

**PLANNING BOARD MINUTES
MONDAY, MARCH 11, 2013
BUTLER MEMORIAL HALL
48 GENESEE STREET, NEW HARTFORD, NY
RODGER REYNOLDS MEETING ROOM
5:30 P.M.**

The Regular Meeting was called to order by Chairman Elis DeLia at 5:30 P.M. at which time the Pledge of Allegiance was recited. In attendance were Board Members Peggy Rotton, G. Brymer Humphreys, Julius Fuks, Jr., William Morris II, Ellen Rayhill and Heather Mowat. Also in attendance: Councilman David Reynolds, Town Attorney Herbert Cully, Codes Officer Joseph Booth, Highway Superintendent Rick Sherman, and Recording Secretary Dory Shaw.

Draft minutes of the February 11, 2013 meeting were received by each Board Member. Motion was made by Board Member Bill Morris to approve these minutes; seconded by Board Member Peggy Rotton. All in attendance in favor, vote 7– 0.

Senpike Mall Company/**Sangertown Square Mall**, Route 5 & 5A. 3-lot minor subdivision on Commercial Drive, New Hartford, New York. Tax Map #328.008-1-12.2; Zoning: Retail Business 1. Thomas A. Shepardson, Esq., of White, Osterman & Hanna, LLP, and Mr. Scott Dumas, General Manager-Pyramid Management Group, appeared before the Board.

Attorney Shepardson referred to the updated subdivision map dated March 6, 2013. The only change is for it to read Senpike Mall Company. He explained that one lot known as OG will be transferred to Olive Garden. Lots A & B will not be developed at this time – there are no plans. Responses have been received from Oneida County Planning 239 with no significant impacts; NYSDOT was received with comments regarding a drainage easement owned by them on Lot A. The applicant is aware of this. Attorney Shepardson explained that this proposed subdivision is a housekeeping action. Board Member Mowat asked him to explain – to clear matters with the tax assessor’s office. Attorney Cully stated this is a tax parcel consistent without contiguous numbers – this will straighten it out. Also, he compared the lot descriptions with the map and it is complete.

Board Member Rotton asked about McDonald’s across the street from the Seneca Turnpike parcel as she is concerned about storm water. Chairman DeLia stated that when the Sangertown parcel develops, it can be addressed at that time.

Motion was made by Board Member Bill Morris to close SEQR with a negative declaration; seconded by Board Member Heather Mowat. All in favor. Motion made by Board Member Bill Morris to **grant Preliminary and Final Minor Subdivision approval for Senpike Mall Company/Sangertown Square Mall** with map dated March 6, 2013; seconded by Board Member Heather Mowat. All in favor.

Recommendation to Town Board from Planning Board regarding Town Code Amendment Chapter 107B – **Telecommunication Facilities.**

Town Attorney Cully explained that the Town Board was approached by some residents who live near the water tower on Sanger Avenue and who are concerned with the possibility of a cell tower being on this water tower. Attorney Cully reviewed Section 107B5 of the Town's Zoning Ordinance.

Attorney Cully explained what our Ordinance states for someone to co-locate a cell tower on an existing tower in a residential district – all that is needed is a Building Permit. He was asked by the Town Board to look into this – he talked with the Association of Town's counsel and also reviewed a number of Ordinances and it became apparent no one else has this type of provision to simply co-locate with a Building Permit without coming to a Planning Board, Site Plan Review, or Special Use Permit. The Town Board suggested amending our Ordinance and get the public's response. Attorney Cully provided the criteria for this Board's review. In talking with the State and the Association of Towns, they indicated they have never seen a Zoning Ordinance where someone could get a Building Permit for a cell tower without reviewing the area, distance from residences, and prove it is needed. The Telecommunications Act of 1996 encourages co-location – that Ordinance says local municipalities can regulate it.

Attorney Cully referred to the Sanger Avenue water tank/tower and a proposed cell tower and he referred to the Local Law Introductory of 2013. This proposal is to update Chapter 107B5. The Town Board has placed a moratorium and is seeking the Planning Board's recommendation.

At this time, Chairman Elis DeLia stated that he is Chairman of the Mohawk Valley Water Authority – he will not be voting on this application.

Board Member Mowat to Town Attorney Cully: in working with the Association of Towns, was this a template from other towns – Attorney Cully said the Town of DeWitt but they don't have that section on the new regulation and no one could tell him why it wasn't put in. His thought is no one anticipated a tower in a residential area and this is a highly residential area. A proposal is for panels on the existing water tank, not a tower. Board Member Humphreys asked if it would go above the existing tank – Attorney Cully doesn't know.

Chairman DeLia asked Attorney Cully – are you suggesting we don't have anything in the Town. Attorney Cully referred to a couple of locations.

Board Member Fuks asked who would be looking at the structural analysis. It was stated this would come under a Special Use Permit – drawings will be required and the Town Engineer to review it. This would all start with a Special Use Permit. DeWitt uses the Zoning Board for their reviews.

Board Member Humphreys suggested that in future reviews for recommendation, if an amendment can have the original wording with the new wording, that would help our review.

Board Member Mowat asked if a petition was filed or did we receive correspondence. Attorney Cully said it came up in a public presentation session at the Town Board meeting. Mr. Jamie Zalewski had raised the issue. The Town Board felt it was something to look into.

At this time, Attorney Cully addressed Mr. Zalewski who was present. He asked him if he had a chance to look at the proposed legislation. Mr. Zalewski said he is a resident and the water tower is in his backyard - he referred to the present Ordinance. To him it was in the Town's best interest to have some overview in these matters regarding safety, fall zone and aesthetics. He feels the Town and the Town Attorney have done a good job and this looks like a reasonable way to look at this issue. Mr. Zalewski asked about a commercial application – should there still be a review. Attorney Cully said there is a review.

Chairman DeLia referred to the proposal in front of the Board now and a recommendation to the Town Board.

Board Member Humphreys asked about an amateur radio operator. Attorney Cully said he did not have that section.

Board Member Fuks asked at any point in time throughout the Town does it talk about public safety and need. Solely on the desire of the telecommunication applicant they don't discuss public safety or need. There are other ways to provide communication unless it is deemed necessary by emergency personnel. Attorney Cully said that is where they have to demonstrate the need. The review is through the Planning Board. Board Member Fuks feels some level of proof for public safety or need should be demonstrated. Attorney Cully said he can reword it with language about possible need and he will suggest it to the Town Board to make that amendment.

Discussion ensued about areas of the Town with limited cell service.

Chairman DeLia asked how does it play with the already existing regulations. Attorney Cully said this only affects Section A residential. The B section will remain intact. They have to come before this Board for a Special Use Permit before they can construct. In addition to SEQR, a visual and an addendum to a full Environmental Assessment Form. If it is residential for co-location, this has to go through the process. Commercial already has to go through the process. Residential is the only one where they don't have to go through the process at this time and he doesn't know why.

Chairman DeLia asked why there is no height maximum. Attorney Cully said it is not in our Ordinance.

Board Member Rotton referred to some types of cell towers.

Board Member Mowat asked if the Town Attorney has heard of anyone who is against this. Attorney Cully doesn't know if anyone was not in favor. Chairman DeLia said the Town Board holds the Public Hearing. Councilman David Reynolds addressed the Board and said the Public Hearing will be at the end of the month. He said the neighbors are in favor of the amendment.

Board Member Fuks asked if he has a conflict because he is a neighbor to the water tank. Attorney Cully asked him if he could be impartial – Board Member Fuks said yes.

Motion made by Board Member Brymer Humphreys to recommend to the Town Board from the Planning Board approval of the Town Code Amendment to Chapter 107B - Telecommunication

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Facilities, based on review of the five (5) criteria (report by Planning Board), and that the Town Board consider adding a stipulation of public need; seconded by Board Member Peggy Rotton. Vote taken:

Chairman Elis DeLia – abstained
Board Member Peggy Rotton – yes
Board Member Heather Mowat – yes
Board Member Bill Morris – yes

Board Member Brymer Humphreys – yes
Board Member Julius Fuks, Jr. – yes
Board Member Ellen Rayhill – yes

Motion was carried by a vote of 6 – 0. Chairman Elis DeLia abstained.

Secretary Dory Shaw will notify the Town Board.

There being no further business, the meeting adjourned at approximately 6:10 P.M.

Respectfully submitted,

Dolores Shaw
Secretary/Planning Board

dbS