

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, October 28, 2010
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152*

RECEIVED

2010 OCT -5 A 9:45

TOWN CLERK

Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:04 p.m. Also in attendance at the hearing were the following Board Members, Brian Beattie, John Rich, and Darren M. Baird. Also in attendance were Captain Ned Hazlett, Winthrop Fire Department, Joanne M. DeMato, Board Secretary/Clerk.

The following matters were heard:

AGENDA: Hearing of the following application(s) for variance and/or special permit and deliberation of pending matters and discussion of new and old business.

01.	#024-2010	82 Faun Bar Ave.	Rachel Gray & James Clark	
02.	#025-2010	10-26 Somerset Ave.	East Boston Neighborhood Health Center Corp.	
03.	#026-2010	93 Putnam St.	Todd Conley	
04.	2010	550 Pleasant St.	VL Realty LLC Atlantis Marina	
05.	#03-2009	82 Faun Bar	Bell Atlantic d/b/a Verizon Wireless - withdrawal	
06.	#02-2010	71 Jefferson St.	Nadia Aboulmal	

#02-2010 – 71 Jefferson St., Tutti Frutti, Nadia Aboulmal.

PM: They submitted a revised plan; we are going to look at the original plan that had been submitted with comments to the Building Inspector and from the Board. I'd like to take a look at this. We'll accept this plan as coming in and take a look at this after the meeting.

#03-2009 – 82 Faun Bar Ave., Bell Atlantic d/b/a Verizon Wireless.

PM: They have withdrawn their application without prejudice. That was one that was approved as they went down the Elks. We have the letter in here withdrawing their application without prejudice from the Board of Appeals. Joanne, record that as an exhibit.

550 Pleasant Street, VL Realty, Atlantis Mariana.

PM: They are going before the Conservation Committee and asking them to allow them to store boats down on Pleasant Ct. which was the satellite off site parking and part of our decision was that we needed a plan for that parking and that plan was never submitted. So, we sent a letter out to the Attorney asking them for the plan because the Conservation Board and the BI asked for that plan and nothing has come before us except for that, we asked them to get it in next week and they didn't so its still an open item. So these were the three bookkeeping items to take care of.

#026-2010 – 93 Putnam St., Todd Conley and Jamie Conley.

Sitting: BB/JR/PM

PM: We received your package and just walk us through what you're looking to do please.

TC: We're looking to put an 18 ft. above-ground pool behind the house, We currently have 28 ft. from the back of the house to the back of the property and we have 10 ft. on the neighbor's side and 20 ft on the other side that goes to the side fence by the other property. We're asking for 5 ft on the back and 5 ft from the back fence and house for the pool. We also have a small porch in the back of the house that leads straight down about maybe a 4x6 porch that leads down the walkway and we would also like to extend that to make it a deck that goes from the house out to the pool so that's the extra 5 ft that were asking for.

BB: Is that an extra 10 ft from the permanent structure?

TC: Yes, well 5 ft for the pool but then the extra 5 ft for a deck if that was possible.

PM: You're looking for an 18 ft pool? Anything else? Is there anybody here that's in favor of this petition? State your name for the record please.

James English, 94 Faun Bar Ave., Winthrop, MA – In favor, no other comment.

PM: Anybody else? Hearing none, anybody not in favor of this petition, hearing none, questions from the Board? Mr. Rich?

JR: The landing you have that's current there, you just want to extend that to the pool?

TC: Yes

JR: And then the relief of 5 ft from the rear of that what's beyond that fence is that the rear of Viking Gardens?

TC: That the C building

Jaime Conley: There's actually grass then the "C" building is directly behind it. The parking lot is a little more over to the left of our house but directly behind where we want to put the pool,

JR: That's building "C"

JC: Bldg. "C"

JR: The Viking Gardens is to the right?

JC: Yes

JR: That's an existing landing and deck? A 4-foot above the ground?

TC: Yes

PM: Anything else Mr. Rich?

JR: The fence around your house is 6 ft? That's there now?

TC: Yes

BB: I'd just like to ask Capt. Hazlett what he thinks about it? Going right up against the house?

NH: I got a chance to look at it being basically a one-story house so I mean our accessibility as far as doing fire-fighting operations would not be a deterrent to the process. We have basically Putnam St, the entrance to Viking gardens and behind so it wouldn't be a problem to the Fire Dept.

PM: Your site plan here is showing 5 ft from the rear fence, ok, then the pool, then 5 foot from there to your porch?

TC: Yes, as it exists now.

PM: As it exists now and you want to take that 5 feet away and bring the deck out to the porch? I think that's a problem, I would have a problem with that. I don't think we have ever allowed that because of safety reasons having it separate from that and its by-laws are 10 feet and we've allowed it go down to a smaller feet but basically never connected. If you would like to reconsider that.

JC: We'd be able to just forget the deck that and do the 5 ft from the house because we don't have a deck now we just have a landing on the side.

PM: You just have a small porch there right now. If you went across with the deck you could go with the deck but as far coming any closer than 5 feet I think that I'd have a problem with that.

TC: Can we withdraw that part of the request?

PM: It's shown here as 5 foot from the deck as far as, once we approve that if you want to extend the deck out, you could extend that deck out that would be a building department matter. Nothing for us, we're just addressing the distance between the pool and your deck right now.

BB: It's just people and little kids might slip into it.

JC: We have little kids too.

PM: You would put your filter right beside the pool?

JC: It would be on the side of the house from the 87 side. There really would be no, if we were allowed to get the pool and put the filter on that side it would be a way to keep the children off that area. They wouldn't be running around it they would play on the other side of the yard.

PM: I have nothing else, what's the pleasure of the Board?

MOTION: (Brian Beattie) #026-2010– Grant the relief requested with conditions to include for the 5 feet on the rear between the porch landing and 5 feet between the house and the swimming pool.

SECOND: (John Rich)

VOTED: All in Favor

Conditions: That the extended deck does not come between 5 feet of the pool, the electric filter would be located on other side of the pool, maintain a six foot fence around the pool so no one could get inside.

PM: Once you get the decision, you have to take it to the Registry of Deeds, and record it in there, once they record it and stamp it you can bring it back, show a copy to the BI and do your permit business with them.

#025-2010 – 10-26 Somerset Ave., East Boston Neighborhood Health Center

Sitting: PM, DB, BB

In attendance Attorney Richard Lynds, representing East Boston Neighborhood Health Center, Milton Batt, architect, Dr. Jim Taylor, Chief Medical Officer

RL: Good evening Mr. Chairman and members of the Board, my name is Richard Lynds, 1216 East Bennington Street, East Boston, on behalf of East Boston Neighborhood Health Center, with me is Dr. Jim Taylor, Chief Medical Officer of EBMHC, to give background about the facilities. As explained in the petition before the Board we are seeking relief for a variance in several provisions of the zoning code in respect of the proposal as well as defining General Laws Chapter 40A, section 6, by way of brief background for this particular project, I'm sure that Board members know this site is the site of the former Family Dollar retail store which is now defunct and there are other retail service establishments which are also located at this particular address the goal is to demolish the existing the roughly 10, 400 square foot structure, construct an approximately 9,200 square foot health care facility for the Winthrop community. Some of the relief that would be necessary as outlined in the petition before the Board involves some designs elements as well as parking. With us tonight was also have the architect Martin Batt, and his assistant Kevin Guersh who will make a brief presentation about the proposal. By way of process we'd ask the Board that we've also submitted a special permit before the planning Board as well a petition of the Site Plan Review Committee, which we commence today. I can turn it over to the architect to make a brief presentation relative to the design elements in what the construction will involve and then special specifically to the issues relative to the hearing.

DB: Mr. Chairman, as a disclosure I have worked quite a bit with the architect for one of my clients who has a hospital in Boston, Children's Hospital, it won't affect my judgment or decision, but if there's an objection I'd be more than happy to sit out.

RL: No objection. Before I bring up Martin Batt let me turn it over to Dr. Taylor who'll make a brief presentation about what EBNHC does and the mission that it hopes to achieve here in the Town of Winthrop.

JT: I think we're very excited about the possibility of bringing primary care back into Winthrop. We really are talking about a primary care center that has _____ offices. We're currently part of a health center now and we've just recruited from our own staff a Dr. Dyer, who has been here for 5 years in internal medicine in pediatrics. We hope to provide a full range of primary care services; there would be no other care than primary care. We currently have a significant portion of our staff who are Winthrop residents; a significant portion of our patients are Winthrop residents, we had many express desire to have care more accessible in their community. We would welcome the opportunity to do this and we think it's a very good use of space and site; it's a good location in the community.

PM: Thank you

RL: I would turn it over to Martin Batt who'll make a presentation for the architect.

MB: So the proposed project will demolish the _____ on the side. After analysis of the existing structure and potential seismic upgrades and the condition of the existing building and basement it was determined that the feasibility of project actually laying out clinic space within a building that had a series of barren walls that would not be particularly feasible. The project is proposed to demolish the existing building and build a new building. The new building is about 1,200 square foot smaller than the building currently on site. It's approximately the same height as the current building and what we're attempting to do in terms of the provincial quality of the building is tie it back into the fabric of Winthrop square where there are a number of masonry buildings that have an abject or detailing have been sort of a continual plaster that rises up from the building so that the idea that the clinic from an architectural point of view is sort of tie that back together from a we'd really have it sort of look something very similar to what is actually in the current square right now.

In terms of the plan, the building that would practice, there are 10 general exam rooms, 2 pediatric exam rooms, we're proposing an entrance right on Somerset Ave, which would be the main pedestrian entrance to the building coming through the entrance into reception, waiting, and then work your way through in the examination areas, there are 4 handicapped spaces in the back of the site as

well as a handicapped entrance at the back which connects you back through into the main reception area. So there is sort of a continuous flow through the building. Currently the existing extends all the way to the property line; there is existing green space here, that you may be familiar here in the back of the parking lot of the maze. We would basically set our building back a little bit and there would be open space between that and the property line. The other ____ we're actually sitting back the side of the building on Somerset Ave. at little bit just because the sidewalk is not too generous there and we're thinking family with strollers or just circulation just having that extra space would be helpful and then maintaining the edge on Cottage Park Rd. This shows you existing conditions that current building has been in tough space for quite a while not sure when the tenants moved out and just to sort of give you an ideal sort of scale and size this shows you the existing building, various use of the back that would be coming down, this shows the corner area. In terms of just existing in looking at the lot shows you the extent of the building coverage of the existing building. The new building is similar in shape to the existing building except really it's just set back from the property line. The paved area at the back of the building effectively remains for the handicapped parking. The views that you see, the main entrance on Somerset St. and this is the view of the rear entrance of the building.

RL: With that Mr. Chairman I would like to go to some of the items that we are requesting relief for as I mentioned we have already petitioned the Planning Board for an SP3 this use under the Winthrop Zoning Bylaw we argue is allowed. The BI does agree with us that this does qualify as physician's offices, which under the zoning by laws as right use. Under the bylaws it also provides that any non-residential structure in excess of 5,000 sq ft in the center of business district would require and SP3 and that specifically is what we petitioned the Planning Board for. The Planning Board has deferred their decision until November 8th, until such time as a comprehensive report from the Site Plan Review Committee can be made as to a number of the issues that they impact not only this site but adjoining sites in the center of the business district as a whole. I would point out with respect to the proposed use and structure the former use is a retail location probably wouldn't be any better or worse when it comes to the parking situation that presently exists with the current structure. Anybody that is familiar with the center knows the Family Dollar didn't provide any parking on site. None of the retail establishments for that location had any parking. This would provide although the required numbered of spaces makes an attempt at the parking issues. The proposal put a total of 4 handicapped spaces to the rear of the building, which would permit those requiring handicapped accessibility an entrance opportunity to the rear. The main entrance would be on Somerset St. however we do recognize a good number of patients who would require some assistance or accessibility so that's why we proposed to put 4 spaces. At the Site Plan Review meeting today the question

was raised as to why make them all handicapped? I think if we are not going to provide the required number of spaces or the a substantial number of spaces on site the temptation for people to use whatever spaces maybe be problematic. I site one business in the town is an ok example gone wrong, the handicapped space is only one with three non handicapped spaces and I think the problem is becoming where the people tend to use the handicapped space when they shouldn't. So the intent here is to simply make this handicapped parking only. So that leaves the question of what about the other parking, under the Bylaw we believe that the total required parking spaces for this use and size structure would be 15. The way we arrived at that is under the By Law 400 square feet of gross foyer requires one parking space in the center of business district or physicians or professional offices. That would leave use with a total of 23 spaces. However the Bylaw does provide that you can reduce that requirement by 1/3 if you're in the center of business district as recognition of municipal or other parking lots in the area. That's how we arrived at 15 and both the zoning enforcement officer and the petitioner agreed on that number. The number of spaces that we required would be 11. That may seems substantial however I think that recognizing that those who will be using the facilities are people would be likely coming to the center anyhow. There are a number of parking spaces in the municipal lot as well in the center and we believe that the patient parking and those use the facility wouldn't be that great of an impact on the center as opposed to any other type of lawful use that may occur at this location. With respect to employee parking, that's a different story, certainly the employee parking would be something a lot more long term and there wouldn't be that level of turn over that would provide for additional spaces to be turned over in the center. So what we've done is to look to other sites in and around the area. In doing that we would require zoning relief variance because we don't have the required number of spaces on site. Our effort and our goal is to mitigate that impact to finding a location available off street parking that we could designate and enforce and encourage with employees. Essentially providing employees with long-term parking. We looked at several sites at properties adjacent at the Bank of America, East Boston Saving parking lot, we've looked at the other site which close by, not a very far distance which is the CVS parking lot, as well as several other privately owned properties. We also had an opportunity to talk to the Town manager, the DPW commissioner, about a site on the corner of Walden and Pauline, next to the EB Newton School, a municipally owned lot that was being use recently for the staging and construction equipment for the repairs to the street. Nothing formal yet, at this point in time, only discussion we are certainly looking at a way to come up with a proposal. As EBNHC does at its facility in East Boston community parking for its employees is critical and it's certainly something that they take very seriously. Its their facility in East Boston to provide off site employee parking its used employees are encouraged not to park in the neighbor or having an impact on the _____. We are hopeful and I don't expect this Board to render a decision this evening on that we are hopeful

that this Board does and we would be in a position to present something to the Board to indicate that we've arranged for parking to mitigate the lack of the 11 spaces that we are not going to have on site. The remaining relief that we require deals with specifically design issues. The first one is the requirement of the code is 24 feet I would suggest the 24 feet can be met in certain areas and depending on how you interpret the definition of grade line it would be met in other areas. The lay out of the building in the existing condition presently goes to portion of that goes to the rear property line. The intent would be to pull that building back approximately with the dimension of what was coming back. We'd be creating a 10-foot buffer that doesn't presently exist with the existing condition. The remaining distance for that a sort of wider distance between Cottage Park Rd. would actually comply with the bylaw because we would have an excess of 24 feet in that location. I would submit that under the bylaw with the recommendation of the site plan review a 10-foot grade set back in the business district would be appropriate and we've asked the Site Plan Review Committee to make that recommendation. In light of the fact that ironically the existing condition is worse than the proposed condition. So by pulling the building back and creating a little green space I think were not only improving not only the density of the building and how it relates to the property line but were also creating some green space and some ability for run off to not just come to the building and create a problem. So that's one of the areas that we're asking for relief. Additionally, the code requires a 15 ft landscaped strip adjacent to the street right of way and I think it would be the area the code requires a 15 ft. set back essentially on the Cottage Park Rd. side of the building. The existing condition shows the building actually comes right up to Cottage Park Rd. and we would be changing that, but as you can see we've done some treatments to the rear of the building that would be a substantial improvement from what currently exists on Cottage Park Rd. We think that the improvements that are being made to the rear of the property certainly would warrant some consideration for relief for that side of the building on Cottage Park Rd. Additionally it requires a 15 ft. landscaped buffer to the rear as indicated by taking the building back we're creating a buffer that never existed before. Where that 10- ft. buffer exists that is not the residential area, there's actually that white space is sort of behind EB Savings Bank those physical therapy building on the corner is all pretty much open space. So there's already a natural buffer in that area. The one that I think is the most concern is on Cottage Park Rd., which would be just at the property line behind the handicapped parking spaces. That is where the residential abutter would reside. Our proposal would be to create a fence or buffer with fence and landscaping that would completely block anything that was happening on the lot so they wouldn't have to see headlights or vehicles on the lot that would be a substantial improvement to what's there now. We're also willing to make some improvements on the abutters land as well to landscaping which we think would create an appropriate buffer strip that would be in spirit intent of the code. There was discussion and I think there's some ambiguity and

it will be investigated further we think through the by law that you put a fence on the property line, Mr. Dimes on the Planning Board and Mr. Soper had an opinion on this that a 5 foot fence that was completely opaque that would not allow any visual, so that the abutters could not see what was going on in the lot, the buffer strip could be reduced to 5 feet and we think we could comply with that but we'd ask Mr. Soper and Mr. Dimes to repeat that as well. The last issue that we would be requesting relief from is the 24 foot aisle for two way traffic for the particular handicapped spaces that are on site I believe the distance between the parking space and that sidewalk are we've created is 21 ½ feet or about 2 ½ feet shy of the requirement. We could if you look at the landscaping and bushes that are put in and the sidewalk that leads to the rear entrance I suppose we could eliminate that to comply but I'm not certain that that would be the best approach for this location. We certainly want people to utilize that are if they are parking back there and we want to obviously keep the appearance of that as welcoming. I think that in light of the limited number parking spaces that are being proposed for the building that the 21 ½ foot aisle would be acceptable and would meet in spirit intent of the code. You wouldn't have traditional two way traffic in the sense of like a municipal lot where you would have vehicles traveling past each other because the limited number of vehicles that would be there. So we think that we could meet with the spirit and intent in all of those regards. And certainly in respect with parking we would require the variance and are goals intent is to find appropriate parking that will serve the employees of this facility. With that I would be happy to answer any questions from the Board.

PM: Hearing that is there anybody here in favor of this petition? State your name please for the record?

Cindy Levin, 59 Faun Bar Ave., Winthrop, MA: I also do business in the center and that 10 square foot space that has been empty for way too long. The building is much too large for a small business owner, we have another small business here in Winthrop, and it's much too small for a small business to take over. Right now, it infested with rats, there's a lot of issues going on with that building. I also serve on the Board of the Chamber of Commerce and we have had representative look at the project and we've voiced our concerns in regards to the business owners in the center and they have been addressed and we feel confident that the representatives will address concerns of the neighbors and seem to have a strong commitment to impress. So I ask the Board to approve the project and it will certainly help to build up the center with business owners in the center area that go tot work everyday and have opened businesses in the last few years. They are making a go of it and the center has been a lot more vibrant than it has been it could be more vibrant certainly that 10,000 square feet that is not being used right now and it would be great to see some activity going on right there. The Chamber is asking for you approval of the project.

PM: Thank you. Anybody else?

Nick DeVento, Councilor in Precinct Three: There are a few issues about the project to resolve. The property has been that way for a number of years the relief there is for a smaller building usually it's an increase in size or height. The parking situation should really be considered because they are providing 4 spaces that have ever been provided for that property. There is a two-hour limit on the business district so there really isn't a situation of employee because they're parking two hours in the area and the traffic is partly the health center. My daughter has gone to the EBNHC for 16 years and they have an incredible program, it's top notch, they say they are going to do something and they do it. They keep their properties meticulous and there's never a problem so it would be a great asset.

PM: Thank you, anybody else? Hearing none, anybody not in favor of this petition? Hearing none, we normally have this as questions from the Board, What I would like to do is to hold off on those questions, I'd like to continue this when I get a report for the Planning Commission and the Site Plan Review which will have some things that the Board will digest and so I will take up the rest of the hearing after we get that information.

RL: Mr. Chairman is there anything specific that the Board members would also, I understand you want to have the Site Plan Review as well as the Planning Board, is there anything specific that this Board may want that we may provide in the interim as well?

PM: I went to the Planning Board Hearing which you had last week, and I think the information which will be furnished to them and to the Site Plan will probably answer some of the questions that we would have so there's no sense in rehashing and go over again. Id like to get information back and that would help other Board members who can attend to formulate their questions and ask something on that materials you will provide because we can go through the same thing the questions that came up at that hearing.

DB: I didn't have any specific question that this presented knowing that we would hear from the Site Plan but I thought that the application was thorough and helpful and the only question I did have was on signage. In whether the signage on the plan is indicative of what you want to do here or is there a signage plan that's going to follow on from that?

MB: As a conceptual design the signage on that is sort have going through more detail than the level you would be looking at – for as part of the application and there will be more information provided.

PM: That would be something I would suggest that you would consider that would be something this Board looks at and would like to render a decision and make it part of our decision when we do if the signage is on that. So if you want to submit something to supplement this the signage I'd like to have that at the next hearing and we can look at that as well.

DB: I don't have anything further, Mr. Chairman.

MOTION: (Darren Baird) #025-2010 – To continue this matter to wait and hear back from the Site Plan Review until December 2, 2010 at 7:00 p.m.

SECOND: (Brian Beattie)

VOTED: All in favor

#024-2010 – 82 Faun Bar – James Clark and Rachel Gray

Sitting: PM, BB, DB

PM: Good evening.

JC: My name is James Clark and this is my wife Rachel, we live at 70 Faun Bar Ave. We abutte the Water Tower which is the site at 82 Faun Bar Ave. Up front I would just like to state for the record because there may be some points that come up, I am R F electrical engineer and attended the United States Navy and I'm also a member if the _ League. So we are here to today appeal the issuance of the Building permit 310-338 to Clear wire Inc. for cell site construction to 82 Faun Bar Ave. The project consisted of 6 plus multiple microwave antennas on the tower the associated chain link on running on the side of the tower and cabinets in the structure itself. We submitted a zoning enforcement request to the BI shortly after the building permit was issued on ____ 10th. Since then the BI has denied the request and that is why we are here today. So why should that permit have been denied? We believe such issuance of said permit violates the Winthrop Zoning Ordinance 17. 20.13.131.130 Table of Use Regulations. It does not conform because it's a residentially zoned property. Any accessory use listed indicates and as such would require a special permit before issuance of said building permit. Secondly, there was no variance issued, a variance would be required to zoning ordinance 17.12.120 in light of the fact that antennae and satellite dish are only permitted in Business A and Light Manufacturing District only with restricted of a maximum height of 65 feet. Thirdly, this represents an intensification of abuse of the property the addition antennas, I believe they put six new antennas on the tower by my count. Represents the intensification of abuse they had to update the power to the building they had a meter. We believe the additional 6 antennas represent the intensification of abuse, keep in mind its already I think by my count 12 antennas up there used by At & T and

Sprint. Now we're closing in on 20 antennas up there. Not only that I would like to submit to the Board a paper that the FCC publishes evaluating appliance to the FCC Guidelines about exposure of radio frequency of electromagnetic fields. This is a document that the FCC publishes. I would like to turn your attention to page 32, which deal with evaluating appliance on sites that have multiple transmitters, which there certainly falls under because of the existing antennas on the tower. So essentially what the FCC says is in order to evaluate the compliance with the RF Radiation limits you have to proof empirically or by analysis that the emitted radiation all dependent on the tower so in this case all 18-20 antennas are within the FCC limits and I don't see how this is possible given the number of antennas around the tower. If we were talking about one antennae I wouldn't be sitting here, the fact is that 20 antennas up there already and not one is looking at the combined effect of all these antennas and it's a clear intensification of use of this site and that's why we think that at the very least it should be denied and brought before the Board of Appeals. We believe that this is a detriment to the character of the neighborhood I have a paper published here in one of the leading real estate appraisal journals which sites up to a 20% impact on house prices of those houses within a 1,000 feet of a cellular station. I think that is clear evidence that this is a detriment to the community. I'll submit this to the Board as well. There are numerous studies talking about health concerns associated with this over use and this controversy and I submit to you and I don't think you would want it if you were sitting in my place your child or children to be the test case. It's completely repulsive of the town to put something in that position given the facts that we've tried to bring up again and again with Verizon and Sprint and God Knows who coming down the pike later. I would also like to submit another thing to the Town, I took a photo of a sign that is posted on the water tower and was posted before Clear Wire ever showed up and what that sign says and I'll read it for everyone – it says " Beyond this point you are entering the area where RF Emissions may exceed the FCC General Population Exposure Limits". That's before Clear Wire ever came down he pike and now they're talking about putting up 6 more antennas up which they are already there. How would you feel and they are putting up 6 more? That is completely unacceptable, unacceptable. We have small children, and the fact that the town would let that happen is disgusting. So in closing we recognize the situation of the town and we want good schools and services we are not here to dispute that however we don't feel that the financial pressures faced by the town given them the right to circumvent the process and just push this project through without getting input from the community and this I just don't understand that. And how they could approve the lease without having the building permit in hand is bad management by the town. Shame on them. They should have building permit in hand before they sign any lease. That's disgusting. So the town including the town council, the town manager, the DPW and the Building Dept. are subject to the same rules and regulations to the citizens they represent. We believe the installation of these 7 antennas is clear

detriment to the character and integrity of the community and we respectfully urge the Board of Appeals hear our appeal.

PM: Is there anyone here in favor of this application? State your name for the record.

Nick DelVento, Council Precinct Three: I've been supporting the Clarks and the entire neighborhood, we've had this situation in 2009, and we had the Verizon actually applying for variances and permits in order to do something. The logic being in a residential zone, I think that lot sizes are 5,000 feet. We are talking about a very small lot. We have a bylaw in town that antennas and satellite dishes are flat out not allowed anywhere in a peopled zone. I was the only dissenting vote on the council when they voted on this. If you have a _ change it, you have this going on from satellite TV dish to everything, but it still is in place. Its higher than 65 feet even if you accept the fact that it could be allowed there's no show that any of these, they should all actually come down. Short of maybe the town owned property, the Fire and Police communications. It's a water tower its not an antenna it's a water tower and any antennas up there for town use should not be permitted up there. When you drive by that sign everyday, it's kind of disturbing and how the FCC can't regulate or if the town is just ignoring the FCC guidelines. It shouldn't be there and I firmly believe that bylaws are replaced that it shouldn't be there. I don't see any logic of it being there.

PM: Thank you. Anybody else in favor?

James English, 94 Faun Bar Ave: I certainly in favor of getting revenue on the tower but at what cost? I've read the telecommunication and it does give a wide berth to municipalities to put these types of devices where they want. It's carefully worded but it does address health issues and it does address common sense to where we put these things. I have 3 young girls and I've read a lot of the studies regarding the exposure to RF and even though its inconclusive both easy I would really like for you to err on the side of caution. I was Gillette Stadium on Saturday, I was in the parking lot, and I looked up at this water tower and it was the same size as the water tower here and its encircled in Ebay. If we need revenue why can't the revenue be something you can just see and not unseen and affect children? There's a wealth of advertisement out there and I'm sure there are more people in planes that see that water tower in a year than all the fans at Gillette Stadium that see that Ebay tower. I think that there's a better way to go about this and I think that we should stop this and rethink. I'm all for revenue for the town and I want good schools and what every other individual in this town wants but at what expense. Telecommunication Act is carefully worded it does address health and it does address common sense.

PM: Thank you. Anybody else?

Cindy Levin, 59 Faun Bar, Winthrop, MA: I live 3 houses down from the water tower on the opposite side of the street. Jim has spoken at this meeting and at others meeting pretty eloquently about the issues and legality of having the antennas up there. It's a great neighborhood we have up there and I'm afraid that it's becoming a dumping ground now for antennas. As he said there are 20 up there now, it's a family neighborhood and I'm not going to repeat what he said very well.

PM: Thank you, yes ma'me?

Connie Fahey, 84 Faun Bar Ave., Winthrop, MA: We presented previously to the Board about contaminated soil that we dealt with on both sides we are dealing with that AC units that we were quoted that would be no louder than a regular home unit. I'm having power surge problems, that kicks on and off, my lights go on and off, which I am going to call the electric company to see why that is going on. And they just continue to add and add and add. It's a residential neighborhood, we put up with enough. I don't even know how they started this whole project anyway, I'm an abutter and I never got a notice that any of that work was going on. I don't know if you did? The first notice I got was of this meeting. There's people crawling up all over yards working on the tower, putting lines up and that, I didn't know anything about. So I think that was done on the sly 'cause nobody was notified of it. I think we have contended with enough and we're all in this boat together in the neighborhood, we all looking for ways for the town to make money without it being detrimental to the health of anybody. I have an elderly mother that has a heart issue, if she had to have a pace maker put in, what kind of effect would that have? I don't know. I don't want to know, I just don't think that it's fair.

PM: Thank you, anyone else?

Harry Benson, 69 Faun Bar Avenue, Winthrop, MA: Verizon tried to slip the building in beside it and we kind of fought them off for a little bit. There seems that there is a saturation point now if you look at the top of the tower and what's next? I have 4 young children. Jimmy is much more versed at all this mumbo jumbo at how this stuff works and I'd rather believe him than anybody else because he knows. He designs this stuff and if he's telling me something about one antenna is one thing and two antennas are another, twenty are am I going to glow in the dark? If he tells me that I believe him. We have to step back and take a look at when does it stop, maybe the line in the sand is now. That tower is our asset, the town's asset. We use it to make a couple of bucks, fine, how much ____? Where do we draw the line?

PM: Anybody else?

DB: May I just make some clarification? I understand and I'm just saying this for the Board's benefit as well as anybody else, I understand the emotions issues around telecommunication equipment and the literature about health effects, but I just want to make one thing clear. As an emotional and health concern issue that it is for you, that is not something that this Board can consider or base its decision on. That would be prohibitive. We can look at this from a legal perspective is this something that is allowed to occur out there we can't think about the health consequences, that is not something that this Board is allowed to think about in the Telecommunications Act. There are rules against that and in fact if we made a decision on that premise our decision would be overturned so I understand that there is all those concerns and I'm not going to speak to what the validity of them because I am a lawyer and not an engineer and I don't know those things but it's not something that we can consider so I just wanted to make that point of clarification for you guys and to make the record clear that some of this stuff was submitted talks about from an FCC standpoint the amount of RF its not necessarily from a health perspective,. Its something that is measurable and its something they are saying its appropriate or not appropriate based on these levels and that is a standard that cannot be exceeded the reason why there's that standard and its not for us to talk about but that's another decision for us to make our decision but you cant consider the potential or something we'll call theoretical or some people will call real health consequences it just not something in hyper via.

JE: I understand that I'm sure that most of us do, but there is a procedural error and it goes on discretion as far as people have making a decision I would hope that in conscience that you would consider, you all live here, I live here, you have to think about this, would you like this near your house, I'm four houses down from this thing and the AC unit I can hear.

DB: We are going to look at it from a legal perspective and say from the by law standpoint what does the bylaws say and that's how we review this, what the Board ultimately makes a decision on I can assure from myself from a standpoint considering the health things, I'm not allowed to consider, I really truly mean that the health stuff is, I didn't want to cut anybody off I understand that people want to talk about what their concerned about but there are other impacts here that we need to consider like the sound of the units that are real impacts that we can consider on the neighborhood. But we can't consider, if you're saying, "If you're on the fence let us sway you", that's not something we say we can do. We can't, we are a Board of Appeal; I don't want to get into a debate about health issues, not going to go there.

JC: I would like to say one more thing.

DB: If it's about a health issue seriously?

JC: I understand that you are not allowed to rule on health issues whether if the is health issue is cause somebody to cause your house prices to go down I would say that falls into your thing.

DB: Well, from the standpoint impact to the detriment to the community the impact from a general diminution of property value I don't know how much weight we can give that, we cant give weight on perceive health issues leads to a diminution in value without imperial evidence to that fact I can't, its not a decision. I hear you, but the health thing I don't want to spend anymore time on.

Harry Benson, 69 Faun Bar Ave., Winthrop, MA: You're saturating a residential area with commercial application everything on the top of that tower besides municipal the Town Of Winthrop is getting paid for, correct?

DB: I can't speak to that.

HB: Is it not a commercial application being applied for or are these antennas are commercial in nature and by that it is zoned residential, special permit, anything along that type of line, not a health issue, but, they are throwing antennas up, I'd like to throw antennas up on my house. Zoned residential but that's ok because maybe I'll kick back something to the town.

RG: I think that Verizon had to come before the board of Appeals and it's something that didn't and we don't why. There was a Conservation Committee hearing on it, we thought it was going to go before the Board of Appeals again, and its just sneaky and the town by passed all of it.

DB: That's why we're here to look at it, I'm not sure why it didn't come before us, I have no idea, everybody else has, that's why we are going to take a really hard look at this and try to figure out they thought they didn't, didn't have to.

RG: I think because they knew they were going to have opposition.

HB: The generator that they have up there to supply the power for the commercial application, the starting up at every Wednesday at noontime, I am sure that Rachel really likes that we her baby is asleep and this monstrous generator is kicking off, it's a timed unit, every Wednesday 10:00-12:00.

BB: Is that right, it sets itself; it kicks off at 10:00 every Wednesday morning?

RG: And then it'll be on all night.

Phil Roan, 80 Prospect Ave., Winthrop, MA: I live directly across the street from the tower. They stole my thunder about the generator it does sound loud as hell, but I have another point I wanted to make, I know you said you don't want to deal with health issues, fine, but I hope that pressure from town officials, and you folks are town official, I don't know how many times I've heard it, we, this town is in dire straights, we need the money, this and that, any monetary considerations are subordinate to the needs of the neighborhood, I know how things are, I've lived here my whole life, I know how things work behind the scenes, I'm not accusing anybody up here of impropriety but there are I'm sure that there will be whispers after this court ends, that you get calls and you'll get slaps to the back and that stuff shouldn't be considered. I don't personally give a darn what any town official thinks I'm more concerned with the concerns of Rachel, Jimmy, the Bensons, all the neighbors, you know we're adversely affected by this gray area on zoning that is going on. You should really look and see what is going on. They need to practice more fiscal moves, I don't want to hear that the Town is going to lose x amount of dollars and I know what the amount is and I'm not going to get into all of that. But I know what the amount is and Clear Channel, I was standing there when the representative of the town a person of Clear Channel were suppose to get some information about that, its never come back the neighborhood, technical data this and that, but, my point is please go on your own merits and don't listen to the whispers and the needs of people trying to balance budgets and do whatever. That's their problem; they're the ones that get paid the big money to do what they have to do. I'm concerned about my little area, the whole town obviously, but I'm more concerned with my neighbors on a daily basis for the last 22 years I've lived there, its been one thing or another cloak and dagger, hoses sticking out of the tower to drain water because they can't fix the check valve in there. The fixed the wall it was corroding for 20 years, just so it would look good for Verizon dog and pony show in here, which was stopped. Just take a long hard look, those people are life long residents of the town, they pay their taxes, they bring their children up here, don't list to the people behind the scenes pushing agenda and try to do whatever they try to do. That's all I'm going to say.

DB: Mr. Chairman, can I address that? As a quasi-judicial body in the town, the one thing I wouldn't take a phone call from the legislative branch, the town council, and the town manager, on any issue that we are voting on. Because it's our job to view these things independently and decide what's best.

PR: That's good to hear, that's comforting.

PM: Where're going to stop that and we've heard everybody that's here in favor of this petition. Anybody here not in favor of this petition?

Elizabeth Lane, Atty. For Kopelman and Paige: I'm here because Mr. McKenna was going to be here this evening but he went home sick and I was here for another purpose to deal with a interrogatory so you might have seen Mr. Bertino was here for a while but because of the change in the schedule he had to leave and he left some materials with me. Plus, I wanted to give you some materials; I'm not an advocate for one side or the other, my role that I hope you understand it to advise the Board and any town officers. So if I could have your indulgence to pass on some information, I don't know because of something that was said perhaps you already have this that Mr. Bertino left this with me. It is a document he gave to the council on the radio frequency issue and I have just the copies. I wanted to make a couple of comments because of the questions that Mr. McKenna asked me the other day and I was waiting to hear for information from him and I found out that he was sick. We spoke briefly today so he asked me if I would take a look at the zoning bylaw and relation to the telecommunication act and this is something that is very hard to swallow the telecommunications act operating. In since it was first enacted our firm has been on the front line trying to fight this, going to the US District Court Federal Legislation is very strong and it basically sort of steam rollers local legislation and concerns by having a 2 point test for location for the telecommunication facilities. One of them is that you shall not immediately discriminate amongst providers, that's not an issue here and the other issue is that shall not prohibit or have the effect of prohibiting of provision of personal wireless services. So in light of that Mr. McKenna asked me to take a look at the zoning bylaws which has been noted by speakers here had provisions that said that the telecommunication facilities has antennas or add-on antennas can only be in 2 districts and frankly that has to be in violation of the telecommunication act. I will give you an extra copy and I will give you my opinion here. So what that means is, what can this Board do in face of zoning bylaw that rendered unlawful by a federal act? Always and in an allowed use you can always regulate what they call a secondary effect. This is what they call plan review where you want to make sure that some of these effects you cannot prohibit they're managed whether its site or sound vibration or anything like that. So that's within your scope, but one thing and Mr. Baird referred to that also in the telecommunication act in this is hard to swallow and we battle this and there is no winning here. It says, "No state or government or instrumentality thereof may regulate the placement construction modification of personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that such facilities comply with the commissions regulations concerning such emissions". So that means the only thing you can look at is to see whether the emissions are in the lawfully allowed range, you cant make evaluations as whether they have detrimental fiscal, mental, or any other kind of effect because this law takes that away from you.

BB: How do you monitor that?

EL: I think that what is, is the specifications that are submitted to you and they are compared to what the federal applications are. I believe that Mr. McKenna dealt with that. I haven't read that piece, that lengthy piece that you provided to the council but I think that's what that attempts to deal with. Also, the way that all this litigation has turned out, the battle has turned out to be coverage. If a provider can show that there is a gap or coverage or no coverage the federal court will absolutely hand that permit to them. I have something that is provided to me from the proposal that was made by Clear Wire. What it says here 3 locations were considered and the other 2 do not work essentially. That is what Clear Wire said that they considered 3 places and 2 of them were the wrong elevation or something like that. If I can speak from some experience, I think the reason that the federal government is so strongly designed this; they determined that wireless communications is like public utilities and a public utility and would get many considerations. So I'm told that the purpose of this is the addition is to provide Internet and telephone service and public utility gets treated very generously in terms of locations. So the court decisions that have been coming out in the past 14 years or so would be telecommunications act are basically you can't prohibit this unless the tower falls down on people, when there is an existing tower there it's not going to fall down because of the addition of antennas.

RG: What about OCEA?

EL: The maintenance of the tank and all that is a separate issue and it's an important issue and I'm not here to argue with you about that. Noise and all that are all issues and that's why I say that there are issues that this board can consider that they're hands are tied in terms of saying yea or no what they can do it make conditions, so if there's some attribute that is unsafe and can't be environmental thing is they are not mounted properly and it falls on people that is a whole different story. That's basically what I wanted to share and even though the bylaws have these provisions in say you can't have it in 2 districts the federal law says otherwise.

JE: I was under the impression that the federal laws speaks to the health affects only and not the zoning laws so you can't put that antennae there because of health concerns you might be right there you are a lawyer but I believe that there are cases that have been ruled on where they've denied they antennae placement not because of the health effect but because of violations to the existing zoning law.

EL: To the extent if you'd like a comment Board members, I would just say that I'm not aware of any of those because there are antennas throughout this state and the US are in districts that come before zoning boards and many towns that

have not provided for them and they have zoning by laws that say if its not provided for its prohibited. It's really outright prohibited and it gets to federal court and federal court says "I'm not hearing it", basically, if the thing is structurally sound and meets safety regulations that pretty much the Fall zone, you have to site it in such a way that its by-distance as the height of the antennae. The Federal court are very ____ with this in fact quite harsh where they feel that the town is guilty of wrong-doing by continuing to press certain issues, so for example, if the town were to argue that there are certain studies there were certain problems with effects on peoples brain or immune system any of that the court will strike that out or even threaten monetary penalties. I think what we have here is another layer of contract which is the contract whether it's a lease with the town and that's a policy matter that's in the hands of others than those of us that are here in this room. Secondary affects are within this Boards jurisdiction.

JE: I find it interesting that you can speak for a certain judge. You're really taking the words right out of their mouth.

EL: My office has had about 15 of these things but they were hard fought and it was really frustrating in the beginning to find out that you can go back to court with this argument or that argument and the court will keep striking you down. It's a hard fact of reality, I don't like it any better than anyone else I wouldn't want a big tower put next to my house but the water tower was already there and I think the courts tend to take a view look you already have the structure there and there is no fall zone issue and they just don't want to give issue to health.

CF: What about a 90-100 year old structure that now gets drilling and changing the face on?

EL: Again that's a separate issue.

CF: It's just a question about as far as safety goes that's a safety issue.

DB: I think as far as I'm concerned federal preemptive issues aside I really need to think about this one. I'm not a fan of that thing becoming satellite hill up there I think it's a ~~back~~ impact to the neighborhood visually I think there's a lot of things wrong with and I really want to take my time and I really want to think about this thing because I do have some real concerns here and Federal telecommunication act s does what it says and we have to live with federal preemptive issues everyday but I want to take a hard look at this because what's gone on here and what continues to go on here does trouble me just from the standpoint of what that thing looks like.

RG: They keep adding big black wires.

CF: They're tubes not wires.

PR: I'm not trying to criticize but here the thing that's very frustrating too all of us that live up there. This is a guarded secret as if it's a national security issue, you can never get an answer from a town official about what's for the umpteen years we've been up there you'd think that there some hidden document that going to sink the whole town or whatever. You get tape dancing, clock and dagger; it's just been hogwash even since, even when we had to have the abated.

DB: Then don't re-elect them.

PR: Well the way they're paid and how things are done nobody stays for long anyway, present company excluded.

MOTION: (Darren Baird) #024-2010 - I would like to move to take this matter under advisement to render a decision, I don't think we need to take more testimony, we've seen and heard enough, we have the benefit of Kopelman and Paige's memo, I just want to have some time to deliberate on it as a group and render a decision.

SECONDED: (Brian Beattie)

PM: I'm fine with that I was going to suggest the same thing. I'm glad that you came up to go over the health issues and this has come up in the past and on a previous add on up there and its fortunate that that was relocated to another part of town and that they withdrew there application. So I want to take another look at this and have some concerns and reiterate what Mr. Baird said we are looking at this strictly from a zoning issue you have to keep your feelings in check. It's hard to do looking at this information and listen to the testimony here but at the same time we are bound to look out for the items for the town and here we are to look at legal issue and what is involved. I just went through a 3-week court case I was on a jury and that what the judge kept saying, you have to base it on the evidence that is there not what you interpret or what you think. You have to look at it here, so I want to take a good hard look at it.

VOTED: All in favor for this motion to continue

DB: Vote to take under advisement

PM: We will take it up on Dec. 2, 2010.

MOTION: (Darren Baird) - Motion to go into executive session under general laws chapter 30A Section 21A for the purpose of discussing litigation strategy as in open meeting will have the detrimental affect on the BOA litigating position

and I further move that the Chair declare that the open meeting will have such a detrimental affect.

SECONDED: (Paul Marks)

ROLL CALL: DB, PM, BB, JR – All in favor

Returned to open session at 8:37 p.m.

PM: Joanne received an inquiry does the BOA have any information regarding a satellite antenna from PCS on the First Church. I don't know where the First Church is.

JD: I believe its 217 Winthrop St.

DB: It's the Congregational.

BB: I remember we did do that that was one of the first one we did.

JD: I looked back to 2004 and I couldn't find anything.

DB: It's got to be longer than that.

JD: So what year roughly?

BB: Anywhere from 2000 on.

JD: I'll look.

PM: What we have to do is to have scorecard where we're going to list so we'll have a cross check. Rather than try and find the file, which is filed by year and case is to have this where we have on a piece of paper.

JD: I should be able to find this through the Town Clerks when the applications come in but those are filed by and once the decisions comes they are folded up and stuck in an envelope.

BB: What about the Building Inspector?

DB: The building jacket should have a copy of it.

JD: I did actually send him an email but I hadn't heard back from him.

PM: I think that's the way to go to find it and find out when they made application and find the year.

JD: I have minutes if you want them.

PM: While were looking at that I mentioned to you what we're looking at from Atlantis Marina what generatered that. When we gave them our decision one of the conditions was that they had to have a satellite parking space and the satellite parking space we wanted to have it paved we wanted them to maintain it and we wanted the plan for it. They never provided us the plan. They went to the Conservation Commission wanting to put up the fence and use that place for boat storage.

DB: This is the one near Viking right?

PM: On the back of Viking. So they're saying – You did something at the BOA on this, they looked at the BOA decision they asked me a question can I have a copy of that plan, the BI asked me for a copy of that plan I got the jackets and I looked in there no plan. So I sent a letter to Cipoletta, here's what it is, we need a plan give to me by past week. Haven't seen anything.

DB: Haven't seen anything? Have you heard from Jim?

PM: No. So right now they are dead in the water with the Conservation and they're not going to do anything with us with the plan, if there's a plan that we have that says satellite parking for excess cars they haven't come before us to do anything about that to rescind that to let them put boats there.

DB: The satellite parking for they run the marina part of it.

PM: Not only the marina but that where they had construction parking and they gave us a plan for that but they didn't give us a plan for the other part of that decision was for their satellite parking whether they had excess visitors or whether the marina could park down there. I suspect were going to see something form them.

BB: Why would you have satellite parking there?

PM: There's not enough parking on site for the marina. I think that is going to come before us. You've got minutes?

JD: Yes, do you normally do them one at a time because I have three?

PM: We have 3 sets of meeting minutes, Aug. 12th, Aug. 26th, and Oct. 6th.

MOTION: (DARREN BAIRD) – I make a motion to approve the meeting minutes of Aug. 12th, Aug. 26th, and Oct. 6th, 2010.

SECOND: (BRIAN BEATTIE)

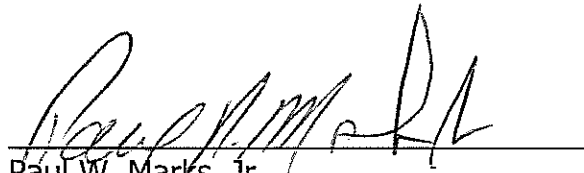
VOTED: All approved.

MOTION: (DARREN BAIRD) - Move to adjourn at 8:50 p.m.

SECONDED: BRIAN BEATTIE

VOTED: ALL IN FAVOR

Adjourned at 8:50 p.m.

A handwritten signature in black ink, appearing to read "Raul W. Marks, Jr.", is written over a horizontal line.

Raul W. Marks, Jr.
Chairman