

ZONING BOARD OF ADJUSTMENT MEETING MINUTES OF 7-21-2011

Submitted by stoddard on Fri, 07/22/2011 - 8:35pm.

Preliminary

TOWN OF STODDARD ZONING BOARD OF ADJUSTMENT MINUTES OF THE MEETING HELD July 21,2011 MEETING CONVENED AT 7:00 PM

Members Attending: Beverly Power, Richard Betz, Maureen Meyer, Fred Ward, Ruth Ward, Alternates Nancy Robinson and Patricia Putnam. Also in attendance was Attorney Sam Bradley.

Correspondence: None

Minutes of previous meeting: Fred Ward moved and Ruth Ward seconded to accept the minutes of the July 6, 2011 meeting as presented, the board approved.

Old Business: Beverly Power reported that the board has had confirmation that the Accident Report CD by NH DOT (needed for site visit at Mr. Mike's) has been completed and was mailed today. The board will have it in the next couple days.

Fred Ward commented that the reports that he saw a couple years ago did not indicate site-specific pinpoints to the exact

location of such accidents.

New Business: None

Application for Variance: None

Application for Special Exception: 7:30 PM the board started their consideration to decide if it would grant a rehearing of the Special Exception for a Wireless Communications Facility to be placed on Melville Hill that was awarded to New Cingular Wireless, PCS (AT&T) under case # 2011 #4. Beverly Power opened the discussion explaining that the board based its decision upon a set of criteria that AT&T presented during its application.

Sam Bradley explained that this meeting is to consider if the board wishes to re-hear the AT&T application. He explained that the board is in receipt of 4 separate requests to grant a rehearing. He addressed the Jim Amrein's petition based on the board not considering the Community Planning Ordinance's (CPO) Article 1 - Purpose and Authority where it specifically calls for protection of the value of property and preservation of the rural character of the Town. Mr. Amrein also went on to say that the board neglected to inquire what guidelines that they should follow during the initial hearing process. Atty. Bradley pointed out that the CPO is lacking in criteria to examine during a Special Exception process. Where the applicant meets the criteria to allow the exception by the guidelines provided by

AT&T the board should have further considered guidelines that would preserve the Authority and Purpose of the CPO.

Mr. Amrein argued his point by citing 2 decisions by the Superior Court - Dow v. Town of Effingham where the court said the board can create standards or criteria in the exercise of its discretion which promotes the purposed and values of the town's zoning ordinance and Voicestream v. St. Croix County where the court concluded that the tower would be visible from one of the most scenic areas in the region.

Richard Betz asked if the board could take into consideration any historic or conservation areas, noting the purpose and authority of the CPO to preserve the rural character of the town.

Sam Bradley noted he advised it is up to AT&T to decide how they desire to fill the gaps in their service.

Fred Ward said AT&T never answered his questions about the technology needed to supply multiple v. a single tower.

Sam Bradley responded that he re-read the NY SMSA Ltd v. Town of Clarkstown

and realized his misinterpretation of the case and that multiple towers could be addressed if they do not require alternative technology.

Fred Ward said Steve Anderson had finally agreed that multiple towers do not require alternate technology.

Sam Bradley said AT&T should present other locations to get the same gap coverage with less impact on the Town's rural character.

He also advised that it is not the board's responsibility to seek information but to consider the information supplied to the

board, such as a jury can consider only the information presented during the testimony portion of the public hearings. If a rehearing is granted, it is necessary for AT&T and the opponents to present information to counter the applicant's position. Then the board needs to balance the applicant's application with the opponents' interests,

Nancy Robinson, after asking the Chair for permission to speak, related her 30 year background in the telecommunication field to advise that the AT&T cell site - structure is not necessary to break out the cost because AT&T could purchase from several suppliers, depending on the equipment necessary to provide the solution needed to supply the desired coverage. She noted that the technology needed is not the business of the board as the AT&T application asks consideration of the placement of the structure that will contain the equipment necessary to provide the gap coverage.

Ruth Ward said AT&T does not have to go with the perfect, ideal service but can go with a better location to supply acceptable service with less impact on the neighbors.

Sam Bradley's opinion of the alternative technology was in error and may be one reason the board erred. He reported he had re-read the Clarkstown case and therefore changed his advise to the board. He also noted that there are 3 other requests for rehearing and some issues addressed are repetitive and some bring up other issues and if a rehearing is granted - the group of residents requesting the rehearing are under an obligation to present their points of view. The residents who have requested the rehearing have to present proof of documentary evidence to

convince the board that they have a legitimate concern. Sam Bradley stated that he had discussed the threat of being sued with Beverly Power and she understood as Chair ~ either we were going to be sued by AT&T if we found against them, or the Granite Lake people who didn't want the tower on Melville Hill. She understood a decision couldn't be based on being sued. Fred Ward noted that a unipole was presented at the May 25, 2011 meeting and he wondered if the board could expect to see that structure in the presentation. He wanted to know if the history of the previous application would cause the board to be stuck with what was presented during the original application. Sam Bradley said AT&T couldn't be excluded from the Town of Stoddard, which would be illegal.

Nancy Robinson, after again asking the Chair for permission to speak, asked if the board could invite other carriers to provide service.

Sam Bradley said it might be a good idea to call other carriers and have them attend the hearings and maybe provide alternatives to the AT&T proposal. Each supplier would have to start at the beginning if they wished to be heard on a request to place a cell tower in town.

Fred Ward wanted to talk about another expert instead of Mark Hutchins, whom he considered to be less than helpful.

Sam Bradley said if a rehearing occurs, another expert might be an avenue to follow.

Fred Ward asked what issues the board should be careful with. Sam Bradley replied that AT&T can come in and object to the rehearing and that they told the board, during their first

presentation, that the single tower on Melville Hill is all they were interested in placing. Sam Bradley noted that the shot clock is still ticking.

Fred Ward moved and Maureen Meyer seconded to grant a rehearing.

All members of the board voted approval of the motion.

Nancy Robinson reported that her husband, James Robinson, is an expert in the field and has offered to provide his expertise to the Town, as a resident of Stoddard, at a nominal fee.

Fred Ward asked if he has a program to support gaps, etc.

Nancy Robinson said no but he has access to folks that do have that program and they would provide the information to him for the board.

Nancy Robinson also noted that she did not plan to sit on the board to hear the application so there would be no conflict of interest.

Sam Bradley said that any board member must present his questions through the chairman in order to have his questions addressed. Also that no discussion should be held with the applicants, consultant, board members or opponents except in an open meeting and it is unlawful to be emailing information to them; that is in violation of the Right to Know Law. He also said if AT&T institutes legal action, discovery would require emails that were circulated in violation of the Right to Know Law. Fred Ward insisted that was a correct method to expedite the process. Sam Bradley replied it was totally incorrect and he was to stop doing it!

The board members consulted their calendars and decided to

initiate the rehearing on September 1, 2011 @ 7:00 PM @ the Town Hall.

Adjourned: Richard Betz moved and Maureen Meyer seconded to adjourn at 8:55 PM, the board agreed.

Respectfully submitted,

Patricia E. Putnam

Secretary

These minutes of the Town of Stoddard Zoning Board of Adjustment have been recorded by the Board Secretary.

Though believed to be accurate and correct, they are subject to additions, deletions and corrections by the Committee members at the next meeting when the Committee votes its final approval of the minutes. They are being made available at this time to conform to the requirements of NH RSA 91-A:2.