



Town Of Amenia

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**JOINT PLANNING BOARD-ZONING BOARD OF APPELAS MEETING
THURSDAY, DECEMBER 1, 2011
7:00 P.M. - 2ND FLOOR MEETING ROOM**

PRESENT: Chairman Flood
Tony Robustelli
Peter Clair
Larry Moore
Norm Fontaine
Nina Peek
James Walsh
Chairwoman Velletri
David Rosenberg
Kevin Cassone
Leo Blackman
David Menegat
Michael Hayes, Attorney

MOTION TO OPEN THE PLANNING BOARD MEETING FOR THURSDAY, DECEMBER 1ST, 2011 was made by Tony Robustelli, seconded by Larry Moore

ALL IN FAVOR - MOTION CARRIED

PUBLIC HEARINGS:

Bailey	Lot Line Adjustment	459 Bog Hollow Road Town of Amenia
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MOTION TO OPEN THE PUBLIC HEARING FOR THE BAILEY, LOT LINE ADJUSTMENT, 459 BOG HOLLOW ROAD, TOWN OF AMENIA was made by Tony Robustelli, seconded by Larry Moore

ALL IN FAVOR - MOTION CARRIED

Chairman Flood read the Public Hearing notice as published in the newspaper. Bethany Ralph introduced herself as the Bailey Attorney present for the hearing. There were no public comments.

MOTION TO CLOSE THE PUBLIC HEARING FOR THE LOT LINE ADJUSTMENT was made by Tony Robustelli, seconded by Larry Moore

ALL IN FAVOR - MOTION CARRIED

Chairman Flood then went over the Environmental Assessment Form.

MOTION TO GRANT A NEGATIVE DECLARATION was made by Tony Robustelli, seconded by Larry Moore

ALL IN FAVOR - MOTION CARRIED

MOTION TO APPROVE THE LOT LINE ADJUSTMENT FOR MR. BAILEY was made by James Walsh, seconded by Tony Robustelli

ALL IN FAVOR - MOTION CARRIED

Nextel/TowerCo	Cell Tower Renewal	DeLavernne Hill/Route 44 Amenia, NY
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MOTION TO OPEN THE PUBLIC HEARING FOR NEXTEL/TOWERCO FOR THE CELL TOWER RENEWAL ON DELAVERGNE HILL, ROUTE 44, AMENIA N.Y. FOR THE PLANNING BOARD was made by Tony Robustelli, seconded by Larry Moore

ALL IN FAVOR - MOTION CARRIED

MOTION TO OPEN THE PUBLIC HEARING FOR NEXTEL/TOWERCO FOR THE CELL TOWER RENEWAL ON DELAVERGNE HILL, ROUTE 44, AMENIA, N.Y. FOR THE ZONING BOARD OF APPEALS was made by Kevin Cassone, seconded by Leo Blackman

ALL IN FAVOR - MOTION CARRIED

Chairwoman Velletri read the Public Hearing notice as published in the newspaper. Chairman Flood stated this is not a new application it is an existing application that is seeking renewal for a project that has existed for almost ten (10) years.

Mr. Seth Mandelbaum, Attorney for Nextel/TowerCo, went over the history of the last ten (10) years. It is located on a 10 ½ acre parcel on DeLavernne Hill, Route 44 in the Town of Amenia. The original permits were granted by the Zoning Board on January 9, 2002 as well as a height variance. The Planning Board also granted site plan approval on February 7, 2002 with a ten year expiration. We have provided specific responses to the Board's questions from the meeting held on October 19, 2011. A report was received from Mark Hutchins who original reviewed the technical aspects of the application in 2001 and now has re-reviewed the updated information regarding the continuing need for the facility to provide wireless services to the town. The Town tower was also looked at by our engineers and Mr. Hutchins and it was concluded the Town tower would not serve as a replacement or a connecting site due to the topography and distance and the way the signals are. The height variance is still needed at 120' for greater coverage east and west. Most of the issues have been resolved.

James Walsh asked if other than the screening were there any other changes. Mr. Mandelbaum said no. We need the Board's direction on the screening they would want. Peter Clair asked about the permahedge. Nextel never did that, however TowerCo will take the Board's direction.

PUBLIC COMMENTS:

Donald Rosendale – Mr. Rosendale told the Board that he had prepared written comments for the Boards' consideration. He then summarized those comments for the Boards before submitting them in written form. Those written comments are attached to these minutes.

Tony Robustelli asked if there were any backup generators for the cell tower. David Hockey said there was no generator he knew of. TowerCo is basically the landlord to Sprint/Nextel so when the tower was sold to TowerCo they sold the lease, the fence compound and the tower itself. They operate their own equipment. Battery backup is only good for about 8 hours; a generator can run for a long time. Mr. Mandlebaum added the utilities were run underground as required by law. It would be up to the service provider to put the generator on the site. Chairman Flood stated the P.B. and ZBA Boards could put a condition on the approval for renewal of adding a generator on the site. Mr. Mandlebaum felt they needed to explore the possibility of a generator with the carrier and if they would be willing to do it, however if the renewal, should the board grant it, would be revoked because the third party tenant says they are not ready to put a generator within a certain time frame. Mr. Hayes felt it could be a condition of approval of the application. Have there been a change in circumstances one is climate change and frequency of storm events and now many people do not have land lines, they depend on the cell phone.

Kevin Cassone stated since Katrina, many cell carriers are now installing generators due to the increased number of users.

Leo Blackman asked about questions regarding the site. Regarding some of Mr. Rosendale's questions: the distance from the property line to the base of the tower as shown on the engineer's drawing should not be left as a grey area; the plans were signed by the engineer or surveyor who prepared them and that the signed plans identified the distance from the base of the tower to the property line, and that these signed plans did not leave any grey area on this property line issue; and the issue of additional plantings and screening from Mr. Rosendale's property. What is the site line issue from his property and can it be solved with plants. Kevin Cassone sent pictures from the site. Two things occurred; one was the thing that stuck out was the three utility boxes that were painted pale colors and the fact the permahedge will make the enclosure fence more visible from the road. Now with the chain link fence without the permahedge, it blends into the landscape. Kevin Cassone felt the utility boxes should be shielded somehow. Mr. Mandlebaum stated those boxes are owned by the utility company and cannot be painted. Nina Peek asked if the reclamation plan and bond from 2002 was an accurate estimate. Should this be re-evaluated and maybe change with a generator and fuel tank. Michael Hayes will have Mike Soyka look over. Mr. Soyka approved the amount of the reclamation plan and bond ten years ago.

MOTION TO CLOSE THE PUBLIC HEARING FOR THE PLANNING BOARD was made by James Walsh, seconded by Peter Clair

ALL IN FAVOR - MOTION CARRIED

MOTION TO CLOSE THE PUBLIC HEARING FOR THE ZONING BOARD OF APPEALS was made by Leo Blackman, seconded by David Menegat

ALL IN FAVOR - MOTION CARRIED

Michael Hayes went over a couple of Mr. Rosendale's points:

1. Arguments regarding the building permits those arguments were made by Mr. Rosendale over the course of three (3) lawsuits. In Rosendale 2 the Federal Court said you can go back and exhaust your administrative remedies in State Court. Mr. Rosendale did not do that, instead he proceeded with Rosendale 3. The Court in Rosendale 3 ultimately dismissed the case. Once Rosendale 3 was dismissed he missed the opportunity to go back and revisit whether the building permit should have been issued.
2. Survey – The numbers in the record to what the distance is from the property line to the

base of the pole is based on the engineer's report.

3. Mr. Rosendale claims that the only thing he is allowed to talk about is landscaping. This is not accurate. The Board has spent a fair amount of time reviewing all of the issues related to this renewal application. Mr. Rosendale is free to address all of those issues, not just landscaping. Specifically, the Board's analysis has been related to whether or not there has been compliance with the conditions of the original approval and whether there has been a change in circumstances, change in technology, change in co-location opportunities that would cause not granting the application. All the conditions of the original approval were looked over at the October 2011 meeting and based on that review there are 8 items open for additional review:
 - a. Confirming space availability on the tower still for the Amenia Fire Company. From a letter dated November 10th the applicant confirmed that.
 - b. Whether the equipment shelter had a neutral stone finish at a height of no more than 12' – the November 10th letter confirmed that.
 - c. Whether the reclamation plan was ever approved by the Town Engineer - Mike Soyka produced his written approval memo from 2002.
 - d. Whether there is a satisfactory certificate of insurance in existence - that has been provided.
 - e. Whether there is a satisfactory removal bond has been provided.
 - f. Whether a satisfactory reclamation agreement had been signed by the property owners and recorded - it was submitted to the town, but never signed by the town. The applicant has resubmitted it signed by the property owners updated to reflect the current business relationship that relates to the tower. The Town Board will vote on it next week (12-08-2011) and will authorize the Supervisor to sign it at which time it will be recorded.
 - g. Open issues from the last meeting are: the adequacy of landscaping and screening for Mr. Rosendale's property, whether the landscaping or screening is holding up, and the issue of the permahedge and the timing in which the Board's would require that to be installed.

Mr. Hayes will draft the resolution. The conditions that are different than those that currently exist are:

1. Remove the permahedge requirement.
2. Additional natural screening to help screen the utility pedestals and provide additional screening for Mr. Rosendale's property as well as replacing any dead or dying screening that has been installed.
3. Generator – three months for approval – one year from date of approval from PB/ZBA for installation with CO.
4. Reclamation – is the amount still valid based on today's numbers and based on the fact the generator is being added.

ALL IN FAVOR - MOTION CARRIED

Respectfully submitted,

Susan M. Metcalfe
Planning Board Secretary

The foregoing represents unapproved minutes of the Town of Amenia Planning Board and Zoning Board of Appeals from a Special Meeting held on December 1, 2011 and are not to be construed as the final official minutes until so approved.

Approved as read 12-08-2011

Approved with: deletions, corrections, and additions