

## **Leicester Zoning Board of Appeals Meeting Minutes**

Minutes of March 9, 2016

Continued hearing from January 20, 2016 and December 9, 2015 on the petition of Verizon Wireless of 900 Elm Street, Manchester, NH for a Special Permit to construct a 150- foot monopole telecommunications facility with associated antennae and equipment on property located at 30 Huntoon Memorial Highway, Leicester, MA.

Members present: David Kirwan, Chair; Jim Buckley, Clerk; Vaughn Hathaway, Paul Schold, David Orth

Alternate members present: Mary Moore, Dick Johnston

Meeting called to order at 7:30PM

Mr. Kirwan gave instructions on meeting procedures, explaining that the meeting was being recorded, to state name and address when speaking.

New Correspondence received:

- A letter dated March 8, 2016, from Forrest Stephen Trimby, 8 Sabina Circle stating being in favor of the cell tower proposal.
- Real Estate Consultants of New England Report submitted from Verizon. This is a document detailing their opinion in support of their analysis on homes sold near or in close proximity of cell towers in response to Mr. Leary's documentation previously presented before the Zoning Board.
- Memo from Michelle Buck, Town Planner explaining the Special Permit Criteria for HB-1 district apply to development in the RIB district because of Section 3.32.C. Also, the Planning Board's Site Plan Review process includes reviewing issues contained in the special permit criteria and attached was a copy of the Planning Board's Site Plan Approval Order of Conditions.

Mr. Kirwan said this continuation was a result of questions asked by the Zoning Board of Verizon. He explained following Verizon's presentation, the Zoning Board will have the opportunity to question Verizon further. He felt that the Board members did realize the abutters were very passionate in response to the cell tower. There has been an abundance of information submitted by everyone and he felt the Board did have a good understanding on what everyone's concerns were.

Therefore, following the presentation by Verizon, he asked from the audience, for only new information that they felt to be important for the Board to consider. He will open up discussion to a 15 minute window and after the 15 minutes, discussion will be closed to the public. At that point, the ZBA will take all information submitted into consideration and work towards some type of agreement.

Mr. Kirwan opened discussion to the applicant to address the questions raised by the Board from the February 17<sup>th</sup> meeting.

Mr. Victor Manougian, Attorney for Verizon Wireless introduced Keith Vallenta, RF Engineer, C Squared Systems, LLC; and Mr. David Tivnan, Vital Site Services, Inc./Verizon.

Mr. Keith Vallenta made the presentation to the Board regarding alternate sites and coverage. He did Power Point presentation showing site wireless coverage data on the area terrain map for the alternate Huntoon Highway site; the sector footprints with alternate sites; the existing sector footprint and sector footprints with proposed site.

The maps reviewed:

- The area terrain map with alternate Huntoon Highway site color coded as follows: dark blue, 650 feet; light blue, 700 feet; dark green, 750 feet; light green, 800 feet; yellow, 850 feet, orange, 900 feet; red, 950 feet; gray, 1000 feet and white, 1050 feet.
- The existing sector footprints color coded as follows: yellow, surrounding sectors; red, N. Oxford Alpha; orange, Leicester 2 Beta; blue, Leicester Gamma; gray, Leicester 3 Gamma.
- The sector footprints with alternate Huntoon Highway site color coded as follows: yellow, surrounding sectors; red, N. Oxford Alpha; orange, Leicester 2 Beta; blue, Leicester Gamma; gray, Leicester 3 Gamma and green, alternate Huntoon Highway site.

The alternate location on Huntoon Highway is 4400 feet southeast of the proposed site and sits 55 feet lower than the proposed location.

Verizon also researched locating on surrounding existing facilities in the area and found relocating 4400 feet further, was quite large in proximity to sites that were in need of additional change in coverage.

The existing sector footprint shown in blue, is an existing site in Cherry Valley, the red is covered by N. Oxford site and the white is where coverage is needed.

The sector footprints with the proposed site, shown in green, is the improvement in coverage and a lot of the white area covered by the green. The proposed site would help provide more coverage along Huntoon Highway and improve coverage to the north.

The sector footprints with the alternate Huntoon Highway site, shows less green and more of the white to the north. By moving the tower further south, would put it much closer to an existing facility in North Oxford having an overlap in coverage areas and taking away from an area where they are trying to improve coverage.

There are multiple sectors where there are problems getting coverage to those areas and the proposed site will help to provide coverage to those problem areas.

The proposed tower will help provide a higher quality of service and serve a larger capacity.

The area they are trying to clean up and provide better service to, is an area on the fringe of what this site will cover.

The footprint of the proposed site shows how coverage comes together and will better serve the area along Route 56 north and south, car traffic and residents.

There are multiple sectors, which is why the proposed site is where it is.

On the sector map with the alternate site, shown in green, based on the top height of the tower, in the area where they are trying to cover to the north it shows a substantial coverage loss. It was on the fringe to what the site would cover and they would not be gaining high quality of service. By moving the tower south ends up with overlaying coverage with that provided by the N. Oxford Alpha site.

Mr. Hathaway asked him to show the coverage maps again on the proposed and existing coverage areas and the alternate Huntoon Highway site.

He asked about the one area to the north, if it would be covered by antennas to the south.

Mr. Vallente said the shift of antennas to the south and seeing the sector footprint on that alternate site, one is directed north and one directed south. Upon a discussion with Verizon and looking at this in detail, it would be useless and redundant. They would not gain in the area they were trying to reach.

Mr. Hathaway said he was having a hard time understanding why the sectors would be redundant. We are talking about the ability to increase communications and from the maps there is some difference in coverage between the proposed site and the Alternate site, but it does not look significant.

Mr. Vallente said there wasn't an issue with sectors. The real issue has more to do with how to serve that area.

Mr. Hathaway said he couldn't really see a difference in coverage between the alternate site and proposed site.

Mr. Vallente pointed out that the proposed site would allow for much better coverage to the north, the west and south and would allow coverage to be much deeper in distance than the site further south. By using the site to the south, there could be a need for another tower.

Mr. Kirwan asked if that would change, if they changed the height of the tower at that alternate site marked at 186 feet.

Mr. Vallente said they could look at a higher tower, but additional height doesn't necessarily help as much to spread coverage. Mr. Kirwan asked if it was more to do with not wanting to have lights on a tower because of the extra work with the FCC and whoever else would be involved.

Mr. Vallente said they don't want to deal with the additional requirement for lights.

Mr. Kirwan said he thought the next step from 150, would be 200, since towers are built in 50 foot increments.

Mr. Vallente said there are certain towers that are in between.

Mr. Johnston asked where the alternate site was.

Mr. Vallente said it was included with the application package and shown earlier on the third map, with the Site Data, marked the Alternate Huntoon Memorial Highway Site.

Mr. Orth said on the maps for both the alternate site and proposed site, there seems to be a significant amount of white to the north. He asked if Verizon proposes, in the future, to build another cell tower to cover the white area.

Mr. Vallente said at this point in time, there were no plans for another tower.

Mr. Orth said the reason he asked was that it would seem Verizon would need a tower there anyway, with or without the proposed site. Therefore, he did not see a significant difference in the need for an additional tower when considering whether the proposed or alternate sites were suitable.

If Verizon were to put in an additional tower, there would still be a big white area, whether there's a tower in the proposed area or not.

Mr. Vallente said coverage information is determined by the conditions in the area and the conditions are poor, because of the hills and the terrain. One tower would not cover the entire Town.

Mr. Hathaway said he was trying to understand the tradeoff. The alternate site won't have a lot of homes around it and would have less of an impact. Although there might be greater coverage in some areas with the proposed site, with the alternate site, it might mean Verizon could still meet most coverage, but with less of an impact.

Mr. Vallente said the highlighted sectors to the north have compounded local interference. In addition to operating the sector to the south, it would also impact the sector to the north and the lower sectors as well. Moving the tower one step closer to the south would not improve sectors to the north; location and planning need to work together.

Mr. Kirwan said way back when this all began, Verizon determined that they needed to provide better service to their clients in this area.

Verizon hunted around in a number of different areas and this proposed area happened to be the bullseye on the dart board to maximize coverage for the need in this area. It also coincided with the finding of a person who owns property that would welcome the tower being installed on their property.

He asked what would have happen if Verizon could not find someone with land who was willing to allow the mono pole to be installed on their particular property and if Verizon couldn't hit the bullseye, would they have considered something further out.

Mr. Vallente said Verizon had a search range and 4400 feet further south was beyond the search range. To maintain their coverage objective, Verizon would have continued to look for the best alternative.

Mr. Kirwan asked for any further comments or questions from the Board.

Hearing none, he opened discussion to public, with a reminder that discussion will only be open for 15 minutes and he asked the audience to only speak to new information.

Mr. Ray Raboin, 12 Ryans Way read a letter in opposition noting his concern of having a cell tower in this area. He then read a memorandum regarding recusal of Chair that had been already noted in the previous meeting minutes.

*Mr. Raboin did not submit the memorandum into record.*

*-Clapping -*

Mr. George Leary, 487 Pleasant Street submitted an addendum to his proposed Findings #6 and a copy of a Supreme Court case argued on November 10, 2014 regarding T-Mobile South versus City of Roswell, Georgia. He then spoke on his same concerns that he had already noted at previous meetings. *-Clapping-*

Mr. Gregg Richardson, 478 Pleasant Street submitted 3 additional reports: 1) Tower Monetization Transaction Report; 2) AMT's U.S. Portfolio on towers; 3) What are American - Tower's credit ratings. He then spoke on his same concerns that he had already noted at previous meetings.-

*-Clapping*

Tom Buckley 76 King Street submitted and read a Brief reviewing his observations over the course of the hearings. The brief stated the same information that he had already spoken on at previous meetings.

*-Clapping –*

Mr. Robert L'Ecuier, 508 Pleasant Street said he has had a Verizon phone for many years and has never had a problem with a dead zone. He can't text with his phone, but he can make calls.

*-Clapping –*

Mr. Kirwan started to close the public discussion. Michael Shivik opposed this because he had something he wanted to add.

Mr. Kirwan explained that he was quite clear at the beginning of the meeting that public discussion would have a 15 minute window.

Mr. Shivik argued on having the right to speak.

Mr. Kirwan explained as Chairperson, he had the right to end public comment. He was sorry, but there had been adequate opportunity at prior meetings to speak.

Mr. Shivik argued on having the right to speak before a vote was taken.

Mr. Kirwan noted that a vote may or may not be take place and that was still to be decided.

Mr. Shivik continued arguing in disagreement.

Mr. Mark Wilson asked for the Board's indulgence to extend discussion and allow the people standing to speak.

Mr. Kirwan said he would have appreciated it if they had approached everyone with their prepared remarks asking to speak.

So given that, Mr. Kirwan agreed to reopen the public discussion for 3 minutes more

Mr. Michael Shivik 99 Stafford Street said he had switched over to Verizon and has not had a problem with dead zones where he lives. He spoke in opposition and felt an additional tower would be proposed anyway to cover the white areas to the north not covered even by the proposed tower.

*-Clapping-*

Mr. Mark Wilson 24 Mayflower Road spoke in favor. He noted the bad cell service the homes in the back area of the neighborhoods receive and would like to see an improvement in coverage. He asked the Board to grant the special permit.

Mr. Kirwan closed public discussion. He said the Board will now take all information presented into discussion and that the public was welcome to stay and listen to what will be part of the public record.

Mr. Manougian said the tower that was approved in 2001 on Huntoon Highway and the fact that no one has wanted to locate there in the last 15 years, shows why the tower was never built. In cases involving local zoning disputes over construction of cell towers, they basically say that a denial cannot be an effective prohibition on wireless cell service and would be in violation of the Federal Telecommunications Acts by the Federal Courts.

In a case filed on May 18, 2015 on an Industrial Tower and Wireless, LLC versus Zoning Board of Appeals of the Town of Falmouth, states in the Motion for Summary Judgement; the ZBA decision violates the Federal Telecommunications Act (TCA) on two independent grounds. First, the ZBA's decision denying was not supported by substantial evidence as required by the TCA. Second, that even if the ZBA decision was supported by substantial evidence, denying has the practical effect of prohibiting the provisions of personal wireless services in contravention of the TCA.

He said they have shown there is a significant gap in coverage and if the local Zoning Board rejects their application, it would be in violation of the TCA.

Mr. Orth asked if Verizon had contacted the church next door about the tower being placed on the steeple.

Mr. Manougian said no, they did not. As stated in an early statement from Reverend Lizewski, the diocese was talking about selling or closing the church and he felt this tower would present an obstacle in trying to keep the parish operating.

#### Under Board Discussion

Mr. Hathaway explained that before the Board can make a Decision, they need to give reasoning based on their findings, before a motion and a vote were taken, and that any decision cannot be based on peoples' emotions but rather only facts and what is allowed or not allowed by local, state, and federal bylaws and laws. There are specific findings the Board needs to discuss on Special Permit Decisions and whether or not it meets the criteria required.

*Mr. Kirwan asked for the crowd to refrain from talking inside the auditorium during the Board's deliberation.*

At this point, the Board discussed and made the following findings:

- That the proposed use meets/does not meet the special permit criteria in Section 5.5.03.2 (as required by Section 3.32.C), as specified below:

- a) Provisions shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property. The service level of adjacent streets shall not be significantly reduced due to added traffic volume or type of traffic in accordance with the most recent edition of the Massachusetts Highway Department Highway Capacity Manual;

The Board found that there would be no impact, as far as traffic.

*The crowd again was asked to refrain from talking.*

- b) The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities and other public facilities;

The Board found this was Not Applicable.

- c) The design of the project shall provide for adequate methods of disposal of sewage, refuse, or other wastes generated by the proposed use;

The Board found this was Not Applicable.

- d) The project shall comply with applicable environmental laws and regulations;

The Board found this did comply with all applicable laws and regulations, as reviewed through the Planning Board's Site Plan Review process.

- e) The proposed project shall be consistent with Leicester's Master Plan.

The Board finds that the project is not inconsistent with the Leicester Master Plan. There is no specific language in the Leicester Master Plan Regarding wireless telecommunication facilities.

- f) The project shall comply with all Site Development Standards required in the HB-1 District.

The Board found, as stated in the Planning Board's Decision Site Plan Approval that this project complied with the Site Development Standards set forth in Section 5.2.03; Site Plan Review for the HB-1 District. The plan provided by Verizon did in fact meet the special criteria.

*Mr. Kirwan again asked for the crowd to refrain from talking inside the auditorium during the Board's deliberation.*

- Findings related to conformance with Section 5.4, Wireless Communication Bylaw.

Mr. Kirwan read the Purpose of the Wireless Communication Bylaw; "The purpose of these regulations include minimizing adverse impacts of wireless communication facilities on adjacent properties, historic areas and residential neighborhoods, minimize overall number and height of such facilities.

Under the Provisions of Section 5.4 the Board found this tower would not;

1. Minimize impact on adjacent properties; and
2. Residential neighborhoods; and
3. Facility failure would have impact on adjacent properties;

There was no justification statement narrowing process that eliminated other sites.

Mr. Hathaway felt Verizon didn't give sufficient justification for this site being the only site to cover the gap in coverage. He thought similar coverage could be obtained by another site down the road that would have less impact. The fall zone, as described, would have the tower, if it were to fall, going onto abutting properties. Also this proposed site raised concerns with the tower having a visual impact to numerous residences within a short distance. He felt there wasn't a large enough buffer of trees that allowed masking the presence of a tower.

Mr. Buckley agreed the tower having a visual impact to neighborhoods and that Verizon didn't demonstrate their search for alternate site locations. He felt there could be an effect on the property values, but there wasn't any actual evidence submitted from either side that specifically showed that.

Mr. Kirwan said one of the requirements was for the applicant to demonstrate, to the satisfaction of the Board, that the proposed facility would have a minimal visual impact. He had no doubt that there was a need for a cell tower and felt it was needed now and would be needed in the future. Providing those services will continue to grow because the population are going to demand it.

As he stated at the very first meeting, he has lousy cell phone service, but there were some people who stated having no problem with their service. He has an awful problem with his and would benefit personally by having a cell tower there. Furthermore, he does not buy into the fact that a cell tower would reduce the value of real estate and did not see that demonstrated with any real data. Unless it was growing out of the backyard of someone's home, it may impact the value, but did not see anything here that would have a significant detriment.

What he does have a problem with is as he listened to the people who are adamantly against the cell tower because of how this will visually impact their neighborhood and the passion behind their words and feelings. He believes that the tower would have a negative visual impact to some of the residents and anything that will stray from all the positives seen with this, was the fact that Verizon did not successfully demonstrate there would be a minimal visual impact to the neighborhood.

Mr. Schold said his concern was that the tower would be in close proximity to the residential neighborhoods and they were the ones who were going to be affected. It states in the Bylaw; "Site Justification Statement including a description of the narrowing process that eliminated other potential sites".

He felt Verizon didn't go out and aggressively talk with other landowners. It sounded like to him that Verizon did their circle, hit the bullseye and it happened to be on the Morris property and Mr. Morris was willing to have the tower put on his site.

The purpose of these regulations was to minimize adverse impacts of wireless communication facilities on adjacent properties/residential neighborhoods and he was not comfortable approving because of that statement.

Mr. Orth said the Bylaws are the Board's guidelines and agreed the tower could be considered having a visual impact based on its proximity to the surrounding neighborhoods and felt there would be an impact to the property values. He felt that Verizon did not demonstrate any specific justifications for this site, as opposed to an alternate site down the road.

Mr. Johnston asked Ms. Buck regarding denial and town counsel review for decision



Ms. Buck explained

Mr. Hathaway explained that when it looks like the Board is considering a denial; it has been the Board's procedure to offer the petitioner the option of withdrawing their application.

Mr. Manougian said they do not want to withdraw and would like to move forward.

Mr. Kirwan asked for any further comments; hearing none, asked for a motion.

MOTION: Mr. Hathaway moved to Deny the petition of Verizon Wireless of 900 Elm Street, Manchester, N.H. for a Special Permit to construct a 150-foot monopole telecommunications facility with associated antennae and equipment on property located at the 30 Huntoon Memorial Highway, Leicester, Ma. There would be a visual impact from this location that cannot be mitigated because vegetation on other people's property and also that the fall zone falls onto other people's properties.

SECONDED: Mr. Orth – Discussion: None – VOTE: All in Favor

Instructions were given on the appeal process and the filing of this Decision with the Registry of Deeds.

MOTION: Mr. Jim Buckley moved to adjourn meeting

SECONDED: Mr. Orth – Discussion: None - VOTE: All in Favor

Meeting adjourned at 8:55PM

Respectfully submitted:

*Barbara Knox*

Barbara Knox