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BROOKFIELD BOARD OF ADJUSTMENT
FINDINGS AND CONDITIONAL USE PERMIT
TELECOMMUNICATIONS FACILITY
T-MOBILE NORTHEAST LLC AND DOUGLAS AND DIANE HAGGETT
OCTOBER 23, 2009

BACKGROUND

Douglas and Diane Haggett (with their agent, T-Mobile Northeast LLC) request a Conditional Use Permit approval under Sections 2.1(E), 3.8, and 4.16 of the Development Bylaws (Board of Adjustment) and Site Plan approval under Section 3.11 of the Bylaws (Planning Commission).

The Haggetts and T-Mobile propose to install nine (9) panel antennas and a monopole tower (telecommunications facility) at 2382 Ridge Road. Installation of the tower and all equipment will be in a leased 100 feet x 100 feet area, with the monopole and related equipment located within a 28 feet x 48 feet fenced-in compound. The proposed tower height is 75 feet. The applicant(s) also originally proposed to install a tree canopy surrounding the monopole and all related equipment. The facility will allow co-location by other service providers.

An application (No. 2009.16) with appropriate fees was received by the Administrative Officer on July 23, 2009. Dee Montie, Administrative Officer for the Town of Brookfield, referred the application to the Board of Adjustment and the Planning Commission on July 28, 2009.

A public hearing was warned and held on August 26, 2009, followed by a continuance of the hearing on September 15, 2009. A site visit took place preceding the August 26 hearing. The Board of Adjustment and the Brookfield Planning Commission jointly reviewed and took comments from the public and representatives for T-mobile and the Haggetts on the proposal. Reference is hereby made to the minutes of those meetings for further information.

REQUIREMENTS UNDER THE BROOKFIELD DEVELOPMENT BYLAWS

Two sections of the Bylaws are triggered in the Board of Adjustment's review of a proposal for a telecommunications facility: Section 4.16 (Telecommunications Facilities) and Section 3.8 (Conditional Uses). The Planning Commission also performs a review under Section 3.11 (Site Plan Approval), and their findings and conclusions are presented separately.

The Board of Adjustment presents its findings first under Section 4.16, which requires factual review specific to facilities such as a cell-phone tower. The initial set of document and testimonial submittals required of T-Mobile are set out in Section 4.16(D). In the order identified under that section of the Bylaws:

1) The location of the proposed structure is identified on a USGS map that is included in the *National Environmental Policy Act (NEPA) Screening Report* (Application Tab 10 of the original application; amended NEPA submission of August 26, 2009).
2) Copies of the Owner Authorization Agreement are included in the application (Application Tab 1). T-Mobile testified that co-location on the monopole will be allowed by T-Mobile, and the location of "future antennas (by others)" is noted on the engineering drawings for the monopole (Application Tab 2, Sheet A-2, as submitted September 15, 2009).
3) Maps of signal coverage with and without 140 feet and 75 feet tower/pole heights are included (Application Tab 4).

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4) Feasible alternative tower location(s) are addressed in Application Tab 3 (*Affidavit of Radio Frequency Expert, Glenn Kreisberg, RF Engineer*, May 4, 2009). In addition, T-Mobile testified that the Haggett property location proved to be the only feasible site in Brookfield based on its central position between existing towers along I-89, its location next to I-89, and its existing access road and tree cover. The alternative site of the Allis State Park fire tower was not considered, T-Mobile testified, as the State of Vermont generally does not allow co-location where there will be visitors near the antennas.
5) Potential federal and state conditions are addressed in Application Tab 3 (*Affidavit of Radio Frequency Expert, Glenn Kreisberg, RF Engineer*, May 4, 2009) and in Application Tab 10 (*National Environmental Policy Act (NEPA) Screening Report*). There are no lights required by the Federal Aviation Administration at the tower's planned height, nor are any planned for the pole, according to T-Mobile's testimony. The company indicated that all materials and paints planned for the pole are non-reflective. The proposed facility meets federal radio frequency limits (Application Tab 3). T-Mobile also testified that the portion of the Haggett property that they will lease is in the state current use program, and that this portion will be taken out of the program and the monetary balance due paid to the state.
6) A complete description of the facility is provided in the site plans and engineering drawings located in Application Tab 2 (including amended submissions from the August 26 and September 29, 2009 hearings).
7) A description of utilities and accessory structures is incorporated in the site plans and engineering drawings located in Application Tab 2 (including amended submissions from the August 26 and September 29, 2009 hearings). Testimony from T-Mobile indicated that any generators used in the event of a power failure will be temporary and have noise shielding, and there will be batteries on-site to provide coverage for short power interruptions. The power line will run within T-Mobile's 30 feet right-of-way (ROW), with seven poles proposed at a maximum height of 35 feet, as T-Mobile testified (September 29, 2009 hearing).
8) Landscaping, screening, fencing, and the access road are depicted in the site plans and engineering drawings located in Application Tab 2 (including amended submissions from the August 26 and September 15, 2009 hearings).
9) Nearby trees are at a 65 feet height, as shown in Application Tab 2 (Sheet A-2, as submitted September 15, 2009).
10) The exemption cited in Section 4.16(C) of the Development Bylaws does not apply to this proposed facility.
11) Additional information requested by the Board of Adjustment, and T-Mobile's responses, is indicated in the minutes to the August 26 and September 15, 2009 hearings.

The next set of general standards applied to the T-Mobile tower proposal are set out in Section 4.16(E). In the order identified under that section of the Bylaws:

1) Based on the site plans, the Board of Adjustment finds that with respect to height, color, and size, the proposed facility will be compatible with the existing natural and man-made characteristics of the Haggett property site. The tower will be a 75 feet monopole colored charcoal gray, set against a forested area with appropriate natural screening and landscape to shield the compound.
2) Existing on-site vegetation will be preserved as part of the proposal, and will be used to provide screening on the western side of the compound. No additional screening will be required on the eastern side of the compound. The location of the site is approximately 1300 feet from the Ridge Road, and the compound placement is shielded to the east by a hill and field so that there is minimal visual impact to passers-by along the Ridge Road. An existing drive and path on the Haggett property will be used to provide access to the facility, with an extension tracking the ground-level tree line leading up to the facility, in order to minimize landscaping disturbances

beyond the compound. Utility lines cannot be buried due to ledge underlying the property (testimony from September 15, 2009 hearing).

3) The physical facility, specifically the 28-feet by 48-feet equipment compound, will be enclosed by an eight-foot chain link fence and will be entirely screened as described in 2) above. The leased site's setback distances are greater than: a) 65 feet front yard minimum setback, and b) 50 feet side and rear yard minimum setback as required under Section 2.1(E)(4) (Agricultural/Residential District) of the Bylaws.
4) No lighting is currently required for the proposed tower by the FAA. Lighting for the equipment compound will consist of one shielded bulb, to be used intermittently if night-time maintenance visits are required by T-Mobile (testimony from September 15, 2009 hearing).
5) The Board finds that the proposed monopole tower structure, painted charcoal gray, will cause negligible glare problems. The supporting equipment compound will be screened adequately by surrounding trees and landscape to reduce adverse visual impacts.
6) Testimony and documentation indicates that the proposed facility will be more than 500 feet from any existing residential unit.
7) Based on the treeline studies referenced above, the proposed 75-feet tower will be approximately 10 feet above the average tree height on land adjoining the proposed site. The Board of Adjustment finds that the addition of lightning rod, if deemed necessary by T-Mobile, would be reasonable as long as it is within the 16-inch girth limitation for structures above the maximum height prescribed for towers (75 feet for this proposal) under the Bylaws.

Additional criteria are applied to the T-Mobile tower proposal under Section 4.16(F). In the order identified under that section of the Bylaws:

1) As there are no existing sites or telecommunications facilities within Brookfield, there is no potential for co-location in the town. The Board of Adjustment finds that T-Mobile has shown it has and will diligently pursue additional location options outside of Brookfield to fulfill its goal of providing coverage along the I89 corridor.
2) T-Mobile has provided for potential co-location on its tower and antennas once the proposed facility is completed. Should the opportunity arise for another service provider to co-locate on the tower, T-Mobile will apply to the Board of Adjustment for review and approval of the proposed additional antennas or services.
3) The Board of Adjustment finds that, based on the submittals and criteria discussed above, all aspects of the proposed project, including the access road and utility lines, are located and designed to mitigate undue adverse visual impact on the aesthetic quality of the area and the character of the Haggett property site and surrounding natural resources.
4) The Board of Adjustment finds that, based on the submittals and criteria discussed above, no dangers to the public health and safety can reasonably be expected from the operation of the facility.

Lastly, the Board of Adjustment must address the general criteria for conditional uses set out under Section 3.8 of the Bylaws. In the order identified under that section of the Bylaws:

1) The Board of Adjustment finds that the proposed telecommunications facility will not adversely affect the capacity of existing or planned community facilities.
2) As discussed above, the proposed facility will not adversely affect the character of the surrounding area. Adequate measures are proposed to minimize the visual and physical impact of the proposed tower and compound.
3) Construction and operation of the tower and surrounding compound will yield a minimal increase in traffic on roads in the vicinity. Building the tower and compound will result in a short-term increase in traffic along Ridge Road and its arteries, while operation of the facility will lead to

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monthly or bi-monthly site visits for maintenance purposes. The Board of Adjustment finds that these traffic impacts are reasonable and will have no adverse effect on the area.

4) The Board of Adjustment finds that the proposed telecommunications facility will not adversely affect environmental factors such as air, soil, and water quality. The proposed facility will have no effect on air and water quality. Construction activity on the access path will cause a short-term effect on soil quality in the immediate vicinity of the project, but as proposed, will have no adverse effect subsequently.

PERMIT CONDITIONS

The Board of Adjustment finds that the following conditions are appropriate for the Administrative Officer to include in the Development Permit for the proposed telecommunications facility:

1) The tower may be a maximum 75 feet in height, with the potential to add a lightning rod as long as the rod does not exceed the limitations in the Bylaws.
2) The tower will be painted in a manner and color to fit in with the surrounding vegetation. Antenna arrays at the top will be painted in a similar manner.
3) Existing vegetation and landscaping around the equipment compound are adequate to fully screen the facility year-around.
4) No lighting will be placed on the tower itself; there will be minimal lighting as indicated above for the compound.
5) The tower and compound will be built and located as specified in the site plans for the facility (prepared by T-Mobile Northeast LLC and Aerial Spectrum Inc., dated September 14, 2009 and submitted at the September 15, 2009 hearing, Drawings T-1, A-1, A-2, C-1 C-2, E-1, EME-1 through EME-4, S-1, S-2, and SP-1). The plans indicate: a single-lane access road and path tracking the existing access path on the Haggett property and extending along the tree line towards the tower site; a single 75-foot monopole tower, with lightning rod, and nine attached antennas mounted on a three-sided platform; and a 28-feet by 48-feet fenced-in equipment compound.
6) T-Mobile will provide documents showing adequate bonding for future dismantling and removal of the tower and compound. T-Mobile shall submit updated proof of bonding (and amount) every five years to the Board of Adjustment for review and approval.
7) Utility lines will be located as indicated on site plan sheet C-1, with seven utility poles (no higher than 35 feet) as indicated at the September 15, 2009 hearing.
8) T-Mobile shall allow co-location on its tower and antennas once the proposed facility is completed, if such co-location is technically feasible on reasonable terms and conditions. Should the opportunity arise for another service provider to co-locate on the tower, T-Mobile will apply to the Board of Adjustment for review and approval of the proposed additional antennas or services.
9) A copy of the lease agreement between the Haggetts and T-Mobile (Omnipoint Communications Inc.) shall be recorded at the Brookfield Town Clerk's Office in the land records.
10) Any proposed changes in construction, operation, or maintenance of the facility shall be submitted to the Board of Adjustment for review and approval. In addition, the Board of Adjustment shall be notified of any changes in ownership of the facility or in ownership of T-Mobile's company itself.
11) T-Mobile, or its corporate or individual successor, shall annually, on January 15, file a declaration with Brookfield's Administrative Officer certifying continuing safe operation of the tower facility. Failure to file a declaration shall mean that the tower is no longer in use and considered abandoned.

12) When the facility has been abandoned as defined in 4.16(G) of the Bylaws, the tower, and all associated structures, equipment, utilities, and materials shall be removed from the property and the site restored with top soil and vegetation.

The Board of Adjustment grants Conditional Use Approval for the proposed tower with the inclusion of the above conditions.

For the Board of Adjustment:

Jeffrey Kimmel (Chair)
Hank Buermann
Neil Husher
Katherine Roe

Dated: October 23, 2009