

PLANNING BOARD MEETING  
Thursday, January 22, 2015 @ 7:00 p.m.  
8220 Loop Road  
Baldwinsville, NY 13027

The special meeting of the Town of Lysander Planning Board was held Thursday, January 22, 2015 at 7:00 p.m. at the Lysander Town Building, 8220 Loop Road, Baldwinsville, New York.

MEMBERS PRESENT: Fred Allen, Chairman; Joanne Daprano; Hugh Kimball;  
James Aust; John Corey; William Lester; James Hickey

OTHERS PRESENT: Al Yager, Town Engineer; Zach Benjamin, Planning Board  
Attorney and Karen Rice, Clerk

The meeting was called to order at 7:00 p.m.

I. PUBLIC HEARING -- None Scheduled

II. APPROVAL OF MINUTES

Review and approval of the minutes of the December 18, 2014 special Planning Board meeting.

Page 11, Paragraph 5, change Concern to Consent.

Page 4, Paragraph 12, change Dan to Dean.

RESOLUTION #1 -- Motion by Corey, Second by Kimball

RESOLVED, that the minutes of the December 18, 2014 special Planning Board meeting be approved as amended.

6 Ayes -- 1 Abstain (Hickey was not at the December 18, 2014 Planning Board Meeting)

III. APPOINTMENTS

1. Appoint Zachary Benjamin, Esq., Scolaro, Fetter, Grizanti, McGough & King, attorney to the Planning Board for the year 2015.

Zach Benjamin stated that he'd be pleased to act as legal counsel for the Planning Board.

RESOLUTION #2 -- Motion by Allen, Second by Hickey

RESOLVED, that the Planning Board appoint Zachery Benjamin, Esq., Scolaro, Fetter, Grizanti, McGough & King, attorney to the Planning Board and Allen Yager, engineer to the Planning Board for the 2015 calendar year.

7 Ayes -- 0 Noes

2. Appoint Allen Yager, engineer to the Planning Board for the year 2015.

Al Yager stated the he has enjoyed working with the Planning Board and would be pleased to continuing to act as Engineer to the Planning Board.

RESOLUTION #3 -- Motion by Allen, Second by Kimball

RESOLVED, that the Planning Board appoint Allen Yager, engineer to the Planning Board for the 2015 calendar year.

7 Ayes -- 0 Noes

3. Appoint an Acting Chairman to the Planning Board to act on behalf of the Chairman if he is unable or has a conflict of interest.

Fred Allen, Chairman, stated that for the last couple of years we have appointed a Deputy Chairman for the Planning Board to act in case the Chairman is not able. John Corey has been asked if he would accept that position and he has agreed to that. Many of the others have been very busy with the Land Use Plan, etc... and it's also great to spread the wealth around.

RESOLUTION # 4 -- Motion by Allen, Second by Kimball

RESOLVED, that the Planning Board appoint John Corey, Deputy Chairman to the Planning Board to act on behalf of the Chairman if he is unable or has a conflict of interest for the 2015 calendar year.

7 Ayes -- 0 Noes

IV. NEW BUSINESS

1. Information Only— Zachary Benjamin, Esq., Cell Tower Regulations  
Future Agenda Item: Syracuse SMSA dba Verizon Wireless, Project  
Location: 8456 Smokey Hollow Road

Fred Allen, Chairman, stated that there is an application that will be coming before the board for a cell tower. We won't be dealing with that specific application this evening; however in reviewing the application several questions come to mind. We've asked Zach to look at what the cell tower rules and regulations are in general as we don't have any regulations of our own; more particularly height regulations, "fall" zones, etc...

Mr. Benjamin stated that he has reviewed the application as well as the Code of the Town of Lysander. There is nothing specific as it pertains to height restrictions within the Code for cell towers. We have specific provisions for wind towers and we have other language dealing with possible exceptions, height limitations exceptions; which largely appear to pertain to signs/signage. The issue I see it on the application that is pending is more a "fall zone" issue because the tower is proposed to be 190' and that would arguably fall into or across the line of the premises that is covered within the lease agreement. The entire property is owned by the same landlord. Conceivably that could be addressed. The problem as I see it is the tower is close enough to an adjoining tower that it could fall into that. With no height restrictions being in

the Town Code, or NYS Building Code for that matter, the board would have to look at Control Site Review. One of the components they can look at within that review is potential danger. That is an issue that the board would have to take up. It appears to be less than 100' in distance from any existing communications tower. As it stands currently, there are no restrictions. The sections of the law that are cited in the application are applicable and they are correct. The issue is more the danger of the potential fall over and whether or not the tower could be placed on the property in an area where you would have sufficient distance between the proposed tower and the existing tower.

William Lester added...existing structure that is also there.

Mr. Allen stated that the tower appears to be 190' tall and is 194' from the road; so if it fell it wouldn't make the road; however it has the capability of hitting two of guy wires on the closest tower as well as the closest tower itself. Further, if it fell in the right direction it might hit a guy wire from the second tower.

Mr. Benjamin state that he reviewed some "fall zone" regulations that other Town Codes have from various areas and some of them have included language that would require a distance between other structures of two or three times the height of the tower. The Planning Board's Code does not have that regulation, so that is something that would need to be implemented for future cell tower provisions that might be proposed.

Mr. Allen stated that the interesting thing is, the existing tower that is closest to this proposed location is quite a bit taller than the 190 and it would go right across Hencle Boulevard if it did fall that way. Apparently, whenever this was approved that was not an issue.

Hugh Kimball stated that it's likely that this was never approved; they have been there forever.

Mr. Benjamin stated that he hasn't reviewed any case law that might be in New York's Common Law that discusses whether or not a "fall zone" can be implemented or whether or not they can be considered. My expectation is there probably is case law that deals with the issue; other jurisdictions...but as of yet I have not reviewed that and can certainly do that if the board would like.

Mr. Lester stated that the tower that was approved by this board on Tater Road was designed that way. If the tower were to fall it would fall within the boundary lines.

Mr. Kimball concurred stating that when they subdivided it, they subdivided enough so that it fell within the fall zone; but there were no other tower's either; which is an additional complication.

Mr. Allen stated that the only structure that is on that subdivision is the service building with the generator that services that tower.

James Aust questioned why the owner of that property subdivided.

Mr. Allen stated that the land was being leased to a cell company; the cell company wanted to own the land rather than continue on a lease basis.

James Hickey stated that what concerns him is you have the same landlord where he's subleasing a section of land and he doesn't care about a fall zone. In the future that land could be purchased and it could create a potential for hazard. Other than for a subdivision it wouldn't necessarily have to come back before this board.

Mr. Benjamin stated that the option agreement in the application does provide a right of first refusal just on that section of the property to Verizon.

Mr. Hickey questioned if any of the proposed tower would fall within the right-of-way of somebody...what is the setback of that road.

Al Yager stated that there's a 100' right-of-way.

Karen Rice, Clerk, added that the setback is 100' from the centerline of the road.

There was considerable discussion with regard to the guy wires being hit if the cell tower were to fall.

Mr. Benjamin stated that throughout the application there are statements that are made that this is the most ideal location based on review of the site. It doesn't address the proximity and these issues and what might happen if the tower were to fall.

Mr. Lester stated that perhaps the question to ask Verizon is could they lease tower space on the existing towers.

Mr. Benjamin stated that they did address co-location in different ways throughout the application, but not on these particular towers.

Mr. Kimball stated that the NYS Building Code that was provided talks about location, access, guy wires, etc... and states that it shall not encroach upon any public street; it doesn't say anything about each other and I'm wondering if that's the kind of case law you want to look at.

Mr. Benjamin concurred stating that he believes there may be some that addresses that.

Mr. Hickey stated that along the lines of Mr. Kimball...if it can hit another tower; the road was put in after the fact; but if we allow that and it creates a situation where it falls and takes down a tower across the road, that clearly falls under potential danger. That's the way I will be looking at this whole thing.

Karen stated that the towers were put up in the late 60's, it was just a little dirt road called Patterson Road back then.

Mr. Yager stated that one of the questions he would pose to Verizon is how many instances of failure of towers have you had; is there an instance of failure?

Mr. Allen stated that take a look at the wind turbines...

Mr. Yager stated that you have to take a look of that in context too from the loading and the weight of those towers compared to what we're talking about here. This is a simple truss structure and the total weight on that whole structure is likely less than 5000 pounds. Its tubular steel, it's not that much steel.

Mr. Allen stated that the wind load has to be pretty good though. The antennas are going to catch wind.

Mr. Yager concurred stating that there's huge loading on them, but the foundation design is meant for those loadings.

Mr. Hickey stated his concern of liability issues. If you allow for something to go in and it falls on other people's property, there are massive liability issues. If we approve something like this, how does it impact the liability on a Town, plus preserving rights of other people's property?

John Corey stated that every issue and concern that we have about this tower is in spades for the existing towers that are there. The issue is already there. It's a much worse risk to the towers that are there now than the new one. If the old tower comes down it's likely to take the other one with it. The situation there now is more dramatic than the one we're talking about.

Mr. Hickey stated that it appears to him that your risk factor goes up; it exacerbates an existing dangerous situation...

Mr. Allen questioned the procedure.

Karen stated that it will be going before the Zoning Board of Appeals for an area variance. They need 80,000 square feet and are proposing 50,000...you may not even see it if the ZBA doesn't approve the variance.

Mr. Allen also raised the concern of access. The Onondaga County Planning Board will not let them come out onto Hencle Boulevard. They have to have a road going out onto Smokey Hollow; which is just an easement.

Mr. Benjamin stated that he believes it's an easement that goes over property that is owned by the landlord.

Mr. Allen concurred stating that it's an odd way of "subdividing" the property to get to it. It's almost like making a landlocked property.

Mr. Benjamin stated that that is actually what they have done without actually subdividing, just leasing the property where you're provided an easement with an option. If Verizon ever exercises the option then you would need a subdivision of that parcel.

Mr. Lester questioned whether or not removing the two existing towers and have them co-locate with the new Verizon tower where you would have only one tower on the site is an option.

Mr. Benjamin stated that he doesn't know what is on the existing towers.

Karen stated that they are both radio towers.

Mr. Corey stated that the existing tower's that area there are considerably taller than this one and suggested that they may not be able to get the required frequency.

Mr. Benjamin stated that his expectation is that Verizon probably won't want to spend the additional cost. They tend to keep their own cell service on that tower and they don't co-locate. Usually where you see the co-location, at lease in my experience, is on water towers or silos. Mr. Allen questioned why they don't construct one on the land across the street. The land directly across Hencle Boulevard is for sale.

Mr. Allen stated that the Zoning Board of Appeals is going to be looking at it before we see it again.

Karen concurred stating that their Public Hearing is scheduled for Monday, February 2, 2015 at 7:30 p.m.

Mr. Hickey stated that he'd be surprised if County would approve anything that falls within their right-of-way.

Karen stated that County did hear the application and the resolutions were emailed out earlier this month.

The application was forwarded to the Onondaga County Planning Board for their review and recommendation on all three items, Area Variance, "Subdivision/Lease" and Controlled Site Use. Their only comment on all three are, in part:

Per the Onondaga County Department of Transportation access to Hencle Boulevard is prohibited and the applicant is required to obtain a permit from the Department for any proposed driveways on Smokey Hollow Road and prior to any proposed work within a county road right-of-way.

The Board also offers the following comment:

The applicant is advised to contact the U.S. Army Corps of Engineers and/or the New York State Department of Environmental Conservation to confirm the presence of federal and/or state wetlands, respectively, and/or the 100-foot state wetland buffer on this site, and obtain all necessary permits for any confirmed wetlands and buffers and show them on the plans for the site.

Mr. Kimball stated that he'd like to see something that would actually show the fall zone for all three towers and the anchor points for all of those towers; then it would be really obvious what could happen if any one of those three happens to fall in a certain direction.

Mr. Allen stated that the package does talk about the other towers; however this application is only about the Verizon tower.

Mr. Allen continued stating that rather than proceeding and looking for specific case law, we will wait until the Zoning Board does its thing.

Mr. Benjamin concurred.

Mr. Aust questioned who goes to Verizon and talks to them about possibly buying that property across the street.

Mr. Allen stated that they would be their procurement department. I don't know if it's the Town's responsibility to solve their problem.

Mr. Benjamin concurred stating that after it goes through Zoning and it gets to that level you can have that conversation with them.

Mr. Corey concurred stating that they have to get to that position where they've got think of alternatives before they go that way really.

There was some discussion with regard to amending our Town Code to include such things as cellular communication towers.

Karen stated that we have some draft language on file but it's got to be 15 years old. It never went beyond the talking stages. The proposed Land Use Plan has resurrected that discussion and the Town hopes to have one in place in the near future.

Mr. Yager stated that we could get that implemented and on the books by the time this application reaches the Planning Board.

Mr. Allen thanked Zach for the presentation. There being nothing further the meeting will adjourn to the February 26<sup>th</sup> meeting.

V. ADJOURN

RESOLUTION #5 -- Motion by Hickey, Second by Corey

RESOLVED, that the January 22, 2015 special Planning Board meeting adjourn at 7:30 p.m.

7 Ayes -- 0 Noes

Respectfully submitted,

Karen Rice, Clerk