



ZONING BOARD OF REVIEW MINUTES
TOWN OF FOSTER
Benjamin Eddy Building
6 South Killingly Road, Foster, RI
Wednesday, October 12, 2016
7:00 p.m.

Mr. Walsh read the Hearing Procedure out loud, and noted that the public comment portion of the Industrial Tower and Wireless continuation is closed.

A. Call to Order

Mr. Walsh called the meeting to order at 7:03 p.m..

B. Roll Call

Board Members Present: Joseph Walsh (Chair); Paula Mottshaw (Secretary); Heidi Colwell; John Esposito; Tom DiRaimo (Alternate), and David Paolino (Alternate).

Board Members Excused: Maureen McEntee (Vice-Chair).

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 and Kandis MacKay (83 Moosup Valley Road); Mary-Elena and Robert DeLuca (57 Cucumber Hill Road); Bob DeLuca Jr (Canterbury, CT); James Callaghan (Callaghan & Callaghan); Michael Chippendale (124A Johnson Road); and Carole Malaga (Stenographer).

Mr. Walsh stated that Mr. DiRaimo will be voting in Ms. McEntee's place.

C. Approval of Minutes
July 13, 2016

Discussion / Action

Motion by Mr. Esposito to approve the minutes of July 13, 2016 as written. Second by Ms. Mottshaw. Approved 5 – 0.

F. Public Hearings

Discussion / Action

Continued from July 13, 2016 and September 14, 2016 (Public Hearing closed)

- 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.

Mr. Walsh reminded the Board and everyone present that 3 hours of testimony was heard last time and the Public Hearing closed and the meeting continued after unanimous vote to give the Board time to review the Comprehensive Plan, Telecommunications Act of 1996, and anything else members found relevant to move on with the hearing. All experts from both parties appear to be in the room tonight for the Board to ask questions of that they were unable to resolve on their own.

Mr. Walsh inquired of the Board whether they had any questions on the Comp Plan, staff report, or Communications Act of 1996; there were none. Ms. Mottshaw indicated that she had a question on the propagation study.

Kevin Delaney, engineering and regulatory compliance manager on the project from ITW, was sworn in. Ms. Mottshaw pinpointed the second map in the propagation study and wondered about the white area showing as a significant coverage gap and its accuracy.

Mr. Delaney responded that it is highly accurate but won't be the same for every carrier; the white area represents unreliable coverage because of that variability. The best case scenario is for the carrier at the top of any tower in the area. The maps are generated using a computer prediction analysis for coverage of all carriers, and cell coverage doesn't roam from one carrier to another.

Mr. DiRaimo queried whether there will be space on the proposed tower for all carriers, and Mr. Delaney answered in the affirmative. Mr. DiRaimo inquired whether the two towers just over the line in CT by Route 6 cover the subject gap at all, and Mr. Delaney replied that those towers are shown on the map but are too far away and so the answer is no. Mr. Paolino requested the definition of "reliable coverage", and Mr. Delaney illustrated that the different signal levels on the map represent the reliable coverage patterns inside a vehicle versus walking down the road; signal strength is the standard that carriers use.

Ms. Colwell commented that the water table is high in all of Foster, and asked if the applicant had conducted any soil or wetland analysis. Mr. Delaney confirmed that the engineers did inspect the site conditions via a walk-over but no soil samples were taken or formal study done by wetland biologists.

Ms. Colwell was skeptical about the ~\$12,000 bond for the tower removal, and Ms. Bevilacqua remarked that the Board could consider a condition to increase that amount. Mr. Walsh added that the applicant did testify last time, under oath, that the amount was adequate but the Board could discuss it if a decision gets to that point.

Ms. Mottshaw questioned whether ITW had looked at any sites on roads besides Kennedy and Cucumber Hill, and Mr. Delaney replied that three properties on Kennedy were considered but they were too far away and the property owner was uninterested. Other roads were too great a distance away to cover the gap.

Mr. DiRaimo was curious how carriers will be attracted to locate on the proposed tower in such an unpopulated area, and Mr. Delaney said that the surrounding higher population areas were covered first- carriers are required to cover a percentage of the geographic area stipulated in their FCC license, and now they are focusing on the more residential areas and associated gaps (especially because it is becoming an increasing trend for homeowners to only use cell phone and eliminate landlines). Mr. Walsh cautioned that economic viability falls outside the Board's purview.

Ms. Colwell was of the opinion that a buffer of white pines isn't the best, and Mr. Delaney was open to alternative Board suggestions. Ms. Colwell wondered if the communications compound could be moved closer to the road, and Ms. King recalled that such a scenario did come up at the Planning Board level but the abutters present who spoke then indicated that 50 feet closer wouldn't mitigate the visual impact. Nick Gorham, attorney representing the applicant, highlighted page 39 of the Zoning Ordinance, specifically Section 3A, where "viewshed analysis" must be considered for site selection, and that locating a tower closer to a road will make it more visible for more but less so for others; the applicant will move it closer to the road if the Board prefers it that way. Ms. Bevilacqua voiced the factor that closer to the road means a greater possibility of trespassing and nuisance calls to the police.

Mr. Walsh directed the Board's attention to the standards worksheet.

James Callaghan, attorney representing abutters Robert and Mary-Elena DeLuca at 57 Cucumber Hill Road, brought up his recent correspondence regarding reopening the Public Hearing. Mr. Walsh corrected him that the Zoning Board never requested or mentioned that the private parties talk to each other to try and work it out between the first meeting and this one, though that is always an option. That first meeting entailed 3 hours of public comment and the Board's vote was unanimous to close the Public Hearing.

Ms. Bevilacqua stressed that the Board cannot be used to force a business deal. The landowner has a right to apply to do what they want with their land, and the Board cannot get involved in a private matter other than what the owner and applicant have set before the Board; the DeLucas are not a party to the hearing in that way. Mr. Walsh was firm that the Board can only decide whether the applicant did due diligence to find alternate sites, and referenced the Planning Board Master Plan decision as having reviewed the application and found it consistent with the Comp Plan. Mr. Gorham protested that it was highly inappropriate to have settlement discussions spilled out in front of the ZBR, and it isn't pertinent to a Board decision anyway.

Mr. Walsh marked the full plan set with attachments as Town Exhibit #1, the staff report as Town Exhibit #2, and the balloon study analysis as Abutter Exhibit #1.

Mr. Callaghan brought up the second map, but Ms. Bevilacqua told him that it was deemed for demonstrative purposes only.

Mr. Walsh directed the Board's attention to the draft motion, emphasizing that a motion should be in the affirmative- anyone can still vote against it. A two-part motion, with conditions as the second half if the vote is to approve, would be in order.

Mr. Esposito listed the Plat and Lot as 4 and 36, the Address as Cucumber Hill Road by Pole 55 in Foster RI 02825, the Zone as Agricultural/Residential AR, the Acreage as 5.38, the Current Use as Vacant, the Proposed Use as a 150'-high personal wireless service telecommunications monopole tower, the Owner as Russell J. and Ellen A. Flock, and the Applicant as Industrial Tower and Wireless, LLC, and made a motion to approve the application under the authority granted to the Zoning Board of Review by Rhode Island General Law 45-24-57 and by the Town of Foster's Zoning Ordinance, Article XI Section 3C. Specifically, the following special use permit is granted:

- Construction of 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, on Cucumber Hill Road by Pole 55, being Plat 4 Lot 36 in an Agricultural/Residential AR district on 5.38 acres, per the Town of Foster Zoning Ordinances Article IV: Zone Regulations: Description of Uses: Section 7 Business: Subsection 20 Communications Towers & Antennas.

Evidence of the following standards, pursuant to Rhode Island General Law 45-24-42 and the Town of Foster's Zoning Ordinance Article VII Section 2B, has been entered into the record of proceedings:

- The special use is specifically authorized by this Ordinance;
- The special use meets all of the criteria set forth in the sections of this Ordinance authorizing such special use; and
- The granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this Ordinance or the Comprehensive Plan of the Town.

Second by Mr. DiRaimo.

Ms. Mottshaw polled the Board:

Mr. DiRaimo voted yes, Mr. Esposito voted yes, Ms. Colwell voted to approve then changed it to no, Ms. Mottshaw voted no because she didn't believe that the applicant performed due diligence in finding the best location and that the proposal is not compatible with the Comprehensive Plan, and Mr. Walsh voted yes.

Mr. Walsh tallied the votes as 3 – 2 to approve the application, so it failed.

Mr. Walsh expressed concern that the optional conditions weren't addressed, but Ms. Bevilacqua assured the Board that if there were a successful appeal the decision would be remanded back to the Board, not reversed.

K. Adjournment

Action

Motion to adjourn at 7:54 p.m. was approved unanimously.

Respectfully submitted,

Paula Mottshaw, Secretary