



Town of Tyngsborough
Planning Board
25 Bryants Lane,
Tyngsborough, Massachusetts 01879-1003
Office: (978) 649-2300 ext. 115

MINUTES
May 20, 2010
APPROVED

Attachments:

1. Meeting Agenda
2. Planning Board Minutes Regarding Wilson Way Cell Tower: 11/5/09, 12/17/09, 1/7/10, 2/4/10, 3/18/10, 4/15/10
3. Isotrope Wireless Response to TW, LLC report dated 4/15/10 – 5/19/10
3. SAI Communications RF Study Report for Wilson Way Cell Tower – 5/20/10
4. FCC TOWAIR Determination Results – 5/19/10
5. Evidence Documents for Wilson Way Cell Tower: 12/6/09 through 5/6/10

Members Present: Steve Nocco, Chairman
Tom Delmore, Vice Chairman
Steve O'Neill
Jim Miller
Bill Gramer
Jesse Johnson, P.E.: David E. Ross Associates
Pamela Berman, Administrative Assistant

7:00pm - Meeting opened by Chairman Nocco

7:02pm **Wilson Way Telecommunications Tower Special Permit**
(Continued from April 15, 2010)

Applicant Walter Eriksen for TW, LLC appeared before the Board to present the evidence for the construction of a telecommunications tower on Wilson Way. Present with him were attorney Scott Eriksen, and RF consultant Mike Dorian of SAI Communications. Mr. Dorian explained that the data he collected show signal gaps which clearly demonstrate the need for a cell tower in this area. He went on to say that when the initial study was conducted there were no leaves on the trees in the area, and now, with the leaves fully grown, the signals are much worse. Mr. Dorian continued by submitting a rebuttal to the report submitted by the Board's wireless expert, David Maxson of Isotrope Wireless. The Board and Mr. Maxson were unable to review this report prior to tonight's hearing. Mr. Dorian explained that the report shows coverage maps for the different wireless carriers (T-Mobile, AT & T, Sprint, and Verizon). These data show that the new tower would fill the coverage gap that currently exists. He went on to say that the cell tower located in Groton does not provide enough coverage for Tyngsborough residents.

The Groton tower is located approximately 4500 feet away from the proposed Tyngsborough cell tower and is located in an area that is a slight valley. This location does not offer the necessary coverage that carriers are looking for. The Tyngsborough tower would be located on a cliff and would provide that coverage. Additionally it would be situated well away from the closest home which is approximately 925 feet away.

W. Gramer asked how Mr. Dorian obtained the coverage data in his report for each of the various carriers identified. Mr. Dorian explained that scanners were used to pick up the carrier's beacon signal to collect their network data. T. Delmore asked if there are any carriers that have signed on to the proposed Tyngsborough cell tower. Mr. Eriksen said that no carriers have signed an agreement to co-locate, however, he is currently in talks with AT & T. He went on to say that before any cell tower is built he would have cell carriers locked in to co-locating on the tower. T. Delmore asked about the value of the land. Mr. Eriksen said that each cell tower and each carrier are taxed separately. S. O'Neill asked why there haven't been any cell carriers coming in with their proposals for co-location. Mr. Dorian said that usually small towns like Tyngsborough "fall off a carrier's radar" as far as providing coverage. However, the FCC is putting pressure on these carriers to step up their efforts to add coverage to rural areas.

W. Gramer commented that when he looked at the AT & T coverage map in Mr. Dorian's report, it indicated that the coverage in this area is good. He went on to point out that Mr. Maxson's report noted that the previous coverage maps submitted by the applicant had the proposed tower in the wrong location, and if moved to the correct location the coverage was already "good". Mr. Dorian replied that most carriers would probably inflate their data shown on their web sites in order to market themselves better.

At this time the Board's RF expert David Maxson joined the conversation and began his presentation. Mr. Maxson explained that there are two levels to consider with regards to issuing a special permit. First, the Board should review the evidence pursuant to the requirements of the zoning by-law. Second, the Board should consider whether denying the application would have the effect of prohibiting wireless service within the meaning of the Federal Telecommunications Act (FCA) aims to achieve. Mr. Maxson provided an explanation and posed questions in helping a Board understand what criteria to consider when reviewing the evidence. First, is there a significant gap in coverage? Second, is there another way to address the purported gap in coverage (i.e., are there any alternatives that a wireless carrier would accept with regards to location, positioning, height, etc.)? Mr. Maxson commented that because there are no carriers present at this hearing, that answer will remain unknown.

Mr. Maxson said that the existing tower in Groton was built in 2004 and only has one carrier on it, Sprint. The Tyngsborough tower would provide additional coverage, but it's duplicative in nature, there is a lot of overlap. He added that the drive test data are good but it's still estimated because there are no carriers present at this hearing to offer concrete data to back up the applicant's contention that a cell tower is needed at the Wilson Way location. The lack of such representation makes it difficult to fairly and accurately weigh the data because you don't know what a carrier's "real" data are.

Mr. Maxson said that the Board could ask the applicant to conduct an alternatives analysis and report back with the results. Mr. Eriksen felt that the site as it stands is ideal because of its obscurity and remote location, approximately 925 feet away from the nearest home.

Abutter Scott Landsteiner of 10 Wilson Way spoke about the other cell towers in town, and asked about the coverage from those towers, is it better or the same. Mr. Eriksen said that the drive tests they conducted showed a “dead zone” in and around the Wilson Way area. The Groton tower doesn’t fill the gaps enough, but a new tower would provide more Tyngsborough residents with better coverage. This would include the Tyngsborough Highway Department, and the Fire Department who have both indicated interest in the new tower. Mr. Eriksen went on to say that he would offer “free service” for those departments on the new tower. T. Delmore stated that he feels the tower would be beneficial for the town and asked what the actual height would be. Mr. Dorian replied that 173’ would be the best height to achieve the coverage that is needed. Mr. Maxson offered that the height might be difficult for a carrier to use, but again, it’s unknown because there is no carrier present at tonight’s hearing to report on it.

Town Counsel, Charles Zaroulis and Attorney Christopher Heep were present for the Town Attorney Zaroulis stated that the applicant would have to be approved by the ZBA in order to construct the tower where they are proposing as the “spot” is currently not zoned for a telecommunications tower. S. O’Neill believes that since the by-law requirement isn’t being met, he has trouble with the proposal, because Section 4.16(E)(3) of the by-law requires a finding that existing facilities cannot accommodate the proposed user. W. Gramer added that the basic standards of the by-law have not been met because the proposed site is not one of the specific telecommunications zones identified in the by-law. He also stated that it appears that the citizens of the Town would need to approve any amendment to the zoning by-law to allow the placement of a tower in a parcel not specifically identified in the current zone. W. Gramer questioned the applicant’s agreement to a condition in the proposed decision that they also obtain a “use variance” from the ZBA. Since use variances are not permitted, the ZBA would presumably be unable to grant such relief. W. Gramer stated that assuming such a use variance could be obtained, and assuming that the special permit could be granted for the proposed site under the current by-law, it has not been shown in his opinion that there is a significant gap in coverage because no carrier presently intends to locate at this site. The Board cannot review the proper data to make such a determination, including making a finding that existing facilities cannot accommodate the proposed user, because there is no “proposed user” in this application. He also commented that the alleged gap in coverage was not significant since the proposed coverage area of the new tower did not cover any heavily trafficked State roads but only small side roads. Therefore, in his opinion, although the site itself appears suitable for a tower, he has difficulty with this proposal. The question then raised was: what is the definition of a “significant gap in coverage”? Attorney Heep stated that there is not a single definition of “significant gap in coverage”. Instead, the question is analyzed on a case-by-case basis by looking at several relevant criteria. These criteria include (1) the geographic size of the purported gap, (2) the number of people in the purported gap, and (3) the wireless carrier’s existing quality of service in the purported gap.

9:25pm

T. Delmore: Motion for a 5 minute recess
S. O’Neill: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

9:30pm Hearing reconvened

S. O’Neill: Motion to close the public portion of the hearing
T. Delmore: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

Hearing Deliberations

The Board deliberated over the evidence presented and offered several comments. W. Gramer strongly stated that in his opinion it would be a mistake to grant a permit without having “actual” data from a carrier that would be co-locating on the tower. In addition, the Board may be granting a permit now for the tower structure only to have a carrier come back later seeking approval to locate on the tower, however, we are prohibited from fully analyzing the application, since a permit has already been granted. S. O’Neill asked Attorney Zaroulis whether the Board would be locked in on any aspect of a future application by a carrier. Attorney Zaroulis responded that part of the analysis and finding for granting a permit is that alternative sites have been considered and therefore it would not make sense to perform that analysis a second time if a permit is granted now to locate a tower at the proposed site. W. Gramer added that the site is good, but the Board would be speculating on the gaps in coverage. The Board needs to know who is going to be co-locating on the tower before an approval is granted. T. Delmore said that the conditions Town Counsel suggested could be part of the decision.

T. Delmore: Motion to approve a Special Permit for a Telecommunications Tower off Wilson Way Tyngsborough, MA, in accordance with Tyngsborough Zoning By-Law Section 4.16.00, for the reasons stated in discussion and in the draft decision prepared by Town Counsel, which shall be amended to reflect the evidence presented at the May 20, 2010 public hearing. Said parcel is shown on Assessor’s Map No. 3 as Parcel 4, Lot 0.

No 2nd
Not Vote Taken

W.Gramer: Motion to deny a Special Permit for a Telecommunications Tower off Wilson Way Tyngsborough, MA, in accordance with Tyngsborough Zoning By-Law Section 4.16.00, for the reasons stated in discussion and in draft decision prepared by Town Counsel, which shall be amended to reflect the evidence presented at the May 20, 2010 public hearing. Said parcel is shown on Assessor's Map No. 3 as Parcel 4, Lot 0.

S. O'Neill: 2nd the motion

In Favor: 3 Opposed: 2

Roll Call Vote:

Jim Miller: In Favor

William Gramer: In Favor

Tom Delmore: Opposed

Steve Nocco: Opposed

Steve O'Neill: In Favor

Passes: 3-2

Administrative

T. Delmore: Motion to approve the March 18, 2010 minutes as written

J. Miller: 2nd the motion

In Favor: 4 Opposed: 0 Abstain: 1

Passes: 4-0-1

S. O'Neill: Motion to approve the minutes as written for April 15, 2010

T. Delmore: 2nd the motion

In Favor: 4 Opposed: 0 Abstain: 1

Passes: 4-0-1

S. O'Neill: Motion to approve the minutes as written for May 6, 2010

T. Delmore: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

New Business

Planning Board Re-Organization

With the election of member William Gramer the following re-organization votes took place.

T. Delmore: Motion for Steven Nocco to remain Chairman of the Planning Board

S. O'Neill: 2nd the motion

In Favor: 4 Opposed: 0 Abstain: 1

Passes: 4-0-1

S. O'Neill: Motion for Tom Delmore to remain as Vice Chairman of the Planning Board

B. Gramer: 2nd the motion

In Favor: 4 Opposed: 0 Abstain: 1

Passes: 4-0-1

S. Nocco: Motion for William Gramer to assume the role of Secretary to the Planning Board

T. Delmore: 2nd the motion

In Favor: 4 Opposed: 0 Abstain: 1

Passes: 4-0-1

S. O'Neill: Motion for Jim Miller to assume the role of Treasurer to the Planning Board

B. Gramer: 2nd the motion

In Favor: 4 Opposed: 0 Abstain: 1

Passes: 4-0-1

10:20pm

S. O'Neill: Motion to adjourn

W. Gramer: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Minutes respectfully submitted by
Pamela Berman
Planning Board Administrative Assistant