

PLANNING BOARD  
Meeting Minutes  
Thursday, March 27, 2014  
Judge Welsh Room  
6:30 P.M.

**Members Present:** Marianne Clements, John Golden, Dorothy Palanza, Grace Ryder-O'Malley and Brandon Quesnell.

**Members Absent:** Mark Weinress (excused).

**Staff:** Gloria McPherson, Town Planner.

Acting Chair John Golden called the meeting to order at 6:30 P.M.

**Meeting Agenda:**

1. **Public Comments:**  
None.

2. **Public Hearings:**

a) **Case FY14-12 (re-scheduled from the cancelled March 13<sup>th</sup> meeting)**

**Application by New Cingular Wireless PCS, LLC ("AT&T")** requesting a Special Permit pursuant to Article 7, Wireless Telecommunication Towers and Facilities, Section 7070, General Requirements, and Section 7080, Application Requirements, and Site Plan Review Approval pursuant to Article 2, Districts and Regulations, Section 2320, High Elevation Protection District, of the Provincetown Zoning By-Laws for the installation of panel antennas on the façade of the existing water tank together with related equipment including remote radio heads, surge arrestor, cable trays, GPS antennas and conduits and associated equipment shelter to be located within an existing fenced area at the property located at **7 Capt. Bertie's Way**.

Attorney Ed Pare, Dan Bilezikian, of SAI Communications, and Brian Ramos, an RF engineer, appeared to present the application. The proposal is to attach antennas to the Town-owned water tank on Capt. Bertie's Way. The equipment to be installed is shown in detail on the submitted plan. Attorney Pare reviewed the plan with the Board. There are three installations of four antennas each. As requested by the Board, the cable tray has been moved over to the existing ladder in order to lower its visual profile. The Board's packet contained a copy of the executed lease with the Town. As part of the re-design process, new photo simulations have been submitted. The photos were taken from various locations in Town; as existing and with the antennas superimposed, and included the revised position of the cable tray. In addition, photos requested by the Town from a number of areas were submitted. Attorney Pare reviewed the coverage maps.

The Board questioned Attorney Pare about the adequacy of the new coverage areas and if, in the future, coverage could be extended even farther into areas not currently covered

or included in the proposed coverage areas. These areas would include the airport and bike trails. He stated that the area is owned by the Seashore and the topography is very low. He doesn't know if AT&T, in the future, would place an antenna out in the dunes in that area. Mr. Ramos said that testing had been done for the proposed tower installation and he surmised that there would be minimal reception at the airport, but that they would have to do further testing once the antennas were in place.

The Board questioned whether there would be further vegetative screening added or if there would be additional removal of trees or brush outside the specified area. Mr. Bilezikian said that the area in question was an open area and Attorney Pare added that there will be a fence on one side, but no other screening is being proposed.

The Board inquired about the proposed location of the sign on the fence. Attorney Pare explained that the sign will be on the outside of the fence so that anyone approaching knows that the area is an FCC site that is emitting a receiving signal and cautioning that there is electronic activity occurring in the area.

The generator noise was discussed. The Board's preference was that the generator testing would occur on Wednesdays at noon.

The requested waivers were discussed. Attorney Pare reiterated that AT&T was asking for three waivers, including Section 7110 B and Section 7140, which makes the term of the SP co-terminus with the lease with the Town. He stated that the other waiver in regard to the consultant, Section 7100, has already been granted by the Board.

Ms. McPherson raised the issue of posting a bond to cover the cost of the removal of the equipment. Attorney Pare had no problem with that.

There was no public comment. There were three letters in support and one letter in opposition to the application.

The Board discussed conditions, including requiring more vegetative screening given that there is a residence to the west of the tank. According to Attorney Pare, there is a fence on the west side of the area to shield that residence. The Board discussed requiring vegetation in front of the fence. Waivers, including pre-testing and post-testing requirements, were discussed. The conditions of the FY11-09 Special Permit for T Mobil Northeast, LLC were discussed.

The Board made the following Applicable Findings:

- The applicant is not already providing Adequate Coverage and/or Adequate Capacity to the Town of Provincetown;
- That applicant is not able to use or modify for use existing towers/facility sites located within or outside the Town, either with or without the use of Repeaters, to provide Adequate Coverage and/or Adequate Capacity to the Town of Provincetown;

- That applicant has endeavored to provide Adequate Coverage and Adequate Capacity to the Town with the least number of towers and antennas which is technically and economically feasible;
- That applicant has agreed to rent or lease available space on the tower, under the terms of a fair-market lease, with reasonable conditions and without discrimination to other Telecommunications Providers;
- That the proposed telecommunications facility or tower will not have an undue adverse impact on historic resources, scenic views, natural beauty, residential property values, natural or manmade resources;
- That applicant has agreed to implement all reasonable measures to mitigate the potential adverse safety and aesthetic impacts of the facilities;
- That the proposed tower/telecommunications facility shall comply with current FCC standards (or other current applicable standard, if changed) regarding emissions of electromagnetic radiation and that the required Monitoring Protocol (as defined in Section 7040 to the extent not preempted by federal law, all rights reserved) is in place and shall be paid for by the applicant;
- That the proposed sites for facilities and towers have been camouflaged and screened to the greatest extent possible to minimize adverse visual impacts;
- That applicant has conclusively demonstrated that the proposed site for the service facility or tower is at the highest level, in order of site acceptability, specified in Section 7070, Subsection M, Number 3;
- That no indirect services proposed could reasonably be provided by use of land lines or other non-radiating means; and that all other conditions and requirements of this by-law have been fulfilled by the applicant; and
- That less than 50% of the primary coverage of the proposed site is outside of Provincetown.

***There was a motion by John Golden to grant a waiver of Article 7, Section 7100, The Provision of Independent Consultants. The motion was seconded by Grace Ryder-O'Malley. VOTE: 5-0-0.***

***There was a motion by Dorothy Palanza to grant a waiver of Article 7, Section 7110 B, Post-Testing, and to have it replaced by Condition 1B from the FY11-09 Special Permit for T Mobile Northeast, LLC. The motion was seconded by Marianne Clements. VOTE: 5-0-0.***

***There was a motion by John Golden to grant a waiver of Article 7, Section 7140, Terms of Special Permit, requiring a three-year term, to be replaced with a ten-year term, co-terminus with the lease agreement with the Town. The motion was seconded by Marianne Clements. VOTE: 5-0-0.***

***There was a motion by Grace Ryder-O'Malley to grant a Special Permit for Case #FY14-12, application by New Cingular Wireless PCS LLC ("AT&T"), with the following conditions:***

- ***That generator testing shall occur on Wednesdays at noon;***
- ***That a bond for dismantling the installation shall be posted in the amount of \$30,000; and***

- *That the applicant shall be granted a waiver from Article 7, Section 7110 B, Post-testing.*

*Marianne Clements seconded. VOTE: 4-1-0 (Brandon Quesnell opposed because of his concern about the importance of areas still not covered).*

b) **Proposed Zoning By-Law Amendment:**

Discussion of proposed amendment to Article 2, Section 2330, Floodplain District Boundaries and Base Flood Elevation Data, of the Zoning By-Laws (Warrant Article 23):

Ms. McPherson reviewed the amendment.

There was no public comment and no letters submitted.

*There was a motion by Dorothy Palanza to recommend Warrant Article 23. The motion was seconded by Brandon Quesnell. VOTE 5-0-0.*

c) **Proposed Zoning By-Law Amendment:**

Discussion of proposed amendment to Article 6, Growth Management By-Law, Section 6600, Table of Use Categories and Priorities, of the Zoning By-Law (Warrant Article 24):

Ms. McPherson reviewed the amendment.

There was no public comment and no letters submitted.

*There was a motion by Grace Ryder-O'Malley to recommend Warrant Article 24. The motion was seconded by Marianne Clements. VOTE 5-0-0.*

d) **Proposed Zoning By-Law Amendment:**

Discussion of proposed amendment to Article 2, Districts and District Regulations, Section 2560, Dimensional Schedule, of the Zoning By-Laws (Warrant Article 25):

Ms. McPherson reviewed the amendment.

There was no public comment and no letters submitted.

*There was a motion by John Golden to recommend Warrant article 25. The motion was seconded by Grace Ryder-O'Malley. VOTE 5-0-0.*

e) **Proposed Zoning By-Law Amendment:**

Discussion of proposed amendment to Article 2, Districts and District Regulations, Section 2320, High Elevation Protection District, of the Zoning By-Laws (Warrant Article 26):

Ms. McPherson reviewed the amendment.

There was no public comment and no letters submitted.

*There was a motion by Dorothy Palanza to recommend Warrant Article 26. The motion was seconded by Marianne Clements. VOTE 5-0-0.*

f) **Proposed Zoning By-Law Amendment:**

Discussion of proposed amendment to Article 4, Special Regulations, Section 4015, Site Plan Review by Special Permit, of the Zoning By-Laws (Warrant Article 37):

Stan Sikorski, Joseph Bologna, of Coastal Engineering, and David Mayo appeared to present the proposed amendment. David Mayo explained that his family has paid taxes on the buildable lot at 294 Bradford Street for many years. He claimed that his ownership rights have been abridged by the passage of this section of the by-law limiting the amount of material that can be excavated from a site without Special Permit to 750 cu. yds. This allows only for a small house to be built on that site. He alleges that the point of limiting the amount of material that can be excavated is to prohibit the development of any buildable lots left in Town. He noted that the by-law was voted in by a small percentage of Town voters at Town Meeting. He said that no study had been done on its effect on the Town before it was passed. He supported the 2000 cu yds. limit that was originally proposed by the Planning Board. He understood that this part of the by-law would allow the Planning Board to be able to review developments that would not normally come under its purview.

Sherry Dranch, and Jonathan Sinaiko spoke in opposition to the amendment. Rob Jason and David Nicolau spoke in favor of the amendment.

John Bologna reviewed the design plan submitted by Mr. Sikorski. He stated that the plan is for a modest single-family home and to illustrate the volume of material that 750 cu. yds. represents. The threshold for site plan review is 2500 cu. ft., which is in Article 2, Section 2320. One limit is for site plan review and one limit is for a Special Permit. In Article 4, Section 4015, the first four items that trigger site plan review by Special Permit are all indicative of larger projects, such as commercial developments. He doesn't think that the intent of the by-law was to restrict one and two-family dwellings and to put those under the same kind of scrutiny as commercial projects. He added that he thought that the passage of the by-law was an example of spot zoning.

Duane Steele stated that he did not agree with the change in volume that was proposed on Town Meeting floor. He thought the process by which it was arrived at during Town Meeting was chaotic and confusing, especially when it came to trying to understand what cubic yard volumes represented. He is hoping that the Planning Board will revisit the issue.

Stan Sikorski stated that the problem for someone trying to build a house that involved more than 750 cu. yds. being excavated was that if and after a Special Permit was granted, it could be appealed. This can slow the project and be costly to the applicant. He said that the by-law as written would affect the remaining buildable lots in Town, of which there are somewhere between 50 and 70, and that no one could not build something larger than a modest house. The process is too risky to a developer. He asked what the benefit of this by-law to the Town was. It places a restriction on the lot owner

and devalues the worth of the land if it cannot be developed. The Town is also missing out on potential tax revenue if lots cannot be developed. He also added that there is a housing shortage in Town and this by-law would stifle any development of affordable and other types of housing. He brought the submitted chart of undeveloped buildable lots to the attention of the Board.

Clarence Walker spoke in support of the amendment.

The Board discussed the proposed amendment.

***A motion was made by John Golden to not recommend Article 37. The motion was seconded by Grace Ryder-O'Malley. VOTE: 5-0-0.***

The Board discussed motions for Town Meeting and the language of the Planning Board reports. Ms. McPherson will work on language for the motions.

The Board discussed who would introduce the various amendments at Town Meeting. Ms. Clements will move Warrant Article 23. The language will remain as proposed, as it was crafted by staff at DCR.

Grace Ryder-O'Malley will move Warrant Article 24. The Board discussed the language of the Planning Board report.

Dorothy Palanza will move Article 25. The language of the proposed Planning Board report will remain the same.

The Board assigned Mark Weinress to move Article 26. The language for this article will not be revised.

The Board discussed visual aids to illustrate the volume of a cubic yard.

**Minutes of previous meeting: February 27, 2014: *There was a motion by Grace Ryder-O'Malley to approve the language as amended. The motion was seconded by Brandon Quesnell. VOTE 5-0-0.***

There was a motion by John Golden to adjourn the Planning Board meeting of March 27, 2014 at 9:00 P.M.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2014

Mark Weinress, Chair