

**BOARD OF APPEALS
REGULAR MEETING MINUTES
OCTOBER 28, 2009**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Kimberley A. Fernandes, Alternate
William Wyatt, Alternate
Christopher J. Graham

Absent: Donna Lambert, Clerk
Kendal Tripp

Also present: Ralph Souza, Building Inspector/Zoning Enforcement Officer

Chairman Harrison called the Zoning Board of Appeals meeting to order at 7:30 PM in the Westport Town Hall, 816 Main Road, Westport, MA 02790.

METRO PCS MASS, LLC – Public Hearing on an application for a Special Permit for relief from Zoning Bylaw 9.1.2 to install a wireless communications facility on an existing wind turbine at 1065 Horseneck Road, located outside the wireless overlay district. The property is also known as Assessor's Map-75, Lot-9.

Sitting on petition: Harrison, Coutinho, Fernandes, Graham and Wyatt.
Attending: Robert Watson, Metro PCS representative
Abutters: William & Jane Wisneski, 1107 Horseneck Road

Chairman Harrison opened the hearing at 7:30 PM with the reading of the Public Hearing Notice aloud.

Mr. Watson stated that he would like to request a continuance to amend the application or to be allowed to withdraw without prejudice in order for Metro PCS to be able to reapply. Mr. Watson stated he was not aware of Article 17.

Mr. Coutinho felt it would be a good idea, now that the hearing was opened to get the information out because there could be other issues to deal with. In the best interest of the applicant, it would be a good idea to get an idea of what is being sought.

Mr. Harrison stated this application was being sought to cover a gap in coverage by Metro PCS. Mr. Harrison noted that there were two letters received from William & Jane Wisneski, 1107 Horseneck Road and Peter Crooke Canning, 1103 Horseneck Road; both parties agreed on the issues they addressed in their letters. Mr. Harrison stated the problem that the applicant has encountered is that the Zoning Bylaw book he consulted did not contain Article 17 – Commercial and Non-Commercial Wind Energy Facilities and in particular, section 17.3.9.

Mr. Coutinho stated this was a critical piece especially with the request for three proposed antennas.

Mr. Harrison asked Mr. Watson to give his presentation to the Board.

Mr. Watson stated the proposal was to place a set of antennas as a flash-standoff mount. The mounts are 54 inches tall and accommodate one single carrier. Mr. Watson stated that Metro was not requesting to build a tower but would be attaching to an existing tower, wind turbine.

Mr. Coutinho stated in the Tower Regulations 9.2.2.5, the design calls for 3 separate carriers. Mr. Coutinho asked if Metro would be submitting plans to show that the (wind turbine) tower will support 3 separate carriers.

Mr. Graham stated that once a carrier is attached, the (wind turbine) is considered a tower.

Mr. Watson stated that if the Board wished, Metro would certify that the tower could accommodate 3 carriers.

Mr. Coutinho stated that if necessary, perhaps Metro would want to seek relief from 9.2.2.5 and any other necessary sections in their reapplication.

Mr. Wisneski, abutter, stated he owns 5 1/3 acres of land that overlook the wind turbine.

Mr. Wisneski stated he spoke with his neighbor and they both agree it is not a good idea. Wind turbines were meant to produce electricity and if this is allowed, three parts of the regulations will be affected. These facilities belong in the overlay district that has been setup. This is a way for commercial businesses to sneak in.

Mr. Coutinho asked Mr. Wisneski is he was aware of where he was getting his service from because there is a communications tower located inside the Tripps' Boatyard flagpole. Mr. Coutinho stated that people needed to know that the Federal Government is on top of towns and cities to allow cell towers, even in residential areas. The Town is hard pressed to not approve a cell tower; the other option is to allow the building of a tower instead of using the existing wind turbine. If there is a documented need for a cell tower, the Town will be hard pressed not to approve.

Mr. Watson stated the cell tower at Tripp's Boatyard is a stealth flagpole, which is in harmony to maintain the rural appeal of the Town. The pole was granted and is the exact same relief Metro is seeking. The communications within the flagpole is owned by T-Mobile and they took the 40 & 50-ft. levels. A stealth pole can't be attached because it is a single pole. Metro would love to co-locate on an existing pole that is already located at 1100 Main Road, which is owned by Metro, but there is a need to fill in our area.

Mr. Coutinho stated that normally, before the pole is built, the Board would look at fitting at least 3 co-locators on it or whatever fits.

Mr. Watson stated this request is for service to the southern tip of Westport. Metro would be attaching to, in essence, a singular monopole; unless examined very closely, a person would not know that there is an antenna there. Metro is trying to stay in harmony with the bylaw and the environment. As for ground equipment, it will look like a shingled small outbuilding, part of the Huntington Farm.

Mr. Wisneski stated that Sylvan Nursery has 2 wind turbines, out of the way of sight and less obtrusive.

Mr. Watson stated the coverage area could have been covered at Tripp's but Metro can't get on the pole so Sylvan's was approached but the results could not be achieved that were achieved at 1065 Horseneck Road. Mr. Watson stated he did not know the elevation difference but he did know the difference in distance was making a big difference for coverage. Mr. Watson noted that all wiring would be inside the pole/turbine. The co-location would consist of 3 panels which are 54" x 6".

Mr. Coutinho asked if Metro considered going to the Methodist Church for use of their spire. Mr. Coutinho stated that Metro might want to re-approach the church because there has been a lot of changes within the church.

Mr. Watson stated the church was approached and agreement among the church was divided.

Mr. Coutinho asked if the antenna was going to be in the radius of the spinning rotors of the wind turbine.

Mr. Watson stated the antenna will be 14 ft. from the rotors and will cause no disruption. Also, the steeple would have to be replaced with a fiberglass one, if the Methodist Church had agreed.

Mr. Wisneski stated that it sounded like Metro's equipment range is more limited than other companies.

An engineer for Metro PCS stated that Metro's equipment is not inadequate. Different megabytes depend on factors of height and geography; other carriers can go as far as Metro and vice versa.

Mr. Watson stated that on the turbine, Metro has no where to move higher due to the radius of the rotors.

Mr. Wisneski said he was concerned that there could be more vendors on this turbine and it turns into a christmas tree.

Mr. Coutinho stated that was why Metro was here before the Board, so the Board could hear the proposal and the Board can set the conditions.

Mr. Wisneski asked if Metro looked into an area in Dartmouth known as Allen's Neck.

Mr. Watson stated they did and they would lose the coverage area in locating there; short of proposing another Town, this would be the best location. Mr. Watson stated that Metro supported the Board's limiting to one carrier on the wind turbine. Mr. Watson stated that Metro, which is a new carrier just launched in February. This is an actual service. If another company wanted to co-locate, the Board would control that and the company making the proposal would be limited to coverage due to a height restriction.

Mr. Harrison stated that each antenna group is for a multiple frequency use.

Mr. Watson stated that the FCC limits to 3 frequencies.

Mr. Wisneski stated there is a restriction that is stated in the bylaw under Article 9.1.2. This sounds like a temporary bylaw that needs to be thought out.

Mr. Harrison stated a group developed the article, with a planning for basic regulations; there is a similar situation with the turbine bylaw.

Mr. Harrison said the applicant has asked for a continuance to resubmit an amended application.

Mr. Coutinho stated that due to competing sections of the bylaws, in his opinion, to continue to amend the application is not good. Notices have been sent to abutters and we would have to ignore the rule. Mr. Coutinho suggested a withdrawal without prejudice, so the applicant could review his options and the bylaws and is able to reapply with the correct provisions.

There was no comment received from Mr. Ralph Souza.

Mr. Watson requested a withdrawal without prejudice. Mr. Coutinho stated the Board would need a letter requesting this in writing.

Mr. Harrison explained that with a withdrawal without prejudice, the applicant could reapply with a 2-year time period.

Mr. Wisneski asked who would be notified; a wider audience perhaps who would be interested in this matter. Mr. Coutinho stated the abutters only but there is a public hearing notice that is advertised in the newspaper.

Motion made by Mr. Coutinho to allow the petitioner to withdraw without prejudice because of problems with the print of the Zoning Bylaw books and the need to address the Wind Turbine Bylaws as well. Second by Ms. Fernandes. The Board voted unanimously in favor.

PAUL COSTA & CAROL LORTIE – RE: Public Hearing on an Administrative Appeal of the Zoning Enforcement Officer's refusal of 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 & 10-A.

Sitting on petition: Harrison, Coutinho, Fernandes, Graham and Wyatt.
Attending: Attorney Daniel Perry, representing the applicants
Abutters: No abutters were present.

Attorney Perry stated this petition was filed one month ago; it was filed before the Zoning Board of Appeals amended the variance for Underwood Farms for varying crawl space heights and amended setbacks. Attorney Perry stated the point to the filing is based on the way the law applies to this property. There will be an appeal filed on the decision amendment. Attorney Perry stated this appeal will happen once the appeal period is over because the legislature changed the rules as to beginning construction according to MGL Chapter 40A, Section 11. Attorney Perry requested that the Board direct that a cease & desist be issued until the appeal is filed. Attorney Perry stated the Board was the Zoning Enforcement Officer in this case.

Mr. Souza stated that on August 13, 2009 a letter was sent to the applicant for a cease & desist, regarding the same units they are appealing.

Attorney Perry stated that units 1- 4 were not addressed by the Zoning Enforcement Officer, while units 9, 10 & 11 were addressed and satisfied.

Mr. Souza stated units 1 & 2 were okay, unit 4 – the crawl space was reduced by a wood floor and unit 3 – is still empty, vacant and needs to reduce the crawl space to the original decision or just wait until the appeal period passes. The legislature changed the rule that construction can begin before an appeal.

Attorney Perry stated his clients don't contest the decision, they are raising issue on the language for unit #3.

Mr. Souza said that unit #3 must comply with the original decision and once it does, an occupancy permit will be issued; as for units 9, 10 & 11 they are in the appeal process and no permits have been issued.

Attorney Perry requested that the Board continue this matter to their next meeting, pending the appeal.

Motion made by Mr. Coutinho to continue this matter to Wednesday, December 2, 2009 at 7:00 P.M. in the Westport Town Hall. Second by Mr. Wyatt. The Board voted unanimously in favor.

Motion made by Mr. Coutinho to adjourn the Zoning Board of Appeals meeting at 10:00 P.M. Second by Mr. Fernandes. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Diane Pelland, Principal Clerk
to the Zoning Board of Appeals

APPROVED: 
Donna Lambert, Clerk