

Minutes

Planning Board Meeting

May 7, 2020

As Chair of the Planning Board of the Town of Strafford, Charles Moreno opened the meeting by stating that he finds that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

The Chair then made the following announcements: Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I (the Chair) am confirming that we (the Planning Board) are:

- a) providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means. We are using the Zoom platform for this public meeting. All members of the Planning Board are able to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing and using the assigned meeting code or by clicking on the website address:
<https://us04web.zoom.us/j/78899231603?pwd=a1ZLU3cxVUxXSUhpbnZbmd1QUVadz09>.
- b) providing public notice of the necessary information for accessing this meeting. We previously gave notice to the public of the necessary information for accessing this meeting, including how to access the meeting via Zoom or telephonically. Instructions were posted on the website of the Town of Strafford at www.strafford.nh.gov.
- c) providing a mechanism for the public to alert the public body during the meeting if there are problems with public access: If anybody has a problem they were directed to call or email eevans.strafford.nh@gmail.com.
- d) adjourning the meeting if the public is unable to access the meeting: In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

The Chairman began the meeting by taking roll call attendance and having Board members introduce themselves. Members of the Planning Board in attendance were Charles Moreno, Chairman, Phil Auger, Terry Hyland, Brian Monahan, newly designated ex-officio member, and Donald Coker and Don Clifford, Alternate members. The Chairman then called the meeting to order at 7:34 PM. The closing date for applications to appear on the agenda for the June 2020 regular meeting will be 5 P.M. Tuesday, May 12, 2020; revised materials for continuing applications must be submitted by Tuesday, May 26th. The Chairman then turned to the minutes of the April regular meeting. The Chair noted that Donald Coker would be designated as a voting member this evening due to the absence of one of the regular members. The Chair asked if there was a motion; Phil Auger moved to accept the minutes as presented. Terry Hyland seconded the motion. The Chair then proceeded with a roll call vote: Phil Auger—aye, Terry Hyland—aye, Donald Coker—aye, Charles Moreno—aye, Brian Monahan—aye. The motion was carried by unanimous vote in the affirmative with none opposed.

There were no items of new business. The first item of continuing business was the application of MANDY YOUNG for two-lot subdivision of her property located at 633 First Crown Point Road (Tax Map 19, Lot 70). Rick Turner, the surveyor for the project, has not yet submitted any new information and nobody is present for this item. The Chairman stated for the record that further consideration of the application is continued to the next regular meeting to be held on Thursday, June 4, 2020.

The next item of business was the application of VERTEX TOWER ASSETS LLC for Non-Residential Site Plan Review for the construction of a telecommunications tower to be located on the land of the Bertha Huckins Revocable Trust, 22 Hillside Drive, off Huckins Road (Tax Map 11, Lot 4). Atty. Fran Parisi, representing the applicants, was present, accompanied by T. Johnson, an engineer for Vertex. Cindy and Joe and Cindy, representing the Huckins family, were present. David Copeland, the Building Inspector and Scott Whitehouse, the Fire Chief were present. Bruce Patrick and Dan Martin, residents, were also present. The Chairman noted that this application has been

before the Board for several meetings, and last month the Board postponed further consideration to tonight's meeting. Mr. Moreno advised that he has put together a list of items for the Board to review regarding the Vertex proposal:

1. Recap the Zoning Board decision;
2. Review the Request for Waiver letter;
3. Review the most recent plan set;
4. Review the lease documents;
5. Review the removal plan, documents, and proposed bonding;
6. Review the Isotrope LLC alternative sites study;
7. Hear from the Fire Department;
8. Review potential conditions of approval for the Site Plan.

1) The Chairman briefly summarized the decision of the Board of Adjustment, advising that the Board had granted the variance to the requirement that the tower be disguised, conditional upon applying the brown rust color discussed at the joint meeting. The second variance requested was for height; the ordinance requires that the tower extend no further than 20 feet above the average tree canopy and the applicants want 140 to 145 feet. The variance for height was denied but the applicant has appealed and the rehearing is upcoming. Donald Coker asked about the fact that the Planning Board is looking at plans for a 140 foot tower. Mr. Moreno said that it is his understanding that the Site Plan is essentially the same regardless of height; if the variance is again denied the applicants would have the right to either appeal to court or resubmit an amended proposal. Atty. Roman noted that the applicants have chosen to take the risk to submit the Site Plan applications for final review showing the 140 foot tower. She suggested that the Board could put on a condition that the applicant would have to comply with ZBA variances, including the ZBA's decision on color. There were no other questions.

2) The Chairman read out the Request for Waiver letter; the applicants are asking to postpone submitting information on the foundation and final construction plans for the tower as required under Paragraph 3.2.2 I of the Site Plan Regulations until all approvals are in place and they have secured a carrier. Terry Hyland said that they are asking to postpone construction plans in case the technology changes, and that makes sense. Donald Coker noted a concern with granting waivers and urged Board members to think carefully. It was noted that the Board has received removal plans, so all that is missing are the construction plans. Fran Parisi said that they feel that they have provided construction details with the exception of the foundation design and tower structural analysis. He said that they feel that it is premature to provide construction details now because rules change. He said that they will give plans to the Planning Board and the Building Inspector when they are ready to build. Mr. Parisi said that he would agree to a condition of approval that any future plans submitted are consistent with the site plans that are being approved here.

The Chairman then opened discussion to the audience. Scott Whitehouse said that he was speaking for the Fire Department and Police, and that they think the tower will be a benefit because it will significantly improve the signal in blind spots by Caswell Cove and toward Wild Goose Pond Road. There were no other comments.

The Chairman brought discussion back to the waiver requesting that the foundation design and soil analyses be postponed until later. Atty. Roman noted that there are two standard prongs to considering a waiver. To grant a waiver, you must find that requiring compliance would be an unnecessary hardship, and that secondly, that it would not be contrary to the spirit and intent of the regulation. Does requiring the construction plans pose an unnecessary hardship on the applicants—Terry Hyland said that he does not feel that it is necessary to have the plans submitted now if they might change. Donald Coker noted the final sentence of the regulation, and asked if third party review would still be possible—are the building plans still part of the Site Plan proposal, even if they are submitted later? Atty. Roman said that requiring third-party review of the plans could be a condition of approval. She said that the Building Inspector reviews the plans, and if needed, could get third-party technical review. David Copeland, Building Inspector, said that he would indeed ask somebody to look at the plans before he signs off, as he does not have any experience with building telecommunications towers. Mr. Moreno said that he feels that it poses an unnecessary hardship, as the applicants have submitted a number of detailed plans and this is only a small part. If the plans can be reviewed when they come in, this helps. In response to the question of whether approving the waiver would be contrary to the regulations, Donald Coker noted that if technology is changing, it would be fair and reasonable to postpone until the tower is built. Phil Auger then made a motion that a waiver be granted to the requirement for full construction plans for the foundation and exact structural design of the tower be submitted at this time. Donald Coker amended the motion to reference the May 4, 2020 as referenced in the May 4, 2020 Request for Waiver letter submitted by Francis D. Parisi, Esq. letter requesting the waiver; Phil Auger seconded the amendment. The Chairman

then called a vote on the amended motion. Board members voted as follows: Phil Auger—aye, Terry Hyland—aye, Brian Monahan—aye, Donald Coker—aye, and Charles Moreno—aye. The motion passed by unanimous vote of the members voting, with none opposed.

3) The Chairman noted that the latest revision to the Site Plans included only very minor changes; he turned to Atty. Parisi for comment. Fran Parisi said that the applicants feel that they have submitted plans in accordance with the regulations and said that the most recent revisions were just clarifications as requested by the Board. Mr. Moreno noted the erosion and drainage information for the driveway and the detailed engineering. Board members reviewed the list of items missing and/or requiring clarifications as noted at the December 2019 meeting when the Plans were conditionally accepted as complete for consideration, and it was agreed that most of the items have been addressed. The December minutes noted a question regarding noise from any generators that might be put on site. Mr. Parisi said that he feels that this is not an issue, as the generators would only run if there was a power outage, and he suggested that any generators would comply with the town's noise ordinance. Phil Auger asked if a motion was required since the Site Plans have been modified since their original acceptance. Atty. Roman said that this is not necessary. However, she noted some additional items for discussion by the Board. She noted that the site will be served by a lengthy driveway off a Class VI road, and she said that the applicant would normally either be required to bring up the road to Class V standards or comply with RSA 674:41. She noted that this is a unique situation because the property actually extends out to Parker Mountain Road and therefore has frontage on a Class V or better road under the State law requirements, even though that is not the access. Still, given the access concerns, she offered as a potential condition of approval that the applicants complete a waiver of liability, noting that she has a standard form that could be used. Atty. Parisi agreed this was standard practice and was agreeable. Atty. Parisi also said that he has spoken with the Road Agent and that they plan to walk the road before beginning construction and discuss what needs to be done to the road before they get a building permit. Atty. Roman said that she wants the Board to consider that if there is damage and the Road Agent finds that Vertex is responsible, they (Vertex) will need to restore the road. Atty. Parisi said that the proposed conditions of approval posed by Atty. Roman would be acceptable. Atty. Roman then noted that the driveway in some spots comes very close to the 25 foot no-disturbance buffer around wetlands. She offered that another condition of approval requiring that the buffer be delineated so that the delineation is clear to people constructing the driveway. Fran Parisi said that they can redelineate the buffer and that this is a reasonable request. Mr. Johnson of Vertex pointed out that the limits of work for the driveway will be marked by the erosion control materials, which will create a physical barrier. Board members confirmed that the driveway does not encroach on the buffer, it just comes close. Atty. Roman then noted the question about the generator, noting that the plans do not include a generator because the applicants said that they did not know what size would be required. She suggested that the applicants should come back to the Board in the future with the specifics for the generators. Atty. Parisi advised that the generators would be provided by the tenants; he said that Vertex will supply the information as part of the building permit applications. He clarified that a building permit would be needed for each new antenna. Atty. Roman said that it would legally be acceptable for the Building Inspector to review the information as part of the building permit application. Atty. Parisi said that it will remain as a fenced compound for the foreseeable future; all the mechanical components, including generators, will be inside the fence, and subject to the Building Inspector's review. The Site Plan is focusing on the location and fence, he noted. If those things change, they will need to come back with revised plans. Don Clifford then noted his concern whether the tower will be a concern for the NH National Guard training site nearby, noting the helicopter traffic. Atty. Parisi notes that they have submitted a document stating that the height of the tower is not a navigation hazard, and once built the tower will be registered and will appear on air navigation records. Discussion followed; compliance with FAA requirements was suggested as a condition of approval. Brian Monahan noted that air navigation information is updated frequently; he said that he does not feel that it is an issue but agreed that notification should be given.

4) Lease agreement; Board members noted that the significance is to show that there is an agreement on file. Atty. Roman noted that it is important to have this on file to make it clear that the Board has not approved a tower without access; the owners and applicants have agreed to a lease agreement rather than an access easement. Atty. Roman has completed the legal review of the agreement and did not see any issues from the Town's perspective.

5) Tower Removal—Plans, removal agreements, and cost information have all been submitted. Atty. Roman noted that she has reviewed the documents and only one thing remains—the removal bond. She suggested as a condition of approval that the removal bond should be subject to her review and she noted a few minor edits to the agreement. Atty. Parisi advised that he had seen her proposed changes and approves them. Atty. Roman suggested that the proposed condition of approval be changed to execution of the removal agreement.

Donald Coker asked when the tower might actually be discontinued, particularly if the tower carries police and fire antennas. Board members noted technology changes will likely mean that towers will eventually become obsolete, but concern remained about the public safety signals. Atty. Roman suggested that the language regarding discontinuance could be changed to clarify that tower removal would be required if the tower was abandoned by the cell companies/discontinued for personal wireless service facilities (PWSF), or that the agreement could be left as proposed, on the assumption that the town would work with public safety officials in the future to pull down the tower once the public safety antennas are the only thing remaining.

6) David Maxson's alternative locations study. Board members noted that the results are interesting, but perhaps more important to the ZBA and as a planning tool.

7) There were no other comments.

The Chairman then opened the public hearing to the audience. There were no comments. Donald Coker then made a motion to close the public hearing. Phil Auger seconded the motion. There was no further discussion and the Chairman called the vote. Phil Auger—aye, Terry Hyland—aye, Donald Coker—aye, Brian Monahan—aye, and Charles Moreno—aye. The Chairman then closed the public hearing.

The Chairman then turned to the question of the various proposed conditions of approval. Atty. Roman shared her notes regarding the various conditions of approval that have been mentioned this evening and at previous meetings. Board members agreed to go through the list of possible conditions and discuss each in turn to see if any member of the Board has questions, concerns, or objections to the proposed conditions of approval. A vote may then be taken on the full list at the conclusion of the discussion.

- a. Execute a Waiver of Municipal Liability regarding the Class VI road, and driveway access way, for recording prior to approval of Building Permit

Atty. Roman noted that she has a standard form. It was confirmed that Strafford typically records these waivers. Phil Auger noted that the Board had recently looked at a similar Class VI road case regarding a proposal to build on Pig Lane. There were no objections to including this as a condition of approval.

- b. Agreement to the following: Applicant shall restore and post bond for restoration (if determined necessary by the road agent) of Huckins Road to prior condition.
Charles Moreno asked if this would be up to the Selectmen or the Road Agent. Atty. Roman noted that Atty. Parisi had said that Vertex would work with the Road Agent. Fran Parisi said that this is a common concern for towns but that they have never needed to post a bond. Mr. Moreno noted concern for maintaining access to the home on the Class VI part of the road. Atty. Roman noted that the proposal is worded "shall restore" and that if violated, the Planning Board could move to revoke the site plan approval.
- c. Post-construction engineer certification that access road complies with PB-approved plans
Atty. Roman noted that this provision provides for engineering review when a town does not have in-house resources to be sure that the work complies with the plans. Fran Parisi said that Vertex has engineers that come to the work site and provide an affidavit that the work complies with the plans. T. Johnson confirmed that they have an affidavit that they submit to the town that will satisfy this provision.
- d. Wetland and 25' no-disturb wetland buffer on-the-ground delineation along access way during site construction
No discussion and no objections to including this provision.
- e. No land disturbance or activities impacting adjacent wetlands with 25 feet of the wetland including, but not limited to: construction activities, filling, dredging, and grading
It was noted that problems can arise, for example when a tree falls, and this is a good idea.
- f. No tower lighting
It was suggested to add the words "of any kind".

- g. Prior to receipt of building permit for any provider (antenna), must submit revised plans showing location and size of generator(s) to the Building Inspector.

There was no discussion and no objections to including this provision. Atty. Parisi said that he will do this as a matter of course.

- h. No harvest of trees zone of 250 feet around tower.

There was a great deal of discussion of this proposal. It was noted that a timber harvest near the tower would put the tower in non-compliance by removing trees and changing the overall height of the tree canopy and by making the tower more visible. Atty. Roman noted that this concern stemmed from discussion at the joint meeting with the ZBA and suggested that the Planning Board could ask the ZBA consider this because it is related to the overall question of height. Phil Auger said that he was concerned about this potential condition of approval and thinks that a perpetual restriction of this kind could be dangerous and would be likely to be violated. Atty. Parisi noted that Vertex does not have the right to make this agreement on behalf of the landowners. Several different ideas were suggested, including a basal area restriction, for example, allowing the harvest of no more than 25% of the basal area and leaving a well-distributed stand within 250 feet of the tower. Atty. Parisi noted his understanding of the concern and also noted that ZBA does not meet until next week, which would allow time for Vertex to talk to the landowners and engineers. It was agreed to strike this proposed Planning Board condition of approval and to send the concern to the ZBA.

- i. Comply with any requirements or conditions of any ZBA decisions.

There was no discussion nor any objection to including this condition of approval. It was noted later that this would include the Zoning Board's condition of approval requiring the use of the CORE-TEN rust brown color for the Variance granted regarding the requirement for disguise.

- j. As part of the building permit application, submit engineer-stamped construction plans for the foundation, tower and structure that is consistent with the Site Plan approval and applicant's representations made at Planning Board public hearings; the Building Inspector, at his/her option may seek 3rd party engineer review of the construction plans which review shall be paid by the owner of the tower.

Donald Coker noted that this has already been discussed and that the Building Inspector has already indicated that he would do this because the Building Inspector is not familiar with building towers.

- k. Execution of Tower Removal Agreement and post a Removal Bond (in a form acceptable to Town Counsel) with the Town

Phil Auger noted that the Board has already covered this and there were no objections to including this provision.

- l. Any change in original Tower height from 140 feet requires submission of an amended Site Plan to the Planning Board; a non-substantial modification shall not be subject to this requirement if otherwise exempted from Site Plan review under RSA 12-K.

Atty. Roman explained that this provision would be an attempt to deal with the fact that the ZBA not having approved the 140 foot tower shown on the Site Plan, and if the ZBA still doesn't and the applicant goes ahead with a lower height tower, that would be a significant change and the Site Plans would need amendment. RSA 12-k allows a non-substantial change of 10% without additional approval, only a building permit. Mr. Moreno asked if this means that they can increase the proposed height of the tower by another 10% without further review and Atty. Roman agreed that this is true and that the law is not favorable to local land use boards. Atty. Parisi asked if this would mean that he would have to come back to the Planning Board if the ZBA did not approve the height. It was discussed whether it would be possible to submit amended plans to the Planning Board without requiring a public hearing. Atty. Roman noted that the problem is timing, as the applicant wished to go forward and conclude the Site Plan process before the the ZBA variance application was concluded. It was agreed that the Site Plan cannot be approved to an unknown height, and the current Site Plan specifies the 140 feet. T. Johnson asked if the approval could be "up to 140 feet" but it was agreed that this is not possible. It was asked if Strafford typically records Site Plans, and it was agreed that the plans are not typically recorded but that this written decision should be recorded. Atty. Roman noted that the worst that would be required if the ZBA does not approve the height and the applicants go forward with a reduced height is that the applicants would need to submit an amended plan, and if the Board can handle it administratively, they will, and if they can review the amendments without a public hearing, they will. Atty.

Parisi said that they would not want the case to be reopened; Atty. Roman noted that under state law any substantial changes to an approved Site Plan have go to the Planning Board. After discussion it was agreed that the condition of approval would provide that amendments to the Tower height would be submitted to the Planning and Zoning Administrator for review. There were no other objections.

Finally, Charles Moreno said that he would like to add another condition of approval stating that the tower shall not be built until there is an agreement with a cell phone carrier. Fran Parisi suggested the following wording: evidence of an agreement with a licensed telecommunications carrier prior to the issuance of a building permit. Board members agreed.

Review of the proposed conditions of approval now complete, the Chairman turned to the Board and asked if there was any further discussion motion. There was none. The Chairman then asked if there was a motion. Atty. Roman proposed the following wording:

A motion to approve the application for Non-Residential Site Plan approval by Vertex Tower Assets. LLC for a telecommunications tower to be placed on the property of the Bertha L. Huckins Revocable Trust, 22 Huckins Road, Tax Map 11, Lot 4, as most recently presented to the Board (5/7/2020), subject to the twelve conditions of approval.

Donald Coker said “so moved” and then proceeded to read the finalized Conditions of Approval, with the wording of the conditions updated and numbered:

1. Execute a Waiver of Municipal Liability regarding the Class VI road, and driveway access way, for recording prior to approval of Building Permit;
2. Applicant shall restore Huckins Road to its prior condition, and post a bond for restoration if determined necessary by the Road Agent;
3. Post-construction control affidavit submitted to the Town by the engineer of record;
4. Barrier established at the limit of work beyond the 25’ no-disturb wetland buffer;
5. No land disturbance or activities impacting adjacent wetlands within 25 feet of the wetland (wetland buffer) including, but not limited to: construction activities, filling, dredging, and grading;
6. No tower lighting of any kind;
7. Prior to receipt of building permit for any provider (antennae), must submit revised plans showing location and size of generator(s) to the Building Inspector;
8. Comply with any requirements or conditions of any ZBA decisions;
9. As part of the building permit application, submit engineer-stamped construction plans for the foundation, tower and structure that is consistent with the Site Plan approval and applicant’s representations made at Planning Board public hearings; the Building Inspector, at his/her option may seek 3rd party engineer review of the construction plans which review shall be paid by the owner of the Tower;
10. Execution of Tower Removal Agreement and post a Removal Bond (in a form acceptable to Town Counsel) with the Town;
11. Any change in Tower height from 140 feet requires submission of an updated Site Plan to the Planning/Zoning Administrator;

12. Evidence of an agreement with a licensed telecommunications carrier shall be submitted to the Town prior to the issuance of a building permit.

Phil Auger then seconded the motion. There was no further discussion. The Chairman then proceeded with a roll call vote. Phil Auger—aye, Terry Hyland—aye, Donald Coker—aye, Charles Moreno—aye, Brian Monahan—aye. The motion passed by unanimous vote of the members voting.

Board members then turned to the agenda. Prior to the declaration of the State of Emergency, Bruce Patrick had requested an opportunity to meeting with the Board for informal discussion. He was present earlier in this meeting but signed off at the conclusion of the Vertex discussion. Phil Auger asked if there had been any further action regarding the MacIver request to build on a lot located on Pig Lane. Mr. Auger noted that had visited the site and verified that the slope of the road in this area is approximately 23%. He expressed serious reservations about allowing building and road work on such a steep site and so far in on a Class VI road. There was some discussion. David Copeland said that he believed that the Selectmen had already approved the Class VI road release, but he said that the MacIvers have only applied for a building permit for a shed.

There being no further business before the Board, Donald Coker then moved to adjourn the meeting. Brian Monahan seconded the motion, there was no further discussion. The Chairman called the vote. Phil Auger—aye, Terry Hyland—aye, Donald Coker—aye, Charles Moreno—aye, Brian Monahan—aye. The motion passed by unanimous vote. The meeting adjourned at 10:13 PM.