

APPROVED
Town of Fitzwilliam
Planning Board Meeting
April 19, 2016

Members Present: Terry Silverman, Robin Blais, Paul Haynes, Matt Buonomano, Suzanne Gray, and Nancy Carney, Selectman's Representative.

Others Present: Earl Attorney Duval, Attorney, Blue Sky Towers, LLC, Steve Filipi, Robert Ford

Call to Order: 7:00 PM

7:00 PM Preliminary consultation: Jean Ibelle to discuss options for subdividing property located on Holman Road, Map 10, Lots 4, 5 & 6.

Mrs. Ibelle displayed a survey plat of her 382 acre parcel, noting that it was her father's original homestead, which he plans to keep intact. She wants to preserve the majority of the acreage, the hay fields, from being developed. She wants to retain the homestead including the house, barn and field for her use, and to create an access to the back fields, which she does not want developed.

The Board agreed that it would be good to preserve this open farm land. Gray asked about a conservation easement to protect it. Mrs. Ibelle said her goal is to subdivide the homestead and its field from the remaining hay fields to protect them from development. She does want a way to access the back fields from the homestead.

Silverman discussed the hammerhead lot, which would give a 50 foot wide access from Holman Road to the back fields. He suggested consulting a surveyor to determine how this could be accomplished. He added that 1983 date of the most recent survey meant she could petition the Board to waive the need for a new survey.

7:10 PM Preliminary consultation: Durval Elias and Juliano Fernandez, Turnkey Lumber Corp. to discuss plans to locate a manufacturing operation in the former Bard building on Route 12 N.

Mr. Elias and Mr. Fernandez described their proposed manufacturing business for the Board. They have locations in Gardner and Lunenburg in MA, and other sites from Maine to NY. They plan to gut the former Bard building with no structural changes to the interior or exterior. They will sell lumber and manufacture wall panels and trusses. They anticipate creating 40 new jobs in Fitzwilliam with 25-40 people working at any one time, depending on the work load.

Silverman clarified that all manufacturing would be conducted inside the building and that storage would be outside the building in the back. Blais asked if they did cement siding and they do, but only at the Lunenburg site. On site they will have designers, estimators and production teams. Currently they buy trusses from other suppliers, but intend to manufacture them on site going forward. Silverman asked if they use glue or other adhesives. They do not, their only byproducts are scrap wood. Gray asked about night lighting, telling them that Fitzwilliam has a night skies ordinance to protect the town's rural character. They said there may be lighting seasonally, since it gets dark early in the winter, adding they do not anticipate exterior lighting of the outdoor storage area since the forklift has a light.

Silverman asked if they had talked with the Fire Chief about this project. Carney said the Board of Selectmen has worked on this property for months and when these new owners begin their renovation the Fire Department will work closely with them. Carney added that obtaining a building permit for the renovation will trigger an inspection prior to issuing an occupancy permit.

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Silverman said he thought it would be a good fit for the town. Gray, as chairman of the Economic Committee, said she would like to write an article about the business in the Town newsletter. Silverman said they would need a site plan review to confirm what has been said tonight.

7:15 PM Preliminary consultation: Fred Blais to discuss subdivision options for property located on Rockwood Pond Road, owned by Lakeville Shores, Map 17, Lot 4. [Mr. Blais was not in attendance.]

7:30 PM Public Hearing. Blue Sky Tower Partners, LLC application for a conditional use permit under Article IV, Section 127-16.2 G. to install a multi-user Wireless Communications Facility consisting of a 125 foot monopole tower within a fenced compound located on property known as the Pinnacle, owned by Filipi Contracting, LLC on Upper Troy Road, Map 15, Lot 6-12, Residential, Rural and Historic Districts.

Silverman called the hearing to order, reading the posted notice. Board member Matt Buonomano recused himself as an abutter to the property under discussion.

Attorney Duval introduced himself to the Board. He represents his clients Blue Sky Towers, LLC and T-Mobile. He gave a brief outline of his presentation. He intends to give:

- 1) A procedural overview of several months of meetings with the ZBA, who issued a variance on April 7, 2016 to locate a cellular tower outside of the wireless overlay district
- 2) An overview of the installation of the proposed new tower
- 3) A summary of the research and efforts of the ZBA, the Town's expert consultant, and the applicant
- 4) A review the application for a conditional use permit and site plan review.

Attorney Duval began with the preliminary consultation with the Planning Board in August 2015 when Blue Sky Tower first introduced the then proposed siting of a cellular tower outside of the wireless overlay district, at 36 Webber Lane. They were sent to the ZBA for a variance at that time. They filed an application for a variance with the ZBA on October 21, 2015, and since then they have been working with the ZBA and the Town's wireless technology consultant David Maxson to meet the required coverage needs of T-Mobile and the Town. This work eventually resulted in an amended application for a new site located on the Pinnacle. On April 1st they submitted the amended application to the ZBA for a variance since this site was also outside of the wireless overlay district.

On April 14th, they met with the Historic District Commission, since the property they leased for the new site is in the Historic District. The HDC approved their application, noting they could proceed with the plan as presented.

Attorney Duval distributed plot plans for the installation. The Board reviewed them. Gray clarified that the road designated as Pinnacle View is actually the Raitto driveway. The Board looked at the 75' x 75' leased area, within which is a 65' x 65' fenced and gated compound for the monopole and equipment. The chain link fence is topped by three courses of barbed wire to prevent climbing and the gates will be locked at all times. The existing WiValley tower, which was determined not to be structurally sound enough for additional co-location sites, will be removed and the equipment will be relocated to the proposed new tower, placed in the topmost position on the monopole.

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Attorney Duval described the locations on the monopole, with WiValley and Public Safety equipment on top, T-Mobile in the second position with a 6 panel array at 116 feet. And three co-location sites 10 feet apart on the rest of the monopole. Blue Sky Tower will use the existing gravel road for access to the compound.

Attorney Duval noted that the T-Mobile licenses are in their application packet. He said that T-Mobile has been very active in NH, building out its network to satisfy license requirements.

Attorney Duval described the investigations that they did in conjunction with David Maxson and the ZBA to find the best spot to achieve T-Mobile coverage goals and for reaching Fitzwilliam residents in their vehicles and in their homes. He described how Mr. Maxson insisted at looking a two sites in the overlay district, one on Route 119 W and on Route 12 S to see if two towers could provide better coverage than one site outside the overlay district. He suggested that other sites in the overlay district be investigated for propagation potential. They then began to investigate sites outside the overlay district for propagation and coverage potential.

He distributed graphs and coverage maps depicting the various sites explored and the coverage each provided. He emphasized how Maxson urged compliance with the 1996 TCA in finding sites that provided coverage to close the gap in T-Mobile coverage and to locate the most feasible sites.

Attorney Duval stated that his client's criteria for a site are 1) is it leasable, 2) is it constructable, 3) is it zonable. He said Mr. Filipi will lease the 75x75 foot area using the existing gravel roadway for access.

Gray asked about the existing Saga Tower and Attorney Duval said it was found to be structurally unable to accommodate any more carriers and a qualified engineer determined that it could not be made more structurally sound. A letter to that effect is in the application.

Gray also asked if carriers located below the T-Mobile location on the new tower might not get the kind of coverage they need, since they will be at a lower elevation. Attorney Duval said any co-locators would have to prove that the site would not provide the needed coverage. He added that the ZBA decision referenced Section 6409 of the Middle Class Tax Relief and Jobs Creation ACT of 2002, which enables modifications of wireless facilities. Attorney Duval noted a carrier would have the burden of proof of feasibility and coverage. Attorney Duval read the ZBA decision with conditions into the record. (The decision is attached.)

Gray noted that a lot of the area covered by the proposed site is also covered by the Saga Tower. Haynes said the graphs indicate that there is less than ½ the coverage of the proposed site in part because it is at a much lower elevation, surrounded by higher elevations. Attorney Duval said that at one point they had even investigated buying and tearing down the Saga Tower but at the time the property ownership was in question and so it wasn't pursued.

Gray asked how the Board can be sure the new tower will be structurally sound for co-location. Attorney Duval said the tower will be built to support 4 carriers. He suggested that ProTerra, the engineering firm, could attend the next meeting if the Board wished.

The Board reviewed photos and photo simulations of the balloon test. Gray asked if the actual tower array could be superimposed on the photo sim tower, which now portrays the existing WiValley tower in the

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simulations. The WiValley tower has only the broadband and public service antennas, and therefore is not a realistic portrayal of how the proposed tower, with WiValley, Public Service and four additional carriers on it may be seen. Attorney Duval said he could provide that for the next meeting.

Silverman asked if anyone else wanted to speak to the proposal. Attorney Bentley, attorney for the Raittos, said he wished to speak in opposition to the proposal. He reiterated the argument he posited at the ZBA hearings, stating that in 2008 there was an agreement between WiValley and the Raittos regarding tower height and a court order in 2009, which ratified the agreement.

He said that if the Raittos cannot see the tower they will be fine with its location, however, if they can see it they will be in court to enforce the benefits accorded Mr. Raitto in the court order regarding tower height. Attorney Bentley acknowledged that the two representatives designated by Mr. Raitto, his brother and Mike Methe, were both at the balloon test and both testified that they could not see the balloon. However, he added they were outside the house not inside.

Silverman noted the proposed tower under review is on the same property but not on the same land as that leased by WiValley. Attorney Bentley countered that following the ice storm in 2008, which damaged the WiValley tower, the WiValley replacement tower was not erected in the same location. He added that the proposed tower, while sited 17 feet lower in elevation, at 138 feet is still taller than the agreement allows. He said the Raittos will be back in town on May 4th.

Silverman asked if another balloon test would satisfy Mr. Raitto, flown in the early AM or PM when winds may not interfere. Attorney Duval described the process of correcting for wind shear in the last balloon test. There was gusting wind that day, even though they flew early in the AM. The company doing the test deploys two people on the ground communicating by radio, one at the site and one driving around to photograph the balloon from different places in town. If the balloon is blown off vertical, a mechanism attached to the balloon tether can be activated by the person on site to bring it back to vertical. He emphasized that all photos were taken when the balloon was vertical.

Silverman asked Attorney Duval if another balloon test could be arranged. He responded that he could discuss it with his client. He added that he disagreed with Attorney Bentley regarding the impact the agreement between WiValley and the Raittos would have on the Blue Sky Tower proposal. He noted that neither Blue Sky Towers, LLC nor the property owner are parties to that agreement. He noted that Mr. Raitto has not lost any of his rights since the WiValley tower will be removed with equipment relocated on the new tower. He said that the land owner was not restricted from negotiating with another carrier.

There was some additional discussion, but no changes in positions. Attorney Bentley said his client intends to appeal the decision of the ZBA to grant a variance and they intend to file for a re-hearing of the ZBA decision made on April 7th and will go from there.

Silverman noted that in 2010 the ordinance was amended by voters to exclude Fixed Wireless Transmitter Tower Structures from the requirements of the Wireless Communication Facility Ordinance and Overlay District. A Fixed Wireless Transmitter Tower Structure is defined as a structure that supports an antenna that receives and transmits fixed wireless signals to provide subscribers with high speed (broadband) internet access

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capabilities. (Added by ATM 03-09-10 by Article 4.)

Attorney Bentley said he is hearing that Mr. Filipi is not a party to the agreement, and that WiValley is relocating its equipment to another tower, noting that WiValley leased land from Mr. Filipi. He added that the Planning Board did not appeal the 2009 court decision and for them to say now that the court order has no bearing is a problem.

Silverman said the Board is just trying to accommodate the Raitto needs to determine if a tower can be seen before building it. Mr. Filipi said he personally notified Mr. Raitto of the balloon test. Blais asked if Blue Sky Towers would be willing to do another balloon test. Attorney Duvall noted that Mr. Raitto's two representatives testified at the ZBA hearing that they could not see the balloon. He questioned that to do another balloon test for one person and if that one person could see the tower, is it enough to deny the application and could it withstand a TCA challenge in federal court.

Attorney Duval referred the Board to the Real Estate section of the application, which indicates that new buyer want cell service coverage and property is not devalued even when a tower can be seen. No evidence was offered by Mr. Raitto, other than "I may be able to see it from my second story window." Attorney Duval noted that the Saga tower can be seen from the Raitto home. He said they had done the best they can to provide the most coverage for the town. He added that if the town's expert consultant was present he would attest to the fact that this is the only feasible site to do that.

Silverman asked if Attorney Duvall and his client were confident enough to proceed without another balloon test. Mr. Filipi said that he was not aware of the agreement between WiValley and the Raittos until this year, posing the question "what rights can WiValley give away on my own property?" Mr. Filipi said he agreed to keep a buffer for the abutters, since the property is so large, adding that worse things could be built on the property.

Silverman moved, Blais seconded and the Board voted to continue the Blue Sky Towers, LLC hearing to May 17, 2016 at 8:00 PM.

Attorney Duval asked if the Board wanted him to bring the project engineer to the meeting to give a synopsis of the project and demonstrate the tower is solid. Silverman agreed.

Silverman notified the Board of the Eversource project timeline and that an attorney will review any proposed agreement between Eversource and the Planning Board. There was some discussion about notifying abutters that the Eversource landscaping plan would be implemented this fall. Staff will contact Eversource about this.

Minutes. The Board reviewed minutes of the 04/05/16 meeting. Blais moved, Haynes seconded and the Board approved them as written.

The meeting was adjourned at 9:30 PM.

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