

HAMILTON PLANNING BOARD  
MINUTES OF MEETING  
August 1, 2017

Members Present: Richard Boroff, Peter Clark, Ed Howard, Rick Mitchell, Bill Olson, Brian Stein (Chair), and Claudia Woods

Others Present: Patrick Reffett

The meeting was called to order by Claudia Woods at 7:00 pm. in the Memorial Room. Ms. Woods said she was never told that she was invited to the Selectmen's meeting. Ms. Woods met with Bill Wilson personally. Ms. Woods offered her concern regarding the temper of the Board and noted that they did not need to like each other but they did need to be collegial and polite. Ms. Woods had heard disparaging things on camera about her at the previous meeting when she was absent.

**Board vote regarding Board offices**

Brian Stein said he wanted to be Chairman.

Richard Boroff nominated Brian Stein as Chairman.

Rick Mitchell seconded.

Peter Clark said it was unfair that Claudia Woods was only Chair for a short time as the Chairman usually lasted for at least a year. Mr. Clark nominated Claudia Woods as Chairman and added that Brian Woods could be Chairman next summer.

Ed Howard seconded adding that he had no opposition to Brian Stein but was concerned about Mr. Stein being Chairman of two powerful Committees. Robert Boroff responded that another person was Chair of two Boards. In response to Mr. Clark's suggestion that the Board wait a year for a new Chairman, Mr. Boroff said there was no need to wait for a year. Bill Olson said the position should be voted upon in the summer despite the interim position having been filled due to a resignation. Mr. Olson thought Ms. Woods did a great job, but the Board needed to vote. Vote for Brian Stein: Richard Boroff, Rick Mitchell, Brian Stein, and Bill Olson. Majority in favor. Motion carries.

Vote for Claudia Woods: Claudia Woods, Peter Clark, and Ed Howard. Minority in favor. Motion fails.

Rick Mitchell nominated Bill Olson as clerk.

Richard Boroff seconded.

Vote: Unanimous in favor.

**Board vote regarding two Associate Member vacancies.**

There were five applicants.

Peter Clark nominated Bill Dery as the Board could use his engineering skill.

Ed Howard seconded.

Vote: Minority (3) in favor. Motion fails.

Janell Curry was nominated by Rick Mitchell as being highly qualified.

Richard Boroff seconded.

Vote: Majority in favor. Motion passes.

Chris Shephard was nominated by Bill Olson due to his financial background.

Seconded by Rick Mitchell.

Vote: Majority in favor. Motion passes.

Rosemary Kennedy was nominated by Ed Howard as she had shown a great deal of interest in the Town, perseverance, and legal knowledge.

Seconded Claudia Woods.

Vote: Minority (3) in favor. Motion fails.

Norm Cramer was pursued by Richard Boroff as an applicant, but Mr. Boroff did not want to nominate him as there were already two candidates with a majority vote.

Claudia Woods announced that the Planning Board would recommend Janell Curry and Chris Shephard to the Selectmen. The Zoning By-law indicated that the Board shall jointly appoint Associate Members for the Planning Board. Now that the Board had their recommendation, Patrick Reffett would write a letter to the Selectmen. They would then vote upon those two recommendations. Rick Mitchell recalled that last time, the Board of Selectmen were the appointing authority while the Planning Board was the recommending authority.

#### **Amend Existing Site Plan Decision – 775 Bay Road, Athletic Facilities**

Peter Clark recused himself as an abutter. Richard Boroff was on the School Committee for seven years, but said he had no Conflict of Interest. A Conflict of Interest form had been filed.

The Gale Associates representative presented the planning design of the synthetic turf fields at the high school. The history of the project included two master plans. In 2012 a town wide study of 22 fields was conducted to determine the town was short four to six fields based on well maintained grass fields with 250 events a year. Eleven out of the 22 fields were overused and in poor condition. The 2015 Master Plan focused on the high school track and field, softball and multi-purpose fields. It was determined that the high school had 1,500 uses per year. The high school was short two multi-purpose fields and two out of the six were in fairly poor condition.

The applicant would go to the Conservation Commission next as wetlands existed. The soils were well draining with the baseball field draining via sheet flow to the north and south to the wetlands. The existing track featured pvc piping, which drained with outfalls to the wetland area.

Field dimensions were discussed with MIIA criteria as well as National High School standards. The running track had a small radius which did not allow for the construction of a full sized soccer field or women's lacrosse field within it. The existing field was 180' but needed to be 195'. The proposal included two synthetic turf fields with a new wider radius track to allow for a larger field interior. The applicant was also proposing a multi-purpose synthetic field at the baseball field. The 210' by 330' track would be eight lanes wide. Drainage would be improved as the turf field base was stone allowing for vertical drainage versus horizontal drainage with grass. There would be improved site access via ADA walkways and athletic lighting as uses required extended time of use. The applicant was also proposing concrete pads for portable visitors' bleachers. There would be a dugout, pitching and batting tunnels, and fencing. While the first phase would be the fields, track, and lighting, the home bleachers, press box, storage, concession stand building pavilion would be later.

There were 600 uses per year per field and the Master Plan dictated to meet all the uses to meet the demand. Turf fields allowed for non-stop use until the lights were turned off. There was less maintenance with no mowing, no fertilizing, and the fields would be available in bad weather as the fields were plowable. The fields were environmentally sensitive as there were no herbicides used, the drainage system promoted groundwater recharge, no water use, and marking would be permanent. The fields could be rented to semi pro teams. The field would last 12 to 14 years.

Athletic lighting would be used to meet the 1,500 uses by extending the time. Light poles would be 70' to 80' tall. Light would be pointed down to the field to keep the lights from shining off the property. The light would be reduced to one foot-candle as soon as it hit the property line. The applicant hoped for permitting this fall to allow for construction to occur as soon as fundraising was provided.

Ed Howard asked the applicant to address noise pollution as there would be more noise if there were more games. Mr. Howard heard activities there in the day and didn't want to hear them at night. There would be 700 seats in the bleachers. Currently there were 300 – 350 according to Sean Timmons. Portable bleachers would be on the pad on the visitor side as the current bleachers did not meet ADA standards. It was agreed that the area had poor drainage but Gale Associates reported that the applicant needed to meet Stormwater Regulations and the Mass handbook. The synthetic stone created a 30% void that held water and migrated it into the groundwater so it would improve the drainage system.

There would be five fields for simultaneous play with permanent rest rooms, a concession stand with a pavilion entry and storage. Rest rooms would be tied into the existing septic system.

Gale Associates discussed the negatives of turf fields including the heat issue, which was resolved by water coupling under extreme heat situations. Rubber infill would be warmer than sand and a hose would water the field to cool it. The track would have a drain that went along the inside of the track and would tie into the system outfall to the wetlands. Manchester and

Lynnfield had similar athletic fields. Musco lighting was proposed and had been used at Patton Park. The applicant stated that the design would not be changed, but would be phased. Curfews could be put in place to limit nighttime use.

Phil Tocci said it was a town project not just a school project. Patton Park was an athletic complex and once high school sports were removed and returned to the campus, it would ensure safety for those students driving to and from games. The park would become a park again. Joanne Patton earmarked the proceeds of the sale of the Patton land to be used for fields. The project would allow town groups to use the facilities. Mr. Tocci recalled that the first year Patton had lights, there was a curfew of 9:00 pm. which was later extended until 10:00 pm. By bringing high school players back to the high school, other fields would become available in town. Sports groups pay to play at other fields, so savings would occur.

Rick Mitchell asked for a schedule with curfews to establish criteria for a decision. The applicant stated weekday practices would be from 3:00 -5:00 pm and weekday games would be from 6:00 -9:00 pm. Saturday morning games with a turn over to the youth groups would occur. A fall and spring schedule would be provided. There would be two Junior Varsity games at night. Discussion ensued regarding parking, security, police, noise, and the public address system. Rick Mitchell asked about Longmeadow. Mike Harvey said the site was constrained and that if Longmeadow were added to the high school campus, there could be a shift in one direction, which would allow for construction not to intrude upon the wetland areas.

Bob Curry (713 Bay Road) said neighbors on Ortins Road would be affected by the lights and if the Longmeadow project of 150 units of affordable housing moved forward, even more abutters would be affected.

Claudia Woods wanted more information regarding scheduling and the high school guidelines from 2014, which should be updated for 2017.

Motion made by Brian Stein to continue.

Richard Boroff seconded.

Vote: Unanimous to continue.

### **Site Plan Review continued 537 Highland St. Pingree Athletic Facilities**

Tom Catalano said at the previous meeting, one of the conditions for the continuance was that the applicant would engage with Mr. Catalano, but the applicant had refused to do so. Jock Burns was concerned that the neighbors were defining how the facility was going to be used and wanted to address that. Mr. Burns said the field had existed but the School was moving it a little bit and that it was in the same place when Tom Catalano bought his land and when Mr. Doherty's house was built.

Town Counsel said the application should have been completed by July 8, 2017 under the Dover Amendment. Patrick Reffett said the actual submission was May 8, 2017 but since then, a

number of submissions had been received. Land Court would ask if the applicant brought additional supplemental information to the hearing process beyond that initial date and if the answer was yes, the timeframe would restart based on additional information submission. The Board asked for additional information and the applicant had provided it. The Board received additional plan information and Natural Heritage information on July 13, 2017. An adjusted plan was received on July 11, 2017 and a supplemental adjusted plan was received on July 17, 2017. Mr. Reffett thought it was within the Board's purview to recognize that a timeframe shift had taken place as plan amendments had been made by the applicant. Claudia Woods noted July 17, 2017 was the last submission so there was another month.

Jock Burns said the message received focused on lights, speakers and screaming fans all pointed at the abutters' houses. Big league fields with disruptions into the night, horse trail disruptions in the woods, and major parking problems created by the activity, were also a heard concern. Athletics were co-curricular as students were required to participate in athletics. Field hockey had to be played on artificial turf. There would be no summer or winter use, only fall and spring. Pingree's day ended at 5:30 pm. so the use would be in October into November. Outside groups had come on. 7<sup>th</sup> and 8<sup>th</sup> grade teams were supported and serious athletes wanted to train and practice. There would be practice times and not games. Out of 11 schools in Pingree's football league, 10 had turf fields. The Admission's Office said it was a competitive disadvantage not to have turf fields. The Town of Hamilton would be supported when they could be but everyone wanted the same hours, according to Mr. Burns.

The timeline with the neighbor meetings was discussed as well as meetings with Susan Lawrence of ECTA to discuss easements. Jacques Burns said there were changes Pingree was willing to make in response to the Board's and neighborhood feedback. The light would be LED with an additional expense of \$100,000. There was a negative impact on the softball field. Additional screening was included at the Catalano property line and street side for the Doherty property. The use would be Sunday to Thursday from dark until 8:30 pm and Friday and Saturday until 9:30 pm. There would be no more than three games that used the lights.

Parking and traffic were discussed. Jock Burns did not feel a traffic study was needed as there was no increase in fields, only an extension of the time they could be used. A weekly Pingree meeting talked about traffic, planning, conflicting events, and the pool of people that parked cars if needed. Pingree had cancelled events that could not be handled and had hired police officers when necessary.

Jock Burns described that independent football was different from public school, noting that games were against three boarding schools in Maine with only a couple of parents attending. The other two teams were from Connecticut with few people in attendance and Middlesex, a boarding school in Concord. Claudia Woods asked why 450 seats plus concessions and trucks were being planned for the scenic area. Mr. Burns responded that the stand would be at 15% capacity. There were 350 permanent and 100 temporary seats on the application.

Jock Burns referred to the Dover Amendment and wondered if it should be used for the school's best interest as it was consistent with the school's mission, which was why the Dover Amendment existed. Laura Ogden (Pingree School Counsel) talked about the Dover Amendment, which prevented overregulation from developing or using land. The amendment would provide for an expedited process or limited review for this type of project. The Zoning By-law specifically noted in Section 10.7 that there was a different review process while most fell under Section 10.6. Ms. Ogden asked if the use qualified under the Dover Amendment and if it did, the Site Plan Review should be limited to reasonable regulations under the six or seven areas listed.

The By-law specifically addressed the timeline for projects under the Dover Amendment in Section 10.7.6, which allowed for a quicker process than seen with other projects or within 60 days of receipt of the application. Laura Ogden disagreed that each submission restarted the clock and affirmed that if there were no decision within 60 days, the project would be constructively approved. According to Ms. Ogden, the clock ran out on July 7, 2017 with the application date of May 8, 2017. The School wanted to work with the Town but did not want to waive their rights. Ms. Ogden asked the Town to acknowledge that the 60 day applied from May 8, 2017 or to the extent that real substantive approval be given, that the approval be retroactive to the July 8, 2017 date. Patrick Reffett disagreed.

Tom Catalano said he respected the school's right to have a field, lights, and Dover Amendment but should not be given carte blanche to do what they wanted. Mr. Catalano wanted the impact to be spread between the abutters to the north as well as Mr. Burns' home, the headmaster's home as well as the existing school infrastructure to the south. In response to Mr. Catalano's alternate plan, Mr. Burns had sent him an e-mail stating that the school had carefully evaluated the proposal and considered it unacceptable so they did not believe a further meeting on the same suggestion would be fruitful. Mr. Catalano said the school did not make a reasonable effort to study the proposal.

Tom Catalano noted that half the project was in a mature woodland, which would be cleared and was not a minor renovation of an existing field. Jock Burns said there would be no use in the summer but there was currently soccer field rental and screaming soccer players in the summer. Rick Mitchell said the Board could not compel the School to do something that would cost more. Mr. Catalano suggested putting the turf field in the middle of the campus, lessening the burden to the abutters. Mr. Catalano said ledge removal costs could be eased by using the processed stone on site. Mr. Catalano had hoped to engage with the school regarding alternatives.

Tom Catalano said it was a political decision as to how much the school would get to do what they wanted and how much the abutters would have to bear the brunt of it. The Town was letting the designer make a political decision. Laura Ogden said the woods had been used by passive recreation users of the easement for the trail. The improvement would cause no significant

impact in the winter and summer months. Potentially sunset was 4:46 and under the current proposal the increase would be by more than four hours, which was more than a minor increase in use, according to Mr. Catalano. Mr. Catalano questioned the parking for the 450 seat bleacher with parking being further from any existing parking.

Town Counsel described the Dover Amendment as being more stringent than Sections 10.7 and 10.6 of the Zoning By-law. Donna Brewer said the Board could regulate the bulk and height of structures, lot areas, open space, parking, coverage, and structures. Ms. Brewer, who said Pingree School did not have carte blanche and potentially could be required to obtain a Special Permit from the Selectmen for a Commercial Recreational Use Facility. Pingree School had reportedly claimed rental was an incidental income for tax purposes but if they rented it out when they were not using it for their core educational purpose, the field rental became a commercial operation. The stipulation had nothing to do with IRS categorization as a nonprofit. The designer, Mr. Romano said the Board should be compelled to do the right thing rather than the easiest thing. It was noted that the school could come up with a solution that had far less impact on neighbors and keep it out of the Groundwater Protection District. The change would allow for a project that would not require a Notice of Intent for wetlands.

Debra Ellison addressed whether Pingree School was entitled to the Dover Amendment and said the burden of proof was on Pingree. The controlling case (*Regis College vs. Town of Weston*), was a supreme judicial case. Pingree must show there would be a significant educational purpose for the field and that purpose was a primary and a dominant purpose. The educational purpose had to be narrowly construed under the court's ruling because they wanted the Dover Amendment to not be used or extended to things that should not be protected. Whether the use had a primary or dominant purpose was something the Board needed to answer. If not Section 10.6 would apply rather than Section 10.7 of the Zoning By-law. The Board heard the proposed schedule for third party and town use, a schedule that provided 12 time slots for fall and spring, with Pingree only using three, five being used by outside parties, and the remaining four slots had no use listed. The Board was told earlier that Pingree anticipated third party uses but this evening the Board heard that the majority of use would be in the evening for third party only. The rationale for lights would be for third party uses. This use was predominantly for third parties. The reference to the recruiting of students would be a commercial use not an educational one. According to Ms. Ellison, Pingree had not proven that the intended use had a significant educational purpose nor shown primary or dominant purpose related to education. If the use were only for Pingree students, the situation would be different.

Rick Mitchell said the Dover Amendment was relevant because the Board could look at bulk and height of the structure, set back, open space, parking, and building coverage. Mr. Mitchell said use was not within the Board's purview. The Conservation Commission would determine whether the project impinged on wetlands. Mr. Mitchell didn't think the Board should compel the applicant to negotiate to obtain a result that was satisfactory to one abutter as it would set precedent. Mr. Mitchell felt that two or three abutters were trying to redesign the applicant's

project. The applicant had made changes. Site Plan Review could not impose conditions that cause a financial hardship and the Board needed to recognize the limitation of its authority.

Peter Clark questioned the double counting of users between the high school and Pingree School as they would be renting to the same third party users. Jacques Burns responded that the current primary use was for educational purpose and they were not stuck on providing programs for other people, but were trying to be a good neighbor to serve the town. Mr. Burns said they rented space to Hamilton and Wenham users, at times for free or little money. Claudia Woods suggested placing conditions upon the approval allowing night time use to Pingree users only. It was added that Pingree was proposing the same field as the high school at a fraction of the cost.

Amy Roberts (Highland St.) was an abutter who just moved in and noted that the plan was not what she had seen proposed before she moved in. Ms. Roberts said the proposal would affect her resale value and asked the Planning Board what the repercussions would be if Pingree did not follow the approved schedule. Ms. Roberts said she would now have 500 people in her backyard with lights and sound.

David Santomenna (Highland St.) said the project would affect the whole neighborhood and that it was not a minor modification. Mr. Santomenna noted the public address system calling the proposal a stadium.

Ed Howard was interested in protecting the Ipswich Water Basin and the Groundwater Protection Overlay District. Mr. Howard noted that the proposed parking lot was in Zone II with 52 automobiles concentrated in the water protection area. The applicant responded that the current parking was for 20 cars. There would be six ADA spaces in the proposal. Water would be collected on a 120' curb filter swale before entering another basin when it would be filtered again and settled. During a ten year storm, water would enter into chambers under the parking area. Gravel could be used if requested but by using impervious pavement, water would infiltrate quicker. Mr. Howard wanted monthly reports that the filtration system was maintained. The response was that the Conservation Commission would cover that.

Changes to the road were to increase safety. The entrance was on the school safety committee's list to fix. Claudia Woods requested a landscape plan for the entrance and where the portable toilets would be located as well as a schedule of night usage. Rick Mitchell suggested identifying specific criteria to make a decision that fell within the Board's purview.

The applicant noted that the proposal had shifted seating and moved the track to get a 90' setback from closest property line. There would be a .01 of one foot candle a few feet off the property corner not taking into account screening. The applicant would remove speakers, creating a portable address system but said a fixed system would point in one direction while a portable ones could point in any direction. Rick Mitchell questioned the benefit.

David Santomenna responded that the sound system was a new component of the complex and asked the Board to eliminate the public address system which would go a long way to mitigate the impacts. Claudia Woods asked if Essex County Trail Association (ECTA) had agreed to the shift in the trail and the applicant responded that it was moved closer to Black Brook to be better. Ms. Woods asked the applicant to show the trail and show that ECTA was happy.

Motion made by Rick Mitchell to continue.

Richard Boroff seconded.

Vote: Unanimous in favor.

Donna Brewer pointed out the requirements of what the Board could review in 10.7.3.2, which was identical to the Dover Amendment and added that asking a consultant to redesign the proposal to a different place was not within what a consultant could do.

### **Approval Not Required Request for 34 (29) Black Brook Road**

Miranda Gooding represented the applicant requesting an internal lot line change. 34 Blackbrook Road was a 14 acre parcel with frontage on an unimproved portion of the road. The home was built in 1959 from a Definitive Plan approved in 1957. Lots 3-1 and 3-2 were large lot exceptions with 50' of frontage on Blackbrook Road. The lot conformed with 6.1 acres. 7.8 acres would be conveyed to the adjoining property at 29 Black Brook Road. The note on the Blackbrook plan indicated that there was a requirement that all the lots on the plan not be subdivided or improved with more than a single family home and traditional accessory structures. This was not creating a new buildable lot. The paddocks of one lot would be combined with the other lot. A lot line could be changed but a new building lot could not be created. The original note carried forward. Peter Clark wanted to add the notation on the ANR plan. "See note on plan of record."

Motion to approve the ANR for lot line adjustment for 34 and 29 Blackbrook Road was made by Brian Stein.

Ed Howard seconded.

Vote: Unanimous in favor.

### **Cell Tower Special Permit 577 Bay Road. Continued public hearing.**

Claudia Woods said she met with Bill Wilson and asked how other cell tower sites were reviewed. There was no technical evaluation as to how they arrived at sites. The Selectmen were comfortable with the selection and found no need to reopen it. Rick Mitchell said the Board should look at the application in front of them and make a determination.

The Selectmen's discussion included meeting minutes back from 2010 and looking at Town owned properties. The Selectmen connected with consultants to choose the land behind Town Hall and the Public Safety Building as they would provide for coverage. The Selectmen required the Town Manager, as part of his goals, to pursue a project by preparing an RFP and make both properties available for use.

Peter Clark referred to the By-law noting that the applicant should demonstrate that technical coverage from one or more alternative sites would be poorer than the proposed facility. Mr. Clark thought the Board should obtain a technical evaluation of the cemetery site which would be out of sight from Bay Road. Mr. Clark said the Historic District Commission requested the Board deny the proposal as they didn't want to see the fabric of the Historic District disrupted. If the technical evaluation proved the coverage was poorer, it would meet the letter of the By-law.

Richard Boroff responded that the RFP did not have the cemetery in it. The RFP precluded a lot of the requirements because of the specificity of the RFP. A cell tower in the cemetery would be in the Historic District and put more ramifications on it as well as creating obstacles for emergency vehicle access. Mr. Boroff repeated that the applicant was not told to look at the cemetery. Patrick Reffett said the cemetery was looked at but it was in the Historic District.

Mary Green (Bay Road) said the technical evaluation requirement in the Town's By-law would open the Decision up to an appeal. Ms. Green added that if the Planning Board could not uphold their own Zoning laws, questions should be raised. Communities all over the State were outraged at the disruptions to their Historic District due to MBTA plans while Hamilton was asking to have one in their District. Ms. Green said the MBTA was giving pause to their proposals and that this Board should give pause as well. Ms. Green asked for patience to determine if the coverage from the Asbury St. and Ipswich towers might cover the area. Ms. Green requested that the Board deny the application until more information was available.

Richard Boroff responded that the applicant had shown what the coverage would be and that the MBTA wifi tower were not cell towers as they were only 70'. Bill Dery repeated that the Town had not delivered a technical report for all sites so there was not a proper evaluation. Mr. Dery thought Peter Clark's idea of building a bell tower monument in the cemetery was a clever one. Mr. Dery also suggested using Brown's Hill, which was 213' in elevation, especially at a time when the Seminary's contribution had decreased from \$100,000 to \$30,000. Mr. Dery said the Town had a lot of amateurs making assumptions and evaluations. The whole town might be covered by a tower at Brown's Hill. Mr. Dery asked the Board to deny the proposal until a proper evaluation had been conducted.

Peter Clark said he had AT&T service which was sited at Gordon Conwell, and had two bars of coverage all over town. Donna Brewer described the Town's role in reviewing cell towers through the Telecommunications Act as the Town not being able to regulate the construction or modification of personal wireless facilities or unreasonably discriminate amongst providers and may not prohibit personal wireless services. Section 7.2.4. noted the need to describe other feasible sites, which were required to be put in the report, but the Planning Board could waive whatever information they wanted. The Planning Board could not deny a permit if it meant a prohibition of wireless services. The Courts had determined if a significant gap in coverage existed, a denial would violate the effective prohibition even if there was some service in town. No local government can prohibit based on RF emissions. The Town could not unreasonably

delay a proposal based on the FCC published guidance and shop clock ruling. A decision needed to be made within 150 days of submission. An applicant can seek judicial relief if there was a failure to act. As the submission was received May 19, 2017, the Board had until October 16, 2017.

Donna Brewer said the burden was upon the Board to sustain its decision if it denied the request. In response to Rick Mitchell's comment that the site was selected by a public process, Ms. Brewer answered that it did not matter how the site was selected, it would not affect if the site should be approved. Varsity Wireless described other sites with technical evaluations. Ms. Brewer said if the Board denied the permit because they disagreed that it was needed or they did not qualify because other sites were technically valid, the Board could do that but it would be the Planning Board's burden to prove the evidence in the record. Having feelings that better sites might be around in laymen's view of other sites, would not do it. The Court would not accept a view that Brown's Hill was better than this building as a legitimate basis to deny the permit, according to Ms. Brewer.

Bill Olson asked if the By-law required technical analysis, why wasn't one done. Varsity Wireless said they did one (Section 11 of their application document). One of the preambles was to look at municipal sites, which the Town was proactive. Varsity Wireless said they ruled out alternative sites by sending letters to technically viable site owners, but the sites needed to be available. Varsity Wireless was told by the Town to look at Town Hall. The cemetery was not available as the landlord was not willing. There was not an RFP issued for the cemetery or Patton Park. The landfill was not viable from a technical standpoint. Varsity Wireless said encouraging a municipal site and then denying it sounded like a prohibition. There was a substantial gap in coverage and Varsity Wireless established that there was no viable alternative. Cemeteries tended to be deed restricted for cemetery purposes and there was not a 75' x 75' track of land in the cemetery. Varsity Wireless said they provided a site that complied with Zoning and Special Permit Regulations and denying the permit would be an effective prohibition under the Federal Communications Act.

As the Town was the landowner, the Town would be suing the Planning Board as part of the appeal process, according to Donna Brewer. Ms. Brewer said the Planning Board would be the defendant with the co-plaintiffs being the Selectmen and Varsity Wireless. Both would hire an attorney with the Planning Board requesting the Selectmen for approval to fund an attorney. Technical analysis should be a part of the application, but if it was part of the process, it should be easy to supplement, according to Ms. Brewer. Claudia Woods said the Board of Selectmen, who looked at the sites, were not technical experts. Ms. Woods wanted proof that other sites were not appropriate. Varsity Wireless said they had more support in Hamilton than all other towns combined as citizens recognized the needs and Varsity found no alternatives.

The fact that there might be other sites out there, would not meet the burden of proof for the denial, according to Donna Brewer, who warned that it would not just be the Telecommunication

Act that would be violated. Typically the applicant would sue the Board for damages. If the Board lost, the Town would pay the attorney fees for the winning side. Peter Clark said the Board finds the application deficient due to missing technical information of alternative sites. Claudia Woods said it was a real estate review. Bill Olson wanted to define “technical.” Alternative analysis was presented from a real estate perspective but members of the Board wondered if it would work from a technical standpoint as in the same general area.

Rick Mitchell said the applicant said they did site analysis looking at alternative sites, in the lack of coverage area and discarded sites due to environmental reasons or landowners not being interested. The question, according to Mr. Mitchell would be if this the type of documentation would persuade an adjudicatory authority to deny the tower denial. Donna Brewer said the court would discuss the availability or physical feasibility of the site rather than the technical coverage of the site, under case law. It did not need to be town owned land.

Paula Gesmundo (Bay Road) suggested hiring an independent technical expert. Rosemary Kennedy (Rust St.) said the assessment was done many years ago in 2010, 2011, and 2012 and wanted to get the Town dump site evaluated. Donna Brewer agreed with hiring a consultant to focus on the section of the By-law to give the Board objective advice about other feasible site including existing sites if any showing coverage. The consultant could review what had been done. It was recalled that Tom Catalano voted that the location would have an adverse impact on the Historic District. In an attempt to minimize impact, if something in the District had less impact, the Historic District Commission would vote to support it.

Patrick Reffett said the Town had coverage maps that illustrated where there was no service and if a tower were erected, where the service would be. If the Board voted to not allow this to proceed, it would be a violation of the Telecommunications Act. Bill Wilson reportedly told Claudia Woods if the Board turned down the application, the Selectmen would explore other sites and that no engineer did technical review of other sites. Ms. Woods added that the proposal would still not cover the coverage gap area. Ms. Woods thought it would be better to waive the 110’ requirement in a place that would not be an affront and cover the whole town. Rick Mitchell responded that alternatives were shown in the target area and if there were no alternative sites, there was no basis to deny the permit.

David Smith (Home St.) said if asked to conduct a technical site review, the Town should consider infrastructure, wetlands, zoning, all factors in a site selection process, which would be considered a technical analysis.

Motion to approve the proposal to include the ten conditions read by Brian Stein at the August 1, 2017 meeting.

Rick Mitchell seconded.

Four to three in favor, supermajority not met. Motion fails. Aye votes were offered by Brian Stein, Rick Mitchell, Bill Olson and Richard Boroff. Nay votes by Peter Clark, Claudia Woods, and Ed Howard.

Peter Clark said he might change his vote if he saw the technical coverage that would come from a site in the cemetery based on what Tom Catalano said. Varsity Wireless said never once did the Selectmen tell them to look at the cemetery. Varsity Wireless would need to demonstrate that the coverage from one or more alternative sites would be poorer than that of the proposed facility. The Planning Board had the list of alternatives, but no technical information about them. The Board of Selectmen had voted not to make the cemetery available.

Rick Mitchell recalled that the Board of Selectmen had voted no so what would be the point of a technical evaluation and compared it to private properties where the owner had said no. Even if the site technically worked in terms of coverage, the owner did not make the property available. Peter Clark spoke about the Brown's Hill site. Bill Olson provided options for the BOS to obtain technical evaluations. Varsity Wireless said they would file an appeal within 30 days because there was a substantial lack of coverage and no viable alternative. There was no evidence in the record that there was a viable alternative but a concern that there might be. Varsity Wireless would negotiate with the Board of Selectmen regarding funding for Planning Board legal defense and negotiating for a settlement as the lease had already been signed. Varsity Wireless said it made no sense that the Board denied it and incurred legal fees for the Town.

Donna Brewer opined that the failure to approve needed to be in writing essentially contemporaneous with the Planning Board vote. The majority voted in favor, but not the supermajority required.

#### **Approval Not Required Request for 103 and 105 Linden St.**

Patrick Reffett explained that the property was created long before zoning. There were two houses on one lot. The Knight family sought to allow them to divide the parcels into two. The neighborhood had small historic properties. The resulting lots would be less than Zoning allowed. The ZBA issued a positive decision that allowed them to have smaller lots. Each lot would have about 4,000 sf.

Motion made by Brian Stein to approve 103 and 105 Linden St. as presented.

Claudia Woods seconded.

Vote: Unanimous to approve.

#### **227 Willow St. Executive Session**

Richard Boroff made motion to go into Executive Session for the purpose of discussing litigation and come out and not return to regular session.

Richard Boroff aye, Rick Mitchell, aye, William Olson aye, Peter Clark aye, Ed Howard, aye, and Claudia Woods, aye at 11:32 pm.

Prepared by:

---

Marcie Ricker

---

Attest

---

Date