

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
DECEMBER 02, 2009**

**Members Present:** Clayton M. Harrison, Chairman  
Gerald Coutinho, Vice Chairman  
Donna Lambert, Clerk  
Kendal Tripp  
Kimberley A. Fernandes, Alternate  
William Wyatt, Alternate

**Absent:** Christopher J. Graham

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA 02790.

\*Note: Ms. Lambert arrived at 7:16 PM and Mr. Tripp arrived at 7:10 PM

**Paul Costa & Carol Lortie – RE: Public Hearing on the application request for an Administrative Appeal of the Zoning Enforcement Officer's refusal of a Cease & Desist on 1344-1346 Main Road, units 1 through 4, under the Zoning Bylaw Article 2.4.2.0. The property is also known as Assessor's Map-56, Lots-10 & 10A.**

Mr. Harrison noted that this petition was presently in pending litigation. Mr. Harrison called for a motion to close this hearing.

**Motion** made by Mr. Coutinho to close this hearing. Second by Ms. Fernandes. **The Board voted unanimously in favor.**

At this time, an informal discussion took place between the Westport Conservation Land Trust members Peggy Stevens, Executive Director and Chris Detwiller, Conservation Specialist and their attorney, Dorothy Tongue and the Zoning Board of Appeals members. The discussion was regarding the property located on Route 177 slated for recreational purposes such as fishing, walking, hiking, etc. Attorney Tongue stated that this type of activity that is being proposed is intrinsic to ownership of the land. The problem that is being faced is the requirement of a Special Permit being granted by the Zoning Board of Appeals. The 1<sup>st</sup> right by law is that the owner is allowed to use their property. Only the owner can grant an easement to pass over property. The Zoning Bylaw controls uses that are more active. The bylaw does not contemplate the use of walking, fishing, etc. The bylaw under Article 1 presides over crowding not resources, etc. Under the Special Permit Article 2.5 the requirements for uses, etc. specify that my client go before the Building Inspector, who can issue a permit because there is no building on the property. Property owners rights allow this and my client is asking that the Zoning Board of Appeals consider this fact.

Mr. Coutinho stated that he did not hear Attorney Tongue read the bylaw. This bylaw was voted by Town Meeting and approved by the Attorney General. This is not something that the Zoning Board put together, we are merely here to apply the bylaw as voted by the Town.

Attorney Tongue stated that this bylaw has never been imposed before in Town, thereby no precedent has been set. Mr. Coutinho asked Attorney Tongue, if the Zoning Board were using her services, would she still feel that it applies.

Mr. Detwiller stated that Article 2.5.0 is like the front door for this bylaw and we are not doing anything on the property such as building, so this front door does not apply to our proposal.

Mr. Coutinho stated that the bylaw was created to protect the Town. The parking lot had to go before the Planning Board and when it did, an abutter came down from Boston to voice their concern. The bylaw protects both landowner and abutter. Once this project is made public, the parking will be increased, the fishing will take place and where will people go when they need the bathroom. Attorney Tongue stated that this proposal has already gone before the Planning Board to address these issues. Mr. Coutinho stated that is fine, but this board is the Special Permit authority.

Mr. Harrison stated that this bylaw has been around since 2006 and was created as a form of protection for the abutters. This bylaw may have been overlooked in the past but it would not be appropriate for this board to overlook it again. Part of the property is commercial and part of it is residential. The parking lot is located in the commercial area. Perhaps, Attorney Tongue can create an outline and draft a letter to be submitted to Town Counsel for an opinion.

Mr. Coutinho again stated that more access for the public will create a situation for trash, parking, bathrooms, etc. and this board may have to set hours and conditions. Mr. Coutinho stated that he originally found this section of the bylaw while doing research for a dog kennel.

Mr. Wyatt stated that the main thing is to protect the public. There are a lot of issues that need to be addressed. These types of developments need oversight.

Attorney Tongue stated that she would put together a presentation for the Zoning Board and would handle the rest of this matter with Town Counsel.

The Board thanked Attorney Tongue and the Westport Land Conservation Trust members for coming in.

**Metro PCS – Massachusetts, LLC – RE: Public Hearing on the application request for a use variance pursuant to Section 2.4.2.2 of the Zoning Bylaw from Article 9.2 (Section 9.2.1.1) because property is not located within telecommunications facilities overlay district and from Section 17.3.9 to permit a wireless communications facility to be installed on an existing wind turbine located on the property. The property is located at 1065 Horseneck Road, also known as Assessor's Map-75, Lot-9.**

Mr. Harrison called the hearing to order at 7:39 PM. Sitting on the petition, in addition to Mr. Harrison were Gerald Coutinho, Kimberley Fernandes, William Wyatt and Kendal Tripp. Present for the petitioners were Attorney Scott Lacy, Bob Watson representative for Metro PCS and Sameer Parakkavetty, Engineer for Metro PCS.

Attorney Lacy stated his client was seeking a use variance due to the location of the proposed project. The area of the project is due to a significant gap in coverage. This area is located off a private way known as Indian Spring Way. There will be a 12x18 ft. cape-cod style shed built to house the equipment needed for the communications facility. The proposal consists of 3 panels and 1 small GPS antenna banded to the wind turbine.

Attorney Lacy presented photo shots from different angles of the proposal.

Mr. Parakkavetty presented graphs showing the coverage, where it lacked and where this facility would provide coverage. Metro is new and now building the company up; in 2006 they acquired their FCC License. This proposal would provide coverage from Main Road out. Tripp's Boatyard does not include our coverage and no one else can use their tower because T-Mobile has exclusive use. Coverage areas need to overlap in order to be effective. There are no other available sites in the Overlay District to cover the gap and even with the wind turbine being approved, there is still a gap. We are also looking and still talking to the Methodist Church to try to fill in a gap there. The first aspect we looked at was rather than build a tower, we are trying to use an existing structure with very little impact to the area; the second aspect is that wind turbines and cell facilities are both passive use and both need structures to house the utilities. Once a month, 1 to 2

vehicles will conduct checks of the sites for maintenance. There is no sewer or water use associated with this proposal and attaching the antenna does not conflict with the wind turbine. The Telecommunications Act allows for competition and in using the wind turbine, it will not substantially derogate from the bylaw. This is a unique circumstance and utilizing the wind turbine is the best alternative. The height of the turbine is 65 ft. and allows for coverage of the gap without altering the host. We looked at the wind turbine located at Sytan's Nursery but they had no desire to look into our proposal and the we approached the property owner who had no interest. Mr. Watson stated that there is no written communication to that effect but a verbal discussion with the owner took place. Mr. Watson stated that even if a site were found in Dartmouth, it would not cover the gap in Westport.

Mr. Coutinho asked if there is any information showing evidence that the wind turbine can handle the weight capacity. Mr. Watson stated that the engineers have already checked with the engineers of the wind turbine and approval must come from the Building Inspector.

Mr. Coutinho stated one concern was, could a wind turbine be used for anything other than a wind turbine, if there was even considered when the bylaw was being written.

Mr. Wyatt stated that if this proposal was approved, it would be to a specific size, etc. supposing as technology moves along, you may need a larger device. Mr. Watson stated that with the technology today, items tend to become smaller not larger. Attorney Lacy stated the proposal is for 3 panel antennas, if any modifications are needed, they are usually 1" in difference in size. The proposed size is 54" long, 6" wide and 3" deep.

Mr. Harrison stated that in the bylaw, there is a clause for abandonment; suppose in 5 years Metro does not want this facility anymore and the Town must remove it. Attorney Lacy stated that a Removal Bond would be provided. The maximum distance of the bridge is probably less than 20 ft.; a GPS is used for clocking the location of the caller, with this being a requirement since 9-11. The antennas are painted to match the pole (host).

Mr. Harrison noted that no abutters were present and no objections were received; and seeing no further public input or comment or additional information from the applicant, the Board voted to close the hearing.

**Motion** made by Mr. Coutinho to close the hearing at 8:22 PM. Second by Mr. Wyatt.  
The Board voted unanimously in favor.

### **Discussion**

Mr. Coutinho stated this proposal was unobtrusive, better than constructing new towers everywhere they are needed; this is a good thing. Mr. Harrison stated the presentation set forth demonstrated a lack of coverage, a complete description was presented of what needs to be done, the structural integrity of the tower will be part of the permanent file and the Town needs to comply with the Federal Telecommunications Act.

**Motion** made by Mr. Wyatt to approve the application of Metro PCS to install a wireless communications facility on the existing wind turbine tower pole located at 1065 Horseneck Road with the following conditions: 1. A Removal/Dismantling Bond suitable to the Building Inspector must be provided by Metro PCS prior to installation. 2. The facilities and antenna must be constructed in accordance with the plans that were presented with the application. 3. Any future antenna size change of 6" or greater in any dimension than what is being specified, will need advance approval from the Board of Appeals. 4. The submission to the Building Inspector of the engineer's structural integrity report of the existing Wind Turbine tower structure, proving it to be able to handle the extra weight and stress. 5. The three-(3) antennas will be installed at the same

single level and must be clustered tightly to the tower pole (known as flush-mounted). It was noted that no objections were received from abutters at this hearing. Under the Telecommunications Act, the Federal Government favors this type of application in order to deliver cell phone coverage to customers; thus the hardship exists because there is no other possibility currently to cover the desired coverage area with a facility located within the Town's designated Telecommunications Overlay District. Second by Mr. Coutinho. The Board voted unanimously in favor.

This hearing ended at 8:37 PM.

#### **Consider**

1. Motion made by Ms. Fernandes to accept the Regular Meeting Minutes of 09-16-09, 09-30-09, 10-01-09, 11-22-09, 10-28-09 and 11-04-09. Second by Mr. Tripp. The Board voted unanimously in favor.
2. Motion made by Mr. Coutinho to set Wednesday, January 6, 2010 at 7:00 PM as the next Zoning Board of Appeals meeting. Second by Mr. Tripp. The Board voted unanimously in favor.
3. The Board took no action on a referral received from the Planning Board regarding 536 Old County Road.

#### **Correspondence**

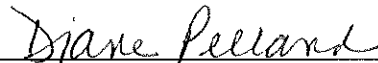
The Board received the following items but no action was taken. These correspondences were informational only.

1. An email received from Alan Charette, 19 Charlotte White Road regarding Excel Recycling.
2. A copy of a second notice by the Building Inspector to 42 Cleveland Street.
3. A copy of a cease and desist on all operations by the Building Inspector to Paquachuck Inn.
4. A memo from Kopleman & Paige regarding important recent decisions regarding lapse of variances and special permits.

**Motion** made by Ms. Fernandes to adjourn the Zoning Board of Appeals meeting at 9:15 P.M. Second by Mr. Wyatt. The Board voted unanimously in favor.


**Adjournment.**

Respectfully submitted,



Diane Pelland, Principal Clerk  
To the Zoning Board of Appeals

**APPROVED:**



Donna Lambert, Clerk