

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
NOVEMBER 18, 2020
APPROVED: APRIL 14, 2021**

Chair Chris Tracey called the meeting to order at 7:04pm, virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20 under M.G.L. Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Mark Lanza (Town Counsel), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Keith Vellante (Real Estate for Verizon Wireless), Barbara & Gregory Romero, Roseanne Saalfeld, Matthew Flokos (Harvard Press), David Maxson (Isotrope), Peter Dorward, Bill & Robin Calderwood

Continuation of a Variance Hearing – Cello Partnership d/b/a Verizon Wireless, 12 Woodchuck Hill Road. Opened at 7:08pm. (See page 2 for complete details)

Executive Session

Chris Tracey made a motion the Zoning Board of Appeals (ZBA) go into executive session pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(3) to discuss strategies with respects to potential litigation between Celco Partnership d/b/a Verizon Wireless and the Zoning Board of Appeals and permit Land Use Administrator/Conservation Agent Liz Allard, Town Counsel Mark Lanza and peer consultant David Maxson to participate in the executive session at their respective remote locations. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Mr. Tracey stated the ZBA will reconvene in open session in approximately 20 minutes.

Request from Craftsman Village Harvard to Waive Affordable Units Building Permit Fees

After a brief discussion, Steve Moeser made a motion to not waiver the building permit fees for the affordable units at Craftsman Village Harvard. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; Michael Lawton, aye; Orville Dodson, aye; and Chris Tracey, aye.

Adjournment

At 9:36pm Theodore Maxant made a motion to adjourn the meeting. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; Michael Lawton, aye; Orville Dodson, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

- Town of Harvard, Zoning Board of Appeals Agenda, dated November 18, 2020
- Letter from David Maxson of Isotrope Wireless to Chris Tracey Zoning Board of Appeals, RE Bolton Road water tank, dated November 17, 2020
- Hypothetical location of tower at Bolton Road water tank parcel, undated

Harvard Zoning Board of Appeals

Continuation of a Variance Hearing Minutes

Cellco Partnership, d/b/a Verizon Wireless, 12 Woodchuck Hill Road

November 18, 2020

The hearing was opened at 7:08pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20, by Chairman Chris Tracey under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125.

Members Present: Chris Tracey, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Mark Lanza (Town Counsel), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Keith Vellante (Real Estate for Verizon Wireless), Barbara & Gregory Romero, Roseanne Saalfeld, Matthew Flokos (Harvard Press), David Maxson (Isotrope), Peter Dorward, Bill & Robin Calderwood

This hearing was continued from November 10, 2020 for a Variance filed on behalf of Cellco Partnership, d/b/a Verizon Wireless, to allow for a replacement wireless communications tower taller than 105 feet and up to 160-feet when a 120-foot wireless communication tower exists at 12 Woodchuck Hill Road, Harvard.

Chris Tracey read comments received from into the record. Mr. Tracey has requested an update from the Select Board in regards to available land to locate a wireless communication tower (WCT) on Bolton Road at which an existing water tower is located. The Town Administrator, Tim Bragan, has confirmed at the 2002 annual town meeting the location received approved as an active parcel to be considered for locating a WCT. This vote has never been rescinded and therefore could still be considered by the Town as a viable location for a WCT. Mr. Tracey has been busy rounding up appropriate information in regards to other potential locations for a WCT. David Maxson, peer consultant for the Board, was able to assess the water tower location and provide a report.

Town Counsel Mark Lanza stated he reviewed the 2002 vote, he not only recalls the vote, but also what lead to it. Ultimately the vote passed Town Meeting. There is no doubt in Attorney Lanza's mind that the parcel on Bolton Road is available for a WCT. The Select Board may need to prepare a Request for Proposal (RFP) depending on the lease amount and could determine to license the land as opposed to leasing, but as a license it could be terminated at will, which Attorney Lanza would not advise.

Mr. Maxson stated the elevation is very consistent at the Bolton Road location, therefore there is not interference from the tank itself. Mr. Maxson stated the location is physically suitable for a WCT, however he is not sure how wetlands may affect that. The assessment Mr. Maxson provided delineates an area that has a shadow, where as the proposed tower would cover this area. As for achieving improvements in and around the center of Town the Bolton Road location falls short from the tower proposed on Woodchuck Hill Road. By extending a WCT another 20 - 40' on Bolton Road the gap in coverage could be diminished.

Attorney Christopher Swiniarski asked when you say it is available, is it available to Verizon Wireless; the answer is "no", we all know that. Attorney Swiniarski stated Verizon attempted for

seven years to locate a WCT in Harvard. Attorney Swiniarski stated he knows this game, because the Supreme Judicial Court just turned down the Town of Peabody in a similar situation. Mr. Bragan stated today it was not available.

Mr. Tracey asked Attorney Swiniarski if he was willing to continue the hearing until after the December 15 meeting of the Select Board, at which they will determine if they are willing to issue an RFP for Bolton Road. Attorney Swiniarski asked if it was reasonable to make Verizon wait even longer and possible be competed out by another provider; not to mention the abutters to the Bolton Road property may take issue with a WCT next to them. Attorney Swiniarski thinks the Board is missed informed to think an analysis could be completed in a month. Although he does not think that will happen, he will agree to continue the hearing. Attorney Swiniarski believes it is important to meet with the abutters of the Bolton Road land before the Select Board meeting. Attorney Swiniarski was willing to continue the hearing as long as the decision is filed with the Town Clerk no later than December 31st.

Steve Moeser stated this will not be the last WCT in Harvard where there will be objection from the abutters. Mr. Moeser is disappointed the Select Board knew this was happening and did not provide support. The Select Board are the gate keepers of Town and they should not have let this drag out as long as it has. Unless there is some discernable direction from the Select Board Mr. Moeser does not want to give Bolton Road any consideration.

Theodore Maxant stated he has viewed many WCT from southern New Hampshire to western Massachusetts, some being very tall with many carriers. In the beginning he thought that this was an acceptable variance, but now he knows a tower at this height is a colossal sized WCT. The allowed height under the bylaw should be maintained. A WCT at 160' is going to affect the landscape. Mr. Maxant is okay with a smaller tower in this residential area, but would deny a WCT at 160' and would ask Verizon to reconsider the WCT at 115'. Mr. Tracey asked Mr. Maxant if he had any comments on the Bolton Road property. Mr. Maxant stated he did not and the Board wasting time talking about other locations. Orville Dodson agreed strongly with that statement. Mr. Maxson added a fact check – the Protective Bylaw allows for a WCT at 105' and not 115'. Attorney Swiniarski agrees with Mr. Maxant and added Verizon is fine with a WCT at 125' limited to use by Verizon only.

The Board discussed the ability to achieve an acceptable height of the WCT including camouflage as well as the implications of Section 6409(a) of the 2012 Spectrum Act.

There were no comments from the public this evening.

Attorney Swiniarski asked about meeting with the abutters; he is willing to holding his own meeting if that is okay with the Board. Attorney Swiniarski agreed to extend the public hearing to December 17, 2020 with 14-days to file the decision with the Town Clerk.

Barbara Romero, a direct abutter, just wants to make the point that this is a new tower.

Steve Moeser made a motion to continue the hearing to December 16, 2020 at 7:00pm. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk