

**TOWN OF RANDOLPH, VERMONT**  
**DEVELOPMENT REVIEW BOARD**  
**MEMORANDUM OF DECISION**  
(Findings of Facts, Conclusions, and Decision)

**PERMIT NO.:** Z09-49

**Property address:** South Randolph Road

**PROPERTY OWNER:** Vermont Technical College  
PO Box 500  
Randolph Center, VT 05061

**Parcel no.:** 117002  
**Parcel size:** ±29,700 SF acres

**APPLICANT:** Mark G. Hall (Paul Frank & Collins, PC)  
on behalf of T-Mobile Northeast, LLC  
PO Box 1307  
Burlington, VT 05402-1307

## I. INTRODUCTION

On June 30, 2009, Mark G. Hall on behalf of **T-Mobile Northeast, LLC** ("Applicant") filed an application for a zoning permit for a project generally described as **the co-location of a telecommunication facility on an existing water storage tower**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on July 1, 2009.

Under the Randolph Zoning Regulations ("Regulations"), projects are reviewed based on the site plan, conditional use and/or any other applicable criteria of the Regulations. Before the Administrative Officer ("Administrator") may grant a permit, the Board must find that the project complies with all applicable criteria and approve the site plan, the conditional use and/or provide any other approval, as required.

Decisions must be stated in the form of Findings of Facts and Conclusions of Law. In rendering this decision, the Board relied on the following:

1. Sworn testimony presented to and evidence received by the Board during the first and final public hearing held on July 28, 2009;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on July 28, 2009, deliberated later that evening and this written decision was prepared pursuant to 24 VSA ch. 36 §1209.

## II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Residential (RES) District.
2. As the project is not either a one- or two-family dwelling, site plan approval is required.
3. The use is categorized as "utility service facility." Such a use is listed as conditional on the Chart of Permitted and Conditional Uses and therefore conditional use approval is required.

On July 1, 2009, 2009, the Administrator referred the application to the Board for review and approval as determined.

### III. PARTICIPANTS

For the purposes of this application, “interested persons” are those who fulfill the requirements of 24 VSA ch. 117 §4465. The attached Service List for this project includes the Applicant’s and Property Owner’s representatives and persons<sup>1</sup> who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were John Becker, J. Kenneth Currier, Samuel Lincoln, Christopher Recchia, Scott Berkey and Joel Tillberg.

### IV. FINDINGS OF FACTS

*The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact.*

#### Project Description

1. The applicant has filed an application for the co-location of a telecommunication facility on property currently with a water storage tower. Specifically, the facility will include 9 panel antenna on top of the water tower and pad-mounted equipment in an fenced-in enclosed area at the base of the tower as shown on Exh. #1, tab #2. (application)
2. The subject property is approximately 29,700 SF and is owned by Vermont Technical College, which has total holdings in Randolph Center of over 400 acres. (application and municipal records)

**The proposed use is consistent with the objectives of the Town Plan and the purposes of the Randolph Zoning Regulations. (CU criterion A)**

**The proposed use will not adversely affect the bylaws in effect. (CU criterion K)**

**The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and the Town Plan. (SP criterion A)**

3. The development standards regarding lot size, setbacks and building coverage are not applicable because either there is no requirement in the RES District for non-residential uses (lot size) or there is no proposed building. (Regulations and application)
4. The required off-street parking shall be as set by the Board. The property already has an area at the end of the existing driveway that can accommodate a vehicle. (Regulations and Exh. #1, tab #2)
5. There is no clear and unambiguous language in the Town Plan that relates or refers to the proposed project. (Town Plan)

**The proposed use will not cause any hazard to health or property through fire, traffic, accident, unsanitary conditions, excessive noise, vibration, odor or other nuisances. (CU criterion B)**

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<sup>1</sup> By inclusion in this section of the Memorandum of Decision, the Board does not address the status of any of the people listed above as “interested persons” as defined in the above-referenced state statute.

The proposed use and layout is of such a nature that it will not make vehicular or pedestrian traffic hazardous when considering turning movements, relationship to intersections, sight distances, location and access of off-street parking, pedestrian traffic and pedestrian-vehicular contact points. (SP criterion C)

The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity. (CU criterion C)

6. The proposed use will not generate any of the following: odor, glare, noise, dust vibration or radiation. (application)
7. The proposed use will utilize South Randolph Road, which is a Class 3 town highway. No changes to the existing driveway are proposed. (application)
8. The proposed use will generate minimal traffic of approximately 1 to 2 trips per month. (application and testimony of M. Hall)
9. There will be a gel battery contained with the fenced-in area which presents a slight potential for a hazardous waste spill should the battery leak. Secondary containment would mitigate this potential. (testimony of M. Hall, A. Floyd and condition of approval)

The criterion regarding Town of Randolph road standards is not applicable as no new roads are proposed. (CU criterion D)

10. The proposed project does not involve any new roads to be adopted by the Town. (application)

The access and exit points of the subject property will be limited to one location, which is sufficiently wide and so related to highways to insure safety and efficiency of circulation of vehicular and pedestrian traffic. (CU criterion E)

11. No changes to the existing driveway are proposed. (testimony of M. Hall)

All unsightly uses of the proposed project are properly screened. (CU criterion F)

12. The equipment at the base of the water tower will be barely visible from South Randolph Road. (testimony of M. Hall)

An adequate system of surface runoff control is not required. (CU criterion G)

13. The proposed regrading of the site is minimal. (testimony of M. Hall)
14. No impervious surface is proposed (compound will have gravel underneath). (Exh. #1, tab #2)

A continuous strip of not less than six (6) feet wide will be maintained between the right-of-way line and the balance of the lot which will be suitably landscaped. (CU criterion H)

15. The subject property only has approximately 50 feet of road frontage and no building is proposed within 300 feet of the Ridge Road. (municipal records)

The proposed use will not adversely affect the capacity of existing or planned community facilities. (CU criterion I)

The proposed use will not adversely affect the character of the area affected. (CU criterion J)

The proposed use, design and layout is of such a location and in such a size and character that it will be in harmony with the appropriate and orderly development of the surrounding area. (SP criterion B)

The proposed height and location of buildings, walls, fences, parking, loading and landscaping will not interfere with or discourage the appropriate development in adjacent land or unreasonably affect its use. (SP criterion D)

16. The surrounding area is a mixture of rural, agricultural and residential uses. (application)
17. The proposed project will not adversely affect the surrounding area. (application)
18. The utility tray on the outside of the tower will be painted to match the existing tower. (testimony of M. Hall)
19. The antenna will be of a low-impact color and will be non-reflective to eliminate potential for glare. (testimony of M. Hall)

The proposed use will not adversely affect the utilization of renewable energy resources. (CU criterion L)

20. The proposed use will not affect the utilization of renewable energy resources. (application)

## V. CONCLUSIONS

Based on the foregoing Findings of Fact, it is the conclusion of the Board that the project described in the application referred to above and including the Applicant's representations at the public hearing, if completed and maintained in conformance with all of the terms and conditions of that application and as required below, will meet the following criteria:

### 1. Conditional Use Criteria<sup>2</sup>

- A. The proposed use is not inconsistent with the objectives of the Town Plan and is consistent with the purposes of the Randolph Zoning Regulations.
- B. The proposed use will not cause any hazard to health or property through fire, traffic, accident, unsanitary conditions, excessive noise, vibration, odor or other nuisances provided secondary containment for the battery is constructed.
- C. The proposed use will not add a volume of traffic to the highways beyond their reasonable capacity.
- D. The criterion regarding Town of Randolph road standards is not applicable as no new roads are proposed.
- E. The access and exit points of the subject property will be limited to one location, which is sufficiently wide and so related to highways to insure safety and efficiency of circulation of vehicular and pedestrian traffic.
- F. There are no unsightly uses associated with the proposed project.
- G. An adequate system of surface runoff control is not required.
- H. A continuous strip of not less than six (6) feet wide will be maintained between the right-of-way line and the balance of the lot which will be suitably landscaped.
- I. The proposed use will not result in an undue adverse affect on the capacity of existing or planned community facilities.

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<sup>2</sup> Criteria A – H are from the Randolph Zoning Regulations. Criteria I – M are required to be reviewed pursuant to 24 VSA Ch. 117 §4414(3).

- J. The proposed use will not result in an undue adverse affect on the character of the area affected.
- K. The proposed use will not result in an undue adverse affect on the traffic on roads and highways in the vicinity.
- L. The proposed use will not result in an undue adverse affect on the bylaws and ordinances in effect.
- M. The proposed use will not result in an undue adverse affect the utilization of renewable energy resources.

**2. Site Plan Criteria**

- A. The proposed use, design and layout meets the provisions of the zoning ordinance, other regulations and ordinances of the Town and is not in non-conformance with the Town Plan.
- B. The proposed use, design and layout is of such a location and in such a size and character that it will be in harmony with the appropriate and orderly development of the surrounding area.
- C. The proposed use and layout is of such a nature that it will not make vehicular or pedestrian traffic hazardous when considering turning movements, relationship to intersections, sight distances, location and access of off-street parking, pedestrian traffic and pedestrian-vehicular contact points.
- D. The proposed height and location of buildings, walls, fences, parking, loading and landscaping will not interfere with or discourage the appropriate development in adjacent land or unreasonably affect its use.

**VI. DECISIONS<sup>3</sup>**

Based upon the foregoing Findings of Facts and Conclusions, the Board hereby makes the following decisions regarding the telecommunication as applied for in zoning permit application #Z09-49 and including the evidence and testimony entered into the record as Findings of Fact.

- A. The Board hereby sets the off-street parking requirement at one space.
- B. The site plan approval is granted with the following conditions:
  - 1. Construction shall be as shown on Exhibit #1.
  - 2. Snow from parking areas must not be plowed onto public highways, adjoining streams or waterways, or onto abutting properties. Snow must be plowed elsewhere on the subject property or removed.
  - 3. The subject property shall have adequate entrance and exit for emergency vehicles at all times.

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<sup>3</sup> An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of \$250 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the appeal, and a copy mailed to the Zoning Administrator. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.

4. Any significant modifications to the approved site plan shall require re-approval by the Board pursuant to the regulations in effect at the time of re-application.
- C. The conditional use approval is granted with the following conditions:
1. A secondary containment system shall be installed for any potential leakage from the batteries.
  2. Applicable material safety data sheets shall be submitted for all applicable materials on the site.
  3. Any expansion or alteration of the telecommunication facility, including but not limited to additional antenna and/or alteration of existing antenna, shall require approval pursuant to the regulations in effect at the time of re-application.

Dated at Randolph, Vermont this 22<sup>nd</sup> day of September, 2009.

RANDOLPH DEVELOPMENT REVIEW BOARD

**Concurring Board Members**

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/s/ Joel Tillberg, Chair

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/s/ John Becker

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/s/ J. Kenneth Currier

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Christopher Recchia

\_\_\_\_\_  
/s/ Samuel Lincoln

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/s/ Scott Berkey