



**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, June 30, 2011
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152*

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TOWN CLERK
WINTHROP, MASS.

Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:06 p.m. In attendance at the hearing were the following Board Members, Darren Baird, Brian Beattie, Irene Dwyer, and Romeo Moreira. Also in attendance were Joanne M. DeMato, Board Secretary/Clerk, and Chief Paul Flanagan.

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.	#007-2011	VL Realty d/b/a Atlantic Marina	550 Pleasant St.	
02.	#008-2011	Robert Moynihan	760 Shirley St.	
03.	#009-2011	Brian Rich	69 Birch Rd.	
04.	#010-2011	Clear Wireless, LLC	82 Faun Bar Ave.	
05.	#011-2011	Robert Dello Russo	395 Shirley St.	
06.	#012-2011	Pasquale Cimino	224 Winthrop St.	
07.	#013-2011	Anthony Martucci Tr. M & M Realty Tr.	41 Argyle St.	
08.		Approval of prior meeting minutes		

#013-2011 – 41 Argyle St. – Anthony Martucci Tr. M & M Realty Trust

In Attendance: Attorney J. Falbo

Sitting: PM/DB/BB

PM: Good evening everyone. I'd like to start with case #013-2011. Attorney Falbo?

JF: Mr. Chairman and Members of the Board, as I had mentioned to you the petition was filed prematurely because we have two other matters that we have to do prior before coming to the Board one is to submit a plan before the Site Plan Review Committee and then we have to take care of the matter which we almost avoided with the EEP so in light of those matters I cannot say with any degree of certainty I would request that the Board grant us a continuance of 60 days and hopefully the matter will be concluded and we'll be ready to make a presentation to the Board because my understanding is we cannot make a presentation to the Board without that site plan approval.

PM: OK, so what we'll do is open the hearing then we'll continue it. You'll ask for a continuance.

Motion:(Darren Baird) To make a sixty (60) days continuance for the petitioner request provided that the petitioner agrees to sign the paperwork to waive the time requirements for a hearing.

JF: I have no problem

SECOND: Brian Beattie

VOTED: ALL IN FAVOR

#007-2011 – 550 Pleasant St. - VL Realty Atlantis Marina

In Attendance: Attorney James Cipoletta

Sitting: PM/BB/DB

PM: Good evening.

JC: Good evening Mr. Chairman, Board members. I represent the successor to VL Realty, which is Atlantis Marina, LLC that is the successor to this permit, which was issued on June 2, 2005 by the Board of Appeals by variance. The variance was due to the part that we weren't able to meet the parking requirement for the entire project for Atlantis Marina. And it appears that the element that throws the project into non-compliance was the Marina and the Dock which was completely removed and re-built so that triggered as the Board found in 2005 the requirement to comply with the then ordinance of the satellite parking. And since the Winthrop Zoning Ordinance requires one parking space for every slip, which is one of the highest in the state, we needed to seek a variance, which the Board granted. As a conditions of the variance, condition #2 requires the applicant and its successors to establish service to an outside parking lot owned or leased and maintained by the applicant and its successor to service parking needs on behalf of residents, marina users, visitors and commercial and office owners. It appears that if there was ever a need for

overflow parking needs that it would be caused by the marina so in the event that there were four people coming to go on one boat then we would be 3 parking spaces short and that would be in the summer time. And we do maintain the offsite parking and we've supplied the Board with the parking plan and it's also appended as part of my petition to modify. And that's the summer parking but in the winter time basically after Nov. 1st when the marina shuts down we don't have that risk of overflow parking requirements so therefore it seems that the Board of Appeals when granting the variance in the certain other permits of Atlantis Marina it requires that there be no on site boat storage of Atlantis Marina it makes sense that we move the boats that are in the marina in the summer time to the lot down the street which accommodates the summer time overflow parking so that we have an alternate seasonal use. It works very well, we've been to the Conservation Commission, we're in parallel with the permitting process, and we would ask the Board of Appeals leave to use that offsite parking area for boat storage only from Nov. 1 to May 1st and return to it to its offsite parking from May 1st to Nov 1st that is the basis of our petition to modify or amend the conditions of the variance issued on June 2, 2005. Is there any questions that the Board has I would be happy to answer?

PM: Is there anything else to present?

JC: Does the Board have a copy of the summer/winter offsite-parking plan?

PM: Yes, it's in our package.

JC: I believe that all of the exhibits I would have entered into the records are in fact entered into the record. I might add as we did to the Conservation Commission I know no work on boats ever, its prohibited.

PM: Is there anybody here in favor of this petition? Hearing none, anyone not in favor of this petition? Hearing none? Questions from the Board, Mr. Beattie?

BB: How many boats will you be able to put in there?

JC: It looks like 24 on the plan but there might be more depending on the size there might be a few more. Obviously if there are sailboats you need to block them and have access around them.

BB: They'll all be shrink-wrapped?

JC: Yes.

PF: May I just add the land has to be licensed for gallon usage although this is the layout for the land you're going to be licensed for 6,000 or 7,00 gallons however they want to do you can have 7 boats they each have a thousand gallons of fuel. There is a limitation on fuel storage.

PM: That was going to be one of my questions to you, Chief. Have they come to you and have you looked at this?

PF: We've accepted the layout of the plan but one concern we have one boatyard in it self is difficult for us and now we've combined two boatyards. Although we're not against it we do have a high group location problem down there. We were going to request that if it was allowed on a known as Simone property a gate and a 6-foot pass so if we do have a boatyard fire the way it is now we only have a box boatyard and two dwellings and were going to have

another existing boatyard we have no access from the rear on one side and prevailing winds in the winter are NW which in a boat fire would endanger the 2 dwellings are going to be basically surrounded by the boatyard so our only request is that we get some access on Simeone side of the property it can be a locked gate cause we can cut a lock but we can gain access to the boatyard for the advancement of hose lines.

JC: Would a Chapter 148 permit would that be required? Chapter 148 permit, and Storage & Fuel containment?

PF: Yes, you have to go through the licensing board for storage and fuel. And all tanks have to be assumed.

JC: Yes.

PM: Anything else, chief?

PF: That's it.

PM: Ok, Mr. Beattie?

BB: No that kind of answered that.

PM: OK, Mr. Baird?

DB: From this committee's perspective how is this a permitted use?

JC: I think it's a light manufacturing I believe.

PM: I don't think it's a light manufacturing there, light manufacturing is only down by Banks St.

JC: Boatyard is an allowable use on the in the BA zone.

DB: Yes it is, I have nothing further Mr. Chairman.

PM: Mr. Cipoletta looking at the plan you have prepared for the winter storage its showing a silk fence and hay bales.

JC: Yes that the plan that you have is the next variation of that one we gave to the Con. Comm. because we have ____.

PM: Have you got a determination from them yet?

JC: They will not, they are pressing their requirements that all other permits be obtained before they issue an order of conditions.

PM: All other permits?

JC: Yes, and the zoning issues such as variance issues be ironed out before they issue and order of condition but they are ready to go with their order.

PM: OK. You talked about no work on boats right? One of the concerns I have is if you have a person down the marina and does something with his boat and doesn't have it his brother and somebody wants to come and put a boat down there, it's got to only be for people who have boats in the marina because then I think you could open it up and I think we could have a problem. So I would want to put a condition on it that it's got to be only the boats that the marina uses.

JC: All the contracts are going to be that they could do winter storage and summer storage. We only actually have two boats that stay in the water over the winter then they would sign up for winter storage as well.

PM: And you've mentioned to them no work being done on the boats?

BB: How is that going to be policed?

JC: That's a Con. Comm. issue and they were fairly clear because they were concerns about paints, oil, and gasoline to some extent and things infiltrating the soil in the resource area so they wanted to make sure that there was no painting and sanding, no changing oil and filter because it's a sensitive area.

PM: And I would think the same of power washing?

JC: Yes anything that would be done like that off site.

BB: The only problem is how are they going to take the boat from there and put it in the water? Without working on it, without doing the bottom, without sanding the bottom, without painting the bottom?

JC: It's got to go somewhere else; we're prohibited from doing that in your conditions that Atlantis from doing any work and are prohibited from maintaining winter storage so we'd had to be doing the work off site. Frankly, I don't know where they would do, maybe Belle Island Boatyard down the street, he does indoor stuff, I don't know. But I know that Con. Comm. is not going to let us do it.

PM: Anyone else?

DB: One question about the noise. There is residential neighborhood nearby and you know how the halyards and the clanging that sort of stuff, you have to make sure these things are secured and don't create a noise nuisance. One of the conditions I would want to put on these is that the owner/operator of the lot make sure that the noise issues are not a nuisance or minimized and if they are a nuisance that we are going to have you come back in here to talk about it.

JC: Fair enough.

PM: What's the pleasure of the Board?

MOTION: (DARREN BAIRD) Pursuant to condition #2 of the variance to approve as submitted the off site parking plan as submitted by the partitioner and if there are going to be any changes to it for modification for it they have to come back before this Board of Appeals for approval and a motion to amend the variance to permit for the off site storage of boats and the configuration and number showing on the plan marked winter submitted to the Board and a condition that if there is a change or modification that they have to come before the Board also, condition of the operator of the lot doing what is necessary to secure the site and to get any other permits for flammables materials that they may be required to get from the Fire Dept. and to the extent that this becomes a nuisance that we have the ability to call the petitioner to come back in here to address those issues to our satisfaction. Chief did I miss anything?

PF: Other than we are requesting a gate on the Simeone property line.

DB: An installation of a gate on the Simione property to allow for fire access so the Town of Winthrop Fire Dept. can deal with any fire issues on site. So moved, Mr. Chairman.

PM: Questions? On the gate you'll have to deal with Simione property to get that. And this approval on this decision will be contingent on that coming through, if we grant this here you'll have to get gate approval before this come force onto effect.

JC: We'll be erecting a fence.
SECOND: (BRIAN BEATTIE)
VOTED: ALL IN FAVOR

#008-2011 – 88 Bowdoin St. – Robert Moynihan

Sitting: PM/RM/BB

In attendance: Robert Moynihan

PM: Good evening. Want to tell us what you are looking to do?

RM: Good evening. Yes I have an existing structure at 88 Bowdoin St. and my daughter is moving back there with her children, one 12 and one 15 a boy and a girl and it's only a two bedroom. She has an autistic son and we're looking to add a room for him.

PM: Looking at the plan you're looking to add a second floor?

RM: Raise the roof and add a second floor and put two bedrooms up on the second floor.

PM: Ok, anything else you want to say?

RM: No. I believe that's it.

PM: Closing that is there anybody here in favor of this petition, hearing none, is there anybody here not in favor of this petition, hearing none, questions from the Board. Mr. Moreira?

RM: I don't have any questions.

PM: You don't have any questions?

RM: No.

PM: Mr. Beattie?

BB: No, I drove by and took a look at it. I really don't have any questions.

PM: OK, the plans that we have here have a stamped plan from a land surveyor showing two buildings and it's indication that it's a condominium?

RM: No, I was going to condominium but I never filed for that and never went to that. I just had the plans drawn up but I decided not to do it. It's a basically two family house is the way I bought it but it's two separate structures.

PM: The plan that I'm looking at here that is stamped by the surveyor is showing areas on the side looks like common driveway and places on the side that looks like places on the right hand for dedicated parking and there's enough for how many cars in each?

RM: Four, two in each.

PM: I don't think I have any other questions.

ID: These plans show on these plans 88 has a separate floor and has two bedrooms.

RM: Those are the only two bedrooms on the property. We need to add a third.

ID: OK, sorry I didn't catch that. What we are looking at right now is what's there.

PM: Look at the next plan.

ID: None of these plans show what's to be built?

PM: Sheets 3 or 4?

DB: That's 86.

PM: Ok, the other plans just show 2 bedrooms. You don't have a plan in here of what you propose to do?

RM: I don't believe.. I don't have it with me.

PM: So you have something?

RM: The builder has it I don't have it with me.

PM: OK I think that is something you have to submit to show us what you're going to do, so we will know what you're looking to do and if we grant this we stamp the plan so that's what going to be done and any variation from that has to come back before the Board. Any questions Ms. Dwyer?

ID: No.

PM: We would need a plan and probably what we would do is until we got that plan to look at it, other conditions we talked about here and its not on here and what we normally ask is what kind of materials will be used for it? What is the house now? Is it wood siding on it?

RM: The house is wood. It would be wood; it's a wood structure with vinyl siding. It would be an asphalt shingle roof.

PM: And the new part would be matched to the existing?

RM: Exactly.

PM: Any questions from the Board? What I would like to do is to do a motion to continue to get the plan.

MOTION: (BRIAN BEATTIE): To continue this until our next meeting until we have the plan of the work that is actually going to be done.

PM: So if you have a plan all drawn up we want to get that plan and look at it and see what is going to be and then once we have that we make a decision we stamp it and every is clean and everything goes forward. When you have the plan get it into the Clerk's office and they'll stamp it in and we'll have you sign a continuation until next meeting at the end of July.

SECOND: (Romeo Moreira)

VOTED: ALL IN FAVOR

#009-2011 – 69 Birch Rd. – Brian Rich

Sitting: PM/ID/RM

In attendance: Attorney Jeff Drago and Brian Rich

PM: Mr. Beattie has recused himself.

JD: Good evening Mr. Chairman and members of the Board my name is Jeff Drago I am an attorney for the applicant and owner Mr. Brian Rich to my left. We are here today asking for zoning relief in the form of a special permit to

enclose the rear porch that's existing now on the one family in the rear of the one family house. My client purchased the building of April for residential use and has been doing extensive renovations and pulled permits to do so and would like to extend the proposed kitchen area out the back rear porch that's now existing you'll see in some of the info I passed around there's a photo of what's there now and on page 2 & 3 you'll see the proposal we're not building up in height we're not looking to build out beyond the existing we're simply looking to enclose that space. I also have a few more pictures for you just so you can take a look at the back you'll see in those photos just exactly what we are trying to do we are not building out. The neighbor to the right of the property also has an addition to their house so we don't believe that this would be detrimental to the neighborhood so we would humbly ask for zoning relief from this Board.

PM: Ok anything else? Closing that part is there anybody here in favor of this petition?

Brian Beattie, 71 Birch Rd. - New neighbors and they just bought the house and are trying to improve the house and improve the neighborhood and my wife are all for this. It's just a very small ambition and all they are trying to do is to just square up the back of the house.

PM: Thank you, anybody else? Anybody here not in favor of the petition, hearing none. Questions from the Board. Ms Dwyer?

ID: Only question I had, basically it works out, am I correct in calculating the --- You're going to enclose the rear porch and your going to connect the two decks?

JD: Yes we are, which didn't trigger a special permit violation. We are also leaving the stair and egress as well so you'll see a rendition they'll be a means of egress where the decks are and a means of egress right where will stay right where that enclosure will be that means there will be two back means of egress back where the porches connect and another where the stairs are now.

ID: I don't know where the porches connect.

JD: You see right here where the porches connect in back that will be a means of egress and the ones that are already existing we are enclosing where the stairs are and also right here where those doors will be. So you have one here that will wrap the porches around.

ID: Ok, I see it's going to be a French door from the dining room. You haven't actually made additions you're not showing here of the basement. The reason for making the area larger is because the side set back already exists.

JD: Yes.

PM: Mr. Moreira?

RM: I'm all set I don't have any questions.

PM: Is there plans to use the basement as a living area? I see you've got a walk out on the basement.

BR: No, it's already finished.

PM: It's a finished basement like a playroom or something?

BR: No exceptional plans like a bedroom, it's probably going to stay a basement.

PM: Materials that you're looking to use will match the existing house?

BR: Yes. Wood and vinyl.

PM: One of the requirements that we ask people to do is to have no exposed pressure treated materials if you do use it you enclose in some type of a fascia board and not have it expose such as railing and decking and post and stairs, if you do, you put a finished board on it

BR: We can do that.

PM: Anything else from the Board? What's your pleasure?

MOTION (IRENE DWYER): To grant the special permit relief requested on the grounds that it will not be any more detrimental to the neighborhood than the already existing and will not change the footprint in any way and condition that the materials requirements as listed.

SECOND: (ROMEO MORIEIRA)

VOTED: ALL IN FAVOR

#011-2011 – 395 Shirley St. – Robert Dello Russo

Sitting: PM/BB/ID

In attendance: Michael Dello Russo

PM: Good evening.

MD: My name is Michael Dello Russo, I'm actually Robert's son and the general contractor. I have copies of the actual plan for the project, if you need to see the larger version. I moved here to Winthrop from Boston in 2003. I bought 409 Shirley St., which is right across from the playground, it's a 3-family residence, I live on the first floor there with wife and 2 children. I also bought 411 Shirley St and renovated that so I have a 3-family that I renovated on that same corner. Since then I bought the single family on the opposite corner of Cutler St. and Shirley and Veterans Rd. and I am petitioning to turn it into a 2-family where I would move into one of the units and have an in-law apartment below me. My family has been expanding these last couple of years and I am trying to improve the area the best that I can and hopefully I can get approval today.

PM: Ok, anything else?

MD: No.

PM: So Robert Dello Russo how is he connected to this?

MD: He's my father and he actually owns the property.

PM: So he owns the property? So you're not the owner then?

MD: I'm not the actual owner.

PM: Is there anybody here in favor of this petition?

Police Chief Terri Delehanty – I originally came to speak on another matter however just a credit to Mr. Dello Russo, those houses that he's re-done already, it's actually upgraded the area, police service calls to the houses since he has

purchase them have significantly dropped the call level to that area. It's certainly been an improvement to the two houses.

PM: Thank you Chief. Anybody else? Anybody here not in favor of this petition? Yes, please state your name ma'me please?

Phyllis Fairchild, 391 Shirley St.: I have been the owner for the last 30 years. Although I realize that to Mr. Dello Russo's credit I think he has done a very good job to the 2-3 family homes. The police were well aware of what was going on there it's been much better. My major issue is that and Mr. Dello Russo knows this is a single family home next door to me and he's basically trying to take a lot of 4300 sq. ft. and the code is now 7500 sq. ft. now for a two family residence and basically create 20 feet as an extension of the building that would go up 2 ½ floors and my concern is that I bought this property 30 years ago the building was the right price and it had views of the golf course and in addition to that I can see the dog playground, I can see a little bit of Lewis Lake and I can see beyond that where it is the Winthrop Yacht Club and the water. If Mr. Dello Russo is allowed to build based on the plans he submitted I will no longer have those views. I have photos from my second story and those views on that side of the house will be prevented. I appreciate green space and I appreciate gardens, I appreciate trees. Basically having that myself in my own backyard and the yard on the other side I will be losing something. Even though that house has been in disrepair for many years and anything would be somehow adding value but somehow I would lose property value.

PM: So you think that your property would lose value?

PF: I've been here 30 years and I can't tell you how much longer I'm going to be here, but it does have some view. The camera doesn't even really give you an appreciation of the views and Mr. Dello Russo has been into my home and knows what the views are and now he'll have the views that he and his family will enjoy and that my family and I will no longer have.

PM: Is yours a single or a two family?

PF: It's a two family. I have an elderly mother on the first floor.

PM: Anybody else? Yes, sir, state your name for the record please.

John Stanley – 387 Shirley St.: My property abuts his property and he has done a very nice job but if he converts to a two family my question is the parking and I am concerned.

PM: What color is your house, sir? Is it a tan house?

JS: Yes.

PM: OK, is it a single or a 2 family?

JS: It's a 2 family.

PM: Anybody else? No? Closing that part of it any questions from the Board?

ID: Is there anyway, looking at the first page of your plan. You're going to demolish part of what?

MD: There's a small addition on the back there that's already 11 ft off the existing home.

ID: Ok, that's....

MD: That would be coming down and then extending that, that would be 20 feet, so I'm really only extending 10 ft on the first floor but then of course gradually going up and then lastly we'll have a small balcony off of the master bedroom.

ID: I'm just wondering if there isn't a way.

MD: I have met with Phyllis and I have taken it all into consideration and before I even had this all drawn up I sat with the architect and tried to figure out any way shape or form so that anyone could be happy. For the 2 windows that will blocking it's the same view, it's the only way that I could get the square footage that I needed, in other words if I cut it back 10 feet, it still loses the view so it doesn't make that much sense to cut it back any further.

ID: The footprint of the existing house is on the first floor if you even went up that?

MD: It would still be blocking it.

ID: It seems to me that 387 extends farther to the rear of your lot than 391. Actually 391 looks as if it had back decks that were enclosed at some point?

PF: Possibly, it's the back hallway now.

ID: The views that are going to be blocked are on the second floor.

PF: The third floor I have two bedrooms so going up to the third floor. The first floor will be totally blocked anyway. The kitchen obviously has a different view from the first floor and more I'm looking at the playground and the low level.

PM: Anything else Ms. Dwyer?

ID: No, I'm just trying to Photoshop this thing in my mind. Right now it looks to me that 395, 391, and 387 are kind of staggered.

MD: What happens is that would be 391 and then 395 is a little bit shorter but definitely bigger than my house and then my house becomes the smallest house on the corner.

PM: That's the way it shows and projects now but with the new plan it would probably become as big as 391.

MD: Almost as big, I was out there measuring today and there's a 10-12 feet still setback to the end of 391. I'm going to hot top the whole back cause I need parking. There will probably be 6-car parking in my rear yard.

BB: How much room do you have in the back now? You have no plans here for parking.

MD: It's just not showing but those are my intentions.

BB: Is there a curb cut in the back yard.

MD: No I'll have to get that; I already had a curb cut on 409 where I live now and park four cars down and on 411 where I park four cars as well. That was originally a grass and party area so I decided to make it a parking lot. With some landscaping, if I get this approved I'm pretty much taking care of the whole corner.

BB: The whole plans aren't here with the parking and the curb cut and you don't have an application for the curb cut. Have you put in for that? There are no plans here actually showing the parking.

MD: OK, I didn't think that was why I was here. The parking I applied for the permit they come out and approve you from DPW and give you a curb cut and do it a day later.

PM: Yes, but the plans that Mr. Beattie is talking about is that on a two family you've got to show parking for two cars per unit. And it has to be shown on a site plan and what you have is a survey plan and normally on a plan like that it'll show the set backs on the house and the parking if you have a driveway specifically show that information on here.

MD: I know where I'm going to put if you'd like that know unless you want me to get that drawn up and come back again.

PM: I think that was one of the things Mr. Beattie was leading to.

BB: That's what we had to do on the other one; we have to have a complete and total plan to vote on it.

PM: Because if we have something here were going to do we do it and stamp it and give permission to do it that's what there are going to do because we've have problems before where people say they are going to do this and they come back and do something else and we don't have anything on it. I would say that is something that we would discuss here and look for it to have a plan showing this your proposed addition its 10 ft. out from the way you have it where you're going to park if you're going to have a driveway on the side or it's just going to be in the back, if its going to come off of Cutler St. or off of Veterans Rd. so we need to see that, it's just continues to be part of it because you have a nice plan here of what you're going to do. Any discussions with the Board?

ID: If it's possible to do it with the plan, if you can kind of Photo Shop so we can see the back of the house visa vi the house next door, I know you're showing it from the plans and I think I'm getting a I've got a pretty good picture in my mind of what it's going to look like when you get through but I'm sure you can do it on the computer of just basically of showing us the additional bulk is going to be at the back. You have pictures showing what the back is going to look like and you the plans showing hash marks where the constructions is going to be But none of these actually show how it's going to affect the house next door. Maybe I'm not phrasing it very well?

MD: You want another rendition to show how it's blocking the windows. We're blocking her windows there is no way around it. So I don't know, I would really like to do something that I wish that I could but in order to make what I need to happen on that property to make it financially work for me and why I bought in that area there is no way to prevent that other than to do something for my abutter that makes her understand that I appreciate her concerns.

PM: This is the pictures that I took of the property when I went by there, this is a tree right here. Whose tree is that?

MD: Right. My tree.

PM: That's your tree. What are your plans for the tree? Are you going to take it down?

MD: It's going to be replaced with other.

PM: If you took that down the views from the abutter and the 3rd person at 387 would be better looking at that.

MD: I'm definitely taking that down, I'm only going to put low hedges around the property.

PM: So your intent is to take that down?

MD: Yes absolutely. There's another giant tree but that is not on my property that's on Phyllis' property. That's not close to my property. Which is a nice tree.

PM: OK, so I think Ms Dwyer what you're looking for is to see how much if it came out another 290 feet here.

ID: I can envision what its going to look like, but if we ever end up in an appeal we need to have it in the records where the additional exactly bulk is going to be.

PM: I think if you try to visualize it from here its two different angle about this is closer angle to the side and I think this is the porch that's enclose here and you're probably going to come out close to the end of the adjacent property.

ID: I can envision that and it would nice to have it as part of the records one of the computer drawings showing.

PM: You need to show on his plot plan, your could probably do it on the assessor's map here's the house on the corner of Cutler and Shirley and here the other house I think that is what your looking to see where they would be in relation to that. The pictures here that we have that is way I went down to take the pictures so we could see something in the adjacent and to see what you're going to be up against and what the other people would look at. I would think that would be that, Ms Dwyer. Is that something you can show on your sketch here?

MD: I can try.

PM: I would like to have a motion on this to continue.

ID: I'll motion to continue to the next meeting to show your parking plan and to show on the assessor's plan where the buildings are located and to show the rear of these houses are going through.

MD: OK, Just so you understand that there is not a conforming two-family on the street.

ID: Probably not.

MD: I'll get you everything that you're asking for and that's not a problem. By the way, I'm the abutter on the opposite side of 395 Shirley St and I'm in favor of it.

PM: OK, thank you.

MOTION: (IRENE DWYER) – To continue this case to the July meeting.

SECOND: (BRIAN BEATTIE)

VOTED: ALL IN FAVOR

PM: So we'll continue it and you get that drawing of your plot plan into the Clerk just to show where the other buildings were to satisfy Ms. Dwyer. Thank you.

MOTION: (DARREN BAIRD) – Motion for a quick recess.
SECOND: (BRIAN BEATTIE)
VOTED: ALL IN FAVOR

MOTION: (DARREN BAIRD) – Motion to return to meeting.
SECONDED: (BRIAN BEATTIE)
VOTED: ALL IN FAVOR

#012-2011 – 224 Winthrop St., Pasquale Cimino

SITTING: PM/ID/BB

In Attendance: Pasquale Cimino

PM: Good evening.

PC: I own the Meat Market on Winthrop St. and I am actually looking to take over the window store to put some tables in. I do a lunch business now and loose a lot of customers because they don't have any place to sit when they come in for lunch. Business is off so I am trying to gain some new customers like the contractors and the people that don't come in now. The landlord is re-doing the whole store and its empty right now. I'm going to punch the wall out and go from the existing to store the other one. My kitchen stays in my business store where I have now and nothing is going to change just putting in tables and chairs.

PM: OK, anything else that I've seen in the plan here?

PC: Right now I'm doing breakfast in there and the lunch, I don't know about dinner I have to see how it goes, business has been slow the last couple of years so I am trying to increase it.

PM: Ok, thank you. Anybody here that's in favor of this petition? A lot of hands. For the record could you give Joanne your names please?

Harry Benson – 96 Plummer St. – in favor, great family business would love to see them expand.

James and Rachel Clark – 92 Faun Bar Ave. – in favor

Phil Ronan – 80 Prospect Ave. – my wife & I have been customers for years and take Chinese sausages up to Maine and they all want to know why theses aren't sold up there.

Sean Donahue – 27 Sewall Ave. – I'm a long time customer and love their chicken, broccoli, and ziti.

Terry Delehanty – Chief of Police and abutter – He is a responsible business owner, is improving the parking in the back, we like to see businesses thrive and not suffer and want to support them and have an impact on the community.

Cindy Levin – 59 Faun Bar Ave. – I'll reiterate what everyone else said.

Maggie Morris – 2 Terrace Ave. – it's a great restaurant and he does a great job and everyone in town loves his food.

Eric Gaynor – Executive Director of Winthrop Chamber of Commerce – here to express enthusiastic support for Mr. Cimino's proposal to change the use to a restaurant. Definitely a demand, built up a well-deserved reputation. The Meat Market was recently profiled on Billy Costa's program TV Diner for one of his famous subs. Since the day that they opened their doors they have been excellent business owners, considerate neighbors, active in community. That they want to grow their business in a very difficult economy and make a very significant investment in the town is very welcomed.

Peter Gill – 25 Plummer Ave. – Echo the sentiments, 25 years in business and it's been nothing but great.

PM: Ok, thank you, closing that side anybody here not in favor of the opetition? Hearing none, questions from the Board.

BB: How many seats does he have roughly here?

PM: I'm counting 20.

PC: 24-30 depending. There's a bathroom there, the landlord is putting one in because they never had one.

BB: And there's a door to the back?

PC: A 36" door in the back to parking lot. There is 2 handicapped spots directly behind the door and there's no steps to get in to the store. There's about 24-30, I haven't laid out any table to see.

BB: You're going to cut a wall out?

PC: Yes. The kitchen is staying, where that cut out is on the other side of the wall and I'm going to keep everything right there, so I would put a doorway to lead in and out.

PM: Where would the doorway be, Patsy?

PC: I have to lay it out, because I have my other counters there right now so I'm looking for to cut out one of these sections here 'cause my counters here right now, so I have to see the space.

PM: Your seating is showing 20 spots.

PC: I didn't want to go too little and too big. Because of the fire laws I wanted to leave so much space between the tables.

PM: Right, do you consider this a final plan because if we approve this thing we want to say this is what your going to do and stamp the plan and this is what you're going to build.

PC: Yes, I have to leave the wall space on it.

PM: Any other questions, Mr. Beattie?

ID: I had a question what's the story with parking?

PC: There are over 35 spots in the back and the landlord told us he was going to put up a retaining wall and extend it a little further wall. Mr. Stimpson is behind us right now and getting ___ to add spots so there's about 35 spots right now.

PM: 35 spots?

PC: Yes. Maybe more if counted.

PM: Anything else?

ID: I have a question on the plan then because if we approve this that your keeping the wall ___?

PM: I'd have to show a plan that you're opening in the wall you'd have to add that as part of what we would approve.

PC: With the seating I'm going to have someone from a restaurant to see how many I'm going to fit, there might be a few more.

PM: Ok, so what I suggest....

PC: Once I cut that wall I'll have to see the space that we have.

PM: Ms. Dwyer had mentioned that we'd like to see you do your plan up and show the opening on the wall, and then come back so we have something to approve, right now we have something that's going to change. And we'd like to have something in the file that that's what it is and going to be approved.

PC: Ok.

MOTION: (IRENE DWYER) – move to continue this to the July meeting so that the Board can have plans showing where the wall will taken down.

SECOND: (BRIAN BEATTIE)

PM: Any discussions on that? If you would do that up and get that into the Clerk's office, we don't have to advertise it, just so we'll have it for our next meeting.

VOTED: ALL IN FAVOR

#010-2011 – 82 Faun Bar Ave., Clearwireless

Sitting: PM/DB/ BB

In Attendance: Scott Lacey, Attorney for Prince Lobel and Representative for Applicant Clearwireless.

PM: Good evening.

SL: Good evening, my name is Scott Lacey with the law firm of Prince Lobel and I am the representative the applicant Clearwireless. We're before the Board in respect to an installation of Clearwireless at 82 Faun Bar Ave. This is a municipal owned property and there was a RFP issued, Clearwireless responded to it, based upon the original representations by municipal officials they installed the facility with the understanding that they didn't need a building permit. Neighbors appealed, this Board determined that Clearwireless needed some form of zoning orders. Went back, got a denial decision from the BI and we're before you today. Part of the initial process is figuring out what zoning regulations are needed, the BI sites a number of sections and to me it seems to be a really either or type situation because granting all of the relief references doesn't make a lot of sense under Chapter 40A. In terms of context is Board in case of #16-2005 grants relief to Cingular now AT&T to locate antennas and dishes on the existing water tower. The relief that was granted was a special permit for a

telephone exchange and because Cingular was expanding the existing building at the time they also received a dimensional variance for front yard set backs. They also received approval for environmental design and use variance. The BI in his denial letter cited a number of things one that there would be a special permit for telephone exchange required for the installation that he also reference is an accessory use section, Section 17.12.120 C A with respect to antennas and antenna dishes, whether or not they are allowed in residential districts and whether or not they are screened or recessed from the roof line. That entire section is accessory uses as part of the Board's decision filed by the abutters, this Board concluded that Cingular use is not an accessory use, so if it's moved by the Board as not an accessory use, I don't see why those sections would be applicable to Clear Wireless application. This is not an accessory use and it's not, in which case you would be back to the type of relief that was required by Cingular and ATT and which was granted by the Board and was for a telephone exchange use and then the standards for environmental design. The packet included section by section how this application complies with the Special Permit standards, the environmental design standards and in the alternative it did also address should the Board finds notwithstanding the prior decision it be the accessory use section applies how it would comply with use, variance, and dimensional areas. This proposal is similar as to what Cingular has on the water tank. The water tank itself is 105 to the top; there is a railing that runs around the top, Cingular currently has 6 panel antennas and 3 dishes currently on the water tank. Clearwire's application is for 3 panel antennas and 3 dishes mounted to the same railing on the tank. Neither the panel nor the dishes will exceed the height of the water tank and are beneath the existing antennas that are located there. All of their ancillary equipment will be located within the existing building; its not going to be outside it's contained within the building itself. There are no proposed air conditioning units there is just a small exhaust fan that's installed. So, in terms of impact, the antennas are consistent of what's been previously approved of what exists on the location. The ancillary equipment is contained within the building. We're mindful of the presence of the neighborhood and in light of prior decision and we certainly want to minimize any noise. There is no HVAC installed and in terms of traffic these are unmanned facilities, once they're installed they are visited once a month by technician to check the electronics and to make sure the sites are operating properly. It's not a high traffic type facility other than emergency service it's not like they're being visited in the middle of the night. That's the nature of why we're before the Board. I would be happy to go through and specifics to make our radio frequency coverage mount. Cingular is deployment technology in the Town of Winthrop so we don't have any sites so the maps that were submitted show a before picture which shows no sites in the Town of Winthrop and then the dark blue is coverage proposed shown by multiple sites with the Town of Winthrop. The designation is called BOS7060B is the proposed site. So you would have a multiple of proposed sites that would

connect and form a network that would cover Winthrop under the Clearwireless spectrum.

PM: Ok, anything else to present? Is there anybody here in favor of this petition, hearing none, is there anyone here not in favor of this petition? All sorts of hands, would you like to identify yourself please?

Harry Benson – 69 Faun Bar Ave. - A couple of my concerns, just the density of the antennas, how many antennas are actually at the railing now and what actually can that railing withstand? It's a high wind area and they keep mounting all this equipment up there and it obviously has wind drag to it. It makes noise during windy days, the other concern is they keep tacking things on to the side of the tower which is a billion years old and again makes more noise and when is enough enough? It seems that everybody in the world wants to put an antenna on Winthrop tower. I'm not for it and I think we have to put a moratorium on anything else that goes on top of the and it's a historical landsite and I think that we should really re-think it.

Phil Ronan – 80 Prospect Ave. – I'm a direct abutter and would like to say in the 20 some odd years I've been up there, you can't tell what's up there now and if you haven't been up there you'd be stunned and with the Board has overseen what happened with Verizon and them moving on to the Elks it just seems like the approach of the Town of Winthrop and these vendors is to just continually throw something against the wall and see what sticks and it's at the expense of the neighbors, and in light of what happened a couple of weeks ago with the World Health Org. talking about microwaves and phones, these folks have youngster, my kids are grown up and out in college, there are a lot of other youngsters in the neighborhood. This is got to stop; I don't think the Town even knows how many antennas and apparatuses are up there now. And I know you folks are completely unbiased over this whole procedure and looked at all of the various cases but I can tell you living in this town the people above or this regime, if you want to call it that, is looking at \$27,000 for 10 years for a grand total of \$270,000 at the expense of the neighbors and at the expense of all the youngsters in this neighborhood and I can't believe the callousness of the people that are running this town now and the disregard of the people that they are suppose to be representing and I think it's a disgrace and I think you folks need to take a real close long look at everything that's going to be presented and my esteemed neighbor is a naval engineer and has background in reference to a lot of this stuff and can speak a lot more informed than I can. I'm speaking more from the heart for the youngsters and the neighbors, and the impact, we just want to know when its going to stop, who's the next group pf people that are going to go up there and cut some sort of a deal with the people above to get something else up there. Excuse my anger but twenty years of this foolishness is enough.

DB: Thru the chair, before we take any more comments, I just want to remind anyone that is making comments I understand that this particular issue can be emotional charged, that people have their own opinions or not as to whether

there are any health consequences or anything like that that come from EMF frequencies that may or may not emit. But I want to make it clear that this Board cannot consider those issues, it is beyond our authority to consider those issues, so please, we understand that you may have concerns in that realm, we can't make a decision based on that. The FTC act prohibits us from doing that, so to the extent you're going to offer testimony in that regards please restrain yourself from doing so.

Rachel Gray – 70 Faun Bar Ave. – As of June there is new research regard this.

Cindy Levin – 59 Faun Bar Ave. – I've been living there for 13 years, I don't know what is going on up there, there are so many antennas and equipment, when we drive by home from work and park next to the water tower. I realize that you can't take testimony for health issues. I've written a couple of permit applications, and a question on the application is how does what you're applying for affect the neighborhood, well this does affect the neighborhood, let's forget about the health issue, the noise issue, the look of it, the danger it imposes on the neighborhood, it does affect the community, and from the Special Permit applications that I've written that seems to be an important part of obtaining a special permit for anything. It does affect us greatly.

PM: Thank you. Anyone else?

Sean Donahue – I'm an attorney here representing Harry Benson and his wife Carol Benson and Jim Clark and Rachel Gray. You've heard from Mr. Benson and Ms. Gray, I just wanted to take an opportunity to address the Board. I don't believe that they are here this evening asking to prohibiting placement of the wireless and telecommunication systems within the town. We're actually here to ask that you consider some of the facts. Some of the facts are that we're asking you to consider is the strength and structural integrity of the tower. The tower is an aging antiquated structure that was built years ago on the coastal property. How is each piece of equipment mounted to that tower? Does the mounting of telecommunication equipment on the tower result in fatigue, structural ___? Fatigue has occurs when materials are subjected to repeated loading and unloading until it eventually cracks and suffers fractures. The primary question here is what are the thresholds in materials on the tower? When was the tower last inspected by an engineer? What's the overall weight of the cables and transmission lines that are mounted along the side of the tower, which extend to the ground level to the top of the tower? There are several cables that are weighing a considerable amount of weight. What impacts the airport on that side of the tower and how about the tower itself? How about the impact to the neighboring land and has it impacted neighboring lands? What of the likely hood of the equipment to become unstable, loose, or un-fixed on top of the tower? What's the likelihood of an antenna or other piece of equipment falling onto a neighboring property? There natural impacts of the earth and coastline property and we're asking what impacts the erosions on the ocean side of Cottage Hill side of the property. As you know several years ago there were significant

problems that were addressed to what extent they were addressed? To what extent there may be problems here today I don't know? But again these are concerns that continue to put telecommunication equipment on top of the tower and beginning to look at what impacts putting telecommunication equipment may have to do the tower at this hearing. How many antennas are mounted to the tower? How many surge arresters, how many radios bits, how many cables and transmission lines? Are there any other telecommunications equipment mounted to the tower and is it feasible to add more equipment and is it prudent to add more equipment? Has the Town enacted any policies regarding telecommunications? Are there any new rules and regulations? Has the Town implemented a policy regarding the siting of telecommunication facilities within the community? Has the Town adopted any rules and regulations that accomplish a public safety objective? The stark preservation rules or the protection of health and safety and the general welfare of the community? The problem here isn't isolated with the water tower. Any land owned by the Town of Winthrop including schools, parks, and playgrounds may forever be targeted for a colossal antenna structure, a massive telecommunication facility, or monolithic communication tower. It's in the RFP; all of those plans are subject to his type of development. The issue here is not necessarily the absolute best location for a telecommunication facility instead the issue here is to establish a viable location for telecommunications for such a facility in the area that would address the gaps in network coverage. There are several publicly owned properties in and around town for such a service. I have booklets here, which spells out the procedural history of the use of the water tower as a telecommunication facility.

DB: Do you have one for the applicant?

SD: I don't. There are several exhibits, in that packet, some of the more significant events, back in November, exhibit A there, November of 2009, a request for proposal was released by the Town and went out. On page 4 of that request and I quote: "The Town of Winthrop is seeking proposals for a firm or firms to lease small portions of town owned land for the purpose of installing wireless antennas and apparatus or monopole – a monopole is a mass like structure or tower used for telecommunications systems, they can reach excessive heights. It also states in the RPF on page 4; "Firm or firms to be authorized to erect such apparatus to be fully responsible for all permits'. There's a representation here that the town has made a representation that permitting wouldn't be necessary. Page 5; "The proposal is restricted to any property which is owned by the Town of Winthrop including but is not looking to the following locations: schools, parks, playgrounds, Town Hall, Library, Central Fire Station, Beach Fire Station, Cottage Hill standby which is the water tower, and the DPW building. On page 6; "The proposed must comply with applicable section of the Winthrop By-Laws". On page 9 of the RFP; "The ___ must conform to applicable sections in the town building by-laws to all permits'. And lastly on page 9; "The Town reserves the right to terminate the lease for cause including

but not limited to failure to by the lessee to fulfill its obligation of the lease under the law of full regulations of permit requirements. Here this vendor failed to obtain the requisite zoning relief via its installation of its antennas. Exhibit B Town Council approved the lease to Clearwireless on July 6, 2010. Exhibit C there was a memorandum recorded to the County Registry of Deeds, Building permit issued on August 9, 2010 to Clearwireless to install 3 antenna and 3 dishes on the existing water tower. Exhibit E for request for enforcement filed by Jim Clark, who is here this evening and a direct abutter to that property, in which he spelled out some of the violations as he perceived them. In Exhibit F there was a supplemental request for zoning enforcement filed by Jim Gray. Jim Gray and Rachel Clark are married and they are both direct abutters of the property next to the water tower. Exhibit G after making the request for enforcement, the Town refused to do so. In a letter dated Aug. 24, 2011, it said that the Town refused to take zoning enforcement action. In Exhibit H there was an appeal filed with the Zoning Board of Appeals and on October 29 that appeal was heard by this Board and the appeal was to essentially seeking and to turn over a decision of the BI and not to perform any type of enforcement action. On Dec. 9th, this Board issued a written decision, in turn the BI's decision not to take any enforcement action. On Dec. 29th that written decision became final when no one appealed that decision, no appeal was filed. On Dec. 29th that decision became final. On Exhibit K on April 11, 2011, the own of Winthrop revoked building permit B10338 which had issued back in Aug. 2010, that's the building permit that's referenced in Exhibit D, the reason for the revocation of the decision from this Board. The order of revocation of permit B10338 issued on April 11, 2011, under MGL 40A Section 15, any appeal for this section 8 to the permit granting authority shall be taken within 30 days from the date of the order or decision when the decision was appealed. No appeal was taken. On April 20, 2011 it appears that Clearwire sought a building permit and put down a substitute replacement building permit because I assumed that was what they were doing since the initial building permit had initially been revoked. In the request for building permit, they request 3 panels and 3 dish antennas, that their request was denied by the Building Inspector, MGL Chapter 40A Section 15, any appeal on Section 8 shall be taken within 30 days from the date of the order of the decision. In the outline, what the zoning code Section 17.52.010 (C) where it says and talks about reason to obtain a permit, within 30 days of the decision, no appeal was taken by from the Town of Winthrop's denial of Clearwireless' request for issuance of the substitute or replacement building permit. On June 9th, well beyond the 20 days period, the denial letter issued on April 20, 2011, on On June 9th, well beyond the 20-day appeal period, Clearwireless filed the appeal application that is before you and application for special permit, request for a use variance, request for a dimensional variance. According to the zoning bylaws, the application was not timely filed. Depending to the Winthrop the zoning code section 17.52.010 (A) 3 a, the Board is empowered to hear and decide appeals and is authorized upon appeal a variance. There was no appeal filed, they came

here asking you for a variance, which you can only be issued by way of appeal. No appeal was filed. The filing of this application is well beyond the 30-day period commencing on April 20, 2011, when the building inspector denied their request for a building permit. In their application, if I can briefly address that, on page 2 of the application, it says, the applicant seeks to install and operate a wireless telecommunications facility consisting of 3 panel antennas, 3 BTS units, 3 back hauls antennas and 3 GPS antennas which is not fully represented to the BI when he denied back on April 20, because when the BI writes that the applicant requests a permit to construct a telecommunications facility consisting of 3 panels and 3 dish antennas. Seeing now that they are seeking to install more equipment than they had initially installed up there. In Exhibit N the requests for zoning enforcement was filed with the town once again on behalf of James Clark and Rachel Gray regarding Clearwireless' use of the water tower as a telecommunication facility also that same paper request for zoning enforcement filed with the town on behalf of James Clark and Rachel Gray regarding AT&T's use of the water tower as a telecommunications facility. Apparently, November 10th, a building permit issued by the town to AT&T, that equipment went up, the building permit issued, the equipment went up, and no zoning relief was ever issued. This is the kind of activity the abutters are seeking to prohibit. All this equipment is going up there and no notice is given at all to the abutters, it's clearly a change of use. Here they are asking for a change of use, a question that they have is, if you are changing the use as a water tower to a telecommunication facility for a telephone exchange, what will that do to the value of the property, it will then become the use will become a telephone exchange, it's a water tower. Has been, hopefully it will continue, they want to change it now to a radio tower. That holds several thousand gallons of water and we just allow it to be converted into a radio tower, it's serving a useful purpose in order to hold water and maintain water pressure throughout the town. A telephone exchange is not an appropriate use, a telephone exchange, is somewhat obsolete, it's a telecommunication facility that the town has permitted use for. I would ask that you summarily deny their application as the application was untimely filed and to the extent that maybe the special permit might be viable that the applicant can satisfy the pre-requisites necessary for this Board to issue a special permit. Thank you.

PM: Anyone else?

James Clark, 70 Faun Bar Ave. – I'm Jimmy Clark, I just have some pictures. We've been there about 5 years and when we moved in there the only antennas that were up there were the antennas from the police and fire departments. So that's what has transpired over 5 years. I just want to touch on a few points, first point is zoning, I don't believe that the use of the tower is helping make vision of zoning regulations and should permit that sort of construction. This is definitely in my opinion a telephone exchange we don't have switchboards any more so this is a whole new beast, and I don't think the town permits, there's no accessory use for that sort of use anymore. The second point, is for the

structure itself of the water tower, there a lot of antennas up there you can see already and people want more up there, we all know how windy it is up there, and the structural railing. We've already seen since we've lived there, one flew off the tower, the wind is substantial up there. I don't know if anyone is looking at that issue. I'll look out in that fall zone in my backyard, and I have 2 small kids and I have concern about that structural integrity of the tower. I've lived there for 5 years and my wife's grandfather lived there for 50 years and right before we moved in there was a panel antennas that got knocked down in the wind and was flapping against the tower so that kind of thing has happened before. So I just don't think that anyone has looked at the structural integrity of the tower. The third point is the RF ____, I know we've been down that road it doesn't mean that they get a pass, and they still have to show that they meet the FCC limits. The typical analysis I've done for customers in my line of work and it's typical of this sort of project. The question is not whether Clearwire can actually meet those limits by themselves; they have to show that they meet them with their antennas and all the other antennas that are around the tower, a combined effect. And simply put I don't see how that given the density of the antennas and the distance between the tower and residents in that areas how they can possibly meet that requirement and I don't think they have shown anything that they have or haven't. So that is something that has to be shown before you are considered a license. Don't take my word for it, this is picture that I've taken a few months ago of a notice on the water tower, a few feet from my house it says "Warning: Beyond this point may be an area that exceed limits of radiation." So this is the type of people that I am dealing with, when I brought this up to the town, that's what I got, they took the sign down, like that was going to solve the issue. This is why it's a special case, the reason is, with this many antennas and this many radios, and this many amplifiers, they typically are not in a densely populated residential area and you simply do not have the physical separations between antennas and the residences guaranteed they are going to fall in the right one. You simply don't have the physical separation. That point has been ignored and the other issue related to the RF interference between the emergency antennas on the tower, who's done that analysis to show us that's not going to effect the fire department and police antennas? There has been no analysis on __ this since we've been looking at it. I just want to reiterate for those who are new here. What's interesting about this whole thing is since we've through this process a few people have said...

DB: We can take this as evidence, I'm sorry; we can put it in the record. It's just not.

JC: Well, I hope you can live with it.

DB: Well, you know. I don't have any response. Thank you.

PR: I caught the expressions of some of the Board members when they saw pictures of all the antennas and what Jimmy did showing you that the answer of the town was to remove the evidence that it is injurious to the neighbors and now you know why there is a harbored mistrust of all of us. I can't say much

more. They could give a damn about any of these people or any of their kids. They're looking at the almighty dollar and they're thumbing their nose at all of us up there. And they're ruining this town that I grew up in and loved and raised my kids in and it's a disgrace.

PM: Anybody else? We've got one more and that's it.

SD: Despite the revocation of the building permit and despite the decision of this board back in December the equipment is still up on the tower. God only knows if it's being used. We asked for a cease and desist order to be issued, we don't even know what's going on up there. I don't even know if it's being use.

PM: OK. Thank you. Closing that part of it. Any questions from the Board?

DB: I have a threshold question as a jurisdiction for the Board and I'm just wondering if this is a question for counsel. Whether this is properly enforced now or whether you have to get a new denial letter, because if we render a decision even if it's in your favor does that open it up to collateral attack because we didn't have jurisdiction to hear it?

SL: I guess the question for me is when I pull the BOA application as I had the denial letter I was told that it was part of the application filing not necessarily a threshold question. Meaning that there's a lot of towns that when you go to the BI you use your plans and here's list of all the relief that I think you need. They're not necessarily appealing his decision you're just incorporating that as the application form much like you need to submit an abutters list you need to submit plans, how many so forth and so on. In this case, it wasn't much that we appealed his denial, we weren't trying to appeal his denial, we were trying to respond to his denial. If it's the practice of the Board that you treat that denial you want every applicant that comes before you that must be done within 30 days and you are requiring in compliance with section 15 if that's the case then we can return the application I can get a new denial and I can back before this Board with all the same issues again. If that the process for this Board then I would rather comply with the process for the Board if that's the way its been done, but the way that it was explained to me, wasn't that way.

DB: Let me just say this, historically that has been the process of this Board.

SL: Than I would rather do this I would rather ask to withdraw the application and get a new denial letter as soon as I get the new denial letter and I would re-file that the very next day.

DB: I understand that and what I don't want to do and this is subject to the rest of the Board is to render a decision either way on this if we don't have jurisdiction or its not the way that we typically do it I don't want this to be subject to collateral attack of our decision and make everyone go through the coast and expense of being here and getting a decision just to come back in here again and do it all over again.

SL: That's ok, I have no problem erring on the side of cautious and asking to withdraw the application, get a new denial letter and I will immediately re-file and then there will be no jurisdictional issue. To the extent that the Board has any particular pieces of evidence that we would like to address from issues that

have been raised by the abutters I would try to do that with the submittal as well. I can look at the structural issues to see if whether or not a structural report has been done. I respectfully disagree it's not treated as a telephone exchange and there is no provision for a wireless telecommunication.

DB: That's not better for the town.

SL: That would be a clear violation of Federal law.

DB: Right, I don't disagree with you.

SL: Clearly it has to be treated as something and it seems like telephone exchange.

DB: The Board has always considered it as a telephone exchange because not having something that is corollary that can be treated under the FTCA is allowing for this sort facility would make your zoning by-laws subject to attack everywhere and we would have no standing to have any sort of conditions to be put on these circumstances. So it's a telephone exchange, and the definition of telephone exchange can be read broadly enough under our code and in Webster's Dictionary I don't care which dictionary you pick up to include this as a facility. And that's how we've always treated it.

SL: OK.

PM: There are a couple of questions that I have and been raised by Attorney Donahue. Was that the antennas that have been up there and installed by you, are they in use?

SL: I'd have to check. I know that they're still there.

PM: Right, they're still there but are they in use?

SL: I'll get that later.

PM: Something that I'd be concerned about that was brought up here is about the structural integrity of that railing system that's up there. I know the tower has been painted recently there's a lot of rust to the tower, its been up there for 70-80 years?

RG: It was a 100 last year.

PM: 100 last year? OK.

PR: I was re-done in '98 Mr. Chairman; it was renovated and painted in '98.

PM: Ok, thank you. And I'm sure that there was a structural evaluation done then because of the rusting and the abatement and what it had to do to structure? But that was the actual structure itself and I'm not sure about the railing system up there and that would be a concern that I would have. Those two items are that I would have.

DB: My only question that I have and you touched on it but don't go into detail in your submission which I thank you for your detailed submission is just what other locations were considered as an alternative is the only question I have? I think procedurally the best course of action is to withdraw your filing.

SL: Then I would request to that and for the Board to withdraw without prejudice.

MOTION: (DARREN BAIRD) – To allow applicant to withdraw without prejudice and to seek a new denial letter so to procure any jurisdictional defects that may exist.

SECONDED: (BRIAN BEATTIE)

VOTED: ALL IN FAVOR

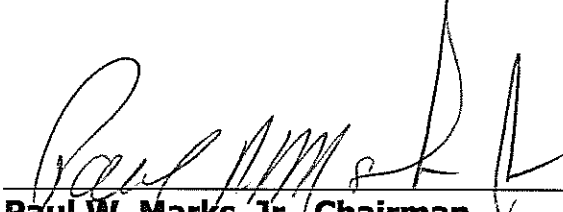
MOTION: (DARREN BAIRD): To approve minutes for last meeting.

SECONDED: (BRIAN BEATTIE)

VOTED: ALL APPROVED

MOTION: (DARREN BAIRD): Motion to adjourn meeting at 9:14 p.m.

SECONDED: (BRIAN BEATTIE)



Paul W. Marks, Jr., Chairman

7-28-11
Date