

**TOWN OF SARATOGA
PLANNING BOARD DRAFT MINUTES**

September 26, 2012

Chairman Ian Murray called the meeting to order at 7:30 p.m.

Roll Call: Due to the absence of Clerk Linda McCabe, Chairman Ian Murray called the roll. Chairman Ian Murray – present, Laurie Griffen – present, Patrick Hanehan – present, Robert McConnell – present, Jennifer Koval – present, Joseph Lewandowski – present, Brandon Myers – present, Alternate George Olsen – present.

Also attending: Town Engineer Ken Martin, Mr. & Mrs. Post, Arthur Boyajian, Michael Cusack, Dean Long, Bernard Buff, Gay Gamage, Kristina Gamage, Peter Nemen, Kim & Dave Austin, Julie Stokes, Will Corrigan, and other interested persons. (Sign-in sheet is on file in the Planning Clerk's office)

Approval of Minutes: A motion was made by Robert McConnell, seconded by Jennifer Koval to accept the minutes of the August 22, 2012 meeting. Chairman Ian Murray – aye, Laurie Griffen – abstained due to absence at the August meeting, Jennifer Koval – aye, Patrick Hanehan – abstained due to absence at the August meeting, Robert McConnell – aye, Joseph Lewandowski - aye, Brandon Myers - aye.

Carried 5 - 0

Approved

Public Hearing for Minor Subdivision

**Douglas & Carol Post # 12-08
580 Rt. 9P
Saratoga Springs, NY 12866
S/B/L 193.14-1-13 Lake Residential
Location: 1258-1260 Rt. 9P**

Applicant proposes a two lot subdivision, located at 1258-1260 Rt. 9P.

The Applicant appeared before the Board.

Chairman Ian Murray questioned what the Applicant was going to do with the existing driveway on Lot 2.

The Applicant responded they are going to widen it.

Chairman Ian Murray questioned if they were going to straddle the lot-line with it and the Applicant said yes, it will be the main entrance then it will break off into two separate driveways. Chairman Ian Murray explained he is asking because if, in the future, the Applicant sold one of the parcels, there would need to be an easement in place.

The Applicant stated they are putting an easement on that driveway for that reason.

Chairman Ian Murray stated they would like a note on the survey map stating that the

driveway will be realigned and there will be an easement for that. He then asked if the Applicant had spoken with NYS DOT concerning the need for a new curb cut. The Applicant responded he doesn't need it; NYS DOT said it would be better to move it over and go with the easement.

Town Engineer Ken Martin and Chairman Ian Murray stated that the driveway easement would have to accompany the new deed. There's some language the Board can furnish the Applicant with, which Tommell can incorporate into the deed and on the plot plan.

Chairman Ian Murray then stated there is a correction needed on the survey. Under the section Notes, #2, it reads "Lot 1 total area = 15,007+/- acres, Lot 2 total area = 36,953+/- acres"; it needs to read square feet not acres.

Proof of Notice having been furnished by newspaper on September 16, 2012, Chairman Ian Murray opened the Public Hearing at 7:35 p.m., asking those wishing to speak to please stand and state their name and address; no one came forward.

Chairman Ian Murray closed the Public Hearing at 7:36 p.m.

Chairman Ian Murray stated the Board did not get a response from the County, however he was at the Saratoga County Planning Board meeting when this application was reviewed, and they indicated there was no significant county wide or intercommunity impact with this project. The County's response will be on file in the Clerk's office upon receipt from the County.

**Laurie Griffen read the short form EAF, line by line, which was completed by the Board. Chairman Ian Murray made a motion, seconded by Patrick Hanehan to accept the documents as presented, to declare the SEQR review complete and to make a Negative Declaration. Chairman Ian Murray – aye, Laurie Griffen – aye, Jennifer Koval – aye, Patrick Hanehan – aye, Robert McConnell – aye, Joseph Lewandowski – aye, Brandon Myers – aye. Carried 7 - 0
Approved**

Chairman Ian Murray asked the Board if there were any questions; there were none.

Chairman Ian Murray made a motion, seconded by Laurie Griffen, to approve the application as proposed with the following conditions:

- 1. Correction on the survey map from acres to square feet.**
- 2. The driveway realignment to be put on the map.**
- 3. The town driveway easement incorporated into the deed and plot plan.**

Chairman Ian Murray – aye, Laurie Griffen – aye, Jennifer Koval – aye, Patrick Hanehan – aye, Robert McConnell – aye, Joseph Lewandowski – aye, Brandon Myers – aye. **Carried 7 - 0**

Approved

Sketch Plan Review for Minor Subdivision

**Arthur Boyajian #12-09
466 Hudson River Rd.
Waterford, NY 12188
S/B/L 182.-1-41.31
Location: Rt. 32**

**Owner: Landman Enterprises Inc.
466 Hudson River Rd.
Waterford, NY 12188**

Applicant proposes a two lot subdivision on Rt. 32.

The Applicant appeared before the Board stating he has a vacant 19+/- acre parcel on Rt. 32, which is separated by the road. He'd like to subdivide the parcel, creating one lot on the west side of Rt. 32 (about 9 acres) and one on the east side of Rt. 32 (about 10 acres).

Chairman Ian Murray stated this is a pre-existing lot, carved out of the old farm prior to our current regulations. He explained that the Applicant needs to have soil engineering completed; a deep hole test and a perc test done on the soil.

The Applicant stated he's not planning on building and Chairman Ian Murray explained those tests are a requirement for subdivision. He then added the Applicant will need to hire an engineer to witness the tests; the 6' deep hole test as well as perc tests on both lots, and a survey of the property. Chairman Ian Murray explained the reason this has to be done is to be sure these are viable building lots.

There was a lengthy discussion concerning the other parcels that the Applicant owns and the Applicant asked what could be done about a specific land-locked parcel.

Chairman Ian Murray stated that once the parcels are subdivided, they could do a lot-line adjustment with that parcel.

The Applicant thanked the Board.

Special Use Permit for a Telecommunications Tower

**Verizon Wireless /Cellco Partnership#12-04
Michael E. Cusack, Young/Sommer LLC
5 Palisades Dr.
Albany, NY 12205
S/B/L 181.-1-5
Location: 178 Wagmans Ridge Rd.**

**Owner: Mr. & Mrs. Joseph Peck
178 Wagmans Ridge Rd.
Saratoga Springs, NY 12866**

Returning Applicant seeks a Special Use Permit to construct an unmanned telecommunications tower on the lands of Joseph and Patricia Peck, located at 178 Wagmans Ridge Rd.

Returning Applicant's representative, Attorney Michael Cusack, appeared before the Board, and introduced the team he brought with him to help answer questions of the Board: Dave Weisenreder, Engineer, Rick Andras, Frequency Engineer, Sara Coleman and Kathy Pomponio, real estate manager. He stated they are ready to answer any questions of the Planning Board concerning materials they provided on 08/08/2012,

09/10/2012 and 09/11/2012. Ideally they would like to establish a date for the Planning Board's requested additional balloon float, and then talk about dates for their public hearing. He then said he'd like to answer a question from the 06/27/2012 meeting, concerning moving the site in one direction or the other in order to achieve better separation from the neighboring property owners. He stated they'd be interested in doing that if it makes more planning sense, but before they invest more time and money, they'd like to get a consensus of the Board on where that location will be. They would also like to further talk about an overall time frame to get this completed. He continued saying they have taken the Board's suggestion of perhaps converting the structure to a silo; they have a number of photographic simulations taken throughout the community that he's put up for the Board to view and he'll leave that up to help throughout their discussion.

Chairman Ian Murray stated, to update the Board, there have been a lot of meetings and conversations since the last Board meeting. Chairman Ian Murray stated he has talked with the Applicant's representative Michael Cusack, Town Engineer Ken Martin, Town consultant Dean Long of the L.A. Group, Town Attorney William Reynolds and he's talked with a few of the neighbors in proximity to the original proposed location. The Board knows this is not a desirable location because of the impact to the neighbors and the area, so they have all taken a hard look at this project and property. There are a couple of alternative spots they have looked at on the farm. One location would be toward the northeast, going toward the Hulka property, which is back from the farmland a bit and another spot is south of that location which is another 413' elevation; which is the exact elevation as the original proposed location for the tower. They feel that would be a location with fewer impacts to the neighbors. He then stated if there were any Board questions, they would try and answer them and Dean Long, consultant for the Town, can help explain things.

Dean Long stated since they are proposing either a monopole or silo, as you move the silo closer to the farm complex, it becomes more in character with the farm and provides better camouflage screening. It then becomes a question of does it look abandoned out there in the field or is it close enough where it appears compatible in keeping with a typical farm complex. Those are questions the Board needs to ask themselves as they continue this review. As was discussed in the past, you can't get the structure too close to the farm complex because the signal gets shadowy and lost.

Chairman Ian Murray commented to the Applicant's representative, Michael Cusack, that one question which goes hand in hand with this, is the co-location option for this tower. This tower is proposed at 80', plus a 4' antennae on top of that. He asked the Michael Cusack his thoughts on that and also asked if the Applicant needed the revenue for co-location.

Michael Cusack responded that before answering that question, they'd need to know what type of co-location design the Town would like implemented on the structure. It makes a difference in the foundation design and the structural design for the size of the silo or monopole itself and they need to take into account the future for potential co-

location. They have the ability to design it now for the lower height and make it expandable in the future. He noted that the silo comes in many alternative designs, and if one goes with an ornamental dome or cap on top it can add another 5' to 10' of height to the structure; it's just a matter of personal preference and it can be done either way. He also added they do not require the revenue from co-location. The facility, as currently proposed, will hold up to three users structurally.

Chairman Ian Murray questioned, hypothetically if Verizon Wireless was approved for 80', co-locaters can fill the 70' and 60' spots and still function correctly?

Michael Cusack responded that is correct and proceeded to review the schematics with the Board.

Chairman Ian Murray stated he had a legal question for Town Attorney William Reynolds; since the Town's zoning regulation requires the Board to promote co-location, can the Board even approve this as a one user tower or does the Applicant have to have the ability of co-location space on the lower levels of the tower for approval?

Town Attorney William Reynolds responded any co-location requires someone else coming in, so your question is, is it okay to approve for one user or do you feel in order for the Board's approval the Applicant needs to provide the ability for additional co-location carriers.

Chairman Ian Murray responded yes, that was what his question was.

Town Attorney William Reynolds said the Board should encourage co-location as it is part of our statute and part of our policy. It's a good idea to promote co-location with the design.

Chairman Ian Murray explained he asked because he would hate to have to see the Applicant come back before the Board and ask for an extension on it for co-location; he'd like to minimize the impacts from the beginning.

Town Attorney William Reynolds responded it's about consideration.

Robert McConnell questioned if it's feasible to put the silo near the dairy farm instead of in the middle of the field.

Chairman Ian Murray responded to answer that question he'd like to hold an on-site workshop; we'll post it in the paper since it will be a public meeting, and he'd like the entire Board there, as well as the general public if they like. That way they can all see the physical site and try to get any questions answered while on site.

Michael Cusack stated he will check with the property owner since it's a working farm. He also noted if you drop down in elevation next to a hill, the height has to be made up by structural height and it ends up not as a one-to-one trade-off because you have

shadowing from the hill. The silo would be out of scale; you can't have that lower elevation area as high as 150' – 160'.

Robert McConnell stated he walked up on the hill today and it struck him how fairly high it was right close to the farm; he said he wasn't sure about it being 150' but there is a plateau up there.

Jennifer Koval asked what the setbacks were and if they would need a variance.

Chairman Ian Murray responded setback requires one and a half times the height of the tower.

Town Attorney William Reynolds stated it's a safety issue so he doesn't believe variances could be issued.

Jennifer Koval then said for co-location, Verizon wants to be at the top; she asked if they could locate lower on the tower if another carrier needs to be higher or do they need the 80' height.

Michael Cusack responded they need the 80'.

Jennifer Koval said so the potential co-locaters just have to deal with not having as good coverage because they're lower, but that's what the Applicant wants; the 75' – 80'.

Dave Weisenreder, engineer, responded that it depends on the technology and if someone in the future wants to co-locate higher, then that company would have to come back to this Board to get that extension approved. If the Board states they want the tower designed to be expandable, Verizon Wireless would have the tower designed, the foundation designed such that it could be expandable in the future.

Robert McConnell said doing that makes sense; Chairman Ian Murray stated the Board is trying to reduce the impacts and hopefully not have to have anyone apply for an extension on the tower.

A lengthy discussion continued concerning co-location.

Jennifer Koval stated, if the tower is to be a silo design, she'd like to see it closer to the barns otherwise it's not going to accomplish the objective of having the structure look as if it's part of a farm. She does not believe anyone will go for a silo at the original proposed location. It wouldn't fit in; if you can't put a silo tower near the barn she isn't sure anyone would want it designed as a silo. If the location near the barn is out, then an alternate site needs to be found.

Robert McConnell wants to be sure that the location near the barn is not out of the question.

Patrick Hanehan stated you have more camouflage if you go closer to the barn so he believes the silo would be better.

Town Engineer Ken Martin stated there's a silo tower outside of Fort Miller, off County Rt. 46, and it's not near a farm. You should go look at it; it's bigger than the proposed tower but he thinks it looks good.

Michael Cusack stated after the conversation he had with the Peck's, the barn location is out. They work the farm every day and the silage is there, concrete bunkers are there, tractors running there all the time and he doesn't believe they'll get permission for that location.

Attorney William Reynolds questioned if the cemetery is an issue for this. There was no response.

Michael Cusack responded everything is close to the road. The barns, the dairy barn, the garage, the maintenance garage and the house are all close to the corner of Southard Rd. and Wagmans Ridge Rd.

A lengthy discussion continued regarding locations.

Chairman Ian Murray stated the Board would like to conduct an on-site workshop first and then see the balloon float. It was decided to schedule an on-site workshop for October 10, 2012 at 5:00 p.m. They will meet on-site and if they get a better consensus for tower location they can change the balloon float location at that time.

Michael Cusack agreed and stated they'll send out notices to the neighbors stating they will hold a visual impact assessment, the balloon float, on Saturday, October 13, 2012, from 8 a.m. – 1 p.m. at the Joe & Pat Peck farm, 178 Wagmans Ridge Rd. In the event of inclement weather, it will take place on Saturday October 20, 2012 or the first day following where weather conditions allow for the completion of the assessment. He then said, as they indicated in their proposal, they are agreeable to a public hearing date in November but they are also open to an October date if the Board would want to consider that.

Chairman Ian Murray said, to be fair to the general public, he'd like to open the public hearing in October and keep it open through November. That way if any of the general public goes to the workshop and observes the balloon float and has questions, those questions will be fresh in their minds for those public hearing meetings, as well as giving the Board and the Applicant ample time to answer potential questions. He added the Board will advertise for a public hearing for the October 25, 2012 meeting if agreeable.

Michael Cusack agreed. He then said he had questions for the Town Attorney on their extension request.

Chairman Ian Murray explained the FCC has a regulation called a Shot Clock. That regulation allows the Applicant or the Board a 150 day review period for an application like this. If the application is not completed within that 150 day window, the Applicant has the option to file a lawsuit against the Town for not conforming to that.

Michael Cusack stated that is a point of some discomfort and he'd like to say that from their perspective, as a wireless carrier, it's a 'use it or lose it' deadline under FCC regulations and puts a lot of artificial pressure on them to have to have a deadline. If they're working on a project and a town needs a couple of extra months and the project cannot get done in the 150 days, it puts them in the uncomfortable position of having to bring that up. Ordinarily it doesn't come up, but it has in other communities and their approach is to request an extension to take the time period and push it out to encompass the review to take pressure off so neither side has to deal with it. It has helped them tremendously in terms of handling their obligations. They are in agreement with the timetable that has been established at this meeting. They only ask that the Board help them take the time pressure off that exists now since it's been more than 150 days.

Chairman Ian Murray stated they're asking for the extension into the November time period so it protects their legal right to sue the town.

Town Attorney William Reynolds stated since the Board had an executive session at the August meeting and discussed possible litigation, he asked if the Board would like to discuss this again.

Patrick Hanehan stated since he was not at the August meeting and he would like to go into executive session.

Robert McConnell asked if the Board could go into executive session.

Chairman Ian Murray questioned the Board members to see if they wanted to recess into executive session; they did.

Chairman Ian Murray made a motion, seconded by Laurie Griffen to go into executive session to discuss possible litigation concerning the 'shot clock', Section 332, C7BV at 8:40 p.m. Chairman Ian Murray – aye, Laurie Griffen – aye, Jennifer Koval – aye, Patrick Hanehan – aye, Robert McConnell – aye, Joseph Lewandowski – aye, Brandon Myers – aye. **Carried 7 – 0**

Chairman Ian Murray made a motion, seconded by Laurie Griffen to exit executive session at 9:18 p.m. Chairman Ian Murray – aye, Laurie Griffen – aye, Jennifer Koval – aye, Patrick Hanehan – aye, Robert McConnell – aye, Joseph Lewandowski – aye, Brandon Myers – aye. **Carried 7 - 0**

Chairman Ian Murray stated they discussed the 'shot clock', Section 332, C7BV, in executive session. Chairman Ian Murray made a motion, seconded by Laurie Griffen, to extend the shot clock to December 15, 2012 if in agreement with council

for Verizon. (Council for Verizon voiced agreement) Chairman Ian Murray – aye, Laurie Griffen – aye, Jennifer Koval – aye, Patrick Hanehan – aye, Robert McConnell – aye, Joseph Lewandowski – aye, Brandon Myers – aye. **Carried 7 – 0**

Town Attorney William Reynolds stated the Board has a letter of stipulation extending the shot clock on file. Michael Cusack will send a revised letter with the agreed upon date of shot clock extension for Chairman Ian Murray's signature.

Old Business: None

New Business: None

Patrick Hanehan made a motion, seconded by Laurie Griffen to adjourn the meeting at 9:28 p.m. Chairman Ian Murray – aye, Jennifer Koval – aye, Robert McConnell – aye, Laurie Griffen – aye, Patrick Hanehan – aye, Joseph Lewandowski – aye, Brandon Myers – aye. **Carried 7-0**

Meeting Adjourned

An on-site workshop meeting will take place on Wednesday, October 10, 2012 at 5 p.m.

The next regular meeting will be held Thursday, October 25, 2012 at 7:30 PM.

I, Linda A. McCabe, prepared these minutes from an audio tape due to being absent from the meeting.

Respectfully submitted,

Linda A. McCabe
Planning Clerk