

**MONTGOMERY TOWNSHIP ZONING BOARD
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY
SPECIAL MEETING
DECEMBER 13, 2016**

MINUTES

Chairman DeRochi called the meeting to order at 7:38 p.m. and read the opening statement which affirmed that adequate notice of the meeting had been posted and sent to the officially designated newspapers.

BOARD MEMBERS PRESENT: Chairman DeRochi; Vice Chairman O'Brien; Mr. Fedun; Mr. Post; Mr. Thompson; Mr. Vecchione; Mr. Kristjanson, Alternate #1; Mr. Wu, Alternate #3

ALSO PRESENT: Mr. Drollas, Board Attorney; Ms. Goldman, Board Planner; Mr. Cline, Board Engineer; Dr. Eisenstein, RF Engineer; Mr. Palmer, Zoning Officer; Mark Conforti, Township Committee Liaison

I. SALUTE TO THE FLAG

II. APPLICATIONS

Case BA-05-14 **Applicant: New York SMSA Limited Partnership d/b/a Verizon Wireless**
Block 8001 Lot 1
Use Variance and Site Plan
Expiration Date – 12/31/16
Affidavit of Notification and Publication Required and Previously Found to Be In Order

Richard Stanzione, Esquire represented the applicant.

Dr. Eisenstein said the Planner's memo had some open questions regarding the signal strength that the applicant testified to. The applicant used the appropriate measures for signal strength to determine whether or not there is a gap. When the applicant talks about the signal strength from the site it does not mean that they are increasing the strength they are broadcasting. The amount they broadcast is fixed. What signal strength indicates is the distance from the tower that a person gets a usable signal. When a cell phone network is designed what is in mind is the handheld device. Signal strength from the tower is used as a proxy measurement for whether or not the handheld device will be able to communicate back to the tower. The applicant has to provide service for every handheld device which is approved by the FCC. Sophisticated receiving antennas are put on the tower so the very low signal coming out of the handheld can be read by the tower and the handheld has sophisticated computing equipment in it that can do the signal processing to receive the very weak signal coming from the tower. When he said he thought there was a gap, that implies that, at the power level they had which is the acceptable design power level, they don't have, beyond that, an adequate signal strength for design of the network.

Chairman DeRochi said there have been repeated questions from members of the public about the nature of the obligation of Verizon to provide this service. Dr. Eisenstein said the issue is the difference between design versus operation. The propagation plots are done at the median level of signal strength since the amount of signal you get from a wireless system is random. This means that 50% of the time you will get better coverage than what is shown and 50% worse. When they put the system in they have to design for the worse conditions so there will be enough margin for the phone to work as expected. The issue is not whether a person can make a phone call in an area that they designated as a dead area. The chances are 50-50 that a call can be made. The issue is a question of where you design and they have to design in such a way that there is enough room so under bad conditions it will still work. The standard is the service has to be substantially better than the level of mediocre. It is his opinion that the signal level the applicant shows achieves that level.

Vice Chairman O'Brien noted that it has come up in testimony that the tower could be lower and have the same net effect. Dr. Eisenstein testified that during the drive test at different heights there was not much of a difference. Mr. Stanzione said the drive tests were done at 100', 110' and 120'. Mr. Stanzione summarized the transcript where Mr. Villecco testified between the 120' and 110' it wasn't so much a difference in distance as it was the coverage of the units as shown on Exhibit A-9 and the loss in the number of dwellings which in effect also translates to roadways. Dr. Eisenstein said it was his opinion that the difference was relatively de minimis and they wouldn't lose much at 110'. It would be reasonable to impose a condition to ameliorate the effects of the tower to a height of 110'.

Mr. Vecchione asked how high most towers are in the area. Dr. Eisenstein said they are about 110'. In this area the height should not be much under 90 feet because of the trees which would start to block the signal. There is no advantage to them of going much higher in this area. As they go higher there will be interference with other towers that are in the area. He sees a range of between 110' to 120' to 130' in this general area. He recalled the tests showed when the tower went down to 100' there was a substantial drop off in coverage.

Mr. Kristjanson asked if the antenna height is at 110'. Dr. Eisenstein said that is usually the center of the antenna at that height. The overall height of the tower is about 2' above the height of the antenna which are about 4' high.

Chairman DeRochi recalled the tree version would be 118' as opposed to 135 with the silo.

Mr. Vecchione asked if the height, as you go up or down, could be affected by who else will collocate on the tower. Dr. Eisenstein testified that if a collocator wants to go on to the site they would have to maintain the same level of stealth so the question would be whether or not 100 feet works for them. If they chose to, there is a provision in the Middle Class Tax Relief Act, which says that a collocator can come in without further review by the Board and add up to 20' to the height of the antenna. There are some limits on ground equipment that they would have to satisfy but they do not have to come back to the Board.

Mr. Stanzone said that Verizon Wireless as the owner of the facility would have to agree to that collocation and increase in height. Verizon would accept a condition by the Board that it not be increased in height. As the original applicant, Verizon Wireless can impose their own condition for that facility.

Dr. Eisenstein said if another carrier says they need 110' or 120' they would have to make an application for a new facility and it would be difficult for the Board to deny their application.

Chairman DeRochi opened the meeting to the public to question Dr. Eisenstein.

Candy Willis remains under oath. Ms. Willis asked Dr. Eisenstein if the FCC document she had was the basis for his testimony regarding the increase in height. Dr. Eisenstein read from page 2 of the FCC document called Tower and Antenna Siting - Section 14:55A of the Communications Act which states in part that a state or local government may not deny and shall approve any eligible facility request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

Jan Ten Broeke said what is extremely objectionable is the location that is close to the scenic historic corridor. He asked about the launch of satellites to make broadband communication possible over the whole globe. Dr. Eisenstein said that has happened and it failed. The maintenance of the satellites is very expensive.

The public question portion of the meeting was closed and the meeting was opened to public comments.

Steve Virostko, 121 Green Avenue, was sworn in. Mr. Virostko is a lifelong resident of the Township. He spoke of the many changes that have taken place in town and in favor of the application.

Judy Peters, 43 Dead Tree Run Road, remains under oath. River Road is the Township's oldest neighborhood. There has been testimony presented on how important it is to preserve this area. There has been very little presented to address the noted adverse effect on historic resources. There really were no mitigation suggestions put forth by Verizon. The only mitigation answer for every question has been that they believed a tall stealth silo would be compatible with existing farmlands. A 135 foot concrete structure has no place in a landscape of 18th and early 19th Century farms where silos were 40 to 50 feet at most. Preservation guidelines exist for new construction in or near historic districts and they should be compatible with historic materials and features to protect the integrity of property and its environment. A 135 foot silo and a 120-125 foot tree or monopole would be incompatible. The location the Board suggested in the T-Mobile application that was denied was further west, a little higher in elevation and outside the historic district and the historic byway. There are far better sites for good cell coverage. At past meetings there were suggestions that the 106 review process can play out after Board approval. The next step would be negotiation on mitigation only after approval is granted. Since 2014 the Board has not seen that Verizon was willing to mitigate any of the important historic resource issues, most notably location. She asked the Board to deny the application as it is presented.

Frank Drift, 361 Sunset Road, was sworn in. Over the years wireless antenna facilities have been constructed. When they were proposed residents fought it, now no one notices them. Cell service is important in the case of an emergency.

Brad Fay, 1135 Canal Road, was sworn in. For many of his years here he lived in a historic style home built in 1835 on the west side of the river. He has been a customer of Verizon and is frustrated by the lack of coverage. Better cell coverage is needed but the proposal needs to address the kind of historic and scenic considerations of this important area. The silo or tree would be a great harm to the viewshed of this preserved area. A terrible precedent would be set that could lead to more towers. New Jersey has promoted a statewide effort to foster preservation and promote tourism but it must fall to individual municipalities to preserve assets that matter greatly to the region. This area is famous for being a crossroads used multiple times by the Continental Army. He hopes Verizon might collaboratively work with communities on either side of the town line to find a suitable location.

Leonard Dunbar, 16 Staats Farm Road, was sworn in. Mr. Dunbar fully supports the construction of the tower. A cell tower provides cell service during emergencies, during long-term and short-term power outages and for routine communications. He had an article about cord cutting spreading broadband but did not leave it with the Board.

Barbara Ten Broeke was previously sworn in. Ms. Ten Broeke distributed the Montgomery resolution supporting the corridor management plan and the scenic byway which was marked as Exhibit O-4. Millstone Valley Scenic Byway has been designated as one of the only 42 national scenic byways by the Federal Highway Association (FHA). It was recognized by the FHA for its historical, recreational and natural qualities. She asked the Board not to let the cell tower application at this location advance any further.

John Thallemer, President of the Griggstown Historical Society, was sworn in. They worked hard to preserve the area and do not want the cell tower. He lives on Canal Road and does not have a problem with cell communication. There are other ways to resolve the cell phone issue that is less intrusive.

David Vair, 146 Staats Farm Road, remains under oath. He asked if it was possible to have a small tower for emergencies. Chairman DeRochi noted there has been testimony that shorter towers are not going to provide the coverage that is required.

Matt Rosenthal, 119 Woodview Drive, was sworn in. He does not have any cellphone issues where he lives. The towers are noticeable. As part of the Green Avenue cell tower application, he was one of a group that hired a professional to do a study on home values and the study found that homes near cell towers did sell for less money. If you open the door for one tower you might open the door to something the Township really doesn't want.

Larry Koplik, 48 Harlingen Road, was sworn in. Mr. Koplik is the Chair of the Shade Tree Committee. He is concerned about the aesthetics of the township. The proposal requires the removal of trees. The fake tree is better than the silo but they don't look like real trees. Verizon may have an obligation to maintain them but it might not necessarily happen. Mr. Koplik is also a member of the Van Harlingen Historical Society. He referenced a transcript of an interview with Donald Staats in 1995, who put the property into farmland so houses couldn't be built on it. He loved farming and would be appalled to think this would be on the property.

Donald Matthews, 28 Rutland Road, was previously sworn. Mr. Matthews supported the people who spoke in favor of the application to get better service. River Road is approximately four miles of serenity and beauty that cannot be replaced once it is destroyed. The township developed the Landmark Commission to protect the historic homes, values and viewsheds. The Board's professional said that any tower of this magnitude would impact the historic district. The intrusion into the historic district means giving up more of our heritage.

June Staats, 644 Millstone River Road, was previously sworn. She asked if anyone checked to see if it was feasible to put it on the lot owned by the Township north of Staats Farm Road. Chairman DeRochi informed her it was looked into and was at a lower elevation than the proposed location.

Sarah Roberts, 48 Harlingen Road, was sworn in. Ms. Roberts is a member of the Environmental Commission who issued a review letter on the application. The Environmental Commission does not think it is an appropriate location so close to the many historic designated districts and sites and the scenic byway. It is also an environmentally valuable area.

The Board took a five minute recess.

Lloyd States was previously sworn. Mr. Staats discussed the history of his property.

Candy Willis was previously sworn in. She asked if the Board would accept a little petition. Mr. Drollas said the Board couldn't. Approval of this variance would set a precedent for future application all around the country for cell tower applications to be insensitive to rural historic areas. The applicant could site their structure on preserved farmland outside of the viewshed of the Millstone Valley National Scenic Byway. There has been no testimony about 911 availability. She contacted the Somerset County 911 Communication Center and was told there is no area in the state that is not covered by 911. The application seeks to subvert five of the eleven Master Plan Goals (#1, #2, #4, #10 and #11). The State Historic Preservation Office found three years in a row that this tower would have an adverse effect. This application will have such major negative consequences to the township.

Robert Von Tumbusch, 1113 Princeton Kingston Road, was sworn in. Mr. Von Tumbusch is the president of the Kingston Historical Society and is a member of the D&R Canal Commission Master Plan Committee. The DAS system is being used in Princeton and it should really be looked into for this area especially along River Road. Then if it's necessary for more general service a tower could be located away from the historic areas.

Jessie Havens was previously sworn in. This application is for something that a historic district designation and national scenic byway are intended to protect against. Which of the two federal promulgations takes precedent: that which governs a license to provide cell service or those conferring historic protections? The tower will be plainly visible from River Road and to the homeowners to the west.

Mark Barber, 30 Sleepy Hollow Lane, was previously sworn in. A vote to approve the tower will do a great disservice to property maintaining the historic section of the township. It will open the floodgates to applications for towers by other companies.

Greg Kaganowicz, Griggstown Road, was sworn in. The property values will be affected with the construction of the tower. People move here for the rural character and opens spaces. There may be gaps in the coverage along the River Road corridor but there is no law that there should be 100% coverage all over the place. There will always be small pockets where there is no signal.

Liz Palius was previously sworn in. The question is not whether a cell tower is needed it is where to put it and putting it on River Road is the wrong place. There are other places within their search circle. There is no way to mitigate the fake tree by planting other pines around it.

Eva Zak, Griggstown Road, was sworn in. Ms. Zak is on the Shade Tree Committee. It would be incredibly expensive to even have an area like the Millstone Byway corridor to create from scratch. We have it here and we propose to destroy it by creating the tower.

Leslie Brecknell, 207 Rhodes Drive, was sworn in. There is a huge support for the open space and the historic nature of Montgomery. People use the parks and ride their bikes on River Road due to the beauty of that area.

David Vair, 146 Staats Farm Road, said he was going to move to Rocky Hill but didn't because of the cell tower.

A motion to close the public hearing was made by Mr. Thompson and seconded by Mr. Post. The motion carried unanimously.

Mr. Stanzione summed up the case. The public travels the state and uses wireless communications. Technology has moved a long way. The federal government puts out to bid licenses for wireless communications on a yearly basis. There is a requirement to provide continuing coverage throughout the country. The improvement of telecommunications serves the public good and the welfare. The locations Montgomery has said they are permitted do not solve the coverage gap that needs to be filled here. There are no existing structures and no priority zones. The proposed location is in the residential zone but is over 80 acres and not within a historical district; it is adjacent. The applicant reviewed the denial of the Green Avenue site. The resolution referenced the Quick property and the silo design. Verizon looked at alternate sites but went back to the Quick Farm which was suggested in the resolution. Testimony has been provided why the site is particularly suited. The negative criteria has to be addressed. It has been shown that the DAS system won't work. It has been shown that they need the height that is being proposed. If the Board approved it at 100 feet they would take it but that would not allow others to collocate. A condition can be imposed that the tower can't go any higher than what the Board approves.

Chairman DeRochi said the Board has to go through the positive criteria. They have to prove that there was a gap in service which they have. The signal strength was such that there could be a lower height tower. Alternate sites, height and technologies have to be considered. Consideration of whether the same result can be achieved by placing antennas on some other existing structures, by erecting the tower in a more suitable location or by lowering the tower. They can go with a lower tower. They have demonstrated that this is the only location that is available to them.

The Board discussed the height. There was concern that if it was approved at 100' there would be other tower requests in the area. The Board could make a specific height a condition the approval. The height of 110' is as low as it can go before more towers are going to come.

Dr. Eisenstein said DAS is advantageous because it uses existing poles to cover a linear stretch or compact areas such as a stadium. It does not work well when trying to cover a large area. Each DAS system would cover approximately 500 to 800 feet in radius which means you would need 100 to cover a mile radius area. If existing poles can't be used it will require the installation of additional poles. The places with DAS systems in this area are very limited and they are in places where you cannot get a macro site.

The Board discussed the negative criteria versus how compelling the need for a tower is. There has been a lot of opinion about the detrimental effects of the tower.

Mr. Thompson felt there is a significant detrimental impact. The Planning Director's memo covers 12 different things that are very unique about the area. No matter what is proposed it's going to have a very adverse impact on the viewshed.

Mr. Post did not feel the testimony on the impact on real estate values was compelling. The statistics used were not good usage. He would argue that the value was going to go down.

The Board discussed whether there were any ways that the detrimental effects could be minimized. The tree would be pretty well hidden in the summertime when the leaves are on the trees but when the leaves are down it will be very visible. There was a question as to whether a monopole might be a better solution. There was concern that if a tower is approved and it doesn't satisfy the needs of the collocators they will come in for their own tower and there will be very little legal ground to deny it.

If a motion was made to conditionally approve the facility, the vote would be on the variances for use, height, security fencing and the existing setback for an accessory building to a sideline. The site plan and the exceptions would come back to the Board. Conditions would include but not be limited to outside agency approvals, removal within 6 months if it is abandoned and the height cannot be increased.

A motion to approve the application was made by Mr. Thompson and seconded by Mr. Post. The motion carried on the following:

Ayes: Fedun, O'Brien and Kristjanson

Nays: Post, Thompson, Vecchione and DeRochi

The motion required five affirmative votes so the motion was denied.

There being no further business to come before the Board, the meeting was adjourned at 10:35 p.m.