

**Town of Ancram  
Zoning Revisions Committee  
20 February 2012**

Members Present: Hugh Clark, Terry Boyles, Barry Chase, Barbara Gaba, Bonnie Hundt, Jim Miller, Bob Mayhew, Bob Roche, Jane Shannon, Dennis Sigler  
Members Absent: Terry Boyles, Kyle Lougheed, Don MacLean  
Others Present: Robert Downie, Donna Hoyt, John Mason, Ann Rader, Ron Rader, Steven Sorman, Betty Walsh

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The Chair called the meeting to order at 7:01 p.m. and determined no recusals were necessary.

The committee approved minutes of the 13 February meeting.

After reviewing Nan Stolzenburg's responses to questions and suggestions about the FBD raised at the 13 February meeting, the committee endorsed corresponding edits to Subsections G1, G2d, G2e, G3, G4, G5a, G5b, G6b, and G7a. Edits implement recommendations by Nan and John Lyons to make very clear that the TB has no obligation to accept or process any FBD application; that the TB may turn down an application for no reason; that potential applicants embark upon an FBD application at their own risk and with no assurance of any particular outcome; that the applicant should certify the truth and accuracy of all application information; and that the applicant should certify that he/she applies with full knowledge of these points. Although the TB is not obligated by other law to state its reasons for denying any FBD application, to foster governmental transparency the edit at G7a requires the TB to state in writing its reasons for not approving an FBD application. This requirement coincides with a requirement at Subsections C8c and G3b of Section XIII, SPR, for the PB to state its reasons for disapproving a site plan.

As requested by the TB, the committee then initiated its review of Local Law #1 of 2011, Telecommunications Towers. The Chair noted that features of the pending Mariner II application precipitated the review, but that the review was not being conducted to affect that application, nor should the review be limited to issues prompted by that application. The Chair also noted that all ZRC deliberations and decisions, including this review, are intended to ensure that the town's zoning ordinance is consonant with the town's Comprehensive Plan. Accordingly, the committee and all contributors to ZRC deliberations should hold in mind the final paragraph of the community's Vision; Goal 7. Economic Development; and Detailed Strategy 7.4 Telecommunications. The Chair also noted that deliberations would occur in three distinct steps. The first objective is to identify whether problems exist with the current law. If there are features that warrant revision, what are those features, and what is the exact problem with each feature that needs correction? The second objective is to identify potential solutions. For each problematic feature, how should the text be altered to fix the problem? What are the corrective options, and what are the pros and cons of each option? The third

objective is to decide which solutions best correct the identified problems—what amendments to recommend to the TB.

Ms. Hundt nominated Subsection 4C6b on page 4 as a problematic feature. This text authorizes the PB, upon applicant request, to waive some provisions in cases involving a collocated or camouflaged facility. She considers this subsection to be vague, and that it unduly emphasizes minimizing cost to the applicant without enough attention to effects on neighbors.

During ensuing discussion, others opined that setbacks should not be waived; that waiver authority in this cell tower law should be consistent with PB waiver authority in other features of the zoning ordinance; that setback waivers should be allowed if neighbors consent; that neighbors' consent could be influenced by inducements or pressures from telecommunications corporations; that it is bad public policy to set neighbor against neighbor—regardless of whether the neighbors are separated by a lot line or by a municipal boundary; that it's better for neighboring municipalities to collaborate than to conflict; that any municipal government must first do what is best for its citizens; that waivers are intended for relatively modest differences, not for gross differences; and that the PB is required to state why a waiver is granted. Also voiced were thoughts about whether a cell tower's height and proximity differ from other structures in their effects on property values; that cell towers may affect property values both negatively and positively; that the applicant should be required to address objectively effects on property values; the relationship between waivers and variances; and other points.

As indicated above, the core of the waiver discussion focused on Subsection 4C5F on page 9, Setbacks. Additional issues related to setback problems included the point from which to measure the base of a cell tower—i.e. from the center of the tower base or from the edge of that base closest to an adjoining property line; whether to measure setbacks from the tower or from whatever accessory structures are closest to adjoining property lines; relationships between setbacks and collapse zones; potential infringements on the rights of adjacent property owners to build; that not only safety, but also aesthetics, should be considered when determining setbacks; and that Ancram's previous cell tower law (and those of neighboring towns) correctly establish bigger, more stringent setbacks. Looking forward, it was suggested that the height of the tower plus the side/rear yard setbacks in the density and dimensions table might be a practical solution to setback distances.

While nominating problems with the current law, Mr. Downie opined that Subsection 1, Purpose, is flawed in its intent “to attract cellular service” and “to facilitate the delivery of cellular service.” He noted that having no telecommunications law would best serve that end, but that local citizens would then be unprotected. He opined that PB waiver authority extends this flawed, one-sided intent. The Chair pointed out the protective balance stated elsewhere in the Purpose: “to attract...while at the same time minimizing the negative impact...on the environment; minimizing the number of towers...establishing a fair and efficient process for review...assuring an integrated comprehensive review of environmental impacts...protecting the health, safety and welfare of the people...[and] minimize the negative aesthetic impact....”

Mr. Downie also opined that Subsection 4C5, Escrow, on page 4 is flawed in that it does not require deposit “up front” and that other towns set deadlines after which action on the application ceases. Mr. Sigler and others disputed allegations about Ancram’s escrow requirements, with Mr. Roche asking the value of placing a time limit on escrow payments.

Mrs. Rader voiced concerns about provisions for a bond to secure removal of the cell tower and site restoration if use ceases, and cited precedent in Egremont, MA for a bond of \$20K. Noting Subsections I, Removal, on page 9, and 8C, Bond, on page 12, the Chair and others opined that such provisions appeared to accomplish the ends sought by Mrs. Rader.

In follow-up discussion, Mr. Rader inquired whether the landowner or the telecommunications company is ultimately responsible for removal and restoration, and whether the encumbrance is made known to any potential purchaser of the property. Others commented that the landowner is ultimately responsible, but that the point is worth validating.

[Note: On 23 February, subsequent to the 20 February meeting summarized in these minutes, Mr. and Mrs. Rader sent an email to the Chair and ZRC with further comments about several topics discussed during the meeting. That email was forwarded to ZRC members on 24 February.]

Acknowledging that Federal law [the 1996 Telecommunications Act] precludes local governments from deciding about the siting of cell towers on the basis of radio frequency emissions, Mrs. Hoyt commented that nothing precludes her from voicing her personal opinion that there are adverse effects from such emissions, so cell towers should not be near schools and similar gathering places.

Having determined that passages requiring amendment appear to center on setbacks, but perhaps also waivers, purpose, escrow, bond, and some technical references within the text, the Chair requested members to study the text of Local Law #1 of 2011, Telecommunications Towers; determine precisely which parts of the passages need edits; identify what those edits/solutions should be; and identify the pros and cons of each editing solution they propose.

The meeting adjourned at 8:48 p.m.