

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
DECEMBER 01, 2010**

**Members Present:** Clayton M. Harrison, Chairman  
Gerald Coutinho, Vice Chairman  
Christopher Graham  
Kimberley A. Fernandes, Clerk  
Donna Lambert, Alternate  
William Wyatt, Alternate  
**Absent:** Kendal Tripp  
**Also Present:** Attorney Ilana Quirk, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 6:20 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

A delay in the start of the meeting was due to Members Graham, Lambert and Wyatt arriving late.

**Excel Recycling – RE: Review of Decision**

The Board reviewed the final draft of the Excel Decision. The following are the last revisions.

Page 2 – Under # 5: insert (Voted 5-0).

Page 3 – Under # 6: insert (Voted 5-0).

Page 4 – Under #16: delete “that” insert “than”.

Page 5 – Under # 4: delete “of”.

Page 9 – Under # 37: delete “Fernandes” and insert “Lambert”.

Page 10 – Under # 13C: **Motion** made by Mr. Coutinho to insert “and more continuous and cumulative” after the word greater. Second by Ms. Fernandes. The Board voted 3 in favor, 2-opposed (Lambert & Graham).

Page 11 – Under # B1: use “to adopt”.

Page 14 – Under # 4C: **Motion** made by Mr. Coutinho to delete “reduce and”. Second by Ms. Fernandes. The Board voted unanimously in favor.

Page 15 – Under #D: insert “the” before the word lawfully. Under “Record of Vote” delete “October 27, 2010 and insert “December 1, 2010”.

**Motion** made by Ms. Fernandes to adopt the revised Decision for Excel Recycling”. Second by Mr. Coutinho. The Board voted 4 in favor, 1-opposed (Lambert).

Attorney Quirk stated she would make the necessary revisions and send it to Ms. Pelland for filing with the Town Clerk.

**T-Mobile Northeast, LLC & Robert J. Desmarais - RE: Continued hearing on 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 a 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. Property owner is Robert J. Desmarais.**  
Present were Attorney Parisi, David Maxson, Brian Eicens (Tower Engineer) and Mike Johnson (Real Estate specialist).

Attorney Parisi stated he was very disappointed; the contract was to be sent to the consultant but yet he has had no response as to what is happening. Mr. Coutinho stated he was concerned about the scope of the contract. Attorney Quirk stated she has spoken with Attorney Parisi and Mr. Maxson. Attorney Parisi stated at the last meeting, the talk was about getting a consultant on board; a radio engineer was even present tonight to hear the results of the consultant. Attorney Quirk stated she apologized to the Board and Attorney Parisi, a number of items came up and she could not get to this but Attorney Parisi did speak with the consultant and Mr. Maxson is willing to be at the hearing tonight. Attorney Quirk stated she understood that Mr. Maxson did do a review; as for the contract, she did email the wrong one but that will be corrected. Attorney Parisi asked if one would be delivered to the Town Hall tomorrow. Consultant David Maxson stated that even without the proper contract, he was willing to continue at his own risk. Mr. Harrison stated he chose Mr. Maxson as the consultant for this project, the contract has not been signed but this is a public hearing and Mr. Maxson has stated that he is willing to continue at his own risk. Mr. Maxson stated that he has worked all over the Commonwealth; T-Mobile is a very reputable company; he is willing to be here and he is willing to hear all sides and willing to go forward in good faith.

Attorney Parisi stated that since the last meeting, a balloon test was conducted; the test results also include more information that what the consultant was seeking. Attorney Parisi stated that T-Mobile is trying to build a network and can't go on the existing locations in Dartmouth. The inventory of existing tall structures has been looked at but they don't provide the coverage. One mandate is to improve the ability to make a 911-call; it is also a proven fact that more people are using wireless instead of landlines. Last year alone on the T-Mobile network in this area, more than 7,000 calls were made to the E911 system; and that is T-Mobile only. Attorney Parisi then presented a coverage map depicted areas of the quality of a reliable signal represented by a dark green, the lesser quality of reliable signal represented by a lighter green and less than reliable area represented by a white area. The goal is to fill in the lighter green and white areas. The proposed tower will be to accommodate more coverage; the Town bylaw requires co-location and T-Mobile is very cooperative in this area, just like all other wireless companies. No other towers can be co-located in this area, thus T-Mobile was forced to install their own tower, at a substantial cost. T-Mobile must show a substantial gap in coverage and by looking at the coverage maps, it does exist. Mr. Coutinho asked about roaming. Attorney Parisi stated that most times, a person is not able to roam to another carrier, it is very rare when it does happen, that is why T-Mobile must fill in their own gaps. Mr. Maxson then reviewed the bylaw dealing with telecommunications towers. Attorney Quirk asked Mr. Maxson to address the facts that the Board was looking at, such as confirmation of a gap in coverage and is the height of the proposed tower needed. Mr. Maxson asked a series of questions in relation to the application and to give the Board a direction for his consultation.

Ms. Susan Camara, representing the Medeiros Family, 640 Highland Avenue, presented pictures to the Board, which were taken during the balloon test. Ms. Camara stated her parents intend to get counsel to represent them on this matter. Mr. Harrison asked if Ms. Camara could mark the pictures or copies of them before submitting them to the Board. Ms. Camara stated her parents were contesting the height and location of the tower. Attorney Parisi stated he believed the Town would prefer one strategically located tower rather than multiple towers all over Town. Mr. Coutinho stated that because our bylaw calls for inside the district, we don't have to follow the outside. Attorney Quirk stated T-Mobile does not have to co-locate with four others but the coverage could be less and the coverage map information could show perhaps two lower towers. Mr. Eicens stated that 200 ft. is the most height to be expected of a tower, any higher would cause problems.

Attorney Parisi stated that at 170-ft. federal lighting is not required; lighting is one of the more objectionable items for everyone. Mr. Johnson stated that even if T-Mobile were proposing a tower on Route 6, the site would still require a use variance, the same relief that is being sought for this site. Mr. Maxson stated it would be very important to get the maximum coverage chart, especially showing Route 6 and appropriate documentation to support no lighting required by the FAA. Attorney Parisi stated he would provide a coverage map for Route 6. Mr. Maxson stated this would rule out any question of where the tower should be; also, information on the design of the tower and confirmation of the class of the tower. Mr. Maxson questioned if there were any other existing T-Mobile towers in the area and any potential locative towers in the area. Attorney Parisi stated there is a signed affidavit from Site Acquisition Specialist Mike Johnson, Tower Resource Management, outlining the detailed process to identify other sites. Mr. Maxson stated that a drive data shows the scan test of T-Mobile. Mr. Eicens stated that a baseline test was done using an antenna on a vehicle. Mr. Desmarais stated he witnessed the balloon test and they used a site to measure the height and the picture was taken after being called on the radio. Mr. Maxson stated that his engineers said the balloon was at a useless height; suggesting not enough information was on the record to prove a need for this location. Mr. Maxson stated he had reason to be skeptical of the balloon test photos; he would like it in writing for the record. Attorney Parisi stated that could be made a condition and voted on tonight; he was also willing to submit Mr. Maxson's request. Mr. Harrison stated the Board was not ready tonight to take a vote. Attorney Parisi stated a radio frequency report has been submitted, a coverage map for Route 6, a Class III structural design affidavit by the Building Inspector and there has been no substantial evidence to make our reports false. Mr. Harrison stated there is a situation where a direct abutter is opposing this application; the Board as a service to the abutter needs to hear this application out. Ms. Fernandes stated that if this tower were not built, T-Mobile would seek to build shorter towers throughout Town to make the coverage. Ms. Fernandes questioned where other towers could be placed if this area is not approved, when you are saying there is no other suitable area. Attorney Parisi stated that each lot has been looked at and they will not allow a tower on an easement of a gas company or conservancy area, which means looking at placing towers all over town, maybe not as high but a number of them located closely together; this is why one location is better. Attorney Parisi stated that no spot is perfect and there is no spot where it can't be seen and no spot where it does not abut anyone; also, the questions of is it cost effective and is it buildable have to be looked. Mr. Maxson reminded the Board of the fact that the FCC issued a ruling that all applications must be decided within 150 days of filing when a Board considers coverage of the applicant and not the competitive service. Mr. Maxson stated that if this is the most appropriate site, mitigation could be done on this tower. Mr. Coutinho asked about the consideration for the design of the tower, could it be a hidden inside a flagpole, which has been done in this Town already; also, it was part of a Wind Turbine. Attorney Parisi stated it is a 170-ft. monopole and yes, T-Mobile tries to work with the Town, flagpoles can be done, the only issue is the flag themselves. There are issues with noise and wind plus displaying of the flag calls for lighting. This is an unmanned site with no one to take the flag down everyday. Mr. Maxson stated the flagpole design does not require a flag or gold ball at the top. On the flip side, there is a challenge with a flagpole design, and that is getting to the antennas. Attorney Quirk asked Mr. Maxson how long it would take to get a report from him so the next meeting can be arranged and the information digested. Mr. Maxson suggested two weeks. Items that will be addressed are confirmation of no lighting, clarification of the antenna test results, a tower design, a plot from 190 feet to the target area, a map on record showing the communications and unrestricted area and this information can be

provided in a PDF file format. Mr. Coutinho stated that at the prior meeting, a question was raised that this property already has a non-conforming use, could this be considered an expansion of that non-conforming use. Attorney Parisi stated he was not comfortable saying that adding a tower to an auto salvage is expanding a non-conforming use. Attorney Quirk stated she thought there would be an application for a finding and perhaps the application could be amended to reflect this. Attorney Parisi stated he would apply in addition to the use variances.

**Motion** made by Ms. Fernandes to continue this hearing to Friday, December 17, 2010 at 6:30 PM. Second by Mr. Coutinho. The Board voted unanimously in favor.  
Hearing is closed at 9:48 PM.

#### **Correspondence**

1. No votes or actions were taken; information provided to the Board was an update from legal counsel regarding Lortie v. Harrison, et al (ZBA and Underwood Farms of Westport, Inc. and McDonalds).


#### **Consider**

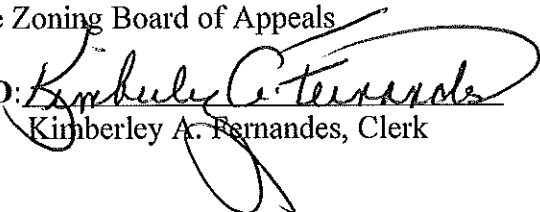
1. No votes or actions were taken on a Notice from the Mass DEP regarding an application for maintenance of an existing pier/dock at 35 Gadoury Street.

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

#### **Adjournment**

Respectfully submitted,

  
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Diane Pelland, Principal Clerk  
to the Zoning Board of Appeals

APPROVED:   
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Kimberley A. Fernandes, Clerk