

**STURBRIDGE PLANNING BOARD**  
**MINUTES OF**  
**TUESDAY, April 6, 2004**

**Present:** Mike Beaudry  
Sandra Gibson-Quigley, Chair  
Deb Hill  
Thomas Kenney  
David Yaskulka

**Absent:** Milton Raphaelson

**Also present:** Lawrence Adams, Town Planner

S. Gibson-Quigley called the meeting to order at 7:00 PM and read the agenda. The minutes of February 24, 2004 and March 24, 2004 were reviewed.

**Motion:** to accept the minutes of February 24, 2004, as presented, by T. Kenney  
**2<sup>nd</sup>:** M. Beaudry  
**Discussion:** None  
**Vote:** In favor – M. Beaudry, S. Gibson-Quigley, Deb Hill and T. Kenney  
Abstain – D. Yaskulka

**Motion:** to accept the minutes of March 24, 2004, as presented, by M. Beaudry  
**2<sup>nd</sup>:** D. Hill  
**Discussion:** None  
**Vote:** All in favor

**ANR's**

Vilandre, M – Cedar Street – Jalbert Engineering – 5 lots – Approved 5

**# OF PARCELS CREATED** 5

**ENDORSEMENT – Whittemore Woods Subdivision**

S. Gibson-Quigley stated that the Board had approved the subdivision on November 19, 2002 and it now met all of the decision's conditions. She asked L. Adams if there were any issues with the endorsement. L. Adams stated that he and DPW Director, Greg Morse had reviewed the mylars and that they reflected all the requested conditions and amendments from the Board's approval. He had a copy of the covenant which had been registered with Worcester District Registry of Deeds and noted that the recording number should be added to the Definitive Plan prior to the Board's endorsement. Attorney Mark Donahue recorded the numbers on the mylars. L. Adams added that the Town Clerk had signed the cover indicating that there had been no appeal to the Approval of Definitive Subdivision Plan. It was his recommendation that the Board endorse the mylars. Board members agreed to sign during a break in the agenda.

**PUBLIC HEARING CONTINUATION – NEXTEL CELLULAR TOWER - SITE PLAN REVIEW**

S. Gibson-Quigley continued the public hearing at 7:15 PM and recognized Attorney Michael Rosen, counsel for Nextel Corp. Also present was George Chainis, project manager, and Victor Drouin, Green Mountain Realty Corp.

7:16 PM – D. Hill recused herself from the Board.

Atty. Rosen reviewed that Green Mountain Realty Corp. had applied simultaneously to the Planning Board and the Zoning Board of Appeals (ZBA) for a special permit application to permit a 130-foot wireless communications tower with co-location for four carriers (at the time of application only two carriers were signed on.) The ZBA had met and approved the application, but its decision reduced the height of the tower to 100 feet and the number of carriers to two. Green Mountain Realty Corp. has appealed this decision. Atty. Rosen asked if the Board would agree to an extension to the next available hearing date for the following reasons – the submitted plans show a 130-foot tower, the proposed zoning amendments relative to the wireless overlay district, cost and time factor for reengineered plans for a 100-foot tower when Green Mountain Realty Corp. continued to pursue its appeal for the higher tower. He also asked if the Board would take the matter under advisement or to Town Counsel to discuss granting a conditional approval which would be subject to a determination of the ZBA or the courts as to a height between 100 and 130 feet.

S. Gibson-Quigley commented that if the Board did agree to continue the hearing there would only be four members eligible to hear their. Site Plan Review (opened Fall 2003). M. Beaudry added that he did not want to contradict another Town board, wanted the ZBA issues to be resolved and he would not approve anything other than what the ZBA approved. T. Kenney and D. Yaskulka agreed with M. Beaudry given the ZBA's definitive decision. After discussion on the possibility of hearing the Site Plan Review, reaching a decision and then conditioning that decision to honor the ZBA's 100-foot tower approval, the Board was not comfortable with that process. S. Gibson-Quigley asked L. Adams' opinion. He recommended a withdrawal without prejudice with a refile given the Board's upcoming public hearing schedule and Green Mountain Realty Corp.'s appeal to the ZBA's decision. Atty. Rosen asked for a two minute recess.

At this time the Board endorsed the Whittemore Woods Definitive Subdivision Plan.

Atty. Rosen came back to the Board and stated the applicant was inclined to withdraw without prejudice. S. Gibson-Quigley asked if there was anyone from the public that wished to speak. There was none.

**Motion:** to close the public hearing, by M. Beaudry  
**2<sup>nd</sup>:** D. Yaskulka  
**Discussion:** None  
**Vote:** All in favor

**Motion:** to accept the request of Green Mountain Realty Corp. to withdraw without prejudice the proposal for their cellular tower Site Plan Review, by D. Yaskulka  
**2<sup>nd</sup>:** M. Beaudry  
**Discussion:** None  
**Vote:** All in favor

D. Hill stepped back onto the Board.

#### **ENDORSEMENT – Whittemore Woods Subdivision (cont.)**

Since the Board had endorsed the plan, L. Adams recommended that any request for a Whittemore Woods extension be taken up as a public hearing process. This direction came from Town Counsel who stated an extension or change to the conditions was an amendment to the plan and required a public hearing.

#### **PLANNER'S UPDATE**

Forest Lane Access – Opacum Land Trust “THE WALK” – Residents had responded to postcard mailings – three supported the request for public access for “THE WALK” and three opposed it. L. Adams had copies of Conservation Commission's covenant restrictions and the agreement between The Preserve and Opacum Land

Trust which stated there would be no public access until Scotch Pine Circle had been finished. Though he respected the concerns of the residents, D. Yaskulka felt the request was not necessarily for the public, but a select group; would like to support "THE WALK" by allowing the access and that approving the request was less detrimental to a neighborhood than some decisions the Board has made.

S. Gibson-Quigley recognized -

- Attorney Bob Levite - believed access was not available yet as designed through Preserve Way and understood why the Board was upholding its agreements to support the residents.
- Ed Goodwin, Conservation Commission – felt that for one time the developer, Charlie MacGregor, might allow access from a loop in The Preserve.

**Motion:** that the Board not approve Opacum Land Trust's request for "THE WALK" access to Forest Lane on June 6<sup>th</sup> and recommended discussion for alternate access with the developer, Charlie MacGregor, by D. Hill

**2<sup>nd</sup>:** M. Beaudry

**Discussion:** T. Kenney did not want the Board to say it was not approving the access, as much as it would not amend a previous decision to allow the access.

**Amended Motion:** that the Board not amend a previous decision to allow Opacum Land Trust the one time use of Forest Lane for "THE WALK" on June 6<sup>th</sup> and recommended discussion for alternate access with the developer, Charlie MacGregor, by T. Kenney

**2<sup>nd</sup>:** M. Beaudry

**Discussion:** None

**Vote Amended Motion:** In favor - M. Beaudry, S. Gibson-Quigley, Deb Hill and T. Kenney  
Opposed – D. Yaskulka

**Vote Main Motion:** In favor - M. Beaudry, S. Gibson-Quigley, Deb Hill and T. Kenney  
Opposed – D. Yaskulka

W.S. Development – New Construction & Curb Consolidation at Hobbs Brook – A memorandum from the Building Inspector stated that the curb cut consolidation would be a precondition before a building permit was issued for the final phase of construction. L. Adams spoke with Robert Frazier who agreed to discuss this issue with the Board. Secondly, plans for the last store next to Staples showed a 9,000 square foot building with four tenants. The original plan was for one retailer, not four retailers. The Board agreed to meet with R. Frazier on site on May 4, 2004 at 5:30 PM at Staples Lot.

Elderly Housing – L. Adams noted the developer for the project proposed for Wallace Road was looking at The Estates North (approx. eight acres) site for about 30 units with a second phase of 30 additional units. T. Kenney asked if there was a possibility for options of open space. L. Adams said the location had significant open space.

Windgate – Chapter 40B – L. Adams said the Selectmen would be approached with a potential 40B project behind Autumn Ridge with 69 units (duplexes and three story buildings). The Board would be asked to make comments on the project for the ZBA. The project was dependent on the State's approval of the submittal.

Fiske Hill – Route 131 proposed subdivision – L. Adams mentioned these 150 units of moderate income housing would first need approval from the Selectmen for water and sewer.

8:10 PM The Board recessed.

8:28 PM S. Gibson-Quigley called the meeting back to order. T. Keeney read the legal notices for the two proposed petitions regarding the wireless overlay district zoning amendment articles.

8:30 PM D. Hill recused herself from the Board.

**PUBLIC HEARING – ZONING AMENDMENT – BY PETITION – Removal of Area F**

S. Gibson-Quigley opened the public hearing at 8:30 PM. Robert and Molly Giordano, 6 Wildwood Lane, presented the petition request. M. Giordano explained that they were property owners of a large part of Area F and had been unaware that the area had been passed as an overlay district in 1997. She acknowledged and accepted the fact that the fault was theirs in not attending the meeting. She stated the following concerns for requesting the removal of Area F:

- That multiple towers or different types of technology would be placed on the site;
- That the overlay district might be accessed through their farm;
- A communication facility would significantly decrease the resale value of their property, a fact supported by written documentation submitted to the Board;
- An RF engineer had stated that the site was unnecessary – with the use of St. Anne’s water tank and an area known as T3;
- Felt it best to have cellular facilities on Town property (T3) to generate revenue for the Town.

R. Giordano added the following concerns -

- At Town Meeting vote the location was advertised as a Clark Avenue residence – their home and the home of the owners of the property upon which the tower would be placed are located on Wildwood Lane;
- He had never been informed by telephone, letter, by any means that his property would be part of an overlay district;
- He had been led to think that a tower was going on the property by the Massachusetts Turnpike – the balloon test clarified the towers location;
- Additional cellular facilities might be allowed if they were of a different type.

S. Gibson-Quigley asked if there were questions from the Board for the proponents. There were none. She asked for others wishing to speak for or against the removal of Area F.

- Ginger Peabody, 4 Wildwood Lane – was involved in town politics and in 1997 did not realize the tower was going up; supported the petition because Wildwood Lane was a private road and the Giordano property could not be accessed for use of Area F; felt that access was not legal from Clark Road due to its frontage which measured 77 feet and noted three wetlands would be crossed to reach the site of the tower.

S. Gibson-Quigley asked L. Adams for clarification on -

- The affect the removal of Area F would have on the proposed tower for Nextel – L. Adams stated it depended on the legal arguments. He felt that Nextel’s approved 100-foot tower would be protected from zoning changes, even though it was under appeal, because it had been applied for and approved. He questioned if on appeal, the tower could be increased to 130-feet; felt it would be up to the attorneys. Other towers would not be allowed and the area would be protected from the intensity of use.
- How the districts were selected – L. Adams stated the districts were done in part with Central Mass Regional Planning Commission and selected for – highway locations, elevations and Town owned properties.
- Long range objections – L. Adams felt there would be no negative implications except for the effected property owners and those for and against and that the removal of the area did not go against the intent of the bylaw.

S. Gibson-Quigley recognized -

- Atty. Rosen - felt the petition would have a negative impact on co-location because only two carriers were allowed on the proposed Nextel 100-foot tower and the Town would be forced into a second tower since the Nextel tower would not have the ability to place additional carriers at 110, 120 or 130 feet;
- Monique Marinelli, 114 Clark Road – felt their neighborhood was the wrong area for the tower; favored other areas on Town property or location that did not devaluation resident’s homes.
- Penny Dumas, 136 Walker Pond Road – felt that if the one tower had a negative impact on the neighborhood the area should be removed so as not to burden the residents with a second tower.

**Motion:** to close the public hearing, by T. Kenney  
**2<sup>nd</sup>:** M. Beaudry  
**Discussion:** None  
**Vote:** All in favor

**Motion:** to recommend that the Board approve the petition to remove Area F from the Town's Wireless Communications Overlay District, by M. Beaudry  
**2<sup>nd</sup>:** D. Yaskulka  
**Discussion:** The Board discussed issues of the importance of quality of life in a neighborhood; selected areas must be good for reception and questioned loss of tax base.  
**Vote:** In favor – M. Beaudry, S. Gibson-Quigley and D. Yaskulka  
Abstain – T. Kenney

#### **PUBLIC HEARING – ZONING AMENDMENT – BY PETITION – Addition of 297 Clark Road**

S. Gibson-Quigley opened this public hearing at 8:30 PM. Peter Grudzien, 288 Clark Road Ext., presented the petition request. He explained his interest in having a tower built on his property and described the site as undeveloped treed land, approximately 22 acres, abutting the Massachusetts Turnpike owned by him for 18 years. The land had failed numerous percolation tests.

S. Gibson-Quigley asked for questions from the Board. There were none. She asked if there was anyone wishing to speak for or against the petition.

- Brian Friedman, 45 Clark Road – asked if abutters were notified of the zoning change. L Adams responded that the State Zoning Act did not require notice to abutters for a zoning change on the premise that everyone in the Town would be affected. He felt the good community relations would make an effort to notify the most sensitive parties.
- Charlie Blanchard, 26 Farquhar Road – asked the number of square footage of the 297 Clark Road proposal – 21 acres and the distance away from the Area F – about one quarter of a mile. C. Blanchard noted that if the Nextel monopole was built on Area F, the 297 Clark Road site could not have another tower of that type built on it. The Board noted the one mile measurement could be changed in the bylaw.

**Motion:** to close the public hearing, by M. Beaudry  
**2<sup>nd</sup>:** T. Kenney  
**Discussion:** None  
**Vote:** All in favor

**Motion:** to recommend that the Board approve the petition for the addition of 297 Clark Road to the Town's Wireless Communications Overlay District, by T. Kenney  
**2<sup>nd</sup>:** M. Beaudry  
**Discussion:** T. Kenney commented that he would have voted for the removal of Area F had the petition for the addition of 297 Clark Road come prior to the discussion of Area F because 297 Clark Road provided for a viable alternative with an engaging property owner.  
**Vote:** All in favor

8:14 PM D. Hill stepped back onto the Board.

#### **PUBLIC HEARING – ZONING AMENDMENT – BY PETITION – Addition of Wholesale-retail storage and distribution of fuel oils in IP Zone**

S. Gibson-Quigley opened the public hearing at 9:15 PM. T. Kenney read the legal notice for the zoning article amendment to add wholesale-retail storage and distribution of fuel oils in the IP Zone. S. Gibson-Quigley explained that Pioneer Oil had come to the Board under Site Plan Review with a proposal to establish an oil storage facility in an Industrial Park. As part of the Board's discussion, it stated that in the permitted use regulations Chapter Ten, 10.01 "(d) – wholesale warehouse or storage facilities" was an allowed use. This interpretation was questioned as to whether the proposal was wholesale or retail. The amendment specifically would allow for "retail and wholesale fuel oil distribution and off site heating service, oil storage and associated office and garage space..." Retail fuel oil distribution was considered different than retail sales. S. Gibson-Quigley clarified that the discussion on this article amendment was not to be directed to Pioneer Oil, but to the language of the proposal as written. She noted that the intent was not to have retail sales in the Industrial Park District, but to allow the taking of the fuel oil from the facility by truck to homes.

Attorney Philip Leader, counsel for Pioneer Oil, stated the following –

- This proposal was a change to the zone and would apply to anyone.
- The site was a good location for this use.
- This would provide tax revenue for the Town.
- There was a need for petroleum resources and its distribution to serve the people.
- The proposed amendment did not open the zone for retail activity and the language "retail fuel oil distribution and off site heating service" limited the use and did not mention stores or other retail uses. It did allow for retail trucks to go from the site to homes to make the retail sale.

D. Hill asked how the language of the amendment protected against a gas station as an allowed use. Atty. Leader responded that the term "fuel oil" was not gasoline. L. Adams noted that automobile service stations were presently allowed in the Industrial Park zone and he felt the amendment was explicit to fuel oil. The Board discussed issues of broadening the language to include more uses and excluding customer traffic into an Industrial Park zone.

S. Gibson-Quigley asked if there was anyone wishing to speak for or against the amendment.

- Dave Brunell, 272 Main Street – felt the proposed use was allowed as an industrial project and fell under Chapter Ten, 10.01(c) and that wholesale retail was not an issue.
- Penny Dumas, 136 Walker Pond Road – agreed with Mr. Brunell and asked for a second opinion as opposed to changing the bylaw and risking a gasoline station/food mart in the Industrial Park. Since customers were not entering the business to get fuel oil, she felt this was not a retail business. S. Gibson-Quigley assured P. Dumas that the Board had had numerous discussions as well as input from Town Counsel relative to her comment. L. Adams stated that the Building Inspector had ruled that the proposed use was not a wholesale use. P. Dumas suggested an appeal of the Building Inspector's decision to the ZBA.
- Don Alary, 6 Lakewood Trail – felt an automobile service station was a retail use; that D. Brunell's business should not be considered retail since the sale was not made on the site; that it was simply semantics and he supported the amendment. S. Gibson-Quigley concurred.
- Charles Blanchard, 26 Farquhar Road – felt the amendment was a zoning elimination or amplification and not a zoning change; the proposed use was an anticipated use for an Industrial Park and supported the amendment because it clarified the issues.
- Luke Bardsley, 267 Main Street – in favor of the amendment
- Tom Root, President Optim Incorporated, 64 Technology Park Road – opposed to the amendment because the use of the word "retail" was overly broad; opened the door for people to come into the Industrial Park to buy smaller quantities of oil or kerosene and that the sale of fuel oil was not a retail sale.

S. Gibson-Quigley reviewed the point that the Board had made during Pioneer Oil Site Plan Review that the proposed use was an allowed use in the district. L. Adams added that the use was fuel oil distribution – both to retail customers in the home or to other wholesale buyers with accessory uses of off site service, storage, office

and garage. He and the Building Inspector were satisfied with the language of the amendment and felt it would support any issues the ZBA might have to address. He felt it made planning sense to have a fuel oil storage facility and distributor given that there were over 2,000 households in Sturbridge and to locate it in the Industrial Park at the edge of town. The only negative he saw was the traffic issue, but he stated that was a regional problem.

- Charles Blanchard, 26 Farquhar Road – felt that L. Adams had clarified the need for the change of the bylaw.

**Motion:** to close the public hearing, by D. Hill  
**2<sup>nd</sup>:** M. Beaudry  
**Discussion:** None  
**Vote:** All in favor

**Motion:** to recommend that the Board approve the proposed use regulation, by M. Beaudry  
**2<sup>nd</sup>:** D. Hill  
**Discussion:** D. Hill felt there was no need for the amendment that the use was allowed with the existing bylaw. T. Kenney appreciated having the opportunity to amplify and clarify the issue.  
**Vote:** All in favor

**Motion:** to adjourn, by D. Hill  
**2<sup>nd</sup>:** M. Beaudry  
**Discussion:** None  
**Vote:** All in favor

**Adjournment at 10:00 PM**