

TOWN OF BOOTHBAY PLANNING BOARD
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Re: Site Plan, Special Exception and C1 Zoning District Application of Spectrum Resources Towers, LP for 190' Telecommunications Tower

In an application dated August 30, 2001, Spectrum Resources Towers, LP ("Spectrum") proposes to construct a 190' self-supporting lattice-type telecommunications tower, located within a 5,625 square foot compound, off River Road in Boothbay. Spectrum has been represented before the Planning Board by its agent, ATC Realty, Inc. ("ATC").

The Boothbay Planning Board conducted public hearings on the application on September 18, 2001, October 16, 2001, November 20, 2001, December 18, 2001 and January 15, 2002. The Planning Board conducted a site visit on September 29, 2001. Based upon the testimony at said public hearings and the application, plans, correspondence and other exhibits contained in the file and presented to the Planning Board, the Planning Board makes the following findings of fact, issues the following conclusions of law and decides upon the application as follows:

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

A. This is the application of Spectrum for site plan, special exception, and C1 zoning district approval for an 190' telecommunications tower to include the following:

The project consists of a 190-foot self-supporting lattice-type telecommunications tower, located within a 5,652 square foot compound, accessed from a short 12-foot wide gravel drive private driveway off River Road. The compound will be enclosed by an eight foot tall chain-link fence topped with three strands of barbed wire and will have a 12.5-foot wide secure access gate. Within the compound there will be concrete pads for installation of power, telephone service, and telecommunications equipment installed by broadband wireless carriers. The tower will be constructed to take at least five carrier arrays and will be lighted with downshielded motion sensitive security lighting. The Tower will be constructed to the current ANSI/TIA Standard 222 Revision F.

Spectrum has signed a 5-year renewable lease agreement (with automatic renewals to a 40-year term) with the property owner, Harvey L. Smith. The property owned by Harvey L. Smith is 6 acres in size and described as Assessors' Tax Map R5, Lot 2; the property is further described as a portion of premises

described in a deed to Harvey L. Smith dated May 11, 1962 and recorded in the Lincoln County Registry of Deeds in Book 577, Page 87. Pursuant to its site/lease agreement with the Harvey L. Smith, Spectrum is only leasing the 100' by 100' square that is shaded and shown on Plan Sheet C-1 (i.e., 10,000 square feet of land), together with certain non-exclusive access easements. *See Site Agreement between Harvey L. Smith and Spectrum dated August 2, 2001.*

B. In regard to the site plan application, the Planning Board makes the following findings:

Performance Standards for the Review of Site Plans
(*See Zoning Ordinance § VI(N) (pg. 34-41)*)

1. Setbacks

- a. **Conforming Lots:** the overall site is approximately 6 acres and so meets the zoning district setback requirements. The 75' setback from wetlands required under Section VII(E)(4)(c) (pg. 55) of the Zoning Ordinance is not applicable, as the wetland is not one identified by the Maine Department of Inland Fisheries and Wildlife. *See letter of Woodlot Alternatives, Inc. to Oest Associates, Inc. dated December 17, 2001 and Field Determination of DEP Bureau of Land and Water Quality dated January 7, 2002.*
- b. **Non-Conforming Lots:** N/A.

2. Off-Street Parking and Loading

Each telecommunications provider will typically send a technician, in a light duty pick-up truck, to the site once or twice a month to perform regular maintenance, equipment upgrades, testing and repairs. There will not otherwise be a need for parking or loading at the site.

- a. **Basic Design:** There will be off-street parking for any maintenance vehicles that need to visit the site. (Two parking spaces will be provided.) *See Plan Sheet C-2.* Maintenance of the driveway is Spectrum's responsibility.
- b. **Commercial Development:** The driveway access is located so as to minimize traffic congestion and to avoid generating traffic on local access streets. The driveway will have at least 12" in

thickness and 2" of finish gravel or bituminous concrete. *See* Plan Sheet C-2.

- c. **Parking Lot Design Criteria:** The single access driveway to the site on River Road will be clearly identified and allow for the interior circulation of maintenance vehicles.

3. **Screening:** The plans provide for adequate screening from and between adjacent properties. The applicant is to provide a 100-foot no cut "greenbelt" buffer easement around the perimeter of the site as shown on Plan Sheet C-1. In addition, no vegetation shall be cut within 20 feet of the development perimeter. The facility and related equipment shall be screened with existing plants; existing trees and brush cover shall be maintained to the maximum extent possible. *See* Plan Sheet C-2 (treeline as shown on drawing shall be considered clearing limit).

4. **Roadside Trees and Walls:** Roadside trees along Route 27 and River Road will be maintained; there are no stone walls to protect.

5. **Lighting:** The tower will not be lighted in any way unless required by the Federal Aviation Authority (FAA). The compound will be lighted with downshielded motion sensitive security lighting. Light pollution will be avoided to the greatest extent possible.

6. **Placement of Buildings:** No important views are obstructed by the location of the building compound proposed, which consists of power/telephone area, the tower and the fence. The proposed development will create a clearing of only 10,000 square feet (100 feet square), with a constructed pad of 5,625 feet (75 feet square). Central Maine Power ("CMP") does not object to the location of the tower as shown on the plan, and the applicant has submitted measurements showing the distance between the tower wires and the CMP easement area. *See* Plan Sheet C-3.

7. **Facades:** Given the location of the building compound on the site, this standard is not implicated by this application. *See* Plan Sheet C-3.

8. **Outdoor Storage:** There will be no hazardous materials stored or used on site, and there will be no outdoor storage of chemicals or similar products.

9. Dust, Fumes, Vapors, Gases and Odors: Dust will be minimized by the gravel base and finish gravel construction pursuant to Zoning Ordinance standards. Fumes will not be a nuisance since the only traffic generated by the site will be the once or twice a month maintenance visits. Similarly, odors will be limited to non- nuisance levels since the only traffic generated by the site will be the once or twice a month maintenance visits.
10. Noise: The only noise produced will be from generators and air conditioning units. The generators will run only in the event of a power outage at the site or during normal working hours for maintenance. The air conditioners are only sufficient to cool small, enclosed shelters. Minimal noise pollution will be generated given the generally wooded nature of the setting and the retention of buffering around both the site perimeter.
11. Refuse Disposal: No rubbish storage or collection area is proposed by the applicant.
12. Access Control: The single access point on River Road will provide for good control of access into site onto the public way.
13. Storm Water Runoff: Storm water will be treated on site, and there will be no net increase in storm water offsite.
14. Erosion Control: The applicant will employ Best Management Practices for Construction. *See Amended Site Plan.*
15. Principal Use/Accessory Use: N/A.

C. In regard to the C1 District, the Planning Board makes the following findings:

C1 District

(*See Zoning Ordinance § VII(E) (pg. 54-55)*)

1. Description: N/A.
2. Uses: A “communications tower” is permitted as a conditional use/special exception (the two terms are used interchangeably in the Zoning Ordinance) (*see Zoning Ordinance § XI (pg. 87)*) in the C1 zoning district. *See Zoning Ordinance Table of Land Uses at*

pg. 44. The term “communications tower” is defined in Section XI of the Zoning Ordinance (pg. 87) as “[a]ny structure used to facilitate broadcasting, receiving and/or sending and receiving information by electromagnetic waves except when used for private ham radio or satellite dish antenna.”

3. Standards:

Dimensional Requirements Table - Setbacks (Zoning Ordinance pg. 46): All setbacks from property sidelines, state-owned right of way centerlines and principal structures on adjoining lots have been met. *See* Plan Sheet C-1. (The 75' setback from wetlands required under Section VII(E)(4)(c) (pg. 55) of the Zoning Ordinance is not applicable; *see* discussion above.). The site is not located in the shoreland zone or in the 100-year flood zone. The buildable area/lot coverage restrictions have been calculated based on the 6 acre overall size of the parcel of the parcel (currently vacant) and comply with the 30% maximum developable area under the Zoning Ordinance.

Dimensional Requirements Table - Other Requirements (Zoning Ordinance pg. 46): The proposed project meets all other dimensional requirements except for the maximum structure height requirement. Spectrum proposes a 190' self-supporting lattice-type telecommunications tower. A 34' height limitation on all structures applies throughout the Town. The definition of “structure” in Section XI of the Zoning Ordinance excludes “radio towers and antennas.” The Zoning Ordinance appears to use the terms “radio tower,” “communications tower” and “transmission tower” interchangeably such that the Spectrum’s proposed 190' tower can be considered a “radio tower” and thus exempted from the definition of “structure” set forth in Section XI of the Zoning Ordinance. Alternatively, even if the proposed tower is not excluded from the definition of “structure” under the Zoning Ordinance, the Planning Board finds that application of the 34' height limitation throughout the entire Town would result in an effective prohibition on the provision of wireless telecommunications services in violation of the Telecommunications Act of 1996. *See* 47 U.S.C. § 332(c)(7)(B); *Omnipoint Communications MB Operations, LLC v. Town of Lincoln*, 107 F. Supp. 108, 117 (D. Mass. 2000) (application of zoning ordinance provision that limited

parcels on which wireless towers could be erected had the effect of prohibiting the provision of wireless services in violation of the Telecommunications Act of 1996). Spectrum presented credible evidence that a 34' tower for a new wireless telecommunications facility is insufficient because both cellular and digital wireless telecommunications signals are subject to signal blockage, particularly at low heights. These technological limitations mean that natural features, including trees, hills and topography, and various manmade structures require the installation of wireless communications facilities at heights above 34' in order for the wireless signal to be transmitted and received between the proposed facility and the individual wireless devices. Spectrum presented a USGS topographic map of the area showing the topography of the Town and propagation maps demonstrating the need for the 190' Spectrum tower.

4. Additional Standards: The standards set forth in subsections (a), (b), (c), (h) and (j) do not apply. Subsection (d) is met, as there will be no chemical or petroleum products stored on the site. Subsection (e) is met, as adequate off-street parking will be provided. *See* discussion above at Section I(B)(2). Subsection (f) is met, as there will only be vehicular access to the site from the less traveled River Road, not from Route 27. Subsection (g) is met, as side lot lines are perpendicular to the street where possible. Subsection (i) is met, as future subdivision of the lot may be allowed.

D. With regard to the special exception standards, the Planning Board makes the following findings:

Special Exception Standards

(*See* Zoning Ordinance § X(C) (pg. 83-84))

1. Ability to support sewage disposal: N/A.
2. Impact of traffic/adequacy of on-site parking: Each telecommunications provider will typically send a technician, in a light duty pick-up truck, to the site once or twice a month to perform regular maintenance, equipment upgrades, testing and repairs. There will not otherwise be a need for parking or loading at the site. Thus, there will be minimal traffic generated by the site and adequate off-street, on-site parking will be provided.

3. Adequacy of fire and safety protection needs: The building compound and tower will not be operated or maintained for use by the general public and so this standard does not apply.
4. Impact on the surrounding environment: The standards set forth in subsections (c), (d), (e), (f), (g), (h) and (i) do not apply. Subsection (a), regarding safety, is met by the provision of a tower "fall zone" on the lot to the maximum extent possible to minimize the threat posed to neighboring properties and buildings by any collapse of the tower. Subsection (b), regarding erosion and sedimentation control is met by the applicant's employment of Best Management Practices for Construction. *See Amended Site Plan.*
5. Compatibility of the proposed use with adjacent land uses: The use is listed as a special exception/conditional use and is generally compatible with the surrounding properties' uses and zoning, i.e., with the satisfaction of the various Zoning Ordinance approval conditions, the use is generally compatible in this zoning district.
6. Performance Standards for the Review of Site Plans: *See discussion above at Section I(B).*
7. There is no alternate site which is both suitable to the proposed use and reasonably available to the applicant (*see Zoning Ordinance "Districts Allowed Land Uses" at pg. 43*):

At the Planning Board's October 16, 2001 meeting, Spectrum presented a USGS topographic map of the area showing the topography of the Town and propagation maps demonstrating the need for the Spectrum tower and the unavailability of alternate sites.

8. The neighborhood environmental impact reports shows that there will be no adverse impact on the neighboring uses, or on the intent of the C1 district as a whole (*see Zoning Ordinance Districts Allowed Land Uses at pg. 43*):

As part of the September 29, 2001 site visit, the applicant ran a balloon test to simulate the tower from River Road and Route 27. In addition, the applicant submitted photosimulations of the tower from Route 27 to demonstrate that there will be no adverse impact

on neighboring properties. In addition, the applicant has provided certification that the proposed facility will comply with all FCC standards for radio frequency emissions. *See* Plan Sheet C-1, Condition of Approval # 6.

- E. With regard to the General Standards for Performance (pg. 12-41), the Planning Board makes the following findings:
1. General Standards: Subsection (9) is met and subsections (1)-(8) do not apply.
 2. Construction Standards: Subsections (1) and (4) are met and subsections (2)-(3) do not apply.
 3. Farming: N/A.
 4. Sanitary Standards: N/A.
 5. Prohibited Uses: Spectrum does not propose a prohibited use.
 6. Shoreland Zoning Standards: N/A.
 7. Signs: The site will have an approximately two square foot emergency notification sign on the building compound fence. There will be no advertising of any kind. The applicant's proposal is in compliance with the sign standards.
 8. Uses Projecting into Water Bodies: N/A.
 9. Flood Hazard Review: N/A.
 10. Mobile Home Parks: N/A.
 11. Junkyards: N/A.
 12. Home Occupations: N/A.
 13. Yard Sales: N/A.
 14. Performance Standards for Review of Site Plans: *See* discussion above at Section I(B).
 15. Principal Use/Accessory Use: N/A.

- F. With regard to the Standards for Planning Board Permits (pg. 6), the Planning Board makes the following findings:

See discussion above at Section I(D)(4) (regarding special exceptions).

II. DECISION

The Planning Board votes 5 to 0 to approve with conditions the site plan application;

The Planning Board votes 5 to 0 to approve with conditions the C1 District application; and

The Planning Board votes 5 to 0 to approve with conditions the special exception application.

CONDITIONS OF APPROVAL

1. The property shown on this plan may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board.
2. Prior to the commencement of any construction, the applicant shall provide the Town with a copy of an executed agreement with a telecommunications provider.
3. The owner agrees to allow shared use of the tower if another applicant agrees to pay reasonable charges for co-location. The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - a. respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

- c. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location; and
- d. require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

4. The owner of the tower shall remove the tower, after due notice from the Town, upon the occurrence of the earlier of the following events: (a) the tower is not utilized for telecommunications purposes for a continuous period of 12 months; (b) the termination of the lease agreement between the owner/applicant and the telecommunications provider.

5. Prior to the commencement of any construction, the applicant shall provide the Town with a performance bond or letter of credit in an amount sufficient to cover the cost of removal of the facility if it is abandoned as set forth above, including all site reclamation costs deemed necessary to return the site to its pre-construction condition such as the removal of any road and reestablishment of vegetation. The applicant shall maintain such bond or replacement bond/letter of credit in place throughout the time period that the telecommunications tower is in existence. The performance bond or letter of credit or any replacement performance bond/letter of credit shall be subject to the prior approval of the Town Attorney.

6. The proposed facility will comply with all FCC standards for radio emissions.

7. Upon request, the applicant shall provide the Town with a list of tenants of the facility.

8. The applicant shall provide the Town with a set of keys to the Knox box in order to allow access to the site by emergency vehicles and personnel.

9. The applicant shall provide a 100' no cut "greenbelt" buffer easement as shown on the plan. The facility and related equipment shall be screened with

plants from view by abutting properties to the maximum extent practical. In addition, no vegetation shall be cut within 20' of the development perimeter. Prior to the issuance of any building permit, the applicant shall submit an executed and recorded easement deed between the applicant and the property owner showing these two easement areas.

10. Electric generators at the facility shall be operated only as necessary for emergency power and for normal maintenance and repair, and that the sound level produced by said generators and/or any and all machinery or equipment at the facility shall not exceed 65dB when measured at any property line forming the boundary of lot 2 as shown on Assessors' Map R2.

11. There shall be no lights on the tower, and all lights installed at the facility shall be mounted less than 12 feet above ground level, located and shielded to minimize light pollution, and illuminated only as necessary for work or safety at the facility.

12. The tower shall be constructed of galvanized steel, matte gray in color.

13. The applicant certifies that no "dish-type" antennas having a diameter of 24" or greater shall be attached to the tower.

14. Tower installation shall meet all local, state and federal requirements for equipment emissions.

15. The tower shall be constructed to the current ANSI/TIA Standard 222 as may be amended from time to time.

16. The only improvements to be constructed by the applicant on the property are the power/telephone area, the tower and the fence, all as shown on Plan Sheet C-3.

17. The top of any panel antennas mounted on the tower shall not exceed 190'.

Dated: Feb. 19, 2002

Witness

Witness

Witness

Witness

Witness

Witness

Witness

*M. J. Anderson
Jan ALL*

Estelle Appel

Estelle Appel, Chairman

Larz Neilson

Larz Neilson, Vice-Chairman

John Hauptfleisch

Charles Cunningham

Charles Cunningham

Kenneth Hanson

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Sarah Johnson

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Svend Jorgensen

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