



## ASHFIELD PLANNING BOARD

# NOTICE OF DECISION ON APPLICATION FOR A SPECIAL PERMIT

Case No.: 2020-1

Regarding the application of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility for a Special Permit, pursuant to the Ashfield Zoning Bylaws, received by the Planning Board (hereafter referred to as 'the Board') on March 4, 2020.

An application to construct a 120-foot tall wireless communication facility, including a tower and ground equipment within a fenced compound, pursuant to the Ashfield Zoning Bylaws, Section VI.F and Section VII, for property located at 2003 Conway Road, was made by the above-referenced applicant.

The owners of the property are Christopher Robertson and Robert Robertson, Jr. The property is located in a residential-agricultural zoning district, by a deed duly recorded in the Franklin County Registry of Deeds in Book #3089, Page #133.

With the onset of the Covid-19 pandemic and consequential State of Emergency issued by the Governor (resulting in the closing of all Town offices, as well as suspension of shot clocks related to special permitting), the original public hearing date of April 22, 2020 was postponed to later in the year. After virtual hearing formats were established and shot clocks suspensions were lifted, proper notice was given, and a public hearing was opened (virtually, via Zoom) on December 2, 2020, continued on January 20, 2021, February 10, 2021, and February 17, 2021, and closed on March 3, 2021.

The required application and fee were accompanied by the following:

- Zoning Drawings
- National Environmental Policy Act (NEPA) Screening Report and Appendices
- U.S. Fish and Wildlife Official Species List
- Radio Frequency Analysis Report
- Radio Frequency Comparison Plots
- FAA-1A Certification
- Viewshed Analysis
- Support Statements for Zoning Relief

The Board reviewed and gave due consideration to the application and all other materials submitted prior to the close of the public hearing, including required approval forms from the Board of Health, Conservation Commission, Emergency Services (Police and Fire Departments), and Hazardous Materials; Alternative Sites Analysis; Radio Frequency Exposure Report, Phase 1

Environmental Study, photo simulations, additional photos from Murray Road from abutters, Mount Analysis, coverage plots of the proposed site and alternate site, Memoranda in Opposition from opponents to the project proposal, and subsequent replies from the Applicant; real estate value opinions from both the Applicant and project opponents, and a review from an radio frequency (RF) consultant on the proposed facility hired by opponents of the project. The Board received and gave due consideration to both oral and written public testimony given at the public hearing.

The following Board members attended the public hearing:

- Alan Rice, Chair
- Richard Chandler, Clerk
- Robert Cherdack
- Kenneth Miller
- Jane Shaney

### **Findings.**

#### A. General.

1. The property consists of 233.85 acres, with 265 feet of road frontage along State Route 116. The terrain rises over two hundred feet in elevation from the road to the proposed facility site, with mixed deciduous/evergreen areas of vegetation interspersed with open fields, some of which are maintained for agricultural purposes.
2. The property is a working dairy farm, with nearly all acreage in Massachusetts General Laws Chapter 61A, an agricultural and horticultural land classification program promoting active agricultural and horticultural land use, through a reduction in local property taxation for such agricultural use. In return, the owner has granted a lien to the municipality conveying a right of first refusal to the municipality, should any portion of the restricted area be proposed for conversion to a different use. Issuance of a Special Permit for a non-agricultural use will require prescribed municipal action on the Chapter 61A conversion.
3. The proposed siting for the facility by the Applicant is part of an agreement between AT&T and the national FirstNet emergency communications program. FirstNet is an independent authority within the U.S. Department of Commerce, with a mission to provide a wireless broadband network dedicated to public safety by improving communications capabilities for first responders and emergency services along designated vehicular routes (in this case, a section of State Route 116).

#### B. Regarding Special Permitting Requirements: **Section VI** (Use Regulations), **Part F** (Telecommunication Facilities) requires the Board to review the following.

- a. *To the maximum extent possible, facilities shall be located on pre-existing structures, and all service providers shall co-locate on a single structure. Structures shall be designed to accommodate the maximum number of users technologically practical. The intent of this condition is to reduce the number of towers within the town.*

**Findings:** The Board recognizes that there are no pre-existing structures in place within the targeted area on which service providers can locate/co-locate. Testimony revealed knowledge of an agreement between a landowner and an independent cell tower developer on private property approximately one mile to the east of this proposed tower site, in the neighboring town of Conway. Further testimony argued that the landowner-developer agreement in Conway would result in the construction of a tower providing equal or greater coverage than this proposed facility, thus making this facility unnecessary. In its deliberation, the Board determined that it cannot base its decision to grant or deny a permit on a speculative cell tower that may or may not be constructed in another town outside of the Board's jurisdiction. Additionally, the Board found that other potential wireless communication facility sites in other areas in the town of Ashfield will not be able to cover this section of State Route 116, due to the hilly terrain.

*b. No facility shall exceed 80 feet in height as measured from the mean finished grade at the facility base. Exterior lighting of the tower and accessory structures shall be prohibited.*

**Findings:** The Applicant has proposed a facility of 120 feet in height, as it deems necessary to increase the coverage area, eliminate gaps in coverage, and provide opportunity for co-location by additional carriers. As such, the Applicant has asked the Board to vary the 80-foot height limitation, as allowed in Section VI.F.1 (see below). Public testimony included outright opposition to a tower of any height, to requesting the tower height not be varied from its 80-foot maximum height stipulated in this subsection. In reviewing requested coverage maps of different tower heights, and in consultation with its radio frequency (RF) consultant, the Board determined that there is marginal difference in coverage between a tower 80 feet in height and a tower 120 feet in height, and concluded that 1) a tower lower than 120 feet in height will provide sufficient coverage, and 2) a tower height of between 80 feet and 120 feet will provide opportunity for at least one co-location. The Board decided to allow for one additional transmitter, given the small area of coverage for non-FirstNet broad market competitors, while FirstNet needs are met by the single AT&T transmitter that the Applicant has testified will be placed on the tower, once constructed.

Additionally, public testimony raised concerns about lighting on the tower. The Applicant testified that there would be no lighting on the tower (does not cross FAA thresholds for required lighting), and no lighting on any accessory structures. The Board has conditioned the approval of the Special Permit on the Applicant meeting this requirement.

*c. New towers shall be freestanding monopoles or other designs approved by the S.P.G.A. (Special Permit Granting Authority).*

**Findings:** Applicant testimony and submitted construction drawings confirm that a freestanding monopole is being proposed, and that the Applicant will comply with "any reasonable request of the Board regarding a preferred design." In its deliberation, the

Board discussed a camouflage requirement, as stipulated in Section VI.F.m of the Bylaws (see below).

- d. Facilities shall not be located within 100 feet of the crest or ridgeline or 500 feet of a summit of a hill and shall be located in such a way as to minimize the visual impact of the facility when viewed offsite. Notwithstanding the previous sentence, if in the opinion of the Planning Board, such other location would be the least detrimental to the overall purpose of this section (VI.F), then such siting may be allowed.*

**Findings:** Public testimony raised objections to the proposed location of the tower as being on an existing ridgeline and thus increasing adverse visual impacts of the entire tower and compound, particularly when viewed from residences to the west, on Murray Road. The Applicant “submits that the proposed location is sufficiently isolated and will impose minimal visual impact and thus should be considered as an appropriate site for the facility.”

In its deliberation, the Board agreed that the proposed facility location is sited at the southern end of an existing ridgeline, in violation of the condition of this subsection. The Board disagreed with the Applicant that the proposed location “...will impose minimal visual impact...,” as the entire tower and compound of accessory structures will have significantly adverse visual impacts on residences to the west of the facility location. The Board determined that moving the facility to an alternate location approximately 150 feet to the east of the proposed location will comply with this subsection, as well as lessen visual impacts to residences more adversely impacted. The Board confirmed with its RF consultant that – though approximately 30 feet lower in elevation – coverage at the alternate location, at an appropriate height, will remain viable for the objectives of the FirstNet communications systems along this section of State Route 116, while providing the opportunity for at least one co-location.

- e. No tower, inclusive of any attachments, shall be erected nearer any property line than the distance equal to 125% of its vertical height.*

**Findings:** As indicated on the site plan submitted by the Applicant, the Board confirmed that the proposed facility location exceeds this requirement.

- f. Fencing or other means shall be provided to control access to the telecommunications facilities and shall be compatible with the scenic character of the neighborhood and landscape.*

**Findings:** Construction drawings submitted with the application specify a 6-foot height galvanized chain link fence, topped with a 1-foot height, 4-point barbed wiring that will encompass a 50-foot x 50-foot compound, for necessary security. The Board recognizes that this style of fencing is more industrial in appearance than what is typical in this agricultural/residential community, and thus not compatible with the town’s rural character. The Applicant has stated in its application submittal that it is “...agreeable to working with the Board regarding design of fencing.” The Board determined that, while

security fencing is necessary for this type of facility, the appearance should be softened so as to blend in with the surrounding landscape as much as possible. The Board agreed that a black (vinyl-coated) chain link fence and barbed wire (such as what is used often in backstops at baseball fields) will be less visible than galvanized fencing and thus more compatible with the surrounding landscape. Additionally, the Board determined that a planting of vegetation around the perimeter of the compound would help to screen the facility and fencing. The Board has conditioned the approval of the Special Permit on the Applicant meeting these requirements.

*g. Existing on-site vegetation shall be preserved to the maximum extent possible.*

**Findings:** The Board observed during a site visit to the proposed facility location that some vegetation has been cleared by the landowners from areas around the site, thus opening up views of the site more to the west. The Board determined this activity as additional justification for relocating the facility farther to the east (as stipulated in Section VI.F.d of the Bylaws, stated above), to allow the existing topography to obscure the facility compound and lower section of the tower from views to the west. The Board has conditioned the approval of the Special Permit on the Applicant meeting this requirement.

*h. All facilities shall be painted, or otherwise colored, so that they will blend in with the surrounding landscape or the structure on which they are located, including using a different color scheme below or above the tree or building line, as appropriate.*

**Findings:** As a means for meeting this requirement, the Board discussed the option of camouflage for blending the tower into the surrounding landscape (see Section B.m, below).

*i. There shall be no exterior storage of equipment on the site without the written approval of the S.P.G.A.*

**Findings:** The Board sees this requirement as self-evident and did not receive any testimony in this regard.

*j. To the extent feasible, all network intercommunications and power lines, to and from the facility, shall be underground.*

**Findings:** The Board found that the proposed route of overhead power lines shall commence from an existing power line running from the east side of State Route 116, opposite 2003 Conway Road, to an existing structure on the property, run up the hillside and meet the proposed access road at an elevation of approximately 955 feet. The power lines continue along the proposed access road to the facility. The Board determined that the existing landform to the west of the access road – particularly at lower elevations – would obscure views of the overhead power lines and, additionally, recognizes the exorbitant cost of burying lines over 3,000 linear feet, uphill from its source to the facility, as not feasible.

*k. All facilities, attachments, and necessary structures, which have not been used for a period of one (1) year, shall be dismantled at the owner's expense. Such expense shall be secured with a performance guarantee in the amount determined by the Planning Board and posted in the name of the Town.*

**Findings:** The Board has conditioned the approval of the Special Permit on a performance guarantee to meet this requirement. Testimony voiced concern regarding the absolute need for this requirement to be put in place and strictly enforced. The Board agreed of the need for a performance bond as necessary, should the facility not be operational within one (1) year and if it ceases to provide cellular service consistent with its intended purpose.

*l. The Planning Board may require additional condition or vary the prescribed conditions upon a finding that such action is reasonably necessary to meet the purpose and intent of the Zoning Bylaws.*

**Findings:** The Board recognized the Applicant's request to vary the requirement of an 80-foot maximum tower height (see Section B.b, above) to a tower height of 120 feet, in order to eliminate gaps in service while allowing for co-location. As stated above, in consultation with its RF consultant the Board determined that a tower height lower than 120 feet would meet this need even in an alternate location of different elevation, and will achieve coverage objectives for the FirstNet communications system along State Route 116, while allowing for at least one co-location. The Board found that – at its alternate location approximately 30 feet lower in elevation – a tower height of 110 feet (the 80-foot maximum tower height as prescribed in this bylaw, plus an additional 30-foot adjustment at the lower, alternate location) would meet the needs of the Applicant and address the concerns of the Town.

*m. The Applicant shall be prepared to install the most appropriate and up-to-date camouflage if it will lessen impacts on the neighborhood character.*

**Findings:** Testimony voiced concerns for the adverse impacts of the proposed tower on neighborhood character, both from an aesthetic standpoint as well as on real estate values. The Board reviewed contradicting reports from abutters and the Applicant on the impacts of a cell tower on surrounding real estate values, but determined that neither report adequately addressed the impacts of a tower with mitigating conditions in place (e.g. reduced tower height, camouflage, less visually impactful location) on surrounding property values.

The Board requested from the Applicant visual simulations showing the tower camouflaged to resemble an evergreen tree – a 'monopine' – to determine if such a condition would lessen visual impacts. The Board agreed that such camouflage would significantly lessen adverse visual impacts on neighborhood character. The Board has conditioned the approval of the Special Permit on the Applicant meeting this requirement.

n. *Towers shall be set back 10x their height from existing public school buildings, boundaries of existing town-owned parks, and the Ashfield Plain Historic District.*

**Findings:** As indicated on the site plan, the Board confirmed that the proposed facility location exceeds this requirement.

o. *Towers shall be set back 5x their height from existing residences and other existing buildings, unless a right-of-way is obtained from the landowner.*

**Findings:** As indicated on the site plan, the Board confirmed that the proposed facility location exceeds this requirement.

C. Regarding Special Permitting Requirements: **Section VII** (Special Permit), **Part H** (Criteria) requires the Board to review the following.

1. *The proposal will not overload any public water, drainage or sewer system or any other municipal services to such an extent that the Town will be unduly subjected to hazards affecting health, safety, general welfare.*

**Findings:** The Board determined that the facility would not involve the use of any public water, drainage or sewer system, and is unlikely to use any other municipal services. Thus, the facility will not overload these municipal services.

2. *The impact on adjoining premises of sound, light, odor, noise, and other disturbances is avoided or minimized.*

**Findings:** The Board determined that – subsequent to construction – impacts on adjoining premises of sound, light, odor, noise, and other disturbances would be minimal. As stated in Section B.b, above, the Applicant testified that there would be no lighting on the tower (does not cross FAA thresholds for required lighting), and no lighting on any accessory structures. Cell towers do not emit sound, odor, noise or other disturbances.

3. *The proposal will avoid or minimize topographic change, unnecessary removal of mature trees, shrubs, or other botanical assets, erosion or siltation, stormwater runoff, or displacement of rare or natural wildlife habitats.*

**Findings:** The Board found that some site-specific topographic change is necessary for the construction of the facility compound that would require earth moving and removal of some mature trees and vegetation. An existing gravel road leading up to the site will be used for access, and will be improved with drainage swales on each side and periodic stone-bermed level spreaders for additional water catchment and silt containment. The Board noted that – with improvements – the use of an existing gravel road to the proposed facility location is significant in minimizing topographic disturbances and/or alterations and removal of mature vegetation, while properly managing stormwater

runoff. The Applicant submitted a document from the U.S. Department of the Interior, Fish and Wildlife Service, stating there are no critical habitats within the proposed project location.

4. *The proposal will not cause surface or groundwater pollution, surface or subsurface drainage detrimental to abutting properties, or other adverse effects upon the natural environment in the area where the use is located.*

**Findings:** The Board found no evidence of any potential groundwater pollution that would result from this facility. In review, the Ashfield Board of Health determined no pollution sources, and there would be no surface or subsurface drainage detrimental to abutting properties. The Conservation Commission found no evidence of impact on any water features on this or adjacent properties that would result from the construction of this facility. Any adverse effects on the surrounding natural environment would be minimal.

5. *There is adequate traffic safety at entrances to public ways.*

**Findings:** The Board determined that very little traffic would be generated by the proposed facility. The Applicant has stated that maintenance vehicles will be accessing the site at a rate of approximately one visit per month, well within the norm in the area for commercial and agricultural activity.

6. *The proposal is compatible with neighborhood character.*

**Findings:** Despite the Applicant's statement in its application submittal that the "immediate neighborhood is sparsely populated..." and thus subject to minimal impacts from the proposed facility, the Board recognizes that, regardless of how densely or sparsely populated the immediate neighborhood, the wireless facility – as currently proposed – will have a significant adverse impact on neighborhood character. The Town of Ashfield – including the area around the proposed facility – is a rural community physically characterized by numerous small hills, valleys, farms and fields, pastures, water bodies, and panoramic viewscapes that residents consider of great cultural and aesthetic importance. Testimony clearly and repeatedly voiced concerns about the negative impacts of this facility on the neighborhood character, particularly the areas in and around Murray Road to the west of the proposed facility, which includes one of Ashfield's most signature viewsheds. Testimony also cited the primary purposes of Section I (Purpose) of the Ashfield Zoning Bylaws: to "promote and enhance the Town's rural atmosphere and character, and to protect the health, safety, and general welfare of the inhabitants of the Town of Ashfield." The Board had to carefully weigh these primary purposes in making its decision about a structure that potentially challenges the Town's rural and aesthetic character, while improving mobile communication services for first responders and emergency services, as well as the general safety and welfare of travelers and residents along this section of State Route 116. The Board recognized also that federal law allows facilities of this type.

The Board determined that the best means to achieve a balance of the primary purposes of the Ashfield Zoning Bylaws is to set reasonable, mitigating conditions on the project proposal to lessen its visual impact in the encompassing landscape.

7. *Additional requirements being met, as listed under General Regulations for Alterations, Off-Premises Signs, and Driveways, and under Use Regulations for Residential Uses and for Cottage Industries and Home Occupations.*

**Findings:** The Board found that the additional requirements cited above were not applicable in this application.

### **Decision**

After reviewing the application, the site plan, and other submitted materials and information, and after considering testimony given at the public hearing, the Board made the above-referenced findings of fact and, based on these those findings, the Board – by a vote of 5-0 – grants a Special Permit to New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, to construct a wireless communication facility, including a tower and ground equipment within a fenced compound, at 2003 Conway Road, subject to the following conditions:

1. The tower and compound will be relocated off the ridgeline, approximately 150 feet to the east, to an exact location agreed upon between the Applicant and the Planning Board, and meeting the approval of Emergency Services (Police and Fire). The Applicant will submit revised plans of the new facility location to the Planning Board for approval, prior to commencement of construction.
2. At its alternate location off the ridgeline, the tower will be constructed at a maximum height of 110 feet above grade level.
3. Prior to, during, and after construction, as well as for the life of the facility, existing vegetation around the site's perimeter will be preserved, to the maximum extent possible.
4. The tower will be camouflaged from the top of the tower to ten (10) feet below the height of the majority of surrounding trees, and shall be such that all parts of the tower visible from Murray Road and Hill Road shall be camouflaged with simulated branching and bark for the life of the tower, in accordance with the specifications submitted by the Applicant, in accordance with condition #5. If the Applicant cannot ensure that vegetation and trees similar to the current density and height of surrounding trees and shrubs will continue to exist for the life of the facility, then all parts of the tower visible from Murray Road and Hill Road in absence of existing screening shall be camouflaged with simulated branching and bark. The camouflage will be a white pine design, and will be re-bristled every ten years.
5. The Applicant will submit drawings, images, and specifications (including general requirements, references, quality control, submittals, warranty, materials, execution, and cleaning and completion) of the camouflage design to the Planning Board for approval, prior to commencement of construction.
6. No exterior lighting is allowed on the tower or accessory structures.

7. No signage is allowed on any part of the tower, nor on any part of the facility compound, except as is required by federal and/or state regulations, and to provide information required for safety purposes and requested by the Town of Ashfield emergency services.
8. Both chain link fencing and posts, and barbed wire fencing encompassing the facility compound will be a black-coated vinyl fencing. The Applicant will provide specifications to the Board for approval prior to construction.
9. A vegetative buffer of plant materials shall be installed and maintained around the perimeter of the fenced compound that effectively screens the view of the compound from adjacent properties. (See Attachment A)
10. Prior to construction of the facility, the Applicant will submit a report from a licensed engineer to the Building Inspector that demonstrates the facility complies with all applicable state and federal standards, and describes the capacity of the facility, including the number and type of antenna arrays and co-locators that it can accommodate.
11. The Building Inspector shall not issue a permit until a bond equal to fifteen percent (15%) of construction costs is provided and approved by the Planning Board. The bond shall cover present ownership of the tower and all future owners, should the title and/or license be transferred. The Town may dismantle the tower if it is abandoned (not used for commercial personal communication services (PCS) or cellular coverage) for more than twelve (12) consecutive months. The Board notes that the purpose of this facility is to provide cellular and/or PCS coverage. The existence of a private service antenna alone shall not constitute use for the purpose of this facility.
12. A minimum of one cell tower antenna array will be installed within four (4) months of completion of the construction of the tower.
13. The operator of the tower will provide space at no cost to the Town of Ashfield on which the Town can locate an emergency services antenna on the tower, provided it does not interfere with the primary purpose of the tower.
14. Any emergency power generator(s) used on site shall meet all federal, state, and local regulations for sound emissions.
15. Any standard facility maintenance shall be restricted to weekdays, and only between the hours of 7:00 AM to 7:00 PM.
16. The Owner and/or Operator of the facility is required to provide to the Planning Board and Building Inspector an up-to-date contact list of the individuals/operators and owners of the facility on an annual basis AND/OR a minimum of fourteen (14) days prior to a transfer of ownership and/or management.
17. The wireless communications facility must be built according to the plans submitted, with the exception of the conditions listed above, and it shall meet these conditions.

# ATTACHMENT A

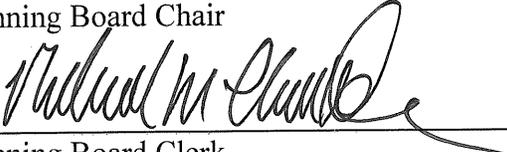
A vegetative buffer of plant materials shall be installed around the perimeter of the fenced compound that effectively screens the view of the compound from adjacent properties.

- The standard buffer around the compound perimeter will consist of a minimum 12-foot width of shrub plantings;
- A diversity of plant species native to New England will be used;
- Any use of plants identified by the most recent version of the 'Massachusetts Prohibited Plant List,' as maintained by the Massachusetts department of Agricultural Resources, is prohibited;
- Cultivars of native plants are acceptable;
- Shrubs will be a minimum 30-inch height at time of installation;
- Plantings will be staggered, at 6-foot centers;
- At least fifty percent (50%) of plantings will consist of evergreen shrubs;
- Plantings will be maintained and replaced, if unhealthy, by the Owner and/or Operator of the facility, for the life of the facility;
- The Board may vary the requirements of this attachment if compliance with them proves impractical or excessively disruptive of the landscape.

Signed this 29<sup>th</sup> day of APRIL, 2021.



\_\_\_\_\_  
Planning Board Chair



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Planning Board Clerk

Pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws, appeals to this decision must be filed with the Town Clerk within twenty (20) days after the date of the filing of this Notice of Decision with the Town Clerk, by the Planning Board.

ASHFIELD TOWN CLERK  
2021 APR 29 PM 2:20

Received on this date.



Town Clerk