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TOWN OF DUXBURY



BOARD OF APPEALS

DUXBURY BOARD OF APPEALS MEETING MINUTES

October 24, 2019 @ 7:30 p.m.

ATTENDANCE: Kathleen Muncey, Freeman Boynton, Jr., Borys Gojnycz, Philip Thorn & Wayne Dennison

CALL TO ORDER: Wayne Dennison

ZBA Case #2019-11 CrossFit Kells, 14 Chestnut St. Appeal: *The Board voted to continue the public hearing until November 14, 2019.*

ZBA Case #2019-12, Cellco Partnership dba Verizon Wireless, 155 Mayflower St.
(CONT'D): *The Board voted to continue the public hearing to December 12, 2019.*

Wayne Dennison voted to adjourn the meeting. Borys Gojnycz seconds. All in favor (5-0).

BOARD OF APPEALS — MINUTES

Case No: 2019-11

Petitioner: CrossFit Kells

Address: 14 Chestnut St

Parcel #'s: 110-771-032

Date: October 24, 2019

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, October 24, 2019 at 7:30 p.m., continued from July 25, 2019, to consider the application of CrossFit Kells for a Comprehensive Permit. The property are located at 14 Chestnut Street, Parcel No.'s 110-771-032 of the Duxbury Assessors Map, consisting of .082 Neighborhood Business District 1 (NB1) and owned by South Shore Capital, LLC. The Applicant disputes the basis of a zoning violation notice citing offensive noise and vibration and the Town's By-laws meaning therein. The application may be viewed in the Municipal Services Department between the hours of 9:30 a.m. and 2:30 p.m., or by appointment. Any individual with a disability may request accommodation in order to participate in the public hearing and may request the application and any accompanying materials in an accessible format. Such requests should be made at least three business days in advance by contacting the Municipal Services Department.

Members present: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojyncz & Philip Thorn

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Asst. ZBA

Members Voting: Wayne Dennison, Kathleen Muncey, Freeman Boynton, Jr., Borys Gojyncz & Philip Thorn

- Wayne Dennison announces the request to continue, asks Angela Ball the date of continuance and then states he's inclined to allow a continuance.
- Amy Reilly 37 Chestnut St states it's been going on forever, being woken up at 5AM with music.
- Siobhan Perenick 24 Chestnut St states that she is ok with the continuance with the conditions, as they'd have time to fix this. Please add the contingencies.
- Wayne Dennison states that there is already an order in place.
- Siobhan Perenick asks why have there been no fines.
- Wayne Dennison states that they have the right to appeal
- Siobhan Perenick states that nothing has been done-they've known
- Chuck Perenick 24 Chestnut St states this is the second continuance, there have been no testes. Do we know if they'll definitely do the flooring?
- Wayne Dennison states there is a letter that states that seismology was going to be \$10,000 and that they would rather do the flooring. There is an order in place.
- Chuck Perenick states we understand all is in place. We need to call the police for this and I find it difficult to call the police. If this doesn't stop I'll call the police and wait for the mats.

- Wayne Dennison asks anybody else? No
- Wayne Dennison states its good faith to address it and if we are at three weeks and no activity, then that would resolve it entirely.
- Borys Gojyncz ask from Scott
- Scott Lambiase asked and told to call the Police Department, so I could fine with record, the inspector tried to witness, saw it, and started a cease and desist. I can't just fine them without it present
- Siobhan Perenick responds that he's been there and recorded it
- Chuck Perenick Jim said he heard it
- Wayne Dennison moves to continue to 11/14/2019 consistent with the request.
- Borys Gojyncz second

Motion: It was moved, seconded and unanimously voted to close the public hearing.

Moved by: WD

Seconded by: BG

Number in favor: 5

Number opposed: 0

BOARD OF APPEALS — MINUTES

Applicant: Verizon Wireless c/o Gehrig Associates

Property Address: 155 Mayflower Street

Case No: 2019-12

Date: October 24, 2019 Time: TBD

The Board of Appeals will hold a public hearing in the Mural Room at Town Hall, 878 Tremont Street, on Thursday, October 24, 2019 at 7:30 p.m. to consider the application of Celco Partnership dba Verizon Wireless c/o Gehring & Associates, LLC for a Special Permit and a Variance under Article(s) 400, 600, and 900, Section(s) 406, 410.3 #11, 610.4, 610.5, 610.6, 610.7, 615, 906.2 and 906.3 of the Duxbury Protective Bylaw. The property is located at 155 Mayflower Street, Parcel No. 092-500-039 of the Duxbury Assessors Map, consisting of 18.99 Acres in the Residential Compatibility (RC) and Aquifer Protection Overlay Districts (APOD) and owned by the Town of Duxbury. The applicant proposes to construct a ground-mounted monopole Wireless Telecommunications Service Facility with a 150-foot tall monopole. A Special Permit is required for the Facility and a Variance from the 65 foot height limit is required for the monopole.

Members present: Kathleen Muncey, Freeman Boynton, Jr., Borys Gojncyz, Wayne Dennison, Philip Thorn & Emmett Sheehan

Other persons present at the hearing: Scott Lambiase, Director of Municipal Services & Angela Ball, Administrative Assistant

Members Voting: Kathleen Muncey, Freeman Boynton, Jr., Borys Gojncyz, Emmett Sheehan & Philip Thorn

- Kathleen Muncey reads the Public Hearing notice
- Wayne Dennison discloses that he's been litigating cell towers for 20 years and has not been retained by Verizon or others, so there is no conflict.
- Wayne Dennison cites the application, Planning Board memo, Chief Nord's email, The Duxbury Review Boards email, the Conservation Committee's email and the Board of Health's email.
- Wayne Dennison states that if we approve a 150 foot tower, you can come back and get 170 feet, correct?
- Carl Gehring states that the applicant does not want the additional height.
- Carl Gehring introduces himself and his team and distributes a handout and asks to make an uninterrupted presentation
- Wayne Dennison disagrees with the idea of uninterrupted aspect, would prefer to ask questions as they go along.
- Carl Gehring explains the bylaw is intensive and begins to show the pole example
- Wayne Dennison asks how wide
- Carl Gehring replies 4 or 5 feet
- Wayne Dennison states no external

- Carl Gehring states less competition from a real estate level point of view. I combined Planning Board and Zoning Board of Appeals application as it's not app to planning.
- Carl Gehring goes over his statement in support and sites what each tab in application goes over # 1-9 and points to maps on the easel and explains map coverage
- Wayne Dennison asks coverage objective
- Carl Gehring states 95. Whole vicinity and explains that when the number of users increase, the whole area is taxed with existing – as tab #10 is provided as a courtesy
- Wayne Dennison asks what law
- Carl Gehring responds to the extent that we're compliant
- Wayne Dennison asks do you know antennas
- Carl Gehring states that we've made assumptions based on other carriers and frequencies. Fully loaded it's at 2%, so it means it could go 50 more. Tab #11 (in the provided binder) goes over sand assessment, that it's a non-issue. Tab #12 stats that according to our consultant, there is none and refers to information in the letter.
- Wayne Dennison asks are the matched pairs on the South Shore
- Carl Gehring states yes, some in Duxbury, other are nearby – he proceeds to go to #13 and #14 with a photo simulation
- Wayne Dennison asks balloon float?
- Carl Gehring replies yes. He finishes up #14, under tab #15 are the site plans showing zoning districts and shows on map area with no residences in certain areas and no wells. Next is a close up and the only place nearby is a woodland.
- Wayne Dennison asks does this depict it so close that it could fall on the existing solar farm?
- Carl Gehring replies we put these close to buildings. He continues to go over why he'd put a tower up so high and it's good to minimize height request, part of RFP was to offer up part of the pole.
- Wayne Dennison asks how much above
- Carl Gehring states below 20 feet. Interest from the town to maximize revenue, we need to have site plan approval and ZBA approval.
- Wayne Dennison asks could you go over variance requirements for me? Typography cliff?
- Carl Gehring replies yes, I think so. Its latitude and longitude and height are above sea level.
- Wayne Dennison Not soil conditions or shape of property, just typography
- Carl Gehring states yes, typography. Shape and location thus make this a unique property
- Wayne Dennison states that 150 feet is a gigantic tower
- Carl Gehring replies we used to ask for 190 feet
- Wayne Dennison replies I know, because I was there
- Carl Gehring states we would need 140 feet; at 100 feet we wouldn't get this close. 125 feet center at minimum and we're no being greedy and ask for 190 feet, so we're competing with that and this allows us for colocation, which will benefit the town.
- Wayne Dennison You needed a 125-foot tower
- Carl Gehring states no, a 130-foot tower. We're asking for a 150-foot tower comparatively modest, allowing for colocation.
- Wayne Dennison asks why no interior antennas?
- Carl Gehring replies they are restrictive and inefficient; used in lower sites but wouldn't work here
- Wayne Dennison asks to see the map again? Coverage
- Carl Gehring shows the map
- Wayne Dennison states it's a honeycomb, it's how it works

- Freeman Boynton Jr asks How about in the Kingston area on the left. I drive up over the highway and lose service and it seems this site won't fix it. Why not Elm Street, which was already approved. Why not fix instead and a steeple works great
- Carl Gehring replies no it doesn't
- Philip Thorn asks did Steeple sites go away
- Carl Gehring replies no
- Carl Gehring states the whole sector is off
- Wayne Dennison asks what does that mean?
- Carl Gehring responds that it means they are only operating at a certain percentage and need to be fixed. If you go to population improvements, it's across the board 3x coverage
- Wayne Dennison asks how'd determine business coverage?
- Carl Gehring replies through census etc.
- Wayne Dennison asks do you know how many businesses in Duxbury?
- Carl Gehring responds based on census and registered businesses
- Kathleen Muncey asks if you reduce the tower by 25 feet, how much less coverage is there? Maps change?
- Carl Gehring the minimum is 125 ft and 130 ft
- Wayne Dennison states if we did 110 feet couldn't you do 20 under the Federal Law and go to 130 feet?
- Carl Gehring states we couldn't do more until it's built
- Wayne Dennison states I can't see any reason to go higher than what the Law provides
- Emmett Sheehan you've referenced lease arrangements and monies from the town, what are the numbers?
- Carl Gehring states colocation and if we sublet it would be 50% to the town; to allow additional height at the get go is due to colocation
- Philip Thorn states if it increases to 170 feet, can you do that?
- Wayne Dennison asks so for variance submission you're relying on a typo?
- Carl Gehring replies also relying on case
- Wayne Dennison states I am familiar with the Burrows case that states we don't have to consider Federal
- Carl Gehring states it's different than a regular variance
- Wayne Dennison states the first circuit is determined, we don't have to consider that
- Carl Gehring responds why not?
- Wayne Dennison states the Board has limited jurisdiction
- Carl Gehring states the Federal overlay trust allows you to expand 40A and not discriminate among carriers
- Wayne Dennison states is there anything that states we are discriminating?
- Carl Gehring replies no. I'm just basing it on past variance requests and I know you've...
- Wayne Dennison states that Federal Law says that we don't have to consider Federal Law. We can just consider Duxbury ZBA.
- Kathleen Muncey asks what's the case?
- Freeman Boynton Jr. asks why not use an existing site; we're already approved on Elm Street
- Carl Gehring and Freeman Boynton Jr. go over the map
- Carl Gehring responds wrong location
- Wayne Dennison asks is that in alternative site analysis?
- Carl Gehring responds No
- Freeman Boynton Jr. states it seems you're putting another pole near an existing ...

- Scott Lambiase states that alternative site has expired and will be back in front of the Board. There was never a tower tall enough to reach that area. The town put at that site specifically.
- Freeman Boynton Jr. states you're covering town forest, why not covering North or South, just the town hall area
- Kathleen Muncey states I have a question; the solar farm leased to the town on site very close, have they been notified? Solar leases are tight, a lot of restrictions are on this.
- Scott Lambiase states I will have to check, I don't think they'd been notified
- Kathleen Muncey asks will there be a fence? Yes...
- Wayne Dennison asks is there anybody here to speak?
- Dr. Dieter Drexler, 3 Cranberry Hill, states we could see the balloon from Cranberry hill and the pole will be more like 175 feet and this was done in the summer, I would for this to be viewed in the winter with no...
- Wayne Dennison asks how close?
- Dr. Dieter Drexler responds bordering the Police Department. I think a pole this close would reduce home values and I would like an independent real estate evaluation
- Freeman Boynton Jr. asks can you point at your house on the map?
- Dr Dieter Drexler points to his house on the map
- Carl Gehring states we will stipulate that yes, you can see it, but what other use in your Zoning Bylaws are invisible?
- Philip Thorn asks will there be a lot on top?
- Carl Gehring responds No
- Hilary Baker, I Cranberry Hill, I dispute that it doesn't affect property values. I googled it and there is an indication that it affects property values and a few of us just bought houses here, so we'd appreciate serious consideration.
- Wayne Dennison states we have the ability to ask for a peer review and many opinions have been heard, but I'd be in favor of having these issues peer reviewed. I'll tell you from personal experience, it won't exceed FCC regulations, so it's not their issue you bring up, yes.
- Hilary Baker says yes, property value is the biggest concern
- Lt Chubb of the Duxbury Police Department states I am here to represent the Duxbury Police Department in support we have various computers and cells and from a public safety standpoint it will be a huge improvement
- Wayne Dennison asks does it work now?
- Lt. Chubb states it's not reliable, no
- Dr, Dieter Drexler asks why not have a glass fiber -- would this not help? You don't go on wifi
- Lt. Chubb responds I was referring to mobile that are still on persons back in the building and connectivity loss is huge
- Wayne Dennison asks people working on wifi internally cannot go?
- Lt. Chubb states that if we had wifi, then computers would work much better.
- Wayne Dennison asks a tower of any height?
- Kathleen Muncey asks how tall is the Fire Station? 130 feet?
- Carl Gehring states it would be beneficial for Mark Correnti to give a review.
- Mark Correnti is a certified residential appraiser in Massachusetts and New Hampshire for 22 years. I get it that there are a lot of opinions on property valuations and that's not a fact, i.e. a swimming pole. So, what a study does is that, it goes over cell tower influence.
- Wayne Dennison asks how do is cell tower influence determined?

- Mark Correnti states if you are familiar with Heritage Lane, there is a tower there that is 130 feet and there have been home sales.
- Freeman Boynton Jr. did the tower exist before the sales?
- Mark Correnti goes over an example of 650 Tremont Street and how an analysis works
- Wayne Dennison questions page #19 peers and how can you compare if you don't have that information.
- Carl Gehring asks Mark Correnti is he's using Peers?
- Mark Correnti replies yes
- Wayne Dennison asks how close to water are the peers? Side of 3A?
- Mark Correnti states I can provide that information
- Wayne Dennison states there's no way without the location
- Carl Gehring replies with no view of the tower
- Wayne Dennison states you can't tell me a comp is a comp without location
- Mark Correnti states for the 2018 real estate market, that's how it works
- Wayne Dennison asks supplement this report?
- Mark Correnti responds yes, I have all of the addresses
- Carl Gehring asks can you speak to others?
- Wayne Dennison asks did peer 650 right?
- Mark Correnti replies I'm sure they did
- Wayne Dennison asks who said it?
- Mark Correnti responds I am not sure of the name, any questions.
- Borys Gojnyecz asks Lt. Chubb about an application for a variance to raise a micro technology-does the police department use technology?
- Lt. Chubb responds It's RF technology, not...
- Mark Correnti states it was Donna Wood who sold property
- Carl Gehring states we have Dr. Hayes present brief example for benefit
- Dr. Hayes identifies himself, states he penned a report and in this report it's a theoretical and use analysis that the FCC suggests to determine if the site would comply-I looked at, as a radiation safety specialist, I included typical antenna configurations and there is no real difference with antennas other than working down and I used most restrictive antennae 65 feet.
- Wayne Dennison asks what does most restrictive mean?
- Dr. Hayes explains what he means, that it'll give you the highest number and I ran a series of calculations and used the worst
- Carl Gehring asks worst case scenario?
- Dr. Hayes responds the FCC says 2.5 and I used 4 and that a terrestrial radio on the tower and many, not the first version, on the tower- AT&T, T-Mobile and Sprint. Cites fig. 4 and that without the rest, it would be less than 2.5
- Cranberry Hill resident asks how close does the signal come from the monopole?
- Dr. Hayes states antennas are designed to emit energy from a fan shaped flashlight and if you took the light and flipped it sideways...
- Wayne Dennison asks if it's a general range of tilt?
- Dr. Hayes responds that there are two types mechanical and electrical and that typically 10 degrees is highest and it doesn't affect the number, just the location.
- Unknown resident states that the Police Department is in close proximity, but will still get a better signal?
- Dr. Hayes responds that the whole idea with wireless is to give equal to all providers and you'll see bands of higher light (looking directly at it).
- Carl Gehring asks complaint with FCC?

- Dr. Hayes replies yes
- Wayne Dennison states we have no authority to regulate the RF admissions as long as it's FCC compliant, Federal Law issue...
- Freeman Boynton Jr. states there's talk of putting antennas on the water tank
- Scott Lambiase states that nobody responded to RFP, there was zero interest.
- Freeman Boynton Jr. states look with the map again
- Wayne Dennison states Captain Hill with search range?
- Carl Gehring replies No
- Borys Gojnycz and Freeman Boynton Jr. discuss the question good service and the Police Department needing it...
- Freeman Boynton Jr. states it's not helping service here, but fin...
- Wayne Dennison states I want to do a peer review on appraisals and Radio Frequency and if you want real estate, Hayes, but I can tell you from experience he's good.
- Carl Gehring asks what on Radio Frequency that you're...
- Wayne Dennison says that'll cover
- Carl Gehring asks suggest?
- Wayne Dennison states Ivan of IDK
- Scott Lambiase says they've used D. Martin
- Wayne Dennison states think about real estate appraisal
- Carl Gehring asks what in real estate report, is?
- Wayne Dennison states we want to see that it's accurate and we'd like to see that peers agree
- Carl Gehring responds ok, so an expert will have to be
- Austin G asks has this been done with other sites in Duxbury?
- Mark Correnti states that if Donna sold a home, I'd say that's appropriate
- Ingrid Drexler, 3 Cranberry Hill, states I live at the closest house and we bought the home for the view and the privacy. Had we known the cell tower would be there we would have reconsidered buying the house. Please consider how you would feel if it was your house. We are on a hill, so we'll see it more. He gave an example of one who wouldn't mind, but I am an example of someone who would mind.
- Carl Gehring responds I would welcome a tower and so that's a great example of people being different. Dead zones are a negative and you can't argue personal taste and if we scrapped the site and rent somewhere else, you'll all see it.
- Wayne Dennison asks Scott Lambiase how long do we need for a review?
- Scott Lambiase replies he will reach out to minute man asap.
- Emmett Sheehan asks if it was at 120 feet would you feel the same?
- Wayne Dennison responds I think it's way too tall
- Carl Gehring asks would 130 feet be ok?
- Kathleen Muncey asks I want to know the difference in coverage
- Carl Gehring responds I have info on that-hands out a sheet-
- Wayne Dennison states I am not sure how you use a census to do this, but I thought you gave me something that said you would fill 2/3 of the coverage gap?
- The Board addresses coverage – Freeman Boynton Jr. states not church other...
- Austin G states that there is a capacity issue at the site
- Carl Gehring states the existing church is limited
- Wayne Dennison states I see the coverage map that says you don't need a variance...
- Carl Gehring argues that the yellow/red area it is needed and is substantial.
- Kathleen Muncey responds that the schools are now covered

- Freeman Boynton Jr. states I think they are already covered
- Wayne Dennison asks why we need a RF
- Sohail Vsmari, a Radio Frequency Engineer, states that the church site is limited; provides, no way to detail perf. Stat on map and what you see is not what it provides. A church site with an antenna inside the steeple has many issues. So unavailable that it may be decommissioned, so site location where it is, is to provide back up to the church. There have been many attempts to mitigate perf issues unsuccessfully.
- Wayne Dennison states in the coverage map, is the church site on
- Sohail Vsmari responds just the proposed site
- Wayne Dennison states we need an RF expert, I am hesitant to grant a variance.
- Kathleen Muncey asks is it visible at 95 or 145?
- Carl Gehring replies probably
- Freeman Boynton Jr. asks are there pine trees that tall?
- Wayne Dennison states over trees or it won't work-we'd like to continue – date
- Carl Gehring asks how soon?
- December 12th
- Freeman Boynton Jr. states in the meantime should we consider Elm Street or the water tank to close gaps?
- Ingrid Drexler asks is it possible to enhance the Fire Departments pole to improve reception for the police?
- Wayne Dennison states that the Peer Review will look at that I'm sure
- Lt. Chubb replies that that tower is full or close to it.
- Austin G replies we did analyze that site and it's maxed out
- Freeman Boynton Jr. could you replace that with 170 foot pole?
- Scott Lambiase states there is no room now
- Philip Thorn asks does the ability to add 20 feet apply to any height-95 or 145?
- Carl Gehring responds yes the structure is suitable – we would like it to work on the get go
- Philip Thorn asks no lighting, correct?
- Carl Gehring says no
- Kathleen Muncey Motion to continue to 12/12/19
- Emmett Sheehan second
- All in favor

Meeting minutes approved

Wayne Dennison move to ok 10/10/19

Borys Gojnycz Secons

All in favor

Wayne Dennison adjourns

Motion: It was moved, seconded and unanimously voted to close the public hearing.

Moved by: KM

Seconded by: ES

Number in favor: 5

Number opposed: 0

Motion: It was moved, seconded and unanimously voted to grant the variance.

Moved by: ES

Seconded by: PT

Number in favor: 5

Number opposed: 0