

The Deerpark Planning Board met for their bi-monthly meeting on Wednesday, July 28, 2010 at 7:00 p.m. at Deerpark Town Hall, 420 Route 209, Huguenot, N.Y. The following were present:

#### BOARD MEMBERS

Willard (Skip) Wilson, Chairman	Dan Loeb	Theresa Santiago
Derek Wilson	Noel Malsberg	Mike Breitenfeld

#### OTHERS

Mr. Glen A. Plotsky, Town Attorney	Mr. Alfred A. Fusco, Jr., Town Engineer
Mr. Dave Dean, Town Board Liaison	Mr. Daniel Laub, Esq.
Mr. Dominick Grillo, Applicant	

#### THE PLEDGE OF ALLEGIANCE

#### NEW CINGULAR WIRELESS PCS, LLC (AT&T) - PRE-APPLICATION CONFERENCE

Represented by Mr. Daniel Laub, Cuddy & Feder, Esq. 914-761-1300

Owner/ K & K Management NY LLC

Applicant/ New Cingular Wireless PCS LLC

wishes to construct a new telecommunications facility (150' monopole)

associated equipment, shelter within a compound area 1, 047sq. feet,

located on a 5.5 acre parcel at 51 Route 209, Port Jervis.

Section - Block - Lot 52 - 1 - 29.21

Mr. Laub presented drawings to the Board.

Derek Wilson told Mr. Laub that the Town does have a telecommunication ordinance.

Mr. Laub said that that has already been reviewed by his firm.

Skip Wilson said that if there are other towers available, then he should strive to be attached to them first. He said that the Town is installing a tower adjacent to Town Hall, it will be Verizon affiliated, and he might want to co-ordinate with that tower.

Mr. Laub said that he will pass that information to his associates.

Al Fusco said that the applicant should obtain information from the Town about what is proposed on this Town Hall tower, in terms of height, frequencies, coverage area, etc., to see if it can be co-located. He said that the applicant needs to do a study and co-ordinate with the Town first, to determine that the Town locator will not work in tandem with his proposed tower.

Derek Wilson said that other providers that have already made agreements with the Town, are obligated to provide for other carriers on their towers. He said that there is already a tower located off of Routes 42 & 97.

Glen Plotsky said that the applicant has to show their coverage area, and verify that it isn't provided by any currently existing or already approved tower. He said that if the tower is already approved or existing, the applicant has to negotiate with those carriers, to put it on their tower. He said that only if that tower is full, then the applicant can make an application for a second tower in the proximity, to cover the same general area.

Al Fusco said that the applicant has to show the Board where the applicant has their facilities, what their ranges are, and things of that nature. He said that the Town tower is in between these two proposed towers.

Mr. Laub said that they will provide maps with areas of coverage. He said that that will co-ordinate with the coverage of the Town tower. He said that he would need the exact co-ordinants and the elevation information concerning the Town tower.

Derek Wilson asked if Mr. Laub has researched placing a tower on hunting camp property, because it will not be located close in proximity to homes.

Mr. Laub said that he will research that, if the hunting camps are in the correct zones, and towers can be placed there. He said that they will obviously be un-manned facilities, requiring no water or sewage.

Derek Wilson said that the tower cannot be located within so many feet of the Calvary Bible Church, because of the Town Regulation of not being near a playground.

Skip Wilson said that the distance is no closer than 350 feet.

Al Fusco added by reading from the Town Regulation: "... must not be 350 feet from the nearest property line, school, day car center, camp, public park, playground or public road."

#### NEW CINGULAR WIRELESS PCS, LLC (AT&T) - PRE-APPLICATION CONFERENCE

Represented by Mr. Daniel Laub, Cuddy & Feder, Esq. 914-761-1300

Owner/ Burnett Enterprises

Applicant/ New Cingular Wireless PCS LLC

wishes to construct a new telecommunications facility (125' monopole) associated equipment, shelter within a compound area 2,500 sq. feet, located on a 12.7 acre parcel at Route 211, Cuddebackville, N.Y.

Section - Block - Lot = 22 - 1 - 61

Glen Plotsky said that concerning both towers, it basically comes down to the coverage area, that is, making the best use of the fewest number of towers. He asked if there would be emergency services on the towers?

Mr. Laub said that they will certainly provide frequencies for fire, police etc.

Theresa Santiago asked if the tower would be on the same parcel as Brim's junk cars?

Mr. Laub answered that it is the same parcel, as they are not merged, but there are no junk cars near the area where the tower will be located.

Mr. Laub said that for both towers, he will provide photo simulations, to show what the tower will look like, a visibility analysis, including a birds eye view, topography, etc.

Theresa Santiago asked if the building of this cell tower will be adding to a non-conforming use?

Glen Plotsky answered that if it's on the same parcel, perhaps yes. He said that it's a pre-existing non-conforming use.

Mr. Laub answered that junk cars is not his use, and his use is subject to special permit approval. He said that it would be a special permit approval on a lot that has a different existing non-conforming use. He said that even if his client put the tower on a lot that has junk cars, the tower use would be permitted.

Glen Plotsky answered that the parcel does become subject to review and the applicant cannot expand or change on the use.

Mr. Laub agreed and said that, that is not what his client will be doing.

Glen Plotsky repeated by saying that the question that is raised, is that if you've got a non-conforming use on the property, and you're going to add something else to it, you're changing the use on the parcel.

Mr. Laub agreed and added, you're adding something that will be subject to special permit approval.

Glen Plotsky then said, that you're changing the use on the parcel, it's a non-conforming parcel.

Mr. Laub respectfully disagreed.

Glen Plotsky said that the applicant will be either renting or buying the parcel from Brim Recyclers, so he needs to tell Brim to take the cars and put them on the parcel that is already non-conforming.

Derek Wilson said that this Board also has to see a copy of the Brim Recycling site plan, to make sure that this parcel is on the existing site plan.

Noel Malsberg said that an aerial photo, which is approximately six years old, provided by Board member Mike Breitenfeld, does show that there are plenty of cars on that parcel.

David Dean asked if the applicant has looked into using the nearby Cuddebackville Reformed Church steeple, because there is a Town Regulation that states that a cell tower cannot be located near a school or a playground, because of the fear of affecting children.

Skip informed Mr. Laub that his client will have to set up two separate escrow accounts for the two applications. He said that \$500 will have to be put into each of the two legal escrow accounts, and \$1,500 needs to be placed into each of the two town engineering escrow accounts. He said that that money will have to be placed into the Town Supervisors' office, before the applicant can come back before this Board.

#### DIAMOND FABRICATION, INC. - PRE-APPLICATION CONFERENCE

Represented by Dominick Grillo 206-6734

Owner/ Applicant Dominick Grillo received a letter from the Building Department to appear before the Planning Board concerning his business located at 419 Route 209, Huguenot, N.Y.

It is an HMU Zone.

Section – Block - Lot = 38 - 2 - 8.2

Mr. Grillo said that he already has a business located in the garage next to the house, and he does welding and some mechanical. He said that he does any kind of small fabrication, such as railings, repairs, etc. He said that he is his only employee and he has been in business for approximately three years. He said that the house and garage is on approximately 1/4 of an acre.

Glen Plotsky expressed his doubt that fabrication is considered a home occupation. He said that in the letter from the Building Inspector, Mr. Grillo is in violation, and needs to pursue a site plan before this Board.

He told Mr. Grillo, that the general rule is that commercial operations in the Town of Deerpark requires a site plan. He said that a site plan is basically having a map of the property, placing on that map what he is going to do, when he's going to do it, who's going to do it with you. He said that it's basically a diagram of his property, and what he intends to do on it.

Derek Wilson suggested that Mr. Grillo get a copy of the Town's Zoning Law, which describes what type of businesses are allowed in the HMU zone and also the amount of acreage that that business can be done on.

Mr. Plotsky said that it probably is not a home occupation, but would be light manufacturing, which would be a special use in the HMU zone.

Skip Wilson told Mr. Grillo that before he comes back before this Board, two escrow accounts have to be set up with the Town Supervisors' office, of \$500 a piece, one for town attorney fees, and one for town engineering fees.

#### DEERPARK VILLAGE DISCUSSION

Al Fusco said that Mr. Nat Parish, the project engineer and himself actually got through all of the issues that the Board wanted discussed, and there was communication between Mr. Plotsky and himself, and in one or two weeks they both want to sit down with the respective applicants' consultants. He said that when all four people

come together, they will be better able to hash out issues. He said that he has this Boards' directives, and will try to maintain as much of that, that they can. He said that whatever Mr. Plotsky and himself bring back, they will relay to the Board, and see if they concur with the recommendations. He said that at that point, Mr. Plotsky and himself will go back to them with a formal okay from the Board. He said that of the ten sticking points, five of them are already worked out, three are worked out tentatively, and two are still sketchy. He said that hopefully, within the next 30 days, all of the issues will get settled, and then the formal SEQRA procedure will move forward, that is, getting the document prepared, sending out appropriate notices, getting the appropriate material posted, and just moving forward, in accordance with the SEQRA regulations.

Derek Wilson asked, once this Board accepts the final document, what is the time frame?

Al Fusco answered that he believes it to be 30 days.

Glen Plotsky said that the settlement is 30 days also.

Derek Wilson asked about the traffic studies?

Al Fusco said that Mr. Parish had pointed out to him, that in the existing report, it was outlined build/no-build, 20-20, 20-10, etc.

Derek Wilson said that one of the Boards' original comments was that they can find reference to some units, but it was unclear.

Al Fusco said that that is still an issue that has to be worked out with the applicant.

Dan Loeb asked about the references to the level of service, and said that in the past he had insisted on percentages, as far as traffic is concerned. He said that these constant references to levels of service, he believes that different people would have difference definitions of level of services.

Al Fusco answered "level of service" for Dan Loeb, by saying, that it is the time it takes to make a movement, i.e., you pull up to an intersection, you look left, you look right, there's cars coming, you can't pull out, it takes you 90 seconds to finally get out onto the road, then that is an "F", failed intersection. He said on the other hand, you pull to an intersection, you look right, you look left, there's no cars coming, and you pull out onto the road, then that is an "A" intersection. He said that level of service does change, but it may not denote that in the record.

Al Fusco then referred to another scenario, where 3,000 units are built, it can take as much as two minutes to get out into the intersection, which would be a failed intersection. He said that that has to be mitigated by NYSDOT putting up a traffic light with a 60 second changeover, which would bring the failed intersection up to a "C" or a "D".

Al Fusco said that a road with a 65 mph speed limit, and then because of a slow moving truck, upgrades, inclement weather, etc., you have to drive much lower, then the level of service for the road has been reduced. He said that if it's always a poor level of service, then it can be mitigated by installing another lane, installing a left hand only turn lane, widening the road, etc. He said that traffic studies are based on the intersections. He said that a traffic engineers' report may say, "...that it does not significantly alter the levels of service." Or, if it does significantly alter the level of service, the report may say, "... level of service at such and such an intersection has been impacted, but it can be mitigated by, (i.e. traffic light, left turn lane, etc.)

Derek Wilson mentioned safety issues, and said that when drivers get impatient, they may pass other cars on the shoulder of the road. He said that, at what point will the NYSDOT determine mitigation is needed for the Route 42/ Wilson Road intersection, that is, the Board still needs feedback on the dangerous situation that will be created at that intersection, by the building of so many units.

Al Fusco said that basically the Board has to prove to the NYSDOT that a traffic light, or a turning lane, or whatever, is warranted at that intersection. He said that in order for the NYSDOT to consider allowing a traffic light, it has to be a failed intersection. He said that the Board can require from the applicant a complete new traffic analysis of this intersection, after the building of the first 500 units. He said that these warrants will then be

given over to the State to consider a traffic light, a turning lane, etc. He said that the Board convinces the State by the counting of cars, it needs to be justified, because they have so much liability. He said that the State has criteria. He said that in order to put in a traffic light, the rate and amount of traffic accidents are determined into the calculations. He said that also the grade of the road, the inclination of the road, the slope of the road, etc. He said that the State looks at the whole picture, it's more than just a traffic count.

Derek Wilson said that the developer will not pursue a new traffic study on their own, but the Board has to have it in writing, that at the different phases, the developer will create a new traffic study.

Al Fusco answered that language like that is already in this document. He said that practically speaking, the applicant will be coming back to this Board phase by phase, and at each phase the Board has the right to ask for additional traffic information, based on the previous phases and the function. He said that the applicant must comply with this.

Al Fusco said that the cycle of the traffic light can also be adjusted or altered, because if there are more cars than originally planned for, coming into that intersection, then the amount of time for which cars have to come out into that intersection, can be lengthened.

Mr. Plotsky said that Mr. Fusco will transmit to Mr. Parish the changes that the Board has already agreed to, and then within the next 10 days, Mr. Parish, Mr. Fusco, Mr. Sachs, (the applicants' attorney) and Mr. Plotsky will get together and address the 5 biggest issues, where right now, they seem to be at an impasse.

#### DISCUSSION - CINGULAR CELL TOWER

Theresa Santiago said that the applicants' representative said that the lot that the cell tower will be placed on is not part of the junkyard, but then, why are there junk cars on that lot? She asked, is Brim Recyclers in violation?

Derek Wilson said that if Brim is in violation of their site plan, then that is an enforcement issue for the Building Inspector.

#### ADJOURNMENT

Derek Wilson made a motion to adjourn. Dan Loeb second. Roll call vote: Santiago, aye; Loeb, aye; D. Wilson, aye; Breitenfeld, aye; Malsberg, aye; W. Wilson, aye. Motion carried.

Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Barbara Brollier, Secretary