



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

MINUTES
January 20, 2011
APPROVED

Attachments:

1. Meeting Agenda
2. SBA Tower Revised Location Site Plan – 1/12/2011
3. SBA Towers Revised Coverage Map
4. Northeastern Consulting Forestry Services Wetland Assessment Report – 1/13/2011
5. Tyngsborough Conservation Director Response to Wetland Assessment Report – 1/16/2011
6. Aerial Spectrum, Inc. Cell Tower Removal Estimate – 1/18/2011
7. David E. Ross Associates Engineering Review – 180 Sherburne Ave.: 1/17/2011
8. David E. Ross Associates Engineering Review – 77 Middlesex Rd.: 1/17/2011
9. Duval, Klasnick & Patel, LLC Request to Withdraw Special Permit Application for 54R Locust Ave. Cell Tower Co-Location – 1/18/2011

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

7:00pm - Meeting called to order by Chairman S. Nocco

7:05pm - 180 Sherburne Ave. – SBA Towers for T-Mobile, USA Special Permit Application for the proposed installation of a ~160ft. monopole style cell tower – Continued from December 16, 2010.

Board member Tom Delmore recused himself from this hearing, as he is an abutter to this project.

Attorney Kevin Eriksen representing the applicant appeared before the Board to submit the final revised plans for the proposed cell tower. J. Johnson reported that all of his comments were addressed in these revised plans. There were no additional abutter comments or concerns brought forward. S. Nocco asked whether a condition could be added to any decision that would ensure that the trees buffering the closest abutter be preserved from cutting. Atty. Eriksen responded that a “no-cut” condition like that would not be something the owners would be willing to agree to. He went on to say that the property has been a 61A forestry area for 100 years with a Massachusetts State forestry permit. C. DeCarteret stated that the permit decision cannot be based on what might or might not happen in the future. Atty. Zaroulis stated that the Board is within its rights to impose a condition on tree cutting if it wishes. Property owner Corliss Lambert stated that even if they imposed such a condition, there is still a possibility that someone could trespass on his property and cut down or burn the trees. The Board’s RF engineer David Maxson reported that the FCC expressly preserves zoning and imposes limits on the screening by which it earned the right to have a tower at the location. Tom Delmore speaking as an abutter related his concern that the tree screening buffer already in place should not be removed in the future. Mr. Lambert indicated that any cutting plan must be approved by the State before it commences. Additionally, Tyngsborough’s Conservation Commission receives copies of the cutting plans and does review them for compliance. S. O’Neill asked whether a condition could be structured to “maintain the existing tree buffer”. Mr. Lambert went on to say that he would agree to “not clear-cut” the land. The Board felt that language in any decision that said that the integrity of the existing buffer screening would not be breached was important to include.

B. Gramer: Motion to close the public portion of the hearing

S. O’Neill: 2nd the motion

In Favor: 4 **Opposed:** 0 **Abstain:** 1

Passes: 4-0-1

B. Gramer: Motion to approve the application for the construction and installation of a telecommunications tower at 180 Sherburne Ave. as follows:

In accordance with Section 1.16.14 of the Zoning By-Law the Planning Board finds that this proposed use:

1. Is in harmony with the purpose and intent of this By-law.
2. Will not be detrimental or injurious to the neighborhood in which it is to take place.
3. Is appropriate for the site in question.
4. Complies with all applicable requirements of this By-Law.
5. The Board Decision is as follows:

Property Address: 180 Sherburne Avenue
Map 28-117-0 (the "Property")
Applicant: SBA Towers II, LLC (the "Applicant")
Owners: Clark Lambert and Corliss Lambert (the "Owners")

By its application (the "Application") filed with the Tyngsborough Town Clerk on July 16, 2010, the Applicant petitioned the Town of Tyngsborough Planning Board for a Special Use Permit for a wireless communication facility pursuant to Section 4.16.00 of the Town of Tyngsborough Zoning Bylaws (the "Bylaws").

On September 16, 2010, in the Town Hall, a public hearing, duly noticed under the applicable statutes and Bylaw provisions, was opened and immediately continued to October 7, 2010 without the submittal of evidence or testimony. The Planning Members Steven Nocco, Steven O'Neill, Caryn DeCarteret, and William Gramer (the "Board") were present for the October 7, 2010 hearing and the subsequent hearings at which all evidence and testimony were given on this matter, and rendered this decision. Richard Fox, Esq. was also present on behalf of the Town. Also present was the Applicant's counsel, Kevin S. Eriksen, Esq. of Deschenes & Farrell, P.C., One Billerica Road, Chelmsford, Massachusetts, along with T-Mobile Northeast Inc.'s, a wholly owned subsidiary of T-Mobile USA, Inc., ("T-Mobile") radio frequency engineer, Dinesh Dasani of 15 Commerce Way Suite B, Norton, Massachusetts. After taking testimony at the October 7, 2010 hearing, the Board continued the hearing to November 4, 2010, December 2, 2010, December 16, 2010, January 6, 2011 and January 20, 2011. The November 4, 2010 hearing was continued without testimony. Charles J. Zaroulis, Esq. was present on behalf of the Town at the hearings held on December 2, 2010 and January 20, 2010. David Maxson, radio frequency consultant for the Town, was also present at the hearings held on December 2, 2010 and January 20, 2011. The hearings are collectively referred to as the "Hearings".

In addition to the plans filed with the Application, the Applicant filed the following revised plans with the Planning Board (the revised plans are hereinafter referred to as the "Revised Plans"):

"SBA, Tyngsborough" Applicant: SBA Towers, Inc., 5900 Broken Sound, Parkway, NW, Boca Raton, FL 33487-2797, Tel: (561) 226-9523, Fax: (561) 226-9368, Co-Applicant: T-Mobile Northeast, LLC, 15 Commerce Way, Suite B, Norton, MA 02766, Office: (508) 286-2700, Fax: (508) 286-2893, Engineering: Aerial Spectrum Incorporated, 20 Blanchard Road, Suite 4, Burlington, MA 01803, tel. (781) 272-6200, fax (781) 272-6225, e-mail ekeman@aerialspectrum.com, Revised through 1/20/11.

Also contained within Application or submitted as supplemental material, were additional supporting documents which included but were not necessarily limited to; a Land Owner Authorization form; Designers Certificate, Affidavit of Radio Frequency Expert from T-Mobile; Coverage Maps from T-Mobile; Affidavit from Site Acquisition Specialist; Deeds of the Property detailing ownership; Letter from Northeastern Consulting Forestry

Services; FCC License for T-Mobile; Tower Design Specifications; Balloon Float Report; Photo Simulation Report and Visual Impact Analysis Report.

In the Application, and at the Hearings, the Applicant's counsel and T-Mobile's Radio Frequency Engineers described the nature of T-Mobile's gap in coverage in the vicinity of the proposed installation. T-Mobile's radio frequency engineers presented radio frequency coverage plots that identified the gap in coverage and another plot that depicted the resulting coverage from the proposed installation on the Property. Through testimony

and the coverage plots provided, the Applicant and T-Mobile demonstrated a significant gap in coverage, and that even with the existing sites in the telecommunication zoning districts, T-Mobile is unable to provide adequate coverage to this significant gap in its network.

In considering alternative sites, the Board reviewed the affidavit provided by the Applicant's Site Acquisition Specialist which detailed over nine (9) sites researched and considered by the Applicant prior to the selection of the Property as the proposed location for the wireless communication facility. Testimony was also provided by the Applicant at the hearing describing how the wooded nature, size and current use of the Property make the site suitable for the proposed installation. The Applicant demonstrated to the Board's satisfaction that there are no reasonably feasible and commercially available alternative sites upon which this facility could be located and provide adequate coverage to this significant gap.

The Board received testimony from abutters, and written submissions from the Conservation Commission, the Building Commissioner, and the Board's wireless communications consultant, David Maxson of Isotrope, LLC, concerning the Applicant's proposal.

As depicted on the Revised Plans submitted during the Hearings, the Applicant modified its original application, as proposed, by relocating the tower approximately 386' feet east of the original location so as to further minimize the towers visibility from nearby residences and public/private ways. A second balloon float was held on December 18th and a supplemental package demonstrating the photographic results of this balloon float was submitted to the Board as supplemental material.

FINDINGS & DECISION

Based upon the information submitted to the Board and the testimony at the Hearings, the Board hereby makes the following findings:

1. The Property is located in the R-1 zoning District. It consists of approximately 53 +/- acres and is currently used for forestry operations. The Applicant proposes to lease a 100' X 100' area from the Owners on the Property as indicated on the Revised Plans.
2. The Board finds that the Applicant has complied with the instructions and requirements for the application for a Special Use Permit established under Section 4.16.00 of the Bylaws.
3. The Board finds that the Wireless Facility will satisfy the Design Guidelines set forth under Section 4.16.00(D) of the Bylaws.
4. The Board has determined that the use of the Property for the Wireless Facility is in harmony with the general purpose and intent of the Bylaws.
5. The Board finds that the visual, economic and aesthetic impacts of the Wireless Facility on abutters will be minimal. The Wireless Facility will be suitably screened from the view of abutters and nearby residential neighborhoods in accordance with Section 4.16.00(B)(3) by the topography, vegetation and environment of the area. Furthermore, the Property is an appropriate location for the Wireless Facility for a host of reasons including, but not limited to, its natural elevation, the significant gap in coverage existing for T-Mobile's service in the surrounding area, the natural cover surrounding the site, and the distance to the nearest residential structure (approximately 783' feet).
6. The Board finds that the Wireless Facility will benefit the surrounding neighborhood by providing infrastructure to support enhanced emergency and non-emergency telecommunications to the nearby residents and public/private ways.
7. The Board finds that T-Mobile and the Applicant have provided sufficient credible scientific evidence and testimony to demonstrate that T-Mobile has a significant gap in coverage in the area surrounding the Property. Furthermore, T-Mobile and the Applicant have sufficiently demonstrated that T-Mobile cannot provide adequate coverage to this significant gap by utilizing existing towers currently located in the telecommunication zoning district and that no reasonably feasible alternative sites are available to T-Mobile and the Applicant.

8. The Board is of the opinion that all of the conditions for granting the requested Special Use Permit for the Wireless Facility have been met and that the grant as described above will be in harmony with the purpose and intent of the Bylaws.
9. Therefore, acting under its discretionary power, the Board voted to grant the requested Special Use Permit described above, permitting the Applicant to construct the Wireless Facility as designed and permitting T-Mobile to locate on said Wireless Facility, in accordance with this decision, subject to the following conditions:

I. SPECIAL USE PERMIT CONDITIONS:

1. The Applicant shall permit the Town of Tyngsborough Highway Department and/or the Town of Tyngsborough Fire Department to locate antenna or other equipment on the Wireless Facility, free of charge, for the purpose of emergency and non-emergency broadcasting provided that:
 - a) such use does not interfere with the Applicant's proposed use;
 - b) such use does not interfere with the use of the tower for co-location purposes by co-locating at or above 90 feet;
 - c) the Applicant shall not be responsible for any costs associated with the installation, maintenance or removal of any such antennas or equipment; and
 - d) the Town, or the appropriate instrumentality thereof, obtains all necessary approvals, permits and licenses, if any, for its use of the tower and the Applicant shall not be required to apply for and/or obtain any such relief on behalf of the Town.
2. The Wireless Facility shall be designed so as to be able to accommodate no fewer than five (5) wireless service providers (including T-Mobile).
3. The height of the Wireless Facility shall not exceed 160 feet from ground level at the base of the pole. The proposed Wireless Facility shall not incorporate guy wires.
4. The Wireless Facility shall be galvanized steel.
5. The Applicant shall erect a security fence around the Wireless Facility in accordance with the provisions of the Bylaws and as detailed in the Plans.
6. The Applicant shall only erect such signs as may be required or permitted in accordance with the provisions of the Bylaws or state or federal regulations. All signs installed on the Property shall conform to the Town of Tyngsborough Zoning Sign Bylaw.

7. The Applicant shall only install such night lighting on the Wireless Facility as may be required in accordance with FAA regulations.
8. The Applicant shall construct only such parking as may be required in accordance with the provisions of the Bylaws. No such parking shall be used for the permanent storage of vehicles or other equipment.
9. Section 4.16.00 of the Bylaws also provides that “wireless communications facilities shall be located in telecommunication zoning districts and shall be suitability screened from abutters and residential neighborhoods.” The Property is not located within a telecommunications zoning district. Accordingly, based on the advice of Town Counsel, this decision is expressly conditioned upon the Applicant obtaining a variance from the Town of Tyngsborough Zoning Board of Appeals to construct the proposed Wireless Facility at the Property.
10. The Applicant shall have this approved Special Use Permit decision recorded with the Middlesex North District Registry of Deeds. This recording shall be done prior to the issuance of any Building Permit or the start of construction on the Property.
11. All construction on the Property shall be conducted in accordance with the plans approved by this decision and with all statutes, laws, rules and regulations of the Commonwealth of Massachusetts and the Town of Tyngsborough.
12. Any changes in the approved plans which, in the opinion of the Board, are material as to the size, shape, use, location or any other conditions stated in this Special Use Permit decision may require that a new Special Use Permit be issued in accordance with the provisions of the Town of Tyngsborough Zoning Bylaws.
13. Upon applying for a Building Permit, the Applicant shall post a bond in an amount of \$20,000.00 in order to secure the cost of removal of the facility should the use of the facility cease for a period exceeding one (1) year in accordance with Sections 4.16.00 (B)(4) & (5).
14. Certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration and the American National Standards Institute and required maintenance shall be filed with the Building Commissioner by the Special Use Permit holder if requested by the Building Commissioner.
15. The Building Commissioner shall have the authority to make inspection of the site during the construction period.

16. Prior to the issuance of a Building Permit, proof of a lease agreement between the Applicant and T-Mobile shall be provided to the Building Commissioner.
17. Prior to issuance of a Building Permit, proof of a lease agreement between the Applicant and the Owners shall be provided to the Building Commissioner.
18. The as-built plan shall be submitted to the Building Commissioner.
19. The Revised Plan is hereby incorporated in and made a part of this decision.

C. DeCartert: 2nd the motion

Roll Call Vote:

B. Gramer: Yes
Tom Delmore: Abstain
Steve Nocco: Yes
Steve O'Neill: Yes
Caryn DeCartert: Yes
In Favor: 4 Opposed: 0 Abstain: 1
Passes: 4-0-1

8:45pm

B. Gramer: Motion for a 5 minute recess
S. O'Neill: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

8:50pm - 77 Middlesex Rd. – Special Permit hearing for Belley Limousine.

S. O'Neill: Motion to waive the reading of the legal ad
T. Delmore: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

S. O'Neill: Motion to waive the reading of the abutters list
T. Delmore: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

Applicant Michael Ivos appeared before the Board with plans to build office space that will house Belley Limousine. In addition, there will be limousines parked at the site. Mr. Ivos indicated that he has obtained the necessary building permits for the work, but had to complete the Special Permit process as the work is not an allowed use in and I-1 zone. The Board's engineer J. Johnson reported that the site plan was deficient in showing where the limousines would be parked. In addition, the plans do not show any of the other structures that are present on the property. This must be added to the plans. The Board also indicated that since the space has been vacant for more than 4 years, the applicant will have to file with the ZBA. Finally, the Board of health requires that a Title 5 report be submitted to their office.

S. O'Neill: Motion to continue the hearing until February 3, 2011
T. Delmore: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

Administrative

T. Delmore: Motion to approve the minutes from January 6, 2011.
S. O'Neill: 2nd the motion
In Favor: 4 Opposed: 0 Abstain: 1
Passes: 4-0-1

9:30pm

S. O'Neill: Motion to adjourn
T. Delmore: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

Minutes respectfully submitted by
Pamela Berman
Planning Board Administrative Assistant