

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
November 20, 2017

Chairman Peter McNamara called the meeting to order at approximately 7:00pm.

The Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Joseph Passamonte, Tim Doherty, Jim Bergeron, Selectmen Representative Hal Lynde, Alternate Samuel Thomas, Alternate Richard Olsen, Alternate Bruce Bilapka, Planning Director Jeff Gowan

ABSENT: Alternate Paddy Culbert, Alternate Derek Steele

Mr. Thomas was appointed to vote until Mr. Montbleau arrived.

PLEDGE OF ALLEGIANCE

MINUTES REVIEW

November 6, 2017

MOTION: (Passamonte/Lynde) To approve the November 6, 2017 meeting minutes as amended.

VOTE: (7-0-0) The motion carried.

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NEW BUSINESS

Mr. Montbleau arrived.

PB Case#PL2017-00020

Map 31 Lot 11-33

Charles M. Kleczkowski, Jr. (Owner) American Towers, LLC (Applicant) – Spring Street Off - Site Plan Review for a proposed 150' monopole and associative facilities, also seeking Special Permit to access drive through wetland buffer.

Mr. Dadak read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Attorney Ed Pare of Brown Rudnick came forward to represent the applicant 'American Tower' and T-Mobile (co-applicant) FCC licensed service provider.

Mr. Doherty questioned if the FAA had been notified. Attorney Pare replied they would notify the FAA in due course; there is no notice required. They had done a study and the tower didn't have to be lit. Mr. Doherty

questioned if navigable airspace was considered. Attorney Pare replied it was. He questioned if the FAA had been notified or if the applicant intended to notify them. Attorney Pare replied no notice is required to the FAA.

Mr. McNamara noted that the matter was recently in front of the Zoning Board who scheduled a site walk for December 2, 2017 at 9am. He added that the site walk was an open meeting and abutters were allowed/encouraged to be in attendance. He stated the hearing was preliminary and the Board couldn't do anything on the case unless/until the Zoning Board granted the requested variance. He thought they could have a brief introduction of what the applicant wanted to do so the Board had some knowledge prior to the site walk. He noted that the Conservation Commission would also be attending the site walk.

To get a sense of the crowd and who would like to speak, Mr. McNamara inquired if there were any representatives present from the Dracut, MA government, Police, Fire or any public officials that had been designated to speak. No one spoke up or came forward. He stated the proposal was a development of regional impact and separate and apart from the notice requirements he felt the federal statute required significant notice, which is why many of the Towns in New Hampshire were noticed. He asked if there were any Pelham residents present who would like to speak on the plan and then he asked the Dracut residents to raise their hands. He discussed how the Board would conduct the hearing.

Attorney Pare provided a quick overview and explained that T-Mobile had a significant gap in the area. He said they had selected the parcel after searching far and wide for a parcel that was large enough to accommodate a cell phone monopole. He said everything within the area was residential, and unfortunately the allowed zoning districts business, industrial were nowhere near where the gap was located. The information provided to the Zoning Board include the listing of approximately twenty (20) parcels that had been reviewed. Attorney Pare stated there were no existing towers to co-locate on. Also there were no tall structures or water tanks in the vicinity to avoid the need to build a tower. He noted that T-Mobile needed a location at about one hundred twenty-five (125) feet above ground level. They were told that the Town of Pelham had a need for public safety gear and believed the Board had received a copy of the Fire Chief's letter to the Zoning Board.

Mr. Doherty understood that the applicant had done extensive research on the location and asked if they had looked into the piece of property the Town owned at the side of Gage Hill. Attorney Pare replied they spoke with the Fire Chief about a site, but didn't know if it was the same one Mr. Doherty was referencing. He said if he was given the address or location he could review his information and see if it was listed. Mr. Doherty noted if the Gage Hill property was used the abutters would all be the Town. Attorney Pare questioned how far away from the proposed site was from the parcel Mr. Doherty was referencing. Mr. Doherty believed it was approximately three thousand (3,000) feet away, accessed off Spring Street. Attorney Pare replied they did a site visit with the Fire Chief to Poplar Hill Road. Mr. Gowan noted that the Selectmen didn't have the authority to lease/sell any parcel of land without going to the ballot. Mr. Doherty replied there was a residential parcel in the center of the Town-owned land. Mr. Gowan wasn't aware of the parcel Mr. Doherty referenced. Attorney Pare suggested they could review the location after the meeting once they were given coordinates. Mr. McNamara understood that the applicant had reviewed approximately twenty (20) locations that were deemed unsatisfactory for one reason or another. Attorney Pare stated they could provide the materials to the Board that had been included with the Zoning Board application.

Mr. Bilapka stated there was a tower erected within the last year on West Street in Methuen, MA that was approximately four (4) miles from the proposed location being discussed and wanted to know if it had been considered. Attorney Pare replied four (4) miles would be well outside the area they were looking to cover. He said anything more than a mile and a half (1.5 miles) (depending upon terrain and elevation) wouldn't function.

Attorney Pare told the Board that T-Mobile had a need for a one hundred twenty-five (125) foot tower; in meeting with the Pelham Fire Chief, he requested that the height of the tower be extended up to one hundred fifty (150) feet. The applicant agreed that the top twenty-five (25) feet of the tower would be reserved for public safety. He understood there was a need in Pelham and was advised by the Town of Dracut that they had a more immediate

need; however, they didn't have anything in writing in support of the tower. He said if Dracut wasn't going to participate they could adjust their plans accordingly but keep it available for Pelham. Attorney Pare stated that the site had significant setbacks from abutting property owners. They heard some of the concerns of Dracut residents. They were proposing to use the access easement (for the applicant's property) at the end of a cul-de-sac off Ruby Road in Dracut. They've continued to have discussions with the property owner to see if they could find a way to access the site through another means; they don't have frontage on any public ways. He felt it would be best to discuss access once they have a better sense from the property owner of what they would do.

Attorney Pare displayed plans and highlighted the parcel's location and where the proposed tower would be located. He noted the property contained significant wetlands, which limited where they could put the site. He said they are seeking a Special Permit and would set a meeting with the Conservation Commission; however, he noted once they put a lock down on the location of the access road, the requested relief may change. He stated they were trying to be responsive to the neighbor's concerns. Attorney Pare showed a plan that depicted the pole itself, fence compound, equipment pad and elevation. He felt it was too soon to review the access drive because it may be moved.

Mr. McNamara read aloud the letter submitted to the Zoning Board of Adjustment by the Pelham Fire Chief dated November 23, 2017.

In looking at the vicinity map and some of the roads, Mr. Doherty said he mention the FAA for a reason and believed the proposed site was in the flight path of the historic landing of water craft onto Little Island Pond. For this reason he felt the FAA needed to be involved. Attorney Pare reiterated that they didn't need to notify the FAA, but would be happy to provide the Board with their study. He noted that they do put towers right near airports. He said as long as they were identified, they became part of the beacon. He felt it would be appropriate to provide the Board with the information provided to the Zoning Board, which included the information pertaining to the FAA.

Mr. Thomas commented it appeared the tower would be located in a low land and questioned why T-Mobile wasn't selecting a high point. He then spoke about the protection of the wetlands and felt the project should be held to a higher level, as was other projects. He stated there should be provisions for lightning strikes and questioned if the tower would be properly grounded to ensure there wouldn't be an impact to homes in the vicinity. Attorney Pare replied they weren't asking for anything different than anyone else with respect to the wetlands. He noted they were in the wetland buffer zones, but would not be crossing the wetlands, or in the wetlands. He stated they were trying to design an alternative access way that likewise would be in the buffer zone, but didn't cross wetlands. He pointed out that there would be erosion control, and very little impervious surface created. With respect to the height, he believed it was a high spot in the area where T-Mobile needed coverage. He noted it they moved less than a mile away, it wouldn't fill their gap. Mr. Thomas said it didn't make sense to put a cell tower in a low spot as opposed to locating it on a high spot. Attorney Pare replied it depended on the area was being covered, and added that's why they needed the height of the pole itself. He believed there would be more towers coming into residential zones because the highways and commercial zones had been covered. He said most of the sites he did were in residential districts. He said not every tall spot was ideal to cover certain areas. Mr. Thomas inquired if T-Mobile had done the analysis to ensure that there would be proper coverage in the location. Attorney Pare replied they had and submitted documentation for such to the Zoning Board. Mr. Thomas felt the Planning Board should be able to see the information. Attorney Pare agreed. He answered the question regarding lightning strikes, noting that the pole will be grounded in accordance with code, and the closest house is approximately 390ft away.

Mr. Doherty spoke about the height of the pole, comparing it to testimony Raytheon had provided during past meetings regarding microwaves going over homes, and not toward them. He understood the proposed height would broadcast microwaves and cellular signals into the sides of houses on Gage Hill. He felt they should find out if the microwave portion of the tower was necessary. He noted that the Board didn't need to accept the plan for consideration to be able to attend the scheduled (Zoning Board) site walk. Attorney Pare believed the

microwave component was coming (as a request) from the Fire Chief. He noted it would have to comply with all FCC requirements. T-Mobile uses a PCS signal to broadcast (and penetrate) buildings. He stated they had done an emissions study (included in the Zoning Board packet); T-Mobile will be at 1.2% of the FCC maximum permissible exposure limit. He said he couldn't speak to public safety and believed the Board could speak to the Fire Chief and/or whoever was designing the radio system. It was his understanding that microwave was used for their redundant backup system.

Mr. Bergeron stated he had a legal issue with the case and believed they had the 'cart ahead of the horse'. He believed the application was presently in violation with Article X of the Zoning Ordinance, given that the Zoning Board of Adjustment had not yet acted on the request. Being a former Zoning Board member, he recalled in the past when towers were allowed in residential districts with certain stipulations, and noted they were now only allowed in certain districts. He recently attended a legal seminar dealing with cell towers. The one thing clearly said during the seminar was that the Planning Board had to act within the Zoning parameters. He reiterated his belief that the Planning Board had to wait until after the Zoning Board acted on the request. Attorney Pare stated they weren't asking the Planning Board to act prior to the Zoning Board. He said they submitted the plan in good faith and felt it made sense for the Planning Board to attend the site walk and view the balloon test. Mr. Bergeron stated as the application stood, the Planning Board could not allow the tower in the area per Article X because the Zoning Board had not acted on the proposal. Attorney Pare agreed that the Planning Board could not approve the application, but felt they benefitted by receiving the materials and viewing the balloon test. Mr. Bergeron believed in the event of follow up litigation for or against the tower, it was best for the Planning Board not to proceed in accepting the plan for consideration. Attorney Pare disagreed. He said refusing to accept an application was problematic under the Federal Telecommunications Act ('FTC'). He said they were asking that the Board work with them. He said the Board will be able to review all of the evidence and make a decision.

Mr. Gowan stated that the application was complete for a Zoning Decision.

Mr. Doherty stated that the Planning Board didn't need to accept the plan for consideration to attend the site walk. He didn't feel they needed to 'start the clock' on the application. Attorney Pare replied the clock had started as soon as they filed with the Zoning Board. He said they were trying to be cooperative so the Board could stay within the parameter of one hundred fifty (150) days. Mr. Bergeron questioned if the referenced 'clock' was the FTC. Attorney Pare answered yes. Mr. Gowan knew that municipalities were compelled to approve co-location on existing towers in short order. He mentioned to the Board that prior to opening discussion to the public they would have to accept the plan for consideration. He said they had the option to continue the matter within the timeframe so the abutter notice doesn't have to start over. Mr. Bergeron suggested that the Board seek a legal opinion regarding the 'clock'. Attorney Pare stated the clock from start to finish for all permitting for a co-location was ninety (90) days; the clock for a tower one hundred fifty (150) days. He said the Town could set up procedures and processes; however it would have to be done within that timeframe in accordance with the FCC rules, which have been upheld by the U.S. Supreme Court.

Mr. McNamara suggested that the Board, without accepting the matter for consideration, date specify the case to a date after the site walk and December Zoning Board meeting. Attorney Pare recommended pushing the date to January. Mr. Gowan stated the first Board meetings next year were Thursday, January 4, 2018, and Monday, January 15, 2018. Mr. Lynde confirmed that the clock would be stopped if the Zoning Board denied the application. Mr. Gowan stated the whole application would stop.

There was no objection by the Board to date specify the matter to January 15, 2018.

The Zoning Board site walk is scheduled for December 2, 2017 beginning at 9am. Attorney Pare noted if there is inclement weather the balloon test would be postponed and rescheduled to December 9, 2017. Mr. Doherty spoke about the photographic requirements by the FAA and noted the timing of the balloon test (flight path over Little Island Pond) was important. Attorney Pare assured the Board that they would comply with all FAA regulations.

There was a question raised from the audience regarding the applicants right of access; however the individual did not come forward, as the Board was not accepting public input given they had not accepted the application for consideration. The response given by Mr. McNamara was that right of access is a civil matter with the applicant.

The case was date specified to January 15, 2018.

ADMINISTRATIVE

Zoning Workshop

Mr. Gowan stated that he received items the Board members wanted to speak about. Mr. McNamara understood the matters to be discussed were Elderly Housing (Article IX), Conservation Subdivisions, Workforce Housing and Wetland Conservation District.

Mr. Passamonte asked for the definition of workforce/affordable housing. Mr. Doherty replied it was contained in Article XV, which referenced RSA 674:59,I and 674:21,4. Mr. Gowan read aloud definitions contained in RSA 674:58. Mr. Passamonte questioned if 'affordable housing' referenced a small one-family home versus 'workforce', which he believed was apartment-style units. Mr. Gowan replied workforce housing could be individual houses. He said they had to be careful with the terms 'affordable' and the word 'workforce'. He said 'affordable' didn't mean low income. He explained that 'affordable' was part of the definition in 'workforce', but felt they would be smarter to stick with 'workforce' since it had its own section in the statute. Mr. Lynde questioned if they needed to provide more specifics regarding 'workforce' housing. Mr. Gowan replied at present 'workforce' was only addressed in the Conservation Subdivision ordinance. There was a discussion regarding the 'workforce' law. Mr. Doherty discussed how the ordinance could be amended to gain workforce housing. Mr. Bergeron said he would have to see the proposal in writing. There was further discussion and Mr. Gowan suggested once the Board came up with final language it would be wise to also review the Subdivision Regulations so everything matches.

Mr. Doherty read aloud his suggested amendments. The Board discussed his proposal. Mr. Gowan will create a draft for the Board to review.

The Board then addressed elderly housing. Mr. Lynde spoke about 307-49 and suggested the Board review Windham Terrace, which currently had a waiting list to get in. He said he would review the square footage of the floorplans. Mr. Gowan told the Board he would ask the Building Inspector to provide information for the next meeting.

Mr. Lynde asked that the Board address open space if it was contained in Zoning. Mr. Doherty replied they could include language requiring open space within Section 307-51. Mr. McNamara read aloud a letter provided to the Board from Attorney John Ratigan (Town Counsel), dated October 12, 2017 noting items the Board should discuss and clarify in the Subdivision Regulations. Mr. McNamara said the Board should consider counsel's suggestions carefully and how they would affect zoning. Mr. Doherty suggested an amendment to 307-51, requirements of a complex for open space.

Mr. Gowan understood that the Board was discussing potential changes to Conservation Subdivision Ordinance and Senior Housing Ordinance. He commented that it was potentially confusing to bring Senior Housing again in March, since it was on last year's ballot and brought back by special meeting. The Board will consider how they want to proceed. Mr. Bergeron felt the purpose of the meeting was to come up with basic points they might want to proceed on.

Mr. Thomas spoke to open space and questioned who was responsible for maintaining open space. Mr. Gowan replied in a conservation subdivision a homeowner's association managed/maintained those areas. He said the Town had been dealing with cul-de-sac situations by calling it 'open space', otherwise the maintenance would fall on the Town. Mr. Thomas questioned who had oversight over the associations. Mr. Gowan replied association documents were reviewed by counsel.

Mr. Gowan reviewed the proposed schedule for public hearings, noting that the last day the Board could hold a public hearing on Zoning was January 15, 2018. Mr. Passamonte suggested if members had any additional comments they could submit via email. Mr. McNamara cautioned the member to be careful of the open meeting law. Mr. Gowan told the Board he would put the things they discussed on paper and send it out to members for review. Mr. Bergeron didn't see the process as reasonably possible, because he felt the last thing the Board should do is rush.

Mr. Thomas voiced concern about houses being close together in conservation subdivisions with individual wells. He wanted to know how doing so would affect the neighboring well and septic. He wanted to know if there were any concerns for proper water supply, such as in the area of Sherburne Road. Mr. Gowan said as the Board speaks to wells, he noted that the Board of Health 'owned' the Septic/Well Ordinance/Regulations. He noted those regulations consider community well systems. He then discussed the rules concerning community wells. Mr. Bergeron felt the Town should consider adopting the State Regulations and provided Mr. Lynde with a copy of such. Mr. Gowan suggested also getting the Board of Health Chairman Paul Zarnowski involved in the discussion.

DATE SPECIFIED CASE(S) – January 15, 2018

PB Case#PL2017-00020 - Map 31 Lot 11-33 - Charles M. Kleczkowski, Jr. (Owner) American Towers, LLC (Applicant)

ADJOURNMENT

MOTION: (Montbleau/Bergeron) To adjourn the meeting.

VOTE: (7-0-0) The motion carried.

The meeting was adjourned at approximately 9:20pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary