

MINUTES OF THE PUBLIC HEARING CONTINUATION  
SUDBURY BOARD OF APPEALS  
MONDAY, FEBRUARY 28, 2005

The Board consisted of:

Jonathan G. Gossels, Chairman  
Elizabeth A. Taylor, Acting Clerk  
Jeffrey P. Klofft  
Constantine Athanas, Alternate

The hearing was reconvened by the Chairman, Mr. Gossels.

Brian Grossman, Anderson & Kreiger LLP, submitted a letter dated February 28, 2005 prepared in response to the Board's request for additional information. He noted that in the application the name of the applicant was given as New Cingular Wireless Services of Massachusetts. At the time of submission it was thought that this would be the name. The corporate restructuring has been done and the name is now to be New Cingular Wireless PCS LLC.

The Board had no problem with the name change.

Mr. Grossman also noted that PiRod, the monopole manufacturer, is not a local manufacturer. Edwards & Kelsey is the engineering firm that Cingular has been consulting with. Their representative was present this evening.

Mr. Gossels said given the safety issue, he would like to go through the whole letter and then speak with the representative.

It was agreed to discuss the issues, leaving the modifications for later.

Mr. Grossman said the first issue had to do with the one-piece shroud and whether or not that was a doable solution. He did go back and talk to Cingular who in turn talked to Valmont, which acquired PiRod in 2001. Valmont doesn't produce a one-piece shroud for this diameter pole. Anything that would be done would have to be custom made. He was not sure it could be done. There would have to be three essentially separate one-piece shrouds, one for each 10-foot section. How to do this and whether it would work was a concern. It doesn't seem to be a feasible solution.

Mr. Gossels asked if this cover is only the top 30 feet of the tower.

Mr. Grossman said it was. The rest of it is the steel.

Mr. Gossels said the Board's concern is when you have panels that can catch the wind and can separate. Having a 10-foot high cylinder would address the Board's safety concerns, even if it isn't a one-piece shroud. Three 10-foot sections would certainly meet the requirements.

Mr. Klofft questioned whether or not that final 10-foot top section would pose any risk.

Mr. Grossman said it is the feasibility of designing of the shroud as to whether it would be possible to get it to properly fit given the tower design. He said Valmont is adamant that this is the proper solution and on top of that Cingular proposed another modification.

The next issue is the annual inspection. Mr. Grossman said Cingular has proposed this and believes it to be appropriate. Inspections would be made no later than June 30 of every year and a letter would be submitted to the Building Inspector.

Mr. Klofft voiced a concern that if in one of these routine inspections there was a more noticeable amount of decay or damage, perhaps for some period of time the inspections should be done more frequently so that we could be sure that whatever caused the problem or any modification would actually be resolved. Then, once it was seen that the problem was corrected, Cingular could then go back to a more regular annual schedule. He would not want to fix this on an annual schedule, find out we're going to make some changes but not going to look at it again for another year.

Mr. Grossman felt what might be an appropriate solution would be an annual inspection with a letter to the Building Inspector. If the Building Inspector felt there to be cause for concern, give him the flexibility to request an additional inspection.

With regard to the maintenance log requirement, Mr. Grossman said he spoke with Cingular and the FCC Regulatory Department and as was stated at the previous hearing, the regulations pertain to air traffic safety.

Mr. Gossels said what the Board requested was somewhat different from what some of the neighbors requested. They were referring to the FCC regulations. The Board was requesting that a log be maintained for whatever is done on that tower, so if someone makes a modification, that's recorded. He understood why Mr. Grossman was saying the log doesn't apply. Mr. Gossels would like a log kept of whatever modifications are done so that inspectors from year to year would be able to see from year to year what has been happening.

Mr. Athanas asked if that wouldn't that be included in his annual report to the Building Inspector.

Mr. Gossels didn't think so. He felt if there's a technician doing something up there with an antenna, and they're putting the panels back on, that should be recorded. With any modifications to the panels, if they're not being put back exactly the way they were, a note should be left in a log file. Otherwise when someone is inspecting it they wouldn't know something has been changed.

Mr. Athanas asked how often technicians go up there.

Mr. Grossman said tower experts go up there on average once a month.

Mr. Gossels said he would like a report each time the cover is changed in addition to the annual inspection.

Mr. Grossman's concern was how that mechanism would work if we don't have that kind of procedure in place. He said lot of the things we are talking about are over and above what we ordinarily do.

Mr. Gossels replied that in most cases you don't have towers that are shedding panels on your neighbors.

Mr. Grossman said Cingular has proposed other procedures to make sure the panels get back on right. As far as the maintenance, he said Cingular doesn't have that kind of procedure in place. What he was trying to say is that whatever we say we're going to do, Cingular will make sure they do. Because in five years if they don't, when renewal comes up again, it will be a much different situation.

Mr. Klofft said there has to be some sort of maintenance ticketing system that's used to send someone out to that system. In a system like that there's got to be a case of notes peculiar to the site, whether it's access to the site, or whatever that something could be logged there.

Mr. Grossman another issue is Cingular doesn't control Nextel. It does to the extent that we can make sure that those things happen, that they put things on the right way.

Mr. Gossels said that is exactly the issue that has this Board concerned. He said he has total confidence that when the panels are taken off and new ones are put back properly, at that moment it will be secure. He had no confidence that it will stay in that condition. Even if he could accept that riveting the sides was an acceptable solution, the first time a technician, maybe not Cingular's technician, but Nextel's technician goes out, what's to say he's going to put it back properly.

The representative from Edwards & Kelsey asked who was in control of that site.

Mr. Gossels said the permit holder, Cingular, is responsible. We're not talking about who owns the site. Ultimately in this case Cingular, who holds the permit, is responsible for that tower.

Mr. Grossman said there's a difference as far as the maintenance and keeping the log and being able to get that information from Nextel vs. being able to work with them and make sure that they understand the procedures; i.e., the panel numbering system and all those procedures. This would be required on the contract with Nextel. Which was why Cingular committed to the annual inspections.

Mr. Gossels said over time people will be up there making changes. Cingular will probably do some training for the technicians that are on board right now. But two years from now, three years from now there will be different technicians who won't have lived through this.

Mr. Grossman said another issue was the emergency contact number. He has included the contact number which should be on file where zoning records are kept, most likely with the Building Inspector. It will also be posted in a prominent location at the site.

Mr. Klofft asked whether Mr. Grossman had a problem with at least now, not on a regular basis, sending a letter to all the abutters informing them of the number.

Mr. Grossman did not.

In response to a question from Mr. Athanas, Mr. Grossman said the number would probably be prominently displayed on the fence; it is usually an 11X17 inch plate. It varies by site.

Mr. Grossman said the last issue was that of relocation as requested by the abutters. He said unfortunately relocating the facility isn't feasible or viable. Cingular needs a system in this area of town to provide coverage. Also, there are zoning issues. He said the research district is very limited and cell towers are not allowed under current zoning. Cingular would need a use variance in operate to operate in the research district and he was not sure if this Board could grant a use variance pursuant to the Bylaw. Cingular would still be talking about a system in essentially the same area.

Mr. Gossels read into the record a letter dated February 28, 2005 from the residents at Frost Farm which requests that the tower be relocated. He said that is the position of the residents. It is not the position of this Board.

Discussion followed on the proposed modifications to the panels. Mr. Grossman referred to the Flagpole Shroud Retrofit Installation Guidelines submitted with his letter which depicts the retrofit. He said. all 12 panels are going to be brand new. The mounting panels to

which the panels are bolted will be verified and corrected to make sure that they meet the manufacturer's specifications.

One issue that was noticed, when looking at the fiberglass panels was that it appeared there were holes outside of where the pre-drilled factory holes had been. While Cingular cannot conclusively establish this as a cause of the failure, it is certainly cause for concern. Cingular wants to make sure that everything is lined up properly. If it's not lined up properly, someone may decide instead to re-drill another hole rather than spend the time to align it properly. They're going to go up the way they're supposed to go up.

Each new panel has 6 mounting bolts per panel, 3 across the top, 3 across the bottom. And each panel will have rivets spaced one foot apart. (also shown on retrofit drawing). According to Valmont's engineers, this will fix the problem and prevent this from re-occurring.

Mr. Gossels asked what the life expectancy of the panels was.

Mr. Grossman was not sure but said part of the annual inspection process would be to check that variation.

Mr. Gossels questioned whether Cingular should be requiring periodic replacement, perhaps every three years or five years.

Mr. Grossman felt the annual inspection should take care of this. During inspection if there appears to be an issue as to whether one of the panels needed replacement, it would be reported.

Mr. Klofft agreed because he said typically the fiberglass cracks can be seen during inspections.

In addition, Mr. Grossman said Cingular has decided to go a couple of steps beyond Valmont's modifications given what has happened and the Board's and public's concern. He said the most important aspect of the additional steps are the two steel retaining bands that will go in close to the top and close to the bottom of each ten-foot panel section. There won't be any in the middle because that would interfere with radio transmission. They are similar to cable clamps that are used to secure coaxial cable to the tower.

Mr. Gossels asked if those bands could be painted to match the tower.

Mr. Grossman said they could. He added that during the installation of the panels, the mounting collars and the panels will be marked to insure that when they're removed they're put back in the right position. Then the inside of each panel will also include a warning to whoever takes them off that each panel must be reinstalled in the correct position. Under no

circumstances shall any hole be re-drilled or enlarged to accommodate a misfit. If there is a misfit, it must be reported to Cingular management before finishing the re-installation.

Mr. Klofft said if there are problems, with reinstallation, the technician is to report to Cingular before finishing that re-installation. However, they could conceivably leave one of the panels down. He asked how this would be handled.

Mr. Grossman said these are trained personnel; we leave it to their discretion. If, looking at it it's in an unsafe position, they wouldn't leave it on.

Mr. Klofft would be comfortable that if the Building Inspector is notified of the situation with a timetable, that would be fine.

Mr. Gossels said issues relating to unfinished state of repairs would require notice to Building Inspector of the agreed upon action.

Mr. Grossman understood this to mean if someone went out there and made changes and there were no problems, no notice to the Building Inspector is required.

The Board agreed.

Mr. Gossels said Cingular has come a long way in addressing most of the Board's concerns. He did question whether the renewal period should be as long as five years. He would be more comfortable with a 3-year renewal period given the safety issues we are dealing with.

Selectman Lawrence O'Brien said the bylaw prior to the wireless overlay constraints required a special permit from the ZBA for the height of the tower. He said the attorney for AT&T filed a subdivision plan prior to publishing of the public hearing notice advertising the town's intent to propose a wireless overlay district, thus grandfathering the property under the old bylaw.

It was Mr. O'Brien's understanding that Nextel and Sprint are in the process of merging one of those companies as a co-tenant on this tower. They have non-compatible technologies and will be making some technological changes and some of the hardware will have to be changed. This will entail opening up those panels. Shortening up the renewal period would allow for some safety checks.

Mr. Grossman said the question is whether a shorter renewal period could have the effect of prohibiting wireless communications services to the extent that the renewal process could be such that the burden imposed is so onerous that we would have to come back every month.

Mr. Gossels said this Board has been very clear about the issues, which are simply the public safety issue. It's not been about prohibiting this tower.

Discussion followed on what the length of the renewal period should be. Given the length of time to complete the modifications and the fact that the Board would like to go through two inspection periods prior to renewal, a three-year period seemed to be the consensus. There was also agreement to change the annual inspections from June to October.

In addition, there are the seven actions items that Cingular is proposing, with a modification to October. As to the inspections, Mr. Gossels noted that the frequency of inspection isn't strictly annual. Depending upon what's found, the Building Inspector at his discretion can require additional inspections.

Mr. Grossman asked whether the renewal period could potentially go back to five years if everything is okay. Mr. Gossels said it would, over time, depending upon what's found.

Mr. Gossels said three years from now the Board will be asking how the panels are wearing. At that point, since they would have been up there for three years, the question would be whether it is better to replace them pro-actively or not. The Board would expect the application for renewal to address this.

Mr. Klofft suggested Cingular might also want to attach the reports from the annual inspections.

There was no further input. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant New Cingular Wireless PCS LLC, applicant, Sudbury Research Center, owner of property, renewal of Special Permit 99-46 for the continued operation of a 120-foot flagpole style, two-carrier monopole, including associated equipment, property located at 142 North Road, Research District #1 in accordance with Conditions 1 through 5 contained in Special Permit 99-46 as follows:

1. The monopole shall be in accordance with plans prepared by Greenman-Pederson, Inc., Consulting Engineer, Marlborough, MA, dated October 20, 1999, Sheets A3 and A4.
2. The diameter of the pole shall be no larger than 18 inches at the top, 27.5 inches at the base, light gray in color. The gold ball will be eliminated from the top of the pole.

3. Two adjoining 12X20 foot equipment shelters within a 30X40 foot fenced equipment compound shall be constructed as shown on the plans, and shall be of brick exterior, or such other materials as the Selectmen approve.

4. There will be no lighting on the pole unless required by the FAA. There will be no lighting for the flag unless approved by the Selectmen. The rules of flag etiquette shall be observed.

5. The flag will be displayed at the discretion of the Selectmen.

and including the following additional conditions:

6. The vertical position and azimuth of the cast metal mounting collars to which the fiberglass panels are bolted will be verified and corrected as necessary to meet manufacturer's specifications.

7. The new panels will be installed with six mounting bolts per panel.

8. Each panel will also have rivets spaced one foot apart along the long edges to prevent them from being lifted by high winds.

9. For additional security, each ten-foot cylindrical section comprised of quarter-panels will be secured with two external stainless steel retaining bands, for a total of six retaining bands. These bands will be painted to match the color of the pole.

10. During installation of the new panels, both the clamp-on mounting collars and the panels will be marked to insure that when the panels are removed in the future, they will be re-installed in their correct position on the pole.

11. The inside of each new panel will include a prominently located warning stating that (a) the panels must be re-installed in their correct positions, (b) the rivets and the stainless steel bands must also be correctly installed, (c) under no circumstances shall any hole be re-drilled or enlarged to accommodate a misfit, (d) any difficulties in re-installation of the panels shall be reported to Cingular management before finishing the re-installation.

12. After the repairs are complete, Cingular will provide a certification from a structural or professional engineer that the repairs have been completed as outlined above.

13. In addition to the above repairs, Cingular will cause the tower to be inspected annually to verify that the panels remain secured properly. No later than October 31 of each year, Cingular will provide a letter to the Building Inspector stating the date the inspection occurred and the results of the inspection. The Building Inspector may, at his discretion, required additional inspections as deemed necessary.



14. In the event any panels are left in an unfinished state of assembly, the Building Inspector will be notified, and there will be an agreed upon action plan for completion.

15. The site will be prominently marked with an emergency contact number in case of an emergency. The contact number will be updated as necessary. Letters will be sent to the abutters informing them of this contact number.

16. The approval granted herein shall expire in three (3) years on February 28, 2008. Continued operation of this facility shall be subject to application for renewal to the Board of Appeals on or before this date.”

VOTED: In favor: 4 (unanimous) Opposed: 0

REASONS: The petitioner seeks renewal of a special permit for the continued operation of a wireless communications facility. In light of the recent failure which caused panels to fall from the tower into a residential area, the Board has taken steps by imposing additional conditions in an attempt to prevent this situation from re-occurring. The tower is located in an area in close proximity to many residents, a school, and a commercial office building thereby heightening the Board’s concerns with regard to safety. As a result of those concerns, the Board finds a three-year period to be appropriate in this case.

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Jonathan G. Gossels, Chairman

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Elizabeth A. Taylor, Acting Clerk

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Jeffrey P. Klofft

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Constantine Athanas, Alternate

ELIZABETH M. SULKOWSKI  
73 Moore Road  
05-12

MINUTES OF THE PUBLIC HEARING CONTINUATION  
SUDBURY BOARD OF APPEALS  
TUESDAY, FEBRUARY 28, 2005

The Board consisted of:

Jonathan G. Gossels, Chairman  
Stephen M. Richmond, Clerk  
Elizabeth A. Taylor  
Jeffrey P. Klofft  
Constantine Athanas, Alternate

The public hearing was reconvened by the Chairman, Mr. Gossels on the matter of an appeal by the Sulkowskis of a decision by the Building Inspector that a special permit is required for the chickens on their property at 73 Moore Road. At the previous hearing, Mr. Sulkowski maintained that the use has been continuous and is a pre-existing non-conforming use.

Adam Sulkowski submitted the following information for the record:

- letter dated February 28, 2005 from Elizabeth Sulkowski
- memorandum dated February 28, 2005 from Adam Sulkowski in support of his appeal
- email from Town Counsel Paul Kenny to James Kelly dated September 15, 2004
- Bylaw Section 2230, appendix A, Table of Principal Use Regulations
- Pages 109 and 110 of Zoning Bylaws
- Planning Board memo dated February 10, 2005 to Board of Selectmen including 2005 Annual Town Meeting articles
- Excerpt of M.G.L. Chapter 40, Section 3.
- Excerpts from 2001 Master Plan
- Definition of "raising"
- 2 pages of photographs of property at 73 Moore Road
- letter dated February 19, 2005 from Llewellyn G. Churchill
- letter dated February 22, 2005 from Dorothy Haskell Chhuy
- letter dated February 24, 2005 from David Kirshner
- letter dated February 27, 2005 from Beverly Haskell
- copies of Sudbury's Real Estate Valuation List for the period 1928 through 1951

Mr. Sulkowski presented arguments in support of his documentation. Several residents presented further oral history of the area.

The Board reviewed the documentation submitted by Mr. Sulkowski, particularly the copies of the real estate valuation list. The list documents a chicken coop having been on this

ELIZABETH M. SULKOWSKI  
73 Moore Road  
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property as far back as 1928, prior to any zoning in the Town of Sudbury. Based on this information, the Board concluded that the use was pre-existing.

With regard to the issue of raising as it applies to the Bylaw, the Board reiterated its unanimous agreement at the February 8, 2005 hearing that it considers the Sulkowskis to be

raising chickens. However, the Board found the documentation submitted by the petitioner attesting to the continuous raising of poultry on the property extending back prior to zoning restrictions to be sufficient evidence that the use is pre-existing, nonconforming and a special permit is not required.

Mr. Gossels pointed out that there are two types of issues – zoning issues and neighborly issues. In this case, it is a neighborly issue which he hoped would be resolved between the neighbors.

The public hearing was then closed. The following motion was placed and seconded:

MOTION: “In the matter of the appeal by Elizabeth Sulkowski of a decision of the Building Inspector that a Special Permit is required under Section 2313 of the Zoning Bylaws for the raising of animals (poultry), property located at 73 Moore Road, the Board finds this use to be a pre-existing non-conforming use and a Special Permit is not required.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: Documents from the Assessors Office of the Town of Sudbury clearly indicate the chicken coop existing on the property dating back to 1928, prior to zoning, together with the documentation that poultry has been raised continuously on the property, conclusively demonstrates a pre-existing use. Although the Board has determined that the use does constitute “raising” of poultry, it is exempted from the requirement of a Special Permit due to its pre-existing non-conforming status.

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Jonathan G. Gossels, Chairman

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Stephen M. Richmond, Clerk

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Elizabeth A. Taylor

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Jeffrey P. Klofft

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Constantine Athanas

