

**MINUTES OF THE REGULAR MEETING OF THE TOWN OF ELLICOTT  
ZONING BOARD OF APPEALS HELD AT THE ELLICOTT ADMINISTRATION  
BUILDING, 215 SOUTH WORK STREET, FALCONER, NY 14733  
ON FEBRUARY 27, 2017 AT 7:00 P.M.**

**PRESENT:** Chairman Steve Hoglin, Ang Cimo, Ken Lyon, Phil Pratt, William Pentheny, Attorney William Wright, code Enforcement Officer Dave Rowe and Secretary Valerie Pierce

**ABSENT:** John Merchant and Jean Holton

Chairman Hoglin opened the meeting at 7:00 PM and led in the Pledge of Allegiance. Secretary Pierce called the roll.

**Motion made by William Pentheny, seconded by Ken Lyon to approve the minutes of the January 30, 2017 meeting.**

**Carried.                    Ayes – 5                    Noes – 0                    Absent – 2**

Attorney William Wright swore in everyone that would be giving testimony at this meeting.

**Chairman Hoglin reminded the Board that Richard and Anthony Benedetto had requested their application be tabled until the March meeting.**

**Chairman Hoglin opened the public hearing for Timothy Ruch, 580 Fairmount Ave., Jamestown, NY for the renewal of a special use permit for a three unit apartment dwelling.**

**Mr. Ruch was not present.**

**Motion made by Steve Hoglin, seconded by Phil Pratt to table this application until the March meeting.**

**Carried.                    Ayes – 5                    Noes – 0                    Absent – 2**

**Chairman Hoglin opened the public hearing for Chautauqua Watershed Conservancy for the renewal of their special use permit for a park (Chautauqua Lake Green Preserve) on Old Fluvanna Road, Jamestown, NY.**

**Jonathan Townsend, the conservation lands manager for the Chautauqua Watershed Conservancy, addressed the Board.**

- they are requesting a permanent extension because they are a permanently conserved nature preserve – they will not change ownership or not be developed
- they had added some parcels when they last renewed in 2015



- they provided pictures of when they went out to float a balloon at the height of the facility and took pictures at different distances from the site
- the FAA and FCC coordinate to provide information to carriers about the safety of the towers and they indicated that the tower did not require any lighting
- the radio frequency emissions are less than 1% of the federal standards – the federal government regulates emissions
- this is a self supporting mono-pole – they provided the engineering structural report
- the 150 foot does not include the 10 foot lightening rod on the top
- they provided information on site searches – there are no opportunities for co-location on existing towers – they also looked at several larger sites
- this tower will be owned by SBA Towers not Verizon
- the tower has been designed for an additional 3 carriers besides Verizon
- technicians go out approximately once a month to check the tower – for the company and also for the carriers
- the structural engineering report does account for the additional wind load
- William Pentheny asked why this could not be put on one of the hotels in the area rather than building the tower – Mr. Laub stated that it was because of the elevations
- Dave Rowe said that Verizon contacts him at least once a year concerning some location for a tower

Attorney Wright said he wanted to go through the code (Section 146-72) because the information was provided and have Attorney Laub address those sections so the Board is not scattered going from one criteria to another.

- Section 146-72 (B1) Necessity – they looked at other towers in the area and found that they have some gaps in the coverage and do not have enough capacity. In the materials there was an inventory of the other towers in the area. Phil Pratt asked Mr. Laub at what level they would need more capacity. Mr. Laub and Mr. Makubire explained that more people are using more data and multi-tasking on their devices. Phil asked about the antenna dish that was on the tower. Mr. Laub explained this would be temporary and that they hope to use underground fiber into the site. They can not determine that until they do the utility walk and determine if there is even fiber available along West Oak Hill Rd. Attorney Wright asked about the towers in the Town of Ellery. Mr. Makubire stated that they were too far to reach the area they want to cover with the tower on West Oak Hill Rd. The applicant explained the necessity for a new location to the Board members satisfaction and the Board felt they met this criteria.
- Section 146-72 (B2) Height – the tower is now 150' with a 10' lightening rod – Verizon is willing to drop their antenna 5 feet and Mr. Stuart said the lightening rod could be reduced to 5 feet. That would bring them down to the allowed 150'.

- Section 146-72 (B3) Location – no tower shall be closer than 1000' to any residential district boundary nor closer than 500' to any public road right-of-way. There are residents within the 1000'. Dave Rowe stated this is in a residential zone. Attorney Wright asked if notices were sent out and they were but they were sent out to residents within 500'. Attorney Wright said he thought that the criterion was 1000' for cell towers. There were no neighbors present. Phil Pratt asked about the branches on the tower. He wondered how much ice they would hold before they would snap. The antennas are bolted on. Mr. Laub stated that was included in one of the structural engineer's reports.
- Section 146-72 (B4a) – Safety requirements - Design criteria – structural integrity report was provided by a professional engineer. This was dependent on soil characteristics. They do take into considerations the location, the topography and the wind and ice load.
- Section 146-72 (B4b) – Security – the applicant is proposing a 50' by 50' fence which is significantly smaller than what is required by code - they have a 100' by 100' lease area. There was a discussion on how the tower would be designed and how it would come down if it does come down. Mr. Stuart said that the towers are designed so it would not be a total collapse from the ground level. Typically there is an engineering point on the tower that is designed to be the failing point. Those can be changed for different reasons. Mr. Pentheny asked about the propane tank and if it would have an ice canopy over it. Mr. Stuart said they would not typically put an ice canopy over the propane tank. Attorney Wright brought up the height of the fence. The proposed fence is 8' and the code allows up to 6'. They applicant was willing to have the fence be only 6'. If they are able to do that it would eliminate the need for a variance for the height of the fence.
- Section 146-72 (B4c) – Radio emissions -- there was a supplemental submission of the engineering analysis of radio emissions provided to the Town from a licensed professional engineer - the Town does require new RF studies as new co-locators are added
- Section 146-72 (B4d) – noise- they will have a backup generator that would be the loudest thing on site – they did not currently have the specs for the generator for this site so they did not know the dB ratings yet - they will provide that information when they make that determination.
- Section 146-72(B5) – accessory buildings – they will have outside cabinets – no buildings or structures.
- Section 146-72 (B6) – access and parking – there is a small service road that already exists – no other vehicles or equipment will be stored at the site – the site is visited once or twice a month by the tower company and for the carrier – the carrier monitors the site 24/7 remotely
- Section 146-72 (B7) – visual impact – this tower is FAA exempt – presents no hazard – requires no painting or lighting. They provided the results of the balloon fly they conducted with photos. Phil Pratt asked about the microwave dish – he would like it to be green instead of the white that was

proposed. He also asked what was the lowest antenna Verizon could use – Mr. Makubire stated that Verizon needs to have enough line of site for their signal – he is willing to drop the antenna 5 feet – Attorney Wright asked if they could refuse a co-locator if they were not willing to pay what the tower owner wanted - Attorney Laub stated that would be a requirement under the special use permit - that the tower owner make the tower available for a reasonable market analysis. The Board decided that the applicant would have to do a balloon fly at the date and time the Board determines and a notice needs to be published. It was decided to have the balloon fly on March 13<sup>th</sup> from 8:00 am to 10:00 am with an inclement weather date of March 14<sup>th</sup> at the same time.

- Section 146-72 (8) – bonding requirement – SBA will provide a performance bond.
- Section 146-72 (9) – inspection and renewals – they will renew in two years and provide the required information and reports.
- Section 146-72-(10) – co-location – the Board had discussed the co-location of other carriers

The Board could impose any other conditions to protect property values and ensure the safety of the public.

Attorney Wright stated that the applicant would not need a height variance because the applicant is reducing the height of the tower and also the height of the fence. They will need a variance for the size of the fence because even if they move it to the edges of the leased area it is not sufficient under the code. Attorney Wright will research the 1000' from a residential zone. There is no section in the cell tower code that states they can only be located in specific districts. There is only a set-back requirement. The Board needs to make a determination that the 1000' setback from residential is a code error. Dave suggested that the code read 1000' back from a residential dwelling.

Dave asked what the law for public utility location was. Attorney Laub said that the granting of the variance is the balancing standard that weighs the benefits of the applicant against the impact of the area around it. That actually does not apply to cell towers. It is a much more generic analysis of the public benefit vs. the potential impacts. It is similar but does not go through the five factors. It applies to both area variances and use variances. Attorney Wright said the deterrent to the applicant of requiring a larger than 25' perimeter is cost. So if the Board wanted them to move it to the lease area (100' by 100') to make it an easier variance that would be a cost factor. It would be safety issue to the general public to have a larger buffer zone vs. the cost of double the fence. Mr. Laub said that he could safely say that the applicant would agree to a larger space (100' by 100'). Ang asked if the Board would require a canopy over the propane tank. The Board discussed it and decided they would not require one. Mr. Stuart said that they would be moving the tank back by the fence if they were moving the fence.

The Town received one letter from **Gene and Ann Aversa, residents of the area**, that stated they were not opposed to the cell tower but wanted to know what the impacts might be on other services they have.

**The Board set March 13, 2017 from 8:00 AM to 10:00 AM for the balloon fly with an alternate date of March 14<sup>th</sup>, 2017 at the same time.**

**Motion made by Ken Lyon, seconded by Ang Cimo to table this application until the March 27<sup>th</sup> meeting.**

**Carried.                   Ayes – 5                   Noes – 0                   Absent – 2**

**Motion made by Ang Cimo, seconded by William Pentheny to adjourn the meeting at 9:00 PM.**

**Carried.                   Ayes – 5                   Noes – 0                   Absent - 2**

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Valerie Pierce, Secretary