

Town of Nelson  
Zoning Board of Appeals and Planning Board Joint Meeting  
April 12, 2011  
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Chairman Jeff Rubenstein called the Town of Nelson Zoning Board of Appeals Board Meeting to order at 7 p.m. Present were Jeff Rubenstein, Tom Harvey, John Foley, Carl Shaw and Mary Perry.

Chairman John Dunkle called the Town of Nelson Planning Board Meeting to order at 7 p.m. Present were John Dunkle, Jim St. Pierre, Kevin Pace, John Laubscher, Robert Carr and Holly Ioset. Also present were Roger Cook, Code Enforcement Officer and Jim Stokes, Town Attorney. Absent was Sandy Palmer.

### **Minutes**

The ZBA reviewed the minutes from the November 16, 2010 meeting. Mary Perry made a motion to approve the minutes as written. It was seconded by Tom Harvey. There was no further discussion. All voted in favor and the motion carried. Chairman Jeff Rubenstein abstained as he was not present at the November 16, 2010 meeting.

The Planning Board reviewed the minutes from the March 8, 2011 meeting. Holly Ioset made a motion to approve the minutes as written. There was no further discussion. It was seconded by Jim St. Pierre. All voted in favor and the motion carried.

#### **1. New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, Inc. – Chaphe Hill Road – RB Zone – Special Use Permit, Site Plan, Use Variance Amendments - Tax Map #133.-1-10.12 – Joint Public Hearing**

Steve Woodward, representing New Cingular/AT & T, presented plans for a proposed cellular equipment collocation on the Madison County 911 tower on Chaphe Hill Road. The purpose of the project is to provide Cingular/AT & T cellular phone coverage for Southern Madison County. There will be 6 panel antennas installed at 155' on the 195' tower. An 11'6" x 20' x 8' precast concrete building will be located within the Madison County enclosure. A 5' x 10' concrete pad will be also be constructed for a future generator. The generator would be automatically exercised approximately ½ hour a week once a month. Maintenance would probably be done once a month as well. There will be one power service going in and metered individually.

The power and supply and telephone lines will be co buried with the underground lines feeding the 911 facilities. There will be no lighting, except a motion detected door

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light on the equipment building. Construction will likely occur simultaneously with the initial installation of the tower by Madison County. We will be staying within the same footprint as Madison County.

### **Public Hearing**

Jeff Rubenstein, ZBA Chairman and John Dunkle, Planning Board Chairman, jointly opened the Public Hearing at 7:24 p.m. There were no public comments.

Tom Harvey made a motion to close the ZBA Public Hearing. It was seconded by John Foley. All voted in favor and the motion carried. The ZBA Public Hearing was closed at 7:24 p.m.

Holly Ioset made a motion to close the Planning Board Public Hearing. It was seconded by Jim St. Pierre. All voted in favor and the motion carried. The Planning Board Public Hearing was closed at 7:24 p.m.

ZBA Chairman Rubenstein questioned the technicality of who the applicant is. Jim Stokes, Town Attorney, suggested that we have Madison County sign off and that the amended Use Variance be granted to New Cingular Wireless/AT & T. Jim Stokes also discussed with the ZBA that you have to consider whether it can be located somewhere else where it is a permitted use and its impact on the view shed. This is the most logical place as that's where the 911 tower is located and it wouldn't make any sense to put it anywhere else.

Planning Board Chairman John Dunkle noted receipt of the Madison County Planning Board GML report dated March 23, 2011. It was being returned for local determination and stated, "No adverse County impact would result from AT & T Mobility, collocating equipment on the existing 195' self support tower owned by Madison County located at 2855 Chaphe Hill Road, etc." There was also a letter from Madison County E911 Center supporting an AT & T collocation on the Madison County E911 tower.

### **SEQRA**

Jeff Rubenstein, ZBA Chairman, recommended that the ZBA Board approve the Planning Board as Lead Agency. John Dunkle, Planning Board Chairman, explained that the applicant had presented a short form EAF and also included a visual assessment addendum.

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The Board reviewed the submitted short form EAF. A motion was made by Jim St. Pierre and seconded by Robert Carr to a. declare the Town of Nelson Planning Board Lead Agency, b. to declare the proposal an unlisted action, and c. based on a review of the potential environmental impacts outlined on the short form EAF, to make a SEQRA negative declaration. All voted in favor and the motion carried.

### **Approval**

Chairman Jeff Rubenstein recommended that the ZBA approve a Resolution allowing the Use Variance to be amended and that construction be completed in accordance with the application.

Mary Perry made a motion to approve the amended Use Variance. It was seconded by John Foley. There was no further discussion. All voted in favor and the motion carried.

Upon approval by the ZBA of the Amended Use Variance, the Planning Board considered an Approval Resolution for the Amended Special Permit and an Approval Resolution for the Amended Site Plan, which has 2 conditions.

1. The generator will have noise attenuation and
2. All buried lines serving the AT & T antennas will be installed in the same trench as Madison County's lines.

Jim St. Pierre made a motion to approve amending the Special Permit. It was seconded by Kevin Pace. There was no further discussion. All voted in favor and the motion carried.

Jim St. Pierre made a motion to approve amending the Site Plan. It was seconded by Holly Ioset. There was no further discussion. All voted in favor and the motion carried.

2. **Syracuse SMSA Limited Partnership d/b/a/ Verizon Wireless, Inc. – 3750 Route 20 – RB Zone – Site Plan, Special Permit and Use Variance Amendments – Tax Map #109.-1-8.3 – Joint Public Hearing**

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Ashley Baker, of Nixon Peabody, representing Verizon, reviewed the plans to install a 6' diameter microwave antenna facing West at the 137' height on the existing Verizon Tower. The antenna will provide signal transmission with the Verizon Tower in the Town of Cazenovia. There will no site disturbance associated with the new antenna.

### **Public Hearing**

Planning Board Chairman John Dunkle and ZBA Chairman Jeff Rubenstein jointly opened the Public Hearing at 7:48 p.m. Alice Alsever of 3736 Route 20 spoke at length criticizing the Town of Nelson for allowing the original tower to be installed in a Town view shed and along the scenic Route 20 corridor. She further explained that she lived immediately West of the tower and that the proposed antenna would transmit radiation onto her property and that this would pose a health risk. She strongly urged the Town of Nelson to not allow the additional antenna.

Ashley Baker of Nixon Peabody explained that there would be no health risks associated with the proposed antenna. Ashley Baker stated that the FCC and the Federal Communication Act prohibited local Boards from denying microwave antennas based on perceived health risks. This is provided that transmission rates are below the regulated levels as is the case with this proposed site. Town Attorney, Jim Stokes, also agreed with the interpretation.

Roger Cook, Code Enforcement Officer, Jim Stokes, Town Attorney, Planning Board Chairman John Dunkle and ZBA Chairman Jeff Rubenstein discussed the extensive review process the Town of Nelson undertook in 2007 for the original Verizon Tower and discussed the Town's limited jurisdiction in denying the Tower location sites under the FCA.

There were no other Public comments.

Tom Harvey made a motion to close the ZBA Public Hearing. It was seconded by Carl Shaw. There was no further discussion. All voted in favor and the motion carried. The ZBA Public Hearing was closed at 8:02 p.m.

Robert Carr made a motion to close the Planning Board Public Hearing. It was seconded by Holly Ioset. There was no further discussion. All voted in favor and the motion carried. The Planning Board Public Hearing was closed at 8:02 p.m.

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Planning Board Chairman John Dunkle noted receipt of the Madison County Planning Department GML recommendation report dated March 23, 2011 which was returned for Local Determination and which stated, “no adverse County wide impact would result from granting a use variance to Syracuse SMSA Limited Partnership d/b/a Verizon Wireless, Inc. to allow the addition of one 6’ microwave antenna at the height of 137’ etc.”

### **SEQRA**

Jeff Rubenstein, ZBA Chairman, recommended that the ZBA Board approve the Planning Board as Lead Agency. John Foley made a motion authorizing the Planning Board to take the role as Lead Agency in regards to this application. It was seconded by Mary Perry. There was no further discussion. All voted in favor and the motion carried.

The Board reviewed the submitted short form EAF. A motion was made by Jim St. Pierre and seconded by Holly Ioset to a. declare the Town of Nelson Planning Board Lead Agency, b. to declare the proposal an unlisted action, and c. based on a review of the potential environmental impacts outlined on the short form EAF, to make a SEQRA negative declaration. All voted in favor and the motion carried.

### **Approval**

ZBA Chairman Jeff Rubenstein recommended that the ZBA approve the Amended Use Variance based only on the issues they are entitled to consider and with the condition that it be installed specifically in accordance with the plan submitted.

Carl Shaw made a motion to approve the Amended Use Variance on the condition stated and that it be installed in accordance with the plan submitted. It was seconded by John Foley. There was no further discussion. All voted in favor and the motion carried.

Upon approval by the ZBA of the Amended Use Variance, the Planning Board considered an Approval Resolution for the Amended Site Plan and an Approval Resolution for the Amended Special Permit.

Jim St. Pierre made a motion to amend the Site Plan to allow an additional microwave dish. It was seconded by Kevin Pace. There was no further discussion. All voted in favor and the motion carried.

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Holly Ioset made a motion to amend the Special Permit. It was seconded by Robert Carr. There was no further discussion. All voted in favor and the motion carried.

**3. Dwayne Klossner – 2688 Woodcock Terrace – WFZ- Informal Discussion – Planning Board and ZBA**

Mr. Klossner appeared before both the ZBA and the Planning Board to informally discuss a proposal to install either a 12' deck or to add 12' to the living room along the lake side of the existing structure on the 55' x 100' lot.

Chairman Jeff Rubenstein explained that in the current zoning law, specifically in the Waterfront Zone, any existing structure that is already non conforming in any way cannot be changed to make it more non conforming. The lot and structure are non conforming as determined by both the ZBA and Planning Board. The proposed addition would require Variances for Side Yard Setback, deck height and lot coverage.

A septic system evaluation would be needed if additional living space were added. Jeff Rubenstein, Chairman, explained that the Planning Board has more expertise for providing possible suggestions for mitigation. Mr. Klossner will look at his options before proceeding any further.

**4. Mark Storer – 3776 Thomas Road – AR Zone – Area Variance – Tax Map #108.-1-15.16 – Public Hearing**

Mark Storer is requesting a 17' Side Yard Variance to add a lean to off the North side of the existing barn. Mr. Storer will only be using this to store and park his work vehicles. Roger Cook, Code Enforcement Officer, explained that this is not considered a commercial operation as there will be customers, no materials coming in and he will not be performing any business duties on the property.

Chairman Jeff Rubenstein opened the Public Hearing at 8:35 p.m. Mildred and Richard Buschatzke, 3780 Thomas Road, neighbors to the North of Mark Storer, expressed their concerns about the view from their property of the proposed lean to. The Buschatzke's were also concerned about this being a commercial business and that was addressed prior by Roger Cook. It was suggested that the Buschatzke's and Mark Storer work together to devise a detailed plan for plantings of trees or some sort of vegetation to mitigate the "view" issues. The board also suggested

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putting a gutter on the proposed lean to minimize the runoff.

Chairman Jeff Rubenstein adjourned the Public Hearing at 9:00 p.m. and will keep the Public Hearing open until the next meeting. Mark Storer subsequently withdrew his application.

Tom Harvey made a motion to adjourn the meeting. It was seconded by John Foley. The meeting was adjourned at 9:11 p.m.

Respectfully submitted,

Deborah Costello  
Zoning Board of Appeals Secretary

