

**BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
DECEMBER 18, 2013**

Members Present: Clayton M. Harrison, Chairman
Christopher Graham, Vice Chairman
Gerald Coutinho
Gary Simmons
Larry Kidney
Heather Salva, Clerk
Also present: Ralph Souza, Building Inspector
Absent: Donna Lambert

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 with the reciting of the Pledge of Allegiance.

Public Hearing - New Cingular Wireless PCS, LLC (AT&T) – Tower Resource Management - RE: Applicant is seeking a Special Permit and Site Plan Approval for a Wireless Communications Facility, pursuant to Article 9 and Article 2, Section 2.5 of the Town of Westport Zoning Bylaw; a dimensional variance from the terms of Article 7, Section 7.2.1 (height) and Article 9, Section 9.2.2.3 (setback) pursuant to Article 2, Section 2.4.2.2 of the Bylaw; and in the alternative, to the extent necessary, all rights reserved, a use and dimensional variance pursuant to Article 2, Section 2.4.2.2 of the Bylaw, MGL Chapter 40A, and; in the alternative, to the extent necessary, all rights reserved, approval pursuant to the federal Telecommunications Act of 1996 for the construction, operation, and maintenance of a Wireless Communication Facility and such other relief as deemed necessary, all rights reserved. The location of the tower is to be 7 Olin Howland Way; also known on Assessor's Map 57, Lot 34A.

Hearing petition: Harrison, Coutinho, Graham, Salva, Kidney
Present: Attorney Edward Pare-Brown & Rudnick, representing AT&T
Michael P. Johnson, Site Aquisition/Zoning Specialist from TRM for AT&T
Alfred Ross, Karal Ranch, property owner/petitioner
Abutters present: Mark E. and Stephanie Pawlak, 1 Olin Howland Way
Wayne Sunderland, resident and Planning Board member
Jane Loos, resident and Historical Commission member
Peter Streng, 1818 Main Road
Francis McDonough, 1687 Drift Road
Robert Rondeau, 1681 Drift Road
Janet & Peter Robash, 2 Olin Howland Way
Robert A. White, 1705 Drift Road
David Cabral, 1 Tootell Way
Carroll Brownlee, 77 Masquesatch Road
Mary Kennedy, 1831 Main Road

The public hearing was called to order at 7:00 P.M. with Chairman Harrison reading aloud the Public Hearing Notice. Chairman Harrison explained the procedure for the hearing; first, the applicant would present their petition and then input would be taken from the abutters. Anyone wishing to speak must identify themselves by name and address.

Attorney Pare, representing AT&T (New Cingular Wireless PCS, LLC) stated that AT&T provides wireless communications and telephone services throughout the country. AT&T is proposing to use 7 Olin Howland Way for location of a new tower structure (a monopole). Attorney Pare then explained to the Board that the property owner, Mr. Ross raises racing horses on this property and the location of the pole is approximately 43 ft. off of the property line to the south. This tower, at this location, is being requested due to a gap in service. Attorney Pare present the following charts: C-1 (shows where the tower will be located); Z-1 (is an aerial view of the property); and Z-3 (shows the tower in the center of a 40'x40' fenced-in compound; the pole is made of steel and is 150 ft. with the antennas located at the top and included in the compound will be shelter for any equipment and backup generator. This tower will provide a 360° footprint for coverage; it will house 4 antennas on all 3 sides. The pole will be providing co-locators for competitors according to the Town's bylaws. AT&T needs this site because there are signal and coverage issues in this area. AT&T is trying to build overlapping coverage; the area will cover Main Road, Drift Road and Westport Point. Attorney Pare presented photos of a balloon float showing the view from Tootell, Olin Howland and Loretta Way; View 1- shows the driveway and barn; View 2- shows Tootell Way's line of trees and the need to be above the treeline; and View 3- shows Loretta Way and the proposed monopole drawn in. Attorney Pare stated that when AT&T comes in, they look for an area without structures. The Overlay District is located a couple of miles northwest of the site. No location within the Overlay District works; we looked at the Methodist Church but no coverage was provided; we need to get above the treeline so we need the 150 ft. monopole; yes, the pole will be visible but our customers are demanding service.

Mr. Harrison stated the Board has been provided with a summary of the relief being sought; it is an indepth application and the Board needs to explore each and every item included because if the Town is challenged, we need to have done our due diligence.

Attorney Pare stated the site was designed with the property owner and they went to the Zoning Enforcement Officer and filed for a building permit and procedurally, we were denied. Now, we are seeking relief under the bylaw as a Special Permit (but a special permit is only used in the Overlay District and the District does not work). We are confident we have shown that the Overlay District does not work and Westport can't deny our petition, they can deny our location. Attorney Pare stated the application also asks for a Use Variance; the law says we can fill our gaps in coverage and there are no tall structures for us to use so we need a pole; that is why, under MGL we have filed our petition. We have requested a Dimensional Variance because if we were in the Overlay District, 190 ft. would be allowed but we are outside of the district so we look to height restrictions in the area; we are also 43 ft. off the property line. Our goal is to provide some screening for coverage. Attorney Pare stated the property owner, Mr. Ross has spoken to his neighbors to the south of him and they have no problems with this. Under the bylaw, there needs to be 1 ½ times for a fall zone; that would be the 150 ft. setback from the southern property line. We can't move the tower at 150 ft. because it would interfere with Mr. Ross's activities and there is also the presence of wetlands. We are asking for a 107 ft. variance. The hardship for this petition is the gap in coverage area. The Zoning Board of Appeals has the authority to grant relief and according to the FCC, you must grant relief. In summary, Attorney Pare stated the application is requesting a Special Permit, a Dimensional Variance, a set-back variance and a site plan approval.

Mr. Harrison stated that Site Plan Approval is done with the Planning Board; and all other issues, if there are any, need to go before those particular boards such as Conservation for the wetlands, etc. Attorney Pare stated that the Board has been presented with letters from the Planning Board and the Historical Commission.

Mr. Harrison questioned the design of the pole. Attorney Pare stated it is a steel monopole using fiber optics inside the pole; it is designed not to collapse; the antennas need to be spaced, they are not flush-

mounted, this is a triangular mount. Attorney Pare stated that AT&T wants happy customers, a happy ZBA and would like to attract potential customers.

Mr. Simmons asked why the pole was located only 43 ft. off the property line; suppose the property is sold. Attorney Pare stated the wetlands could cause a problem; the abutter has no issues with the location; it is setback at the best location; also, there will be a variance granted and recorded and abutters don't make the decision, the ZBA does. This structure is built to withstand 110 mph winds; moving the tower 150 ft. puts in the middle of Mr. Ross's corral.

Mr. Coutinho questioned who owned the property. Attorney Pare stated Karal Ranch, LLC does, of which Mr. Ross and his wife are the principles.

Mr. Coutinho stated Attorney Pare mentioned that the Methodist Church was looked at; have any alternative sites been approached. Attorney Pare stated three properties were approached, the Quiet Place Tree Farm, 0 Tootell Way and 1665 Driftwood Road; all three had no interest. Mr. Coutinho asked about Tripp's Boat Yard; there is a monopole located there that looks like a flag pole. Mr. Coutinho stated he mentioned this pole, although it is small, but AT&T may want that for their information. Attorney Pare stated he would have an engineer look at it but it may not satisfy the need because flagpoles do have limitations due to taking all the gear and making it smaller, this causes the slots to lessen. Mr. Coutinho stated there is another cell tower located at 1065 Horseneck Road, it is mounted on a wind tower, again it is limited and flush mounted. Attorney Pare stated he will have it looked at. Mr. Johnson, Site Acquisition/Zoning Specialist from TRM for AT&T, stated that pole is pretty used up; but he will look, he believes it maybe a single carrier pole.

Mr. Coutinho stated he saw the test balloon because he lives across the river and he could only see it due to his distance from it; he took a picture of it and it did look very small. Mr. Coutinho asked what camouflage is used by AT&T for these poles. Attorney Pare stated we have three designs: the Monopine, which looks like a pine tree, it has fiberglass needles with metal branches; the Flagpole, which has everything located inside of the pole and a flag can be flown from it; and the Plain Pole which has internal gear and it is brown colored to match the trees around it. Attorney Pare suggested to the Board that they approve this pole with full carriers and they will work on the appearance. Attorney Pare stated the pole is 36" at the top and at 150 ft. it will not be invisible. Mr. Coutinho stated the bylaws call for three co-locators in order to reduce the number of poles in Town.

Mr. Graham asked what the minimum height would have to be in order to get a good signal. Attorney Pare stated 150 ft. and AT&T will be taking the top place; the next co-locator will be 10 ft. below and so on. Attorney Pare stated the Town's bylaw is restrictive due to height.

At this time, Chairman Harrison called for any input from abutters:

Mark & Stephanie Pawlak, 1 Olin Howland Way: Mr. Pawlak asked when picture #Z-4 was taken because his house is not showing and he has lived there for two years; this causes him to question whether this is an accurate reflection of the area. Mr. Pawlak stated he has a strong objection to this application. He moved to Westport for it's rural character; he has great neighbors and his concern is the negative effect in regards to visuals and property values; he is also concern with potential health issues. Mr. Pawlak stated he was not contacted by Mr. Ross and this is a concern because there are only three neighbors on this way. Mr. Pawlak asked if all the alternative sites have been exhausted; and what about Town-owned property being used? We already have a wind turbine at Chardon's property. We are a private way and 1753 Drift Road is located in an historic area. The usage of Olin Howland Way is great due to traffic such as 18-wheelers, etc. and there is already two businesses down there. Mr. Pawlak stated there will be increased traffic during the construction and there will continue to be traffic once

construction is completed for maintenance purposes by AT&T. Mr. Pawlak stated he did not believe this was the intended use of this subdivision. Mr. Pawlak stated that cell service is not great in this area and that is why he kept a land-line, specifically for that purpose. Mr. Coutinho asked what historic property was being referred to on Drift Road, he would like a clarification on Mr. Pawlak's knowledge of this. Mr. Pawlak stated he only has information that was on the field card from the Assessor's Office; he felt that history may have some value. Mr. Coutinho asked how far away was the (former) Chardon's property. Mr. Pawlak stated $\frac{1}{4}$ to $\frac{1}{2}$ mile as the crow flies. Mr. Coutinho asked if Mr. Pawlak saw the balloon test. Mr. Pawlak stated he did not see it. Mr. Coutinho stated to Attorney Pare, that a second balloon test maybe needed with everyone being alerted. Mrs. Pawlak stated again, with three carriers on one pole, there will be more traffic on this dirt road. Attorney Pare stated that in all reality, inspections are done once a year; the site is alarmed back to AT&T should anything go wrong and the only traffic will be roughly for 60-90 days for construction of the site.

Mr. Coutinho asked Mr. Ross, one of the uses on his property was horse breeding; what were all the other uses mentioned by Mr. Pawlak. Mr. Ross stated he raises standard racing horses. Mr. Ross confirmed that he lived in Dartmouth, MA but he is proud of his 20 acres in Westport. Currently, Jarred and Jackie White run his farm and that is the only use of his property. Mr. Coutinho stated training of police dogs has been mentioned as being conducted on your property. Mr. Ross stated that Officer Jarred White does have K-9's on his property and his wife owns a cleaning business; the ladies in his wife's employ gather there in the morning before work and they all leave together. Mr. Ross stated he has excavated three acres in order to put in grass paddocks and to create paddocks west of the barn but he has stopped at the wetlands line. The wetlands were flagged prior to his purchasing the property. He has stayed out of the wetlands and no engineers were involved in his clearing of his property. As for the wear and tear on the road, Jarred White takes care of the upkeep of the road by clearing it out and grading it. Mr. Coutinho asked Mr. Ross as to whether he was aware of the bylaws regarding allowed commercial uses by an owner on their property. Mr. Ross stated that Mrs. White was not running her business out of his property; she does not even store cleaning materials onsite.

Wayne Sunderland, resident and Planning Board member: Mr. Sunderland stated he did not recall any review of this application being done by the Planning Board. Mr. Coutinho asked if a Site Plan Review should be done by the Planning Board. Mr. Sunderland stated that it should have come for Site Plan Review due to the neighborhood. Attorney Pare stated he understood and yes, it has not been done yet, they wanted to get through with the ZBA first.

Jane Loos, resident and Historical Commission member: Ms. Loos stated she is also a resident of Westport Point. The MA Historical Commission addressed this matter to the EBI requiring the proponent to do a crane or balloon test to see the effects on anyone possibly affected. Mr. Coutinho stated the Board received a letter from the Historical Commission Chairman stating the proposed project was visible from the east branch of the Westport River; is this property listed as historical. Ms. Loos stated there are several hundred properties listed and the Point is historic but this property is not listed. Mr. Coutinho stated the letter says it is visible; do you or anyone recall seeing the test balloon. Ms. Loos stated no one said they saw the balloon, we were not aware; we relied on what the MA Historical Commission said and their reference.

Peter Streng, 1818 Main Road: Mr. Streng stated there was mention of potential renters in the future and yes, there will be and yes, we will see them and one tower will grow in appearance. Mr. Streng questioned other carrier's coverage areas; does coverage by Verizon overrule AT&T? The answer is no so there will be future applications from other carriers. Now, with the way technology is advancing, who will take care of the removal of these towers? Mr. Coutinho stated our bylaws refer to this.

Francis McDonough, 1687 Drift Road: Mr. McDonough questioned how high the wind turbine was at the Chardon's property. Answer: 100 ft. Mr. McDonough asked if the Board would approve the application. Answer: this is the first presentation; but the decision will be made by this Board based on the presentation. Mr. McDonough asked if this was a mandated approval. Answer: Technically, under the FCC mandate, service must be provided for to the public; there are a number of towers in Town, the ZBA is responsible for enforcing the codes such as setbacks. We have to produce a decision on all that is presented but the FCC overrules. We need to allow service; it does not have to be at this location but the applicant can appeal.

Robert Rondeau, 1681 Drift Road: Mr. Rondeau stated he did not want the tower; he does not want a problem if he wants to sell his property; also, he has a concern over health issues.

Janet & Peter Robash, 2 Olin Howland Way: Mr. & Mrs. Robash stated they were both in favor of the cell tower. We need improved service; right now, we have no reception. Why not run two balloons at the locations for the proposed location and at 150 ft. As for the road maintenance issue, we are all aware of the agreement for the four properties located on Olin Howland Way, we are all equally responsible to maintain the road. Mr. Robash stated that 90% of the activities is from 7 Olin Howland Way and Mr. White does plow the road but basically it needs refurbishing, especially with the maintenance of a cell tower.

Robert A. White, 1705 Drift Road: Mr. White stated that from his deck, he has direct view of the barn from the east where 60 ft. white oaks are located. He has talked with the William's and they have concerns also. Mr. White said he is looking for the least intrusive way to do this cell tower. With the current plan showing only 43 ft. from the side line, there must be somewhere else on Mr. Ross's 20 acres this can be located. Mr. Ross stated this area is accessible to power from Drift Road that is why it was settled on and because the abutter did not have a problem with it's location. Mr. White questioned what other plans were for the rest of the property. Mr. Ross stated that he is possibly buying three more acres from Mr. Howland to the south. Mr. Graham asked if there was any other site on this property to place the tower. Attorney Pare stated it is a 20-acre parcel, we will investigate the wetlands; if it is not wet and we can get 150 ft. we will try to make it work. Mr. White questioned why have bylaws if this cell is not in the Overlay District? Mr. Coutinho pointed out other towers located outside the district; Charlotte White Road, Horseneck Road, Cherry & Webb Lane and Highland Avenue. Mr. White stated there seems to be a problem imposing the commercial rules in a residential area; he suggested that setback areas have aesthetic views and that they are out of sight and out of the wetlands; the height should be appropriate in residential areas and perhaps less co-locators be allowed. Mr. White stated that according to the application, this site was selected so as not to interfere with Mr. Ross's activities on his property. Mr. White felt that is a problem between Mr. Ross and AT&T and not a valid concern in order to grant the variance. Mr. White continued speaking about federal law requirements and towns opposing them. He implored the Board to seek a balance that works and encourage exploration. Mr. Harrison stated the ZBA did not solicit AT&T; they filed an application and Westport is facing a lot of technology; we try to limit intrusion and we are finding that monopolies are replacing lattice towers. The designs have changed and now we are facing wind towers and solar. We are not the zoning police and sometimes we work with outdated zoning bylaws. These towers are mandated not to use microwave technology and with multiple antennas, there is a reduction in the number of towers. Mr. Coutinho stated that earlier Mr. White mentioned the bylaw should deal with aesthetics; tonight we must deal with the existing bylaw and he invited Mr. White to come up with language that could be universally applied because the ZBA was working with the Planning Board to develop bylaws. As a reminder, Town Meeting preferred this height in order to reduce the number of towers in Town. Mr. White stated this is not a telecommunications district; the bylaw applies to an Overlay District. Mr. Coutinho asked Mr. White to provide recent case law for more guidance; personally, Mr. Coutinho wanted another balloon test and an onsite of the property.

Carroll Brownlee, 77 Masquesatch Road: Mr. Brownlee stated he can't see the tower because he is in the middle of the woods but it can be seen from everywhere else; he spends time on Drift Road and the river, so it will intrude on his view.

David Cabral, 1 Tootell Way: Mr. Cabral stated he was never approached by the owners and he was never approached by AT&T but it did not matter because he did not want it but he did find that this pole is much more attractive than the older versions. Attorney Pare stated that Howland and Martin were contacted. Mr. Cabral said there are trees on the property approximately 60-70 ft. high but from his house, he can see above the treeline. His question was where is the hardship and why can't this be built in the wetlands. Attorney Pare stated at sea level (95 ft.) they located a tower but needed the 150 ft. to get coverage. Mr. Harrison stated the bylaw says 190 ft. maximum is allowed.

Mary Kennedy, 1831 Main Road: Ms. Kennedy stated that she has not seen any topographical maps for viewing. Attorney Pare then presented what maps he brought with him.

Attorney Pare gave a summary/response to all that he has heard tonight from the abutters.

- A. Road Maintenance – this is a private way, if AT&T causes any damages to the road, they will fix it.
- B. Traffic – once or twice a month for maintenance, one truck, one person.
- C. Property Values – the EBI does go out and NEPA-MA Historic contacts EBI. We have no objection to a balloon test. We will take all the photos; if anyone wants a special photo, contact me. AT&T will have a study of the facts regarding property values done.
- D. Health Issues – the ZBA can't take health issues into their decision making; the FCC has standards, which AT&T has to meet.
- E. MHC contacts the Local Commission in regards to proposals such as this.
- F. AT&T will look at alternative sites.
- G. Our engineer put a tower at the edge of Olin Howland Way, to which he can testify; and he did a test at 190 ft. The tests will show there is not enough coverage and some is redundant.
- H. The Town's bylaw is the problem; we have tried to stay within your bylaw even outside of the Overlay District.
- I. Site – No RFP's were sent out; the property owner has the right to do what he wants with his property; under the law, the site is available and it is up to Mr. Ross what area he wants to lease, as long as the site is feasible. AT&T will work with Mr. Ross to get the site that allows a 150 ft.

Attorney Pare stated the bottom line is that no one likes towers but they like cell service. We will be happy to work with Mr. Ross, the ZBA and the neighbors to make this work.

Mr. Coutinho stated he thought he heard the potential of a lower tower; what is the potential of lowering the height even if it means reducing the number of carriers. Attorney Pare stated AT&T needs 150 ft. but your bylaw requires three carriers; our engineers state that 150 ft. is the bare minimum. Mr. Coutinho asked if 130 & 140 ft. was ever considered. Attorney Pare stated yes. Mr. Coutinho stated that a previous applicant for a cell tower had agreed to the hiring of an independent engineer/outside consultant; how does AT&T feel about covering the cost. Attorney Pare stated that as long as the cost was reasonable and the person is qualified, there was no problem but he would check with his client.

Discussion continued regarding a balloon test. Mr. Sunderland stated that it would be beneficial to everyone is when the balloon test was conducted, the date and time be publicly announced. Mr. Harrison stated his concern with the test was it being conducted before alternative sites are looked at. Attorney Pare stated AT&T will do a balloon test but we need additional time to work with Mr. Ross in looking at alternative sites. Attorney Pare suggested this hearing be continued to some time in February.

Mr. Simmons asked if the wetlands area drops, what pole height will be needed. Attorney Pare stated they will need to see what the coverage is before making that decision.

Seeing no more input, as a recap:

The date/time/location of the balloon test will be announced and abutters will be notified and the additional material for next meeting is:

- A. An updated aerial view of the property.
- B. Update on alternative location(s) looked at.
- C. An engineered plan of the wetlands and topo lines.
- D. List of other properties that have been looked at/considered.
- E. Site Plan indicating the tree height (canopy).
- F. Current list of all uses on the property.
- G. Documentation of the willingness to allow the hiring of outside consultant.

Motion made by Mr. Graham to continue this hearing to Wednesday, February 26, 2014 at 7:00 PM, Town Hall. Second by Mr. Coutinho. The Board voted unanimously in favor.

Minutes

Motion made by Ms. Salva to approve the Regular Meeting Minutes of November 13, 2013. Second by Mr. Simmons. The Board voted 5 in favor, 1-abstention (Graham) and 1-absent (Lambert).

Other Business

1. The next meeting date for the ZBA will be Wednesday, January 22, 2013 at 7:00 PM on the petition filed for 929 Pine Hill Road.

Correspondence

1. No action taken, informational only.
2. The Annual Report will be submitted with up to date changes.

Motion made by Ms. Salva to adjourn the Zoning Board of Appeals meeting at 10:00 PM. Second by Mr. Graham. The Board voted 6 in favor, 1-absent (Lambert).

Adjournment.

Respectfully submitted,

Diane Pelland
Diane Pelland, Principle Clerk
to the Zoning Board of Appeals

APPROVED: Heather Salva (dp)
Heather Salva, Clerk of the Board