



# Town of Canton, Massachusetts

ZONING BOARD OF APPEALS

MEMORIAL HALL

801 WASHINGTON STREET

CANTON, MA 02021

TEL: (781) 575-6589 FAX: (781) 575-6574

Minutes of the meeting of January 26, 2023

PRESENT: Gregory L. Pando, Chairman

Michael Khoury

John R. McCourt

Also Present: Tamra Stock, Recording Secretary

Not Present: Matthew Carlton, Alternate

Barbara J. Saint Andre, Alternate

Chairman Pando opened the meeting at 6:00 pm and reads the agenda.

## **Kenneth Wertz/Julie Callagee – 1825 Washington Street – 2-23-ENCB-SP-V**

Chairman Pando opens the hearing and sees there is no one in the hall regarding this petition. Chairman Pando holds this hearing for second call.

## **340 Pine Street Realty Trust/George Pickering, Trustee – 340 Pine Street – 3-23-SPA-SP-V**

Chairman Pando opens the hearing and reads the petition. Chairman Pando explains he is in receipt of an email from Site Design Professionals asking for a continuation due to a conflict.

Chairman Pando continues the hearing to February 23, 2023

## **Everything's Fine, LLC – 100 Royall Street – 4-23-SP-V**

Chairman Pando opens the hearing and reads the petition. Attorney Brian Grossman explains he is in front of the Board tonight representing Everything's Fine, LLC with the Operations Manager for Trillium. He explains they never really know how to characterize this particular request but they do it every year. Chairman Pando explains this has basically turned into an annual review or large events and as long as the Board doesn't have a long list of issues it is just checks and balances. Attorney Grossman explains with the change in capacity of 750 occupants now anything under is covered but this request is for the events that will have more than that. Trillium is proposing six events over a few weekends. He reviews the events and dates. He also states they have submitted the operations plan which is submitted every year and they worked with police and fire for this. Some of the larger events they will hire a parking company to help manage traffic flow. Chairman Pando mentions that he believes last year went smoothly and events were well attended.

Chairman Pando explains the petitioner is looking for a Special Permit. Mr. McCourt explains this is a just a repeat but he mentions there is a new Police and Fire Chief and he would like for the petitioner to make sure they are all set with everything. Mr. Khoury states he is fine with the application and concurs with Mr. McCourt about making sure the

petitioner speaks with the new chiefs. The events up there are terrific. Chairman Pando asks if there is anyone in the hall that wishes to speak.

Joe Iacono of 2309 Davenport Ave states he has a few questions and a statement. He would like to clear up a point about noise regulations. He would like to know when the Board discussed Waivers of the Performance Standards for noise. Chairman Pando doesn't recall if there were any. Mr. Iacono asks why this is continually being overlooked. It bothers him that there is no standard for the noise that is produced over there. He explains in the Board's decision it makes reference that that the Board could amend or modify if there are issues but the Board is not addressing this.

Chairman Pando reviews the noise standards for background and ambient noise. He has been up there himself over the course of the summer and he did notice one instance that it was loud when they were using a microphone but no louder than some other events that are held in town. *Chairman Pando appreciates the abutter's comments but the Board believes this request is reasonable.*

Another abutter asked how many people the Board will let run around their neighborhood with liquor. Chairman Pando explains right now the limit is set at 1500 people for these special events. That is what the applicant has asked for and that is what the town has found appropriate. She asks if microphones are allowed. *Yes.*

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Mr. McCourt states based on the comments of the abutters he understands the frustration. When he has been there it has been quite and in the last year he has not received one complaint. Mr. McCourt states as much as you have a right to live in peace Trillium has a right to do business. Mr. Khoury questions if the noise complaints are even reviewable by the Zoning Board of Appeals or if they would need to go to the Select board. Chairman Pando states it would need to be reviewed by the Select board. Chairman Pando explains there will be spikes of noise levels during an event and maybe they can ask the petitioner to pick an event and do a noise report. This way it is on record. Attorney Grossman explains any complaints Trillium has had during an event from the neighbors have been addressed immediately. Chairman Pando suggests that maybe Trillium shouldn't be responsible for this but he will discuss it with the Board of Health agent to have some checks and balances.

Mr. McCourt makes a motion on behalf of Everything's Fine, LLC of 100 Royall Street to issue a Special Permit to host eight events for up to 1,500 guests on the property including March 23<sup>rd</sup> Anniversary event, Summer kickoff tradeshow, Lager fest, Oktoberfest, Fall Fest, and Winter Holiday Market. Petitioner is to get approval from the Building Department, Police Chief, and Fire Chief. Mr. Khoury seconds, **Vote 3-0 Approve.**

**Kenneth Wertz/Julie Callagee – 1825 Washington Street – 2-23-ENCB-SP-V**

Chairman Pando call this hearing and asks if anyone is in the hall yet. Seeing none.

Chairman Pando continues this hearing to February 9, 2023

**Vertex Tower Assets, LLC/Canton Fish and Game Association, Inc. – 25 Nasir**

**Ahmad Road - 40-22-SP-V (GP, JM, MK)**

Chairman Pando opens the hearing and explains this is a continuation. He explains the Board has heard a lot on this case and the Board understands none of the abutters want this to be approved. He opens it up to Vertex for presentation.

Attorney Francis Parisi explains that he has been using Power Point as part of his presentation and he would like to officially add that presentation to the record. He explains he is going to respond to some of the things that have been asked throughout the hearings. He starts reviewing his power point presentation. Attorney Parisi explains he has Mr. Steve Kelleher and Mr. Martin Levin here with him tonight and based on allegations in the memo of the Abutters Attorney and her Co-Counsel questioning their integrity he has asked both of them under the pains and penalties of perjury that they swear to tell the truth the whole truth and nothing but the truth. Both answers Yes. Attorney Parisi continues to go through his presentation. He states he has spoken with both the Police and Fire Chief regarding the need for this for public safety and through letters and emails they are in support of this project. He states it is clear to him based on the objections received so far and memos that have come in that people are concerned with the health effects. He explains the Federal law is very clear that you cannot take the health effects into the decision. He states at this point there is so much information in the record and all they need to show is that they will meet the FCC regulations. They have done that. He also states there is ample case law for this that has been submitted to the Board. He explains in a case in Milton there was so much information entered into the record it was considered tainted. There are already towers in residential zones in Canton. Attorney Parisi explains that the Board has no jurisdiction to adjudicate the title issue on the land so he does not want to spend a lot of time on the issue but they have continued to show access and that the title issues for the land are fine. The results of the visibility demonstration clearly show that there is no adverse impact on the Nasir Ahmad Road neighborhood. There are at least 5 other towers and numerous other antenna facilities in residential zones in Canton and others are much closer to residential developments. There is a substantial gap in coverage and those reports have been submitted to the Board. There is no viable alternative. He states at the request of the Planning Board they did a site visit and they did a balloon test that was floated at the height the tower will be at. It was determined that this is not visible from most areas. There was a petition for this same address a number of years ago that was never acted upon but they have moved the proposed tower to a better location. They have

filed with the Conservation Commission and they are confident they will get through that successfully. To go elsewhere it would have more impact on residential abutters. There are already substantial utility structures in the area. They believe they picked the best area. Attorney Parisi reviews some pictures that were taken of Nasir Ahmad Road. This is a small footprint in a large area. There is no noise. The neighbors will not see it hear it or smell it. There will be a short period of construction in which they will work with the neighbors to make that the best and fastest experience it can be. This will take a month and then will have no impact. He reviews some maps of existing towers. Attorney Parisi explains they are not required to submit drive test data. In the last meeting there was a gentleman who submitted maps of various cell phone carriers showing coverage and those are all done by the carriers for marketing purposes and are subject to several small print disclaimers and cannot be relied on. There has been a lot of question as to if they have explored other areas to put this tower in. There are no available or appropriate alternatives in the industrial or limited industrial zoning districts. Attorney Parisi explains it is his understanding this will be going to litigation either way so he needs to make sure the record is clear which is why he is going through all of this. He reviews the Telecommunications act with the Board.

Chairman Pando opens it up to Attorney Suzanne Matthews. She explains before she starts with her presentation who she is representing but she sees more faces in the crowd tonight that might like the chance to speak and she does not represent them. Attorney Matthews would like to thank the Board and appreciates the time this Board has spent on this. This is a volunteer Board so she appreciates it. Attorney Matthews states she would like to identify or address the constant criticism of Attorney Berg from Attorney Parisi. They are lucky to have received help from a very experienced Attorney. He doesn't need to live in Canton and she quite certain the Attorney Parisi doesn't live in Canton either. She explains it is some. She states it is somewhat troubling to hear what Canton has approved in the past and there is no reason the Town should be ignoring what the By-Law states. She also objects to the submissions of Attorney Parisi tonight as they have not received them before the meeting. She states the application was incomplete. Attorney Matthews also explains it isn't a title issue with the land it is an access issue. She states she doesn't believe they are being good neighbors. She also states the Fire Chief mentioned access in his letter. She states the health risk isn't the biggest or strongest argument but reviews the risks anyway. She also doesn't believe they have proven there is a gap on coverage. She believes it is also important for the Board to listen to the abutters that are here tonight from Canton. The abutters have only had a month to review this and she is asking for the Board to deny the petition.

Chairman Pando mentions there are a lot of residents in the hall tonight and the Board has received correspondence from abutters in the Highland Street area. He is going to keep this simple and ask for a show of hands if here is anyone in the hall other than the applicant and his people is there anyone in support of this. There is no one in support. He asks for a show

of hands of who is not in support. There is almost a unanimous vote for people against. Chairman Pando states this is clearly a case where everyone in the area is in opposition and at this point we have enough evidence from all parties. Chairman Pando closes the meeting for public comment and the Board will enter into deliberations on the facts before them. Chairman Pando explains there was a case on this exact site in the past and it ended up in Superior Court. He explains he did discuss this with Town Counsel and reached out and offered for both Mr. McCourt and Mr. Khoury to talk to them as well. This has not been discussed outside of these hearings. Based on that and opinions and discussions with Town Counsel and the review of the facts and history of this site it is likely going to end up in litigation. Irrespective of that and his history of sitting on these hearings for towers this petitioner has meet the burden of proof for the telecommunications act and requirements of the By-Laws and at this point in time he would suggest issuing a Special Permit and Variance. Mr. McCourt states this has been a difficult case. When you see a lot of opposition that weighs heavily on the Board. He explains he went back and dug into the reports from the petitioner and read all of them and looked at maps. The FCC have a tower already recorded at this site. They had the same exact arguments back in 2000 and he also talked to someone who was involved in the case. The case was denied and then the courts approved it but it was never built. He doesn't believe there is too much of a visual concern. He has one in his neighborhood and didn't even realize it was there until he went looking for it. This board has approved cell towers in residential areas in the past. We have letters from the Planning Board and we have a balloon test and he looked at pictures and couldn't see the balloon. Visual effect seems minimal especially with the high-tension towers. He states the litigation is going to cost the town money and he doesn't think they have a chance of winning it. Mr. Khoury explains he did spend a lot of time talking to Town Counsel and this Board doesn't have a right to consider the health aspects of this. If the telecommunications act wasn't in play this Board would have no right to issue a use Variance and after lengthy discussion with Town Counsel the act first looks to see if the Variance is allowed and it is only allowed in extememe circumstances. The application has given a lot of evidence that it is needed but the Board should have gotten its own Peer Review. Because if there isn't a need a Variance shouldn't be issued. He is disappointed it went all the way through the Planning Board without a peer review and Mr. Houston who did the review for the Planning Board has no expertise with this. Town Counsel said we should have asked for this in the beginning and this process is flawed. He has done his own research but he is also not an expert so what does he know. He shouldn't be asked to weigh in on something he knows nothing about. The Board needs an expert in this area to do that. He would like to fix this process and engage in a peer review to make sure there is a need. Chairman Pando states that request is out of order because they have closed the hearing. Mr. Khoury states he shouldn't be asked to decide on something he doesn't know about. This is way too important and the Board shouldn't be granting use Variances unless critical. It would be cheaper if we can get that opinion from an unbiased expert. Chairman Pando suggests again that this will most likely go to litigation either way. Mr. Khoury states he understands that but he doesn't want this to get kicked back to the Board because

they didn't do enough research. He states he can't vote for this. The Board shouldn't not fix their mistake because this has gone too far.

Chairman Pando asks for a motion.

Mr. McCourt makes a motion on behalf of Vertex Tower Assets, LLC/Canton Fish and Game Association of 25 Nasir Ahmad Road to approve a use Variance and Special permit to construct a cell tower. Mr. Pando seconds. Mr. McCourt Nay. Mr. Khoury Nay. Mr. Pando Yay. Vote 1-2 motion fails.

Mr. McCourt makes a motion to accept the minutes from the meeting of January 12, 2023. Mr. Khoury seconds. **Vote 3-0 Approve**

Chairman Pando reads the continuations at a later date

Chairman Pando states the next meeting is scheduled for February 9, 2023

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Mr. McCourt makes a motion to adjourn at 7:38PM. Mr. Khoury seconds. **Vote 3-0 Approve.**

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Respectfully submitted,

Gregory L. Pando  
Chairman

