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ZONING DEPARTMENT

Town of Somers

WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Thomas J. Burke, Esq.,
Chairperson
Steven E. Waldinger, Esq.
Ronald A. Carpaneto
Thomas A. Garrity
Umberto Santaroni
Victor J. Cannistra, CPA
Linda R. Burpee, Esq.



January 18th, 2005

7:30 PM

ROLL CALL:

PRESENT: Chairman Burke, Messrs. Waldinger, Garrity, Cannistra, Carpaneto, Santaroni and Ms. Burpee.

ALSO

PRESENT: Town of Somers Legal Counsel, Kenneth Powell, Building Inspector, Efrem Citarella, Town Planner, Dr. Dennis Tobin, ZBA Secretary, Toni Siriani, LMS Consultant, M. Musso and interested citizens.

Chairman Burke opened the meeting with the attendance.

The assemblage recited the Pledge of Allegiance.

Prior to the first scheduled applicant approaching the podium to speak, Chairman Burke informed the Board and the assemblage that the application for Prudential Holmes and Kennedy would be held in abeyance as the applicant would be working with the Architectural Review Board to settle any issues and eliminate the need for the application to be heard by the Zoning Board.

Chairman Burke continued that the application for Andrew Mullhaupt as originally submitted would be withdrawn and a new application submitted for review at a future Zoning Board Meeting.

Chairman Burke asked the representative from AT&T Wireless to approach the podium to present their application. One of the representatives from AT&T asked that the application be heard later in the meeting as all of the responsible parties were not present at this time.

Chairman Burke moved to have the Sprint Spectrum application hear next.

APPLICATIONS:**SPRINT SPECTRUM LP****BZ09B/04-37.14-1-4**

Carryover. Robert Gaudioso of Snyder & Snyder approached the Board as representative for Sprint Spectrum LP with their application for a public utility wireless telecommunication facility consisting of a 100 foot stealth "flagpole" with antennas therein, together with related equipment at the base in an R-120 Zone located at the property of George Piccorelli at 4 Orchard Hill Road. This property is known on the tax map as Section: 37.14, Block: 1, Lot: 4. RE: Sec. Sched: 170-7. He began by responding to the December 28, 2004 memo from Dennis Tobin, Ph. D., Town Planner. In respect to item 1. which suggested that the cell tower be moved to another location on the property, Mr. Gaudioso noted that any place on the property would not meet the code requirements and Sprint would need to seek a variance. Item 2 asked that the application be resubmitted to the Westchester County Planning Department. Mr. Gaudioso thought that all the requirements of submission to this entity had been met and there was no need to resubmit. In response to the question in item 3 as to "How does the cell tower integrate with the entrance to a sentimental and civil pilgrimage site such as the Vietnam Veterans Memorial in Lasden Park?" Mr. Gaudioso stated that the view exiting the park is minimal and the war memorial is quite a distance from the roadway and there would be no view of the cell tower.

Chairman Burke asked if anyone on the Board had any questions for the applicant. Mr. Garrity asked Mr. Gaudioso about the appraisal within his package given to the Board at the last ZBA meeting of December 21st, 2004. Mr. Garrity noted that he has been involved with appraisals over the years and was interested in the back up for the Real Estate Evaluation completed by Lane Appraisals, Inc. dated December 2, 2004. He felt that the comparison was not relevant and more information as to the size, year built and number of bedrooms for these homes was needed.

Mr. Gaudioso responded that the review was valid and that the company was certified and its prior reports were upheld by the courts.

Chairman Burke asked for any other comments or questions from the Board. There being none, he asked the counsel for the neighbors if he had any questions or comments.

Mr. Vartabedian approached the podium and asked to address some of the documentation submitted by Sprint for this application. He expressed similar issues with the appraisal report provided by the applicant and took exception to the comments that there is no feasible alternative to the site and questioned the significant gap in coverage in this area of Somers which requires this site.

He also expressed that it was his understanding that it was the Boards obligation to investigate all evidence to expose relevant issues. He asked for action to eliminate the

Butler site application that Sprint has held in abeyance as an alternative to this site. There should only be one application/location reviewed by the Board. If the Board continues to keep the two locations, the SEQR investigation should be expanded to include both sites and Sprint should be required to resubmit a full EAF addressing both sites.

In response to the statements made in the State Environmental Quality Review (SEQR), he disagrees that the cell tower would not have a significant impact on the environment. He continued that the responses to Items 13/14 were incorrect in that there is a recreational area at the foot of the Orchard Hill property and the view is one of the most pristine in the area. Item 15 is also incorrect because there is a natural trout stream across the street from the site. He also believes that the response to Part 2, Section 1 which states that this project would result in a moderate impact on this property should in fact state that the impact is large because there is not only a pole but equipment cabinets and batteries with the possibility of leaks on the site. Items 3, 4 and 5 in this section are also a concern because of the previously mention stream that would be effected by any battery leaks. He also disagrees with item 11 that aesthetic resources would not be impacted by this action. Item 13 also is incorrect because of the 27 acres of park land across from this project. He again noted the issue of battery leakage in item 18. Item 19 was obviously incorrect because of the many neighbors here tonight to argue the change to the character of the community. He reiterated that Mr. Gaudioso already agree to the fact that item 20 was incorrect as to the public controversy of this action.

Mr. Vertabedian advised that he had completed an extensive search and interview process for other experts to be used to provide more information to the Board. He presented the Board with resumes for Hubbell Realty Services, Inc., Richard C. Smardon, MLA, and PH.D. VIA Consultant, and William P. Johnson.

A discussion took place between the Chairman and the Town Counsel regarding the point made by Mr. Vertabedian regarding the two sites under consideration and the use of other experts to complete the review process.

Mr. Gaudioso returned to the podium to refute the comments made by Mr. Vertabedian by commenting that the parcel in question for this site was residential and not open space. The property across from this site is a park not the property addressed in this application. The batteries used in this project are gel pack and are also used in the White Plains water shed area because they do not leak. The stream mentioned is not on this property. As for the EAF he did not understand the issues since the Town Planner and the Westchester County Planning Department had no issue with the form.

Mr. Gaudioso expressed concern that the Board would be acting more as a prosecutor in the review of the materials if it decided to pursue the expert route that Mr. Vertabedian suggested. This would be overreaching. He noted that in the resume provided a Hubbell analysis was thrown out of court and a Lane analysis used. He believes there is no need for additional experts since the Board has already retained a consultant and the Town Planner has also reviewed the application.

Chairman Burke expressed his agreement with Mr. Garrity and felt the Board needed more information related to the Real Estate appraisal information. The Town Attorney, Kenneth Powell opined that a Request for Proposal (RFP) would be necessary to obtain additional expert appraisal review and information.

Mr. Cannistra questioned how many experts could the Board hire to review an application. He feels it is important to have an expert to review the market value analysis. Mr. Waldinger asked the Town Counsel whether it was incumbent on the Board to hire various experts to further develop the record or for those objecting to the application to provide evidence in opposition to the application.

Mr. Powell responded that SEQR regulations allow the Board to hire experts to review the draft environmental impact statement at the Applicants expense. Other provisions of the Town Code would enable the Board to retain experts to review the application when it believes there are issues raised that require special expertise to come to a proper decision. These experts would review the application, evaluate information and issues raised. The Board could then decide if further evidence or information is required to make a decision.

Mr. Guardioso expressed his concern that the scope of the RFP should be limited to a review of the Lane report and not open ended as this would just continue to increase the timeframe of the application review. He expressed his concern that the residents opposed to this application have mentioned in this meeting and previous meetings that they were going to present information and nothing has been forthcoming. This information should be presented to the Board as soon as possible in order to avoid a delay in these hearings and a decision.

Chairman Burke entertained a motion with respect to the Request for Proposal. Mr. Garrity made a motion that a Request for Proposal be sent to Appraisal Companies to review the Lane report. Mr. Cannistra seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	aye
Mr. Carpaneto	aye
Mr. Waldinger	nay
Mr. Garrity	aye
Mr. Cannistra	aye
Chairman Burke	aye

The motion was carried.

Chairman Burke noted that the RFP would be expedited and issued to obtain some guidance with the review and evaluation of the Lane report. It would be carefully worded with the help of Mr. Powell to avoid creating a new property analysis.

Mr. Michael Musso, Senior Project Engineer for Lawler, Matusky & Skelly Engineers LLP spoke to the assemblage. Mr. Musso was hired as the consultant to review the application. He gave a brief outline of the company which is an Environmental Science & Engineering Consulting firm established in 1965 and operating out of a facility in Pearl River, New York. Mr. Musso outlined the process and extent of the review that would be performed which included a technical review of the ordinance and the application, coverage maps and existing telecommunication facilities. A review of alternative locations and existing facilities, and an evaluation of the "gap" of service would be completed. A study of the radio frequency emission, structural analysis of the facility, including loads, integrity, esthetics and landscaping would be presented. Reports would be submitted which included legal case law concerns and review of all documents presented in the application.

Mr. Musso also noted that he would be presenting the Board with a request for additional information in few days. He also informed the assemblage that he was present at the Balloon Test and spoke with the technicians from Sprint and the neighbors. He also took a number of photos from various locations both on and off the property.

Chairman Burke approved Mr. Vartabedian's request that he also receive a copy of Mr. Musso's reports directly and that at this point Mr. Musso was the consultant the Board would be employing for this application.

Dr. Dennis Tobin, Town Planner for the Town of Somers spoke from the podium to add to the information provided in the two memos he sent to the Board in December. He advised the Board that he spoke to the County Planning Department and they were going to send the application information for the Sprint Site to the Westchester County Parks Department. They will provide a response to the Board.

After affirming that the Board had no more questions for the applicant, the Chairman opened the discussion to the Public.

Mr. John Lissauer of 2621 Route 35 explained that a stream does flow between his property and the site of the proposed cell tower. This stream continues to flow into the reservoir and could prove to be an issue.

Mr. Dennis A. Suskind a Town Councilman for the Town of Southampton approached the Board and spoke as a visitor to Somers. His sister-in-law is a neighbor to this proposed site. Mrs. Levine. He has had similar issues before his Board and once something like this is approved it is there forever. He would suggest that the Town put a moratorium on this type of application until a master plan can be generated for cell tower installation with consideration of present configurations and future sites.

Mr. Guardioso spoke again to reiterate that the Town had put a moratorium on this type of installation in the 1990's until the new ordinance was approved.

Mr. Himmelstein a neighbor of the site questioned the Sprint reasoning for the site based on a gap in service yet AT&T has service in this area.

Chairman Burke and Mr. Musso affirmed that the scope of the consultants report would include an inventory of all sites and coverage in the Town.

Maureen Lange of 11 Orchard Hill Road expressed her concern that Sprint might come back in the future to add to this site. She also noted that the area around the site has dangerous winding roads and cells phone use should not be allowed in the area.

Chairman Burke asked if there were any addition comments or questions from the Board or the audience. There being none, he adjourned the application to the February 15th ZBA meeting.

AT&T WIRELESS PCS, LLC**BZ12A/04-28.10-1-6.1**

Carryover. This is an application for a Special Use Permit and an Area Variance to locate a public utility wireless telecommunications facility consisting of a 105 foot stealth "flagpole" with antennas therein, together with related equipment at the base thereof. The property which is subject to this appeal is located at 243 Route 100 (Somerstown Road) and is known and designated under Samaj Investors Corp. on the Town Tax Map as Section: 28.10, Block: 1, Lot: 6.1 in an OLI Zone (Office – Light Industry). Re: Sec. Sched. 170-7.

Neil J. Alexander, attorney from Cuddy & Feder LLP appeared before the Board representing the applicant. He reviewed the material submitted in the January 12th, 2005 mailing which answered questions posed in the last meeting.

The name of the applicant is now Cingular Wireless PCS, LLC as a result of a merger of AT&T Wireless and Cingular Wireless. An investigation was made of the viability of co-locating this facility on the Crown Castle monopole at IBM. There are four other wireless carriers located on this pole and the only available location would be at 65 foot height and this does not provide the height requirement that would allow the coverage needed.

Cingular has also provided a FCC TOWAIR Determination to document that no lighting, striping, or markings are required on the monopole for safety reasons. The dimensions of the pole are 33 inches at the base and 18 inches at the apex. Cingular has no preference to the type of flag used. Also provided was a report and photographs of several flagpole wireless facilities in Westchester and Rockland Counties.

Mr. Alexander also responded to the memo generated by Dr. Tobin, Town Planner regarding the site. Cingular will revisit its proposed access to the wireless facility pursuant to these comments.

Mr. Alexander asked if the Board had hired Mr. Musso to review this application as they had for the Sprint application and if the Board had pursued the Lead Agency designation for this application.

Chairman Burke asked for a vote from the Board to generate the notification to designate the Town of Somers Zoning Board as Lead Agency for this application.

Mr. Waldinger made a motion for Lead Agency designation. Mr. Carpaneto seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	abstained
Mr. Carpaneto	aye
Mr. Waldinger	aye
Mr. Garrity	aye
Mr. Cannistra	aye
Chairman Burke	aye

The motion was passed. The Chairman asked the Zoning Board Secretary to prepare the Lead Agency package for mailing.

Chairman Burke asked for a vote from the Board to hire Mr. Mike Musso from LMS to provide consulting services for the Cingular application in a similar manner to the review and analysis provided for the Sprint application.

Mr. Carpaneto made a motion to accept Mr. Musso of LMS to provide consulting services for the Cingular application. Mr. Waldinger seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	abstained
Mr. Carpaneto	aye
Mr. Waldinger	aye
Mr. Garrity	aye
Mr. Cannistra	aye
Chairman Burke	aye

The motion was passed.

Chairman Burke asked for a motion to require Cingular to provide a \$5,000 Escrow payment to establish an account for Consulting Services.

Mr. Carpaneto made a motion to have Cingular provide a \$5, 000 Escrow payment for LMS Consulting services for this application. Mr. Garrity seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	abstained
Mr. Carpaneto	aye
Mr. Waldinger	aye
Mr. Garrity	aye
Mr. Cannistra	aye
Chairman Burke	aye

The motion was passed and the applicant was asked to send a check in that amount to the Zoning Board Secretary.

The Chairman asked the Board and the audience if there were any other questions or comments. There being none, the application was adjourned until the February 15th, 2005 meeting.

OTHER BUSINESS

Chairman Burke asked the Board members if they had received and reviewed the ZBA Meeting Minutes for December 21st, 2004. All the Board members affirmed that they had. Mr. Garrity made a motion that the minutes be approved. Mr. Santaroni seconded the motion and all members voted aye to approve the minutes. The Minutes were accepted.

There being no further business Chairman Burke adjourned the meeting.

Respectfully submitted by

Toni Siriani
ZBA Secretary

APPROVED: Zoning Board of Appeals Meeting of February 15, 2005