

TOWN OF LSYANDER
ZONING BOARD OF APPEALS
8220 Loop Road, Baldwinsville, New York
Monday, February 2, 2015 @ 7:30 p.m.

The special meeting of the Lysander Zoning Board of Appeals was held Monday, February 2, 2015 at 7:30 p.m.

- MEMBERS PRESENT: L. Micha Ordway, Chairman; Richard Jarvis; Frank Costanzo
- MEMBERS ABSENT: S. Webster Reid and Chris Patrick
- OTHERS PRESENT: Robert J. Brenner, Esq.; Eugene S. DiDmenico; David M. Herbowy; John Kalkbrenner; Rose Kalkbrenner; Don Kinsley; Nena Kinsley; Hugh Kimball, Planning Board and Karen Rice, Clerk

The meeting was called to order at 7:30 p.m.

I. PUBLIC HEARING -- 7:30 p.m.

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| 1. Area Variance—Lot Size | Syracuse SMSA/Verizon |
| Case No. 2015—001 | 8456 Smokey Hollow Road |

The Public Hearing opened at 7:30 p.m.

Micha Ordway, Chairman, reviewed the application of Syracuse SMSA/Verizon Wireless, for an Area Variance, for property located at 8456 Smokey Hollow Road, Tax Map No. 055.-02-04.0, Baldwinsville, New York, to allow the construction of a Cellular Communication Tower and Equipment Shelter on an undersized lot in accordance with Article X, Section 139-14, Paragraph B91)(a), of the Lysander Town Ordinance.

Robert Brenner, Esq., Nixon Peabody LLP, represented the applicant with David Herbowy, Site Acquisition Specialist and Eugene DiDamenico, Project Engineer, represented Syracuse SMSA/Verizon Wireless.

INTRODUCTION OF PROPOSED PROJECT

Syracuse SMSA is a Limited Partnership d/b/a Verizon Wireless is a public utility and wireless telecommunications licensee of the Federal Communications Commission. To remedy service inadequacies in and around the Smokey Hollow Road portion of the Town of Lysander, Verizon Wireless proposes to construct and operate a 190' wireless telecommunications facility on property located at 8456 Smokey Hollow Road.

The Site consists of a 1.15 acre leased portion of an approximately 10.53 acre parcel owned by Leatherstocking Media Group, along with a thirty (30) foot wide access and utility easement running from the Lease Parcel to Smokey Hollow Road. The Project will consist of the construction of a 190' self-support tower (with an additional four (4) foot lightning rod), the installation of twelve (12) wireless telecommunications antennas on the Tower, a 12' x 30' equipment shelter and other associated improvements.

The Site is located in the Town's AR-40 zoning district. Utility Substations (the definition of which includes the proposed wireless telecommunications facility) are permitted in the Town's AR-40 zoning district upon Controlled Site Plan review and minor subdivision approval from the Planning Board (See Town of Lysander Code Sections 117-40, 139-13(B)(1), 139-14(B) and 139-29).

DISCUSSION:

Mr. Ordway stated that the site consists of two Towers of some sort.

Mr. Brenner concurred.

Mr. Ordway questioned if an application has been made for a driveway permit with the Onondaga County Department of Transportation.

Mr. Brenner stated that the applicant will comply with any necessary County DOT approvals once the zoning approvals are in place. Access will be off of Smokey Hollow Road.

Mr. Ordway stated that the application was forwarded to the Onondaga County Planning Board for their review and recommendation, who have made the following determination, 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 with 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.

To add to the introduction, Mr. Brenner stated that initially when this search ring was developed and it was assigned to Mr. Herbowy, who requested an audit of the Town Code. We had flagged the fact that potentially there would be this 80,000 square foot lot requirement. We passed that information along to Dave who leased as land that was absolutely feasible to get us as close that that 80,000 square foot requirement to minimize the amount of the variance we are seeking. In so doing, Dave leased in excess of 50,000 square feet of land. The company traditionally leases 10,000 square feet. The reason why we weren't able to lease the full 80,000 is because there are some site restraints with the existing tower locations, guy wires, etc... The 50,000 square feet would be the ideal lease parcel size from the landowners perspective.

Mr. Brenner continued stating that the two existing towers on the site are AM/FM radio towers and guy wires...the tower we are proposing on the site is a bit different. Our tower is a free standing lattice tower. It won't have any guy wires coming off of it like you see on the AM/FM towers. It supports itself. It doesn't go out any further than the base of the tower. To the extent of whether there's a tower failure or things like that the tower can be designed in such a way so that it doesn't fall to the full size of its height. Break points can be designed in the tower and

that's something the company plans to discuss with the Planning Board as we go through this site plan.

Mr. Ordway questioned why the tower is necessary; the application doesn't really say why it's necessary.

Mr. Brenner stated that the reason why we have to produce this facility in this particular area is because there is a gap in coverage. Exhibit F in the application talks about the gap in coverage and the need for a site in this particular location. To meet that need the company develops a search area; in the search area there weren't many parcels for us. The company seeks to co-locating where it can, we would have done so on the existing AM/FM radio towers but they didn't pass structural analysis. They couldn't handle the addition load of the Verizon Antenna. The weight would be too much for those towers to handle. Secondly, the company looks where it can co-locate a tower in existing areas where there are already towers. Most ordinances call for and most municipalities prefer less visually intrusive, all of that, to the extent if this particular tower was located somewhere else in the search range it may develop similar "tower farms" to what you see there now, multiple towers located in the same area. There were other sites in the vicinity but they were heavily treed, a good number of trees would need to come down. This particular site trees are already down, there are towers there, from a siting perspective perspective this was the most appropriate site.

Mr. Ordway reiterated that it's not the only site, it's just the appropriate one.

Mr. Brenner stated that there were two sites, the site across the street and this particular site. When the company developed this range they contacted the landowner across the street and they weren't interested in leasing, that's why this site was chosen. It's both the RF constraint and the landowner being willing to lease.

Richard Jarvis questioned if there was a photograph to show us what it's going to look like.

Mr. Brenner stated that that was something we were prepared to discuss with the Planning Board as part of the site plan review process. We did have the produced even though they're not required.

Mr. Jarvis questioned how tall the tallest tower is there right now.

Karen Rice, Clerk, provided a map showing all of the towers in the Town, including the two Radio Towers, one at 270' and the other at 308' for the WSEN Radio Station at the corner of Smokey Hollow Road and Hencle Boulevard.

Mr. Jarvis stated that in reviewing the application, I think the engineer filled it out, there's a question that talks about, it may have been an oversight, but, it talks about facilities serving children, the elderly, people with disabilities, etc... within 1500 feet, which is a long ways, but the Town Park is across the street, certainly that serves children on a daily basis. Why was that answered no?

Mr. Brenner stated that it was answered no because there's a separate inquiry about parks and recreation facilities in the area if I'm not mistaken. Parks generally aren't included in that analysis, that's more nursing homes, assisted living facilities, things like that.

Frank Costanzo questioned the cell boundaries, three miles apart, four miles apart, from one cell to another...

Mr. Brenner stated that it depends on the particular area that the cell tower is operating in. They can be spaced closer together than that or further apart. It depends on the demand, terrain, etc...but if you want a more in depth analysis than that Gene can speak about that.

Mr. Costanzo asked if they were anticipating more towers in the Lysander area?

Mr. DiDomenico spoke to that regard, however it was unclear as he didn't use the microphone.

Karen questioned if anyone was going to co-locate off of this one in the near future.

Mr. Brenner stated that the company always allows co-location. A copy of the co-location policy was made part of the application. If another company has a gap in coverage in this area they will certainly be able to co-locate on this tower. It will be constructed at such a height where it would accommodate co-locators.

Karen added...rather than another tower in this location currently.

Mr. Costanzo questioned if the 750 MHz/4G is bigger than what you have in the area?

Mr. Brenner discussed the different frequencies the company currently uses and their plans to move technology forward.

Mr. Costanzo stated that one of the maps indicates that the tower is 190', but it's actually 194' with the lightning rod on the top. If this thing ever fell...could you give us a radius here, 360 degrees, of how this could fall because we have some homes, buildings and the other two towers to consider. I for one would like to see that fall zone/radius.

Mr. Brenner stated that that is something we can have before we appear before the Planning Board. The tower is currently designed without a breakpoint, however in the unlikely event that the tower would fail, they really don't, it would fall to its height of 194'; but I talked to the engineer and there is a letter that can be submitted to the board stating that a breakpoint can be designed in this particular tower at the mid-way point, so if it were to fall it would collapse to half of its height or at least it would be designed to do that. That's something the Planning Board can condition their site plan approval on, assuring that a breakpoint is built in at mid-way on the tower height to accommodate a smaller fall zone.

Mr. Costanzo questioned the 12' x 30' building, more particularly, what is it constructed of?

Mr. Brenner stated that they're prefabricated buildings dropped on site by a crane. They are generally constructed of steel in a sandstone color with a raised surface, similar to a popcorn texture.

Mr. Costanzo stated that the reason he is asking is because you have two VAC units in there/two generators; that make quite a bit of noise. We have people that live in the vicinity...

Mr. Brenner stated that the back-up generator operates in the event that there's a power failure and they typically exercise it once a week during day time hours for one hour to make sure there's not an issue, but we can get the decibel levels of that. Most of the sites we work on

work at 65 to 70 decibel levels which is below the level of a household appliance (washing machine, something like that).

Mr. Costanzo stated that with the 700 MHz, do you have bigger antennas than a normal tower.

Mr. Brenner stated that the antenna panel is not bigger; they're typically 8' antenna panels.

Rick Jarvis questioned lighting of the building and/or structure.

Mr. Brenner stated that the tower itself will not be lit because it will be below the FAA requirement. The threshold for lighting is 200' and we're at 194'. There will not be a strobe light or red light on top. The only lighting on site would be over the door on the equipment shelter; which has a motion sensor on it. If someone were to approach the building that light is going to kick on. It's on a timer.

Mr. Ordway questioned how long the proposed road/driveway would be off of Smokey Hollow.

Mr. Brenner stated that from the edge of the Smokey Hollow right-of-way to the fence compound as it's currently designed is roughly 350'.

Mr. Ordway questioned how long the construction on the tower would take.

Mr. Brenner stated that that depends on whether or not there are particular issues that they run into. It's hard to say, two to three weeks for a raw land build.

Mr. Ordway questioned what happens if we don't grant the variance, other than the obvious appeal process. Say you can't put a tower in this location, what happens?

Mr. Brenner stated that if we can't put a tower in this particular location we would have to seek other candidates within the search ring. That tower needs to go within the search ring. Denying a variance for example at this particular site wouldn't make the tower in this vicinity go away. The tower has to be here for Verizon's network to function appropriately. Verizon is also entitled to the "relaxed public standard under New York Law", so the traditional zoning standards don't apply. To the extent that we can prove a need and a particular location satisfies the need (unclear) the Courts in New York has interpreted public utilities being exempt from the traditional zoning requirements. We've included the Public Utility Standards in Exhibit C of the application and have cited some case law.

Mr. Ordway stated that we did have some opposition from some folks in the area; one of which put in an email because he couldn't attend raising some concerns...

Donald Kinsley, 27 Athena Drive, Baldwinsville, New York, submitted the following email, in part:

Dear Ms. Rice,

I received a notice that the Town of Lysander Board of Appeals is considering an application from SMSA / Verizon Wireless to build a cellular communication tower in the undersized lot located 8456 Smokey Hollow Road, Baldwinsville - directly behind my home and my neighbors homes. I want to voice my opposition to this plan but am unable to attend the meeting as I will

be with my daughter who is scheduled for surgery that day. That undersized lot already has two very tall radio antennas, cables, fencing and a storage building. In addition, there are high power poles running along the railroad tracks feeding power to the Anheuser plant. We already have problems related to the radio towers causing us to hear that radio station in our phones, computers, and other electronic equipment. Per the Town's Ordinance, that lot is undersized for this construction and my wife and I are against this proposed construction. If you need a signed letter from us, I would be glad to put one in the mail to you.

Thank you,

Nena and Don Kinsley

Mr. Brenner stated that as far as the lot being undersized, the lot itself is not undersized. The lot itself is in excess of ten acres. The reason why we have the issue to seek the variance is because of the Town's requirement for the leased parcel is to go through subdivision approval. It is a fairly large lot and can certainly accommodate the uses that are on it in addition to Verizon's proposed use. As far as the interference, that's an interesting question, and it's interesting to me that that's the particular concern the author of that email has is because wireless telecommunication towers are quite a bit different than AM/FM radio towers. AM/FM radio towers are designed to cover a much larger area and because they're intended to cover a much larger area they are operating at a much higher power. That's the reason why folks in such close proximity to an AM/FM radio tower experience that interference. A wireless telecommunication tower wouldn't have an effect on folks in the vicinity. The power levels of a radio tower are so far in excess of what this proposed wireless telecommunication tower would operate at that it will really have no effect. To the extent that that's a concern of the Town we'd be more than happy to provide a non-interference letter from a third party engineering firm as a condition to a building permit.

There being nothing further, Mr. Ordway opened the floor to any questions from the public:

Mr. Kinsley stated that his concern is more than the interference. The reason we bought our home where we did is because we wanted to be out in the country. We are right at the edge of the Village. We have a wildlife preserve behind us, all trees, very natural. We just built a deck on the back of our house and the last thing we want to do is sit on the deck and look at a cell phone tower. I've learned a lot in the short amount of time I've been here this evening. The reason I'm here is twofold, one is I don't want anyone considering to buy my house to see two radio towers, a cell phone tower, high power lines, etc...I'm protecting my property. The second is cosmetic. I don't want to sit on my deck and stare at a cell phone tower; I don't want to hear generator's running. I want to continue to see deer walk around back.

In reviewing the plans, it appears that there is one tower with guy wires, with the next tower parallel between the Kinsley's property and the proposed tower site, approximately 750 to 1000' away.

Mrs. Kinsley stated her concern with decreased property values and it not being aesthetically pleasing.

John Kalkbrenner, 8436 Smokey Hollow Road, stated his concern with underground springs and a creek that comes through there. It's a waterway that cuts through his property. If the tower were to fall it would likely be in his backyard very close to the house. When you put this tower; when you place the tower in front of the first tower, off to the right, facing from Smokey Hollow Road, you're closer to the waterway. There are high voltage cables coming from the radio shack. If that thing falls it either hits the high voltage wires and takes the radio station out, takes the tower out, takes the guy wires out and causes a disaster area. Due to the frequencies from these two towers we've had to put filters on our computers, our T.V.'s and you could still hear the radio station. Also, the radio waves, nobody has proven it right or wrong, we have people in the area that have had cancer, bone cancer, illnesses, etc... all the way up the street. I don't know if it's from the radio towers, but I don't need more crap in my neighborhood to cause more disaster for all of us. It would have been better on the other side of the road, but they want the open space to pick up the 4G. We've tried to get 4G, we couldn't get it, they wanted to sell us the relay for \$250. You've got a park across the street that has 1000's and 1000's of feet of property. You've got State Game Lands (Three Rivers Game Management). 1000's and 1000's of feet...they can put a cell tower and blend it in with the scenery. They won't see it, I won't see it. We probably wouldn't even care. I think it's a bad spot even though there are two towers there. They've got money to go somewhere else, right across the street to the State Game Lands. Mr. Kalkbrenner thanked the board for their time.

Mr. Ordway questioned if Verizon could lease State land?

Mr. Brenner stated that to the extent that it's State Park Lands, a lease would require State legislature, which is not something that happens often. That would be extremely onerous and not practicable in this instance.

Mr. Costanzo stated that there were eight additional properties looked at, with three that were acceptable, but Verizon didn't pursue it, if I'm not mistaken.

Mr. Herbowy concurred stating that they looked at co-locating on the radio towers, but it was not feasible from a structural standpoint so we reviewed building a tower on that same parcel since (unclear) there was interest from the landlord.

Mr. Brenner stated that had we proposed a site where there would be the removal of a few hundred trees, we would have had that opposition as well.

Mr. Ordway questioned if the other acceptable locations were in residential areas or more remote from that.

Mr. Brenner stated that they were across the other side of Hencle Boulevard, it's not like they're a half mile away, they would have to be right there.

Mrs. Kinsley questioned the other acceptable areas.

Mr. Brenner used the proposed site plan to show the public the areas in question, identifying the 10 acre piece, across from Hencle, diagonal across the intersection of Smokey &

Hence...they're all in the immediate vicinity. They were not on the other side of the Town of Lysander.

Mrs. Kinsley questioned if they were in business areas and not homes. Further, I must admit I do worry about health concerns.

Mr. Brenner stated that as far as health concerns, FCC has a rule making that when considering an application for wireless telecommunication it's not appropriate to discuss health concerns and things like that. There are federal regulations on that issue.

Mr. Ordway questioned if the board was ready to put to put it to a vote.

Motion by Ordway, with respect to Case No. 2015—001, the application of Syracuse SMSA/Verizon Wireless, seeking a variance for property located 8456 Smokey Hollow Road, Baldwinsville, New York, all in favor...

Mr. Brenner questioned if the board would review the SEQR process before putting it to a vote.

There was some confusion with the board members as to who would be Lead Agency and review SEQR.

Mr. Brenner stated that he sent out an amended Long EAF to Karen today who recirculated it to the board, asking for a Negative Declaration pursuant to SEQR.

Mr. Ordway asked if all were in favor of passing a Negative Declaration.

Mr. Jarvis stated that he is not sure what that is having never had it presented before. I got Karen's email today, but I guess I'm not understanding...

Karen stated that the Zoning Board of Appeals doesn't normally review the Long EAF when it's followed by a Site Plan. The applicant fills out Part I, the Board designates who should be the Lead Agency, reviews Part II and answer those questions. If you determine that it's an Unlisted Action with a Negative Declaration, that it's not going to have any significant impacts, you can make that resolution.

Mr. Ordway stated that he has only been on the board 1 ½ years and he has never done one and asked that the board take a short recess...

During the recess, Karen provided Part II of the Long EAF to the board members for their review and recommendation.

Mr. Ordway stated that Part II was not included in the package for this evening's meeting and it is a 10 page form that we have not yet even looked at; as such the board is going to table this until our next meeting so that we have the opportunity to look through Part II and complete it properly so we're not going to take a vote tonight.

Mr. Brenner stated that Part II is completed by the municipality, that's why it wasn't provided.

Mr. Ordway stated that he's not suggesting that anyone did anything wrong with the application, we typically do not do SEQR at the ZBA level, it's typically done by the Planning Board. We will table this until next month.

Karen added that at that time we may have a full board as well.

Mr. Ordway concurred and addressed the public stating that there will be no action tonight because there is a second part of this process that we were asked to review. No decision will be rendered.

Karen stated that Monday, March 2nd, 2015 at 7:30 is the next Zoning Board of Appeals meeting. We meet as needed.

Woman...asked if they could speak at that time.

Mr. Ordway stated that she would and that a legal notice would be published again.

Karen stated that it won't be published again, the board can adjourn it until such time that we have a full board, unless...

Mr. Brenner stated that if you can't complete the SEQR form tonight and you're not in a position to take a vote...I feel as if we've answered the questions of the folks that came out, perhaps you might entertain a motion to close the public hearing. We've presented the project, we've addressed the questions. You understand from Karen that it was noticed.

Karen concurred stating that a Legal Notice was put in the paper and property owners within 300' were notified a week prior. You can close the hearing but have to act on it within 62 days I believe.

Mr. Kalkbrenner expressed his concern that health and safety isn't being taken into consideration.

Mr. Ordway stated that Counsel is saying that there are FCC regulations prohibiting us from taking into our consideration whether or not radio waves, or whatever type of waves are being produced by this particular tower can create cancer or any other health issues. He is saying that under the law we can't consider that.

Woman...I find that amazing.

Mr. Ordway stated that the applicant has asked if we could entertain a motion to close the public portion of this application.

Motion by Ordway, Second by Jarvis to close the public hearing.

3 Ayes -- 0 Noes

Karen stated that it still won't be renoticed, it will be just continued on our next agenda until it's resolved.

The Public Hearing closed at 8:20 p.m.

II. APPROVAL OF MINUTES

Review and approval of the October 10, 2014 special Zoning Board of Appeals meeting.

RESOLUTION #1 -- Motion by Jarvis, Second by Ordway

RESOLVED, that the October 10, 2014 Zoning Board of Appeals meeting minutes be approved as submitted.

3 Ayes -- 0 Noes

III. ADJOURN

IV.

RESOLUTION #2 -- Motion by Jarvis, Second by Costanzo

RESOLVED, that the February 2, 2015 special Zoning Board of Appeals meeting adjourn at 8:20 p.m.

3 Ayes -- 0 Noes

Respectfully submitted,

Karen Rice, Clerk