

DRAFT—NO LEGAL VALUE

Minutes

Planning Board Meeting

December 5, 2019

Members of the Planning Board in attendance were Charles Moreno, Chairman, Phil Auger, Terry Hyland, Scott Young, ex-officio member, and Donald Coker and Don Clifford, Alternate members. The Chairman called the meeting to order at 7:32 PM and announced the members present. The Chairman noted that Steve Leighton is absent this evening, and he designated Donald Coker as a voting member for this meeting. The closing date for applications to appear on the agenda for the January 2020 regular meeting will be 5 P.M. Tuesday, December 10, 2019; revised materials for continuing applications must be submitted by Tuesday, December 17th. The Chairman advised that the Board has a policy setting time limits for meetings and that the Board will not consider any new business after 10:30 PM and that the meeting will adjourn by 11:00 PM. Board members turned to the minutes of the November meeting. Phil Auger moved to accept the minutes as presented; Scott Young seconded the motion. There was no further discussion and the Chairman called the vote. The vote was unanimous in the affirmative.

The first item of new 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). It was noted that Rick Turner, the surveyor for the project, had not yet arrived, so the Chairman agreed to move forward with the agenda and return to this item later.

The next item of business was to call on Francis Parisi, Esq. representing 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 Berthat Huckins Revocable Trust, 22 Hillside Drive, off Huckins Road (Tax Map 11, Lot 4). The Chairman noted that this is the first formal meeting on this project, and that the Board would be looking for completeness of the application. The Board might take a vote on accepting the application as complete or may ask for additional information. Mr. Parisi introduced Tom Johnson, the civil engineer who prepared the plans, and summarized the proposed project. Vertex is a wireless infrastructure developer. They have been working in NH for some time, and have built or been approved for towers in a variety of communities, including Barrington, Sutton, Raymond, North Conway, Brentwood, etc. Their focus is more rural areas. Although Strafford's ordinances are not very detailed, Mr. Parisi advised that the plan set includes the typical technical information as required under state and federal guidelines. They hope to install a 140 foot (146 feet to the top of the highest appurtenance) tower on the Huckins land. They will be seeking two variances from Strafford ordinances; one for height and one to the requirement that towers be disguised. They have given affidavits from site acquisition specialists. There are not a lot of tall things in the area, which is why they need to build a new facility, he said. The application includes their responses to the questions regarding the criteria for variance. They have documented that the FAA does not require that the tower be lit. Analysis will be completed after installation to make sure that there is no registration required. The tower would be sending low frequency emissions, which do not cover a large area, he noted. He said that half of NH is now using wireless communications and 70% of 9-1-1 phone calls use mobile phones. He said that the Lakes Region Regional Planning Commission had recently identified lack of cell phone coverage as a safety hazard. He then spoke briefly about the federal First Net program; AT & T is working with the federal government on the program which would allow public safety officials to use the network and override commercial traffic in case of emergency. Now they are required to expand cell phone coverage to rural areas as part of the program. He said that the topography in Strafford, as in most of NH, is challenging because of the rolling hills, which create dead service dead zones. Their goal is to provide coverage from Parker Mountain down towards Bow Lake. Mr. Parisi advised that he would go through all this information in more detail once the plans have been accepted as complete. The Chairman advised that this is Strafford's first tower and that there may be things beyond the purview of the Board that require professional technical review. For the moment, the Board will focus on determining whether the plans are complete.

Board members then reviewed the plans with the standard Non-Residential Site Plan checklist. It was noted that the property is under current use assessment. Wetlands were surveyed by Lucas Environmental; it was noted that surveyors and wetlands scientists' stamps/seals will be needed for the final plans. They will need to build an access road to the proposed site, which is in a wooded area to the northwest of the large open hay field. The access road will not go through wetlands, but there is a wet area off the southern edge of the proposed drive. The drive has been engineered with swales and culverts for drainage. Soils data is missing. The applicants suggested that they might

request a waiver to the requirement. Perc test data is not applicable, as they propose to only construct a small fenced pad at the base of the tower. Landscaping is not applicable as the pad and tower will be located in a 60 foot by 60 foot area in the woods. The only utilities will be overhead utility wires; the proposed pole locations are showing along the details for the access road. There will be no permanent lighting for the pad, as the carriers who lease space on the tower will be putting weatherproof cabinets on site to hold their equipment and will be bringing their own lighting when doing maintenance. Regarding fire protection, the Chairman advised that the applicants should check with the Fire Chief regarding any requirements. There will be only public safety (i.e. "Keep Out" etc.) signs on the fence. It was agreed that a driveway permit will be required for the new access road off Huckins Road, and the applicants were advised that they will need to work with the Road Agent regarding upgrades to Huckins Road. Don Clifford noted that construction vehicles will likely wreck the gravel road surface, and that it will need to be brought back into shape following completion of construction.

Board members then turned to the application items required under RSA 12-K. The first is a copy of the FCC license. Fran Parisi said that Vertex is not required to have a license, only their tenants. Phil Auger asked if they would have tenants decided before the end of the application process so that licenses can be submitted. Mr. Parisi said that they will not pull a building permit until they have a carrier, and suggested that they could submit the licenses as part of the building permit process. The Chairman suggested that submitting the licenses could be a condition of final approval. Regarding the map of the carriers, Mr. Parisi said that they have provided a map showing towers within 5 to 7 miles, because he feels that 20 miles is not needed. The Chairman noted the two variances that are being requested; one for height and one for not disguising the tower. He noted that the average height of the tree canopy is about 75 to 80 feet, so the proposed tower is higher than the 20 feet above the canopy allowed under the ordinance. The Chairman noted that the balloon test will be important. The test is scheduled for Saturday and Sunday of this weekend, weather depending. It was noted that the forecast for Saturday is iffy because of wind, but Sunday looks good. Lester Huckins said that he thinks that the tower will only be visible from the Ridge area. Mr. Parisi said that they hope to engage people to take photos and the point is that people can get an idea, and gauge the visibility of the structure. Mr. Moreno noted that under RSA 12-K, the Board can ask for a map of tower locations within a 20 mile radius. He said that he thinks that this would be helpful so people can look and see what these towers look like. Mr. Parisi noted again that they have provided a map showing the towers in abutting towns, and they have submitted a list of towers within 10 miles for people to look and compare. Mr. Moreno said that he feels that the list should be disseminated. Fran Parisi said that he wants people to take photos from where the balloon is visible. He said that he can use the photos to make a photo simulation, which he feels will be more valuable. Phil Auger asked if they will use a standard tower for the simulation. Mr. Parisi said that they can simulate what the tower will look like from Town Hall. The Board brainstormed addresses for photos, including Parker Mountain Road, Bow Lake, the Storer Lot hiking trails, Mack Mt., Old Ridge Road, and Lakeshore Drive. Mr. Parisi said that they are not predicting that the tower would be visible from the lake, to the north of the Ridge, or to the west of Parker Mountain.

Board members returned to the plans. The average tree canopy height is depicted on Sheet A3. Mr. Parisi noted that the trees going up Parker Mountain are higher than the proposed tower, although some distance away. Mr. Moreno asked about noise. Mr. Parisi said that there are no moving parts, although they will eventually have a generator on-site. It was noted that this information should be added to the plan. Mr. Moreno then asked about alternate sites, and what studies have been done to determine the proposed location. Mr. Parisi noted the affidavits in the application package. Mr. Moreno read RSA 12-K:3, which states that the Board may ask for this information. Mr. Parisi said that he wants to address this question as part of the site plan process once the application has been accepted as complete. Phil Auger asked how they came to the conclusion that this is the best site; he said that he wants to know how the decision was made, and for example why they did not consider using existing buildings at a higher elevation on the Ridge, such as Austin-Cate. Mr. Parisi said that he wants to discuss this at the hearing, and that he can bring Mr. Kelleher who did the work. He noted variables such as topography, existing cell coverage, etc.

The Chairman then briefly turned to the question of whether this project should be considered a project of Regional Impact. Donald Coker, our Regional Planning representative, said that he does not feel that this project is of regional significance, noting the suggested criteria. Don Clifford said that the current plans seem well done, while several Board members noted that more information is needed in certain areas. Phil Auger said that he is more concerned about getting a professional review of how the tower is sited, and said that he is not convinced that the proposed location is the best place or that it would serve the greatest part of the population. He said that he would like to have the applicants submit the data to a professional consultant for review. Donald Coker agreed and asked whether it would be appropriate to have a third party review now or after the first public hearing. Phil Auger noted the 150 day federal clock, and Mr. Moreno briefly explained the rule to the audience. He noted that there are a few things that

need to be added to the plans, but that they appear to be well-engineered and the missing items are all straightforward, such as seals or the response to the question about noise. Turning back to Phil Auger, he returned to the question of hiring a consultant engineer for the Board. Bertha Huckins advised the Board that the people who approached them told them that many people did not want a tower on their land. Mr. Parisi said that he feels that this is not within the purview of the Board, saying that the visibility is an issue for the Boards, but the question of how the location was chosen is not. Mr. Moreno noted the language of RSA 12-K, which says that information should be made available upon request. Mr. Parisi again said that he believes that the Board will see that the tower will not be visually intrusive. Donald Coker reiterated that asking for review is in the Board's purview, and that would include siting.

The Chairman then opened up discussion to the abutters and audience. Debbi Hinrichsen said that she supports the request for written information on siting; noting that the hope is to limit the number of towers, so the locations should be chosen carefully so that the towers are in the best place. She asked if the tower would be carrying 5G equipment, and then advised the Board that she has health concerns about 5G facilities due to the microwave transmissions. Donald Coker said that he was aware that there is a healthy debate on the health impact of 5G, and noted that HB522 establishes a study committee to look at the impacts of the environment and health. Mr. Coker asked if tenants for the tower would be required to come before the Board, noting that if so, 5G could be debated at that point. Ms. Hinrichsen again said that she wants a thorough review so that the best decision is made and the tower is put in the best place for both the visual impact and health, noting the relative proximity to the school. Mike Richard, Police Chief, noted that his people rely on cell phones while on duty. He said that he knows that First Net is the up and coming thing, but does not know when it would be available. He said that he understood that cell towers are needed about every 6 square miles. There were no additional comments at this time and the Chairman closed the public comment.

The Chairman then turned to Board members. He noted that the Site Plan checklist is covered and additional information is needed on only a few minor things. The applicant has provided a map of the abutting towns, and plans to submit a visual simulation of the tower in the proposed spot. There is the issue of professional review and whether to bring in consulting engineers sooner or later. It was noted that having the professional review done sooner would also be helpful to the Board of Adjustment. Donald Coker suggested that a condition of acceptance could be third party review of the siting and the plans more generally. In response to the question of who selects the third party reviewer, Phil Auger advised that this would be up to the Board. Terry Hyland agreed, noting that none of the Board members have the expertise to determine the best location, but the project still needs a willing landowner. Phil Auger said that he wants a professional evaluation of the application, and the sooner the better. He noted that having this information will be necessary for the next step. Donald Coker agreed, noting 'trust but verify', and saying that the third party review is a condition of acceptance. It was noted that statutes state that the costs of such studies must be borne by the applicant. Charles Moreno then said that he would accept a motion to accept the plans as complete for consideration with the understanding that the Board will be retaining a third party consultant to review the application plans and site location documentation. Phil Auger so moved. Scott Young seconded the motion. There was no further discussion and the vote was unanimous in the affirmative.

Fran Parisi said that he assumed that discussion is continued to the next regular meeting and Board members agreed that this is the case. Mr. Parisi noted that the law allows for joint meetings, and asked if there was a possibility of a joint meeting for January 2<sup>nd</sup>, as the same information requested by the Planning Board will be needed to justify the requested variances. Mr. Moreno noted the usual process for moving Site Plan and commercial use applications through the two Boards. Audience members asked if there would be new notifications, and Mr. Coker suggested that people should stay informed and noted that public participation is crucial. It was agreed that it might be helpful to put the map of nearby towers on the town web site so that people can look at similar towers.

The Board then returned to the application of MANDY YOUNG for 2-lot subdivision of her property located at 633 First Crown Point Road. (Tax Map 19, Lot 70). Matt Young was present representing the landowner, and Rick Turner, the surveyor presented the application. The landowner is hoping to split their 20+ acre property into two lots; one 12.84 acre lot including the existing home, and one 9.87 acre lot, using the Supplemental Lot provision added to the ordinances a few years ago. This lot qualifies under the provision as it is over 20 acres in area and meets the frontage provisions of between 250 and 400 feet of frontage. The proposal is to use Matt Young's existing driveway to access both lots for the first 600-700 feet, at which point a driveway would split off for the new undeveloped lot. Wetlands have been flagged by Damon Burt and show on the plans. Mr. Turner has the topography data and test pit information, although he has not yet added this to the plans. He advised that his biggest concern is how the Board wants the language for the joint driveway and whether Board members want certain language added to plan and/or

would the Board want to review proposed deed language. The need for emergency vehicle access for the long driveways was noted.

The Chairman asked Mr. Turner to go through the requirements for the Supplemental Lot; greater than 20 acres and between 250 and 400 feet of frontage. Mr. Turner noted that he had met informally with the Board before beginning the project. It was agreed that the total frontage should be added to Note 3 along with a reference to the Supplemental Lot article in the ordinances. Mr. Turner noted that they are hoping to keep both new lots in current use assessment, and may need to make a small adjustment to the lot lines as a result. Phil Auger noted that the total annual assessment would not be dramatically different for a lot with 10 acres whether or not the land is in current use assessment, but it was noted that if one of the new lots does not meet the 10 acre minimum, a land use change tax penalty would be assessed. Board members then reviewed the plans with the checklist. The following items are missing and/or need clarifications: Edits for Note 3, as outlined above; show the 150 foot line to demarcate the narrow part of the lot from the buildable area and calculate the buildable area beyond the line; topography, contours and elevations; test pit data; surveyors and wetlands scientist seals; soils, floodplain note; setback lines for buildings, septic, and well radius; clarify the driveway for the new lot with a double line; shoreland statement; and monuments. Mr. Turner said that there are boulders on the lot, but no ledge. Mr. Moreno advised that the Board would like to see blazing and painting of the new long internal lot line and Mr. Turner agreed. The lots are over 5 acres, so do not need state approval. Board members agreed that although there are quite a few missing items, the framework of the project is definitely shown. The Chairman asked if the Board had comments and if there was a motion to accept the plans as complete, conditional upon completing all the above. Phil Auger made a motion to accept the plans as complete, conditional upon the completion of the various items, noting that this is a minor subdivision. Scott Young seconded the motion. There was no further discussion, and the vote was unanimous in the affirmative.

Discussion then turned to the proposed deed and the shared driveway easement. Board members indicated that they do not need to see the deed but that the shared driveway easement area should be labeled on the plans to avoid future confusion and to alert landowners. It was suggested to add the label 'Driveway easement to benefit Lot 70-4'. Driveway turnouts will also be needed, as required by the Building Regulations. It was agreed that turnouts should be every 400 feet and large enough so that the fire truck could pull off so that something could go by, a bit less than 50 feet in length and about 12 feet wide. Scott Whitehouse noted that the specifications for the turn-out near the house are in the regulations and could just be copied onto the plans. It was agreed that further discussion will be continued to the next regular meeting, when the public hearing will be held. Tracy Legrand, an abutter, briefly looked at the plans.

The final order of business was to call on Jarod Legsdin, d.b.a. Parker Mountain Machine, and a number of his neighbors. It was established that both parties had requested an opportunity to meet with the Board. Mr. Legsdin originally met with the Planning Board back in 2014 when he was first establishing his business. The question now is whether the business still qualifies as a home occupation. Charles Moreno advised that it has been brought to the attention of the Board that the business is now different, and that there are concerns about noise from test firings. If the business has expanded, it should go forward to Site Plan Review. He noted that zoning allows certain things as home occupations, while other proposals must go through Site Plan and seek a Special Exception from the Board of Adjustment. Mr. Legsdin said that he hoped to discuss NH laws, town ordinances, and how they fit his property. The Chairman said that in order to keep the discussion focused, he wanted to start with Mr. Legsdin's original 2014 presentation. At the time, Jarod Legsdin indicated that he was the only employee, and that he was working out of his home. Mr. Legsdin agreed that over the years, much has changed. He now has three full-time employees and some part-time help. Mr. Moreno then read from the letter from the Board to Jarod Legsdin in 2014. The letter advises that if the business expands, including the hiring of employees, that Mr. Legsdin should return to the Board. Mr. Moreno advised that the ordinances allow customary home occupation carried on by a resident person. He noted the example of a recent case where somebody was conducting internet sales from their home. The Chairman advised that once there are employees, the business no longer falls under the home occupation ordinance. He noted that Mr. Legsdin will also need to go for a Special Exception. Donald Coker noted that there also appears to be a noise issue, and he noted that representations were made in 2014 regarding test firings and that the Board's decision that the business qualified as a home occupation would have included those representations, and now things have changed. Phil Auger agreed, saying that the concern is that things agreed on, were not followed. He said that this is a clear case of why zoning exists, and said that is written throughout the zoning ordinances that you cannot affect the quality of life of your neighbors. Mr. Coker said that one possibility is that the Board could revoke their 2014 approval for the home occupation if what was presented is not what is happening. Mr. Moreno agreed that this is one possible strategy, but that he thinks that this can be worked out if the proper procedures are followed.

Terry Hyland advised that there are two separate issues; first, a business that has morphed and grown and the Board now needs information to see if it fits the zoning, and secondly, the complaints about noise. The conversation turned to the complaints, and the Chairman then called on the neighbors who had also requested an opportunity to meet with the Board. Sharon Omand noted her concerns about noise, stating that the topography factors into the noise problem because the area is in a valley overlooking the lake. Mr. Legsdin is shooting into metal targets and firing automatic weapons, she noted. Much of the shooting takes place during the day. She said that he has stopped shooting regularly on Sundays, which she appreciates. However, there are several people in the neighborhood who work at night and the noise interrupts their ability to sleep during the days. It also is a problem for people who work out of their homes and she noted that when she works from home that she must time her telephone calls between bursts of test firings so that she can hear the phone conversation. It was noted that Mr. Legsdin's land is not posted, and there is concern that this is dangerous. Kerry Omand noted that the shooting gets pretty loud and will go in bursts of 5 to 50 shots over the course of a couple of hours at a stretch. Scott A. Young said that he began keeping a journal documenting the times of the test firings, and noted similar concerns with the bursts of noise. He said that he feels that the shooting has depressed property values and affects the mood of residents. He also noted concern for lead dust in the air after the firings, and how this might be impacting surface water.

Mr. Legsdin responded to the various noise complaints, saying that he feels that there is misrepresentation because of the emotions. He said that he put in a shooting range for personal use shortly after moving to the property, and that he believes that he is 534 feet from the Omand's home, which would meet requirements. He said that he has taken decibel readings at the property line and believes that the noise is within the same range as loud conversations. He said that he now does the heavy testing at the sand pit in Barnstead. He said that shooting the steel targets is safer. He agreed that there is more shooting now because the business has grown, but again said that the shooting range was established 6 months after he purchased the house. He said that he is making arrangements to mitigate the noise and that he has now purchased a bullet trap device that will allow him to do test firings indoors in his cold storage area, and said that he has the right to shoot on his own property. There was some discussion about the number of complaints and the response to complaints from public safety.

The Chairman then returned to the zoning issue of the expansion of the business. Don Clifford said that a site plan is needed if he has three employees. Donald Coker agreed that this is now a commercial operation. Phil Auger agreed, noting that this is the natural growth of a business, but that it needs to go through the review process. He said that he is also a gun person, but that he does not shoot at home out of concern for his neighbors and depreciating property values. He said that he was surprised that the neighbors had waited this long to complain. He said that the Board would work with Mr. Legsdin, and also noted that it is the Board's job, in part, to defend the residents of Strafford. The Chairman agreed, saying that if the business has grown and changed, it should be reviewed by the Planning Board and then sent to the Board of Adjustment. He said that it is important that everyone has the same set of rules. There was a brief discussion about whether test firings could be done at Major Waldron's in Barrington. Travis Ferland said that he has worked for Mr. Legsdin since 2017 and that they cannot test everything at Major Waldron's because of certain restrictions. Donald Coker agreed. He said that he also collects and shoots guns, and said that Mr. Legsdin should have anticipated this. He said that he also feels that Site Plan review is needed due to the growth of the business. Scott Young noted that the Board cannot tell Mr. Legsdin that he cannot shoot, but said that he wants things worked out.

Board members turned to the minutes of the November meeting. Phil Auger moved to accept the minutes as presented; Donald Coker seconded the motion. There was no further discussion and the Chairman called the vote. The vote was unanimous in the affirmative.

The Board then called on Lissa and Bob McLellan, 270 Roller Coaster Road, who had attended the meeting in hopes of discussing the ROW crossing their property that is used by Brian Payne. They are concerned that Brian Payne is building a new home and thus increasing the use of the ROW crossing their land without their approval. The McLellans said that they believe that the original agreement for the ROW was that there would only be one entity on the ROW. Mr. Payne's original home has now been sold, although his business continues to operate out of the garage accessed over the ROW. The Planning Board had worked with the Paynes on a subdivision project that would have included rerouting the Payne's driveway out to Roller Coaster Road over their own land. The subdivision was never completed.

Phil Auger then moved to adjourn the meeting. Donald Coker seconded the motion, there was no further discussion, and the vote was unanimous in the affirmative. The meeting adjourned at 11:15 PM.

