

**TOWN OF ST. GEORGE
DEVELOPMENT REVIEW BOARD
MINUES OF MEETING
ONE BARBER ROAD, ST. GEORGE
July 8, 2009**

- MEMBERS PRESENT:** Marie Mastro (Chair); Scott Baker, Ron Arms, Matt Palmer, Lisa Beliveau, Dan Pillsbury, Connie Kendall.
- ADMINISTRATION:** Ed Hanson, Zoning Administrator.
- OTHERS PRESENT:** Glenn Kieisberg, Bob Walker, Cathy Neff, Mark Hall, Don Taub, Andrei Leontiev, Rita Martel, Lisa Steadman, Steve & Jane Stowell, Brian Anderson, Ken Couture, Chris LeBlanc, Bill Steadman, Susan Martel, Chana Martel, Sandy Hoar, Brian Hoar, Ray Martel, Tom Walsh.
- AGENDA:**
1. Call to Order
 2. Applications
 - Conditional Use Review, Antennas, Mount Pritchard, Omnipoint Communications (#09-2)
 - Conditional Use Review, Home Based Business, Martel Extension, Steadman (#09-3)
 - Sketch Plan Review, Three Lot Subdivision, 963 Willow Brook Lane, Pinkham
 3. Zoning Administrator's Update
 4. Approval of Minutes
 5. Other Business
 6. Adjournment
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1. CALL TO ORDER

Marie Mastro called the meeting to order at 7:15 p.m. and confirmed Board members received the meeting packets with information on the applications to be heard.

2. APPLICATIONS

Marie Mastro explained the procedure to be followed at the meeting, reviewed the definition of "interested persons (interested party status) pursuant to 24VSA4465.B, and swore in those individuals to give testimony before the Development Review Board (DRB). Submittals at the meeting included the following:

1. Letter from the Tom Walsh, Esq., dated 6/30/09, regarding the Steadman application.
2. Copy of the Act 250 notice for the Omnipoint Communications American Tower (4C1107) regarding the July 28th comment deadline date and classification as a minor application (a hearing will be held only if comments are received by 7/28/09).
3. Letter from Cathy Neff and Michael Garvey, dated 7/2/09, relative to the Omnipoint Communications application.
4. Letter from Mark Hall, Esq., dated 7/7/09, regarding change of name from Omnipoint to T-Mobil Northeast, LLC.

(#09-2): Conditional Use Review for co-location of an array of up to nine additional cellular telephone antennas on the existing American Tower telecommunications antenna tower on Mount Pritchard (parcel ID#05-20-30) by Omnipoint Communications Incorporated

Connie Kendall recused herself from review of application #09-2 (Omnipoint telecommunications antenna). There were no disclosures of conflicts of interest by Board members relative to the Omnipoint Communications application.

Mark Hall, attorney with Paul Frank & Collin representing T-Mobile Northeast, LLC, and Glenn Kieisberg appeared on behalf of the application.

APPLICANT COMMENTS

Mark Hall explained T-Mobile is locating throughout the state, especially into the more populated areas. The proposal before the DRB is to add nine wires (three sets of three) to the existing tower on Mount Pritchard below the existing carriers. Three wires are requested now and three in the future extending coverage to I-89 and the general area around St. George. There are minor applications for service in Richmond, Williston (two locations) and Burlington. Existing facilities, such as silos, barns, roof tops, are being utilized. T-Mobile has a license to build out and a timeline, and is moving as rapidly as possible to complete the work. Service is on-line in Richmond and at location 321 in Williston. Service is coming into the Vermont market which will eliminate roaming charges to users. Mr. Hall reviewed the locations of the lines on the tower (one line at 73' high and 60 degrees from true north, one at 73' high and 180 degrees from true north, and one at 83' high and 300 degrees from true north). The lines are in compliance with FCC regulations with regard to interference, other communications facilities, and public safety guidelines. There is less than 1.2% of the allowable radio frequency emission. The existing tower will be used. Technology is growing, carrying more information on a shorter bandwidth, explained Mr. Hall. Sites will be closer. The signal does not go around corners or through trees. T-Mobile is trying to work through the local process to avoid a federal mandate to put in a tower.

Glenn Kieisberg with T-Mobile reviewed the map showing the tower site, noting the signal is propagating and not obstructed on top of the 1,800' hill. Other sites were reviewed in the area. Brownell Tower is the approved alternate though the signal is not as good as the Mount Pritchard site. Also, there could be other issues with the Brownell Tower (i.e. lease rights, space).

STAFF REPORT

Ed Hanson noted there have been four revisions since the original submittal of drawings (there were problems with the original proposal). Mr. Hall said he will submit plans under T-Mobile Northeast, LLC.

Marie Mastro asked what is on the tower presently. Ed Hanson said T-Mobile will be the third on the tower to Verizon and Sprint as well as linkages to TV antennas. Mr. Hanson mentioned the structural analysis is part of the submittals, but the structural report on the

extension is not updated. The electromagnetic study is updated. Mr. Hall said he will submit a letter confirming the tower extension will support the application. Ms. Mastro asked if an electrical engineer or a structural engineer will review/stamp the plans. Mr. Hall said the engineer who produces the plans will stamp the drawings. Ms. Mastro noted a civil engineer stamped the electrical and structural drawings when there should be an electrical engineer's stamp. Mr. Hall said he will investigate the matter though his understanding is the plans are sufficient if stamped by an engineer.

Matt Palmer asked if a pad and cabinets will be installed for equipment shelters. Mr. Hall stated a climate control cabinet which does not use as much power will be installed. Ed Hanson pointed out the shelters were installed early to support the microwave antennas.

Scott Baker referred to the RF Report which shows the antennas below the extension. It was noted the photos on the report were not of the proposed antennas and therefore not accepted by the DRB. Ed Hanson said a revised report was submitted with the Act 250 package.

PUBLIC COMMENTS

There were no comments from the public on the application.

DELIBERATION/DECISION

Conditional Use, Antennas, Mount Pritchard, Omnipoint Communications/T-Mobile Northeast, LLC (#09-2)

MOTION by Scott Baker, SECOND by Lisa Beliveau, to recess the hearing of #09-2, Condition Use Review for antennas on Mount Pritchard by Omnipoint Communications/T-Mobile Northeast, LLC until September 9, 2009 to allow the applicant the opportunity to submit additional/revised information including a revised structural analysis and confirmation that a civil engineer can stamp electrical and structural drawings related to the application.

DISCUSSION: The applicant urged action on the application as soon as possible, noting if the site is not built by fall then construction will be pushed to spring, 2010. Connie Kendall, adjoining landowner, expressed frustration with regarding to information changing all the time. Mark Hall explained the objective is to decrease impacts of the tower, not to confuse anyone. The project will be delayed until next year without action by the DRB. Mr. Hall offered to add the name of any 'interested party' to the mailing list. Marie Mastro acknowledged the applicant's position, but mentioned the requirement of due process. There were no further comments.

VOTING: unanimous; motion carried.

Connie Kendall joined the DRB.

(#09-3): Conditional Use Review for a home based business (landscaping service operating out of an existing detached accessory outbuilding) on Martel Extension (parcel ID #05-20-07) by William and Lisa Steadman

Lisa and William Steadman appeared on behalf of the application. There were no disclosures of conflicts of interest by Board members relative to the Steadman application.

APPLICANT COMMENTS

Lisa Steadman explained their home based landscape business was in operation when the 10 acre property on Martel Extension was purchased. The business operates out of the 2,000 s.f. garage at the front of the property. The house is located behind the garage structure. There are five other 10-acre lots on the road with a similar arrangement of buildings (garage in front). There are two large doors on the front of the structure. The interior is open space used primarily for storage/repair of equipment. There is a bathroom in the structure. The business employs five workers and a part-time mechanic who works in the equipment shop two to three days a week, possibly more if necessary. The mechanic is a family relative (brother of William Steadman). The business owns six trucks including three pickup trucks, two 350 dump trucks, and one vehicle. The shop has always been used as a shop. When a permit was sought for the business after the property was purchased, the Zoning Administrator at that time (Dick Ward) issued a home occupation permit. Ms. Steadman said they were in the process of transitioning winter to spring equipment when the Zoning Administrator did a site visit and expressed concern about all the equipment being outside. Mr. Ward subsequently issued a Notice of Violation of the home occupation permit. Ms. Steadman said they contacted their attorney about the matter and received an explanation from the current Zoning Administrator, Ed Hanson, as to why the home occupation permit was not the correct permit to be issued in this case. Ms. Steadman stressed they want to be in conformity and want to remedy the concerns expressed by neighbors. There are times when more equipment is outside than inside, such as during the transition between seasons. Much equipment is stored in the 2,000 s.f. shop. There is enough parking for all the vehicles in the front of the property, but to alleviate concerns and reduce the number of vehicles the employees are now taking the vehicles home with them. The site does look nice, more tidy, agreed Ms. Steadman.

Ron Arms asked about the number of employees and vehicles. Ms. Steadman stated there are five employees and six vehicles. The larger trucks are used for salting roads in winter. The mulch blower is considered a vehicle. All the equipment is registered and inspected, including the trailers.

Scott Baker asked about the size of the shop and if the shop is a garage. Ms. Steadman stated the shop is 1,900 s.f. and is a garage. The sketch plan with an overlay of photographs of the site taken in April, 2009 by the Zoning Administrator was reviewed. Matt Palmer pointed out the zoning regulations prohibit visible outside storage. Lisa Steadman said the vehicles are in use part of the year. Mr. Palmer asked if vehicles are stored outside in the evening. Ms. Steadman confirmed this, adding there is also a dumpster outside. Mr. Palmer asked what was outside the shop now. Ms. Steadman said the front parking area has trucks and plows and employee vehicles. Behind the shop on one side is the right-of-way with a hedgerow and 10 acres of land on the other side. The satellite dish was on the property when it was purchased. William Steadman pointed out

the items in the photograph are no longer there or cannot be seen unless someone is standing in the right-of-way. Ed Hanson confirmed most of the material has been removed. Ms. Steadman said she has current photographs of the property on her cell phone which she will email to the Zoning Administrator. There was mention of the DRB doing a site visit.

MOTION by Marie Mastro, SECOND by Scott Baker, to conduct a site visit to the Steadman property on Martel Extension (parcel ID#05-20-07) on September 9, 2009 at 7 p.m. VOTING: unanimous; motion carried.

William Steadman reiterated the desire to come into compliance and stay that way, adding when the neighbor (Ray Martel) mentioned the clutter around the site it was cleaned up. Mr. Steadman said they want to get along with the neighbors on the hill as has always been the case. Truck travel on the road has been reduced with employees taking the vehicles home and going directly to work sites rather than coming to the shop at the start of the work day. Employees only come to the site to deliver/pick up a piece of equipment, said Mr. Steadman, and there is now a list and it will be easy to stick to it.

Lisa Steadman said outside storage is a grey area since there is space by the house that is not visible from the road (blocked by the house and shop). The employees carpool, but if they do come to the shop they will park by there. There is a skid steer and mulch blower at the site so clarification of the definition of 'outside storage' versus parking is needed. Also, there is a covered trailer behind the shop that is not visible from the road. Direction is needed as to whether the trailer needs to be moved. What is allowable needs to be specified so the property can be in compliance.

STAFF REPORT

Ed Hanson noted photographs of the site taken in April, 2009 were overlaid on the sketch plan which was given to Scott Baker at the recent Planning Commission meeting to bring to the DRB meeting.

Connie Kendall mentioned the protective covenants of the homeowners association for the property that say no lot shall be used except for residential purposes. Matt Palmer interjected the town does not enforce homeowner association covenants. Ms. Kendall questioned why the DRB is requiring a permit if the residents will not enforce the covenants of the homeowners association. Mr. Palmer pointed out a conditional use application was submitted by the property owner and must be reviewed by the DRB. Ed Hanson explained complaint from neighboring landowners was received and upon investigation the allegations were confirmed and documented. The file showed a Certificate of Occupancy was issued by the former Zoning Administrator in 2003 acknowledging the home occupation of what was described to occur on the property at that time. The proper permit was not issued for the situation, advised Mr. Hanson. Under Section 825.2 of the town's regulations a home based business is allowed if reviewed and approved by the DRB as a conditional use. There may be covenants in the Martel Homeowners Association, but neither the town nor the DRB enforces these covenants. The DRB deals with state and town regulations only. If the Martel Homeowners

Association intends to uphold the covenants it must be done as a civil action, not through the town.

PUBLIC COMMENTS

Tom Walsh on behalf of Lake View Farm, Inc. noted according to the home occupation certificate issued September, 2003 there would be one mechanic working three days per week for five hours a day, and William and Lisa Steadman were the employees of the business at the site. Also, there would be no outside storage. The Vermont Supreme Court ruled on a case of inappropriate determination by a zoning board of adjustment which frees the Town of St. George to make a decision that is not bound by the decision in 2003. Mr. Walsh said he will submit a copy of the Supreme Court decision to the DRB. The concern is the property is in the Limited Development District (LDD), continued Mr. Walsh, and per Section 880.5 uses must be expressly permitted or approved as a conditional use in the district. Per Section 720.1 conditional uses in the LDD include outdoor recreation areas, nature trails, cross country trails, skating rinks, and open athletic fields. The current use is not a permitted or conditional use. Mr. Walsh referred to photographs taken on June 27, 2009 showing conditions on the site (photographs attached to his letter to the DRB, dated 6/30/09). Mr. Walsh submitted additional pictures taken July 3, 2009 showing activity on that date. The pictures were taken from Martel Extension, said Mr. Walsh. The picture of the storage shed behind the Steadman's garage was taken from the Stowell boundary line. Lisa Steadman pointed out the trucks in the photographs taken on July 3, 2009 are for the people coming to mow the lawn. Also, the use has not changed significantly on the property. The information in the letter of September 30, 2003 saying there will be one mechanic three days a week, five hours a day, and William and Lisa Steadman as employees on the site on a regular basis still stands. The scope of the business has not changed. There are fewer employees now than in 2003. The issue of outside storage is a question, conceded Ms. Steadman, especially since what was stored behind the shop was originally acceptable, but if this is not the case now it can be remedied with a covered trailer. There was mention of accessory structures. Ed Hanson explained there was no formal process at the time of the original permit. The current application is under Section 825.2 for a home occupation in an accessory structure as a conditional use (not limited to a specific district in town). The DRB reviewed Sections 825.1 and 825.2 and associated subsections. Mr. Walsh offered to send a copy of his letter, dated 6/30/09, and copies of the photographs taken on July 3, 2009 to the interested parties.

Chris LeBlanc, 32 Martel Lane, asked about the driver of the red truck, noting excessive speed and recklessness by the driver. There are children and pets in the area. Mr. LeBlanc said his young child was nearly hit three times by the driver and the police have been contacted. Pictures have been taken. The red truck goes to the Steadman house every day, often towing a trailer, contended Mr. LeBlanc. William and Lisa Steadman said the driver is their son and he has been told to drive slowly and carefully. Marie Mastro clarified the DRB is bound by the town bylaws and regulations only and will consider evidence to that end.

Ken Couture, 1154 Martel Extension, confirmed his mailing address (his house on Martel Extension has not yet been built) and said it is unfortunate to meet his future neighbors under these circumstances. Regarding the matter of impact on resale value of houses, Mr. Couture said when they were looking at property to purchase last fall the activity on the Steadman property was a notable concern. Regarding the conditional use criteria, bylaws and ordinances currently in effect and the responses by Ms. Steadman about vehicles not being visible from the road, Mr. Couture countered vehicles are visible from the road. Lisa Steadman interjected the vehicles that can be seen are personal vehicles (Volvo, Chevy Blazer, and a truck). Employee vehicles are parked by the house. William Steadman observed there are cars at every house on Martel Lane. Also, there are two businesses on the hill (landscape business and masonry business) and one at the bottom of the hill (Custom Closets) and all their vehicles are visible. Mr. Williams questioned why their one vehicle must be hidden from view. Matt Palmer clarified there is no requirement that a vehicle not be visible unless it is considered outside storage. Lisa Steadman stressed the number of vehicles on the property has been reduced. The Chevy Blazer is for sale. In the past the area was cluttered, conceded Ms. Steadman, but now trucks will be there on occasion and the matter of driving too fast on the road will be addressed. The 1,900 s.f. building is full. If another structure is needed that will be considered. Mr. Steadman said his son has been reprimanded and the concerns of the neighbors have been heard.

Brian Hoar, 1062 Martel Lane Extension, referred to Section 825.1 regarding a home occupation not having undue adverse impact and no visible exterior storage. Mr. Hoar said there are vehicles parked on Martel Extension in the road (trucks and trailers with lawnmowers blocking the road and driveways). It is a common scene, said Mr. Hoar, and it is unsightly and an adverse impact. Besides parking in front of the property and the impact on safety by the truck traffic there is the noise of the lawnmowers, trailers clanking, and the backing up warning beeps early in the morning and in the evening. The road is a private road supported by fees paid by the homeowners in homeowners association. There is constant traffic daily from the Steadman's business. The pictures show there are more than one or two lawnmowers and many trucks and trailers at the Steadman property and this is constant. Many of the vehicles are heavy duty trucks and in mud season cause much stress and damage to the road. The traffic from the Steadman's business outdoes all the traffic of the residents who pay to maintain the road, stressed Mr. Hoar, adding prior to and since April the traffic puts undue noise and stress on the road. There is now a white truck in front of the garage along with the dumpster. Mr. Hoar agreed it is a shame to meet neighbors for the first time under these circumstances. William Steadman acknowledged the comments, but stressed the trucks are not there everyday (maybe two to three times a week and only to drop off or pick up something). The trucks do stress the road, but not more than the rest of the residential traffic, opined Mr. Steadman.

Marie Mastro asked if the GMC truck is the largest piece of equipment on the road. William Steadman confirmed the F-350 truck is the largest. The white truck is for sale and that is why it is parked out front. Lisa Steadman offered to provide a list of trucks

and trailers. Ms. Steadman urged the neighbors to communicate any concerns and comments to her at any time so they can be remedied.

Ray Martel, Martel Lane, said the equipment for his landscape business is stored at Lake View Farm (his mother's property). Only personal vehicles which include a ¾ ton and one ton truck are at the house. Mr. Martel confirmed he has spoken to William and Lisa Steadman about their son's driving. The son, Jay Steadman, does not listen and has no respect for the people or property in the area, said Mr. Martel. Jay Steadman is 24 years old and an employee of the Steadman's landscape business. Mr. Martel contended the Steadman's employees and their spouses do not have respect for the other residents on the road with regard to the way they drive. There are many young children in the area. William Steadman concurred with the comments by Ray Martel, but added they have also experienced property damage by others on the road (wellhead damage, issue with the driver of the yellow jeep) though complaint was not made. Mr. Steadman stated everyone drives too fast on the hill. Marie Mastro said the DRB acknowledges the comments and concerns expressed by the residents about driving safety and urged the homeowners association to have a meeting to discuss the issues that have been raised since the matter is not the jurisdiction of the DRB.

Ron Arms requested a list of commercial versus personal vehicles at the Steadman property. Lisa Steadman will provide the information. William Steadman said the red truck (mentioned by Mr. LeBlanc) is not his vehicle.

Connie Kendall asked for clarification of the application under conditional use review in the Limited Development District and as a home occupation or a home based landscape business. Ed Hanson explained the home occupation is predominantly operated in the accessory building (garage) and that requires conditional use approval. Ms. Kendall pointed out the use is not listed under Conditional Uses in the Limited Development District. Matt Palmer added the use is not listed as a conditional use in any district; Section 825.1 of the regulations supersede. Mr. Hanson said per state statute there can be no provision that limits the ability to have a home occupation provided the external appearance of the house is not altered and the activities take place inside the structure. The town regulations (Section 825.2) indicate a home based business in an accessory building is allowed with conditional use approval. Ms. Kendall mentioned regulations relative to vegetative buffers between commercial and residential properties. Mr. Hanson stated under conditional use review the DRB has the authority to require screening of storage areas.

There were no further comments.

DELIBERATION/DECISION

Conditional Use, Home Based Business, Martel Extension (parcel ID#05-20-07), Steadman (#09-3)

MOTION by Marie Mastro, SECOND by Scott Baker, to recess the hearing of #09-3, Conditional Use Review for a home based business on Martel Extension by William and Lisa Steadman until September 9, 2009 at 7:30 p.m. to allow for

additional information including a list of vehicles and equipment for the business provided by the applicant, a copy of the Supreme Court decision referenced by Thomas Walsh, and the mailing to interested parties of a copy of the letter and photographs from July 3, 2009 taken by Mr. Walsh. VOTING: unanimous; motion carried.

Sketch Plan Review for a three lot subdivision at 963 Willow Brook Lane by Kenneth and Martha Pinkham

No one appeared on behalf of the application. Marie Mastro updated the DRB on the application. Following the meeting in June the town sought outside counsel with regard to deer yards and important soils on the property. There was a conference call with attorney Steve Stitzel and the letter to the Pinkhams was drafted with the assistance of the Town Attorney (John Klesch). A copy of the Supreme Court decision on the JamGolf case in South Burlington was sent to the DRB, reported Ms. Mastro. The court decision in the South Burlington case ruled that according to the zoning regulations an applicant must show due regard to natural resources, but the judge felt the language was too vague as to what the applicant needed to do to move the application through the review process. Attorney Klesch advises 'due regard' means a reasonable level of protection, not 100% protection. The letter as drafted is asking the applicant to have burden of proof to indicate/delineate natural resources (soils, wetlands, deer yards) and show 'due regard' to what is identified, and to provide a plan showing how there will be compliance with town bylaws and the town plan. The DRB needs this information before a decision on the application can be made. The applicant could be asked to present testimony from an expert on deer yards, for example. The letter from the Agency of Natural Resource (ANR), dated February, 2007, to the Pinkhams discusses Class 2 wetlands, deer wintering yards, and statewide agricultural soils. Much of the information that is being requested is already mapped. There is a letter from Julie Foley (Agency of Natural Resources), dated February 13, 2009, on wetlands. The town also has a letter from ANR asking the applicant (Pinkham) to keep the subdivision toward the southern edge of the property between the deer yard and field, and to place the building envelope outside the wetlands. The applicant needs to compile current information on deer years and delineate statewide agricultural soils and wetlands on the site, and then draft a plan to minimize or give 'due regard' to these natural resources.

Minor clarifications were made to the letter to be sent to the Pinkhams. Dan Pillsbury observed the town has conserved approximately 250 acres of land which exceeds 10% of the town committed to protect deer yards. Scott Baker pointed out the DRB is charged with implementing the town plan. Protecting natural resources is one aspect of that task.

3. ZONING ADMINISTRATOR'S UPDATE

Ed Hanson reported an email from the Bingham on Willow Brook Lane was received on 7/2/09 regarding solar photovoltaic array panels on their property. If the house structure or footprint is not altered and the height restriction is not violated a permit is not needed for the panels (panels are a permitted use), however, the Bingham propose to mount the panels adjacent to the principal structure so they are considered an accessory structure and a residential accessory use (conditional use). The regulations are ambiguous. The

regulations prohibit windmills, but voltaic, solar passive, and solar water needs further discussion under the energy section of the land use regulations, advised Mr. Hanson. A legal opinion is being sought on the issue because the regulations are not clear. The Bingham will be informed once more information is known. A sketch of the panel on the property has been requested from the Bingham. Ron Arms asked how satellite dishes are handled. Ed Hanson said satellite dishes are permitted. Connie Kendall commented it is good to have conditional use approval for the panels because as technologies evolve there will be bigger impacts.

4. APPROVAL OF MINUTES

June 10, 2009

MOTION by Marie Mastro, SECOND by Scott Baker, to approve the 6/10/09 minutes as written. VOTING: unanimous; motion carried.

5. OTHER BUSINESS

Dan Pillsbury reported the homeowners association paperwork relative to King George Estates as requested by the DRB is forthcoming.

6. ADJOURNMENT

MOTION by Marie Mastro, SECOND by Scott Baker, to adjourn the meeting. VOTING: unanimous; motion carried.

The meeting was adjourned at 9:56 p.m.

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