

# TOWN OF WARWICK PLANNING BOARD

December 2, 2015

Members present: Chairman, Benjamin Astorino  
Roger Showalter, Vice-Chairman  
Dennis McConnell, Bo Kennedy,  
Christine Little, John MacDonald, Alternate  
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, December 2, 2015 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:**

### ***T-Mobile Northeast, LLC./15 Pysners Peak***

Application for Site Plan Approval for the construction and use of modifications to an existing cell tower (American Tower) to consist of the collocation of (6) panel antennas and related transmission equipment on the existing tower. In addition, T-Mobile proposes to install new transmission equipment within the existing equipment compound, including one new equipment cabinet and (3) utility/battery backup cabinets, situated on tax parcel S 58 B 1 L 18.22; project located on the eastern side of Pysners Peak and north of Kain Road (15 Pysners Peak), in the MT zone, of the Town of Warwick.

Representing the applicant: Robert Gaudioso from Snyder & Snyder, Applicant.

The following review comments submitted by HDR:

1. Planning Board to discuss SEQRA.
2. Applicant to discuss project.
3. Conservation Board comments: pending
4. Architectural Review Board comments: pending
5. Wireless Telecommunication Facility Board comments: pending
6. OCPD: pending comments
7. The appropriate Town of Warwick Standard notes must be added to the plan (overlay districts, etc.).
8. Provide updated Emergency Service Plan and post contact information at the site for emergency purposes.
9. §164-79.A.(1)(a) The Planning Board must determine if additional landscaping should be installed.
10. §164-79.A.(1) and (4) The color of the towers, cabinets, and associated accessory structures are required to be non-reflective; color samples must be submitted.
11. §164-79.A.(2) All lighting, including existing, must be in compliance with §164-43.4, where are lighting features are shielded/facing downward; Applicant to add note to confirm that no new lighting is proposed.

12. §164-79.A.(3)(a) All signage, including existing, must be in compliance with §164-43.1; Applicant to add note to document the type and locations of existing FCC signage (or to confirm that new signage will be installed and maintained). FCC signage should be maintained (and installed if not currently present) in accordance with applicable local, State, and Federal rules and regulations.
13. §164-79.A.(3)(b) Applicant to confirm if Danger-High Voltage signs are required/posted.
14. §164-80.B.(1). This special use application requires proof that the Applicant is a licensed carrier in the project area.
15. §164-79.B(4) Applicant to confirm that noise is less than 50dB at the property line. Applicant to add note to plan.
16. §164-83.B (1)Wireless Facilities shall be structurally inspected annually and certified by a professional engineer.
17. Add the recently approved NJ Transit antennas at Elevation 140 feet to the tower elevation shown on sheet C-1 of the zoning drawings.
18. §164-79.C(1) Applicant to provide the current and cumulative Radio Frequency Radiation (RFR). Applicant to confirm that RFR complies with current the Federal maximum permissible exposure (MPE) level for the general public.
19. Applicant to clarify if an emergency generator is being proposed.
20. Applicant to clarify the protrusion at the top of the Tower Cross-section on Sheet DWG C-1 (it may be existing lighting).
21. Per Code Section 164-80 and 81, please provide:
  - a. A listing of the nearest T-Mobile sites in each direction from the Pysner Peak tower. The list shall include location and lat/long of each existing or approved T-Mobile cell site; site address; type of facility (e.g., antennas mounted on tower, rooftop, or other structure); T-Mobile antenna heights.
  - b. A Coverage map (using In-Vehicle signal strength) that shows the existing / approved coverage from the sites on the (above) list, plus the coverage pattern resulting from the proposed co-location at the Pysners Peak tower (in an alternate color).
  - c. If both coverage and capacity are needed for T-Mobile's network, please describe in a brief narrative to justify the need for this co-location.
  - d. The operational frequencies proposed (700 and 1900 MHz ranges) as noted in the Waterford RF Rpt dated 8/26/15 should be confirmed.
22. The Ridgeline Overlay notes must be added to plan set; Note 7 of these notes can be replaced by the following note that was added to the previous cell tower owner's final plans (Global Tower, signed 10/06/11): There are existing grants of easement to the United States of America (Book 11635 Page 1759 and Book 11635 Page 1768) limiting the future development of this property and the height above grade level of structures.
23. The following Private Road notes and maintenance agreement shall be added to the plan: A declaration setting forth the private road and drainage maintenance agreement has been recorded in the Orange County Clerk's Office in Liber 4639, Page 29 on 09/29/97.
24. Private road notes as determined by the Planning Board Attorney must be added to the plans.
25. Payment of all fees.

The following comment submitted by the Conservation Board:

T-Mobile Northeast, LLC./15 Pysners Peak – None submitted.

The following comment submitted by the ARB:

T-Mobile Northeast, LLC./15 Pysners Peak – None submitted.

Comment #1: Planning Board to discuss SEQRA.

Mr. Fink: The applicant has submitted a short EAF. This project is a Type 2 Action. No SEQRA Review is necessary. I have prepared a draft Resolution for the Board's consideration.

Ms. Little makes a motion for the Type 2 Action.

Seconded by Mr. Showalter. The following Resolution was carried 5-Ayes.

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

**Name of Action:** T-Mobile Kain Road Antennas Installation

**Whereas**, the Town of Warwick Planning Board is in receipt of a Site Plan application by T-Mobile Northeast LLC for a ± 5.1 acre parcel of land located at 15 Pysners Peak, Town of Warwick, Orange County, New York, and

**Whereas**, an Environmental Assessment Form (EAF) dated 10/26/15 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)(2) and, therefore, SEQR does not apply, and

**Whereas**, the Planning Board has determined that the proposed project is not within an agricultural district and, therefore, the requirements of 617.6(a)(6) do not apply, 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.

Robert Gaudio: Mr. Chairman, I think you stole my thunder when you read the agenda blurb. It is pretty straight-forward.

Mr. Astorino: Ok.

Comment #3: Conservation Board comments: pending

Comment #4: Architectural Review Board comments: pending

Comment #5: Wireless Telecommunication Facility Board comments: pending

Comment #6: OCPD: pending comments

Comment #7: The appropriate Town of Warwick Standard notes must be added to the plan (overlay districts, etc.).

Robert Gaudio: No problem.

Comment #8: Provide updated Emergency Service Plan and post contact information at the site for emergency purposes.

Robert Gaudio: No problem.

Comment #9: §164-79.A.(1)(a) The Planning Board must determine if additional landscaping should be installed.

Mr. Astorino: We discussed this at the Work Session. I believe that additional landscaping is not needed.

Mr. Bollenbach: The facilities and the cabinets are going to be installed need to be earth tone colors.

Comment#10: §164-79.A.(1) and (4) The color of the towers, cabinets, and associated accessory structures are required to be non-reflective; color samples must be submitted.

Robert Gaudio: Ok.

Comment #11: §164-79.A.(2) All lighting, including existing, must be in compliance with §164-43.4, where are lighting features are shielded/facing downward; Applicant to add note to confirm that no new lighting is proposed.

Robert Gaudio: Ok.

Comment #12: §164-79.A.(3)(a) All signage, including existing, must be in compliance with §164-43.1; Applicant to add note to document the type and locations of existing FCC signage (or to confirm that new signage will be installed and maintained). FCC signage should be maintained (and installed if not currently present) in accordance with applicable local, State, and Federal rules and regulations.

Robert Gaudio: Ok.

Comment #13: §164-79.A.(3)(b) Applicant to confirm if Danger-High Voltage signs are required/posted.

Robert Gaudio: Ok.

Comment #14: §164-80.B.(1). This special use application requires proof that the Applicant is a licensed carrier in the project area.

Robert Gaudio: We will submit those licenses.

Comment #15: §164-79.B(4) Applicant to confirm that noise is less than 50dB at the property line. Applicant to add note to plan.

Robert Gaudio: Will do.

Comment #16: §164-83.B (1) Wireless Facilities shall be structurally inspected annually and certified by a professional engineer.

Robert Gaudio: We did submit a structural report. I assume that was part of that review.

Comment #17: Add the recently approved NJ Transit antennas at Elevation 140 feet to the tower elevation shown on sheet C-1 of the zoning drawings.

Robert Gaudio: Ok.

Mr. Bollenbach: NJ Transit was also going to add additional cabinets, propane tank and other facilities within the compound area. I did not see that located on your site plan.

Robert Gaudio: If it is acceptable, I would like to have my Engineer contact your Engineer, Laura Barca and ask for a copy of those plans that were approved. Then we will transpose them onto our plans.

Mr. Bollenbach: Just transpose them so that we know where they all are.

Robert Gaudio: Ok. Understood.

Mr. Astorino: We don't have those final maps yet from NJ Transit. You will need to contact Laura. She might have a copy of those documents. She will be in next week.

Robert Gaudio: Ok.

Comment #18: §164-79.C(1) Applicant to provide the current and cumulative Radio Frequency Radiation (RFR). Applicant to confirm that RFR complies with current the Federal maximum permissible exposure (MPE) level for the general public.

Robert Gaudio: We had provided those documents.

Comment #19: Applicant to clarify if an emergency generator is being proposed.

Robert Gaudio: None proposed. We will do a letter or note.

Comment #20: Applicant to clarify the protrusion at the top of the Tower Cross-section on Sheet DWG C-1 (it may be existing lighting).

Robert Gaudio: Ok.

Comment #21: Per Code Section 164-80 and 81, please provide:

- a. A listing of the nearest T-Mobile sites in each direction from the Pysner Peak tower. The list shall include location and lat/long of each existing or approved T-Mobile cell site; site address; type of facility (e.g., antennas mounted on tower, rooftop, or other structure); T-Mobile antenna heights.
- b. A Coverage map (using In-Vehicle signal strength) that shows the existing / approved coverage from the sites on the (above) list, plus the coverage pattern resulting from the proposed co-location at the Pysners Peak tower (in an alternate color).
- c. If both coverage and capacity are needed for T-Mobile's network, please describe in a brief narrative to justify the need for this co-location.
- d. The operational frequencies proposed (700 and 1900 MHz ranges) as noted in the Waterford RF Rpt dated 8/26/15 should be confirmed.

Robert Gaudio: We will provide map and a narrative. No problem.

Comment #22: The Ridgeline Overlay notes must be added to plan set; Note 7 of these notes can be replaced by the following note that was added to the previous cell tower owner's final plans (Global Tower, signed 10/06/11): There are existing grants of easement to the United States of America (Book 11635 Page 1759 and Book 11635 Page 1768) limiting the future development of this property and the height above grade level of structures.

Robert Gaudio: Ok.

Comment #23: The following Private Road notes and maintenance agreement shall be added to the plan: A declaration setting forth the private road and drainage maintenance agreement has been recorded in the Orange County Clerk's Office in Liber 4639, Page 29 on 09/29/97.

Robert Gaudio: Ok.

Comment #24: Private road notes as determined by the Planning Board Attorney must be added to the plans.

Robert Gaudio: Where do I get that from?

Mr. Bollenbach: We have some samples. Other facilities have been located on the premises.

Connie Sardo: You could talk to Laura about that. She will get that to you.

Mr. Bollenbach: Yes. Speak to Laura. She has those samples available.

Mr. Astorino: I think you want to work through those notes especially for this site. Let's make sure it is done right. There were some issues last year with the snowplowing and with the residents of Pysners Peak in which it got the Town involved to clear the snow to get emergency service personnel up there.

Robert Gaudio: Are those notes on the NJ Transit plans?

Mr. Bollenbach: They are in the process of being placed on the plans.

Robert Gaudio: Have they been drafted?

Mr. Bollenbach: They are in the process of doing that.

Robert Gaudio: Are they in the process of being drafted by Laura or John?

Mr. Astorino: It is in the process of being done by the applicant and to be reviewed by Laura and John.

Robert Gaudio: Ok.

Connie Sardo: Next week contact Laura.

Robert Gaudio: Ok.

Mr. Bollenbach: Peter Papay is NJ Transit's Engineer. He should have that wrapped up by the end of the week. Laura should take a look at that.

Connie Sardo: Rob, just send Laura an email regarding all of this. She will be able to help you out.

Mr. Astorino: Laura will be in next week.

Robert Gaudio: Ok. I also know Peter Papay.

Comment #25: Payment of all fees.

Robert Gaudio: Ok.

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

Mr. Bollenbach: Would the Board like to set this for a public hearing? I know that the Board has on the agenda to consider on cancelling the 12/7/15 Work Session and the 12/16/15 Planning Board Meeting. In an effort to accommodate the applicant, we could set this application for a public hearing and have it on 12/16/15. That way we could wrap this up.

Robert Gaudio: Ok. If there is anything that is not accommodated, could we have that as a condition of the approval?

Mr. Astorino: The only thing that I would like to see is some work on that maintenance agreement.

Robert Gaudio: I do have American Tower's updated maintenance agreement with me that I could give to you.

Mr. Bollenbach: Yes. Just give that to Connie.

Robert Gaudio: Ok.

Mr. Bollenbach: Just for the Board's information, there have been numerous phone calls to Town Hall concerning maintenance. It's not just the maintenance of Pysners Peak private road. That is one issue where all lot owners are supposed to participate in maintenance and snow and ice removal. That apparently has not been going on in the past. That is why we have the opportunity for a public hearing in order to try to get this stream lined. I have seen contracts from Canivari Construction.

Robert Gaudio: Ok. Yes. There is a contract from Canivari Construction. It is an updated one with an updated set of notes.

Mr. Bollenbach: Ok. That is wonderful.

Robert Gaudio: I had just given that to Connie.

Mr. Bollenbach: Ok. It is a two faceted thing. Then you have the private driveway which is the access drive to the tower. In the past, that has also not been maintained and kept free of ice and snow. There has been difficulty with accessing for EMS purposes. This is an effort to try to get everything working nicely.

Robert Gaudio: Ok. What they had done was take the prior one that was approved by the Town and they updated it. I think the prior one the contract expires in March of 2016. This now extends that. After the expiration on this, then it goes month to month.

Mr. Astorino: John, could you take a look at that?

Mr. Bollenbach: Yes. What we have been doing in the past is requiring an annual maintenance contract. That way we would have something on file.

Robert Gaudio: Ok.

Mr. Bollenbach: Ok. I believe it is for the tower owner that this is being done.

Robert Gaudio: That would be what I have here. All I ask is that if there is a problem with this, please let me know. We are kind of in a catch 22. We would have to go back to American Tower. If there is any problem with this, please let me know.

Mr. Bollenbach: Ok. I will be in tomorrow morning.

Robert Gaudio: Ok.

Ms. Little: I have one comment. I know that Laura is not here tonight. Back when we were talking about the same tower when all of the neighbors were here, there was a question about the total load. It was an unusual number. It was like 130 or 140 something percent. The total load at that time was in excessive of 100 percent it was around 107 or 108 percent. How much more of a load would this put on there? How much does this bring us closer to that total capacity?

Mr. Bollenbach: I think that was around 150 or 160 percent.

Robert Gaudio: We did submit a full structural report for that.

Mr. McConnell: Mr. Chairman, didn't we also ask one of these applicants to explain that to us in lament terms because it seemed non-sensible?

Mr. Bollenbach: Yes. Perhaps that could be done at the public hearing.

Mr. Astorino: Those are very good comments. That could be explained at the public hearing. Just so that you know at the public hearing, if there is a question or not, you would want to explain that up front. Then that would be done and over with. I just wanted to give you a heads up on that for the public hearing.

Robert Gaudio: Ok. I understand that.

Mr. McConnell: Mr. Chairman, could I ask that the maintenance agreement not to have an expiration in the middle of the winter?

Mr. Astorino: That would be a good idea.

Robert Gaudio: We did. That is a great point. What we had, I think it was until March. Then we had it go from month to month thereafter. It is automatically renewed so that there would not be that problem.

Mr. McConnell: Is it an evergreen?

Robert Gaudio: Yes. There is an evergreen provision on it.

Mr. McConnell: For service contracts, evergreen service contracts I don't believe is enforceable under the general obligations law.

Robert Gaudio: Isn't that just for residential? This would be considered commercial.

Mr. McConnell: No. For commercial, I don't believe they are enforceable under a GOL?

Mr. Astorino: John, could you look into that?

Mr. Bollenbach: We will take a look into that.

Mr. McConnell: My second suggestion would be, is it possible to make these things have a term longer than a year? Could we suggest that? I don't think we could require that but could we suggest that?

Mr. Showalter: Dennis, what are you thinking to have? Do you want something like from May 1<sup>st</sup> to May 1<sup>st</sup> or June 1<sup>st</sup> to June 1<sup>st</sup> so that way it would be covered for the winter?

Mr. McConnell: John, you are the expert on these things farther more than I am. The reason being is that I have never done one. I would like to see a multi-year term if at all possible. If it is not, then ok fine. I would like to see its expiration to be sometime in May just like what Roger just had suggested. The third thing I would like to see is that 90 days before it expires, I would like to see a draft of the next one.

Ms. Little: When are the RF normally due? Is that a yearly thing? Is that correct?

Connie Sardo: Are you talking about the annual reports?

Ms. Little: Yes.

Connie Sardo: That is supposed to be done on a yearly basis and submitted to the Building Department.

Mr. Astorino: That goes to the Building Department. That is not us.

Ms. Little: Is there any way to try to link the two of them?

Mr. Bollenbach: What we would have to do is try to work on the timing of that. They do have tabs that do pop up. It would be nice to have it all done at the same time. You don't really want to do your structural report in the middle of winter when it is all ice covered. Maybe that could be in one of our conditions of the approval that the Board might want to consider on having these contracts become due May 1<sup>st</sup> and that the reports be submitted May 1<sup>st</sup>.

Mr. Astorino: I will bring that up to Laura next week. We will see if we could get something. It does get to be a cluster.

Robert Gaudioso: Those are things that could be handled in a condition of the approval.

Mr. Astorino: We will work on that. Does someone want to set T-Mobile/Pysners Peak for a public hearing for the December 16, 2015 Planning Board Meeting?

**Mr. McConnell makes a motion to set the T-Mobile/Pysners Peak application for a Public Hearing at the December 16, 2015 Planning Board Meeting.**

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

Mr. Astorino: This coming Monday is our Work Session. Whatever you need to discuss with Laura, you could do that on Monday.

Connie Sardo: You could even send her an email.

Mr. Astorino: Yes. You could email her.

Mr. Bollenbach: Once I review this, then I could let you know even if there is a need for a Work Session.

Robert Gaudio: Ok. If there is not a need for a Work Session, that would be great.

Mr. Bollenbach: I will let you know.

Robert Gaudio: Regarding sending out the legal notice, do I use the same list of neighbors that I used before when I sent out the early notification letters?

Connie Sardo: Yes. You will use the same property adjoiners list. On Monday, I will email you the Planning Board's legal notice. That legal notice you will send out certified mail to all the neighbors.

Robert Gaudio: Ok. Thank you.

**Other Considerations:**

1. Planning Board Minutes of 11/4/15 for PB Approval.

Mr. McConnell makes a motion to Approve the Planning Board Minutes of 11/4/15.

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

2. Planning Board to discuss cancelling the 12/7/15 Work Session & 12/16/15 PB Meeting.

Mr. Astorino: That doesn't apply anymore.

**Correspondences:**

Mr. Astorino: Connie, do we have any correspondences this evening?

Connie Sardo: No.

**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.

**Mr. McConnell makes a motion to adjourn the December 2, 2015 Planning Board Meeting.**

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