

MOTION TO OPEN THE SPECIAL JOINT ZBA MEETING TO HEAR TOWER ENTITY 9 LLC, TBC TELECOMMUNICATIONS TOWER RENEWAL, ROUTE 44 IN AMENIA, NY was made by Chairman Velletri, seconded by Leo Blackman

ALL IN FAVOR - MOTION CARRIED

Seth Mandelbaum of McCullough, Goldberger & Staudt, attorney for the applicant, introduced himself, then introduced David Hockey, National Zoning Manager for TowerCo and Ari Tran of the Mr. Mandelbaum's office. TowerCo is a national tower company that purchased this site from Sprint/Nextel.

Michael Hayes stated there are three approvals up for renewal: the Special Use Permit the ZBA granted about ten years ago, the height variance for a 120' tower in a 70' tower zone, and the renewal of the Site Plan approval that was obtained from the Planning Board roughly one month after the ZBA granted its approvals. In the review ten years ago the Planning Board acted as lead agency for SEQRA purposes. Lead agency will need to be discussed and decided tonight. As to the legal framework for reviewing these renewal applications, in general they are not reviewed as though this is a clean slate. There is an existing tower on the property with existing approvals. For the Special Use Permit and Site Plan approvals, the primary analysis is whether or not the property has complied with the conditions of those approvals. The Boards need to identify the various conditions and/or requirements of the permits and to ascertain whether the property is in currently in compliance or if there is a history of compliance or violations. With Site Plan and Special Use Permit if the Board finds the property is in compliance with the requirements that have been in place in the last ten years, then the only other thing to look at is has there been some other change in circumstances which would justify looking at the existing approvals or rescinding them. Nextel owned the tower first, then Nextel/Sprint and now TowerCo owns the tower, the approvals run with the land, not necessarily with the owner. The height variance is looked at through somewhat of a clean slate perspective. You must apply the same five factors as with any other area variance. The ZBA would take into account the fact that the tower already exists as it applies those factors, but if the ZBA concludes that the height variance is no longer appropriate, then the ZBA would have the flexibility to come to a different decision on the height variance ten years later.

Seth Mandelbaum then gave the Boards an overview of the project. The tower property was approved January 9, 2002 by the Zoning Board. The Planning Board was Lead Agency and granted a negative declaration under SEQRA. Nextel Communications was granted a Special Use Permit for a ten year term and a height variance, and the Planning Board granted Site Plan approval. Mark Hutchins who was consultant for the Town looked at the project. Mr. Hutchins concluded that the height was justified at that time. The Boards were given an affidavit from Robert Bertona who is a Radio Frequency Engineer, and he still feels nothing has changed to

lower the tower from 120'. Mr. Mandelbaum wanted to note that they were not aware of any violations for the tower.

Leo Blackman asked about questions that were raised about the site plan that was approved. How far the tower was away from the property line? Michael Hayes stated that the as-built plan indicates that it is 130' from the tower base to the Route 44 property line. Michael Hayes also stated that the as-built plan indicates that it is 152' from the equipment shelter to the west property line shared in common with Mr. Rosendale, and that according to the as-built plan the tower base is located farther from that western boundary line than the equipment shelter.

Mr. Blackman then asked about the installation of permahedge material in the slats of chain link fence. Mr. Mandelbaum said Mr. Hockey would check on that. Tony Robustelli asked if they had bought the property. Mr. Mandelbaum stated they still lease the property from Mr. and Mrs. Bates. Mr. Blackman asked about the Supplemental Landscaping Plan.

Mr. Hockey went out to the site and the trees that are there were planted as a result of the tower. Mr. Hockey will bring the landscape up to speed as the landscape is not in good shape and will try to find the landscaping plan. The Board members should take a look at the site and if there are problems they will be taken care of. Chairman Velletri asked if Mr. Rosendale could bring in the discussion regarding the plantings. Mr. Hayes stated it would depend on how it is presented. If the question being raised was whether the property is in compliance with its existing approvals, that would be an appropriate issue for Board consideration. If the issue being raised was whether the building permit and/or original approvals should have been granted, that would not be an appropriate issue for Board consideration. Norm Fontaine felt that a follow up on the plan before a CO is issued would be a good idea. Nina Peek asked if they would consider co-locating next to the town tower. Mr. Mandelbaum said he had spoken with Mr. Bertona regarding that, however, Mr. Bertona felt because the present site is on the ridgeline, it covers both east side down to Route 22 and west to the Taconic, the town tower is blocked on the west. For Nextel the present site is better optimized. Ms. Peek felt it would be good to have that documentation in the record. Mr. Mandelbaum said he would get it from Mr. Bertona.

Michael Hayes then went through compliance checklist that the Boards should consider when deciding whether to renew the existing approvals. The as-built plans confirm that the monopole is at height of 120' above ground level. The pole is painted brown below tree line and galvanized steel above. There is space on the tower for Amenia Fire Company, if needed. The evergreen plantings will be included in the Landscape Plan. David Rosenberg asked if there was a Landscape Maintenance Plan. Michael Hayes felt adding a Maintenance Plan as a condition of renewal may be a good idea if a Maintenance Plan is not already required by the existing approvals. Seth Mandelbaum said his company goes out quarterly to check and make sure the plantings have not died or need some care. The utility lines are installed underground. The company is still in compliance with all applicable FCC regulations. The 8' high security fence

will be addressed for the addition of permahedge slats that are needed. Mr. Hayes asked if the equipment shelter have a neutral stone aggregate finish and is it 12' or lower. Mr. Mandelbaum said it had the stone finish and was 10 ½'. The exterior lighting should be one motion detector emergency light, and Mr. Mandelbaum said he would check on it as well as the approval of reclamation plan by the Town Engineer. Was the \$3,000,000 Insurance policy naming the Town as an additional insured as well as the posting of \$10,000 Performance Bond to secure Murphy and Rosendale landscaping obligations done for one year from the original CO. Mr. Mandelbaum will check on these items. On the additional insured it should be specified that the Town is additional insured on a primary non-contributory basis. Is there a recordable instrument running with the land giving the Town the right to enter the property and dismantle the tower under circumstances identified in 121-46.F.11. Mr. Mandelbaum will check on this.

Mr. Hayes went on with any changes in circumstances: Are there any changes in technology that might eliminate the need for the height variance approving 120' tower or any changes in signal coverage eliminating the need for this tower? The affidavit Mr. Bertona submitted states that there is still a need for the tower under existing circumstances and technology. Mr. Hayes recommended that the Board's consultant take another look at this issue. If he agrees there have been no changes in technology that would change the analysis, then you would have his independent confirmation of Nextel's engineer. The last point is evaluating the potential co-location on the municipal cell tower.

David Rosenberg asked Mr. Hayes why there was a ten year time period on the variance. Mr. Hayes stated it was the Town code that sets the approval for ten years.

Planning Board

MOTION TO DECLARE THE PLANNING BOARD INTENT AS LEAD AGENCY was made by Nina Peek, seconded by Norm Fontaine

ALL IN FAVOR – MOTION CARRIED

ZBA

MOTION TO CONSENT THE PLANNING BOARD AS LEAD AGENCY FOR SEQRA REVIEW OF THIS APPLICATION was made by Chairman Judy Velletri, seconded by Leo Blackman

ALL IN FAVOR - MOTION CARRIED

All materials will be sent to Dutchess County Planning and Development for referral.

Planning Board

MOTION TO RETAIN MARK HUTCHINS AS CONSULTANT ON THIS PROJECT was made by Norm Fontaine, seconded by Nina Peek

ALL IN FAVOR - MOTION CARRIED

The application fee was \$450 for Special Use Permit and \$300 for variance – total \$750.

Planning Board

MOTION TO SET ESCROW FOR THE APPLICATION AT \$3000.00 was made by Chairman Flood, seconded by Norm Fontaine

ALL IN FAVOR - MOTION CARRIED

MOTION TO SET THE PUBLIC HEARING FOR NEXTEL CELL TOWER FOR THURSDAY, DECEMBER 1, 2011 AT TOWN HALL, 7:00 P.M. was made by Norm Fontaine, seconded by Nina Peek

ALL IN FAVOR - MOTION CARRIED

ZBA

MOTION TO SET THE PUBLIC HEARING FOR NEXTEL CELL TOWER FOR THURSDAY, DECEMBER 1, 2011, TOWN HALL AT 7:00 P.M. was made by David Rosenberg, seconded by Leo Blackman

ALL IN FAVOR - MOTION CARRIED

Planning Board

MOTION TO ADJOURN THE PLANNING BOARD MEETING was made by Chairman Flood, seconded by Nina Peek

ALL IN FAVOR - MOTION CARRIED

ZBA

MOTION TO APPROVE THE ZBA MINUTES OF SEPTEMBER 14, 2011 was made by Chairman Velletri, seconded by David Menegat

ALL IN FAVOR - MOTION CARRIED

MOTION TO CLOSE THE ZONING BOARD OF APPEALS MEETING was made Chairman Velletri, seconded by Leo Blackman

ALL IN FAVOR - MOTION CARRIED

Respectfully submitted,

Susan M. Metcalfe
Planning Board/ZBA Secretary

The foregoing represents unapproved minutes of the Town of Amenia Planning Board and Zoning Board of Appeals from a joint meeting held on October 19, 2011 are not to be construed as the final official minutes until so approved.

Approved as read 11-03-2011

Approved with: deletions, corrections, and additions