

A regular meeting of the Town of LaGrange Planning Board was held at the LaGrange Town Hall, 120 Stringham Road on Tuesday November 17, 2009. Chairman Alan Bell called the meeting to order at 7:30 p.m. Board members Dennis Rosenfeld, John Gunn, Tony Brenner, Stacy Olyha and alternate board member Kevin Donohue were present. Joe Zeidan was absent. Also present was Wanda Livigni, Administrator of Public Works, Walter Artus from Stormwater Management Consultants and Greg Bolner from Clark Patterson Lee.

Mr. Gunn made a motion to approve the minutes of September 15, 2009, seconded by Mr. Brenner and the motion carried unanimously. MINUTES ACCEPTED.

### **PUBLIC HEARINGS:**

#### **BROTHERS COMMUNICATIONS CELL TOWER AND SPECIAL USE**

**PERMIT** – Proposed site plan and Special Use Permit located on Sedgwick Road. Continuation of public hearing.

Mr. Frank Redl and Mark Redl, applicants were present. Mr. Redl said their proposal is to erect a 195' telecommunications facility on the salvage yard property on Rte. 55. He said it will be designed to have a maximum of 5 carriers permitted on the tower with 2 additional at the lower end...1 for the Town Highway Dept. and 1 for the Fire Dept. He said the property is within the ridgeline and they were also applying for a special use permit. He said the facility is not going to affect any drainage, no public utilities, no well, no septic, an unmanned facility. Mr. Redl said they meet the code criteria in that it is not going to be within 500' of any existing residence.

Mr. Bell re-opened the public hearing and asked if there was anybody in the audience who wished to speak for or against the application.

Mr. William Spiak of 863 Freedom Plains Road spoke. He said his property is residential and could be subdivided into a minimum of 7 building lots and that would adversely affect the value of his property. Mr. Spiak said there are other towers in the area that are vacant and those towers have the capacity to have more units put on them or better equipment. He said there is room on the tower on Vervalen Drive and the tower on Commerce Street is close to the fire house. He said he said a lot of people in the neighborhood oppose this and he said they sent in letters. He said he was going to compile a list of names. Mr. Bell told Mr. Spiak if he wanted to see anything that is in the public record that has been received by the board, he could file a F.O.I.L.

Mr. Spiak talked about radio frequencies and the affects of that on the community. Mr. Bell said the radio frequency issue is completely controlled by the Federal Communications Commission. They set the proper levels and they have to adhere to federal law. He said the Town of LaGrange doesn't have the ability to override Federal Law. Mr. Spiak asked about his rights. He said he planned on building houses within 500' of that site. Mr. Bell said he wasn't sure what he was asking. Mr. Bell asked Mr. Spiak was he asking if the tower is approved and built and he feels that his property

dropped in value, what actions could he take. Mr. Spiak said yes. He felt his property value would drop. Mr. Bell said he understands and said he didn't think he could comment on his rights. Mr. Bell said he should consult an attorney. Mr. Bell told Mr. Spiak his rights as a citizen involve speaking and outlining his concerns. He said the applicant is required to respond to all the concerns in writing to the board, which the board will determine if they are satisfactory before they make a decision.

Mr. Spiak asked where he could get that information and he was told the documents were public record.

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

Mr. Artus spoke and referred to a discussion he had. He said he reviewed the recent submission and revised his comment letter, which he handed out to the board.

Mr. Artus said the applicant satisfied some comments and the applicant states that there are other comments they will satisfy. Mr. Artus said there were 3 or 4 comments that the board should give the applicant some direction on. He specified # 5, and suggested they meet with the town Highway Superintendent. Mr. Redl said they have and Mr. Kelly has indicated that he will approve the existing drive. #15 – in the code relative to the ridgeline, they talk about a buffer extending 25 feet around the activities, landscape buffer and asked the board if they wanted a landscape buffer. Mr. Bell said he didn't feel it was necessary to put in a landscape buffer to shield a junk yard.

Mr. Artus referred to # 21 and the structural analysis report. He said they are asking the applicant to submit one however he said the Planning Board may wish to make that a requirement prior to the issuance of a building permit and have the applicant put a note on the plan to that affect. Mr. Redl said he would agree to that.

Mr. Bell said the building inspector sent the board a memo related to a number of things that didn't comply with the town code and the board asked for a legal opinion from Rebecca Valk. Mr. Bell said his recollection is that most of his concerns were made moot by the variance that was granted in 1987. That variance allows them to not be subject to a number of those constraints but the one left was the setbacks. He said while they are exempt from the specific setback rule, the original variance specified that the tower would be built far enough away from the property line so if it fell it would not fall off the property. Mr. Bell said their attorney has recommended, and the building inspector has also requested, that they get an engineering report that demonstrates that the kind of tower being built is engineered in such a way that it collapses upon itself which is how a lot of these are built. Mr. Bell said the request is that we put a note on the plan stipulating they will provide that prior to be issued a building permit. Mr. Bell said that will be a condition of their approval.

Mr. Bell said the plan they would be approving would have a note on it saying they need to provide this before they get a building permit. Mr. Bell asked if the board was comfortable with that and the board agreed.

Ms. Livigni recommended the note be taken directly from Ms. Valk's letter and that we provide the note to them to be put on the plan. Mr. Bell agreed and so did Ms. Valk.

Mr. Artus referred to # 23 – relative to liability insurance certificates. Mr. Redl said he indicated he would supply that when they applied for the building permit. Mr. Artus said that was actually an application requirement and he said he discussed it with Ms. Valk and it was in the code. Ms. Valk said under the town code the application is not complete until they have that. Mr. Bell said if it's not complete then the board cannot take any action.

Mr. Redl asked what does the board propose they insure? A building that they don't have a permit for. Mr. Bell said isn't this liability insurance for whoever is going to be doing the construction work. Mr. Artus said yes. Mr. Bell said they have to have liability insurance to cover the work that they do on a regular basis. Ms. Valk said the way the code reads is the applicant shall provide to the town a copy of the applicant's liability insurance which shall name the town as an additional insured party. So if there is already liability insurance on the property it would be as simple as naming the town as an additional party to that policy. Mr. Redl said they would do that before the map is signed.

Mr. Bell said he believed the board needed it before they could take any action because it is an application requirement.

Mr. Artus referred to # 25 – he said Mr. Redl's response was correct, they do not have to provide the town with the lease agreements.

Mr. Bell asked if they were putting on 2 carriers. Mr. Redl said there are 2 cell companies they are in negotiation with but there is also the Town Highway Department and fire department. Mr. Bell said that is a requirement as well, an anticipated build-out plan. Mr. Bell said the cell tower law requires them to give a full build out plan of what they intend to do, not what they have already agreed to do. Mr. Redl asked how would they know who the other 3 carriers would be. Ms. Valk said they need to know how many antennae the tower can hold and the code says if they have any ongoing negotiations or have had any, they need to disclose that fact so the board can consider it under SEQR.

Mr. Bell talked about a note the board received from Dutchess County saying they take no position on the board being Lead Agency and also a note from the DEC saying they don't consider themselves to be an involved agency.

Mr. Artus said based on the DEC letter, they could disregard under part 1 EAF comment # 3 and Part 11 EAF comment # 1.

**LANDS OF MILEA LOT LINE REALIGNMENT** – (lot 25) Proposed Lot 25 Proposed Lot Line Realignment located on Cramer Rd./Frost Hill Rd. containing 3.08 acres (Grid No. 6461-03-269188)

Mr. Richard Milea appeared before the board. The notice of publication was given to Eileen Mang, Planning Board Secretary.

Mr. Milea said in 2004 he was promised a piece of land from Jbar and Montort provided he put a sales trailer on his property. He said the lawyer dragged his feet and he ended up not getting the land. Mr. Milea said finally the zoning changed and he was out the land and now he was granted a variance and now he was back to the planning board.

Mr. Bell asked if there was anyone in the audience who wished to speak for or against the application. There was no response.

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

Mr. Artus said this was reviewed internally.

Mr. Brenner made a motion to deem the project an unlisted action and to grant a Negative Declaration pursuant to SEQR because the Board finds that the project will not have a significant adverse impact on the environment because the impacts have been identified and suitable mitigating measures have been identified and suitable mitigating measures have been incorporated on the plans and/or in the reports. Mr. Gunn seconded it and the motion carried unanimously. NEGATIVE DECLARATION

Mr. Gunn made a motion to grant preliminary subdivision approval, seconded by Mr. Brenner and the motion carried unanimously. PRELIMINARY SUBDIVISION APPROVAL\

Mr. Donohue made a motion to grant final subdivision approval contingent on payment of all fees and the satisfactory response to any outstanding consultant issues, seconded by Mr. Brenner and the motion carried. FINAL SUBDIVISION APPROVAL.

**LANDS OF MARSH SUBDIVISION** – Proposed 2-lot subdivision located on Lauer Road containing 5.095 acres (Grid No. 6460-03-173138))

Mr. Richard Marsh appeared before the board. The notice of publication was given to Eileen Mang, Planning Board Secretary.

Mr. Marsh said he was looking to subdivide a 5 acre parcel on Lauer Rd in order to build a house.

Mr. Bell asked if there was anyone who wished to speak for or against the application. There was no response.

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

Mr. Bell said the building inspector has said his comments are satisfied. Mr. Artus said this was his initial review and there are some relatively minor comments for the applicant to address.

**OTHER BUSINESS:**

**HEBERT SUBDIVISION** – Proposed subdivision located on Skidmore/sunset Hill Road containing 12.0 acres (Grid No. 6562-04-675345)

Mr. Jason Morris of M.A. Day Engineering appeared before the board. Ms. Valk said she wrote a letter to the Judge and hasn't received a response so she said she had no indication that the restraining order that was issued on the board was lifted. Ms. Valk said she sent the letter to Judge Emmett Murphy who took the case over from Judge Marlow upon the Judge's retirement. She said the notice she received was from an attorney indicating that the matter was resolved and the findings were confidential. Ms. Valk said she believed it was sent by the applicant's attorney. Ms. Valk said she wrote a letter to the judge in September saying while she had no reason to doubt the assertions in Mr. Ragucci's letter, there has been a restraining order placed on the Planning Board and that she would like to know that the findings lifted that order. Ms. Valk said she hasn't received a response. She said she would follow up with Judge Murphy's chambers but unfortunately. She said while she has no reason to doubt Mr. Ragucci's representation, a judge puts a restraining order on; she really needs a judge to lift it.

Mr. Bell said the restraining order kept the board from taking any action whatsoever. Ms. Valk responded correct. She said it may be in that findings but we haven't seen it. Ms. Hope Newhard said she had the findings. Ms. Newhard said she could show her that part of it but she couldn't go into further detail of what it's in the court papers, but she said she could show her the paragraph that said she could continue with the subdivision.

Ms. Valk said if she was shown page 4 and 12 and added while she has no reason to doubt her, she didn't know what it was the judge signed. Ms. Newhard said she would show her the document and mark off the area where it said the judge said they could proceed on with it.

Ms. Livigni said maybe between now and the December meeting either Ms. Newhard could work it out with her attorney. Ms. Livigni told her that her attorney's opinion doesn't count as much as the judge's findings. Mr. Bell said the board either needs a letter from the judge or Ms. Newhard attorney to convince our attorney to advise us the board can act and until that takes place, there's nothing we can do.

Mr. Bell said there is an outstanding legal issue and until it is resolved, there is nothing that can be done. Ms. Valk said she needed to see something with the judge's signature on it. Mr. Bell set an escrow for \$1,000 to cover the cost of the town attorney's fees.

**TACONIC REALTY PARKING PLAN** – Proposed site plan located on Rte. 55 containing 10.5 acres; set public hearing

This project was removed from the agenda, however the Planning Board needed to vote to appoint an attorney for this project since VandeWater has a conflict.

The board voted to appoint Steve Gaba as special counsel for Taconic Realty Parking Plan (Taconic Crossings Site Plan)

**LAGRANGE PHYSICAL THERAPY** – Proposed site plan located on Freedom Plains Road containing 1.09 acres (Grid No. 6360-02-626880); consideration of SEQR determination.

Mr. Bell said he had a comment letter from the CAC stating they have no environmental concerns. Mr. Bell said the Dutchess County comment letter was already seen by the board.

Mr. Artus said they met with the applicant about a week ago. He said Wanda Livigni, Alan Bell, the applicant and the applicant's engineer attended. Some of the things that need to be look at by the board is a landscaping plan and the county asked for an alternative parking plan, which the applicant needs to show the board for a determination. Mr. Artus said the applicant submitted another plan which 95% of the comments had been addressed, with 2 or 3 minor comments. He said he reviewed the EAF and it would be ready for a SEQR determination. He said the main thing is for the board to go over the parking and landscaping.

Mr. Bell said the original plan showed the parking in the front and C-1 regulations recommend that the buildings be set near the road and parking in the rear. He said this is an existing structure which can't be moved next to the road. The County made the observation that the code calls for that. Mr. Bell asked the applicant to demonstrate alternatives. He said the main back of the site drops off and has large trees and the collective feeling of the consultants is that's not feasible. He said the request was could they show something on the side, which the County mentioned as well. Mr. Bell said the diagram showed the alternate view and because of the constraints, what it really comes down to is moving ½ dozen or less on to the right side of the building but leaves a fair number in the front. The questions is does that actually accomplish anything. He said it's not clear to him that it does. He said if they put the parking on the ride side, cars pulling in and out in the evening would direct the headlights onto the adjacent property instead of on the building, which doesn't seem to be a good idea.

Mr. Bell said and the board continued to discuss the issue of parking. Mr. Burke explained why the current parking layout worked best. Mr. Burke showed the board a diagram of a car and the bushes. He said this property has big trees on both sides. Mr. Bell said with the regulations in a C-1, the intent is to have buildings built up close to the road and the parking disguised behind the buildings. This is not a new building and since it has been demonstrated that the parking cannot be put behind the building, he wasn't sure what they would be accomplishing by moving less than half the spaces and moving them 90 degrees. He said he didn't even believe the visual impact was different because instead of seeing 4 car's fronts, they would see the sides instead. Mr. Bell said it seemed

to him that it would be much more of a negative impact on the adjacent property owners. Mr. Bell said it seemed to him that the original design worked best and asked the board if anybody disagreed. The board replied no.

The board continued on with a discussion regarding a fence. Ms. Livigni said at the public hearing the neighbors to the right, who are in favor of the parking, expressed concerns that were not addressed. Mr. Burke said he submitted a letter addressing the concerns. Ms. Livigni asked the board how they felt about putting a fence along the property line and Ms. Olyha and Mr. Bell said that is what the board was currently discussing. Mr. Burke asked if the purpose of a fence would be for aesthetic purposes or for a physical barrier. Ms. Olyha said it was for a physical barrier. Mr. Burke asked if it was to prevent their patients from wandering into the neighbor's yard. Mr. Bell said yes and also for children wandering into the parking lot, which could be a safety issue.

Mr. Burke asked why wouldn't the neighbor put up the fence and Mr. Bell replied because they were the ones requesting the use be changed from residential to business. Mr. Burke said they would rather not put a fence there. Mr. Bell suggested the board go by and take a look on their own. Mr. Artus said beside the fence issue, they need to provide the correct signature block, provide the owner's consent note and the swale that goes back to the stormwater trench is grass, it's a 20% slope and it should be a stone swale. Ms. Valk said by the time the site plan is signed whoever the owner is at that moment needs to sign that.

Mr. Artus recommended a negative declaration pursuant to SEQR.

Mr. Gunn made a motion to deem the project an unlisted action and to grant a Negative Declaration pursuant to SEQR because the Board finds that the project will not have a significant adverse impact on the environment because the impacts have been identified and suitable mitigating measures have been identified and suitable mitigating measures have been incorporated on the plans and/or in the reports. Mr. Zeidan seconded it and the motion carried unanimously. **NEGATIVE DECLARATION**

Mr. Bell said there are a couple of that things that need to be changed on the plan and the board wants to visit the site regarding the fencing. Ms. Olyha also asked the board to think about landscaping.

### **DISCUSSION:**

### **ROLLING MEADOWS PHASING:**

Mr. Bell said Rolling Meadows have been before the board to discuss phasing. He said they appear to be interested in proceeding and in order for that to take place they need to send a note to the Town Board asking for their views on the subject. Mr. Bell asked the board if anyone had an objection authorizing Eileen to send that memo. There was no objection.

Mr. Artus reminded the board of his upcoming Stormwater Management training session on November 30, 2009.

Ms. Valk brought up Daley Farm and a stipulation extending time because the public is interested in the status so Dan Leary and she drew up a document that needed to be circulated to all the involved agencies. Mr. Bell said it is basically an extension of the time line for the FEIS. Mr. Bell said some people who attended the public hearing wanting to know what is going on because there are specific timelines in SEQR that things are supposed to take place. Mr. Bell said in most cases none of those timelines have any consequences if they don't get done when the guidelines say they are. In particular,, if the applicant takes longer to come back to the board with things, there's no consequences at all because the whole purpose of the timeline is to keep the town from dragging their feet, not the applicant for taking appropriate time to answer concerns in a responsible manner. He said all this is is a legal document that says the town and the applicant negotiation under timeline with each other which the SEQR law provides for.

Ms. Valk announced the Nurtury got their CO for the other building.

Mr. Gunn made a motion to adjourn the meeting at 8:40 p.m., seconded by Ms. Olyha and the motion carried unanimously. MEETING ADJOURNED

Respectfully submitted  
Eileen Mang, Planning Board  
Secretary