

APPROVED
Town of Fitzwilliam
Planning Board Meeting
July 19, 2016

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

Others Present: Eversource Team: Attorney Allwarden, Lisa Kavarnos, Bonnie Kurylo, Jim Jiottis, Joe Purington, Tracy Tarr, GZA; Dana and Cheryl Pinney, Robert Ford; Blue Sky Towers Attorney Earl Duval, and Mr. and Mrs. Filipi, and Keith Johnson.

Call to Order: 7:05 PM

7:00 PM Public Hearing continued. Eversource (PSNH) application for a conditional use permit for proposed wetland impacts within the Wetlands Protection Overlay District, Fitzwilliam ordinance Section 127-16.1, D.4., to co-locate the new Q166 transmission line with an existing line and install poles in a utility corridor; and associated application for a site plan review of this corridor and existing substation, including a sound study report and landscaping plan.

Silverman updated the Board on the work session held on July 12, 2016. The Board had copies of the notes taken that night. He added that the group had finalized language for the Notice of Decision, which was based on a draft Memorandum Of Understanding (MOU) between the Board and Eversource. The Notice of Decision is the document to be signed by all parties. The MOU was never signed by either Eversource or the Town, but most aspects of it were incorporated in the final Notice of Decision as agreed during the work session.

Two typos in the Notice of Decision were corrected – spelling of Eversource in one instance, and removal of a duplication of a phrase in another. The signed copies of the Notice of Decision contain these two typos. Gray also questioned the meaning of the Notice of Decision, paragraph 8, referring to the Site Evaluation Commission. Mr. Ford said it meant that the SEC cannot trump the town's authority.

Silverman asked if there were other questions regarding the “Notice of Decision in the Matter of the Application of Public Service Company of New Hampshire dba Eversource Energy to Construct and Operate a New 115kV Transmission Line Q166 between the Eversource Monadnock Substation in Troy, NH and the Eversource Substation in Fitzwilliam, NH.”

Hearing none, he asked the Board to review the **Notice of Decision: Conditional Use Permit** under Chapter 127-16.1 D of the Town's Wetlands Protection Overlay District ordinance, for the construction of the 115kV transmission line, known as the Q166 line, and concomitant mitigation plans within the wetlands and buffer zone. Tracy Tarr, GZA, noted that the total permanent impact in the WPOD is less than first measured at 436 sf. It is now 412 sf. The Board reviewed the document. Silverman moved, Gray seconded and the Board voted unanimously to approve the Conditional Use Permit, including all conditions as stated in the Notice of Decision.

The Board reviewed the **Notice of Decision: Site Plan Review** under Chapter 219-6 for construction of the 115 kV transmission line, known as the Q166 line. The Board reviewed the document. Silverman moved, Gray seconded and the Board voted unanimously to approve the Site Plan Review, including all conditions as stated in the Notice of Decision.

Mr. Ford asked if the proposed substation sound wall plans will be presented to the public. Silverman noted that the Board has the preliminary plans, and as soon as final plans are available they will be presented to and

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reviewed by the Board in a public meeting. He said no further meetings on the sound wall are planned.

With the Board's concurrence, Chairman, Duly Authorized for the Board, Terry Silverman and Vice President-Electric Operations, Duly Authorized, Joseph Purington signed the "Notice of Decision in the Matter of the Application of Public Service Company of New Hampshire dba Eversource Energy to Construct and Operate a New 115kV Transmission Line Q166 between the Eversource Monadnock Substation in Troy, NH and the Eversource Substation in Fitzwilliam, NH."

Minutes. The Board reviewed minutes of the 07/05/16 meeting. Gray moved, Parker seconded and the Board approved them as written. Buonomano abstained as absent from that meeting.

Preliminary consultation. Keith Johnson asked to speak with the Board, representing Michael Daveney. They are purchasing the Mayer building at 218 Route 12 N, across from the Transfer Station and plan to operate an auto body and collision repair service on the site. The Board determined that the use was an allowed use in the Light Industrial District, under Chapter 127-11-T allowing a "motor vehicle repair or body shop."

Silverman said the next steps are to apply for a site plan review to discuss safety, materials disposal, general operations, parking, outdoor lighting, etc. Mr. Johnson said they plan to do a lot of brush and tree cutting after they close on the property to make room for parking in front and to create a fenced area in the back to store wrecked vehicles awaiting repair. Silverman said the site plans must be very specific about operations and they must comply with state regulations. A public hearing will be scheduled following submission of the site plan application. Carney said she would be at the public hearing, to discuss safety issues and review the plans. Parker noted that disposal of fluids and hazardous materials is critical.

Mr. Johnson asked what they can do prior to getting site plan approval. Silverman said they can do tree work, with an intent to cut permit from the Town, and can get a construction permit and sign permit for allowed work on the building. A public hearing will be scheduled for the first meeting in September, Tuesday, September 6, 2016.

8:00 PM Public Hearing continued. 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 Filipi Contracting, LLC on Upper Troy Road, Map 15, Lot 6-12, Residential, Rural and Historic Districts.

Attorney Duval began by stating that he had reviewed the Board's proposed indemnification language with his client. He said the client was "not excited about it." Attorney Duval researched NH state law regarding municipal liability and discussed his findings with the Board. He wanted to share this information because it indicates that indemnification language is not necessary.

Attorney Duval reviewed findings in the Hurley v Hudson case before the NH Supreme Court in 1972. He also discussed municipal law in NH, citing an article by Charles Bauer regarding NH RSA 507-B. He submitted these items to the Board to demonstrate that the Board is shielded as it exercises its discretionary functions in making decisions.

Silverman asked if the indemnification clause is left in the Notice of Decision, would Blue Sky Towers pull out.

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Attorney Duvall said the insurance company would not allow the clause. He said there is no contract between the Town and the carriers on the tower, and the indemnification is an unreasonable condition, adding that Blue Sky Towers would appeal. He said his client cannot see any liability for the Town. The client carries commercial liability insurance, and unless it is some event the Town causes, the Town has no liability. He added that there is significant case law regarding municipal immunity from tort proceedings.

Gray asked if the clause was written because of concern about an abutter to the tower. Silverman said it was a general indemnification. Parker said kids climb towers and fall and injure themselves. Attorney Duval said even if someone climbs the tower there is no liability to the Town. Attorney Duval likened the issue to other commercial ventures, like Mr. Mike's, which is the same commercial venture as the tower only the tower is vertical not horizontal. He asked if there was an indemnification clause for Mr. Mike's. There isn't.

Silverman asked for a sense of the Board regarding an indemnification clause. Gray said there seems to be enough case law to support town immunity, adding however that it doesn't mean the Town won't get sued anyway. Attorney Duval said the Town would need to act negligently or wrongfully to be held liable. He said there is no Town involvement with the compound or the tower. Haynes noted that the Town didn't have an indemnity clause with WiValley, and wondered why there would be one with Blue Sky Towers.

Silverman confirmed concurrence that the Board did not want to include an indemnification clause.

Silverman moved, Gray seconded and the Board voted unanimously to approve the site plan review Notice of Decision for Blue Sky Towers, Inc.

Carney reported that she has been notified by the Fire Marshall's Office that there was a fireworks accident at the Park Construction property related to the three pods placed on the property to provide secure storage of fireworks. A written warning was sent to the Company. She added that the injured worker drove himself to the hospital and was flown to a burn unit. The Town was not notified of the accident.

Silverman recalled that the pods provided cold storage for the fireworks. Carney said a worker removed fireworks for a 4th of July display and stepped on one, which exploded. She said the event indicates that there needs to be more communication between the company and the Town and they need to follow state regulations regarding fireworks.

Silverman noted that when solar panels and inverters are shut off, there is no electrical power that could endanger firefighters. Carney said dispatch will have specifics about installed solar panels to convey to firefighters.

The meeting was adjourned at 8:30 PM.