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Planning Board  
Minutes of the Meeting  
Tuesday May 19, 2009  
Town Hall, 120 Main St.  
7:00 PM

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

Chair called the meeting to order at 7:09 pm.

**Chair called for the following DISCUSSION:**

**AT&T Wireless, 1 High Street – Schneider Electric is the applicant who wishes to install wireless installation on their premises.** This is a pre-application conference and not a submittal of a formal application process regarding that installation and operation of wireless communications antenna on the roof of Building 36 and additional antennas and related equipment inside multiple other buildings (the “Facility”) located at the above property.

Judy: met w/Machine Shop Village committee and discussed AT&T Wireless proposal for antennas to provide coverage within Building 36 etc. at Schneider Electric. Judy: spoke w/Gerald Brown, Building Inspector, to get his opinion because AT&T is requesting a waiver. Jerry’s opinion was that he’s reviewed our bylaw and according to definition of wireless facility he believes that this requires a Special Permit. TS: read Mr. Brown’s letter for the record. Plse. note: MW is now present.  
Judy: the applicant provided a letter requesting a pre-application conference w/PB.

Attorney Stephen Anderson of Anderson & Kreiger: stated he has a difference of opinion than Mr. Brown. This is an accessory use it’s not a wireless service. Schneider Electric is in I-S zoning district. There is antenna placed as markup on top of this building 2<sup>nd</sup> antenna is corner antenna. They are similar to television antenna. Antenna is used to receive signal from existing system in Town. This is an “old brick building” with thick walls that won’t get adequate wireless signal strength to operate wireless equipment. Owner of Schneider Electric asked AT&T to install their antennas on High Street property. The proposed in-building wireless system is an allowed accessory use under North Andover’s Zoning Bylaw. Schneider Electric property is located in I-S district.

1 Zoning Bylaw Section 4.135, #12 allows research and development facilities, business,  
2 professional and other offices, light manufacturing, warehousing and wholesaling in and  
3 I-S district. Schneider Electric's business is an allowed use under these provisions. In I-  
4 S zoning district, zoning bylaw 4.135.12 allows, "(a) ny accessory use customarily  
5 incident to any of the above permitted uses, provided that such use shall not be injurious,  
6 noxious, or offensive go the neighborhood". It's intended to provide service within  
7 Schneider building, not meant to provide and broadcast to the public, it's not on personal  
8 computer device...not on cell phones. Mr. Brown is talking about something else.  
9 Installation would not cause any decrease in property value. There is no lighting,  
10 signage, no noise, no effect on conservation or preservation, will not affect wildlife, etc.  
11 The only item in bylaw relating is the fact that this is in historic district. Atty. Anderson  
12 wants to discuss waivers requested.

13  
14 Engineer for the project addressed questions: YAGI antenna frequency range 806-960  
15 MHz/11dBi, Corner Reflector antenna Wide Band/PCS, frequency range 1600-2000  
16 MHz. He captured signal existing outside, small dish, bring signal into amplifier and  
17 broadcast system throughout building.

18  
19 Chair: do you measure RF emissions from that and compare it to FCC. Yes, RF is ½  
20 watt.

21  
22 RR: are both antennas just receiver and not transmitter: No, they receive and transmit  
23 back to site.

24  
25 CL: are there any other antennas like this in Town? Judy: not that she's aware of, these  
26 antennas are only allowed to be used by wireless carrier; someone could not purchase and  
27 use their antennas?

28  
29 Chair: Mr. Brown made determination based on preliminary information which he  
30 received from NEPA filing which provided cover letter, summary form, some plans  
31 showing schematics of antennas and wiring. Chair: it's been their practice to rely on  
32 Mr. Brown as to how zoning works, he said clearly this requires a SP.

33  
34 RR: not sure he agrees w/Mr. Brown's judgment, he read the bylaw and it's written  
35 around public broadcasting facility, this one is private. If he can demonstrate this is  
36 radiating similar to a cell phone then RR feels this is different from intent of bylaw.

37  
38 Judy: a lot of regulation around monopoles, and co-locations, bylaw has not been written  
39 for this type of use.

40  
41 Chair: PB should defer to the view of Mr. Brown's unless this is erroneous, but if Mr.  
42 Brown is mistaken then have a dialogue w/Mr. Brown. MW: agrees this is different from  
43 what we've had in the past, this is within the realm of reason; he doesn't feel entirely  
44 comfortable w/Mr. Brown's determination.

45

1 Judy: Mr. Brown used packet submitted prior to tonight. TS: the only thing Mr. Brown  
2 does is quote the bylaw and say therefore, TS wants Mr. Brown to address specific things  
3 such as internal facility - is commercial radio service - a common carrier wireless  
4 exchange service? Mr. Brown doesn't tell why he arrived at his opinion. TS: would like  
5 to discuss w/Mr. Brown before PB goes any further tonight.

6  
7 Atty. Anderson did not request a building permit, the information provided was the  
8 document prepared for historic district, he wants to wait for Mr. Brown to reconsider his  
9 preliminary letter rather than defer to incomplete information.

10  
11 Engineer: There are other wireless systems in buildings in Town now, such as FIOS,  
12 computer, you have wireless transmitting and receiving in your house, wireless phone  
13 mounted on wall it's broadcasting and receiving a wireless signal. None of these have  
14 come forward for zoning but they are existing in Town today. Chair: this is a matter of a  
15 SP to the PB.

16  
17 Bob Bell, Schneider Electric: utilizes wireless in conference rooms through out High St.  
18 on both sides of the street. wants PB to approve this tonight so this doesn't negatively  
19 impact their business.

20  
21 Mark Depolito, 9 Pleasant St.: Are there measurements from other facilities that RF  
22 emissions are given off if he's outside on the sidewalk? Engineer: max power that can  
23 transmit is less than 1/2 watt same amount as cell phone.

24  
25 Liz Fennessey, 77 Elm St.: smaller antenna looks different than the one she previously  
26 saw. Where are the photos you said you would send to her? Atty. Anderson: smaller  
27 antenna is PCS wireless band. The pictures came out dark, if you're the Chair of  
28 Machine Shop Village and you haven't even noticed them ....even though they are on the  
29 roof.... .....Plse. note: Atty. Anderson's voice was not totally audible due to laryngitis.

30  
31 Chair: put this on for discussion at the next PB meeting have Mr. Brown come to next  
32 meeting of June 2<sup>nd</sup> but give him a full information packet, he sited some information but  
33 didn't provide his thought process or articulate it.

34  
35 CL: applicant is saying this doesn't require a SP. Judy: Planning Department saw a  
36 public advertisement in Lawrence Tribune that a NEPA report had been filed.

37  
38 TS: Judy check where Tim Seibert's property falls within this project and how many feet  
39 of this installation and provide this information to Tim.

40  
41  
42  
43 **Chair called for the following DISCUSSION:**

44 **Molly Town Road subdivision,** applicant asking to submit a monitoring report monthly  
45 instead of weekly. Judy: environmental company is requesting to submit monthly  
46 monitoring reports to the Planning Department. Soils stable, erosion control adequate,

1 not much construction on site now. If work occurs within 100 foot buffer zone of  
2 Con/Com developer will be notified. Judy: made a site visit w/Jennifer Hughes, of  
3 Conservation. Site looks like a junkyard, on the sites that aren't constructed there's a lot  
4 of earth removed, it's not eroding it's fairly stable, but piles have gotten bigger. Maybe  
5 the work would start to erode into the wetland areas. Judy: there are rusted out trucks on  
6 the premises. Charlie Carroll is developer. No open foundations at this time. Road is up  
7 to binder coat. Chair: Judy to check to see if lots are released. Tell them to come back in  
8 and clean up the sites. RR: if no earth work is being done then it's a reasonable request  
9 to monitor monthly. RR: hears what you have to do to consider our agreeing to a  
10 monthly report. Judy submitted pictures tonight. Chair: maybe consider adding street  
11 sweeping etc. to decision.

12  
13  
14 **Chair called for the following DISCUSSION:**

15 **492 Sutton Street (airport) M.E.M.L.V., LLC** applicant has filed a formal application  
16 with Planning Department but is asking for discussion regarding requesting a waiver of a  
17 Site Plan Review Special Permit for construction of a proposed hangar.

18  
19 Judy: made a site visit, proposed hangar is being erected next to the last two permitted  
20 hangars in 2005. The previous 2 hangars went thru a Site Plan Review Special Permit  
21 process, however, they didn't have to go thru an outside consultant review process  
22 because there was no increase in impervious surface.

23  
24 Motion by RR that Site Plan Review Special Permit process for 492 Sutton Street not be  
25 waived, 2<sup>nd</sup> by TS, vote was unanimous.

26  
27 Chair: asked Judy is there a grand plan related to the airport? RR: there is a big problem  
28 into the access into the airport, should have an exit off Rte. #495 off the back end of  
29 airport but doesn't see this happening.

30  
31 Plse note: Mr. MacLeod, Engineer, Andover Consultants arrived later in the evening and  
32 the PB revisited the discussion when Mr. MacLeod was present.

33 Mr. MacLeod is now present and submitted photos tonight. Only a single hangar is  
34 proposed tonight, this project requires a light switch and a door switch, no sewer, water,  
35 gas, an electric line comes in underground, basically this is for storage of an aircraft that  
36 the applicant Mr. Scott has submitted. Request for waiver of Site Plan Review SP is to  
37 save time, and recording costs, and going thru appeal period, and no-one shows up for  
38 this. Nothing gets changed on the Site Plan, positioning hangar/building where there is  
39 pavement. Would the PB give some consideration because bylaw does allow PB to  
40 waive Site Plan Review SP process? Can't see the building from the street, public  
41 doesn't have access to the building, there is a security gate and secure passkey. Project  
42 isn't generating traffic, or pedestrian traffic.

43  
44 RR: the issue is issuing the proper approval with "conditions" in there that the PB  
45 normally puts in their decision specifically in the "conditions" of what specific things you  
46 can't do in a hangar. RR thinks Site Plan Review has merit.

1  
2 Chair: If Judy took the previous decision relative to the previous (2) hangars and used it  
3 as appropriate wording for this one and if Mr. MacLeod can accommodate us and have  
4 everything ready by then the PB can open and close it in one night. Chair agrees, PB can  
5 waive outside consultant review process on this one too.

6  
7 **Chair called for the following DISCUSSION:**

8 **Turnpike Street, Walgreens/PETCO:** Chair: thought this one didn't come out as  
9 nicely as he wished. Judy: submitted pictures tonight. She has as-built and all things are  
10 in existence, however, a metal guardrail exists, the decision states there would be a  
11 wooden guardrail.

12  
13 RR: in tower at Walgreen's there is a corner tower type of structure that looks like a  
14 piece of plywood with mortar painted on it.

15  
16 Chair: check on number of trees? Judy: did look at number of trees and checked on  
17 Waverly Road side and number of trees were rearranged on the plan. Chair: the depth of  
18 PETCO and the way utilities show coming down is more severe than he thought. Chair:  
19 wants to engage them (developer) to shelter this in a particular way. Chair: if metal  
20 guardrail is the best practice of State Highway, but PB always had a fence with  
21 landscaping in front which creates a buffer between public and private space this doesn't  
22 exist there. Chair: landscaping on corner of property is scaled far too small for size of  
23 open space it's out of proportion; put a row of landscaping by parking lot. Chair: Judy do  
24 a workshop with them and get them to come in here for a discussion.

25  
26  
27 **Chair called for the following PUBLIC HEARING:**

28 **Omnipoint Communications, Inc. – 72 Elm Street, Trinitarian Congregational**  
29 **Church,** Site Plan Review SP to install, operate, & maintain a stealth wireless  
30 communication facility consisting of up to 4 wireless telecommunication antennas  
31 mounted within the existing spire, radio communication equipment cabinet to be located  
32 within existing Church within R-4 zoning district.

33  
34 Plse. note: Tim Seibert recused himself from this Omnipoint hearing:

35  
36 Judy: gave a brief overview – reviewed application in May 2009 and application was  
37 missing items which have now been provided: Structural report was received - no  
38 structural upgrades are required, antennas be supported by a new pipe mass, cabinet to be  
39 in library at ground level. Noise study was provided takes into account there could be  
40 two wireless at 70 Elm St. Air-condition unit to be located outside of the church.  
41 Applicant has since provided a NEPA report; MA historic has provided no effects on  
42 historic property district. Requested waiver for design, site filing requirements, what  
43 specific waiver do you require, they will provide this list of waivers.

44  
45 Representative from Omnipoint spoke: 42 % of people use cell phones, 300 emergency  
46 calls are made on mobile phones daily. Chair: talk to RF emissions and alternative site

1 you looked at and why they aren't available. He passed out photos to the PB tonight.  
2 Location chosen by the RF engineers expertise, and handed out specs tonight.

3  
4 Judy: windows are custom made on site, so Judy couldn't get actual window to provide to  
5 Machine Shop Village Committee.

6  
7 Christoher King, representative for Omnipoint, spoke and stated he checked  
8 w/construction engineers it was easier to make the windows on site, that's why he  
9 submitted pictures of existing steeple in Newburyport. RF engineer report was  
10 submitted by Glenn Kreisberg, RF Engineer, pictures were submitted showing on air sites  
11 within 1 mile of North Andover boundary, additional pages to show existing coverage  
12 without 4BZ0023A and another page contained existing coverage with 4BZ0023A. He  
13 submitted list of other facilities he looked at to PB tonight. RF emissions are well below  
14 the standards that are set.

15  
16 Chair: read the RF level information submitted in handout tonight. Chair: Judy send this  
17 new material to PB consultant for review. Judy: has not contacted Mark Hutchins yet.

18  
19 MW: wants an independent appraisal done and RF report done.

20  
21 Chair: should take Mr. Hutchins less time to review this site than the first time.

22  
23 Judy: is waiting for applicants waiver list. There are two waivers already submitted. Ask  
24 to have the air-condition thing waived. Yearly noise reports were asked to waive. Judy:  
25 recommended noise reports not be waived, she wants yearly noise report done. Town of  
26 N.A. does not do surety bonds Town does cash bonds so PB won't waive this one. Judy;  
27 entire sections were requested to be waived. Should say these are the ones we're waving.  
28 Chair; look at the prior decision and see what PB waived.

29  
30 Mr. King: will have this information ready on Monday. Chair: called for comments from  
31 the audience.

32  
33 Ms Fennessey, Elm St.: asking questions about map what is coverage in white spot? It's  
34 for car coverage but if you're walking you get coverage. Concerned about another  
35 antenna, nothing in file from Mr. Brown telling them they don't need a variance and can  
36 go straight to PB. Submitted letter signed by Keith Mitchell, Lynn Arvikar, Bernice  
37 Fink, Don Stewart, dated 2009 and various other documents for the record. Ms  
38 Fennessey: read letters from the file regarding applications for various locations.  
39 Submitted a disk of this year's Town Meeting and read Mr. Brown's interpretation.  
40 Stated that Mr. Brown chose this way because of a lawsuit, but he wasn't following the  
41 law. BOS supported article #33 at Town Meeting. Ms Fennessey: asked PB to refer this  
42 matter to the ZBA where it belongs.

43  
44 RR: voted for her article after the PB article was defeated. Reason was that as PB reads  
45 the bylaw and interpreted it there are inconsistencies and conflicts in the bylaw as  
46 written. Second warrant article took away all ambiguity, he voted for it because he wants

1 to have a clear and consistent bylaw on the book to make judgments other than any  
2 ambiguity. He believed this honestly if it passed it would clarify things but if PB made  
3 judgments based on clarified bylaw he believes PB would be in court and be challenged,  
4 let's get it over with and bring it to a head and have the Court system rule on this matter.

5  
6 Ms Fennessey: sees Mr. Brown is not following the law and the PB is following Mr.  
7 Brown.

8  
9 Chair: Ms Fennessey is overstating how PB interpreted bylaw and there is ambiguity  
10 there, different people with good faith could come up with different answers because of  
11 the way the law is written. Agree there are shades of gray and PB is not unreasonable  
12 and stupid you should hone this to some degree.

13  
14 Ms Fennessey: boils down to settle these matters in court, she has hard time when certain  
15 things are put in front of PB and PB agrees with Mr. Brown. Chair: PB will get a letter  
16 form Mr. Brown again.

17  
18 Christopher King: explained rational that now many more people are working at home, in  
19 the year 2015 you will see increase of data transfer on these line, Town needs to be able  
20 to use their services for a living, this is the least intrusive way to do that. See application,  
21 Mr. King: feels Omnipoint is under the same law that pertained to MetroPCS.

22  
23 Thea Fournier, 247 Main St., bottom line is there a true gap in coverage? Bob Nicetta  
24 former Building Inspector interpreted the bylaw in 2000 and didn't find shades of gray.  
25 The bylaw is being mis-read. Omnipoint is breaking the Towns bylaw again as well as  
26 MetroPCS. Ms Fournier submitted document from Edward Collins tonight regarding 600  
27 feet setback copy for the record.

28  
29 Chair: Judy give the applicant Thea's document that she's read tonight.

30  
31 Ms Fournier: drove around area and can't find any gap in coverage. Chair asked if she  
32 had experience with engineers regarding gap in coverage? Ms Fournier: worked with  
33 engineers on this. Omnipoint ended up on Stevens Estate despite their instance that there  
34 were not any other sites available to cover gap in coverage. Ms Fournier finds engineers  
35 are working for industry so they are bias. Chair: if someone works for you that means  
36 they are not biased?

37  
38 MW: PB hired independent person to take a look and will be asking him again to do this  
39 tonight? Is that person sub-standard? Ms Fournier: he didn't talk about significant  
40 effects and other regulations. Omnipoint wants a free-bee here; they can't prove there is  
41 a significant gap in coverage. This should go before ZBA.

42  
43 Christopher King: T. Mobile isn't getting a freebee; they have no reason to spend money  
44 to put a tower that they don't need.

1 Loretta Wentworth, 15 Pleasant St., lives less than 300 feet away from the church. Many  
2 towns have setbacks and have no problem enforcing them. People had left Town Meeting  
3 early or their article would have passed.

4  
5 Chair: emissions are going to be 1 1,000 of a statutory limit.

6  
7 Ms Wentworth: evidence is clear that property values will be affected in a negative way.  
8 By paying church lots of money hiding antennas in steeples who will object? Residents  
9 are objecting. Submitted decline in property values document tonight dated 2003 for the  
10 record.

11  
12 MW: is this appraisal of 2003 on the smoke stack? Ms Wentworth: yes. MW: if you  
13 could put something current into the record he would like to read it. Ms Wentworth: will  
14 try to get updated data to submit for the record.

15  
16 RR: are people inquiring/asking because they want to ensure that there is coverage for  
17 their phone? Ms Wentworth: no, a house she handled started out at \$700K, now it's  
18 down to \$629K, in photo there is a cell tower located behind property.

19  
20 Christopher King: ran a closing company for years and people asked is there cell tower  
21 coverage?

22  
23 Mark Depolito, 9 Pleasant St. submitted a document for the record regarding Clarkstown,  
24 New York versus Verizon Wireless case. What's different about this equipment?

25  
26 Christopher King: ties into 911 thing tries to identify where someone is in case of  
27 emergency. Entirely concealing towers, everyone is broke now that's why houses aren't  
28 selling now.

29  
30 Mr. Depolito: he's a user of T. Mobile & he gets perfect coverage at Steven's Estate area  
31 and Pleasant St. he's not sure where the gap in coverage is.

32  
33 Christopher King, he's here because he gets calls from his clients saying they aren't  
34 getting coverage. He's not here to waste money because he gets dropped calls. And that's  
35 why they are requesting a SP be granted.

36  
37 Janice Williams, 88 Elm St., will be reviewing materials for replacing the window and  
38 review placement of air-condition and landscaping. She wants to review the materials for  
39 clapboard. Why do they have to replace these materials? Concerned about structural  
40 integrity of the leaning steeple toward her house. Chair: Judy we have structural report  
41 take a look at it and make sure our engineer looks at it as well.

42 Christopher King: sometimes windows are leaded, the wood is a problem, and he'll  
43 provide a sample of window material.

44

1 Thea Fournier, Main St., because there is lead metal in windows, signals can't go thru  
2 because of metal? Mr. King: it could be wood causing the problem instead. Ms Fournier:  
3 we should be concerned if signal goes thru window material.

4  
5 Chair: Judy summarize our punch list.

6 List of waivers, Judy will get a letter from Mr. Brown in terms of zoning. Provide to  
7 applicant material she received from residents submitted tonight. Judy will talk w/Mark  
8 Hutchins and get a contract for review of this application, alternative analysis and gap in  
9 coverage, she'll look at structural report, she's in process of distributing material in time  
10 for May 28<sup>th</sup> meeting w/historical Machine Shop Village committee.

11  
12 Chair: if Judy needs to follow up w/PB or Town Counsel go ahead.

13  
14 RR: will be out of town on June 16<sup>th</sup> and 17<sup>th</sup>. Chair: Schedule June 9<sup>th</sup> for the next  
15 meeting.

16  
17 Liz Fennessey: ZBA will be having their meeting on June 9<sup>th</sup>? Chair: we're short a  
18 person and TS recused himself tonight. Judy schedule around the time to hear this  
19 w/ZBA. Chair: plan on June 9<sup>th</sup> if we don't get information back flip to June 23<sup>rd</sup>. If Judy  
20 doesn't have anything for June 2<sup>nd</sup> then don't have that. We can have meeting on June  
21 2<sup>nd</sup> and have meeting on June 16<sup>th</sup> or June 23<sup>rd</sup> depending on when we get Mark  
22 Hutchins report back.

23  
24  
25 **Chair called for following DISCUSISON:**

26 **Coalition for Zoning Reform**

27 **Plse. note: recording secretary took a bathroom break.**

28  
29 **Chair called for the following DISCUSSION:**

30 **Town Meeting wrap-up**

31 Drive thru's discussed at Town Meeting lasted about 45 minutes. Come up with  
32 something and walk all properties, work way backward what zoning needs to be to  
33 accommodate that. Lots at beginning of street - the lots are almost too small you have to  
34 stay with same footprint.

35  
36  
37 **Chair called for approval of MINUTES OF THE MEETING:**

38 **May 5, 2009 "Minutes"**

39 Motion by MW to approve May 5, 2009 "Minutes" 2<sup>nd</sup> by TS, vote was unanimous.

40  
41 **Motion to adjourn by MW, 2<sup>nd</sup> by TS, meeting adjourned at approximately 10:00**  
42 **pm.**

43  
44 By order of the Planning Board

45  
46 **Approved**