

APPROVED
Zoning Board of Adjustment
Meeting Minutes
March 29, 2016

Members: Gretchen Wittenborg, Acting Chairman, Bob Handy, Jack Ernst, Carmen Yon seated for Davis, Chad Beede, new alternate member.

Others Present: Susan Silverman, selectmen's representative; Blue Sky Tower representative Attorney Earl Duval; Mrs. Hay, Steve Filipi, and Attorney Mike Bentley representing Mr. and Mrs. Raitto.

CTO: 7:00 PM.

Wittenborg noted that Steve Filipi recused himself from this hearing and Carmen Yon was seated for Davis.

7:00 PM Public hearing. Blue Sky Towers, LLC Amended application, continued for a variance to install a multi-user Wireless Communications Facility outside of the Town's Wireless Facility Communications Overlay District, 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.

Wittenborg read the public hearing notice and invited Attorney Earl Duvall, Blue Sky Tower to be seated at the table. Wittenborg asked for the lease area dimensions and coordinates for the tower. Mr. Duval indicated where that information could be found on the Plot Plan, clarifying the 75' x 75' leased area within which is the 65'x65' fenced compound. The latitude and longitude identify the exact location of the proposed tower. Mr. Filipi noted that he controls access to the site via an easement extending from Upper Troy Road to the proposed site. It is a gravel driveway. Attorney Duvall said a thorough title search was completed for the Filipi and Royce properties to verify the easements.

Attorney Bentley informed the Board that he had discussed the tower with Mr. Raitto and if the tower is built as planned and is not visible from the second floor of Mr. Raitto's house, Mr. Raitto is OK with the tower; however, if it can be seen, it is Mr. Raitto's intention to enforce the superior court order regarding the Planning Board's condition. [The court order is dated September 11, 2009 and states that the parties (Russell and Dee Raitto and WiValley) reached an agreement and the Planning Board amended the decision appealed from on April 21, 2009 to limit the height of the WiValley tower to 79 feet AGL with an 8 foot antenna on top of the tower for a total height of 87 feet AGL, which was agreed to by WiValley as a condition of the settlement terms with the Raittos.]

Attorney Bentley said he hoped the town would abide by the agreement. He added that Mr. Raitto's property rights will have been infringed on if he can see the tower.

Wittenborg said WiValley does not have an application before the Board. Attorney Bentley said the Planning Board is party to the court order and the amendment was the decision of the Planning Board. Wittenborg said that the court decision referred to a tower that is going to be removed.

Attorney Bentley said the court order deals with height and location and visibility specifically and the Raittos will enforce the agreement if the tower is visible from the second floor.

Attorney Duval said the ZBA is not the proper tribunal to make this decision; if Mr. Raitto has an issue with the agreement with WiValley, it is his right to pursue the perceived violation. The Board has evidence that the

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proposed tower will not be visible, based on the testimony of Mike Methé, who represented Mr. Raitto during the balloon test. Mr. Methé said that he could not see the balloon from the Raitto property, nor could he see it when he walked 30 yards into the Filipi property toward the proposed site of the new tower.

Attorney Duval said they have done the best they can to keep the tower out of the viewshed. He added that he hopes the Board has reviewed the TCA regulations with David Maxson.

Wittenborg noted that in Fitzwilliam the 'significant gap' in cellular service coverage is "nearly the whole town." She said the TCA gives the Board very little latitude to deny this location because it provides such exceptional coverage.

Ernst said that after the WiValley tower was installed, he met with Mr. Raitto and observed that the second story window is actually at ground level, the house being a one story house with a walk-out below grade. This will be the same perspective as Mr. Raitto had with the WiValley tower, which he could not see.

Attorney Bentley said he had heard that Wi Valley had not delivered on their service. Wittenborg noted again that WiValley delivers broadband internet service, a completely different technology than cellular service. She added that Mr. Methé and Mr. Raitto's brother who also observed the balloon test, both observed the test from a southwest facing side of the home, which is the same as the window view, and neither could see the balloon.

The Board reviewed a draft document pertaining to conditions of approval and the variance criteria. Wittenborg said that one of the conditions is that the Board receive the FAA determination for this tower regarding lighting. The FAA determination letter arrived this week and specified that the proposed tower did not require lighting. It is attached to these minutes.

Wittenborg asked if the Board was ready to deliberate. Yon moved, Ernst seconded and the Board voted to close the public hearing so they could deliberate. Wittenborg noted that there was a lot of information to consider and the Board may not finalize the case tonight.

Yon clarified that the fence will be 8' high with 1' of barbed wire at the top. The double door gates are 6' wide and 8' tall.

Asked about the WiValley equipment bunker, Filipi responded that the bunker was actually a septic tank in which all the electrical equipment was placed. It is 30-40 feet from the WiValley tower and is about 6'x12' in size, with a door. He voiced concern that the conduits from the equipment to the new tower could not be buried because of ledge in the area. Yon asked if the pad would be removed once the tower was removed. Attorney Duval said that was up to Mr. Foucher. Wittenborg said the Board would leave that to be resolved by Attorney Duval and WiValley.

Addressing the TCA requirement that a significant coverage gap existed and had been identified, Wittenborg said a lot of research had been done to identify the gaps in coverage, including an affidavit from Mr. Ramos, the Blue Sky Tower radio frequency engineer, which is attached to these minutes. David Maxson worked with Blue Sky and the Board to identify the gaps in coverage and to identify a location that provides the most coverage. Research on sites within the WCOD indicated that none could provide the coverage sought by T-Mobile. The option that came closest to that goal was siting two towers within the WCOD, one on Route 119W

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and one on Route 12S. Both towers would be 140 feet tall to get the coverage. Mr. George, site acquisition specialist said T-Mobile would not be interested in constructing two towers. Wittenborg marked as Exhibit 5 the plot that shows the T-Mobile gap in coverage. Exhibit 6 shows the coverage from the proposed 125' high tower, with appurtenances to 138 feet, located at the Pinnacle site. This tower will carry WiValley and Public Safety antennas on top, T-Mobile equipment just below that, with room for three additional carriers sited below them. Wittenborg noted that TCA requires the Board to address the gap in coverage and their research complies with that requirement.

Yon said he thought a missing piece was a business plan from T-Mobile that demonstrates the economics of locating in Fitzwilliam. Would it be profitable? Would there be a hardship for them to locate in town? He suggested that three towers in the WCOD would replicate the coverage of the one tower on the Pinnacle. Wittenborg said the Board heard from the applicant that the client would be unwilling to build even two towers. He said the ordinance doesn't say visibility has to be eliminated, but it has to be mitigated. Wittenborg noted that the ordinance was amended and Yon responded that the Board can only judge the application against the existing ordinance.

Attorney Bentley asked if the town will certify the height once the tower is constructed. The Board agreed it will be measured and "as-built" plans will be submitted.

Attorney Duval said he had referenced a case in NH, Ryder v Londonderry, which discusses issues of reasonableness and hardship. He said the Board must address the significant gap in coverage and determine there are no feasible alternatives. He added that the Board and David Maxson led the applicant to investigate all alternative sites and to provide the best option for the town. He said case law indicates it is not reasonable to ask the applicant to build three towers.

Yon said he hadn't seen information regarding the impact on property values. Wittenborg noted that Exhibit 9 in the original submission addressed this issue and included a real estate market study. She added that it demonstrated no measured impact on property values in terms of visibility.

Yon moved, Ernst seconded and the Board voted to continue the hearing to Thursday, April 7, 2016 at 7:00 PM.

The meeting was adjourned at 9:30 PM.

Adjourned at 9:30 PM.