

Town of New Paltz Planning Board

Monday, February 24, 2020

Final Meeting Minutes

Call to order by Deputy Chair Lyle Nolan at 7:00pm

Attendees: Stana Weisburd, Adele Ruger, Lyle Nolan, Amanda Gotto, Matt DiDonna

Remote: Amy Cohen

Absent: Jane Schanberg

Also Attending: PB Attorney Richard Golden, PB Engineer Andy Willingham, PB Engineer Ryan Cornelison, PB Telecommunications Engineer Michael Musso

Meeting Minutes

Deputy Chair Nolan asked for a motion to approve the minutes for February 10th.

Motion 1 by Matt DiDonna. Motion 2 by Adele Ruger. All present in favor. Motion carried.

Public Comments

No public comments

Application Review

PB 19-272 Institute for Family Health Site Plan

Applicant Kenneth Hamilton appeared before the Board. There was no discussion from the Board on the draft Resolution they had received. Deputy Chair Nolan asked for a motion to approve the resolution for Institute for Family Health site plan.

Motion 1 by Amanda Gotto. Motion 2 by Adele Ruger. All present in favor. Motion carried.

PB 20-33 Wellness Embodied Simplified Site Plan

Consultant Michelle Harrington explained to the Board that Owner Doree Lipson was proposing to renovate the first and second floor of the principle structure with interior renovations, that included rework of a partition wall to create additional private office spaces, with ground floor bathroom modifications and cosmetic upgrades that includes flooring and interior painting. Deputy Nolan asked if there were any proposed exterior changes. Ms. Harrington noted that no exterior modifications are proposed at this time.

Deputy Chair Nolan asked if there were any further comments or questions.

Motion 1 by Lyle Nolan to make this as a Type II action. Motion 2 by Amanda Gotto. All present in favor. Motion passed.

Deputy Chair Nolan referred to the review memo from Stacy, who had no problem with it.

Motion 1 by Adele Ruger to waive Site Plan review. Motion 2 by Amanda Gotto. All present in favor. Motion passed.

PB 20-08 Homeland Towers Site Plan, PB 20-09 Homeland Towers Longform Wetlands Permit

Attorney David Kenny and Applicant Vincent Xavier approached the Board. Deputy Chair Nolan asked for them to give an update to the Board. Attorney Kenny told the Board that he represents Homeland Towers and Verizon Wireless from the law firm Snyder & Snyder, and that Homeland Towers and Verizon Wireless are seeking to construct a 150 foot monopole wireless company agent facility at 60 Jansen Road, adding that this is necessary because Verizon has wireless services in that area, and after searching for properties this was the best property available for building that facility. Attorney Kenny also noted that they have since filed a full Planning Board application with the Planning Board, and they will be also be seeking to file a Zoning Board application for a Use Variance tomorrow so that it will be on the March 10th Zoning Board meeting. Attorney Kenny stated that they had previously met with the Planning Board to discuss the visual analysis and balloon test, noting that one of the most important components in reviewing the wireless telecommunications facility is the balloon test and visual analysis as he feels that isn't what most of the public is concerned about, but what is this facility going to be looking like and where it can be visible from. Attorney Kenny gave an overlay where they think it might be potentially visible through the trees or partially visible which would be the top 10%, and also noted in the overlay they would be able to take photos to have digital photo simulations of the tower overlaid on the balloon so they were proposing flying a balloon the weekend of March 7th, where they will fly a balloon 150 feet in the air so it will be the exact height of the proposed tower, and will then drive around at proposed viewpoint locations will take photos of the balloon, and they will see if its visible or not visible, and in the areas where it is visible they will do a photo simulation of the monopole, which will enable them to give the Board a visual representation of what the actual visual impact will be.

Deputy Chair Nolan stated his initial reaction was that this would look bulky. Attorney Kenny noted that with more than one carrier on the tower it will be beneficial to reduce of impact on the town with more towers. Mr. Xavier noted that they will provide photo simulations of what the tower will look like from certain standpoints, noting that they would be happy to show additional carriers on the photo simulation. Attorney Kenny also commented they would like to do the testing on the 7th unless there is inclement weather then it would the next day, also noting they would like to get it done before the leaves are back on the trees.

Amanda Gotto asked why they went outside the overlay. Attorney Kenny stated they did their search initially in the overlay zone but the wireless siting is affected by where the other existing facilities are and also where the gap in service is, adding that the part of this facility's purpose is to offload certain surrounding facilities that are already serving the Town that are at capacity. Mr. Kenny also noted this is strategically located where those existing sites are as well as where the gap in services are as well as what properties were available. Mr. Xavier also noted that the terrain in the overlay would block to the west on the hill they would be on, prohibiting the service from reaching the area.

Michael Musso introduced himself to the Board and to the public, noting he worked for HDR, and was working on behalf of the Town to review the application at 60 Jansen Road. Mr. Musso noted that while listening to the discussion so far, he wanted to hit on some things, noting he did not have a memo for tonight, but wanted to give some verbal findings and recommendations that maybe go towards the next step such as the balloon test that would inform the visual impact of this proposed site. Mr. Musso stated he started consulting for municipalities in 1999 when cell phones looked a lot different than they are now and pagers were still in vogue, and cell phones have changed over time, and where technology has changed, and where the FCC does govern

the siting to a large degree, however, but doesn't exempt what the Board can do and what comments they can put in. Mr. Musso noted that he would be looking at (Town) code 140-170 and compliance for that, as well as submitting email info requests to the applicant as there are some deficiencies in the application now, and in regard to what the FCC considers a complete application, it isn't there yet as they are missing quite a few important things, notably the overlay corridor that extends ½ mile on each side of the Thruway, which also extends on to 299 north and south a little bit and is part of his review for the justification for being outside that corridor. Mr. Musso mentioned the balloon test, referring to the map provided by the applicant, noting he will put together a scope over the next week for the Board, and will point out alternate viewpoints for photos to be taken, will be out in the field for that. He noted that key is the height justified for the tower, and to get the height right with justification request, and also will look at alternate site locations, schedule dates for balloon tests, on a Saturday within a 3 hour window, before buds get on the tree, 2 balloons suggested with one at 150 feet, and other one lower. He also mentioned that the simulations should show the full buildout, and his review memo should come out with his markups, which Deputy Chair Nolan instructed him to send to Pat. After short discussion on balloon testing method, Deputy Chair Nolan asked if they were going to talk with Zoning. Attorney Kenny stated that one of the determinations was that they were outside the overlay zone they need a Use Variance rather than the special permits they will file with the Zoning Board a Use Variance. Mr. Kenny also noted they had just received the RF emissions report, the FCC compliance report, and that they would get to the Board as well.

PB Attorney Richard Golden commented that cell tower applications were treated like other site plans but that has changed drastically over the last 5 to 10 years, especially the last 5 years, and now the Federal Government has stepped in and said to a great degree that rightly or wrongly that they think cell tower service or self service is important enough an issue under the FCC that by their regulations and their rulings they have restricted the abilities of localities in their reviews. Attorney Golden noted that the Board still has review powers and noted that Mike Musso is very well aware of them in the scope of them and in the FCC rulings and regulations, noting that the Board will find it different than their normal review. Attorney Golden also noted that once an application is determined complete, a shot clock comes down and for a cell tower it is 150 days that the Board would need to act quickly even though it sounds long it actually goes by quickly, which Attorney Golden noted that Mike (Musso) will guide the Board on how to get through all that. Attorney Golden also noted that in his opinion, to determine an application's completeness, it shouldn't be considered complete until it is permissible in a zone and this application isn't permissible in a zone until it gets its Use Variance, noting that the applicant is correct this would need a special permit if it were inside the overlay zone but outside the zone it will need a site plan but it won't need a special permit, noting that he felt the Board's review won't be very different as a result of that. Attorney Golden noted that the Board will still have to consider what Mike Musso will lay out for them, and that he himself will guide them through some of the legal aspects, which he noted one the applicant has already recognized is that under the Town Code this is a Type 1 action, and because it is recognized as a Type 1 action they are required to submit a long form environmental assessment form, which is what they had done, when originally they submitted a short form but followed up with the long form.

Attorney Golden noted that tonight the Board can type the action as a Type 1 action under SEQRA, and to make a motion that your intention is to be Lead Agency, and then he would send on the Board's behalf a notice of intent for this Planning Board to be lead agency which will be sent out to the ZBA, which assuming they don't object to that, the Board would assume lead agency and the SEQRA review. Attorney Golden also noted there will be a need for a wetlands review and application, which will need to be referred to the Town's Wetlands Specialist as the applicant has applied for a Long Form wetlands application, noting that the

Town code requires that both the wetlands application and any site plan be considered together in any public hearings, noting that a public hearing is not required but the Board may consider input the public may have to better inform the Board, but did not have to set that public hearing right now. Attorney Golden also noted that the balloon test is appropriate at this stage, but if they do not get the variance, the Board would not be able to approve at this location, but they could move along and Mike (Musso) would guide the Board in that respect. Amanda Gotto asked if this needed to go to County, which Attorney Golden noted it did, as it has to fit in with the 150 days but noted that that clock has not started yet. Attorney Golden also noted that before it does go to County that additional information is needed, specifically the Balloon test, adding that a good time to send it would be when they hear back from the ZBA, which they can't make their final decision until the Board makes their final review as the ZBA is subject to SEQRA as well, and as Lead Agency, the Board has to finish their SEQRA before the ZBA can do their work. Attorney Golden noted that the ZBA can do all their review, but they cannot make a final decision until the Board, as lead agency, completes SEQRA and then the ZBA can make a final determination, adding that the Board will refer to the County at a later date.

Attorney Kenny stated he could argue the other way, stating that the 150 days is for the municipalities entire review of the entire process which includes the Zoning Board, includes the Planning Board and even includes the Building permit and the Wetlands permit. Attorney Kenny did agree they need some information so maybe it's not deemed complete yet, but there is a process on how to do that but noted that as far as the shot clock, Homeland Towers will work with this town as long as this application is being processed forward and will not use the shot clock yet as long as its being progressed and things are moving along that they'd be happy to extend the shot clock and continue to review this application. Attorney Kenny did ask as a possibility considering that there are two Boards reviewing in the Town, that if there is a way to do this concurrently since the SEQRA review has to be done before either Board can act, he thinks that the Board would want to be involved in the process and not just have the Zoning Board have their entire review and then come back here to another separate review, having it concurrently at the same time to respond to both Boards.

Attorney Golden noted to the Board that he has worked with Homeland Towers before and stated that the shot clock doesn't mean that as soon as you hit the 150 days you get an automatic approval and then if they didn't think that the Board was progressing in a meaningful way, they could go to Federal court for instance, try to get an order from a Federal Judge to go ahead and ensure that the Board has their decision making very quickly after that order, but that's a lot of expense and delay as well but said he can attest to the fact that they do work with municipalities as long as you are not delaying or slow walk the process, as they are cooperative and go ahead and try to give you the information you need as long as you are moving forward with your decision making. Attorney Golden also commented that he agrees that they should be concurrent but they have to realize that the Board has certain things they have to deal with, mostly with site plan, and the Board should be looking at those the ZBA, even though you need that information before you can act, is also a different analysis than the Boards, as the ZBA won't be looking at the same issues as the Board is.

Concluding, Attorney Golden stated that the Balloon test, to continue on with that, and if there is access issues with site plan that can be dealt with those issues as well as any other issues; environmental issues that the Board wants to talk about, as it will be going to the Wetlands (Inspector), which is going to be an issue here, or any other environmental reviews as they have put forward their Part 1 of the EAF, as from the SEQRA point of view, the following step would be for the Board engineer to put together a Part 2 EAF for your discussion, and would be gone over together at some point in time, and then the Board would make a determination of significance after that. He also noted that the Board can refer it to the Wetlands (Inspector).

PB Engineer Ryan Cornelison read from his review memo, noting that most had been discussed but the application will still need to go to the ZBA, the balloon test has to happen still, and noted that the generator noise letter submitted (by the applicant) led him to believe from the data provided that vegetation was not taken into account as proposed to be scaled back. Ryan also noted that he was unaware of the town code and had listed this as an unlisted action, but it is a Type II and can prepare the Part 2 for the next meeting if needed. Ryan also noted that there were issues that were obvious with the wetland issue where the Town's consultant would have to do his own wetlands review, as well as noting that there were some EAF issues he would discuss with the applicant. As for the Site Plan itself, noted the driveway did not need stabilization as it appears to be steep but should be addressed in their next submission, Two oak trees to be removed on the plan should include a note on the plan due to Federal Restrictions near the site for bats be performed during specific dates, and gravel road detail had a crown on it so could cause drainage issues to be addressed. Ryan concluded there are a couple other issues such for span of control, make sure not in the buffer areas.

Amanda Gotto asked about the access road. Attorney Kenny stated that they are using an access drive right now but they are planning natural vegetation and natural screening. Attorney Golden commented to the Board that they should visit the site. Attorney Golden also commented to the Board about the visual aspects of the balloon testing as to where its visible not on the site itself but at a site on the map or several locations. Mr. Xavier stated he could walk the site with the Board. Amanda Gotto stated the Board usually goes on the site visit when the wetlands inspector does his visit to walk together. Mr. Xavier said he'd do that whenever it is scheduled. Deputy Chair Nolan noted his concern that the site plan noted a diesel tank but the plan should be considered to use propane. Applicant agreed that the plan needed to be updated.

Chair Ruger asked about alternate site locations if they still had the opportunity to look at other sites. Mike Musso stated they have looked at other alternate sites, within the overlay and outside the overlay, they talk about zoning, and setbacks, and important for the Town Code. Mike Musso stated he still needed to get clear on some things but he did want to make recommendations to the Board, but noted that the site acquisition people for Homeland and Verizon put the most time into the site because they know it has to comply with the code and minimizing and obtaining a variance if needed, but they know they have a good site and also have to get people to lease to them. But Mike feels they have a decent case but he still has to review it deeper. Mr. Xavier noted that if there is a property they think is better let him know sooner than later and they will analyze it.

Amanda Gotto asked about how the height is determined. Mr. Xavier stated the height they justify they think will provide the service for the area. Mike Musso noted that the 4 major carriers (Verizon, ATT, T Mobile and Sprint) with a possible merger with TMobile and Sprint, service the area right now, he asked the Board if there is a need for EMS or emergency services, that may be a thought. Mr. Xavier noted that they will open space for the Town for access to emergency services, such as police, fire if they wanted that and if there was a contact for them to discuss give them his contact info. Mike Musso noted this is not 5G as those frequencies are not in the Hudson Valley, noting that there will be conditions in his tech memo, and the questions about health and 5G and the facility will be in compliance for health based criteria.

Attorney Golden noted that anything outside the fence, even if underground, is clear to the Board. Lyle Nolan asked if lights are only as needed. Mike Musso stated they have proposed ground lights which he will look at. Attorney Kenny stated there is no light on the top of the tower.

Matt DiDonna asked Ryan in regard to his review memo if it included the road, and the wetlands #3, asked if its larger than 1 acre. Ryan stated it does include the road, and the limited disturbance is not in the 1 acre, and they are not disturbing the wetlands. Mr. Xavier noted the wetlands buffer line on their map. Matt DiDonna asked how much they'll drive on the road. Mr. Xavier stated once a month, an hour, one pickup truck on the road. Amanda Gotto asked the wetlands will be flagged, which Mr. Xavier stated they are flagged. Matt DiDonna continued to ask Ryan under Site Plan #2, how many trees are they talking about. Mr. Xavier noted they are within the compound itself, 4 trees, as noted on page SU1 map. Attorney Golden asked that they mark the trees themselves for the Board to see.

Attorney Golden, after discussion, set a public hearing but noted the public should see the balloon test first, comment on it, put it in the paper for awareness from 9am-3pm balloon test on March 7, then March 10 is the ZBA meeting.

After no further questions or comments, Attorney Golden noted the Board can motion to type the action and notice of intent to be lead agency.

Motion 1 by Lyle Nolan for the Board type this as a Type I Action.

Motion 2 by Matt DiDonna. All present in favor. Motion approved.

Motion 1 by Lyle Nolan to notice of intent to be lead agency.

Motion 2 by Adele Ruger. All present in favor. Motion approved.

Attorney Golden noted that his office will prepare the notice of intent and send it to the other involved agency which is the ZBA. Amanda Gotto asked a question about for a wireless facility if there is a time limit for the public hearing. Attorney Golden noted he would look at the Town Code. Pat to send the balloon test information to the NPTimes, and ask the wetlands inspector to set a date to visit the site.

Motion 1 by Matt DiDonna to adjourn. Motion 2 by Lyle Nolan. All present in favor.
Meeting adjourned at 8:18pm.