

**GROTON PLANNING BOARD
DECEMBER 2, 2004
MINUTES**

Chairman Eliot called the meeting to order at 7:30 PM in the Town Hall

Members present: Eliot, Barringer, Clements, Degen, Lewis, Perkins and Wilson

PUBLIC HEARING (con't) – BAY COMMUNICATIONS SPECIAL PERMIT

The Board continued the public hearing to consider the application submitted by Bay Communications to construct a 190 ft monopole tower on land owned by the Town of Groton off Cow Pond Brook Road and by Nextel to install its equipment at the 150 ft elevation on the tower. Attorney Scott Lacey represented Bay Communications at the public hearing. Bay Communications agent Carey Diehl, Nextel agent George Chianis, Nextel's Radio Frequency Engineer Nooshin Zareian, MIT Haystack Observatory's representatives Alan Rogers and Frank Lind, and the Planning Board's RF engineer David Maxson were present.

Mr. Lacy submitted information dated November 29, 2004 from Aerial Spectrum Inc. regarding the photosimulations based upon the balloon test and an analysis of the surrounding topography and the tree canopy. He stated that Nextel believes its equipment will not interfere with MIT's operations as stated in the letter dated November 30, 2004 from Marlon DePaz of Nextel.

Dr. Rogers said MIT is satisfied that they will not have a problem, and if they do, they will be able to work it out with Nextel.

Member Barringer asked how such a problem can be corrected after the system is up and operating. Mr. Lacy said Nextel would modify its equipment to correct any interference problem.

David Maxson submitted his report dated December 2, 2004 to the Planning Board. He said all parties have agreed to cooperate if any problems occur. It is not uncommon for electronic equipment to cause interference. There is a potential problem with unintentional emissions from the equipment shed. The building can be shielded to prevent problems. Mr. Maxson noted that federal standards require that there be no human exposure within the beam of radar. As the tower is designed, no humans will be within the area of the beam. Any potential problems are manageable and can be worked out between the parties. Federal law includes a pre-emption so that only federal law applies. There is no jurisdiction on health impacts at the local level. There are no safety issues with Nextel because its equipment must comply with federal standards.

Member Lewis said the special permit should include a condition on both parties – MIT and Nextel – to communicate with each other if there is a problem. Mr. Maxson said the special permit cannot place a condition on MIT because it is not an applicant. However, both parties have been very cooperative in this matter.

Chairman Eliot asked about future carriers. Mr. Maxson said the Town has a lease with Bay Communications who can control other carriers. In addition, each carrier must apply to the Planning Board for a special permit.

Member Degen noted that he uses Nextel telephones in his business. He asked if this is a conflict of interest. Other members of the Board said it was not because it is a common utility, such as telephone and electric service.

Member Clements asked if the signal at MIT's Haystack Observatory is above the threshold for human safety if it shines on a human at 190 ft. Mr. Maxson said MIT's radio emissions envelope is cut off 40 ft above the top of the proposed 190 ft tower.

Dr. Rogers requested that the equipment be tested and measurements verified before it is operational.

Chairman Eliot asked about the other tower in Westford. Frank Lind of MIT said the microwave tower belongs to MIT and is used as a backup.

Chairman Eliot read comments dated November 30, 2004 from the Highway Surveyor and comments dated December 2, 2004 from the Fire Chief.

Member Wilson asked if the fenced area could be moved without affecting the tower. Mr. Diehl said, "yes."

Member Clements expressed concern that limiting the use of the tower may limit the financial benefits to the Town. Mr. Maxson said he does not believe any carriers would be precluded from using the site because solutions with the available technology are always possible.

Dr. Rogers said it is important to have open communication to limit interference and correct problems. Mr. Chianis said Nextel's building is connected to Nextel's dispatch center in Lexington so they will know right away if there are any problems. Member Degen said it should also be connected with Groton's emergency dispatch in case there is a fire or other emergency.

Nextel's RF engineer Nooshin Zareian presented revised coverage maps showing coverage with Nextel's equipment at 120 ft and at 150 ft to demonstrate that the gaps in coverage at 120 ft are filled with equipment at 150 ft. The new measurements are based upon a test signal rather than computer modeling.

Member Wilson asked why the tower will be 190 ft if Nextel will be located at 150 ft. Mr. Lacy said the Town's RFP was issued at 190 ft to accommodate all carriers. Mr. Maxson said if the tower is 200 ft or higher, the FAA requires lighting.

Member Lewis asked the height of MIT's microwave tower. Mr. Lind said it is 175 ft above ground level (AGL).

Member Lewis asked how much higher the elevation of the road is than the base of the tower. Mr. Lacy said this information was included with Aerial Spectrums report dated November 29, 2004. The tower will be at 204 ft MSL and the proposed height of the tower is 190 ft AGL.

Mr. Maxson advised the Board that if Nextel can provide coverage at 120 ft and another carrier needs the 120 ft slot, then the next carrier can build another tower. He said the new coverage maps, based upon the test signal, are more accurate. The maps show additional coverage at 150 ft when in comparison to 120 ft, especially in Area A along Route 40. Requiring Nextel to locate at 120 ft does not prohibit coverage, but the 120 ft slot may be needed by another carrier in the future. He said the Board could require that the tower be constructed at the 150 ft height with a base to support 190 ft or permit the construction of the 190 ft tower now for the Town's benefit.

Mr. Lacy described the photosimulations for equipment at 120', 150', 160', 180' and 190' AGL. The only visible location is from Route 40 at Old Homestead Road. Mr. Lacy said Nextel could be located at 150 ft with the base constructed to support 190 ft in the future. However, the tower would be stronger if it is built at 190 ft now.

Member Lewis requested that the applicant correct the plans so they do not say, "West Groton" to avoid confusion.

Member Perkins asked if the tower is constructed at 190 ft, what elevation would Nextel use. Mr. Lacy said 150 ft.

Member Lewis said if collocation is desirable, then he does not have a problem with the tower at 190 ft and Nextel at 150 ft because the base of the tower is below the road. He asked which applicant is requesting the 190 ft height. Mr. Diehl said Bay Communications is requesting the 190 ft height in response to the Town's RFP.

Member Lewis said the public safety officials' concerns must be addressed. Mr. Lacy said the location of the tower cannot be moved, but the compound area and fence around it can be.

The Board voted unanimously to close the public hearing. The Board announced that it would act on the special permit decision at its meeting on December 9, 2004.

MEETING WITH MARK BOBROWSKI

The Board postponed its meeting with consultant Mark Bobrowski to January 20, 2005 when it will continue working on proposed zoning amendments to be presented at the 2005 Annual Town Meeting.

The motion was made by Perkins that the Board send a letter supporting Mark Bobrowski and expressing appreciation for the work he has done for the Planning Board. She stated that Mr. Bobrowski's experience in land use law is invaluable. The motion was seconded.

Chairman Eliot thanked members of the Board for attending the Zoning Board of Appeals (ZBA) meeting on December 1, 2004. She stressed how important it is for the Planning Board and ZBA to work together. She said she spoke with George Dillon, Chairman of the Board of Selectmen, about having Kopelman & Paige and Mark Bobrowski to give a seminar on Chapter 40B for Town boards and departments.

Member Degen said recent newspaper articles did not refer to Mr. Bobrowski's work for the Planning Board, only to his role as consultant to the ZBA.

Member Lewis said many people have asked him about Mr. Bobrowski based upon what they have read in the newspapers. He agreed that the Board should send the letter of confidence to Mr. Bobrowski.

Chairman Eliot said such a letter would reiterate the Board's vote of confidence in Mr. Bobrowski taken at its August 26, 2004 meeting. She noted that Member Degen's comments to the press do not reflect the opinion of the Board as a whole. The Board should respond to the letter from the ZBA and work closely with the ZBA in the 40B process.

Member Degen said he has studied the DHCD regulations and has a better understanding of Chapter 40B. He stated that the First Amendment gives him the right to speak out.

Member Barringer agreed, but noted that he can speak out as a private citizen or as a public official. However, when such statements are made, they carry the weight of a person's expertise and position. The public finds it difficult to separate the private citizen and the public official. Any opinions expressed should be based upon the discussions at the Planning Board's meeting.

Member Degen said when he attends ZBA meetings, he does not express the opinion of the Board. He makes it clear that he is speaking as a private citizen. Many times he is addressing procedural issues.

Member Lewis agreed that any Board member has a right to speak as long as it is made clear that they are not speaking on behalf of the Board. If rules or regulations are not being followed, it is important to speak out. A Planning Board member, or any other volunteer, does not give up their rights as a citizen.

Member Clements said he believes a member of the Planning Board has a right to express his opinion as an individual. However, he or she must exercise judgment when expressing an opinion.

Board of Health Chairman Susan Horowitz said the Board of Health was late in comments to the ZBA on the 40B because the information was not distributed to all departments, including the Board of Health and the Conservation Commission. The Board of Health has requested that Town Counsel Jason Talerma of Kopelman and Paige attend the next ZBA public hearing to represent the Board of Health. She said if Josh Degen had not spoken out, the ZBA would have closed the public hearing on the Oak Ridge Manor comprehensive permit.

The motion to send a letter of support to Mark Bobrowski passed with Barringer, Eliot, Lewis, Perkins, and Wilson in favor; Degen opposed; Clements abstaining.

The motion was made by Barringer to send a letter to the Board of Selectmen requesting that it schedules a seminar on Chapter 40B with Town Counsel and Mark Bobrowski. ***The motion was seconded and passed unanimously.***

MILL RUN PERFORMANCE BOND

The Board received a copy of a letter dated November 30, 2004 from the Board of Selectmen to Robert Walker of Ryan Development combining the bond for the drainage system with the bond for the Mill Street relocation. The Board received a report dated November 29, 2004 from Judith Nitsch Engineering, Inc. (JNEI) estimating that the cost to complete all the work, including the detention basins for Mill Run Plaza, the Mill Street relocation, and Groton Residential Gardens, is \$117,009.13. The Selectmen are holding a bond in the amount of \$126,479.79.

Members of the Board expressed concern that the Selectmen acted without consulting with the Planning Board first. Planning Administrator Michelle Collette said she attended the Selectmen's meeting to provide background information as requested by the Selectmen's office.

The motion was made by Lewis to request that the Selectmen not reduce or release the bond without the Planning Board's agreement. *The motion was seconded and passed unanimously.*

The Board also received a field report dated November 29, 2004 from JNEI indicating that the 24" culvert was not installed as shown on the plan. Two 15" culverts were installed instead as directed by LandTech, the design engineer. The motion was made by Wilson to send a letter to Ryan Development requiring submission of a revised plan for site plan review modification. *The motion was seconded and passed unanimously.*

The motion was made by Degen to send a letter to the Building Inspector requesting that he not issue a building permit for the fifth building at the site until the Board has reviewed and approved the modified site plan and that he release building permits for tenant fit up units in Buildings 1 – 4. *The motion was seconded and passed unanimously.*

COMMENTS TO THE ZBA – OAK RIDGE MANOR

The Board will request that the ZBA ask the applicant to provide more specific information on the requested waivers. The single access road serving 44 units and drainage impacts are the Board's most important considerations.

The Planning Board recommendations, in order of priority, are as follows:

1. **Number of Units & Public Safety** - The Board reiterates that the Subdivision Regulations (and Flexible Development provisions by reference) state that a single access shall not serve more than ten units. This regulation is in place for emergency vehicle access and public safety reasons. In addition, the length of the proposed road exceeds the Subdivision Regulations' 1000-ft limit of a dead-end street. The Board recommends that the ZBA request written comments from the Town's public safety officials on emergency vehicle access prior to acting on this waiver.
2. **Drainage** - The Board recommends that the ZBA require the applicant to submit a hydrological study to determine whether there is any potential negative impact from proposed work. There should be no net increase in runoff onto abutting properties and no discharge pipe located off the property without an easement. The Board is also concerned about possible flooding on site, if the drainage system does not function properly. In addition, the project is *not* exempt from the NPDES Stormwater Management Program and a permit is required.
3. **Construction Standards** – The Board strongly recommends that the access road, drainage system and other infrastructure be constructed to conform with the "minor street" standards of the Subdivision Regulations. Since the applicant has not requested any waivers of these provisions, the Board recommends that the ZBA include compliance with the Subdivision Regulations as a performance standard.
4. **Site Plan Review** – The Planning Board requests that the ZBA not waive the site plan review requirements and that the applicant submit a site plan to the Planning Board in accordance with §218-25.

Other Comments

1. The Board recommends that all units be rental rather than condominiums so the Town will have credit for all 44 units in the development.

2. The Board recommends that the ZBA consult with the Town's public safety officials on water supply and the proposed location of hydrants for fire protection.
3. The ZBA should require submission of a landscaping plan to provide proper screening for abutters. The plan should be reviewed by a Registered Landscape Architect, to be contracted by the ZBA, at the applicant's expense.
4. The limit of construction and tree clearing should be shown on the plan and well delineated in the field prior to the commencement of construction.
5. The Board believes the applicant's request for waivers should be more detailed rather than a general request to waive entire sections of the by-law. In addition, the applicant should submit the rationale for each requested waiver.

General By-laws

Chapter 315 Subsurface Sewage Disposal – The Board recommends that no waivers be granted of local sewage disposal system regulations without consultation with the Board of Health.

Chapter 134 & 239 Earth Removal - The Board recommends that no waivers be granted of Earth Removal By-law or Regulations without consultation with the Board of Selectmen.

Chapter 198 Soil Erosion - The Board recommends that no waivers be granted of the Erosion Control By-Law without consultation with the Earth Removal Advisory Committee.

Chapter 215 Wetlands – The Board recommends that no waivers be granted from the local Wetlands Protection By-law without consultation with the Conservation Commission.

Meeting adjourned at 11:00 PM

Respectfully submitted,

Michelle Collette
Planning Administrator

