

TOWN OF WARWICK PLANNING BOARD

April 3, 2024

Members present: Chairman, Benjamin Astorino
Roger Showalter, Vice-Chairman
Dennis McConnell, Bo Kennedy,
Rich Purcell, Vickki Garby, Alternate
Laura Barca, HDR Engineering
Max Stach & Danielle Dreyer, NPV Planners
Bob Krahulik, Planning Board Attorney
Connie Sardo, Planning Board Secretary

The regular meeting of the Town of Warwick Planning Board was held Wednesday, April 3, 2024 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.

PUBLIC HEARING

Review of Submitted Maps:

GTP Acquisition/American Tower 207 Tower Lane

Application for Site Plan Approval and Special Use Permit for the "**5-Year Renewal**" of the Special Use Permit for the continued use of an existing wireless telecommunications facility, situated on tax parcel S 64 B 1 L 55; project located on the eastern side of Brady Road 1500+/- feet southeast of Bowen Road atop Tower Lane (207 Tower Lane), in the CO zone, of the Town of Warwick. Previous Renewal was granted on December 7, 2011.

Representing the Applicant: Diane Enright from NBCLLC, Applicant.

The following review comments submitted by HDR:

Comment # 1.A: Planning Board to discuss SEQRA.

Danielle Dreyer: Type of Action. This is a Type II Action under SEQR based on NYCRR 617.5 (c)(9), "(32) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;" The Planning Board may enter this determination into the record by simple motion and vote. No further SEQR Action is required.

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

Seconded by Mr. Purcell. Motion carried; 5-Ayes and 0-Nays and 0-Absent

Comment #1.B: The Town of Warwick Standard notes applicable to this project must be added to the drawings (see Attachment 1).

Diane Enright: Yes. Those notes would be added to the drawings.

Mr. Astorino: We will list Comment #2 through Comment #10 for the record. Does the record. Does the Applicant and/or Professionals want to address any of these comments. They seem to be the standard comments that we go through to make sure the tower is sound. This is what we do for the 5-Year Renewal of the Special Use Permit. Does the Applicant have any comments?

Diane Enright: As far as American Tower, Comment # 2 and #3 are ok. Regarding Comment #5, American Tower requests that the Town with respect to the Suicide Prevention signs be posted on the fence. It is against our corporate policy. However, posting the sign outside the compound by the Town would be acceptable under their current corporate policy.

Mr. Showalter: What is up with that?

Diane Enright: We have a lot of towers. They have a lot of corporate policies with respect as to what goes on the fences of the compound.

Mr. Astorino: They would put up a freestanding pole with a sign. Is that correct?

Diane Enright: You could put up a post outside the compound. The Town could put it out in front of the compound.

Mr. Astorino: Do you want the Town to do that?

Mr. Showalter: Why can't the Tower company do that? Why does the Town's taxpayers have to pay for that?

Diane Enright: They are requesting that the Town puts it outside the entrance to the compound.

Mr. Astorino: We have the sign that we could provide to you. The entrance is on Brady Road.

Laura Barca: It shouldn't go by that entrance.

Mr. Astorino: You should put the sign closer to the entrance of the compound. We do have a Suicide Prevention that that we would like to see there. The Town could provide you with that sign. It's a good cause.

Mr. Showalter: I don't understand why they have that policy.

Diane Enright: It is a pretty broad policy as to what signs could go on their fences of the American Tower's compounds. It is a ridged policy. They adhere to that for all of their towers. We do ask for a compromise here.

Mr. Astorino: We do need a contact.

Diane Enright: The Town would provide the sign.

Mr. Astorino: American Tower could provide the post. We would provide you with the sign. American Tower could install the sign on the post.

Diane Enright: We would go with that.

Mr. Astorino: Give the Planning office a contact person.

Laura Barca: Would that be Margie Weber?

Diane Enright: Yes.

Mr. Astorino: Ok. We have a contact person.

Mr. Purcell: What does the sign say?

Mr. Astorino: I will provide the Board with a copy of what the sign says. We made a sign. I won't go into details, but especially on this tower located at 207 Tower Lane there was an incident. I understand you caught in a rock and a hard place. As long as the sign gets installed, I think it would work.

Diane Enright: Ok.

Mr. Showalter: Regarding the suicide prevention sign, please let American Tower know that another Planning Board member and I think that American Tower's policy is not good. It has nothing against you Ms. Enright. You are just the messenger.

Diane Enright: I understand.

Mr. Showalter: It is a huge problem in our country today.

Mr. Astorino: We have American Tower's contact person. It will get done. Do you have any other comments or concerns?

Diane Enright: Regarding Comment #15, the Radio frequency NIER Report has been submitted. Regarding the Recertification the telecommunications tower and attachments, those are done when someone does a modification to a tower. There are two modifications coming in.

Laura Barca: Comment #15 is the same as Comment #5.

Diane Enright: Whenever a carrier does a modification or changes to the tower, these reports would be submitted.

Laura Barca: Right. The carrier Verizon will be going on both of these towers very soon. I have already received the reports for one of the towers. Then within about a month from now the tower will receive the reports for the 2nd tower.

Diane Enright: Yes. That is the modifications that we are talking about. You will have these updated reports with that.

Mr. Astorino: They would be put into the files. Is the Board ok with that?

Diane Enright: The policy is whenever anybody changes anything on a tower the carrier takes care of that.

Laura Barca: Correct.

Mr. Astorino: Do you have any other questions?

Diane Enright: Regarding Comment #6, American Tower is not a carrier. They have carriers on the tower. American Tower is the tower owner.

Mr. Astorino: Comment #6, Proof that the applicant or co-applicant is a licensed carrier or public utility.

Diane Enright: They are neither one. American Tower is the tower owner. When the carrier, Verizon does their medication, we would provide proof that they are a licensed carrier.

Laura Barca: Yes.

Mr. Astorino: Do you have anything further? Do any Board members have any comments?

Mr. McConnell: The last 5-Year Renewal on this tower was done in the year 2011. Is that correct?

Connie Sardo: Yes.

Mr. McConnell: They are a little bit overdue. What is the cost for the application?

Mr. Astorino: Whatever it is through here.

Mr. McConnell: If this renewal should have been done in the year 2011, then done in the year 2016 and then in 2021, we have missed revenues on those scheduled renewal dates. Is that correct?

Mr. Astorino: It makes sense.

Laura Barca: Yes, as according to the Code.

Mr. McConnell: Why are we not collecting back fees?

Mr. Astorino: We can't by the Code. I don't think we could just back date renewals and collect fees from them.

Mr. McConnell: Bob, is there anything in the Zoning Code that states if you are late with a renewal?

Bob Krahulik: What would happen is the Building Inspector would send a Notice of Violation to give the Applicant 30 days to cure.

Mr. McConnell: Maybe that would prompt people.

Mr. Astorino: I think it would. But it is not the Planning Board's purview to send a Notice of Violation.

Mr. McConnell: Ok. Having us sitting here now contemplating the renewal, you are in violation at this point. Generally speaking, in a situation like that, you have to come current. You would have to be current in order to get a renewal. You don't have one now. It would be improper for us to do a renewal on something that has expired.

Mr. Astorino: The curiosity that you have is that it should have been flagged by the Building Department. A violation should have been sent to them. Then, they would have been here.

Mr. McConnell: Right. Do we have the ability?

Mr. Astorino: We do not have the ability as a Planning Board.

Mr. McConnell: Do we not have the ability to not hear the application for renewal since they are in violation?

Bob Krahulik: Dennis, maybe this would help illustrate the problem. An example in the Town are short-term rentals. If a permit expires and you continue to operate, there is a fine of \$500.00 or \$750.00 per day. We don't have such a provision for cell tower renewals. There are no penalties that could be imposed under the Code as it exists today for being late. We could change the Code. But as of right now, it just states you have to renew it every 5 years. It doesn't say in the Code if you fail to renew it, it would be a \$250.00 per day fine.

Mr. Showalter: It sounds like the error occurred by the Building Department.

Bob Krahulik: No. I would not say that. In order to enforce this, the Building Department would have to have some type of a tickler.

Mr. Showalter: Yes.

Mr. Astorino: They do.

Bob Krahulik: So that every 5 years they would know to send a notice. They do that for short-term rentals but not for cell towers.

Mr. Showalter: The Town Board would have to take a look at that.

Mr. Astorino: That could be a thing when we do the Code. They are here now. If it meets the requirements for 5-Year Renewal. Let's get them current.

Bob Krahulik: It is not the Planning Board's job to police these. If we have a tickler system and we are policing them, then that is great.

Mr. Showalter: Right.

Bob Krahulik: It is not our job to make sure the Applicant is doing what they are supposed to do.

Mr. Astorino: Right.

Mr. McConnell: I look at it as coming to court but you don't have clean hands.

Bob Krahulik: Right. The only way to fix it is to apply for the renewal.

Mr. McConnell: Right.

Mr. Astorino: Does the Board have any other comments?

Mr. McConnell: I think we have the same problem with the next application. It is a different expiration date.

Mr. Astorino: Yes. It is the Applicant's responsibility to follow the Code.

Mr. McConnell: These people have towers everywhere. They must have a tickler system somewhere that states when these towers are up for renewal.

Bob Krahulik: Not every town requires a renewal.

Mr. McConnell: They ignored it. They can't get out of ignoring with what they are obligated to do.

Mr. Astorino: They are now in front of the Planning Board. They are going to remedy it. Does the Board or Professionals have any other comments?

Diane Enright: The other comment I have is regarding Comment #7. The structural report was provided. The RF report is provided by the carrier when they make modifications or changes to the tower.

Mr. Showalter: Is that the RF Emissions Report?

Diane Enright: Yes.

Mr. Astorino: Laura, are you ok with that?

Laura Barca: Yes.

Diane Enright: Regarding Comment #9, the annual maintenance contract would be submitted to the Municipality by May 1st. We are ok with that. Comment #10, Payment of all fees, we agree to that.

Mr. Astorino: Do any Board members or Professionals have any comments or concerns? Does the Applicant request to waive the public hearing?

Diane Enright: Yes.

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

Seconded by Mr. Purcell. Motion carried; 4-Ayes and 1-Nays (Mr. McConnell) and 0-Absent.

Mr. Purcell makes a motion on the GTP Acquisition/American Tower 207 Tower Lane application, granting conditional Site Plan and Special Use Permit for the “**5-Year Renewal**” of the Special use Permit for the continued use of an existing wireless telecommunications facility, situated on tax parcel S 64 B 1 L 55; project located on the eastern side of Brady Road 1500± feet southeast of Bowen Road atop Tower Lane (207 Tower Lane), in the CO zone, of the Town of Warwick, County of Orange, State of New York. A SEQRA Type 2 Action was adopted on April 3, 2024. Approval is granted subject to the following conditions:

1. The Town of Warwick Standard notes applicable to this project must be added to the drawings (see Attachment 1).
2. An Emergency Service Management Plan must be submitted (See Attachment 2).
3. A note shall be added to one of the Drawings stating: All outdoor lights shall be designed, located, installed, and directed in such a manner as to prevent objectionable light at and across the property lines, and to prevent direct glare at any location on or off the property. The prohibitions and requirements listed in §164-43.4 of the Town Code shall apply to all proposed and existing outdoor lighting fixtures.
4. Due to a previous incident, the Town of Warwick requests that Suicide Prevention signs be posted along the fencing. If signs have already been posted by the tower owner, please confirm that the signs are in good condition; submit photos.
5. §164-79.C Safety standards.
 - a. Radio frequency radiation (RFR) standards. An Annual NIER (RF emissions) certification is required under 168-23.
 - b. Security barrier. All wireless telecommunications facilities shall be provided with security measures, such as fencing, anti-climbing devices, electronic monitoring and other methods, sufficient to prevent unauthorized entry and vandalism. Electrified fence, barbed or razor wire are prohibited. Town to Provide Suicide Prevention Sign and Applicant to install at the entrance Facility to Town Engineer’s specifications.

- c. Recertification the telecommunications tower and attachments both are designed and constructed (as-built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified New York State licensed professional engineer acceptable to the Town, the cost of which shall be borne by the applicant.
6. §164-80.B(1) Proof that the applicant or co-applicant is a licensed carrier or public utility.
7. §164-83.A(1) Add a note to one of the Drawings: An annual RF Emissions report, including cumulative RFR, shall be submitted to the Town of Warwick Building Department by the Tower Owner.
8. §164-83.B Add a note to one of the Drawings: An annual structural report shall be submitted to the Town of Warwick Building Department for the tower structure by the Tower Owner.
9. Add a note to one of the Drawings: An annual access maintenance contract shall be submitted to the Town of Warwick Building Department by May 1st of each calendar year by the Tower Owner.
10. Payment of all fees.

Seconded by Mr. Kennedy. Motion carried; 4-Ayes and 0-Nays (Mr. McConnell) and 0-Absent.

HDR Comment #2 through Comment #10 listed for the record:

Comment #2: An Emergency Service Management Plan must be submitted (See Attachment 2).

Comment #3: A note shall be added to one of the Drawings stating: All outdoor lights shall be designed, located, installed, and directed in such a manner as to prevent objectionable light at and across the property lines, and to prevent direct glare at any location on or off the property. The prohibitions and requirements listed in §164-43.4 of the Town Code shall apply to all proposed and existing outdoor lighting fixtures.

Comment #4: Due to a previous incident, the Town of Warwick requests that Suicide Prevention signs be posted along the fencing. If signs have already been posted by the tower owner, please confirm that the signs are in good condition; submit photos.

Comment #5: §164-79.C Safety standards.

- a. Radio frequency radiation (RFR) standards. An Annual NIER (RF emissions) certification is required under 168-23.
- b. Security barrier. All wireless telecommunications facilities shall be provided with security measures, such as fencing, anti-climbing devices, electronic monitoring and other methods, sufficient to prevent unauthorized entry and vandalism. Electrified fence, barbed or razor wire are prohibited.
- c. Recertification the telecommunications tower and attachments both are designed and constructed (as-built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified New York State licensed professional engineer acceptable to the Town, the cost of which shall be borne by the applicant.

Comment #6: §164-80.B(1) Proof that the applicant or co-applicant is a licensed carrier or public utility.

Comment #7: §164-83.A(1) Add a note to one of the Drawings: An annual RF Emissions report, including cumulative RFR, shall be submitted to the Town of Warwick Building Department by the Tower Owner.

Comment #8: §164-83.B Add a note to one of the Drawings: An annual structural report shall be submitted to the Town of Warwick Building Department for the tower structure by the Tower Owner.

Comment #9: Add a note to one of the Drawings: An annual access maintenance contract shall be submitted to the Town of Warwick Building Department by May 1st of each calendar year by the Tower Owner.

Comment #10: Payment of all fees.

It is understood that the tower owner, operator, applicant, and the applicant's engineer maintain full responsibility:

- (1) for the accuracy and adequacy of all aspects of the design and analyses provided to the Town, inclusive of the recertification submittals;
- (2) for the construction and maintenance/operation of the facility; and
- (3) for compliance with Section 168 criteria, including but not limited to the annual NIER certification (168-23).

Diane Enright: Thank you.

ACC Tower Services/American Tower 15 Pysners Peak

Application for Site Plan Approval and Special Use Permit for the "5-Year Renewal" of the Special Use Permit for the continued use of an existing wireless telecommunications facility, situated on tax parcel S 58 B 1 L 18.22; project located on the eastern side of Pysners Peak 690± feet north of State Highway 17A (15 Pysners Peak), in the MT zone, of the Town of Warwick. Previous Renewal of 5-Year Renewal was granted on 6/1/14.

Representing the Applicant: Diane Enright from NBCLLV, Applicant.

The following review comments submitted by HDR:

Comment #1.A: Planning Board to discuss SEQRA.

Danielle Dreyer: Type of Action. This is a Type II Action under SEQR based on NYCRR 617.5 (c)(9), "(32) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;" The Planning Board may enter this determination into the record by simple motion and vote. No further SEQR Action is required.

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

Seconded by Mr. Purcell. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

Mr. Astorino: These are the same exact comments that we had for the previous application for the cell tower located at 207 Tower Lane.

Diane Enright: All of the answers to these comments are the same as the previous application.

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

Mr. Showalter: Laura, regarding Comments #8 & #9 the structural reports and the annual access maintenance contract, have we been receiving those reports by May 1st of each calendar year? I remember discussions that we had years ago regarding those reports. It is important that we receive those reports. Are we receiving those reports?

Laura Barca: I believe the Building Department receives those reports for some but not for all. Considering the comments of the Board, I work with the Building Department to make sure that they have something in their system that shows up before May 1st regarding all cell towers needs to send a friendly note stating that the Town of Warwick requires you to submit x, y, and z.

Mr. Showalter: I think we need to clarify it with the cell tower operators or whoever is responsible to file this. Maybe that would also help us stay on top of the fees that they owe us as well. I don't think the optics are good that we have missed the renewal thing. I think we need to on our end as far as representing the Town to be more on top of that.

Mr. McConnell: To Roger's point, the structural report that we have now is going to be only current. We don't know that the structural of these towers was good from the last expiration until today. At the very least, we should have requested them to attest that there has been no material change in the condition, use, ownership of this tower since the last time a renewal was issued. That is the way we cover ourselves.

Mr. Astorino: That is an inaccurate statement. These towers have been before us in that timeframe for structural reports for adding equipment. We have reports that this Board had required when additional carriers went on both of these towers.

Mr. McConnell: We do have those. Those reports are current. Is that correct?

Mr. Astorino: Yes.

Mr. McConnell: That is without a gap. Is that correct?

Mr. Astorino: Yes. That is without a gap. I agree with what you are both saying. I think our Attorney summed it up the best. It should be put into the Code. It is not in the Code. We are discussing Code changes.

Mr. Showalter: It would bring clarity to everybody.

Mr. Astorino: Our Professionals here tonight, Bob had mentioned it and Laura reiterated it. It is not the Town's responsibility. As per what Laura had pointed out, send a friendly letter out to all tower owners and/or carriers stating what we require. We could put some teeth in the Code regarding that.

Mr. McConnell: Our experience with the attorneys representing the cell towers has been that the federal law protects them. They don't really care what the Town thinks or wants.

Diane Enright: We understand.

Laura Barca: The way the Town Code is currently written is if the carrier comes to the Town and wants to add new antennas onto this tower, that application the way the Code is written that does not significantly alter the tower, which means that you are not changing the height or the fencing around it does not have to come in front of the Planning Board. It stays at the Building Department/Pre-Planning Board level. They do submit an escrow that allows HDR to review the exact same documents such as the structural and RF Reports. Specifically, these two towers are the two towers that appears most frequently to the Building Department asking for new or a change to the antennas. They have been approximately 4 to 7 different times since the year 2011 that they had these reports reviewed.

Mr. Showalter: They do have a lot of stuff on those towers. They are important towers. I understand that they are important to your company. I don't have a problem if it doesn't come before the Planning Board like Laura had just explained. As long as it is a review done in the Building Department/Pre-Planning Board level. I do want to make sure that our

Professionals are covered for their review time by the Applicant. Our Professionals are doing their job to keep everyone safe.

Mr. Astorino: In this case as Dennis had pointed out, this 5-Year Renewal had to come before the Planning Board. That is the Applicant's responsibility.

Mr. Showalter: Yes. I understand that.

Mr. Purcell: I've worked many years in the insurance industry. I have many years of experience in that. We refer to a gap as a lapse. When there is a lapse, nobody wants to know anything. The last thing we would want to do is put the Town of Warwick in the position where it would have to defend itself. That is not something that we are here to do. We want to make sure all of the nuts and bolts are in place. This is a wakeup call that Mr. McConnell had brought it to our attention. It is only going to help us down the road.

Diane Enright: Yes. This will be noted with American Tower that they had lapsed on their 5-Year Renewal. You are right that there are a lot of upgrades being made to the towers. You will be seeing a lot of structural reports coming in every time an upgrade is done on a tower. There are many carriers constantly coming in to upgrade their equipment. These reports would always be submitted for your offices review. We will make sure those documents are always updated for your files. It is done every time a carrier does an upgrade to the tower.

Mr. Astorino: Ok. Thank you. We will list Comment #1 through Comment #10 for the record. Does the Applicant request a waiver of the Public Hearing?

Diane Enright: Yes.

Mr. Showalter makes a motion to waive the Public Hearing.

Seconded by Mr. Kennedy. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

Mr. Purcell makes a motion on the ACC Tower Services/American Tower 15 Pysners Peak application, granting Site Plan Approval and Special Use Permit for the "5-Year Renewal" of the Special Use Permit for the continued use of an existing wireless telecommunication facility, situated on tax parcel S 58 B 1 L 18.22; project located on the eastern side of Pysners Peak 690± feet north of State Highway 17A (15 Pysners Peak), in the MT zone, of the Town of Warwick, County of Orange, State of New York. A SEQRA Type 2 Action was adopted on April 3, 2024. Approval is granted subject to the following conditions:

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2. An Emergency Service Management Plan must be submitted (see Attachment 2).
3. A note shall be added to one of the Drawings stating: All outdoor lights shall be designed, located, installed, and directed in such a manner as to prevent objectionable light at and across the property lines, and to prevent direct glare at any location on or off the property. The prohibitions and requirements listed in §164-43.4 of the Town Code shall apply to all proposed and existing outdoor lighting fixtures.

4. Due to a previous incident, the Town of Warwick requests that Suicide Prevention signs be posted along the fencing. If signs have already been posted by the tower owner, please confirm that the signs are in good condition; submit photos.
5. §164-79.C Safety standards.
 - a. Radio frequency radiation (RFR) standards. An Annual NIER (RF emissions) certification is required under 168-23.
 - b. Security barrier. All wireless telecommunications facilities shall be provided with security measures, such as fencing, anti-climbing devices, electronic monitoring and other methods, sufficient to prevent unauthorized entry and vandalism. Electrified fence, barbed or razor wire are prohibited. The Town to provide Suicide Prevention Sign and Applicant to install at the entrance facility to the Town Engineer's specifications.
 - c. Recertification the telecommunications tower and attachments both are designed and constructed (as-built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified New York State licensed professional engineer acceptable to the Town, the cost of which shall be borne by the applicant.
6. §164-80.B(1) Proof that the applicant or co-applicant is a licensed carrier or public utility.
7. §164-83.A(1) Add a note to one of the Drawings: An annual RF Emissions report, including cumulative RFR, shall be submitted to the Town of Warwick Building Department by May 1st of each calendar year by the Tower Owner.
8. §164-83.B Add a note to one of the Drawings: An annual structural report shall be submitted to the Town of Warwick Building Department for the tower structure by May 1st of each calendar year the Tower Owner.
9. Add a note to one of the Drawings: An annual access maintenance contract shall be submitted to the Town of Warwick Building Department by May 1st of each calendar year by the Tower Owner.
10. Payment of all fees.

Seconded by Mr. Kennedy. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

Diane Enright: Thank you

HDR Comment #1B through Comment #10 listed for the record:

Comment #1B: The Town of Warwick Standard notes applicable to this project must be added to the drawings (see Attachment 1).

Comment #2: An Emergency Service Management Plan must be submitted (see Attachment 2).

Comment #3: A note shall be added to one of the Drawings stating: All outdoor lights shall be designed, located, installed, and directed in such a manner as to prevent objectionable light at and across the property lines, and to prevent direct glare at any location on or off the property. The prohibitions and requirements listed in §164-43.4 of the Town Code shall apply to all proposed and existing outdoor lighting fixtures.

Comment #4: Due to a previous incident, the Town of Warwick requests that Suicide Prevention signs be posted along the fencing. If signs have already been posted by the tower owner, please confirm that the signs are in good condition; submit photos.

Comment #5: §164-79.C Safety standards.

- a. Radio frequency radiation (RFR) standards. An Annual NIER (RF emissions) certification is required under 168-23.
- b. Security barrier. All wireless telecommunications facilities shall be provided with security measures, such as fencing, anti-climbing devices, electronic monitoring and other methods, sufficient to prevent unauthorized entry and vandalism. Electrified fence, barbed or razor wire are prohibited.
- c. Recertification the telecommunications tower and attachments both are designed and constructed (as-built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified New York State licensed professional engineer acceptable to the Town, the cost of which shall be borne by the applicant.

Comment #6: §164-80.B(1) Proof that the applicant or coapplicant is a licensed carrier or public utility.

Comment #7: §164-83.A(1) Add a note to one of the Drawings: An annual RF Emissions report, including cumulative RFR, shall be submitted to the Town of Warwick Building Department by May 1st of each calendar year by the Tower Owner.

Comment #8: §164-83.B Add a note to one of the Drawings: An annual structural report shall be submitted to the Town of Warwick Building Department for the tower structure by May 1st of each calendar year the Tower Owner.

Comment #9: Add a note to one of the Drawings: An annual access maintenance contract shall be submitted to the Town of Warwick Building Department by May 1st of each calendar year by the Tower Owner.

Comment #10: Payment of all fees.

It is understood that the tower owner, operator, applicant, and the applicant's engineer maintain full responsibility:

- (1) for the accuracy and adequacy of all aspects of the design and analyses provided to the Town, inclusive of the recertification submittals;
- (2) for the construction and maintenance/operation of the facility; and
- (3) for compliance with Section 168 criteria, including but not limited to the annual NIER certification (168-23).

JuSuDa Farm/Mike Siegel “Chapter 150”

Application for Recommendation to the Town of Warwick Building Department for "Chapter 150" remediation plan, situated on tax parcel S 63 B 1 L 1.1; parcel located on NYS Route 94 and Sanfordville Road (172 St. Rte. 94S), in the OI zone of the Town of Warwick.

Representing the Applicant: Kirk Rother, P.E.

The following review comment submitted by HDR:

Comment #1: Planning Board to discuss SEQRA.

Danielle Dreyer: This is a Type II Action under SEQR per 6-CRR NY 617.5 (35) “civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion.” The Planning Board may enter the determination into the record by motion and vote. No further SEQR action is required.

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

Seconded by Mr. Kennedy. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

Comment #2: Applicant to discuss project.

Kirk Rother: As the Board is aware, Mr. Siegel initially placed fill on the property. He also cut down trees. We had made an application to the Board for a site plan. Right around the same time, the Town issued a violation for tree cutting. We went through a process with the EPA regarding the wetland. There is a Stipulation of Consent that the Board has a copy of. We are in front of the Planning Board for the Chapter 150.

Comment #3: Conservation Board – no comments received

Comment #4: Architectural Review Board – no comments received

Comment #5: OC Planning Department – comments pending

Comment #6: TW Building Department – 07/13/22 violation for disturbance greater than ¼ acre (permit 20220032), permit 28699 has expired, open permit 27885, permit 26942 for well has expired, Hemp Alliance needs a fire inspection.

Mr. Astorino: That is stuff you would need to take care of with the Building Department.

Kirk Rother: Ok.

Comment #7: Applicant to add Order on Consent CWA-02-2024-3501 language to the site plan.

Kirk Rother: Yes. We will add that.

Mr. Astorino: That would be the whole EPA Consent added to the plan.

Kirk Rother: Yes. We will add the whole EPA Consent to the site plan.

Comment #8: Planning Board to determine if additional landscaping is required.

Mr. Astorino: I don't believe it needs additional landscaping. How does the rest of the Board feel? They are going to follow the consent of the EPA. The Board is fine with that. We could strike Comment #8.

Comment #9: Any required landscape plan should include planting details, such as tree planting and staking, tree protection details for trees to remain. Seed mixture information should be provided, such as type of wildflower meadow mix, installation notes, seeding rates, maintenance plan.

Comment #10: Any proposed landscaping shall include applicable notes, including three-year survivability.

Mr. Astorino: We could also strike Comment #9 and Comment #10.

Comment #11: Provide anticipated restoration schedule, including site grading, topsoil placement, and landscaping installation.

Mr. Astorino: We could strike the landscaping installation portion of that comment. What are they doing for the EPA? Are they just removing soil?

Kirk Rother: They have to remove approximately .13 acres of soil. They would have to restore that.

Mr. Astorino: Would that be done with topsoil?

Kirk Rother: They want to excavate it down to the wetland level. We would then put in a wetland seed mix in that area. At this point as far as the rest of it, the EPA doesn't want us to mess with it.

Mr. Astorino: I agree with that.

Kirk Rother: There is an actual date in the stipulation. It is coming up pretty quick.

Mr. Astorino: They have to do it. Would the EPA inspect it?

Kirk Rother: Yes. They will. I don't know when. I believe it is stated in the stipulation. They will go and inspect it again.

Mr. McConnell: Did we quantify the volume of dirt that would be removed?

Kirk Rother: I don't really know how to do that. I would have to have pre-fill topography.

Mr. McConnell: How would you know when to stop digging?

Mr. McConnell: It is pretty obvious.

Mr. Astorino: He would need to have somebody out there. A wetland expert would need to be on site.

Mr. McConnell: It seems to me if you have this area where you would have to remove all of this stuff, you would dig a small hole next to it until you get down to the level that they are talking about. Once you know the depth that you would have to go to, now a land engineer should be able to calculate the volume of material that would have to be removed in order to satisfy what the EPA had said. Am I missing something?

Kirk Rother: No. It could be done. We could do that. The EPA did not ask us to do that. They just showed us what area would have to come out down to the wetland elevation. When they dig down, they would see the topsoil layer and where they would have to stop.

Mr. McConnell: Is there a guess to how much it would be? I just don't like going into it blind.

Mr. Astorino: We are not going into it blind. The EPA would be there to inspect. When the EPA was out there, I was out there with Steve Seymour from HDR. When they dug down, they did their little test holes. They knew right away.

Mr. McConnell: Right.

Mr. Astorino: That is the difference of why they would need to have an Inspector on site to determine how much.

Mr. McConnell: Ok. What is it that we are being asked to do here? Are we issuing an approval?

Mr. Astorino: No. This is a Chapter 150. This is not the first time that this Board has done a Chapter 150. It is a recommendation to the Building Department. We are not giving a site plan approval. We have already done that.

Mr. McConnell: Ok.

Kirk Rother: When we initially submitted an application, Mike Siegel wanted to fill even more. That was why the project description was written that way as site plan approval.

Mr. McConnell: Ok.

Max Stach: When you take out the fill, the idea is that the wetland would be restored. Is that correct?

Kirk Rother: Yes.

Max Stach: Were you at the maximum coverage under the previous approved site plan? So, when these wetlands are restored, would you be over based on that lot area?

Kirk Rother: Do you mean the 30% lot coverage for all impervious areas? We were not even close.

Max Stach: Ok. Thank you.

Kirk Rother: That approved site plan those calculations were based on before this fill was placed.

Max Stach: Ok. It included the wetland.

Kirk Rother: Yes. The area that is to be removed is already staked out. You could go take a look at it.

Mr. Astorino: Ok. We will keep Comment #11. We will strike the last portion of it where it states; topsoil placement and landscaping installation.

Comment #12: The path(s) of the vehicular traffic for the machinery or trucks must be shown. Applicant to clarify if the gravel drive along Route 94 is completely shown on the plan.

Mr. Astorino: Dennis had brought that up at the Work Session. You would need that added to the plan.

Kirk Rother: Will add.

Comment #13: Add the Overlay Protection Districts table to the plan (Agricultural, Aquifer, and Biodiversity).

Mr. Astorino: These are on the site plan already. Is that correct?

Kirk Rother: All of these are on the site plan. They have been recorded already. I will add those to the site plan.

Mr. Astorino: Do any Board Members or Professionals have any comments or concerns? We will list Comment #14 through Comment #20 for the record. We need a motion for a recommendation to the Town of Warwick Building Department for the Chapter 150 reclamation plan with the conditions.

Mr. Showalter makes a motion for the Recommendation to the Town of Warwick Building Department for "Chapter 150" reclamation plan, situated on tax parcel S 63 B 1 L 1.1; parcel located on NYS Route 94 and Sanfordville Road (172 St. Rte. 94S), in the OI zone of the Town of Warwick.

1. TW Building Department – 07/13/22 violation for disturbance greater than ¼ acre (permit 20220032), permit 28699 has expired, open permit 27885, permit 26942 for well has expired, Hemp Alliance needs a fire inspection.
2. Applicant to add Order on Consent CWA-02-2024-3501 language to the site plan.
3. Provide anticipated restoration schedule, including site grading to be performed by EPA & reviewed by the Building Department.
4. The path(s) of the vehicular traffic for the machinery or trucks must be shown. Applicant to clarify if the gravel drive along Route 94 is completely shown on the plan.
5. Add the Overlay Protection Districts table to the plan (Agricultural, Aquifer, and Biodiversity).
6. The Town of Warwick standard note for lighting must be added to the plan.
7. Property owners within 300-ft of this property must be added to the plan.
8. Provide a map note stating that “No additional construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained.” Sheet 1, Note 13
9. The surveyor must sign and seal the plans.
10. Surveyor to certify that iron rods have been set at all property corners.
11. Applicant to post any Performance Bond or Landscaping Bond, as determined by the Planning Board.
12. Payment of all fees

Seconded by Mr. Kennedy. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

Kirk Rother: Thank you.

Comment #14: The Town of Warwick standard note for lighting must be added to the plan.

Comment #15: Property owners within 300-ft of this property must be added to the plan.

Comment #16: Provide a map note stating that “No additional construction or proposed use shall begin until the maps are signed by the Planning Board Chairman and Building Department permits are obtained.” Sheet 1, Note 13

Comment #17: The surveyor must sign and seal the plans.

Comment #18: Surveyor to certify that iron rods have been set at all property corners.

Comment #19: Applicant to post any Performance Bond or Landscaping Bond, as determined by the Planning Board.

Comment #20: Payment of all fees.

Other Considerations:

1. Letter from Kirk Rother, Engineer, dated 3/13/24 addressed to Planning Board. Planning Board to consider adopting the Ball Farm Part 2 EAF prepared by Planner.

Mr. McConnell makes a motion to adopt the Ball Farm Subdivision Part 2 EAF prepared by Planner.

Seconded by Mr. Showalter. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

2. Planning Board Minutes of 3/20/24 for PB approval.

Mr. McConnell makes a motion to approve the Planning Board Minutes of 3/20/24.

Seconded by Mr. Kennedy. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

3. Planning Board to discuss canceling the 4/8/24-W.S. & 4/17/24-PB Meeting.

Mr. Kennedy makes a motion to cancel the 4/8/24-W.S. & 4/17/24-PB Meeting.

Seconded by Mr. Showalter. Motion carried; 5-Ayes and 0-Nays and 0-Absent.

4. Planning Board to discuss scheduling a site visit for the Michael Brown Cascade Road 3-Lot Conventional Subdivision.

Mr. Astorino: We will schedule the Michael Brown Cascade Road Subdivision site visit for Monday, 4/22/24 @ 6:00 p.m.

Correspondences:

Mr. Astorino: We do have a class coming up from the OCMPF. It is the Planning & Land Use course to be held on April 29, 2024 at 6:00 p.m. at the SUNY Orange Middletown Campus. It is a free course. If you would like to attend, please let Connie know. The OCMPF is back in action again. There will be more courses for the Board to take throughout the year.

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 April 3, 2024 Planning Board Meeting.

Seconded by Mr. Showalter. Motion carried; 5-Ayes and 0-Nays and 0-Absent.