

# DRAFT

**PLANNING BOARD**  
**Minutes**  
**Tuesday, September 15, 2009**  
**Town Hall, 120 Main Street**  
**Top floor conference room**  
**7:00 PM**

1

2 Members present:

John Simons, Chairman

3

Richard Rowen, regular member

4

Timothy Seibert, regular member

5

Michael Walsh, regular member

6

Courtney LaVolpicelo, regular member

7

8 Members absent

Michael Colantoni, alternate member

9

10 Staff present:

Judy Tymon, Town Planner

11

12 Staff absent:

Mary Ippolito, Recording Secretary

13

14 Chair called the meeting to order at approximately 7pm.

15

16 **Chair announced there were no POSTPONEMENTS:**

17

**none**

18

19 **Chair called for Discussion: Trustee of Reservations:**

20

Judy: This Grant application for DCR due September 30<sup>th</sup>. This is a recreational trails grant looking for feedback and support from PB. Re-route the trail in some places adjacent to the lake, construct a board walk and stabilize high use areas where there are lots of erosion to prevent further shoreline erosion and loss of vegetation and still allow pedestrian activity. Judy submitted a handout for tonight. Con/Com is in favor of goals and what they want to achieve. Chris Worth from Trustees presented a map showing the trails along Eastern shore line of Lake Cochichewick. Wants to build a board walk to get people off of the soil and vegetation. Bring in crushed stone and planting soil then do plantings that would keep people from entering those areas (temporary fencing will be put up to keep people out). Motion by ? to direct Judy to write a letter in favor of this project 2<sup>nd</sup> ? vote was unanimous.

31

32

33

34 **Chair called for Bond release:**

35

**210 Holt Road, TBI (Thomson Brothers Industries, Inc.) Recycling Facility for solid waste, requesting \$15K bond be released**

36

37

Judy: received a letter from Mr. Thomson requesting release of bond, issue of signalization and cost incurred to do so. Judy: did full site visit w/Jennifer Hughes in December 2008 and as-built provided by Engineer was received on Dec. 15<sup>th</sup>.

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1 Landscaping was left to be completed. Judy: did another recent site visit and landscaping  
2 looked fine. Gene Willis, DPW, has no issues with this project.

3 Chair: complimented the good service and was impressed with how very nice the facility  
4 looks and it's well maintained. Mr. Thomson extended an invitation to the Board and to  
5 Judy to visit this site, just give him a call and he'll provide you with a hard hat and ear  
6 plugs and give you a tour.

7 Motion by RR to release the Planning Department bond \$15K in its entirety plus interest  
8 for 210 Holt Road, 2<sup>nd</sup> by MW, vote was unanimous.

9  
10 **Peachtree:::(I'll have to find where this is on the DVD and type up).**

## **Chair called for CONTINUED PUBLIC HEARING:**

11  
12 **William Gillen, Kelsey Lane 3 lot subdivision.** Leaving existing house on existing lot,  
13 which is Mr. Gillen's private residence and add two new lots and new roadway within R-  
14 2 zoning district. Engineer to submit revised change from cul-de-sac to roadway. Meeting  
15 still open.  
16

17 Judy: received package today with proof plan showing full cul de sac, second is a  
18 driveway plan. Driveway plan was reviewed by VHB, proposed rain-garden and  
19 vegetated swale, suggested a pre-treatment filtered strip be added around rain garden and  
20 maintenance plan for rain-garden. Judy: suggested applicant has test pits done to  
21 determine the high ground water table so rain gardens are going to work or resized or  
22 relocked based on depth to ground water. Minor changes on proof plan; waiver was  
23 added for requiring a flat grade of first 100 feet of a roadway. Phil Christenson,  
24 Engineer, present, would prefer not to do the test pits first in case the plan doesn't get  
25 approved you've just wasted a couple of thousand dollars. He thinks the rain-garden will  
26 work the way it is. CL: what is the pre-treatment filter strip around rain garden? Mr.  
27 Christenson: just grass. RR: If test pits come out different than expected then come back  
28 and modify the plan this should be done prior to endorsement. Keep this hearing open.  
29 Draft a decision.  
30  
31  
32

## **CONTINUED PUBLIC HEARING:**

33 **Brooks School, 1160 Great Pond Road.** Renovate existing natural grass soccer fields  
34 with synthetic turf, installation of sub base drainage system, walkways, 200 bleacher  
35 seats and sports lighting on both fields within R-1 & R-2 zoning district. Meeting still  
36 open.  
37

38 Judy: submitted a draft decision. Edits: Change the date on the first page from September  
39 1 to September 15. Change expiration date from Sept 1<sup>st</sup> to September 15<sup>th</sup>. Judy: Page 3  
40 lighting issue put hours of operation proposed by Brooks be limited to 10 pm & lights out  
41 by 10:30 pm. Same Page: applicant has decided not to use standard synthetic turf.  
42

43 Chris Huntress: this is not synthetic turf it's the in-field product the plans just say  
44 synthetic turf in-field refer to specification.

45 Page 3 under #2 will consider using alternate products? Mr. Huntress: page 4 item 3 prior  
46 to issuance of a building permit...technically there is no building permit to be issued on

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1 this project because it's site work, the only permit issued will be an electrical permit for  
2 sports lighting which may or may not happen in phase one ...can this be prior to start of  
3 construction as opposed to issuing a building permit? Judy: yes.

4  
5 Page 4, #8, SP shall be as of September 15<sup>th</sup> instead of September 1<sup>st</sup>. Motion by MW to  
6 close public hearing, 2<sup>nd</sup> by RR, vote was unanimous.

7  
8 Edits: Chair: At beginning of decision see "renovate" you are replacing. Hours of  
9 operation.. put this in "conditions" hours of operation shall be such and if any changes  
10 they need to notify us. RR: findings of fact the first finding it will not degrade the quality  
11 of water so #1 and #2 including address the quality of the water then #3 he recommends  
12 it should be under #2. Judy: should she restate #2? Chair; refer to best practices etc.  
13 Motion by RR to approve Watershed SP for Brooks School for the replacement of two  
14 soccer fields as amended this evening, 2<sup>nd</sup> by TS vote was unanimous.

## **CONTINUED PUBLIC HEARING:**

15  
16  
17 **Eugene & Anne Saragnese, 105 Bonny Lane**, requesting a Watershed Special Permit  
18 to raze existing residential dwelling and rebuild new residential dwelling with footprint  
19 enlarged by 1169 s.f., construct a deck, widening of existing driveway, minor site grading  
20 changes, installation of drainage structure within Non-Disturbance zone in R-1 zoning  
21 district. Meeting still open.

22  
23 Motion to close public hearing by MW, 2<sup>nd</sup> by RR vote was unanimous.

24 Edits: Chair: look at dates at the very end. RR: at top of page 3 D&E it's a repeat of 2 &  
25 3 above. Item 2 add the house will utilize the existing foundation. Chair: D in keeping  
26 with topography, tie that in with the same foundation so you don't have to do a lot of  
27 grading...we're actually improving the situation compared to what it was before. Chair;  
28 did any of the letters explicitly go into detail in terms of using best practices? Judy: there  
29 was a fairly detailed letter from the Engineer listing the best practices...they were  
30 referenced in this decision. Judy: B, 1, 2, 3 are where the best practices are. RR: #5  
31 findings of facts: it's conforming when it was built, clarify this. Judy: It's grandfathered.  
32 TS: typo on top of page 4 plan dated June 30<sup>th</sup>. Motion by MW to approve the Watershed  
33 SP be approved as amended, 2<sup>nd</sup> TS, vote was unanimous.

## **PUBLIC HEARING:**

34  
35  
36 **New Cingular Wireless, PCS LLC ("AT&T"). – 0 Chestnut Street, Map 98C, Parcel**  
37 **2.** Renewal of a 2006 Special Permit which allowed co-location of 12 coaxial cable  
38 antennas on existing tower facility along with approximate 11'x20' equipment shelter for  
39 its ancillary equipment within the fenced compound within the R-2 zoning district.

40  
41  
42 Judy: Original application was approved on May 06, litigation sided in favor of applicant  
43 in 06, and facility constructed in fall of 07, because of litigation the SP date was tolled  
44 until September 2006 which is date of litigation made and SP would lapse on September  
45 2009. Received from applicant two RF reports as required by SP...has one from Dr. Haes  
46 dated September 16, 2008, another one dated September 7, 2009, noise reports provided

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1 by applicant dated Nov. 24, 2008, assume that in Nov. 09 we would get another noise  
2 report as those reports are required for continued operation. See page #7 see chart  
3 showing total contributions max. Permissible exposure, summary indicates max is less  
4 than 2% of the current State and Federal maximum permissible exposure guideline. In  
5 September report see page #7 the same conclusion less than 2%.

6  
7 Attorney Susan Roberts, Anderson and Kreiger, along with her is Rich Detts of AT&T  
8 Mobile. She's requesting a favorable vote to extend or renew the SP granted in 2006.  
9 Facility became operational in 2007. She's here to extend the status quo. Has no plans to  
10 upgrade or modify at this point. Other carriers are located on this tower as it's a co-  
11 location site.

12  
13 Since applicant has met all of their requirements PB is ok with this application. Chair:  
14 asked if Mr. Tryder had questions?

15  
16 Mr. Tryder: because facility was not operational until September that would be the SP  
17 renewal date?

18  
19 Atty. Roberts said the SP was granted in May 06, however, at the time the SP was  
20 granted there was litigation pending and terms of SP actually make the exercise of SP  
21 subject to the granting of the variance which was the subject of the litigation, because the  
22 variance was not granted until the end of the litigation which was on Sept. 25<sup>th</sup> she could  
23 never exercise the SP essentially the period of time during which the two years would run  
24 was actually tolled or stopped for that period of time until the litigation was over.  
25 Decision was actually filed on Oct. 6<sup>th</sup> she chose the earlier date of September 25<sup>th</sup>.

26  
27 Mr. Tryder: When did you receive the SP from the PB?

28  
29 Atty. Roberts: permit was issued on May 31<sup>st</sup> and recorded on June 30, 2006.

30  
31 Mr. Tryder: When did work begin on the tower?

32  
33 Atty. Roberts: building permit issued on July 2007 and completed in September 2007.

34  
35 Mr. Tryder: the building permit was issued in 2006. Building permit was issued on  
36 7/21/07 and work began at that time and it was installed before September. Mr. Tryder  
37 argued that building permit was issued on 7/21/07 and work began at that time and  
38 installed before September. He lives in neighborhood and knows when work was  
39 conducted.

40  
41 Chair: the date we're talking about is 2006.

42  
43 Mr. Tryder: right but they already started work before that.

44  
45 Chair: before 2007?

46

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1 Mr. Tryder: before September.

2

3 RR: Attorney said the litigation ended in September 06 and 10 months later they began  
4 construction and they had a 2 year window to do it so they are well within the window of  
5 this SP.

6

7 Mr. Tryder; where does September come from he's not getting July to September?

8

9 RR: it's September to July.

10

11 Mr. Tryder: he's not talking about the time frame that they started the work; he's talking  
12 about the date of the renewal. SP was issued by the Town on May 31, 2006.

13

14 Chair: under the law the clock stops. Mr. Tryder: he'll read 40A and the clock does not  
15 stop.

16

17 RR: regardless what's your point?

18

19 Mr. Tryder: that the renewal date was back in July or May and not in September you  
20 can't push the renewal date up to Sept. it's actually May.

21

22 Mr. Tryder: the permit is expired. The SP expired on May 31, 2009. Not Sept. you can't  
23 renew something that's already expired.

24

25 Chair; do you have any other points?

26

27 Mr. Tryder; that's a pretty big one because then this hearing shouldn't be taking place  
28 because it has to go back to the ZBA to get a new permit, once a permit has expired  
29 according to our Bylaw then it has to go back to getting a new permit it isn't in force  
30 right now. It ended in May.

31

32 Chair: not sure if he agrees with Mr. Tryder's interpretation.

33

34 Mr. Tryder; dates are dates they got a SP on may 31 of 2006 the permit according to our  
35 Bylaw lasts for 3 years, 3 years from May 31 2006 to 2009 was May 31.

36

37 Chair: understands that's your interpretation of the law, could you conceivably grant that  
38 somebody could have a difference of opinion with you? Mr. Tryder, the law says 3 years  
39 how can you come up with more than 3 years?

40

41 Chair: do you have any other points?

42

43 Mr. Tryder: they didn't submit the annual report on time as Judy just got the annual  
44 report from last year yesterday, we didn't get a 90 day report that's required, there is no  
45 certification from an Engineer in the file stating that the work was done that the permit  
46 was given for is actually done according to what the permit was and there's no sign off

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1 from the Building Inspector and Mr. Tryder verified that with him today. Not only is it  
2 out of date in terms of the renewal but it hasn't been in compliance during the term that  
3 they had it. It says in our Bylaw page 13 section 5 (inaudible) under RF radiation filing  
4 requirements it says that the permit granting authority may condition any SP entered  
5 under this granting under this section under periodic submittal of certification of  
6 compliance which set standards and that was not done.

7  
8 RR: plse. read what you just said.

9  
10 Mr. Tryder: it says that the permit granting authority may condition any SP....

11  
12 RR: may condition....

13  
14 Mr. Tryder: none of the certification compliance things were ever submitted doesn't  
15 know that there was a variance given to the initial permit that they didn't have to do  
16 that... believes that they are supposed to do that. Read terms of a SP, section 12, a SP  
17 issued for any wireless etc.....(see attached section). Read under MA General Law  
18 Chapter 40A Section 9 under SP zoning ordinance or Bylaws shall provide that a  
19 etc.....

20  
21 RR: that's exactly what the PB is saying: you've just supported her (Atty. Roberts)  
22 contention.

23  
24 MW you've read what the PB just said.

25  
26 RR: When it was under litigation and they couldn't exorcise their rights given to them  
27 under the SP that it's suspended until such time as the litigation is resolved.

28  
29 Mr. Tryder: issue is it shall not include such time required etc....

30  
31 RR: that the 2 years shall not include the time spent in litigation.

32  
33 Mr. Tryder: it doesn't say in terms of the activation of the permit they already went ahead  
34 and built the facility....

35  
36 Chair: with all due respect we've got the guy who practices law in this area and I've been  
37 on the Board for a long time and know what Chapter 40A says and you got it wrong,  
38 sorry, you have it wrong about the 3 years the idea is because we see litigation all the  
39 time people come in with a subdivision and the zoning changes the litigation and what  
40 happens is the zoning rights are held until the litigation is resolved and then the clock  
41 starts to tick, the clock stops during any litigation.

42  
43 Mr. Tryder: even if they began construction?

44  
45 Chair: they didn't begin construction.

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1 RR: Mr. Tryder you're off by 10 months. They began construction 10 months after their  
2 permit came into effect.

3  
4 Mr. Tryder: so the date of the permit is not May 31 even though it's stamped?

5  
6 RR: correct, the 3 years began when the litigation was finalized Sept. 2006.

7  
8 Mr. Tryder: has questions for RF and Noise reports people, needs to have those people  
9 here.

10  
11 Chair: what are the questions?

12  
13 Mr. Tryder: will have questions prepared for the next time they come, the reports are  
14 complicated, they didn't send in the 90 day one. They are out of compliance with 2  
15 reports, expiration date for SP argues that it's not correct but will consult his attorney  
16 about that.

17  
18 Judy: regarding RF report that has to be submitted within 90 days either completion or  
19 beginning of operation (didn't look in file today) assume that was provided back in 2007  
20 when it was being constructed as Judy goes thru and works with the Building Inspector  
21 when we have installations she makes sure that that report is provided and on file and  
22 notifies the Building Inspector that she's gotten all requirements that she needs so that  
23 both can move forward with the project. That information is probably in the file.

24  
25 Chair: Mr. Tryder you have a copy of this information?

26  
27 Mr. Tryder: doesn't understand it and has to ask questions of Engineer.

28  
29 Chair: can you put your questions in writing about what they are because you look at this  
30 and it's so far within the tolerance of the law.

31  
32 Mr. Tryder: where were the measurements taken from?

33  
34 Judy: there's a map in the report but it doesn't say where the property lines are or from  
35 where on the property they took those measurements.

36  
37 Mr. Tryder: statement in a report where they talk about measurements near, approximate  
38 property lines, where are the property lines? He lives there, there isn't any property lines  
39 marked off or staked off, how are they doing their measurements if they are not staked  
40 off?

41  
42 RR: you may be technically correct, but other fact is if they are off by 10 feet or 100 feet  
43 it wouldn't substantially change these readings, and thinks they are well within 100 feet.  
44 If they are 2% of what is allowed then 100 feet is not going to make a difference.

45

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1 Mr. Tryder: in order for it to be accurate and scientific it needs to be from the exact line.  
2 No-one - all of these years - that the tower is existing - has ever walked that out/or  
3 measured it out they haven't put anything up so all these measurements that they are  
4 giving us don't add up and asking that it be done correctly.  
5

6 Mr. Tryder: have you read the file on the tower? You've been here for 30 years on this  
7 Board? The Building Department doesn't know what's in these files, he's done a  
8 thorough reading of them and researched them and the documents that are missing aren't  
9 in there and the Building Inspector doesn't know where they are and he's going to try to  
10 get them from the companies.  
11

12 Judy: Gerry Brown, Building Inspector, as well as she have at least 20 days to respond to  
13 requests for information, you were in the office today at 3:30pm and she didn't receive  
14 any requests in writing and neither did Gerry.  
15

16 Mr. Tryder; Gerry stated there was a document he didn't have or didn't know where it  
17 was.  
18

19 Judy: again, Gerry and she have a certain amount of days to respond to requests for  
20 information, and she didn't have that time today between 3:30 and 4:30 pm.  
21

22 Mr. Tryder: has been told to look for it yourself, they don't have time to find those  
23 documents, he's been willing to do so and has been going thru them for 6 years looking  
24 for things.  
25

26 MW: as it relates to what you maintain are not in the file that request was made at  
27 3:30pm today, Judy and Building Inspector has 20 days.  
28

29 Mr. Tryder: agrees, thought it would be in there, when these things are passed there is  
30 some kind of system to check if engineering reports say the work is completed according  
31 to what specifications were and if the Building Inspector signed off. He's found that on  
32 this Tower that has never been done and those reports don't exist and the Town is out of  
33 compliance with their own Bylaws. When these documents are there he'll come back  
34 with his questions ready for the RF and Noise people.  
35

36 MW: given this does have a time frame, would you put it in writing and submit it to them  
37 and we'll also ask follow-up questions for you?  
38

39 Mr. Tryder; when do you need the questions by?  
40

41 Chair: the Engineer is going to say this is in compliance and within best practices and  
42 within reasonable engineering practices. Doesn't want to go on a lengthy fishing  
43 expedition to get that same information, just burns up a lot of money and doesn't yield  
44 meaningful incremental information other than what we already know. Would rather  
45 have some crisp questions in writing, doesn't particularly want to bring a bunch of people

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1 back for a meeting and incur thousands of dollars of hearing costs when there's probably  
2 an easier way.....

3

4 Mr. Tryder: thousands of dollars in engineering costs for who, who's paying the  
5 engineering costs?

6

7 Chair: they would pay for it.

8

9 Mr. Tryder: then why are you concerned about what they have to pay?

10

11 Chair: because ultimately everybody who uses these things ends up having to pay more  
12 money ....

13

14 Mr. Tryder: what do you mean everybody who ends up using these things?

15

16 Chair: anybody who is a cell customer is paying the cost; he's been on this Board for a  
17 long time....

18

19 Mr. Tryder: then I would think you would know the history of this tower enough to know  
20 what's transpired, you're partly responsible for all this stuff that hasn't happened these  
21 documentation from the companies, how do you compete with Mass General Law saying  
22 that the SP can't go beyond 2 years?

23

24 Chair: You are just wrong.

25

26 RR: this is a matter of reading comprehension Sir.

27

28 MW: Federal Court says: no construction shall start until the building permit is issued as  
29 said on 9/25/06, the building permit didn't issue until the next year.

30

31 Chair: you had an opportunity to put your comments in writing, please put your  
32 comments in writing, so I can get you answers to your questions. But don't wait for 2  
33 weeks; he's not going to bring in a bunch of people if we can get the answers very  
34 quickly and crisply. If it turns out we can't we may have to bring the people in but he's  
35 not going to tell you that were going to bring people in for a renewal application for  
36 something that is pro forma in nature it just doesn't make sense to do so. Sorry to  
37 disappoint you but that's the way it's going to be.

38

39 Mt. Tryder: how many abutters were notified?

40

41 Judy: showed you that list when you were in the office.

42

43 Mt. Tryder: quite lengthy isn't it? You noticed that Mr. Tryder is the only one that came,  
44 do you think it's because they are not interested? It's because they have given up and  
45 feels that no matter what is presented at this meeting you are going to do whatever you

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1 want, you are pro cell tower, and not pro Bylaw in this Town, so they have all told him  
2 that it's a waste of time to come here.

3

4 Chair: well thank you; do you have any other questions?

5

6 Mr. Tryder: he'll pursue this in Court.

7

8 Chair: do you have any other questions?

9

10 Mt. Tryder: none.

11

12 Chair: I'll ask Mr. Tryder to get his questions to us within a day or two?

13

14 Mr. Tryder: can't do it within a day or two.

15

16 Chair: well then we may just close the public hearing.

17

18 Mr. Tryder: doesn't think his questions are going to matter to the Chair anyway.

19

20 Plse. note Mr. Tryder walked out the door as he made a further comment, the PB asked  
21 Mr. Tryder to come back in and state that comment for the record. Mr. Tryder shut the  
22 door behind him.

23

24

25 RR: read Dr. Haes report where he took readings clearly is no way near the property line  
26 of 300 Chestnut St., he's taken them from the far side of Kara Drive. There must be some  
27 logic or requirement that he uses for where he's got to be to take the measurement for the  
28 record if total immersion is less then 2% the total from AT&T is less then 1/10<sup>th</sup> of 1%  
29 but the measurements are from the far side of Kara Drive down by Peachtree, a  
30 considerable distance from the tower itself. If obligation is to measure at the property line  
31 or within so many feet of the tower he doesn't know what the requirements are.

32

33 Rich Detts, Engineer/technician from AT&T was present said that Dr. Haes stated that  
34 measurement was taken from various locations. He can't just go surveying and staking  
35 people's property to take measurements he's doing it from public ways. Maybe he's  
36 referring to noise study because that directed toward the property lines.

37

38 Chair: once you get 30, 40, 50 feet away it's almost infinitesimal the impact so it almost  
39 doesn't matter if you do it at the property line or 50 feet past the property line it ends up  
40 being such a small number if we could get a paragraph explained to us and if any of the  
41 measurements were close and they fall under then it becomes a moot point.

42

43 Judy: page 10 there are some national standards that Dr. Haes sites.

44

45 RR: doesn't know what requirements are for measuring, doesn't know what limits are?

46

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1 Atty. Roberts: Engineer was trying to measure where the public might be.

2

3 RR: we're not dealing with necessarily rational thought, we're dealing with absolutes and  
4 if it absolutely says you have to take the measurement at a property line...

5

6 Atty. Roberts: the Bylaw does not say that so because there are no requirements that are  
7 stated in the Bylaw in terms of where this must happen, you may be distinguishing that in  
8 the noise regard so you want to take it from where people might be.

9

10 RR: doesn't want to put Atty. Roberts in a position to rebut perhaps frivolous arguments.  
11 If you are on firm ground saying this is what the requirements are we either meet that  
12 requirement or we're more stringent in the requirement then the conversation can end. If  
13 there are no limits stated and you on your own took something that was reasonable but  
14 someone who doesn't want to accept a reasonable argument and says prove to me what is  
15 correct.

16

17 MW: ask Dr. Haes to submit an addendum indicating that he does say they are obtained  
18 on specific days on 9/16/08 using scientific procedures, temp 68 over-cast sky, at least at  
19 location describing what the protocol is so it's not just general.....

20

21 Atty. Roberts: what the general practice is. Board: yes.

22

23 Chair: doesn't close the public hearing until they are ready to make their decision, if you  
24 can get this information it makes it a lot easier for the Board.

25

26 Atty. Roberts: in the event a hearing is not held before 9/25 that we somehow make a  
27 note so that a period of time before which you decide to vote that would be extended.

28

29 RR: is it a requirement that they apply for a renewal before the 3 years is up, or granted  
30 before the 3 years is up?

31

32 Atty. Roberts: made the application before the SP expired. Atty. Roberts: PB will  
33 continue hearing until Oct. 6 during the period of time which the meeting is open she'll  
34 have her RF emissions Engineer write an addendum the locations and what standard  
35 practice is and why he took measurements where he did as a supplement.

36

37 MW: there may be further questions if so we'll forward them along as well.

38

39 Atty. Roberts: is the PB all straight on the dates and the business about May 31?

40

41 RR: thinks PB is all clear, thinks Mr. Tryder wasn't quite sure.

42

43 MW: he wasn't clear that the SP carries on thru an appeal process.

44

45 Atty. Roberts: there is case law that supports her position and SP itself has terms it's  
46 subject to the variance that gets granted.

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1

2 TS: if the reports that were due in 90 days and we can't locate them do we have the  
3 power to waive something like that?

4

5 Chair; no, the point ends up being we could end up chasing our tails that every  
6 Subdivision, Watershed SP, every SP we do has conditions. If you go thru with a fine  
7 tooth comb you'll find every single decision has something in there that's not perfectly in  
8 compliance. If there is a technical violation it doesn't have a material impact on the  
9 decision.

10

11 TS: suggests that if there are such gaps that we identify them and make sure that they  
12 don't trigger any sort of instant ?????? of the permit, be prepared to defend why we're  
13 not going to consider this thing to be complete and invalid?

14

15 Chair: we can't base everything that we do on one person who is being unreasonable.

16

17 Atty. Roberts: would like to supplement her application letter and ask for a waiver to the  
18 extent that their report that was due 90 days and was not in the file?

19

20 RR: suggests if they are not in the file because we've lost them, or if they were never  
21 submitted that's another issue. If you have them re-submit them and say in case you lost  
22 your copy here it is.

23

24 Atty. Roberts: with respect to RF emissions report but not with the noise report, she  
25 doesn't know about the noise report. The RF emissions report that was due 90 days  
26 afterwards the requirement to prove such a report was challenged by AT&T in litigation  
27 and referred to in the decision that she attached to the application. After the decision was  
28 rendered down there is correspondence in the file and she resubmitted that she wanted to  
29 maintain that challenge because it is not what Federal law would require. Her guess is  
30 that the 90 day report doesn't exist. Regard to the noise report she doesn't know what  
31 was done.

32

33 Judy: tonight was the first that Mr. Tryder was looking for the 90 days report, never  
34 mentioned anytime when he was in the office.

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36 MW: could ask Mr. Tryder to submit this request in writing?

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38 Judy: yes, and she has 20 days in which to provide you with information.

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40

## **DISCUSSION:**

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### **CDD1 & CDD2 zoning districts.**

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43 **Judy submitted a map outlined in yellow, and green showing the CDD1 and CDD2**  
44 **districts: properties outlined in green were identified** by Scott Hajjar as his and Oscar  
45 Pancorbo properties to potentially be develop together (they prefer these lots to be zoned  
46 as G-B). He talked w/developers, office space is not needed, restaurants and drive-thru

# DRAFT

1 are preferred by potential buyers. he's willing to consolidate his property w/Oscar  
2 Pancorbo There are existing Dunkin donuts, a car wash already existing in this area.  
3 Chair: Hajjar's lot is bigger than the other lots out there but still not big enough to have a  
4 use that works in this district, the two lots combined are big enough. No other input from  
5 other property owners tonight, just Hajjar and Pancorba input. There are properties that  
6 contain wetland in the district. Cut away from this and return later this evening.

7  
8 **Continue typing here right after 210 Holt road finished.**

9  
10  
11 **MINUTES OF THE MEETING:**

12 **September 1, 2009 "Minutes"**

13  
14  
15 Motion by ? to adjourn tonight's meeting, 2<sup>nd</sup> by ? vote was unanimous.  
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37 Please note: The Planning Board reserves the right to take items out of order and to  
38 discuss/or vote on items that are not listed on the agenda.