

PZC Minutes JUNE 16, 2014 Special Meeting

The Planning and Zoning Commission held a special meeting at the Avon Town Hall on Tuesday, June 16, 2014. Present were Linda Keith, Chair, Carol Griffin, Vice Chair, David Cappello, Marianne Clark, Christian Gackstatter, Thomas Armstrong and Alternate Elaine Primeau; Mrs. Primeau sat for the meeting. Absent was Peter Mahoney. Also present were Kari Olson, Town Attorney, and Steven Kushner, Director of Planning and Community Development.

Ms. Keith called the meeting to order at 6:30pm.

OUTSTANDING APPLICATIONS

App. #4708 - Meredith Corporation dba WFSB-TV, owner/applicant, request for Special Exception under Section IV.A.4.a.of Avon Zoning Regulations to replace communications tower and add Doppler Radar weather system, 375 Deercliff Road, Parcel 2090375, in an RU2A Zone

App. #4709 - Meredith Corporation dba WFSB-TV, owner/applicant, request for Site Plan Approval to replace communications tower and add Doppler Radar weather system, 375 Deercliff Road, Parcel 2090375, in an RU2A Zone

Ms. Keith reported that the public hearing for Apps. #4708 and #4709 was closed on May 13 and therefore no additional input can be received. She noted that tonight's meeting is an open public discussion for the Commission to continue their review of the application checklist/criteria.

Mr. Gackstatter stated that he has listened to the first tape, as well as read all the documentation from the first meeting. He added that he has participated in all the other meetings/hearings and was present for the last meeting where deliberations were first discussed. He confirmed that he is familiar with the entire record.

Ms. Keith noted that discussion will begin with the special exception criteria, Section VIII of the Regulations.

A. Suitable location for Use

Ms. Keith noted that a lot of homes were constructed in this area many years after the Doppler was removed from the subject site.

Mr. Armstrong noted that he would like to discuss Items A., B, C., and I. He submitted to the Commission, for the record, a document entitled "Draft Section 6. Site Plan Requirements" and commented that his notes get into some of the facts/issues that have been raised and asks whether the Commission believes that the applicant has adequately addressed all concerns relating to the proposed Doppler use. Mr. Armstrong referenced his document and read, verbatim, his text from "A. Suitable location for use". He noted that he feels he has touched on the main points communicated by each party and added that his comments do not reach a conclusion.

Ms. Keith conveyed her agreement with the information Mr. Armstrong read into the record.

Mr. Armstrong commented that if you are in favor of the application then you're in favor of the arguments proposed by the applicant and if you are opposed to the application you conclude that the applicant failed to meet the burden of the special exception criteria. He noted that he feels it would be appropriate for Commissioner's to add items they feel would be appropriate, either for or against.

Ms. Olson explained that if a draft motion is going to be prepared, it would be helpful to have independent discussions by each Commission member as to whether it is felt that the applicant has met the requirement in connection with suitability of location for use.

Mr. Gackstatter indicated that, generally, he finds Mr. Armstrong's statements to be true but noted that his question is whether the radome, the proposed new equipment, is another new antenna, or a totally new device, or a new piece of electronic equipment, or a replacement. He noted that the people who bought homes in this area knew the equipment was there, so it's not like something new is being added to a neighborhood. He noted that the thing that is new is the proposed radome to sit on top of the tower and asked if the radome is acceptable to the development of the neighborhood; is it a modification or a replacement or a new device.

Mr. Armstrong indicated that he feels Mr. Gackstatter's comments speak directly to the special use and modification aspect. He noted that his earlier discussion relates to harmony with the area development and compatibility with other existing uses.

Mrs. Griffin commented that the major existing use in the area is residential, which was not there before and neither was the radome, as it was abandoned 37 years ago. She asked at what point is something to be considered abandoned. She noted that people bought their homes believing that there would not be a radome or Doppler radar in the area, as it wasn't there and hadn't been for many years. She indicated her belief such that if the radome goes in that she doesn't believe that the area will add new homes of the type that exist there now. The neighborhood would not be as desirable because whether or not there is a real danger from the radome, there is a perceived danger. The radome would affect how the area develops from here on.

Ms. Keith commented that many of the comments overlap more than one section of the special exception criteria.

Mr. Armstrong noted that 3 of the areas touch on valuation.

Ms. Olson concurred and noted that overlap is ok.

In response to Ms. Keith's question, Ms. Olson indicated that it would be better to get through the whole discussion to ask for a consensus.

Mr. Kushner noted that the discussion could cover the 3 related items at once, Items A (Suitable location for use), C (Neighborhood compatibility), and I (Consistent with Purposes).

Mr. Gackstatter noted in connection with rebuilding the tower that he accepts that everything, excluding the radome, that is there is the same and would not affect the economic development of the area, as it was there before the area was developed. He voiced a comparison like building houses next to a factory and then asking the factory to be knocked down because it is now a residential area. The houses got built accepting the existing conditions of the area. He indicated that the specific question is whether the proposed radome is a replacement or a modification to existing equipment or whether it is something new that changes the orderly development of the area.

Mr. Armstrong addressed his document/read the last paragraph under Item B and asked whether the Commission believes the applicant has responded and demonstrated that the kind, size, location, and height of the structure are appropriate for the use and will not hinder the appropriate use or diminish the value of adjoining properties. He read, verbatim, from his document the entire text/language contained in Section "B. Suitable Structures for Use".

He noted that the first paragraph addresses only the landscaping plan.

In response to Ms. Keith's question, Ms. Olson explained that valuation can be discussed at this time; any topic can be discussed.

Mr. Armstrong continued his document review and read, verbatim, the valuation information contained in the second paragraph under Item "I" (Consistent with Purposes). He added/noted that "valuation" is setup with slightly different wording in each section (i.e., the section now being discussed uses the wording "will not diminish the value thereof").

Ms. Olson explained/reminded the Commission that while Mr. Armstrong's summaries are very helpful, it is very important that the record reflect each Commissioner's recollection of the evidence heard. She noted that the members are not bound to rely on Mr. Armstrong's recollection or analysis. She indicated that each member must come to their own conclusions and clarified that while Mr. Armstrong's information is very much appreciated, she reiterated that each member needs to make an independent judgment.

Mr. Armstrong noted his agreement with Ms. Olson adding that he tried to prepare a summary/highlight of the important issues made by each party.

Mr. Kushner noted that the testimony received relating to valuation, from both sides, maybe wasn't as conclusive as desired by the Commission because the proposed condition doesn't occur that frequently (i.e., info about values both prior and after a Doppler radar installation).

He commented that the applicant provided information relative to cell phone towers, noting that he doesn't know if this is a valid comparison to a radar tower.

In response to Mr. Kushner's question, Ms. Olson confirmed that it is within the Commission's discretion to decide which expert they agree with. She noted that it is also within the Commission's discretion to determine whether any of the expert testimony provides information necessary to draw a conclusion relevant to the proposal. She explained that if the Commission agrees with Mr. Kushner, such that no information was provided in connection with the affect of radome on property values, then it is within the Commission's discretion to say that none of the provided information was very persuasive. She further explained that if a study on the impact of a radome on a residential property had been provided then the Commission would have to disclose during the public hearing information about their specific expertise, if they choose to discount the expert testimony. Ms. Olson indicated that the Commission does have some rights to rely

on their own personal knowledge, being familiar with the Town.

In response to Ms. Keith's question, Ms. Olson explained that the Commission does have rights, noting that the courts are very clear on this point, to rely on personal knowledge of a specific site location and area characteristics. She clarified that the first issue is for the Commission to determine if they feel that adequate expert testimony has been received that is relevant to the subject issue. If the Commission decides that the experts did provide comparable information from which a conclusion could be drawn, then the decision is which expert is going to be believed and then voice that position.

Mr. Gackstatter indicated that he feels the applicant has met all the requirements for public health and safety (I. Consistent with Purposes). He commented that the Commission isn't an expert on public health and safety issues and noted that those standards are governed by the FCC and the MA Board. If the applicant meets the standards the Commission should accept the information from those organizations; the applicant is within 30% of the maximum allowable value for EMFs in the field. He noted that the property values are known as they were defined when the houses were built, as the broadcasting complex/antennas already existed. He added that the radome could possibly have an effect on property values from a public health and safety perspective but noted that that part has been met. He asked for discussion on the physical/visual aspects of the radome. He asked if the actual installation of the radome itself would hurt property values.

Mrs. Griffin asked which section of the Regulations does the discussion about whether the radome is really a proper replacement for what now exists fall into. She noted that it is expected that a replacement is something similar to what already exists; she commented that modify could mean slight change. She indicated that in her opinion, the comparison is apples to oranges, as there are whip antennas and small dishes. There is no proposal to replace those items but rather there is a huge radome. She communicated her opinion that a radome is not a replacement but is rather brand new equipment. Mrs. Griffin noted that it seems senseless to review all the other sections of the Regulations because she doesn't feel the proposal is a proper replacement.

Ms. Keith noted her understanding of Mrs. Griffin's comments and suggested that other areas be discussed. She addressed Section VIII and noted that parking and access (D) is not applicable; the Commission agreed. She noted that adequate street use (E) is not applicable; the Commission agreed. She noted that emergency access (F) is not applicable; the Commission concurred. She noted that adequate public utilities (G) is not applicable; the Commission concurred.

In response to a discussion about Section 6.a. Site Plan requirements, Ms. Olson explained that this section is applicable as it relates to providing a plan that shows the location of each structure or other man made features on the site. She noted that if the Commission feels this issue has been adequately provided that is great but added that, if not, the Commission should want a plan to show what is there and/or what is proposed.

Mr. Kushner referenced adequate emergency access (F) noting that there was testimony such that in the event of an emergency, Deercliff Road has limited access; there are no roads intersecting east or west and only access from the north and south.

Mr. Armstrong commented that either (F) or (E) could cover the issue of access.

Ms. Keith noted that (F) is more pertinent.

Mr. Kushner suggested that guidance from Ms. Olson be requested relative to Mrs. Griffin's comments about modification and replacement. He noted that it could be argued, perhaps, that the proposed change is great enough such that it can't be categorized as a modification or replacement. Mrs. Griffin concurred.

Ms. Olson strongly advised the Commission to have a discussion on the issue of modification and/or replacement and come to a consensus. She recommended that the other criteria also be discussed. She explained that if an appeal results the courts will look at the basis of the Commission's decision and determine whether there is substantial record evidence to support that decision.

Mr. Cappello noted that one could argue, to Mrs. Griffin's point, that if someone tore down their house they would need a new building permit; the subject proposal could be considered a new application.

Mr. Gackstatter commented that if you had a house and added a second story, that's a modification.

Mr. Cappello agreed but noted that everything would be taken down.

Mr. Gackstatter commented that everything would be put back; they are putting the same structure back that was there before, bar the dome. He referenced an earlier application where the Commission allowed a homeowner to take down to the ground an entire 1-story house, except one wall, and then rebuild to a 3-story building; the house is located in the ridgeline setback.

Mrs. Griffin commented that putting a house where a house already existed is different; the radome is the main issue here.

Mr. Gackstatter noted his understanding that the dome is the main issue.

Ms. Keith indicated that comparing a house with a second floor atop of an existing house is different than the subject proposal which is a house with an extension around the outside of the perimeter of the footprint.

Mr. Gackstatter clarified that his point relates to the tower and acknowledged that he has questions about the radome. He noted his point is whether the tower is there or not there; is it a replacement structure or not a replacement structure. The proposed tower is very similar to the existing tower; basically the same size and structure. He noted that he questions whether the Commission can stand on the argument that the proposed structure is not a replacement, as other people have been allowed to make big modifications on other structures and classify it as a replacement.

Mr. Kushner referenced the just discussed house replacement and explained that the section of the Regulations that governed the aforementioned house application is totally different than the section that governs the subject proposal. There is nothing in that section (ridgeline) of the Regulations that speaks to modification or replacement; however, the Regulations that govern the subject proposal do contain language relative to modification or replacement. He clarified further that the aforementioned house application required a special permit from the Commission. He confirmed that the language is not the same, as we are talking about two different sections of the Regulations.

Mr. Gackstatter noted his understanding adding that his point was more to Mr. Cappello's comments as to whether the tower is an existing structure or not. If the tower is completely torn down and rebuilt is it an existing structure.

Mr. Kushner commented that focus/question for the Commission is what's going on top of the tower, more than the tower itself.

Mr. Gackstatter conveyed his opinion that he doesn't see how the Commission has anything to say about replacing the tower and putting the same whip antennas on it, not including the radome.

Ms. Keith commented that she feels every member looks at the tower structure with the radome on top and added that she doesn't think the discussion can be separated, as they are one in the same. She indicated that she doesn't feel anyone has an argument on the structure of the tower but noted that she feels there's only one discussion, including the radome.

Mr. Gackstatter noted his agreement with Ms. Keith but added that his argument related to Mr. Cappello's comments that because the tower is coming down, they are not replacing equipment. He noted that his thought is that the tower is already there and the real issue is what is on top of the tower.

Mr. Cappello cited an example at the High School noting that a press box tower existed and was torn down and then it was decided that the tower wanted to be replaced and it wasn't allowed. A new application was needed that had to meet all the current Regulations; he noted that there is no tower there today.

Ms. Keith noted that the example at the High School falls under a different section of the Regulations.

In response to Ms. Keith's question, Mr. Cappello confirmed that he considers the tower and the radome as one.

Mrs. Clark noted her agreement with Mr. Cappello.

Mr. Armstrong indicated that he feels everyone may be saying the same thing but noted his agreement with Mr. Gackstatter that the focus should be the radome, as that is what makes the difference. He noted that the Regulations allow for tower replacements.

Ms. Keith indicated that she doesn't think anyone disagrees that the tower can go; adding that the discussion should be about the tower with the radome and not just the tower itself.

Ms. Olson explained that the Commission doesn't have to agree on why the application does or doesn't meet the Regulations. She further explained that she believes the crux of the question relates to Mrs. Griffin's earlier question such that does the Commission believe the proposal meets the Regulations. She noted that whatever the reasons are, the Commission must determine whether the proposal meets the Regulations.

Mrs. Griffin noted her recollection of a conversation/testimony relating to forms filed with the State or local government noting that the subject tower was no longer functioning. She added that reports noting the years were also given.

Ms. Keith commented that she believes that conversation was part of Mr. Chase's testimony such that the tower originally had Doppler radar but it has not functioned with Doppler radar for many years.

Mrs. Primeau commented that the Science Center has a very similar dome to what is proposed for the subject site. The dome at the Science Center has been there for 30 years and is still there; she noted that that dome is the one that used to be at the subject site. She noted that houses have sold all around the Science Center property and asked whether there has been any decrease in value of those homes. She added that the Science Center wrote a letter to the Commission.

Mr. Kushner noted that the radar at the Science Center is not licensed.

Mrs. Primeau noted her understanding of Mr. Kushner's comment but noted that the FCC had approved the Science Center location. She referenced the issue of property values and asked whether there has been a decrease in property values on Montevideo Road.

Mr. Armstrong noted that no information was provided, by either the applicants or the opponents, on property values on Montevideo Road. Ms. Keith agreed.

In response to Mrs. Griffin's question about whether a report was ever filed stating that the subject site was no longer a functioning tower, Mr. Kushner indicated that he doesn't know about a report filing but remembered that there was conflicting testimony and that Attorney Hollister conceded to the timetable that Mr. Chase provided. He noted that Mr. Chase had facts and dates with respect to when the equipment was physically removed.

Mrs. Griffin noted that she feels the report is significant because if the equipment is no longer functioning then it's not a replacement of a functioning tower.

Mr. Gackstatter commented that the applicant contends that the proposal is to modify and replace equipment on the existing tower. It's an active tower than holds antennas and the applicant contends that he's replacing antennas (whip and VHF) with a different type of equipment that is called a radome. The question is, is this really modifying equipment.

Ms. Keith indicated that she remembers testimony that some of the existing antennas are currently working. She noted her recollection that at the last public hearing meeting it was indicated that a minimum of 4 antennas were working that could be confirmed at that time.

Mrs. Griffin noted that the applicant submitted a document as an answer to questions that were raised; she noted that the document includes a map of the area and on the map it says that the weather radar tower is inactive.

Mrs. Clark read the following..."the radar location was used during the 1990s to provide WFSB with a Doppler radar feed until they installed another system at Bradley Airport". She noted that she read this from a letter.

Mr. Gackstatter noted that the applicant acknowledged that the radar was inactive but also noted that the tower with all the antennas and equipment located on it have been active the entire time. The applicant now wants to change and modify the equipment to add radar. The question is, does that proposal mean change and modifying.

Ms. Keith noted her understanding that the testimony was that the existing antennas won't be changed and that they would be reattached. The radome is a change but the existing antennas are not changing. She noted that the radome is a change and a modification of what is on the tower, with or without antennas.

Mr. Gackstatter asked if the radome is actually a new piece of equipment and an upgrade, as the old pieces of equipment are remaining.

Ms. Keith indicated that she doesn't believe the radome is an upgrade and change, because the applicant is not removing something to change it. The existing antennas will be reattached.

Mr. Armstrong commented that the applicant agreed to remove and not replace the existing antennas (whips and dishes) on the tower until they reapplied to the Commission.

Ms. Keith noted her agreement with Mr. Armstrong but clarified that before the applicant agreed to that condition it was stated in the record that the existing whips/dishes are not changing and just going to be reattached. She noted that the proposed radome does change things and is a modification because they are not taking away the whips and dishes and putting the radome in their place.

Mr. Gackstatter asked if it's a modification or an addition.

Ms. Keith clarified that she thinks it's an addition.

Mr. Gackstatter commented that it might not be a modification if it's an addition.

Ms. Keith reiterated that, in her view, it's an addition. She added that it is her understanding from the testimony that the whip antennas and dishes are going to go back on but they aren't going to be enhanced or improved by the radome. The radome stands alone as an addition.

Mr. Gackstatter commented that this is not a modification or replacement of equipment; this is an additional piece of equipment on top of the tower. Currently, they are allowed to have modifications and replacements. Ms. Keith agreed.

Mr. Kushner commented that if the term "modification" is broadly defined, then modification represents a change and this is certainly a change. Mr. Gackstatter agreed. Mr. Kushner noted that the Regulation states modification or replacement. He referred to Mrs. Griffin's concern that no radar exists there now and commented that maybe the argument is that if the proposal is not a replacement, maybe it's a change or modification.

Mrs. Griffin commented that it's a huge modification.

Mr. Kushner added that if it's decided that it is a modification, then a review of the special exception criteria is needed and an evaluation about the modification and how it relates to the neighborhood. He reminded the Commission of testimony from Attorney Dowd relating to modification of any existing communications/transmission station and tower. There was a discussion as to whether Doppler radar is a whole different animal and shouldn't be included in this category. He commented that beginning with the definition of modification takes into account all the testimony relating compliance with specific standards and the special exception criteria.

Mr. Gackstatter commented that if the tower is viewed as a whole device, then anything on the tower can be modified to include any type of radio device as long as it complies with FCC and MA Standards. If the radome is an individual device and the antennas are "other" equipment, there is modification of broadcasting equipment for and then there's modification or replacement of radar equipment that was never there, so it's an addition. He asked if the tower, including the radome and all the antennas as a single device or is it viewed as a tower on which devices sit on and then are modified.

Mrs. Griffin asked if the Commission would have granted an application to erect a Doppler radar without trying to put it on a tower that is falling down with whip antennas and dishes.

Mrs. Primeau noted that the Commission approved the radar, originally, years ago and then the radar was moved to the Science Center and then moved to Bradley Airport.

Mr. Kushner explained/clarified that the testimony received indicated that the Doppler weather radar was installed in 1972. He noted that there was no special permit or site plan approval granted by the Commission in 1972. The installation at the Talcott Mountain Science Center was not under the purview of this Commission, as it is located in Bloomfield. He further explained that the radar started in 1972 before this process existed and was at the site for some period of time. He noted that there was a factual dispute as to how long it has been since the radar was removed from the site but commented that he believes there was a general agreement at the end that it is 35+ years. Ms. Olson explained, in response to Mrs. Griffin's earlier question that a request for a brand new tower, with or without Doppler, is not allowed under the current Regulations; no new towers are permitted.

In response to Mr. Armstrong's question, Mr. Kushner indicated that the Regulations were amended with regard to towers in the mid to late 1980s. He added that he believes the last new tower permitted by the Commission is the Channel 18 tower, located on the other side of the street.

Mr. Armstrong referenced the terms modification, replacement, and change. He noted that he thinks it's possible that the Doppler tower may come into play under both areas, as the tower is being modified so it can host the Doppler and the Doppler probably meets the definition of equipment. He noted that it's possible that Doppler could fit under the category of modification or replacement and also fit under "change".

Ms. Olson reminded the Commission that it's all subject and just preface to the analysis. She noted that whatever the Commission determines the proposal to be, either modification or change, is subject to everything that comes after. Mr. Armstrong agreed.

Mr. Gackstatter commented that the applicant could propose to put anything on the tower as long as it met subsequent requirements.

Ms. Olson explained that any proposal would have to meet the definition of equipment under the prefacing provision which says modifications or replacements at the same site of any existing communications transmissions stations and towers both conforming and non-conforming including changes to any accessory building, facilities, or equipment, subject to the following. She noted her opinion that equipment is modified by the communication transmission station tower language. She added, for example, that a windmill would not be allowed.

Mr. Gackstatter noted his understanding that a windmill wouldn't be allowed but noted that they could put any type of broadcasting or transmission equipment on the tower.

Ms. Olson clarified that it would have to be communications transmission station equipment.

Mr. Gackstatter noted his opinion that he may not agree with that. He noted that equipment and modifications and improvements must be defined at some point. The base is either a UHF transmission or Doppler; if the base is currently UF broadcasting transmission, that's what it is. The third part is whether change is allowed to add additional equipment, such as Doppler. He noted that the modification part has to go with "modification to or replacement of".

Ms. Olson noted that the language "changes to any" must also be included.

Mr. Gackstatter commented that modification or replacement only applies to existing equipment on the tower; improvement to the functional equipment. The radar has different functional behavior and is therefore a change.

Mr. Kushner asked Mr. Gackstatter if he feels the request for a change in equipment meets the special exception criteria. He explained that this is what the Commission needs to decide.

Mr. Gackstatter indicated that he doesn't know yet but clarified that he now knows that it is not a modification or replacement.

Ms. Keith asked if the Commission is in agreement that adequate emergency access and adequate street use have been met.

In response to Mrs. Griffin's question, Mr. Kushner noted that he doesn't believe any reports or testimony were received from either the Police Department or the Fire Department regarding emergency access. He clarified that the proposal was discussed by all the Departments at the Staff meetings but a choice was made not to comment. He noted that one homeowner who lives near the subject site communicated his concerns at the hearings about access to this site.

Mr. Armstrong noted that at the February hearing the manufacturer of the Doppler radar testified that both offsite and onsite capabilities are built into the system to allow it to be turned off, if need be, such that no radiation would be emitted. He commented that he feels as long as the Commission imposes safeguards on the applicant that these standards would be met.

In response to Mr. Gackstatter's question, Mr. Armstrong noted that the area, right now, is fenced with locked rooms. He remembered testimony such that employees could not be physically located on site so there must be remote monitoring.

Ms. Keith noted that all the controls are located within the building on the site.

Mr. Armstrong clarified that he feels the Commission should make it a condition, if an approval is granted, that the building be monitored.

Mrs. Primeau noted that she would like to see the total amount of radiation, emitted anywhere from the tower, reduced, if an approval is granted. She asked if such a condition could be imposed.

Ms. Olson explained that the application must be considered as presented and added that she believes that Attorney Hollister indicated that he would be willing to accept, as a condition, that the existing antennas and radome be reduced in height to meet the existing standard. She indicated that the Regulations specifically address the conditions under which changes in the radiation levels would allow additional tower height.

Ms. Keith noted that the Regulations cover Mrs. Primeau's question and referenced Section IV.4.(a) (10), which says that (a) the radiation levels at the nearest property line is reduced; and (b) the resulting impact on the ridgeline is improved by other site, equipment, and modifications."

Mr. Kushner clarified that reduction of radiation at the property line only applies if the request is for a tower height increase.

Mr. Gackstatter commented that he feels the applicant has shown that they meet the requirements of the FCC and MA standards relative to radiation; very little radiation is added to the overall field from this proposal.

Mrs. Primeau noted that she wants the existing radiation on the site reduced, regardless of the radome.

Ms. Keith noted that she doesn't believe the Commission can ask for a reduction in radiation, as the Regulations don't provide for it.

In response to Mrs. Primeau's question, Ms. Olson explained her concerns with respect to the existing Regulations but clarified that the Commission, in the context of a special permit, is allowed to impose reasonable conditions on an approval. She added that she would like more time to think about Mrs. Primeau's request.

Mr. Armstrong noted that he proposed last week that if the standard is reduced, the Commission retains the right to impose on the applicant shielding and safeguards. He noted that there is an annual test required and if the annual test was 15% higher than the baseline that the applicant must return to the Commission for consideration on additional safeguards. He pointed out that the Doppler radar sits on top of the terminal at the Airport and is located only 10 to 15 feet away, not 110. He noted that the applicant may have to turn down the power, the power is 350kw. The power from some of the antennas may have to be reduced, as that is where most of the radiation is coming from. He noted that there is a standard for the general public, which is 5 times more stringent than for workers. If that standard gets lowered in the future or if Dr. Carpenter's theory such that a pulsating factor should be added to the standard, he noted that he wants the Commission to retain jurisdiction to require reduction in EMFs.

Ms. Olson reiterated her concern is whether the condition can be that it be less than today, not baseline and not what already exists on the site. She noted that she wants to think it through before she provides an answer.

Ms. Keith pointed out that a large volume of conditions could make it burdensome and prohibitive for the Town from an enforcement standpoint. She noted her preference for minimal conditions.

Mr. Armstrong commented that the annual submission must discuss how it is doing with regard to all the conditions in the permit.

Mr. Kushner noted his agreement with Ms. Keith that conditions of approval can be very difficult and added that the subject proposal is a highly technical, specific area. He noted that there is no one at the Staff level that has expertise in this area so the Town may have to retain an expert. He explained that the technical standards in the Regulations relating to the maximum permitted amount of EM radiation is not the only criteria to be considered; the special exception criteria must also be reviewed and considered, as this proposal is a special permit application.

Mrs. Primeau noted that she would like to see a yearly report submitted to the Town that shows that the radiation coming off the tower is less and stays less, for health and safety reasons.

Mrs. Griffin commented that the applicant has noted that they will remove everything from the tower, if the radome is approved. The applicant noted that they will apply in the future to put the equipment back on.

Ms. Olson noted that if everything is removed, then Mrs. Primeau's requirement is met.

Mrs. Primeau agreed.

Mr. Armstrong noted that the amount of radiation coming from the existing equipment on the tower is not known but we know measurements were taken at the tower base.

Mr. Gackstatter asked whether the radome would reduce property values of the surrounding properties.

Mrs. Clark noted that Mr. Kilcommons testified/indicated that there is no real data available to prove that the radome would affect property values. He didn't say it wouldn't affect values just that no data exists. She noted that she has to draw her own conclusion from her own experience.

Mr. Armstrong noted that the Commission must find that the radome has no detrimental effect upon property values. He commented that he feels there are deficiencies in the applicant's report such that there is no conclusion. The information submitted related to valuations for cell towers, noting that Mr. Kushner pointed out that cell towers are different than Doppler. He noted that Mr. Kilcommons indicated that he can't find any comparable analysis.

Ms. Olson noted that Mr. Kilcommons indicated at the end of his presentation that it should be intuitive, which is his opinion and not based on data.

Mr. Cappello indicated that he feels it is safe to say that the radome would not increase property values.

Mrs. Clark agreed and asked if people would buy a home next to a radome.

Mr. Gackstatter commented that the question should be would I buy a home next to a radome and 4 other towers and 20 other dishes. Is the radome the tipping point?

Mrs. Clark noted that she would not buy a home next to any site with towers and that type of equipment.

Ms. Olson pointed out that the question is what is proposed pursuant to the subject application and is that likely to decrease property values. She explained that it's important not to confuse the issue thinking about the decrease in values based on all the towers that are there.

Ms. Keith commented that she hopes everyone on the Commission has gone to see the site. She noted that photos were submitted of what the site is projected to look like from Fisher Meadows and from the surrounding homes. There is testimony that buffering will be provided and that only 4 homes are directly impacted relative to sightline. She added that she feels a visual inspection of the site would help the Commission to visualize what the radome may look like from different areas.

Mrs. Griffin commented that screening could be provided for the residents near the site but there is nothing that would provide screening from below.

Mr. Gackstatter noted that the tower at the Science Center is still there but no one can remember whether it is there or not because we all see it all the time but it doesn't register.

Mr. Armstrong indicated that he would not conclude that there is an effect on property values as seen from the Valley. Mr. Gackstatter agreed.

Mesdames Griffin and Clark noted their disagreement.

Mr. Armstrong noted that he has been to the site several times and would propose more screening on the side that faces 354 Deercliff Road.

Mrs. Griffin indicated that she doesn't think the decrease in property values will result from visibility of the radome. She clarified that the issue is whether people looking at the radome will consider it a danger, relative to radiation. She noted that perception is the key.

Mr. Armstrong acknowledged his understanding of Mrs. Griffin's point but noted that it is a very complex issue and people can have very different thoughts regarding value.

Ms. Keith commented that she feels Item H. (Environmental protection and conservation) has been adequately addressed by the applicant.

Mr. Armstrong agreed.

Mrs. Primeau commented that she feels the site needs to be better maintained and more buffering than what is proposed is needed.

Ms. Keith indicated that she feels Item I. (Consistent with purposes) has been discussed enough.

Ms. Keith noted that she believes that Item 6. a. (Site plan requirements) has been adequately answered.

Mr. Armstrong noted his agreement but noted that the height and description of the whip antennas on the existing structure were not originally identified but the applicant has since provided this information.

Ms. Keith noted that the Commission would like Ms. Olson to create a condition pertaining to height. Mr. Armstrong agreed.

Ms. Keith indicated that she feels that Item 6.b. (visual impact) has been addressed and met. Photographs and diagrams have been submitted but no aerial markers were provided.

Mr. Gackstatter noted that calculated analytics were also provided.

Ms. Keith commented that additional information cannot be received, as the hearing is closed.

Mrs. Griffin noted her understanding but noted that the fact is the applicant didn't submit aerial marker information and it is required under the Regulations.

Mrs. Griffin asked Mrs. Primeau if she saw aerial markers in the sky to the highest point where the top of the radome would be.

Mrs. Primeau indicated that she didn't see any aerial markers but noted that she didn't look because the applicant didn't notify anybody.

Mr. Kushner noted that computer simulations were provided with a cross section analysis as to what they represented what the views would be.

Mrs. Griffin noted her understanding but reiterated that they didn't provide what the Regulations state. Mr. Kushner agreed.

Mr. Armstrong noted that the Commission has the authority to waive the aerial marker requirement if they so choose.

Ms. Olson explained that the Commission would have to find that the aerial marker is not essential to a determination of compliance with the special exception criteria.

Ms. Keith noted that the applicant did not submit a map of existing trees, as noted in Item 6.c.

Mr. Armstrong recollected that the applicant asked for a waiver of this requirement so the drawing could be limited to the immediate vicinity of the tower. He noted that he has no concern with limiting the requirement to what has been submitted, as the trees located outside the area of the tower are not a shielding issue.

Mrs. Griffin asked if the diameter of the trees was shown.

Mr. Armstrong noted that the diameters for the trees in the immediate tower area were shown but the site is 21 acres and they didn't want to do the entire site.

Ms. Keith reviewed Item 6.d.(visual screening/impact).

Mrs. Primeau noted that she would like the proposed white pines be changed to another type of evergreen and to add different types of vegetation for added screening on the bottom. She suggested some type of fir or spruce tree.

Mr. Armstrong noted that he suggests that the initial tree height be increased to 9 to 10 feet and additional evergreens be planted along the southerly point heading west. He also suggested additional trees between 12 and 15 feet to shield property across the street.

Ms. Keith reviewed Item 6.e. (color restrictions) noting that there is no choice on color, as the radome only comes in 2 colors (white or gray), as indicated by the applicant. She indicated that she thinks gray is the best choice. The Commission agreed.

In response to Mr. Armstrong's question about the tower, Mr. Kushner explained that the material he referenced at the last meeting is called corten steel, noting that it is designed to rust on the outer surface only, so it doesn't compromise the steel's structural integrity. He added that he doesn't know if it's possible to use this material for a tower.

In response to Ms. Olson's question, the Commission confirmed that earth tones are required for the tower.

The Commission discussed tower height and agreed that the existing height must be maintained.

Mr. Gackstatter noted that it should be made clear that maximum height means the height of the tallest antenna.

Ms. Olson indicated that it should be the height of the tallest appurtenance. She recollected that there was some discrepancy with regard to the tower height, noting that an addendum was submitted where the applicant provided the height of the existing tower with all the antennas.

She asked if everyone is in agreement that the term "height" means everything on the tower, including all antennas and dishes. The Commission noted their agreement but Mr. Gackstatter noted that he isn't sure he agrees.

Mrs. Clark commented that she has 127.5 as the total tower height including all equipment.

Ms. Keith referenced the answer sheet submitted by Attorney Hollister (response to April 8 meeting) and noted that Item #4 indicates that the existing tower height is 126.8.

Ms. Olson confirmed that the Commission is allowed to rely on what the applicant has submitted.

Mr. Kushner noted that the record could be researched to get the number correct.

Mr. Gackstatter noted that he wants to talk about acceptance of the existing height of the tower. He noted that the tower is a solid structure with wispy antennas adding to the total height. He noted that this is going to be replaced with a sizable visual structure on top, which creates a question as to what the height of the tower is. He asked if the height is the top of the tower itself or whether the height is the top of the antenna tips.

Ms. Olson indicated that in her conversation with Attorney Hollister, they agreed to disagree on the point of total height. She explained that Mr. Hollister conceded, at the public hearing, that he will restrict the height to what currently exists, including all appurtenances.

Mr. Gackstatter commented that he doesn't know if the existing height can be acceptable for a new device, as it seems like a comparison between apples and oranges.

Ms. Olson noted that Mr. Gackstatter's point relates to different criteria. She explained that the question was, under the Regulations, can the tower height be increased, which would have required that the electromagnetic radiation be reduced.

Mrs. Primeau noted that under Tab B it says total height of existing tower and antennas is 126.8 feet. The height of the proposed reconstructed tower is 110 feet and the height of the Doppler radar is 14 feet. She noted that this totals 124 feet.

Mr. Armstrong noted that the dish is 14 feet but is covered to seal it from weather and that totals 18 feet.

Ms. Olson noted that Mrs. Primeau's information is correct and added that that is what was proposed, at one point. She explained that because she and Attorney Hollister agreed to disagree and Ms. Olson took the position that the Regulations could not be met with the current proposal, Mr. Hollister conceded and told the Commission that he would reduce the tower height such that the tower and the radome would not exceed the existing height of the tower with all appurtenances.

Mrs. Primeau noted her understanding.

Mrs. Griffin commented that she finds it interesting that an application this huge gets basic information, like tower height, wrong. She asked how their other measurements could be trusted.

Ms. Keith reviewed Item 7, Prohibited operations and uses in the ridgeline setback area. She asked if it is agreed that there is no conflict with this section.

Mr. Kushner indicated that Items 7 and 8 are not applicable.

Ms. Keith indicated that she would like Ms. Olson to prepare information relative to the special exception criteria and whether the proposal is a modification or a replacement or something else.

Mr. Armstrong suggested that Ms. Olson could provide definitions for modification, replacement, and change.

Ms. Olson noted that she is happy to provide definitions in writing but explained that, as a general principle, when regulatory terms are not specifically defined the courts will look to the ordinary use of the term, general dictionary definitions. She further explained that if there is any ambiguity, the courts will generally side with the applicant; tie goes to the runner.

In response to Mr. Armstrong's question about looking up dictionary definitions, Ms. Olson clarified that no independent research should be done by the Commission. She noted that she is allowed to provide the Commission with a legal opinion. She explained that each member could come up with a different definition by doing their own research.

In response to Mr. Kushner's question, Ms. Keith noted that the Commission will be ready to vote at the next meeting, June 24. She asked that motions with conditions, one motion for approval and one motion for denial, be drafted but noted that the Commission could reject or change or modify any conditions. Ms. Keith commented that reasons for denial must be stated.

Ms. Olson noted her agreement with Ms. Keith's comments and pointed out that if the Commission votes against a motion to approve with conditions, the application is not receiving approval. She explained that any motion prepared to deny the application is going to be very broad/general in nature (i.e., application doesn't meet a section(s) of the Regulations) noting that the Commission will probably have to make modifications to that motion to address its specific position.

Ms. Keith noted her understanding of Ms. Olson's comments.

In response to Mrs. Primeau's question about lights, Ms. Keith noted that there will be no lights.

Mr. Kushner noted that he doesn't believe any testimony was provided that the FAA is going to require any lights.

Mrs. Griffin commented that if lights were to be proposed, the applicant would have to return for a modification.

Ms. Keith reviewed Section IV.4., Special Exceptions, as follows:

- (a)(2) has met the Regulations;
- (a)(3) is not applicable;
- (a)(4) would be a condition of approval if lights are proposed;
- (a)(5) is not applicable;
- (a)(6) compliance with Regulations is required (no onsite office with broadcasting and employees);
- (a)(7) this item is covered under (2);
- (a)(8) this item is covered under (2) but would be a condition of approval if annual reports are required;

In response to discussion about annual reports, Mr. Kushner noted that Channel 18 submits annual reports to the Town. Mrs. Primeau and Mr. Armstrong noted their preference for annual reports. Mr. Gackstatter noted that he is in favor of the annual reports but explained that he is opposed to the requirement for the applicant to come back to the Commission if the change is greater than 15%, because the levels/standards are under FCC control, not the applicant. He added that he doesn't think it's enforceable.

Ms. Olson acknowledged Mr. Gackstatter's comments/concerns but noted that the Commission has the right to impose reasonable conditions on any approval. She suggested that a condition that speaks to compliance could be added such that the permit could become void should non compliance occur.

In response to Mrs. Primeau's comment about replacement of existing equipment on the new tower, Ms. Olson explained that if the applicant has already agreed that they will take everything off and just have the radome, this can be added as a requirement/condition of the approval.

In response to a discussion about existing antennas and what would be allowed on the new tower, Mr. Kushner noted that the record will be researched to verify the information. Ms. Olson agreed and noted her understanding of what the Commission is looking for.

In response to Mr. Armstrong's concern about radiation and the possibility of land sale,

Mr. Kushner suggested that, at a minimum, the facts should include all the land area that is owned by the TV station, as the Commission is being asked to determine whether the special exception criteria are being met. If the Commission concludes that the criteria met, it seems reasonable to conclude on the basis, in part, of the land holdings the owner has. He noted that the current buffer is much less than it was at one time but it is still a buffer. He noted that the owner would not be allowed to sell of land and add more houses. Mr. Armstrong noted his agreement.

Ms. Olson noted that the owner would have to come back before the Commission for any such changes.

Mrs. Griffin commented that anything added to any existing towers should be coming to the Commission for approval. She noted that there have been very few applications during the last 30 years that she has been on the Commission.

Ms. Keith noted that she has been on the Commission for a long time and was surprised to learn how much equipment is on the tower.

Ms. Olson noted that she could add language to the draft motions to remind the applicant that no modifications to equipment, pursuant to the Regulations, are allowed without application to the Commission.

Ms. Keith continued her review of Section IV.4., Special Exceptions:

- (a)(9) visual intrusion this has been covered in several places; clean up of the site and additional plantings have been suggested.

Ms. Olson commented that a condition for maintenance of the grounds can be added.

Ms. Keith continued her review:

- (a)(10) the tower height is not increasing.

Ms. Olson agreed that the height is not increasing and noted there will be a condition that the applicant agrees to both (10)a (radiation level at nearest property line) and (10)b (impact to the ridgeline).

Ms. Keith reviewed Section VIII, Special Exception criteria:

A. Suitable location for use - development of the size, use, nature, and intensity in relation to the size of the lot; harmony with the orderly development of the area compatible with existing uses.

Mr. Kushner explained that while he and Ms. Olson can prepare draft motions, the Commission must decide whether the special exception criteria have been met, or not.

In response to a discussion, Ms. Olson explained that a motion for denial has to be very general, and would look very similar to the outline being reviewed. She noted that the specifics would have to come from the Commission.

Mr. Gackstatter noted that he hasn't heard a lot of fact/data based arguments to the negative. He added that he has heard that people don't want it but asked what the basis is.

Mr. Cappello commented that the proposal is not suitable for the location; there is a residential area that now exists that did not exist when the tower was originally erected. He noted the Doppler was abandoned and the area developed, so the situation is now totally different. The proposal is not in character with the neighborhood.

Mr. Gackstatter agreed that it is a residential neighborhood but noted that an industrial use existed there prior to that neighborhood and people buying there knew it. He noted his issue with modification or replacement at the site and commented that he feels this is for existing equipment. He noted that he defines existing equipment and modification and replacement of as equipment that has the same functionality. For example, a broadcasting antenna could be modified and the power increased but noted that it doesn't make it radar.

In response to Ms. Olson's question about changes allowed to facilities or equipment,

Mr. Gackstatter commented that functionality applies to the equipment that is currently there and asked that as soon as something with a different functionality is added, can it be considered a change or modification. He noted that the question about what is being changed and modified needs to be answered.

Mrs. Primeau noted that the applicant says that the radar did exist on the site and therefore it can exist again.

Mrs. Griffin commented that the radar hasn't been there for 37 years.

Ms. Keith commented that the radar existed 37 years ago and was removed; where it was removed to has no bearing on this application. Ms. Olson concurred.

Ms. Keith noted that when the Doppler radar existed on this site it was smaller and less intense in radiation. She noted that there is a lapse between the use of the Doppler radar, 37 years ago, and the proposed use now. She noted that the owner has lost their opportunity by stopping the radar 37 years ago and not asking to resume until now. This meets some of the language in the Regulations.

Mr. Kushner explained that the applicant is not claiming any nonconforming rights and added that even if there was never a Doppler radar on site 37 years ago the applicant can still submit the same application.

Ms. Olson noted that the Regulations apply whether the condition is pre-existing, nonconforming, or otherwise.

Mr. Kushner commented that maybe Mr. Gacksatter agrees that, A. (Suitable location for use), has been met but that, procedurally, he feels that the scope of the proposal exceeds what is allowed under the Regulations.

Mr. Armstrong commented that if a vote for approval with conditions is denied, a motion for denial is needed. He added that Section IV and Section VIII A, B, C, and I, generically, should be included in a denial motion. He added that it doesn't matter if the Commission agrees on all 4 points because language could be added or subtracted.

Ms. Olson noted her agreement with Mr. Armstrong, reiterating that motions would be very general in nature. The specifics would be provided by the Commission's input.

In response to Mrs. Primeau's question, Ms. Olson explained that if the proposal is denied, an appeal is likely and, in time, a court will decide whether the existing conditions at the site can continue. She added that if the court upholds the Commission's decision for denial, then things will remain the way they are.

Mrs. Primeau noted her understanding that nothing can be added without application to the Commission but reiterated her concerns about the present conditions at the site and the amount of radiation being emitted.

Ms. Keith noted that some of the existing equipment may not be needed in the future due to technology changes. She noted that if the application is denied, the existing condition cannot get worse.

Mr. Kushner commented that, based on the testimony that the radar is a relatively low contributor noting that the Channel 3 tower antennas and the TIC AM station are the big contributors. He noted that the antennas owned by the University of Hartford are very modest.

Mr. Gackstatter noted that the radar is .003% increase in the field, which is nothing compared to what is there now. He noted that he feels the applicant pretty much meets all the requirements but noted that he doesn't feel they have the right to change the equipment because they are adding functionality.

Mrs. Griffin asked if the Commission needs to tighten up their Regulations because there have not been a lot of applications, in general, to add equipment to any of the towers in Town.

Ms. Olson noted that that is a discussion for another time and not suitable as part of the discussion for this application.

Ms. Keith addressed Section VIII C., Neighborhood compatibility. She indicated that she feels this issue is a personal choice and doesn't know if this could be included as part of a denial. She noted that color has already been addressed.

Mr. Cappello noted that it is not compatible.

Mrs. Clark commented that it's really a personal choice.

Mr. Kushner commented that he thinks neighborhood compatibility is a critical issue.

Mr. Gackstatter indicated that he thinks the proposal is compatible because there are already antennas on the site; he added that he feels the applicant has proven compatibility. He reiterated that they shouldn't be allowed to put the equipment there because they are asking for a change they shouldn't be allowed to change.

Mr. Armstrong noted that a landscaping condition is necessary. He added that he feels landscaping is separate issue and noted that he

hasn't decided which way he would vote regarding neighborhood compatibility. He noted that he doesn't think any more conditions are needed.

Mrs. Clark indicated that she hasn't made a decision.

Mrs. Primeau commented that she is up in the area.

Mrs. Griffin commented that she doesn't think it's compatible.

Mr. Cappello communicated that it is not compatible.

Mr. Kushner noted that it appears that 3 members feel strongly it is not compatible and 4 members are undecided.

Ms. Keith continued her review of Section VIII and noted that nothing needs to be done for D. (Adequate parking and access). She noted that E. (Adequate streets for use) and F. (Adequate emergency access) could be covered under a condition for emergency access. She noted that G. (Public utilities) is not applicable. She noted that H. (Environmental protection) involves additional buffering and noted that that item could be referenced under an already existing condition, instead of creating a new condition. She noted that I. (Consistent with purposes) has been covered.

In response to Mr. Cappello's question on public health, Ms. Keith indicated that two engineers said the same thing, with regard to health issues. She noted that a doctor testified that he was concerned about the proposal. She commented that the health issues are subjective to each member.

Ms. Olson explained that health concerns have to be analyzed in a similar manner to property values.

Ms. Keith noted that she doesn't feel a condition can be added that hasn't already been discussed.

Mr. Kushner explained that health concerns is not so much a condition of approval but rather is an analysis/a determination by the Commission as to whether it is believed, or not, that the criteria have been satisfied.

Ms. Olson noted her understanding of Mr. Kushner's comments but clarified that she feels it is appropriate to discuss whether there may be specific conditions that the Commission feels may promote public health safety and welfare given the subject application, as they still need to come to a conclusion/decision.

In response to Ms. Keith's suggestion to review the site plan requirements, Ms. Olson explained that the question is whether the site plan requirements have been met or not, and not open to an analysis.

Ms. Keith asked if a condition is needed for Item 6.a. to meet the height condition (126.8 feet) for the tower.

Ms. Olson noted that she feels this has already been covered in an earlier section.

Mr. Armstrong noted that waivers are needed for 6.b. and 6.c. but the limit for 126.8 feet is already noted in another condition.

Ms. Olson reminded the Commission that they need to decide whether the site plan requirements have been met.

Ms. Keith noted that 6.e.(1) and 6.e.(2) relating to earth tone colors for the tower and height restrictions have already been discussed. She noted that Item 7. (ridgeline) doesn't apply.

Ms. Olson confirmed that she would work with Mr. Kushner to create draft motions. She informed the Commission that no communication to anyone is allowed in connection with this application.

Ms. Keith closed the meeting noting that the discussion has been comprehensive but there are subjective issues. She noted that if the application is denied, reasons for denial will be needed and asked the Commission to be prepared. She added that no members are claiming to be engineers or having health backgrounds and no members know anything about NIER levels. The Commission must rely on the expert testimony provided and decide whether the Regulations have been met.

Mr. Gackstatter stated that he is an engineer but not an expert in radar.

There being no further input, the meeting adjourned at 9:30pm.

Respectfully submitted,

Linda Sadlon, Clerk