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TOWN OF THORNTON PLANNING BOARD

Approved on: Sept 16 2021
PB Initials: SB
Rec'd by Town Clerk on: 9-22-2021
Town Clerk Initials: pdw

Planning Board Meeting Minutes Tuesday, September 7, 2021

CALL TO ORDER – PLEDGE OF ALLEGIANCE:

Chairman Babin called the meeting to order at 6:00 p.m.

ROLL CALL:

Members present at Town Hall: Steven Babin, Chairman; Frank Freeman, Vice-Chairman; Nancy Decoteau, Peter Laufenberg; Donna O'Donnell, Kathy Menici, Planning Director; Kerrin Randall; Board Assistant; David Rivers; Karen Waters

Members present via call-in: None

Members not present: None

Alternates present at Town Hall: Cynthia Schofield, Jack Gaites

Alternates absent: None

Others present via call-in (names are as they appeared via Zoom): Elaine, Jeff Scholtz, Jesse Moreno, JS, Marcia King, Mary Ann, Michael Sununu, Robert Nagle, Ron, rothm, WJD, Phone XR

Others present at Town Hall: Francis Parisi, Carol Stewart, Robert Stewart, Katherine Bolduc, Andrew Bolduc, Arthur Bergeron, Bob Lawson

APPROVAL OF MINUTES:

Upon distribution and review of the meeting minutes of August 19, 2021, the members took the following action:

MOTION: "To accept and approve the Minutes of the Thursday, August 19, 2021 meeting as amended."

Motion: P. Laufenberg

Second: K. Waters

Discussion: None

Vote: 5 YES - 0 NO - 2 ABSTAIN

Motion passes.

PRELIMINARY BUSINESS: None

COMMUNICATIONS: None

REPORTS: None

UNFINISHED BUSINESS: None

HEARINGS:

- Continued Remanded Site Plan Review; Vertex Tower Assets, LLC as agent for Michael C. Sununu and James G. Sununu, Trustees of the SMA Realty Trust, Upper Mad River Road [Map 17 Lot 5-21]; Remanded by Town of Thornton Zoning Board of Adjustment.

Mr. Babin clarified that the public hearing regarding this application was closed at the August 19, 2021 meeting. He stated that there will be no public comment at this time and that the Board appreciates members of the public who have come to the meeting and are present on Zoom.

Mr. Babin reviewed that the site plan application was remanded by the Zoning Board of Adjustment (ZBA) to the Planning Board because of an Appeal of Administrative Decision that was heard on June 24, 2021 with a decision rendered on June 28, 2021; the Planning Board denied the application on April 15, 2021.

Mr. Babin stated the applicant has already received the following from the ZBA at their December 3, 2020 meeting:

- Waiver to allow a telecommunications facility in a residential zone;
- Variance to allow the height of the tower to exceed 100 feet with a maximum height 182 feet;
- Variance to allow a vegetative buffer to begin away from the fence line;
- Variance to allow the proposed facility to have overhead utilities; and
- Variance to allow a lattice style tower to be built.

Mr. Babin stated the waiver and variances granted by the ZBA will not be discussed at this time. He stated the remand asks that the Board review materials brought to the ZBA at the June 24, 2021 meeting where the Administrative Appeal was heard.

Mr. Babin stated the purpose of this meeting is to render a decision on the remand before them from the ZBA.

Mr. Laufenberg clarified that the Board needs to either decline the application again or approve the application at this time. Mr. Babin confirmed that those are the only two (2) options available to the Board at this time.

Mr. Laufenberg clarified that the tower itself can be built based on the approvals given by the ZBA. Mr. Babin stated that is correct; the applicant has the right to construct the tower, as the ZBA granted all necessary waivers for that to occur. Mr. Babin stated the Planning Board has been left with deciding the method in which the tower will be accessed.

Mr. Freeman stated the Board still has the authority over Site Plan review. Mr. Babin reiterated that the Site Plan for the access driveway has been remanded back to the Board from the ZBA, asking that the Board reexamine the information provided by the applicant and render a decision.

Ms. O'Donnell asked if any correspondence had been received following the August 17, 2021 meeting.

Mr. Babin acknowledged that the Board received multiple pieces of correspondence (8-10 items) following the meeting. He stated the correspondence was received following the close of the public hearing and cannot be used in deliberation on the application.

Mr. Babin stated the only opportunity remaining for the Board to have local control over the project is to approve the Site Plan with conditions.

Mr. Babin reviewed Planner Menici's recommended conditions of approval, should the Board choose to approve the remanded application:

- All necessary state and federal permits to be obtained prior to approval, including by not limited to the following:
 - NH-DES – Alteration of Terrain
 - NH-DES – Wetlands
 - US-EPA – Stormwater Pollution Protection Plan (SWPPP)
 - US-EPA – National Environment Policy Act (NEPA) review
 - US-Army Corps of Engineers – General Permit
 - US-Army Corp of Engineers – 404 Permit
 - Federal Aviation Authority (FAA)

- Any and all access to the facility for construction and maintenance activities must be from Upper Mad River Road only.
- On the Title Sheet, delete reference to Tree Line Road and correct "Site Address" to read: Upper Mad River Road.
- Carrier lease must be signed and in hand prior to applying for a Zoning Compliance Application.
- Equipment cabinets and compound must conform to fire containment levels that are acceptable to the Town of Thornton Fire Chief upon date of installation.
- Gated and locked access to the access road using a Knox Box or other security system that is acceptable to the Town of Thornton Fire Chief upon construction and completion.
- Annual inspection of the proposed access road by the Town of Thornton Road Agent.
- The applicant's engineer to propose a bond amount for the future removal of the tower. The proposed bond amount and the basis for the amount to be reviewed and approved by the Planning Board's review engineer, Steve Keach, at the expense of the applicant.
- Compliance with all FAA requirements regarding aviation safety.
- Signature block to be added to each of the following pages in the plan set: Title Sheet and CS-1.
- Applicant to submit a minimum of:
 - Six (6) full size final plan sets (one each for the Town, applicant, property owner and each professional stamping and signing the plan set),
 - One (1) 11x17 final plan set, and
 - One (1) electronic final plan set.
- All conditions of approval set forth in the Notice of Decision from the December 3, 2020 ZBA meeting are to be memorialized.

Mr. Laufenberg asked Mr. Parisi if he had concerns with the proposed conditions of approval. Mr. Parisi stated he had no concerns with the proposed conditions.

Mr. Babin stated the Board is aware that there was substantial opposition at last hearing to the tower, as well as support for it.

Mr. Babin stated the conditions of approval are the only option the Board has to retain some type of local control. He stated if the application is denied, the Board will be left with zero options and will be brought to court. Mr. Babin stated, as the Chair of the Planning Board, he believes the remand should be granted and the application approved with the conditions discussed.

MOTION: "To approve the Site Plan for Vertex Tower Assets, LLC as agent for Michael C. Sununu and James G. Sununu, Trustees of the SMA Realty Trust, Upper Mad River Road [Map 17 Lot 5-21] as remanded by Town of Thornton Zoning Board of Adjustment with the following conditions:

- All necessary state and federal permits to be obtained prior to approval, including by not limited to the following:
 - NH-DES – Alteration of Terrain
 - NH-DES – Wetlands
 - US-EPA – Stormwater Pollution Protection Plan (SWPPP)
 - US-EPA – National Environment Policy Act (NEPA) review
 - US-Army Corps of Engineers – General Permit
 - US-Army Corp of Engineers – 404 Permit
 - Federal Aviation Authority (FAA)
- Any and all access to the facility for construction and maintenance activities must be from Upper Mad River Road only.
- On the Title Sheet, delete reference to Tree Line Road and correct "Site Address" to read: Upper Mad River Road.
- Carrier lease must be signed and in hand prior to applying for a Zoning Compliance Application.
- Equipment cabinets and compound must conform to fire containment levels that are acceptable to the Town of Thornton Fire Chief upon date of installation.

- Gated and locked access to the access road using a Knox Box or other security system that is acceptable to the Town of Thornton Fire Chief upon construction and completion.
- Annual inspection of the proposed access road by the Town of Thornton Road Agent.
- The applicant's engineer to propose a bond amount for the future removal of the tower. The proposed bond amount and the basis for the amount to be reviewed and approved by the Planning Board's review engineer, Steve Keach, at the expense of the applicant.
- Compliance with all FAA requirements regarding aviation safety.
- Signature block to be added to each of the following pages in the plan set: Title Sheet and CS-1.
- Applicant to submit a minimum of:
 - Six (6) full size final plan sets (one each for the Town, applicant, property owner and each professional stamping and signing the plan set),
 - One (1) 11x17 final plan set, and
 - One (1) electronic final plan set.
- All conditions of approval set forth in the Notice of Decision from the December 3, 2020 ZBA meeting are to be memorialized."

Motion: S. Babin

Second: K. Waters

Discussion:

Mr. Rivers read the following from the August 19, 2021 Planning Board Meeting for the record:

Page 4, Lines 202-209

'Francis Parisi, attorney for Vertex Towers, LLC., stated he was before the Board as a courtesy. He stated the Board based their denial on information that was misunderstood and inaccurate, and he is asking the Board to reconsider their denial. Mr. Parisi stated his client has appealed to Federal Court on the denial of site plan and will pursue the appeal if the Board upholds their decision.

'Mr. Freeman stated it sounds as if Mr. Parisi is threatening the Board with a lawsuit if the decision is not overturned. Mr. Parisi stated he is not threatening the Board with litigation and would like to avoid going to Federal Court if possible; this is the Board's opportunity to prevent a lawsuit.'

Mr. Laufenberg stated that he would be supporting the motion, but under distress. He stated, regarding the relationship of the ZBA and Planning Board, that he believes the decision of ZBA was not in the best interest of the Town of Thornton and that they essentially sold out the residents of Thornton. Mr. Laufenberg stated the Telecommunications Facility Ordinance (TFO) was adopted in 2001 by the vote of the people to expressly stop towers of this sort from being built in Thornton.

Mr. Laufenberg stated Vertex Tower Assets, LLC is the first entity to approach the Town seeking variances or waivers for five (5) violations of the zoning ordinances; that alone should have given the ZBA pause. He stated the ZBA clearly did not respect the people's voice via the TFO.

Mr. Laufenberg further stated he is not opposed to a cell tower being built in town, but he is opposed to a tower being built in a residential area. He stated by allowing the tower in a residential neighborhood, it is setting a precedent for the possibility of further commercial projects seeking to operate in residential neighborhoods. He stated it is unfortunate that the ZBA has put the Board in this situation.

Mr. Laufenberg acknowledged that if the application is denied, the Town will be brought to Federal Court costing the potentially large legal costs in addition to ones already incurred for this case; a case that likely would not end well for the town. Mr. Laufenberg stated as a steward of the people's tax dollars, he could not justify this. Mr. Laufenberg reiterated his comments that the ZBA did not make the right decision for the Town and has backed the Board into a corner.

Mr. Freeman stated he strongly agreed with all of Mr. Laufenberg's statements.

216 Mr. Babin asked for a roll call vote.

217

218 **Roll Call Vote:**

219 Steven Babin: **Yes**

220 Frank Freeman: **No**; Mr. Freeman stated his concerns are the same as they were when the Board took a
221 vote in April to deny the application.

222 Nancy Decoteau: **Abstained**; Ms. Decoteau stated the ZBA already took her vote away.

223 Peter Laufenberg: **Yes**

224 Donna O'Donnell: **Yes**

225 David Rivers: **Yes**; Mr. Rivers stated the Town needs to save money on legal fees.

226 Karen Waters: **Yes**

227

228 **5 YES - 1 NO - 1 ABSTAIN**

229 **Motion passes.**

230

231 Mr. Babin stated a Notice of Decision will be sent to the Applicant within 5 business days.

232

233 Mr. Parisi thanked the Board.

234

235 **OTHER BUSINESS:**

236 Planner Menici reminded the Board that a full dialogue regarding possible amendments to the Zoning Ordinance
237 will be had soon, as she is waiting for the NH Municipal calendar to be published to determine timelines.

238

239 **ADJOURNMENT:**

240 **MOTION: "To adjourn at 6:30 p.m."**

241 **Motion: P. Laufenberg**

242 **Second: K. Waters**

243 **Discussion: None**

244 **Roll Call Vote: 7 YES - 0 NO - 0 ABSTAIN**

245 **Motion passes.**

246

247 Respectfully Submitted,

248

249 Kerrin Randall, Board Assistant