

**STURBRIDGE ZONING BOARD OF APPEALS**  
MINUTES OF  
WEDNESDAY, November 19, 2003

**Present:** Theophile Beaudry  
Mary Blanchard  
Jeff Bonja  
Robert Cornoni  
Pat Jeffries, Vice Chairman  
Ginger Peabody, recused

**Also in Attendance** Nancy Campbell, Clerk  
Larry Adams, Town Planner

**PUBLIC HEARING CONTINUATION– SPECIAL PERMIT – GREEN MOUNTAIN REALTY CORP. – TO PERMIT THE CONSTRUCTION OF A 130 FOOT MONOPOLE TOWER AND RELATED WIRELESS EQUIPMENT AT 126 CLARK ROAD**

P. Jeffries opened the meeting at 7:00 PM to continue the public hearing and read the agenda. The Board members introduced themselves. P. Jeffries asked the clerk to read the following correspondence -

Attorney Michael Rosen, of Devine, Millimet & Branch of Andover, MA – requested that the Board continue the November 12<sup>th</sup> public hearing for Green Mountain Realty Trust until the next scheduled public hearing on November 19<sup>th</sup>.

126 Clark Road Telecommunication Tower – Many letters, all identical with different signatures, were submitted to the Board expressing opposition to the telecommunications tower proposed at 126 Clark Road.

Dr. and Mrs. Robert J. Giordano – dated November 10, 2003 – RE: 126 Clark Road, Cell Tower Application – questioned the legal responsibility for damage to their property and animals during construction of the cell tower and referenced the lack of Wildwood Lane in the impact studies to the neighborhood and environment done by Green Mountain Realty Corp.

Dr. and Mrs. Robert J. Giordano – dated November 12, 2003 – RE: 126 Clark Road, Cell Tower Application – gave reasons why they felt the zoning bylaws rendered the application illegal. (3 submittals)  
Green Mountain Realty Corp., George Chianis, Representative – written authorization that the Board shall have until November 19, 2003 to conduct and close the public hearing with an additional 90 days to take final action and file its decision.

P. Jeffries welcomed and introduced David Maxson, of Broadcast Signal Lab, LLP, Medfield, MA, the radio frequency (RF) consultant engaged by the Town to review the RF engineering material submitted by Green Mountain Realty Corp. in its special permit application. D. Maxson reviewed the following observations –

- The one mile radius question for a new 12.03(c) facility – felt this did not pertain to the St. Anne’s structure.
- As designed the proposed facility fit within a table in the FCC rules and regulations; the facility would be inherently compliant with these regulations regarding human exposure to radio frequency emissions and did not require additional analysis.

- The monitoring requirement was not necessary because the facility was so inherently compliant. However, if there were substantive changes or if the Town chose to make an inquiry, the permittee should respond promptly with the facts and measurements.
- The effectiveness of the tower's coverage did not have a "huge" difference between the heights of 100 feet and 130 feet. The applicants could most likely operate 20 to 30 feet lower than the proposed height of 130 feet. This reduced height would take away the possibility of potential co-location.

D. Maxson stated that the Board needed to address the following questions: Should it accept the maximum height that the Town allowed in an overlay district in order to maximize the tower's capability or should it request a lower tower to make a difference to the visual impact of the facility? Due to the constraints of the bylaws, he recommended that the Board not reduce the height of the tower, if the visual impact was not objectionable, at 130 feet since a lower facility would reduce the co-location potential.

D. Maxson went on to explain what wireless companies could do to meet the intent of the bylaws and to provide better coverage. He found Omnipoint's materials to be more thorough than those of Nextel. Therefore, his comments were based on Omnipoint's submissions, but noted Nextel would have similar issues. The discussion covered topics of reliable service coverage in terms of dBm's (-93 dBm), minimum receiver sensitivity (-102 dBm), on street signal, gaps and fade margins (9 dBm);

- St. Anne's water tank would not provide coverage as far up the Massachusetts Turnpike as the proposed location due to a terrain obstruction to the east/northeast. The coverage would be more solid closer to Route 20;
- The option of the T3 site (a Town owned overlay district) with a tower of 130 feet would cover the same area as the Clark Road facility with a "dent" in coverage (-90 dBm on street signal) to the south at Route 20;
- The best alternative to the proposed site would be to occupy the T3 site at present and in the future St. Anne's water tank. These two locations would be fairly complementary in the coverage they would provide. The T3 site would provide coverage further north, northeast and northwest than the Clark Road site, redistributing the coverage and servicing more territory. It was D. Maxson's opinion that T3 and St. Anne's water tank site locations together would be a superior location for the applicants.
- Reducing the height of the tower from 130 feet to 100 feet would lower the reliability in some small locations, but not make a substantial difference. Lowering the height of the tower may result in a reduction of coverage for certain locations. This reduction could not be adequately modeled, since the inherent errors built into the model lies within the fade margin indicated above. It was D. Maxson's opinion that the only way to accurately quantify these lower reception regions would be through an intensive drive test. In addition, the size of the reduced power regions would vary significantly depending on the current ambient conditions and receiver quality. D. Maxson felt it would not mean the difference between success and failure in connection with the adjacent sites.
- Multiple towers on a site would require a distance of approximately 50 to 75 feet of separation in order to avoid interference with each other.

P. Jeffries recognized Attorney Michael Rosen, on behalf of the applicant, who stated that the T3 site had not been made available by the Town through an RFP (Request for Proposal) and that the water tank was not in the wireless overlay zone. He felt D. Maxson raised hypothetical situations and questioned how D. Maxson would advise the applicant or the Board in selecting a location for a tower.

D. Maxson commented that it sometimes was necessary for the interested party to approach the Town and express its interest in a site in order for the Town to issue an RFP. He recognized that this process might take too long as far as the applicant was concerned. He could not make recommendation on the water tank issue because he felt it required an interpretation of the Town's bylaw which he was not qualified to do. He suggested that the Board consider the process when deliberating on this special permit. The Board should look at the coverage, the fact that the carriers chose a location that was within the overlay district approved by the Town and the other criteria before making its decision. If the Clark Road location did not have any legal obstacles to it, the Town pointed the carriers to that site and he felt that should have some weight in terms of its value and its viability as a site. However, the Board might also find that the submittals it received regarding the visual impact and the input from the citizens documented that the proposed tower would be too intrusive to the community. If the Board denied the permit, was there another way the applicant could get its coverage? In his opinion, the T3 site (if the Town promptly got into the process to issue an RFP) was as valid as the Clark Road site from a coverage prospective.

Attorney Rosen noted that Nextel had been in this application process since August of 2000 dealing with the Conservation Commission and Town officials and an RFP still has not been issued for the site.

J. Bonja asked the applicants if there were any clarifications on the technical testimony. The Board recognized Marlon DePax, Nextel Communications, RF Engineer, who stated a letter had been submitted which addressed the following –

- the possible use of St. Anne's water tank finding that it was too low;
- the locations of existing nearby locations with addresses;
- the need for twelve antennas;
- the minimum height requirements.

J. Bonja asked if Nextel concurred with the testimony regarding minimum receiver sensitivity, models and fade margins or did they find it contradictory. M. DePax did not find D. Maxson's testimony contradictory. M. DePax also commented that their effective receiver sensitivity was -92 dBm, their fade margin was 5.5 accounting for a -86.5 dBm for on street coverage and a 5 dBm accounting for a -81.5 dBm for in-car penetration loss.

P. Jeffries asked if there were questions from the public.

- Ginger Peabody (private citizen), 4 Wildwood Lane – felt the interpretation of the bylaws should be left to Town Counsel, that the T3 site answered Nextel's primary goal for coverage on I-90 (Route 20 and Route 48 was its secondary goal), the delay of three and one half years for the permit process was due in part to continuations at Nextel's request with the Conservation Commission, questioned the non-conformity issue regarding frontage for 126 Clark Road and thanked J. Bonja for his questions and his guidance.
- Bob Giordano, 6 Wildwood Lane – commented that area State Police had told him they received many 911 calls from motorist on the Massachusetts Turnpike reporting accidents, felt a reduction of 30 feet in the height of the proposed tower would make a tremendous difference to his family and other abutters; asked the Board to consider co-location on T3 and St. Anne's water tank since D. Maxson stated this would give superior coverage and protect the residential area.

P. Jeffries asked if the Board had any further questions. There were none. She asked for input from Larry Adams, Town Planner. He concurred that the Board inquire as to Town Counsel's opinion of the interpretation of the Town's bylaw. He asked if Attorney Rosen had any objection to obtaining that information outside of the public hearing process. Attorney Rosen stated he did not, but requested a copy of that opinion and an opportunity to submit information solely and limited to Town Counsel's opinion. He encouraged the Board to raise the issue of the RFP for the site and effective prohibition with Town

Counsel. He felt the applicant had shown a willingness to consider alternatives (ex. Conservation Commission requests) which contributed to the time delay previously mentioned. L. Adams added that the applicant's original submittal to the Planning Board had placed the tower outside of the overlay district. Part of the time delay was taken up by defining the district and relocating the tower into it. He felt this had been Nextel's omission and not that of the Town. L. Adams offered that Sprint had approached the Town in the absence of an RFP to use the facility as a location. Nextel could do the same for the T3 site. He cautioned the Board on setting aside the monitoring regulations under a special permit provision since they were a part of the bylaws.

J. Bonja asked for Attorney Rosen's opinion on the frontage issue. Attorney Rosen said the Town created this district and could not prevent carriers for using the site by not granting an exception for frontage. This would be effective prohibition. Attorney Rosen felt the Board should review the Federal Telecommunications Act and the Lincoln, MA vs. Omnipoint case.

Attorney Rosen submitted a letter from Boggini Realty Advisors, dated 11-18-03, stating there would not be an impact to the real estate values of the properties in the surrounding area. It also stated that the residential district was impacted by the presence of the Massachusetts Turnpike. R. Cornoni noted that the letter did not include an opinion on aesthetic impact. Attorney Rosen pointed out that comments were made comparing items the average homeowner considered as part of the view of their home - transmission lines, smokestacks, etc. M. Blanchard felt the proposed tower would have an impact on the sale of the abutting properties.

- Bob Giordano, 6 Wildwood Lane – felt that it only took common sense to realize the tower would have an impact on the value and reduce the marketability of his property, hoped that the Board would not be flexible with the bylaws since they were a means to protect its citizens. J. Bonja asked if a 100 foot tower would be acceptable. He did not know, but felt a balloon test at 100 feet would help him make that determination.
- Molly Giordano, 6 Wildwood Lane – submitted brochures with the latest coverages for T-Mobile, Verizon Wireless, Cingular, AT&T Wireless and Sprint and noted that all the companies had coverage throughout the Massachusetts Turnpike with the exception of T-Mobile and Nextel. She felt this was a concern regarding the height of the tower.

M. Blanchard felt the suggestion of balloon test at 100 feet was valid and asked the applicant if they were willing to conduct such a test. Attorney Rosen stated the applicant was not inclined to do so.

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

J. Bonja requested clarification on the following issues – interpretation of the bylaws Section 12.03(c) and 12.03(a), the Lincoln case, the FCC's definition of adequate coverage and the approval process of the overlay district at Town Meeting.

The Board tentatively scheduled discussion for Green Mountain Realty Corp. at its December 11<sup>th</sup> meeting at 7:30 PM.

**Motion:** to adjourn, by M. Blanchard

**2<sup>nd</sup>:** J. Bonja  
**Discussion:** None  
**Vote:** All in favor

**Adjournment at 9:00 PM**