

APPROVED
Zoning Board of Adjustment
Meeting Minutes
March 24, 2016

Members: Gretchen Wittenborg, Acting Chairman, Bob Handy, Jack Ernst, Carmen Yon seated for Davis, Chad Beede, new alternate member, and David Maxson, Isotrope, LLC, consultant to the Board.

Others Present: Susan Silverman, selectmen's representative, Blue Sky Tower representatives, Earl Duval, Attorney, Jim George, Site Acquisition; Mr. and Mrs. Hay, Andrew Royce, Steve Filipi, Mr. Mattson, Mr. Methé, Raitto Attorney Mike Bentley, abutters Matt Buonomano and Andrew Royce.

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 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. Interested persons are invited to attend in person or by agent or counsel and state reasons why these proposals should or should not be approved. If you require special accommodations, please contact Sandra Gillis in the Land Use Office at 585-9119.

Wittenborg read the public hearing notice. She introduced David Maxson, Board consultant, and Chad Beede, newly appointed alternate member of the ZBA. Wittenborg noted that since this is the first time the Board had heard the amended application case, she would reiterate the procedures the Board follows for public hearings.

1.) The applicant presents the application, 2.) ZBA members ask questions of the applicant, 3.) Board will hear public comment, and 4.) Board closes the public hearing and deliberates on the case.

Wittenborg invited Earl Duvall, Blue Sky Tower attorney, and Jim George, site acquisition, to present the amended application. Attorney Duvall noted that all the applicable filings required for the first application for a variance, proposed to be sited at 36 Webber Lane, were taken as incorporated into this amended application for a variance, proposed to be sited on the Pinnacle. He distributed the photos taken at the balloon test by the company that conducted the test.

Attorney Duvall also distributed the Plot Plan indicating the location of the proposed tower and the co-location opportunities for the tower. WiValley and Public Safety equipment currently on the WiValley tower will be moved to the highest position on the new tower and the existing WiValley tower will be removed. The proposed tower site was moved 120 feet farther south, away from an abutter's property. That move resulted in the tower elevation being 17 feet lower, however, the land is flatter making construction of the structure easier and safer. The move did not degrade the propagation from the tower, confirmed by coverage plots done by T-Mobile.

The balloon test showed an 8 foot tall red balloon, with the top of the balloon at 127 feet and the bottom at 120 feet. The yellow balloon, which was to be flown at 100 feet on the same tether, was destroyed by a wind gust. Photos taken from various sites around town were presented. The photo simulations also showed the balloon with the WiValley tower and T-Mobile equipment nearby.

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Hany asked why they decided to move the proposed tower down the hill. Mr. Duval said the existing WiValley tower is 460 feet from the Raitto property line. WiValley has a 100 foot square lease area for equipment. The applicant decided to move the proposed tower another 120 feet a from the Raitto property, to insure the tower could not be seen. The WiValley equipment and Public Safety equipment now located on the WiValley tower will be relocated to the top position on the proposed tower.

Board members reviewed the photos taken by Caron & Associates, the firm that conducted the balloon test. Mr. Maxson said this company was one of the best and is very reliable. He added that they always make sure that the balloon is at 90 degrees before taking photos. They have a remote control device that moves the balloon to the 90 degree position. A plot plan indicated the eleven different locations where photos were taken (from which the balloon could be seen) within a three mile radius. The Board also looked at photos taken by a Fitzwilliam resident, Alan Cates.

A Lease Exhibit plot plan was distributed detailing the 75'x 75' gated lease area, the 65' x 65' equipment area bounded by an 8 foot tall chain link fence, the location of the 125 foot monopole within this area, access easement parking and turnaround area, meter center and 12' wide gravel driveway, and pad mounted transformer, utility lines within a 20' wide utility easement. The surface of the area within the 65' x 65' area will be crushed stone over weed block underlayment.

The proposed tower is 125' tall, with the highest appurtenance at 138' AGL. This is the WiValley and Public Safety equipment. At 116' will be the T-Mobile equipment, and between 106' and 86 feet there other carriers could be co-located. WiValley will relocate dish antennas between 76' and 66'. Tree height in the area is about 60 feet.

Attorney Duval noted that this was the end of their presentation, adding that the application is for variance to locate a cellular tower outside of the Wireless Communication District. The Telecommunications Act of 1996 governs this deliberation and clarifies that a Board may evaluate alternative sites. The Board and applicant considered site both inside of and outside of the WFCOD. The Board evaluated the virtual residences coverage data, as well as in-vehicle coverage data.

The Board found that inside the WFCOD there was only option, which included two 140 foot towers, one located on Route 119 W and one located on Route 12 S. The combination of two towers in two different locations did not propagate coverage as well as several individual sites located outside the WFCOD with only one tower, at a lower tower height. David Maxson summed up the case, saying the Pinnacle and the Webb Hill sites outside of the WFCOD provided the best new coverage and improved overall cell service coverage significantly.

Attorney Duval noted that the new, amended application includes all the information which was provided in the first application. Asked about the impact on co-locators of a lower tower height, Mr. Maxson said that at 86 feet AGL pine trees may challenge the bottom co-locators, but it was designed to maximize co-location opportunities at the minimum tower height. Yon asked if the WiValley dish antennas would be relocated to the proposed tower. They will be, which Mr. Maxson postulated may not make any difference in their coverage.

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Matt Buonomano, an abutter, asked if the tower would be lighted at night. It is not required to be lighted by the FAA and a document to that effect is in the record but a new report will be forthcoming for the Pinnacle site and its proposed tower.

Attorney Michael Bentley, representing Russ Raitto, was invited to join the Board at the table. He said that when WiValley came to the ZBA and PB in 7 years ago it was resolved. Mr. Raitto appealed to the Supreme Court. An agreement between Mr. Raitto and Brian Foucher led to a court order regarding the height of the tower and the number of towers. Attorney Bentley contends that the agreement is with the town also, by virtue of a reference in the court order to the Planning Board conditions in their notice of decision on September 2, 2009, granting WiValley a conditional use permit for an 87' tall tower. This was the original tower, which was damaged and replaced in 2010. The Board approved a replacement tower 96' tall and the Raitto's signed an agreement with WiValley to that effect. (We do not have a copy of the court order – requested by Gillis on 3/25/16)

Attorney Bentley said his client would reserve the right to contest the height of the existing tower, maintaining that the Raitto's never agreed to the increase in height. He added that he hadn't heard the variance criteria addressed in this meeting. He questioned the noticing of the tower hearing, saying that the notice was defective because the day was wrong on the notice sent to abutters. The date was correct and both day and date were corrected in in newspaper notice. He recalled the hearing in 2009 and the support WiValley had for providing broadband serve. The new, proposed tower is primarily for providers of cellular service, and WiValley will also co-locate its service to the Blue Sky Tower.

Ernst asked Mr. Bentley if he was saying that the Raitto's would ask WiValley to lower their tower? Attorney Bentley said no, not at this time, but they reserve the right to do so in the future. He added that Mr. Raitto would probably be fine as long as he could not see the tower or antenna mast from his house. He said they had no interest in giving either WiValley or Blue Sky Towers any trouble.

Wittenborg asked Mr. Bentley if he knew whether the tower could be seen. Mr. Methe, who had observed the balloon test in Mr. Raitto's stead, said he could not see the balloon. Chad Beede, alternate, asked if Blue Sky Tower was part of the agreement with the Raittos and WiValley. Attorney Bentley said no, Blue Sky Tower was not known then. Mr. Filipi, property owner, said he leased a 100' X 100' foot square to WiValley and WiValley can't agree to anything outside of that leased square. No one can agree to anything pertaining to the remaining 56 acres of his property, except him.

Asked if there was a specific variance needed for the WiValley location and Mr. Filipi said no, under an amended town ordinance, the provision of broadband service is exempt, unlike the provision of cellular service. Mr. Bentley agreed but added that WiValley had obtained waivers from the Planning Board to locate outside the Wireless Communications District. Wittenborg responded that WiValley does not provide cellular service, only broadband service. She added that the application the Board is considering tonight is from Blue Sky Towers, not WiValley.

Mr. Bentley said their position is that the town has to abide by the agreement between the Raittos and WiValley.

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Filipi noted that a replacement tower was approved for WiValley following the ice storm that damaged the original WiValley tower.

Attorney Bentley said that there was verbal evidence that at least one person was present to observe the balloon test and that the balloon could not be seen from the Raitto property.

Andrew Royce, an abutter, asked about the timeline for completing the tower. Attorney Duval responded that if the ZBA grants the variance, the applicant has April appointments with the Historic District Commission and a public hearing with the Planning Board for a site plan review and conditional use permit. Jim George responded that if construction could begin in mid-May it may take about two weeks for construction of the tower. Equipment monitoring trips to the site will be far fewer than expected, because monitoring will occur off site by computer.

There was some discussion about how Mr. Raitto would react to seeing or not seeing the tower. Attorney Bentley said that if the variance and conditional use permit were granted, and Mr. Raitto came home from Arizona and could see the tower, it would be problematic, regardless of the results of the balloon test. He added that Mr. Raitto's major concern is that there not be a lot of towers on the hill.

David Maxson noted that there are woods between the proposed site and the Raitto property. These are 40-50 foot trees and the tower location has been moved to a site that is 17 feet lower, and 120 feet farther from the initial proposed site. He added that to see the tower one would need to be able to see over the trees. He said the board has weighed this site against other alternatives, in making their decision about how reasonable this site is compared to other sites they considered. This site has been shown to provide the most coverage for the applicant's cellular service coverage goals and for the residents of Fitzwilliam.

Wittenborg said the Board has looked at a lot of alternative sites since the original application was submitted and the balloon test for the original site was very visible and the tower would not have provided as much coverage as sites on Webb Hill or the Pinnacle. The Webb Hill site was not available. Towers at sites within the WCOD would have been visible.

Attorney Duval said he had been listening to Attorney Bentley's points, and said it was clear that the Zoning Board has the authority to approve or deny the application. He added that neither the town nor the property owner, Steve Filipi, were a party to the lawsuit or settlement between WiValley and the Raittos. He said Blue Sky Towers and T-Mobile are not parties to that agreement. He said they had worked with WiValley and Mr. Filipi to reach an agreement on location and relocating the WiValley equipment onto the Blue Sky proposed tower simply to benefit the Raittos. They re-positioned the Blue Sky Tower so the WiValley tower could be removed, and put a structure that people are familiar with further down the hill. And they have heard the testimony that the balloon test could not be seen from the Raitto property.

Attorney Duval said that if the variance is granted they are scheduled to meet with the Historic District Commission and with the Planning Board for a site plan review. He added that the applicant understand the condition for removal of the WiValley tower. He said the application covered the ZBA Variance requirements and the TCA requirements. The applicant looked at all the alternatives and determined that the Pinnacle site was best even if it is outside the WCOD and a variance is required.

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Attorney Duval said they can't make the tower invisible, noting that the courts have said that "a gut reaction to a communications tower in general, can't be used as the threshold for approving or denying an application.

Bob Handy noted that the new tower is outside the WiValley leased area and is 120 feet farther away from the WiValley site, and therefore the applicant is not bound by any previous agreements with WiValley.

Attorney Bentley said that it is his opinion that the agreement is not a private agreement because the court order cites the Planning Board conditions.

Wittenborg asked if there was a motion to close the public hearing so the Board can deliberate. Yon noted that after 2 ½ hours of the hearing, he did not feel ready to deliberate. The Board agreed and Yon moved, Ernst seconded and the Board voted to continue the meeting to March 29th at 7 PM.

Yon noted that Blue Sky was to provide a document from the FAA that lighting is not needed for the tower.

Minutes of the February 23, 2016 meeting. The Board had reviewed the minutes. Wittenborg had a word addition to p. 2, paragraph 2, last line, adding the word "two" before the words "140 foot towers."

Ernst moved, Handy seconded and the Board approved the minutes as amended.

The meeting was adjourned at 9:15 PM.