

Town of Wakefield, NH
Planning Board
Minutes of the Meeting – As Amended
June 17, 2004

Members Present John Blackwood, Selectmen's Rep; Rod Cools, Vice-Chairman; Joe Fluet, Chairman; Paul McNally, Member; Ed Morrison, Member; Desiree Tumas, Secretary.

Others Present Gerry Mylroie, SPRC; Steve McDonough, Code Enforcement; Nancy Spencer-Smith, Alternate.

Attending Public (As signed in) Susan Therrien, Joan Rosenthal, Norman Panall, Norma Panall, Mark Panall, Norman Therrien, Fred W. Elliott, Charlie McLaughlin, Karen Voigt, John Kenney, John Stevens, Tremblay & Sons Htg.; Nathan Fogg, Land Tech.; Howie Knight, Douglas Tremberth, Frank Tremberth, Virginia Hansley, Josephine Williamson, Richard Houle, Margie Floyd, Doris A. Osterman, Rich VanderPoll, Rich & Sue Bixby, Ed Pinao, John Randall, MD; Carl & Merlyn Campbell, Edward J. Kelvington, Ronald Murray, Brookfield Planning Board; Daniel Pelletier, Illegible Name, David Lee, George Szirbik, Larissa Mulkern, Granite State News.

Pledge of Allegiance

Mr. Fluet opened the meeting following the Pledge of Allegiance.

Public Hearing

- 1. The Applicant, Nextel Communication of the Mid-Atlantic, Inc. and property owners John & Sandra Kenny–Land/Crown Castle Tower have applied for a Minor Site Plan Review in which the seek approval to install twelve (12) panel antennas with connecting appurtenances and related ground equipment to the existing telecommunications tower shown on Wakefield Tax Map 75, Lot 8C. Said property is located on Juniper Ridge Road, Wakefield, NH.**

George Chainis, Project Manager with Nextel is in attendance and following introductions; Mr. Chainis explained that Nextel is seeking approval to install a triangular array consisting of 12 panel antennas with connecting appurtenances and related ground equipment to the existing telecommunications tower located on Juniper Ridge Road.

The antenna array is proposed to be located at a height of 177' feet and will be located approximately 11 feet from the centerline of the tower with 4 panels measuring 6' on three sides of the tower transmitting in all directions. Nextel maintains the licenses nationwide and provides coverage with the exception of some pockets that are unavoidable.

Mr. Chainis went on to explain that Nextel's intent is to provide coverage further Northern NH on the Rte. 16 corridor to North Conway by installing antenna in Wakefield, Ossipee, Albany, Conway and North Conway.

Mr. Fluet questioned the minimal percentage of coverage for the Town of Wakefield as projected in the submitted "Existing Nextel Coverage with proposed area plan". Mr. Chainis explained that the additions of antenna arrays are proposed throughout an area as a result of the engineered evaluation of services provided. Secondary plans are proposed once the primary antennas have been installed. Essentially, "filling-in" the spaces and connecting the service uninterrupted. Additionally, Mr. Chainis explained that Nextel may entertain additional antennas on an additional tower if the service is found to have pockets where service is not available.

Mr. Kenny additionally explained that with the Nextel Antennas located in Milton, NH and on Juniper Ridge Road there should be no need to locate additional antennas on the Access Road Tower.

Mr. Fluet questioned if the proposed co-location and 11' x 6' hut to be located at the base of the tower have been approved by the Fire Chief. Mr. Chainis stated that he had not contacted the Fire Chief but would do so.

Mr. Fluet completed the Site Plan Approval Checklist indicating that the proposal meets the requirements for completeness and entertains a motion to accept the application.

Mr. Cools moved to accept the application as complete; Mr. Blackwood seconds the motion as stated; the motion passed unanimously.

Mr. Fluet called for comments from the Board, hearing none; Mr. Fluet opened the public discussion.

Mr. Fred Elliott questioned the granted access to the tower from Juniper Ridge and requested consideration of compensation for road maintenance. Additionally, Mr. Elliot stated that the it is his belief that the values of the surrounding homes continue to diminish and attributed the decrease to the additional antenna that are placed on the tower.

Mr. Kenny explained that the property is allowed access from the public roadway and that maintenance of the driveway to the tower location is maintained by Mr. Kenny and the specific carriers whenever access is necessary during the winter months. Additionally stating there is no need to keep the driveway plowed during the winter, it is done on an as needed basis only when access is needed.

Mr. Elliott argued the point that the use of the property is considered commercial and Juniper Ridge Road is a private road with no known legal owner of record. Mr. Kenney disputes the commercial comparison due to the minimal amount of traffic as a result of the two existing carriers and including the proposed results in significantly less than that of a residential use.

Brief discussion without conclusion commenced regarding the possible formation of a road association to assist in the road maintenance. Both Abutters and Mr. Kenny are agreeable to discuss the possibility at a later time.

Mrs. Campbell stated concern regarding the number of additional carriers stating that Verizon, T-Mobile and now Nextel questioning how many can be located on the tower at once and additionally questioned if the antenna can be located at the same levels as the existing to reduce the visual impact.

Additionally, Mrs. Campbell stated concern regarding the RF emissions with consideration of the eight children living in the neighborhood. Mrs. Campbell stated agreement with the statements related to the erosion of property and the visual impact explaining that trees were not located at the base as the regulations indicate.

It was explained that the two telecommunication towers that exist in Wakefield were approved with the intent to allow co-location on existing towers before entertaining additional construction of new telecommunication towers.

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With regard to the RF emissions, Mr. Fluet made clear as did Mr. Chainis that the Federal Fcc regulates RF emissions and as such the Planning Board has no purview in consideration or determination. Additionally, Mr. Chainis stated that Nextel transmits at a frequency of 800 MHz

which is within federally recommended levels.

Mr. Campbell questioned at what point would there be enough antennas on the tower?

It was explained that the antenna can only be installed at a certain height depending on the frequency at which the antenna transmits. At a lower level it is not feasible to locate with consideration of topography and tree lines.

Mr. Ron Murray, Brookfield Planning Board stated it was his understanding that carriers can jointly shared antennas.

Mr. Chainis explained that Mr. Murray had been misinformed that in fact AT&T has merged with Cingular and that carriers transmit at different frequencies and as such need their own antennas located at differing levels. In the case of the merger, various antennas will be removed as a result of the merger.

Additional debate ensued related to the RF emissions with Mr. Chainis reiterating that Nextel Wattage is under Federal FCC limits in compliance with the Telecommunications Act, 1994. Antennas are located in area next to Nursery School in Nashua as well as other populated areas and that at no time would Nextel risk revocation of licensing.

Mr. Fluet concluded discussion regarding the RF emissions reiterating that the RF emissions are not within the purview of the Planning Board.

Mr. Fluet called for further public discussion, Ms. Smith questioned the applicability of Wakefield Zoning Ordinance; **§4.06 A-4 Personal Wireless Service Facilities** as well as exploration of locating on "other structures".

Following brief debate the Board concluded that the language pertained to the consideration of locating on existing "structures" including existing telecommunication towers before construction of new towers, not the installation of antennas. There is an existing tower that will facilitate the requirements of Nextel for which they have applied.

Mr. Fluet called for further public discussion, hearing none; Mr. Fluet redirected to final Board discussion.

Board Members stated understanding of the public concern regarding the RF emissions again reiterating the federal regulation and control, the Board favors complete coverage for the Town of Wakefield for safety reasons.

Mr. Morrison questioned if there would be any addition to the tower structure? Mr. Chainis explained that the only addition to the structure would be the triangular array to support the antennas and that 1-5/8 coax cable is run inside the tower structure to the base mechanical hut.

Additionally, Mr. Morrison questioned the number of towers and the close proximity required for coverage? Mr. Chainis explained that engineers that work for Nextel conduct coverage studies that determine the locations required to provide coverage.

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Mr. Fluet called for further Board discussion, hearing none; Mr. Fluet entertains a motion to conditionally approve the application pending Fire Chief Approval and to provide adequate tree screening around the mechanical hut proposed at the base of the tower.

Mr. Blackwood moved to conditionally approve the application pending Fire Chief Approval and written agreement to provide adequate tree screening around the 11' x 6' mechanical hut proposed at the base of the tower, Mr. Cools seconds the motion as stated; the motion passed unanimously.

Public Hearing

(Continued from June 3, 2004)

1. The Applicant, Martha H. Henbest Trust c/o George Szirbik has applied for a Major Subdivision Review in which they seek approval to subdivide the 27.9 acre parcel shown on **Wakefield Tax Map 25 Lot 10** into 5 parcels (4 buildable and 1 non-buildable). Also proposed is to subdivide the 43.8-acre parcel shown on **Wakefield Tax Map 25 Lot 66** into 13 parcels. All proposed parcels would have a minimum of 200 feet of road frontage on Witchtrot and/or Canal Roads and are a minimum of 3 acres in size to meet the current Agricultural Zone requirements. Said properties are located on the corner of Witchtrot and Canal Roads, Wakefield, NH

Mr. Mylroie SRPC; discussed the findings of the TRC as well as the legal review of the proposed easement and covenant language as well as the applicability of the "Open Space" proposed regulation. (See attached copy).

Mr. Szirbik stated that he feels that the subdivision proposal does consider the spirit of the proposed regulation in that open space has been delineated on the plan and additionally, one of the proposed lots will remain as a conservation easement.

Mr. Szirbik has also agreed to include language pertaining to restricting further subdivision of any parcel that is the subject of this subdivision.

Board Members briefly discussed and mutually agreed with the spirit of the proposed Open Space regulation stating concern regarding the permanent status of the conservation easement put in place. All agree that with the language provided in the RSA674:21a Development Restrictions Enforceable which specifically states: (See attached copy)

"Any open space designation or other development restriction which is part of a cluster development, planned unit development, village plan alternative subdivision, or other proposal approved under innovative land use controls, or which is lawfully imposed by a local land use board as a condition of subdivision, site plan, variance, or other type of approval, and which has been filed in the records of the local land use board in accordance with its established procedure, shall be deemed to create a conservation restriction as defined in RSA 477:45, I, which shall run with the land, and shall be enforceable by the municipality, or by the owner of any property which would be specially damaged by the violation of such restriction, regardless of whether any deed or other instrument conveying such restriction has been executed or recorded. For purposes of this section, an applicant's statement of intent to restrict development, submitted with or contained in an application which is subsequently approved, shall be deemed a condition of approval."

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Following much debate regarding the applicability of the proposed Open Space Subdivision Regulation, in light of the recent court decision and the good faith effort made by Mr. Szirbik Mr. Fluet entertains a motion to accept the proposed "Open Space" design to comply with the proposed regulation and that the Open Space Regulation is not applicable to this project.

Mr. Blackwood moved to accept the proposed plan without applicability of the Open Space Subdivision Regulation in light of the good faith effort made by the Applicant and recent court decisions, Mr. Cools seconds the motion as stated for discussion;

Mr. McLaughlin questioned the fairness of arbitrarily choosing which subdivision proposals would be required for compliance with the proposed open space regulation.

Board Members agree that the Board should evaluate the merits of each individual subdivision based on the submitted proposal.

Mr. Panall stated concern regarding future changes with the passing of the motion on the table; Mr. Fluet explained he would open the public discussion following the Land Agents presentation and called for a vote to the motion on the table: ***The motion carried, 4-in favor, 1-opposed vote by Member McNally.***

Mr. Fluet redirected to the Land Agent, Bryan Berland's explanation of the proposal for shared driveways and improvements to increase sight distance where necessary. Mr. Berland went on to explain that a 30' buffer from the street has been provided and begins behind the sight distance clearing.

To address the legal/civil issues which can and do arise from a shared driveway access, Mr. Sager further explained that the covenants are a separate document in addition to any deed restrictions which may run with the land. (Copy of the proposed covenants and easements are contained in the PB file)

8:45 PM: Mr. Fluet called for a 5-minute recess to read the legal review of the proposed covenants and deed restrictions.

8:50 PM: Mr. Fluet called the meeting back to order.

Land Agent, Nate Fogg went on to explain the driveway culverts and redesign to meet the 10 year storm calculations not the 50 year storm. Mr. Fogg further explained that although the proposed culvert development provides less flow it does not fix the inadequacy of the existing town culverts that divert run-off from the area.

Mr. Blackwood questioned the removal of the bio-retention areas that were previously proposed; Mr. Fogg explained that the redesign of the culverts and direction of runoff that individual bio-retention areas would not be necessary with the proposed culvert plan.

Board Members as well as Members of the public stated concern regarding the fertilizer use and potential run-off into Great East Lake. Following much debate regarding the necessity of individual bio-retention areas it was agreed that the proposed design of individual bio-retention areas would be included in the revised plan.

Mr. Fogg went on to explain the property wetland features of 66-10, 66-8 and 66-7 stating that the proposed parcels have wetland delineations flagged.

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Both Norman and Mark Panall stated concern regarding the protection of the "green belt" and the drainage issues. Ms. Norma Panall provided the Board pictures showing the damage from storm water runoff along Witchtrot Road. Secretary Tumas will scan a copy of the photos for the record and will return the originals to Mrs. Panall.

Additional members of the public reiterated the concern regarding the additional run-off created as a result of the residential development proposed.

Mr. Mylroie suggested that the easements of common area could be held by a homeowner's association to include maintenance of the culverts that run along the property as well as the maintenance of the sight distance.

Mr. Fluet called for further public discussion; Mrs. Bolstridge questioned the disclosure of the deed restrictions and covenants at the time of the sale which would inform the potential buyer of the restrictions that are imposed.

It was briefly discussed by Mr. McLaughlin that there is no obligation of disclosure by the real

estate agent, but rather due diligence by the prospective buyer to research a potential property including title prior to any agreement to purchase a potential property.

Board Members revisited the removal of the proposed individual bio-retention areas; all agree that it would be a good idea to include the individual retention areas to mitigate the amount of additional run-off from the proposed residential development. As well as reference to the shoreland protection language to be incorporated into the legal documents of the proposal.

Mr. Norman Panall commented on the water testing that is routinely done on Great East Lake and stated additional concern regarding the additional run-off and additional fertilizer that will be introduced by the residential development within the wetlands that abut Great East Lake.

Ms. Hansley and Josephine Williamson reiterated the concerns already expressed related to the potential runoff as a result of the residential development.

Ms. Voigt stated concern with regard to the proposed dry hydrant and the potential impact to the beaver dam area.

Mr. Fluet read a letter submitted by e-mail to Secretary Tumas from Abutters, Linda Pella, Carol Maccarone and Virginia Hansley. (See attached copy)

Due to the late hour, Mr. Fluet called for final public comment explaining that the public hearing would be continued and additional time would be available to the public at the next public hearing.

Hearing no further comment from the public, Mr. Fluet closed the public discussion and redirected to the Board.

Board Members state agreement to include individual bio-retention areas as well as additional design to further reduce the overall runoff.

Board Members additional agree that there should be no further subdivision of the parcels produced as a result of the proposed residential subdivision.

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Mr. Fluet called for further Board discussion, hearing none; Mr. Fluet restated the following recommendations:

- 1 Include individual property bio-retention areas.
- 2 Cross section of the driveway swales
- 3 Added deed restriction to reflect the Police Chief's concerns regarding potential civil issues as a result of the shared driveway access.
- 4 To address public concerns regarding the reduction of volume and quality.

In concluding the discussions, Mr. Fluet, restated that the Board has resolved the following:

- 1 Open Space Regulation issues
- 2 Most of the drainage issues as well as quality of the runoff
- 3 Bio-retention
- 4 Driveway culverts
- 5 Board Members agree use of the 10-yr storm water runoff is reasonable
- 6 Issues of public safety related to adequate sight distance
- 7 Monuments of conservation areas to be set
- 8 Driveways to be pitched and paved 25' away from the roadway

Mr. Berland questioned if additional professional review would be required as a result of the bio-retention design? Mr. Fluet stated it would not require additional PE review as the purpose of the bio-retention area is to address the quality of runoff not the quantity.

Responsibility of culvert maintenance along Witchtrot and Canal Roads was questioned. It was explained that both Witchtrot and Canal Roads are Town owned byways and therefore the responsibility of the Town to maintain.

Mr. Fluet questioned if the Applicant expected to have all necessary information for the next meeting on July 1, 2004? All agree that they should be ready to proceed at the next scheduled meeting.

Mr. Mylroie questioned if an additional TRC Meeting would be required to review the amendments made as a result of this evenings meeting. Mr. Blackwood and others stated concern regarding the additional cost. Board Members agree it would not be necessary conduct an additional TRC meeting.

Mr. Fluet entertains a motion to continue the public hearing until July 1, 2004.

Mr. Blackwood moved to continue the Public Hearing until the July 1, 2004 regular meeting, Mr. Morrison seconds the motion as stated; the motion passed unanimously.

Mr. Fluet closed the public hearing thanking the Applicants and his Agents for attending and stated that the Public Hearing has been continued until the July 1, 2004 regular meeting.

Preliminary Discussion

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Conceptual Design

- 1. Gary Tremblay and Randy Metivier to discuss the possible conversion of the existing barn on the property shown as Wakefield Tax Map 30 Lot 12. Said property is located at 155 Meadow Street, Sanbornville.**

Mr. Fluet explained that the purpose of conceptual and preliminary discussions is discuss ideas before the expense of plans and formal application and that discussion are non-binding to both the Planning Board and representatives discussing possible development.

John Stevens representing Gary Tremblay and Randy Metivier who were unable to attend to discuss the conversion of the existing barn on the property located at 155 Meadow Street. Mr. Stevens explained it was Mr. Tremblay & Mr. Metivier's intent to purchase the property and convert the existing barn into a two bedroom apartment downstairs and a one bedroom apartment that would be, "Manager" occupied.

The Board reviewed the Zoning Requirements indicating that the property has adequate square footage to support the additional living units and that the barn and existing structure and could be converted to apartments and could not see any obvious issues with the proposal other than addressing the issue of two building existing on the property and the requirement of a single building which would allow for three dwellings within the same building.

Mr. Stevens questioned if a common entrance connecting the existing barn to the existing dwelling would be acceptable. Board Members agree that the design submitted would have to be such that the barn and dwelling are connected.

Mr. Fluet called for further questions, hearing none; Mr. Fluet thanked Mr. Stevens for attending

and discussions were concluded.

Discussions

Insignificant Change of Use

- 1. Wakefield Tax Map 30 Lot 85; Dan Pelletier seeks an Insignificant Change of Use approval to convert the former Ossipee Insurance Business Office to a Real Estate Business Office. Said property is located at 373 Meadow Street, Sanbornville, NH.**

Mr. Pelletier is in attendance and explains he seeks approval for an Insignificant Change of Use to operate a Real Estate Office in the space previously occupied by, Ossipee Insurance Company.

Mr. Fluet completed review of the Criteria outlined in Site Plan Review Regulations §202 Insignificant Changes of Use. Having completed §202.1-§202.10 to the Boards satisfaction, Mr. Fluet entertains a motion to approve the proposed change of business from an Insurance Office to a Real Estate Office to be Insignificant.

Mr. Cools moved to approve the proposed change of business from an Insurance Office to a Real Estate Office at the property located in the commercial space previously Occupied by Ossipee Insurance at 373 Meadow Street to be Insignificant, Mr. McNally seconds the motion as stated; the motion passed unanimously.

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New Business

- 1. Schedule Site Walk of Wakefield Tax Map 53 Lot 4B, 5 and 14; Blackwood/Colosi proposed 6-lot Subdivision.**

Mr. Morrison moved to conduct a site walk of the Blackwood Property shown as TM 53 Lot 4B, 5 and 14 located at the corner of Blackwood Road and Province Lake Road, Monday June 21, 2004 beginning at 4:30 PM, Mr. Cools seconds the motion as stated; the motion passed unanimously.

- 2. Wakefield Tax Map 46 Lot 4; Doris Osterman, seeks PB direction regarding a possible 2-lot subdivision on White Mountain Highway.**

Ms. Osterman is in attendance and following introductions, explained that she is the owner of record for the 5 acre parcel shown as TM 46 LT 4 and she seeks guidance to subdivide the parcel creating two parcels. Ms. Osterman went on to explain that she understand the 3-acre Minimum Lot size in the Agricultural Zone, nonetheless, she would like to know if relief can sought from the ZBA reducing the minimum lot size to 2.5 acres each instead of the current 3-acre minimum.

It was explained that the ZBA is an appeals board which requires a denial from either Code Enforcement or other Municipal Department in order to seek relief from the zoning requirements there must be a violation on record.

Board Members recommended possibly purchasing additional land from either abutter to meet the minimum lot size.

Following additional discussion regarding the requirements of subdivision and in light of the requirements to seek audience with the ZBA, Board Members suggest Ms. Osterman apply to the Planning Board with the proposal adding that if the Minimum Lot requirements are not met the Board would have no choice but to deny the application based on insufficient Minimum Lot Requirement of which the Planning Board has no authority to waive.

Upon receipt of the Planning Board denial, Ms. Osterman could then seek relief from the Minimum Lot Size Requirement with the ZBA.

Mr. Fluet recommended Ms. Osterman meet with Secretary Tumas on Tuesday to review the requirements of Subdivision Application. Ms. Osterman was agreeable and will meet with Secretary Tumas.

Mr. Fluet called for further discussion, hearing none; Mr. Fluet thanked Ms. Osterman for attending and discussions are concluded.

Old Business

1. Wakefield Tax Map 69 Lot 1; Heffron Materials have requested an extension to the, approval.

The Board confirmed receipt of a written request to extend the July 17, 2003 approval for a period of 1-year as requested due to extenuating medical issues with the property owner.

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Mr. Cools moved to extend the July 17, 2003 approval of the Bedford Design/Heffron Materials submitted plan for a period of (one) 1-year expiring on July 17, 2005 due to extenuating medical issues with the property owner, Mr. Blackwood seconds the motion as stated; the motion passed unanimously.

2. Wakefield Tax Map 32 Lot 22; Scheduling of Traffic Study Review.

Following brief deliberation as to the necessity of a Traffic Study Review the Board reconfirmed that a professional review should take place.

Board Members request the material is forwarded to Gerry Mylorie of Strafford Regional Planning Commission for selection of review.

3. Wakefield Tax Map 33 Lot 38 Code Enforcement to confirm 30-day compliance of required screening of equipment.

Steve McDonough confirmed that Mr. Garland has complied with the condition outlined at the May 20, 2004 Planning Board Meeting and a fence screening has been installed.

Code Enforcement Q & A

1. Wakefield Tax Map 19 Lot 7; Linda Dodier, violation of approved Home Occupation.

Mr. McDonough explained that the use for which Ms. Dodier was using the Home Occupation went beyond the scope of Home Occupation and that Ms. Dodier subsequently met with Secretary Tumas who provided a clear explanation of the Home Occupation Regulations as they relate to, "exterior evidence of the enterprise."

Secretary Tumas explained that during discussions with Ms. Dodier she stated her understanding of the regulations outlined and also stated compliance with the regulations outlined.

Mr. McDonough will take further action if warranted.

Approval of the Minutes

1. June 3, 2004

Mr. Cools moved to continue Approval of the June 3, 2004 Minutes of the Meeting until the July 1, 2004 regular meeting, Mr. Blackwood seconds the motion as stated; the motion passed unanimously.

**Correspondence and Miscellaneous
Adjournment**

Mr. Cools moved to adjourn the meeting at 11:15 pm, Mr. Blackwood seconds the motion as stated; the motion passed unanimously.

Respectfully submitted,

Desiree Tumas, Secretary
Wakefield Planning Board