

## ZONING BOARD OF APPEALS

March 18, 2014

Present: Michael Dudick, Chairman, Michael Bloss, Jerry Cifor, Randy Gifford, Chris Lemire Jennifer Vucetic (7:25)

Also Present: Joel Peller, ZBA Counsel  
Steve Myers, Director, Building & Zoning

Absent: Doug Strother, Mario Fantini

Mr. Dudick called the meeting at 7:08 p.m.

### PLEDGE OF ALLEGIANCE

Mr. Dudick informed the applicants this is a seven member board with one alternate. Tonight one board member and the alternate are absent. To receive approval an application one must receive 4 yeas regardless of the number of members present. There are six members present tonight so the applicant must receive four out of six votes for approval. He explained applicants have the option to defer to a future date when there might be more members present, but there are no guarantees how many members will be present at any meeting.

### OLD BUSINESS

None

### NEW BUSINESS

1) An application from Saratoga Sign Pros, Inc. for a variance from Chapter 171 Table I. Wall sign allowance is 2 signs for a maximum of 32 square feet total. Applicant placed one

**wall sign in April 2013 with area variance of 32 sf. Applicant requests variance for second wall sign (which is allowed) needing a variance for the additional 21 square feet. Property is located at 386 Clifton Park Center Road, Clifton Park, NY 12065 (Permit#80968)**

The application was presented by Judith Frolish owner of Saratoga Sign Pros, Inc. and also present was Dave DeMarco from Saratoga National Bank.

Ms. Frolish reminded they had been before the board previously to receive a variance to place a sign on the wall of the building, facing the Northway and they are happy with that. She explained they are on Clifton Park Center Road and people are having trouble locating them from the road. She asserted some people come into their bank and think it is still Cap Com because there is no identification on the building other than small decals in the window. They would like to install a sign on the front of the building over the door. It would be 3' x 7' or 21 square feet which exceeds the allowable footage in the wall sign code. She stated she does not feel the size is any different from those of the other stores because they all have two signs, one facing the Northway and one over the door.

She explained that, at first, they did not think they would need a sign, but found the main entrance is not well identified. She discussed the freestanding sign which is about 30 feet from the street and claimed it is not very well seen from either direction and is located on a curve. She said it is partially obscured by trees and other signs. She repeated some people just drive by or think it is Cap Com because the front entrance is not identified.

Mr. Dudick commented it has been five years since Cap Com left the building. Ms. Frolish affirmed that is so, but they need a sign to identify their entrance.

Mr. Bloss asked if the freestanding sign between the building and the road is as close to the road as it could be. Ms. Frolish answered she believes it is.

Mr. Peller asked Ms. Frolish to describe the sign she is proposing.

Ms. Frolish complied and described it as the same construction as the tower sign with individually constructed letters on a bar with white LEDs in sign with an electric eye that lights it up only at night. She said just the letters light up.

Mr. Peller questioned if it is the same concept as the other sign and Ms. Frolish answered it is exactly the same.

Mr. Dudick announced the public hearing and asked for comments or questions.

Mr. Frederick Bloom, resident of Clifton Park, asked if the sign is lighted. Ms. Frolish responded that it is that each of the letters is internally lighted.

Mr. Myers stated he has no problem with it, adding it is pretty small and doesn't detract. He expressed his understanding of her issue.

Mr. Lemire commented that when Ms. Frolish was before the board in April asking for the sign variance for height on the tower, they had discussed this and she had stated that a sign on the front was not an issue. He asked what had changed since then.

Ms. Frolish answered that she was proved wrong. She said the branch manager had informed her that customers couldn't find it, and they had received phone calls asking where they are located.

Mr. Lemire asked if the traffic off the Northway had trouble finding it. Ms. Frolish responded she did not know the origin of the traffic, just that people were having trouble finding it.

Mr. Dudick commented that knowing it is on Clifton Park Center Road people still can't find it, even with the sign in front.

Mr. Bloss suggested the problem is because Clifton Park Center Road curves and turns around as it comes around the mall.

Mr. Dudick asked why she was asking for the variance if the sign they are requesting is so small. Ms. Frolish responded they have no footage left.

Mr. Lemire suggested they take the 32 square feet and divide the footage between the two signs. Ms. Frolish informed Mr. Lemire that they looked at the readable distances and explained that 9" high letters can be read from about 90'. She informed that if they divide the sign footage, they would end up with 5" letters which could not be read from the Northway.

Mr. Lemire asked about the orientation of the freestanding sign. Ms. Frolish explained how it can be viewed, volunteering the opinion that over the door makes the most sense.

Mr. Dudick asked if the wall sign would be less than 20 feet in height. Ms. Frolish said it would be within code.

Mr. Dudick asked for comments and when there were none, he made the motion to close the public hearing, seconded by Mr. Cifor. All approved. Public hearing closed.

Mr. Dudick summarized, saying this is a commercial location between the mall and interstate highway. He alluded to the unusually shaped building on an unusual angle of the road and stated he does not see it as a problem. He made the motion to approve the application as submitted. Mr. Cifor seconded the motion.

Ayes: Bloss, Gifford, Dudick, Cifor, Lemire Noes: none

Application approved as submitted.

Mrs. Vucetic joined the board at 7:25.

**2)An application from New Cingular Wireless PCS, LLC for a 1) A use variance from Section 208-9D.(3)(h) and 208-95E.(3)(a) to allow siting of a new telecommunications structure in an R-1 Zone which is not allowed 2) An area variance from Section 208-95D.(4)(a) and 208-95E.(3)(b) which does not allow new telecommunication facilities within 500 feet of an existing residential property line. Distance proposed to property line = 75', 425' variance required.**

**Property is located at 276 Moe Road, Clifton Park, NY 12065 (Permit #80967)**

Prior to the presentation, Mr. Dudick informed the application is also coming before the County Planning Board for review and the Board was not due to meet until two days from now. He stated that, should an affirmative decision be made on the application, it would be pending the County's decision, and if a negative decision was made by this board, comments from the county would not matter.

Mr. Dudick explained to the audience that the application was originally to be heard on March 4, 2014 but because the applicant had not made mailing notification to neighbors within 500' it was postponed. He asked the applicant for proof of notification.

Mr. Donald Ross (of Phillips Lytle LLP) presented the application. He informed the mailing had been done but he had not received receipts back yet.

Mr. Peller stated that an affidavit of service would be proof and asked Mr. Ross to provide that.

Mr. Dudick queried the audience as to how many people were there because of the mailing they received. Three people responded.

Mr. Ross introduced Mr. Allen Hinkley, Site Acquisition Specialist from Network Building & Consulting and a Clifton Park resident, Peter Coppola, RF engineer from AT & T.

Mr. Ross stated they wish to construct a 120 foot tower (wireless communication facility) at 276 Moe Road at the Vischer Ferry Road Fire Station which is in an R-1 zone. At the base of the tower would be a 50 x 50' leased area. The tower would have nine antennas and the purpose is to fill a gap in coverage. He displayed a picture of how the tower will appear and explained there will also be a 50 kW backup diesel powered generator.

He discussed the variances they require, the first being a use variance because the towers are not allowed in an R1 Zone. He informed that in NY State, the towers have a status of public utilities under the NY zoning law and there is a three part test to determine if the facility would be allowed in the R1 zone. He listed the parts 1) demonstrated service gap 2) would this adequately cover the gap 3) is the facility the least intrusive means of addressing the gap or is there another alternative the gap could be covered.

Mr. Ross, by means of several color coded maps (propagation maps), indicated where the firehouse is located and identified the other towers in the area, Crescent Rd (on which they are not located), Clifton Park Center, Lindsey Farms just going on line, Route 146 & 146A, Bowman Orchards and another proposed site at Vischer Ferry located on Clifton Park Water Authority tank and one on Boyak and Jameson.

He explained the color coding represents different levels of service, green & yellow which are optimal trouble free access to internet and phone coverage and red and orange which are areas which do not have optimal AT & T coverage. He explained they describe it in terms of db (decibel) levels.

He asserted the people located on the east side of Moe Road have a significant gap in coverage which was identified by the engineers. He pointed out the area from Crescent to Grooms Road and along Grooms to Lapp Road.

Mr. Lemire asked to what Exhibit he is referring in the packet and was told Exhibit 2 (F in the booklet).

Mr. Ross displayed a second color coded map which showed how they would adequately remedy the gap (Exhibit 4) and how the proposed coverage would be if they are allowed to install the tower at 120 feet.

He claimed the gap would be filled from the east side of Moe Road from Grooms along Evergreen and Barnegat Avenue and residents would have coverage of -75 dB or better. (yellow) Green is best at -65 dB which would have a full set of bars and no dropped calls.

He referred to the third prong of the test, whether the proposed facility is the least intrusive alternative to overcome the gap. He displayed an alternative analysis prepared by Mr. Hinkley. He explained engineers are told to go out and find a site that has certain characteristics and find everything in the search ring that was generated, including existing towers and parcels of land. He described it as a unique situation because almost everything in the search ring is residential properties. Mr. Hinkley had reached out to the owners of the Hackney property off Grooms Road and they were not interested after repeated visits and calls. He also discussed it with the Parkside Baptist Church but they were not interested. Mr. Ross disclosed they located a site on the county sewage pump station next to the fire station, but determined there is not enough space to erect the facility. He referred to Exhibit 4.

Mr. Lemire queried what Exhibit 3 refers to as “existing plus plan”. Mr. Ross explained that is taking into account everything that exists in the town plus everything that is planned, for example it is assuming that the Vischer Ferry site would be switched on, explaining it is a planned facility not built. He pointed out another site in the Town of Halfmoon at the junction of Rt 9 and 236 which is not turned on, and one on Grooms Road which is has a permit but has not activated yet.

Mr. Ross informed they had met with town planning staff and the town attorney to get a sense of issues that would arise and to see if there are any alternatives. He discussed suggested alternative site they considered: 1) CP town landfill (Exhibit 6 map showing it would address an area to the east of the tower and duplicate coverage provided by the tower on Bowman Orchards and not cover areas identified on the east side of Moe Rd between Crescent Rd, Lapp Rd and Grooms. He added that it is more than 2 miles from the center of the area identified as needing coverage.

He referred to Exhibit 5 which would be co-locating at the Crown Castle Tower at the junction of the Northway and exit 8. He said they determined there would be some benefit to customers in the immediate vicinity of the tower but it would not remedy the gap identified in the area of Lapp, Grooms and Crescent.

Mr. Tom McCarthy, Town Attorney was introduced.

Mr. Ross informed the Board they had prepared propagation maps for Planning and Mr. McCarthy showing what would happen if they went on line with the tower on Crescent Road and went on line with a new tower at the landfill and went on line with a new facility on Boyak Road. He asserted it would not remedy the gap on Moe Road, explaining the dB levels as green

at -75 and yellow at -85 and -95 which he maintained would not provide in-building coverage and would not be ideal.

He displayed another propagation plot map. Mr. Cifor asked if the maps were computer software generated or if they were tested in the field.

Peter Coppola answered Mr. Cifor saying the plots are from a program called ATOL, which takes into consideration the terrain, tower height and type of tower and project coverage for a propagation plot and projects based on the input. Mr. Cifor asked if it considers weather and was told it does not.

Mr. McCarthy asked if the population density is a variable, i.e. if there are more homes, would it require more signals than a less populated area.

Mr. Coppola answered it would be the same for small towns, the exception would be a place like New York City, stating they wouldn't use the same program or projection to use as a rule for Clifton Park which is a suburb area. He explained the tool is modeled for a suburban area.

Mr. McCarthy asked if it would be different in a farming area. Mr. Coppola responded they would still need -75 to work in rural areas for the phone to work indoors, and in New York City they would need a higher decibel level to penetrate the infrastructure of an urban environment.

Mr. Dudick asked Mr. Coppola if they have the means to measure the number of dropped calls and if they used that in their calculations in determining what a weak area was.

Mr. Coppola answered that was identified by complaints from their customers. He asserted they do have a program to measure specifically where calls are dropped although that was not on the map.

Mr. Lemire asked about the different types of antenna, and if a higher strength antenna would get better coverage than if you use a lower strength antenna.

Mr. Coppola answered "yes" and "no". He said it's a big puzzle.

Mr. Dudick asked for an answer, all things being equal.

Mr. Coppola responded the same antenna was used throughout to make the maps so they didn't use different antenna heights on different sites.

Mr. Lemire repeated his question asking again if they used a high powered antenna on Crown Castle tower and the Landfill and Vischer Ferry if it would give those areas coverage.

Mr. Coppola said his educated guess would be "no" that putting a higher strength antenna on Crown Castle tower would not do it. He said there is only so much they can do, explaining that they generally use an 8 or 9 foot antenna throughout this area and they can only pack so much into it before it affects the electro-characteristics.

Mr. Lemire asked if antenna strength and size is the same as frequency. Mr. Coppola said it is not. Mr. Lemire asked if A T & T's frequency is purchased by license and Verizon and other

carries have different frequencies. Mr. Coppola affirmed that is correct. He said the higher the frequency, the shorter it will propagate. He told Mr. Lemire the higher frequency you have, the more towers you need and a lower frequency would need fewer. He informed that AT & T is licensed at 850 megahertz. Mr. Lemire inquired whether other companies have different frequencies they can purchase. Mr. Coppola answered that Sprint operates at 1900 megahertz and Verizon at both 1900 megahertz and 800 megahertz and T Mobile at 1700 or 1800 megahertz. He explained they all have different blocks of licenses and the frequencies come from the federal government which came up for auction.

Mr. Peller asked the location of Crown Castle tower. Mr. Myers informed it is on the west side of the Northway in Halfmoon. Mr. Peller stated this is not a viable alternative for this board to consider. Mr. Ross said it was something AT & T was asked to consider.

Mr. Cifor asked Mr. Coppola if they are looking for a certain level of redundancy. He responded they like a certain level of overlap so when you are driving between towers you would not have a dropped call so you need a handoff spot.

Mr. Lemire stated that looking at the data and the map he concluded there is no issue with coverage in a car. Mr. Coppola said the issue is “in-building coverage”. Mr. Lemire continued to question, asking if he means you can’t talk on the phone or you can’t use the high speed internet.

Mr. Ross rephrased the question. Mr. Coppola explained that he lives in a similar area and he couldn’t use his phone in the house and he can’t go into the basement and use the phone or surf the web, or use his I Pad.

Mr. Dudick mentioned his phone service distinguishes what he is paying for as voice communication and data and he assumes they are tracking those two things separately. He asked Mr. Coppola when he is talking about the area needing the tower, if he is talking about the need for voice communication which is a utility or talking about data. He went on to question whether the need for data such as Netflix and data streaming is considered a utility need. He asked if the data stream is also considered a utility need under the Federal Communications Act. He speculated that if everyone can communicate are they looking to boost it up so people can watch movies. He asked again, if that is where the gap is, does it fall under the FCC as a utility need.

Mr. Coppola said the reason why this area was looked into was from a phone perspective.

Mr. Dudick repeated his question to Mr. Ross, asking whether providing a data stream is covered under the FCC or is it a separate issue.

Mr. Ross answered AT & T is a wireless carrier and all its services would be covered but he was not sure.

Mr. Lemire referred to page 1, paragraph 2 which said it should be -85 dB or better. He alluded to the map and pointed out the orange is -85 already and that it is a large majority of the area they are proposing to cover.

Mr. Coppola responded that the area in question is the red area. Mr. Lemire commented the only part that doesn't meet is the red area, which is a much smaller gap than portrayed on the map, and is only that part which is -95.

Mr. Peller asked if there is a margin of error on the computer program versus field testing. Mr. Coppola responded he does not know what the percentage of error is. Mr. Peller asked if they are going to do field testing. Mr. Ross said they would if the board would like them to.

Mr. Lemire asked if the customer complaints of dropped are recorded and written? Mr. Ross answered it is not in the application. He said it is covered under customer confidentiality the same as they have for their future sites but he would work with the engineers to provide that information to the best of their ability.

Mr. Dudick suggested they could redact the names of the customers. Mr. Ross said they have a program called Mark the Spot which is an app on the phone which marks dead coverage areas and identifies it to AT & T.

Mr. Lemire inquired about the number of antennas AT & T currently has in Clifton Park. Mr. Ross answered there are seven tower sites. Mr. Lemire asked how many antennas. Mr. Ross said he did not have that information as you can't assume there are 9, or 7 or 12 on each. He informed there are 7 facilities within the town, but serving the town, they have facilities in other town such as Niskayuna. Mr. Lemire asked how many AT & T customers are in Clifton Park. Mr. Ross answered that is information he would have to provide later.

Mr. McCarthy interjected, stating the applicant made the request that their future plans for towers be confidential because of the proprietary nature and because of the request, that information was not distributed to the board. Mr. Ross laughingly stated that one proposed tower plan has already been mentioned in the discussion.

Mr. Bloss asked Mr. Lemire if he is asking about the number of AT & T customers they have now or the number they hope to get one day.

Mr. Lemire suggested that if they had 1000 AT & T customers and only one lived in the red area, he doesn't know whether that is a significant gap in coverage.

Mr. Ross responded this is an open market and customers can get coverage from whomever they want and they would like to get coverage from AT & T but they can't.

Mr. Lemire asserted that raises a very good point. He asked "does the Clifton Park Zoning Board of Appeals have the obligation to create a marketplace whereby Verizon customers in this location have perfectly fine coverage and other carriers have perfectly fine coverage, but AT & T might have some gap in coverage because of their antenna or the frequency they purchased". He repeated, asking does the board have an obligation to remedy that when clearly they have not excluded AT & T from the town and there are 18 sources of coverage in the Town of Clifton Park.

Mr. Dudick asked Mr. Lemire if he needs to think about those things. Mr. Lemire answered that Mr. Ross needs to provide further information to answer the questions he posed.

Mr. Cifor queried Mr. Ross whether they had considered the aesthetics, like making a tower look like a pine tree since it is in a residential neighborhood. Mr. Ross responded they have not ruled out anything like installing a “monopine” or “Franken pine” as they are called. He informed that people in some towns like them and some people don’t. He declared they would need to do a visual impact analysis of what that would look like. He said it would take a balloon test or a photo simulation of the site asserting the site is pretty well screened by trees on three sides of four sides and the fourth side has some trees. He stated the visual impact study would show what the monopole or monopine would look like.

Mr. Cifor said he lives in the red area identified on the map and he and his wife are AT & T customers and do not even have a landline. He informed he has a phone and iPad with 4G coverage and has never had a problem, he added, never even close. He argued they have been there over four years and can use them in his basement, backyard and car. He explained that is why he asked about the ground studies because he has never had a problem, repeating that they have been so confident in their service they don’t even have a landline.

Mr. Ross admitted it is clear that they will need to provide a more sophisticated study as they are in no position to disagree with them. He added they have personal experience and the report put together by the engineer.

Mr. Dudick indicated they have not yet heard from the public and announced that if the hearing goes beyond tonight, he will not close the public hearing. He asked for comments from the public.

Mrs. Vucetic questioned whether the tower would have six carriers. Mr. Ross responded that it depends on the structural capacity of the tower and most of the monopoles are built to hold upwards of five carriers. Mrs. Vucetic asked how many his would hold. Mr. Ross answered it would hold the same, adding that they are required by code to have at least four other spots in addition to theirs.

Mrs. Vucetic asked what the additional frequency emissions will come from adding four more companies to the tower.

Mr. Ross said it is a hypothetical situation and informed that the Zoning Board is pre-empted from considering their emissions. He suggested talking about facilities by their height, because if they are more than 30 feet off the ground, they are categorically excluded from regulations so the emissions are not an issue.

Mr. Dudick asked if that is the inverse square of emissions or simply because it is not allowed to be considered by law.

Mr. Ross responded that he wanted to explain what would happen if the board was allowed to consider the emissions. Mrs. Vucetic said she would like an answer any way he can provide the information.

Mr. Dudick asked what the maximum number of antennas/load allowed is. Mr. Ross said it is both height and total emission power and referred to a bulletin at FCC.gov OET Bulletin 65 which explains how the calculation is done and how it impacts the passerby vs the worker.

Mrs. Vucetic said she has been on site to see the location. She asserted she knows there is an occupational hazard for persons working on the antenna and questioned "what about the person living close to the antenna".

Mr. Ross said his answer would be the same.

Mr. Dudick asked the people in the audience whether they wished to have a ten minute recess or to continue with the public hearing. The audience chose to continue.

Mr. Alan Neufeld, 6 Balsam Way, spoke first. He informed he had just moved to the area and lives near Mr. Cifor. He said he assumes the Zoning Board has to look at the big picture rather than one specific request. He asked if there are numerous carriers covering the area as well, don't you have to do a greater search of what the coverage is. He explained, if Verizon has better coverage than AT & T then don't we have enough towers and maybe AT & T has to locate on another tower. He asked don't we have to look at the big picture and find out where all the towers are rather than looking at one that is going to be put up in one spot.

Mr. Dudick agreed that the Town's approach from a zoning standpoint is there is no logic to having more towers than necessary. He responded to Mr. Neufeld's point saying if the other cell phone companies can have coverage with strategic placement then AT & T would want to replicate the same strategic placement to get the best coverage they can.

Mr. Lemire acknowledged that Mr. Neufeld's argument is, if AT & T has a gap in this particular location, but the other carriers don't, why the public utility isn't served without this additional tower. He asked Mr. Neufeld if that is what he meant. Mr. Neufeld confirmed it is. Mr. Lemire repeated that if AT & T has a gap, then it is their issue.

Mr. Neufeld suggested that if AT & T has a gap, it should hook onto someone else's tower and to cover that area. He indicated he is also in the red area, but has no problem, does not even have a landline, and can use his phone in the basement. When asked if he has AT & T, he responded he has Verizon.

Mr. Bloss noted that cell towers are not owned by the carriers but are independent companies that carriers rent spaces on. Mr. Dudick questioned Mr. Ross if this is the case.

Mr. Ross answered it can go either way, explaining this tower would be AT & T owned. He added it is true that elsewhere in the town are towers owned by other companies not by AT & T, Sprint, Verizon or T Mobile that carriers co-locate on. He cited as an example, the tower at Exit 8 which is owned by Crown Castle, he described as the largest tower company in the world.

Mr. Peller asked if AT & T owns the tower, does it have the right not to allow T Mobil or other carriers to locate on it.

Mr. Ross responded “no”. He explained they have to negotiate business on it, but the structure would have to be able to handle it and more than likely it would. He said AT & T gets the top.

Mr. Bloss asked if New Cingular Wireless is the same company as AT & T. Mr. Ross replied that, by a series of mergers, it became AT & T. He clarified that if they located with a Crown Castle tower, they would sign a lease as Cingular Wireless and that space would become their property.

Mr. John Cole, 54B Englemore Road, stated he lives in the red zone and has had AT & T for 7-8 years with no problem. He admitted he is now with Verizon for his business but said this is due to cost savings not service. He expressed concern over health issues and indicated he believes the jury is still out, describing it (safety) as the “pink elephant in the room.” He stated his driveway is located across from the proposed tower site. He described his property as an estate saying he pays taxes and this is not why he bought that property. He asserted he strongly opposes the tower in his neighborhood and the coverage gap he does not “buy”. He repeated he has had AT & T and he didn’t have a problem with it in his basement. He pointed out it is an aesthetic issue for the neighborhood, you will see it when you drive down Englemore Road and the new development, Carleton Estates is also affected. He repeated he opposes this and as a homeowner he will take whatever actions he can.

Mrs. Gia Lemery, 275 Moe Road, informed the board she lives directly across from the proposed site. She stated she is opposed to the tower which could be seen from her window. Her home is part of the Carlton Development and she has been there for a year and this is not why they moved to this location. She informed both she and her husband have AT & T and they have not had any issues. She questioned why the 500 foot setback code was put into place, unless there were reasons for it, and if so, then why would you try to go around the code. She asked if any other established towers have appealed the 500 foot residential property code or if this would be the first time.

Mr. Dudick said no it wasn’t the first time. Mrs. Lemery asked if this is the first time an applicant has asked for a variance of  $\frac{3}{4}$  of the distance the code defines. Mr. Dudick said he can think of at least one.

Mr. Myers corrected Mr. Dudick, suggesting he was thinking of the one in Jonesville that never made it to the board. He added this application would be the first one.

Mr. Peller asked for more details about the Jonesville tower proposal. Mr. Myers explained it was proposed to the Town but it never went to a hearing with Zoning.

Mr. Dudick then responded to Mrs. Lemery’s question saying this would be the first formal application for the Zoning Board in Clifton Park requesting a variance from the 500 foot setback. Mr. Lemery suggested it would be setting a precedent. Mr. Dudick rephrased, stating it would be challenging the law for the first time and agreed it is another way of saying it is setting a precedent.

Mrs. Lemery thanked Mrs. Vucetic for bringing up safety concerns. She expressed concern because she has a young family and a baby on the way, asking, along with aesthetics she hopes the Board will consider all these factors.

Mr. Mike Charsand, 252A Moe Road informed he is directly south of the fire department by 500-600 feet. He said he can see the fire department through the trees this time of year, but in the summer cannot see it. He mentioned the tower is 120 feet high and reminded that there will be antennas on top of that – which has not been discussed. He said it could go to 124 feet and he would see it year round from all of his windows on the North side of his home. He described purchasing his property as a beautiful piece of land in a nice area, at the end of a dirt road for peaceful living. He explained he owns two acres which has a beaver pond and asserted this would destroy the character of that area. He said they would not have purchased the property had they known a cell tower was going in or if a cell tower had been there. He avowed he thinks a cell tower completely detracts from the value and enjoyment of his property and asked that his opinion be placed in the record.

He informed he had looked at the plans and noticed that some parts of the application had not been completed. He referred to Part 2 which talks about consistency of community character and pointed out that this part is not answered, which he believes for obvious reasons. He said the tower is not compatible with R1 zoning.

Mr. Charsand referred to Mr. Ross assertion that the location is ideal for their purposes, and declared it is anything but ideal for his or his family's purposes. He said he has young children also. He admitted the law says the Board can't consider emission from the towers, but he thinks the science behind it is not well established and referred to studies in Europe where they have separated or limited where the towers can be used based on health concerns.

He referred to the three part test to be met which Mr. Ross mentioned was the way the FCC act allows a tower to go in. He listed the three parts of the test 1)service gap 2)coverage of the service gap 3)demonstrate it is the least intrusive means possible. He said based on what he has heard tonight, two of those requirements have not been met. Mentioning the "service gap" he said he does not think that has been demonstrated in any way. He commented there are people living in the red zone who get great coverage in their basements which clearly contradicts the computer modeling that was presented. He discussed part 3, which required the least intrusive means, reminding it is a public corridor and stated he believes there are alternative sites, seven other towers and possibilities for stronger antennas on other sites. He summarized that, to him, the requirements are not met.

He referred to statements made that were said to be educated guesses that a stronger antenna wouldn't provide the coverage. He reminded you can't work on educated guesses and there needs to be more science before we dismiss that other towers couldn't be used.

Mr. Fred Bloom, 272 Moe Road, (immediately adjacent to the Firehouse property) asked who owns the property that the property. Mr. Peller answered it is owned by the Fire Department, not the Town of Clifton Park. Mr. Bloom asked if there is remuneration for leasing the space to AT & T and how much that is.

Mr. Dudick responded it is not a requirement for the Board to make a determination but he guesses there is some sort of agreement.

Mr. Bloom stated he is concerned whether there is some influence by the Town or an entity of the Town to receive financial remuneration which would cause interest in pushing it through. Mr. Dudick answered that whatever the fire department receives it would be no financial benefit to him or the Town or the Board itself. Mr. Bloom said they all pay taxes to the fire department and asked if that income would offset the taxes for property owners.

Mr. Dudick said he thought it wouldn't be a great impact and referred the question to Mr. Myers. Mr. Myers replied he does not know what the fire department would receive, and, in fact, he does not know how much the Town receives for the tower they put up on town property but he thinks it is probably insignificant.

Mr. McCarthy stepped in to explain that the Town code does prioritize public facilities higher than private facilities and the applicant actually sought out public facilities.

Mr. Bloom stated it is his understanding the property was conveyed by the Carlson family, before the subdivision, for the purpose of building the fire station. He asked if there is a deed restriction. Mr. Peller answered they have not gone that far in determining that but he would guess there is nothing in the deed to prohibit the tower.

Mr. Bloom suggested they compare the 120 foot tower to the height of a telephone pole which is 40 feet. He indicated that makes the tower three times the height of a utility pole. He reminded that anyone coming down Grooms Road toward Engelmores will see that tower. Referring to people who purchased property recently in the Carlton Farms area, he asked if the developer was aware of the intent to install a tower.

Mr. Coppola replied that it has only been the past 5-6 months they have been discussing the tower. Mr. Bloom concluded that no property owner was aware of the intent to install a tower when they purchased and that he agrees with previous speakers, that it will have a negative impact on the property values of those people in the development.

Mr. Eric West, 256 Moe Road, informed he has Verizon as his carrier and he has no problem with service. He stated, regarding the location, they already have the sewer substation and the fire department there and the tower is totally out of character with the residential area and not needed based on testimony of the speakers. He expressed concern with the diesel backup generator which he said could be loud if it goes on in the middle of the night only a few hundred feet from houses. He mentioned the security fencing around the towers and asked what is to stop them in the future from putting security lights on it that are on 24 hours a day. He inquired whether there is a security bond to be posted which would ensure removal of the tower if it became obsolete or abandoned.

Mr. Coppola said there is a bond to remove it in that case.

Mr. West concluded by saying it is not appropriate for the area, that the area has already seen enough, referring to the second floor which was approved for the firehouse. He inquired how much fuel would be stored on premises for the generator.

Mr. Ross addressed the questions posed about the generator, informing there would be 211 gallons of fuel stored on site. He discussed the noise issue explaining that, with a Level 2 cover, the data says at 21 feet it would be at 68 decibels, which is comparable to a vacuum cleaner or dishwasher. He informed it would run 10 minutes a week, for testing and would be programmed to run during the day unless there was a power outage. He added the safety issue is addressed with sensors to notify them if there is a leakage. He stated the FCC and state, although not formally, have considered and strongly suggest there be backup power especially after the experience with recent storms.

Mr. Dudick asked for further comments. There were none.

Mr. Dudick asked Mr. Ross, when exploring other sites, had they considered linking on to the highest structure in Clifton Park, namely the Hilton Hotel.

Mr. Ross answered they have not considered it but they can. Mr. Dudick informed it is a five story building plus there is a whole mall complex there. Mr. Ross argued the complex is covered by another tower. Mr. Dudick answered it is on the other side of the hill and the mall property is fairly large, and there is also a plaza across the street. He suggested that the whole area is commercial and it is closer to the area they wish to cover.

Mr. Cifor suggested the Rod and Gun Club as a possible site, indicating it is only about ½ mile from there. Mr. Dudick asked Mr. Ross if they had considered that location. Mr. Ross responded they had considered it, but it borders the landfill property which is too far. Mr. Cifor asserted it is about .6 miles from there. Mr. Ross answered they can put together some plots for both scenarios and it may show positive results.

Mr. Dudick said people both on the board, and the audience know the town as well as anyone so if we can help you spot better locations that can fill your needs and the Town's then everyone walks away satisfied. Mr. Ross said they will consider whatever they want us to consider.

Mr. Dudick asked them to look at the commercial area and the Rod and Gun Club. He added he would like to know the FCC requirement as whether data transmission as well as voice and text are included and if there is a difference he would like to know the needs.

Mr. Lemire read aloud a section of Mr. Southerland's report and based on that, he concluded that the tenor of the report is to achieve data and not telephone needs.

Mr. Dudick explained they are trying to define and ask what telecommunications is now. Mr. Cifor added that there is phone and then there is entertainment.

Mr. Ross said there is a gap, and you need a breakdown of what the gap is. Mr. Dudick agreed saying they want a better definition of what that gap is.

Mr. Ross agreed the audience has brought up points to be addressed at a future meeting and some more sophisticated analysis is needed as to what the coverage gaps were in terms of customer complaints and outages. Mr. Dudick confirmed they need raw numbers and percentages of complaints.

Mr. Ross mentioned the request was made for data on the numbers of customers in the town and numbers in the gap as well the need to investigate the possibility of using stronger antennas on another site. He agreed they are all issues they need to address.

Mr. Ross said he had questions regarding bonding, etc. and was told to speak with Mr. Myers. In answer to his question on SEQRA, Mr. Dudick informed the Zoning Board is the lead agency on that.

Mr. Ross referred to the environmental assessment form and that completion of part 2 and 3 had been mentioned. Mr. Myers informed the board he had sent an e-mail to Mr. Ross regarding discrepancies in part 1 informing him of the need to correct it on the EIS statement. He asked them to draft part 2 themselves, explaining that is the way the town likes it done so they can see their side of it, and completing part 3 comes after that.

Mr. Ross acknowledged they had received the e-mail and are working on it. Mr. Myers asserted that, at this point, the application is incomplete. He informed of another requirement, the balloon test (a visual test of the site) which has not been done. He summarized that, as a result of this and the request for information they discussed tonight, the Board cannot make a decision this evening.

Mr. Dudick agreed that he is not ready to call for a decision.

Mr. Ross declared this is an optimal time up to mid-April to do the balloon test because it gives an idea of what the tower looks like with the leaves off.

Mr. Myers responded they want a visual with leaf on and leaf off and he recommended it be done as soon as possible. Mr. Dudick said they have a four week window to do the test before the trees bud.

Mr. Ross stated he needs to inform the property owners of the test so there is a process they need to set in motion. He offered to take as many pictures as the Town wants.

Mr. Dudick asked him to start now, and questioned the length of time the balloon stays up. Mr. Ross responded it is up for 4-5 hours but that is only the average time. Mr. Gifford inquired the color and size of the balloon and was told it is typically red and about 3 feet in diameter.

Mr. Dudick suggested posting the dates and time of the test on the reader board in front of the firehouse for notification of residents.

Mr. Myers stated the Planning Board has done those tests in the past and he is going to refer to them. Mr. Dudick reminded that County Zoning will meet Thursday and by the first they will know their position on the application.

Mr. Dudick asked Mr. Ross if he would waive the 62 day rule. Mr. Peller explained the purpose of waiving it, as otherwise it forces the board to make a decision on the information they have now. Mr. Dudick said if they don't waive, the Board is under a time constraint to make a decision.

Mr. Ross agreed to waive the 62 days rule. He informed that the Federal Shock Clock rule still applies with all its nuances, explaining they have 150 days from date of application.

Mr. Ross asked to be placed on the agenda for the April 1, 2014 meeting. Mr. Myers requested that, should they need to postpone, Mr. Ross notify him immediately so he can put the notice on the Town website to let the public know they will not be there.

Mr. Dudick said he assumes they will have the information they requested by then. Mr. Ross suggested the balloon test might not be done by then and they would need information from the Town where it wants pictures taken. Mr. Peller informed they will defer to the Planning Department for that information.

Mr. Bloom informed that area is in the flightpath to the airport and asked about lighting on the tower. Mr. Ross responded the tower is not high enough to require lighting, adding they have done FAA due diligence to ensure there is no issue.

The application will continue to be heard at the April 1, 2014 meeting of the Zoning Board.

Mr. Dudick made the motion to approve the minutes for the March 4, 2014 meeting. The motion was seconded by Mr. Gifford. All approved. Mr. Lemire abstained as he had not been sitting on the board at the meeting.

The next meeting is April 1, 2014.

Mr. Dudick made the motion to adjourn. The motion was seconded by Mr. Gifford. The meeting was adjourned at 9:20 pm.

Respectfully Submitted,

Susan White  
Secretary

cc: Town Clerk, Town Board, Town Attorney, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, -, ECC, Assessor, Highway