

**CHARLOTTE PLANNING COMMISSION**  
**RECONSIDERED AND RESTATED FINDINGS OF FACT AND DECISION**  
**IN RE APPLICATION OF**

**NEXTEL WIP LEASE CORP., Applicant**  
**JAMES W. AND HELEN H. BROWN, Property Owner**

**Site Plan Review**  
**For the installation of twelve PCS antennas and associated equipment**  
**Application # PC-02-21**

**Background**

This matter came before the Town of Charlotte Planning Commission on an application of Nextel WIP Lease Corp. (“The Applicant”) for Site Plan Review for the installation of twelve (12) panel antennas and associated equipment on and adjacent to an existing silo located on property owned by James W. and Helen H. Brown at 1783 Greenbush Road.

The Planning Commission issued a Findings of Fact and Decision on October 10, 2002. On November 7, 2002 the applicant submitted a Motion to Reconsider. The Planning Commission considered and granted the request for reconsideration at its meeting on November 7, 2002. This Reconsidered and Restated Findings of Fact and Decision is the result of the reconsideration.

**Application**

The application consists of:

1. A Site Plan Review application form, a list of adjoining property owners, and appropriate fee.
2. A written narrative addressing Section 9.6.2 of the Charlotte Zoning Bylaws.
3. A plan by Erdman Anthony entitled “Mt. Philo, Site No. VT-010P, Town of Charlotte, Chittenden County, VT”; sheet 1 dated 12/03/01, last revised 1/18/02; sheet 2 dated 12/03/01, last revised 4/10/02; sheet 3 dated 12/03/01, last revised 1/18/02; sheet 4 dated 12/03/01, last revised 4/11/02.
4. A twelve page plan for the proposed equipment shelter by United Structures Inc. entitled “Nextel Partners, Modular Equipment Shelter” dated 8/22/01.
5. A narrative by Ermand, Anthony and Associates, Inc. entitled “62’ Silo Communication Facility” with page heading “Visual Report—Proposed Mount Philo Communication Facility—Nextel Partners, Inc.” dated December 2001.
6. A plan by Erdman Anthony Consulting Engineers entitled “Nextel Partners, Inc. Communication Facility, Mt. Philo VT—010P, Town of Charlotte, Vermont, View Shed Map”, no date.
7. A plan entitled “Mt. Philo Communications Facility, Greenbush Road, Charlotte, Vermont, Photograph Location Map”, no date or author.
8. Three sets of photographs by Erdman Anthony & Associates showing the site with existing and proposed views (no date).
9. Four photographs of the proposed equipment shelter, no author or date.
10. A plan entitled “VT-010P Mt. Philo Proposed Site, Active Cells”; no author or date.

11. A plan entitled "Neighbors of the Proposed Site, Active Cells"; no author or date.
12. A plan entitled "Proposed Site and Neighbors"; no author or date.
13. A letter to the Charlotte Zoning Administrator from Peter P. Coppola, Nextel Partners, Inc. dated January 28, 2002.
14. A sheet entitled "Nextel Partners, Calculational Method of Evaluation As Outlined in FCC OET 65 Edition 97-01", no date.
15. A sheet by Erdman Anthony entitled "Nextel Partners, Inc., Mt Philo Communication Facility, Mt. Philo, Town of Charlotte, Vermont, Silo/Antenna Mounting Analysis", dated April 11, 2002.
16. A plan by Erdman Anthony entitled "Silo Foundation, Section & Details" dated 2/22/02, no revisions.
17. A specification sheet from Decibel Products, a Division of Allen Telecom, entitled "DB844H80(E)-XY", no date.
18. A map including the USGS quadrangle showing the location of the proposed facility.
19. A report by Jaworski Geotech, Inc. entitled NEPA Threshold Screening Report dated February 13, 2002.
20. A report by Jaworski Geotech, Inc. entitled Environmental Site Assessment dated January 2, 2002.
21. A sheet entitled "License Information" for Nextel WIP Expansion Two, Inc.
22. A copy of a document entitled "Communication Site Lease Agreement (Silo)", executed by James and Helen Brown (individually) on 12/13/01 and Nextel WIP Lease Corp. on 1/4/02.
23. Seven photographs of the site, no author or date.
24. A memorandum including a Motion to Reconsider signed by Mark Teliska of Nextel WIP Lease Corp. dated November 4, 2002.

## **Public Hearing**

A public hearing was opened for this application on August 15, 2002 and continued on September 19, 2002. The hearing was closed on September 19, 2002. A balloon test was conducted on September 19, 2002, and a site visit was conducted by the Planning Commission during the balloon test at 6:00 PM on September 19, 2002.

The following were present on August 15<sup>th</sup>:

- X Representing the applicant: Steven Elsbree
- X Adjoining property owners: Pete Rosenfeld, Diane Rosenfeld, Jonathan Freese, Mac Keyser

The following were present on September 19<sup>th</sup>:

- X Representing the applicant: Steven Elsbree
- X Adjoining property owners: Peter Rosenfeld, Diane Rosenfeld, Tom Henneberger
- X Other persons: Sharon Balaban

## **Reconsideration**

In order to reopen a public hearing, the Planning Commission must find that one or more condition(s) inadvertently resulted in unintended and negative consequences, or that germane information was not considered by the Planning Commission during the original hearing. At its meeting on November 7, 2002 the Planning Commission considered the applicants' request for a reconsideration of the Findings of Fact and Decision dated 10/10/02, and determined that the

applicants' request satisfied the requirements stated above, as follows: 1) In Finding #7 and Conclusion re: Section 9.8(A), the applicant's testimony that all utilities will be underground was not considered; 2) In Conclusion re: Section 9.8(D), the applicant's testimony that the proposed equipment shelter will be in accordance with the 12' maximum height requirement was not considered; and 3) In Conclusion re: Section 9.8(H), the applicant's pending application to the Charlotte Zoning Board of Adjustment for variances from setback requirements was not considered. Additionally, the applicant proposed new conditions that would mitigate the proposal's impacts with regard to several Site Plan Review criteria.

A public hearing for the reconsideration of the Findings of Fact and Decision was held on January 2, 2003. The following persons were present:

- X Representing the applicant: Steven Elsbree
- X Adjoining property owners: Tom Henneberger, Shirley Reid and Peter Rosenfeld
- X Other persons: Conservation Commission Chair Linda Hamilton

### **Regulations in Effect**

Town Plan as amended March 2002

Zoning Bylaws as amended March 2002

Subdivision Bylaws as amended March 1995

### **Findings**

1. The property involved with this application is an approximately 41-acre parcel of land located at 1783 Greenbush Road (the "Property"). The Property is located at a transition from a residential neighborhood (to the south and east) to a rural-residential area (to the north and west). Immediately adjoining the Property (within 1500 feet of the proposed antennas) are sixteen (16) occupied residential dwelling units, not including the dwelling unit located on the Property. (Application submittal #3 sheet 2, and other sources). The Property is located in the Rural Zoning District.
2. The Property is improved with a residence, several outbuildings, and two silos. The antennas are proposed to be located in the westerly silo. This silo is less than 300 feet from the westerly, northerly and southerly property boundaries. (Application submittal #3 sheet 3). These distances do not meet property-line setback requirements, and therefore a variance will need to be approved by the Charlotte Zoning Board of Adjustment.
3. The silos are not currently used for agricultural purposes. (Testimony of Steven Elsbree).
4. The silo where the antennas are proposed to be located is currently approximately forty-seven (47) feet in height. The applicant originally proposed to increase the height of the silo to sixty-two (62) feet in height for the purpose of supporting the proposed antennas. (Application submittal #3, sheet 4). However in the Motion to Reconsider and at the reopened public hearing on January 2<sup>nd</sup>, the applicant indicated that the silo's height will not be altered. (Motion to Reconsider and testimony of Steven Elsbree).
5. During the construction and installation phase, the temporary means of access is proposed to be south of the existing garage. However after construction and installation is complete, the permanent means of access is proposed to be the existing driveway to the north of the garage. The construction access will be discontinued and reseeded. (Testimony of Steven Elsbree).
6. If preferred by the Planning Commission, proposed fencing will not be installed around

- the facility. (Testimony of Steven Elsbree).
7. The proposed antennas will be located within the silo, and a fiberglass cap (on the silo) will be similar to the existing aluminum cap. (Motion to Reconsider and testimony of Steven Elsbree).
  8. The equipment shelter housing all associated equipment will be located within the existing barn. No equipment or additional structures will be sited outside of the barn or silo. (Motion to Reconsider and testimony of Steven Elsbree).
  9. All new utility lines will be underground, including the service between the barn and the silo. (Motion to Reconsider and testimony of Steven Elsbree).
  10. If preferred by the Planning Commission, proposed landscaping will not be installed near Greenbush Road, but will be installed to the south of the equipment shelter. (Testimony of Steven Elsbree).
  11. The Applicant will need a Conditional Use Permit from the Charlotte Zoning Board of Adjustment for the proposed use. Variances for property-line and dwelling setback requirements will also be addressed by the Charlotte Zoning Board of Adjustment.
  12. The coverage propagation information submitted by the Applicant in support of the Conditional Use Permit was engineered specifically and exclusively for the proposed silo height of sixty-two (62) feet. (Testimony of Steven Elsbree).
  13. Output from the proposed antennas will not be increased from what was indicated in the original application, even with the revised height of the silo. (Testimony of Steven Elsbree).
  14. Additional antenna sites in the town will not be needed, even with the revised height of the silo. (Testimony of Steven Elsbree).
  15. The Town Plan indicates Greenbush Road in the vicinity of the proposed facility as a “Most Scenic Road” (Map 13).

### **Conclusions of Law**

This application was reviewed under Chapter VI, Section 6.5 and Chapter IX, Sections 9.6.2 and 9.8 of the Charlotte Zoning Bylaws. In Chapter IX, Section 9.6.2 provides Site Plan Review application requirements for telecommunication towers and facilities, and Section 9.8 provides general project requirements and standards. Conclusions regarding the compliance of the application with the standards set forth in Sections 6.5.D. and 9.8 are provided below.

#### **Section 6.5.D.**

##### **1. Route 7 Access:**

This standard is not applicable.

##### **2. Maximum safety of vehicular circulation between the site and road network:**

The proposed permanent driveway (following construction and installation) is the existing driveway to the north of the garage. This standard is met.

##### **3. Adequacy of circulation, parking and loading facilities:**

The Applicant is not proposing, and there is not a need for, additional parking or loading facilities. This standard is met.

##### **4. Adequacy of landscaping and screening:**

The Applicant proposes to provide screening landscaping to the south of the equipment shelter, and will eliminate proposed landscaping near Greenbush Road. This standard is met.

**5. Adequacy of recognition of historic structures:**

This standard is not applicable.

**6. The overall aesthetics of the development and structures:**

With the conditions proposed by the applicant in the Motion to Reconsider, the project will not have an undue adverse impact on the scenic qualities of the surrounding area. This standard is met.

**7. Adequacy of recognition of important natural features:**

There do not appear to be important natural features (other than scenic and historic resources) in the immediate vicinity of the proposed facility. This standard is not applicable.

**8. Adequacy of water supply and sewage treatment and disposal:**

The proposed facility will not require the use of water or involve surface-water or ground-water emissions; nor will the proposed facility require wastewater treatment or disposal. This standard is not applicable.

**Section 9.8**

**A. Access Roads and Utilities:**

- X The proposed driveway to the north of the garage will follow the contour of the land. This standard is met.
- X No new utility poles will be installed and all utility lines will be underground. This standard is met.

**B. Landscaping/Screening:**

Landscaping is proposed to the south of the equipment shelter. The proposed disturbance to existing topography for the installation of equipment will be revegetated. This standard is met.

**C. Fencing and Signs:**

The Applicant is willing to install or not install fencing, as preferred by the Planning Commission. The applicant is willing to install required signs. This standard is met.

**D. Building Design:**

The equipment shelter will be located within the existing barn. This standard is met.

**E. Height of Towers:**

No new towers will be constructed. The height of the silo on which the antennas are proposed to be mounted will not be increased. This standard is met.

**F. Visual Impact:**

The proposed facility will have a minimal visual impact on the surrounding area, since all equipment will be located within the existing silo and barn, the existing driveway will be used after construction is complete, and all utility lines will be underground. This standard is met.

**G. Zoning Compliance:**

The Property meets the minimum size requirement and other regulations for the zoning district. This standard is met.

**H. Setback Requirements:**

The proposed facility does not meet the required setbacks to property boundaries or to occupied residential dwellings. To construct and operate the proposed facility, the applicant will need appropriate approvals from the Charlotte Zoning Board of Adjustment.

**Decision**

Based on these Findings, the Planning Commission approves Site Plan Review application PC-02-21 with the following conditions:

1. The applicant will obtain appropriate approvals from the Charlotte Zoning Board of Adjustment prior to construction or operation of the proposed telecommunication facility.
2. The new driveway will be used during construction only, after which it will be reseeded prior to use of the proposed telecommunication facility.
3. All utility lines will be underground.
4. The silo will remain at its current height.
5. Antennas will be located within the silo.
6. The equipment shed will be located within the existing barn.
7. Unless the applicant discontinues use of and removes the antennas and associated equipment related to this permit, the applicant will not install any additional antennas within the Town of Charlotte.
8. Sheet 3 of the site plan entitled "Mt. Philo, Site No. VT-010P, Town of Charlotte, Chittenden County, VT" will be revised in accordance with conditions 2-6 above.
9. A mylar (18" x 24") of sheet 3 (as amended by Condition #7 above) will be submitted to the Planning Commission for review within 60 days, and recorded in the Town Land Records within 90 days.

**Additional Conditions:** All plans, drawings, testimony, evidence and conditions listed above or submitted at the hearing and used as the basis for the Decision to grant permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed in accordance with such approved plans and conditions. Any deviation from the approved plans shall constitute a violation of permit and be subject to enforcement action by the Town.

**You and any interested parties are entitled to appeal this decision to the Environmental Court within 30 days of the signing of this Decision, as per requirements of 24 VSA Chapter 117, Sections 4471 and 4475.**

**Members present on August 15, 2002:** Jeff McDonald, Jim Donovan, Josie Leavitt, and Gene Diou

**Members present on September 19, 2002:** Jeff McDonald, Al Moraska, Dave Brown, Josie Leavitt, Gordon Troy and Gene Diou

**Members present on January 2, 2003:** Jeff McDonald, Al Moraska, Jim Donovan, Gordon Troy, Gene Diou, and Linda Radimer

**Vote of Members after Deliberations:**

The following is the vote for or against the application, with conditions as stated in this Decision:

Signed: \_\_\_\_\_ For / Against Date Signed: \_\_\_\_\_

Signed: \_\_\_\_\_ For / Against Date Signed: \_\_\_\_\_