

CITY OF WALTHAM
ZONING BOARD OF APPEALS

January 8, 2013

The Zoning Board of Appeals held a public hearing at 7:00 P.M., Tuesday, January 8, 2013 in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA. In attendance were Chair Barbara Rando and members Glenna Gelineau, Mark Hickernell, Gordon LaSane and Edward McCarthy.

The chair called the meeting to order at 7:00 P.M.

Mrs. Rando: Tonight we have two continued cases before us, Case 2012-23 Paul and Theresa Leonelli, 26 Douglas Road and Case 2012-26, American Towers LLC and Hilltop 110 Bear Hill Road LLC.

The first action this evening is for a motion to accept the minutes of the meeting of December 18, 2012.

Do I have a motion to accept the minutes?

On motion of Mr. McCarthy, seconded by Mr. LaSane, the board voted to accept the minutes of December 18, 2012.

Will the clerk please read the petition in Case 2012-23?

The clerk then read the petition of Paul R. Leonelli and Theresa A. Leonelli, as Trustees for Leonelli Realty Trust in an application for a Variance and Special Permit. The locus consists

of an existing parcel of land situated at 26 Douglas Road. A single family residence is situated thereon. Petitioners propose to construct, use and maintain a small addition to the rear of the existing structure. The addition shall expand the first floor living area for the family. Location and Zoning District: 26 Douglas Road, Residence A-4 Zoning District.

Mrs. Rando: May we hear from the Petitioner or the Petitioner's representative please?

Joseph M. Connors, Jr., Esquire, 404 Main Street, Waltham, the petitioners representative came forward.

Mrs. Rando: Before you start, Attorney Connors, I am going to ask the clerk to read an opinion that we received from the Law Department late this afternoon.

The clerk then read a letter/opinion from Michelle Learned, Esquire of the City's Law Department dated January 8, 2012 into the record.

Mr. Connors: I am the attorney for the petitioners, Paul Leonelli and his wife, Theresa, with their two children here. I think that a couple of things came up at the last hearing, maybe three things. One, we did talk about there was an inquiry from the chair as to whether or not the neighborhood supported this particular project. Mr. Leonelli stated that they did and he informed the neighbors of the proposed project, so in the meantime we did have a petition signed. (Mr. Connors submitted the petition to the board.) I'm not going to speak for all the people in the room but I do know that Mr. Leonelli tells me that they signed their names in support of this project.

Two, there was an inquiry as to what it was going to look like and Mr. McCarthy requested a rendering, so Mr. Leonelli did provide you with a rendering. (Mr. Connors submitted a copy of the renderings to the board.)

And then, we have the opinion. I read the opinion and I can tell you factually that the roof is not enclosed so my petition requested a special permit pursuant to Section 3.722 and

3.722 provides the proposed addition must be less than ten percent of the ground floor area of the building or area of land used. The opinion of Attorney Learned stated that unless the roof is enclosed, it can't be included in the ground floor area of the building. So, I don't have an issue with that. I can't disagree with that interpretation but I would state to the board though, however, it's still less than ten percent of the area of land used here. My area of land still includes the footprint of the home and the deck because the deck is a portion of the land area used and the total therefore of that is the combination of the footprint of the house is 1155 and if you add the deck it is 192, that's 1,347 square feet. Our proposed addition is only increasing the coverage by 122 and 1/2 square feet because we are substituting the deck for an enclosed area but under the area of land used under that particular portion of Section 3.722 I still think that we are under 10%. That's 9.09%

And I think there was a lot to that opinion that maybe covered a lot of topics that I didn't know the board requested an opinion on, but you certainly got it. I don't disagree with Attorney Learned that my roof is not enclosed and therefore I can't include it in my ground floor area of the building but I still say that it's included in the area of land. Now, there's nothing in the zoning ordinance that defines that particular statement. I would state that Mass General Laws allows for words and phrases should be interpreted in the common usage under the English language. And so there's certainly a common usage of area of the land used can and mean that the area of land would be the areas of this particular lot that are covered, that are used by the Leonelli's as part of their home. And if this board was to be of that opinion then we are still under 10% of the land area used.

Attorney Learned talked about the Bransford and the Bjorklund Cases which are cases that came down in 2005 and 2008, and those cases were attempted to define and kind of provide guidance on the meanings of Chapter 40A, Section 6. But, Chapter 40A, Section 6, talks about when one can expand or alter a nonconforming use. And there's two type of nonconforming, I mean there's probably a lot of kinds, but I mean I think there's commercial or business and then there's residential because under Mass General Laws, Section 6, they create a kind of special consideration for single families and two families. Whereas it doesn't provide that for just any nonconforming use. So a nonconforming single family or a two family residential structure

which does not increase its nonconforming nature doesn't need a special permit at all. Now, I would say, if anything the legislature has attempted to provide additional protection to residential structures, singles and two families, where they are not provided at for just strictly nonconforming uses, buildings or land. What's nonconforming here today is not the home but it's the land that it sits on. It's supposed to be 7,000 square feet, it's 62,116, so he's a little bit under 800 square feet under what's required. But I would say to the board, you know, I think the legislature has certainly intended that single families and two families should be given some special treatment here. That particular language which I just read to you has also been cited in Michelle Learned's opinion. She cites 3.7225 which state that exact same language. It states that single families and two families may be altered or enlarged as a matter of right provided we don't increase their nonconforming nature.

Now in this case, I didn't particularly ask the building inspector to issue an opinion on that, and so I came here seeking a Special Permit under Section 3.7222. I believe that we are under 10% of area of land used that has been used by this homeowner and then, therefore, in that I mean it's certainly the intention of the legislature to provide a little bit extra protection for single families and two family homeowners. Because here he is in a neighborhood that really the net increase is 122 square feet, but if we didn't have the right to use the definition of "Area of Land Used" that he's simply not going to have the right to do this addition and I think that that's just kind of a harsh reality for Mr. Leonelli and anyone that's in this entire neighborhood. I mean a lot of these lots are under 7,000 square feet. So it's not like he's building another home or an accessory use or a second floor. He is simply asking to build a single story small family room addition.

And I would say that perhaps I haven't posed the question to the board that I would ask them to certainly consider, is Mr. Leonelli increasing the nonconforming nature of his lot by adding a net increase of 122 square feet, is he really increasing the nonconforming nature of this lot? It's an undersized lot but we are not creating new uses, we are not creating extra bedrooms. you know, I mean he and his wife and two children, so the same family is going to reside there. The same family is going to use this property, the garage and the back yard and their family room. So they are not really increasing the nonconforming nature of this property because they

are not building a much grander house. They're knocking it down. The Bjorklund Case and the Bransford Case talked about Martha's Vineyard and Norwell where they had lot area requirements, I think in Norwell it was two acres and they had 1.75 acres and they knocked down a small house and they built a much larger house. So the consideration to those cases where these McMansion homes, where they take a little house, knock it down and build a big mansion. So, it was kind of a divided court first time around and the second time around, the court ruled 4-3 that if they built a brand new house on an undersized lot you need a special permit. I mean I think I have spoken to the board about that case before where they did articulate certain exceptions to the rule. This is not one of them articulated in that case but it did state as a matter of law, the addition of a sunroom would not be increasing the nonconforming nature of an undersized lot. That's not what we are doing here but we are running a family room and I would say to the board that, in that, the impact is not as great as that as was discussed in the Bransford and the Bjorklund Case.

And the other thing, is with the 10% rule in our zoning code, if you look at that it talks about you can't exceed the 10% but then it says after that there are situations where you could exceed the 10% if you go to the city council and get a special permit. I know Mr. McCarthy mentioned that the last time we were here. If you look in the zoning tables and it states right in that Section 3.7222, you can increase your FAR more than 10% with a special permit from the city council but if you look at the zoning tables, single family homes don't have an FAR. There is not one set. There's not a maximum. There's not a minimum. It doesn't apply. So, he doesn't have that option to go to the city council to ask for a special permit to increase his floor area ratio because if you look in the book it doesn't apply. So, I think that I think if we could do that, then maybe he would but it's just not an option for Mr. Leonelli and so he would like to stay in this particular home. He feels this is a modest increase. I'll just give a copy of the table of the floor area ratios to the board. (Mr. Connors went over it with the board.)

So that's not an option for Mr. Leonelli because floor area ratio doesn't apply so he couldn't go to the city council and ask to increase it because there's no minimum and there's no maximum if you look at the table of uses in the zoning code and the 411, it's just a dash line, so it doesn't apply. So we don't have that option here. I believe that the board can certainly make a

determination as to what is the intended meaning of area of land used and I don't think its an unreasonable interpretation to include the deck area and if the board was to make that factual determination then, in fact, the proposed net increase would be under 10% and therefore they would qualify under 3.7222 for a special permit.

As pointed out in the opinion, you also need to make a determination that it's not substantially more detrimental to the neighborhood than what is there today. And again I would say this is an accessory use to the family that's there and it's not substantially more detrimental to the neighborhood. I think that that's displayed in the petition signed by the neighbors.

So, again, I think that this is a reasonable proposal. I think to state that if there is no relief, then it's a harsh reality to Mr. Leonelli who's been in that home for many years and would like to stay here in the City of Waltham and to know that he will be able to do that.

It was mentioned in Attorney Learned's brief about the small lot exceptions. It articulated on the plan, it states right here, this is filed with the building inspector and he's signed off on it. She says in her opinion we have a request for a small lot opinion. No, we haven't. I presented him the plan. I said this is the criteria of the small lot exception and he signed off on it. I've given this board copies of the plan which establishes that this particular entire subdivision was created in 1940 which therefore predates 1942 and so therefore it's subject to the small lot opinion, so she states in her opinion we haven't requested one, we haven't. There's evidence and I think Inspector Powell would have told me that I needed to.

Mrs. Rando: I was going to ask you, when you sat down with him did he mention a small lot opinion?

Mr. Connors: No, I said the standard is 4.11 but under 4.218 it's an exception and he said okay. If I wasn't to come to this board of appeals then I would need a small lot opinion because he's not going to issue a building permit. That's the only way and I would ask the building inspector give me a small lot opinion and I'd give him the evidence, the same evidence you have, and he'd render an opinion and then we would be in a position to get a building permit.

Mrs. Rando: So did the building inspector advise you to go along the way you did?

Mr. Connors: Yes. If he wanted me to request a small lot opinion, I would think he would have said so. He never did that. I presented to him how we were going to proceed and he had no problem and he signed off on it. Because, I mean the other thing, when you look at the zoning ordinance, if you look at small lot opinions, you can read the book from front to back and you're never going to find in there you need to request a small lot opinion. That's insane. It's a custom practice, because when they are giving out building permits they want to make sure that you have satisfied the historical requirements of the book. It doesn't say that in the book. So, I would say that we certainly meet the exceptions articulated in the zoning code and I stated it and I presented it to the building inspector and he didn't have an issue with that.

Mrs. Rando: Are there any questions from board members? Hearing none, is there anyone in the audience that would like to stand and be recognized in favor of this petition or would like to go to the microphone? How many are in favor?

Twelve people raised their hand in favor.

Would anyone like to go to the microphone and speak and give their name in favor?

Russ Malone, 21 Allen Road, Waltham: The northwest corner of my property abuts the southeast corner of the Leonelli's. So you really can't get much closer than that. These are small capes. People built there during the war. Personally I have been there for forty years and enjoy the neighborhood. That's why people stay. People have different ideas about how to expand on all of these houses. Some go up, some go sideways. I had to go sideways. The people across the street went up. People next door went up and it turned out to be really beautiful homes. A better tax base for the city. A better place for their kids to grow up.

The ZBA speaks for itself. It's the Zoning Board of Appeals! And I have seen a lot of people walk out of here with smiles on their faces. And we, the Clerk's office on appeal periods

certify that piece of paper. And a lot of people have a lot of good stories about this board. You have been good to people and I ask you to do it one more time. Not one more time, but again. Thank you very much.

Mrs. Rando: Is there anyone in opposition? Seeing none, anyone seeking information? Seeing none, you may continue with your proposed findings of fact.

Mr. Connors: Madam Chair, I originally presented a Proposed Findings of Fact to the board with my petition back in October, I think initially. But I will say that I revised it somewhat because of the issue about the 10%, whether or not we could take it from the ground floor area or from the area of land. So I revised it to reflect the area of land so I will read that to you.

(Mr. Connors read his Proposed Findings of Fact into the record and submitted a copy to the board.)

Mr. Connors: I have a proposed decision as well. (Mr. Connors submitted his Proposed Findings and then read them into the record. Corrections were made to the Proposed Findings which are so noted in the findings.)

Mrs. Rando: Attorney Connors, I did not check, but the abutters on either side, have they signed the petition?

Mr. Connors: No 22 and 32, I think.

Mrs. Rando: Fine. Any other questions or changes by this board. (Mr. Hickernell made some changes in the Proposed Decision which are so noted in the final decision.)

All right, I am ready to entertain a motion on the Proposed Finding of Fact as amended.

On motion of Ms. Gelineau, seconded by Mr. LaSane, the board voted to accept the Proposed Finding of Fact, as amended, to be the board's Finding of Fact.

The roll being called: Mr. McCarthy, no; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

Mrs. Rando: Do I have a motion on the Proposed Decision as amended?

On motion of Ms. Gelineau, seconded by Mr. LaSane, the board voted to accept the Proposed Decision, as amended, to be the decision of the board.

The roll being called: Mr. McCarthy, no; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes and Mrs. Rando, yes.

At 7:45, on motion of Mrs. Rando, seconded by Ms. Gelineau, the board voted to take a five minute recess.

The board reconvened at 7:50 P.M.

Mrs. Rando: Will the clerk please read the petition in Case 2012-26 American Tower and Hilltop 110 Bear Hill Road?

The clerk then read the Petition of American Towers, LLC and Hilltop 110 Bear Hill LLC in an application for a Special Permit for the reconstruction/alteration of a nonconforming structure and dimensional variances from required height and setback provisions. The Petitioner requests the Board to allow the removal of an existing 300 foot above ground level lattice tower located at 110 Bear Hill Road and replace it with a 240 foot above ground level lattice tower at 50R Bear Hill Road (may also be known as 46 Bear Hill Road) which includes a proposed land swap, removal of an existing 365 foot guyed tower from 50R Bear Hill Road, transfer of all existing antennas from the two towers to be removed to the new 240 foot lattice tower, and an access road to 50R Bear Hill Road over 110 Bear Hill Road. Location and Zoning District:

Subject lot 50R Bear Hill Road and access lot 110 Bear Hill Road, Commercial C Zoning District.

Mrs. Rando: May we hear from the petitioner or the petitioner's representative, please?

Edward D. Pare, Jr., Esquire, BROWNRUDNICK, 10 Memorial Boulevard, Providence, Rhode Island representing American Tower came forward.

Mr. Pare: I guess I had a question procedurally with respect to the site visit. I know we tried to set up a date. I don't think that ever happened with the holidays, etc. I think the board was of the consensus that it would make sense to view the sites at 110 and 50 Bear Hill Road. We encourage that. We think that it would make a lot of sense, so at this time we would like to request a site visit if we can schedule a date so we can avoid public notice issues, publication, might I suggest a date within the next week because it seems to be relatively warm.

Mrs. Rando: What is the feeling of the board? I myself have made many trips up there. I don't know about the rest of the board.

Mr. LaSane: I've looked at both lots, the one up the top and ah---

Mr. Pare: Some time ago.

Mr. LaSane: Okay.

Mr. Pare: I think it would make sense with the changes that have taken place to 110. I think it would give you a perspective of just how steep of the terrain we are looking at and where the replacement tower would actually be located. And I think it's very telling once you are on the site to have things pointed out to you. We just can't do it in a room. We can't do it with plans. Just from the distance along Route 128 of trying to get some photographs, I think it would make a lot of sense. And the second part, of the memo that was issued, there were lots of issues

In there and I certainly would like an opportunity to give it some thought, maybe talk to Pat. Get a sense of exactly what the memo is, whether it's confidential or not and that sort of thing.

Mr. LaSane: Well that's been a year. I guess a lot has been going on up there. Since I have been there, it's been a year and a lot has gone on so I am available.

Ms. Gelineau: It just sounds that it's important to you to have us there to tell us. I mean I've been up there too but it sounds like it would be beneficial to you if you could get us collectively and explain certain dynamics of the projects which we just couldn't see visually. So I am happy to accommodate you.

Mr. Power: So currently, American Tower is on his property (gentleman in the audience).

Mr. Pare: That's correct. The tower itself is owned by American Tower. It's located on 110 Bear Hill Road.

Mr. McCarthy: And you purchased land at that other lot?

Mr. Pare: American Tower owns 50 Bear Hill. The parcel to the rear is owned by American Tower.

Mr. McCarthy: Where you want to move this tower to?

Mr. Pare: Yes, but its not just move this tower to. There's also a tower on 50 Bear Hill that we are proposing to take down. So, its not, you know part of my notes was making sure that as we ran through a lot of material last time, I felt that the board was left with the impression that we were moving this big tower over to this other lot. What we are actually doing is taking that big tower down. We are also removing the tower that's currently existing on 50 Bear Hill which has been the subject of some controversy from time to time with the city council. We are going

to remove that tower which has the guyed wires and place the new tower on 50 Bear Hill. So its not just we are taking off 110, we want to move it to 50. We are taking off the one on 110 but we are also taking a taller one off of 50 and putting a new one on 50.

If you know where the property lines are when you go up and visit a site they just get out of the ground so you have to get a perspective of just where this thing is going.

Paul Brickman, 15 Alton Place, Brookline MA came forward:

Mr. Brickman: I think this is one of those picture is worth over a thousand words (pointing to the board) but actually being there and seeing it where you understand some of the heights and some of the other things that have gone on here. AT&T put up a tower in the 1940's on the site and a lot has changed over the past 70 years, a bunch of different ways. When you actually go on the site and you can see these things, it starts to make a lot of sense. It's certainly worth a visit.

Mr. McCarthy: In my viewing of the site, okay, you've got a location. You've got a nice tower there. It can handle everything you need to handle or not?

Mr. Brickman: The existing tower?

Mr. McCarthy: Yes.

Mr. Brickman: Yes, it can.

Mr. McCarthy: And it's quite an operation to move that tower from that location to the other location. It's going to cost a few bucks to do that?

Mr. Brickman: Oh certainly.

Mr. McCarthy: Yet, what is the reason for that expenditure?

Mr. Pare: Well it's a modern facility. So we will have a tower that's different than the one up in the front on 110 Bear Hill; easier to modify in the future if need be. It provides the needs of all of the carriers, all of our tenants that are on the two towers now because we are not just dealing with the tower at 110, we are also dealing with the tower at 50 Bear Hill. The 365 foot lattice tower will also come down. Those tenants also need to move.

Mr. McCarthy: To me, it seems that the land owner here is the prime reason this is being done because it means logical sense to me. Yes, or no?

Mr. Pare: Well it's the land owner and resolving the - - -

Mr. McCarthy: You don't represent the land owner?

Mr. Pare: I do not. But in resolving some longstanding issues at the site from American Tower's perspective this was also issues that have been a pain for the city for a long period of time. What we will end up with, as I mentioned, we will end up with an access road that can actually get us to 50 Bear Hill over this property.

Mr. McCarthy: What is inspiring the move?

Mr. Pare: A combination of things. We have - - -

Mr. McCarthy: What is the primary inspiration for the move? What is the primary reason for doing this? There's all sorts of secondary things you talk about, this, that and the other thing. It wouldn't seem to me logical from a business standpoint to go through all this expense.

Mr. Pare: Well it does because American Tower will have all of its towers on property it owns. It will also have legal and adequate access, which it does not have now. When you visit the site you will see where access is. It's the stairway from Bear Hill up a mountain basically.

That's the only legal access that exists. So there's plenty of give and take. The removal of the tower at 110 will open up the opportunity for the property owner to do what he wants with the property within whatever limits there are.

Mr. McCarthy: I talked to the Super up there. He said they are going to knock 100 feet off the top of the building cropping out off the rock.

Mr. Pare: There's been some movement already. So when you go up there you will see that some of the area has already been removed. So the point is, will it open up space where the tower currently exists? Yes. Can he develop around it? Probably. But it moves everything. We don't end up with a landlord/tenant situation between American Tower and 110. We have everything on our parcel and we and our tenants will get access as will your public safety, folks.

Mr. McCarthy: Through the other lot though.

Mr. Pare: Through 110.

Mr. McCarthy: They're giving you an easement of some sort.

Mr. Pare: They will. So one of the real complicated factors in trying to deal with 50 Bear Hill. There are four towers there. I go before the city council frequently to add antennas to those. The technology is constantly changing. The complaints have always been, we need to be able to access and we would like to be able to do something with that guyed tower, because as I mentioned in my brief, these guyed wires themselves aren't within the lot. So they extend and encroach on 110. So all of that would be removed. American Tower would own land with four towers on it and service the tenants and give the tenants access. So when AT&T needs to visit the site to do something they have to walk up these stairs carrying equipment. Or helicoptering in something hugely expensive.

Mr. McCarthy: But the existing tower now that you are going to move, they always had access to it from the road.

Mr. Pare: We don't. We have access to Bear Hill which is the stairway that I'm talking about.

Mr. McCarthy: Well I know. Verizon and AT&T, we used to drive up there all the time.

Mr. Pare: Well people may have been trespassing, I don't know.

Mr. McCarthy: Aren't they renting the land from the people that own the hill?

Mr. Pare: They are from American Tower. American Tower's access comes from Bear Hill. There's a fifty foot - - -

Mr. McCarthy: I understand that.

Mr. Pare: That tower will need access.

Mr. McCarthy: So you built a tower with no access?

Mr. Pare: In the past. The towers were built years and years ago. In the past, how they got them up there, I have no idea. There may have been means to do it.

Mr. McCarthy: You're making me scratch my head now.

Mr. Pare: I told you that out of the box, it's very complicated.

Mr. McCarthy: It sounds like the proposal in the final analysis you're getting rid of guyed wires, correct?

Mr. Pare: Yes.

Mr. McCarthy: There will be fewer towers?

Mr. Pare: Fewer towers.

Mr. McCarthy: Shorter towers.

Mr. Pare: Shorter towers and at significantly lower elevations. And not only do we reduce the height - - -

Mr. McCarthy: That's after this project is done. Where do we go from here?

Mr. Pare: That's it.

Mr. McCarthy: Are we going to get to a point where the towers will come down, ever?

Mr. Pare: Ya, that's a hypothetical.

Mr. McCarthy: Well, I'm just talking about technology, now, a lot of things with the satellites now. There's a lot of things that have changed like we have gone from copper wires on the pole lines to fiber optics to cell phones with no requirement for anything.

Mr. Pare: If the technology becomes such that you don't need towers and there's another way to deliver the service, they'll come in.

Mr. McCarthy: Because, what I'm thinking of in terms of you're taking them towers down today, there will be fewer towers when you are through, but is someone going to be coming down here and knocking on the door and saying we need another tower tomorrow. Is that going to be turned into tower mountain?

Mr. Pare: Well let me say this, as it currently exists, it's pretty busy with towers More than, I mean that's another thing that makes this so unique. It's a high spot. Obviously

everybody's put towers up there because it makes sense. The new tower will be built so that additional carriers and additional users or tenants of American Tower can attach to it. Your ordinance and I don't want to leave it this is step one and a few steps we have to deal with. Your ordinance also requires us to go to the city council and prove our case to them for a special permit and you can't build the tower unless you prove that all the existing towers can't be used. So anybody coming in after us, the city council is never going to approve a tower. I've been there many times. I'm very confident to say they are not going to approve a tower if there's space available and it would work for any carrier. This new tower will open up opportunities to other carriers to attach and other users.

Mr. McCarthy: Now the towers that are existing on the front lot, on the American Tower lot all the towers are owned by American Tower?

Mr. Pare: Yes. I think they are either owned or managed. I believe AT&T built their own tower. I believe Verizon built their own tower.

Bonnie Bellaire, 10 Presidential Way, Woburn, MA: Two of the towers on the 50 Bear Hill Road parcel, one is owned by AT&T and one is owned by Verizon. Two are owned by American Tower on American Tower owned property.

Mr. McCarthy: The AT&T one and Verizon are on American Tower property as well?

Ms. Bellaire: Correct.

Mr. McCarthy: And their access is up the stairway.

Ms. Bellaire: The legal access is up the stairway.

Mr. McCarthy: I don't know how anybody would ever use that. I can't imagine any Verizon using that.

Mr. Pare: There's actually a trolley system next to our stairs.

Mr. McCarthy: Ya, I see it.

Ms. Bellair: We've taken that out of operation.

Mr. McCarthy: If there's a chimp as far as reading what the opinions were, etc., in this whole process that's going to a different lot.

Mr. Pare: From what I understand, I don't see that as an issue according to what I've read this evening. I have to read it a little closer but I didn't see where anything was prohibited. There were some concerns about the relief that was requested. Again I'd like to look a little deeper into that. But I have no issue with the relief we have requested; how it's been requested. There was some concern about whether there was an abutter appeal. I've been doing this for fifteen years. When I come out to propose a tower we usually fill a room and we have had no opposition. This is a win/win. I'm sure you have heard that frequently but we get rid of 665---

Mr. McCarthy: The trees don't complain though.

Mr. Pare: Well, exactly. That's where you want them. You want them where people aren't going to be bothered by them.

Mr. Hickernell: I know one of the issues that was raised and maybe you have had a chance to look at was potential issue publication of the notice for this public hearing. If it is going to be something that we need to dismiss and have you re-notice, obviously we should do that sooner rather than later before we get too much deeper into this.

Mr. Pare: Which is why I think I need to talk to the Law Department to figure out what the issue is with the notice. The notice was bedded through the process. I see no apparent issue but I know it was mentioned and I need to get some feedback back from the Law Department as to what that problem is. If the notice need to be re-done then we re-do the notice.

Mrs. Rando: Are there any other questions. (There were none.)

All right. What is the feeling of the board of meeting as a group or going up individually.

Mr. McCarthy: I'm all set. I don't have to go up again.

Mrs. Rando: Mr. Hickernell, how do you feel?

Mr. Hickernell: If we can agree on a time. I usually have a tough time showing up especially with the sun going down so early now. So potentially a Saturday morning or Sunday morning.

Mrs. Rando: I can go separately.

Mr. Pare: If the board meets in a majority fashion, then the meeting needs to be noticed. It's a matter of if folks want to go up there; we will accommodate any of the individuals. We'd like to have everyone come up but we are asking you to do it. It's our request. We will accommodate whatever the need is.

Mrs. Rando: I think it's impossible to get five people to agree on the same time working and the weather and the sun. I think it would be best if we just notified you that we are going to come up on Thursday or Friday or whatever. If that works with you people.

Ms. Bellaire: Could I ask that you give me a call. I would be happy to meet you on site. I'm just ten minutes up the road in Woburn. I think that if you see it like you point out especially the topography and the challenges that the site presents and actually what the proposal is and how it's going to make the site so much better in many, many ways, visually, less towers.

Mr. McCarthy: Excuse me. I'd like to hear from the landowner and what their plans are up there.

Mr. Brickman: The plans are still uncertain because in all likelihood there will be some sort of commercial development on Bear Hill. There's a lot of development in the area with the former Polaroid across the street. We did go through a subdivision review process. We were asked to study a by right office project about 375,000 square feet. Commercial allows a number of different uses but in all likelihood there's going to be an office building, or two office buildings or three office buildings that will actually go on this site. That's the likelihood.

Mr. McCarthy: Nice View. It's spectacular.

Mr. Brickman: Yes, it is. But there's no specific plan at this point. It's also affected by the tower situation. We can't build around the tower but again when you look at it; it makes more sense if all the towers are grouped together so you can access them.

Mr. Pare: I can commit to the board, I know part of the questions from the law department was whether we would commit to remove the towers. We would absolutely, that's part of the application we submitted. You don't need to condition it. We will state it for the record and it will become a finding of fact and you can see it throughout the proposed decision that we have agreed and will remove the tower at 110 and remove the 365 foot guyed tower at Bear Hill Road. That's a committed to the board. That's a committed to the city that we came up front with and I have no issue with that.

Mr. Brickman: It was mentioned by one board member if you would like, as the property owner of 110, that the towers are going to be moved on to the American Towers property, we would agree not to seek approval for a tower because, frankly, once you go through this process once, you probably don't want to go through it again anyway.

Mr. McCarthy: We could put that as a condition on the ---

Mr. Brickman: The property owner would be willing to have a condition that we won't seek approval for a telecom tower on the 110 property if it was granted.

Mrs. Rando: I think it's agreed then that we will each make our own site view. We will get the telephone number to call before we do go. Is that in agreement? (The members agreed.) And we will continue this case and you can check with the Law Department and we certainly have a decision that we have to digest ourselves and look into.

Mr. Pare: I think I need to contact the Law Department. We need to find out what's in it so we can respond which I think we can do just by working with Pat.

Mrs. Rando: How is February 5th for the board?

Mr. Pare: I think the 5th is fine if you can schedule the site visit. Is there anything else the board would like? I know I asked this last time. Is there anything else the board would like to see as far as questions that might be outstanding?

Mrs. Rando: Does any board members have any questions? (There were none.) Do we have to extend the hundred days?

Mr. Hickernell: The hundred days is February 1st.

Mrs. Rando: Okay. If the meeting is in February, let's make it April.

All right, do I have a motion to continue Case 2012-26 to February 5th?

On motion of Mr. Hickernell, seconded by Mr. McCarthy, the board voted to continue Case No. 2012-26 to February 5, 2013.

The roll being called, Mr. McCarthy, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes; Mrs. Rando, yes.

Mrs. Rando: Now to extend the hundred days to April 30th, do I have a motion?

On motion of Mr. McCarthy, seconded by Mr. Hickernell, the board voted to extend the time to act on this matter until April 30, 2013.

The roll being called, Mr. McCarthy, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Mr. LaSane, yes; Mrs. Rando, yes.

There being no further business, the board vote to adjourn at 8:30 P.M.

Barbara Rando, chair