

TOWN OF WARWICK PLANNING BOARD

October 1, 2014

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

The regular meeting of the Town of Warwick Planning Board was held Wednesday, October 1, 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:

Warwick Valley Local Development Corp. (Lot Line Change #2)

Application for Final Approval 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. ZBA variances granted on 9/22/14.

Representing the applicant: Ross Winglovitz, Engineering Surveying & Properties. Bob Krahulik, President of WVLDC.

Mr. McConnell: Mr. Chairman, I will need to recuse myself from the WVLDC application.

Mr. Astorino: Ok. We will note for the record that Mr. McConnell has recused himself from the WVLDC application.

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 comments
6. TW Building Department – 09/03/14 no comments
7. The ZBA variances were granted on September 22, 2014; the complete ZBA language must be shown on the drawing.
8. The Planning Board may request a site inspection if the ZBA grants the requested variances (scheduled for October 01, 2014 at 6pm).
9. Future action: Prior to a change in ownership of either parcel, access easements, utility easements, and other typical site plan comments will be addressed.
10. 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.

11. Future action: The existing fence line on proposed lot #1 is shown to be on proposed lot #2 at the eastern side of proposed lot #1. There are other locations where the existing fence line is not completely located on proposed lot #1. Applicant to propose an easement.
12. The plans must be signed/sealed by the Licensed Surveyor from the State of New York.
13. Surveyor to certify that iron rods have been set at all property corners.
14. Payment of all fees.

The following comment submitted by the Conservation Board:

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. Astorino: Since Mr. Ted Fink is not here this evening, I was told that this application has been classified as Type 2. No further SEQR review is necessary.

Comment #2: Applicant to discuss project.

Ross Winglovitz: We were here last month. This application is for a proposed lot line change between 2 existing lots that encompasses the property that was the old prison site. Looking at the map, the lot line will be moved to create 2 new lots.

Bob Krahulik: No new construction is proposed.

Comment #3: Conservation Board – pending comments

Comment #4: Architectural Review Board – pending comments

Comment #5: OC Planning Department – pending comments

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

Comment #7: The ZBA variances were granted on September 22, 2014; the complete ZBA language must be shown on the drawing.

Ross Winglovitz: Will do.

Comment #8: The Planning Board may request a site inspection if the ZBA grants the requested variances (scheduled for October 01, 2014 at 6pm).

Mr. Astorino: We had done the site inspection this evening. Do any Board members have any comments on the site inspection?

Mr. Kennedy: No.

Mr. Astorino: Ok. We can strike Comment #8.

Comment #9: Future action: Prior to a change in ownership of either parcel, access easements, utility easements, and other typical site plan comments will be addressed.

Ross Winglovitz: No problem.

Comment #10: 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.

Ross Winglovitz: That needs to go to Lot 2 for access. We will provide that.

Mr. Astorino: Ok.

Comment #11: Future action: The existing fence line on proposed lot #1 is shown to be on proposed lot #2 at the eastern side of proposed lot #1. There are other locations where the existing fence line is not completely located on proposed lot #1. Applicant to propose an easement.

Ross Winglovitz: Ok.

Mr. Astorino: That comment is just a place keeper for us as we go through the next phase.

Comment #12: The plans must be signed/sealed by the Licensed Surveyor from the State of New York.

Ross Winglovitz: Yes. Bob Schmick is ready to sign and seal them.

Comment #13: Surveyor to certify that iron rods have been set at all property corners.

Ross Winglovitz: We will provide that.

Comment #14: Payment of all fees.

Ross Winglovitz: We will provide that.

Mr. Astorino: Do any Board member or Professionals have any comments?

Bob Krahulik: Since there is no new construction proposed, we request the Planning Board to waive the public hearing.

Mr. Astorino: I don't have a problem with that.

Mr. Kennedy makes a motion to waive the Final Public Hearing.

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

Ms. Little makes a motion on the WVLDC Lot Line Change #2 application, granting Final Approval 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, County of Orange, State of New York. A Type 2 Action was adopted on September 17, 201. Approval is granted subject to the following conditions:

1. The ZBA variances were granted on September 22, 2014; the complete ZBA language must be shown on the drawing.
2. Future action: Prior to a change in ownership of either parcel, access easements, utility easements, and other typical site plan comments will be addressed.
3. 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.
4. Future action: The existing fence line on proposed lot #1 is shown to be on proposed lot #2 at the eastern side of proposed lot #1. There are other locations where the existing fence line is not completely located on proposed lot #1. Applicant to propose an easement.
5. The plans must be signed/sealed by the Licensed Surveyor from the State of New York.
6. Surveyor to certify that iron rods have been set at all property corners.
7. Payment of all fees.

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

Ross Winglovitz: Thank you.

Bob Krahulik: Thank you.

Other Considerations:

Mr. Astorino: Let the record show that Mr. McConnell returns to the Planning Board meeting.

- 1. Hewitt-Hashim Lot Line Change** – Letter from Elizabeth Cassidy, Esq., dated 9/23/14 addressed to the Planning Board in regards to the Hewitt-Hashim Lot Line Change – requesting a 6-Month Extension on Final Approval of a proposed lot line change, situated on tax parcels SBL # 16-1-59.1, 61, & 62.1; parcels located on the western side of Big Island Road south of Mountainside Road (Soft Landings Lane), in the RU zone, of the Town of Warwick. Conditional Final Approval was granted on 4/2/14. *The Applicant has stated that they submitted the required documents for final review and are working on closing out outstanding permits. They anticipate all should be resolved shortly.* The 6-Month Extension becomes effective on 10/2/14.

Mr. Kennedy makes a motion on the Hewitt-Hashim Lot Line Change application, granting granted a 6-Month Extension (Vote 5-0-0) on Final Approval of a proposed lot line change. SBL # 16-1-59.1, 61, & 62.1. Conditional Final Approval was granted on 4/2/14.

The 6-Month Extension becomes effective on 10/2/14.

Seconded by Ms. Little. Motion carried; 5-Ayes.

- 2. Planning Board Minutes of 9/17/14 for PB Approval.**

Mr. McConnell makes a motion to Approve the Planning Board Minutes of 9/17/14.

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

- 3. Planning Board to discuss canceling the 10/6/14 Work Session & 10/15/14 PB Meeting due to no submittals.**

Mr. Kennedy makes a motion to cancel the 10/6/14 Work Session & 10/15/14 Planning Board Meeting.

Seconded by Ms. Little. Motion carried; 5-Ayes.

Correspondences:

Mr. Astorino: We received the following correspondences regarding the Pine Island Fire District.

1. Letter from Frank Simeone, Esq., dated 9/26/14 addressed to Joseph Martens, Commissioner of NYSDEC in regards to Pine Island Fire District and Town of Warwick Planning Board.
2. Letter addressed to Joseph Martens, Commissioner of NYSDEC, dated 10/1/14 from the Planning Board in regards to Pine Island Fire District and Town of Warwick Planning Board.
3. Letter from Christopher Fisher, Cuddy & Feder, dated 9/29/14 addressed to Joseph Martens, NYSDEC in regards to the Pine Island Fire District Replacement Tower Project.

Mr. Astorino: We have a letter addressed to Joseph Marten, Commissioner of NYSDEC, dated 10/1/14 from the Planning Board in response to Frank Simeone's letter dated 9/26/14 addressed to Joseph Martens, NYSDEC stated below:

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

OCTOBER 1, 2014

Joseph Martens, Commissioner
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
Lead Agency Dispute Resolution, Town of Warwick, Orange County
Response to 9-26-14 Letter from Fire District Attorney Frank T. Simeone*

Dear Commissioner Martens:

The Town of Warwick Planning Board has reviewed a copy of the above captioned letter from Frank T. Simeone to your office through a copy provided to us by Supervisor Michael Sweeton (see comment # 14 below). We are responding herein to the allegations and misstatements in Mr. Simeone's letter. For brevity sake, we cite the page number and paragraph of Mr. Simeone's letter, where we believe a response is required:

1. P.1, ¶.3. In the Planning Board's Exhibit A to our September 17, 2014 lead agency dispute letter (see both the EAF and Site Plans), AT&T is listed as "Project Sponsor" or "Project Applicant" and the Fire District is listed as "Co-Sponsor" or "Co-Applicant."
2. P.1, ¶.4. The Planning Board acknowledged in its September 17, 2014 letter that LTE services may be placed on the tower. No further information on LTE services has been provided. The Fire District has not kept the Planning Board informed of any of its decisions or discussions in this regard. Rather, contrary to Mr. Simeone's quotation of the SEQR regulations on his P.7, ¶.3 that: "*The regulations advise agencies to seek the advice and assistance of other agencies.*" there have been no communications between the Fire District and the Planning Board, other than those noted in the Planning Board's letter dated September 17, 2014.
3. P.2, ¶.2. This allegation is irrational. The Planning Board by law must follow, at a minimum, the mandates of SEQR, New York State Town Law and the Town Zoning Law. Public input and often public controversy is an ever-present aspect of administering such laws. As the agency with the broadest powers over land use and environmental review in the Town, our responsibility is to ensure all rules are followed.
4. P.2, ¶.3. The Planning Board is unquestionably impartial in regards to the proposed project, just as it is with the hundreds of other development projects we have reviewed over the past decade. Our jurisdiction and authority over projects rests on whether a project meets the Zoning Law, can be modified to meet the Zoning Law through reasonable conditions, or whether it violates the Zoning Law. Under SEQR, our jurisdiction and authority extends to whether a project will result in a significant adverse impact and, if so, whether the impact can be reduced or avoided.
5. P.2, ¶.4. No "history" has been omitted from the Planning Board's September 17, 2014 letter. Neither the Planning Board as a whole nor any of its individual members was ever invited, prior to the lead agency dispute, to discuss the review process for the proposed tower. The Planning Board's only involvement up until that time was the Planning Board's November 20, 2013 letter requesting

additional information prior to acquiescing lead agency. Any discussions during that time, that may have taken place outside of the Planning Board's meeting schedule or through correspondence, did not involve the Planning Board. Therefore, there were never any determinations that the Planning Board was called upon to make. Our sole aim was to determine the Planning Board's jurisdiction under the Zoning Law and therefore, under SEQR, in order to properly respond to the Fire District's coordinated review request.

6. P.2, ¶.5. The Planning Board was provided with a copy of the September 9, 2014 letter from Supervisor Michael Sweeton to Mr. Simeone. Any discussions between these two parties is not binding on the Planning Board. The Planning Board is an independent agency of the Town of Warwick. Further, Supervisor Sweeton appeared to make it clear in his September 9, 2014 letter that the Fire District can proceed with claiming governmental immunity only after demonstrating the balancing of interests from the County of Monroe vs. City of Rochester case. To date, this still has not been completed.

7. P.3, ¶.1. In our November 20, 2013 letter to the Fire District, the Planning Board clearly states: *"The Planning Board does not intend to contest Lead Agency status, at this time, but we will need additional information from the Board before acquiescing Lead Agency status on this proposed facility...The information that we will need to consent to Lead Agency status is an analysis of the nine 'Monroe' factors...Once the Pine Island Fire District conducts its nine part Monroe test and provides documentation to the Planning Board, then the Planning Board will consider whether it will consent to the Pine Island Board of Fire Commissioners acting as Lead Agency under SEQR."* We do not know how the questioning of lead agency could have been made any clearer.

With the passage of nearly one year since we responded to the Fire District on November 20, 2013, the Fire District has failed to acknowledge the Planning Board's potential challenge of its lead agency intent. The Fire District has still not conducted the balancing of interests analysis to determine if the Planning Board is an Interested or an Involved agency. Rather than the Planning Board *"By its inaction, surrendered its right under SEQR"* we responded to the Fire District's letter dated October 22, 2013 on November 20, 2013 (within 30 days, as required by SEQR). Further, the Planning Board also responded to the Fire District's August 21, 2014 pronouncement of Lead Agency within 30 days (on September 17, 2014). The Planning Board acted in good faith on November 20, 2013, assuming that the Fire District would respond in a timely manner, so that the Planning Board (and of course the Fire District) could *"Determine whether the action may involve one or more other agencies."* [6 NYCRR 617.6(a)(i)(iii)].

8. P.3, ¶.1. The Fire District has never invited nor in any other way sought the involvement of the Planning Board in its dealings with AT&T. The Planning Board never surrendered any rights under SEQR (as stated above). In fact, the failure of the Fire District to address the substantive lead agency consent questions, within the Planning Board's letter of November 20, 2013, represents not only a fundamental flaw in their Coordinated Review process but a *"failure of the lead agency's basis of jurisdiction"* [6 NYCRR 617.6(b)(6)(i)(b')].

9. P.3, ¶.2. It is an absurd charge to allege that the Planning Board is driven by public controversy. While public controversy may be new to the Fire District's Commissioners, it is a daily fact of life for those who are dedicated and serve on planning boards. Land use changes generate emotional responses by those affected by the changes and the Planning Board is well equipped and has many years of experience dealing with this.

10. P.3, ¶.3 to P.4, ¶.4. Mr. Simeone raises issues that are more properly raised in the balancing of interests test by the Fire District. The Planning Board has been awaiting a clear and logical analysis of the nine factors by the Fire District and his arguments are better placed on that analysis. The Planning Board never *"acceded"* to the Fire District as alleged (see the Planning Board's response to the Fire District's Lead Agency request above in Item 7).

11. P.5, ¶.2. Whether the Planning Board has “*expertise in emergency service communications*” is irrelevant to the Planning Board’s Lead Agency dispute. The Planning Board’s expertise is SEQR, Site Plan, Special Use Permit, and Subdivision review and approval and we are all trained annually on how to administer laws and regulations for such land use controls. The positioning of a new telecommunications facility within the Town of Warwick inherently includes SEQR, Site Plan, and Special Use Permit protocols; these are within the authority of the Planning Board. The laws created to control land use restrict our authority to the general concerns of the use and conservation of land and to quality of life, as it is affected by land use changes. Our decisions are limited by law and must be conducted in an open and fair manner, by impartial Planning Board members, and must be based upon evidence contained within the record of our decisions. Simply put, the Planning Board cannot act outside our delegated authority or base our decisions on standards not contained in the land use controls we administer.

12. P.5, ¶.3. A false allegation is made when Mr. Simeone states that the Planning Board will ignore the LTE/FirstNet system. Our September 17, 2014 letter to your office contesting Lead Agency status notes that a place for LTE/FirstNet is reserved on the proposed tower, which is the only information we have at this time. How this translates into an allegation that the Planning Board somehow has or will “ignore” it is accusatory and lacks a factual basis.

13. P.7, ¶.1 to P.7, ¶.4. We note the absence of any supporting evidence that the Fire District has conducted “*A lengthy period of involvement in the environmental review process.*” Also, why would the Planning Board investigate impacts of the proposed tower when no application has been filed with the Planning Board nor in a case where the Fire District has not sought the advice and assistance of the Planning Board? What would be the basis for our jurisdiction to do so in the absence of the “balancing of interests” test?

14. P.7 to P.8, carbon copy list. We note that the September 26, 2014 letter from Frank Simeone to Commissioner Joseph Martens has not been copied to the Planning Board. Mr. Simeone’s letter was copied to the Fire District, the Town’s Zoning Board of Appeals, the Planning Board’s Consultants, Supervisor Michael Sweeton, and Cuddy & Feder LLP but, significantly, not to the Planning Board nor any member of the Planning Board.

The Planning Board would like to add a bit of local information in this response, that we assume your office is not aware of. In Mr. Simeone’s correspondence, a subtext of his argument is essentially that the Warwick Planning Board has no place regulating an emergency services tower, citing caselaw such as Crown Communications v Department of Transportation of the State of New York, as justification for why the Fire District is the only agency that can act as lead agency. The Attorneys for AT&T similarly argue that this is simply an emergency services tower that just happens to include personal wireless carrier services (for five different providers).

Exhibit A to this letter contains a news report from the Warwick Advertiser from June 26, 2014. It was well known in the general Warwick community that AT&T went “shopping” in the spring of 2014 to find another location for their proposed tower when it appeared that the Pine Island Fire District’s location was bogging down. The attached Exhibit A recounts AT&T’s attorney, presenting to the Pine Island School District, how “desperately needed in the area” their cell phone tower is. The Planning Board has never questioned the need for a tower, either by AT&T or the Fire District. Their motives in labeling it an “emergency services tower” however, are certainly questionable considering AT&T’s prospecting for another suitable location than the Fire District’s. We suspect that AT&T may be using the “emergency services” label as subterfuge to achieve their own goals, as opposed to the goals of the Fire District, and to build their tower as they want to build it without the burden of local Zoning approvals.

Mr. Simeone concludes by stating that “*The fire district’s effort and involvement has been to seek the advice and counsel of other agencies and to utilize their special expertise.*” But the only agency in Warwick that has concrete experience reviewing and approving up to 10 other wireless telecommunications facilities has been the Planning Board and neither he nor the Fire District has ever asked for our advice and counsel.

For the above reasons, we reaffirm our position that the Planning Board is the agency that should be designated as lead agency, as further detailed in the Planning Board's September 17, 2014 letter to your office.

For the Town of Warwick Planning Board,

Benjamin Astorino, Town of Warwick Planning Board Chairman

On a motion by Mr. McConnell, seconded by Mr. Showalter, 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 October 1, 2014.

CC: Pine Island Board of Fire Commissioners
Town of Warwick Zoning Board of Appeals
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

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.

Theresa Benjamin: What is the date of Frank Simeone's letter to the DEC?

Mr. Astorino: The date of Frank Simeone's letter is September 26, 2014. Is there anyone else?

Maryanne Flatley: I would like to applaud the Board for picking up on this. We have been very frustrated with this on how we have been treated. I think you saw it last night. They did not get out of their Executive Session until well after 10pm. They only read with what they came up with. I would really like to see the Fire Commissioner and their Board be dissolved.

Mr. Astorino: That would be something that is outside of our purview.

Maryanne Flatley: I know that.

Mr. Astorino: As far as we are concerned at this point, our correspondence goes to the DEC as well as theirs.

Deborah Carmody: I live on Firehouse Lane. When will the DEC Commissioner give you an answer?

Mr. Astorino: I am banking on that it would take about 6 to 8 months. I don't think you will see it before that.

Deborah Carmody: Really. That long?

Mr. Astorino: It is a State agency.

Deborah Carmody: I thought there was a time limit.

Mr. Astorino: No.

Maryanne Flatley: They stated in their meeting last night that they had to answer within 20 days.

Mr. Bollenbach: That is just a guideline. The process has been very much longer.

Maryanne Flatley: Thank you.

Mr. Astorino: When we hear from them, we hear from them. We don't have any control over that. Is there anyone else? Let the record show no further public comment.

Mr. McConnell makes a motion to adjourn the October 1, 2014 Planning Board Meeting.

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