

## June 24, 2002

MEMBERS PRESENT: Mr. Fitzherbert, Mrs. Friedman, Mr. Martin, Mr. Owen, Ms. Page

ALTERNATES PRESENT: Mr. Abella, Mr. Brinton, Mr. Shapiro

STAFF PRESENT: Mrs. Hill, Mrs. Luckey

ALSO PRESENT: Mr. and Mrs. Williams, Mrs. Mello, Mr. Millington, Atty. Regan, Mr. Wells, Mr. Greggor, Mr. Libertine, Atty. Leary, Mr. Joseph

### Regular Business

Mr. Martin called the meeting to order at 7:30 p.m. and seated Members Fitzherbert, Friedman, Martin, Owen, and Page. He noted Mr. Potter's 6/12/02 letter of resignation and said Mr. Fitzherbert had been appointed a Regular Member and Mr. Brinton had been appointed an Alternate. Mr. Martin congratulated both Commissioners on their appointments. A brief discussion followed concerning Mr. Potter's contributions and the following motion was made.

**MOTION:** Be it resolved that the Washington Zoning Commission pass a motion of appreciation for John Potter who has resigned his seat after many years of distinguished service. John, a former Zoning Commission chairman in the 1970's, rejoined the Commission in 1999. As a life long Washington resident with many years of experience dealing with a broad range of land use issues, he was an important and valued voice on the Commission, and he will be missed. By Mr. Owen, seconded by Ms. Page, and passed 5-0.

### Consideration of the Minutes

**MOTION:** To accept the 5/20/02 Regular Meeting minutes as presented. By Mrs. Friedman, seconded by Mr. Owen, and passed 5-0.

### New Application

#### **Devereux-Glenholme School/81 Sabbaday Lane/Special Permit: Section 4.4.10/Addition to Library**

Mr. Martin briefly reviewed the application form dated 6/20/02. Mrs. Hill noted the Health Department had approved it. A public hearing was scheduled for Monday, July 22, 2002 at 7:30 p.m. in the Land Use Meeting Room.

### Other Business

#### **Sprint Spectrum LP/399 Chestnut Land Road, New Milford/Wireless Communications Facility/Pre Application**

Mr. Martin noted this pre-application information had been referred to Washington because the applicant believed the proposed tower was

within 2500 feet of the Town line. He also reminded those present that jurisdiction over telecommunications facilities had recently been given back to the Ct. Siting Council. He thanked the Sprint representatives for appearing at this meeting, which was the first opportunity for the Town to dialogue with Sprint on this pre application. Atty. Regan, Mr. Wells, radio frequency engineer, Mr. Greggor, site engineer, and Mr. Libertine, Director of Environmental Services represented Sprint. They reviewed Sprint's application for a 160 foot tall telecommunications tower at 399 Chestnut Land Road, New Milford on the north east side of Rt. 109, approximately a half mile from Washington. The proposed site is on a farm in a wooded area 1000 feet north of the road on the Washington side of the ridge. Maps and plans reviewed included the following: "Sprint PCS, Wireless Communications Facility, Site #CT33XC606, New Milford, Ct.," 5 sheets, by SEA Consultants, Inc., dated 7/9/01; "Visual Resource Evaluation Report," by VHB, Inc., dated July 2001, map of the zoning layout of the proposed site, topo map, existing and proposed coverage maps, visibility map, and site development map. The site plan showed an existing 12 ft. wide gravel driveway would be used to access the 100 ft. X 100 ft. tower site. Underground power, a concrete pad, crushed stone and drainage swales would be installed The following questions were raised:

- Where are the nearest surrounding cell towers? Mr. Wells stated they are a significant distance from the site. He said this tower would try to connect with one to the south, and to date, there were only preliminary coverage sites within search rings to the north along Rt. 202.
- Does Sprint plan to share the tower with other wireless carriers? Atty. Regan said the tower is designed for colocation. He also said Sprint has a marketing division, which handles colocation. He made no commitment, however, that this particular tower would be shared with other companies.
- How much higher is the tower than the elevation of the ridge? Mr. Greggor said it would be approximately 30 feet higher than the ridge and 60 to 80 feet higher than the tree line.
- Will the tower be visible from Washington? Mr. Libertine explained a balloon had been raised to 160 feet and representatives had driven along area roads within a 2 mile radius of the site to determine where it could be seen from. He pointed out photo #5 from the "Visual Resource Evaluation Report," noting the tower would be seen from West Church Hill Road, from some of the fields along Rt. 109, and the peak of Church Hill. When the leaves are on the trees, he said, the tower will be seen from only 2% of the land within the 2 mile radius. When there are no leaves, it will be visible from additional areas including a longer stretch of Rt. 109.
- Would Sprint conduct another balloon test so that Washington residents would have an opportunity to see the results? Atty. Regan said a second test would be part of the Siting Council public hearing procedure. No other test would be conducted until that time.
- Why can't Sprint build lower towers as in Woodbury, even if it takes more of them to provide the same coverage? Mr. Wells stated topography and tree coverage were the reasons for the taller tower. He said Sprint uses a higher megahertz frequency, which can not bend around trees and hills. He explained Sprint tries to cover as much territory with a tall tower and then fill in coverage with shorter ones.
- How does the proposed 160 ft. height compare with other towers? Mr. Wells said it was close to average.

- If two towers were constructed, could the height be lowered? Mr. Wells said that would depend on the sites, noting the topography is rough along Rt. 202. He also noted that as you decrease the height of a tower, you also decrease the opportunities for colocation.
- How does the colocation process work? Atty. Regan stated that Sprint has a separate market division to market towers, that none of its towers are built on speculation, and that its towers are built based on its own needs and not those of potential future users. He said the towers are always designed to accommodate at least two additional carriers.
- How does the Siting Council regard multiple towers in close proximity to each other? Atty. Regan stated the Siting Council has a professional staff that reviews all applications and as part of the process, the applicant must show why he can not locate his facility on any existing structure.
- What if another company says that 160 feet is not high enough for its purposes? Atty. Regan stated in some cases a new tower must be built to replace the original or Sprint must build an expandable tower. He said this was covered in the Council's application process. He noted, too, other companies intervene when an application is submitted to make their needs known.
- Is it true that these towers will soon be obsolete? Mr. Wells stated that due to both the laws of physics and capacity considerations the use of satellites was problematic.
- Why can't you install this facility in the New Preston Congregational Church steeple? Atty. Regan said Sprint tries to use existing structures whenever possible, but in this case 160 feet was needed; the steeple was not tall enough to provide adequate coverage. (Note: Later in this Zoning meeting AT&T Wireless, operating in the same megahertz range, proposed a wireless facility that would be installed in this church steeple.)
- Will there be any attempt "to disguise this hideous looking tower?" Mr. Libertine said that while mono pines were sometimes used to disguise towers, in this location it would be so high above the tree line, it would not be effective. He said this kind of design works only in selective locations.
- Were alternate sites with less impact on Washington's vistas and scenic views considered? Atty. Regan said 30 to 40 property owners within the search ring were contacted, but this was the only location where the coverage was adequate and the owner interested.
- Is this the only site that is feasible? Atty. Regan said this is a one site solution. He claimed that in order to connect with the nearest location to the south, this is the only viable piece of real estate.
- It appeared from the topography map provided by the applicant that there is another siting option on this same parcel, but on the west side of the ridge, that would have less visual impact on Washington. It was noted that the same property owner owns both the east and west sides of the ridge. Mr. Wells and Mr. Libertine, however, noted site development would be more difficult in that location because the length of the driveway would have to be increased and more cuts and fills for construction would be required due to the steeper topography. Mr. Libertine thought a site on the other side of the ridge would be only slightly less obtrusive for Washington. Atty. Regan noted the height requirement for the tower could change if the location changes. Mr. Martin requested that Sprint evaluate this

particular siting option and others that Sprint may have, which would mitigate the harm done to Washington's scenic vistas. Atty. Regan said Sprint would not consider an alternate site unless directed to do so by the Siting Council.

- What determines what is a viable site? Mr. Wells said once a search ring is established, the two factors considered are adequate coverage and the property owner's cooperation.
- Where will the next tower to the north be located to continue the coverage along Rt. 202? Mr. Wells said depending on the topography and whether there are any existing structures that can be used, a tower is needed every 2 to 3 miles.
- Why can't repeaters be installed along the Rt. 202 corridor? They are lower, more inconspicuous, and still provide coverage. Mr. Wells said Sprint does use repeater technology when it can, but in this case, the objective was also to provide coverage to surrounding neighborhoods outside the corridor.

In summary, Mr. Martin noted Washington's concern was that although the primary service area for the tower would be outside the Town of Washington, it would impact Washington's scenic vistas and viewsheds due to its proposed location on the north east side of the ridge. He noted that the Town's Plan of Development recommended the protection of vistas and scenic resources. He said Washington requests that Sprint mitigate this problem through the use of an alternate site. He said that Washington would make this same request directly to the Ct. Siting Council.

Mr. Martin voiced his concern about the Sprint proposal and its impact on that section of Washington. He said the Commission did not have much time to educate itself before the Siting Council's public hearing. It was the consensus a consultant was needed, although consulting funds were limited, to represent the Town at the Council's hearing. A primary concern to be conveyed to the Council would be the possibility of an alternate site to lessen the impact on Washington.

### **AT&T Wireless PCS/New Preston Congregational Church/15 Church Street/Wireless Communications Facility/Preliminary Discussion**

Atty. Leary and Mr. Joseph represented AT&T Wireless. Atty. Leary presented plans, "Church Elevation," and "Antenna Plan," by AT&T, both dated 6/13/02 for the installation of an antenna in the steeple of the New Preston Congregational Church and an associated equipment cabinet on the side of the existing building. He noted that unlike the tower just discussed, this installation was under the jurisdiction of the local zoning authority. He noted the proposed personal wireless facility would require a Special Permit.

He stated AT&T would evaluate Sprint's proposed New Milford site as a colocation opportunity, but said it seemed to be located too far to the SE to serve all of the area AT&T is trying to cover, which is Rt. 202 in New Preston and Marbledale.

Atty. Leary asked for the Commission's guidance regarding the following standards specified in the Zoning Regulations:

- 1) Section 13.19.8.O.2: A tower or personal wireless service facility may not be located closer than 750 feet to an existing church.

2) Section 13.19.8.O.1: The siting of such a facility may not be within 1500 feet of any public or private school property.

3) Section 13.19.8.f: Such a facility may not be located on a school.

First, he noted that although a school is presently located across the street, he understood that it would be moving to another location. Second, he asked whether the antenna would be permitted in the church spire. He noted that although there was a 750 ft. setback required from a church, the regulations did not specifically prohibit siting a facility on a church as they prohibit siting one on a school. If it was not allowed, he asked if there was a procedure by which he could obtain a variance. Mr. Martin stated if the application was viewed favorably by the Commission, an amendment could be made to the Regulations to permit the church steeple location. Third, Atty. Leary noted the 750 ft. setback requirement from a dwelling unit and asked if the church parsonage would be considered part of the church or a separate dwelling unit.

Mr. Martin said, and the other Commissioners concurred, the proposal to camouflage the facility in a church steeple was in the spirit of the Regulations. Thus, depending on the degree to which this facility would pre-empt the need for other facilities in Town, and other aspects of the project, the Zoning Commission would be willing to work cooperatively with the applicant. Mr. Owen noted that if the Regulations prevent the location of a facility in a church steeple, this is contrary to the Commission's intent to reduce visual impact whenever possible.

Atty. Leary was asked if other sites were currently being considered. He responded that no specific sites were being studied at this time, but that in general sites along Rts. 202, 109, and 47 would be considered.

Mr. Owen asked him whether there were any other sections of the Regulations that could conflict with this proposal. Atty. Leary said perhaps those concerning ridgelines and watercourses may be in conflict. Mrs. Hill asked how large the church property is because Section 13.19.8.q.7 prohibits facilities on lots that are less than the minimum lot size required for the zoning district in which they are located. Atty. Leary thought the lot size requirements would not be a problem.

Mr. Martin noted the Commission was concerned about the possibility of 160 ft. towers being sited in Town, and so said if an acceptable application is submitted, it would work with the applicant on addressing the problem areas. It was the consensus that locating the facility in a church steeple was a desirable solution in that it would help to preserve scenic vistas. Mr. Owen said that in addition to avoiding an eyesore, another beneficial aspect of this proposal would be that it would provide coverage for Washington residents.

The actual installation of the facility in the steeple was discussed. Atty. Leary said the louvers in the steeple would be replaced with materials similar in appearance that would be technologically suitable.

Mrs. Friedman asked how AT&T could accomplish at 58 ft. what Sprint required 160 ft. to do? Atty. Leary stated the property was 600 ft. above sea level and was suitable for the company's needs, adding that he had not brought technical staff with him to answer this kind of question. It was noted that both companies operate in the same megahertz range.

Mr. Joseph from the American Tower Corp. with AT&T advised the Commission that the fact AT&T was able to propose a facility in a church steeple did not necessarily mean that the same kind of plan would meet the needs of other companies or that colocation would be

possible. For example, he said frequency levels could interfere with each other.

Atty. Leary asked if the Commission would recommend he submit an application for a text amendment. Mr. Martin said the Commission might propose one itself. Atty. Leary stated at the time an application is submitted he would show it is aesthetically acceptable, safely constructed, and that the intent of the setback regulations have been met.

### **Revision of the Zoning Regulations**

- Section 13.1.B: The Commissioners had reviewed Atty. Byrne's recommended revisions in his 5/8/02 letter to the Commission. (See attached proposed amendments) The objective of these revisions is to improve clarity and to better align this section with Ct. Supreme Court case law. It was the consensus to schedule a public hearing for 7:30 p.m. on Monday, August 26, 2002 in the Land Use Meeting Room.
- Circumventing the Zoning Regulations by Conveying a Small Parcel of Land: Mr. Martin briefly described the situation on Old North Road where a property owner had conveyed a small parcel with a large percent of coverage to a third party so that his remaining lot would be far enough under the maximum coverage so that he could get a zoning permit for an accessory building. Several attorneys had been consulted about this and had advised Mrs. Hill that while this action may not be in the spirit of the Zoning Regulations, it was legal. Mr. Martin expressed his concern that it was possible to circumvent the Zoning Regulations in this way and expressed his disappointment that a resident would consider this type of scheme. He said he had consulted with Atty. Byrne regarding possible amendments to close this loophole. He read a proposed amendment to Section 2.3.1. Mrs. Hill suggested that proposed Sections A and B have the same explanation included. Mr. Martin and Mrs. Hill will soon contact Atty. Byrne regarding this and future revisions and will ask him 1) if the same explanation should be included for each section and 2) if there could be any unintended consequences or rights taken away if the amendment is adopted. The wording of this section will be clarified by Atty. Byrne and added to the revisions to be considered at the August public hearing.
- Other Zoning Revisions in progress:
  1. An update of Section 17 by Atty. Byrne
  2. A general update of the entire Regulations by Atty. Byrne
  3. A technical update of Section 14 by Land Tech Consultants
  4. Revision to the Woodville Business District section by Mrs. Friedman and Mr. Owen.

There was a general discussion about the Zoning Commission's concern that the ZBA does not apply the standards for hardship and parcel uniqueness as required by state statute when granting variances. Mr. Owen and Mr. Martin will soon meet with Mr. White, ZBA Chairman, and Mr. Owens, ZBA Vice Chairman, to discuss this issue. The possibility of a joint meeting of the two commissions was also suggested.

Mr. Fitzherbert stated his intention to recuse himself when an application is submitted by the Housing Trust for affordable housing at the Montessori School site. He thought it could be perceived that he has a conflict because Mr. Sears, President of the Trust, reports directly to him at work. Mr. Martin said he would have no personal or financial gain from the outcome and if he had not made a predetermination regarding the application, there was no actual conflict. He said he would leave the decision up to Mr. Fitzherbert.

MOTION: To adjourn the meeting. By Mr. Owen.

Mr. Martin adjourned the meeting at 10:34 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill  
Zoning Enforcement Officer