

Minutes

Village Planning Board

October 28, 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

Motion by Doug Baker that the minutes of the Planning Board Meetings of September 23 and October 14, 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)

Chairman Stenpeck - We have received the preliminary report from our consultant CMS. We met with Sue Marino from CMS. Went to all sites. One comment she made was that wireless technology has no written documentation that they are a public utility and an essential service. It was my understanding that NY courts have ruled that they were. I would like final answer from our atty.

Atty. Groff - it's not an easy question. If you want to truly know if they are a public utility, the answer is no. Because by statute that is defined as gas service, electric, etc. Like many things the law hasn't kept pace. No legislation exists that has defined cellular communication as a utility. There are court cases that have come to that conclusion that they are to be treated as a utility. But defining it as such is only by legislative act. But in terms of should they be treated as such, case law says they are to be treated like public utility. That is why traditional zoning restrictions placed on a commercial use are not applicable here. You heard before that variance

criteria don't apply here. The cell towers are to be treated as if they demonstrated proof of need to be located, then the courts say ok. Need to make exception for these types of uses.

Chairman Stenpeck - I see this as an issue proof of need vs wants. I want to know how to distinguish this. Or is our consultant going to clarify this.

Atty. Groff - it is the applicant's obligation to prove need. They are to convince you with data and info. In terms of proof of need that is something that our consultant will assist you in concluding. In their preliminary report they feel that additional info needs to be provided to complete their analysis. That info will hopefully be forthcoming from applicant. You'll have the full report in a few days from consultant.

Chairman Stenpeck - what about alternative sites. I noticed in one email the applicant wants to dialogue with our consultant. I think that is a good idea. Since CMS has indicated the final report will be in Nov. 4th we should have our next mtg. on 11/18 to given everyone chance to review.

Lew VanDuzer - when does the 150 day time line run out?

Atty. Groff - December 21.

VanDuzer - the ZBA still has to meet.

Chairman Stenpeck - if we get report 11/4 we'd have two weeks to review it. In today's letter from Atty. Groff to applicant, John talks about GML Section 809. This is a disclosure issue?

Atty. Groff - ethics law says that municipal employees must disclose their interest in different types of matters, sometimes to their superior, sometimes to board, etc. In terms of land use apps the interested parties are supposed to reveal their interest to the ZBA, and to the PB, and to the Village. Application is by Verizon. However the permit is for the cell tower on property leased from Arthur Sullivan and their family. What I brought to Mr. Burgdorf's attention is that he needs to reach out to Art and Art needs to inform us that he has an interest in this property that would be impacted by this permit. In my mind it's a formality. It's something I would expect him to talk to Art about. Simply a disclosure. It's implicit in materials you already rec'd. Sullivan family is referenced. He is an employee of the Village. My guess is Burgdorf didn't know this.

Tom Rupp - if I'm a consumer and I pay 200 for a cell phone and I pay 50-60 a month to use it I would want best possible coverage and reception. If company says this is the place that will give us the best service are we trying to give the consumer lesser service by moving the location? If we don't want it there, why? Visual impact should have nothing to do with it. What are we trying to do here?

Chairman Stenpeck - we are trying to cover every aspect and every angle before we make a decision.

Tom Rupp - are we saying Verizon might be lying to us?

Chairman Stenpeck - that is what we are trying to determine.

Bill Goodwin - I think it's a good thing that they want to give Hhds better service. My thought is this is great. This is new technology. We have to continue moving forward.

Tom Rupp - in Ithaca there are two colleges, and a plaza up there. And there is a tower behind it. I don't know how long it's been there. I believe this will catch everyone's eye initially then you won't notice it.

Dave Helsing - I think everyone embraces technological advantage. I think sensitivity is the historic nature of Hanover Sq. But there are already deviations. Do It center doesn't exactly match architecture of the square. Neither do some other buildings. I am encouraged by list of alternate sites. Because there are some other areas. It's very likely this the best place to put it but I can't be sure. But I think this is a benefit to us as consumers. When they talk about co-location or future antennas. That may be an issue. I would like more info on that.

Atty. Groff - if a permit is granted it would be specific as to height. If at some point they want to increase height they have to start process again. It would be treated somewhat different than this application because it would be a modification to an existing tower. If it's a new tower its 150 days. If it's a modification its 90 days. If they want to add another antenna below the max height it would be up to ZBA to decide if that is a relevant concern on their part.

Tom Rupp - two of the alternate sites, Gardner Rd. ball field, E. Mill St. - wouldn't they have to close the field to do that.

Atty. Groff - possibly. The reason these sites were given was just to ask if it can be in a different location. Gardner Road location would be a much more difficult fit. That is a defined recreational facility. Would need legislative approval to put it there. Not likely to happen. The one by Babe Ruth field on Mill St., that is not in the ball field area. The Village owns land over there not devoted to recreational purposes. If that location had merit it could be utilized without much extra work. Maple Grove - that is also Village property, it's not a recreational facility. Its cemetery land. If that location has merit then the Village could look at it. This is merely exploratory.

Dave Radin - my board meets Thursday. My initial reaction on this was no way. I've changed my thinking. We can't be a backwards Village. I think the decision will come down to who do we believe. I have to be convinced that alternate sites won't work. If it can be equally effective elsewhere that would be preferable. But who do we believe.

Louise McIntosh - we are forgetting this is not just for Village residents. This is the main travel route between I86 and Route 14. A lot of travelers. Not just the residents. It's also needed for EMTs and emergency services. They have cell phones. That's what it's going to come down to.

Arthur Sullivan - NYS Department of Health has said that the future of EMS is that we will be going to houses with tablets, talking back and forth to doctors, etc. Data is very important.

Atty. Groff - application does require a SEQR review. That is something the ZBA will be acting on as lead agency. When there are multiple agencies then it's preferable to have a coordinated review. In this instance you're a recommending body. I would ask you as a Board to act on approving the ZBA as lead agency for the SEQR review of this application. Allows ZBA to start the process.

Motion by Bill Goodwin, that this Planning Board hereby approves the Zoning Board of Appeals acting as Lead Agency regarding the SEQR review of this application. Motion seconded by Dave Helsing.

Roll Call Vote:

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

As there was nothing further to come before the Planning Board, the meeting was adjourned at 5:55 p.m.

/rmb