

CANDIA PLANNING BOARD
MINUTES of July 6, 2011
APPROVED

Present: Mary Girard, Chair; Sean James, Vice Chair; Ginny Clifford; Judi Lindsey; Kim Byrd; Albert Hall III; Steven Bradley Alt; Carlton Robie, Board of Selectmen; Dennis Lewis, Road Agent

Chair Girard called the meeting to order at 7:00pm, immediately followed by the Pledge of Allegiance.

Minutes June 15, 2011

J. Lindsey **motioned** to accept the June 15, 2011 minutes as amended. K. Byrd **seconded**. **All were in favor**. A. Hall abstained. Page 2 change “he” to “her” and “were” to “where”, period after “uniform” and capitalize “For”. Remove “if they”. Page 3, Capitalize “Scientist”, Change “he” to “her”, “Wilder” to “Wilderman”. Page 4 change “were” to “was”, rewrite G. Clifford’s comment, Page 5 - change “saying” to “by stating”, Page 6 change “CIP” to “Master Plan” and “submitted” to “received”.

7:15 pm – Major Site Plan Application: New Cingular Wireless PCS, LLC (“At & T”) c/o Susan M Roberts, Anderson & Kreiger, LLP One Canal Park, Suite 200, Cambridge, MA 02141; Owner: Paul Hunter 606 North Road, Candia NH 03034, Map 402 Lot 10: To permit construction of a 100’ monopole cell tower, gravel access road and a 75’ x 75’ compound with a generator. ZBA case #567 granted special exception to allow 100’ monopole cell tower. For additional information please call the Land Use Office at 483-8588.

The Board took a few minutes to read Stantec’s review & comments that were just received before the public hearing was opened. Chair Girard opened the Public Hearing at 7:15pm.

Susan M. Roberts, Anderson & Kreiger and Jacqui Swenson, K.J. Wireless were present for the applicant. Abutter Dennis Orzechowski, 55 Halls Mill Road lot was present. Chair Girard said before they could start the Board has to accept the application. She said there was an application review done by K. Byrd and C. Robie June 28, 2011. K. Byrd said the application is complete enough for purpose of discussion only.

K. Byrd **motioned** to accept the application for purpose of discussion only. C. Robie **seconded**. **All were in favor**.

Chair Girard said the Board and applicant just received the review from Stantec. She said there are a number of items of concern. She said Aaron LaChance from Stantec is present tonight to review the comments and answer any questions. S. Roberts asked what the Board meant by the acceptance of the application for review. Chair Girard said it means the Board has accepted the application to be complete enough for discussion to go forward. K. Byrd said the Board did not specifically say it was complete.

S. Roberts summarized the history of the application, stating it went through the zoning process and court. She said the courts have issued an order for approved plans for a 100’ monopole. They are requesting the tower be permitted. S. Roberts read from P.11 of the court order dated April 19, 2011, *“1. Defendants shall permit the Plaintiff to construct, and maintain its wireless communication tower and facility (collectively the “Facility”) at 606 North Road, Candia, New Hampshire (“Site”), subject to securing any other necessary relief from the Town of Candia such as site plan approval and a building permit, substantially in accordance with the Approved Plans identified below and in accordance with the terms and conditions of this order.*

2. The Approved Plans shall consist of the following plans prepared by Dewberry-Goodkind, Inc., dated March 20, 2009, previously submitted to the Board, which shall however be modified by AT & T to show the Court-approved Facility as including a 100-foot monopole-style tower.” S. Roberts

said she wanted to give the background to show they are trying to adhere to plans the court approved as closely as possible. She said they submitted a set of plans with red lines showing the difference between what was approved and what was changed. She said where Lattice tower was noted it was changed to monopole and height references were changed to 100'. She said they are before the Board tonight to ask for approval of their site plan to go forward and build the facility.

S. Roberts said they were asking for four waivers located in item #15 of the submitted packet. She said they went through each ordinance and stating how they were in compliance and if a waiver was requested they put those in italics. Chair Girard said the Board would like to see the waivers listed separately. S. Roberts said they will list the waivers separately. K. Byrd felt the applicant's application contained information that was not needed, specifically the plans with the lattice tower. S. Roberts said they included this section to show the difference from the court approved plans to the updated plans showing the monopole.

S. Roberts said these are the main points she wanted to stress. She would ask the Board to indicate application was complete for discussion so they can be approved. She said they received Stantec's review today. Chair Girard asked Aaron Lachance from Stantec to come forward to explain the comments. S. Roberts said her intentions were to go through all of the comments with her engineer. She said some of the comments were brought up by K. Byrd and C. Robie at the completeness review last week and she said she is going to address them.

Aaron Lachance from Stantec started with the first comment on his review letter. He said comment #1 requesting waivers, in a separate format has already been addressed. He said comment #2 talked about section 2.05 of the regulations article 19.06, 19.08, 19.09, 19.11 and 19.13. He said the applicant does not appear to adhere to the regulations. C. Robie asked to stop A. Lachance and comment on #2. He said it seems that Stantec is adhering to road standards and said this is a driveway which does not need to be paved. He said the application does not warrant a paved driveway to the cell tower. A. Lachance said personally he agrees but he is adhering to the Site Plan Regulations. S. Roberts asked why the Subdivision Regulations would apply when this is not a subdivision. A. Lachance said the Site Plans Regulations refer back to the Subdivision Regulations. A. Lachance said there is one set of construction standards and they are in the Subdivision Regulations. The construction standards are not duplicated in the Site Plan Regulations so that is why there are referrals to the Subdivision Regulations made in the Site Plan Regulations. Chair Girard said it is a driveway into a commercial site and needs to be accessible to fire equipment even if it is gravel. A. Hall said it may be a driveway but legally it is something else. C. Robie said all the other cell towers in town have gravel access ways. D. Lewis said it is considered a driveway not a public street and should adhere to driveway standards. He said the Board can stipulate the driveway to be 14' wide for access of fire equipment. Chair Girard said if the driveway is more than 1000', a turnaround for fire equipment is required. S. Roberts said they currently have a proposed 12' gravel access road. She did not see a reason why they could not widen the driveway to 14'. D. Lewis said a driveway permit is not needed because they are using the existing driveway.

A. Lachance said Comment #3 discussed scales of the drawings. He said the scale was different on each page. Discussion ensued about the different scales 1=10', 1=20' and 1= 30' on the plan. The applicant was told to ask for a waiver as the regulations state 1=20'.

A. Lachance continued with comment #4 listing owners of record. He said addresses were found on the sidebar. S. Roberts said at the completeness review it was noted that the abutters address were found on a sidebar.

S. Roberts suggested they address all the comments and write a response and provide updated plans. Chair Girard said the meeting could be continued to allow them time to address the Stantec letter. Chair Girard said the Planning Board has accepted the application so the 65 day clock has started.

Chair Girard asked the Board if they had any specific questions. Chair Girard asked if any abutters present had any comments or questions for the applicant. Abutter D. Orzechowski said in the plan there was a request for a 75' x 75' compound. He said that size was originally for potentially 4 carriers, their equipment and generators. He said now that the cell tower is 100' collocation does not seem likely and asked if the compound could be reduced. This would reduce the trees and vegetation removed and would keep a larger buffer. He asked if the pole could be camouflaged. S. Roberts asked the abutter to show him where his property was in relation to the cell tower. Chair Girard said if they intended to do any planting and S. Roberts said they usually do not but they try to be careful and only cut what they need. S. Roberts said they could possibly reduce the compound down to 50' x 50'. She said she would check with the engineers but felt it was something they could accommodate. J. Szot said reducing the compound to reduce the number of trees cut was discussed at the ZBA meeting but the ZBA Board felt this was a Planning Board issue. S. Roberts said all the vegetation is not necessarily removed within the compound. Discussion ensued on a monopine instead of a regular monopole. S. Roberts said she would look into the comments and concerns from the abutter. A. Lachance said he would go through and revise the comments. S. James said his recommendation would be to continue the hearing.

S. James **motioned** to continue the public hearing to July 20, 2011. A. Hall **seconded. All were in favor.** Discussion continued and the applicant asked if they could have more time to address the comments and asked the hearing be continued to the next meeting, August 3, 2011. S. James **motioned** to amend the first motion and continue the public hearing to August 3, 2011. A. Hall **seconded. All were in favor.**

K. Byrd asked Stantec if they were going to make a recommendation for the removal bond. A. Lachance said they would. Chair Girard thanked A. Lachance for coming and invited him to attend the August 3rd, 2011 Planning Board for the continuance.

Continuance Minor 2 Lot Subdivision Application: Roger Demanche Jr. 298 Chester Turnpike, Candia NH 03034; Owner: The Charles I. Doucette Family Trust 260 Peabody Ave, Manchester, NH 03109; Property Location: Healey Road Map 406 Lot 48; Intent: Subdivide into 2 lots. Owners of the Charles I. Doucette Family were present. Applicant Roger Demanche and his Mr. Pollack his attorney were present. Abutter Linda Doucette 216 North Road was present.

Chair Girard said the notarized permission slip from the owners of the land was submitted. She clarified from the last meeting on why the Board accepted the application as complete for discussion. She said the Board may proceed with an application pursuant to RSA 676:4 1(6). This RSA states that a Board cannot hold up an application waiting issuance of permits from governmental bodies and added the Board can issue approvals with conditions based upon receipt of such permits.

Chair Girard said RSA states you cannot refuse an applicant solely on the basis that you are waiting for permit etc from another state agency. The Board did not error by accepting the application. She wanted to clarify because there were questions.

J. Franklin presented a new plan to the Planning Board. He said he circled the items he added. He said he added a revision date, DES comments, Wetland Scientist seal, proposed location of culvert, and a note showing 1½ acres contiguous buildable upland. He said DES asked for the proposed location of culverts and head water. He said he has not yet received the State of NH Dredge and Fill permit or State Subdivision approval. J. Franklin said what he submitted to DES, he copied the Planning Board and CC.

J. Franklin said the Wetland Bureau asked him to submit additional information. He said the Wetland Bureau's 60 day clock stopped since they have asked for additional information and now they have unlimited amount of time to respond.

Chair Girard said she had spoken to legal counsel concerning the original subdivision that appears to have not been registered at the registry of deeds. She said the Planning Board was advised they can go forward with the subdivision as there is a deed that references the subdivision. She said it felt it does go against some of the RSA's stating deeds are not legal without a recorded subdivision on record. S. James asked if counsel could provide that in writing to the Board. Chair Girard said the legality of the deed has to be settled between the people contesting the legality.

J. Szot said Candia's Zoning Regulations state from 1969 to 1986 that a subdivision must be recorded at the registry within one year or it becomes null and void. She said this subdivision was done during this time frame and according to Candia's Zoning Regulations this particular subdivision does not exist. C. Robie said it is on the tax maps and the original subdivision was signed by the Planning Board.

Mr. Pollack, attorney said he was present on behalf of R. Demanche, applicant. He said the Town clearly had evidence of a subdivision that is referenced on the deed and owners have been paying taxes on the parcel since 1983. L. Doucette said she paid the taxes for a number of years at the beginning.

Chair Girard said the Board could issue a conditional NOD because the Board cannot approve a subdivision without a DES approval, septic approval or State Subdivision approval. She said they received letters from Police Dept, Fire Dept and Building Dept and they had no concerns. D. Lewis, Road Agent said he did not have any issues. Chair Girard said they received a letter from the Conservation Commission but it did not list their concerns.

L. Doucette said she wanted to speak on the legality of the subdivision. She said she paid the taxes for many years in the beginning and farmed the land organically for 28 years. She said she has major concerns about water runoff because she has two dug wells and her property is downhill. She said it is illegal to allow water runoff onto another property.

L. Doucette said another issue is the history of the historic cart path. She said she wanted to exercise her right to pass over the woods road and maintain the path as an easement right. She said if the proposed houses and driveways were built it would forever change. J. Franklin said he researched the deed and found no prior easement. He said there was no easement reserved by the prior owner. L. Doucette said her father in law was holding the title to the land until they could pay him back and that the land was always intended to be returned to the farm. She said she has cared and maintained the land and the woods road for 28 years. She said her father-in-law never set foot on the land. She asked how the Town could approve a subdivision with all the legal issues. C. Robie said the legal issues do not have anything to do with the town.

Mr. Pollack said he researched the deed and found in 1859 there was an easement for persons to haul hay but not sure if this would translate into easement rights. Mr. Pollack said there is no intention to block the Woods Road by any of the improvements. He said he did not see why the Woods Road could not follow the driveway for some stretch. Chair Girard said the Planning Board cannot grant an easement. She said the easement would be a civil matter.

J. Franklin said this is one of the most difficult subdivisions he has ever encountered from the emotional standpoint but not technically. He said he went to the Conservation Committee meeting and explained what he did and why he did it and apologized for overstepping his bounds. He said certain statements were made about rare and endangered species seen on the property. He said they used the Natural Heritage Database Inventory which said there were no rare or endangered species. J. Franklin said this is not absolute. He said if there was a sighting he would like to see that in writing. L. Doucette submitted a letter from Charles Moreno consulting forester who spotted a Northern Harrier, an endangered list bird on the property.

S. James said if the subdivision is approved with conditions and the applicant is denied the wetland application that would nullify the subdivision.

Chair Girard said they have met all the requirements according to the Building Inspector and there are no issues from the Police Department and Road Agent, Fire Department. J. Lindsey said she would like to wait and see before the Planning Board makes a decision.

Chair Girard said as far as the Planning Board is concerned the application is complete and meets all the requirements.

S. James **motioned** to approve the 2 lot Minor Subdivision with conditions; DES wetland Dredge & Fill, State Subdivision approval, septic approvals, driveway permits and set granite bounds with all conditions to be met in 90 days. A. Hall **seconded**. S. James, G. Clifford, A. Hall, C. Robie, M. Girard voted for the subdivision. J. Lindsey and K. Byrd voted against the subdivision. **Motion passes 5-0**. J. Franklin thanked the Board for their time.

Other Business

Candia Open Space Plan

Chair Girard said Betsy Kruse has met with SNHPC and has been working on the Open Space Plan to rewrite sections 3 and 4 and make other changes that were discussed.

S. James **motioned** to cancel the July 20, 2011 Planning Board Meeting due to lack of applications. A. Hall **seconded**. **All were in favor**.

The next Planning Board meeting is August 3, 2011 at the Town Hall at 7pm.

A. Hall **motioned** to adjourn at 8:50 pm. K. Byrd **seconded**. **All were in favor**.

Respectfully submitted
Sharon Robichaud
Land Use Secretary