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Town of North Andover
Planning Board
Minutes of the Meeting
December 2, 2008
Town Hall, 7:00 PM

- Members present: John Simons, Chairman
Richard Rowen, regular member
Timothy Seibert, regular member
Michael Walsh, regular member
Courtney LaVolpicelo, alternate
- Member absent Jennifer Kusek, regular member
- Staff present: Judy Tymon, Town Planner
Mary Ippolito, Recording Secretary

Chair called the meeting to order at approximately 7:10 PM.

Chair announced the following POSTPONEMENTS:

- **John Cahill – 166 Salem Street, Map 37D, Parcel 21.** Definitive Subdivision known as The Captain Nathaniel Berry Homestead, consisting of a new 292 foot long roadway and 3 new proposed lots each containing 25,000 s.f. & existing lot containing 32, 174 s.f. with existing single-family dwelling within R-3 zoning district. Meeting not closed. Waiver on file until Feb of 2009
- **John Cahill – 166 Salem Street, Map 37D, Parcel 21.** Watershed Special Permit to construct a new 292 foot long roadway and 3 new single-family homes, portions of the roadway, one house and a storm water detention/infiltration basin will be within the non-discharge buffer zone. Meeting not closed. Waiver on file until Feb. of 2009.
- **674 Turnpike Street, Theodori Londi,** Site Plan Review Special Permit to allow for demolition of a 2 story residential dwelling in order to construct a 2,800 s.f. Commercial building consisting of 1,400 s.f. restaurant and 1,400 s.f. retail within CDD2 zoning district. Waiver on file until Dec. 16, 2008, PD will request a new waiver.
- **Discussion only with Merrimack Valley Planning, Dennis DiZolio** discussion regarding “Priority Growth Strategy”.

Chair called for the following DISCUSSIONS:

- **Town of North Andover, propose to construct a modular school, 13K s.f.** adjacent to the Atkinson School within R-4 zoning district. Ben Gary, Engineer presented

1 landscaping plan tonight. Will save trees at closest corner to Chickering Rd., added
2 evergreen, red maple for shade and planting in front of building, seeding will be done.
3 Foundation will be a crawl space. Keep stripes on parking lot for now.
4

5 Town has a short time frame to get ready for 2009 school year. Modular building will be
6 assembled at the location. Pat Saitta present tonight. Sargent and Franklin has approx. 7
7 or 8 classes of pre school children. \$4M budgeted for this project. Ben Gary presented
8 proposing to use existing wooded area to place new Pre-K school. Right turn only
9 coming out onto Chickering Rd. Over 100 feet from wetland. Looped around driveway
10 for buses to drop off and for parents to pick up. Diverting catch basin for flow. Internal
11 drains for roof and perimeter drains. Hydrant to be close to the school at corner of
12 building. Gas and electric connected. Security lighting presented. Play equipment for
13 the children enclosed in a fenced area. At 400 feet located a swail around building from 1
14 foot to 4 feet to catch over flow from catch basin.
15

16 Judy submitted a letter for the record from Ben Gary to Gene Willis dated December 1,
17 2008see item 2 regarding drain pipe, Mr. Gary will redesign access and confirm exact
18 location to avoid problems. Gene Willis doesn't want them to pick up 12-inch pipe: and
19 keep other pipe at 15 inch. Clean out and make sure Mr. Gary has extra clean out and all
20 of this will be incorporated into the site plan.
21
22

23 MW asked what is traffic flow? Dismissal times at adjacent schools are between 2:10
24 PM and 2:40 PM won't affect the traffic flow of the Pre-K School, not much congestion
25 only about 6 cars use this area now. Submitted picture for the record. Pat Saitta
26 explained the look of the exterior of the school. Flat roof; roof top air-conditioning units,
27 elevation of roof was discussed. Chair will issue a letter saying we find this to be a good
28 project we recommend the following.....as they go thru the development process, issue
29 this letter at next PB meeting.
30

31 Eric Asvestas, 36 Water Street, will parents have to pay for this? It was explained to Mr
32 Asvestas that there are special needs students and role model students; role model
33 students have tuition requirements and limited amount of spots available for a monthly
34 fee.
35
36

37 **Chair called for the following discussion:**

38 • **Boston Hill project, Turnpike Street, Paul Marchionda** is making refinement
39 to site layout and building design and address concerns with parking and building
40 massing.
41

42 Paul Marchionda presented; parking in front of building and size of building itself are
43 issues tonight. 25 feet lay out line from edge of Rte. 114, grading out base of 5 feet high
44 wall, limited with build out because of Con/Con issue. Will landscape parking lot to
45 dress up site from the street. Building is only one elevation. Paul Shatenau, Architect,
46 stated common space is located on first floor because it's easily accessible. He finds that

1 when you break it up it makes it more complicated for the residents. Applicant stated he
2 will reserve some parking space for future use. Judy wants as much landscaping in the
3 front area disbursed among parking spaces. Make more landscaping at unused parking
4 spaces in front. Dermott Kelly will submit a traffic study. Phase one is now done.

5
6
7 **Chair called for BOND RELEASE:**

8
9 ● **Brooks School, 1160 Great Pond Road**, Site Plan opening bond \$10K and
10 Watershed Special Permit bond \$2K constructed a science building. As-built and letter
11 from Engineer submitted. Applicant wishes to donate this cash bond to the Town of
12 North Andover. Judy read a letter from the headmaster of Brooks School who graciously
13 wishes to donate their \$12K back to Town as a gift. Chair stated let the Tribune know.
14 PD submitted letter from engineer and as built was submitted, no issues with DPW
15 Engineers. Motion by MW to release and close out Performance G bond for \$12K, 2nd by
16 RR, vote unanimous 5-0.

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20 **Chair called for CONTINUED HEARING:**

21
22 ● **Bank of America, 154 Main Street**, Map 41, Parcel 33 – Site Plan Review
23 Special Permit to expand existing parking by removing the rear drive-through aisle and
24 increase the parking area to accommodate an additional six parking spaces for a total of
25 18 parking spaces within G-B zoning district. Meeting not closed. Decision drafted.

26
27 Judy drafted decision PB reviewed it....edits ...numbering is off 1 & 2 and jumps to 5....
28 Say after completion of construction

29
30 Motion by MW to close public hearing 2nd by RR, vote was unanimous 5-0.

31
32 Motion by RR, to approve a Site Plan Review Special Permit as amended, 2nd by MW
33 vote was unanimous 5-0.

34
35
36 **Chair called for NEW PUBLIC HEARING:**

37
38 ● **Metro PCS, 70 Elm Street**, Special Permit, proposes to install 6-panel antennas
39 at a centerline of 80' in existing church steeple and related BTS cabinet within R-4
40 zoning district.

41
42 Judy explained this is a Public Hearing for a SP required by wireless bylaw for
43 installation of any wireless facilities. **Board member Tim Seibert stated he will recuse**
44 **himself from sitting on the Board and moved into the audience. Plse. note: now**
45 **there is only Simons, Rowen, Walsh and Courtney to hear this petition.** Chair
46 explained the procedure relative to this hearing.

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Atty. Karen Simao was present to represent Metro PCS tonight. In the event that Atty. Simao doesn't continue then Atty. Peter Morin will be here to do so. Bill McQuade, consultant, Mathew Boles, consultant, and Franz Pierre, RF engineer are also present tonight. Donald Hayes, was not available this evening. Mr. Mark Hutchings, RF Engineer, will be doing a safety report obtained by the Town. Time is 8pm.

Mr. McQuade spoke proposing to mount antennas behind louvers, in line of 80 feet in church, equipment placed in basement, only replaced louvers, other than that no other exterior changes. Chair asked what is coverage gap, what is need, etc?

Mr. McQuade submitted waivers tonight, and has alternative structure report to submit. which were not included in PB packet.

RR asked is the church well aware of what is being proposed? Mr. McQuade stated yes.

Franz Pierre demonstrated where the gap in coverage is, with colored dots. Look at white area there is no coverage, green is where proposed coverage will go. Next page shows a very large green area with coverage, with one small area 70 Elm St. where church has no coverage at all, by connecting the dots on the sites it provides more coverage. Next map showed once the church is connected to the green area an entire area will have coverage to Town of North Andover and connecting to other Towns.

Judy asked if there may be other carrier facilities in the area, and if they provide Metro PCS with coverage? Mr. Pierre stated other carriers are flagpole on top of hill on Rte. #125, Stevens Estate, this pole is full, and there are 3 other carriers on this pole and no more can co-locate there. Judy asked if frequency band is covered by another wireless facilities? Mr. Pierre stated Spectrum.

Mr. McQuade said no ground space is available for Metro PCS. Smoke stack located 300 yards from 70 Elm Street church; its not commercially available landlord has no interest. It's more preferable for a concealed facility versus a brand new tower facility.

Judy stated VHB will do a review, and Mark Hutchings, an RF Engineer will also do a review of Dr. Hayes report, coverage analysis, and alternative analysis. Mark Hutchings was recommended by VHB and received a scope of work and estimate which will be paid for by the applicant. Hope to have this ready for next PB meeting. The Telecom. Act of 1996 says health cannot be taken into consideration. Dr. Hayes will attend a community meeting Monday (December 15), however, location of meeting was not discussed?

MW asked does this application agree with the guidelines? Atty. Simao stated absolutely. Mr. Pierre stated based on Dr. Hayes report stated RF is less then 1 10th of a percent, which is below the FCC guidelines. See report for the record.

RR asked where do you measure? Mr. Pierre stated measure at a building do it 90 days after installation to take measurement. RR asked show a diagram of strongest signal and

1 vertically show significant drop off and show how radiation map changes horizontally
2 and vertically. Mr. Pierre stated in Dr. Hayes report on page 8 it shows distance of
3 horizontal. RR wants to see the vertical? Mr. Pierre stated he has this information in Dr.
4 Hayes packet.

5
6 Judy stated does installation fall within FCC guidelines? Our engineer will do a report.
7

8 Chair wants the waiver request explained. Mr. McQuade submitted waiver for Site Plan
9 Review, see waiver submitted.

10
11 Judy met w/Chair person of Historic Society Kathleen Szyska, regarding alteration being
12 excluded from review, they looked at information brochure and they want to see a piece
13 of that equipment to discuss request for exclusion from review and take action at that
14 meeting. Mr. McQuade requested a determination from Building Inspector in the mail on
15 November 6th, now Con/Com wants to have a review. He will send a sample of the
16 material to the office in a week and Mr. McQuade will attend the meeting on Dec. 15th.
17 Chair spoke on regulation of wireless facilities. North Andover has a bylaw in place to
18 do this for visual and safety impact regarding freestanding structures and towers in place
19 and filing requirements etc. There is preference to co-locate versus building a new
20 wireless structure etc. Atty. Tom Urbelis provided a set of checklists for PB and carrier
21 and applicant has to provide information in their application etc.
22

23 Cindy Allen, 45 Elm St., applauded at what has happened, this came up a few years back,
24 went before PB at this church and they dropped the idea of putting cell antennas in, so
25 she knows that health can't be taken into consideration, she finds that for every one study
26 presented there are no health effects, she can also find another study that says there is
27 health effects. 15 years after putting these antennas in a variety of places, now we have
28 to pull them out. Number of studies going on now, people need to understand the facts.
29 You can take into account property value, if you have two houses of equal value one is
30 opposite church without cell tower, other proper has a cell tower, which are you go to
31 choose? Buyers want to know if there are cell towers in close proximity this needs to be
32 disclosed. It's within the PB's consideration to take into account property value.
33

34 Chair stated if property value will diminish then the PB needed to see documentation
35 specifically stating the property value has been diminished.
36

37 Ms Allen wants to make the Church aware this is going to alienate the Church, if cell
38 tower was within the Church she would never have sent her son to that Church/school
39 how can the Church alienate its neighbors? She will picket this on her lawn. She cannot
40 believe the church will have the almighty buck take precedence over almighty God.
41

42 Jim Gordon, 500 Rea St., were trustees of parish aware of changes made to structure? He
43 suggested PB require a certified vote from Board of Trustees authorizing them of making
44 this assertion. When is the discussion of the waiver going to take place? He feels a Site
45 Plan Review of Section 8.3 should be warranted. Chair stated Section 8.9 Special Permit
46 is in front of PB tonight.

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2 Mr. McQuade stated Stevens Estate has no longer any capacity for Metro PCS to
3 collocate there.
4

5 Mr. Gordon is concerned about this process at Town Meeting, he thinks the Town should
6 be looking at ways to work with people. Property values were brought up tonight - then
7 provide appraisals, the PB might want to look into this, what will be the impact on real
8 estate? Town should be seeking advice on this issue keep nagging at PB and BOS that
9 could be resolved if everyone gets on same track. Cell Tower Committee was organized
10 to look at this issue and nothing came out of it. Nothing coming out of present
11 committee? Someone needs to take charge to address this thru a vehicle and the PB in
12 conjunction w/BOS should come up with something that can or can't happen regarding
13 these cell tower committees.
14

15 Bill Gordon, 25 Garden St., what is Metro PCS? Mr. Pierrce stated they have locations in
16 Dallas, New York, Georgia, etc. it's second largest carrier. Mr. Pierre explained the
17 coverage map again. Does Town want another tower there? Mr. McQuade stated the
18 Stevens Estate has no capacity, Town is looking for collocation on existing structure,
19 Town is not looking for new towers. Mr. Gordon stated it would be a good thing to
20 investigate why Metro PCS is taking easy way out and it's gong to have a greater impact
21 on the Town if they put cell antennas in the Church. Bylaw regarding residential setback
22 how many feet? Church doesn't meet setback issues? it's pre-existing non conforming.
23 Mr. Gordon submitted written lawyers opinion to Judy for the record tonight. 50 children
24 in this neighborhood living in this area and living within 300 feet of this cell tower.
25 Abutters list is incomplete. Raised health as issue because of cell tower's interpretation
26 of the wording he knows of 100 signature petition who are not in favor of this
27 application.
28

29 Thea Fournier, 247 Main St., Town has a right to site where antennas and cell towers will
30 be placed, and can't prohibit cell tower coming into this Town. Documentation from
31 realtors indicates there is 10 to 30 percent in devaluation of property value once tower
32 goes into effect. Mix up of interpretation of bylaw, two churches turned down antennas.
33 Mass Ave. church passed thru Building Inspector saying it was pre-existing, his
34 comments are illegal? Please note that Ms Fournier's further comments were not audible.
35

36 Chair asked Thea to put this in writing, give this to us now or later? Thea stated 600 feet
37 setback should be required, whether it be a church or not.
38

39 Chair said put this in writing and we'll have attorney review it. Gerry Brown has
40 authority to make a determination, which was not appealed. Chair advised Thea to make
41 the argument in writing and have an attorney do it for her. Thea thinks this is a legal
42 issue.
43

44 Liz Fennessy, 77 Elm St., submitted a letter to Judy, if abutters were not properly notified
45 what is protocall? Judy presented a certified abutters list which was certified by the

1 Assessor and dated 2008. Judy also had the packet of certified mail receipts stamped by
2 U.S. Postal services as proof that certified mail was sent to each abutter on the abutters
3 list.
4

5 Ms Fennessy feels bylaw is subject to interpretation and doesn't understand the 600 feet
6 setback. Should this go to ZBA for review? Chair stated he will go to the Building
7 Inspector and ask for interpretation of Bylaw and if anybody disagrees with this they can
8 appeal it. Ms Fennessy feels a new tower should be built at Stevens Estate for the Town
9 to get the revenue instead of collocating it at Elm Street steeple. She wants to know
10 about the December 15th neighborhood meeting? She only heard about it a week ago.
11

12 Diana Warren, Wayland, Mass, stated a letter of authorization signed by the church but
13 no lease agreement was submitted? There is no binding contract yet? Chair stated by the
14 time PB makes their decision then that would be able to take place. Ms Warren stated
15 that Town Counsel's analysis is a slanted view from Town Counsel who works for BOS,
16 she urged PB to hire their own counsel. Chair asked for this in writing. She said she
17 will. You need to know coverage of all other carriers in the Boston area to make a
18 determination. Section 704 no municipal can inhibit communication services. FCC 65108
19 it's on docket to close loophole, if there are carriers in area that provide service then
20 communication services is being provided, so you don't have to approve Metro PCS then.
21

22 MW asked about prohibiting decimations from one carrier to another? Ms Warren read
23 Dr. Hayes report and found it inaccurate and incomplete. Chair asked if she is willing to
24 submit all of this in writing. She said she will. She said this is not a co-location site.
25 Coverage maps give a false impression, but you didn't get complete documentation. She
26 said they aren't showing a large enough area how far do you go before you hit another
27 Metro PCS facility? She said citizens have to provide reports, lawyers, professionals, but
28 case law indicates under TCA indicating this is not the case. She urged PB to hire their
29 own counsel. Chair asked who would pay for it?
30

31 Chris Lathrop, 27 Church St. stated confirm that the smoke stack was not commercially
32 feasible? Wants to see receiving signals on a map. He wants copy of Dr. Hayes report.
33 Mr. McQuade stated that the smoke stack structural analysis was not available because
34 the owner had no interest in leasing to Metro PCS. Mr. Pierre did a study of the gap
35 coverage, but those alternative sites were not available, he showed them on the map
36 where they were. Chair wants Mr. Pierre to do more due diligence, and look at Stevens
37 Estate to see if there is any appetite to expand it there.
38

39 Loretta Wentworth, 15 Pleasant St. real estate agent, stated the average consumer today is
40 aware and concerned about health issues, consumer walks away if there is gas line or
41 power line, what is the monetary value to the church? Chair stated they are under no
42 monetary obligation it's a private legal matter. Ms Wentworth stated this is a big issue
43 and will affect property values.
44

45 Eric Asvestas, 36 Water St., has 4 children and if this goes thru the whole neighborhood
46 will move he doesn't want this in the neighborhood.

1
2 Diana Warrant stated the FCC will not look to protect that their standards are being
3 followed in North Andover. Donald Hayes report has very little technical information.
4 She will provide actual reports and PB should ask Metro PCS to provide all of this
5 information. Chair stated we have hired a consultant to handle this. PB should ask Metro
6 PCS to provide technical information, which is required on a State standard level so that
7 Mr. Hutchings will have this information to assess the veracity. Random testing should
8 be done on a random basis by independent engineer.
9

10 Chair thanked everybody for the civil tone of this discussion which makes for a better
11 process; PB is looking for solid verifiable input. Chair announced that the PB will have
12 to meet again on January 6, 2009. PB will not be meeting on December 16th as we won't
13 have the sufficient number of PB members in order to do so. Chair asked Ms Warren if
14 you need to provide information please see Judy.
15

16 Atty. Karen Simao stated that PCS has license by FCC they are charged by FCC to build
17 out their network for coverage sites and NOT capacity sites. Stevens Estate is not a
18 commercially available site, no more room there, it is not available and no RFP was
19 issued and that makes it not available. She obtained a certified abutters list from the
20 Assessor's office, but, Metro PCS would not have gone thru that list and decided who not
21 to send a legal notice to and stated that Ms Warren is a lobbyist. Metro PCS can only
22 provide information in compliance w/existing bylaw and she knows Town wants
23 additional information, but for future decisions Metro PCS will comply with whatever the
24 PB wants them to do, Metro PCS has worked to meet all their requests. Can Judy gather
25 any additional information for the Dec. 15th meeting?
26

27 MW asked who is competition in this area and what is the coverage? Submit coverage
28 from other carriers in this area. How much RF homework was done on other sites?
29

30 Thea asked why Stevens Estate would not be available to build a tower? Metro PCS put
31 this in writing. Chair will ask if there is any appetite on the part of the Town to do this, if
32 it is limited to one site there?
33

34 Ms Warren stated she is not lobbying she goes to D.C. to educate and inform and
35 illustrate fact that petition is before the FCC that carries under section 7204 - then
36 communications services are being provided. Time is 9:50 pm.
37

38 Chair asked Judy to check w/Tom Urbelis on this stuff, Ms Warren needs to submit her
39 argument in writing when she criticized Atty. Urbelis.
40

41 **IMPROMPTU DISCUSSION:**

42 Chair discussed that National grid wants to take down trees but some trees do not need to
43 be cut down, put public pressue or e-mail Mark Rees. If more people are opposed it will
44 tighten up.
45
46

DRAFT

1 Motion to adjourn by RR, 2nd by MW, vote was unanimous meeting adjourned at
2 approximately 10:15 PM.
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5 **APPROVE MINUTES OF THE MEETING:**

6 November 18, 2008 Will have to wait until January 6, 2009 PB meeting to approve.
7

8 **PLANNING BOARD MEETINGS:**

9 December 16, 2008

10 January 6, 2009

11 January 20, 2009
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26 **By order of the Planning Board**

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29 _____
30 **Approved**
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