

MINUTES  
TOWN OF TOPSHAM  
PLANNING BOARD MEETING  
JUNE 29, 2010, 7:00 P.M.

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- MEMBERS PRESENT: Donald Spann, Chairman  
Stephen Mathieu, Vice Chairman  
Michael Colleran  
Scott Libby  
Jay Prindall  
Bruce Van Note
- MEMBERS ABSENT: Ron Bisson recused himself because of a possible conflict of interest.
- STAFF PRESENT: Planning Director, Richard Roedner was present representing the Planning Staff.

A meeting of the Topsham, Maine Planning Board was held on Tuesday, June 29, 2010 at the Municipal Building at 100 Main Street, Topsham, Maine.

**1. CALL TO ORDER AND ROLL CALL**

Chairman Spann called the meeting to order at 7:00 p.m. and asked the recording secretary to conduct the roll call. Roll call was conducted and it was noted that all members were present except for Ron Bisson who recused himself because of a possible conflict of interest.

**2. PUBLIC HEARING – (Continued from May 4, 2010)** The Planning Board will hear all comments and concerns on a Site Plan and Conditional Use Application of Mariner Tower II, LLC, to construct a 75-foot high cell phone tower at 14 Oak Street, Tax Map U01, Lot 109. The property is located in the R-1 Zoning District and is owned by Clifford and Pauline Farr.

Chairman Spann asked that only new comments be made. He noted that Board Member Mathieu had a fire at his home and is living in a motel. Chairman Spann said it would be good if the meeting could move steadily forward to be able to end by 10:00 p.m.

The Town Planner summarized the past meeting stating that the applicant presented the Board with an Alternate Site Plan during the site walk. Following the hearing on May 4, 2010, the Board decided that because of the nature of the changes the hearing was tabled and a June 8, 2010 deadline was set for submission of new material. Mr. Roedner said additional and new information was submitted to his office on June 8, 2010 and preliminary submission had been submitted to the Town's engineering prior to June 8.

Mr. Roedner said there had been a couple of rounds of comments and responses exchanged and the final version of responses was submitted to the Planning Office this past week. Copies of the responses were included in the Board's packet of information distributed prior to the meeting for review. Mr. Roedner said, in his opinion, the applicant has met pre-conditions of the submission date.

Chris Ciolfi spoke, representing Mariner Tower. He said Mariner Tower had come a long way since filing the original application on April 29, 2009. He said comments from the Board and the neighbors and residents had been listened to and changes made in response to the comments. Mr. Ciolfi reviewed the new drawings and showed where changes and adjustments had been made. A new entrance road was reviewed, reduced tree cutting and frontages and setbacks shown. The size of the compound area was reduced from 70'x70' to 40'x70'.

Comments were made regarding a typo on measurements on the plan and Mr. Ciolfi said the measurements were taken correctly but because of a typing error the incorrect figure was shown. The numbers were corrected at the meeting.

Board members responded with questions to the applicant regarding things like how often would cranes be required to visit the site and how often would the area receive service calls. There was a lot of concern regarding the cutting of trees, which constitute the primary buffer for the proposed tower. Mr. Ciolfi said Mariner Tower would cut only the trees marked on the plan, but added they had no control over the owner of the land and what their future intentions were. There was concern expressed over a letter the owners, Clifford and Pauline Farr, sent to the Board dated May 24, 2010. The letter read as follows:

*"May 24, 2010*

*To: Members of the Topsham Planning Board*

*Per your request, we are writing this letter to clarify our position regarding the cell tower.*

*We purchased our property in four stages starting in 1978. Our primary objective was to ensure our privacy by purchasing additional land surrounding our home. Over the years, without our permission, we have had kids build tree houses, people walk their pets, pick our blueberries, dump their tires and trash on our land.*

*Five years ago, River Ridge Phase II project cleared, scraped and exploded over 15 acres of abutting property leaving huge piles of rock and barren land. It appears the project is on hold, and they have not cleaned up or restored any of their property.*

*Two years ago, we decided to rent out property to Mariner Tower, over other options such as selling our property to a developer. We feel the cell tower would have the least negative impact on Topsham Heights and property values wince it will be located in the middle of and screened by a very mature grown of trees. Property values are more negatively impacted by the following: 1) railroad tracks running beside Front Street properties, 2) substation power transmission lines running beside Bridge Street and Abenake Drive properties, 3) River Ridge Phase II Project, 4) the water tower, 5) private dirt roads such as Maple Street Extension.*

*Since the access road is a concern, we asked Mariner Tower to relocate the road to the already cleared west side of our house. This will save all the trees that would have been cut had the road been put on the east side of our property and will also eliminate any drainage problems.*

*We are third generation Topsham Heights land owners, whose families have paid Topsham property taxes*

*for over 100 years. We cut and will continue to cut approximately two cords of fire weed per year to hear our home. We feel we should not be restricted from cutting dead wood from the Mariner rented property as it represents a safety issue and fire hazard. We further feel it is out right as property owners to cut as much wood from our property as we choose. Also, if we give part of our land to one of our children or grandchildren or sell to a stranger, then they would have the right to clear the trees for a house, driveway and septic system.*

*In conclusion, our goad is to keep our land private and intact by cutting only a minimum of trees. We do not want to put up more than one cell tower, nor do we want to upset the people who have been our neighbors for thirty-two years. Our intention is to respect our neighbors and their land rights, and we ask that they and you, the Planning Board Members, respect our rights as well.*

*Thank you for your time and service to our community.*

*Clifford and Pauline Farr”*

A memo from Alan Frasier of the Brunswick-Topsham Water District, dated May 4, 2010 was referenced. The memo follows:

*“Sent: Tuesday, May 4, 1020 4:42 p.m.  
To: [Rroedner@topshammaine.com](mailto:Rroedner@topshammaine.com)  
cc: [cwgouglas@btwater.org](mailto:cwdouglas@btwater.org); William Alexander  
Subject: Cell Phone Tower*

*Hi Rich,*

*As we discussed on the phone, we became aware this afternoon that the proposed cell phone tower off Oak Street is being considered at the Planning Board Meeting tonight. Unfortunately, we will not be able to attend so I ask that you please pass along our comments to the Planning Board.*

*We understand that rock removal will be required for the project and further, that the builder is not planning to blast. Nevertheless, we are unsure of the possible problems rock removal work, whether by blasting or mechanical means, may have with out storage tank on Oak Street. We have placed a call to the designer/building for the tank for their advice but do not expect to hear back form them by the close of business. At a minimum, we would request that a condition of approval include a requirement that the applicant work with us to insure that our tank is not damaged.*

*Thank you for your consideration.*

*Alan J. Frasier, PE  
General Manager*

*Brunswick & Topsham Water District  
PO Box 489  
266 River Road  
Topsham, ME 04086  
Tel: 207-729-9956  
Fax: 207-725-6470”*

Following receive of questions and comments from the Board, the Public Hearing was declared open.

Several citizens came to the podium to speak including:

Jeff Deletesty – There is a positive public need for a water tower; not a positive public need for a cell tower. Said Chris Ciolfi really has not listened to the neighbors. Language is needed in the Town Ordinance on cell towers. Numbers of towers need to

be limited. There are other sites more fitting than 800 feet from my house. Brunswick-Topsham Water District is family to Topsham – public need. Thanked those involved in the petition. Urged Board Members not to approve.

John McCarthy – Urged Board to deny request. Both he and his wife do not want the tower in the neighborhood. People bought in that area thinking it was true residential – not a place for towers. Said people already have lost 40% of their property value because of the economy; don't need additional reductions because of a tower. Said Mariner's request is a corporate interest, self-interest, not of the people in the area. Asked the Board to deny.

Ed Webster – Said no one from the Town contacted the Brunswick-Topsham Water District. Talked personally with Alan Frasier who is concerned about their water tank and possible blasting. Said Alan Frasier did not receive notice of meetings on cell tower from the Town. Ed Webster said Mariner Tower has played with the truth. Said homeowners property values will be reduced. Mariner Tower will apply at a future date for a 125-foot tower. T-Mobile has not proven a real need for the tower at this location. The proposed tower will ruin the natural beauty of three neighborhoods. All the neighbors signed a petition to change the zoning. Urged Board to retain Topsham's beauty and to deny.

Regina Leonard – Ms. Leonard said she is a homeowner and a landscape architect. Said a tower in this location is not compatible with the neighborhood. Ms. Leonard distributed graphics to the Board and said a cell phone tower should not be placed in the middle of a residential growth area. Said the Planning Board should honor the Comprehensive Plan and the neighborhood is too diverse for such a tower. Said it's not fair to compare with the water tower. Water tower serves the people and was built in the early 1900's. Said the applicant did not submit a landscape plan. Asked for Town's legal counsel to review.

Bill Morin – Read definitions from the ordinance. Said he does not understand how this commercial tower can be placed in this residential zone. Said the tower should not be permitted and that the definition he read backs up his statement. Said we need an ordinance like Owl's Head has.

James Phillby Baxter White (Phin White) – Mr. White spoke strongly in opposition of the cell phone tower being erected in the residential area. Said applicant said it will not affect property values and that is not a true statement. Will reduce property values. Said comparisons made by Mariner not good ones. Biggest concern is the reduction in property values as no one wants a tower in their back yard, or even wants to be able to see one from their homes. Is not similar to surrounding properties. Said concerned citizens hired David P. Maxson, WCP from Broadcast Signal Lab, LLP from Cambridge, Massachusetts to identify alternative locations for the tower. Mr. Maxson's resume was included in the Board package. Isotope Wireless from Medfield, Massachusetts presented a report outlining alternative locations and said it was their belief that an antenna could be mounted on the roof of the Fort Andross building could be presented camouflaged as a flagpole. Mr. White presented a letter dated April 13, 2010 from Waterfront Maine which read as follows:

*"April 13, 2010...To the Topsham Planning Board and the Topsham Town Planner, Rich Roedner:*

*I am not opposed to reviewing a proposal for a cellular antenna or antennas to be located on Fort Andross in Brunswick. We would not want to incur any costs associated with logistics of doing this and would expect revenue for the rental or leasing of the proposed site or sites.*

*Fort Andross has a flag pole on one of the two prominent towers already. I assume these towers could be an ideal location for a stealth design – an antenna designed to look and function like a flag pole. I am open to reviewing any design as long as it does not harm the integrity and charm of the building.*

*Thank you.*

*Anthony J. Gatti  
Vice President Maine Operations  
Waterfront Maine"*

Mr. White suggested the Mariner Tower work with Waterfront Maine to place their tower on that building in Brunswick. Said Mariner Tower did not look at alternative sites as they said they would. Urged the Board to deny the application.

Brian Grossman of T Mobile told the Board that they had looked at the Ft. Andross Building as a possible site but that there was not adequate clear signal over the trees at that location. He said their models were more accurate than those of Isotope Wireless and that the program that consultant used does not come close to providing what Mariner needs for good operation.

Chris Ciolfi – Said the Ft. Andross building was considered by Mark Hutchins and it would not work for what T Mobile needs.

Sandra Conselini – Said she was speaking not as a Selectperson but as a citizen of Topsham. Said she knew most of the citizens from the Heights who are opposing the placement of the tower in the Heights. Said the tower will benefit only three entities: 1) the applicant, 2) the tenant and 3) the landowner, but not the citizens of the area. Asked the Board to heed what Mr. Maxson reported and not to approve the application. The Heights is a neighborhood made up of good people whose request should be honored. Thanked the Planning Board for their patience in listening to this application. Said the Planning Board should serve the people first and the application second and asked them to do the job they would appointed to do.

Tom Heskit – Said he has been a T Mobile customer for the past 3 or 4 years and has absolutely no problem receiving or sending signals on his phone from the Heights.

Following receipt of all comments from members of the public, the Public Hearing was declared closed at 9:20 p.m.

Chairman Spann said the application will be considered by the Board under the Conditional Use portion of the ordinance and if the application passes the Conditional Use, the Transmission Tower Ordinance will be reviewed and then the Site Plan.

**FINDING OF FACTS** The Board found the following facts:

1. The applicant is Mariner Tower II, LLC.

2. Mariner Tower II, LLC is requesting to construct a 75-foot high wireless communications cell phone tower at 14 Oak Street, Topsham, Maine.
3. The location is identified on Tax Map U01, Lot 109 in the R-1 Zoning District.
4. The site is owned by Clifford and Pauline Farr.
5. Mariner Tower II, LLC will be a renter of the property.
6. Mariner Tower has proposed to move the access of the property away from some of the neighboring residential properties as shown on the plans.
7. Balloon floats were performed at the site to support the 75-foot tower with photographs presented for the file.

The Board was in unanimous agreement with the above Finding of Facts.

### **Section 225-67.F - Conditional Use**

The Board reviewed Section 225-67.F, Conditional Use and determined the following:

1. The use is compatible with and similar to the general categories of uses of neighboring properties:

*The proposed use, a 75' tall cell phone tower is listed in the Zoning Ordinance as a Transmission Tower, which is separate from a public utility facility. It has its own section of the zoning code, because it is distinctly different from utility facilities. While a transmission tower does provide a telecommunication service, just as utility poles do, the scope and scale is in no way comparable to utility poles. The proposed site is surrounded by residential structures, The presence of a water tank within 400' of the proposed site, a singular use nearby, does not constitute "compatible with and similar to the general categories of uses of neighboring properties". While within 500' of the site there are two residences and one water tank, within 1000' of the site the number of residences jumps to over 25, and still only one water tank. The proposed use is buffered from the neighboring property owners based on the existing vegetation within the leased area as well as the area outside of the lease area.*

*The proposed use is not similar to the general category of uses on neighboring properties, which are primarily residential. The scale of the proposed use, 75' tall, is not similar to the general category of neighboring uses, which range from a 49' high water tank down to typical residential buildings of not more than 35' in height. The applicant has guaranteed that existing vegetation within the leased area will be preserved, but the owner of the property will not guarantee that the area outside the leased area will remain in its existing condition.*

2. The use is compatible with the Comprehensive Plan and the anticipated future development of the neighborhood.

The Topsham Comprehensive Plan discusses the need to increase densities in areas where there are adequate sewer and water, including the Topsham Heights. Businesses that cater to the immediate neighborhood “could be allowed”. The Comp Plan also contains goals of minimizing the impact of new development on existing residential areas. Lastly, the Comp Plan has goals of increasing the overall economic vitality of the Town.

**Based on these various goals, it is difficult to say that the proposed use is not consistent with some portion of the Comp Plan. However, it is likewise difficult to say that a 75’ cell tower in this location is consistent with the Comp Plan language about protecting residential neighborhoods. The section on Housing Goals, Objective 1, reads “use development as a tool to improve the integrity and character of Topsham’s residential areas”. The Heights, River Ridge and Sokokis/Abenaki Circle are clearly residential areas, and a cell tower is clearly not a residential use. A tower clearly has a more ‘industrial’ feel to it. Therefore, the Board finds that the introduction of a cell tower into this dense residential neighborhood does not protect the integrity or the character of the neighborhood, but instead harms it by introducing a facility that overshadows the existing homes, in scale as well as in “the feel” of the use. The applicant’s submission of real estate impacts appears to have shortcomings, including proximity to towers and visibility of towers. Therefore, there is no valid expert opinion that there is no impact on property values. To the contrary, evidence submitted by the public and various professionals contacted by the public indicate there would be an impact to values. Add to this the ‘common sense’ view of properties in close proximity to towers, therefore would indicate that these properties would suffer value loss and would not be compatible with the Comp Plan and would injure the integrity of the neighborhood.**

3. The anticipated traffic for the proposed development will not cause an adverse negative impact on the neighborhood surrounding the proposed development.

**The proposed use will generate perhaps two trips a month, following the construction period. The proposal adequately addresses this standard.**

4. There will be no noise, dust, odor, vibration or smoke generated by the use that will adversely affect neighboring properties.

**The proposed use, once operational, will not create any noise, dust, odor, vibration or smoke that will affect any properties adjacent to the proposed site. This standard is met.**

5. The physical characteristics of the site, including location, slope, soils, drainage and vegetative cover, are suitable for the proposed use.

*The applicant has stated that the existing site conditions, including vegetative cover, slopes, soils, etc., are suitable for the proposed use. Through a site visit on May 4, 2010, and a review of the applicant’s submissions, the Board has determined that the existing vegetative cover within the applicant’s leasehold area is adequate for the proposed use. However, the Board has further determined that the area outside of the leasehold area, which is an integral part of the proposed buffer plan, is not adequate due to the lack of long-term restrictions on clearing within this buffer area. The Board has asked the*

*applicant on more than one occasion to address this issue, and the applicant has failed to do so. In its present submission, the applicant has provided written documentation from the property owner that the owner will not consent to restrictions on his ability to cut in the area outside of the leasehold area, between the facility and the neighboring property owners.*

***This standard is not met, as the applicant is relying on land outside of his control to provide buffering of the proposed use to the neighboring property owners.***

6. The proposed use will not constitute a public or private nuisance.

Lacking a clear definition of public/private nuisance, and the lack of testimony that deals with the traditional interpretation of nuisances, the Board finds that the security around the site, along with the construction style of the tower, will prevent the site from becoming an attractive nuisance. Further, the lack of noise generated by the site, the lack of traffic, dust, odor, glare, vibration or other adverse affects of the proposed use do not constitute a nuisance.

**The Board finds that the proposed use will not constitute a public or a private nuisance.**

Motion was made by Mr. Mathieu, seconded by Mr. Colleran and it was unanimously

VOTED

That the Conditional Use Application of Mariner Tower to erect a 75-foot high cell phone tower at 14 Oak Street, Tax Map U01, Lot 109, in the R-1 Zoning District be denied as it failed to meet the Conditional Use Standards.

3. **MINUTES FROM THE JUNE 1, 2010 MEETING.**

Motion was made by Mr. Colleran, seconded by Mr. Mathieu, and it was

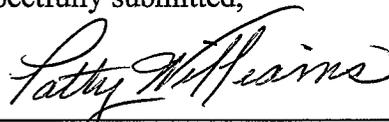
VOTED

To approve the minutes of the June 1, 2010 meeting as corrected.

(Correction: Change date in first paragraph on page 1 from "May 4, 2010" to "June 1, 2010.")

With no further business to address, motion was made, seconded, and the meeting was adjourned.

Respectfully submitted,



\_\_\_\_\_  
Patty Williams, Recording Secretary