

Meeting of the Planning Board of the Town of Lewisboro held at the Town Offices at Orchard Square, 20 Cross River Plaza, Lower Level, Cross River, New York on Tuesday November 27, 2012 at 7:30 P.M.

Present: Jerome Kerner, Chairman  
Ronald Tetelman  
John Gusmano  
Robert Goett  
John O'Donnell  
Jan Johannessen, Kellard Sessions Consulting, Planning/Wetland Consultant  
David Sessions, Kellard Sessions Consulting, Planning/Wetland Consultant  
Lawrence Praga, Esq., Planning Board Counsel  
Margaret Clark, Esq., Special Counsel  
Janet Andersen, CAC Chairwoman  
Aimee Hodges, Planning Board Secretary

The Chairman called the meeting to order at 7:30 and pointed out the emergency exits.

## **I. DECISIONS**

### **Charles & Martha Ehlers, 37 Conant Valley Road – Cal. #4-11 W.V.**

Michael Sirignano, Esq. was present.

Ms. Clark reviewed the draft resolution prepared for the Board's consideration.

On a motion made by Mr. Tetelman, seconded by Mr. Gusmano, the resolution Violation of Wetland and Watercourse Law, Charles and Martha Ehlers, Cal. #4-11 W.V. was adopted.

Vote: In Favor: Tetelman, Gusmano, Kerner, O'Donnell  
Abstain: Goett

### **Sprint Spectrum, L.P. and Nextel Communications, of New York, applicants (American Tower, Inc., owner of record) - Application for the renewal/reapproval of Special Use Permit Approval pertaining to communication facilities pursuant to Sections 220-32 and 220-41.1 of the Lewisboro Zoning Ordinance to continue use of its telecommunication facility, which is co-located on an existing lattice tower. - Cal. #7-98 P.B.**

Adam Moss, Esq. of Snyder & Snyder, LLP was present representing the applicants.

Mr. Johannessen reviewed the draft resolution he prepared for the Board's consideration.

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the resolution Renewal of Special Use Permit, Sprint Spectrum, L.P. and Nextel Communications of New York, Cal. #7-98 P.B. was adopted.

Vote: In Favor: Tetelman, Gusmano, Kerner, Goett, O'Donnell

On a motion made by Mr. Gusmano, seconded by Mr. Goett, the Board entered into an Executive Session with legal counsel, Margaret Clark, under Attorney/Client Privilege at 7:33 P.M.

Vote: In Favor: Tetelman, Gusmano, Kerner, Goett, O'Donnell

On a motion made by Mr. Goett, seconded by Mr. Tetelman, the Board exited the Executive Session at 7:49 P.M.

Vote: In Favor: Tetelman, Gusmano, Kerner, Goett, O'Donnell

**II. REQUEST FOR AN EXTENSION OF TIME**

**Barry Nesson , 228 Smith Ridge Road, South Salem /Thomas J. & Nancy Torti, 3 Beaver Pond Lane, South Salem – Applications for Lot Line Change and Wetland Activity Permit Approval to accommodate the remediation/expansion of a sewage disposal system located at 228 Smith Ridge Road – Cal. #13-10 P.B.**

Michael Sirignano, Esq. was present representing the applicant.

Mr. Sirignano advised that the Torti's must receive a partial release of their mortgage before the transaction between the two parties can be finalized. In addition, the plat has not been signed by the Westchester County Department of Health and that it is his understanding that the engineers are working on obtaining the approval.

Mr. O'Donnell noted that the last time this Board heard anything regarding the Board of Health was in a letter dated May 20, 2011. He advised that if any further extensions became necessary that the Board would want more detailed information with respect to the applicant's obtaining this approval.

Mr. Johannessen noted that although an unlimited number of extensions could be granted for the subdivision approval, that the wetland activity permit approval would expire two years from the date of the resolution.

On a motion made by Mr. Tetelman, seconded by Mr. Gusmano, the Board granted the November 2, 2012 request of Michael Sirignano, Esq. and granted an additional 90 days to the resolution granting Final Subdivision Plat Approval and Wetland Activity Permit Approval dated August 9, 2011.

Vote: In Favor: Tetelman, Gusmano, Kerner, Goett, O'Donnell

**397 Smith Ridge Road, LLC, Smith Ridge Road, Vista – Applications for Site Development Plan Approval & Wetland Activity Approval to construct self storage facility – Cal. #2-11 P.B.**

Steven Kaplan was present.

Mr. Kaplan advised that the delay was due to timing issues with the project financing. He is currently waiting on the bank's appraiser.

Mr. Johannessen noted that there are only two ninety day extensions permitted for site development plan approvals; this is the second request. In response to a question of Mr. Tetelman, Mr. Johannessen advised that the approval would expire if a building permit had not been applied for within one year of the date of the signing of the mylar by the Chairman or if all improvements are not completed within three years of the approval.

On a motion made by Mr. O'Donnell, seconded by Mr. Tetelman, the Board granted the November 26, 2012 request of Steven Kaplan and granted an additional and final 90 days to the resolution granting Site Development Plan and Wetland Activity Permit Approval dated February 28, 2012.

Vote: In Favor: Tetelman, Gusmano, Kerner, Goett, O'Donnell

### **III. SITE WALK REPORT**

#### **Todd Management Subdivision**

Mr. O'Donnell noted that the Board met at the site on Todd Road, Saturday, November 17<sup>th</sup>. Some of the findings were that it was a beautiful site with great views. There are many slopes, some steep. It was noted that there were significant wetland/wetland buffer issues that became apparent as they walked through areas of moisture. The Board advised the applicant's representative that there appeared to be a lack of locations for future tennis courts and swimming pools on the proposed lots and that there would be a need for significant improvements to reach the proposed house sites. The Board appreciated the attempts that had been made to only locate one driveway through the wetlands. The Board looked at the entrance on to Todd Road and discussed with the applicant's representative the one or two preferable locations with respect to sight lines. It was noted that it would be wise to get fire department input. The Board had specific concerns with respect to one of the building sites as to whether it might pose greater environmental costs than the others.

Mr. Kerner added that he would like to see a low impact development proposed for this site. He stated that he would like the applicant to demonstrate in graphic form the two stream crossings, the amount of clearing needed to achieve the grades for the roads and the septic systems so that the Board could fully understand the impacts. The meadow where a turning circle is now proposed might be a good location for cluster housing. He expressed concern with the proposed middle lot as it appeared that it may be very close to the Arbor Hills subdivision and would not afford the future homeowners the privacy that they would expect being located so far back on the property.

Mr. Gusmano agreed with Mr. Kerner's assessment of the middle lot. He described the overall parcel as a naturally nice area and that it would be good to understand how much clearing would be necessary. He noted that the site is hilly with a lot of rock outcroppings. The Board would have a better understanding of how much of the current proposal would stand once the deep hole tests have

been performed. He believed that it would make more sense to create smaller detention basins than the large basins now being proposed.

Mr. Tetelman noted that the majority of the development is being proposed within the wetland buffer. Any way that this could be reduced should be considered with a low impact development. He thought that the one lot near Arbor Hills could be reconsidered.

Mr. Sessions noted that typically the NYCDEP would only permit one stream crossing to access the property. The second crossing being proposed in this plan is a driveway. The applicant advised that they are currently researching the second crossing with the NYCDEP who may allow it under a separate individual residential stormwater permit. To date, with the exception of the septic systems, the applicant has not dug any deep tests in the stormwater areas. Although they are showing stormwater quality basins, they do not even know if they are feasible. Once the NYCDEP and his office witness the deep hole tests, the plans could potentially change significantly based on these test results.

#### **IV. CORRESPONDENCE & GENERAL BUSINESS**

##### **Annual Training**

It was noted that Mr. Johannessen had transmitted the potential websites for the APA and Department of State. He noted that the Department of State courses were developed to meet the training requirements. Mr. Kerner noted that the Town Board had approved the webinars. The Board agreed to individually pick three hours webinar of courses and spend the fourth hour discussing with each other what they have learned and what can be improved upon in terms of best practices.

#### **V. MINUTES OF November 13, 2012**

On a motion made by Mr. Tetelman, seconded by Mr. Goett, the minutes of November 13, 2012 were adopted.

Vote: In Favor: Tetelman, Gusmano, Kerner, Goett, O'Donnell

#### **VI. DECISION**

**Homeland Towers, LLC, and New Cingular Wireless, PCS, LLC (AT&T), applicants (Francis Coyle, Jr., and Ash Tree Development, LLC, owners of record) 117 Waccabuc Road, NYS Route 138, Goldens Bridge -Applications for Special Use Permit Approval and Wetland Activity Permit Approval pertaining to communication facilities pursuant to Sections 220-32 and 220-41.1 of the Lewisboro Zoning Ordinance to construct a 154-foot tower situated within a 3,500 S.F., fenced-enclosed compound area - Cal. #5-12 P.B.**

Manny Vicente was present with Tony Gioffre, Esq. of Cuddy & Feder.

Mr. Johannessen reviewed the draft resolution he prepared for the Board's consideration. The applicant was provided with a copy of the document.

Mr. Gioffre expressed concern with Condition 44 in the resolution, which strongly recommended a propane generator. He advised that his client had no control over what type of generator would be installed by the carrier. In addition, a propane generator may require that the compound be bumped out, which may potentially bring further issues from the ACOE and the NYSDEC. Additionally, if it is located within the compound, it may preclude co-location opportunities at the base for other carriers. Although they will make that recommendation to the carrier, he requested that the reference to propane be stricken from the document.

Mr. Johannessen advised that the compound is not within the NYSDEC regulated wetland buffer. The ACOE does not have jurisdiction. If necessary, the compound could be bumped out to accommodate an additional generator as he did not believe either agency would be involved.

Mr. Kerner advised that the environmental impact of a spill associated with diesel was a concern.

Mr. Vicente advised that the problem with this requirement is that every carrier has their own requirements. The amount of fuel storage needed is dependent upon the size of the generator required. Although he understands the Board's intention, which is good, and understands that this is a recommendation, the real concern as a tower developer is that he cannot dictate to a carrier what they must use as back up power source. Each carrier has their own criteria and advised that criteria changes. He would prefer that the Board not specify propane. He advised that Verizon generally placed their generator within their shelter. If it is placed outside their shelter they are careful about having a large enough container tank.

Mr. Gusmano expressed concern that the recommendation would dissuade carriers from installing generators.

Mr. Johannessen noted that the language is a recommendation allowing the carrier to go straight to the Building Department for a permit if they utilize propane. If the carrier chooses to utilize diesel, they will be required to come back to the Planning Board.

Mr. Vicente advised that although he would accept this condition, he preferred that the word propane be removed. He stressed that he is not in the position to dictate what type of fuel the individual carrier utilizes.

Mr. Vicente advised that there were two other conditions of concern. Of most concern is Condition 4. He advised that he has a very good lease agreement and access to the site is specified and outlined the requirements and responsibilities. He advised that he had a similar requirement previously where an approval was granted in July. He is still struggling to reach an agreement with the landlord and the Town. He expressed concern with this requirement because he has every right to access this property and it clear what his responsibilities are. To ask him to reach an agreement with the landlord and record is overkill and could be problematic for his company.

Ms. Clark advised that in reviewing the lease agreement that she did not see any provision for maintenance or for the stormwater control which are conditions of the wetland activity permit.

Mr. Vicente advised that he believed that by having rights to access in the lease that he has the rights to maintain it. They can accomplish the same task through a condition of approval.

Mr. Gioffre advised that the Board could impose additional language that encumbers the applicant with those obligations and afford the Town the opportunity to have access, which they have in any case for enforcement.

Although he believed that Condition 2 would not be amended, Mr. Vicente advised that the five year bonding period of the wetland mitigation and screening plantings is long. He advised that his preference was to bond the plantings for two to three years. His experience is that after a year or two whatever is gone needs to be replaced. His concern is that they will be replacing plantings more than once, which is expensive and hard to manage.

Ms. Sessions stated that although five years seemed like a long time it is his experience that there is a lot of die off after 2 to 2 ½ years. New plant material is then replanted in the third year with no mechanism of ensuring that the planting survives. It takes almost three years to establish the planting and another two to three years to ensure it survives. He advised that this time requirement gives the applicant the impetus to plant the material correctly, maintain and protect it the first time.

Mr. Gioffre advised that the code requirements referenced in Conditions 51 and 52 are pre-empted by federal law. The requirement for annual inspections of the emissions and structural soundness in Condition 51 are onerous and costly. The ANSI Standards typically require towers to be inspected every five years and asked that the Board's resolution be revised to be consistent with these standards.

Mr. Vicente advised that his structures are designed to a higher standard than the NYS Building Code. This tower will be designed to accommodate six carriers and public safety antennas.

In response to Ms. Clark's request for clarification with respect to the stormwater provisions, Mr. Johannessen advised that the lease did not identify who is responsible for the stormwater maintenance or any sort of protocol. The Town has the desire to ensure that all of the practices are performing correctly. He wanted some sort of agreement as to who is responsible, with what frequency are the practices to be inspected and with what protocol. The frequency of the inspections is identified on the site plans and it is just a matter of allowing the Town some access rights to periodically take a look. He would like to know there is an agreement with the property owner and Homeland Towers as to who is responsible.

Mr. Gioffre advised that they would have no objections to filing a protocol as a condition of the approval. The issue is the coordination of an agreement amongst three parties. He believed that the Board could impose a condition of approval tying the obligation to the applicant with the protocols already in place.

Mr. Vicente advised that the condition as written would give the landlord an opportunity to renegotiate their agreement.

Mr. Johannessen questioned whether the Town would need the permission of the property owner to enter the property.

Mr. Vicente advised that the lease specifies that he is allowed to do anything necessary with any government regulation; the landlord must cooperate.

On a motion made by Mr. O'Donnell, seconded by Mr. Gusmano, the Board entered into Executive Session with counsel under Attorney/Client Privilege at 8:49 P.M.

Vote: In Favor: Tetelman, Gusmano, Kerner, Goett, O'Donnell

On a motion made by Mr. Gusmano, seconded Mr. O'Donnell, the Board exited the Executive Session at 9:30 PM.

Vote: In Favor: Gusmano, Kerner, O'Donnell  
Absent: Tetelman, Goett

Mr. O'Donnell questioned if Mr. Vicente could provide the status of the NYSDEC application and was advised that they had received a confirmation of receipt. Although nothing has been received indicating that there is a problem, the approval has not been received.

Mr. O'Donnell noted that previously this Board had requested that Mr. Fisher correspond with AT&T with respect to the generator and questioned whether this had been done and what the result was.

Mr. Gioffre advised that Mr. Fisher had reached out to AT&T but was not aware whether there was a response.

Mr. Vicente confirmed that there had not been a response.

Mr. O'Donnell advised that this Board has listened to Mr. Vicente's concerns this evening but believed that it is wise to have their counsel look at the provisions in the lease and provide further analysis of some of the points raised. It is further believed that they probably required additional time of their consultants and are considering not adopting the draft resolution this evening, permitting those discussions that will probably involve Mr. Fisher as well to take place before taking a vote on the resolution at the next meeting. Due to various requirements, this Board asked Mr. Vicente for his consent to postpone the vote until December 11, 2012.

Mr. Vicente consented to the postponement because it has been a long process and the vote would only be delayed an additional few weeks.

Mr. O'Donnell assured Mr. Vicente that the Board had spent a lot of time on this application and only because they would like to try to seek a resolution of some of the issues raised this evening are they even contemplating reaching out to others to try to resolve some of these issues.

In response to a question of Mr. Kerner regarding Condition 51, Mr. Gioffre advised that AT&T is responsible to comply with the Federal regulations or they risk losing their license.

Mr. Vicente reminded the Board that as part of the application that a health and safety study had been done utilizing worse case calculations for six carriers. These calculations are certified by a third party demonstrating to the Board that in a worse case scenario that the emissions from this tower will never exceed the FCC emission levels.

At the completion of her services for the evening, Ms. Clark exited the meeting at 9:16 P.M.  
Mr. Tetelman exited the meeting at 9:16 P.M.

On a motion made by Mr. O'Donnell, seconded by Mr. Gusmano, the Board entered into Executive Session with counsel under Attorney/Client Privilege at 9:16 P.M.

Vote: In Favor: Gusmano, Kerner, Goett, O'Donnell

On a motion made by Mr. Gusmano, seconded by Mr. Goett, the Board exited the Executive Session and adjourned the meeting at 10:15 P.M.

Vote: In Favor: Gusmano, Kerner, Goett, O'Donnell  
Absent: Tetelman

Respectfully submitted,

Aimee M. Hodges  
Planning Board Secretary