

TOWN OF WARWICK PLANNING BOARD
September 17, 2014

Members present: Chairman, Benjamin Astorino
Roger Showalter, Vice-Chairman
Dennis McConnell, Beau Kennedy,
Christine Little
Laura Barca, HDR Engineering
J. Theodore Fink, Greenplan
John Bollenbach, Planning Board Attorney
Connie Sardo, Planning Board Secretary

The regular meeting of the Town of Warwick Planning Board was held Wednesday, September 17, 2014 at the Town Hall, 132 Kings Highway, Warwick, New York. Chairman, Benjamin Astorino called the meeting to order at 7:30 p.m. with the Pledge of Allegiance.

Review of Submitted Maps:

WVLDC Lot Line Change #2

Application for Sketch Plat Review of a proposed Lot Line Change, situated on tax parcels S 46 B 1 L 9.2 and L 34; parcels located on the eastern side of State School Road 3200 feet south of Kings Highway, in the OI zone, of the Town of Warwick.

Representing the applicant: Keith Woodruff, Engineering & Surveying Properties. Bob Krahulik, President of WVLDC.

Mr. McConnell: Mr. Chairman, I will need to recuse myself from this application because of my association with Mr. Krahulik.

Mr. Astorino: Ok. Let it be known for the record that Mr. McConnell has recused himself from the WVLDC application.

The following comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board – pending comments
4. Architectural Review Board – pending comments
5. OC Planning Department – pending submittal
6. TW Building Department – 09/03/14 no comments
7. TW ZBA – area variances will be required
8. If ZBA approval is granted, the complete ZBA language must be shown on the drawing.
9. Applicant to clarify if the existing fence lines will remain. If they are to remain, applicant to show that these fence lines are in compliances with the Town of Warwick Town Code or obtain a ZBA variance.
10. It appears that all of the buildings in the most-southern section of the proposed lot 46-1-34 are not included in a building envelope; variances may be required.

11. The Planning Board may request a site inspection if the ZBA grants the requested variances.
12. The surrounding tax lot number and the N/F information should be shown on the plan.
13. The 911 addresses must be shown on the plan.
14. Service Capacity letters must be submitted to highway, police, ambulance, fire, and school.
15. If no stormwater plan is included, a note must be added to the plans stating that there will be no ground disturbance.
16. The lots should be designated as Proposed Lot 1 and Proposed Lot 2; the Orange County Tax Office will determine that new tax id number for each new lot.
17. Please add a note to the plans stating that prior to a change in ownership Planning Board Special Use / Site Plan approval is required and during the Planning Board approval process comments regarding access, utility easements, and other typical site plan comments will be addressed.
18. The beneficiary to the 50-ft access easement should be clarified on the plan (proposed lot 46-1-9.2). The agent responsible for maintenance should be identified.
19. Applicant to clarify if the 50-ft access easement will also be needed for utilities or other uses besides access.
20. The existing fence line on proposed lot 46-1-9.2 is shown to be on proposed lot 46-1-34 at the eastern side of proposed lot 46-1-34; applicant to remove fence or propose an easement.
21. Applicant to clarify if the razor wire is proposed to be removed; if so, applicant to clarify when.
22. The plans must be signed/sealed by the Professional Engineer from the State of New York.
23. The plans must be signed/sealed by the Licensed Surveyor from the State of New York.
24. The appropriate Town of Warwick Standard Notes must be added to the plan (access onto a Town Highway Note and private road notes).
25. Provide a map note stating that "No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained."
26. Surveyor to certify that iron rods have been set at all property corners.
27. Payment of all fees.

The following comment submitted by the CB:

WVLDC Lot Line Change #2 – None submitted.

The following comment submitted by the ARB:

WVLDC Lot Line Change #2 – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: The Planning Board had previously reviewed this and had done a SEQR review. This application is just a lot line change. Under SEQR, a lot line change like this is a Type 2 Action. We don't need to do anything as far as SEQR is concerned. I have prepared a Type 2 Action Resolution for the Board's consideration.

Mr. Showalter makes a motion for the Type 2 Action.

Seconded by Ms. Little. The following Resolution was carried 4-Ayes.

Resolution

Type 2 Action

Name of Action: WVLDC Re-Subdivision

Whereas, the Town of Warwick Planning Board is in receipt of a Subdivision application by the Warwick Valley Local Development Corporation for a \pm 41.67 acre parcel of land located at State School Road, Town of Warwick, Orange County, New York, and

Whereas, an Environmental Assessment Form (EAF) dated 9/3/14 was submitted at the time of application, and

Whereas, after comparing the thresholds contained in 6 NYCRR 617.4 and 5, the Planning Board has determined that the proposed project is a Type 2 Action that meets the thresholds found in 6 NYCRR 617.5(c)(26) and, therefore, SEQR does not apply, and

Whereas, the Planning Board has determined that the proposed project is within an agricultural district and, therefore, the requirements of 617.6(a)(6) apply meaning that an Agricultural Data Statement must be filed, forwarded to the owners of all farm operations within 500 feet of the site and then considered by the Planning Board, and

Whereas, after examining the EAF, the Planning Board has determined that there are no other involved and/or federal agencies on this matter.

Now Therefore Be It Resolved, that the Planning Board hereby declares that no further review under SEQR is required.

Comment #2: Applicant to discuss project.

Keith Woodruff: It is pretty cut and dry. It is just a lot line change in order to increase the lot size for the future sale of the property.

Mr. Astorino: As we had discussed at the Work Session, there are some variances that are required. We have all gone through the maps. You will be on your way to the ZBA to go for those variances. As we had discussed at the Work Session, we will send them to the ZBA with a "Positive" recommendation. Do we have a consensus from the Board to send this application to the ZBA with a "Positive" recommendation?

Mr. Showalter: Yes.

Ms. Little: Yes.

Mr. Kennedy: Yes.

Mr. Astorino: Ok. The Board is in a consensus to send this application to the ZBA with a "Positive" recommendation. John, will you get that letter out to them?

Mr. Bollenbach: Yes.

Mr. Astorino: Ok. You are all set. We will list Comments 3 through 27 for the record.

Keith Woodruff: Ok. Thank you.

Comment #3: Conservation Board – pending comments

Comment #4: Architectural Review Board – pending comments

Comment #5: OC Planning Department – pending submittal

Comment #6: TW Building Department – 09/03/14 no comments

Comment #7: TW ZBA – area variances will be required

Comment #8: If ZBA approval is granted, the complete ZBA language must be shown on the drawing.

Comment #9: Applicant to clarify if the existing fence lines will remain. If they are to remain, applicant to show that these fence lines are in compliances with the Town of Warwick Town Code or obtain a ZBA variance.

Comment #10: It appears that all of the buildings in the most-southern section of the proposed lot 46-1-34 are not included in a building envelope; variances may be required.

Comment #11: The Planning Board may request a site inspection if the ZBA grants the requested variances.

Comment #12: The surrounding tax lot number and the N/F information should be shown on the plan.

Comment #13: The 911 addresses must be shown on the plan.

Comment #14: Service Capacity letters must be submitted to highway, police, ambulance, fire, and school.

Comment #15: If no stormwater plan is included, a note must be added to the plans stating that there will be no ground disturbance.

Comment #16: The lots should be designated as Proposed Lot 1 and Proposed Lot 2; the Orange County Tax Office will determine that new tax id number for each new lot.

Comment #17: Please add a note to the plans stating that prior to a change in ownership Planning Board Special Use / Site Plan approval is required and during the Planning Board approval process comments regarding access, utility easements, and other typical site plan comments will be addressed.

Comment #18: The beneficiary to the 50-ft access easement should be clarified on the plan (proposed lot 46-1-9.2). The agent responsible for maintenance should be identified.

Comment #19: Applicant to clarify if the 50-ft access easement will also be needed for utilities or other uses besides access.

Comment #20: The existing fence line on proposed lot 46-1-9.2 is shown to be on proposed lot 46-1-34 at the eastern side of proposed lot 46-1-34; applicant to remove fence or propose an easement.

Comment #21: Applicant to clarify if the razor wire is proposed to be removed; if so, applicant to clarify when.

Comment #22: The plans must be signed/sealed by the Professional Engineer from the State of New York.

Comment #23: The plans must be signed/sealed by the Licensed Surveyor from the State of New York.

Comment #24: The appropriate Town of Warwick Standard Notes must be added to the plan (access onto a Town Highway Note and private road notes).

Comment #25: Provide a map note stating that “No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained.”

Comment #26: Surveyor to certify that iron rods have been set at all property corners.

Benz-Bieling Lot Line Change

Application for Sketch Plat Review & Final Approval of a proposed Lot Line Change, situated on tax parcels S 31 B 2 L 22.21 and L 22.1; parcels located on the northern side of Ackerman Road and NYS Route 94N (560 NYS Route 94 & 102 Ackerman Road), in the RU zone, of the Town of Warwick.

Representing the applicant: Karen Emmerich from Lehman & Getz Engineering.

Mr. Astorino: Let the record show that Mr. McConnell has returned to the Board.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board – pending comments
4. Architectural Review Board – pending comments
5. OC Planning Department – pending submittal
6. TW Building Department – 08/29/14 no comments
7. TW ZBA – area variances may be required for setbacks; even though there is no construction proposed and the proposed action reduces the amount of non-conformity
8. If ZBA approval is necessary, the complete ZBA language must be shown on the plan.
9. Applicant to clarify if proposing to dedicate the portion of the Bieling property in the Town's right-of-way to the Town for roadway purposes.
10. If no stormwater plan is included, a note must be added to the plans stating that there will be no ground disturbance.
11. Plan should clarify how or if water goes into and out of the existing pond.
12. The locations of the existing well and septic system for the Bieling property should be shown on the plan.
13. The Ridgeline and Agricultural Notes must be added to the plan.
14. The plans must be signed/sealed by the Licensed Surveyor from the New York.
15. Provide a map note stating that "No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained." (please add the word "proposed" to Sheet 1, Note 6).
16. The declaration information for the Ridgeline and Agricultural Notes must be added to the plans.
17. Surveyor to certify that iron rods have been set at all property corners.
18. Payment of all fees.

The following comment submitted by the Conservation Board:

Benz-Bieling Lot Line Change – None submitted.

The following comment submitted by the ARB:

Benz-Bieling Lot Line Change – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: This is a simple proposed lot line change. The applicant has submitted a short EAF to the Planning Board. This is a Type 2 Action. It is not necessary for any SEQR review to be done on this application. I have prepared a Type 2 Action Resolution for the Board's consideration.

Mr. McConnell makes a motion for the Type 2 Action.

Seconded by Ms. Little. The following Resolution was carried 5-Ayes.

617.6
State Environmental Quality Review (SEQR)
Resolution
Type 2 Action

Name of Action: Benz-Bieling Re-Subdivision

Whereas, the Town of Warwick Planning Board is in receipt of a Subdivision application by Paul & Helen Benz and Timothy and Dara Bieling for a \pm 10.3 acre parcel of land located at 560 Route 94 North and 102 Ackerman Road, Town of Warwick, Orange County, New York, and

Whereas, an Environmental Assessment Form (EAF) dated 8/26/14 was submitted at the time of application, and

Whereas, after comparing the thresholds contained in 6 NYCRR 617.4 and 5, the Planning Board has determined that the proposed project is a Type 2 Action that meets the thresholds found in 6 NYCRR 617.5(c)(26) and, therefore, SEQR does not apply, and

Whereas, the Planning Board has determined that the proposed project is within an agricultural district and, therefore, the requirements of 617.6(a)(6) apply meaning that an Agricultural Data Statement must be filed, forwarded to the owners of all farm operations within 500 feet of the site and then considered by the Planning Board, and

Whereas, after examining the EAF, the Planning Board has determined that there are no other involved and/or federal agencies on this matter.

Now Therefore Be It Resolved, that the Planning Board hereby declares that no further review under SEQR is required.

Comment #2: Applicant to discuss project.

Karen Emmerich: This is a proposed lot line change where we are increasing the size of the Bieling's lot. The boundary lines are going to coincide with the area that is currently being mowed by Bieling. The Benz property will be reduced in size somewhat but it would still conform to the Code. The Bielings would actually increase in size and become more conforming than it is right now.

Mr. McConnell: It would be less non-conforming.

Karen Emmerich: Yes. It would be less non-conforming.

Comment #3: Conservation Board – pending comments

Comment #4: Architectural Review Board – pending comments

Comment #5: OC Planning Department – pending submittal

Comment #6: TW Building Department – 08/29/14 no comments

Comment #7: TW ZBA – area variances may be required for setbacks; even though there is no construction proposed and the proposed action reduces the amount of non-conformity.

Laura Barca: Right. It is my job to bring that to your attention. Even though it is less non-conforming, it is still non-conforming.

Mr. Astorino: Basically, you are telling us that it is still non-conforming but it is less than it was.

Laura Barca: Yes.

Mr. Astorino: Ok. That is not a bad thing.

Mr. Bollenbach: We can strike Comments 7 and 8.

Comment #8: If ZBA approval is necessary, the complete ZBA language must be shown on the plan.

Mr. Astorino: We can strike Comment #8.

Comment #9: Applicant to clarify if proposing to dedicate the portion of the Bieling property in the Town's right-of-way to the Town for roadway purposes.

Karen Emmerich: The applicant does not want to dedicate it.

Mr. Astorino: Ok.

Comment #10: If no stormwater plan is included, a note must be added to the plans stating that there will be no ground disturbance.

Karen Emmerich: Ok.

Comment #11: Plan should clarify how or if water goes into and out of the existing pond.

Karen Emmerich: Ok.

Comment #12: The locations of the existing well and septic system for the Bieling property should be shown on the plan.

Comment #13: The Ridgeline and Agricultural Notes must be added to the plan.

Karen Emmerich: Will add.

Comment #14: The plans must be signed/sealed by the Licensed Surveyor from the New York.

Karen Emmerich: Ok.

Comment #15: Provide a map note stating that “No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained.” (please add the word “proposed” to Sheet 1, Note 6).

Karen Emmerich: Ok.

Comment #16: The declaration information for the Ridgeline and Agricultural Notes must be added to the plans.

Karen Emmerich: Ok.

Comment #17: Surveyor to certify that iron rods have been set at all property corners.

Karen Emmerich: Ok.

Comment #18: Payment of all fees.

Karen Emmerich: Ok. We ask the Board to waive the Final public hearing.

Mr. Astorino: How does the Board feel? This is a simple lot line change. There is no construction proposed.

Mr. McConnell makes a motion to waive the Final public hearing.

Seconded by Mr. Showalter. Motion carried; 5-Ayes.

Ms. Little makes a motion on the Benz-Bieling Lot Line Change application, granting Final Approval of a proposed Lot Line Change, situated on tax parcels S 31 B 2 L 22.21 and L 22.1; parcels located on the northern side of Ackerman Road and NYS Route 94N (560 NYS Route 94 & 102 Ackerman Road), in the RU zone, of the Town of Warwick, County of Orange, State of New York. A Type 2 Action was adopted on September 17, 2014. Approval is granted subject to the following conditions:

1. Applicant to clarify if proposing to dedicate the portion of the Bieling property in the Town’s right-of-way to the Town for roadway purposes.

2. If no stormwater plan is included, a note must be added to the plans stating that there will be no ground disturbance.
3. Plan should clarify how or if water goes into and out of the existing pond.
4. The locations of the existing well and septic system for the Bieling property should be shown on the plan.
5. The Ridgeline and Agricultural Notes must be added to the plan.
6. The plans must be signed/sealed by the Licensed Surveyor from the New York.
7. Provide a map note stating that “No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained.” (please add the word “proposed” to Sheet 1, Note 6).
8. The declaration information for the Ridgeline and Agricultural Notes must be added to the plans.
9. Surveyor to certify that iron rods have been set at all property corners.
10. Payment of all fees.

Seconded by Mr. McConnell. Motion carried; 5-Ayes.

Karen Emmerich: Thank you.

Canine Case Squad, Inc./Forst

Application for Site Plan Approval and Special Use Permit for the construction and use of a dog evaluation and training facility, situated on tax parcel S 20 B 2 L 17.1; project located on the left side of Grandview Place 37 feet west of Lincoln Road (37 Grandview Place) in the RU zone, of the Town of Warwick.

Representing the applicant: Karen Emmerich, Lehman & Getz Engineering. Doug Jones, Attorney.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board – pending comments
4. Architectural Review Board – pending comments
5. OC Planning Department – pending submittal
6. TW Building Department – 08/28/14 valid open permit for renovations to a pole barn
7. TW ZBA – This proposed application will require variances: §164-40.N(P) a kennel requires 10 acres where 2.6 are provided, lot depth (200' required-134.38' and 94.90' are proposed), front setback (100' required-54.4' and 52.5' are proposed, yards to special areas (100-ft required, 54.4' and 52.5' are proposed) ; §164-46.J(2) requires a 300-ft setback for a dog kennel, runway, or exercise pen; §164-46.J(102) distance between buildings is 30-ft
8. If ZBA approval is granted, the complete ZBA language must be shown on the drawing.
9. The bulk table should be updated for the proposed use of a kennel: §164-46.M Business Use 35 Dog Kennels, §164-46.N Use Group “p.”
10. The existing septic system location should be shown on the site plan.
11. Applicant to clarify if the existing well and septic services both the home and barn.
12. Sheet 1, Notes 8 & 9 state that there is an existing and proposed well and septic system; the proposed information should be added to the plan.
13. The surrounding tax lot number and the N/F information should be shown on the plan.
14. The ridgeline and agricultural notes must be added to the plan.
15. If no stormwater plan is included, a note must be added to the plans stating that there will be no ground disturbance.
16. There is an existing fence shown; applicant to clarify the purpose of this fence, including what dogs are proposed to use this fence.
17. The purpose of the two sheds and pen on the property should be shown.
18. Applicant to clarify where the dog training will take place (indoors or outdoors); add a note to the plan.
19. Application to clarify if there is a maximum number of dogs that will be trained at the facility at any given time; add a note to the plan.
20. Applicant to clarify what the training will include (e.g., will the dog owners also be onsite for the training).
21. Applicant to clarify if the dogs will spend the night at the Canine Case Squad.

22. Parking calculations, including required and proposed parking spaces, must be shown on the plan.
23. Traffic flow patterns and the design of any loading areas, including truck turning movements, must be shown on the plans.
24. A landscaping plan, including a planting schedule and notes assuring replacement of plantings that do not survive three years must be shown on the plan.
25. Show the location, design, and construction materials for all existing and proposed walkways, ramps, outdoor storage/display areas, and retaining walls/fences.
26. Show the location, height, size, materials of construction, design, and illumination of all existing and proposed signs, as required in §164-43.1.
27. Show the location, type, and screening details for solid waste disposal facilities and containers.
28. The plans should estimate noise generation or include a note that states compliance with the Town's Performance Standards (§164-48).
29. Provide a map note stating that "No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained." Completed: Sheet 1, Note 13.
30. The declaration information for the Ridgeline and Agricultural notes must be added to the plan.
31. Surveyor to certify that iron rods have been set at all property corners.
32. Payment of all fees.

The following comment submitted by the Conservation Board:

Canine Case Squad, Inc./Forst – None submitted.

The following comment submitted by the ARB:

Canine Case Squad, Inc./Forst – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: This application is subject to SEQR. It is an Unlisted Action. The applicant has submitted a Short EAF to the Planning Board. Since this application needs to go to the ZBA for variances, we don't need to declare Lead Agency at this time. We could declare Lead Agency once they come back from the ZBA.

Mr. Astorino: Ok.

Comment #2: Applicant to discuss project.

Karen Emmerich: The applicants are behavioral trainers. I hesitate to use trainers. They are not training dogs.

Mr. McConnell: Are they evaluators?

Karen Emmerich: They evaluate and to a certain extent they do training. They have an existing metal building that they would like to conduct these training activities in. They had remodeled this building specifically for this purpose. They have a building permit. The issue is for them boarding dogs or keeping dogs over night for

evaluation. That is not the primary purpose of their business; It is something that could occur on occasion.

Mr. Astorino: You have variances that are needed from the ZBA.

Karen Emmerich: That is right. We have a number of setback area variances that we need to go for.

Mr. Astorino: Ok. Essentially, you need to go to the ZBA. As we had discussed at the Work Session, we are going to send them "Without" recommendation to the ZBA. We haven't heard enough about this. We haven't done a site visit yet. You go to the ZBA and present your case. Do we have a consensus from the Board to send the applicant to the ZBA "Without" recommendation?

Mr. Kennedy: Yes.

Mr. Showalter: Yes.

Mr. McConnell: I would like one of the representatives to speak to the applicant. Let's see if we could nail down if they are or are not a training facility. I understand what you said and it is an incomplete understanding that they weren't training. But then you said they have an existing building to conduct their training.

Karen Emmerich: They use the building for evaluation.

Dog Jones: It is my understand that for the dogs that they are working with, they want to bring them up to the premises to number one, evaluate them. Then also to provide training many but not all. Some are just strictly evaluation and then they go back. Some dogs would be kept for evaluation and training. I know they do dog training as part of what they do as a business. I would assume through my discussions with them, it was my understanding that some of that training would occur in this facility. I do want to correct one thing regarding this building. I said it was remodeling of the building. This was a new construction of the building. It was originally going to be a pole barn. But they made it into a fully enclosed building. I have seen the building. I have been inside of the building. The building has a concrete flooring. It is a closed building. It is sound proof. There are cameras inside the building. It has 3 kennels in there. They look just like the ones that you would see at the Humane Society. The kennels are built into the building. They have a small outside area that are fully fenced in for each one of those kennels. It has a door from inside the kennel that leads to outside of the kennel to allow the dogs go outside the caged area. That is only if you open the door and let them out. They control whether the dog is fully inside or inside and outside.

Mr. McConnell: We call those kennel runs.

Mr. Astorino: Ok. With that being said, you will need to go to the ZBA. Nail down exactly what you would be doing there.

Mr. McConnell: Bring back a narrative of what is going on.

Mr. Astorino: Do we have a consensus from the Board to send this application to the ZBA “Without” recommendation?

Mr. McConnell: Yes.

Mr. Kennedy: Yes.

Mr. Showalter: Yes.

Mr. Astorino: We have a consensus from the Board to send this application to the ZBA “Without” recommendation. We will list Comments 3 through 32 for the record. Once you are done with the ZBA, you will come back to the Planning Board.

Karen Emmerich: Ok.

Mr. McConnell: Regarding Comment #6, is that an accurate comment regarding valid open permit for renovations to a pole barn? Mr. Jones had just told us that it is not a pole barn.

Doug Jones: The original permit was for a pole barn. Then they went to the Building Department to get a second permit to enclose the structure.

Mr. McConnell: That description would need to be clarified.

Mr. Astorino: We will clarify that ourselves through the Building Department.

Doug Jones: As far as I know, I think a final inspection has been done.

Mr. Astorino: We will get that information from the Building Department.

Doug Jones: Thank you.

Karen Emmerich: Karen Emmerich.

Comment #3: Conservation Board – pending comments

Comment #4: Architectural Review Board – pending comments

Comment #5: OC Planning Department – pending submittal

Comment #6: TW Building Department – 08/28/14 valid open permit for renovations to a pole barn

Comment #7: TW ZBA – This proposed application will require variances: §164-40.N(P) a kennel requires 10 acres where 2.6 are provided, lot depth (200’ required-134.38’ and 94.90’ are proposed), front setback (100’ required-54.4’ and 52.5’ are proposed, yards to special areas (100-ft required, 54.4’ and 52.5’ are proposed) ; §164-46.J(2) requires a 300-ft setback for a dog kennel, runway, or exercise pen; §164-46.J(102) distance between buildings is 30-ft

Comment #8: If ZBA approval is granted, the complete ZBA language must be shown on the drawing.

Comment #9: The bulk table should be updated for the proposed use of a kennel: §164-46.M Business Use 35 Dog Kennels, §164-46.N Use Group “p.”

Comment #10: The existing septic system location should be shown on the site plan.

Comment #11: Applicant to clarify if the existing well and septic services both the home and barn.

Comment #12: Sheet 1, Notes 8 & 9 state that there is an existing and proposed well and septic system; the proposed information should be added to the plan.

Comment #13: The surrounding tax lot number and the N/F information should be shown on the plan.

Comment #14: The ridgeline and agricultural notes must be added to the plan.

Comment #15: If no stormwater plan is included, a note must be added to the plans stating that there will be no ground disturbance.

Comment #16: There is an existing fence shown; applicant to clarify the purpose of this fence, including what dogs are proposed to use this fence.

Comment #17: The purpose of the two sheds and pen on the property should be shown.

Comment #18: Applicant to clarify where the dog training will take place (indoors or outdoors); add a note to the plan.

Comment #19: Application to clarify if there is a maximum number of dogs that will be trained at the facility at any given time; add a note to the plan.

Comment #20: Applicant to clarify what the training will include (e.g., will the dog owners also be onsite for the training).

Comment #21: Applicant to clarify if the dogs will spend the night at the Canine Case Squad.

Comment #22: Parking calculations, including required and proposed parking spaces, must be shown on the plan.

Comment #23: Traffic flow patterns and the design of any loading areas, including truck turning movements, must be shown on the plans.

Comment #24: A landscaping plan, including a planting schedule and notes assuring replacement of plantings that do not survive three years must be shown on the plan.

Comment #25: Show the location, design, and construction materials for all existing and proposed walkways, ramps, outdoor storage/display areas, and retaining walls/fences.

Comment #26: Show the location, height, size, materials of construction, design, and illumination of all existing and proposed signs, as required in §164-43.1.

Comment #27: Show the location, type, and screening details for solid waste disposal facilities and containers.

Comment #28: The plans should estimate noise generation or include a note that states compliance with the Town's Performance Standards (§164-48).

Comment #29: Provide a map note stating that "No construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained." Completed: Sheet 1, Note 13.

Comment #30: The declaration information for the Ridgeline and Agricultural notes must be added to the plan.

Comment #31: Surveyor to certify that iron rods have been set at all property corners.

Comment #32: Payment of all fees.

Other Considerations:

1. **Sayed Shah Building #2** – Planning Board to discuss site visit and Planning Board recommendation to the ZBA.

Mr. Astorino: We discussed this at the Work Session. We should let this application go to the ZBA. Let them plead their case and make a decision. As far as the site visit, Laura you have a list of comments that you will be sending to their professionals that needs to be cleaned up. We had only seen the outside. Is that correct?

Laura Barca: Yes.

Mr. McConnell: What are the variances that they actually need?

Mr. Astorino: I don't know off the top of my head. Laura, do you know?

Laura Barca: I know they need to renew a variance that was granted in October of 2012. It expires in October of 2014. That was for the 2nd apartment. It was a conversion from a one-family to a two-family. Since they are already going back to the ZBA, I believe they are going to ask for a variance for one of the sheds that is closer than 5 feet to the property line.

Mr. McConnell: That is not the one that is falling down and is no longer there.

Laura Barca: No.

Mr. Astorino: This is for the other shed in the back.

Laura Barca: They are not able to show that it was constructed prior to zoning.

Mr. McConnell: Thank you.

Mr. Astorino: They will go off to the ZBA "Without" recommendation. The Board is in consensus with that.

2. **BCM Development** – Letter from Tony Ciallella, BCM Development, dated 8/31/14 addressed to the Planning Board in regards to the BCM Subdivision – requesting **4th Re-Approval** of Final Approval for filing a 42-Lot subdivision in Sections. Section I to consist of a 12-Lot subdivision, situated on tax parcel SBL #44-1-133; parcel located along the northerly side of State Hwy 17A 500 feet east of Ketchum Road and Pumpkin Hill Road, in the SL zone, of the Town of Warwick. Conditional Final Approval was granted on 9/1/10. *The applicant has stated that due to the continued depressed state of the real estate market and the economy the 4th Re-Approval is needed.* The 4th Re-Approval of Final Approval becomes effective on, 9/1/14; subject to the conditions of final approval granted on 9/1/10.

Ms. Little makes a motion on the BCM Development application, granting **4th Re-Approval** of Final Approval for filing a 42-Lot subdivision in Sections. Section I to consist of a 12-Lot subdivision, situated on tax parcel S 44 B 1 L 133; parcel located along the northerly side of State Highway 17A 500 feet east of Ketchum Road and Pumpkin Hill Road, in the SL zone, of the Town of Warwick, County of Orange, State of New York, subject to the conditions of Final Approval granted on, 9/1/10. (See attached).

The 4th Re-Approval of Final Approval becomes effective on 9/1/14.

Seconded by Mr. Kennedy. Motion carried; 5-Ayes.

3. **Warwick Isle Sectionalizing Plan** – Letter from Kirk Rother, P.E., dated 9/10/14 addressed to the Planning Board in regards to the Warwick Isle Subdivision – requesting a 6-Month Extension on 3rd Re-Approval of Final Approval for filing Section I to consist of 7-Lot Cluster subdivision including a Special Use Permit for the One-Affordable Home, Lot #5, situated on tax parcel SBL #3-1-6.21; parcel located on the northern side of Merritts Island Road at the intersection with C.R. 1, in the SL zone, of the Town of Warwick. Conditional Final Approval for Section I was granted on 4/6/11. *The Applicant has stated that they are unable to satisfy the conditions of final approval at this time. This includes bonding of the public improvements and paying of the parkland fees.* The 6-Month Extension on 3rd Re-Approval of Final Approval for Section I becomes effective on 10/6/14.

Ms. Little makes a motion on the Warwick Isle Sectionalizing Plan application, granting a 6-Month Extension on the 3rd Re-Approval of Final Approval for Section 1 to consist of 7-Lot Cluster Subdivision including a Special Use Permit for the 1-Affordable Home, Lot #5, situated on tax parcel SBL # 3-1-6.21; parcel located on the northern side of Merritts Island Road at the intersection with C.R. 1, in the SL zone. Approval for filing in Sections and Conditional Final Approval for Section I was granted on, 4/6/11.

The 6-Month Extension on the 3rd Re-Approval of Final Approval for Section I becomes effective on, 10/6/14.

Seconded by Mr. Kennedy. Motion carried; 5-Ayes.

4. Planning Board Minutes of 8/20/14 & Special Meeting Minutes of 9/3/14 for PB Approval.

Mr. McConnell makes a motion to Approve the Planning Board Minutes of 8/20/14 and Special Meeting Minutes of 9/3/14.

Seconded by Mr. Showalter. Motion carried; 5-Ayes.

Correspondences:

1. Planning Board to discuss the Pine Island Fire Department status.

Mr. Astorino: We have a list of letters that we received from residents regarding the Pine Island Fire Department's proposed cell tower. I will list them for the record. With that being said, we have a Resolution to send to the NYSDEC. The Board members have all seen it. The Board members had an opportunity to comment on it. Is that correct?

Mr. McConnell: Yes.

Mr. Kennedy: Yes.

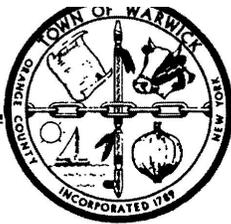
Mr. Showalter: Yes.

Mr. Astorino: Ok. Ted, please could you read the Letter/Resolution to the NYSDEC for the record?

2. Letter from Allen Wierzbicki, Deputy Commissioner of OC Dep't of Emergency Services, dated 8/29/14 addressed to Maryann Flatley regarding PI Firehouse proposed cell tower.
3. Letter from Jude Hayes, dated 9/3/14 regarding PI Firehouse proposed cell tower.
4. Letter from Barbara Lanza, dated 9/3/14 regarding PI Firehouse proposed cell tower.
5. Letters from Frank Simeone, Esq., dated 9/8/14 & 8/21/13 regarding PI Firehouse cell tower.
6. Letter from Supervisor Sweeton, dated 9/9/14 addressed to Frank Simeone, Esq. PI Firehouse cell tower.
7. Letter from Christopher Fisher, Cuddy & Feder, dated 9/9/14 PI Firehouse cell tower.
8. Email from Ted Fink, dated 9/10/14 regarding SEQR Regulations Excerpt on Lead Agency Disputes.
9. Email from Supervisor Mike Sweeton, dated 8/27/14 regarding an email he received from Jeanette Shanahan with an attachment of a Lead Agency Resolution by the Pine Island Fire District confirming Lead Agency status.
10. Letter from Kimberly Starks, dated 9/9/14 received at the PB Work Session on 9/10/14 regarding PI Firehouse proposed cell tower.
11. Letter from Edward Murphy, dated 9/10/14 received at the PB Work Session on 9/10/14 regarding PI Firehouse proposed cell tower.
12. Letter from Dean Diltz, dated 9/10/14 received at the PB Work Session on 9/10/14 regarding PI Firehouse proposed cell tower.
13. Letter from Marsha Talbot, dated 9/3/14 received at the PB Work Session on 9/10/14 regarding the PI Firehouse proposed cell tower.
14. Letter from Theresa Benjamin, dated 9/17/14 regarding PI Firehouse proposed cell tower.

Mr. Fink: Yes. It is a letter in form of a Resolution for the Planning Board's consideration. The letter is addressed to Joseph Martens, Commissioner of State of New York Department of Environmental Conservation, dated 9/17/14. The Commissioner is the one that mediates Lead Agency disputes. The Letter/Resolution below is stated as follows:

TOWN OF WARWICK



132 KINGS HIGHWAY
WARWICK, NEW YORK 10990

TOWN HALL TELEPHONE (845) 986-1124
POLICE DEPT. TELEPHONE (845) 986-3423
PUBLIC WORKS TELEPHONE (845) 986-3358
TOWN HALL FAX (845) 986-9908
SUPERVISOR supervi@warwick.net
TOWN CLERK townclk@warwick.net

September 17, 2014

Joseph Martens, Commissioner
September 17, 2014

State of New York
Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1011

Re: *Pine Island Fire District and Town of Warwick Planning Board
Request for Lead Agency Dispute Resolution, Town of Warwick, Orange County
By Certified Mail Receipt #70121010000095973300*

Dear Commissioner Martens:

The Town of Warwick Planning Board (hereafter the Planning Board) requests that a lead agency be designated by your office for a proposed wireless telecommunications facility within the Town. This letter will provide relevant information for your office to make a determination as to which agency should act as Lead Agency for the review of the proposed facility. Detailed information in support of the Planning Board's position is provided herein through a discussion of the three criteria listed in 6 NYCRR 617.6(b)(5)(v). The steps that have led to the Planning Board requesting this dispute resolution are as follows:

1. AT&T is the project sponsor on a proposal to construct a new 150 foot high wireless telecommunications tower (and associated equipment building) for their use on land under the ownership of the Pine Island Fire District (hereafter the Fire District). The Fire District, a co-sponsor of the proposed tower, proposes to replace its existing 70 foot high emergency communications tower at the Fire District's firehouse, by placing their two existing antennas on the AT&T tower at the same elevation as they are presently installed. AT&T has proposed to allow up to four additional wireless telecommunications providers to place their antennas and ground mount equipment at the proposed tower facility (see Exhibit A for more detail on these and other features of the action). As such, the proposed tower meets the definition of a wireless telecommunications facility in the Town of Warwick Zoning Local Law (see Exhibit B).

AT&T, as project sponsor, has proposed the wireless telecommunications facility, is responsible for obtaining approvals required for the facility, will construct it, maintain it and be responsible for its removal should that be needed in the future. The Fire District, as co-sponsor, will lease a portion of its firehouse property to AT&T to build and operate the tower and will place its two existing emergency services antennas on the proposed new tower.

2. The Town of Warwick, through its Zoning Local Law, permits new wireless telecommunications towers within most of its Zoning Districts, subject to specific siting, camouflage, and height requirements as well as public health and safety concerns. Such towers require Site Plan and Special Use Permit review and approval under the sole jurisdiction of the Planning Board. However, to date, neither AT&T nor the Fire District have filed applications for Site Plan and Special Permit approvals with the Planning Board.

3. The Pine Island Fire District's firehouse and headquarters (the property where the tower is proposed) is situated within the Town's Local Hamlet Business (LB) District, where a variety of mixed use residential and commercial land uses are allowed and encouraged. In the LB District, new wireless telecommunications towers are prohibited "unless the provider can demonstrate that adequate coverage cannot be provided by locating such facilities in zoning districts where the use is specially permitted." (see Exhibit B). The Fire District's firehouse is situated just a few hundred feet from the nearest Zoning District where wireless telecommunications towers are allowed, the Town's Agricultural Industry (AI) Zoning District. In addition to the apparent prohibition on the proposed use, the proposed tower exceeds the maximum height requirements of the Zoning Law and does not meet the minimum required setbacks for a new tower, among a number of other non-complying features.

The Fire District has identified in its Environmental Assessment Form (EAF), the need for Zoning Area Variances from the Town of Warwick Zoning Board of Appeals (see Exhibit A), an acknowledgement that it is subject to the Zoning Law's Table of Bulk Requirements (see Exhibit N). However, to date, the Fire District has not addressed the action's failure to comply with the Zoning Law for the use prohibition (see Exhibit I), the Town's requirements for Site Plan and Special Use Permit approvals from the Planning Board (see Exhibit B), and the requirement that all uses in the LB District comply with the Town's Design Standards (see Exhibit I). Normally, a failure to secure Site Plan and Special Use Permit review and approval from the Planning Board, where it is needed, is a violation of the Zoning Law, subject to enforcement proceedings according to § 164-54 of the Zoning Law (see Exhibit O).

4. The Fire District classified the Action as Unlisted and undertook a Coordinated Review. The Fire District, through its Board of Fire Commissioners and its Attorney, notified the Planning Board that it intended to designate itself lead agency for review of the facility in a letter dated October 22, 2013 (see Exhibit C). The Fire District identified the Planning Board as either an "Involved" or "Interested" agency under SEQR, and sent a letter to the Planning Board requesting that the Planning Board consent to the Fire District acting as lead agency. The Fire District's position in its October 22, 2013 letter was that the impacts of the proposed tower are primarily of local significance and that a Negative Declaration will be issued (see Exhibit C). The Planning Board addresses below its unease with a hasty pronouncement as this, even before a lead agency had been designated and before compliance with the Town Zoning Law had been either confirmed or rejected.

Non-compliance with the Town Zoning Law makes this a potential SEQR issue of Townwide significance. Indeed, as discussed below, this proposed action may have intermunicipal and interstate impacts that the Fire District is apparently ill-prepared to address. The supposition that the project will not have any significant impacts on the environment at such an early stage of the review process (i.e. prior to designation of lead agency) concerns the Planning Board and seems to indicate that the Fire District is either unable or unwilling to take a "hard look" at the action by properly considering the action, identifying the relevant areas of environmental concern, thoroughly analyzing the identified relevant areas of environmental concern, and then fully setting forth a reasoned elaboration for such a determination. It must be noted that the Town of Warwick, through its Zoning Law, has classified wireless telecommunications facilities involving a new tower in the Town as Type 1 Actions under SEQR.

5. The Planning Board, in a letter dated November 20, 2013, responded to the Fire District within the 30 day window for a Coordinated Review. The Planning Board did not consent nor acquiesce to the Fire District acting as lead agency, but instead asked that the Fire District first conduct the required "balancing of interests" test, as set forth by the New York State Court of Appeals in the "Matter of County of Monroe vs. City of Rochester" case dating from 1988, before the Planning Board would acquiesce lead agency status (see Exhibit D). The Fire District now maintains that it cannot conduct the "balancing of interests" test until SEQR has been completed (see Exhibit F). This strategy "puts the cart before the horse" so to speak and means that the Planning Board is unable to properly assess its role under SEQR and the Town Zoning Law. It also amounts to a failure of the Fire District to demonstrate

that it is immune from the Townwide Zoning Law before proceeding, thereby committing itself and others to additional actions.

In Exhibit F, a letter from AT&T's Attorneys to the Planning Board, it states: "*All parties including Town of Warwick officials have acknowledged that the Pine Island Fire District has the authority in the first instance to determine whether it or municipal zoning agencies have regulatory jurisdiction over this specific tower joint use tower facility as proposed.*" The Planning Board was not invited to participate and did not participate in any discussions with the Fire District about jurisdiction and authority as asserted in the letter. Moreover, the Planning Board's determination, as expressed in its letters to the Fire District (Exhibit D), is based upon both Federal and State guidance that Zoning applies to the review of wireless telecommunications facilities (see Exhibits E and H).

The Planning Board cannot properly determine its status as either an Involved or Interested Agency under SEQR until the "balancing of interests" test has been completed (see Exhibit E). If the Fire District is immune from the Town Zoning Law, then the Planning Board will be an Interested Agency. But, if in fact the "balancing of interests" test identifies the Fire District as subject to the Town Zoning Law, then the Planning Board would be an Involved Agency and, as argued here, is the agency that would be most appropriately designated as lead agency.

The Planning Board has been operating under the advice provided to local municipalities in New York from the New York State Department of State's Legal Memorandum entitled "Governmental Immunity from Zoning" (see Exhibit E). As stated in the Legal Memorandum, "*Unless a statute exempts it, the encroaching governmental unit is presumed to be subject to the zoning regulations of the host community where the land is located.*" Wireless telecommunications facilities are not exempt from the Zoning Law in the Town of Warwick. The Planning Board is acting in accordance with its authority and regulatory jurisdiction granted to it under New York State Town Law, the State Environmental Quality Review Act and the Town of Warwick Zoning Law.

Since the action is a Type 1 Action under the Town Zoning Law, Coordinated Review would be mandatory, an application would need to be filed with the Town Building Department, and a Lead Agency would need to be selected. In this case, as in all other previous wireless telecommunications facilities reviewed, approved, constructed and operated by wireless telecommunications services providers in the Town, the Planning Board would be the most appropriate agency to act as lead agency.

The Fire District asserts that it must comply with SEQR before conducting the "balancing of interests" test because it would "subject the District to a claim of legal error" (see Exhibit F). By taking such a position, the Fire District has confirmed its lack of understanding of the SEQR process; namely that conducting an analysis such as the "balancing of interests" test should be classified under one or both Type 2 Action thresholds found in 6 NYCRR 617.5(c)(21) and/or (28). There is no legal or procedural reason why an analysis cannot be undertaken before or in conjunction with the Fire Department's initial review of the action, including establishing a lead agency under 6 NYCRR 617.6. Indeed, the Planning Board asserts that such an analysis is required in order to comply with SEQR's mandate for "Initial review of actions" found in 6 NYCRR 617.6(a).

6. The Fire District chose not to reply to the Planning Board's November 20, 2013 letter in which the Planning Board stated clearly that it would not acquiesce lead agency status until the Fire District had completed the "balancing of interests" test, so that the Planning Board could properly determine its role under SEQR. There was no further action that the Planning Board could take with regard to contesting lead agency status since that time, since the Planning Board was waiting for the Fire District to undertake the "balancing of interests" test to determine whether it was immune from the Town Zoning Law. The Fire District failed to address the Planning Board's withholding of its consent for the Fire District to act as lead agency, but instead proceeded to declare itself lead agency in a Resolution it adopted on August 21, 2014 (see Exhibit G). In the Resolution, the Fire District asserted that it would

not conduct the “Monroe test” until after it had issued a Negative Declaration under SEQR. The Fire District has also stated its intention to proceed with SEQR by scheduling adoption of a Negative Declaration at its next meeting on September 30, 2014.

7. Since the Fire District has failed to support its positions that it is exempt from the Town Zoning Law and is the agency that should act as lead agency for a SEQR review of a proposed tower, the Planning Board has no choice but to challenge the Fire District’s position by requesting that your office designate the Planning Board as Lead Agency for the review of the proposed facility. Wireless telecommunications facilities are clearly regulated by the Town of Warwick Zoning Law, under New York State Town Law, New York State Municipal Home Rule Law, and in accordance with the Federal 1996 Telecommunications Act. (see Exhibits B and H).

8. There is considerable public controversy associated with this action. Pine Island is the largest hamlet within the Town of Warwick and is an area where the Town encourages dense residential and commercial mixed uses. Numerous existing residential homes are located next to or in close proximity to the proposed facility. Warwick’s Comprehensive Plan affirmatively and proactively seeks to enhance the livability of its residential neighborhoods, protect the natural scenic quality of the Town and its environmentally sensitive areas, and to carefully site new wireless telecommunications facilities with due regard to such concerns through concerted regulations in the Town Zoning Law. The Zoning Law has been carefully designed and implemented over many decades in order to carry out these goals while preventing land use conflicts. A further goal of the Comprehensive Plan is to encourage tourism related to the Town’s farming community and its scenic and natural beauty. Such effects on tourism and the potential for diminution of the Town’s scenic and aesthetic resources could detrimentally affect such resources, impacting industries and employees within the Town and this is of great concern to Town residents and officials.

Planning Board Jurisdiction

The action involves the construction and operation of a 150 foot monopole tower by AT&T (New Cingular Wireless PCS, LLC), associated personal wireless telecommunications antennas for AT&T, and a telecommunications equipment shelter for AT&T. The tower is co-sponsored by the Fire District and is proposed to include space for the Fire District to replace its own antennas, at the same currently installed elevation on its existing 70 foot tower on the site, that the Fire District presently uses for emergency communications (see Note 2 on Site Plan Sheet 7 of 7 in Exhibit A). The proposed tower also includes space to accommodate additional wireless telecommunications services, antennas, and equipment shelters for up to four other personal wireless telecommunications providers (see proposed AT&T Site Plans Sheet 7 of 7 in Exhibit A) as well as space for future “Public Safety Broadband LTE Network” services. The Planning Board recognizes the necessity of providing for both emergency services communications and personal wireless services to its residents and visitors. Nevertheless, the Planning Board is also obligated to comply with the laws and regulations with which it has been authorized.

The Planning Board is authorized by the Town Board of the Town of Warwick to review wireless telecommunications facilities throughout the Town. This authority is pursuant to the authority of New York State Town Law § 271 and the Town of Warwick’s Local Law No. 4 of 1994. All wireless telecommunications facilities in Warwick are subject to the Town’s Zoning Local Law (see Exhibit B). Wireless telecommunications facilities are defined in the Zoning Law to include an equipment shelter, a mount (i.e. a tower), and/or antennas. Wireless telecommunications services do not include those services used for fire, police, and other dispatch communications, nor private amateur (ham) and other similar communications.

There is an important distinction to make between “Wireless Telecommunications Facility” and “Wireless Telecommunications Services,” as defined in the Zoning Law, because the proposed “Facility” will be built and operated by AT&T to provide Wireless Telecommunications “Services” to its customers while also

accommodating the emergency “Services” needed by the Fire District to carry out its firefighting and other essential emergency operations. However, this action must be viewed primarily as a wireless telecommunications facility because it is proposed by, will be built by, and will be maintained by AT&T. Up to five wireless telecommunications service providers will be sited on the tower in addition to the Fire District’s two antennas. AT&T alone proposes 12 antennas to provide its services. This means that more than 60 antennas could eventually be installed on the tower with only two antenna spaces reserved for the Fire District and an area reserved for future LTE Network services. The Fire District Attorney’s suggestion that this is simply an emergency services tower is disingenuous at best (see Exhibit F and C).

The Planning Board has approved other new wireless telecommunications facilities in the Town, and has ensured that space was reserved on the new towers to accommodate the needs of emergency services communications (see Exhibit B). Over the past 20 years, the Planning Board has reviewed and approved approximately 10 other wireless telecommunications facilities. In the case of new facilities, each has accommodated the needs of emergency services communications. This potential dual role of new wireless telecommunications facilities was recognized in the Town Zoning Law when it was adopted because the Zoning Law specifies that space for other wireless providers, including emergency services, be reserved on all new towers in the Town.

From a reading of the Zoning Law (see Exhibits B and I), the Town of Warwick allows new towers by Special Use Permit in all Zoning districts except those that encourage relatively dense residential uses or are reserved for land conservation uses, such as Sterling Forest State Park. The Town’s wireless telecommunications facility regulations are designed to address public health and safety, scenic areas and aesthetics, environmentally sensitive locations such as wetlands, water bodies, endangered, threatened and special concern species, historic or archaeological sites while allowing for ample opportunities for wireless telecommunications providers to locate their facilities in places where they will do no harm to the character of the community and its neighborhoods.

Therefore, the Planning Board asks that you intercede and determine which agency should act as Lead Agency pursuant to 6 NYCRR 617.6(b)(5). We believe the Town of Warwick Planning Board should be designated Lead Agency in accordance with the following criteria:

Impacts of Statewide, Regional or Local Significance [6 NYCRR 617.6(b)(5)(v)(‘a’)]

The Pine Island Fire District is one of five (5) fire districts within the Town of Warwick as shown on the map in Exhibit J. Jurisdiction of the Board of Fire Commissioners is therefore, limited to their service area. The Fire District has no jurisdiction whatsoever in regard to the Town of Warwick Zoning Law, nor does it possess any other land use control authority. Its sole purpose, as a district corporation under New York State Law, is to provide a single service, fire protection within the Fire District’s boundaries. However, the anticipated impacts of the “action” may be significant and go well beyond the Fire District’s service area. Compliance with the Warwick Zoning Law for a use that is apparently prohibited, must be examined under SEQR on both a neighborhood and (at least) a Townwide basis. This is in part because of the precedent setting nature of the action. The potential impacts of the action may be of both neighborhood and Townwide significance. Zoning applies to all lands within the Town of Warwick and visual impacts especially can be expected to extend well beyond the Fire District’s boundaries for the reasons identified below.

Warwick’s Zoning regulations have been in place since 1927. The Town has a long history of carefully considering which uses are appropriate in the Town and in what locations they will be allowed. To demonstrate the care to which Warwick affords its Zoning regulations, in 2002, the Town of Warwick enacted a comprehensive rewrite of its Zoning Law, which had last been comprehensively rewritten and amended in 1989. Warwick began a long 10 year process to evaluate the effectiveness of the 1989 Zoning regulations in 1992 and appointed at least four different committees during the 10 year process to examine what was working in the 1989 Zoning and what wasn’t. The enactment of the Federal 1996 Telecommunications Act was one of the careful considerations that was incorporated into the 10 year

planning process. The result was the 2002 Zoning Law. Since 2002, the Town has enacted Zoning Amendments on at least 12 occasions. This is not a reflection of what is wrong with the Town's Comprehensive Plan or Zoning Law, but demonstrates that the Town is serious about staying current with the State-of-the-art in community planning and to treat planning as the dynamic process it is. The State Legislature asserts that: "Among the most important powers and duties granted by the legislature to a town government is the authority and responsibility to undertake town comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens." [see New York State Town Law Section 272-a.1(b)]. The Fire District is not subject to such authority and responsibilities as the Planning Board.

The location of the proposed tower is the hamlet of Pine Island. This hamlet is located in Orange County's black dirt farming area. Historically the "black dirt" region was called the "drowned land." At one time, the black dirt area was covered by a shallow glacial lake. As the last of the glaciers melted away about 10,000 years ago when the climate warmed, lush vegetation grew up, died and sank to the lake bottom. Most of the lake area gradually filled in, forming a large wetland complex where layer upon layer of decaying organic matter built up. When immigrants came to the area about 100 years ago, they quickly realized the value of the soil that lay below the "drowned lands." For years, the new residents cleared the land by hand and constructed an extensive system of drainage ditches. Areas that had elevations above the glacial lake, with names like Pine Island, Merritts Island, and Black Walnut Island, were where concentrated settlements were able to be established. Pine Island is the only significant hamlet in the Town of Warwick where mixed-residential and commercial uses exist outside of the three villages (Warwick, Greenwood Lake, and Florida).

The black dirt lands encompass not only Warwick but other surrounding towns including Wawayanda, Goshen and Chester in New York State as well as Wantage and Vernon in New Jersey. A clipping from the Orange County Tourism website (see Exhibit K), shows the visual qualities of the black dirt area that are so valued, not only in Warwick but throughout the County and into New Jersey. The photograph in Exhibit K illustrates Pine Island in the background of the photograph; this is where the tower is proposed. Topography of the black dirt area is simple. The black dirt lands stretch for miles in many directions and are as flat as a Midwestern prairie. The black dirt area is mostly flood plain. The few areas that rise above the valley floor are called "islands" because they often are in times of heavy flooding (such as Hurricane Irene and Tropical Storm Lee in 2011). Pochuck Mountain and Mounts Adam and Eve are all located in Warwick and are at much higher elevations than the few "islands" (like Pine Island) that exist. Pine Island is in the very center of the multi-state black dirt farming region, meaning that the visual impacts of a new 150 foot tall tower could be of not only intermunicipal significance but of interstate significance.

The black dirt region is one of several Orange County "Regional Priority Conservation Project" areas in the State's 2009 Open Space Conservation Plan. Here is what the State's Plan has to say about it:

"The Wallkill River begins in the mountains of northern New Jersey and enters New York via the Wallkill River National Wildlife Refuge on the NY/NJ border. From there it flows through the fertile black dirt region of southern Orange County and then winds through a variety of landscapes, some amazingly rich in biodiversity, joining the Rondout just south of the City of Kingston, Ulster County, a short distance from its confluence with the Hudson. It provides excellent opportunities for recreational fishing and boating. A recently completed Southern Wallkill Biodiversity Plan (Wildlife Conservation Society/Metropolitan Conservation Alliance) identifies critical areas in need of protection. In addition, Counties and local municipalities are beginning to plan for its protection and restoration through a Wallkill River Watershed Planning program. Through these planning processes open space priorities will be identified for future protection measures."

Upon the Planning Board's information and belief, we do not anticipate that the Fire District will be conducting a visual impact assessment, as required by the Town Zoning Law and certainly as called for under SEQR for a project of this magnitude, nor will the tower be camouflaged, as required for all new towers in the Town by the Zoning Law. If the Fire District has already conducted a visual impact assessment

or plans to do so,¹ it certainly has not shared such information with the Planning Board. The proposed Site Plans (Exhibit A) show a simple 150 foot high monopole painted grey. The aesthetic impacts may be significant and almost certainly extend beyond the jurisdiction of the Fire District. Considering the statement made to date by the Fire District, a Negative Declaration was anticipated in the Fire District's original lead agency coordination request of October 22, 2013 and in the August 21, 2014 Resolution of the Fire District confirming Lead Agency status. Based upon what the Planning Board has reviewed and been made aware of, if a Negative Declaration were to be adopted by the Fire District, it would likely not include a visual impact assessment since we have seen no indications that such a study has even been considered by the Fire District. Failure to conduct a visual assessment of the impacts on the Town's scenic and other resources and to properly mitigate potential impacts by camouflage or other techniques, as required by the Zoning Law, would mean that aesthetic resources in the Town and surrounding areas may be compromised. Certainly, given the probability that visual effects of the tower will extend over a broad area of Warwick and surrounding towns in both New York and New Jersey, the impacts therefore, extend well beyond the jurisdiction of the Fire District.

New telecommunications towers were a subject analyzed and discussed in the Town Comprehensive Plan. Here is what the Town's 2008 Plan had to say about new towers:

In 1996, federal legislation limited the ability of local governments to restrict the establishment of wireless communication facilities, such as transmission towers by cellular phone companies and personal communications systems (PCS). While wireless communication facilities cannot be prohibited, they can be controlled in a number of respects including their design and siting. Since the 1999 Plan was adopted, Warwick has enacted regulations that control the siting, visual impacts and maintenance of wireless facilities. These standards have become a model for a number of other Towns in New York State. Several new wireless facilities have been built since the regulations were enacted. The Town should continue to concertedly use its adopted regulations on any new applications, including the on-going maintenance and reporting requirements for such facilities as well as enforcement of the approved site plans and special permits.

The Town Comprehensive Plan encourages increased commercial and retail activity and development of a cohesive village atmosphere in Pine Island. Streetscape improvements have been recommended including additional landscaping and roadside tree planting in the hamlet to encourage more pedestrian activity and help the existing businesses.

The AT&T tower has been proposed on Pine Island Turnpike (County Route 1) in the heart of the hamlet. Pine Island Turnpike was designated in the Town of Warwick's 1999 Comprehensive Plan, and affirmed in the Town's 2008 Comprehensive Plan, as a Scenic Road (see Exhibit L). The structure, as proposed and as evaluated against the Part 2 EAF's identification of potential project impacts, will at a minimum² be "obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource." It is located within a mixed-use residential area where the land use pattern is of one, two and three story small scale residential and commercial structures in a hub that largely serves as a settlement for the surroundings intensively farmed black dirt farms. Moreover, the proposed structure "may be visible from any officially designated federal, state, or local scenic or aesthetic resource" will be "visible from publicly accessible vantage points," the "situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work [and] ii. Recreational or tourism based activities," and "The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource." The action, as proposed, may also represent a Large Impact on the growth and character of the Town. The structure "is inconsistent with local land use plans or zoning regulations." (i.e the 2008 adopted

¹ A balloon test is required by the Zoning Law for new wireless telecommunication towers, with sufficient notification to affected parties provided through advertising of the date, time, and location in local newspapers on at least two occasions prior to the test.

² The recitation of potential impact thresholds from the Part 2 EAF here in no way represents a full environmental assessment of the proposed project's potential impacts but is a preliminary indication of some of the important topics that should be addressed under SEQRA.

Comprehensive Plan and Town Zoning Law), “*may interfere with the use or enjoyment of officially recognized or designated public resources.*” (a designated scenic road), “*is inconsistent with the predominant architectural scale and character.*” of the hamlet of Pine Island, and “*is inconsistent with the character of the existing natural landscape.*” These impacts may be able to be mitigated by changes in the project.

The Planning Board has seen no indications that the Fire District is willing to concertedly apply the requirements of the Zoning Law to the proposed tower project (other than a general acknowledgment in the EAF that “potential variances” may be necessary). AT&T, in all likelihood, would like to build their proposed tower without the constraints (and added costs) of complying with the Town of Warwick Zoning Law, including its rigorous environmental assessment of a tower’s environmental impacts. The Planning Board, however, views any additional costs of compliance as an affect on a private applicant and as such, has no bearing on the need for properly assessing impacts on the community and environment.

Broadest Governmental Powers for Impact Investigation [6 NYCRR 617.6(b)(5)(v)(‘b’)

Without the Fire District completing an analysis of the “balancing of interests” test required for situations such as this, it is the Planning Board’s position that the project requires Site Plan and Special Use Permit approval as discussed above. The Planning Board regularly reviews other wireless telecommunications facilities in the Town of Warwick under the Town Zoning Law and SEQR. In all cases, the Planning Board has issued approvals for the actions following a review as required by the Town Zoning Law as well as an investigation, analysis, and assessment of the potential environmental effects under SEQR. Prior to the enactment of the 2002 Zoning Law, which encourages the use of existing structures for siting wireless telecommunications antennas and mandates that new towers be camouflaged, only one new tower was applied for and then reviewed and approved. Following a comprehensive analysis of the visual effects of the then proposed new tower in Pine Island (on a completely different site than is currently proposed by AT&T), the Planning Board issued a Conditioned Negative Declaration (CND) that required the tower be camouflaged as a Pine Tree, reasoning what better way for a new tower be built in “Pine” Island than for it to resemble a Pine tree within a forested area of the hamlet. The CND was able to be issued because it preceded a Zoning Law amendment that established new wireless telecommunications facilities as Type 1 Actions under SEQR. The Planning Board is not suggesting that a pine tree be used as camouflage in this case, since a compliant “flag pole” or similar structure may be a more appropriate mitigation strategy. The applicant subject to the CND by the Planning Board never pursued its approval to build the approved Pine tree tower.

The Town of Warwick Planning Board oversees all new development proposals in one of the largest towns in New York State, outside of the Catskill and Adirondack parks. For decades, Warwick has been one of the fastest growing Towns in New York State with a rate of growth exceeding that of Orange County, which is one of the fastest growing counties in the State. Over the past 20+ years, the Planning Board has conducted more than 750 SEQR reviews of new developments under the Site Plan, Special Use Permit and Subdivision review powers granted to it by the Warwick Town Board. The Planning Board has participated in even more SEQR reviews as an Interested or Involved Agency when other agencies have acted as Lead Agency.

The Fire District’s powers are extremely specific and, while adequate to permit effective operations as firefighters, are narrowly limited by section 176 of New York State Town Law. Such powers include the ability to make contracts for purposes authorized within appropriations approved by the Fire District taxpayers or within specified statutory limitations. They may organize, operate, maintain and equip the fire company, adopt rules and regulations governing the district and prescribe the duties of its members, purchase apparatus and equipment, acquire real property and construct buildings, fire alarm systems, water supplies for firefighting, and contract for providing services outside the Fire District.

The Fire District is not equipped to conduct site plan review. Indeed, New York State Town Law mandates that all planning board members must undertake yearly training by qualified individuals to carry out the often complex review of site plans, special use permits and their required SEQR documents. The Planning

Board does not believe that any of the Fire Commissioners have training in site plan and special permit reviews nor SEQR.

The Planning Board's powers are wide-reaching on all land use matters in the Town that do not involve a legislative decision or a variance from a legislative matter. For example, Article VIII of the Town Zoning Law (Exhibit B) contains all the areas that must be reviewed by the Planning Board for new wireless telecommunications facilities alone. Virtually all the Zoning Law's provisions, which encompass more than 320 pages of text, tables, and maps, are filled with planning, engineering, legal and procedural considerations that pertain to new residential, commercial, and industrial development and to modifications to existing residential, commercial, and industrial development in the Town.

As cited above, there has been considerable public controversy associated with this proposed action, primarily from residential neighbors who believe they may be detrimentally affected if a new 150 foot tower is constructed virtually in their back yards. One of the allegations made in numerous letters submitted to the Planning Board has been the effect of such a tower on property values. While SEQR addresses environmental effects,³ the Town Zoning Law addresses the fiscal effects of new projects such as the action (see Exhibit M 164-46.G(5)(a)). The thinking goes like this: if property values were to decline as a result of a significant new and potentially inharmonic use in close proximity to existing residences, then the assessed value of such residences may decline leading to a decline in Town tax revenues.

None of the land use control powers described above are under the jurisdiction of the Fire District. They are solidly within the powers of the Planning Board and they have been widely employed by the Planning Board for many years on hundreds of other actions.

Greatest Capability for Providing Thorough Environmental Assessment [6 NYCRR 617.6(b)(5)(v)(c')]

The Planning Board has decades of combined experience in the review of subdivision, site plan, and special use permit applications, including their accompanying Environmental Assessment Forms and Environmental Impact Statements, where required. The Town Planner has 37 years of experience preparing or reviewing more than a thousand environmental documents under SEQR and/or the National Environmental Policy Act (NEPA). The Town Planner has trained planning board members in numerous municipalities on development reviews and SEQR, was a consultant to the DEC on the Sterling Forest Development's SEQR review process, and in the early 1980s was an employee of the DEC. The Planning Board Engineers are a multi-national firm that has been in existence for almost 100 years with a broad range of expertise in working on a variety of projects throughout New York State and around the world. They are the No. 19 Environmental Firm in the Nation as ranked by Engineering News-Record.

The Planning Board in the past couple of years alone, has conducted scores of separate SEQR environmental reviews, including Environmental Impact Statements, for a variety of proposed developments including wireless telecommunications facilities. Both staff to the Planning Board have varied technical support staff of their own, capable of reviewing all anticipated aspects of the environmental review for the proposed AT&T Tower. The Planning Board, therefore, is ready to assume all lead agency functions necessary to provide a thorough environmental assessment of the action.

While the Fire District has technical expertise in the area of firefighting, the Planning Board has reservations about the Fire District's technical ability to review the complex aspects of the proposed tower, especially in the areas of environmental concern such as aesthetic resources, community character, zoning and land use, noise, and fiscal resources. If the Fire District were to be designated for the Lead Agency function, then it should be demonstrated to our Planning Board that the Fire District has proven technical expertise in conducting environmental reviews in these areas. Considering the information and belief of the Planning Board, the Fire District's Board of Fire Commissioners has never before conducted a SEQR review of either a tower nor of any other proposed land use

³ Economic effects are generally excluded unless they are linked to an environmental effect like blight.

change. Since we already know that the proposal has generated public controversy, the Planning Board has the greatest capability for conducting effective and responsive local public hearings on the applications.

For the reasons cited above, we believe that the Town of Warwick Planning Board should be designated Lead Agency for the proposed action. We would like to reiterate that the "action" as defined by SEQR, includes compliance with the Town Zoning Law in the absence of a finding that the Fire District is immune from the Zoning Law. The Planning Board has the broadest governmental powers for reviewing such a development. If the Planning Board is designated, we are ready to assume all functions of the Lead Agency.

According to the SEQR regulations, all comments on this request must be submitted to your office within 10 calendar days after receipt of the request. The Planning Board can be contacted directly at 845.986.1127 if there are any questions or clarifications required immediately.

For the Town of Warwick Planning Board,

Benjamin Astorino, Town of Warwick Planning Board Chairman

On a motion by Ms. Little, seconded by Mr. Kennedy, and a vote of 5 for, and 0 against, and 0 absent, the Planning Board authorized its Chairman to sign and then forward this letter to the Commissioner of the New York State Department of Environmental Conservation on September 17, 2014.

CC: Pine Island Board of Fire Commissioners (by Certified Mail Receipt # 70121010000095973317)
Town of Warwick Zoning Board of Appeals (by Certified Mail Receipt # 70121010000095973348)
Laura Barca, P.E., Planning Board Engineer
John Bollenbach, Esq., Planning Board Attorney
Cuddy & Feder, Attorneys for AT&T
J. Theodore Fink, AICP, Town Planner
Frank T. Simeone, Esq., Attorney for the Fire District
Michael Sweeton, Town of Warwick Supervisor

Exhibits:

- A. AT&T Full Environmental Assessment Form and AT&T Site Plans
- B. Wireless Telecommunications Regulations Section of Town Zoning Local Law
- C. October 22, 2013 SEQR Coordination Request Letter from Fire District Attorney
- D. November 20, 2013 and September 3, 2014 Planning Board Letters to Fire District
- E. Department of State Legal Memorandum: Governmental Immunity from Zoning
- F. September 9, 2014 Letter from AT&T Attorneys to Warwick Planning Board
- G. August 21, 2014 Fire District Resolution Declaring Itself Lead Agency
- H. Federal 1996 Telecommunications Act Guidance on Local Zoning
- I. Warwick Zoning Law Table of Use Requirements Excerpt, Town Zoning Map, and LB District Design Standards Requirement
- J. Map of Fire District Service Area
- K. Orange County Tourism - Pine Island Black Dirt Photograph
- L. Excerpts from 2008 Town Comprehensive Plan
- M. Excerpt from Town Zoning Law on Fiscal Impact Analysis Requirement
- N. Warwick Zoning Law Table of Bulk Requirements
- O. Section 164-54 of Zoning Law - Enforcement

Mr. Astorino: I would like to thank all of the Board members and Professionals especially Ted Fink we charge you with doing a full comprehensive report. All Board members were involved. I really appreciate that. It think it is exactly what we asked for. Connie, please get this off to the NYSDEC tomorrow.

Connie Sardo: Yes.

Mr. Astorino: Thank you.

Privilege Of The Floor For Agenda Items!!

Mr. Astorino: If there is anyone in the audience wishing to address any of the agenda items, please rise and state your name for the record. Let the record show no public comment. I just wanted to let the Board know that we do have a Work Session on 9/22/14. That is our regular Work Session. We have one item on the agenda. We are going to take care of that.

Mr. Bollenbach: Are we going to have a meeting for one application?

Mr. Astorino: Yes. We are.

Mr. Showalter: What is the application?

Mr. Astorino: It is the WVLDC Lot Line Change #2 application. They are trying to get their variances. Once they get their variances, they will submit to us right away. They will come back to the Planning Board. We will take care of it. That is what we do.

Mr. McConnell makes a motion to adjourn the September 17, 2014 Planning Board meeting.

Seconded by Mr. Showalter. Motion carried; 5-Ayes.