

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday September 21, 2010. Chairman Alan Bell called the meeting to order at 7:30 p.m. Board members John Gunn, Bob Straub, Tony Brenner, Dennis Rosenfeld were present. Joe Zeidan and Stacy Olyha were absent. Also present was Kevin Donohue, Alternate board member, Walter Artus from Storm water Management Consultants, Rebecca Valk from VanDeWater & VanDeWater and Greg Bolner from Clark Patterson Lee.

Mr. Bell announced that Mr. Donohue would be a voting member.

Mr. Straub made a motion to accept the minutes of August 17, 2010, seconded by Mr. Gunn and the motion carried unanimously. MINUTES ACCEPTED.

**REQUEST FOR TIME EXTENSIONS:**

**LAKE RIDGE SUBDIVISION** – REQUESTING 3<sup>RD</sup> REAPPROVAL OF FINAL SUBDIVISION APPROVAL

Mr. Gunn made a motion to grant a 3<sup>rd</sup> re-approval of final subdivision approval, seconded by Mr. Straub and the motion carried unanimously.

**ROLLING MEADOWS SUBDIVISION** – REQUESTING 3<sup>RD</sup> RE-APPROVAL OF FINAL SUBDIVISION APPROVAL.

Mr. Rosenfeld made a motion to grant a 3<sup>rd</sup> re-approval, seconded by Mr. Straub and the motion carried unanimously.

**HARVEST RIDGE SUBDIVISION** – Requesting 90-day extension of final subdivision approval(1<sup>st</sup> one)

Mr. Gunn made a motion to grant a 90-day extension of final subdivision approval, seconded by Mr. Straub and the motion carried unanimously. 90-DAY EXTENSION

**HEBERT SUBDIVISION** – Final expired in June, 2010 (all extensions have been used). Applicant has used all extensions and needs a 90-day extension of final subdivision approval.

Ms, Valk said we've done this for a couple of other applications and she would do a resolution to extend it as if it was done in June.

Mr. Gunn made a motion to grant a 90-day extension effective date of June, 2010 and to expire in September, 2010, seconded by Brenner and the motion carried unanimously.

**CRYSTAL LAKES PDD** – The Planning Board needs to re-schedule the date for the scoping session. The Board set October 14, 2010 as the date for the scoping session to be held.

**PUBLIC HEARINGS:**

**FIGA SPECIAL USE PERMIT** – Proposed Special Use Permit located on Smith Rd.  
(Grid No. 6360-04-703236)

Mr. Ryan Figa appeared before the board. The notice of public hearing and receipts from adjacent notifications was submitted.

Mr. Figa said he is establishing a Special Use Permit for an apartment in his house for his mother-in-law to stay with them.

Mr. Bell declared the public hearing open and asked for comment. There were none. Mr. Straub made a motion to close the public hearing, seconded by Mr. Gunn and the motion carried unanimously. PUBLIC HEARING CLOSED.

Ms. Livigni said the only outstanding issue was the DOH and septic tank and Mr. Figa got a letter from Mark Day's office certifying his septic can handle the apartment.

Mr. Straub made a motion to grant the Special Use Permit, seconded by Mr. Gunn and the motion carried unanimously. SPECIAL USE PERMIT

**GENTLE GROOMER SPECIAL USE PERMIT** – Proposed Special Use Permit located on Freedom Road containing 1.78 acres (Grid No. 6462-03-080210)

Ms. Annette Faiello appeared and submitted the notice of public hearing and receipts from adjacent notifications.

Ms. Faiello, said this is a part time grooming business. She said she cannot work full time – presented a letter from her Dr., a copy of her handicap sticker, a letter from her neighbors indicating they were in favor, except for one neighbor, the Haley's. She said their dog trespassed on her property and attacked her daughter, she presented more documentation, a letter from the Haley's saying they would keep the dog on a leash and put a fence, and added they did never did. She said well, they put up a fence, but put it up on her property and then the Haleys got angry when she told them to move it and she had to pay \$1,500 for a land surveyor. She said they moved some of it but not all of it so she had to send a certified letter stating that. To this day the dog is still not on a leash as promised and then showed the board a picture.

Mr. Bell said we now have officially moved off of the target of Ms. Faiello's request. Ms. Faiello said the room is 7x9, existing, part-time, by appt. only, not a lot of cars, only a few days a week, few dogs a day. Ms. Livigni asked hours of operation. Ms. Faiello said obviously not before 8:00 a.m. Mr. Bell asked her would she be doing it at night and Ms. Faiello said no. Mr. Bell asked if she would be done before 5:00 p.m. and Ms. Faiello replied definitely before 5 and no weekends. Mr. Bell asked any proposed changes to the house and Ms. Faiello said none.

Mr. Bell declared the public hearing open and asked for comment.

Mr. David Haley of 294 Freedom Road spoke. He said his dog bit their kid and didn't think it was relevant. He moved his fence, but said it wasn't relevant. He said their relationship is not relevant. His goal is not to cause hardship, said she's had this business for years and said he got tired from the substandard signs held up front with cinderblocks and he asked they move it, not to shut down their business. He said they eventually moved the sign. He asked how big would the business get? Does it have a life span and expire?

Ms. Valk said some of them do, some of them don't, she would check.

Mr. Haley wanted to make sure there is no boarding, there has been boarding in the past. Mr. Haley said it would not be a good precedent to add dog grooming into the code.

Mr. Haley said the house was built at least before 1955, before over seeing of septic systems, and the septic system handle 4 or 5 dog baths a day. He wanted assurance his well would be safe. He talked about vaccinations for dogs, and asked if it was a requirement of her clientele. He said he wasn't sure the driveway complies with the apron. Mr. Haley talked about the non-compliance with the outside evidence statute – they have chicken wire guiding the dogs to please let your dog go here. Mr. Bell asked evidence of what? Mr. Haley outside evidence of the business.

He said the front porch has been enclosed and couldn't find any building permit for the enclosure. Zoning – they became aware they are not supposed to be having this business with a special use permit and they did not stop until they got permission. Non-compliance with the sign ordinance. Outbuildings – large metal that is within the setback and not compatible with appearance and design with the principal structure and encroaches the site set back.

Mr. Haley asked the board to decline the application, it's a bad precedent.

Ms. Valk commented on the expiration of Special Use Permits – 240-54 provides the permit expires when the occupation changes or the property is sold. Ms. Valk noted when the occupation changes she would take the position if a home occupation expands the permitted use, she would argue that would fall within the occupation changing.

Mr. Straub made a motion to close the public hearing, seconded by Mr. Rosenfeld and the motion carried unanimously. PUBLIC HEARING CLOSED.

Mr. Bell said it sounds like there are enough concerns raised that the applicant would need to respond to those concerns in writing to the board. He said when the minutes are done, the applicant could get the list from them and send the board a letter answering them.

Ms. Livigni said if the applicant needed some clarification on the code sections, she may want to talk to the Building Inspector to assist with that.

**VERIZON WIRELESS COMMUNICATIONS FACILITY** – Proposed site plan located on Rossway Road containing 41.6 acres (Grid No. 6562-03-370380)

Mr. Clifford Rohde was present and presented the affidavit from the paper and proof of notification to the adjacent property owners.

Mr. Rohde, attorney for the law firm of Cooper, Erving and Savage, regional counsel to Verizon Wireless and here tonight with Jonathan Edwards, radio frequency engineer for Verizon Wireless and Michael Orchard of Tectonic Engineering, site acquisition specialist for Verizon Wireless. Mr. Rohde said this is the 2<sup>nd</sup> time before the Planning Board and was grateful for the opportunity to explain their project to the board and answer any questions they may have or the public may have, at the board's direction.

Mr. Rohde said they were hoping to accomplish a few things, deal with some SEQR issues, set a date for a balloon test discussed at the last meeting, deal with a Wetland Permit application and some other procedural items. He said the applicant is Orange County Poughkeepsie Limited Partnership doing business as Verizon Wireless and are a New York State public facility authorized and licensed by the Federal Communications Commission to provide wireless services in and around the town and Dutchess County and certainly other parts of the country as well. He said they are before the board for a Special Use and site plan permit approval to install what is proposed as a 120' monopole tower off Rossway Road on property owned by the Iozzos, zoned R-120 and also in the Ridge Overlay Protection Zone. Mr. Rohde said the application has been submitted pursuant to town code, sections 240-49 dealing with wireless facilities. Town law clearly prefers co-location which is the installation of your facilities on somebody else's structure or tower. Unfortunately there were no co-location opportunities available in this case which is why they are proposing a new tower. Mr. Rohde said they are also before the Zoning Board of Appeals as to install the tower they need both height variances because there is a height restriction of 35' at this location and they also need a setback variance because the setback requirement is 3 times the height of the tower.

Mr. Rohde said there is nowhere on this property where that setback could be met. He said they were last here on July 20, 2010 to present the project and before that they met with the Zoning Administrator in March, submitted comprehensive written materials to the board at the end of April, early May and after the public hearing there's been a fair amount of activity on paper. On August 5<sup>th</sup> they submitted a wetlands permit application as requested and required by the board. On August 10<sup>th</sup> they submitted a comprehensive set of supplemental materials, revising some of the materials provided to the board already. He said they responded to the comments from SMC dated June 8<sup>th</sup> as well as the letter from CPL of July 7<sup>th</sup>. He said they provided information to the board about some of the alternative sites that were discussed at the ZBA meeting and provided information about why those sites were not feasible as alternates to the site being proposed.

On July 18<sup>th</sup> the board mailed its notice on SEQR, declaring itself the Lead Agency and on September 9<sup>th</sup> they had some correspondence with the board's attorney regarding the timing of the town review of this application and on September 10<sup>th</sup> they sent out notices to adjourning property owners and on September 14<sup>th</sup> it was published in the Poughkeepsie Journal. Mr. Rohde explained why they were here and said there were 3 points that address that issue. The first point is it is all about the network, Recent statistics show that the penetration of wireless services is about 91% - which means there is a phone for a number in place for 91% of the population in the U.S. probably many people in the audience, himself included use cell phones and added, certainly not everybody. He said 25% of households in the U.S. no longer use a landline phone and rely exclusively on wireless information. Mr. Rohde said all of this information is from the wireless industry, CTIA, available on their website. In the case of the Verizon Wireless network, as a Federal Communications Commission Licensee, they are obligated to provide safe and adequate service in the areas in w which they are allowed to provide service, in which they have a license to provide service. First and Foremost, they propose a new site when they identify some type of inadequacy in the network and in this instance what was identified by John Edwards was shortcomings that were coverage problems in the area of LaGrange. He said Mr. Edwards could certainly speak much more intelligently about the radio frequency issues but as a general matter, they have 3 frequencies in which they are operating, each of them provide wireless services, each of them has special characteristics that allow different types of services to be offered and they are proposing to enhance and make adequate, in some cases, facilities or services in each of those frequency bands. He said once a shortcoming in the network has been identified, what John will do is find a site to fix it and it needs to be put in the general area which they call either a search area or search ring. He has all the software necessary to identify usage patterns, topography, where they think traffic is going to be, how good or bad service would be depending where you would place a facility and he has a general area where it would probably work to put in a facility and at that point it is turned over to their site acquisition team, Mike Orchard in this case, who will go out and look for a specific property. Mr. Rohde said they don't go out and buy properties because that would be too expensive. He said they find land owners who are willing to work with them and lease property from them to be able to install facilities there.

Mr. Rohde said in this case the property of the Iozzo's was identified, that property is then handed back over to John and the radio frequency team to look at to see if a facility on that specific site would work and if so, at what height would it be necessary and what location on the site. Mr. Rohde said LaGrange is a hilly town and in the surrounding areas there are a lot of hills as well. Wireless technology is a very low power affair and requires a line of sight between the tower and the device it is communicating with to be able to communicate effectively. Wireless signals do not travel well and they don't travel at all through hills, and do not travel well through trees or houses. In the industry it is called clutter – clutter for the radio frequency signal. Mr. Rohde said identifying that specific location does require an investigation of that specific topography, what type of clutter is there. Mr. Rohde said it is an industry standard practice to look for opportunities to co-locate your facilities. Verizon Wireless wants to do that, towns always want them to do that because it tends to minimize the number of obvious facilities that are out there.

It is generally cost effective as well because instead of having to erect a tower, you are able to affix your antennas to whatever structure happens to be out there. In this case there were no collocation opportunities available that they identified to be able to place a tower. When it comes to building a new tower they absolutely realize that towns are very sensitive to towers going in, the laws in the town of LaGrange are no different from many of the laws throughout New York in that they expressly desire that towers are minimized. He said they come in knowing full well that there can be opposition to these types of things but it is a requirement for them to be able to provide the services that they are required to provide as a consequence of their FCC licenses. Mr. Rohde said there is an interplay between federal law and local law. Wireless services generally speaking are favored by federal law as a federal policy to get as much wireless service out there as possible. There is a Federal Telecommunications Act from 1996 which does carve out certain responsibilities for towns. He said he tends to be the bad guy at these meetings when he tells boards that while there is a role for them, it is somewhat circumscribed or limited by federal law. There is only so much that towns, planning boards, other zoning boards can do as a consequence of the federal laws and policies out there.

Mr. Rohde said they have identified a network need, identified a general area where they need to put the facility and identified a specific parcel that would work for them and so what they are proposing to put at this location is a 120' monopole tower which includes a 4' lightning rod bringing the total structure height to 124'. Anybody who builds a tower you want to put your antennas at the top of it because that's where you get the best bang for the buck.

Mr. Rohde said they are proposing to put their antennas at the top of the tower at what is called a centerline height which is the middle of the antennas of 117' so the center of the 6' antenna would be 117 feet....so centerline – 117 so 3 feet above and 3 feet below would be at the top of the tower and then the 4' lightning rod which is very thin would be at the top of that. Mr. Rohde said the hilly nature of this area requires a certain height but they are also somewhat limited in terms of height by a couple of things. One is there are airports nearby and generally they try to avoid putting towers up at a height that requires lighting. Most towns do not want towers to be lit up all the time. Federal Aviation Authority regulations require towers over a certain height to be lit so they are not going high enough to require lighting by the FAA. They do not want to go so high to require lighting. Mr. Rohde said there is a pressure from the nature of the physical limitations of wireless services and the technology involved in that you have to get up to a certain height to be able to get your beam out, line of sight so you can cover the territory you are seeking to cover. At the same time the town law of LaGrange requires that facilities be designed with co-location in mind so that in the future if another carrier were to come along they would be compelled to look at this tower and see if they could put their facilities on that as well.

Mr. Rohde said it is designed so that 2 other carriers could also put their equipment/antennas below their antennas. He said they are not saying there is another carrier out there that wants to do that, they don't know of any. He said this is just their application and no other carrier is involved and he said he had no knowledge or promises

that any carrier would or would not ever come before the board to seek to go on that tower, s should it be built.

Mr. Rohde said at the ground level t here is a 12' x 30' pre-fabricated equipment shelter, sits on top of a concrete pad and at its highest point it is about 10 ½ feet. He said it is completely shielded by trees they are not proposing to eliminate.

Mr. Rohde said he wanted to discuss with the board a time where they can go out, let the community know, fly a balloon at the height of the proposed facility so they can take pictures of the balloon and create simulations of what it might look like if it were in place.

Mr. Bell declared the public hearing open for comment and asked if there was anyone in the audience who wished to speak. He said because of the number of people present he would like to avoid questions and answers going back and forth in arguments in the interest of hearing what everyone has to say. He said the process is for the board to hear the concerns, the applicant to address those concerns in writing to the board.

Joe DiPalo of 273 Skidmore Road spoke. His concerns were the location of the site. He read from a prepared statement written by a neighbor that couldn't be present, which included comments that Verizon has not viably explored alternatives such as the power lines or the silo on Sky Acres Airport. He said he knew of someone in the audience who would be willing to talk to Verizon that has property that does not compromise the ridgeline protection. There is a site they have not even looked at that doesn't require variances or wetland permits. Mr. DiPalo said the neighbors have fought to protect the vistas and beauty of the area. He said he can't even put up a 25' garage yet they seem to be finding ways to accommodate Verizon.

Mr. DiPalo said the town's history is not strong in dealing with cell towers. He said according to the research he's done, the town must comply with 5 provisions of the Telecommunications act. :

1. cannot ban cell towers – not asking for that
2. can't have regulations that have the affect of banning towers – not asking for that
3. cannot discriminate against providers – not doing that
4. must act in timely manner
5. cannot use health affects of the RF emissions as a reason to deny.

He said there are other sites that are appropriate and they have done research. He said this is one of the most beautiful areas in the town. He talked about open space in the area, town park and the site selected is a landowner who doesn't live there. He said other neighbors that were approached said no. We don't want it here. He said it doesn't seem like they are doing their homework and standing up to verizon and exercising their rights. They built the Panama Canal without a cell phone. He said the world will not stop if one miute of cell coverage is interrupted. We need Verizon to answer these questions. He said they are not interested in balloon tests. He said he is asking the board to exercise the

rights on behalf of the residents. He said Verizon has not done their due diligence regardless of what their legal counsel wants to say, they have not. He said he hasn't heard an explanation as to why they can't co-locate on the power lines. He said their research showed it's more expensive to do that. He said it is a business decision. Mr. Dipalo said Verizon does not have a mandate that we must comply, we are not discriminating, we are acting in a timely manner and asking the board to insist that they do their due diligence.

Duane Byer of 14 Hartstone Drive spoke. He said is the chair of the Open Space Committee and his comments are his own, and has not discussed his comments with the committee. He looked through the open space plan to see where this fit in. He said there are 2 scenic views identified by the public, the Mountain Road and Skidmore Road area. Page 37 in the plan, the entire Taconic ridge and other ridgelines are identified as scenic view areas. Page 46 they identify the ridge area as a scenic view and in 2005 the town's comprehensive plan marked this as a priority area for scenic trails. Page 48 identifies mountain Road and Skidmore Road and page 56 there was a proposal to have scenic drives of the area and tours of the area and the number 1 listed place was this area. Page 61 says top priority the Taconic ridge area and other ridgelines as their natural areas. Mr. Byer asked to see every effort made to make sure it blends in with the surrounding area so they don't lose the scenic view. He also said he would like to see Verizon explore every option, if they do build there, to make it fit in with the environment.

Richard Dawson – 471 Rossway Road. He said he has gone through verizon proposals, other town proposals and spoke to town supervisors who have concerns about cell tower issues. He said several people have gone over topographical maps and gone over court cases regarding cell towers. He said he was a radar technician and said he would like to bring some points to the board. He referred to a letter that was submitted to the board. Mr. Dawson said when he went through the verizon proposal there were deficits throughout. They did not identify co-locations as said. Vervalen tower could be used. He said they said they would look at it in the future. He said have them look at right now. Mr. Dawson said there are Nextel antennas on the con Edison transmissions power lines that run across LaGrange. Con Edison is also going to allow fiber optics to go across. Mr. Dawson said this was not pursued by Verizon. He said AT & T just proposed a new cell phone that will not use cell towers, but satellites. He said it is very interesting that technology could provide the answer. Mr. Dawson said there are other solutions.

He commented on the Telecommunications act of 1996, - the act establishes a comprehensive framework for exercise of jurisdictions by state and local zoning authorities over placement for cell towers. Mr. Dawson said that gives the board the authority to rule for or against the placement of these towers. He said that was confirmed by the martin letter, Chairman Martin of the FCC Intergovernmental Advisory Committee. He said zoning is uniquely a local concern, Congress recognized this in 1996 so the board does have the right to govern the placement of the towers.

Verizon would like to put one antenna up – their concerns over the northeast area of LaGrange is both up towards Unionvale and the TSP. Transmission towers could cover both areas. Vervalen Drive tower could cover the TSP. They could even convert the silo like Stu Leonards did in Yonkers. Mr. Dawson said they've gone over the rules they have to make sure are followed and how the ZBA and the board has to respond to Verizon. Mr. Dawson read a portion of the Ordinance – “the purpose of the overlay zone is to protect the aesthetic, scenic and ecological character and nature of the higher elevation areas. Ridgelines and hilltops are exceptional aesthetic and ecological resources in ensuring that tree lines are uninterrupted and ridgetops are free from visually intrusive man made structures that would prevent the degradation of the rural character and scenic beauty of our town”. He said he appreciated the Chairman of the Open Space Committee and everybody who worked on it, that is a wonderful document. Skidmore Road, the valley that is underneath the Ridgeline where verizon is proposing the tower is an exceptional area. It is important to keep this for the future. He said that Verizon mentioned at the ZBA meeting that with the increase in broadband and population you need more towers. In his research they could effectively request a tower every 1/3<sup>rd</sup> of a mile so we need to find alternative solutions.

Mr. Dawson said he disagreed with the balloon test and said he could show them what a tower looks like. He said go to the Robo Deli on Rte. 55, they cleared the land across the street and he showed the board a picture of the result of clearing the land. He said you could not see the cell tower on 82 but now it is completely visible. He said so if there is any further development up on the ridgeline by homes or farmland, this tower will be exposed. A balloon test is only for the period of time the balloon flies. It could change very quickly. Mr. Dawson said they do not want to see this tower up in the Ridgeline. Mr. Dawson asked before a balloon test permit is given, he'd like to see the ZBA ruling because if the variances are not allowed, there is no sense in going forward.

Mr. Bell said to clarify a procedural issue – neither this board nor the ZBA is likely to rule on the ruling until a determination has been made regarding environmental, it's part of the process for considering an application, you have to do an environmental assessment before you can make a determination and part of the assessment would be a visual one, including the balloon test. Mr. Bell said he respected Mr. Dawson's opinion that the balloon test is meaningless, but the board doesn't feel that way so they will be scheduling the balloon test and added they don't need a permit for it. The will schedule it when the board agrees with it.

Beverly Getz of 152 Sunset Hill Road said she was here on behalf of her employer Mrs. Monica Gerard Sharp Wambold. She said she was asked to read into the record the e-

mail that was sent to Ms. Mang. (see attached)

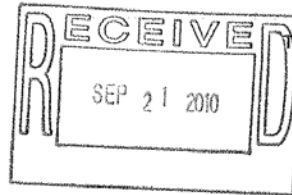
Town of  
LaGrange, NY

Eileen Mang <emang@lagrangeny.org>

## Cell Tower Hearing tonight - written comments submitted herewith

1 message

Parrotmgs@aol.com <Parrotmgs@aol.com>  
To: emang@lagrangeny.org  
Cc: Parrotmgs@aol.com



Tue, Sep 21, 2010 at 5:21 PM

Dear Ms Mang

Re CELL TOWER HEARING TUESDAY SEPT 21ST 2010  
Objection to proposed location of cell tower

I live with my family - my husband and three daughters aged 17, 20, 22 - at 128 Sunset Hill Road, off Skidmore Road in Pleasant Valley (postal address) in the town of La Grange. We have been residents since 1989 and we love the rural character and beauty of this town and of Skidmore Valley. We have worked for many years to preserve its beauty and we helped campaign for passage of the ballot to save open lands, working farms and water resources in La Grange. You will recall that this ballot was overwhelming approved by the citizens last November.

We would probably be able to see the proposed cell tower from our house and would certainly see it from many nearby areas. As conservationists and as neighbors we are directly affected by the proposed cell tower location. Unfortunately we cannot attend tonight's hearing on the tower as we have business meetings in New York City. But I am submitting written comments to the Planning Board on my own behalf and for my family (four voters and tax payers!).

We are adamantly opposed to the proposed location of this cell tower, for three reasons:

- a. it undermines the investment of the Town of LaGrange to protect and permanently conserve the natural beauty of this area through the partnership with the Dutchess Land Conservancy and other bodies, conservation which was approved in principle by voters and advocated by Open Space Committee. The cell tower would mar the scenery and spoil the beauty that the Town is seeking to preserve. The town must resist installation of a cell tower, on a ridgeline, overlooking a designated conservation area.
- b. We understand that the Planning Board wants to facilitate Verizon's goal to offer improved cell service to travelers on the Taconic Parkway. That is okay as a secondary consideration, but protecting the town's investments and following the votes of the citizens surely comes first.
- c. The proposed location of this cell tower is the problem. There are alternate locations available to Verizon, very close to the proposed site, that would offer the improved cell coverage sought for the Taconic Parkway area -- without marring LaGrange. Alternative, more appropriate sites include the nearby Con Ed utility corridor, the median strip between the north and southbound lanes of the Taconic Parkway and an appropriate site within the nearby Taconic-Hereford DEC Multiple use area, or James Baird State Park.

I urge the Planning Board to request that Verizon relocate the proposed cell tower to a site which is not on a ridgeline overlooking a designated scenic area, especially those mentioned above.

Please call me at 212 772 0147 during the day or 917 626 9299 or email me at the above address.

Thank you so much for accepting this contribution to the discussion by email. I apologize for not being able to attend in

<http://mail.google.com/a/lagrangeny.org/?ui=2&ik=848dbacf6d&view=pt&search=inbox&th=12b362...> 9/21/2010

person.

Good wishes for a successful hearing.

Monica Gerard-Sharp  
also writing for Ali E Wambold  
Marina R Wambold  
Daniela S Wambold  
Dominica Y Wambold  
128 Sunset Hill Road  
Pleaseant Valley NY 12569

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James Bisceglia of 261 Skidmore Rd. said at the ZBA meeting Verizon said they needed 136' and not a foot less because it wouldn't work so they have explained now why they need to lower it so they don't have to light it. He said to him it is leaving their credibility in question. He said they stated they need a tower to cover the dead zone on the parkway so they have done an exhaustive search and contacted land owners about other locations. Mr. Bisceglia said Mr. Hatfield, who is in the audience, has a large piece of property on the corner of the Parkway and Mountain Road, the old Porter Farm and he said he was never contacted by Verizon and added he had a very suitable location for a tower. The property is parallel to the parkway so if Verizon is looking for a place to cover the parkway, he didn't think there was a better place than that as well as the alternate locations previously mentioned. Mr. Bisceglia said the town has spent a lot of time and money over the years to preserve the Skidmore corridor and LaGrange is about to spend a lot more money there because they are going to buy the development rights from the Pearson Farm. The town completed a study years ago that designates the Skidmore Rd. corridor as the most scenic place in the Town of LaGrange. He said he found it highly objectionable to locate a cell tower within clear view of the Skidmore Road corridor especially in light of the scenic preservation that has been taking place. He asked the board insist that Verizon find an alternate location.

Walt Skuza 507 Skidmore Rd. – He commented Vervalen is mentioned – there's no going back, once a tower is located – Vervalen was a radio tower in the 1950's – how long has that been there – there's no going back once you sight the cell tower. He asked if there was an alternative to the cell technology? Also, he's gone places where there is no cell service – what do people use. The whole northern/western corner of Massachusetts is nothing but state parks that do not have cell service, and asked what do those emergency providers use. There's got to be an alternative to cell service. Has the height been tested for radio waves and does it comply, they've said it is line of sight, so if they've lowered the height, has that been re-tested and stated as to what goes through.

What would be the degrading coverage as new cell providers came down the tower. Would that be less attractive to them. Site security – 10 years ago the property owner had a burglary – the property is totally out there, way in the woods, there's a locked gate at the road right now. He said he lives on the adjacent property for 30 years and nobody knows you're up there – what kind of security is on the site. Balloon test – if different profiles for a tower could be looked at, not just a monopole, but a 5 or 10 foot wide silo-like profile, would that be something more amenable and said he didn't know. Mr. Skuza said the board has the right to hold them to a higher standard. You cannot ban cell towers but the board can hold them to a higher standard that might require them to do things that would make it something we could live with. Mr. Skuza said if technology changes and that tower becomes useless, then what have we got.

Mr. Bell said as a point of information, the town code currently requires that abandoned cell towers be taken down by the owners and companies have to post a bond at the time the tower is put up and it stays with the town.

Peter Ianucci – 399 Skidmore Road said he was on the open space committee but was not speaking for them. He talked about the issue of co-locating and they say it's not a good site. Can we require them to do a cost analysis, is that why they don't co-locate? Instead of saying it doesn't work, they have to give us a reason why it is not good to put it on the electrical tower. They can say it costs them too much or it is not feasible and the only thing we hear is it doesn't work. Why? Mr. Iannucci asked.

Mr. Bell said their response has to be adequate to the board so the more information they give us beyond what won't work the greater their chance we will find their answer compelling. Mr. Bell said he doesn't believe he has ever seen a cellular provider tell us that a co-location possibility wouldn't work because of financial reasons.

Mr. Rohde spoke about the issue of the electric towers has come up a few times. He said they have responded and provided information. Mr. Bell asked if it was in the documents and Mr. Rohde replied yes and Mr. Bell said then he would prefer not to hear it again.

Bob Ferris and his work address is 1177 Rte. 55 – local real estate broker and has been over the land in this area more than anybody else in this room and in LaGrange and Dutchess County. He said he was pretty sure he knew of sites that would be much more appropriate for the tower that could be available and he said he didn't think Verizon has fully investigated places. He said he is wondering about with Sky Acres being so close, whether that tower is going to be safe for airplanes without a light no matter what height.

Al Rabasco 478 Rossway Rd. He said he is an adjacent property owner and he also owns the land from his house to the parkway. At the ZBA meeting they were adamant this was for the TSP and during the meeting and after the meeting he gave them alternate sources, including his phone number and they said they would contact him and they didn't. He said there is 160 acres behind him which is a ridgeline area too, but he felt it was a better site for the TSP because the Iozza property is much lower than his house. He said the Porter property has much better access. He said you could a pole 20' high and have better access than the Iozza property. Mr. Rabasco said they never contacted anyone and they haven't answered any of the questions from the ZBA meeting which was over a month ago.

Mr. Bell said a month is not a very long period of time for an applicant to not have responded to public comments from a public hearing. He said it's possible they wanted to wait until this one so they could address them all in one submission.

Dan Connors of 207 Sunset Hill Road said he looked up the property and came across the tax records for that property. He said the property there is assessed at \$418,000, the fair market value. The tax value is \$12,892 so they have a 97% tax exemption and asked if they have given up any developmental rights to get that extensive tax exemption. Ms. Valk said he would have to ask the assessor. Mr. Connors asked if the board could look into whether they have given up any rights to get that exemption.

Joe Lombardi of 469 Rossway Road spoke. He said he is a Verizon subscriber and he liked Verizon and has good service but he didn't think this location is where it ought to be. Many speakers have been very eloquent and to the point and he would not belabor points made. Mr. Lombardi said one of the reasons for brevity is because he knows all this is going to be transcribed in minutes and he wanted to give the secretary a break.

Mr. Lombardi said his objection is on several grounds. He said this is ridgeline protected overlay and if a tower was positioned there it would be the first kink in that particular piece of legislation. He said to him that was land marked legislation that protects the visual aspects of our town, like few other laws do and he would hate to see that diminished. Mr. Lombardi said the Skidmore corridor, Sprout Creek has been identified as visually one of the most important areas in the town. He said he knows the labor that went into the creation of that document, the open space document. He said there are thousands of hours, surveys that indicate strong support for that particular concept. Mr. Lombardi said there are alternatives and he thought they ought to be explored. Considering the fact that the points have been made eloquently by others, he did not rehash them but he said the board has it within their hands the power to maintain the momentum that we have for the preservation of open space or to allow that to be weakened by this particular action.

Bob Kondas of Mountain Rd. said addressed the issues of the taxes and said he is in an AG district and he and his brother use some of that land to support their farming endeavors and land is getting harder and harder to come by in the town and it is getting more and more taxable.

Ms. Valk said it makes sense because that is probably the only exemption that would get them that high.

Richard Nunez of 52 Sunset Hill Road spoke. He said he wasn't sure there has been a good identification of need. The height of the tower is a regulation with the FAA and regulations can change. He asked about the notices to neighbors and if there was an issue. Mr. Bell said they provided an affidavit showing they sent out adjacent notifications.

Mr. Straub made a motion to adjourn the public hearing to November 16, 2010. The board discussed the balloon test. The Board decided to hold the balloon test on November 6, 2010 from 8:00 a.m. – 2:00 p.m. with a rain date of November 8<sup>th</sup> at the same time. The notification could be put on the town webpage and the applicant offered to notify the adjacent property owners.

**CRAMER ROAD EQUITIES** - Proposed 3-lot subdivision located on Linda Court/Jeffrey Drive containing 30.30 acres (Grid No. 6461-03-115346); waiver for tree survey; update/discussion

Dennis Lynch of M.A. Day Engineering appeared before the board. He said he is present to ask for a tree waiver. He said he met with the consultants a week prior along with

Wanda Livigni and Mike Kelly to go over the outstanding issues that were in the July 13<sup>th</sup> memo from SMC. The majority had to do with storm water and said they would be re-submitting. There were some issues in the letter that he wanted the board's direction on – waiver of the trees for the site. The site used to be farm land and said he didn't believe there were any significant trees. Mr. Bell said if there aren't any significant trees, than marking them on the map shouldn't take much effort. Mr. Artus said it is 12". Mr. Artus said the applicant is asking for a waiver from the location of any pertinent features such as trees greater than 12" in diameter. Mr. Bell said his explanation for why he wants it is because there aren't any, so if there aren't any than putting them on the map should take little time. Mr. Bell asked Mr. Lynch if he was sure there were no significant trees. Mr. Lynch said he could double check but he was pretty sure there weren't. Mr. Lynch said if there aren't any he could put a note on the plan stating that. Mr. Lynch said one of the comments concerned an emergency turnoff lane for the 3<sup>rd</sup> lot.

Mr. Artus spoke and did not use the microphone therefore his comments were not audible.

Ms. Livigni wanted to clarify the tree survey. She asked if the board would consider just having the applicant check the areas that would be cleared with this application, as opposed to the whole 30 acres. Ms. Lynch said what they've done in the past is 25' of the limits of disturbance. The board said that was ok.

**TACONIC CENTER SITE PLAN** – Proposed site plan located on Rte. 55 containing 14.58 acres (Grid No. 6460-02-9609601; 957922); update/discussion

Mr. Jason Page and Ms. Kelly Libolt were present.

Kelly Libolt said she thought everybody knows where they are with this project. She said she has been before the board month after month trying to get site plan approval wrapped up. She said at this point they have addressed every issue and the only outstanding issue is to get Health Department approval for the water and septic. She said she was disappointed to tell that as of tonight the Health Department has not approved the water yet, they have approved the septic system but not the water system, which is a well.

Ms. Libolt said she could go into great lengths to tell you why that hasn't happened but she didn't think the board wanted to necessarily hear about, the fact is it hasn't happened. Mr. Bell said he wanted to know whether it's being held up because they are not sure there is enough water pressure or the Health Department doesn't know where you are going to drill or whether is some technical issue.

Ms. Libolt said Wanda and she both spoke to Dave MacDougal and was told by him that the well is sufficient. They have done the necessary pump tests and gave Dave MacDougall all the necessary information. She said they have done all the quality testing and 4 rounds of testing and there was one test that keeps coming back with a low level which they would like to get lower, which is turbidity so they keep going back and looking at that. Mr. Bell asked if it was safe to conclude that because they are still doing

testing, the Board of Health doesn't have those tests to review yet. Ms. Libolt said they have 3 rounds of testing and today they asked for one more additional round of testing for the turbidity.

Ms. Livigni said that's not quite what Dave MacDougall told her. She said she didn't know if he didn't give her the complete story. Ms. Libolt said they get a lot of different information from Dave and Ms. Livigni said and that's fine. Mr. Bell said in any event, it is not that the county has absolutely everything they need to review, it's that there's an outstanding test they are waiting for before they can do the review. Ms. Libolt said and Mr. MacDougall wanted the permit application.

Ms. Libolt said the septic system has been approved and they have received permission from this board to proceed at their own risk with respect to the grading. She said because of the nature of the SWPPP and that they exceeded the 5 acres of disturbance, they have extra inspections being done by the town and everything has been done properly. She said a DEC representative came and said they were doing everything in conformance. Mr. Artus replied that was true.

Ms. Libolt said she has cried enough to this board about their tenant, Planet Fitness, and the fact that they have an existing lease and they do have obligations to get this building open to them in a certain time frame. She said winter is quickly approaching and they are not facing problems with respect to getting the building built before the pavement plants close. She said they are trying to proceed as quickly as they can with the site work but they are not at the point where they are ready to pour the foundation and unfortunately they don't have site plan approval to be able to proceed with a building permit. She said she thought in theory this board has approved the building location and the size and elevations, it's a procedural issue right now that's holding them up, so tonight she said she was asking for help from this board in allowing them to proceed at their own risk with pouring the foundation for the building and her hope is between the pouring of the foundation of the building and the next meeting, that we have this information wrapped up with the Health Department.

Ms. Livigni said to Ms. Libolt just for clarity, they are looking to pour the foundation, put in the blacktop for this building and the roadway going in plus the drainage that would go into the storm water facility. Ms. Libolt replied yes, but their expectations are that they are going to back before the board and get site plan approval. She said their next step is the footings and the foundation, that's really what they are trying to get accomplished right now. She said if they don't get these footings poured within the next few weeks, they will not be able to the site worked on it time to get the site paved.

Mr. Bell asked Ms. Libolt if she was asking to proceed at their own risk to pour the foundation and potentially pave the parking lots. Ms. Libolt replied correct. Mr. Bell said suppose the water test never comes back low, then what. Ms. Libolt said Mark Day is their design engineer for the water system and she asked him the same question and at that point, it's a change in the design, a modification on how he treats the water. She said

she thought they were at the point that it's not going to change and he needs to design of their treatment.

Mr. Bell said would also have to be approved by the Board of Health and Ms. Libolt replied correct. She said right now they have a design into them and that would be modified. Ms. Libolt said they would be willing to put together a restoration bond that if in fact, the approvals didn't happen. Mr. Bell said the bond would be money that would guarantee the property would be restored. Ms. Libolt said that the foundation would be removed, the slab would be removed.

The board discussed a recent project with TEG with similar circumstances. Ms. Livigni said outside of this board, the Town Board entered into an agreement with the Harvest Ridge Subdivision. In lieu of a performance bond for infrastructure for a period of 1 year from the date of approval from the Planning Board, to put up a restoration bond. Ms. Livigni said it's the same principal, just a different board taking a different action and Ms. Livigni added that the value of that work in that case was based on taking out all the impervious surface, not putting all the fill back in, but stabilizing it.

Mr. Bell asked how the performance works. Ms. Livigni said she thought the Town Board would have to get Steve Gaba's advice on how to proceed on this, and added she believed it would be a Town Board action with a recommendation from the Planning Board. Ms. Livigni said as done with Harvest Ridge the applicant's engineer would submit a cost proposal, restoration plan, the town with the consultants would review that and recommend that dollar amount to the town board. Ms. Livigni said since this is Planning Board action to proceed at their own risk, she thought the Planning Board should make the recommendation to the Town Board to establish it, should they choose to go that way.

Mr. Straub said it sounds like we are planning for failure, to him he would think they would plan for success. Ms. Libolt repeated that the water issue is a treatment issue.

Mr. Bolner said it's common when you first drill a well and you develop the well that you have issues with turbidity and if you continue to develop the well, it basically clears up.

Mr. Bolner said for most treatment systems in this area, it would be chlorination only. Pumping the water out for commercial public water supply. If you have high turbidity you are required to put in a cartridge filter system and it does have to be approved by the Health Department, but it's not a significant treatment technology.

Mr. Straub said his point is they are not going to have failure, it's a matter of designing the system to accommodate the problem and it will be fixed.

Ms. Libolt said they met with the Health Department 3 weeks ago when they got their first round of results and they were very happy with the water, It's soft water and they thought that maybe they were pulling from the stream because it's so soft a lot of times, you see if it is pulling from the stream, but there were no colorforms in it. Mr. Straub

said it doesn't sound like a big deal to him and it is solvable. Ms. Livigni said she disagreed in regards to the fact that, again she is not saying that Dave MacDougall disclosed the whole situation to me, maybe he left out pieces, but she thought much like Wright Farm, it's very important not to diminish the importance of getting outside agencies' approvals before moving ahead with things. She said she is not trying to doom them for failure, she is trying to say it is a vital part to what goes on sites and to diminish that is a shortcoming. She added she didn't have a problem with the restoration bond.

Mr. Bell asked the board if they had a problem with this, allowing them to proceed at their own risk, and establishing a restoration bond. Mr. Artus said if the board was so inclined to go this route, it's likely out of the construction sequencing that is in the approved SWPPP so there would be a minor modification in the SWPPP and there may need to be some temporary swales installed for the purposes of this impervious area to get to the pond. Ms. Libolt said they did not have an objection to that.

Ms. Livigni said the applicant, because of the issues with DOH and DEC is going to be submitting what they previously called Phase I, which is what the board sees right now, as the site plan. When they come in for the rest of the site, the SEQR was done on the overall site, that will be an amended site plan application, but she just wanted to make it clear to the board that's what they will be looking for and also in terms of work to get done here, that it is imperative that the storm water pond be built and stabilized. Ms. Libolt said the pond is in, they have to stabilize it.

Mr. Bell said the plan the board has been reviewing shows all the buildings, and now this is going to be modified so they don't have to go back into SEQR because it was already done on the whole site so they are not in danger of segmentation because the board reviewed the full impact, so the board would just be approving this one and then when they are ready to build the other ones, they will have to come in for an amended site plan. Mr. Artus said they will also need a wetland permit from the town and a special use permit because they will be in the stream corridor protection. Mr. Bell asked if that was true all along and Mr. Artus said that plan was never presented to the town. Ms. Libolt explained they had an original design for the sewer treatment plant but DEC has always wanted their discharge point to be in rip rap prior to the water source. Unbeknownst to everyone they changed their opinion and they want the out flow directly into the water so they had their outflow into the rip rap, into the buffer, which didn't require the permit, now they want it directly into the stream, so they were re-routing their pipe to try to have the least impact into the stream and that required a DEC permit.

Mr. Bell asked when the amended site plan comes in, are they going to have to reopen SEQR. Mr. Artus replied yes, for the wetland permit, special use permit. Mr. Artus said they also need 3 DEC permits. Ms. Libolt said they are applying for that now. Ms. Livigni said in other words, by the time they come in for the amended site plan they will have everything in place, in theory and Ms. Libolt said "listen, pigs are going to fall from the sky" but it's going to happen.

Mr. Bell asked if there were any objections from the board to allow them to proceed at their own risk for pouring footings, potentially paving the parking lot and road with the understanding that they will recommend to the town that they require a restoration bond so if the whole thing falls apart with whatever isn't tidied up right now, which have to be the Board of Health, that the bond could be used to restore the property. Mr. Brenner asked if it should be the Town Board deciding if they should be pouring the foundation without Board of Health of approval. Ms. Livigni said she believed it was actually the Building Inspector's call because he is the one who issues the permit. Ms. Livigni said he is looking for direction from this board. Mr. Bell said the board has, in the past, allowed applicants to proceed at their own risk for various things based on their judgment on how they close they are and how likely they are to get approval and frequently it is because of weather and he compared this to the TEG bank on Rte. 55. Mr. Bell said he didn't remember having a restoration bond for that. Ms. Livigni said the restoration would terminate immediately upon site plan approval from the board.

### **THE POOL GUYS** – status report on SEQR

Gary Beck of Z3 consultants, Steve Burns from Barger & Miller and Kurt Hahn were present. Mr. Beck said they are working on the full EAF and have just completed the property survey to help assist them with the full EAF. He said he is figuring they will have the full EAF in about 2 weeks. If possible, he said he would like to get to a public hearing as soon as possible. Mr. Hahn would like to get concrete poured before it gets cold.

Mr. Artus said he generated a comment memo in June. Mr. Beck said he could have that answered in 2 weeks. Mr. Bell asked if they submitted a map that meets the requirements for a public hearing. Mr. Artus said no yet. Mr. Beck said the board has a map that shows the general idea. Mr. Beck asked if has everything in 2 weeks, would that be enough time to schedule the public hearing for October 19<sup>th</sup>. The board determined that if the applicant makes a submission by October 5<sup>th</sup>, circulation could be done and the notice could appear in the paper on October 12<sup>th</sup> in time for the public hearing on the 19<sup>th</sup>. Mr. Bell told Mr. Beck if he comes back on the 19<sup>th</sup> and he doesn't have an affidavit showing it was in the paper and proof of notification of adjacents, the public hearing would not be held. Mr. Beck replied absolutely. Mr. Bell said in two weeks the applicant has to submit a map that is public hearing ready including bulk regulations and adjacent property owners, also supply the EAF and a response to the SMC comment letter.

Ms. Livigni asked the board to comment and assistance on the Skrela Subdivision that appears to have been approved in 2004 by the Planning Board. It was a 3-lot subdivision on Todd Hill on the east side of the Taconic, approved and never built. Ms. Livigni showed the board the approved map. They have recently made a submission to the Building Inspector which was given to her. She said they are looking for lots 2 and 3 that got approved as a common drive to have individual drives. Ms. Livigni said Mike Kelly is on vacation and she said she hasn't had a chance to check with him, the big issue being

the line of sight. She said some of this was probably discussed in a workshop for which there are no minutes. Mr. Bell said the question was why did the board ask for a common drive in the first place. The board discussed the application. Mr. Bell said there are no wetlands. Mr. Bell said you have to show it can be done with individual driveways and then there's some discussion as to why it would be better to do it the other way. He said that can take place because the board requests it or the applicant for some reason may want to do it and they usually don't. Mr. Bell said he would guess the issue that resulted in a common drive was sight distance and his response is if Mike Kelly is ok with the new proposal, the board would likely be too. Ms. Livigni said she was looking for the blessing from the Planning Board to proceed with this just with Mike Kelly in terms of verifying the line of sight. Mr. Bell said the question is if they are just switching from a shared drive to individual, do they have to file an amended subdivision application or is that just a driveway permit discussion. Ms. Livigni said she would prefer the board not ask the consultants they would generate a bill. She said she assured the applicant that she wouldn't be generating a bill by talking to the Planning Board. Mr. Artus said his concern would be if there was a maintenance agreement in place that would have to be removed from the chain of title. Ms. Livigni said there would be as-builts submitted so the property file would be accurate and there would be a highway permit authorizing the 2 curb cuts. Ms. Livigni asked if the board recalled any other issues other than this. Mr. Bell said he didn't remember at all.

Ms. Livigni said they would get their highway work permits from Mike Kelly if he deemed it appropriate and then when they go through the building permit process one of the requirements is to submit an as-built to the building department which would then go into the property file so the trail would be there. Mr. Bell said that sounds fine.

Mr. Straub made a motion to adjourn the meeting at 9:45, seconded by Mr. Gunn and the motion carried unanimously. MEETING ADJOURNED.

Respectfully submitted,

Eileen Mang  
Planning Board Secretary