

MINUTES
ZONING BOARD OF APPEALS
SEPTEMBER 17, 2012

The meeting was held in Stow Town Building and began at 7:20 p.m. Board members present were Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (associate), William Byron (associate) and Bruce Fletcher (associate). Also present were Town Counsel Jonathan Witten and Planning Board member Kathleen Sferra.

The meeting had been posted to commence at 7:00 p.m. in executive session. Only two members were in attendance at that time. Calls went out in order to assemble a five-member board.

Executive Session – Mr. Tarnuzzer chaired and declared executive session open at 7:20 p.m. The executive session closed at 8:00 p.m.

Mr. Tarnuzzer reopened the public meeting to discuss and explain a settlement agreement with Star Tower Company that will vacate the Board's decision filed on January 26, 2011 with the Town Clerk denying the request for use and dimensional variances to install and operate a communication facility at Wedgewood Pines Country Club off 215 Harvard Road.

Mr. Tarnuzzer presented a brief history of the matter. There are overlay zoning districts in which wireless communication towers may be erected. A carrier may place a cell tower within an overlay district with a permit from the Planning Board. In the Star Tower case the site was not within the overlay district. The Planning Board denied the permit, and the applicant filed with the Zoning Board of Appeals a petition for a variance from the Zoning Bylaw to allow a 150-ft. cell tower. That constituted a "use" variance that is not allowed by State law. The attorney for Star Tower filed an appeal in the U. S. District Court citing violation of the Telecommunications Act of 1996. A judgment has come down in favor of Star.

On advice of Town Counsel, the Board has agreed to enter into an Agreement for Judgment to allow the tower. Without this action, the matter could go on for many years and most likely result in no change. The agreement will allow a 137-ft. tower that will be below the FAA height requirement for lighting. It will be a mono-pole with no guy wires and flush-mounted antennas.

Town Counsel Witten advised that the litigation took place in Federal Court. The ZBA decided to hold this public meeting to explain the settlement agreement, primarily to abutters. The proposed location has not changed. The 137-ft. height is a departure from the 150-ft. tower originally proposed.

Notification of the public meeting had been forwarded to all abutters to the Wedgewood Pines property. Abutters Jeana and Raymond Albert of 167 Harvard Road were the only abutters in attendance. While they understood the Board's position in this regard, they had concerns

about health issues connected to the cell tower. It was their intention to carry forward with those concerns.

The public meeting was closed at 8:10 p.m.

Mr. Witten advised he would contact Brian Grossman, attorney for Star Tower, to relay the Board's decision. He recommended ratification of the final language with a plan of the proposed mono-pole with flush-mounted antennas and, with ratification, authorization to him to file on the Board's behalf.

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board