

**BOARD OF APPEALS
REGULAR MEETING MINUTES
OCTOBER 27, 2010**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Christopher Graham
Kimberley A. Fernandes, Clerk
Donna Lambert, Alternate

Absent: Kendal Tripp
William Wyatt, Alternate

Also Present: Ralph Souza, Building Inspector
Attorney Ilana Quirk, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 6:00 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

Executive Session

No Executive Session was held; it was deemed unnecessary. The Executive Session was posted in anticipation that it would be needed in reviewing the decisions for Excel Recycling and 42 Cleveland Street.

42 Cleveland Street Decision

Amendments: Page 1 – 1st paragraph: change off-road to off-road; change 2 truck and trailers to 1 truck, 1 service truck and 2 support trailers. Page 2 – 2nd paragraph, last line: change Member Coutinho asked to Discussion. Page 3 – 2nd, 3rd & 4th paragraph: change Rubella to Rebello; 9th paragraph, center of paragraph: insert /equipment after 16 vehicles; Page 4 – under Record of Vote: insert (Dissenting vote) after Christopher Graham and insert (Clerk) after Kimberley Fernandes.

Motion made by Mr. Coutinho to adopt the draft decision for 42 Cleveland Street as amended. Second by Ms. Fernandes. The Board voted 4 in favor, 1-opposed (Graham).

Excel Recycling Decision

Mr. Coutinho stated that this decision needed to be clear, should this matter go back to court. What needs to be made clear, is that this was an auto salvage business. Mr. Coutinho suggested defining by inserting “retail sale of auto parts that have been salvaged from vehicles”. Mr. Harrison questioned inserting the clarification throughout the decision. Mr. Coutinho stated he was asking for a clarification up front, describing the prior business. Attorney Quirk stated she would insert the wording on page 10 and any sub-findings.

Motion made by Ms. Lambert to recess the discussion of the approval of the Excel decision at 7:00 PM in order to open a scheduled hearing for tonight’s meeting. Second by Mr. Coutinho. The Board voted unanimously in favor.

8:32 PM – Continued decision deliberations. The review of the decision was completed at 9:10 PM. The decision will be re-revised by Counsel and emailed out to the members for review. If there are any changes they will be reviewed on November 3, 2010 at 6:00 PM.

Review and Corrections/Changes:

Page 1 – correct the spelling of recycling in title of decision. Insert members present on page.
Page 2 – A. vote needs to reflect 3 –2 vote; change Fernandes to Lambert.

Motion made by Ms. Fernandes to accept section “B” as revised. Second by Mr. Coutinho. The Board voted unanimously in favor.

B.1 – remove crusher/equipment and insert “baler”. Add #4 – the use of dumpsters

- (roll-off containers) was voted 5 –0. Add #5 – the use of the shearer must stop.
- Page 4 – 24. Delete “special”.
- Page 5 – 7. Delete “use” insert “enterprise”. 9. A new paragraph should be inserted defining parts and use. Tenants should be inserted.
- Page 8 – 34. Insert “exact” before amount; add “but enough evidence to show a major increase in scrap metal salvage so the primary use is scrap metal not auto salvage/auto parts sales.
- Page 9 – 13C. insert “major heavy duty metal cutting and baling”.
- Page 10 – 15. insert “in” and delete “is use”; last sentence delete “reasonable” and insert “as listed above”.
- Page 11 – second paragraph, third line delete “the”; under section B second and third paragraphs change 2009 to 2010.
- Page 12 – 4th paragraph move “since 2009” to after the word measures; 4A. insert “all” and remove by and crusher and change crusher to some and then remove the word crusher from the last line; also, insert “Board acknowledges a change in the industry equipment”.
- Page 13 – 1st paragraph insert “to” in the first line; insert under B. “. In addition, the Board found that the noise of the current, changed operations at the Property is more continuous in nature than the prior operations and this is detrimental to the neighborhood”; D. insert “and hazards” in the second line. Under record of vote, insert “clerk” after Kimberley A. Fernandes; correct clerk’s signature line name.

T-Mobile Northeast, LLC & Robert J. Desmarais - RE: An application request for variances and/or Special Permit. The applicant seeks relief from Article 9.0 in the form of a Use Variance; a Dimensional Variance under Article 7.2.1 and/or if applicable, a Special Permit under Article 9.2.1.1. Application is for wireless telecommunications facility outside of the Telecommunications Overlay District, to be located at 560 Highland Avenue. The property is identified on Assessor’s Map 5, Lots 10C, 11G.

Sitting on Petition:	Harrison, Coutinho, Graham, Fernandes, Lambert
Attending:	Attorney Ilana Quirk, Kopelman & Paige Attorney Francis Parisi, representing petitioner Robert Desmarais, petitioner Michael Johnson, Site Acquisition Specialist representing T Mobile Brian Eicens, Radio Frequency Expert representing T Mobile
Abutters:	Richard J. Rodrigues, 555-R Old Bedford Road Donald & Carol Beaupre, 652 Highland Avenue Robert & Doris Bedard, 648 Highland Avenue Gabriel & Etelvina, 640 Highland Avenue Kenneth & Mary Botelho, 26 Bentley Lane Gregory & Helena Macedo, 2 Bentley Lane

The public hearing was opened at 7:00 PM with Chairman Harrison reading the notice aloud. Attorney Parisi stated the property is not located in the Overlay District, which is why his client Robert Desmarais is applying for a use variance, dimensional variance and if necessary, a Special Permit. The proposed project is for a 170-ft. monopole for T Mobile to provide coverage in a gap of service. The equipment for the celltower will be at the base of the tower and located within a fenced-in compound. The proposed project will be located at the back of the lot away from Highland Avenue in an undeveloped area. There will be access to the tower through the salvage yard. The tower is 170 feet from the nearest abutter and 800 feet from all other abutters. There is a 100-ft. buffer zone from any wetlands. This will be an unmanned tower requiring a

once-a-month visit from a technician. The tower does not create smoke, noise or require lighting; it is FAA analysis approved. There is a 150-ft. vegetated buffer from any abutter. The installation of this tower will improve T Mobile's network. Attorney Parisi stated that study has shown that use of mobile phones is becoming the primary use of owners with less and less use of landlines. Statistics show that 50% of all calls in Massachusetts are made on cell phones. Attorney Parisi stated that cell sites track E-911 calls. At this time, T Mobile is aggressively updating every area. Attorney Parisi stated that cell phones are not just for calling anymore, they are like having your personal computer, television, etc. so the additional bandwidths are required. Presently, T Mobile has several sites in the Town of Westport. The installation of towers is not just for coverage only but for quality coverage and T Mobile is trying to fill gaps in the coverage area. Between Highland Avenue and Route 195, there is a gap area. T Mobile can't use the existing sites that they already have in Westport to fill in the gap; the company has gone out and tested but all the sites can't provide the necessary coverage. Attorney Parisi stated that space on the tower would be offered to competing companies if requested. Attorney Parisi stated that in reviewing the requirements of a Special Permit, T Mobile has met all of them. The tower will have 12 antennas at a height of 167 feet. The antennas will be candle-style and 4-ft in length. Mr. Coutinho asked how many carriers could be accommodated. Attorney Parisi stated at a minimum four companies. There will be no microwave connections and landlines can be attached; there is no accessory building, just a small cooling fan the size of a computer; there is no electrical generator and no permanent generator; there is no lighting. The compound area is basically 50 x 50 ft. with all remaining vegetation being preserved. As for backup, it is done by batteries. Mr. Harrison asked who owned the property. Attorney Parisi stated it was Mr. Desmarais. Mr. Coutinho stated the property is located in rural/agricultural and the property has a non-conforming use; would the installation of a cell tower now be considered an expansion of a non-conforming use. Attorney Quirk stated this was a new use not an expansion of the old one. This type of thing has been applied for before without a problem. Mr. Coutinho asked why the Board should entertain a variance, which stays with the land. Attorney Quirk stated that a variance could have a time limit attached; in addition, the Board needs to look at three questions such as the need, the height of the tower and the whether there is a gap in coverage but the Board needed to keep in mind, the ruling of the FCC regarding cell towers. Mr. Coutinho noted that the Town has allowed cell towers in a number of places including antennas on a wind turbine. Attorney Parisi stated that T Mobile has looked at the possibility of a wind turbine, but there is none of use in the northern part of the Town that can be used. Attorney Parisi noted that in the application packet, an affidavit was submitted to that effect by Michael Johnson. Mr. Johnson has attested to the fact that there are no tall structures but there are several that might have been used, they just did not make the coverage. T Mobile would rather not build towers, they would rather co-locate. T Mobile is looking for high structures in the area and they have also looked at land but found none suitable for a viable site. The site needs to meet several factors to be viable and also, finding a willing landlord is not easy either. Attorney Parisi stated that a height of 167 feet is needed to achieve the end results; Highland Avenue slopes up and there is a 50-ft. deep drop at this location but there is a very small area on this lot that is viable and that is why it is being placed where it is indicated on the chart. Mr. Coutinho stated that on the coverage map, given the drop off, there still is a substantial coverage to the east; but near Route 6 there is no coverage. Mr. Eicens stated that the testing showed at 170 ft. that was the best height for coverage and more gain. At this site, our coverage site may shrink. Attorney Parisi stated that from Route 6 to Highland Avenue, there is a 175-ft. height difference. Mr. Coutinho questioned whether two acres on Route 6 would be as viable as opposed to the location on Highland Avenue. Mr. Rodrigues asked at what address the tower was being built. Attorney Parisi stated 560 Highland Avenue. Mr. Rodrigues asked why 560 Old Bedford Road or another parcel had not been looked at; he invited T Mobile and the Board to take a ride and see his neighborhood

and how built up it is, see what the tower would impact. Mr. Desmarais stated that he owns four lots off of Highland Avenue but under state statute, it is considered one lot under one owner. Mr. Macedo stated he has had problems with the junkyard owned by Mr. Desmarais; he would like the Board to come and view his property and at Mr. Desmarais's property; now, he wants to add to his property. Mr. Macedo stated he has had Mr. Desmarais' equipment on his property. Mr. Bedard asked if Mr. Desmarais's proposal was away from Bentley Lane. Attorney Parisi stated yes. Ms. Monica Medeiros, representing her parents Gabriel & Etelvina Medeiros asked about the effect on her well being; any health effects that could be caused by a cell tower. Also, if this is a FCC ruling, what is their ruling on the effects of a cell tower and if this is a low-powered facility, how is it going to give enough coverage. Attorney Parisi stated that the ruling is there are no health effects due to the height of the tower and it is only a small area of coverage that is being looked at. Ms. Botelho stated the devaluation of her property and those of the abutters have not been taken into consideration; it is bad enough that the values of our houses have already gone down due to the market; she did not see anything in writing to that effect. Attorney Quirk stated there is a balloon test procedure that the Board can order be done to see what visual effect the tower would have on the neighborhood and also, the Board could consider a consultant on behalf of the Town for this test and asking that the petitioner pay for a consultant. Mr. Beaupre asked if this would effect his cable television. Attorney Parisi stated that it will not interfere with any other communications in the area; if it did, the company could lose their license. As for the balloon test, Attorney Parisi stated it was not done because it is not required by law; also, Attorney Parisi's client would not be adverse to an outside consultant as long as the cost was within reason. Mr. Coutinho stated he would like to see a consultant for independent verification, if the applicant is willing to pay the consultant fee. Attorney Quirk stated that a certain contract amount could be agreed upon. Mr. Coutinho asked what dates the balloon test could be conducted; and perhaps the abutters could be notified by handout, also, it could be announced on the Town's website and on the cable scroll for anyone interested.

Motion made by Mr. Coutinho to request a balloon test with pictures be conducted on Saturday, October 30, 2010 from 9:00 AM to 1:00 PM. Second by Mr. Graham. The Board voted unanimously in favor.

Motion made by Mr. Coutinho to seek the service of an outside consultant to confirm the need for a cell tower location off of Highland Avenue by providing additional backup detail; the cost of the consultant will be paid by the petitioner within a reasonable amount. Second by Mr. Graham. The Board voted unanimously in favor.

Mr. Coutinho noted for the abutters, that the Board is well aware of foliage and the effect it has on visibility; also, it must be mentioned that the FCC has laws that make it difficult for a board to deny a request without a solid reason; in the same token, applicants do need to be cooperative in these matters.

Motion made by Mr. Coutinho to continue this matter to Wednesday, November 3, 2010 at 7:00 PM. Second by Ms. Fernandes. The Board voted unanimously in favor.

The hearing is recessed at 8:22 PM.

Michael J. Wilding – 213 Main Road - RE: An application request for a Variance to maintain a sign on the premises for a remodeling business and wood shop and to display wooden furniture. Relief is sought from Zoning Bylaw Article 4. The property is located at 213 Main Road and depicted on Assessor's Map 67, Lot 17.

A request was received from Attorney Zajac, representing Michael Wilding to postpone the public hearing due to Mr. Zajac not being able to attend. No testimony was taken. The Board accepted the request.

Motion made by Mr. Graham to continue this matter to Wednesday, November 3, 2010 at 7:15 PM. Second by Mr. Coutinho. The Board voted unanimously in favor.

Correspondence

None.

Consider

1. **Motion** made by Ms. Fernandes to approve the Regular Meeting Minutes of July 7, 2010, July 14, 2010, July 28, 2010, August 4, 2010, August 11, 2010, September 1, 2010, September 15, 2010 and September 29, 2010. Second by Mr. Graham. The Board voted 4 in favor, 1-abstention (Lambert).

Motion made by Mr. Graham to adjourn the Zoning Board of Appeals meeting at 9:20 PM. Second by Ms. Fernandes. The Board voted unanimously in favor.

Adjournment

Respectfully submitted,



Diane Pelland, Principal Clerk
to the Zoning Board of Appeals

APPROVED:



Kimberley A. Fernandes, Clerk