

**APPROVED: 5/19/11**  
**MINUTES OF THE**  
**TOWN OF HIGHLANDS PLANNING BOARD**  
**MARCH 23, 2011**

A regular meeting of the Town of Highlands Planning Board was held in the Town Hall, Highland Falls, New York, on Thursday, March 23, 2011, at 7:00 P. M.

**THERE WERE PRESENT:**

**Board Members:**

Erik Smith, Chairman  
Terry Holt, Deputy Chairman  
Cathy Kelly  
Chris Dyroff  
John Hunter

M. Justin Rider, Attorney (Rider, Weiner & Frankel, P. C.)  
Leslie J. Dotson, Associate Planner, Garling Associates  
Bruce Martin, (J.R. Folchetti)

**ALSO PRESENT:** Ann Marie Fiducia, Sal Fiducia, Cathy Feliciano, Joe Feliciano, Christine P. Moyer, Glen Moyer, Roy Hannawalt, Maria Hannawalt, Greg Lahey, Tony Gioffre, Diane Enright, Todd Padreza, Elaine Graf-Radenberg, James A. Thomson, James G. Sweeney, Deborah Kopald, Bobbie Fallon, Robert Bryant, Manny Vicente, and Mike Colacicco.

**The meeting was called to order at 7:00 P. M. with the Pledge to the Flag. It was noted that there was a quorum present.**

**A motion was made adopt the January 20, 2011 and February, 17, 2011, as amended.**

**Motion: Dr. Kelly                      Seconded: Mr. Dyroff    Approved**

**COMMUNICATIONS**

- Training Opportunities
- Pubic Seminar on Stream Quality
- Land Use Planning Courses for the Spring

**VOUCHERS**

Folchetti & Associates	
Homeland Towers	\$682.50
Garling Associates	
Homeland Towers	\$388.50
Rider, Weiner & Frankel, P.C.	
General Planning	\$130.55

Hannawalt	37.00
Homeland Towers	721.50

The Chairman will submit the vouchers to the Comptroller.

### **OLD BUSINESS**

#### **Homeland Towers, LLC and New Cingular Wireless PCS, LLC (AT & T 1106, Route 9W (Special Exception & Site Plan Section 12 Block 1 Lot 10.11 B District))**

##### **Mr. Tony Gioffre:**

- A supplemental submission was filed.
- Discussion with Mr. Hager determined a use variance would not be necessary.
- Setback variance application submitted to the Zoning Board of Appeals.
- Erosion Permit application submitted.
- Documentation materials submitted to address technical data raised.
- Did another comprehensive review for site location.
- Homeland Towers and AT&T after study both arrived at this site.

##### **Ms. Diane Enright, Property Manager**

##### **Blacken Beach, Consulting Firm, 45 Eisenhower Drive, Paramus, NY**

- Gave overview of how AT&T site selection and the final selection of the Holiday Inn.

##### **Mr. Tony Gioffre:**

- Exhibit B to the submission references a brief narrative, maps identifying zoning classifications, the location of military property, and the parkland property.

##### **Mr. Manny Vicente, President, Homeland Towers**

They are an independent tower developer, structure developer for wireless. They identify geographic areas that have deficient wireless infrastructure, assess those areas, and conduct a search of property in identifying the best property to pursue a facility on.

- Code, elevation, terrain, frequency need
- Identify areas that all carriers need
- Public Safety issues and deficiencies
- Goal is to make wireless infrastructure stronger for commercial use and public safety
- Lack of infrastructure is significant in this country and area
- They conducted a search of this area in early 2009, and identified the Holiday Inn
- The importance of wireless infrastructure and the legitimate need
- Two companies independently looked in the area reaching the same result

**The Chairman discussed the most recent submission dated March 10, 2011, alternative sites.**

- They have not provided the proof the Board is looking for of the unavailability of some sites. The Board would like correspondence from Morgan's Farm and the West Point Military Academy. Would like a thorough analysis.

**Mr. Rider**

- Asked for them to provide analysis with substantiated documentation.
- State lands should be considered.

**The Chairman**

- Concern with the visual impact of this project.
- Route 9W and the Hudson River Valley are both scenic corridors.
- The Code with reference to commercial and residential properties.
- Parkland has the least impact, if that was available.

**Ms. Leslie Dotson**

- Issues of community character and some of the setback requirements of the Code from residences, tending to push one more toward parkland.
- Did not see that parkland was ruled out for other than preference.

**Mr. Gioffre**

- Can provide justification and backup for those two location.
- Size of property in the central commercial corridor.

**The Chairman**

- The siting on that property is in the rear quarter or more and it is directly abutting the R1R District a highly regulated zoning district.

**Mr. Gioffre**

- Can we go on the other side of Route 9W?
- The need that we have is driven by the technical requirements of the particular facility.

**The Chairman**

- Mr. Hutchins said it was not unreasonable to make the requests that are being made, including technical requirements.

**Mr. Rider**

- A more thorough review of the residential sites is required, with an emphasis on sites requiring less substantial variances.
- The Applicant has stated a preference for commercial over residential, the Code does not.

**Ms. Enright**

- Holiday Inn was the farthest from cluster housing.

**Mr. Rider**

- Is the site ideal to meet your needs and comport with the Code? Your needs are not the only analysis to be done with reference to the Code.

**Mr. Gioffre**

- Residential properties were looked at. As you site that section of the Code the further we get away from residential properties you are closer to commercial properties.
- Will request a Public Hearing for this application.

**The Chairman**

- Visual impact. Does not feel there is screening on that property. Concern is visual.

**Mr. Gioffre**

- There are certain trees on the property. That may impact negatively the technical requirements of the tower.

**The Chairman**

- Plots in the Village of Highland Falls – not in the province of this Board.
- Application to the ZBA.

**Mr. Gioffre**

- Awaiting the final determination of Mr. Hager was made as to variances to be required before the application will be made to the ZBA.

**The Chairman**

- This Board cannot render a final decision without a variance from the ZBA.

**Mr. Gioffre**

- The Board could condition its approval but they are hoping that the process will be completed before the Planning Board is ready to take action.

**Mr. Rider**

- That is not the pattern for this Board to grant that type of conditional approval.
- The Shock Clock also affects the timing of various decisions.
- Determinations cannot be made without a variance being granted by the ZBA.

**Mr. Gioffre**

- Would not want to have to go back to the ZBA for further variances.
- Possibility of an extension of the Shock Clock with the Board.

**Ms. Dotson**

- The Board is not happy with the level consideration given to alternative locations.

**The Chairman**

- The Board will review the Erosion Control Application concurrently.
- Building Permit for the tower – which professional engineer will review.

**Mr. Rider**

- This Board will insure that there is review of the relevant plans that can be done under the site plan of the Code of the Town of Highlands, and at that point it would go to the Planning Board Engineer. There could be a system worked out where it potentially it goes to the Town Engineer, or the Building Inspector, as indicated.

**The Chairman**

- This speaks to the specific request of a waiver that it be done as part of the building permit. We cannot tie it into the building permit but it could be a condition.

**Mr. Gioffre**

- They would have no objection to that.

**The Chairman**

- Asks that they prove that the proprietary tower information is unavailable.

**Mr. Gioffre**

Any infrastructure that is beyond a certain distance would be irrelevant. Not something AT&T has knowledge of. The information is not available.

**Mr. Rider**

- Federal legislation does speak to the concept of co-locations. We have not heard enough to waive any further issue in that regard.

**Mr. Gioffre**

- Would it be reasonable for the Board to admit that if I did a FOIL request of a community 20 miles away that it would not provide coverage to the Town of Highlands?

**Mr. Rider and The Chairman**

- Yes

**Mr. Gioffre**

- We would like to be responsible. If there was an existing infrastructure that we could co-locate on, that is the first priority. We can FOIL local communities. It is not a request they have ever dealt with and find it a total unreasonable request.

**The Chairman**

- It is part of the Code.
- Shock Clock - Deadlines have not be met in the last two submittals.

**Mr. Gioffre**

- After January meeting they needed more time to address the comments. Investigating 600 properties was difficult.

**The Chairman**

- This Board can only make decisions on what is presented. This Board is not able to render an approval without the ZBA

**Mr. Gioffre**

- With reference to Shock Clock they have reached out to the community.

**Mr. Rider**

- Asks that they speak to the Board to discuss an extension of the timeframe.

**Dr. Kelly**

- Disagrees with statement – this Board meets in April and May. Irrelevant topic of discussion at this time without ZBA input.

**Mr. Gioffre**

- The Board has the option to keep Public Hearing open. Could grant an extension with regard to the Shock Clock.

**The Chairman**

- SEQRA and GML referral must be taken into consideration

**Mr. Rider**

- GML referral should be done tonight and to have their response before a Public Hearing.

**Ms. Enright**

- Do you have anywhere else, one particular property or a site that you think would be better suited to the Code than the Holiday Inn Express? They need coverage from the Bear Mountain Bridge to the ridge right after the Holiday Inn Express?

**Mr. Rider**

- By the next meeting perhaps the Board could provide some information. The Board is asking for substantiation of these positions. If we have sites that can be provided or analyzed, we can do that by the next meeting.

**The Chairman**

- When you go into specifics, you can see what the issues are with the proposed property.

**Dr. Kelly**

- The wedge shaped piece of property?

**Mr. Gioffre**

- If there is another piece of property, let them know.

**Mr. Vicente**

- Need clear direction.

**Mr. Gioffre**

- If there is something out there, it would help them.

**Mr. Vicente**

- A big advocate of having discussion with the public and the Board, resulting in a better project.

**A motion was made to make the required GML Referral for this project to Orange County Planning.**

**Motion: Mr. Holt**

**Seconded: Dr. Kelly**

**Approved**

**The Chairman**

- Exhibit G – Attachment 4 – No response received. In fact, there is an extensive response from Mrs. Stella Bailey the Town Historian.

**Mr. Gioffre**

- He was informed that there was discussion between the Town Historian and the preparer of that document. He will follow up on that.

**Mr. Rider/Ms. Dotson**

- Will finalize their written comments, including community character issues and visual impact.
- ZBA is not in a position to review since there is no application.

**The Chairman**

- It is appropriate to have some discussion on SEQR for this Board's concerns and how it will proceed with the ZBA.

**Dr. Kelly**

- Can go either way on the SEQR issue from Ms. Dotson's memo.

**Mr. Rider**

- For clarification: That decision is not with respect to a decision on SEQR. That decision is with respect to how to best accomplish the review as the lead agency understanding the necessity for coordination but still respecting the purview of a separate independent board.

**Mr. Gioffre**

- They do have to submit to ZBA. They request that you schedule a Public Hearing and keep it open until May. At that meeting they would be in a position to extend the Shock Clock.

**Mr. Rider**

- This Board should have as the ZBA response and the County response and have as much information as possible available to you. The County information is relevant and you cannot decide without hearing from them. This information should be considered by the Board, the Public and the Applicant.

**Mr. Gioffre**

- If a Public Hearing is held in April, they will consent right now to a 30-day extension to the Shock Clock.

**Ms. Dotson**

- Has severe procedural concerns with the Planning Board opening a Public Hearing for something that does not have an application before the ZBA. Also, the need to coordinate SEQR.

**Mr. Rider**

- It is a legitimate issue. We do not fully know what the date is. There are still determinations to be done. The Public needs to be heard and there are several concerns.

**The Chairman**

- Concerned with setting a Public Hearing.

**Mr. Gioffre**

- Is the Board the Lead Agency?

**The Chairman**

- Yes

**Mr. Holt**

- He is not in favor of scheduling a Public Hearing. This Board tries to move things along as best they can. This is as incomplete as it can be. He would be very uncomfortable with setting a Public Hearing.

**Mr. Gioffre**

- Could we have your other properties to consider prior to the next meeting?

**Dr. Kelly**

- She would like to see denials in writing.

**Mr. Rider**

- The work in that regard will take more days. A date would be hard to determine.

**Mr. Gioffre**

- He would like to move the process along.

**The Chairman**

- Does any member of the Board have a problem with giving any specific areas?

**Dr. Kelly**

- Does not plan to submit any.

**Ms. Enright**

- She discussed the reasons why they did not use certain properties on the map.

**The Chairman**

- The Tax Maps were used.

**Mr. Gioffre**

- Discussed Map 14. The entire area would be ruled out.

**Ms. Enright**

- Many of the lots could not be used.

**Mr. Rider**

- This Board wants the analysis not the conclusive statement that residential cannot be used. The Code must be adhered to.

**Mr. Vicente**

- Use information given you.

**Mr. Rider**

- We may not have an answer by the next meeting.

**Mr. Vicente**

- We labored on this. Please use that information to guide us as to what you need and what direction for the next meeting.

**Mr. Gioffre**

- If we had information beforehand, we could start work on it before the meeting.

**NEW BUSINESS**

**Hannawalt (Amended Site Plan R-1 Zone/S 13 B1 Lots 14, 12 & 4)**

Mr. Hannawalt is requesting that to move the driveway from its original position to a new proposed position. He stated that the new proposal the driveway amounts to about a 13% grade and it is only a little less than 100 feet long. It would make an easier approach.

The Chairman stated that the Applicant has an approved subdivision. That approval carried with it the driveways and where they were. This was agreed upon. This new proposal will require an amendment. Also, the Board would want to insure proper access for both users of the driveway. It would need documentation that allows that.

The Applicant will need to complete an application requesting an amendment for this project. This will also include a Public Hearing. Comment Letters will be generated after this process is completed.

### **Rodway (Special Exception S 16 B 1 Lots 14 & 15)**

Mr. Rodway owns two lots in Fort Montgomery on Mine Dock Road and Route 9W, formerly known as the Wine Cellar Restaurant. This was closed in 2000. He is asking to change the use from commercial to residential. Mr. Rodway would like to take this 6,500 square feet and turn it into five apartments. Mr. Rodway is not changing the building footprint. Mr. Rodway states there are no issues of drainage, no environmental impact, plenty of parking, plenty of square footage. The building is within the property line.

The Chairman stated that a new and complete application is required for this project. A complete package including site plan and map is necessary for review.

### **PUBLIC COMMENT**

#### **Robert Bryant, Fort Montgomery, NY**

- Competitors occupy the same tower, the same trenches, and the same bridge crossings.
- That would allow the tower across the river from that area to be an acceptable site.
- Being turned down by the West Point Military Academy?
- Contact Bernadette Castro for the State Park property use.
- Talking to the right people might result in different outcomes.

#### **James G. Sweeney, Attorney, here for the Mr. and Mrs. Glen Moyer.**

- He will have a statement to be made at a Public Hearing.
- Does not feel this Board has the jurisdiction to hear this application.
- Special use permits can be granted for uses that are permitted in a zone.
- SEQR and the Town Code re Type 1 action.
- Shock Clock

#### **Chris Moyer, 6 Hillcrest, Fort Montgomery, NY**

- Location of her house with the prospect of a tower.
- Shock Clock and the information provided.
- This Board being put in the position to find a suitable location.
- Protect the rights of the citizens of this town.
- Let the ordinance do its job.

**Deborah Kopald**

- Question: What was promised by the Board to give them.
- The Engineer Report. AT&T's map.
- Drive Test reliability.
- The gap may not be significant.
- SEQR review needs to be addressed by the Board.
- Web Site for AT&T coverage and the need for more towers.
- Homeland Towers promoting this tower.
- Gap needs to be defined.
- Failure to find other locations.
- Polhemus Tower.
- Ask the consultants to ask other servers about coverage in this area.
- West Point ski slope tower.
- Concerns about consultants' reports.

**Glen Moyer, 6 Hillcrest, Fort Montgomery**

- Apologized for facial expressions to the Board.
- Looking at maps submitted, my house is the second closets to the tower and is not in the map.
- Considered Route 9W a scenic road. The balloon float was a horrible sight.

**Ralph Ferrara, Fort Montgomery**

- When is the analysis of property values going to come out regarding the tower if it passed?

**Mr. Holt stated that he appreciates Supervisor Magryta letting us do our job.**

**At 9:34 P. M. a motion was made to adjourn the meeting.**

**Motion: Mr. Holt                      Seconded: Mr. Hunter                      Approved**

Respectfully submitted,

Fran DeWitt, Recording Secretary

**The next Regular Planning Board Meeting is  
Thursday, April 21, 2011**