

**HUDSON ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
April 23, 2009**

**I. CALL TO ORDER**

Chairman Seabury called this meeting of the Hudson Zoning Board of Adjustment to order at 7:12pm on Thursday, April 23, 2009, in the Community Development Meeting Room in the Town Hall basement. Chairman Seabury then requested Acting Clerk Houle to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** Maryellen Davis, James Pacocha,  
Michael Pitre, and J. Bradford Seabury

**Members**

**Absent:** William McInerney, Absent

**Alternates**

**Present:** Kevin Houle, Marilyn McGrath, and Donna Shuman

**Alternates**

**Absent:** Normand Martin – Excused

**Staff**

**Present:** William Oleksak, Building Inspector

**Liaison**

**Present:** Roger Coutu, Selectmen's Liaison - Absent

**Recorder:** Trish Gedziun

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## **II. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

For the benefit of all attendees, Chairman Seabury noted that copies of the agenda for the meeting, as well as an outline of the rules and regulations governing hearings before the Zoning Board of Adjustment, were available at the door of the meeting room. He noted the outline included the procedures that should be followed by anyone who wished to request a rehearing in the event the Board's final decision was not felt to be acceptable. Chairman Seabury pointed out that the Board allowed rehearings only if collectively convinced by a written request that the Board might have made an illogical or illegal decision or if there were positive indications of new evidence that for some reason was not available at the hearing.

Chairman Seabury announced that Ms. Shuman would be seated in place of Mr. McInerney and Mr. Houle would be seated in place of Mr. Pacocha for the purpose of reviewing the minutes from the March 26, 2009, meeting as those regular members had not yet arrived. Chairman Seabury also stated that Mr. Houle would assume the role of Clerk as Mr. Martin was excused.

## **III. APPROVAL OF MEETING MINUTES**

The following edits were made to the minutes of the March, 26, 2009, meeting:

1. Page 3, Heading B - "construct" was changed to "constructed" – Seabury
2. Page 5, 4<sup>th</sup> paragraph, last line – "living space" was changed to "living unit" - Davis
3. Page 5, 5<sup>th</sup> paragraph – the paragraph was changed to "Chairman Seabury also stated that he felt that, if the Community Development Department had known in 1987, that the "space" was for a separate living unit, that the applicant would have been deferred to the Zoning Board of Adjustment." - Seabury
4. Page 7, 4<sup>th</sup> paragraph – the paragraph was changed to "Chairman Seabury then stated that as the request for an Equitable Waiver had been approved, the request for an Accessory Living Unit had become moot and would not be addressed by the Board. Mr. Thyne expressed agreement." – Seabury

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5. Page 9, 3<sup>rd</sup> paragraph – the word “area” was changed to the word “building.” - Seabury
6. Page 9, 5<sup>th</sup> paragraph, the word “employees” was changed to “employ” - Seabury

Mr. Houle made a motion to approve the minutes from the March 26, 2009, meeting as amended by the Board.

Ms. Davis seconded the motion.

Chairman Seabury called for a verbal vote and he then stated that all of the sitting Board members were in favor of approving the minutes from the March 26, 2009, meeting.

Chairman Seabury then declared a break at 7:18pm, calling the meeting back to order at 7:35pm.

Chairman Seabury returned Mr. Houle to his seat as a non-voting alternate member of the Board, as Mr. Pacocha had arrived at the meeting and was seated in his usual voting position.

## IV. PUBLIC HEARINGS FOR SCHEDULED APPLICATIONS

1. **Case 167-9 (4/23/09): Public Service Company of New Hampshire, represented by AI Engineers, Inc. (Agent), 919 Middle Street, Middletown, CT, requests the following for the erection of a 100-foot radio communication tower and attached 20-foot dipole antenna exceeding the allowed height at the existing electrical sub-station facility located at 15 Power Street, Hudson, NH.**
  - A. **A Special Exception for the height, (80-foot height allowed, 100 feet requested.) [Map 167, Lot 9, Zoned R-2, HZO Article XVIII, Sections 334-101 C (4) & (5), Antenna and mast height.]**
  - B. **An Area Variance for reduction of the fall zone limitation. (100 feet requested, 70 feet allowed). [Map 167, Lot 9, Zoned R-2, HZO Article XVIII, Sections 334-102 A, fall zone calculation.]**

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Acting Clerk Houle read aloud the posted notice, as recorded above.

### A. Discussion for a request for a Special Exception

*A Special Exception for the height, (80-foot height allowed, 100 feet requested.)  
[Map 167, Lot 9, Zoned R-2, HZO Article XVIII, Sections 334-101 C (4) & (5),  
Antenna and mast height.]*

Chairman Seabury asked who was present to speak in favor with regard to the application for a Special Exception.

Mr. Jack Holland, Project Manager from AI Engineers, Inc., representing the applicant, addressed the Board and read aloud from the Application for a Special Exception as follows:

*The radio communication tower's proposed location will be situated on the highest elevation of the property to minimize the overall height. The tower is required to be above the existing tree line in order to operate adequately while providing radio communications to remote electrical system devices for critical rapid electrical restoration and everyday operations such as first responders.*

- 1. The town's maximum allowable height for a tower was 80 feet and the applicant was requesting a special exception that would allow for a total allowable height of 100 feet.*
- 2. The total additional footage would consist of 20 feet for the actual tower and an additional 20 feet for the dipole antenna which would be affixed to the top of the tower.*
- 3. The proposed tower would be located on the highest available spot on the existing sub-station.*
- 4. The proposed tower had to be above the existing tree line in order to transmit the signals effectively.*

Chairman Seabury asked why the tower had to be above the existing tree line to transmit the signals effectively.

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Mr. John Nachilly, Manager of Networking & Communication Services, from Northeast Utilities System, addressed the Board, stating that the purpose of the proposed tower was to support the Reliability Program. He further stated that the radios on the proposed tower would be for the purpose of controlling the devices in the field to manage circuits, recloser devices, as well as supervisory control devices.

Mr. Nachilly also stated that the applicant was planning to use 900 and 220 megahertz frequencies – noting that they were “subject to foliage and there had been problems when the antennas were located below the tree line.”

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Chairman Seabury asked if there were any members of the Board who had questions or comments.

Ms. McGrath asked the applicant to explain what the Reliability Program was.

Mr. Nachilly replied that the Public Utilities Control mandated that additional devices had to be installed to manage the distribution of electricity so that the circuits could be managed remotely rather than dispatching crews to the site.

Ms. McGrath asked the applicant how well that program had worked during the ice storm of 2009.

Mr. Nachilly replied that part of the problem regarding the ice storm of 2009 was that there were not a lot of those devices in existence at the time.

Ms. McGrath asked the applicant if there were any other type of tower that could be used that would be less visible.

Mr. Nachilly replied that because of the types of licenses provided by the FCC, there was no other type of tower which could be used.

Ms. McGrath then asked if there were any other type of license available that would provide the same end result but using a tower that would sit below the tree line.

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Mr. Nachilly replied that any other type of license would not have the data capability needed to control the devices.

Mr. Pitre asked if the proposed tower would be located on the highest point of the property.

Mr. Holland replied that the applicant wanted to keep the location of the proposed tower on the existing access driveway which would avoid having to create a new driveway. He also said that the new expansion of the transmission station did not warrant putting the tower in a different location.

Mr. Pitre asked if PSNH would be the only entity to use the tower once it was erected.

Mr. Holland testified that the tower would be for the sole use of PSNH and, further, if any other antennas or permits were applied for in the future, the applicant would have to appear before the ZBA for review.

Chairman Seabury asked why the applicant picked the existing location for the proposed tower as there were higher points located in Hudson.

Mr. Holland replied that the facilities were generally located next to the sub-stations where fiber optics existed so the data on the existing network could be back-hauled to the control center located in Manchester, NH. Mr. Holland also said that, if an alternate location were chosen, then other services would have to be brought in (such as Fair Point Communications) and the applicant did not want to do that.

Mr. Pitre asked if the location of the sub-station were the largest in Hudson. Mr. Holland replied that it was the one that best suited the applicant's needs.

Ms. Davis asked the applicant what the communication would be used for.

Mr. Holland stated that VHF frequencies were presently being used and, although they were lower on the spectrum, they ran at a higher power and were run from **West Towers** because they had a broader reach. Mr. Holland further stated that the frequencies were used for radio communications to PSNH's vehicle fleet.

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Mr. Holland stated that the initiative was not a direct result of the ice storm but as a result of the Reliability Enhancement Program that had been mandated by the Public Utilities Control.

Mr. Holland stated that the system would initially be used for data communications, however, when the applicant would be subject to looking at the re-banding of the frequencies by the FCC, the applicant could potentially look into using the system to replace the existing voice communications.

Ms. Davis asked if the antenna ran on electricity. Mr. Holland replied that the antenna did run on electricity, adding that it ran on power from the sub-station. He further stated that, if there were a region-wide power outage and the sub-station did not have power, then a generator which ran on natural gas would be used.

Ms. Davis commented that she was concerned with how the proposed 100-foot antenna would look. Chairman Seabury replied that although it would obviously be tall, very few people would be able to see it because of its location.

Chairman Seabury declared the matter before the Board.

Ms. Davis stated that she needed clarity as to why the applicant could not have achieved the same benefit from a shorter tower.

Mr. Holland replied that towers which were located on the top of mountains radiated further which created a more effective coverage area. He further stated that there would still be a coverage area if the tower were to be shorter but the radius would be much smaller.

Mr. Holland also replied that, because of the overhead wires, it was the only location in which the antenna could be transported onto the site and then be constructed.

Ms. Davis asked what coverage the 120-foot tower would provide.

Mr. Holland replied that the tower would cover a radius of approximately 10 miles.

Ms. Davis commented that she felt it would have been beneficial if the applicant had provided the Board with a map of the location which included a picture of the proposed tower.

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Mr. Holland provided the Board with an aerial photo of the proposed tower -- noting that the aerial photo did not show the recent expansion of the sub-station.

Ms. Davis made a motion to approve the request for a Special Exception to allow a 100-foot tower with a 20-foot antenna with the stipulation that the use was for the sole purpose and benefit of PSNH and could not accommodate or co-locate any type of commercial, cellular, or telephone antenna.

Mr. Pitre seconded the motion.

Ms. Davis, speaking on her motion, stated that the applicant had given testimony that the height of the tower needed to be 120 feet as opposed to 80 feet to get above the tree line. Ms. Davis also stated that she felt PSNH was more of a public service as opposed to a private commercial sector. Ms. Davis said that she felt electricity was a basic fundamental human need as opposed to a cell phone which she felt was a luxury. Ms. Davis stated that she felt it would improve the communications as well as the service and the electricity to the area.

Ms. Davis commented that she thought the town needed to clarify the definition and differences between cell phone towers vs. electricity towers -- perhaps resulting in the re-wording of the ordinance.

Mr. Pitre, speaking on his motion, stated that he agreed with the stipulation Ms. Davis had applied, there was no negative abutter testimony, there was no negative impact to the surrounding neighborhood, and he felt keeping a power grid running in the Town of Hudson was a good thing.

Chairman Seabury commented that the existing ordinance was written to cover two different things at the same time – telecommunications and radio hand towers. Chairman Seabury further commented that he felt the ordinance needed to be re-vised.

VOTE: Chairman Seabury asked the Acting Clerk to poll the Board on the motion to approve the request for a Special Exception with the noted stipulation, and to record the members' votes, which were as follows:

Ms. Davis	To approve
Mr. Pitre	To approve
Mr. Pacocha	To approve
Ms. Shuman	To approve

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Mr. Seabury                      To approve

Chairman Seabury declared that the decision having been five votes to approve, the motion had carried.

## **B. Discussion for a request for an Area Variance**

*An Area Variance for reduction of the fall zone limitation. (100 feet requested, 70 feet allowed). [Map 167, Lot 9, Zoned R-2, HZO Article XVIII, Sections 334-102 A, fall zone calculation.]*

Chairman Seabury asked who was present to speak in favor with regard to the application.

Mr. Jack Holland, Engineering Manager, AI Engineers, Inc., representing the applicant, addressed the Board, stating that the applicant was actually requesting a variance for 50 feet and not 100 feet. He also stated that in the unlikely event that the pole fell, it would fall onto an existing utility easement, which was approximately 650 feet wide -- noting that it would only damage their own equipment and would not pose a threat to any neighboring buildings.

Mr. Holland commented that the towers were built to withstand winds up to 80-90 miles per hour and withstand up to ½ inch of ice. He also stated that to date, PSNH had never had a self-supporting tower fall.

Mr. Pitre asked Ms. McGrath if the Planning Board had any questions or concerns when the applicant went before that Board with regard to the recent installation of the sub-station. Ms. McGrath replied that she did not recall a lot of discussion but that it was collectively felt that it was in the best interest of the public. She also stated that she thought there may have been one abutter that had raised some questions.

Chairman Seabury asked if there were anyone else present who wished to speak in favor with regard to the application. No one else came forward.

Chairman Seabury asked if there were anyone present who wished to speak in opposition or neutrally with regard to the application. No one came forward.

Chairman Seabury declared the matter before the Board and asked if there were any members of the Board who had questions or comments.

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Mr. Pacocha made a motion to approve the request for an Area Variance for reduction of the fall zone limitation.

Mr. Pitre seconded the motion.

Mr. Pacocha, speaking on his motion, stated that he did not feel it was contrary to the public’s interest, denying the request would result in unnecessary hardship, it was compatible with the spirit of the ordinance, and granting the variance would provide the applicant with due justice. Mr. Pacocha also stated that if the tower were to fall, it would only damage PSNH’s equipment

Mr. Pitre commented that he felt a stipulation should be added detailing the “Tower Detail” from the top left corner of page 6 on the Site Plan.

Mr. Pacocha stated that he agreed with the additional stipulation.

VOTE: Chairman Seabury asked the Acting Clerk to poll the Board on the motion to approve the request for an Area Variance, with the noted stipulation, and to record the members’ votes, which were as follows:

Mr. Pacocha	To approve
Mr. Pitre	To approve
Ms. Davis	To approve
Ms. Shuman	To approve
Mr. Seabury	To approve

Chairman Seabury declared that the decision having been five votes to approve, the motion had carried.

## V. OTHER BUSINESS

- Ms. McGrath asked Mr. Oleksak if the request from Jacob and Melanie Stephen for a one-bedroom apartment on 153 Musquash Road had been approved. Mr. Oleksak replied that the Community Development Department was waiting for the applicant to provide plans for a new septic system.
- Ms. McGrath asked if the ice cream stand at Country Brook Farms had any amended site plans because if it was anything more than ice cream, it was not

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- what the Planning Board had approved. Mr. Oleksak replied that he would re-visit the site plan.
- Ms. McGrath asked Mr. Oleksak what the status of the code enforcement issue was regarding located at 97 River Road. Mr. Oleksak replied that he would follow-up.
  - Chairman Seabury noted that the Board had a package regarding the Sign Ordinance. He noted that the ZBA members were interpreters of the ordinance and should be careful about what the Board sponsored in the way of the ordinance because if a public statement was made by a member of the Board, that member might not be able to sit on a case regarding that ordinance.
  - Ms. McGrath asked Mr. Oleksak if there were code enforcements on business signs that were in excess of what was allowed. Mr. Oleksak replied that he did have some signs removed. Mr. Oleksak further replied that he would certainly respond to anything that was brought to his attention as well as anything that was absolutely “obvious.” -- pointing out that he had limited time as he was fulfilling multiple roles at the time.
  - The Board collectively gave Mr. Oleksak and his staff positive comments regarding how the department was operating.

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**VI. ADJOURNMENT**

All scheduled items having been processed, Mr. Pitre made a motion to adjourn the meeting.

Ms. Davis seconded the motion.

VOTE: All members voted in favor. The motion passed unanimously.

Chairman Seabury declared the meeting to be adjourned at 9:11pm.

Date: May 7, 2009

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J. Bradford Seabury, Chairman

Recorder: Trish Gedziun