

## **FINDINGS OF FACT**

### **HARTFORD ZONING BOARD OF ADJUSTMENT**

**Application #17-05 by Robert Jacobson and Gina Watkins  
for Conditional Use Approval  
for the increase in height of an existing wireless communication facility/  
amateur radio tower to 103 feet  
lot 14-0001-002, 88 Hurricane Drive, Hartford, in an RL-5 zoning district**

This decision pertains to application #17-05 by Robert Jacobson (owner) and Gina Watkins (applicant) for Conditional Use Approval under section 2-5 of the Hartford Zoning Regulations for the increase in height of an existing wireless communication facility/amateur radio tower to 103 feet, lot 14-0001-002, 88 Hurricane Drive, Hartford, in an RL-5 zoning district.

### **FINDINGS OF FACT**

Based upon the information contained in the exhibits for this application (see attached list) and the evidence adduced at the Zoning Board of Adjustment meeting of January 4, 2006, January 20, 2006, and March 15, 2006 and a site visit of January 20, 2006 the Hartford Zoning Board of Adjustment makes the following Findings of Fact:

#### **General Information**

1. The owner of record of 14-0001-002 is Robert Jacobson who acquired the lot on 06-12-03. The deed is filed in vol. 353, p. 120 of the Hartford Land Records.
2. The lot is located at 88 Hurricane Drive.
3. The lot is developed with a single-family dwelling, woodshed and 42' tower (see exhibit #3 for details regarding the height of the tower.).
4. The lot is approximately 20.1 acres.
5. The lot is class three (3) lot.
6. The lot is in an RL-5 zoning district.

#### **Background**

7. Zoning permit #2004-72 was issued in April of 2004 authorizing construction of a single-family dwelling, garage, tower and shed on the lot. A certificate of occupancy was issued in June of 2005. To date, the garage has not been constructed.

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8. The lot is part of a subdivision approved by the Hartford Planning Commission in January of 1985 (Application #118-85).

### **This Application**

9. On October 26, 2005, the Zoning Board of Adjustment approved application #17-05 by Robert Jacobson and Gina Watkins for the increase in height of an existing wireless communication facility/amateur radio tower to 100 feet. After the Public Hearing, it was discovered that one of the abutting landowners was not sent notice of the application/Public Hearing. Therefore, the Decision is invalid and a new Public Hearing is required to rehear the application.
10. The applicants propose to increase the height of the facility from 42 feet to 103 feet. According to the applicants, the tower/support structure will be 93' and the antennas will extend an additional 10', bringing the total height of the structure to 103'.
11. Section 3-18 of the Hartford Zoning Regulations governs the development of Wireless Communication Facilities.

The following wireless communication facilities are exempt from Section 3-18.

- A. Amateur radio tower
  - B. Citizens band radio
  - C. Receiving antennae
12. The application is exempt from section 3-18 of the Hartford Zoning Regulations, but Conditional Use Approval under section 3-2.1. is required. Section 3-2.1 allows the Zoning Board of Adjustment, through a Conditional Use Approval process, to increase the height of a structure "providing that it will not be disruptive to its surroundings or create a hazard."
  13. According to the applicants, the existing tower is 42 feet high. The applicants propose to increase the total height of the facility to 103 feet in order to extend above the trees to obtain desired communications.
  14. According to the applicants, the average height of the trees in the vicinity of the tower is seventy-six (76) feet. The proposed tower will extend 27' above the average height of the trees.
  15. According to the applicants, to the extent the tower and any antennas are above the tree line, they will be visible from an abutting property owned by Allen Hall. According to the applicants, the visibility from the abutting property is benign, as the tower is (1) see-through lattice, (2) only 18" wide, (3) grey, and (4) located behind several solid utility

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poles of approximately the same width that are located closer to the Hall home. (The applicants note that the principal view from Mr. Hall's porch includes five towers on Crafts Hill located in West Lebanon, NH, and facilities at the Lebanon Airport.)

16. According to the applicants, the FAA will not require the tower to be lighted.
17. According to the applicants, the tower will not cause interference with town public works, police or emergency services communications.
18. According to the applicants, the tower will be 139' away from the nearest property line.
19. According to the applicants, the facility will be used for on-site and off-site amateur radio users. The facility will not be used for any commercial purposes, including the lot owner's paging business "WaveComm."
20. The applicants understand that it is their responsibility to obtain any applicable State or Federal permits.
21. The applicants understand that fire department and emergency vehicle access during construction must be provided at all times.
22. The applicants understand that a Zoning Permit must be obtained to finalize this Decision. Furthermore, the applicant understands that a Certificate of Occupancy must be obtained from the Zoning Administrative Officer upon completion of the project and before the tower is utilized.

### **CONCLUSIONS OF LAW**

The Hartford Zoning Board of Adjustment, based upon the forgoing Findings of Fact, concludes that the proposed project will not adversely affect:

2-5.1.1. The capacity of planned or existing **community facilities**, including but not limited to:

- (A) emergency services
- (B) municipal water or sewer system
- (C) recreational facilities
- (D) the school system
- (E) solid waste disposal facilities

The Board may seek or require input from the Town Manager and other municipal officials regarding relevant facilities. The Board shall also take into account sections of the Municipal Plan and any duly adopted Capital Plan which specify anticipated growth, service standards, and facility construction plans.

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2-5.1.2. The **character** of the area, including but not limited to:

(A) scenic or natural beauty, historic sites, or rare and irreplaceable natural areas

(B) compatibility with scale and design of structures existing in that area

2-5.1.3. The capacity of **roads and highways** in the vicinity to safely accommodate expected traffic flows. In making this determination, the Board may require submission of a traffic impact study made by a professional traffic engineer.

2-5.1.4 Any Town of Hartford **bylaws** in effect.

2-5.1.5 Utilization of **renewable energy resources**.

**AND**

3-2.1 The tower will **not be disruptive to its surroundings or create a hazard**.

**DECISION**

The Hartford Zoning Board of Adjustment, based upon the forgoing Findings of Fact and Conclusions of Law, hereby approves application #17-05 by Robert Jacobson (owner) and Gina Watkins (applicant) for Conditional Use Approval under section 2-5 of the Hartford Zoning Regulations for the increase in height of an existing wireless communication facility/amateur radio tower to 103 feet, lot 14-0001-002, 88 Hurricane Drive, Hartford, in an RL-5 zoning district **on the condition that before a Certificate of Occupancy is issued, the applicants must submit written verification certifying that the project was constructed in compliance with the approved plan and Findings of Fact.**

This decision is also subject to the condition that no modification or expansion shall be made to the project as described and limited in the above Findings of Fact and Conclusions of Law without the written approval of the Hartford Zoning Board of Adjustment and/or the Hartford Planning Commission. This decision may be revoked and a new application or permit required if conditions and findings are violated or modified without written approval.

The applicant is responsible for insuring compliance with all applicable State and Federal regulations pertaining to this application.

Those in favor: Connie Heiland, Dennis Brown, and Stuart Tane

Those in opposition: Paul Sunde (citing that he did not feel the application met section 2-5.1.2. of the Hartford Zoning Regulations.)

Those not participating: Don Jones

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Dated at Hartford, Vermont this \_\_\_\_ day of March 2006.

HARTFORD ZONING BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
Chairperson/Vice-Chairperson

Appeal Rights: An interested person who has participated in the Public Hearing pertaining to this application before the Zoning Board of Adjustment has the right to appeal this decision to the Vermont Environmental Court, pursuant to 24 V.S.A. s. 4471 and V.R.C.P. 76, in writing, within 30 days of the date of this decision. The fee is \$225.00. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by this decision, pursuant to 24 V.S.A. s. 4472 (d) (exclusivity of remedy; finality).

**EXHIBIT LIST**

1. Application #17-05
2. Document entitled "Supplemental Information for an Amateur Radio Facility Accompanying Application for a Conditional Use Approval under s. 2-5," prepared by Fred Hopengarten, Esq. dated December 16, 2005 and received December 20, 2005.
3. Memo from Steve Allan dated received March 14, 2006 with attachments including an article entitled "Ham Radio Operators See Risks" and photographs of hot air balloons
4. Email from Fred Hopengarten, Esq. dated March 3, 2006
5. Memo from Jo-Ann Ells dated December 28, 2005
6. Memo from Bob Jacobson and Gina Watkins dated November 30, 2005
7. Memo from Allen Hall dated November 30, 2005 with photos and Boundary Line Location
8. Memo from Jo-Ann Ells dated November 21, 2005
9. Memo from Jo-Ann Ells dated 10-17-05
10. Memo from the applicant written and received on 10-06-05

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11. Memo from Jo-Ann Ells dated 09-29-05

12. Photos received 10-26-06

13. Memo from the FAA dated 9-8-03

14. Power Point Presentation entitled "Application for a Conditional Use Approval Under § 2-5, Robert Jacobson and Gina Watkins, 88 Hurricane Drive" by Fred Hopengarten, Esq.

15. CD entitled "Bob Jacobson, 1-4-06" (Copy of video with Walter Cronkite)

16. Seven letters of support for the project received 3-15-06