

Case 06-38 – Susan Feist – 15 Brimstone Lane

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
TUESDAY, SEPTEMBER 12, 2006

The Board consisted of:

Jeffrey P. Klofft, Acting Chairman
Constantine Athanas, Acting Clerk
Jonathan G. Gossels
Elizabeth A. Taylor
Jonas D.L. McCray, Associate

This hearing was continued from August 22, 2006 to this date. No testimony was taken on August 22nd.

Notice of the hearing was published in the Sudbury Town Crier on August 3 and 10, 2006, posted, mailed and read as required.

Mr. Klofft, Acting Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Ms. Feist was present to represent a petition for renewal of Special Permit 05-31 for the practice of massage therapy at 15 Brimstone Lane. She explained that she has been in business for one year and that her practice is going well. There have been no problems with neighbors and she commented that some of her neighbors have become clients.

Ms. Feist was requesting renewal with no changes to the conditions.

There were no comments. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Susan J.W. Feist, owner of property, renewal of Special Permit 05-31, granted under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically the practice of massage therapy, property located at 15 Brimstone Lane, Residential Zone A-1, provided that:

1. Hours of operation will be Monday-Friday, 8AM-6PM.
2. No more than six clients per day will be allowed.
3. No more than two residential employees will be allowed. Non-residents are not allowed.

4. No sign will be permitted.
5. All parking will be on the premises. No parking on the street is allowed.
6. This permit is non-transferable and will expire in two (2) years on September 12, 2008, and the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a Special Permit to conduct massage therapy as a home business. The Board finds the use to be in harmony with the general intent and purpose of the Bylaw. It is in an appropriate location, not detrimental to the neighborhood and will not by its presence significantly alter the character of the zoning district. Adequate and appropriate facilities are provided for proper operation. This business has been in operation for one year without incident or complaints from neighbors. Therefore, the Board finds a two-year renewal period to be appropriate in this case.

Jeffrey P. Klofft, Acting Chairman

Constantine Athanas, Acting Clerk

Jonathan Gossels

Elizabeth A. Taylor

Jonas D.L. McCray, Associate

06-34 – Griffin & McManus – 684 Boston Post Road

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
TUESDAY, SEPTEMBER 12, 2006

The Board consisted of:

Jeffrey P. Klofft, Acting Chairman
Jonathan G. Gossels, Acting Clerk
Elizabeth A. Taylor
Constantine Athanas
Jonas D.L. McCray

The hearing was reconvened by the Chairman, Mr. Klofft.

Michael Griffin was present to request a further continuance because his attorney was not able to be present this evening.

As to the current status of the situation, Mr. Griffin said repairs have been made to the property. The broken overhead door was repaired, some glass was replaced and the west side of the building was painted and cleaned up. Some of the vehicles have been moved out of the area. He is trying to schedule a meeting with his attorney concerning the site plan and the cars in front of the building which are scheduled for service. The vehicles which take longer to repair will be stored behind the front of the building and will no longer be parked up front. The boat, motor home and car trailer is still there but is out back and off the grass area and behind the fence area.

Mr. Griffin said he spoke with Mr. Kankanpaa about a month ago – there is an 8-foot fence which shields his property.

Mr. Klofft said the Board had two requests – one was for a final plan in order to be able to draw up a set of conditions to deliberate on. The second was the tax issue.

Mr. Griffin said there was a meeting on the taxes. He is looking towards an actual buyout in the future of Mr. McManus' portion of the business.

Mr. Gossels asked whether there are any vehicles parked on non-paved or non-business areas at this time. Mr. Griffin said there were not.

Mr. Klofft said at the last hearing there was a lot of back and forth as to what was and was not there. There were some complaints from neighbors and at the time it wasn't clear what the applicants wanted to do. There were also some issues with the arrangements that the two applicants had. What the Board wanted was a written proposal and final plan including a decision on what they were going to do with the tax issue in order to move forward.

Mr. Athanas wanted to be sure Mr. Griffin understood what the Board was looking for.

Mr. Griffin said that was along the lines of what he and Mr. McManus were trying to discuss with the attorney.

Mr. Gossels said he would have to see a maximum number of current cars being serviced and number of project cars and no boat, trailer, etc., in order to consider voting on a plan.

Mr. Athanas said this should be comprised of a diagram showing the location and number of the vehicles with a separate sheet containing a list of those vehicles which coincides with the diagram.

Mr. Kankanpaa said despite what was said tonight, there is a pickup truck parked in the unpaved area behind the building every day, seven days a week. This is because Mr. Griffin leases the back part of the building to a carpenter who works there every day. In addition, a few

years ago the requirement for a fence to be put along the zone line was taken out of the condition so there is nothing to prevent that fence from being taken down.

Mr. Klofft said the Board will consider this in the list of conditions.

Mr. Griffin said the carpenter brings his supplies in from the back.

Mr. Gossels said he should not be parking on the unpaved area.

Mr. Kankanpaa said he didn't mind the carpenter being there; however, his only access is through the rear door which he leaves open in the summer. His equipment can be heard at all hours which is a nuisance.

Mr. Gossels said business hours is one thing, but not after business hours, weekends or holidays.

The Board emphasized the necessity for a final plan in the format discussed as well as a resolution to the tax issue.

The hearing was continued to October 11, 2006.

Jeffrey P. Klofft, Acting Chairman

Jonathan G. Gossels, Acting Clerk

Elizabeth A. Taylor

Constantine Athanas

Jonas D.L. McCray, Associate

06-36 Omnipoint Communications – 578 Boston Post Road
MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
TUESDAY, SEPTEMBER 12, 2006

The Board consisted of:

Jeffrey P. Klofft, Acting Chairman
Jonathan G. Gossels, Acting Clerk
Elizabeth A. Taylor
Constantine Athanas
Jonas D.L. McCray, Associate

Also: Jody Kablack, Planning Director
David Maxon, Broadcast Signal Lab, LLC (consultant to the town)

The public hearing was reconvened by the Acting Chairman Mr. Klofft.

For the benefit of Mr. Maxon who was not present on July 18, 2006, Mr. Braillard gave a synopsis of his presentation at that hearing.

Mr. Klofft said he did not recall in-depth discussion of the sheathing on July 18th.

Mr. Braillard said it was touched on briefly. He said it is actually designed so that there is really no sheathing. What is actually seen are the antennas which are completely flush mounted on the pole. Without the antennas one would see a pipe, a flange, a pipe, a flange, a pipe, a flange and then the rest of the pole. With or without the antennas in place, the vacant area is enclosed with a design to simulate an antenna. The remainder of the pole from the bottom antenna to the base is all pole.

Mr. Klofft asked Mr. Maxon for comments.

Mr. Maxon explained that the sheathing is really a cowling consisting of two or three sections with clamshells around the antenna segments to create a continuous surface. They are secured by screws and there are seams. He said from a distance, by and large, if it's maintained well and a continuous matching color it's not a terrible distraction.

Mr. Klofft referred to the pole on North Road which has a similar covering. He said due to age, wind, etc., it cracks and tears around the screws eventually wearing, after which the sheets become loose enough that they come down. He asked whether Mr. Maxon was familiar with this scenario.

Mr. Maxon said he had seen this in Nahant and Georgetown. He had also seen other sites where covers were actually broken. He would say there certainly is a maintenance issue. However, if it's maintained and the covers are replaced when they are worn, they can retain a clean architectural look.

Mr. Gossels pointed out that in its Decision the Board required bands so the pieces wouldn't become airborne.

Mr. Maxon said what happens is with higher velocity winds, the result is a chaotic situation and bands are not necessarily a solution. He added that the telecommunications association has a standard, and one would think the design of the structure would meet the specifications and that the facility would be maintained to meet those standards. He did not feel it to be the Board's responsibility to tell them to do it – they should just meet the standards.

The coverage map was then displayed. Mr. Maxon said it seemed sensible to put a couple of parcels around town for towers when the wireless companies said that was all that they wanted to do. Now, the wireless companies are putting these facilities quite close together. One of the reasons for that is to handle changes in terrain along major roads as well as to provide service to residential areas because people are talking on their phones, getting messages as they're driving right up to their garages. He said the wireless companies are looking at the future which is when they'll be delivering data at rates that rival DSL connections. At that point they'll be in a position to be competing directly with Verizon wireless, Comcast, etc. in providing high

speed data services. And what they'll have to offer is mobility. To meet their objectives, they'll be coming back to the town for more sites.

Mr. Maxon said what is being seen here is that T-Mobile has placed the facility in such a way that it appears to have some substantial overlap with the coverage of the existing facility. It is in a heavily trafficked business/commercial area as well, and there may be some rationale for that. As to this overlap – whether it's intended or whether it's desirable for some particular reason, he said sometimes the overlap is there simply because the target, which may be another stretch of road that doesn't have particularly good coverage, is being served from a location of opportunity – in this case they've identified a large parcel with a substantial amount of commercial development on it already and they proposed something in the back of the buildings of that parcel. They may actually be sacrificing efficiency in return for trying to do something that would be less objectionable.

Mr. Maxon said he made some quick observations today. He said there is a large tower farm on Nobscot Hill just about a mile from this site. He projected the signal down on his computer software and conceivably one could provide pretty good coverage from a site like that. It's very high ground and one of the disadvantages with antennas way up high is they are also spilling signals, so there may be some interference. It may be less than ideal; however, there may be other ways to fill the gap.

Discussion followed on possible solutions in conjunction with the Nobscot site.. Mr. Maxon offered that it could be on a well-placed building roof top, a utility pole, or perhaps a lower monopole right along the street so it's shining up and down the street. Also, there is the question of what has T-Mobile looked at in commercial districts to perhaps make that work for them.

Looking in totality of the town and reading the minutes of the Selectmen's meetings, Mr. Maxon found there to be the open question as to how the town is going to regulate the placement of wireless facilities once the list of the five sites where towers are allowed is practically exhausted and all the existing buildings in the commercial/industrial area are utilized to the maximum extent with the result being that the wireless carriers are still not reaching into all the neighborhoods. Is it going to expect T-Mobile or another carrier to come back and put something in the middle of an area. He said while this Board could overlook that for now and just take this proposal in the context of this coverage area, there is a broader issue here in terms of how the town goes about proving these facilities in the future. Does it want to react to variance requests, or is it time to sit down with the carriers and try to work up a new scheme that will be able to move the community forward in how it regulates facilities.

Mr. Gossels suggested perhaps 50-foot poles or poles not taller than trees.

Mr. Maxon said that could be one of the possibilities if a 100-foot limit is something that might seem a bit excessive for residential areas. Or it might be worthwhile to look at a specific area and figure out if there might be a parcel or a couple of parcels that would stand for an 80 or 100-foot structure, or something along that line – and then point the carrier towards those particular parcels. He felt said this must be done in advance. Otherwise, the town will be

confronted with proposals where the carrier has done the best they can to find a site that they think will be acceptable and tolerable, but they're still asking for a variance.

Mr. Klofft asked if the applicant if they had worked up some alternative proposals.

Adam Braillard said he would like to address the question of the objective of this application which is coverage and capacity. He said the neighborhood coverage maps handed out at the last hearing provide a better view of the gap in coverage that T-Mobile does have along Route 20. The yellow is existing coverage, green shows approved sites and pink shows approved sites, one in Wayland the other in Marlboro. From the map it can be seen that there is still substantial gap or no coverage along Route 20 in the southwest area of Sudbury.

The second map shows the coverage from the proposed site and it is fairly close to the existing Feeley Park site. Mr. Braillard said T-Mobile would prefer being a little bit west but because of the number of disciplines that go into where these towers are sited, this was the only site or the only proposal that that would adequately fill T-Mobile's existing coverage gap.

On this second map that there would still be a gap in the very lower southwest corner of Sudbury. Mr. Braillard said T-Mobile is pursuing an applicant to potentially house its facility in the Martha-Mary Chapel where Verizon is currently located. He said this wasn't propagated as being approved because they don't have the go-ahead from the property owner to put their antennas there. Once T-Mobile has that, they will probably be in front of the Board of Selectmen which will be by-right subject to special permit.

Ms. Taylor asked if the coverage would be limited because of the height of the tower in the steeple.

Mr. Goel said they would get approximately one-half mile coverage. Mr. Braillard added that the height of the chapel is 45 feet and the good thing about that site is that it just fills the Route 20 area. He pointed out the area it would cover.

Looking at the coverage map, Mr. Klofft asked whether a combination of the Martha-Mary Chapel could potentially reduce the size of the pole needed for the Bartlett site and still provide the coverage needed.

Mr. Braillard said what he could do is propagate the Martha-Mary Chapel and see what happens there in terms of whether it would that allow them to possibly reduce the pole on the Bartlett property. He said he was hesitant to bring up the Martha-Mary Chapel because T-Mobile has been working with them to lease that spot there for close to a year. His concern was that they may be thinking one carrier and don't want any more, and if T-Mobile limits this application, then they are stuck.

Speaking for himself, Mr. Klofft said his concern is that this application is for a variance in a residential zone. If it is approved, essentially it sets a precedent with a 100-foot pole on a parcel not too much different relative to a number of other parcels that are similar to this in town. He could see where there is a potential gap given the geography, but would like to see if there

are ways to minimize the impact of the pole in this area in terms of the precedent that it sets because the portion of the variance on the uniqueness of the character of this parcel is not unique relative to other kind of larger residential parcels in town.

Mr. Maxon asked whether those other large parcels have the same degree of commercial development on them.

Ms. Kablack said this is an agricultural parcel and there are many of them in town. Mr. Klofft added that they would be very similar to this one from a legal perspective.

Mr. Maxon said when he mentioned commercial development, there are structures. His point was that they are different from a cornfield in terms of manner of development. He said the carriers will generally look for a parcel that is disturbed by development; for example, a paved parking lot or a structure. They are less concerned about areas where cranberries or corn is growing. He said when you have an 80-100 foot pole behind 300 foot long buildings, in terms of the visual what you have is a particular context of structures. And that tall structure in front of a wide expanse of structures has a different experience to the viewer than a tall structure sitting out in a cornfield.

Mr. Gossels said when you come at it from Horse Pond Road what you have is a field.

Mr. Maxon said in that case he would touch on the question of height and not just the question of structures and ask whether there is a substantial benefit to having T-Mobile come down to 80 feet or 65 feet.

Mr. Klofft said there are large trees there and if it was lower it would blend in more with the surrounding area. He pointed out that in general this Board has opted to work constructively with the applicant, for all types of applications, to find a solution that's acceptable. Further, he said the Board understands the need as well as the desire of many of the citizens in town to have this service – it is not anti-service. He said the Board is just trying to find a workable balance between T-Mobile's needs and the aesthetic needs of the community and to find something that works.

Mr. Braillard said T-Mobile takes the same approach and will try and work with the towns to come up with a workable solution. He said T-Mobile doesn't have a problem with going back to the office and running some propagations using Martha-Mary as speculative and reducing the height of this tower to see what that does from a propagation standpoint although there is tree cover there which he believed were evergreens.

In response to a comment from Mr. Klofft as to focus, Mr. Braillard said while Route 20 is a concern, T-Mobile is also trying to cover the residential area as well. He said it might be that 80 feet may not be an issue, but what he is trying to accomplish with these discussions is also to come up with a solution not only for T-Mobile but for other carriers in the future. He said the figure of 80 feet is speculative – if it's too short and below the tree line, more height is needed.

Considerable discussion focused on the Nobscot hill site, its coverage and its problems, with suggestions for different technologies being offered as to how that site might be enhanced to combine with potential lower sites and provide the coverage desired by T-Mobile.

Mr. Klofft suggested the hearing be continued for the purpose of rethinking the engineering and alternatives.

Mr. Goel said he looked at Fire Station #2, the Bushey property, Sudbury Rental as well as other sites, none of which he felt was adequate.

Mr. Klofft asked whether Mr. Goel had evaluated how the Bartlett site would be impacted with alternative pole heights.

Mr. Goel said he estimated the tree height at 85 feet which would put the pole size at 100 feet.

There was some question as to whether the actual tree line was at 85 feet and whether the balloon was actually 15 feet above the line.

Mr. Braillard said he didn't know the actual tree height and would like to get confirmation on that. At that point he felt T-Mobile could go back in and run a lower height of this tower to determine whether there would be connectivity at a lower height.

Mr. Goel added that he would want the antenna to be over the tree line.

Ms. Kablack said there hasn't been discussion of other available options – roof mounts, spires, etc. for coverage. She said none of that has been explored in any non-residential building.

Mr. Braillard said T-Mobile did an alternative sites survey last week and looked at existing structures that the bylaw says can be used. The only one that was seen as a potential was the Stone Farm red barn which is very close to their existing site. They also looked at the rental center cupola; however, it would not adequately cover T-Mobile's existing coverage gap.

Mr. Gossels suggested perhaps having more sites with smaller structures.

Mr. Braillard felt this would limit propagation to the Route 20 area. He said although Route 20 is definitely one of the primary targets, they are also trying to cover the residential areas in and around Route 20. If they do go with smaller sites, they will still have to come back to the Board with another site.

Mr. Gossels asked about other technologies which had been suggested in conjunction with the Nobscot Hill site.

Mr. Braillard said he had not seen these technologies being used either by T-Mobile or other carriers. However, he agreed to look into it. In addition, he will run some propagations

using the Martha-Mary Chapel to determine whether the tower on Bartlett's can be reduced. He cautioned, however, that the chapel is only speculative at this point.

The hearing was continued to October 11, 2006.

Jeffrey P. Klofft, Acting Chairman

Jonathan G. Gossels, Acting Clerk

Elizabeth A. Taylor

Constantine Athanas

Jonas D.L. McCray, Associate