

EAST LONGMEADOW PLANNING BOARD

Date: January 18, 2022

Time: 6:00 PM EST

Zoom Webinar



MINUTES

Chair Russell Denver opened the meeting at 6:00 PM.

Present Russell Denver, Chair
 George Kingston, Vice Chair
 Jonathan Torcia, Clerk
 Cassandra Cerasuolo
 Pete Punderson

Staff Present Nina Fazio, Planning & Community Development Administrative Assistant

APPROVAL OF MINUTES

- January 4, 2022

Motion to approve made by Vice Chair George Kingston; second by Board member Pete Punderson and approved by roll call vote five (5)-zero (0).

CONTINUED BUSINESS

1. **Case SPRW 2021-61:** Request for Site Plan Review Waiver for the construction of a 20 ft. x 10 ft. outdoor stage at 43 Chestnut Street (Assessor's Parcel ID 40-7-0) on a +/- 2.80 acre lot in the Residence A zoning district. Applicant: Javier Herrera, 50 Indian Spring Road, East Longmeadow, MA 01028 (Cont. 1/4/2021)

AJ Rafi, Vice President of The Meadows Lodge and Assistant Scout Master of the applicant, was present for discussion. Mr. Rafi stated the stage will not be a concert venue and there will be no electricity at the stage for microphones or amplifiers to be used. Mr. Rafi stated the stage would not increase the volume of traffic, as the lodge is a private social club and not open to public events. Mr. Rafi stated the lodge would hire police assistance for any events that would require traffic control.

Board member Pete Punderson stated he spoke with a neighbor of the lodge who stated he has not experienced any traffic or noise issues stemming from this location.

Vice Chair George Kingston asked if the lodge possesses an alcohol license or if the lodge applies for one-day licenses for events. Mr. Rafi stated the lodge does not have a bar on site and applies for one day licenses for events. Mr. Rafi stated the lodge does not host many events that allow alcohol as they typically host family-centered events. Mr. Rafi stated the one-day alcohol permits they apply for pertain to wine and beer only.

There were no further comments or questions from the Board at this time.

Motion to approve made by Vice Chair George Kingston; second by Board member Pete Punderson and approved by roll call vote five (5)-zero (0).

2. Request for consideration of final release of performance bond for Jeffrey Lane Extension Subdivision. Applicant: Southern NE Real Estate Development, Inc. 45 Knollwood Drive, East Longmeadow, MA 01028 (Cont. 1/4/2022)

Tom Christensen, Deputy Superintendent of the Department of Public Works, was present to answer questions for the Board.

Jeffery Bosworth and Attorney Larry Levine were present for discussion.

Chair Russell Denver asked for an update on discussion between the petitioners and the DPW. Atty Levine stated Mr. Christensen has reviewed the Revised "As Built" plans and does not have any issues with them. Atty Levine stated his client does not believe the Subdivision Rules & Regulations pertaining to the binder course of the road are applicable to this case. Atty Levine stated the applicant is still requesting a full release of bond.

Mr. Christensen concurred that the specific Subdivision Rules & Regulations Atty Levine mentioned are applicable to the binder course and not the wearing course. It is the recommendation of the DPW for every course of pavement to sit through a complete winter. Chair Russell Denver asked Mr. Christensen for the reasoning behind that recommendation. Mr. Christensen stated it is to ensure there is still money left to correct any issues if the developer is no longer available. Chair Russell Denver asked if there have been any past experiences where the Town has had to use the 20% of the bond that has been held. Mr. Christensen stated he believes that has happened in the past; more likely there are subdivisions that get left derelict because bonds are released too early which leaves the Town responsible for improvements.

Chair Russell Denver quoted Subdivision Rules and Regulations Section 5.4.4, which states, "The Planning Board shall retain a surety in the sum of 20% of the total cost of improvements that shall be released 18 months after final completion." Mr. Christensen stated that requirement can be waived at the discretion of the Board; however, the DPW recommends holding 20% of the bond at least until the spring. Chair Russell Denver asked if the Town would be responsible for improvements, if the full bond were to be released. Mr. Christensen answered affirmatively. Mr. Christensen stated that if anything were to go wrong after the bond has been released, the cost of improvements would fall on the Town.

Board member Pete Punderson asked what the date of completion was. Board member Pete Punderson stated releasing a bond early could set a precedent. Mr. Christensen stated the DPW completed their inspection of the subdivision on Monday, December 13, 2021 and found construction to be complete.

Vice Chair George Kingston stated he has previously experienced subdivisions which have needed improvements after the full bond has been released. Vice Chair George Kingston stated if the street has not been accepted by the Town, then the cost of improvements falls on the homeowners in the subdivision. Vice Chair George Kingston stated retaining a portion of the bond until final sign off by the DPW is a reasonable approach.

Chair Russell Denver asked Mr. Christensen how many subdivisions are currently under construction in Town. Mr. Christensen stated there are three subdivisions under construction and one with a preliminary approval.

Atty Levine stated the construction of Jeffery Lane Extension was complete in November of 2020; the only thing remaining was the top layer of the road. Atty Levine stated the 18 months after completion should have started in November 2020. Atty Levine stated he has evidence from the company that poured the top layer of the road which states that they have never had any deterioration of top layers of the road. Atty Levine reminded the Board they have the ability to waive the 18 month requirement. Atty Levine recommended releasing the full bond on April 1, 2022, assuming the DPW has approved of the road. Atty Levine stated the bond is due to renew at the end of April 2022 and there is a financial hardship that would encumber Mr. Bosworth if the bond were held longer than April 2022.

Board member Pete Punderson stated he believes the word “completion” is a gray area. Board member Pete Punderson stated he is not sure when the 18 months would begin. Board member Pete Punderson stated he believes Atty Levine has stated a fair case tonight.

Motion to continue retaining 20% of the bond, to be considered for release at the first Planning Board meeting in April 2022, made by Vice Chair George Kingston; second by Clerk Jon Torcia.

Chair Russell Denver requested continuing until the second meeting in April 2022. Atty Levine asked for the Chair’s reasoning behind his request. Chair Russell Denver stated it would provide more time for winter to end while still allowing for sufficient time for the bond to be released. Mr. Bosworth stated the process for bond renewal would need to begin about a month before its expiration date. Mr. Bosworth stated he believes the beginning of April allows for enough time to inspect the road. Vice Chair George Kingston stated he believes the first meeting in April is appropriate in order to ensure there is a quorum before the bond is due to renew; this way there is room to continue the hearing further into April if need be.

Mr. Christensen added that the focus tonight has been on the pavement; however the 18 month holding period is for all of the infrastructure and further protection of the Town. Chair Russell Denver reiterated that there are currently three other subdivisions under construction and any exceptions granted will set a precedent.

Chair Russell Denver reiterated the motion. Board member Pete Punderson urged the Board to further investigate the definition of “completion” before other subdivisions come before the Board.

Motion to continue retaining 20% of the bond, to be considered for release at the first Planning Board meeting in April 2022, made by Vice Chair George Kingston; second by Clerk Jon Torcia and approved by roll call vote five (5)-zero (0).

CONTINUED PUBLIC HEARINGS

1. **Case SP 2021-10: 16 Meadowbrook Road** –Request for Special Permit for the installation of a wireless communications monopole and related equipment at 16 Meadowbrook Road (Assessor’s Parcel ID 78-1-0) on a 12 +/- acre site in the Residence A zoning district. Applicant: Cellco Partnership d/b/a Verizon Wireless, 20 Alexander Drive, Wallingford, CT 06492. (Cont. 10/19/2021; 11/16/2021; 12/21/2021)

Before beginning, Chair Russell Denver asked Administrative Assistant Nina Fazio to recap the

petitioners' public hearings before the Zoning Board of Appeals. Administrative Assistant Nina Fazio stated the petitioners requested two variances from the ZBA.

The first was a use variance to allow for a telecommunications tower in a residential zoning district. This is not currently allowed under the Town's zoning bylaws; however, the Federal Telecommunications Act allows for an exemption from this bylaw. The use variance was approved by unanimous vote.

The second was a dimensional variance to allow for the tower to be placed in a location that did not meet the setback requirements. The proposed tower is 100 ft. from the eastern property bound; the setback requirement is 250 ft. The dimensional variance was approved by unanimous vote.

Vice Chair George Kingston made a note that under the Town's zoning bylaws, the ZBA is not authorized to issue use variances. Administrative Assistant Nina Fazio responded that statement is correct; however, the TCA allows the Board an exemption from that bylaw.

Chair Russell Denver asked for just Attorney Ellen Freyman from the Verizon Wireless petition team to be brought into the meeting at this time.

Atty Freyman added that under the TCA the Town is not permitted to preclude cell service; a literal enforcement of the Town bylaws would preclude towers from being placed in a large portion of the Town. Atty Freyman referenced the existing telecommunications tower in town that is located in a residential district. In that specific case, the Town bylaws were enforced and the decision of the Town was overturned in court.

Chair Russell Denver asked Atty Freyman to summarize the additional documents the petitioners have submitted to the Board.

Atty Freyman discussed the Revised Zoning Drawings, which depict the equipment compound 100 ft. from the eastern parcel line. The equipment compound is over 900 ft. from Meadowbrook Road. Atty Freyman discussed the mounting on top of the tower. Atty Freyman stated the antenna mountings have been condensed in order to minimize visual appearance. Atty Freyman stated the petitioners submitted a proposal for plantings around the equipment compound in order to minimize visual appearance.

Atty Freyman addressed the Alternative Site Analysis presentation based on alternative locations that residents of the Town submitted for further investigation. Chair Russell Denver asked how many alternative sites were investigated. Atty Freyman responded twelve (12) alternative sites were received; five were eliminated immediately because they were deemed too far away to provide service to the target coverage area, seven were further investigated. The seven alternative sites were further investigated based on cell coverage, topography, presence of wetlands, visual impact, as well as other factors.

Atty Freyman discussed the Cumulative Density Calculations. Atty Freyman stated this shows that if the cell tower were operating at “full blast” and “a worst case scenario” then the tower would still only be operating at a fraction of what is permissible by the FCC license.

Atty Freyman discussed the legal memorandum submitted regarding the limitations of municipal boards to consider alleged health effects. Atty Freyman stated under the TCA, towns cannot deny permitting based on alleged health effects; however, towns can require compliance with FCC licensure.

Atty Freyman discussed the land appraisal which calculated property value on properties that are in the proximity of telecommunication towers. Atty Freyman stated the appraisal concluded that there was no diminution of property value before a tower is constructed compared to after a tower is constructed.

Atty Freyman stated the petitioners submitted revised photo-simulations to show that the equipment compound moving closer to Meadowbrook Road has not had a further negative impact on visibility of the tower from the road.

Chair Russell Denver asked if there were any comments or questions from the Board.

Board member Cassandra Cerasuolo stated, following health concerns raised by abutters, she further investigated the lawsuit between Verizon and the Town of Pittsfield, MA. Board member Cassandra Cerasuolo stated she found the lawsuit filed against Verizon by Pittsfield, MA residents is in regards to alleged improper abutter notice and public hearing notice; no health concerns are alleged in this lawsuit.

Board member Pete Punderson stated he is satisfied with the submittals by the petitioners.

Atty Freyman stated the petitioners are open to further conditions of approval based on the appearance/visibility of the tower, such as painting the tower.

Chair Russell Denver opened the hearing to the public.

Attorney Seth Stratton, Counsel to Cindy Normandin of 540 Somers Road and John Burney of 141 Meadowbrook Road, spoke in opposition of the request for Special Permit. Mr. Burney was present for discussion and spoke in opposition of the request for Special Permit as well.

Chair Russell Denver asked Mr. Burney to recap his comments from the meeting with the Zoning Board of Appeals. Atty Stratton asked for his letter of opposition, submitted to the ZBA, to be added to the record for this board as well. Atty Stratton began discussion regarding the location of the proposed telecommunications tower. Atty Stratton stated that while this location may be the best location for Verizon to propose a telecommunications tower, this is not the best location for the Town to house a telecommunications tower. Atty Stratton stated there are alternative sites that would still allow for adequate cell service that would be more appropriate to the Town. Atty Stratton stated the Board

should first consider if co-location on an existing tower is appropriate. Atty Stratton stated there is an alternative site like this, but the petitioners have deemed this site to not be optimal for their needs. Atty Stratton stated that according to the zoning bylaws, this location is preferred by the Town, if feasible. Atty Stratton stated he believes this site was not appropriately considered by the petitioners.

Atty Stratton quoted Special Permit Criteria 5.55(a) (3), which states, "The Planning Board should consider the surrounding topography, tree coverage, and foliage." Atty Stratton stated the subject parcel has largely been cleared for agriculturally use, meaning the natural coverage is less than ideal in this location compared to alternative sites. Atty Stratton urged the Board to consider alternative sites that would be more aligned with Town bylaws, even though those sites would not be optimal for Verizon.

Atty Stratton stated Special Permit Criteria 5 speaks to the availability of suitable existing towers, such as existing utility poles that allow for co-location.

Atty Stratton stated that under Town bylaws, the Planning Board has the right to retain a technical expert, or RF engineer, at the expense of the applicant to determine whether co-location is feasible. Atty Stratton requested that this authority be exercised to eliminate any other alternative sites, besides the subject parcel.

Atty Stratton stated Mr. Burney, under Section 5.5(e) (1), would like to request that any future co-location at this residence be subject to a condensed antenna condition of approval. Atty Stratton requested that any modifications or future co-location require a new Special Permit.

Mr. Burney stated he is opposed to the request for Special Permit for two reasons; the first reason being the location of the proposed tower. Mr. Burney stated, under the Town bylaws, it is the burden of the petitioner to prove that this is the best location. Mr. Burney stated his property was originally the target property. Mr. Burney is opposed to losing any more agricultural land in Town in the name of public utilities. Mr. Burney stated the Town must do whatever they can to protect the little agricultural land left in Town.

Mr. Burney stated there is a difference between an adequate site and an optimal site for Verizon. Mr. Burney stated the optimal location for Verizon is very convenient for them. Mr. Burney stated it is the Town's responsibility to help Verizon shrink coverage gaps, but it does not need to be in the most optimal location for Verizon. Mr. Burney stated there are rural parcels in the southwest corner of Town that he believes are better for the Town to house a telecommunications tower. Mr. Burney stated he believes the west side of Route 83 is the most optimal location for the Town. Mr. Burney voiced his concerns for the first zoning drawings submitted by the petitioners, which showed the equipment compound 100 ft. from his property.

There were no further comments or questions from the public at this time.

Motion to close the public hearing made by Board member Pete Punderson; second by Vice Chair George Kingston and approved by roll call vote five (5)-zero (0).

Vice Chair George Kingston stated that the main question surrounding this case is: is there a critical coverage gap? Vice Chair George Kingston voiced two arguments.

First, Vice Chair George Kingston stated Verizon has proved they already have good 4G coverage in this area, meaning emergency calls can be made. Vice Chair George Kingston stated there is perhaps not great 5G coverage, meaning activities such as videogames and downloading movies may not be available. Vice Chair George Kingston stated he does not believe this constitutes a critical coverage gap.

Second, Vice Chair George Kingston stated none of Verizon's competitors have tried to co-locate in this area, meaning the competing cell services do not believe there is a critical coverage gap in this area. Vice Chair George Kingston stated the TCA allows for exemptions of zoning bylaws, only in the instance of a critical coverage gap. Vice Chair George Kingston stated he is not convinced a critical coverage gap exists.

Board member Pete Punderson reiterated that the Board has the right to hire an independent RF engineer at the expense of the applicant. Clerk Jon Torcia stated he is interested in exercising that right; Board member Cassandra Cerasuolo concurred. Vice Chair George Kingston stated the public hearing would then need to be reopened for the submission of new testimony. Board member Cassandra Cerasuolo stated she is interested in hiring an independent RF engineer to ensure there is enough due diligence in the alternative site analysis. Board member Pete Punderson stated hiring an independent RF engineer would provide the Town with another layer of confirmation that a tower is in fact needed.

Chair Russell Denver stated he disagrees with the Board. Chair Russell Denver stated he found Verizon's efforts to investigate alternative sites to be very admirable. Chair Russell Denver reiterated that the petitioners have investigated 12 alternative locations, and found there to be a complete explanations as to why each site did or did not work. Chair Russell Denver stated he agrees with comments made by ZBA member Daniel Plotkin made in their public hearings for the variances. Chair Russell Denver reiterated what Mr. Plotkin stated; improved service is a benefit to everyone in Town.

Atty Freyman responded to comments made about the possibility of co-location on a high transmission tower. Atty Freyman stated this was not feasible; this would require a two year wait for power to be turned off. Atty Freyman stated building below the transmission lines is no longer possible; the tower would need to be located above transmission lines. Atty Freyman stated the Verizon team ruled this out as an option.

Atty Freyman stated that while there may be enough coverage to make a call today, that may not be the case in the future. Atty Freyman stated the petitioners take into consideration the coverage that will be needed. Atty Freyman stated that as time passes usage continues to increase. Atty Freyman stated this tower is "forward looking" and aims to avoid a situation later where there would be a period without

coverage. Atty Freyman stated the petitioners have spent several years looking for a site and that no site is perfect; every site will have challenges. Atty Freyman stated sites are chosen through extensive criteria before coming before the Board. Atty Freyman stated the petitioners would not have come before the Board unless they thought the proposed tower was necessary. Atty Freyman stated the petitioners have made concessions to make this tower amendable based on feedback received. Atty Freyman stated it is hard to determine what is “better” and there has been a lot of work to screen-out alternative sites. Atty Freyman stated it is a goal to have someone be able to drive through all of Town without ever dropping a call. Atty Freyman stated it is impossible to make a tower invisible, but progress requires a certain amount of utilities to be in our vision. Atty Freyman reiterated that the ZBA spent three public hearings conducting a detailed analysis which lead to two unanimous votes on the variance requests.

Board member Pete Punderson stated he was completely satisfied with the submissions by the petitioners and their due diligence in determining a site location. Board member Pete Punderson attested to the poor coverage as a resident who lives in the area. Board member Pete Punderson retracted his earlier statement about wanting to hire an independent RF engineer and stated he has faith in the petitioners’ diligence in finding an optimal location.

Chair Russell Denver asked for an affirmative motion to act on.

Motion to approve the request for Special Permit made by Vice Chair George Kingston; second by Board member Pete Punderson.

Chair Russell Denver opened up discussion on conditions of approval. Clerk Jon Torcia stated he would like to see conditions of shrubbery and painting to minimize visual appearance. Chair Russell Denver stated the screening from shrubbery is already included in the petitioners’ proposal. Clerk Jon Torcia suggested painting the tower. Board member Pete Punderson noted the different colors available. Clerk Jon Torcia stated the color should fit into the environment. Chair Russell Denver asked Atty Freyman if there is a palette of colors that could be chosen from at a later date. Atty Freyman answered affirmatively and stated a “weathered gray” is usually preferred as it camouflages best into the surrounding sky. Atty Freyman offered to come back before the Board with photo-simulations of different colors, as a condition of approval. Board member Pete Punderson stated he is ok with a gray color.

Chair Russell Denver asked for each member to give their reasoning as to why they would vote yes or no on this matter.

Vice Chair George Kingston stated he believes his reasoning for decision has already been stated tonight.

Clerk Jon Torcia stated he has not made a decision yet; however, his reasoning for voting no would be regarding questions on if the petitioners have fully exhausted every effort of alternative site analysis. Clerk Jon Torcia reiterated that the Board has the option to hire an independent RF engineer. Clerk Jon

Torcia stated he is split on his decision. Clerk Jon Torcia stated he believes the petitioners have provided quite a bit of information and testimony, but he has not made a decision.

Board member Cassandra Cerasuolo stated she has not made a decision yet. Board member Cassandra Cerasuolo stated it may be in the Town's best interest for the Board to exercise their right in hiring an independent RF engineer. Board member Cassandra Cerasuolo stated it is better to exhaust every effort possible.

Clerk Jon Torcia added that, in his opinion, requesting an independent RF engineer is not an indication that Verizon didn't work hard enough, but rather comes from a place that shows the Board is doing their due diligence. Clerk Jon Torcia stated exercising that right best represents all of the community's interests. Board member Cassandra Cerasuolo concurred.

Chair Russell Denver stated there is currently a motion to approve, which has been seconded. Chair Russell Denver asked if a member of the Board would like to withdraw that motion and instead make a motion for the Town to retain an independent consultant, as suggested by Clerk Jon Torcia and Board member Cassandra Cerasuolo.

Board member Pete Punderson stated, in the next case of a proposed telecommunications tower, an independent RF engineer should be hired before the case goes before the Planning Board. Board member Pete Punderson asked how long an independent RF engineer would need to conduct that investigation. Atty Freyman responded that it would take several months. Atty Freyman asked what the scope of investigation would be; Atty Freyman stated she is not aware of what criteria the independent engineer could provide that the Verizon team hasn't already investigated.

Board member Pete Punderson inquired if a judge would concur that Verizon has done their due diligence; Chair Russell Denver stated that may not be something the petitioners can answer.

Chair Russell Denver reiterated the motion to approve the request for Special Permit, which has been seconded. Chair Russell Denver took a roll call vote.

Motion to approve the request for Special Permit made by Vice Chair George Kingston; second by Board member Pete Punderson.

Board member Pete Punderson- Yes
Vice Chair George Kingston- No
Clerk Jon Torica- No
Board member Cassandra Cerasuolo- No
Chair Russell Denver- Yes

The motion to approve did not carry, with a roll call vote of two (2)-three (3).

OTHER BUSINESS:

1. 2021 Annual Report

Administrative Assistant Nina Fazio stated Vice Chair George Kingston offered a few grammatical corrections. Chair Russell Denver stated he is satisfied with the report and believed it accurately reflected the work of the Planning Board.

Motion to approve the draft 2021 Annual report, with corrections made by Vice Chair George Kingston, made by Vice Chair George Kingston; second by Board member Cassandra Cerasuolo and approved by roll call vote five (5)-zero (0).

2. Director's Report

Administrative Assistant Nina Fazio provided an update on the search for a new Planning Director. The Town will research technical assistant provided by the PVPC at the recommendation of Vice Chair George Kingston.

Chair Russell Denver asked what matters were tentatively on the agenda for the next meeting. Administrative Assistant Nina Fazio stated the Board will be hold two public hearings for bylaw amendments and a review of an approved site plan review waiver.

ADJOURN:

Motion to adjourn made by Vice Chair George Kingston; second by Board member Pete Punderson and approved by unanimous vote five (5)-zero (0) at 7:15 PM.