

**LINCOLN PLANNING BOARD  
REGULAR MEETING MINUTES  
WEDNESDAY, AUGUST 13, 2014 – 6:00PM  
LINCOLN TOWN HALL - 148 MAIN STREET, LINCOLN NH**

**APPROVED**

**Present:** Chair R. Patrick Romprey, Vice-Chairman Jim Spanos, Clerk John Hettinger, OJ Robinson, Selectmen's Representative, Tamra Ham Selectmen's Representative (serving in OJ Robinson's stead for Cellco Partnership d/b/a Verizon Wireless application), Paula Strickon, Norman Belanger (alternate), and Callum Grant (alternate).

**Members Excused:** Taylor Beaudin (alternate)

**Members Absent:** None

**Staff Present:** Planning and Zoning Administrator Carole Bont, and Town Manager & Town Planner, Alfred "Butch" Burbank, Wendy Tanner (recorder)

**Town Attorney Present:** Attorney Peter Malia of Hastings & Malia Law Office, PA, 376 Main Street, PO Box 290, Fryeburg, ME 04037-0290

**Guests:**

- **Cellco Partnership d/b/a Verizon Wireless Presenters:**
  - Charles "Chip" Fredette, PM, Vital Site Services, Inc., Site Acquisition and Contracts Management working for Verizon Wireless as a contractor. He looks for real estate for Verizon so that Verizon can meet its coverage needs
  - Dan Goulet, Director of RF Services for C Squared Systems, LLC, a third party radio engineering firm working as a Verizon Wireless Consultant for Verizon Wireless on the proposed site – Substituting for Keith Vellante, Auburn, NH
  - Thomas W. Hildreth, Attorney for McLane, Graf, Raulerson & Middleton, PA, 900 Elm Street, PO Box 326, Manchester, NH 03105-0326, representing Applicant Cellco Partnership d/b/a Verizon Wireless
- **Representative of Property Owner – CLP Loon Mountain, LLC (formerly known as CNL Income Loon Mountain, LLC)**
  - Rick Kelley, President and General Manager of Loon Mountain Recreation Corp., leasing from CPL Loon Mountain LLC, formerly known as CNL Income Loon Mountain, LLC & one of signatories on application for Cellco Partnership d/b/a Verizon Wireless to put up a telecommunications cell tower.
- **Abutters to Proposed Cell Tower**
  - Peter Eisenhower, abutter and home owner (Tax Map 124, Lot 034 – 34 Westwood Drive) from PO Box 1193, Lincoln, NH 03251-1193
  - Rossana Nigrosh, abutter who with a second home at 24 Governor's Lane, Map 124, Lot 028, owned by Kevin M. Sargis, Trustee of Hunter Realty Trust, 44 Old Princeton Road, Fitchburg, MA 01420. Sargis also owns abutting lot M124, Lot 027 on Governor's Lane. Nigrosh lives at 3 Battery Wharf, Boston, MA 02109.
  - Daniel Nigrosh abutter who with a second home at 24 Governor's Lane, Map 124, Lot 028, owned by Kevin M. Sargis, Trustee of Hunter Realty Trust, 44 Old Princeton Road, Fitchburg, MA 01420. Sargis also owns abutting lot M124, Lot 027 on Governor's Lane. Nigrosh lives at 3 Battery Wharf, Boston, MA 02109.
  - Douglas Smith, abutter and President of Westwood Homeowners Association and homeowner in Westwood, PO Box 1413, Lincoln, NH 03251
  - Karyn Forbes Attorney for Shaheen & Gordon, 107 Storrs Street, Concord, NH 03302, representing abutter, Rossana Nigrosh whose property is owned by Kevin M. Sargis, Trustee of Hunter Realty Trust, 44 Old Princeton Road, Fitchburg, MA 01420

- Robert Culgin owner of 7 Sarsaparilla Court, Lincoln, NH 03251 (M124-L022) and lives at 4 Parmanter Road, Framingham, MA 01701
- **Others:**
  - Lincoln Fire Chief Ron Beard, Town of Lincoln, PO Box 25, Lincoln, NH 03251
  - Darin Whippman, Reporter for newspaper The Littleton Courier, 33 Main Street, PO Box 230, Littleton, NH 03561-0230
  - Patricia McTeague, Selectman & ZBA Member, School Street, Lincoln, NH 03251
  - Dennis M. Ducharme, Managing Member of RiverWalk at Loon Mountain, LLC, at 33 Brookline Road, Lincoln, NH 03251, and RRP (Registered Resort Professional), President of Inn Seasons Resorts [212 Mid Tech Drive, West Yarmouth, MA 02673, including InnSeasons at South Mountain and InnSeasons at Pollard Brook

**I. CALL TO ORDER** by the Chairman of Planning Board; announcement of excused absences, if any, and seating of alternates(s), if necessary.

*O.J. Robinson, Norman Belanger and John Hettinger have been recused for the Verizon Cell Tower portion of the meeting.*

**II. CONSIDERATION** of meeting minutes from:

- July 23, 2014

**Motion to approve: John Hettinger**

**Second: Paula Strickon**

**All in Favor: (4-0)**

**III. CONTINUING AND OTHER BUSINESS** (Staff and Planning Board Member/Alternates).

**1. 6:00 pm. Site Plan Review for a Proposed Telecommunications Facility Under Land Use Plan Ordinance Article VI-A Telecommunications Equipment and Facilities**

**1. Application (SPR 2014-02)**

**2. Property:** Tax Map 126, Lot 20, (60 Loon Mountain Road)

**3. Proposal:** Thomas W. Hildreth, Esq., (formerly John F. Weaver Esq.) of Mclane, Graf, Raulerson & Middleton, PA, of 900 Elm Street, Manchester, NH 03101 on behalf of client, Cellco Partnership d/b/a Verizon Wireless ("VzW") of 400 Friberg Parkway, Westborough, MA 01581, filed an Application for Planning Board Site Plan Review Approval for a Proposed Telecommunications Facility Under Land Use Plan Ordinance Article VI-A Telecommunications Equipment and Facilities. VzW is proposing to construct a 100 foot monopole within a 40'X40' fenced-in compound located to the southwest of the Governor's Lodge at Loon Mountain Ski Resort, at the end of Governor's Lane at 60 Loon Mountain Road (Tax Map 126 Lot 020). The monopole will host 12 panel antennas with a centerline height of 97'. The monopole will be supported by a 12'X26' equipment shelter with an internal diesel generator located within the compound. The structures will be in the General Use (G.U.) District. The property is owned by CLP Loon Mountain, LLC (formerly known as CNL Income Loon Mountain, LLC), 60 Loon Mountain Road, Lincoln, NH 03251. No quorum on April 9, 2014. Hearing was continued to April 30, 2014, and then again to May 28, 2014, and then again to June 25, 2014 and then again to August 13, 2014.

Chair Romprey called the meeting to order and asked Attorney Thomas Hildreth to give details of the Verizon Wireless proposal.

Attorney Hildreth stated that there were other members of his team that had not arrived yet. When Verizon Wireless met with the Planning Board a couple of weeks ago to request a brief continuance Verizon Wireless wanted to have a chance to reconvene as a team with the Verizon team members and the Loon Mountain representatives, and to talk further with the most closely effected neighbors and the Westwood Homeowners Association. Based on these conversations, Verizon Wireless has elected to move forward with the location preferred most by the members of the Westwood Homeowners Association. The preferred site is now the site located four hundred thirty-seven feet (437') away from the end of Governors Lane – also known as the “crane site”. Attorney Hildreth further explained that the site is familiar to the Planning Board because it had been presented in the past. On the overview plan it is the site that is four hundred thirty-seven feet (437') from the end of Governors Lane.

Verizon Wireless has worked to clear the relationship with the Westwood Homeowners Association and has continued conversations with the Westwood Homeowners Association. Hildreth sent three different versions of a letter that proposes some additional understandings and conditions that work toward an approval. The last version of the letter is the correct version. The correct letter is the one signed by Mr. Hildreth's secretary on his behalf. [A copy of the letter is attached to these minutes.] The relevant part of the letter is as follows:

*“The purpose of this letter is to provide some further details of the proposal now mutually agreeable to Loon Mountain, Verizon, and the Westwood Home Owners Association. Based on clarifying conversations over the past week, the parties are in favor of site plan approval that includes the following conditions:*

- 1.) max tower height of 100', which will not be increased in the future*
- 2.) ground based compound not to be expanded in the future<sup>1</sup>*
- 3.) monopole, antennas, and stockade fence all to be painted/stained green<sup>2</sup>*

*<sup>1</sup> The property owner has expressly agreed that it will not lease additional land in the vicinity of the Verizon compound to other wireless carriers.*

*<sup>2</sup> It is unlikely that equipment would ever be proposed to be installed at a centerline of the pole in addition to the equipment depicted on the presently mutually agreeable plan. However, if that were to be proposed, the camouflaging described here may be impacted by such addition. The parties expect that any such change will require an amendment to the approved site plan, triggering new notice to the abutters and an opportunity to engage in further dialogue about whether additional or alternative camouflaging, including, the possible conversion of the pole to a monopine, might be in order at that time.”*

Attorney Hildreth then listed suggested conditions for approval as follows:

1. The maximum tower height will be 100' and may not be increased in height in the future.
2. The ground based compound may not be expanded in the future.
  - a. There is a footnote to that that the property owner has expressly agreed that he will not lease additional land in the vicinity of the Verizon compound to other wireless carriers.
3. The monopole, antennas and stockade fence all to be painted/stained green.

Condition # 3 would fall into the category of camouflaging. Therefore, the pole the antennas and the stockade fence surrounding the compound ground based equipment will all be painted or stained green as appropriate. Those are shown on the modified plan set. (Hildreth then showed the plan set to the audience where the antennas, pole and compound perimeter fence were all a dominant green color.) Attorney Hildreth also explained there is proposed landscaping around the base of the tower, “dark American arborvitaes” (evergreens) are shown in better detail on page Z-8 of the plan (dated August 12, 2014).



According to Attorney Hildreth, these conditions are intended to give some assurance to the abutters that the site is not designed to accommodate more than one carrier. These conditions are going to be the governors or the boundaries that help to ensure that the height will not be increased, and the compound will not be expanded. Looking at the August 12, 2014, Verizon plan and at the compound dimensions (50' x30'), this rectangle is all spoken for. There would be no additional room in this compound for the ground based equipment of another carrier. Loon Mountain has said they are not willing to lease land adjacent to this compound, in this vicinity, so there would be no space to accommodate and additional carriers' equipment.

Attorney Hildreth explained a second footnote in the letter that addresses a possibility that was brought up by the Westwood Homeowners Association. He wanted to address it directly. There is the possibility that some time in the future Verizon would seek to add equipment to the tower at another centerline, for instance, below where Verizon's equipment will go initially. Theoretically, if there were ever going to be a second carrier on a tower that is where their equipment would go. A third carrier would go below that and so forth. The parties wrote some additional conditions in footnote 2:

- (1) For a single carrier site, it would be highly unlikely that Verizon would deploy antennas other than on the array that is already spoken for and concentrated in that area.

Attorney Hildreth was talking to Westwood Homeowners Association President Doug Smith earlier about the possibility of another carrier wanting to collocate on this site. Hildreth has never seen it in this context in his 20 years of working for the company [Verizon]. In Hildreth's opinion, that is typical because when a carrier is on a multi-carrier site the [guest] carrier only has 10 feet of horizontal band width for their own devices, so [guest] carriers learn to live within their own assigned space. When changes need to be made, the current antennas and ground equipment are what is changed; antennas are not added at other levels.

According to Attorney Hildreth, if Verizon ever did want to add to its array for some reason, Footnote 2 reads that if additional equipment is required on a lower centerline, Verizon Wireless would expect that any addition would require an amendment to the site plan, and abutter notification. Verizon Wireless would come back and talk about whether camouflaging proposed here would be sufficient in that modified concept. That discussion might also include the possibility that the pole might be converted to a mono-pine at a future date. Footnote 2 is intended to provide some further prospective forward looking at a hypothetical "what if", to ensure that there is a process where neighbors' voices are heard. The parties anticipate that the Planning Board would specifically look at the subject of camouflaging. Is this camouflaging adequate with that possible change? With those provisions and with that location, Verizon Wireless is making peace with the abutters.

Attorney Hildreth stressed that his client, Verizon Wireless, has proposed certain conditions of approval to the Planning Board and that his client "would welcome your approval tonight with these conditions." However, Hildreth understands that the Planning Board has concerns about approving the application with conditions at this meeting. He does not dismiss the concern. He read the minutes where the operative line is, "the Verizon presenter stated they are going strictly with site plan B from now on" and "Site Plan B" is not the same as the location they are now proposing in the Verizon Plan dated August 12, 2014. Hildreth acknowledged that "there was concern at the staff level and among some planning board members that maybe there were some participants who checked out of the process thinking that this site was not going to be resurrected for consideration." The staff recommended that the case be "put forward for a cycle to provide notice to those folks so that they understand that that is the site that we are looking for final approval on". Verizon Wireless only just today sent the electronic version of these revised plans and the related storm water report to Planning Administrator Bont. The town reviewing engineer [HEB Engineers, Inc.] has not had a chance to review the plans. An engineering review takes time. Verizon Wireless understands the wisdom and need for at least one more meeting to go over these new plans.

Chair Romprey then asked for confirmation that the Westwood Homeowners Association is on board and in agreement of all these conditions.

Doug Smith, President of the Westwood Homeowners Association, agreed that they were all on board. Smith then stated that he could not speak for everyone in the Westwood Homeowners Association individually. Whenever you have a large group of people in an association there is bound to be conflict, but he was speaking for the majority of the group.

Chair Romprey asked if all in the room were in agreement with the proposal. There was a collective, “Yes”, from the people in the room.

Paula Strickon asked for some clarification of a footnote in the letter that was received today, the final letter where the parties explained their conditions, in footnote 1.

“The property owner has expressly agreed that it will not lease additional land in the vicinity of the Verizon Compound to other wireless carriers.”

Strickon asked how the parties defined the word “vicinity”. Attorney Hildreth responded with the following: “In my mind ‘vicinity’ means land immediately adjacent to this compound that would potentially facilitate a second co-locator on this tower”.

Strickon asked if that meant there would not be any co-location. Attorney Hildreth agreed.

Strickon then stated that it does not mean that there could not be a second tower put in 100’ away or 1000’ away, or 200’ up the hill. Attorney Hildreth agreed that the footnote does not mean that.

Planning Administrator Bont asked if anyone talked to the Ramshorn people. Several people responded, “No we did not”.

The Town’s attorney, Peter Malia reported to the Board that he had asked RF Engineer Ivan Pagacik of IDK Communications, Inc. if the proposed Verizon tower would support co-location at 100 feet. Malia’s understanding of Pagacik’s response is that co-location would have to be separated by 10 feet. Another carrier would have to go 10 feet down, so potentially co-location could occur at about 87 feet. Malia then asked Pagacik if that would be high enough to make it feasible for another company to ask to co-locate on the same tower. Pagacik said, “You could get some decent coverage at 87 feet.” It sounded like it might allow at least one co-location if capped at 100’. However, Attorney Malia understands that the Westwood folks prefer to have the height of the tower capped. Some might not want it capped. Some might be in favor of co-location because it means fewer towers. Attorney Malia asked Attorney Hildreth about Condition #1. Condition # 1 states that the “max tower height of 100’, which will not be increased in the future”. If the words after the comma were deleted and that was just left at max tower height of 100’ does that mean there would not necessarily be a prohibition against future increases?

Chair Romprey asked if 100 feet maximum was asked for by the Westwood Homeowners. Doug Smith replied, “Yes. Rick Kelley and I discussed this and we do not want to see it go higher than 100 feet.” Robert Culgin also stated that the agreement meant that the maximum height was 100 feet and also there would be no more towers.

Strickon asked where in the letter it says “no more towers”. Doug Smith stated that the agreement had said the max tower height was 100’, which will not be higher in the future” as it says accurately on this letter, if

that [language] were to be deleted (“will not be increased in the future”), then we (Westwood Homeowners Association) would not support this application.”

Chair Romprey asked Doug Smith if some other provider were to co-locate at 87 feet would that be an issue? Doug Smith stated that, “Yes it would be an issue” and then asked Rick Kelley to explain. Rick Kelley (speaking for CLP Loon Mountain, LLC and Loon Mountain Recreation Corp.) said, “That is why Loon Mountain is restricting the leasing of the ground below it. So whether the Planning Board decides if the tower can go up or down, if we do not lease them any land, they cannot build. That is our commitment.

Chair Romprey questioned further, “If I read this correctly other places on the mountain are still available [to put up telecommunication facilities with cell towers].” Rick Kelley (speaking for CLP Loon Mountain, LLC and Loon Mountain Recreation Corp.) agreed.

Chair Romprey asked for confirmation of what was itemized on the letter was what the Westwood Homeowners Association would agree to. President of the Westwood Homeowner’s Association Doug Smith agreed that the language on the letter was correct.

Chair Romprey stated that typically the Planning Board would not consider approval of an application without engineering reviews in place. Romprey thought this was an unusual situation and was very gratified that everyone is in agreement on this application. In his opinion, the members of the Planning Board would have no issues with the conditions that are in the letter. Romprey also stated that he would like to see co-location and fewer towers, but understood why the agreement is worded this way.

Chair Romprey asked Attorney Hildreth if his client, Verizon, would have any objection if the Planning Board gave a conditional approval with the condition that “our in-house engineer would have the final say and you would have to conform to anything that the engineers dictate”. There would be a second hearing on whether the conditions had been met. Everyone would get notice for a second hearing. Any discrepancies would have to be cleared up before Verizon would receive a final approval. Attorney Hildreth thought that would be fine and agreed.

Town Attorney Peter Malia reviewed some recommendations he had for conditions.

1. The Town would need written proof that an evaluation had taken place which demonstrates that the use/facility satisfied the requirements of the National Environmental Policy Act per section 122B of article 6A of the Land Use Ordinance.

Attorney Hildreth said that Verizon would have to do that in any case internally.

Town Attorney Peter Malia wanted to flag another potential condition to be imposed as part of the Planning Board approval. However, he was not sure if the condition would still apply to the new site as depicted on Site Plans dated August 12, 2014. The condition pertains to a prior HEB report on the earlier proposed site that was 247 feet from Governors Lane. Malia thought that the Planning Board would have to see if the same comment by HEB engineers will be contained in the new report. If HEB has the same comment in the new report, then the condition will be as follows:

2. Applicant will need to provide additional engineering information as to the structural design of the concrete pad, footings, connection, etc., per HEB comment number 8 set forth in Joshua McAllister’s June 19<sup>th</sup>, 2014 letter to the Planning Board. (The Planning Board will see if that condition carries over in his new report.)

Attorney Hildreth stated, “No problem. That condition sounds like a detail for a building permit application.”

Attorney Malia recommended that the Planning Board include the following condition:

3. Applicant to post adequate surety per Section J of Article VI-A of the Land Use Ordinance.

According to Attorney Malia, Section I22F of the Land Use Ordinance also requires a co-location agreement) of the Land Use Ordinance. Attorney Malia will ask the Planning Board to waive that requirement.

4. Planning Board to waive Section I22F of the Land Use Ordinance which requires a co-location agreement given the agreement that Verizon has reached with the Westwood Homeowners Association.

According to Attorney Malia, a Planning Board can issue a conditional approval which is either administrative or substantive. With an administrative condition, the approval can become final without the applicant having to come back to the Planning Board. For example if a condition is that certain paperwork from another agency like a driveway permit from NH DOT has to be submitted it would be considered administrative. However, in this case the Planning Board wants to retain jurisdiction over the final approval and have Verizon come back. The Planning Board does not want to impose that burden on Planning Administrator Bont or Planner/Town Manager Burbank, but have Verizon come back to the Planning Board for a final public hearing in September after Josh McAllister’s report is in to make that final decision themselves.

5. Verizon to come back for a final public hearing in September after the HEB Engineers, Inc., engineering Report comes back.

**Chair Romprey opened the meeting to public comment.**

*There was no public comment but the public hearing was kept open during the reading of the final conditions.*

Attorney Malia recommended that the Planning Board make a motion to approve the application for a telecommunications facility in the location shown on the plans dated August 12, 2014, with the following proposed conditions:

**PROPOSED CONDITIONS:**

**Condition #1:** “Maximum tower height of 100 feet which will not be increased in the future.”

Attorney Malia reviewed the conditions as set forth in the letter from Attorney Hildreth dated August 12, 2014. Attorney Malia explained that he would go through the conditions to give the public a chance to speak to them or ask questions. Otherwise he would assume that if this is final conditionally approved that you want these conditions to be part of it.

*No public discussion about this condition.*



**Condition #2:** Ground based compound not to be expanded in the future. The property owner [CLP Loon Mountain LLC] has expressly agreed that it will not lease land in the vicinity of the Verizon compound to other wireless carriers.

Strickon stated her concern was with Condition #2 that reads “additional land in the vicinity.” The definition of “vicinity” has not been determined. How close is the next pole going to be?

Attorney Malia noted that the footnote actually applies to the ground-based compound and that the footnote goes on to read “the property owner has expressly agreed that it will not lease additional land in the vicinity of the Verizon compound to other wireless carriers”.

Planning Administrator Bont asked if the leased area included only the fenced in area. Hildreth explained that the word “vicinity” **would be any area adjacent to the compound that would potentially allow the compound to be expanded to host additional carriers or facilitate co-location. Anything adjacent to the compound, Verizon could define it in a radius.** Bont asked for vicinity to be better defined so that in 2 to 4 years from now the Planning Board would not look at this and ask again what “in the vicinity” means. Hildreth explained that a 100 foot radius around the compound could be the vicinity. Chair Romprey asked if there could be another footnote explaining vicinity. Attorney Malia stated that he took the footnote to be an explanatory footnote, but not necessarily a condition. Malia asked if Hildreth intended for the footnote to be written into the conditions of approval. Hildreth stated that the letter was part of the record.

Attorney Malia read that the second condition would be ground based compound not to expand in the future. Attorney Malia agreed with Strickon that the word vicinity is vague and subjective and meaningless. Attorney Malia thinks that unless “vicinity” is defined, there is no need to include it. The fact that the condition reads, “ground based compound not to be expanded in the future” is clear.

**Condition #3:** “Monopole, antennas, and stockade fence all to be painted/stained green.”<sup>1</sup> “It is unlikely that equipment would ever be proposed to be installed at a centerline of the pole in addition to the equipment depicted on the presently mutually agreeable plan. However, if that were to be proposed, the camouflaging described here may be impacted by such addition. The parties expect that any such change will require an amendment to the approved site plan, triggering new notice to the abutters and an opportunity to engage in further dialogue about whether additional or alternative camouflaging, including, the possible conversion of the pole to a monopine, might be in order at that time.”

*No public discussion about this condition.*

**Condition #4:** Applicant shall satisfy the National Environmental Policy Act. The Town would need written proof that an evaluation had taken place which demonstrates that the use/facility satisfied the requirements of the National Environmental Policy Act per Section 122B of article 6A of the Land Use Ordinance.

*No public discussion about this condition.*

**Condition #5:** Applicant shall post adequate surety per Section J of Article VI-A of the Land Use Ordinance.

*No public discussion about this condition.*



**Condition #6:** Would depend on whether Joshua McAllister of HEB Engineers, Inc., had additional requirements in his report. Final approval would be subject to engineering approval by HEB Engineers, Inc. to be determined by the planning board at a future public hearing.

Attorney Malia noted that Josh McAllister of HEB Engineers, Inc. needed a couple of weeks once he receives the plans to create the report. The next possible date for a Planning Board hearing would be September 10<sup>th</sup>, that would leave you with three Planning Board members on that night. The next available date is September 24<sup>th</sup>.

*Public Discussion:*

**Condition #2:**

Robert Culgin asked for clarification on the word “vicinity”. What is the meaning of the word “vicinity”? Chair Romprey asked Attorney Hildreth to address that question. Attorney Hildreth said he thought that “we” [Verizon and the Westwood Homeowners Association] elected not to include that as one of the expressly worded conditions, but it will remain in the letter as part of the record. According to Attorney Hildreth, “we are going to rely on the compound cannot be expanded as the definitive limitation”.

Culgin asked what would stop if two years from now another carrier comes into town. Several people answered “nothing”.

Culgin asked what the setback requirement on the proposed compound is. Several people responded, “15 feet”.

Culgin asked if they would have to put in the conditions that 433 feet was the setback limit.

Chair Romprey asked what the closest they could build another cell tower to this one. Attorney Hildreth wanted to clarify that a new request for a telecommunications facility would not be Verizon’s issue. If some future carrier comes along and says they want a tower on Loon Mountain, the new carrier would go through the same procedure as Verizon. Some other carrier would go through a whole proposal just like Verizon. The Planning Board would have to “sort it out then”. If there is a tower there today at 100 feet, Verizon can’t speak to what a future carrier might need or not need.

Culgin countered, “This is not Verizon’s issue down the road, but it is Verizon’s issue today to get your application approved.” Culgin argued that he is sitting here as a Westwood homeowner saying to his fellow Westwood homeowners, before we just concede, why don’t we protect ourselves now rather than revisit this issue again two years from now with another carrier? Attorney Hildreth said he was not sure how the homeowners could do that exactly.

Chair Romprey confirmed that the parties (Verizon and the Westwood Homeowners Association) had agreed there would be no co-location, no expansion of the compound and they had capped the height elevation.

Hildreth explained that the two positions the Westwood Homeowners “are driving Verizon toward are at cross purposes”. The homeowners want to cap the Verizon tower to 100 feet and they want to avoid a second tower. If there is a tower there today at 100 feet and another carrier could satisfy a need at 87 feet under ordinary circumstances that would make sense to co-locate. In the Verizon compound Verizon could be bump equipment in one direction or another to accommodate the ground based equipment for the second provider and that would obviate the need for a second tower. However, Verizon’s information from President Doug Smith speaking on behalf of the Westwood Homeowners Association is that the Westwood

Homeowners do not want a second carrier on this pole. But that would leave open the prospect of another pole. Verizon cannot speak to what a future carrier might need or where they would need it. Verizon does not care if another carrier wants to use their facility. Verizon is not erecting a telecommunication facility for rental purposes, but to meet their own needs. This is land in an active part of the ski operation, Loon Mountain has a training slope right next to the Verizon Compound, and Loon Mountain is redirecting the end of that lift just to accommodate this proposal. Hildreth did say that it would be a very modest expansion that could accommodate a second carrier's equipment.

Smith wants to understand the action of the Planning Board regarding footnote number 1. He asked if the Planning Board was deleting footnote number 1. Smith went on to say that would be an issue for the Westwood Homeowners. The three parties worked very closely on this language that it would be part of the approval and deleting footnote number 1 would be an issue for the Westwood Homeowners Association that is why "we" (The Westwood Homeowners Association) want to understand all the conditions.

Chair Romprey asked Attorney Malia if it was his recommendation that the Planning Board delete footnote 1.

Attorney Malia stated that when the Planning Board drafts a Notice of Decision (NOD) it will be an approval with the following conditions and it will list conditions 1 through 6. The Planning Board typically does not footnote conditions so footnote one would need to be worked into Condition #2. If footnote 1 is to be part of the official Notice of Decision (NOD) it would be written into Condition #2. Condition #2 reads: "Ground based compound not to be expanded in the future." The Planning Board can add a sentence that says, "The property owner has expressly agreed that it will not lease additional land in the vicinity of the Verizon compound to other wireless carriers." The Planning Board could add that sentence to the second condition.

Smith stated that the Westwood Homeowners Association condition is that "we" support the application so long as all the things in this document (the August 12, 2014 letter from Attorney Hildreth) are part of that approval. The Westwood Homeowners Association does understand the Planning Board's concern about "vicinity" being clarified, but being part of the public record of what Hildreth's interpretation of vicinity. The Westwood Homeowners are comfortable with that if the Planning Board is.

Attorney Malia clarified; there is a second footnote that attaches to Condition #3. Condition #3 states: "Monopole, antennas and stockade fence all to be painted/stained green." It was not Attorney Malia's intention to include all of the language in footnote number 2 in condition number 3. Attorney Malia asked the Westwood Homeowners if they want it included. Doug Smith stated that all footnotes should be included in the conditions.

Attorney Malia then began to read footnote number 2:

"It is unlikely that equipment would ever be proposed to be installed at a centerline of the pole in addition to the equipment depicted on the presently mutually agreeable plan."

Attorney Hildreth re-explained the definition of "vicinity" as follows. Verizon equipment is at the 97 foot centerline, top spot on the pole. Verizon Wireless will change their antennas from time to time as technology changes or if license agreements change. Verizon Wireless will not propose to install additional equipment below or on a second centerline location on this pole. Furthermore, Attorney Hildreth stated that such a request would be highly unlikely. If Verizon Wireless were to add equipment below the 97 foot centerline, the footnote goes on to say, Verizon Wireless would expect that would require Verizon to file an amendment of the Site Plan, notice to the abutters, and an opportunity to reconsider whether the general filing is still effective with that second set of equipment. So what Verizon is saying is that its telecommunications facility is off limits to another carrier because the compound will not be expanded and

it is unlikely that Verizon would use it, but if Verizon did, Verizon would be back before the Planning Board going through the approval process at that time.

Attorney Malia then comprised the six conditions, the three based on the Attorney Hildreth letter with the two footnotes incorporated into them. Then NEPA (National Environmental Policy Act) is a condition, posting a surety or a bond is a condition and then the final one would be subject to engineering approval by HEB Engineers, Inc. to be determined by the Planning Board at a future public hearing.

Attorney Karyn Forbes asked to take a 5 minute break to talk to with her clients and Attorney Hildreth. They wished to understand the issue about co-location and what would happen if another carrier came in and proposed to put up a tower. The alternative could always be that they would come back and ask to co-locate and that would mean an amended site plan. I don't think people understand that process or even if it is possible.

*The Planning Board took a 5 minute recess and then reconvened.*

Attorney Hildreth suggested that Verizon could make a stairway between the Westwood Homeowners Association and the ski slope. Rick Kelley (speaking for CLP Loon Mountain, LLC) objected on behalf of the property owners because a stairway is a liability to the property owners. There are additional issues around shoveling and maintaining a stairway that would not be approved by the property owners.

Chair Romprey stated that it is an issue for a later date. Attorney Malia asked Attorney Hildreth and Attorney Forbes if the proposed Notice of Decision containing the 6 conditions stated previously was approved would the ZBA issue go away. Attorney Hildreth asked what the ZBA issue was. Attorney Malia explained that it was an appeal by some of the Westwood Homeowners about the Planning Board's decision about the increased size of the building. Attorney Forbes stated that for the ZBA appeal to "go away" she would first have to see the engineers report after the plans and site are evaluated. So perhaps after the next hearing they would make a decision as to whether they would withdraw the appeal.

Attorney Malia attempted to confirm with the parties that once the engineering review was finalized and the second hearing has completed, whether the ZBA case could be withdrawn. *There was no answer from the audience.* Doug Smith said that the one thing he did not understand is that our expectation is that the engineering evaluation would also include a flood and drainage plan.

Jim Spanos recommended that the Planning Board continue this hearing until September. Attorney Malia stated that the next hearing could be on September 10<sup>th</sup> or 24<sup>th</sup> but there would only be three Planning Board members available on September 10<sup>th</sup>.

Attorney Hildreth thought that September 24<sup>th</sup> would be better and the later date would give the HEB engineers more time to do their report. Attorney Malia confirmed the next meeting would be on September 24<sup>th</sup>.

**Jim Spanos made a Motion to approve the Verizon Wireless application with the following six conditions:**

- 1) Maximum tower height of 100' which will not be increased in the future.**
- 2) Ground-based compound not to be expanded in the future. The property owner has expressly agreed that it will not lease additional land in the vicinity of the Verizon Compound to other wireless carriers.**



- 3) **Monopole, antennas, and stockade fence all to be painted/stained green. It is unlikely that equipment would ever be proposed to be installed a center line of the pole in addition to the equipment depicted on the presently mutually agreeable plan. However, if that were to be proposed, the camouflaging described here may be impacted by such addition. The parties expect that any such change will require an amendment to the approved site plan, triggering new notice to the abutters and an opportunity to engage in further dialog about whether additional or alternative camouflaging, including the possible conversion of the pole to a monopine, might be in order at that time.**
- 4) **Written poof that an evaluation has taken place which demonstrates that the use/facility satisfies the requirements of the National Environmental Policy Act (“NEPA”) per Section I92)(ii)(b) of Article VI-A of the Land Use Ordinance.**
- 5) **Applicant to post adequate surety per Section J of Article VI-A of the Land Use Ordinance.**
- 6) **Subject to engineering approval by HEB Engineers, Inc. to be determined by the Planning Board at a future public hearing, scheduled for Wednesday, September 24, 2014, at 6:00 pm.**

**Second: Tamra Ham**

**In Favor: (3-0). Paula Strickon abstained. Chair Romprey did not vote.**

#### **IV. NEW BUSINESS**

*John Hettinger, OJ Robinson and Callum Grant returned to sit as members of the Planning Board. Tamra Ham stepped out.*

#### **IV. OTHER BUSINESS**

##### **A. Enforcement of the Sign Ordinance:**

Robinson stated that the selectmen are in charge of enforcing the sign ordinance. There are a lot of signs that are non-conforming. The Board of Selectmen will discuss having a public forum to see if they want to enforce the ordinance to the letter of the law or if whether they want to discuss or bring up any changes in the ordinance. The selectmen want some direction from the Planning Board. Robinson asked the Planning Board if you wanted the Board of Selectmen to enforce the ordinance.

Strickon stated that the problem is if we allow one store or business to get away with something that is overt, then everyone else begins doing the same thing. For the past couple of months Strickon has been doing a survey. She took pictures and noted who was not in compliance. Strickon went into certain stores with copies of the ordinance telling the store that their sign was not in compliance. The easiest ones were the flashers, asking them to turn off the flasher.

Town Manager Burbank acknowledged that when you have a business community that is not in favor of control of their sandwich signs, the town could have an enforcement person patrolling the Main Street and probably US Route 3 because it has become epidemic. Every day there is a new sign. If we are going to enforce what Planning Boards have approved it is not going to be without argument.

*(Tamra Ham: Who owns the little black car? Bont: Which one? Ham: The one with the tree on it.)*



Town Manager Burbank informed that Planning Board that the Board of Selectmen is going to schedule a public forum. He is going to literally have to put on a part time enforcement person. The sandwich sign in particular is a culture here. The businesses do not use small sandwich boards; they use 4' x 8' sheets of plywood. Jean's Playhouse could be up to 15 signs. No other business is allowed to do that. He has enforced laws all his life, but he is not sure that this sign ordinance is enforceable in its present state. We are trying to determine how passionate the Planning Board is about enforcement. The Planning Board created the sign ordinance. He would like the Planning Board to take another look at it. To enforce the sign ordinance he would really have to change the game here and get aggressive which is going to take some time. There is some education that needs to be done. Some people know the rules, some do not. It is good for businesses to get that sign out but they are not taking them in at night and they are not "temporary" signs. That is why the Board of Selectmen is asking for input from the Planning Board.

Ham would like to get input from business owners. If Lincoln's sign ordinance is not working for Lincoln business owners then we need to change it. Ham would like to get input from the business owners. It would be most beneficial if they can do that in a public forum and do some advertising to get the business in here to talk about what they need.

Vice Chair Spanos suggested that the Select Board wait until after Columbus Day. Ham, thought between Labor Day and Columbus Day. The perfect time, after Labor Day but before foliage when things quiet down a little and our business owners are still here. Some of them pack-up and leave and they are gone for the winter and vice versa, so that is what I would like to see, if it is not working for them, we need to do something, but we need their input in order to figure it out.

Chair Romprey mentioned that the signboard ordinance is the way that it is because it was asked for. Vice Chair Spanos stated that there was a sub-committee that made it up.

The Board discussed a number of sign issues.

Chair Romprey stated that we should schedule the public hearing and go from there. They would love to get input from the local businesses. They will look to scheduling a joint meeting and invite the business owners.

**VII. PUBLIC PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.


**VIII. ADJOURNMENT**      *The meeting was adjourned by 7:15*

**Motion to Adjourn: OJ Robinson**  
**Second: Jim Spanos**  
**All in Favor: (5-0)**

Respectfully submitted,

Wendy Tanner, Planning and Zoning  
Recorder

Dated: August 13, 2014



R. Patrick Romprey, Chairman