

LITCHFIELD ZONING BOARD
TOWN OF LITCHFIELD, NEW HAMPSHIRE
AUGUST 12, 2009

DRAFT

ZBA Members Attending (Indent if Absent):

Richard Riley, Chairman
Laura Gandia, Vice Chairman
 John Regan
Albert Guilbeault
 Tom Cooney, Clerk
Gregory Lepine (alternate)
 John Devereaux (alternate)
Eric Cushing (alternate)
 John Brunelle (alternate)

I. Call to Order

- Richard Riley calls the meeting to order at 7:07 pm. Meeting was published at Town Hall.
- Laura Gandia takes attendance.
- Richard Riley appoints Greg Lepine and Eric Cushing to the Board.

II. New Applications

There is one new application.

Applicant's Name: Susan and Kevin Powers, 10 Cutler Road
Location of Property: 240 Derry Road, Tax Map 2, Lot 29

Applicants seek to appeal the administrative decision regarding BCI Communications and their request to erect a cell tower on the Tabernacle Baptist Church property located at 240 Derry Road, Tax Map 2, Lot 29. The Applicants want to appeal the Code Enforcement Officer's determination that the location where the proposed tower will be erected is not encroaching into the buffer for a natural wetlands but is in fact a drainage swale and therefore is not an issue per RSA 1207.03 which states "The Wetlands Conservation District buffers shall be encouraged, but not required next to manmade vegetated swales, roadside drainage ditches, sedimentation/detention basins, agricultural/irrigation ponds, and wetlands on prior converted cropland, except as required by nearby wetland and surface waters."

Mr. Kevin Powers stated to the Board that their application was submitted last Friday, August 7, 2009. Mrs. Susan Powers presented the application with a copy of section 1203.00 of the Zoning Ordinance attached. This section states "Where it is alleged that an area has been incorrectly delineated as a wetland, or that an area not so designated meets the criteria for wetlands designation, the Conservation Commission shall determine whether the area has been correctly delineated. The Conservation Commission shall make their judgment under this section only upon the determination by a certified wetlands

scientist(s) on the basis of additional on-site investigation or other suitable research, that the information contained on the Wetlands Map is incorrect. This evidence shall be acceptable only when presented in written form by said scientist(s) to the Conservation Commission. Any necessary wetlands delineation procedures shall be conducted at the expense of the landowner or developer. Once an area has been determined to be a wetland under this section, the area shall become part of the Wetland Conservation District. (Adopted March 1987.)

Mrs. Powers stated that during the ZBA meeting in July when Case 2009-02 was scheduled to be heard Kevin Lynch indicated that he had originally based his decision on site plans which showed the area in question delineated as wetlands and therefore he issued a finding that the applicants would need to seek a variance to encroach into the wetland buffer zone. She also pointed out that the new plans presented at the July meeting shows a swale, however, she feels that the area is larger than a swale.

The board discusses the events regarding this case. On June 10, 2009 BCI Communications submitted their application requesting a special exception per Section 1207-03 and 1208 for a wetland setback of 50 feet to a reduced setback of 25 feet. The Applicant seeks to install, operate and maintain a wireless communications facility including a one hundred forty (140) foot tall flag pole style mono pole (the "Tower") at the above mentioned property. The property is a 6 acre parcel located in the Highway Commercial zoning district. The proposed wireless communication facility is a permitted use in the Highway Commercial zone subject to site plan approval by the board. The application was accepted and assigned Case # 2009-02. The case was scheduled to be heard on July 8, 2009.

At the July 8, 2009 hearing Mr. Riley allowed Kevin Lynch, Litchfield Code Enforcement Office, to address the Board to provide new information which Mr. Lynch felt would have a bearing on the case. Mr. Lynch stated that he recently walked the site with the Conservation Commission and they determined that the area is not natural wet lands but it is in fact a drainage swale. Section 1207.03 of the town ordinance states that this is not considered a natural wetland area therefore the applicant does not need to apply for the Special Exception. Mr. Lynch stated that his original finding was in error and he would be issuing a new letter tomorrow stating the new finding. The Applicant, BCI Communications, then made a request to withdraw their application and the Board voted 5-0-0 to accept the applicant's request to withdraw their application based on the new finding made by the Code Enforcement Officer.

Mr. Powers stated that he had spoken with the Conservation Commission to do a site walk with him but had received no response. He then encouraged the board members to do a site walk on the property and that they had his permission to walk on his property. Mr. Riley stated they would have to determine the area of the cell tower pad, the specific area of wetland/swale in question, and their proximity to the Tabernacle Church building so that ZBA members would be able to find the right location. Mr. Riley said he would send out a memo to all ZBA members encouraging them to walk the area prior to the September meeting when this case will be scheduled for hearing.

The applicants were informed that they should state why they felt the CEO was in error on their appeal, as well as presenting plans, pictures, and any scientific evidence to support their appeal. In addition they would need the owner's authorization to represent them.

Mr. Riley asked the applicants if they had brought a check and three sets of mailing labels. Mrs. Powers presented the Board with the three sets of mailing labels, as well as two checks, one to

the Town of Litchfield and the other to the Postmaster. In addition to a letter to the abutters, there will be a public notice in the papers for the September 9, 2009 ZBA meeting.

Laura Gandia proposes a motion to accept the application for an appeal from administrative decision – Case# 2009-03

Albert Guilbeault seconds motion.

The Board votes in favor of motion 5-0-0.

III. Communications and Miscellaneous Business.

- Discussion about Code of Ethics draft document recently distributed to all town departments.

There was a brief discussion about the Code of Ethics document. Mr. Riley took the action item to invite the Ethics Committee to the September meeting for further discussion.

- **Review and Approval of Minutes for July 8, 2009.**

Laura Gandia makes a motion to approve the Minutes for July 8, 2009.

Albert Guilbeault seconds the motion.

The Board votes in favor of the motion 3-0-2.

- **Review of 2009 revised budget.**

Mr. Riley informs the Board that all Departments were asked to make cuts to their budgets. He took some money out of postage, travel expenses and attorney fees. Since applicants now pay for the postage up front, that expense was decreased in the 2010 budget as well. Adjustments were also made for funding for secretarial services.

- **New Business.**

There was no new business to come before the Board.

IV. Adjournment.

Laura Gandia makes a motion to adjourn.

Greg Lepine seconds the motion.

The board votes in favor of adjourning at 7:50 pm, 5-0-0.

Respectfully submitted,
Margaret J. Dabrowski