

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

WEDNESDAY, JUNE 30, 2004

Present: Ald. Mansfield (Chairman), Ald. Salvucci, Albright, Fischman, Merrill, and Samuelson

Absent: Ald. Harney and Vance

Also present: Ald. Lappin

City staff: Ouida Young (Associate City Solicitor), Nancy Radzevich (Chief Planner), Eric Jerman (Senior Planner), and Linda Finucane (Chief Committee Clerk)

#542-03 CLEAR CHANNEL RADIO, BEASLEY BROADCASTING GROUP & CHAMPION BROADCASTING SYSTEM petition to AMEND Board Order nos. 91260 of 1947; 102720 of 1953; 105686 of 1954, 422-6, 552-66, and 781-73(2) and (3) for SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF A NON-CONFORMING STRUCTURE to replace two existing 353' lighted towers for transmission of AM radio with five 199' unlighted transmission antennas (relocated), including the replacement and relocation of foundation piers, anchor mounts, footing, guy wires and outbuildings and renovation of interior and exterior of the existing transmission station building at 750 SAW MILL BROOK PARKWAY, Ward 8, on land known as Sec 84, Blk 10, Lot 57, containing approx 805,000 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-18, 30-21(b), 30-8(b)(8) and (9) of the City of Newton Rev Zoning Ord. **(8/18/04)**

ACTION: DENIED 6-0

NOTE: This is a petition for the permissive use of the site for five radio transmission towers, as well as a request for an extension of non-conforming structures; specifically the height of the towers and the setback of the transmission building.

This special working session was held in order to make a recommendation to the Board at the July 12th meeting, since the petitioners had stated that they were not willing to grant an extension since the public hearing had remained open for an extended period and when the petition was refiled last year it was their understanding that the Board would vote within 6 months. The hearing was opened on 1/13/04, and continued on 3/30/04 to receive a presentation by Dr. Linda Erdreich of Exponent, the Board's peer reviewer for health standards, on 5/6/04 for a site visit by the Committee, and finally closed on 5/20/04 after a presentation on radiofrequency effects by David Maxson of Broadcast Signal Labs. also serving as a peer reviewer for the Board. Mr. Maxson also submitted a 55-page report that is posted on the Planning department web site.

Associate Solicitor Ouida Young advised the Committee to consider this petition with due care, since much of the testimony during the public hearing, both from the residents of the area and from the experts, identified the most potentially

detrimental effects of the petition as those where the City has the least ability to regulate those effects, particularly in the area of radio interference. Thus, she advised, any recommendation for approval should be conditioned very carefully, or a recommendation to deny must be supported with very specific findings.

For the previous working session on 6/22/04, Health Commissioner David Naparstek, who had attended all the public hearing sessions, submitted a letter dated 6/18/04 discussing potential adverse health effects of the petition. He noted that Massachusetts is fortunate to have RF standards that go beyond FCC standards, allowing the calculation of potential effects before the towers are constructed and transmission begins. However, he stated, the proposal does meet both FCC and state standards, at least as far as thermal effects on humans are concerned. He went on, however, to suggest that behavioral effects can also be considered health effects. He noted that standards in Eastern Europe, Scandinavia and Australia take these effects into account. They do not apply in this country, and are far less measurable than thermal effects, but based on the neighborhood testimony of the effects on the quality of life caused by interference effects from the two towers and one station currently transmitting from this location, Mr. Naparstek concluded that the disruption to daily activities and anxiety caused by the presence of these towers could raise behavioral (i.e., mental health) issues. Ald Vance asked if these behavioral effects could be considered in the Board's decision, notwithstanding that thermal effect standards are met. Ms. Young replied that unlike wireless communication facilities ("cell towers"), there are no expressed federal standards for approval or denial of a petition and the FCC standards do not pre-empt local zoning unless local officials interfere with the overall broadcast scheme of the FCC. The FCC has already granted the petitioners licenses for the proposed towers, but Ald. Fischman cited the fact that there is already a station broadcasting from this location should support an argument that to deny the proposed increase to three stations does not obstruct FCC plans.

The Committee examined the potential benefits supporting the public convenience and welfare that this petition might bring. They noted that beyond the lower height of the increased number of towers, 199 ft. and below not requiring lighting or obtrusive paint colors for air traffic safety, the only other major benefit was the protection offered by the Conservation Commission's Order of Conditions, protecting endangered species, establishing a conservation easement, preventing further new construction on the site, and providing some landscape screening. The Chair pointed out that these protections would likely be afforded for any construction that might occur on this site in the future, not just for this proposal.

Ald. Lappin stated that the lower towers are not necessarily a benefit to the community, since they will be closer to some homes than the existing towers. She also cited the detrimental effects beyond radio interference, including interference with portable electronic health equipment, including wheelchairs, monitors, pacemakers and defibrillators. She noted that the BSL analysis had suggested that these effects could increase tenfold, both spreading out beyond Oak Hill and

having a higher concentration of effects within the neighborhood. She suggested that these health issues and perception of health issues could also lead to a diminishing of property values in the area.

The Planning Department reported that their research to find similar transmission facilities in a residential area in other parts of the state revealed very little comparable data. Most stations broadcast at lower power or predated surrounding development. They also could not substantiate that the surrounding neighborhood was one in which people with disabilities were at a significantly higher concentration. Finally, noise studies for the proposed HVAC equipment in the transmission building did not show significant noise levels measured at the nearest residence.

The Committee considered a list of proposed conditions for approval of this petition, including an offer by the petitioners that they be responsible for resolving all interference complaints within the 1 V/m contour line for as long as radio stations operate from this site, and provide access and information through a web site annually updated. Ald. Fischman noted that these conditions were unsatisfactory and generally unenforceable. He and other members of the Committee noted that substantial interference already exists in the neighborhood—including that to medical devices, as reported at the public hearing, and while the petitioners are attempting to resolve it, they are not always successful—nor can they be—in doing so. Others felt the blanketing area was too limited in light of the higher power output proposed.

Ultimately, Ald. Fischman moved denial of the petition, citing as his finding the broader definition by the Health Commissioner of health of existing interference and its anticipated increase by a factor of ten; that the increase in the power of the emissions from 5 to 95 kw is substantially more detrimental to the neighborhood, including the potential extension of interference to medical and life safety devices, that there is an increased danger of arcing on the site itself, and that research could not find other examples of this high wattage output in residential settings. Other members of the Committee added the potential disruption of wetland habitat by the proposed construction, the potential diminished value of neighboring homes due to the perception of adverse effects, and the increased visual pollution from some homes with a view of the towers that cannot be effectively screened. It was also noted that the proposed improvements to the transmission building, the removal of tower lights and “aesthetic” painting, and the Order of Conditions are values that do not outweigh the detriments of this proposal.

The motion to recommend denial of the petition was approved 6-0.

The meeting was adjourned at 9:13 p.m.

Respectfully submitted,

George E. Mansfield, Chair

