



ZONING BOARD OF REVIEW MINUTES
TOWN OF FOSTER
Benjamin Eddy Building
6 South Killingly Road, Foster, RI
Wednesday, July 13, 2016
7:00 p.m.

Mr. Walsh read the Hearing Procedure out loud.

A. Call to Order

Mr. Walsh called the meeting to order at 7:05 p.m..

B. Roll Call

Board Members Present: Joseph Walsh (Chair); Maureen McEntee (Vice-Chair); Paula Mottshaw (Secretary); Heidi Colwell; John Esposito; and Tom DiRaimo (Alternate).

Staff Present: Renee Bevilacqua (Solicitor) and Juliana King (Planner).

Applicants and Public Present: John Champ and Kevin Delaney (ITW); Nick Gorham (Gorham & Gorham); Joe and Audrey Carey (2 Oakhill Road); Paul Allen (83 Moosup Valley Road); Mary-Elena and Robert DeLuca (57 Cucumber Hill Road); Bob DeLuca Jr (Canterbury, CT); James Callaghan (Callaghan & Callaghan); David Cedarfield (56 Cucumber Hill Road); Ned Caswell (Narragansett, RI); Patricia Shaw (35 Howard Hill Road); and Cindy Tangney (Stenographer).

C. Approval of Minutes
June 8, 2016

Discussion / Action

Motion by Ms. Colwell to approve the minutes of June 8, 2016 as written. Second by Ms. Mottshaw. Approved 6 – 0.

D. Correspondence and Communications

Discussion / Action

There was none.

E. Decisions – Review/Adoption & Ratification

Discussion / Action

- 1) Owner, Kimberly McHale, and Applicant, Dare to Dream Ranch, for property located at 12 Snagwood Road, being Plat 13 Lot 36 in an Agricultural/Residential AR district on 11.33 acres. A Special Use Permit is sought from the Town of Foster Zoning Ordinances Article IV: Zone Regulations: Description of Uses: Section 4 Public and Semi-Public Uses: Subsection 11 Day Camps. The Permit is needed to use the property as a day camp for veterans, service members, and their families to attend alternative therapy programs; there will be no permanent residency for the camp attendees, volunteers, or employees.

Motion by Mr. Esposito to approve the decision. Second by Ms. Mottshaw.

Ms. Mottshaw polled the Board:

Mr. DiRaimo voted yes, Mr. Esposito voted yes, Ms. McEntee voted yes, Ms. Colwell voted yes, Ms. Mottshaw voted yes, and Mr. Walsh voted yes.

Mr. Walsh tallied the votes as 6 – 0 to approve the decision, so it passed.

F. Public Hearings

Discussion / Action

- 1) Owners, Russell J. & Ellen A. Flock, and Applicant, Industrial Tower and Wireless, LLC, for property located on Cucumber Hill Road by Pole 55, being Plat 4 Lot 36 in an Agricultural/Residential AR district on 5.38 acres. A Special Use Permit is sought from the Town of Foster Zoning Ordinances Article IV: Zone Regulations: Description of Uses: Section 7 Business: Subsection 20 Communications Towers & Antennas. The Permit is needed to construct a 150'-high personal wireless service telecommunications monopole tower and related facility including equipment shelter and security fencing/gate encompassing 6,400 square feet, with underground utilities and construction erosion control measures, and constructed with the intent to co-locate.

Ms. Mottshaw read the application into the record, including the property and proposed use details, how the proposal meets special use standards including compliance with the Comp Plan, abutters list and 200' radius map, site plans, propagation study, photo simulations, FAA approval, site analysis, purchase and sales (P&S) agreement, RIHPHC letter, tower removal proposal, similar facilities in the region, facility material color board, and that the fee was paid and notification to abutters confirmed.

Nick Gorham, attorney representing the applicant, requested that the applicant be allowed to first proceed with a Powerpoint presentation; the Board agreed.

Kevin Delaney, engineering and regulatory compliance manager on the project from ITW, was sworn in and explained that the proposal is for a 150'-high monopole-type telecommunications tower on Plat 4 Lot 36 in an AR zone on 5.38 acres. Mr. Delaney noted the general location of the facility with respect to local roads, and reviewed the site plan: 12'-wide, 500'-long driveway; one utility pole at the entrance with underground utilities from there; an access gate; 80'x80' compound surrounded by 8'-high chainlink fence and with a monopole-type tower in the center; 150' radius fall zone solely on the subject property; tree-cutting as minimal as possible to preserve a buffer; base of the site being six inches of ¾" crushed stone; carrier shelters or cabinets; and with space for 5 co-locators. The tower has received FAA approval and that approval does specify that no lights are required.

Mr. Delaney demonstrated the propagation study results, and highlighted that it is computer-generated and uses elevation/terrain/vegetation, among other data factors, to show how coverage (unreliable/nonexistent coverage versus coverage while driving versus coverage while walking) will fill in the chosen extent. Mr. Delaney described that a balloon test creates the photo simulations for visual impact from the surrounding roads through the existing fields/ponds/gaps in vegetation, and gave a brief history on ITW as a company and how all of the work will be done in-house except for land clearing. Seven white pines were pointed out as intended to be planted at a 6-8'-height at the north side of the compound for additional screening.

Mr. Gorham asked that Mr. Delaney provide clarification on the alternate site analysis.

Mr. Delaney said that 14 properties were originally identified in the area where a tower site could fill in the coverage gap, and lots were eliminated from contention due to their narrowness, conservation land, landowners not being interested, wetlands, and/or open fields where a tower would be more visible to more people. Elevation on the east side of Cucumber Hill was all too low. The subject site was picked as the best because it was available, provides optimum coverage, and met the other criteria.

Mr. Gorham commented that further south on Cucumber Hill Road is where the Moosup Valley historic district starts, and mentioned the letter from the RI Historical Preservation & Heritage Commission stating that the proposal will not have any impact on any historic properties. Mr. Gorham also noted the prior tower application of another company on the Berkowitz chicken farm down the street. Mr. Delaney responded that ITW had considered that farm site but it is too wide open and on the edge of a flood zone; proximity to wetlands would have required application to DEM too.

Mr. Delaney recalled that a lattice-style tower was originally proposed for the subject site and was preferred because it is safer to climb and visually less intrusive, but the applicant switched to a monopole because of local residents' preference.

Mr. Walsh inquired if the lots considered too narrow were because of the 1:1 or 0.5:1 fall zone ratio, and Mr. Delaney answered with 1:1; to be closer to the lot lines would have necessitated a variance. Mr. Delaney elaborated that 15 of the sites listed in the alternate analysis were the ones that could fill the coverage gap and not so far south as to infringe on the historic district or too low in elevation. Of the lots listed as being unable to come to terms with property owner, ITW offers either outright purchase, a long-term lease, or a permanent easement.

John Champ, site acquisition specialist from ITW, was sworn in and remarked that a verbal agreement was in place for one of the sites listed as not being able to come to terms, but then the landowner changed their mind and wanted a monthly lease. ITW doesn't offer monthly leases, and the landowner wasn't interested in a 99-year lease where the terms are basically the same as an easement in perpetuity. Mr. Walsh asked for and received confirmation that the ITW offer in Foster is the same made to all.

Mr. Walsh opened the Public Hearing and invited any abutter present in favor of the application to speak. Mr. Walsh repeated the invitation twice more.

Mr. Walsh invited any abutter in opposition to the application to speak.

James Callaghan, attorney representing abutters Robert and Mary-Elena DeLuca at 57 Cucumber Hill Road, introduced himself and brought Mr. DeLuca forward.

Mr. DeLuca, of 57 Cucumber Hill Road, was sworn in and voiced general background on his tenure as a Foster resident. Mr. DeLuca added details on his house and property, his volunteer activities, and that the proposed tower is 300' from his land (the compound is 40' even closer). The tower will be easily seen from his house and outbuildings, and Mr. DeLuca believed that it will be detrimental to his property value and the scenic/rural aesthetics of his AR-zoned property. Mr. DeLuca was only against this particular tower location, and had no knowledge of existing cell coverage affecting emergency response. The existing trees at the edge of his land are only 70'-high, and though Mr. DeLuca was approached by the applicant and was interested in siting the tower on his own lot he didn't care for the compensation package. Mr. DeLuca opined that the proposed site is just the most convenient.

Mrs. DeLuca, of 57 Cucumber Hill Road, was sworn in and stated that she had owned the property since 1969, and this application has turned her life upside down- it will affect the DeLucas whether they stay or sell.

Mr. Walsh referred to the letter in the Board's packets from the Callaghan law office listing Bob DeLuca Jr's and Ned Caswell's qualifications.

Mr. DiRaimo and Ms. Bevilacqua talked about how the Board can assign bias to Mr. DeLuca Jr as the opposing abutter's family member but can still accept him as an expert.

Mr. DeLuca Jr was sworn in.

Mr. Gorham objected that Mr. DeLuca Jr's design experience seems to focus on water distribution, and wondered if he had any civil engineering experience in design or proposal of telecommunications facilities, or any experience in propagation studies. Mr. DeLuca Jr replied in the negative, and described himself as an expertise in site feasibility studies as they relate to infrastructure.

Motion by Ms. McEntee to accept Mr. DeLuca Jr as an expert witness. Second by Mr. Esposito. Approved 6 – 0.

Mr. Gorham lodged his objection.

Mr. Callaghan and Mr. DeLuca Jr spoke back and forth regarding Mr. DeLuca Jr's general education and professional background. Mr. DeLuca Jr had performed his own balloon study and illustrated the results from his parents' house at 57 Cucumber Hill. Mr. DeLuca Jr also conducted his own site feasibility study using the applicant's criteria, which resulted in more feasible sites than the applicant listed. Maps were handed out.

Ms. Bevilacqua cautioned that "feasible" can be subjective depending on who's being asked, and that the Flocks as owners have certain rights to do what is allowed on their land by Zoning Ordinance. Mr. Walsh and Ms. Bevilacqua discussed what part of the testimony could be accepted and which reports marked as exhibits.

Mr. DeLuca Jr clarified that he didn't mean to say whether the alternate sites he came up with are actually available. Mr. Esposito cautioned that it is not within the Board's purview to determine alternate sites, though making sure due diligence was done is important.

Mr. Walsh stressed that the Board can't rule on health hazards, and can only decide whether the most conducive site was chosen.

Mr. Gorham focused on lot 30 and how the stream and wetlands in the wooded portion would impact a tower.

Edward "Ned" Caswell was sworn in.

Motion by Ms. McEntee to accept Mr. Caswell as an expert witness in appraisal. Second by Mr. Esposito. Approved 6 – 0.

Mr. Callaghan and Mr. Caswell spoke back and forth regarding Mr. Caswell's background as a RI certified appraiser and broker and his general professional background. Mr. Caswell investigated the abutting property at 57 Cucumber Hill and the surrounding area, especially with respect to radiowave pollution stigma.

Ms. Bevilacqua emphasized that there is a very fine line between what a Board member may consider to be a detrimental effect of radiowaves, and Mr. Caswell's expert testimony on what other people believe could result from a tower and how that affects property value.

Mr. Gorham objected to such a penumbral analysis.

Mr. Caswell went through his appraisal report page by page, including excerpts from the Town's Comprehensive Plan and its emphasis on rural character, as well as definition of stigma as perception leading to declining values. Mr. Caswell numbered the three stigma issues here as: ugly, health, longevity.

Details of the current assessment at ~\$350,000 were provided, with a range of diminishing values depending on the neighborhood setting, with the lowest value at ~\$295,000. Mr. Gorham and Mr. Caswell discussed the difference between diminishing values with respect to siting on other parcels in the area, and whether they would be subjective or according to appraisal standards.

Mr. Caswell was unaware of any town reducing a property's assessment because of proximity to a cell tower.

Mr. Walsh invited any other abutter in opposition to the application to speak.

David E. Cedarfield, of 56 Cucumber Hill Road, was sworn in and stated that he lives across the street from the DeLucas. Mr. Cedarfield was of the opinion that the tower proposal does nothing to enhance the neighborly feeling in the area.

Mr. Walsh asked if there was any other abutter present who wished to speak in opposition to the application, twice in total. No one responded.

Mr. Walsh asked if there was any non-abutter present who wished to speak in opposition to the application, twice in total. No one responded.

Mr. Walsh asked if there were any interested parties present who wished to speak. There were none.

Mr. DeLuca came forward to question why the owners (the Flocks) didn't locate the facility on their own house lot.

Ms. McEntee sought to ensure that the Board knew the applicant's specific roles. Mr. Delaney explained that Mr. Champ and he often visit the sites together; Mr. Delaney identifies the gaps in coverage and examines land characteristics, while Mr. Champ approaches the landowner to assess interest.

Mr. Delaney noted that ITW was in an active P&S with the landowner before the Flocks but experts in foundation design and wetlands determined that the lot wasn't actually feasible. Lot 40 had fill and was built up prior to current regulations so it wasn't feasible either, and even if a tower were sited back in the woods it would be easily seen from the road through the open fields. Lot 30 was discounted because of the open field visibility from the road, and because its configuration would have made the fall zone tricky. The Flocks were not interested in selling their farmland, and wetlands/fall zone/open area also contributed to discounting lot 35.

Ms. Mottshaw was curious about Land Trust property, and Ms. Bevilacqua pointed out that the Land Trust doesn't sell to private entities. Ms. Mottshaw was curious if any land bordering CT might have filled the coverage gap, but Mr. Delaney said no.

Ms. Colwell was doubtful that \$12,000 was enough of a bond value to cover the tower's removal; Mr. Delaney was certain, as an expert, that the amount would suffice. Mr. Esposito wondered about its life expectancy, and thought technology was closer to the repeaters on the telephone poles. Mr. Delaney replied that the tower will last as long as technology allows, and the problem with repeaters is that in rural areas trees interfere with the signal.

Mr. DiRaimo brought up the idea of offering moving the tower to lot 35 (also owned by the Flocks or at least closer to the adjoining lot line with 35 but Mr. Walsh reiterated that it is the same issue with lot 33 and the fall zone.

Mr. Delaney talked about EMS and that the Engineering Board reviewed the proposal favorably, including offering the fire district space on the tower for its own equipment. Mr. Walsh commented that no one from the fire department is present to say that the subject lot is preferred to any of the alternate sites.

Mr. Cedarfield spoke up to inquire why the facility couldn't be moved to the fire department property itself, and Mr. Walsh told him that the fire department is in the historic district.

Mr. Gorham remarked that the obligations under the Telecom Act of 1996 and Foster's Zoning Ordinance have been met, and that no land value consideration is in the special use permit standards. Any location chosen will engender some debate. Mr. Gorham asserted that the subject lot is the only good location.

Mr. Callaghan emphasized that it is important to the DeLucas and an affront to the Town's rural character that the tower be sited elsewhere, and believed that the applicant's definition of feasible is different than implied in the Comp Plan. Mr. Callaghan cited evidence including nationwide court cases to support the Board's basis of denial.

Mr. Gorham in turn cited a 5/18/2016 court case involving ITW in Falmouth MA, and how the Falmouth's Zoning Board's denial was overturned. The feasibility here is convincing, and law and local regulations are clear that cell towers are allowed to fill coverage gaps.

Mr. Walsh went into recess at 10:03 p.m., and reconvened at 10:11 p.m..

Mr. Walsh closed the Public Hearing at 10:11 p.m., and went into Board recess to discuss testimony and material presented as well as decide whether to continue the meeting; if the meeting is continued, the Board will still be able to ask questions of the expert witnesses and applicant at the next meeting.

Mr. Esposito said that the Board is being asked to do analysis above and beyond the Board's purview, especially choosing a different site, and the right of the DeLucas to maintain their land value must be balanced against the right of the Flocks to sell their property. It comes down to dollars and cents, and aesthetics.

Mr. Walsh reminded the Board that opinion doesn't matter, and noted that there is testimony supporting in both directions. The Board must decide if the applicant's alternate site analysis was comprehensive enough and whether the subject site is the best and only location, but otherwise the scope is fairly limited. Mr. Walsh believed the Board needs more time.

Ms. Bevilacqua clarified that "only" location must really be "only viable" location.

General discussion ensued on what is in the Board's purview to consider.

Mr. Esposito stressed that the Board has to address only what's in front of them and at face value, and Mr. DiRaimo agreed that the Board doesn't have the right to pick another location.

Mr. Walsh highlighted the Planning Board's vote to approve Master Plan and its reasoning. Ms. McEntee queried if case law should be taken into account, and Ms. Bevilacqua answered that the Board should look to the Zoning Ordinance and only go to court cases for clarification; .

Mr. Walsh was concerned as to whether the Board is prepared to say the application complies with the Comp Plan tonight, and further discussion ensued including variances and protocol.

Mr. Walsh requested that the Board review the Comp Plan and the Telecom Act before the continued meeting.

Mr. Walsh closed recess at 10:40 p.m..

Motion by Ms. McEntee to continue the matter to August 10, 2016. Second by Ms. Mottshaw. Approved 6 – 0.

J. Future Agenda Items

Discussion / Action

There were none.

K. Adjournment

Action

Motion to adjourn at 10: 40 p.m. was approved unanimously.

Respectfully submitted,

Paula Mottshaw, Secretary