



TOWN OF WAKEFIELD, NEW HAMPSHIRE

Held in the Opera House

Planning Board Minutes

September 1, 2022

Approved

MEMBERS		ALTERNATES		OTHERS	
Tom Dube Chairman	✓	Johnny Blackwood		Victor Vinagro, Building Inspector/Code Enforcement Officer Shoreland Officer	✓
Doug Stewart Vice Chairman	✓	Stephen Leroux		Peter Gosselin, Building Inspector	
Ken Fifield Selectmen's Representative (via Zoom)	✓				
David Silcocks, Member	✓			Steven Whitley, Town Counsel	✓
Dick DesRoches, Member	✓			Public Hearing	✓

Others present

Alternate Stephen Leroux

Robert Ness, Kerry Brown, Nadia Krasowski Carpenter, Sarah Deacon Krasowski, Marilyn Ness, Ted Westfall, Karen Wentworth, Mike Wentworth, John Kenney, Jack Hepburn, Ruben Knisley, Roseanna Moreach, David Stewart, Jim Rines, Dino Scala and Max Gearing from Clearview Community TV. Via Zoom: Ivan Pagicik, Chris Bennett and Bob Benson

Pledge of Allegiance & Call to Order

Mr. Dube called the meeting to order at 7:00 and those present joined him in the flag salute.

Seat Alternates

Full Board

Public Comment

Ruben Knisley asked about an incident in Union and he was directed by Mr. Scala to contact him during business hours to be put on the next Selectmen's meeting agenda.

Dave Stewart said he reviewed the agenda and he asked if the Board was planning a de novo review of the Vertex applications or just consider new evidence. Mr. Dube said we will listen to new evidence.

Public Hearings

Mr. Dube introduced the Board and Town attorney Steven Whitley.

Major Site Plan Application

Submitted by Francis D. Parisi, Vertex Tower Assets, LLC for property owned by Savannahwood, LLC; located on Province Lake Road, Tax Map 92-34. The Applicant is seeking an approval for a Major Site Plan Application in order to construct a personal Wireless Service facility consisting of a 120' tall monopole tower (126' to top of highest appurtenance.)

Note: The ZBA, at its June 20, 2022 meeting, voted unanimously to approve the appeal filed by Vertex Tower Assets and to remand the application back to the Planning Board for further consideration with two new conditions: that applicant not seek a building permit to construct the tower until it had a commitment from a carrier; and that the applicant be willing to provide reasonable space on the tower to accommodate the Town's police and fire departments.

Mr. Stewart made a motion, seconded by Mr. Silcocks, to accept Mr. Fifield as a member tonight via Zoom. Roll call: DeRoches aye, Silcocks aye, Stewart aye, Dube aye. (Vote 4-0)

Mr. Parisi said he believes there is confusion in the notice. We were denied by the Planning Board and have commenced litigation in Federal District Court and plan to proceed with that. He said as a courtesy he also appealed that decision to the Zoning Board which granted our appeal. We thought they would overrule the Planning Board but they wanted to impose certain conditions. They then remanded it back to the Planning Board to approve that decision with conditions. He said that is all we are here for tonight. We are not here to present or hear new testimony. He said if we do hear new testimony he will object and refer to the Federal Court litigation. He said if you'd rather we can proceed to the Federal Court litigation as we have already been denied here. If you want to talk about other things, we will just proceed with the Federal Court litigation. He said we don't need to hear any testimony from the public or any consultants, the record stands for itself.

Mr. Whitley told Mr. Parisi that he understood what he is saying and wished they had had a chance to talk prior to this evening. He said the Planning Board did deny you previously but as you said that was reversed by the Zoning Board and they attached conditions and sent it back here to the Planning Board. The Planning Board was intending to review both your applications on the merits to continue that process and render a further decision. Mr. Parisi answered that they do not have that authority. We applied, they went through a Public Hearing process, and we were denied. We've appealed to Federal District Court. He said he had appealed the decision to the Zoning Board as a courtesy. The Zoning Board overturned the denial. Mr. Whitley said the basis of the decision was reversed so it comes back to the Planning Board to continue the consideration of your application. That's my interpretation. Mr. Parisi responded; I came here as a courtesy to avoid federal court litigation. If we're just going to rehear and deny the application we're still in federal court. We might as well defer to federal court.

Mr. Parisi said I can withdraw the appeal to the Zoning Board. Mr. Whitley asked Mr. Parisi if he challenged the decision of the Zoning Board? Mr. Parisi answered no, they just remanded it back to the Planning Board with specific conditions for the Planning Board to consider, not to reopen the public hearing or reexamine the evidence. Mr. Parisi said the Planning Board had ample opportunity throughout the process and did a through job and made their decision. He said he is giving them an opportunity to reverse that decision. If they're not going to reverse their decision there is no reason to continue to talk. Mr. Whitley said he doesn't think the Planning Board knows what they're going to do in light of the Zoning Board's decision. Mr. Parisi said

it's not to reopen the Public Hearing. The Zoning Board overturned the denial with instructions for the Planning Board to approve it with conditions. If they're not going to do that we'll continue at the federal court.

Mr. Dube told Mr. Parisi that they are going to open up the Public Hearing and let the public speak. He told Mr. Parisi that if he'd like to withdraw his application before we start.... Mr. Parisi said I am not withdrawing my Planning Board application, that application was denied.

Mr. Parisi said, "I am speaking on the record under protest because we do not agree with this process. I do not intend to present new evidence, new testimony. I do not intend to respond to questions from the Planning Board or the public. If the Board wishes the public to speak, I can't stop them but we would be seeking an approval with conditions in line with the Zoning Boards decision."

Mr. Stewart said part of the reason the Zoning Board sent it back to us is because the ZBA considered that the Whittier Tower was not existing. That tower is existing. There's a tower in the air. He said if we are going to make a decision tonight, I would say the tower is existing. He said the reports they received from Mr. Pagicik from his consulting work it sounds like there were some requests made of studies using certain frequencies that Mr. Pagicik did not receive from Vertex. He said Mr. Pagicik did create a study based upon the frequency that would be used in towers in this area with what the Whittier Tower would show. It only shows the Whittier Tower not the Vertex Towers. From his interpretation of looking at that map he believes there would be a lot of overlap from the proposed tower for Perkins Hill Road with less overlap on the Province Lake tower. He feels the Perkins Hill site would not be necessary based on what he has seen and interprets.

Mr. Silcocks agrees with Mr. Stewarts assessment. Mr. DesRoches said that would be his position as well. Mr. Fifield said he has nothing new to add and believes we are in the same position as we were with the existing tower. Mr. Dube said considering the burden of proof, we failed a little bit, we should have seen the RF study too for another tower within four miles of a tower. He's not sure if all the Burden of Proof requirements 1, 2 and 3 were shown by Mr. Parisi. Mr. Fifield doesn't feel they have adequately met their Burden of Proof.

Mr. Dube opened the Public Hearing at 7:20.

Jack Hepburn, attorney for John Kenney, Whittier Communications; disagrees with the applicants interpretation of what happened at the ZBA. The reason this Board denied the application was a violation of Article 24E-5 which says, "If the applicant is proposing a new personal wireless service facility, written evidence demonstrating that no existing facility within four miles of the proposed personal wire service facility can accommodate the applicant's needs." He said they failed to meet that burden. At the ZBA meeting the ZBA determined that Mr. Kenney's tower was not existing because it was not in the air and therefore remanded back to this Board with conditions. We disagree that it was sent back here with the instruction to approve it. It was sent back here to be reevaluated by the Board. Mr. Kenney's tower is now in the air so it is existing. The thought of federal litigation is beyond the scope of what this Board should be considering. It is simply analyzing and reviewing the ordinance and application

Mr. David Stewart said the balloons were visible throughout the area. He showed a picture taken on October 21, 2021, from his home on Chandler Lane. The balloon was visible. He felt their presentation was somewhat vexatious because they did not go to the shoreline to take the picture on Chandler Lane where the balloon was visible. He also said if the Board considers a 120' tower they should consider having Vertex camouflage it. Roseanna Moreach said she lives on Perkins Hill Road is worried about the stress the building of the towers will cause.

Mr. Dube closed the Public Hearing at 7:27.

Mr. Dube reopened the Public Hearing at 7:28.

Mr. Chris Bennett is on Ballards Ridge Road about two miles from the current tower. He would like to wait to see the capabilities of that tower before considering any additional towers.

Mr. Dube closed the Public Hearing at 7:29.

The Board took a recess at 7:30 to talk with their attorney in a non-meeting.

The meeting resumed at 7:44.

Mr. Dube told Mr. Parisi; we need more information on RF studies including the one that is close that we have not been able to get from you in the past. Mr. Dube asked Mr. Pagicik to state exactly what he needs from Vertex Towers, the frequencies for all towers within four miles of this site. Mr. Pagicik said he had requested that in December as part of the second submittal that he submitted to the Board and he believes there was an addendum from the applicant that was addressing his submittal. Mr. Dube asked has the applicant submitted all the RF studies and frequencies to you within the four mile radius? Mr. Pagicik replied he's not sure about the four mile radius but he did request that the Whittier Tower be analyzed as part of their existing coverage footprint. He believes that Vertex submitted that to the Board.

Mr. Parisi said the record speaks for itself. Mr. Pagicik asked for information and we submitted it. We don't intend to supply more information. We request that you approve or deny the application tonight. Mr. Whitley said to Mr. Pagicik that he had a letter that Mr. Pagicik wrote on December 12th requesting additional information. He asked, did you get a response to that letter? Mr. Pagicik said that the applicant submitted an addendum to their application, correct. Mr. Whitley asked, did that addendum answer everything you raised in the December letter? Mr. Pagicik answered yes. Mr. Whitley said he did not have that and asked the Board if they have seen that addendum and the Board responded that they have not. Mr. Parisi said we have supplied copies to the Board. The Board has seen them. We have supplied copies and talked about them at previous meetings and the Board made a decision based on them.

Mr. Dube said when we denied the application and it went to the ZBA with a continuance of the application maybe there was an overlap and we didn't speak to that because we were focused on the existing tower. He thinks the Board needs time to look at those studies to see how much overlap there is. He said we need a list of waivers from our Site Plan Regulations for all the required engineering for a site plan. Mr. Parisi replied that they had provided all that to the Board, Building Inspector, and Mr. Whitley, you denied the application. He said there is no reason to re-request information that's already been provided, the Board has had ample opportunity to look at it and you made your decision based on that. He stated, unless you're moving towards a positive decision tonight, I think your best vote to deny it. Mr. Dube replied it's best to continue while we review the information that you have given to us.

Mr. Whitley asked Mr. Parisi if he would look at coverage maps, he has and tell him if they are the most up to date set. Mr. Parisi said he can't answer that. He said because of the dozens and dozens of pages provided he wouldn't know. Mr. Parisi told Mr. Dube that he will not provide any additional information and you've had ample opportunity to review it. Mr. Dube said we need more time to review it and Mr. Parisi responded, no you do not. You had ample opportunity and that's why you denied the application. Mr. Dube responded, we denied the application on that there was an existing tower and that's what you appealed to the ZBA. Mr. Parisi said we also provided all the information requested by a consultant as if the existing tower was in air.

Mr. Stewart made a motion, seconded by Mr. DeRoches, to have Mr. Parisi come to the meeting of October 6th so we'll have time to review all existing documents submitted because the information received from Mr. Pagicik was received the night of the denial and the information we received from Mr. Parisi was the night of the denial so we didn't have a chance to review everything nor did we have a chance to review any waivers or make any decisions on any of the waivers.

Mr. Parisi said you did make a decision. Mr. Whitley told him; we understand your position. Mr. Whitley asked Mr. Dube when the Board would need the information from Mr. Parisi, understanding that he may refuse to provide it. Mr. Dube said by September 22nd. Mr. Whitley asked, if no further information is not provided what would the Board do? Mr. Dube said we will review everything that we have and render a new decision. **Roll call: DeRoches aye, Silcocks aye, Stewart aye, Fifield aye, Dube aye. (Vote 5-0)**

Major Site Plan Application

Submitted by Francis D. Parisi, Vertex Tower Assets, LLC for property owned by Province Line Associates Trust, Adam & Christiane Benzing co-trustees, located on 4870 Province Lake Road, Tax Map 9-113. The Applicant is seeking an approval for a Major Site Plan Application in order to construction a personal Wireless Service facility consisting of a monopole tower (126' to top of highest appurtenance.)

Note: The ZBA, at its June 20, 2022 meeting, voted unanimously to approve the appeal filed by Vertex Tower Assets and to remand the application back to the Planning Board for further consideration with two new conditions: that applicant not seek a building permit to construct the tower until it had a commitment from a carrier; and that the applicant be willing to provide reasonable space on the tower to accommodate the Town's police and fire departments.

Mr. Parisi said this application was denied and they filed an appeal in Federal District Court and they intend to proceed with that appeal. In addition, as a courtesy he also appealed to the Zoning Board thinking we might be able to resolve this without federal court litigation. The Zoning Board found favorably and overturned your denial and remanded with specific conditions for this Board to consider. We ask that the Board approve the Tower with the conditions imposed by the Zoning Board and we can move forward with the project.

Mr. Stewart said he had the same comments as the other application for a tower. No other comments or questions from Board members.

Mr. Dube opened the Public Hearing at 8:00.

Mr. Kenny of Whittier Communications said Mr. Parisi has indicated that he is filing a law suit and asked if it had been filed. He thinks it's wrong to keep saying, I'm going to file a law suit and continue to make these threats.

Mr. Dube closed the Public Hearing at 8:01

Mr. Stewart made a motion, seconded by Mr. DeRoches, to have Mr. Parisi come to the meeting of October 6th so we'll have time to review all existing documents submitted because the information received from Mr. Pagicik was received the night of the denial and the information we received from Mr. Parisi was the night of the denial so we didn't have a chance to review everything nor did we have a chance to review any waivers or make any decisions on any of the waivers.

Mr. Parisi said, For the record we do not consent to the continuance. **Roll call: DeRoches aye, Silcocks aye, Stewart aye, Fifield aye, Dube aye. (Vote 5-0)**

Major Subdivision Plan Application

Submitted by James Rines of White Mountain Survey & Engineering, Inc., a Division of Horizons Engineering, Inc., for property owned by Jeffrey A. & Charlotte E. Zolt, Map 28 – Lot 2, Leighton Corner Road. The applicant is seeking approval of a Major Subdivision Plan application of the property creating four lots from the 32.98-acre property: Lot 1, 15.71-acre; Lot 2, 6.57 acre; Lot 3, 5.52-acre; lot 4, 6.18-acre. The applicant seeks two waivers:

Checklist Section 4.019, 1.: Sheet size 12" x 36"

Checklist Section 4.07, 12: Delineation of all wetlands on Lot #1.

Mr. Rines said excluding wetlands and steep slopes all lots meet minimum acres. They are requesting waivers for sheet size asking to be allowed to use a 24x36 because on the registry copy, they needed room for abutters and notes. They also requested a waiver from delineating all of the wetland on lot #1 as they have delineated enough to show compliance with the minimum lot size. He said the notes from the reviewer from SRPC said there was a date missing on the plan. He said all plans submitted were dated. The reviewer said that the zone should be added to the plan. Mr. Rines said the entire property is in the agricultural zone except for the wetland conservation. He felt that they had already met that criterion.

He said the reviewer asked for land history. The Zolt family has owned this land for many years and have subdivided as the family grew. He said the reviewer asked about sanitary sewer and on site water supply. They did dig test pits on all lots even though these lots don't require state subdivision approval. They all have plenty of room for well radius. He said the reviewer also asked about flood plain and Article 18. This is an unnumbered 'A' zone. FEMA has not done a detailed study and just look at surrounding topography and make a broad brush guess. He feels that that flooding is unlikely. He's also not sure how article 18 applies and had never seen that section of the ordinance applied before. He said that they have shown lot load calculations where they deducted wetlands on the second sheet of the plan. Mr. Dube said he had spoken to Mr. Vinagro and was told the application was complete.

Mr. Stewart made a motion, seconded by Mr. Silcocks, to accept the application as complete. Roll call: DeRoches aye, Silcocks aye, Stewart aye, Fifield aye, Dube aye. (Vote 5-0)

Mr. Stewart said, for the record, this is a town road.

Mr. Dube opened the Public Hearing at 8:17. Mr. Dube closed the Public Hearing at 8:17.

Mr. Dube asked Mr. Rines if there were any driveway site distance issues. He replied no. Pins and bounds have been set.

Mr. DesRoches made a motion, seconded by Mr. Silcocks, to approve the application with

two waivers the first being Section 4.019, 1. sheet size and the second being section 4.07, 12: delineation of all wetlands on lot #1. Roll call: DeRoches aye, Silcocks aye, Stewart aye, Fifield aye, Dube aye. (Vote 5-0)

Mr. Stewart said for the Notice of Decision we need to state the reasons for our decision.

The subdivision application met all of our zoning and we also accepted forgiving of two waivers: Section 4.019, 1. sheet size and the second being section 4.07, 12 delineations of all wetlands on Lot #1.

Mr. Dube said we need the waiver requests on the plan. Mr. Rines said he'd come back with a new plan with the waivers listed.

Boundary Line Adjustment Plan Application

Submitted by James Rines of White Mountain Survey & Engineering, Inc., a Division of Horizons Engineering, Inc., for property owned by Sarah D. Krasowski, of South Hamilton, MA, Map 117, Lots 4 & 5 in the Residential III & Agricultural Zone. Existing lot size for TM 117-4 is 28.3-acres, proposed lot size is 16.67-acres; Existing lot size for TM 177-5 is 5.1-acres, proposed lot size is 16.68-acres. The applicant is seeking approval of a Boundary Line Adjustment to adjust the common boundary lines to make two equal area lots.

Applicant is also seeking waivers from:

Checklist Section 4.019, 1.: Sheet size 12" x 36"

Checklist Section 4.07, 12: Delineation of all wetlands on Lot.

Mr. Rines said that Mrs. Krasowski has two daughters and wants to divide the land into equal size lots. He pointed out the boundary line. They exceed the road frontage and buildable area minimums. Mr. Rines said the reviewer indicated that they needed signatures. The scanned plans have the stamps and signatures. They have set the boundaries and no state approvals are required for lot size. Mr. Rines said they asked for a waiver from 407,12 and it should have been 406,11. It's the same requirement but in the minor subdivision requirements.

Mr. DesRoches made a motion, seconded by Mr. Silcocks, to accept the application as complete. Roll call: DeRoches aye, Silcocks aye, Stewart aye, Fifield aye, Dube aye. (Vote 5-0)

Mr. Dube opened the Public Hearing at 8:33.

Mrs. Sarah Deacon Krasowski, property owner, said the address on the agenda is incorrect. Her address is 140 Stoneham Road.

Mr. Dube closed the Public Hearing at 8:35.

Mr. DesRoches made a motion, seconded by Mr. Silcocks, that as a statement of fact the application as presented meets our site plan subdivision regulations with the approved waivers section 4.019, 1. sheet size and section 4.06, 11 delineations of all wetlands on both lot 4 and 5. Roll call: DeRoches aye, Silcocks aye, Stewart aye, Fifield aye, Dube aye. (Vote 5-0)

Conceptual Review

Kerry Brown Sr., re: TM 110-6, 161 North Road, potential subdivision into 7 lots.

Mr. Dube told Mr. Brown that this is a conceptual review and nothing said tonight is binding on either party. Mr. Brown would like a review prior to purchase. He said North Road is owned by this lot and most of the property is outside of the shoreland zone and the rest is R-3. There is a small cabin on one of the lots. He said dimensionally it meets the parameters for a road but not structurally. He said he believes it has a defined deeded right-of-way. He said one lot would have waterfront access. There is a thirty-five foot water entrance on this piece of land on the lake that is used as a canoe access.

Mr. Stewart said the road would need to be brought up to town specs but that does not mean the Town will accept it. Mr. Dube said we may grant waivers on width or hot top or what the Fire Department wants. All lots have to be three acres of high and dry land. Mr. Brown explained the other subdivision he owns and what houses exist on Wyman Drive. He will have a soil scientist out there on Wednesday for a consultation about any wet areas. Mr. Dube said being on a private road the Board would have to consider that you have to have a homeowners association where people pay dues for the road maintenance. He said most banks would be looking for an association or who maintains the road. Mr. Brown said the site distances are very good. He said there will be no rights to the water.

Board Business

Appointment or Reappointment of Wakefield member to Strafford Regional Planning Commission.

The Board decided, by consensus, that if Mr. Evan McDougal wants to stay on the Commission he can certainly do so. If not, and anyone from the community is interested let Mr. Vinagro know. The meetings are usually about state roads, what towns are doing etc. They focus on state roads and the larger cities in Strafford County.

Sign plans for McDougal Campground expansion TM 9-113, 4870 Province Lake Road, Major Site Plan/Conditional Use Plan.

To be signed after the meeting

Correspondence

Town of Wolfeboro – Notice to Abutters re: cell tower application.

The Board has no issues.

Approval of previous meeting minutes

The minutes of August 4, 2022 were tabled.

The minutes of August 18, 2022 were also tabled.

Public comment

None

Set next meeting date

September 15, 2022

Adjourn

Mr. Silcocks made a motion, seconded by Mr. Stewart, to adjourn the meeting at 9:08. Roll call: DeRoches aye, Silcocks aye, Stewart aye, Fifield aye, Dube aye. (Vote 5-0)

Respectfully submitted for approval at the next Planning Board meeting

Priscilla Colbath
Planning Board Secretary