

NORTH BERWICK, MAINE 03906

MINUTES OF PLANNING BOARD MARCH 12, 2009

Present: Chairman Todd R. Hoffman, Shaun DeWolf, Mark Cahoon and Lawrence Huntley, CEO.

Absent: Barry Chase and Julie Fernee

Also Present: Aaron Lynch, Lisa Lynch, Alan Shepard (Attorney), Jeanne Emerson, Jeanne Kennedy, Emily Thornton, Mark Demers, George Hanson, Karherine f. Adams Gary, Charles A. Gary Alex Gary, Joan Stanton, Matt Townsend, Quinn Traboid, Kim Downing, Paisley Saltmarsh, Dustin Anderson, Rachel Smith, Joe Marion, R. Gordon Kennedy, Ronald Smith, Paul Andrade, Joanne Morrow, Sarah Hill, Alex Morrow, James Fields, Perry Eastman, Mark Smith, Stephen Serwacki, Robert Pelletier Timothy Towne, Rebecca Towne, Bob Gashlin (US Cellular), Richard Trefton (Attorney), Nora Krevans, Arthur L. Hall Jr., Juli Rothstein, Jamie Oman-Saltmarsh and Rebekah Yonan.

1. Call to Order:

Chairman Todd R. Hoffman opened the Planning Board Meeting at 6:34 p.m.

2. Current Business:

A. Lisa Lynch---Conditional Use Permit, Applicant proposes to establish a Beauty Salon at 10 Shana Lane (Map 1, Lot 21-1)

Chairman Todd R. Hoffman explained to Lisa Lynch that there are three Board members this evening. However you have an abutter Mark Cahoon you may allow him, but if he is not allow to participate as a Planning Board member by you, then you will need to return when there is a full Board.

Lisa Lynch replied that she would allow Mark Cahoon as a Board member this evening.

Lisa Lynch explained that I live at 10 Shana Lane. I would like to put in a Hair Salon in my home. I have three disabled children; my son has autism and twins that have cerebral palsy this requires me to be home a lot. It would be a big help if I could put the salon in my house. The plot plan that I provided in the application of the parking area; there are four spaces to park, two of the spaces would be for Aaron and me. I do not plan to have anyone work for me but at the worst case, there could be one other girl working in there with me.

Shaun DeWolf asked if there was adequate area to back up and turn around in the parking area.

Lisa Lynch replied yes there is.

Chairman Todd R. Hoffman asked Lisa Lynch to sketch the turn around on the plot plan of parking area for the Board to refer to.

Mark Cahoon asked how wide your existing driveway and is there enough room for two cars to pass even though it is a loop.

Lisa Lynch replied yes there is.

Chairman Todd R. Hoffman asked the hours of operation.

Lisa Lynch replied the Salon hours would be Mon. through Sat. from: 9:00 a.m. to 8:00 p.m.

Mark Cahoon asked about advertisement sign.

Chairman Todd R. Hoffman discussed with Lisa Lynch that there is an ordinance regarding the size of signs allowed in North Berwick.

Lawrence Huntley, CEO spoke that the sign cannot be any larger than 2 feet by 3 feet and fifteen feet from the road.

Condition:

When Lisa Lynch hires another stylist parking will be address before the Planning Board.

Shaun DeWolf moved to accept the Conditional Use Permit application for Lisa Lynch with the condition that when she hires another stylists the parking address before the Planning Board, Mark Cahoon seconded a motion. Vote, 3-0

B. MSAD 60---Conditional Use Permit, Applicant proposes a Cross Country Running Trail at 388 Somersworth Road (Map 3, Lot 57)

Paul Andrade spoke that he is here to support the students from Noble High School and will answer the Planning Board questions after the student give their presentation. Mr. Andrade introduced Sarah Hill a teacher at Noble High School and a Cross Country Coach.

Sarah Hill spoke that the Cross Country Runners have put together a presentation to get an overview on what the running trail is all about.

Paisley Saltmarsh explained that she is a sophomore at Noble and this is her first year on the Cross Country Team. We are all members of the Cross Country Team and we would like to request a permit to build a bridge over the wetland area of the trail to improve our Cross Country Course. So during our presentation we wanted to describe the plans for building the trail, as well as the benefits that it will provide not only our team, but to the school and the local community, without having any significant environmental impact. This idea was started by two Noble High School students who identified a need for a better Cross Country Course at our school, so they designed and researched building this trail for their Senior Project. They made a presentation to the School Board and Mr. Andrade who unanimously supported this plan. The MSAD 60 district applied for and was awarded a recreational trail grant from the State Department of Conservation to build this trail including a bride to be built over the wetland area.

Rachel Smith spoke that I 'am a sophomore and I have been running Cross Country for three years. I will be addressing our future plans for building this trail. As part of the grant we have plans and places to begin construction of our trail in May. The Contracted help from the Maine Conservation

Corp as well as volunteers from the school and the community. In addition to our plan included in this permit application to build a bridge are also a list of abutters and a copy of the deed.

Kim Downing spoke that I 'am a senior at Noble High School and I have been running for two years. The benefits to our Cross Country Team are that it will increase the safety tremendously because right now we are forced to run the roads all the time and create a big danger factor. When running about 5 miles we are farther away from the school and you need to be picked up by someone and be brought back to the school. The Cross Country it comes from the name off road. It will give us a full 3.1 mile course which is what Cross Country is supposed to run. We will also have pride when other schools come to visit us, we will have this beautiful course.

Dustin Anderson spoke that I 'am a sophomore and this is my first year running. The benefits would include curriculum opportunities. For example writing classes can write journals about the nature. Biology class can research the plants. This trail course would create fitness and team building. The trail could also be used for cross country skiing or snow shoeing This can also provide an opportunity for student to fulfill community service while the trail is being built, which is required to graduate. It will also encourage fitness and wellness among the student body. And finally this project can show how a Senior Project Can be a powerful way for students to complete real world projects.

Quinn Traboil spoke that I 'am a senior and I have been running for 6 years and I will be discussing how the trail will benefit the community. The trail will provide a fitness area for the whole community to use for activities such as walking or jogging. It will encourage the community members to come to our High School and use the facilities that we do have and to encourage younger members of our community to get outside.

Alex Morrow spoke that I 'am a sophomore at Noble High School and I have been running for one year. I will be talking about how this trail will have no environmental impact on the area. Included in our application to the trial program was an EPA application, which was a finding of no significant impact was made for all the questions raised. This was supported with a review from the Maine Natural Areas program that states "The information currently in our Biological Conservation data files there are no rare botanical features documented pacifically within this project."

Matt Townsend spoke that I 'am a junior and I have been running for the Cross Country team for two years. I'm here to say thank you from all of us for listening and being supportive of our Cross Country Team.

Chairman Todd R. Hoffman asked how wide the trail is.

Paul Andrade answered that it is 6 feet.

The areas that the runners use now are the fields and the parking lot area. The proposal is to cut through the woods roughly paralleling the back driveway to the High School over to where the bus garage is. Then from the corner of the practice soft ball field towards the back of our property and hooking up to the Old Goodwin Road. There are some wetlands in there and we laid it out to what the wetland were as much as possible and put in a small foot bridge.

The concept is to cut down some trees and grind them up and use that to cover some of the trail. We have applied for a permit by rule from the DEP. There seems to be nothing of historical significance there such as a cemetery. There seems to be no rare plants.

Shaun DeWolf asked about an area that maybe a wetland.

Paul Andrade answered that he would check on that area.

Shaun DeWolf asked how you are going to deter snowmobiles and four wheelers from going on it.

Paul Andrade answered to gate the area.

Jamie Oman-Saltmarsh spoke that she is a consultant to the Planning Board and work for Southern Maine Regional Planning. I help the Town of North Berwick for two years write their Comprehensive Plan and community trails was definitely one of the top priorities in that plan and will be coming up at your next Town Meeting.

Chairman Todd R. Hoffman asked the Cross Country Team if they flag the area for Team Meets.

Kim Downing answered that we have volunteers stand on the turns on the course using pointers or ribbons and sometimes chalk paint.

Shaun DeWolf asked if permanent signs were used.

Kim Downing answered that we don't usually put permanent signs.

Condition:

- 1. Receive a DEP permit by rule.**
- 2. Gate on Old Goodwin Road entrance.**
- 3. Sign prohibiting motorized vehicles and dogs.**
- 4. Trash disposal system in place.**

Shaun DeWolf moved to approve Conditional Use Application for Maine School Administrative District 60 with the condition that a gate be put on the Old Goodwin Road entrance, with a sign prohibiting motorized vehicles and dogs, a trash disposal system in place and a DEP permit by rule filed with the town, Mark Cahoon seconded a motion. Vote, 3-0

C. Arthur & Gloria Hall Family Trust---Conditional Use Permit, Applicant proposes Telecommunications facility at 9 Schoolhouse Road. (Map 5, Lot 37 A)

Bob Gashlin explained that I am representing Maine RAS #1, Inc., also known as US Cellular and as you know we are here tonight to ask for a Conditional Use Permit. We started this process on January 8th and at that meeting you all had a number of questions that we have come back to answer and another thing about the January 8th meeting presentation was that the Planning Board did accept our application as being complete. Tonight my objectives are that I was to go down and answer those questions that you had and secondly I'm going to go down and go through your Zoning Ordinance and speak specifically about some of the criteria that the planning Board has to make their decision based upon. The best place to start is our site plan. There are a couple of places on the site plan that I may go over a little more quickly than others because of course we went down through the site plan in a lot of detail the first time in front of you all. I think everyone is familiar the general location of our proposed site. With us tonight is Art Hall Jr. representing the property and Richard Trafton who is a lawyer with the law firm of Trafton & Matzen and representing US Cellular.

First page: Our proposed site is on the corner of Lebanon Road and School House Road on the Hall farm. We are looking to locate our facility up in the corner of the parcel. We picked this corner of the parcel for a couple of reasons; number one its proximity to the Lebanon Road our site is approximately 580 feet from Lebanon Road; as it relates to School House Road here it sets back approximately 200 feet from School House Road. What I would like to point out about this location is there is basically a 90 foot wide wooded buffer between our site and School House Road.

Second page: The most important thing I will point out on this page is that we do indicate on the upper left hand corner that we adhere to all Federal and State local guide lines. The other real important thing about this page on the right hand column center column spilling over to the right hand column you have a pre comprehensive seeding and revegetation plan and of course that is requested in the ordinance.

Third page: We have an overall look of the parcel on our proposed site this we call our abutters plan. Here is our site and we will be setback actually 199 feet from School House Road and 580 feet from Lebanon Road, from the southwestern border we are setback about 306 feet and from the western border 250 feet. There is a circle drawn in on this abutters plan and the reason for that is that the ordinance requires that we do have that setback.

Forth page: We have leased a 100 x 100 foot area from the property owners for our facility and inside that 100 x 100 foot area we are proposing a 75 x 75 foot fenced in compound. In side the compound our proposed facility is our tower, our equipment shelter, propane tank and generator. The other significant item in our facility is the utilities, a telephone, a cabinet and an electrical utility. The other component is our access road and you may recall when we first came in we proposed a 12 foot wide surface for our access road but you encouraged us to go with a private road plan and actually it is not a private road plan, it is called a private drive plan. What we have done on this plan is, we have agreed with you to expand our road to 50 foot rive way as required in the ordinance with a private drive.

I have mentioned that we need some utilities to our site and were proposing one overhead power pole to this point and then from this point we are going under ground into the facility it self.

The carriers all vastly prefer overhead because it is easier to maintain and work with.

You have two sites in town that have been approved and the tower on Oakwoods Road had overhead utilities that you approve, so based on that we would like to stay with our original proposal to go overhead instead of underground.

Your ordinance requires a buffer around our facility and the 90 foot area on the plan is existing vegetation. When to come around the other side of the property the vegetation is much denser.

There is an existing buffer around these sides on the proposed facility and we are proposing to add our own buffer here and we are not actually sure what were going to propose for the exact shrub itself. We did note that on the site 6 foot tall shrubs similar to arborvitaes. We will determine what we will use once we hire a landscaper. We have put in our stall bales here for erosion. We have to setback any type of development 75 feet from any stream.

Page 5: Here is a close up of our compound. On January 8th we proposed a 199 foot tall tower. We had our radio frequency engineers look at that and they have indicated that they can live with a 150 foot tower. We have drawn in an extension here and we have indicated that this is only a future extension to be approved by the Planning Board if someone in the future asked for a use on the tower they can come back and ask for addition height. But for tonight's purposes we are only asking for 150 foot tower.

Your ordinance asked that our compound be fenced in. We have an 8 foot tall chain link fence with barb wire across the top, double swinging gates. Once we get inside the compound all of our utilities go underground.

Page 7: There will be an 18 foot wide surface with a 4 foot gravel base for the road and a 50 foot right of way, which will require shoulders and gullies.

Page 9: All of the equipment propane tank, generator and the building are going to be set on concrete pads. We are proposing a prefabricated shelter for our radio equipment. The shelters are 10 feet by 12 foot. The exterior of our shelters comprised of an earth tone pebble grain finish that will blend in with the environment. The shelter will have a service light will have a downward reflector with a 100 watt light bulb and it has a full cut off switch inside.

If there is an emergency situation out there and one of our guys has to come out they will walk through the gate the light will be tripped by a motion detector sensor then open the door cut it off inside and do his work.

The last meeting we came in and requested to place a generator and there were some questions about the generators and we wanted to get some feed back from the Fire Chief. I have a couple discussions with the Fire Chief and would like to add to the record an e-mail from the Fire Chief: In viewing the proposed plan for the cell tower the one concern that I have is protection of the propane tank that is going to be on site. I am requesting that the installation follow NPFA code 30A section 4.3.7.2 which provides you guide lines in reference to the installation of guard post to prevent haploid damages. They will be planted into the ground and around our equipment.

I will go down the specific criteria that are in the ordinance that the Board will have to make a decision based upon.

6.9.6 Factors Applicable to Conditional Uses:

a-1. the Facility is compatible with adjacent land uses and other property in the district;
There are three towers that have been approved in town. The Oakwoods Road and Morrells Mill towers were approved in the same farm and forest district and our application is very similiar or if not the same as those. We do fill this first criteria that are adjacent land uses and other property in the district.

a-2. the need of a particular location for the proposed use;
During the first hearing I came in and spent some time discussing the radio frequency plot that our engineers provided and I believe at that time we all had a discussion and you all agreed that I satisfied that condition.

a-3. the impact of the proposed use on local population and community facilities;
The local population, this is a man facility and we are not going to impact local population. The impact on community facilities; I have submitted an approval from the Fire Chief that indicates that we are not really going to impact the fire facilities in terms of police, we really don't see this facility is going to require anymore police protection than any other business or residency in town.

a-4. the impact of the proposed use on transportation facilities;
It is not going to impact transportation facilities. We will use the road during our initial construction which would take 10 to 12 weeks. After initial construction we anticipate the site will generate one trip per month for routine maintenance.

a-5. the maintenance of safe and healthful conditions;
We have answered that with the Fire Chief's e-mail that once we install the barb wire fence and the bollards, generator and propane tank that will be located inside the fence there will be no safety issues.

a-6. existing topographic and drainage features and vegetation cover on site;
Flat topography, no drainage issues and I have discussed vegetation.

a-7. the prevention and control of water pollution and sedimentation;
It is not going to be an issue we have relatively flat topography, stack hay bales and erosion sediment control plan. We will not impact water pollution and sedimentation.

a-8. the location of the site with respect to flood plains and floodways of rivers or streams

With the location of the site with respect to flood plains and floodways of rivers or streams; we are some what close to a stream but we meet the ordinance we setback any type of developments 75 feet from that stream.

6.9.6

b-1. ingress and egress to property and proposed structures thereon, with particular reference to vehicular and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

We have already discussed this. I have talked about the amount of traffic coming to this site; we have touched based with the Fire Chief about access for fire catastrophe; pedestrian safety; we don't anticipate any pedestrian up there because our sit is 200 feet from the closes road. I believe we satisfy number 1.

b-2. off street parking and loading areas where required with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional Use on adjoining properties generally in the district;

The parking and loading areas refer to page 4 of our site plan; we do have a parking area right in the front of the facility and that parking area is somewhere in the neighborhood of 75 feet long by 35 feet deep. There is also parking within the fenced in area. I really can't comment on the economic other than providing the Hall's with the means of income and we will be providing the town with means of income through taxes. In terms of noise; the only noise that this site may produce since it is electronic in nature is from what it admits from the generator it self and the generator is only proposed to be used during emergency situations and before the generator even turns on, we have a battery rack in our equipment shelter that has an ample energy from a battery that will run for 7 hours before the generator turns on. The glare as with the tower it self is going to be made out of galvanized steel and as we all know galvanized steel it weathers into a dull gray finish. The odor, this site will not produce any odor at all.

b-3. refuse and service areas, with particular reference to items in (1) and (2) above;

We do not have any refuse from this site it is electronic in nature it is unmanned and it does not require water or sewer.

b-4. utilities, with reference to location, availability and compatibility;

The overhead utilities are exactly what you have approved for other telecommunications in town and we are only proposing one pole.

b-5. screening and buffering with reference to type, dimensions, and character;

We have discussed that.

b-6. signs, if any, and proposed exterior lighting with reference to glare , traffic safety, economic effect, and compatibility and harmony with properties in the district; and

We have discussed lighting which will be one light over the shelter door. US Cellular is proposing a sign and the sign is only going to be an identification marker that is important because it will have a 1-800 number incase of emergencies and it will also have a FCC identification number on it. It is a plain white sign that is 12 inches by 16 inches and it will be fixed directly to the gate of the compound.

b-7. required yards and other open space.

There are no open spaces required here and in terms of yards whatever typical setbacks that you all require, there is a 199 foot setback area.

5.1.1 Traffic and Highway Access

We have discussed access; there is one thing that I have not mentioned is for the access on School House Road is a minimum of 500 foot site distance either way.

5.1.2 Noise

We have spent time discussing noise. The one other thing I didn't mention when I was discussing some of the sounds the generator may produce is on the off times when we do cycle off maintenance. The good thing I want to point out is how this site is tucked into this corner with the existing vegetation around and the proposed vegetation is that when we do cycle off our generator for maintenance is that the noise is going to be muffled.

5.1.3 Air Emissions

This facility will not create any dust, dirt, ash, fumes, vapors and gases.

5.1.4 Odor

The facility will create no odor.

5.1.5 Glare

We have discussed that this is a galvanized steel tower and it will weather into a dull gray finish.

5.1.6 Storm Water Run Off

I have pointed out on page 2 of our site plan that we have a very extensive erosion and sedimentation plan that would cover any storm water run off issues.

5.1.7 Erosion Control

Same answer.

5.1.8 Setbacks and Screening

We have discussed this.

5.1.9 Explosive Materials

We have discussed the potential of the generator and the propane tank and as we have discussed we submitted the Fire Chiefs approval as long as we has bollards to surround our tank.

5.1.10 Water Quality

This facility will just not affect the water quality.

5.1.11 Flood Protection

The facility is not located in a flood plain.

5.1.12 Soil Suitability for Construction

The extent of our development here is that it is not a very extensive project for us; mostly base on the topography that found that the soil was suitable to with stand our foundation for our tower. I will submit those for your files.

5.1.13 Off Street Parking and Loading

We have discussed that.

5.1.14 Subsurface Sewage Disposal

The facility is not going to emit any sewage disposal.

5.1.15 Other On-Site Disposal Systems

The facility will not require waste disposal.

5.1.16 Private Wells

The site will not require a well.

5.2.1 Reserved for Future Use

5.2.2 Earth Material Removal

If we do have to take any earth materials away from the site we will find an off site to unload that.

Shaun DeWolf asked that the soil you are going to be dragging off will be redistributed on the site.

Bob Gashlin answered that to some extent, we are not sure at this point, but if anything was to be taken off we will dispose of it properly.

Bob Gashlin discussed that you have a Planning Board is going to make a decision based on a specific criteria in the ordinance and we spent some time tonight going over each one of those different criteria's and I believe in everyone case we have shown that we do meet those criteria's.

Chairman Todd R. Hoffman opened the Public Hearing at 8:15 p.m.

Bob Pelletier spoke that he is wondering about the health issue with some of these towers and that we cannot refuse these cell tower because of health issues. They say there are no air emissions, but you plan to broad cast electromagnetic radiation heavily, which you do not mention at all.

Bob Gashlin replied that I will give you the official answer. That Federal Law states that the municipality cannot deny one of these applications on heath issues and specifically radiofrequency emissions are governed by the FCC that is the official answer. They are very low powered sites and we had discussed this at the January 8th hearing. Cell phone towers operate off 500 watts per channel.

Katherine Gary spoke that it was stated several times that we have approved cell towers twice but how many times have we denied a cell tower.

Chairman Todd R. Hoffman replied that we have approved to this date two cell towers and the cell tower on Oakwoods and it was approved before I was on the Board. We have also approved transmitters on the water tower. There are four sites in town that have transmitters.

We have never denied one, however what we took great issue with cell towers and its placement and where it was going to go against a couple of ordinances that I have already read into the record. There are other ways of having these transmitters and they don't have to be on cell towers. We can say yes to the essential service but the tower is not the essential service.

The cell tower on Oakwoods Road was reduced and you cannot see it from anywhere except on Lebanon Road ball fields.

The cell tower that we accepted about two weeks ago is off of Route 4. This placement that T-Mobile chose is so that it was not visible.

When we were debating the issue of the cell tower that did not get built, we had suggested the water tower; they said no, we can't do it, 6 months later T-Mobile came in and requested to do it.

Bob Gashlin spoke that our application is a little different because US Cellular has a license issued by the FCC to provide services here that we are not providing.

Emily Thorton asked that you say you have drop calls on Lebanon Road area and that is why you want to put this cell tower up. Do you know what your drop rate is?

Bob Gashlin answered that I don't know what the drop rate is and that is information that US Cellular would not give out that is proprietary information.

Emily Thorton spoke that the government does not require 100% coverage coast to coast. And a 25% drop rate is actually normal and they accept that. That you do not have to put tower up if there is 25% or less and it makes a difference.

And isn't it true that the low density and radio waves that you are going to be putting out are actually more harmful than high density ones. All the research that I have done says that it is.

Bob Gashlin replied like I said our official answer is that is something that is governed by the FCC.

Emily Thorton spoke that there is two frog ponds that are near by with thousands of frog in it. And that these cell towers devastate the frog population, it mutates them; they come out with 6 legs.

Bob Gashlin replied I have no knowledge of that.

Emily Thorton replied I do. Do you know that the metal roof on my barn actually intensifies radio waves making it very harmful for animals and people in the barn?

Bob Gashlin replied that I never read any documentation; and the official answer is that federal law prohibits municipalities from denying applications based on health issues.

Emily Thorton spoke that they should put it in a place 1500 feet from any human person or animal which is standard.

Bob Gashlin replied that we have adhered to all the criteria in the ordinance in terms of tower placement.

Jamie Emerson spoke that earlier in your presentation you described the field as densely wooded and then a few moments ago you were talking about the top soil and your described it as open field, which I certainly see that as an absolute gorgeous open field and I was just curious where you stand; is it densely wooded or is it open, in your option.

Bob Gashlin replied that the facts are that the corner of the property that I pointed out is indeed densely wooded.

Jamie Emerson spoke that I live in that neighborhood and I do not under any circumstances consider that to be densely wooded area. I think it is a matter of option whether the criteria that you have set out do in fact meet the standards in our ordinance and I submit that they don't. There is no way that will be integrated harmoniously in our neighborhood. The people in this neighborhood have to walk out their front door and see a tower like that in front of them. You say it is densely wooded so they won't see it, there is no way. Everything the town puts out and the way we describe

our town in the Comprehensive Plan update that was just mailed to all of us, talks about the character of our town. How we draw people into our town because of the rural quality here and it makes us look hypocritical if we allow something like this in that spot. I understand that people feel that cell phone towers are essential services and I have talked to a lot of people and people in this room and it may not be US Cellular that they have as their carrier but there are people that do get cell phone coverage (4 bars) it just might not be US Cellular. In terms of a dead zone I'm not sure that it really is.

Emily Thorton spoke that Nextel and AT&T both have plenty of coverage.

Alan Shepard spoke that I represent the Fournier's that live right across the street from this proposed cell tower. I have submitted this letter and it looks like you have a copy of it. I don't necessarily need to go over it, although people in the audience may not have heard some of the concerns that my clients have and I don't know if it is appropriate to express those general concerns about the standards of the ordinance. The specific concerns my clients have about this location.

Chairman Todd R. Hoffman spoke that Bob Gashlin has done a good job about presentations and appreciate him going through our ordinance and addressing each of those issues. One of the things I want to do is for everyone here is to be aware of the specificity of our guidelines and how we have to address them and we are still in a fact finding process.
The Planning Board will not be making a decision this evening.

Chairman Todd R. Hoffman asked that Alan Shepard continue to give his presentation on the record and be presented before US Cellular.

Alan Shepard spoke that I will be brief because I don't want to get into the technical part of some of my legal arguments that I think are very important. I understand the Town Attorney looked at it and then maybe some discussion between the Board and the Town Attorney.

I understand there have been other cell phone towers that have been approved in this town. I believe one of the comments were at least one of them was that wasn't the place, there was one that just didn't seem to fit and if that wasn't the place, I can't imagine this could ever be the place.

I was in the Fournier's driveway. I was meeting with some of the neighbors and to think about those people having to walk out and see that tower every morning. I can't think of a worst location than what they have picked here. I understand the process and I represent towns and other circumstances. I represent people that hold cell phone tower leases. The interesting thing when we were sitting in the Fournier's kitchen and Jean eluted to it and unfortunately not one of us were US Cellular wireless carriers and there were four different carriers and everybody had cell phone service. The larger prospective of things, when you talk about it being essential services and as I pointed out in my letter I don't believe that this is an essential service and I don't believe its even a permitted use in this zone. Apart from that if you just want to use generic term essential services. I think you have to look in perspective that this is a private enterprise looking to grab a share of the market. And even if they have an FCC license that allows them and licenses them to provide service. There is some requirement that they go out to seek service. That does not give them any great entitlement to come here before you and say this is the spot, this is where we want it and this is where it needs to be, that is not how the law works. It is absolutely correct, that the law is very clear that you cannot deny it on health related issues, but with the Federal Law has not reserved is your ability to sit here and apply your common sense as members of this community and say does it make any sense for this cell tower to be in that piece of property. In your ordinance it talks about things like aesthetics setbacks, property values, all those things. And when looking at those factors it isn't even close and

even if you could allow it, which I don't think your ordinance allows you to do because I don't think it is a permitted use and even if you could I can't imagine a worst place than this. It is good for reception for them and I can see why they would want it there but I can't imagine a worst location than this. If you could sit in anyone of these peoples house I think you would as strongly as are that this is something that should not happen in this town or any town.

I don't think that they have met the criteria and there are legal issues and serious legal issues. And you have to understand how the Federal Law works and what the Federal Law says is that you can apply your zoning law standards. I think you folks are dedicated to do that. And it sounds like you really have been careful on how you have granted permits in the past.

Alan Shepard asked Bob Gashlin to refer to C-2 of the proposed site plan.

Alan Shepard spoke that this arborvitaes are not going to screen anything. The trees that are in the front here especially when you go by in the winter there is no screen there. You cannot screen a cell tower; we know that, you can't screen it by planting shrub. What you have to do is pick the right site, which other providers have done in this town and other providers have done in York County, to make it a blend of a place that we want and doesn't offend people.

These guys are doing a good job trying to help the company.

As the balloon test showed; you can see it from everywhere. It is not just 800 feet of frontage on one piece of property, this is everybody. I had never been on Lebanon Road but when I was driving to go to the property; it is just beautiful out there, it is an absolute beautiful rural area.

This is what the law still allows you to do, to sit here in a town and make these decisions on stands that you have. Two of my clients cannot be here tonight but I believe my letter articulates their concerns.

Emily Thorton spoke that I just recently rented my apartment and the main house rented out and both tenants have expressed that if that cell tower goes in; that is a huge loss of income for me. This may benefit Mr. Hall; it will be a huge detriment to my income.

Richard Trefton spoke that Mr. Shepard suggestion that US Cellular is trying to distort the purposes of the ordinance is not quite clear. As Bob Gashlin said our application; site plan itself that we believe that we meet all the codes for the Town of North Berwick, we meet the State laws and Federal laws as well. And we are familiar with this, we do this on a regular basis, we have more than 400 sites in the State of Maine, we have been classified by many municipalities as essential services. Your definition of essential services is very similar to many others towns. It says the construction, alteration or maintenance of communication facilities including telephone, cable, lines, poles and related equipment and such systems may include towers, poles, and wire and that is what we are proposing is an essential service. Mr. Shepard's suggestion that we are not an essential service, I think is incorrect. I will be glad to submit written comments point by point. He is correct that the Telecommunications Act essentially preempts the consideration health effects. We are aware of a model ordinance which I assume the Planning Board may have reviewed created by the State planning office in Augusta that describe what a model telecommunication ordinance might be. And in that model ordinance it clearly states the health effects and consideration of health effects are preempted by the FCC. We are not suggesting that the Planning Board doesn't have purview over this application. We are not suggesting that you cannot apply your ordinance but we find your criteria pretty clear, pretty definite and we feel we meet all the criteria of your ordinance. The fact is any tower in the Town of North Berwick or any municipality in Maine is not going to be invisible. You can talk about location being very important to the Planning Board to consider. If you are a biker or skier or hiker or homeowner you see many towers regardless of what municipality you're

in. The 8 foot arborvitae type tree, it wasn't actually an arborvitae because they are not deer proof would provide a limited screen for the equipment shelter and the generator and propane tanks. It is not going to provide a screen for a 150 foot tower. But in fact your ordinances allow a 1500 foot tower; you have not height limitation in the Town of North Berwick for any tower. You have not adopted telecommunications ordinance that either sets limits or requires collocation. What we are presenting here a reduced height that reduced height comes with some limitations, if someone else needs a new location for a cell service in the Town of North Berwick. They are going to have to either build a new tower or collocate on other towers and by reducing the tower by 50 feet you are reducing opportunities for collocation in the Town of North Berwick. When I say US Cellular has an obligation to serve the North Berwick area that is what our FCC license says. We are a network that covers most of Maine and New Hampshire and into Vermont and if have to connect with other towers and Bob explained at the January 8th where the other towers are located in the area with which this proposed tower will communicate. It is nice to think you could change the location of this tower and move it some place else where it would be less visible because you have 100 foot pine trees instead of 75 foot pine trees. The ability to move that tower is limited because our radio frequency engineers are saying that this location is optimal for communication with the other towers and to fill in the areas that don't have existing service. To provide services we need to be in this location in order to commute with the other towers.

We had gone back to the drawing board reduced the height to respond to the Planning Board concerns at the last meeting. We have submitted the RF plots so I think we have supported the need for a tower in this location. This is a service your Comprehensive Plan and ultimately your Zoning Ordinance may not originally envisioned but it is a service just like the land lines have been historically roads have been or the electric lines have been. Our application does in fact meet the statement of purposes. We do believe this application meets the standards in your ordinance.

Juli Rothstein asked are you going to be selling space on your tower for any other transmitters or is it going to be strictly devoted to US Cellular.

Bob Gashlin replied that we don't plan to in the future, but we leave that option open.

Juli Rothstein asked that we have three cell towers already. My husband and I chose North Berwick because of its rural qualities. We have approximately 4,000 people in town. How many towers do we really need for 4,000 people? Are we going to keep putting towers up because the FCC is handing out licenses, are we going to end up with 15 towers in town? You talk about your radio frequency people saying that this is the site that you need to be. Have you tested other sites in North Berwick?

Bob Gashlin replied the radio frequency plot that we submitted with our application is a computer generated radio frequency plot. We have run the test to tell us where our tower needs to be. This isn't just based on one high clear spot but it is also based on where the surrounding towers are. What type of radio wave this is producing. There were a number of different things that we looked at in finding this location.

Juli Rothstein asked that you have this computer generated image that says this is the spot where this tower should be; how about if there were a house there or if the people that owned that property weren't even willing to talk to you. There wouldn't be anywhere else in town that you could put this thing.

Bob Gashlin replied that is not the situation here.

Emily Thorton spoke let me answer that question for you since you missed the first meeting. They did first look at a place back in there in the woods further and that some other woman owned the land and was very willing to have the cell tower put on her property, but that requires a longer road and it cost more, so this is just a cheaper place to put it.

Juli Rothstein spoke so this isn't the only location. There are other locations that would work.

Bob Gashlin replied that we did look at another property before we landed here on the Hall's property and that specific property that we looked at had title issues. And the space we were looking at was pretty limited because that area had some significant drop offs. We just couldn't get by the title issues.

Mark Smith asked if you have looked into co renting space on one of these two towers that are already available.

Bob Gashlin replied that we are on the closes tower already.

Alan Shepard asked that the tower is expandable, you can add an extra 50 feet and I know someone has to come back before the board to do that and does that make a difference on how the tower is going to be constructed; in other words is the base going thicker to allow the additional 50 feet. If you were going to build just a 150 foot tower would that be identical to the one that you would build if it was approved that would be expandable to two hundred feet.

Bob Gashlin replied it is possible.

Chairman Todd R. Hoffman closed the Public Hearing at 8:48 p.m.

Chairman Todd R. Hoffman spoke that the Town's Attorney will be having a meeting with the Planning Board.

The Town will hire an RF Engineer.

Lawrence Huntley, CEO asked Chairman Todd R. Hoffman to note that the applicant is required to fund the RF study.

Richard Trefton asked that I assume the applicant is present when you meet with your attorney.

Chairman Todd R. Hoffman replied that it will be an open meeting and the meeting will be held next Wednesday, March 18th at 5:00 p.m.

Alan Shepard asked that when you talk with the Town Attorney to ask him if he intends to do this in open session or whether he is going to do it in executive session because if he is advising to do it in executive session I want to be able to advise clients.

Shaun DeWolf asked:

- 1. Note: threshold of Arial beacon.**
- 2. Note: the NFPD code and show the bollards on your plan for the next meeting.**
- 3. Note: is if the soil is removed that it will be disposed of by local State and Federal codes.**

Mark Cahoon asked:

1. Note: what the drop rate percent is for this area.

Shaun DeWolf moved to table this meeting, Mark Cahoon seconded a motion. Vote, 3-0

3. Preview next agenda:

4. Other Business:

5. Preview Previous Minutes:

Mark Cahoon moved to accept the minutes of February 26, 2009, Shaun DeWolf seconded a motion. Vote, 3-0

6. Adjournment:

Mark Cahoon moved to adjourn at 9:30 pm, Shaun DeWolf seconded a motion. Vote, 3-0

Lawrence Huntley, CEO
Planning Coordinator

Respectively Submitted:
Anita Lambert, Stenographer

Chairman: R. Todd Hoffman

Julie Fernee

Shaun DeWolf

Barry Chase

Mark Cahoon

Copies:
Chairman R. Todd Hoffman
Julie Fernee
Shaun DeWolf
Barry Chase
Mark Cahoon
CEO
Town Manager
Selectmen
Christine Dudley
ZBA
File