal. Federal law did anticipate that to a degree and what they did was talk about providing a functionally equivalent service meaning that even though you have a different wave length a package providing a similar service needs to function equivalent so distributing based on a wave length issue there is a (inaudible) 1,700 to 1,900 but are now issued even at 800 cover (inaudible) service they make site closer together and they need more sites because it has been 12 years the demand for this service requested from people. Final point T Mobile puts a lot of effort and money looking for more service facilities none of this is done lightly T Mobile puts in hundreds of thousands of dollars into these sites to get to the point to get on air. It is not like we try and go in and give (inaudible) we try and work against that but when we isolate an area that does need coverage we look for the easiest alternative and in this case there is a water tower sometimes we go on high tension wires. We are not in the business of building towers we are in the business of providing service and what we are trying to do is find the least objectionable means necessary. We are looking to comply with what is required here.

B. Read That tower would be available for other antennas from other carriers?

Mr. Brighenti Yes as you can see on the plan here...

B. Read My point is that would change the decibels considerably would it not?

Mr. Brighenti When you are making space for other carriers each of those other carriers would have there equipment down there and again each carrier would be responsible to provide you with information as to what their output would be. I guess the request for further information AT&T what they do is use an indoor shelter which is different from the shelter we use so if the noise you hear probably mostly AT&T (inaudible)

Ch. Grouke Discussion

G. Sagar Mr. Chairman the biggest concern I have with this is need. Several people have testified that they are T Mobile customers and they get reception in that area. The biggest hurdle I have with this is at the last meeting and I don't have a quote for it but words to affect what the engineer said that he wouldn't know what criteria their marketing department used when they went to go site a facility. That raised a lot of red flags with me. For those reasons, for the address, the affect on the

property values and I just do not think this facility belongs there I move that we deny the petition.

K. Rondeau I have a motion for the Board to consider I think it incorporates what Gary said plus more. **I make the motion to deny agenda item 2009-12 for the request for a special permit or variances under section 6.2 for Cell Tower 2 Olney St. and requested variances of special permit requirements of section 9.6.5.1 and 9.6. 6.3 and 9.6.6.4 as submitted on this date 9/21/09 as the petition as presented is not in keeping with the new cell tower bylaw, no hardship has been demonstrated, because of the fact insufficient data to demonstrate a sufficient need has been submitted. For example: several towers within 1.5 miles of each other do not constitute need, the graphics presented were in direct contradiction to the Company's own website regarding coverage, repeated requests for data as to customers affected it was stated during the presentation it was proprietary data and not for publication and that all customers that presented before the board stated their services were good. For these reasons I move to deny the petition. Seconded by B. Read and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Grouрке**

VOTE (5-0) Denied

Ch. Grouрке To add to what Gary and Keith said when you hear people say they have T. Mobile service and they are able to use their phones in the area I don't think you can just say because of that that we can deny this request but when you take that and add it to the marketing information on the website that shows a different type of coverage and it shows different maps as far as what has been presented for this petition. The big problem with the Tower is its prominence in the neighborhood it is on the street not set back like other proposals we have had and acted upon that have been in areas that are not as obvious or close to residents. I think that is a big factor location, size and prominence and it directly affect many people in that area. Maps showed redundant coverage. This tower doesn't even provide complete coverage to the area some gaps still remain and it doesn't do the job providing coverage to justify in my view the variance needed to justify a structure of that height and size in that location. Let's not to forget the noise factor as well, the noise factor is important because the tower is so close to the residents. I think this petition should not be allowed.

Ch. Grouрке The next matter on the agenda is:

2009-24 Maureen O'Neil Brown, 188 Sherman Avenue, Seekonk, MA, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and, if necessary a **Special Permit under Section 5.3 to allow an addition onto an existing dwelling at 188 Sherman Avenue, Plat 21, Lot 280 in an R-2 Zone containing 39,461 square feet.**

M. Brown Sworn in.

Ch. Grouke Somehow when they built it they went over the side line.

M. Brown So when we had the builders (inaudible) we were 19 feet away from the property line. (inaudible)

Ch. Grouke And this is going right on the back.

B. Read It seems a hardship due to narrowness of the lot.

Ch. Grouke The only reason you are here is because someone made a mistake and built it too close. Anyone wish to speak in favor of petitioner? No response, against? No response.

B. Read made motion to approve the Special Permit. Seconded by R. Blum and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Grouke

VOTE (5-0) Approved

Ch. Grouke Next on the agenda is:

2009-25 Lynn A. Neves, 115 Prospect Street, Seekonk, MA, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and, if necessary a **Variance** under Sections 6.4 and 6.8 to allow an addition onto an existing dwelling at 115 Prospect Street, Plat 17, Lot 61 in an R-4 Zone containing 86,336 square feet.

2009-26 Lynn A. Neves, 115 Prospect Street, Seekonk, MA, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and, if necessary a **Special Permit** under Sections 5.2.1 and 5.3 to allow an addition onto an existing dwelling at 115 Prospect Street, Plat 17, Lot 61 in an R-4 Zone containing 86,336 square feet.

L. Neves Sworn in. (inaudible) I would like to build a breezeway to connect with an (inaudible) garage and it is closer to the abutter's property (inaudible). Level in the front on the opposite side of the house where there is more room (inaudible) foundation (inaudible).

Ch. Grouke Any questions? Anyone wish to speak in favor? No response. Against? No response. Discussion?

B. Read made motion to approve the Special Permit and Variance seconded by R. Blum and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Grouke

VOTE (5-0) Approved

Ch. Grouke The item on the agenda:

2009-27 Steven Arruda, 8 Jean Drive, Seekonk, MA, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and, if necessary a **Variance** under Sections 6.5 and 6.8 to allow an addition onto an existing dwelling at 8 Jean Drive, Plat 10, Lot 108 in an R-1 Zone containing 12,646 square feet.

S. Arruda Sworn in. I came here a few years ago to put an addition on my house and now I want to put on a garage with an entertainment room above it. I have a legal non-conforming lot. I do not have an existing garage at my house now.

Ch. Grouke This is to put a garage on the left side?

S. Arruda That is correct.

K. Rondeau Are there any new or additional encroachments on the side of the setback?

S. Arruda Not to my knowledge, no. Right now I think I have 37' or 39' feet but if you look at my survey I have another 20" of land on top that. If you look at what was done by Caputo & Wick about 5 years ago.

K. Rondeau It is a 2-story addition?

S. Arruda Yes. A 22 x 26 foot garage with an entertainment room above.

K. Rondeau You need 20 feet; you have 17 feet you also need a variance of 3' feet.

G. Sagar If you look at the zoning determination you need a special permit and a variance for this.

B. Read What did you say the requirement is?

R. Blum 3 feet.

K. Rondeau He needs another 3 feet of requirements, 20 feet plus 5 feet.

S. Arruda (inaudible) when I complete it.

Ch. Grouke Any other questions for Mr. Arruda? Anyone wish to speak in favor of petitioner? No response. Against?

E. Brady Rosemarie Dr. Sworn in. I have a couple questions the 17feet is it still including the 21inches in question as far as what was surveyed.

Ch. Grouke I'm not sure.

- S. Arruda Like I said I had my yard professionally surveyed by Caputo & Wick and there was a 20'inch discrepancy. There was 20" inches of property that was mine there was a fence that they had on their property that was suppose to be my property I asked them to have their yard surveyed to tell me that it is actually their property. I also asked them to sign a letter of adverse possession that I would not take that fence down and I got nothing from them over the past 5 years. I asked them several time but got rude comments about doing this and they never got back to me legally telling me it was their property.
- R. Blum (looking at the surveyed plot plan) basically these dimensions that you have submitted to us say that your 17' feet off the property line if you go by this so it's 3'feet. I am not seeing anything here that is referring to the 21" inches.
- S. Arruda This is where the posts were and the fence was and it goes to the left of the 1.8'feet which is 20" inches.
- R. Blum So you are just saying there is a fence there now?
- S. Arruda Yes there is a fence there now.
- R. Blum But your survey post ...
- S. Arudda That is the fence line
- B. Read That is 17' feet it would completely ignore the fence. It is what Caputo & Wick said was the property line.
- E. Brady I 'm just asking would that include with the fence poles...
- R. Blum I have a similar situation on my property our neighbors and my fence sit on the property it's whatever your site survey says.
- E. Brady I was just asking if that includes the 21inches.
- R. Blum This shows your 39feet on the property.
- G. Sagar If that fence belongs to Mr. Brady but it is on Mr. Arudda's property Mr. Arudda has a the right to remove it.
- E. Brady I understand that, my question was the 3 feet included? When we had our house done it wasn't me it was the previous owner he had the septic system put in and a survey was done with that and there was an existing fence at that time. This is the reason why I'm asking if that was included it's not really the point I am making I just wanted to make sure I am discussing the same information that everyone is on the same page. Basically my question was in this case for the variance, unfortunately when they did the septic system in my house they raised the level of

the land by 3 feet there is 5 inches between the shingles and the ground on that side so my big concerns are flooding of basement and my septic system. The water will pour down this way because of the level of where the land is it is coming down and it's going to flood my basement. I can't imagine it not going to especially if he brings it that close. The other question I have is we were told the reason why he wants to put on a 2 car garage was that he had a hardship.

Ch. Groucke In order to get a variance you have to show a hardship.

E. Brady Is it necessary to have a 2 car garage if the variance is of 39 feet? I measured today from my foundation to the fence it was 18.4 inches between my house and his. My question is if you have a variance it is going to be very close to my house. Is there something that he could do that would be less impact on my house and septic and water problems?

B. Read Your house is 18.4 feet from the fence. The property line that Mr. Arudda (inaudible) that would be about 17 feet from the property line. If he builds that addition 17 feet from the property line it would almost be exactly the same as you are from the property line.

E. Brady Once again (inaudible) there already was a garage which he made into a family room and that is why there is an existing driveway. So if he puts a two car garage on that is basically putting three garages on his house. I don't think it is fully intended to have that little space between one and the other. I don't know what the fire code is about having a house that close, not that I'm saying he is breaking any codes. I'm just concerned if something were to catch fire especially in a garage the are more tendency to have chemicals that are flammable, cars and it close to that side of the house where the bedrooms are.

K. Rondeau Mr. Brady realizes (inaudible) nonconforming lot because of the size of lots when the zoning laws changed it was a small lot at the time. In an R-1 zone you only need a 15 foot side yard setback so the garage if you were just building a 1 story garage this would be conforming. However because he wants 2 stories he needs an extra 5 feet however with that said the difference between a 1 story and 2 story garage as far as water run off etc...it would be negligible because the roof line is going to be the same.

E. Brady My concern is not the run off or whether it is 1 story or 2 stories it is more the fact that it is close to my property line and this property was raised up.

K. Rondeau Anybody in that area could conceivably build 15 feet from the property line with a 1 story garage.

E. Brady My concern is more with the flooding that unfortunately we are at the bottom of the hill and there already is a problem with water-off in this area.

- K. Rondeau Whatever has to be done for a 1 story garage the same is true for a two story garage.
- E. Brady I'm more concerned about the distance between the property lines there is only so much room.
- K. Rondeau If it were a legal conforming lot he could go 2 feet closer.
- E. Brady I'm not trying to give Mr. Arruda a hard time I'm just I just really concerned about flooding we already have a sump pump.
- Ch. Grouke Mr. Brady do you have any thoughts or suggestions on how to stop that water problem?
- E. Brady He is already on a higher elevation so like I said if you bring him closer to the house maybe on the other side or have the water run off go somewhere away from my house.
- G. Sagar Should we ask the Building Inspector for her opinion on the water issue?
- Ch. Grouke That is a good idea.
- Deb Brady Sworn in. (inaudible) new addition, there are a lot of water problems at that end of the street but whatever it did to the land I started getting water in my cellar. The other thing I am concerned about is a 2 car garage and a loft and now he's got the fence that belongs to him. He said it was a hardship case but the hardship is on us we have to rearrange our whole lives and we have to live with this water problem.
- Ch. Grouke What do you mean rearrange your whole lives, are you talking about the water problem?
- D. Brady The water problems. It's terrible I had 4 or 5 inches of water in my cellar. Some neighbor complained I had my sump pump water going out into the street he said I was breaking the law.
- M. McNeil I have not looked at the grading so I would not be able to answer right now.
- S. Arruda There is water everywhere I have sump pumps in my house I have water coming down from my next door neighbor. I'm going 2 feet below of where I'm at right now that existing will completely come out of there what you will see on the blue print. So I am going below what my yard is right now I'm 2 feet below that so when I come from my garage I'm going to walk 2 steps into my existing home because of the slanting of the property.

- G. Sagar My question to the Building Inspector, Mary if we were to approve this can you think of any conditions we should put in?
- M. McNeil You would need something to control the storm water.
- S. Arruda What I can do is I can actually put drains inside my yard so it does not effect her property. What I am going to do with all the water that comes from my gutters I am going to make dry wells. I can't control run off that comes off the roof but I can control the water that is possibly going into their property. I can tell you this I got people everywhere around me that has water I had existing water 4 feet on my property when I first bought it and I had to fix it. So they think I built something now all of a sudden they have a water problem everybody in that neighborhood has a water problem.
- Ch. Groucke So it's possible that based on what Mr. Arudda has stated that he is going to install these drains in his yard he is willing to except that as a condition and we could also attach an additional condition that storm water management technique be adhered to.
- G. Sagar I have a question for the building inspector. Do they need both a variance and a special permit?
- M. McNeil (inaudible)
- B. Read When you built your first addition did you change the grade of your lot?
- S. Arruda No I did change the grade.
- G. Sagar Are you more concerned about the grading and the water than you are (inaudible).
- E. Brady That is the major concern like I said I can't prevent him from doing what he wants to do my concern is the grade is much higher than on my property. I'm not saying he is doing anything wrong the thing I am trying to say is that the new structure will be close to my property line and we will have more of a water issue than we already have. Water is water but it just seems we have more issues lately.
- Ch. Groucke Keith's point was that Mr. Arruda could build a small garage as a matter of right but if he is willing to take steps to address the water problem as he said and we are also going to impose the other conditions to help that situation on your property while giving him what he is seeking as well.

G. Sagar made a motion to grant the special permit with two stipulations seconded by R. Blum and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Groucke

VOTE (5-0) Approved

G. Sagar made a motion to grant a 3 foot variance as proposed on the same special permit and the same stipulation seconded by R. Blum and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Grouke

VOTE (5-0) Approved

Ch. Grouke Mr. Arruda and Mr. Brady we granted Mr. Arruda's petition to allow the variance for the construction of the garage with the conditions that he install the drain that he spoke of and also that storm water management techniques must be adhered to on the lot.

Ch. Grouke The next matter on the agenda:

2009-28 Frederick Brown III, 103 Hebron Avenue, Seekonk, MA, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and, if necessary a Variance under Sections 6.5 and 6.8 to allow an addition and a porch onto an existing dwelling at 103 Hebron Avenue, Plat 34, Lot 264 in an R-1 Zone containing 7,250 square feet.

F. Brown Sworn in. (inaudible) last year my roof started leaking I went into to the attic and the sheet rock started to fall out so out of necessity I allowed a friend of mine who is a contractor start to work on it. He did the roof and while he did the roof the he said the porch was (inaudible) when he gave me a price to do the roof I thought it would make sense to add a porch. I added the post even with the front of the steps (inaudible) not realizing the roof above the structure was changing the setbacks. I set the poles even with the floor of the steps to make sure they were the same not realizing that the roof line (inaudible). So I assumed it was the same as the porch but I received a stop work order, I went to the Building Inspector asked some questions and had a surveyor check the lot. The problem is that it is 73 feet not 75 feet so that is an issue. The lot is a non-conforming lot in an R-1. It is a small lot and the proposed addition is if you look at the plans is on the left hand side of the house. It appears that whoever built this originally didn't have the money to finish the (inaudible) and garage so there is an open wall on the side and an open wall on the front to get in the back (inaudible) to get to the electrical service. I just want to be able to close that wall off across the side and front and have some more room. I went as small as I could with the porch

Ch. Grouke Any questions for Mr. Brown?

B. Read The only addition to the footprint is the 5 foot porch in the front.

Ch. Grouke Anyone wish to speak in favor of the petitioner? No response. Against? No response.

G. Sagar made a motion to grant a variance and a special permit in accordance with the plan presented. Seconded by R. Blum and so voted unanimously by G. Sagar, R. Blum, K. Rondeau, B. Read, Ch. Groucke

VOTE (5-0) Approved

G. Sagar made a motion to end regular session and go into work session seconded by R. Blum and so voted unanimously

VOTE: (5-0) Approved

**SEEKONK ZONING BOARD
WORK SESSION
MINUTES
September 21, 2009**

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

K. Rondeau One thing I wanted to bring up before the Board is a large communication gap between the town and the residents. There is one incidence of it happening with the Zoning Board and the residents regarding the DiPietro cell tower. To refresh everyone's memory the original cell tower proposal was denied and at some point in time it was appealed by Omnipoint then on the advice from town counsel this Board agreed with Town Counsel, I was not at that meeting, that the appeal be dropped and the cell tower went forward. The problem is no one in the neighborhood knew that. I happen to find out 4 months later and the neighbors were all up in arms. They knew nothing about it until construction began the neighbors should have been notified as to the change in the status of the original decision. As far as the neighbors knew it was denied they had no notice of the appeal and no notice that the appeal had been dropped. I think it is up to the Board to apprise the selectman about this and it could be part of there purview to make this known because I am sure there are other boards that have this same issue.

G. Sagar You raise a good point but this is not a normal practice.

K. Rondeau Yes I know but the neighbors did not know and all of sudden there was construction.

Ch. Groucke There really is no mechanism to notify people.

- K. Rondeau That's the problem I want to resolve.
- Ch. Grouke I don't know how to resolve it. I don't know if we need to amend our bylaws because once it gets into the appeal mode whatever court it's appealed to and when action needs to be taken it goes into executive session because it is a legal matter. It's not like we would schedule another hearing on it.
- R. Blum It's public record.
- K. Rondeau No it wasn't public record that was part of the problem.
- Ch. Grouke It is after the fact public record.
- K. Rondeau They didn't know there was litigation.
- G. Sagar Typically once a decision is made the clerk is supposed to send out the decision.
- C. Testa The Zoning Board of Appeals decisions not the court decision.
- G. Sagar An appeal in the eyes of the court the party of (inaudible) would also have to (inaudible)
- Ch. Grouke Say that again.
- G. Sagar In the eyes of the court if a neighbor felt compelled then they would have to file an appeal and then they would be a party to it.
- Ch. Grouke That's right.
- K. Rondeau I think people would appreciate it if someone would tell them the decision was changed.
- Ch. Grouke You could have a public notice on it or make it a work session to say report on appeals or appeals requests.
- K. Rondeau That is why I would bring it to the selectman because I'm sure it's just not this board.
- G. Sagar Maybe the selectman could post it on the website
- K. Rondeau I just think something of this magnitude the abutters need to know via certified mail or regular mail.
- R. Blum They can check the website

- K. Rondeau But on this a decision was made and it was the last anyone knew about it.
- B. Read When an appeal is made how is the town notified?
- G. Sagar The Town Clerk gets a copy of the appeal. Appeals follow Clerk and the courts.
- B. Read To me it makes sense that the Town Clerk somehow should see that those abutters are notified.
- R. Blum You are talking about time and expense and there are other boards.
- B. Read I'm talking a one sentence letter to some abutters.
- R. Blum One sentence letter? It takes time, effort and money.
- G. Sagar May I suggest that maybe you make an appointment with the Town Administrator and run it by him and see what his thoughts are.
- K. Rondeau Or should we ask to have the problem put on the agenda for the Selectman's meeting?
- G. Sagar I would talk to the Town Administrator first because it's not just for our Board.
- K. Rondeau I think they need to know.
- Ch. Grouke Typically people are notified by the bulletin board in Town Hall or see the legal ads in the newspaper you don't get notices that go to specific people. You are going to run into problems you are going to have some type of notice that there has been an appeal but people aren't going to have any input what so ever.
- B. Read What you are saying is if the abutters are notified or not there is nothing they can do about it.
- Ch. Grouke That's true.
- B. Read They can't participate in that appeal at all.
- G. Sagar Unless they are an abutter and want to hire an attorney.

G. Sagar made a motion that Mr. Grouke be elected as Chairman of the Zoning Board of Appeals from November 2009 through November 2010. Seconded by K. Rondeau and so voted unanimously.

Vote (5-0) Approved

K. Rondeau made a motion that G. Sagar be elected as Vice Chairman of the Zoning Board of Appeals. Seconded by B. Read and so voted unanimously.

Vote (5-0) Approved

G. Sagar made a motion that Ms. Christina Testa be elected as the Clerk of the Zoning Board of Appeals. Seconded by K. Rondeau and so voted unanimously.

Vote (5-0) Approved

Meeting adjourned at 10:00 PM

Florice Craig, Secretary