



**TOWN OF SAUGERTIES
ZONING BOARD OF APPEALS**

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**October 5, 2020
WebEx Meeting Minutes**

Present: Jeanne Goldberg, Henry Rua, Patti Kelly, Joe Mayone, Tim Scott & Holly Strutt, Alternate
Also Present: George Redder: ZBA Attorney, John Lyons and Kim Garrison: ZBA Attorneys, Dan Shuster: Town Planner, Ronald Graiff: ZBA RF Engineer, Mike Ivino: Town Board Liaison, Scott Olson: Attorney Young Summer LLC, Mike Crosby: Verizon RF Engineer, Sara Coleman: Aerosmith, Brett Buggeln: Tarpon Towers, Anthony Campanelli: Attorney, Kevin Freeman: Zoning Board Secretary

- Jeanne called the meeting to order at 7:02 pm.
- Jeanne took roll call of ZBA members and, with full attendance, announced a quorum was reached.
- Jeanne designated Holly Strutt, the alternate, to join the regular board for this meeting as Henry Rua, regular Board member, was not present for the initial 2020 Verizon Cell Tower presentations.

Public Hearing:

**Tarpon Towers II, LLC & Verizon Wireless
RE: Mount Marion Fire Department
766 Kings Highway
Mt. Marion, NY 12456
File #: 19-0006
File #: 19-0007
SBL #: 28.4-11-13.100**

Tarpon Towers II, LLC and Cellco Partnership D/B/A Verizon Wireless, who propose to install and operate a 120-foot monopole tower structure with related equipment on the land of Mt. Marion Fire Department at 766 Kings Highway in Saugerties. We are now continuing the Public Hearing for this application that was begun on July 6, 2020.

At this time, I'd like the Board secretary to read the original Public Hearing notice.

The Town of Saugerties Zoning Board of Appeals will hold a Public Hearing at 7 pm on July 6, 2020 for the purpose of discussing and getting public input on an application by Tarpon Towers II, LLC and Cell-co Partnership D/B/A Verizon Wireless to install and operate a new communications facility on the property of Mt. Marion Fire Department, 766 Kings Highway, Saugerties NY.

Purpose of Hearing

Tarpon Towers II has proposed installation of a 120-foot tall monopole tower and related antennae on the site of the Mt. Marion Fire Department to enhance wireless service in the area. The Town of Saugerties Zoning Law requires the Zoning Board of Appeals (ZBA) to decide whether the Zoning Law applies to projects located on the lands of another governmental entity, such as the Fire Department. The ZBA must consider the “balance of interests” between the Town and the Fire Department in accord with factors established by the New York State Court of Appeals in the case of Matter of Monroe v. City of Rochester, 72 N.Y. 2d 338. The ZBA will also consider the appropriateness of use and area variances should it be determined that the proposed action is subject to the Zoning Law.

The ZBA will consider the nine factors set forth in the Monroe case, as they relate to the proposed tower and will also consider a finding that the proposed tower is immune from the provisions of the Town of Saugerties Zoning Law; therefore, no variances are required nor are any referrals to other agencies except the DEC. This public hearing is being conducted to consider any comments from interested citizens regarding this proposed action.

The July 6 meeting will be held remotely using Web-ex. Login information will be provided on the Town of Saugerties website. Written comments may be sent by July 1 to the ZBA at Town Hall, 4 High Street, Saugerties, NY 12477 or by email to kfreeman@saugertiesny.gov.

Jeanne said:

“As stated in the notice, one purpose of the public hearing is for the Board to solicit and accept comment from the public with regard to the question as to whether the proposed project qualifies for immunity from the Town of Saugerties Zoning Law, and in particular, with regard to our applying to this project the balancing test set forth in the New York State Court of Appeals decision in a case called *Matter of Monroe v. City of Rochester*. The ‘balancing of interests’ test set forth in the *Monroe* case identifies nine (9) separate factors to be considered by this Board in making a determination as to whether the proposed project qualifies for immunity from our Town Zoning Law because this project is proposed to be located on property owned by the Mt. Marion Fire District.”

Jeanne Continued:

“The ZBA has thus far received comment from the Applicants’ counsel, from an attorney representing numerous citizens living in the vicinity of the site of the proposed project; and from members of the public. At our meeting this evening, we will continue the public hearing and we will accept further comment from the public. At the conclusion of the public hearing session tonight, the Board intends to entertain a motion to close that portion of the public hearing which pertains to accepting comment on the issue of the immunity of this project from our local zoning law and conduct of the balancing of interests test from the *Monroe* case. That motion will also propose to extend the period for accepting written comment on the immunity from zoning question for an addition eight (8) days until 4:00 pm on Tuesday, October 13, 2020. This will afford all concerned one additional opportunity to submit comment to the Board on this issue. The motion will also propose that the portion of the public hearing that regards the Applicants’ application for area variances and a use variance shall remain open and be continued to our meeting scheduled for Monday, November 2, 2020.”

Jeanne emphasized:

“It is this Board’s desire to expeditiously complete its review of this application and to issue a final determination. In pursuit of that goal, it is the Board’s intention at this time to make a determination at our November 2nd meeting on the question of the immunity of this proposed project from the zoning law. If the project is determined to be immune from our Zoning Law, then this application will be concluded as neither a use variance nor area variances will be required of the Applicants. If the project is determined to be subject to our Zoning Law and not immune, then the Board will proceed with its review of the pending area and use variance application. In that case, at our November 2nd meeting we will continue that portion of the public hearing which pertains to the application for a use variance and area variances. If the public has additional comments on the variances, please be prepared to deliver your comments to us either at the public hearing session at our November 2nd meeting, or deliver them in writing to us between now and the November 2nd meeting. At the conclusion of the public hearing session on November 2nd, the Board intends to close the public hearing on the variances. Thereafter, the Board will proceed with its review of the application for use and area variances and work toward issuance of a decision on those applications.”

Jeanne ended:

“It is always possible that our planned time line for the disposition of this matter may be altered by unforeseen circumstances or events, but the schedule that I have outlined this evening is the one which the Board intends to try to adhere to as best it can.

We will now continue the public hearing.

Following comments from the public, I will ask that ZBA members ask any questions of the applicant; and then the representatives of the applicants may further address the Board if they so wish. At any time, the Board’s consultants may ask questions or make comments as well.”

Jeanne then asked if anyone from the public would like to comment.

Biagio DelVillano asked about using a water tank that is around a mile from the proposed site. Mike Crosby answered that the Palace Candles tank was unavailable for environmental reasons and not a viable alternative being remote from the search area. Patti Kelly noted the site had been remediated.

Attorney Campanelli went next stating that he represented 34 local residents in opposition to the placement of the tower. He asked the board to review his memorandum of opposition and the studies of impact on local interests both aesthetic and financial. He estimated that homes closest to the tower could expect 25% drop in property value. He noted that the applicant was trying to lean on the positive impact on the public without complete data, saying the board could not make a determination of deficiencies without more information. He pointed to a lack of data on gaps in service as might be determined by a drive test as well as deficiencies in capacity by a log of dropped calls. He stated that tower placement was done by seeking ‘soft targets’ with the good will generated among local emergency services without a study of the adverse effects of the tower in the community.

He noted that the Centerville tower case was not germane and stands on its own. There is no precedent in these decisions, and it is up to the local boards to protect the town and citizens. He stated that the Monroe balancing test have relevance to the Telecommunication Act (TCA) of 1996. He said the key in the code is to minimize towers with smart planning provisions and that Verizon was lacking in probative evidence.

Ron Graiff spoke to the concept of Long-Term Evolution (LTE) of cell technology, that dropped calls are a function of CMA technology and that the applicant had demonstrated capacity issues. Ron's issue with the alternate site analysis was he thought the search ring was too small. He asked if the water tower had been analyzed for this project and wondered about other potential sites within the industrial zone. He expected Sara Coleman from site acquisition to investigate. He said the plan met objectives but didn't know if there was a less intrusive alternative site on Industrial Drive.

Scott answered that there was a Phase One on the water tank, but they were not perusing it or a lease on the property. He reiterated the law requires a balancing test and they were holding back on additional tests, not as a weakness of the application but because they wanted to pursue the balancing test through the public hearing process first. He asked why should they provide additional information until the Monroe test was done first.

Patti noted that the pursuit of additional alternate sites is one of the criteria of the Monroe test.

Scott answered that they did provide propagation data and Mike and Ron were having a difference of opinion. He said again that Verizon had not approached any other property owners.

Patti said she thought Verizon was giving short shrift on alternative sites and Jeanne agreed. Jeanne added that the board had not been given the information they had requested several times regarding sites on Industrial Drive.

Ron replied that Verizon had well demonstrated a need for additional capacity, with coverage less defined. He asked why the 'line in the sand' of -95Db saying the presentation of alternative sites was not done to the standard of previous studies. He inquired if a taller tower could be constructed in a different zone. Scott asked that Ron address the data provided.

Scott said he didn't want to argue with Ron and said that -95Db was reasonable given the current standards.

Mike Crosby said that the -95Db is from an expectation of variations and precedence defines -95Db as a standard. He said drive test data is not applicable since 25 years ago cell service was primarily targeted towards cars only. Now coverage is needed beyond just roads. Since RF signal fades, drive test data is subject to the vagaries of equipment, speed, and atmospheric conditions among other factors. He stated modeling is the best way to convey information and has been done across the state and Hudson Valley.

Henry Rua asked Mike Crosby if equipment could meet the -95Db standard from the industrial zone in addition to the proposed site. Mike said they are trying to compare apples with apples. Henry asked what if the tower was taller? Mike said to compare between hypothetical locations they would need a real site and a real height.

Patti asked if they did modeling of alternate sites, and if so was it before or after choosing the fire house. Is the firehouse the only site that fits the criteria in Mt. Marion? Mike said the search ring was from I87 to Glasco Turnpike and didn't include the industrial zone. Patti said there were at least 7 properties of 5+ acres on Industrial Drive where towers are permitted in the industrial zone. It is difficult to understand why you are resisting exploring that possibility as an alternative, particularly since you would be able to build a tower to a height that would provide the coverage and capacity Verizon says it needs.

Scott said the fire station was picked because of existing zoning laws with a hierarchy to comply with the public benefit. He had met with the Chief of Police about the service lacking in the area.

Patti and Jeanne said they understood the public benefits, and nobody was disputing the need for service in the area.

Scott said the existing tower at the firehouse made their application exempt.

Jeanne said that the pre-existing tower was comparing crab apples to delicious apples. She said that the tower at the firehouse pre-existed zoning so didn't need or have a permit and doesn't meet the criteria of a Type 4 tower as defined in the Zoning Law. She said the board wanted Verizon to explore vacant parcels on Industrial Drive that can have Type 5 towers.

Patti noted Tarpon's commitment to giving emergency services access to the tower rent free regardless of where the tower was sited. Scott said Brett Buggeln of Tarpon Towers couldn't be held to providing services to alternate locations. Patti asked Brett if the ZBA could rely on what he had told us last month, and he reaffirmed that the ZBA had a letter about his company's commitment. Scott, again, said Tarpon could not be held to a non-binding verbal contract.

Patti asked Sara Coleman if she or anyone from her company had personally gone to the sites she identified as potential alternative properties. Sara said she hadn't, but someone from Aerosmith Technologies did a drive-by for some of them. Patti referred to the map, saying Area G is a cornfield. Area D is 11.75 acres, but is not visible from Glasco Turnpike. Sara said nobody set foot on properties since they weren't within the hierarchy. Patti noted that Property D was very close to the industrial zone. Patti said Area E has powerlines nearby and asked if that would be problematic. Sara said most power line companies don't allow cell towers on their rights of way.

Patti asked Sara when she had completed the Search Ring work on potential properties that fit the RF criteria and resulted in her recommendation of the Mt. Marion firehouse as the best site for a tower. Sara said it was March-April 2017.

Patti asked Scott who did the distance measurements from the proposed tower to the front, side and back of the firehouse property and if they were done in person. Scott said he believed they were done by Tectonic. Jeanne asked if the survey was the source of the measurements. Scott said he would have to ask Tectonic about their methodology.

Patti asked how many towers were in the Town of Ulster and the City of Kingston? Scott didn't know. Patti said there were a lot in Saugerties and was interested in how Saugerties compared to its neighbors. Scott said the Thruway rest stop in Ulster had a small cell. Patti asked why not a tower? Mike Crosby said the topography prohibited a tower by a ridgeline and that they could use a small cell there with an effective height of 150 ft due to the ridgeline. Ron questioned the measurements and terminology and Mike responded a small cell at that location was part of their multisite solutions. Patti asked if that small cell was being used to off-load capacity from the Town of Kingston and Saugerties Town Hall towers. Mike said yes.

Ron asked if power companies would still accept co-location and also asked who our power company was. Kathy Pomponio, from Verizon, said co-location on power lines was not a standard now. Patti said Central Hudson is our local power provider.

Jeanne asked if there were any other questions.

Tamara Schuppin asked the attorneys if a private citizen could perform a drive test to be used as evidence. Ron replied that such a technique is called crowd sourcing, but it is not the gold standard for data acquisition. Scott added that such a test would not be accepted by courts – The design requirements are not for one person to have signal. Mike said that coverage is only one function and such a test could not measure capacity. Ron asked Tamara to investigate crowd sourced data projects.

Jeanne stated that there is no argument about capacity; the job of the ZBA is to find the best placement for everyone. She said the board is still waiting for analysis of the industrial zone.

Scott replied that he understood but was hoping the ZBA would close the Monroe test first.

Jeanne made the following four motions:

1. Motion: The SEQRA designation of negative declaration for this project is rescinded, having been issued prematurely. This is due to new information received during the public hearing, and is rescinded upon advice of legal counsel. A new vote will be taken at the November 2 meeting. Patti seconded. Roll call vote: Holly, Yes; Patti, Yes; Tim, Yes; Joe, Yes; Jeanne, Yes. Motion carried.
2. Motion: Close that portion of the public hearing that pertains to the matter of the immunity of this project from the Town of Saugerties Zoning Law. Tim seconded. Roll call vote: Holly, Yes; Patti, Yes; Tim, Yes; Joe, Yes; Jeanne, Yes. Motion carried.
3. Motion: Extend the time to submit written comments on the issue of immunity of this project from the Town of Saugerties Zoning Law to Tuesday, October 13 at 4 pm. Joe seconded. Roll call vote: Holly, Yes; Patti, Yes; Tim, Yes; Joe, Yes; Jeanne, Yes. Motion carried.
4. Motion: Continue that portion of the public hearing pertaining to the area and use variances to our ZBA meeting scheduled for Monday, November 2, 2020. The last date for submissions by the applicant is 4 pm on Wednesday, October 21. Patti seconded. Roll call vote: Holly, Yes; Patti, Yes; Tim, Yes; Joe, Yes; Jeanne, Yes. Motion carried.

Before adjournment Jeanne suggested that the applicants reconsider their position on the information about possible alternative sites, especially on Industrial Drive, as requested several times by the board and not yet received. She said the matter of alternate sites was germane, not just to the variance applications, but is also a factor in the balancing tests to be conducted on the immunity from zoning question under *Monroe v. City of Rochester*. We have specified the information we are seeking previously. We would like to have that information in hand in determining the immunity from zoning questions, and if necessary, later in making determinations on the variance applications.

Jeanne thanked everyone who attended this meeting this evening. Jeanne made a motion to adjourn. Tim seconded. The motion passed unanimously.

Meeting closed at 8:40 pm

Respectfully Submitted,
Kevin Freeman
ZBA Secretary