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**ZONING BOARD OF APPEALS**  
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**March 7, 2022**  
**WebEx Meeting Minutes**

**Present:** Patti Kelly (Chair), Henry Rua (Vice-Chair), Joe Mayone, Tim Scott, Randy Ricks & Bill Schirmer: Alternate, Kevin Freeman: Zoning Board Secretary

**Also Present:** Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Grant & Lyons Brett Buggeln: Tarpon Towers, George Redder

Patti called the meeting to order at 7:00pm. She took roll call of ZBA members and announced that a quorum was reached.

**PUBLIC HEARING**

**TARPON TOWERS 11, LLC/VERIZON WIRELSS**

**PUBLIC HEARING**

**Tarpon Towers II, LLC & Verizon Wireless**

**Mount Marion Fire Department**

**766 Kings Highway**

**Mt. Marion, NY 12456**

**File #: 19-0006**

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**SBL #: 28.4-11-13.100**

The applicant is proposing to install and operate a new communications facility, including a 120-ft monopole cell tower and 4-foot lightening rod antenna at the Mt. Marion Firehouse,

The applicant is requesting a use variance because the facility is not permitted in a Residential Hamlet under the Town's Zoning Law. The applicant is also requesting area variances of 12' for the front yard, 40' for the side yard, and 165' for the rear yard from the required setbacks of 186 feet set forth in the Zoning Law.

The appeal states that due to the configuration of the property the tower is not able to meet the 186' setback required. The proposed tower location is 174' from the front property line; 159' from the side property line; and 19' from the rear property line.

Patti began by stating that the continued public hearing had been postponed until the April 4<sup>th</sup> meeting at the request of the applicant. The applicant sad he needed more time to respond to the public comments from the Feb. meeting. Notices were posted on the ZBA and Town websites, Lighthouse TV, and in the Planning Department. She also sent emails to those who had been

proposed facility's Parts 1 and Part 3 environmental assessment forms for the Mt. Marion Firehouse cell tower application. They had been sent to the board last week for their review and comment, and they had also been sent to Mr. Olson. Patti said that Mr. Olson had asked for time to speak about the ZBAs proposed SEQRA PosDec, and Patti had told him he would be given that opportunity after the board finished its discussion.

Starting with Part 2, Patti read each of the 18 questions that required a yes or no answer as to the environmental impact. A NO answer means no or small impact. A YES answer indicates a moderate to large impact may occur. Patti asked board members to state whether they agreed with what she had written, disagreed or had questions.

Number 1: Impact on Land. The proposed action may involve construction on, or physical alteration of the land surface of the proposed site? The answer to that was NO. All board members agreed with that assessment.

Number 2: Impact on Geological Features. The proposed action may result in the modification or destruction of, or inhibit access to any unique or unusual landforms on the site. The answer to that was NO. All board members agreed with that assessment.

Number 3: Impacts on Surface Water. The proposed action may affect one or more wetlands or other surface bodies, streams, rivers, ponds, or lakes. The answer to that was NO. All board members agreed with that assessment.

Number 4: Impact on Groundwater. The proposed action may result in new or additional use of groundwater or may have the potential to introduce contaminants to groundwater or in the aquifer. The answer to that was NO. All board members agreed with that assessment.

Number 5: Impact on Flooding. The proposed action may result in development on land subject to flooding. The answer to that was NO. All board members agreed with that assessment.

Number 6: Impacts on Air. The proposed action may include a state regulated air emission source. The answer to that was NO. All board members agreed with that assessment.

Number 7: Impacts on Plants and Animals. The proposed action may result in loss of flora or fauna. The answer to that was NO. All board members agreed with that assessment.

Number 8: Impact on Agricultural Resources. the proposed action may impact agricultural resources. The answer to that was NO. All board members agreed with that assessment.

Number 9: Impact on Aesthetic Resources. The land use of the proposed action are obviously different from, or in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. The answer to that was YES because of letter c. which says the proposed action may be visible from publicly accessible vantage points both seasonally and year-round. All board members agreed with that assessment.

Number 10: Impact on Historic and Archaeological Resources. The proposed action may occur in or adjacent to a historical or archaeological resource. The answer to that was NO. All board members agreed with that assessment.

Number 11: Impact on Open Space and Recreation. The proposed action may result in a loss of recreational opportunities or a reduction of open space resource as designated in any adopted municipal Open Space plan. The answer to that was NO. All board members agreed with that assessment.

Number 12: Impact on Critical Environmental Areas. The proposed action may be located within or adjacent to a critical environmental area. The answer to that was NO. All board members agreed with that assessment.

Number 13: Impact on Transportation. The proposed action may result in a change to existing transportation systems. The answer to that was NO. All board members agreed with that assessment.

Number 14: Impact on Energy. The proposed action may cause an increase in the use of any form of energy. The answer to that was NO. All board members agreed with that assessment.

Number 15: Impact on Noise, Odor, and Light. The proposed action may result in an increase in noise, odors, or outdoor lighting. The answer to that was NO. All board members agreed with that assessment.

Number 16: Impact on Human Health. The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. Because safety was not included in this section we checked letter m.- other impacts- and added “Adjoining properties and structures located within the fall zone of the tower” The answer to that was YES. All board members agreed with that assessment.

Number 17: Consistency with Community Plans. The proposed action is not consistent with adopted land use plans. We checked letter a. which states that proposed action’s land components may be different from or in sharp contrast to current surrounding land use patterns. We also checked letter c. which states the proposed action is inconsistent with local land use plans or zoning regulations. The answer to that was YES. All board members agreed with that assessment.

Number 18: Consistency with Community Character. We checked letter e. which states that the proposed project is inconsistent the tower” The predominant architectural scale and character and letter f. that states the proposed action is inconsistent with the character of the existing natural landscape. The answer to that was YES. All board members agreed with that assessment.

Patti asked Dan Shuster to go into more details about the items the board indicated were major impacts, and why this led to a Positive Declaration under SEQRA.

Dan said that under SEQRA the threshold to warrant a Positive Declaration (PosDec) is quite low. The standard is that if there may be a significant impact identified in Part 2, a PosDec is appropriate. The items checked in Part 2 by the board identified two main areas of substantial impact- the character of the community, including the project’s conflict with the Towns’ Zoning Law and Comprehensive Plan, and health and safety issues due to the tower’s location, height

(three to four times higher than other neighborhood structures), and the setbacks within the fall zone. Dan gave one example of this. He said that Glasco Turnpike, rather than being 1.5 times the tower height, is less than 1.2 times the tower height site. Glasco Turnpike itself is a property within the fall zone, and carries over 4,300 cars on a daily average, and that poses a significant possibility of significant impact which is why it was listed in that category and was checked on Part 2 and why a PosDec is required. He said that a Positive Declaration essentially provides an opportunity for the applicant to put forth information and for the board to consider how those possibly significant impacts can be mitigated. He stressed that it is not intended to be a complete laundry list of looking at everything under the sun, but, instead, to focus on the particular significant impacts that the ZBA were identified. The applicant is asked to submit a scope of work that will be undertaken to address those identified impacts. Dan said he thinks, in this case, there will likely be a limited scope mostly related to the location of the site of the tower or the tower, design or the tower height or alternate locations, but it's up to the applicant to propose a scope and the board to approve a scope and then review the environmental impact statement that results.

Henry Rua expressed concern about the safety of vehicles and the traveling public given Dan's Glasco Turnpike example. Citing his former experience with the County Highway Department, he suggested that Tarpon Towers/Verizon Wireless should issue insurance or a performance bond.

Before discussing his objections to the ZBA's Positive Declaration, Scott Olson asked to clarify two points Dan made. First, he said that Dan calling the 120-foot tower 3 to 4 times taller than other structures is inconsistent given that there's already an 80' tower at the firehouse.

Henry Rua told Mr. Olson that was not a good comparison since the firehouse tower isn't going to fall onto a roadway or onto someone's property.

Scott Olson responded that his second point is that Tarpon's tower not going to fall period. He went on to remind the ZBA that we were provided with an engineering study from a New York licensed engineer in the 17 Industrial Drive application, and he thinks the ZB didn't give it any credit. He said "it was ignored, but that engineer said towers, when they are designed properly and built properly, simply do not fall in the history of these things they do not fall on their own period."

Patti Kelly reminded Mr. Olson that the report he referred to was not submitted with the application for the Mr. Maron Firehouse tower, and if he wants it considered by the board, he should submit it. It's not the board's job to assume that a document he submitted for another application is relevant to this one, particularly since you never brought it up until now. Mr. Olson said he would make sure that report is submitted.

Mr. Olson then proceeded to list his opposition to the ZBA's SEQRA- Positive Declaration. He said that on June 1, 2020 the ZBA issued a secret Negative Declaration (NegDec), and it was not for the governmental immunity part. Referring to the minutes, of the June 1, 2020 meeting, he said Jeanne Goldberg closed the discussion of the EAF, made a motion that the application was a NegDec under SEQRA, had discussion with the board, and the NegDec was adopted unanimously. He went on to say that the ZBA board could not just adopt a Positive Declaration when there's a Negative Declaration in place right now.

Kim Garrison told Mr. Olson that the November 2020 ZBA minutes indicate that the SEQR NegDec determination was rescinded by a vote of the board. Mr. Olson said he didn't recall being notified of that or having an opportunity to address that. Ms. Garrison noted that the minutes reflect that Mr. Olson was present at that meeting when that issue was voted on. Mr. Olson, again, said he wasn't notified, and he thinks it's a violation of SEQRA. He went on to state that assuming the ZBA has some type of jurisdiction to entertain a PosDec, it is inappropriate to do it at this stage since the determination of significance needed to be done within 20 days, and we're almost three years into this application.

Kim Garrison said that, for the record, it was not a continuous three-year period and that a good majority of the initial Mt. Marion Firehouse application was dealing with the Monroe review and decision and then the Industrial Drive application. Mr. Olson didn't dispute that, but argued that the majority of the public comments had nothing to do with governmental immunity, but instead focused on the substance of the application. He said that after 4 public hearings to consider a PosDec is unreasonable. He brought up the fact that the Shot Clock expired on Jan. 6<sup>th</sup> of this year, and nobody on the board ever addressed that, and that's one of the reasons he filed a lawsuit against the ZBA and the Town. He said that Tarpon/Verizon he did table the firehouse application for about nine months and then reactivated it in Nov. 2021, but, the ZBA didn't do much on the application until Jan. 6h.

Patti Kelly asked Mr. Olson if he recalled why the ZBA wasn't working on the firehouse application at that time. What was the ZBA doing instead?

Scott Olson said we were reviewing the 17 Industrial Drive other application. Patti said you're darn right we were, and that's where our focus was. Yet the ZBA still did reactivate the firehouse application on Jan. 6<sup>th</sup>.

Henry Rua asked Mr. Olson why he kept saying the ZBA that held things up when we had to wait for months for you to get us the information and data we requested. He said just this month we had to delay discussion of the application because Mr. Olson requested a postponement until April because he needed more time to respond to public comments from the February meeting, and he asked that the record reflect that.

Scott Olson responded that the reason why we had to put off the March continued public hearing was because he had an obligation to provide detailed responses to the public's comments, at the last hearing comments were made we has an obligation to give detailed responses and was not able to do that in time. He added that that happens on a very regular basis among various zoning boards and planning boards, and it is not unique to this specific application. He stated that Tarpon/Verizon should never even have been here, because the decision on the firehouse application should have been decided within the shot clock period or the ZBA should have responded to our request of shot clock extension. He again mentioned the litigation and that it is inappropriate for the ZBA to consider a PosDec at this late stage.

Kim Garrison responded to Mr. Olson, saying that this isn't a delay. It is an environmental review as per the New York State law, and telecommunication towers do not supersede SEQRA. Regarding the public hearing, she said the Monroe decision adopted by the ZBA that found that the Mt. Marion Firehouse application was subject to review under the Zoning Law also said it would be subject to a public hearing to address the use and area variances.

Scott Olson said it doesn't change the fact that four public hearings were held previously on the substance of the application.

Patti Kelly asked Mr. Olson what he has against the public participating in a decision that might impact their homes. She said the more involvement the better as far as we're concerned.

Mr. Olson said having four public hearings and then a fifth one and exceeding the shot clock is problematic.

Kim Garrison responded that the shot clock is subject to the nature of the application. It's a presumptive 150 days for the shot clock depending on the nature of the application.

Scott Olson said the nature of a cell tower application is one of the simplest applications because there is really only one true issue. It's visual. That's the only issue, and it's been that way for 30 years.

Patti Kelly responded that we have a fall zone. We have a zoning law, and we are responsible for following that law.

Scott Olson finished his remarks by stating again his opposition to the ZBA's SEQRA Positive Declaration and again referring the board to his letter.

Patti Kelly asked the board if they had any concerns or question about the SEQRA Parts 2 & 3 that they wanted to discuss before voting. She also asked Kim if, given Mr. Olson's objections, it would still; be appropriate to proceed with the vote. Kim said it was, and reminded Patti to make sure it included the amendments added to Question #16 regarding potential hazards and the fall zone. Patti made that motion to approve the amended SEQRA Part 2. Henry Rua seconded the motion. The roll call vote was unanimous with Patti Kelly, Henry Rua, Je Mayone Tim Scott and Randy Ricks voting in favor.

Joe Mayone made a motion to approve SEQRA Part 3, The Positive Declaration. Tim Scott seconded the motion. The roll call vote was unanimous with Patti Kelly, Henry Rua, Joe Mayone, Tm Scott and Rand Ricks voting in favor. Patti said she would send copies to the Ulster County Planning Board.

Kim Garrison said she would send board members the Nov. 2020 minutes that were discussed at tonight's meeting. She also said the next step is that the applicant will provide its scoping document for the April meeting. Patti will send Mr. Olson a reminder of the ZBA's deadline for documents.

Tim Scott made a motion to approve the ZBA's February 7 meeting minutes. Randy Ricks seconded. There was no discussion, and the vote was unanimous with Patti Kelly, Henry Rua, Je Mayone Tim Scott and Randy Ricks voting in favor.

Patti said that, unless the Governor extends the remote meetings law, the ZBA's April meeting will be in-person at the Senior Center. If that's the case Bill Schirmer will be voting since Henry will still be in Florida. Kevin Freeman said he's been talking to Supervisor Costello about

getting trained on the hybrid system the town board uses which allows the public to listen in to the meeting, but requires Board members to attend in person.

Henry Rua made a motion to adjourn. Joe Mayone seconded. Patti called for a voice vote, and the motion passed unanimously with Patti Kelly, Henry Rua, Joe Mayone Tim Scott and Randy Ricks voting in favor.

The meeting adjourned at 7:51 p.m.