

**TOWN OF SHELBURNE
TELECOMMUNICATIONS REVIEW BOARD
MINUTES OF MEETING**

December 17, 2020

***Meeting held via teleconference.**

MEMBERS PRESENT: Jason Grignon (Chair); Megan McBride (Vice Chair); Steve Kendall, Jean Sirois, Neil Curtis, Deb Estabrook, Stephen Selin.

STAFF PRESENT: Dean Pierce, Planning Director.

OTHERS PRESENT: Zach Manganello, Brian Sullivan, Maureen O'Brien, Kevin and Nicki Hawko, Peter Raymond, Michael Buscher, Gail Albert, Cyndie White, Scooter MacMillan, Jennie Hoeningberg, Elizabeth Seward, David Hedden, Becky Moore, Luke Hoeningberg, Nicole Carpenter, John Hollier.

AGENDA:

1. Call to Order
2. Approval of Minutes (11/12/20)
3. Application(s):
 - Telecommunication Application, "Ham" Radio Facility, 4450 Dorset Street, Manganello (TEL20-01)
4. Adjournment

1. CALL TO ORDER

Chair Jason Grignon called the teleconference TRB meeting to order at 7:05 PM.

2. MINUTES

November 12, 2020

MOTION by Steve Kendall, SECOND by Neil Curtis, to approve the TRB minutes from the 11/12/20 TRB meeting with the addition in the second bullet under Public Comments of "in the applicant's opinion" before "exempt from the town's communications ordinance". VOTING: unanimous (7-0); motion carried.

3. APPLICATION(S)

TEL20-01: Telecommunication application for a "ham" radio facility at 4450 Dorset Street by Zachary Manganello

The public hearing was opened at 7:10 PM. Jason Grignon gave a brief history of Recess Order #5 distributed on 11/4/20 and the public hearing held on 11/12/20. The procedure to be followed to hear evidence on the application was explained. Six witnesses to speak include Jean and Brian Irwin, Kevin Hawko, David Hedden, Maureen O'Brien, Luke Hoeningberg. Individuals to give testimony were sworn in.

COMMENTS

Peter Raymond, attorney for the neighbors, addressed the TRB's authority to impose regulation on the height of 'ham' radio towers or apply the town's ordinance as written.

Case law relative to “reasonable accommodation” was reviewed in terms of limited federal pre-emption (FCC PRB-1) to accommodate amateur communications and that the DRB can make reasonable accommodation. Attorney Raymond said legal cases show the DRB has the power to condition an application, and a 35’ tower is a reasonable accommodation.

Kevin Hawko, Shelburne Farm Road, spoke about the adverse impact on his views by the proposed towers, noting the direct line of sight of the towers from his house and the towers obstructing the view of the surrounding area. Mr. Hawko said he has seen other antenna arrays that are less than 35’ in height and are obscured from view.

Maureen O’Brien, Barstow Road, spoke about aesthetics and character of the area being strong values across the state and in the Town of Shelburne. Ms. O’Brien noted the town’s tower ordinance says towers are not allowed in the rural area, conservation area, or on a ridge line. Also, towers must be no greater than 35’ in height. The DRB is urged to adhere to the town’s ordinance. Ms. O’Brien expressed concern that an incomplete application is being considered and the applicant did not share the plans with residents impacted by the towers. The DRB should consider the concerns expressed and adhere to the tower ordinance.

Brian Irwin, neighbor, spoke about the ease of finding information on telescoping towers, and questioned if other options, such as a collapsible tower, have been researched. Mr. Irwin mentioned his view being impacted by the towers.

Luke Hoeningsberg, neighbor, spoke about the need for FAA approval of the towers before the town can take action on the application. Also, enforcement by the town of any change notices by the applicant needs to be determined. FAA enforcement of failure to notify of changes is after the fact. The fine is \$1,000 per day.

David Hedden, neighbor, spoke about the impact of the towers on his views and that a reasonable compromise is a 35’ tower.

Jean Irwin, neighbor, spoke about the impact on aesthetics by the towers and allowing a hobby to infringe on the neighbors. There are no tall trees in the hedgerow to screen the towers. Ms. Irwin suggested a higher tower can be located elsewhere with connection remotely.

Stephen Selin asked about the following:

- FAA approval before a TRB judgment - Attorney Sullivan said the application can have a condition of approval saying FAA approval is required.
- Cost of telescoping tower - Brian Irwin said the process for approval of the towers is costing many more times the cost of a telescoping tower.
- Internet based connection for the ‘ham’ radio – Zach Manganello said Internet connection is possible, but there are limited stations available to contact with remote control.

- Suggested compromise – David Hedden said the zoning bylaws allow a 35’ tower which is acceptable to most people and less visible, can be screened with vegetation, and not set a precedent outside local zoning laws. Attorney Sullivan clarified the 35’ height limit is the tower height that does not require approval from the town, and Article 8.J of the ordinance says 30’ over the tree tops within 200’ of the tower.

There was discussion of the FAA site used by Burlington Airport. The site is located on a ridge in order to have a straight line to Runway 1 at the airport.

There was discussion of the pictures submitted by neighbors and whether the zoom function was used. It was confirmed the zoom function was used for some of the photos. Michael Buscher stated perspective is an issue with the photos.

There was discussion of the longevity of the trees in the area. Michael Buscher said there are not many trees, but these will grow though it will take time. The relation of the tower location to the trees is difficult to tell precisely. Megan McBride asked about minimizing sight lines with plantings. Michael Buscher said any plantings will take time to grow and be effective. The industry standard is two or three inch caliper and 12’ to 20’ in height. Attorney Sullivan asked if field work is needed to determine the height of the trees. Mike Buscher confirmed field measurement information is needed before a determination can be made. Attorney Raymond asked if the statement saying a 35’ tower is more effectively screened with the existing vegetation is disputed. Mike Buscher said he would not dispute the statement. Attorney Raymond asked if a 35’ tower expands the options for plantings for screening. Michael Buscher said any type of planting installed as a means of mitigation would be more effective because there is less height to obscure or soften the views.

Nicole Carpenter, abutting neighbor, said the towers can be seen from her patio and walking path as well as from other angles on Dorset Street, Barstow Road, and Cheesefactory Road.

Another neighbor testified to having a view of the towers from their property and the trees not providing screening.

John Hollier, corner of Barstow Road/Dorset Street, spoke in support of allowing people the opportunity to pursue their interests and allowing the tower.

A resident spoke against a neighbor being able to impact the property values of surrounding homes with their hobby.

Attorney Raymond spoke to limiting the height of the tower and referred to Article 7.5 which prohibits towers in the Rural District, noting that towers are prohibited in the Rural District to preserve the aesthetics of the area. A 35’ tower is a reasonable accommodation by the DRB.

There was further discussion of the height of existing trees within a 200' radius of the towers. Attorney Raymond confirmed there are no trees at or above the tower height within 200' of the tower site.

There was a question about increasing amplitude with multiple towers. Zach Manganello said it would be an engineering feat to have a phased array of antenna that work. A taller structure (tower) makes a difference in the functioning of the antenna.

There were no further comments/questions.

MOTION by Steve Kendall, SECOND by Neil Curtis, to close the public hearing on TEL20-01, application by Zach Manganello for a 'ham' radio facility at 4450 Dorset Street. VOTING: unanimous (7-0); motion carried.

4. ADJOURNMENT

MOTION by Deb Estabrook, SECOND by Jean Sirois, to adjourn the meeting. VOTING: unanimous (7-0); motion carried.

The meeting was adjourned at 9:07 PM.

The TRB entered deliberative session.

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