

PLANNING BOARD MINUTES
JULY 23, 2008

Chairman Johnston called the meeting to order at 7:02 P. M., with the following members present: Chairman Johnston, Mr. Dwight Anson, Mrs. Evelyn Brant, Ms. MaryLou Fitzgerald, Mr. Alan Hipps, Mr. Ken White, arrived at 7:11 P. M., Dr. Joyce Daniels, Alternate. Absent, Dr. Craig Russell and Alternate, Mr. Chris Maron. Also present, Mr. George Hainer, Building Codes/Zoning Officer and Secretary, Barbara Breyette. Guests in attendance, Mr. Bruce Ware.

MINUTES: The minutes of the June 25, 2008 meeting were approved on a motion by Ms. Fitzgerald, second Mr. Anson, Chairman Johnston asked if there were any corrections or comments or questions regarding the minutes, there being none voiced, all in favor, carried. Minutes were approved.

Chairman Johnston - The next item of business, we will combine items three and four: **VERIZON TOWER** -New York RSA No. 2 Cellular Partnership d/b/a Verizon Wireless' application to the APA to construct and operate an 89 foot Telecommunications tower off Boyle Road (Tax Map No. 56.4-1-12.000 -Kathleen Bramich-Brack). Local Government Notice Form to be completed.

OMNIPOINT COMMUNICATIONS, INC. -Tax Map No. 56.4-1-8.100&200 - Omnipoint proposes to extend the existing guyed tower located behind the Hilltop Motel (35 Youngs Road) to allow for the co-location of its antennas. Local Government Notice Form to be completed.

George has advised me that there are some more cell tower applications on the way.

Mr. Hainer - There have been two inquiries - one, by Verizon Wireless which is the same that has the one at the golf course and they're planning on putting the tower on the Boyle Road, on the Bramich-Brack property, which used to be Joe Forcier's, house, on the knoll in the back. They're planning on putting up an 89 foot structure.

Chairman Johnston - Now that will be APA jurisdictional.

Mr. Hainer - Yes, that's APA jurisdictional, but I think it's going to have to go through our ZBA, due to the nature of our law, we don't allow, we define major public utility but we don't allow it.

Mr. Hipps - Just like Verizon had to go through the ZBA?

Mr. Hainer - Yes. Hopefully, it will be a quicker process, because the APA has their tower policy in there, and they're actually reviewing it, so hopefully it will go a lot quicker, but we still have input.

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Mr. Hipps - You should ask them, "if this will cover the Village".

Mr. Hainer - And that's the other thing that I told the Attorney when they called me, I said, "unless this tower gets up and running", a new public hearing for the ZBA on this tower is likely to get a little more in detail with why this tower doesn't work and are you going to put up one that's going to work, and what's the actual coverage going to be and it might require a consultant".

Dr. Daniels - I understand that they have to apply to be able to put the towers up, but just because they apply doesn't mean they will actually follow through and do it. For example, if both of these companies are competing for essentially the same plot, Youngs Road and Boyle Road, opposite each other, would they necessarily both end up putting a tower there or would one put up a tower and then the other one drop out?

Mr. Hainer - No, the other one is co-locating on an existing tower, behind the Motel, there was a 50 foot tower there, they extended it 15 feet about a year and a half ago and now they want to extend it another 15 feet, put another carrier on it. It's a Unicel tower, which is what the APA wants to see.

Chairman Johnston - Joyce has a good point, would the APA possibly suggest that Verizon co-locate on this tower.

Mr. Hainer - That's a possibility, although Verizon is looking at putting their, in the paper today, it stated six towers and they have a stream of them, like ten of them, along the Northway, they want to put in. That's where the Planning Board could have comments because, we have a Local Government Notice form that has to be signed and on the bottom of it, there's a check-off that the Town wants to be involved. This T-Mobile site, the one that wants to co-locate, they're anxious to move ahead on it, actually they're both anxious, but Verizon I think will be a little longer.

Dr. Daniels - Let me also ask, would there, even though these two are applying at this point, would that also mean that no other cell towers would be proposed, or would follow this with Sprint, I don't know who else, would they all try to put ones there?

Mr. Hainer - I think if the Verizon towers are there, they're going to be made to co-locate, other carriers on them, so that's going to be part of the way they build them, the way the footings are done, the way the APA --

Dr. Daniels - So they wouldn't just go to another property -

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Mr. Hainer - No, I don't think the APA would -

Dr. Daniels - They would try to get them consolidated?

Mr. Hainer - I would think so and that's something the Planning Board could certainly ask the APA. There is that movement out there to get the towers up as quickly as possible along the Northway. In Keeseville, I guess there's one tower, they said there were six carriers co-locating on that one. The APA just approved it. So those forms could be signed, any discussion that you want to have on this, they (Verizon) want minutes to that effect.

Chairman Johnston - We're not doing that at this point because we haven't seen an application.

Mr. Hainer - Right.

Chairman Johnston - I just want to make a personal comment. I wrote a letter, personal letter, to the ZBA on January 16. The very first paragraph of this letter, I said, "therefore, the ZBA should avail itself of it's authority to have the applicant pay funds into an escrow account to enable the ZBA to hire it's own radio frequency engineer to verify that the proposed location and height actually works. Among other things a crane or bucket truck be used to hoist a test antenna to conduct a test drive when the vegetation is in leaf to demonstrate real-world performance". So, I think it's unfortunate that the ZBA didn't do that.

Mr. Hainer - We started down that path, something happened with Wells Communication, I think there was a conflict there, and it sort of just dropped.

Chairman Johnston - Wells Communication is a vendor, they're not engineers, not radio frequency engineers.

Mr. Hainer - I guess one guy was or has credentials for it, but I think he was stepping on his own feet. There is the plan here, Verizon did submit where the site is.

Dr. Daniels - Are you saying that you're concerned that the towers would be built and maybe not functional?

Chairman Johnston - Well, we already have one.

Dr. Daniels - I mean, that's obviously poor business plan.

Mr. Hainer - They assured me, three weeks ago, that they were receiving new equipment from Lucent Technologies, it was going to straighten out this tower. The problem with this tower is, it's not handing off properly and your cell phone keeps going back to

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the Vermont site, this tower isn't doing what it's supposed to be doing. That was three weeks ago, it should have been up and operating by now. Hopefully, soon, it will be functioning better than it is right now. Until we actually see it -

Chairman Johnston - Is there a site plan here, George? Is it anything more than a generic site plan?

Mr. Hainer - It's to the site showing where the road is -

Chairman Johnston - There's topography and all that, actual lot lines, let's take a look at it.

The Board looked at the Verizon Design received in our office July 7, 2008.

Mr. Hainer - This is the letter we have to sign.

Chairman Johnston - We don't have to send it back, yet.

Mr. Hainer - This is the Local Government Notice Form, so they can make application to the APA.

Ms. Fitzgerald - They don't want any comment from us now, is that what you're saying?

Mr. Hainer - When they submit an application, they'll submit an application to us, too, but it gets them to fulfill the necessary requirements of their APA application. We fill that out, we tell the APA they have to comply with zoning, subdivision and NY State Building Codes.

Chairman Johnston - They have your name and signature on it, so you're the one who will fill this out.

Mr. Hainer - I just want to make sure everybody is ok.

Ms. Fitzgerald asked the exact spot.

Mr. Hainer - The road comes up on -

Ms. Fitzgerald - There are places up there that you can actually see the lake.

Mr. Hipps - It looks pretty close to the top.

Mr. Hainer - Here's the house, here's the Boyle Road in relation to the house and here's John Pierce on this side and here's Cliff Legacy. It's right on the edge of their property, the road.

What's the contour like?, Bill?

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Chairman Johnston - It looks like it's about maybe 735 above sea level.

Mr. Hipps - About 600 feet.

Chairman Johnston - Base elevation is 744. Is there going to be, well, George, when the APA starts the review process, they'll do a site visit, right.

Mr. Hainer - Oh, yeah.

Chairman Johnston - Would you let us know when the site visit is, so that anybody that's interested could go out there. So it's just going to be slightly above the level.

Dr. Daniels - And, what do they do when the trees -

Chairman Johnston - This may be hypothetical, well no, it says tree canopy height, 80 feet. So, presumably, they've measured it, the tree canopy height.

Probably extended it.

Chairman Johnston - They have trees mapped here.

Ms. Fitzgerald - Except, that the growth on the road, I don't know how that's going to impact some of those trees on the east side of the road might grow taller.

Mr. Hainer - So, we'll check off the check here "municipality wishes to discuss this project with Agency staff". (Copy of Local Government Notice Form, page 5A, attached).

Chairman Johnston - Will the other one (Omnipoint) be jurisdictional also, George?

Mr. Hainer - I don't believe so, because we can have comment on it, but I know the last one, I don't believe we did much on the last one.

Chairman Johnston - Why would it not be jurisdictional, it's going above 39 feet isn't it?

Mr. Hainer - The other one was above 39 feet, they extended the other one to, I think it was 65 feet. It was jurisdictional to the APA.

Chairman Johnston - This latest project, Omnipoint Communications, that will be jurisdictional, right?

Mr. Hainer - Yes.

Chairman Johnston -- So, will they, do you have a form?

Mr. Hainer - Yes, I do.

Chairman Johnston - Could you check that we would like to be (Local Government Notice Form, page 6A, attached, Omnipoint Communications).

Mr. Hainer - Yes.

Mr. Hipps - They'll be giving us propagation studies or the ZBA.

Mr. Hainer - I don't know if this one is required to go before the ZBA, because the last one, the extension co-location on an existing tower, this one probably will require it.

Chairman Johnston - When the APA gets involved, maybe, the APA will want propagation studies.

Mr. Hainer - Yes.

Chairman Johnston - Anything else on the cell towers? We're up to item five,

Bruce Ware - Tax Map No. 66.58-2-22 & 23.000

Chairman Johnston - As you may remember, from the last meeting, Bruce presented a proposal to reconfigure his two properties. George contacted me and expressed concern about potential appearance of conflict of interest. I suggested to George that he recuse himself from making a decision on what this is, the type of project it is. I recommended that he speak to Dan (Supervisor Connell) about it. So, Dan asked the Attorney for the Town, Mr. Gary Wilson, to look into this. Mr. Wilson wrote a letter (attached, pages 6A-6D). Chairman Johnston asked Mr. Ware if he had seen the letter.

Mr. Ware - No, and was given a copy by Chairman Johnston.

At this time the Board and Mr. Ware read the letter.

Chairman Johnston - Basically, what Mr. Wilson is saying, is that in order to do this it would require a variance. It is possible under State law to directly go to the ZBA in this type of situation. Apply for a variance and Bruce doesn't need to apply for a subdivision and be rejected. Is that what you intend to do, Bruce, or don't you know yet?

Mr. Ware - Yes, I haven't seen this so I didn't know. My assumption is that the ZBA then grants, they can look at it and make it happen or say "no".

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Chairman Johnston - I thought you were aware of this, because Gary, I spoke to Gary on the phone and he told me he had talked to you about this -

Mr. Ware - I didn't know about skipping the Planning Board part -

Chairman Johnston - It comes back to the Planning Board. Assuming the ZBA approves it, then it would come back to the Planning Board for subdivision approval. You don't have to apply, be rejected, then go to the ZBA. Most situations you can't go to the ZBA until you've been denied, so this is a streamlining of the process.

Mr. Ware -- That would be I guess, what I would do then, go to the ZBA, who do I call?

Mr. Hainer - You would get an application from Barbara and the fee of \$50 to file it.

Chairman Johnston - Moving on, item six, "**Item of Information**" The Town Board will meet, Wednesday September 3, 2008, to discuss zoning amendments, that are in the works and, also, outdoor furnace issues. This is just for your information, if anyone is interested, you should go to the meeting and participate.

Dr. Daniels - Will the APA have done anything about their outdoor burning by then or would that still be in the process?

Mr. Hainer - I don't think that's going to be settled until next year or so. They currently have a law in effect now, that they can't shut down, what they want is local communities to draft their own.

Chairman Johnston - I am willing to research, draft, a local law for the Town of Westport, if the Town so desires, for outdoor furnace. I'm just saying, "I'm willing to do this", if the Town is interested in having me do it.

Dr. Daniels - I am concerned, I'm surrounded by outdoor furnaces, and although they're technically called wood furnaces, they, people are not just burning wood. In fact I ran into one of my neighbors at the post office and told her that I had been driving around the other night because the smell was so bad, it was actually sickening, and we couldn't figure out what was on fire. She stated, "Oh, that was us, we were burning cardboard". "We were the ones making the terrible smell". But, that didn't end it, they kept burning cardboard. I guess we don't really understand, maybe I need an explanation, of what the difference is between just outdoor burning and wood furnace. It appears that you have an outdoor wood furnace -

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Mr. Hainer - It's a closed burning barrel?

Dr. Daniels - it's a closed outdoor burning -

Mr. Hainer - It's not supposed to be, they're supposed to burn clean wood, natural firewood, dry -

Ms. Fitzgerald - Not treated.

Mr. Hainer - not treated, not construction debris, not -

Dr. Daniels - There was construction debris in there as well.

Mr. Hainer - I think the thing to do then is to try to compile a list of these people and then write them letters explaining the situation. I think they're aware of it, it's just a matter of -

Chairman Johnston - George, when you say "they're supposed to", they're supposed to according to what.

Mr. Hainer - the manufacturer's specifications. It's pretty much specified in any of these units that get sold, what you can do with it -

Chairman Johnston - There's no -

Ms. Fitzgerald - Further regulation.

Chairman Johnston - thank you, there's no one insuring that people follow the manufacture's recommendation.

Mr. Hainer - No, but if you passed a law too, it would say the same thing, "that you could only burn clean, seasoned, dry -

Chairman Johnston - But, then it would have the effect of a local law.

Ms. Fitzgerald - George, I don't know if it has to be seasoned, wood is wood, as long as, it doesn't have to be dry, it doesn't have to season, by definition, you see, you're getting a barrel of worms, because "seasoned" by definition could be one year, it could be two years, could be two and a half years depending on -

Mr. Hainer - Right, but it's not supposed to be wet, unless the manufacturer's stove can handle that type of wood. The whole idea behind this thing is to get a good hot, efficient burning fire, that doesn't smoke -

Ms. Fitzgerald - and some of them do that.

Mr. Hainer - Right, but, DEC has rules right now, they have their opacity chart, and you're allowed for ten minutes out of every

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hour to exceed or equal this, if you were to hold this chart up, it's different colors of the smoke and you hold the chart up and you can see the opacity of it and if you fall within that category for ten minutes, you're fine, if you go over ten minutes it means you're not combusting properly.

Ms. Fitzgerald - Now that opacity test, weather like today would be different then on a dry day.

Mr. Hainer - It's a very subjective -

Ms. Fitzgerald - It's a variable.

Mr. Hainer - and that's why they don't enforce the law, because, one convention I went to they stated, "they've cited two people in five years", it's very tough.

Dr. Daniels - I have a couple of questions. Does it make any difference the height of the stack coming out of the furnace in terms of smoke or what it can burn or hot it burns, does that have any -

Mr. Hainer - It's all in the design of the furnace, naturally, the draft, the higher up the chimney is the better draft it has, but most of these stoves have forced combustion with fans in them.

Ms. Fitzgerald - A few weeks ago there was a big blog over the computer, did you get that, have you read that? Talked about the stoves, that spoke of the height of the stacks.

Dr. Daniels - I know and that's what I'm getting at.

Mr. Hainer - Generally, the lower the stack, it dissipates over the whole area. A prime example is our highway garage, up there, when they start burning that up there, that covers the valley all around Bessboro and everything. In a normal fireplace, wood stove, normally it's 30 feet or above the peak of the roof, two or three feet, and the prevailing winds will carry it away.

Chairman Johnston - A similar principle of these tall smoke stacks in the west that bring acid rain to the northeast, sending it up high in the atmosphere so it gets blown away, doesn't have a local affect.

Mr. Hainer - The EPA is coming up out with recommended standards and that's what the local law would be addressing and right now, Maine, New Hampshire, Vermont have passed and adopted EPA standards. Almost all of these outside wood boilers are not allowed to be sold in those states. I think it's Classic Boiler, just came out with a gas fire that meets the requirements and very shortly, within the next year, they're all going to meet

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those requirements because they're not going to be able to sell them.

Chairman Johnston - George, you expressed the concern at an earlier meeting that some business people might be trying to dump their inventory in New York, because New York does not yet have a law in effect.

Mr. Hainer - Right. I had a prime example of somebody that called up the other day and said they wanted to buy an outdoor wood boiler and I explained the fact we were going through the law and we were going to adopt a law, I didn't know if it was going to be grandfathered in or not and I asked, "what kind are you looking at"? He stated he was looking at the Classic Boiler and I asked "the new ones", and he said, "no", the new one is two or three thousand dollars more than this one and I don't want to buy that one", I want this model". There's three classes of these boilers, there's the older boilers like what we have at the highway garage, that smoke like crazy, there's the mid-line which is the majority of them out there now, they have forced combustion, and if you burn the right kind of wood in them and you burn them hot enough, they burn fairly clean. And, then you have the new boilers that are gasification boilers and they burn real hot, they burn 1,800 to 2,000 degrees -

Dr. Daniels - I want to make it clear, I'm not opposed to outdoor wood furnaces, boilers, I am opposed to my neighbors burning cardboard in it and stinking us out of the neighborhood, and all the rest of the neighbors. I would think also, there should be a concern this winter with heating oil so high, what are people going to be, I worry about fires.

Mr. Hainer - I've had about five or six inquiries about these outside boilers already. The other issue you have is people who burn them in the summer time, to heat their pools or domestic water, it's tough in the summertime, the air density is so much different, it could be a real problem in the summer time. A lot of these laws are set up where you can't burn them in the summer time, strictly winter heating item.

Chairman Johnston - George, something you just said a minute ago, you made it sound like the Town Board is determined to enact a local law. It's not a question of whether or not they would enact a local, it's what provisions.

Mr. Hainer - Definitely in the Hamlet, it's going to be pretty restrictive, as you get out it will still be the pollution and the smoke issues, but it won't be as someone being right next door, putting in an outdoor boiler and the smoke going into someone's home.

Reference made about living in the Hamlet.

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Mr. Hainer - What I'm saying is there, the restrictions you're looking at have to be 200 feet from your closest neighbor, and there's also the provision that if it is a problem you have to either correct it or get - if they get the new EPA certified stoves, they work fine.

Mr. Hipps - Why couldn't we require, if we're going to do a local law anyway, wouldn't we require they have the new standards?

Mr. Hainer - They are, the local law would require the new standards. The problem is if people go out now and buy these stoves, and they're going to do it, because they're dumping them on the market, what's in inventory, you grandfather them in and you're living with them for another ten or fifteen or twenty years. If you don't grandfather them in, the people who have made an eight-thousand dollar investment, it's a tough thing.

Chairman Johnston - Does anyone have anything else to say?

Mr. Hipps - On the issue of the local law, you said, has the Town asked us to do anything.

Mr. Hainer - This was presented to the Planning Board last year -

Mr. Hipps - Yes.

Mr. Hainer - the Planning Board didn't go anywhere with it, so Tim Sherman took it upon himself to work on it and he's spearheading the whole thing. That's where it went.

Chairman Johnston - George, at the -

Mr. Hainer - It was on record the Planning Board, at that time, either didn't want to address it -

Mr. Anson - I remember when we talked about it, I said, "I thought we should wait a little while", because they were making them better and I don't think whatever the Town does, the law shouldn't be so restrictive, that it would make a difference on the older stoves, because I remember saying I know the APA would come down with some laws and we would all have to meet them, I think that's why we didn't react on it right away. Wait to see what the APA handed down.

Mr. Hainer - Most of the current ones on the market are probably within ten or 15 per cent of these new standards, and if you burn the right kind of wood, you burn them hot enough -

Mr. Hipps - Ten or 15 per cent of efficiency?

Mr. Hainer - Of the particular matter.

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Chairman Johnston - George, I don't think it's accurate to say that the Planning Board didn't go anywhere with it, didn't do anything. I don't believe that we ever got a request, a formal request from the Town Board, by formal, I mean a phone call from the Town Supervisor or a note, handwritten note, we were never requested -

Ms. Fitzgerald - I remember George asking us if we would have input on it, we said we thought we should wait. It wasn't that we weren't interested -

Mr. Hainer - I'll go through the minutes and find exactly what transpired.

Dr. Daniels - But, we do have a meeting coming up, and that would be for the whole Town.

Chairman Johnston - If the Town would like the Planning Board to do something, I think the Planning Board would do something. This communication between us and the Town Board is the vaguest, most bizarre relationship,

Mr. Hainer - There's very few written requests -

Chairman Johnston - There's very few phone calls. I think that the Planning Board and the Town Board ought to work together. If the Town Board wants the Planning Board to do something they should somehow convey that request.

Mr. Anson - I don't think the other time we talked about it, that it was a request. I think it was just something passed by us.

The minutes will be reviewed.

Mr. Hipps - Should we reach out, should we say that it's a concern. If they're interested, we would comment. It just seems like we're leaving it and if it was an open question, let's resolve it.

Mr. Hainer - This is still in the beginning stages here, there's a lot of different laws out there.

Mr. Anson - I personally feel that we shouldn't go by other Town laws, we should do our own.

Mr. Hainer - I think it's just reference material.

Chairman Johnston - Alan, I think you put that very nicely, you said, this is sort of a paraphrase, "The Planning Board is interested and willing to help". Is that what you said, in essence?

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Mr. Hipps - I would be willing to say that, yes.

Chairman Johnston - Why doesn't the Planning Board then, send a note, that states, "The Planning Board is interested in this matter and is willing to help".

Dr. Daniels - I like that.

Chairman Johnston - Ok.

Mr. Anson - Yes.

Chairman Johnston - Is everyone happy with that?

Everyone - Yes.

Ms. Fitzgerald - And that we have been interested in the topic.

Chairman Johnston - Ok. I will send an email to Dan, tomorrow morning to that effect, cc, you George and since I don't have everyone's email address, Barbara can forward it to everyone.

Let's get on to "Other Business", is there "Other Business"?

Mr. White - Move we adjourn.

Mr. Bruce Ware - I would like to make a comment. I know that it might be good for the communications that you find out. I know that the Town Board has been having a hard time with the cell tower law, too. They haven't passed anything yet, it almost seems to me that in the solution that I was thinking about as you were saying this, it's because they're reading these proposed things rather than actually having an editable word document that they could play with and remove concerns, etc. So that might be an enabling way as well.

Chairman Johnston - I think they have the proposed local cell tower law.

Mr. Ware - Ok.

Some members are still reviewing the text.

Chairman Johnston - We have a motion, is there a second?

Dr. Daniels - I second.

Chairman Johnston - All in favor, carried.

Meeting adjourned, 7:39 P. M.

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Respectfully submitted,

Barbara A. Breyette
Secretary