

TOWN OF CONCORD TOWN BOARD MEETING
Public Hearing-Special Use Permit for Telecommunications Facility

April 14, 2016
6:30 p.m.

MEETING CALLED TO ORDER BY GARY A. EPPOLITO, SUPERVISOR

PRESENT: GARY A. EPPOLITO, SUPERVISOR
JAMES M. KREZMIEN, COUNCILMAN
CLYDE M. DRAKE, COUNCILMAN
KENNETH D. ZITTEL, COUNCILMAN

EXCUSED: PAUL F. SALZLER, COUNCILMAN

ALSO PRESENT: DARLENE G. SCHWEIKERT, Town Clerk
MICHAEL F. BARONE, Town Atty
DENNIS M. DAINS, Hwy Supt
CAROLYN ROBINSON, Dog Control Officer
GEORGE DONHAUSER, ASHLEY CHAMPION, Nixon Peabody/Verizon
MIKE SUTTON, ROBB LUBIN, Site Acquisition Specialist
HANK DUWE

Supervisor Eppolito opened the Public Hearing at 6:30 p.m. regarding the Special Use Permit Application for Telecommunication Facility on the lands of Gerald M. Griffith located at 11987 Allen Road, Town of Concord. Town Clerk Schweikert had published the Notice of Public Hearing in the Springville Journal on March 27, 2016. The Notice of Public Hearing was posted on the Town's website and the sign board at the Town Hall on March 21, 2016. Neighboring property owners within 500 feet of the parcel were mailed a copy of the Public Hearing Notice on March 21, 2016. Erie County Planning and Development and MDA Engineers received a copy of the full file for their review. Both Mark Lee from Erie County and Caleb Henning from MDA Engineers submitted their responses to the application.

This matter was reviewed by the Planning Board at their meetings on February 2, 2016 and March 1, 2016.

Ms. Champion is here on behalf of Verizon Wireless and she introduced Robb Lubin, the Site Acquisition Specialist in this region. The property located at 11987 Allen Road, Town of Concord, is owned by Gerald M. Griffith. Verizon Wireless is licensed by the FCC to provide wireless telecommunication coverage in this town. Through this license Verizon Wireless is deemed a public utility very much in the same way that Niagara Mohawk or National Grid or other utility providers are. Through this designation, the zoning standard is a little bit different than it would be for a typical commercial type development. The public utility standard under New York law requires Verizon Wireless and other public utilities to show that there is a need and that the site that they have chosen is the most reasonable to fulfill that need. She displayed the propagation map and explained the current coverage and the coverage that would be realized from this proposed new site. Ms. Champion explained the site selection process starting with the Radio Frequency (RF) Engineer disseminating the search ring where there are areas where Verizon Wireless is under performing (no active coverage or there is coverage but there are more people than they can cover so not adequate capacity, calls are dropped) and where Verizon Wireless is below FCC requirements. Once the search rings are established, Mr. Lubin will approach the property owners within that search ring to see if they would be agreeable to entering into a lease arrangement with Verizon Wireless. If it is raw land, to put up a new tower and if there is an existing tall building/structure, to co-locate an antennae on that structure. Verizon Wireless always looks first to co-locate wherever possible for a lot of reasons: quicker, cheaper, easier so whenever available that is what they aim to do. In this particular search ring, the site was very narrow in the area where Verizon Wireless could adequately place a tower that would cover the gap. See Exhibit F& Exhibit G in the application packet for further details.

Ms. Champion noted that there is a special public utility standard for Verizon Wireless and other public utilities. They are not putting up a tower because they will be

attracting customers or come to the tower. The only reason that Verizon Wireless spends money on new towers and other infrastructure is because they have. If they could adequately run their system with the infrastructure that they have, and not have to spend money to put up a new site, they would do that. In order to meet the FCC requirements of their license, they are constantly being tested and scrutinized to make sure they are meeting those standards. She explained that that is why Verizon Wireless is here tonight. They were before the Planning Board twice for review and the Planning Board found that this application does meet all the requirements under the Code. One question was raised by the Planning Board was the requirement of a fall zone easement on the drawings. This is to make sure that if for any reason, not that she has ever seen it or heard of it happening, the tower were to somehow fall completely at the base, the Town requires a lease or easement area where the radius is the same height as the tower height. With the new technology the tower would just break in half and just hangs there. The proposed tower is 164 feet with a 4 foot lightning rod. Ms. Champion provided the Board with updated plans to show this proposed fall zone easement (Page 3). This easement has been worked out with the landowner. The Planning Board also mentioned that they would like to see some type of landscaping shown on the two sides that would be closer the street or adjacent property owner. She provided the Board with an updated landscaping sketch showing the landscaping. This site is set back far from the road. Ms. Champion volunteered to answer any questions.

Mr. Sutton has concerns where the proposed project is to put a 170 foot tower up directly across from the front door of his home; 600 feet off his property line. He noted that there are several studies, although US studies tend to get squelched pretty good on the possible health threats of having these cell towers near where people live, but the European studies are pretty conclusive that if for no other way of saying anything they are not sure how bad they really are. There are disturbances; there was a study in Denmark where a cell tower was put up near a dairy farm and they watched the output of the cows and in the six month period following the installation of the cell tower, the output dropped. The herd was moved to another location away from the tower and the production went back up. Moved them back to cell tower location and the production dropped again. He believes that something as obscure as milk production out of a dairy cow, he thinks we can all understand that living within a certain distance of these towers, there is an affect. We don't have the longevity to know what really happens. There are enormous questions and enormous concerns of what could happen. Mr. Sutton explained that he has spent the last 25 years turning a cow pasture into a property with an estimated value of over \$350,000 at this point and his property will be worthless once the cell tower goes up. He does not think there is a person here that will go look for an upper middle class home 500 feet away from a cell tower. They will drive by and look for something else. He feels that all the sweat equity, the investment that he and his wife put into the property is about ready to disappear. Mr. Sutton has asked for Verizon Wireless for numbers and justification on why they need this tower here. He drives up and down Genesee Road every day to work in Arcade and the only place he drops a call is at the Erie County Forestry and when he comes out of that valley, he has service again. He feels that an area of about 300 or 400 yards is the area where there are dropped calls. Verizon Wireless can't tell him how many people are affected by that, they can't tell him how many people pass through that are affected. Verizon Wireless' justification is that they need one there because they can make the propagation map more "green". He questions how much of that "green" area is inhabited, how many people are affected, how many people pass through that area that will be helped by this and how much are we going to detriment our community by putting something like this in our community. Mr. Sutton questioned what the benefit of this tower was to the town. The harm to the town is unmeasurable. As a town, the Board has to decide where the Town will go on something like this. Is there a financial benefit to have this here? Supervisor Eppolito said the tower is assessed. Mr. Sutton said the only financial benefit that he knows is that the landowner is going to get some money for leasing the land. In this case, the landowner does care because he does not live here. Anyone who lives on their property does not want it anywhere near them. He believes he has valid concerns. He believes we have a large corporation who found a need, found a willing participate and wants to be able to sell some wireless service but they can't tell him the projected availability of how much more service they even think they can sell by putting up this tower. Mr. Sutton noted that the proposed driveway is literally directly across from his driveway so if

nothing else and if the Board makes a foolish decision, in his opinion, and approves this he is going to have nothing but disruption during the whole construction phase of this project getting in and out of his driveway. He noted that if this goes up across the street from his home, he will leave the Town of Concord. He can't believe he doesn't have more neighbors sitting here at the meeting with him.

Mr. Duwe questioned if there had been any changes in the telecommunication law since the last time he was before the Board. Supervisor Eppolito noted not in the Town's standpoint. Mr. Duwe stated that when he had the issue with the Board he did not think it was ever finalized as to what the setback definitions were. He asked the Board to look at the telecommunications law where the fall down zone and the 500 foot buffer to residence. He believes that this tower impacts Mr. Sutton's house if you interpret that setback to be fall down zone plus 500 feet. Ms. Champion indicated that they did look at and scrutinize all the setback requirements and Verizon Wireless does meet them all. Ms. Champion noted that this tower setback is from where the tower is operating from not from where if the tower were to fall and laying on the ground. Mr. Duwe believes that the Town needs Code needs clarification necessary since he believes it is 500 feet from the fall zone. Ms. Champion read Section D: "The facility shall include a fall zone surrounding supporting tower, which fall zone must have a radius of at least equal to the height of such tower and any antenna(s) attached thereto. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, may not contain any structure other than those associated with the telecommunications facilities, except as further allowed in this subsection, and may not be located within the setback area established by this chapter. If the facility is attached to an existing structure, fall zone requirements may be modified by specific permission of the Town Board." Mr. Duwe stated that there is a paragraph further down from what was read that talks about the 500 foot set back; it is not clear how it is written but he believes that it does indicate that it should be from the fall zone and not from the tower. Ms. Champion indicated she did not see that; the tower is 1550 feet to the east property line, 524 feet to Genesee Road Right of Way, 1947 feet to the northeast corner and they meet the 50 foot rear building setback. There was discussion about the distances from the tower, the fall zone and Genesee Road. Mr. Sutton's home is about 125 feet from the road. Mr. Duwe asked again for clarification from the Board on this fall zone issue. If that is to be interpreted from fall down zone plus 500 feet to a residence, if Mr. Sutton's home is clear of that then there is no issue but if he is within that there is a problem. Ms. Champion indicated that they are well beyond 500 feet from the edge of the road. Councilman Krezmien indicated that he is 356 feet from the fall zone to the road and 125 feet from Genesee Road to Mr. Sutton's home, that's 481 feet and the road is about 80 feet so the location is about 561 feet. Mr. Duwe noted that it legally meets the requirement but it really doesn't make that much difference.

Mr. Donhauser asked Ms. Champion if Verizon Wireless is agreement with the other items discussed at the Planning Board: An address on Genesee Road, fence, signage. Ms. Champion said yes. Deputy Town Atty Barone asked Ms. Champion if Verizon Wireless would be putting up a bond in case this tower is ever abandoned. Ms. Champion indicated that there will be construction bonds and Removal Letters.

Supervisor Eppolito noted that Erie County submitted their 239 form and Ms. Champion has seen that report.

Mr. Duwe asked if under the Special Use Permit the Town has the authority to say that this tower will be what it is when it is installed and that there will be no changes to it. He shared the issue he had when the tower was sold to another leasing company and the resident had no control over whatever went on the tower and then the tower was rebuilt and antennae were sold. Ms. Champion indicated that if there are modifications of the plan, Verizon Wireless would have to come back to the Town.

Councilman Drake questioned the matter of having a light on the tower because of Mercy Flight and the Erie County Sheriff helicopter. Supervisor Eppolito noted that the Town would request Verizon Wireless to leave access for emergency communications on the tower. Ms. Champion noted that she did see that on the Erie County Report. Verizon Wireless is just the same as any private landowner and they can't be forced to give your property but if the Board wanted something in the approval that basically says that Verizon Wireless will be open to this. The tower will be designed to accommodate future co-locations. Supervisor Eppolito stated that we have a hospital here and a helicopter located here full time and there are concerns about a light. Mr. Sutton questioned why when he asked the Board the advantages why the Town had to have this, no one voiced their opinion on wanting to put the emergency services stuff on this tower and that is why the Board is in favor of it? Supervisor Eppolito indicated that that is not the only reason. But if the Town is going to approve the Special Use Permit, we are going to do it our way and the tower will be assessed on the tax rolls.

Supervisor Eppolito advised Ms. Champion that Verizon Wireless will be required to pay the MDA Consulting Engineers' fee. The SEQR was reviewed by the town engineer. Deputy Town Atty Barone asked Mr. Sutton if he had reviewed the Environmental Assessment Form and he has not. This has been on file with the Town Clerk's Office since the application packet was submitted. Councilman Zittel indicated that there is not a lot the town can do except for aesthetics. Mr. Sutton stated that this is a large corporation that is going to get what they want because they have the money to do it. It is going to be detriment to his family. Mr. Sutton questioned Ms. Champion if Verizon Wireless is willing to compensate him for his loss?

Supervisor Eppolito asked Ms. Champion if Verizon Wireless could mitigate the issue of the driveway coming out opposite his driveway. Could it be offset? Mr. Lubin noted that he could go back to the engineers to see. He knows they went there because of the topography of the land and the slope of the road with the hills. Ms. Champion indicated that if the Town wanted to add that as a condition, they will look into it. She indicated that the driveway probably comes out there because much the same reason as Mr. Sutton's driveway is there; it's a good spot. Mr. Sutton indicated that he has about a three second sight window pulling out of his driveway for someone to react and stop. Genesee Road is a 55 mph road. Ms. Champion indicated that the construction period is about 90 days and thereafter it is one to two trips a month in the driveway. Ms. Champion and Mr. Lubin will check into this.

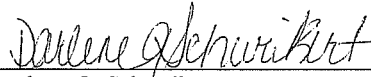
Mr. Duwe asked Ms. Champion if Verizon Wireless would offer a neighbor agreement to compensate a neighbor who is impacted by the tower. Ms. Champion stated no, absolutely not. Not something she has heard of or that Verizon Wireless would ever entertain. It's not just Verizon Wireless being a corporation, they are holding their licensing requirement issued by the federal government and just the same as any other utility provider, the reason that they don't comply with the same zoning standards is because nobody would want that telephone pole or wireless telecommunications facility or electric substation or high tension wires near them. The reality of modern day living is that we all depend and rely on those utilities.

Supervisor Eppolito asked Ms. Champion and Mr. Lubin to revisit the driveway matter. Ms. Champion indicated they could as long as the language was something like it was not financially burdensome. If it is just a matter of moving for convenience and not have to do cut and fill but she believes that they may be locked in and the County is okay with it for permit approval. It may not be idea but there may be topography concerns. Mr. Lubin noted that Verizon Wireless is very protective of their employees for safety issues as well. Supervisor Eppolito asked them to check into this driveway matter in good faith.

Mr. Duwe asked if the Town Board had any interest in dealing with the issues of contractual arrangements with adjacent property owners? Supervisor Eppolito stated no, nothing to do with that. Deputy Town Atty Barone stated, "nor should we."

There were no further questions or discussion.

Motion made by Councilman Krezmien, seconded by Councilman Zittel, to close the Public Hearing at 7:10 p.m. Councilmen Krezmien, Drake & Zittel; Supervisor Eppolito, voting aye; Councilman Salzler, excused. Carried.



Darlene G. Schweikert
Town Clerk