

**TOWN OF ST. GEORGE
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
ONE BARBER ROAD, ST. GEORGE
October 5, 2009**

MEMBERS PRESENT: Marie Mastro (Chair); Scott Baker, Matt Palmer, Lisa Beliveau, Connie Kendall. (Ron Arms and Dan Pillsbury were absent.)

ADMINISTRATION: Ed Hanson, Zoning Administrator.

OTHERS PRESENT: Cathy Neff, Mark Hall, Zach Davis, Don Taub, John Aleong.

- AGENDA:**
1. Call to Order
 2. Applications:
 - Conditional Use Review, Antennas, Mount Pritchard, Omnipoint Communications (#09-2)
 3. Zoning Administrator's Update
 4. Approval of Minutes
 5. Other Business
 6. Deliberative Session and/or Adjournment
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1. CALL TO ORDER

Marie Mastro called the meeting to order at 7:01 p.m.

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.

(#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 (a/k/a T-Mobile)

Connie Kendall recused herself from review of application #09-2 (Omnipoint telecommunications antenna). Mark Hall and Zach Davis appeared on behalf of the application. The DRB received a copy of the recent submission from the applicant including an email from Heather Douglas (American Tower), a photo simulation, EBI (EME) Report, structural analysis, and corrected coverage maps showing site 4BV0357A (Mount Pritchard). The DRB also received a letter from adjoining property owner, Connie Kendall, dated 10/5/09, citing points for the DRB to consider with the application. Marie Mastro stated the correspondence will be emailed to the interested parties.

APPLICANT COMMENTS

Mark Hall noted the EMI report that was submitted does not show extension of the tower. Also, the photo simulation was redone and confirms view of the tower is a diminimus

impact. The letter from ATC (American Tower), dated 9/25/09, shows who is on the tower (MCI on the bottom and IWO which is Sprint on the top). It cannot be ascertained from ATC what is in use on the tower, but the tenants have signed leases with ATC and cannot be forced to take down equipment, stated Mr. Hall. T-Mobile finds it acceptable to have a condition requiring a gate on the roadway in a location acceptable to all, said Mr. Hall. Marie Mastro requested a copy of the leases from American Tower. Mr. Hall said it would be helpful to instruct the Zoning Administrator on behalf of the DRB to request copies of the leases from ATC. It is likely the financial terms will be redacted from the leases. Ed Hanson will research the town records to see if there are copies of the leases on file.

There was brief discussion of the existing antenna array and the yagi (directional device) on the tower. It was acknowledged MCI could possibly be paying for space on the tower they are not presently using. Zach Davis stated ATC has not been as helpful as could be in providing information.

Marie Mastro asked the significance of the asterisk on the structural analysis. Mark Hall explained the asterisk means the report has been revised to show what is on the tower. Mr. Hall also noted Page 12 of the report is not missing information (most of the page is blank) according to the engineer, Asha Shaw, but rather a carry over from the previous page.

Marie Mastro clarified the DRB needs to recognize with regard to the towers on Mount Pritchard there is a permitting and an enforcement situation. There is another tower on the site of which the DRB must be cognizant when issuing further permits. Ms. Mastro asked if there is room on the ATC tower for the antennas from the smaller tower if it is determined the smaller tower must be removed. Mark Hall stated the issue with antennas from other towers is between ATC and the various parties interested in locating on ATC's tower. T-Mobile will maintain a strong position in support of the signed lease with ATC for space on the tower. T-Mobile feels the matter is a superior court issue rather than a zoning issue. Zach Davis commented structurally there is room on the tower (there is not much on the smaller tower). Also, structural reinforcements can be done.

Matt Palmer asked if there is a fence around the site. Mr. Hall confirmed there is a fence around the ATC tower, but not the other location. The equipment cabinets are within the chain link fence. There is not a gate on the road. T-Mobile is willing to reinstall the gate that was in place at one time. Ed Hanson noted the gate was on the boundary of the Neff property. Cathy Neff said the gate was removed when the house was under construction. Mark Hall clarified the compound where the equipment is stored is fully enclosed and gated. Cathy Neff pointed out the Hinesburg tower and gas tank are not enclosed.

Marie Mastro asked about the letter to Peter Kiebel, Act 250, regarding the site. Mark Hall said an interim hearing order from Act 250 was received requesting additional information. Ed Hanson recalled the Hinesburg tower was originally located on Mount Pritchard in 1965 or 1966 which predated Act 250 review. Mark Hall said Act 250 requested information on the agreement pertaining to the access road and a copy of the

EBI report. Mr. Hall could not recall a third item requested by Act 250. Marie Mastro observed ATC is not participating in the Act 250 hearings. Mark Hall stated ATC has not attended the hearing and there has not been a demand that ATC attend.

STAFF REPORT

Information received at the meeting included an email from Heather Douglas (American Tower), photo simulation, EBI (EME) Report, structural analysis, corrected coverage maps showing site 4BV0357A (Mount Pritchard), and a letter from adjoining property owner, Connie Kendall, dated 10/5/09, citing points for the DRB to consider with the application.

PUBLIC COMMENTS

Don Taub, Mt. Pritchard Lane, stressed the need for a representative from American Tower (ATC) to attend the meeting to address issues and concerns. Regarding the road, ATC does not own the road, stated Mr. Taub, but is a member of the association that maintains the road. Mark Hall clarified there is a road agreement and it appears there is a prorated cost depending on your location on the road. Ed Hanson confirmed there is a Mount Pritchard Lane agreement. Connie Kendall noted there is no written agreement with American Tower regarding the road. The association submits invoices to ATC which are eventually paid. Don Taub stated ATC has 1/6th of a vote in the association (the vote is based on the number of property owners on the road). Mr. Taub questioned how ATC can convey a right-of-way to T-Mobile. Mark Hall stated ATC has the right to access their property. Ed Hanson noted the deeded easement to the right-of-way links back to Eastern Microwave and is through the Neff property to the tower. Don Taub said he would like to know more about the agreement between T-Mobile and ATC. Mark Hall stated the agreement says T-Mobile has access to the property. A copy of the agreement will be provided with the financial terms redacted, assured Mr. Hall.

Don Taub referred to the issue of removing unused equipment from the site and the contention by ATC that nothing can be done yet the town is saying equipment should be removed. Mark Hall suggested the land use permit be reviewed for the stated condition though T-Mobile cannot enforce the conditions of the permit. The town's authority will produce better results with ATC. Mr. Hall offered to have T-Mobile post a bond to remove T-Mobile equipment as necessary and install fencing around the Hinesburg tower if the town desires. Cathy Neff interjected the Hinesburg tower is not supposed to be there. The land use permit states unused equipment will be removed and that has not occurred. There is not a problem with T-Mobile on the ATC tower, said Ms. Neff, but with the co-applicant, ATC. American Tower should be held to the regulations rendered by the Town of St. George. Ms. Neff noted her repeated contacts with the town, Act 250, and ATC without any successful outcome. The application by T-Mobile opened the matter again, stated Ms. Neff. Mark Hall suggested the town take enforcement action against any violations of the permit or Act 250 could get involved. Matt Palmer agreed if there is a violation then the town needs to issue a notice. Marie Mastro concurred the DRB must distinguish between an enforcement issue and the application. Ed Hanson suggested the first step would be to issue an advisory letter to ATC and if a response is not received then a formal Notice of Violation under 24VSA117 should be issued. If a

satisfactory response is still not received then fines are incurred by ATC and the town selectboard and town attorney get involved. Mr. Hanson stated he has been compiling information on the matter to have a tight argument should the matter go to court. The advisory letter to ATC will be sent out within a month, assured Mr. Hanson. Cathy Neff commented residents have been requesting action on the matter for the past three years.

Lisa Beliveau asked if ATC has been prompt in paying their invoices. Members of the Mount Pritchard Lane road association said no and explained the difficulty in finding the right contact person at ATC, noting tenants on the tower have been more helpful than the landlord (ATC). There has been road damage that has not been covered by ATC. Residents urged the DRB to consider the impact on the private road (Mount Pritchard Lane) by adding additional tenants to the tower. The residents of the road pay to fix and maintain the road. Mark Hall assured T-Mobile will fix whatever damage is done by T-Mobile.

Matt Palmer asked if ATC has the right to access the site. Connie Kendall stated ATC has a right-of-way to the site. The residents on the road are impacted by the increased burden and should be reimbursed maintenance fees. Lessees on the tower understand the situation and cooperate, but ATC does not, said Ms. Kendall. Mark Hall pointed out there is no limitation to access specified in the deed so anyone can have access. Connie Kendall stressed the road association simply wants to be compensated for use of the road. Matt Palmer said the matter of the private road agreement is between the road association and ATC, not the town. Marie Mastro confirmed there is a right-of-way for ATC up Mount Pritchard Lane and across the Neff property.

Connie Kendall, Mount Pritchard Lane, requested the DRB acknowledge in writing that T-Mobile will compensate the Mount Pritchard Landowners Association for use of the road, and the Association will hash out the details. Ms. Kendall said there are safety issues with the site so it must be reachable. St. George Town Plan says the existing tower shall not be increased in any way. Removing equipment or lessening the number of antennas will mitigate any increase in the tower or the impact. There is also the aesthetic impact of adding nine antennas on the tower. Per Section 810 of the town's regulations the structure is noncomplying and there can be no additions if the structure is not sound. There are unsafe conditions on the site. In addition, dimensional requirements must be met. Adding the proposed antennas to the site above 35' does not meet dimensional requirements. Regarding radiation, there are health concerns by property owners close to the site. Ms. Kendall said her house is 1,000' from the tower. Information on radiation emissions is requested as is confirmation that the RF emissions have kept pace with the revisions (i.e. radiation from the second tower considered in the emissions). Ms. Kendall mentioned her art studio is at an elevation of 1,150'. Emissions occur on a horizontal plane so emissions from the tower will be level with the art studio. Ms. Kendall asked that an independent study of radiation emissions be done and radiation emissions be measured at her art studio. Mark Hall stated a microwave oven is more hazardous than the emissions from the tower which are one percent of what would be allowable. The radiation emissions report measures what is there. Anything above 30' is pre-empted because of diminimus impact. It is not feasible to do testing at every house. The town can

conduct tests though. A calculation was done at 400' vertical and there were no emissions, testified Mr. Hall. Regarding the road, Mr. Hall said T-Mobile will be at the site every two months once the antennas are in place. There are two other carriers plus the Hinesburg tower so it is anticipated there will be 10 trips per month by tenants (negligible impact) versus the number of trips by the residents on the road. T-Mobile will repair any damage caused by T-Mobile, assured Mr. Hall, which is different than agreeing to be taxed with maintenance costs which T-Mobile will not accept. T-Mobile has a lease with ATC, reiterated Mr. Hall. Regarding the matter of a nonconforming use and structure, continued Mr. Hall, provided the tower height is not increased antenna can be added. The tower is valuable to St. George, and T-Mobile will be a valuable neighbor. An existing structure is being utilized. Zach Davis said he will be on-site during construction and any damage to the road will be fixed immediately. Ford Explorer vehicles will be used (and not large construction equipment). The telephone company and power company will go to the site with their vehicles if there is a phone or power failure. Connie Kendall requested an updated contact list associated with the tower and site be filed with the town. Mark Hall stated there is a number to contact T-Mobile 24 hours a day, seven days a week. The Public Service Board also has contact information and there will be a local person as a point of contact.

Connie Kendall asked about lessening the number of antennas on the tower. Mark Hall stated three sets of three is the standard antenna setup. On occasion there are two sets of two depending on the situation. In St. George there will be two sets of antennas at 70' installed first followed by a third set at 80'. The permit is sought for the full array though it is not known exactly when the third set will be installed. Don Taub asked about the antenna in the church steeple in Williston. Mark Hall confirmed T-Mobile has many sites for antennas. Zach Davis stated the number of antennas depends on the size of the antenna.

John Aleong, Mount Pritchard Lane, spoke in support of previously expressed concerns. Mr. Aleong noted the adverse visual impact in winter when the leaves are off the trees (the antenna is visible now from Oak Hill Road and will be more visible in winter). There is also the public perception of a health hazard, continued Mr. Aleong. Two experts in the field, Dr. Henry Lai, Bioelectromagnetics Research Laboratory, Department of Bioengineering, University of Washington, Seattle, WA, and Kurt Edmund Oughstun, Department of Electrical & Computer Engineering, University of Vermont, said they would not live by towers with radiation emissions, and eventually there will be a diminishing of property value. Mr. Aleong questioned the public necessity of the antennas and if they can be located elsewhere. Mr. Aleong will send his comments in writing to the DRB.

Marie Mastro asked the proper authority in St. George to determine the safety of the tower. Ed Hanson stated the structural analysis addresses structural safety. The 'attractive nuisance' issue is handled by the zoning enforcement officer. The lattice tower is properly fenced. Any fire hazard is handled by the fire department.

There were no further comments.

DELIBERATION/DECISION

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

MOTION by Scott Baker, SECOND by Matt Palmer, to go into deliberative session. VOTING: unanimous (4-0); motion carried.

Deliberative session was convened at 8:17 p.m. and adjourned at 8:30 p.m. The regular meeting resumed.

Marie Mastro stated the DRB is requesting Ed Hanson research the town records for copies of the leases on the ATC tower. If necessary, Marie Mastro will draft a letter to Mark Hall requesting copies of the leases with all tenants on the tower with ATC. Regarding the safety issue, the DRB will have an independent review of the structural analysis report done by ATC.

MOTION by Marie Mastro, SECOND by Scott Baker, to continue the hearing of #09-2 - Condition Use Review for antennas on Mount Pritchard by Omnipoint Communications/T-Mobile Northeast, LLC to 11/2/09. VOTING: unanimous (4-0); motion carried.

Connie Kendall joined the DRB.

3. ZONING ADMINISTRATOR'S UPDATE

Ed Hanson confirmed he will formulate an approach to the Hinesburg tower issue (to bring the tower into compliance). The draft letter to ATC will be available for review by the DRB at the next meeting.

4. APPROVAL OF MINUTES

September 9, 2009

MOTION by Scott Baker, SECOND by Lisa Beliveau, to approve the 9/9/09 minutes with the following corrections/clarifications:

Globally correct the spelling of "silviculture";

Page 2, T-Mobile Application, Applicant Comments, 1st paragraph – add "(Brownell Mountain)" after "357A" and in the 2nd paragraph correct the spelling of "microwave";

Page 3, T-Mobile Application, Applicant Comments, 3rd paragraph (beginning with "Scott Baker referred...") – change "doe" to "do";

Page 4, T-Mobile Application, Public Comments, paragraph beginning with "Bob Walker..." – make a separate paragraph with the first sentence (Bob Walker, Mt. Pritchard Lane...) and link the remainder of the paragraph beginning with the sentence reading "There are procedures available..." with the preceding paragraph ending with "...held responsible for an enforcement issue against ATC."

Page 4, T-Mobile Application, Public Comments, paragraph beginning with "Don Taub, Mt. Pritchard Lane....", sentence reading "There are

procedures available...” – insert “It was noted” at the start of the sentence to read: “It was noted there are procedures available...”.

VOTING: unanimous (5-0); motion carried.

5. OTHER BUSINESS

None.

6. DELIBERATION SESSION and/or ADJOURNMENT

MOTION by Marie Mastro, SECOND by Scott Baker, to adjourn the regular meeting and convene deliberative session. VOTING: unanimous (5-0); motion carried.

The regular meeting was adjourned at 9:04 p.m.

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