

Minutes

Village Planning Board

November 18, 2014

A meeting of the Village of Horseheads Planning Board was held on the above date at 5:15 p.m. in Village Hall. Present were:

Board Members

Chairman Mike Stenpeck
Bill Goodwin
Doug Baker
Dave Helsing
Bob Young
Tom Rupp - Alt.

Village Staff

Village Atty. John Groff
Fire Chief Arthur Sullivan
Trustee Ron Swartz
Manager Walt Herbst
Louise McIntosh - ZBA
Lew VanDuzer - ZBA
Dave Radin - ZBA
Manager's Asst. Rachel Baer
Mayor Donald Zeigler

Others

Ashley Champion, Nixon Peabody
John Englebert - Verizon
Dick Comi, CMS - Village consultant
(via speaker phone)

Motion by Doug Baker that the minutes of the Planning Board Meetings of October 28, 2014 be received and approved as submitted. Motion seconded by Bob Young.

Roll Call Vote;

Chairman Stenpeck	Aye
Bill Goodwin	Aye
Doug Baker	Aye
Dave Helsing	Aye
Bob Young	Aye

NYNEX, Verizon - Cell Tower Application - 130 N. Main Street (cont'd review)

Atty. Groff reminded the Board that usual area variances requirements are not applied here.

Chairman Stenpeck - Rec'd a copy of a letter dated November 12 - from Atty. Burgdorf. I would like to set up a conference call with him and the Village's consultant, Dick Comi.

Atty. Groff - you will need a list of questions to enable Verizon to prepare in advance. Mr. Comi needs to develop those questions before any meeting is scheduled. And it won't be a meeting with entire Planning Bd.

Dick Comi - it's all in my two reports. Really is nothing more than what is mentioned in those two letters.

Ashley Champion, Esq., representing Verizon - we are on the same page. There is nothing more to talk about than what we already addressed. Additional conf call is not needed. We've rec'd all the inquiries from the Village staff and we've addressed all of those in writing. Mr. Comi said to make sure we have responded to his comments. We have done that. We provided answers. If there is something more that is why we are here tonight. We urge this Board to move fwd. According to our calculations the Village needs to have an answer by third week in December. We have I think successfully addressed all of the concerns that have been raised. If Mr. Comi has something he wants to talk about that has to do with his inquiries we can do that tonight.

Lengthy discussion ensued throughout the meeting between Mr. Comi, consultant for the Village, and Ms. Champion, attorney for Verizon regarding technical details of the application. The major issues discussed were:

Mr. Comi, CMS:

- One of the areas mentioned in the document from Millennium Engineering is an area that is outside of the village. Northeast of Veteran Hill Road. That area is outside of the Village and therefore is not a requirement for the Village to provide a site that is in a different location or taller than what is necessary to cover the Village.
- The area along Route 14 there was a drive test and for that entire area along that road. In the drive test it shows that the signal strength will be greater than -98dbm. We are aware of other communities that are rural where Verizon in a rural area is only saying it needs a -105dbm. Obviously a -98 is a stronger signal so the drive test that was provided shows that along that route there is already rural strength coverage. Therefore there are at least 5 other locations that we requested info on, all of which are west or southwest of the proposed site and are more near the center of the Village that will provide equal or better coverage than the proposed site.
- On the drive test data, it showed 3 signal strengths: -95dbm, between -95-98, and then -98 or greater. I was expecting to see not only -95-98 but the dbms all the way up to -105 because in a rural area the -105 is a reliable coverage that Verizon has asked for in other communities.
- We have presently in our hands an application being reviewed in NY for rural and village area information from the same law firm that is at -105. So my question was out along route 14 that they do already have -98. The discussion on the search ring, if you look at the 2 maps provided in October 6 application under section N, shows proposed heights of 100, 75 and 50 and site. If you look at the coverage at 100 ft down near the exchange that is near the route 14, there is not coverage within the village from their proposed site. So their site has an area that is not being covered by their proposed site at 100 ft. Exhibit 20 - proposed site which is at the village garage at 100 ft., you will see that this area is now covered with service. At 100 ft. the village garage provides better coverage.

Ms. Champion, representing Verizon, responded to these issues:

- On the first point, not being required to provide coverage beyond Village limits, that's a legal issue. There is no basis that a municipality is only required to approve sites to provide coverage within their boundaries. If that was the case the Village would still not have wireless coverage. Right now you're enjoying it from towers in adjacent municipalities. This is regulated by the FCC. They are meant to cross municipal boundaries.
- Alternative sites. The company has gone above and beyond looking at alternate sites. We have looked at sites that aren't even in our search area. What Mr. Comi is asking you to do is not practical. Unfortunately that is not the way public utility systems work. We figure out where we need the technology, then we find the best site that works. If there was a site you all loved and no one could see it, we would take it. Why would we come to all these meetings if it was as easy as moving the site. But the reality is this site needs to be where it is proposed. We've spent a lot of time and effort to show you all why those other sites don't work and there would be gaps in coverage. Verizon is required by the FCC to provide coverage to certain areas. This site best remedies that.
- The -105 coverage. We don't show that because we don't do that anymore. We're not going to build a site that has less than adequate coverage. -105 was a standard seen in other areas, but right now Verizon technology that everybody wants requires our standards be at -95 coverage. What works here and what we need is -95. We have addressed all of this in the documentation you already have.

Ms. Champion made further points based on questions from the Board and staff:

- Gaps mentioned by Mr. Comi near route 13 would be covered if this antenna was approved as requested
- -95 vs -105 - This requirement varies based on topography, structures, etc.
- We are here to provide coverage to a gap that has been identified, the siting of which happens to be inside the Village. You will be receiving service here because of its location, but the purpose is not to just cover the Village. Again there is no legal basis whatsoever that this should be any consideration, whether or not the site covers only areas within the village, etc. etc. That is not the issue. Case law says municipalities cannot get into redesigning the network. We are showing you there is a need for the site, and we are showing the least intrusive way to remedy this need.
- It's very clear that under NYS and fed case law that our design of the network is not to be reengineering by municipality. If another site would work to provide just as good coverage everywhere, then it is reasonable for us to consider that. If there are gaps then it's not good enough. Then the site we are proposing is the most ideal site.

Mr. Englebert, RF Engineer, responded to a question regarding moving the tower and just turning up the signal strength:

- We do transmit at diff frequencies. To turn up power is not what we want to do. In a modern system the object is to increase power as little as possible.

Other questions:

- Would size of antenna change if you changed the db size.

No. It has to be 100 ft. It could actually get higher if the coverage gets worse. This is why this is the best site. 104 ft might sound really high.

- Why isn't village garage a reasonable alternate site.

This is outside the search area.

- Burgdorf said we couldn't have it at Mill St. site. However the garage would move it westerly. Easterly is mostly fields.

We've done propagations for every single alternate site. There are all in there. The problem with this particular site is the gaps your seeing up to the north. Exhibit 20.

Continued discussions were:

Mr. Comi: Verizon is not a public utility in NYS Verizon wireless is not regulated by PSC relative to a variance. They are because of a court case to be required to have a lesser standard on a variance. But they are not a utility. When it comes to coverage Verizon does not have any license agreement that says they must provide ubiquitous service. Their licenses say they will cover 75% of the population within an area. There is no requirement that they cover 100%. When it was said that there would be no service in the crosshatched area. The drive test data that they have provided shows that that is not true. There will be service at -98dbm or better, which is 7 times stronger than the -105 being used in the community just to the north. There is nothing in documents provided that shows that their proposed site will provide better coverage to the community than yours. The garage site. Also Verizon does not have to get the best site, they have to get service that is reliable. In urban and suburban that is 1 signal strength, and rural is a diff signal site. The garage takes care of all of that.

Ms. Champion: the Board understands your point that you wish us to put this somewhere else. We're still of the position that this is a public utility. And that this is the best site. When he says it's the best site, that is his opinion. Drive test is just on the road. Still produces large white gaps in households. There are still gaps. That is why the site we are proposing in our opinion is the best site.

Mr. Englebert: Sounds like out of all of the alternate sites the one you have the most question is the village garage. That site is closer to homes. The proposed site is ideal also because it's not near homes.

Chairman Stenpeck:

- Proposed site is located in an M1 zone. Its industrial.
- They have demonstrated need for data. We have to decide for ourselves what works.
- Rosenberg case says you are not a public utility but courts treat you as one. Courts are also ruling we cannot be arbitrary. That is why we can't use aesthetics. This gives more reliable data service.
- As far as planning we have to look to the future, not just what will work right now. People traveling through here, very important. The 104 ft. tower plus rod, I took pics of balloon test. Couldn't even see it looking north. Don't think this will ruin Hanover square. I would have to say I would be for the approval.
- On the insurance, the city of Ithaca require a certif. of insur for \$3M. If it's good enough for them, it is for us. My recommendation would be that they have to have this too.

Doug Baker - I think location is fine. New tech coming down the road, have to be ready. I think it's a good project.

Bill Goodwin - I know we can't talk about aesthetics, but we have to move ahead. I'm all for it.

Bob Young - the location is good, tucked back, not very visible. In the photos I hardly noticed it. And it's in an M1 zone. Its where we would want it.

Dave Helsing - benefits outweigh the other considerations. I think it's only inevitable, I welcome it. Our emerg svces are counting on this. I believe it is the best, I recommend approval.

Tom Rupp - were putting it behind the Do It Center. It's not going to hurt aesthetics. People might notice at first but then won't.

Motion offered by Chairman Stenpeck:

BE IT RESOLVED, that on the basis of personal comments made by the Planning Board after lengthy deliberation and input from Village staff, our technical consultant, and information supplied by the applicant, Verizon, it is the recommendation of this Planning Board that the application of NYNEX Mobile of NY L.P. d/b/a Verizon Wireless to Construct and Operate a Wireless Telephone Communications Facility in the Village of Horseheads be approved as to the proposed site as reflected in its application, with the following conditions:

1) The applicant obtain and keep in force liability insurance in an amount to be determined by the Zoning Board of Appeals with the Village of Horseheads to be named as an additional insured.

2) This approval to be rescinded if the applicant does not construct the tower within 24 months of the approval by the ZBA, presuming there is one on record.

3) The Applicant be required to reimburse the Village for costs of our consultant.

4) The applicant post a bond or other suitable surety with the Village to provide for removal of the tower if it goes unused for the purpose as proposed for a period in excess of 12 continuous months.

5) Further that applicant will be required to design the tower so as to allow it to collapse within the leased premises.

Motion seconded by Doug Baker

Roll Call Vote;

Chairman Stenpeck	Aye
Bill Goodwin	Aye
Doug Baker	Aye
Dave Helsing	Aye
Bob Young	Aye

Adj. at 6:48pm

/rmb