

# TOWN OF THORNTON

## Zoning Board of Adjustment

Approved on: 28 Oct 21  
ZBA Initials: JMM  
Rec'd by Town Clerk on: 10-29-2021  
Town Clerk Initials: pdw

### ZONING BOARD OF ADJUSTMENT MEETING MINUTES

June 24, 2021

#### WELCOME:

Chairman Joe Monti welcomed the members.

#### CALL TO ORDER BY CHAIR:

Mr. Monti called the meeting to order at 6:01 p.m. with the Pledge of Allegiance.

#### ROLL CALL BY CHAIRMAN:

Mr. Monti completed the roll call.

#### The following members were present:

Chairman Joe Monti, Vice-Chairman Ken Miller, Joan Marshall, Alan Rawson, Jerry Sobolewski

#### The following members were present via teleconference: None

#### The following members were absent: None

#### Present via teleconference: *(partial names are listed as they appeared on ZOOM)*

Jim, Kathleen Kelley, Paula, Alexis Eynon, Paula, Marianne, Jeremy Duffield, Sally Davis, iPad, Tom Johnson, Deborah Brownstein, Alexa Mart, Jeremy Barnaby, Nancy West, Marcia King, Alexa Mart

**Also Present:** Kerrin Randall, Board Assistant

#### REVIEW/APPROVAL OF MINUTES:

Upon distribution and review of the meeting minutes of May 27, 2021, the members took the following action:

**MOTION: "To accept and approve the Minutes of the Thursday, May 27, 2021 meeting."**

**Motion: J. Marshall**

**Second: K. Miller**

**Discussion: None**

**Roll Call Vote: 5-YES, 0-NO, 0-ABSTAIN**

**Motion passes.**

#### UNFINISHED BUSINESS: None

#### NEW BUSINESS:

Mr. Monti stated the Governor lifted the state of emergency and pre-COVID 19 meeting procedures are back in place; ZOOM will continue to be used for public participation. He stated a quorum of Board members must be present at Town Hall in order to vote on matters during a meeting.

**MOTION: "To continue using ZOOM for public participation during ZBA meetings."**

**Motion: A. Rawson**

**Second: J. Marshall**

**Discussion: None**

**Roll Call Vote: 5-YES, 0-NO, 0-ABSTAIN**

**Motion passes.**

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**6:05 p.m.** Conservation Commission Presentation: 'Protecting the Pemi'

Katri Gurney of the Thornton Conservation Commission (TCC) gave a slideshow presentation expressing the importance of keeping the Pemigewasset River clean and safe for all those who use it. She discussed recreating responsibly and maintaining the value of the river.

Ms. Gurney stated the TCC is working to find ways to educate the public and that they are going before various Town boards to see how best to get information out. She stated the TCC is developing a brochure for distribution, highlighting good habits along the Pemigewasset, and are planning community clean ups and other activities.

Ms. Gurney stated the TCC is looking at the parking area at the end of Robin's Nest to serve as a public recreation area, and are trying to figure out how to work with DOT to make the parking area a more sustainable place. She stated they have more thoughts on public recreation in the future, but for now, they want to kick off their initiative with public education.

Mr. Monti asked how the TCC was hoping to upgrade the area at the end of Robin's Nest, as the property is owned by the State. Ms. Gurney stated the idea of using the property for public recreation is still in an initial stage; they are currently working on a proposal for the State. Mr. Monti stated as it is State property, the Town has no authority over granting public use; the Board will assist the TCC, if they can, with their proposal to the State.

Mr. Monti stated the Town has been looking into purchasing land around the town offices from the state. He stated if the TCC is looking to acquire the property at Robin's Nest, the process may be similar. Ms. Gurney stated she is optimistic in hearing that acquiring land from the State may be an option.

Mr. Sobolewski stated the current parking at Robin's Nest is problematic; people are parking on the side of the road to access the river. Chief Miller stated he will look into temporary 'no parking' signs.

Ms. Marshall stated she is excited to see this initiative happening. She asked is the only public access to the river is at Robin's Nest. Ms. Gurney stated yes; they are trying to find other locations. Ms. Marshall suggested the TCC speak with the Town of Woodstock, as they had a similar situation with river access that was resolved.

The Board thanked Ms. Gurney and the TCC for their presentation. Ms. Gurney thanked the Board and stated the TCC will have a table at National Night Out in August.

**PUBLIC HEARING:**

**6:30 p.m. APPLICATION/PUBLIC HEARING:** Gary Anderson [Tax Map 16, Lot 7-17]

"VARIANCE REQUEST; ARTICLE VI: DIMENSIONAL REQUIREMENTS, SECTION A-2, LOCATION OF STRUCTURES" *A set-back of 15 feet is required from any other boundary line, except that a 15-foot set-back is required from the edge of any public or private non highway or non-road right-of-way.*

Mr. Monti welcomed Gary Anderson. Mr. Anderson stated he presently has a six (6) foot fence between him and his neighbor, Ms. Downing. He stated there is a farm stand on Ms. Downing's property that has grown in popularity over the last few years, resulting in more traffic. He is seeking a variance to build an eight (8) foot fence for more privacy, as the parking area for the farm stand overlooks his yard and customers have been walking on his property.

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Mr. Anderson stated he is glad to see the farm stand doing well, but he would like more privacy. He stated Ms. Downing has no concern with the heightened fence and is in support of it. Mr. Anderson stated an eight (8) foot fence constitutes as a structure per the Zoning Ordinance, but if the fence was moved back the required 15 feet from the property line, it would give him nine (9) feet from the fence to his house. He is seeking a variance for a set back of three (3) feet from the property line for a structure.

Mr. Monti asked the Board for comment. The Board verified that the setback requested was alright with his abutters. Mr. Anderson confirmed that all abutters were aware and fine with the height of the fence.

Mr. Monti asked if there was any public comment.

Cher Duffield stated she is a customer of the farm stand and she supports the heightened fence for privacy, as the parking lot is up on a hill where you can see over Mr. Anderson's current fence.

No other public comment was had. Mr. Monti closed the public hearing at 6:39 p.m.

**MOTION: "To grant the VARIANCE of ARTICLE VI: DIMENSIONAL REQUIREMENTS, SECTION A-2, LOCATION OF STRUCTURES [Tax Map 16 Lot 07-17] for a 3-foot setback from the property line.**

**Motion: J. Sobolewski**

**Second: K. Miller**

**Discussion: None**

**Roll Call Vote: 5-YES, 0-NO, 0-ABSTAIN**

**Motion passes.**

**7:00 p.m. APPLICATION/PUBLIC HEARING:** SMA Realty Trust, Michael C. Sununu and James G. Sununu, Trustees [Tax Map 17, Map 5-21] via APPLICANT VERTEX TOWER ASSETS, LLC for an APPEAL OF ADMINISTRATIVE DECISION of the THORNTON PLANNING BOARD'S interpretation of the provisions of the Thornton Telecommunications Ordinance in the Planning Board's denial of the Applicant's Site Plan Review Application.

Mr. Miller recused himself at 7:00 p.m.

Mr. Monti stated to Mr. Parisi that there are four (4) members of the Board currently, as Mr. Miller has recused himself from this application. Mr. Monti stated that anything done here will need to be voted on with a majority decision. He advised that Mr. Parisi could delay this hearing until an alternate for the ZBA is appointed to have a full Board to vote, or they could continue with a Board of four (4) voting members. Mr. Parisi stated he would like to proceed with four (4) members.

Mr. Monti reviewed a letter submitted on June 17, 2021 by Steven Babin, Chair of the Planning Board regarding this hearing. He highlighted the following concerns cited in Mr. Babin's letter:

- The Zoning Board of Adjustment has no jurisdiction over the Site Plan Review and decision of the planning board's Site Plan Review.
- This request for Appeal from an Administrative Decision failed to meet the timing required by your rules of procedure and the subject matter is outside the purview of the Zoning Boards Jurisdiction.
- The submission requirements of the appeal are inconsistent with other appeals.

Mr. Monti asked if the Board feels they have jurisdiction and if the timing of the application is accurate.

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Mr. Rawson stated it is his understanding that the ZBA has jurisdiction over zoning ordinances, and that the telecommunications ordinance falls under the ZBA; the ZBA still has authority to review the appeal.

Ms. Marshall stated she believes the ZBA has jurisdiction to hear appeals on zoning ordinances, and telecommunication falls under their purview. She stated site plan falls under a different category that the ZBA has no authority over.

Mr. Monti stated he agreed with Mr. Rawson and Ms. Marshall.

**MOTION: "The ZBA has jurisdiction to hear the APPEAL OF ADMINISTRATIVE DECISION of the THORNTON PLANNING BOARD'S interpretation of the provisions of the Thornton Telecommunications Ordinance in the Planning Board's denial of the Applicant's Site Plan Review Application as it falls under the Appeal from Administrative Decision."**

**Motion: J. Sobolewski**

**Second: K. Miller**

**Discussion: None**

**Roll Call Vote: 4-YES, 0-NO, 0-ABSTAIN**

**Motion passes.**

Mr. Monti stated the Board has agreed that they have jurisdiction to hear the appeal. He reviewed the concern of the timeliness of the appeal submission. Mr. Monti stated the decision was made by the Planning Board on April 15, 2021 and the appeal request was received on May 17, 2021. The calendar days exceed 30, but counsel advised that the 30<sup>th</sup> day fell on a Saturday, making the next business day a Monday; therefor the application came in in a timely fashion.

Ms. Marshall stated the ZBA Rules of Procedure state:

"Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Clerk of the Board of Adjustment who shall record the date of receipt over their signature."

Ms. Marshall stated the rules do not state the manner in which the applications have to be submitted, whether via email or in person.

Mr. Monti stated the information submitted via email from Mr. Parisi for appeal contains all the information that is on the 'Appeal from Administrative Decision Form'. The form provided by the Town was completed and submitted by Mr. Parisi on May 18, 2021.

Mr. Monti stated he does not see any difference in the two (2) pieces of paper submitted, and in his opinion, the applicant filed in timely fashion for consideration.

Mr. Rawson stated there are no substantial differences between the letter submitted and the actual form.

**MOTION: "The appeal was received in a timely fashion."**

**Motion: A Rawson**

**Second: J. Sobolewski**

**Discussion: None**

**Roll Call Vote: 4-YES, 0-NO, 0-ABSTAIN**

**Motion passes.**

Mr. Monti stated the Board has established they have jurisdiction to hear the appeal and that the request

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was submitted in a timely fashion.

Mr. Monti opened the public hearing at 7:11 p.m.

Francis Parisi, Vertex Attorney, stated his client submitted applications to the Planning Board for site plan review August 25, 2020, and for waivers and variances from the ZBA at the same time. He stated since his initial applications, there have been a total of 12 public hearings. Mr. Parisi stated both boards requested more information, and it was provided in supplements to the initial application.

Mr. Parisi stated the access to the site was changed per the ZBA conditions of approval of waivers and variances. He stated extensive work was done on a new access driveway, responses to air navigation concerns were addressed, and a memo with fire mitigation was provided at the request of the Planning Board. with everything.

Mr. Monti stated going over the Planning Board meeting minutes, at the March meeting the Planning Board asked for additional information. He asked if all requested information was provided; Mr. Parisi stated yes.

Mr. Parisi stated he was pushing for a decision from the Planning Board at their March meeting. He stated Mr. Babin asked that the Board have time to deliberate thoughtfully before a vote took place. Mr. Parisi agreed to this and asked the planning staff to draft conditions of approval. Mr. Parisi stated the planning staff submitted draft conditions of approval that were agreeable with him.

Mr. Monti stated the draft conditions were not in the April meeting minutes. Mr. Parisi stated they were not discussed; he submitted a copy of the draft conditions of approval from the planning staff.

Ms. Marshall asked when the draft was issued. Mr. Parisi stated they were completed prior to the April meeting.

Mr. Monti asked Mr. Parisi if he was certain that the Planning Board received the draft conditions of approval; he stated yes. The Board reviewed the draft conditions of approval.

Mr. Parisi stated all things that he was asked to do were addressed and given the revision of the access road, extensive state reviews will need to be done.

Mr. Monti reviewed a statement from Mr. Sabourn in the March Planning Board minutes:

*Page 4: "Mr. Sabourn asked if Mr. Parisi would be looking for conditional approval with all state permits required. Mr. Parisi stated yes."*

Mr. Parisi confirmed the statement. He stated he does not understand what happened between March and April; the Planning Board stated they were not comfortable approving the site plan.

Mr. Monti stated federal reviews needs to be completed. Mr. Parisi stated he is not fighting the federal review process. Mr. Parisi stated due to the extensive work being done on the access road, the topic of having a third-party engineer review the site plan came up; Mr. Babin stated it would not be necessary as the federal and state permits would review the site plan.

Mr. Parisi stated it was astounding to him that the site plan was denied based upon information that was not requested from him.

Mr. Monti stated the March Planning Board minutes show that Fire Chief Defosse submitted a letter

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stating the grade of the proposed access would be too steep for emergency vehicles; another letter dated April 14, 2021 from Chief Defosse indicating that the grade is not uncommon for similar sites and that his previous letter should not be used to discourage the tower construction.

Mr. Monti asked Mr. Parisi if he had seen the letter from April 14, 2021; he said he had not. Mr. Monti asked Mr. Parisi if he felt that this letter would have changed the decision of the Planning Board, as one of their concerns was with life safety. Mr. Parisi stated yes.

Mr. Parisi stated in his memorandum submitted to the ZBA on June 17, 2021 that the machines the Fire Department uses to access remote areas will be able to get to the tower in the event of an emergency; there is an affidavit from Jesse Moreno, P.E. in the memorandum that explains the incline versus the actual slope.

Tom Johnson, engineer with Vertex, explained that there is a unit conversion between the grade and slope. The Polaris Ranger, that is used by the Fire Department, is designed to safely operate on a 15-degree slope, which corresponds to maximum 26.8% grade. Mr. Johnson stated the steepest grade on the access road will be 20% therefore the Polaris machines will be able to use it safely.

Mr. Parisi stated the access road will only be used on an 'as needed' basis as the facility is unmanned and will be able to be accessed for routine maintenance using a four-wheel-drive vehicle.

Mr. Monti stated the reasons for denial of site plan by the Planning Board were due to life safety concerns in not being able to access the tower in the event of an emergency. He asked Mr. Parisi why the information that was just discussed was not brought before the Planning Board at the April 15, 2021 meeting.

Mr. Parisi stated the public comment was closed. He stated the life safety concerns were addressed by him at the March meeting, and fire mitigation was addressed with the Planning Board.

Mr. Parisi stated the Planning Board asked the Thornton Conservation Commission (TCC) to conduct a site walk with Mr. Parisi; Myrtle Lewis, Chair of the TCC conducted a site walk with Mr. Parisi and submitted a report. Mr. Parisi stated Ms. Lewis was impressed with the steps being taken to avoid major environmental impact.

Mr. Parisi stated he did everything requested of him from the Planning Board and he felt blindsided by the decision of denial. He stated the Planning Board failed to recognize the benefits the tower will bring to public safety. He stated the Planning Board misunderstood the environmental impact, as there was substantial proof that there would not be excessive runoff, and stormwater mitigation has been addressed.

Mr. Parisi stated the Planning Board ignored evidence that proved there would be no excessive stormwater runoff, they ignored Ms. Lewis's letter or support, and they ignored that State and federal permits will address many of their concerns. He stated the Planning Board stated the plan met the 25-year storm event requirement; nothing in the site plan review regulations state more than that needs to be done. He stated he met the requirement, but they wanted more.

Mr. Parisi stated there is no evidence that there will be environmental impact and he feels the Planning Board was wanted to find a reason to deny the application; they came up with a reason without proof. He stated the Planning Board acknowledged that they received the information requested but ignored it.

Mr. Parisi stated personal bias cannot come into play when making this decision; denial cannot be given

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on personal thoughts. He stated it was clear that they were uncomfortable with the process and wanted to deny the application.

Mr. Parisi stated the Federal Telecommunications Act of 1996 says a denial must be based on substantial evidence and there must be a good reason; a town cannot prevent telecommunications.

Mr. Rawson asked if there was ever an extensive discussion about the potential runoff concerns, as there was not much in the minutes to reflect this.

Mr. Johnson stated there was a question of what year storm event the road was rated to. He stated he told the Planning Board that it was rated for a 25-year storm event; the basins listed on the site plan are rated for a 50-year storm event. Mr. Johnson stated there was not a deep discussion regarding this.

Mr. Rawson asked if the Planning Board knew the basins were rated to a 50-year storm event. Mr. Johnson stated he does not believe that was brought up. He stated they will be up to date with a State AOT permit, which requires basins to be rated for a 50-year storm event.

Mr. Monti clarified that Ms. Menici asked for the access to be rated for a 25-year storm event without further questions. Mr. Parisi stated yes. Mr. Parisi requested the ZBA grant site plan approval.

Ms. Marshall asked what the width of the access would be. Mr. Johnson stated 12 feet wide. Ms. Marshall asked where the access gate would be located. Mr. Johnson stated the gate would be 40-50 feet from the road.

Mr. Monti asked if there was anyone present representing the Planning Board; there was no one present.

Mr. Monti asked for public comment. He stated public comment would be kept to two (2) minutes.

Cheryl Duffield, Upper Mad River Road, stated that this is not the proper venue to be hearing this; a court of law is where all these arguments should be taking place. She stated the arguments are on site plan review, not zoning concerns. Everything discussed here this evening should be applied in court, not here. Ms. Duffield stated Vertex is essentially asking that the ZBA to unlawfully take over and undermine the decision of the Planning Board. She stated Mr. Parisi is not licensed to practice law in New Hampshire, and therefore does not understand what is going on.

Elaine Scholtz, Cone Ridge Road, stated the two items listed in the denial do not comply with site plan regulations, and therefore are valid reasons for denial. She stated the area where the tower is being proposed is in a residential neighborhood, making it vastly different from other telecommunication sites. She stated there was recently a fire on top of Sugar Run and due to steep, winding roads, and the nearest water source being a mile away, 10 towns had to respond. Ms. Scholtz stated if there was a fire at the tower, by the time three (3) units responded, Sugar Run would be gone.

Marcia King, Cold Springs Road, stated the Planning Board made their decision based on site plan regulations and safety concerns. She stated emergency crews will not be able to respond in the event of an emergency event. Ms. King stated her house is 1500 feet from where the tower site is, and she has serious concerns.

Mr. Monti stated there was a fire in the Sugar Run neighborhood on April 25, 2021, and he believes the Board of Selectmen received a letter from the owners of the barn that burned down that stated they had difficulty calling 911, as they had no cell coverage to call.

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Ms. King stated she lives near where the fire was, and she has never had a problem with cell coverage in the area.

Charlie King, Cold Springs Road, stated the Board is bias. He stated paperwork was submitted by him and other concerned abutters via email to the ZBA; the Chair then advised that hand delivered, signed copies of the paperwork submitted via email needed to be delivered to the Town Office, or they would not be accepted. Mr. King stated the applicant was not required to do this and was able to submit paperwork via email after a deadline. Mr. King stated the ZBA Rules of Procedure clearly state that a town form needs to be filled out and submitted; the applicant submitted the town form after the deadline. Mr. King stated the Board is biased on both counts.

Jeff Scholtz, Cone Ridge Road, stated the ZBA and Mr. Monti appear to be giving preferential treatment to the applicant to get a tower put on land owned by the Sununu family. He stated Mr. Monti didn't accept opposition letters after a deadline but accepted letters of support. Mr. Scholtz stated the ZBA needs to be fair.

Mr. Monti stated when a request for rehearing was submitted by abutters, all letters received following the submission deadline were reviewed and responded to.

Jeremy Duffield, Upper Mad River Road, stated the ZBA has no authority to hear this; the appeal was submitted late, and was not required to be submitted in person. He stated the Planning Board does not use the zoning ordinance to render decisions, and the ZBA has no authority to use site plan regulations; they have no jurisdiction. Mr. Duffield stated all appeals made should be heard in appeals court. He stated Mr. Parisi is just complaining about the Planning Board. Mr. Duffield stated Mr. Parisi is not licensed to practice law in New Hampshire, and all issues being discussed are site plan issues that the ZBA has no jurisdiction on.

Kathleen Kelley, Treeline Road, stated members of the Town Zoning and Planning Boards are entrusted by the Town of Thornton to function for the community without bias. She stated most boards work diligently for the public. Ms. Kelley stated the Planning Board, in denying the site plan was deliberate and lawful using their proper standards and knowledge of site plan regulations. She stated the Planning Board has a more comprehensive understanding of environmental and safety standards in the area than Vertex does. Ms. Kelley stated Mr. Parisi and Vertex received they denial and are now posturing as the injured party. She stated Vertex has attempted to influence the ZBA to overturn the Planning Board; this should not be allowed and is not right.

Alexa Martin, Round Top Road in Campton, stated her property overlooks Welch and Dickey and she has concerns regarding the environmental impact and the risk to the airplanes from the Navy that do training in the area. She stated that just last night the planes were flying in the area; they were 200 feet from the ground. She asked if the ZBA received anything from the Navy with concerns. Mr. Monti stated the ZBA did not receive anything.

Jeremy Barnaby stated watching this meeting, Vertex is trying to have the ZBA overturn another board's decision at the town; this should be done in a court of law.

Sally Davis, Sugar Run, asked how the ZBA and Planning Board process and work together. She stated she has read statutes, and it seems that the Planning Board has the jurisdiction over conflicts between the two (2) boards. Ms. Davis asked if Mr. Boldt would be able to answer how he interprets the statutes. Mr. Monti stated he is not going to ask counsel to discuss that right now. Ms. Davis asked if Mr. Boldt speaks for himself. Mr. Monti stated any response Mr. Boldt would make is not covered under attorney client privilege. Mr. Monti stated he can ask questions of Mr. Boldt. Ms. Davis stated she recalls Mr.



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Boldt being asked if he could be warned prior to giving an answer, waiving his right of attorney client privilege.

Mr. Monti stated the question of overlap between the Planning Board and ZBA procedures is not applicable in this matter. Ms. Davis stated Mr. Monti has not read the statutes.

Kayo Matsushita, Tamarack Road, stated she would like to thank the Planning Board as they have the courage to stand up to those in power and she appreciates them doing the right thing. She stated it is much easier to say yes. Ms. Matsushita stated the plan does not address fire hazard mitigation to surrounding areas or adequate stormwater mitigation. She stated there needs to be strong leadership at the town level, and she is concerned that the ZBA hires expensive lawyers on... *(at this time Ms. Matsushita time of two (2) minutes for comment expired.)*

Alexia Eynon stated she would like to piggyback on Ms. Davis's comments. She stated as a curious member of the Town of Thornton who pays taxes, goes to town meeting, and elects officials, she wants the definition of the authority each board holds and how they work together. She asked Mr. Monti to clarify.

Mr. Monti stated the Planning Board members are elected and the ZBA members are appointed by the Board of Selectmen, who are elected. He stated the matter in front of them tonight, the appeal of administrative decision, the ZBA has authority over.

Mr. Monti asked if there was any more public comment; there was none. Mr. Monti asked Mr. Parisi if he had any response and asked that comments be limited to two (2) minutes.

Mr. Parisi stated in regard to timeliness, state cases have interpreted that the number of days to appeal starts on the day the written decision is given; therefore, his appeal was submitted five (5) days before the deadline. at written decision. He stated he would agree with comments if this site plan review was traditional, but the ZBA can rule on it given the uniqueness of the Thornton Telecommunication Ordinance. He stated he is requesting the ZBA to grant the appeal and approve the site plan. Mr. Parisi stated the process for installing the tower is not over after site plan approval is given; it just allows Vertex to go and apply for State and Federal permits. He stated the Planning Board will receive copies of all State and Federal permit processes, as it is public record.

Mr. Monti asked if there was anyone present representing the Planning Board; there was no one present.

Mr. Monti asked if the Board members had any more questions.

Mr. Sobolewski clarified that the 25-year storm event rating was a requirement from the very beginning of the application process; Mr. Parisi stated yes.

Mr. Sobolewski asked when a higher year storm event plan was asked for by the Planning Board. Mr. Parisi stated it was never asked for and the 50-year storm event rating was only listed in the Notice of Decision; if it had been asked for, it would have been provided.

Mr. Rawson asked about the utility box fire mitigation plan, as there was no discussion on that in the Planning Board meeting minutes. Mr. Parisi stated the Planning Board received the information after the public hearing was closed. He stated the utility boxes are designed not to overheat and will shut down in the event of high temperatures. Mr. Parisi stated fires don't occur in the utility boxes because they shut down in an overheating event. A technician would have to visit the site in the event of a box overheating. He stated a variance was granted by the ZBA for a vegetation buffer in order to have more gravel around

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the tower as part of the fire mitigation plan. He stated this was all given to the Planning Board.

Mr. Rawson asked what else was being done for fire mitigation. Mr. Parisi stated there is a lightning rod and grounding system in place that will benefit abutters, as it will attract lightning. He stated it will be an unmanned, steel facility.

Mr. Monti asked for any more questions; there were none. Mr. Monti closed the public hearing at 8:37 p.m. Mr. Monti called a recess until 8:45 p.m.

The meeting resumed at 8:45 p.m.

Mr. Monti stated the Board was now going to deliberate. He stated the Board has done an enormous amount of reading and is of the opinion that authority over site plan review belongs to the Planning Board. Mr. Monti stated Mr. Parisi is asking for the ZBA to overrule the Planning board decision on their site review process. He stated he does not think the ZBA has authority to overturn anything to do with site review.

Mr. Monti stated in the Planning Board's notice of decision, the 20% grade of the access road and significant safety concerns, along with significant environment concerns with the access road being rated for a 25-year storm event were reasoning for denial of site plan. He stated based on the facts and data provided to the ZBA at this time, he believes that there is significant gap in the understanding of the facts and data show.

Mr. Monti stated Chief Defosse's April 14, 2021 letter clarifies previous statements regarding the life safety concern. Mr. Monti stated it does not look like the Planning Board saw the April 14, 2021 letter prior to their April 15, 2021 meeting.

Mr. Monti stated he was unaware that between the March and April meetings, Ms. Menici put together conditions of approval. He stated even though the Planning Board told the applicant there were no guarantees or approval, it appears those conditions were drafted but not given to the Board when they rendered their decision.

Mr. Monti stated, regarding the 25-year storm event rating, it is not clear that the input from the TCC was actually part of decision the process. He stated it also does not appear, based on meeting minutes, that Mr. Parisi failed to provide information requested. Mr. Monti stated in his opinion, he questions the amount of facts and data reviewed by the Planning Board that was the basis for the denial. He stated he does not think it is the ZBA's place to overturn anything that has to do with site plan; that is the Planning Board's process. Mr. Monti stated he has grave concerns with the facts and data presented, and he cannot find substantial evidence for denial in the site plan put forth.

Mr. Rawson questioned the environmental impact concern. He stated the Planning Board asked if the applicant was looking for conditional approval and the applicant stated yes. He stated state approvals and reviews would still need to be done by experts, and that he does not know why this point was not brought up in the Planning Board meetings.

Mr. Rawson reviewed that the Planning Board acknowledged that state and federal permitting would need to be completed and therefore did not require a third-party engineer to review the plans. He stated it does not follow logic that the Planning Board denied the site plan based on concerns that would be addressed by further review. Mr. Rawson stated he would like to see more in their record to indicate why they made their decision as there is no basis for it.

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Ms. Marshall stated she does not think the ZBA has the authority to overturn a site plan decision, but they have the authority to hear the appeal, which they have done. She stated there are significant issues raised, but she does not see how the ZBA can overturn the denial.

Mr. Sobolewski stated from everything he has read and listened to, anything that Vertex was asked to submit or comply with, they did. He stated he does not understand why the concern of the 20% grade on the road was not talked about and he cannot go along with how this whole thing was presented. Mr. Sobolewski stated as far as environmental concerns, there are so many agencies involved following site approval from the town, but the applicant cannot apply for further permits until site plan is approved. He stated the state and federal agencies involved will do their jobs and address concerns. He stated he does not agree with the Planning Board's reasoning for denial.

Ms. Marshall asked if the applicant could be remanded to the Planning Board for further review.

Mr. Monti stated it is possible to remand back to the Planning Board. He stated there was a recent case that was decided on the role of zoning and planning boards; PPI vs. Town of Windham. Mr. Monti stated it basically comes down to the Planning Board's interpretation of the Telecommunications Ordinance and the waivers and variances the ZBA granted.

Mr. Monti stated the ZBA needs to determine if the decision of the Planning Board was lawful and reasonable, or not. He stated it is his opinion that the ZBA cannot and should not get involved in the site plan review process, but that they do have the ability to remand back to the Planning Board. He stated there needs to be a reason for remanding that is separate from any other legal actions taking place.

Mr. Rawson stated the Planning Board does not appear to have had lots of discussion on the utility boxes and fire mitigation plan. He stated the information requested from the applicant on the fire mitigation plans and the utility boxes was provided to them at the April 15, 2021 meeting and was not discussed. He stated there is nothing in the public record that indicates that any consideration was given to the information on fire mitigation that they were given.

Mr. Monti suggested that time be taken to document areas of concerns that the ZBA would like the Planning Board to look more in depth at. He stated a list will be compiled and submitted to the Planning Board and it is up to them to dig deeper into those areas. Mr. Monti stated the list of reasons to remand back to the Planning Board will hopefully help them resolve issues one way or another.

A lengthy discussion ensued.

Mr. Monti asked that a public meeting be held on Monday, June 28, 2021 at 6:00 p.m. to finalize the wording of a notice of decision that will address the appeal decision and the items the ZBA would like the Planning Board to investigate.

Mr. Rawson stated everything the Planning Board did lacks substance and detail and makes their decision of denial unreasonable. He stated he wants documentation to back up their reasons for denial.

**MOTION: "To hold a public meeting to continue deliberations of SMA Realty Trust, Michael C. Sununu and James G. Sununu, Trustees [Tax Map 17, Map 5-21] via APPLICANT VERTEX TOWER ASSETS, LLC for an APPEAL OF ADMINISTRATIVE DECISION of the THORNTON PLANNING BOARD'S interpretation of the provisions of**

# **TOWN OF THORNTON**

## **Zoning Board of Adjustment**

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**the Thornton Telecommunications Ordinance in the Planning Board's denial of the Applicant's Site Plan Review Application to Monday, June 28, 2021 at 6:00 p.m."**

**Motion: J. Marshall**

**Second: J. Sobolewski**

**Roll Call Vote: 4- YES, 0- NO, 0- ABSTAIN**

**Discussion: None**

**Motion Passes.**

### **COMMUNICATIONS AND MISCELLANEOUS:**

**OTHER BUSINESS: None**

### **ADJOURNMENT:**

**MOTION: "To adjourn at 9:35 p.m."**

**Motion: A. Rawson,**

**Second: J. Marshall**

**Roll Call Vote: 4- YES, 0- NO, 0- ABSTAIN**

**Discussion: None**

**Motion Passes.**

Respectfully submitted,

Kerrin Randall  
Zoning Board Assistant