

**TOWN OF NEW HARTFORD
REGULAR PLANNING BOARD MEETING MINUTES
MONDAY, NOVEMBER 9, 2009
NEW HARTFORD PUBLIC LIBRARY**

The Regular Meeting was called to order by Chairman Jerome Donovan at 5:30 P.M. at which time the Pledge of Allegiance was recited. Board Members present were Bob Wood, Julius Fuks, Ellen Rayhill, Peggy Rotton, Brymer Humphreys, and Elisabetta DeGironimo. Also in attendance was Town Planner Kurt L. Schwenzfeier, AICP; Town Engineer John Meagher; Councilman David Reynolds, Councilwoman Christine Krupa, Police Chief Raymond Philo, and Dory Shaw, Secretary.

Board Members received a copy of the draft minutes of the regular meeting held on October 19, 2009. Motion was made by Board Member Peggy Rotton to approve these minutes as written; seconded by Board Member Brymer Humphreys. All in favor.

Chairman Update: Chairman Donovan welcomed newest Board Member Elisabetta DeGironimo. She has been serving on the Town's storm water management group for the past two years recommending policy to the Town Board. Mrs. DeGironimo will continue to serve on that committee as liaison to this Board.

GEIS/Southern Area: there has been a delay with the consultant getting back to us with comments from the Public Hearing – Chairman Donovan will keep this Board advised.

Committee Assignment Update: Brymer Humphreys has taken over the Farm Protection Committee for Peggy Rotton, and he will also serve on the Zoning Advisory Committee established by the Town Board to assist the Codes Officer on recommendations to the Town Code as it relates to zoning. Board Member Rotton is on the Sidewalk Committee.

Faxton-St. Luke's Hospital (former Bushinger Flowers building). Due to some site plan concerns, they are not on the agenda tonight; Staff will be meeting with them next week.

Jubilee Estates: This Board was updated at the last meeting - 1) this project was dormant for 18 months because of the DEC Consent Order; 2) we have three (3) new Board Members and we wanted them to be brought up-to-date on this project. Staff review materials were received late and this project is not on this evening's agenda.

The Town Board has adopted a Retainer Policy for Pre-Development Agreements. The Town Planner will be getting copies of that policy for our information.

Business Park Code Language: The Town Planner has met with the Town Clerk as relates to the language requirements to present it to the Town Board for their consideration.

On November 7, 2009 there was a presentation in the break-in-access for Route 840. Peggy Rotton and Elisabetta DeGironimo were present. The Town Planner has some copies of handouts if anyone would like them. He will get the Planning Board a power point presentation for review. This is within the purview of the Town Board at this point.

Each Board Member should have received a list of the Planning Board meeting schedule for 2010.

Public Hearing for **Upstate Cellular dba Verizon Wireless** for a proposed 100' monopole and 12' x 30' accessory structure at **8639 Seneca Turnpike (Yahnundasis Golf Club)**; Tax Map #329.008-1-1; Acreage of site location: .23+ acres; Zoning: PDREC. Legal Notice was published in the Observer Dispatch on October 30, 2009. Attorney Scott Olson of Cooper Erving & Savage, LLP, appeared before the Board representing Verizon Wireless.

Attorney Olson gave a power point of the project description: 100' tower (antennas at 96' center line height), 12' x 30' equipment shelter, 12' gravel access road/location, underground utilities; utilizing existing paved access roads to maximum extent possible, property description, aerial views, project needs, existing and proposed coverage, existing monopoles, etc. (packet is available in the Planning Board file). He explained that there are significant gaps in service along Routes 8, 12, 5, Commercial Drive, Seneca Turnpike and New Hartford Street. By placing this monopole on the Yahnundasis property, it would fill those gaps. They are required by FCC to fill these gaps. Some other facilities are located nearby but there would be an overlap. Verizon Wireless always looks for co-location sites first. However, the engineers looked but could not locate any sites that would work as well as this location. He referred to the American Tower off Route 12 and the National Grid tower – these did not work for their purposes.

Attorney Olson said they did a visual analysis and tests. They took pictures from a 3-5 mile radius to get a good perspective of what the tower would look like. He also addressed health and safety – he has a report in the record that they are in full compliance with FCC and the Telecommunications Act – they are 500 times below the initial levels.

Chairman Donovan asked if there was anyone present from the public for this application – there were a few raised hands but no one had comments.

Chairman Donovan mentioned that this Board had reviewed the file at the last meeting. He asked if there was a representative from the Yahnundasis Golf Club – Mr. Bob Curri was present. Chairman Donovan stated that an issue that remains outstanding - the one that the Codes Officer brought up – our Code requires a drop zone and the facility (100' tower) it would have to be on the property owned or leased – that is the interpretation of the Town Attorney. He referred to the Town Attorney's initial letter, the response by Attorney Olson then a subsequent recommendation from the Town Attorney on how it could be handled (these letters have been made a part of the file). Attorney Olson referred to the Town Attorney's current recommendation to get a letter from the Yahnundasis addressing this issue. Also, he referred to a letter from Costich Engineering, P.C. that addresses the structure of the tower which would be designed to collapse within a radius less than its overall structure height. It further states the tower is sited 225' from the closest property line and it can be designed to collapse within one-half the overall structure height.

Chairman Donovan stated we have one approach from our Town Attorney and another from the applicant. He is reluctant to address this without further advice from the Town Attorney.

Attorney Olson asked that possibly a condition be placed on an approval that a Building Permit cannot be issued until this drop zone issue is sufficiently addressed.

Mr. Curri was asked if the Yahnundasis Board had any objections of holding the Town harmless in the event the pole collapsed. Mr. Curri said he doesn't feel they would have any problem submitting a letter holding the Town harmless. Attorney Olson said if needed, he would add that also.

Mr. Curri was asked if he is a member of the Yahnundasis Board and is speaking for them – he answered yes. Mr. Curri said their Board is meeting next week and he will address this issue at that time.

The Board Members discussed the issue in detail. Chairman Donovan recommended requiring the Yahnundasis and the applicant to provide to the satisfaction of the Town Attorney and the Planning Board Chairman a letter within thirty (30) days holding the Town harmless in the event of a collapse of the tower. If it isn't produced within that time, it would come back before this Board. Board Member Rayhill would also like a letter from the Engineer that Attorney Olson referred to placed in the file (which is).

Board Member Fuks referred to the time frame and if acceptable, he would like to extend the time to sixty (60) days as he feels it would be more feasible to have the attorneys resolve this issue.

There being no further input, the Public Hearing closed at 6:10 P.M. by motion of Board Member Peggy Rotton; seconded by Board Member Bob Wood. All in favor.

At this time, motion was made by Board Member Bob Wood to close SEQR with a negative declaration; seconded by Board Member Julius Fuks. All in favor.

Motion was made by Board Member Peggy Rotton to grant Preliminary Site Plan Approval for Upstate Cellular, map dated July 17, 2009; revision dates of August 4 and August 21, 2009 for the 100' monopole and accessory structure at 8639 Seneca Turnpike and it be conditioned on the Yahnundasis agreeing to hold harmless the Town of New Hartford regarding the drop zone and that a letter be provided to the Town within sixty (60) days; seconded by Brymer Humphreys.

Discussion ensued. Board Member Rayhill would like to have the motion amended to include additional conditions.

Board Member Rotton was agreeable in amending the motion above as follows:

Motion was made by Board Member Peggy Rotton to **grant Preliminary Site Plan Approval** for Upstate Cellular for the 100' monopole and accessory structure at 8639 Seneca Turnpike (Yahnundasis Golf Club) on map dated July 17, 2009; revision date of August 4 and August 21, 2009 with the following conditions:

- 1) In the event of collapse, while the cell tower may fall outside the boundaries of the leased parcel, the cell tower will fall wholly within the boundaries of the property owned by the Yahnundasis;
- 2) The subject cell tower will be set back a minimum of the height of the tower from the Yahnundasis property lines and from any existing building or structure;
- 3) The Yahnundasis agrees to hold harmless, defend and indemnify the Town from any and all claims, actions, suits, proceedings, costs, expenses, judgments, damages and liabilities arising from, or in connection with, the construction, maintenance, collapse or failure of the subject cell tower and that a letter be provided to the Town within sixty (60) days;

Motion seconded by Board Member Brymer Humphreys. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Elisabetta DeGironimo – yes
Board Member Brymer Humphreys – yes	

Motion approved by a vote of 7 – 0.

Motion was made by Board Member Bob Wood to **grant Final Site Plan Approval** with all conditions as listed above; seconded by Board Member Brymer Humphreys. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Elisabetta DeGironimo – yes
Board Member Brymer Humphreys – yes	

Motion **approved** by a vote of 7 – 0.

Recommendation to Town Board for **Zone Text Amendment/Non-conforming Use of Buildings**. Introduced to the Planning Board on 9/29/09 by Codes Officer Joseph Booth. Referral to Town Board at this time under SEQRA. (Local Law G of 2009).

Chairman Donovan stated that the Town Board has this information, and they have forwarded it to us for a formal recommendation as required by law.

The Board Members are in agreement with the proposed action concerning this ZTA. Motion was made by Board Member Peggy Rotton to recommend to the Town Board the adoption of Local Law G of 2009 for the Zone Text Amendment for Non-conforming Use of Buildings; seconded by Board Member Ellen Rayhill. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Elisabetta DeGironimo – yes
Board Member Brymer Humphreys – yes	

Motion **approved** by a vote of 7 – 0.

Secretary Dory Shaw will notify the Town Clerk of this recommendation.

Valmanvar Corporation: Preliminary/Final review of minor 3-lot subdivision on **Pebble Creek Lane, New Hartford**. Tax Map #340.003-1-64; Zoning: Low Density Residential. Conceptual Approval granted 10/19/09. Mr. Jerry Back appeared before the Board.

Staff reviewed the map dated 4/24/09 and the issues were to change the lot numbers for clarification, which has been completed; the sewer credits previously held up Mr. Back from bringing this to the Board, but this has been resolved.

Board Member Peggy Rotton asked whether the lots are big enough to handle storm water as she went to the site and there was standing water on Pebble Creek. Town Engineer John Meagher feels they are because the lots are large enough and sloped. He asked when Board Member Rotton was at the site as a new catch basin was installed in this area last week. Chairman Donovan stated the lots are in compliance and when someone comes in to place a home on the lots, it will be subject to review by the Codes Officer and Town Engineer. The applicant still needs to comply with the storm water regulations as it relates to post and pre-development runoff.

Town Planner Schwenzfeier said this was a major subdivision at one time and retention exists.

At this time, motion was made by Board Member Bob Wood to close SEQR; seconded by Board Member Julius Fuks. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Brymer Humphreys – yes

Board Member Elisabetta DeGironimo abstained from voting.

Motion **approved** by a vote of 6– 0 with one abstention.

Motion was made by Board Member Brymer Humphreys to **grant Preliminary/Final Subdivision approval** of the three-lot subdivision for Valmanvar of map dated 4/24/09 and based on the recommendation of Town Engineer John Meagher that he accepted revised stamped date of November 9, 2009 showing the change in lot numbers; seconded by Board Member Bob Wood. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Brymer Humphreys – yes

Board Member Elisabetta DeGironimo abstained from voting.

Motion **approved** by a vote of 6– 0 with one abstention.

St. Elizabeth Hospital, 4401 Middle Settlement Road, New Hartford (former Hartford Insurance building). Conceptual/Preliminary/Final Site Plan Review for renovations and reconfiguration of driveway. Tax Map #328.000-2-38; Total lot Size: 40 Acres; Zoning: Planned Development Institutional. Mr. Robert Scholefield of St. Elizabeth Hospital and Mr. Andy Alesia of Alesia & Crewell Architects, appeared before the Board.

The Town Planner stated that concern was expressed about the removal of trees associated with the realignment of the parking lot. Since that time, the applicant has submitted a new planting plan for review. This includes an additional eight (8) Austrian Pine trees, which will be 6-7' in height.

Mr. Scholefield said that Murphy Excavating will be doing the work at the site and they will try to save trees on the site also.

Motion was made by Board member Peggy Rotton to close SEQR; seconded by Board Member Ellen Rayhill. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Elisabetta DeGironimo – yes
Board Member Brymer Humphreys – yes	

Motion **approved** by a vote of 7 – 0.

Motion was made by Board Member Peggy Rotton to grant **Preliminary/Final Site Plan approval St. Elizabeth Hospital, 4401 Middle Settlement Road** for the site plan dated September 25, 2009 and the planting plan dated November 6, 2009; seconded by Board Member Bob Wood. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Elisabetta DeGironimo – yes
Board Member Brymer Humphreys – yes	

Motion **approved** by a vote of 7 – 0.

Sitrin Health Care, Kavod Road; Site Plan Review of Maintenance Facility, Sitrin Lane. Tax Map #340.000-2-21.2; Zoning: PDI. Mr. Rick Wilson, CEO, appeared before the Board.

Chairman Donovan stated this facility is on their main campus. The Planning Board reviewed this several years ago as part of their Master Plan. Question is, are we going to do anything with SEQR. We can do it as an uncoordinated review – the entire site plan went out for SEQR originally. It is up to the Board if they want it sent out for review again.

Mr. Richard Wilson noted for the record that this facility is on Sitrin Lane not Kavod Road. This is a 60' storage building. Chairman Donovan asked how many vehicles would be in there – Mr. Wilson is not sure. He said the dimensions of the building is 60' x 60' and constructed of metal with a poured slab. The color scheme will blend in with their campus. Town Staff requested detailed drawings and they met with Staff. He would like to get preliminary and final approval tonight.

Town Planner Schwenzfeier said Staff reviewed a salt storage building, which is 20' x 20'.

Chairman Donovan referred to storm water runoff from the salt storage shed and how it was addressed. Town Engineer John Meagher said he felt there were no concerns as it is set back quite a distance. Chairman Donovan also referred to an oil recovery separator. It is located to the north of the building toward Sitrin Lane. One of the questions came up about fire safety associated with the oil and grease separator. He thought about checking with the Fire Department regarding any problems that occur with this. Mr. Wilson said he had two (2) separate meetings and it has never been brought up. He said many fire members came up last week to tour the whole site and nothing was brought up as an issue. That is on there as a Code requirement and these are constructed as such. It is all underground and connected to a sanitary sewer.

Board Member DeGironimo asked what would be used to stabilize the bank. She feels it is an unstable situation once the pad is installed. She also feels the contours will be changed – pushing the contours up behind it. Also, she doesn't see where the runoff will go around the building – there isn't much relief to the back of the salt storage building. Board Member DeGironimo asked if they were hydro seeding the bank? Mr. Wilson said it is all wooded – they want to screen the building as much as they can.

Board Member Fuks felt both he and Board Member DeGironimo have concerns about the contours and storm water heading toward the salt storage shed. He is more worried

about the stabilizing of the slope but feels that can be taken care of from a construction detail. Mr. Wilson said there is a swale area that collects water now.

Board Member DeGironimo said her concern is about the back of the salt storage shed as there is 4' that we don't know how it would go around the salt storage shed and she doesn't know how it will flow around it.

Discussion ensued regarding this issue. Chairman Donovan asked the Town Engineer about the contours and storm water runoff concerns as it relates to the salt storage shed. These issues will be addressed in terms of storm water and the slope by the Town Planner and Town Engineer.

At this time, motion was made by Board Member Julius Fuks to **grant Preliminary/Final Site Plan Approval** for the Sitrin Maintenance Facility of maps dated 10/7/09 by Boulder Consultants; seconded by Board Member Peggy Rotton. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Brymer Humphreys – yes

Board Member Elisabetta DeGironimo abstained from voting.

Motion **approved** by a vote of 6– 0 with one abstention.

Michael McCarthy, 2-lot minor subdivision, Longworth Acres/Tibbitts Road, New Hartford (received setback Area Variance from the Zoning Board of Appeals on 10/26/09). Tax Map #339.000-2-21.11; Zoning: Residential/Agricultural 2. Mr. Earl McCarthy appeared before the Board for his son.

Chairman Donovan spoke with Codes Officer Joseph Booth, who made a recommendation to the Zoning Board of Appeals for approval of the Area Variance, and also recommends to this Board the approval of the subdivision as presented.

Town Planner Schwenzfeier explained the average setback as it relates to continuity – it keeps from looking like a zig zag effect – houses are more uniform. Chairman Donovan asked if there is anything in the Code from moving forward on this – the Town Planner said no. It protects the McCarthy's for whatever lot he builds on first. He is just transferring the remainder of Lot 2 to Lot 1 so he has the entire 400' in width. One lot is 21 acres and the other is 12.6 acres.

Chairman Donovan referred back to the major subdivision in this area and gave a history of it for the new Board Members. The private drives will never be dedicated to the Town which was stated at the time of approval. Mr. Earl McCarthy said there is a Homeowners Association for this development.

Motion was made by Board Member Peggy Rotton to **grant Preliminary/Final Subdivision Approval** for this two-lot minor subdivision on made dated August 28, 2009; seconded by Board Member Brymer Humphreys. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Brymer Humphreys – yes

Board Member Elisabetta DeGironimo abstained from voting.

Motion **approved** by a vote of 6– 0 with one abstention.

Carbone Auto Group (Temporary Indoor Showroom) at Sangertown Square Mall. Preliminary/Final Site Plan Review. Tax Map #328.008-1-12.1; Zoning: Retail Business 1. This is a type 2 action under SEQR – unlisted facility. Mr. Darrin Houseman, Sangertown Square Mall, appeared before the Board.

Mr. Houseman said this is a temporary indoor showroom to be located in the former Circuit City building from approximately November 15, 2009 to April 30, 2010. There will be no sales done at this site, simply display. They plan on having about seventy (70) cars – no batteries will be connected – just a couple of gallons of gas to move the cars around.

Motion was made by Board Member Peggy Rotton to **grant Preliminary/Final Site Plan Approval** for this indoor showroom from approximately November 15, 2009 to April 30, 2010; and any Building Permits be applied within one (1) year of approval date; seconded by Board Member Julius Fuks. Vote taken:

Chairman Jerome Donovan – yes	Board Member Bob Wood – yes
Board Member Ellen Rayhill – yes	Board Member Peggy Rotton – yes
Board Member Julius Fuks – yes	Board Member Elisabetta DeGironimo – yes
Board Member Brymer Humphreys – yes	

Motion **approved** by a vote of 7 – 0.

Planning Board appointments. Chairman Donovan proposed a Resolution for discussion and perhaps action about Village appointment mandates and asking the Town Board to revisit the mandatory Village appointment requirement in Town Code 23-4. He said the Town Board changed the Code thirteen (13) years ago predicated on the Villages abolishing their Planning Board and that did not happen. He has no objection to a Village resident serving on the Planning Board but feels we are constrained from recommending the most qualified residents in the Town to serve on the Board. He feels this is a simple request.

Board Member Rotton expressed her views of what transpired a few years ago. She feels there should be some geographic consideration on appointments/representation. – at least one (1) person from each of the four (4) wards.

Chairman Donovan feels this Board has done a good job with filling vacancies in the last six (6) months and is happy with the existing Board Members. His request is just to revisit the process. Discussion ensued about moving forward with Chairman Donovan's proposal, and the wording.

Board Member Fuks stated the Chairman's recommendation gives us an opportunity to see what exists and if someone qualified is capable from the Village, he would hope the Board would recommend it. If no one meets the qualifications by nature of their house address, it could be looked into further. This request by the Chairman is just to revisit the matter. Board Member Humphreys feels the same - the more options we have the better we are.

Based on the proposed Resolution of Chairman Donovan, motion was made Board Member Brymer Humphreys to request the Town Board to review the mandatory Village appointment requirement contained in Town Code 23-4 as existing restrictions and constraints that may inhibit or limit the Planning Board's or the Town Board's selection of the best qualified candidate to fill a Planning Board vacancy; seconded by Board Member Julius Fuks. Vote taken:

Chairman Donovan – yes	Board Member Brymer Humphreys – yes
Board Member Julius Fuks – yes	Board Member Ellen Rayhill – no
Board Member Bob Wood – no	Board Member Peggy Rotton – no
Board Member Elisabetth DeGironimo - no	

Motion **was not approved** by a vote of 4 – 3.

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There being no further business, the meeting adjourned at 7:50 P.M.

Respectfully submitted,

Dolores Shaw, Secretary
Planning Board

dbS