

MINUTES OF THE MARCH 3, 2011 MEETING OF THE TOWN BOARD OF THE TOWN OF POUND RIDGE HELD AT THE TOWN HOUSE, 179 WESTCHESTER AVENUE, POUND RIDGE, N.Y., COMMENCING AT 8:00 P.M.

PRESENT: SUPERVISOR GARY WARSHAUER; COUNCIL MEMBERS:
DANIEL PASCHKES, RICHARD LYMAN, PETER FALCO, PAUL
McCONVILLE

ALSO PRESENT: WILLIAM P. HARRINGTON, DEPUTY COUNSEL
JONATHAN POWERS
MARIANNE VITELLI, CONFIDENTIAL SECRETARY

ABSENT: JAMES J. SULLIVAN, ESQ.
JOANNE PACE, TOWN CLERK

CALL TO ORDER: Supervisor Warshauer called the meeting to order at 8:00 p.m.

CALL FOR EXECUTIVE SESSION: None

ANNOUNCEMENTS:

Supervisor's Forum will be held on Saturday, March 12, 2011, 10:00 a.m. at the Town House to discuss the Deer Management Plan.

PUBLIC HEARING: Continuation of the Public Hearing on the T-Mobile Application for a cell tower at the Ambulance Corps property in Scotts Corners

Board Action: Motion by Councilman Lyman, seconded by Councilman Falco, with Councilman Paschkes recusing himself, all voting aye to open the Continuation of the Public Hearing on the T-Mobile Application for a cell tower at the Ambulance Corps property in Scotts Corners.

At the last Public Hearing the Town Board had made the determination that we were moving forward with the Ambulance Corps property as the site for the cell tower. They had directed the Planning Board to finish up their site plan review and recommendations to the Town Board in terms of the type of pole, the color of the pole and landscaping issues. The Planning Board did that and the Town Attorney and Planning Consultant put together a draft resolution for approval of the cell tower at the Ambulance Corps property. This evening we have the draft resolution for discussion and consideration by the Town Board for adoption, however, Supervisor Warshauer said that we just received correspondence from the applicant which he asked Mr. Gaudioso to present.

Robert Gaudioso, Snyder and Snyder, on behalf of T-Mobile asked that the Town Board act on the application this evening one way or another. He said that they did submit various written comments. Essentially, AT&T is a separate applicant and should be granted their own Special Use Permit with the conditions imposed upon them. It is a matter of fairness and legality. They will be operating a separate business with different antennas and different equipment and different locations on the cell tower. If AT&T

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were slow with complying with conditions, it may hold up T-Mobile with getting a Building Permit. T-Mobile has made the facility available for co-location because that is the Code of Pound Ridge requirement. It gives the Town the direct privy to AT&T if they were in violation of their Special Use Permit.

Anthony Murando, Cuddy and Feder, AT&T representative, said he agrees with Mr. Gaudioso with administering a separate Special Use Permit for the same reasons he expressed. As a co-locator, they would have a Special Use Permit as a co-locator with separate conditions.

Peter Avellino, Pine Drive, asked if this would also apply for new applicants or other co-locators. Supervisor Warshauer said that any other co-locators would have to go through a separate process and get a Special Use Permit.

Councilman Falco asked who would be responsible for damage to the monopole or if it is inoperable and had to come down. Mr. Gaudioso said that in the first instance the pole would be the responsibility of T-Mobile because they would have the pole Special Use Permit. In the second instance, T-Mobile and AT&T would both be responsible because if AT&T became inoperable and had to come down, AT&T's equipment would come down but not necessarily apply to T-Mobile. That is why you would want to have separate approvals. Each applicant is responsible for their own equipment.

Mr. Gaudioso commented that the request from the Town Board to return to the Planning Board for site plan approval is improper as their site plan which included a landscaping plan has been before the Planning Board and the Town Board since May 8, 2008 and has been revised based on comments over such time. He would be happy to discuss any plan elements this evening.

The third comment involves the monitoring of technology and this provision concerns them because it is very vague. He is not sure of what the obligation for T-Mobile is or what the process is or the timing. There is vague language and appears to be a durational time limit on the Special Use Permit and time limits are only given if it is part of the zoning ordinance, and in this case it is not. Such condition imposes an illegal time limitation on the Special Use Permit. Finally, a Board may not impose a condition on a zoning approval if the field related to the condition has been preempted. There is a durational time limit without any type of criteria.

The fourth item that is very important to T-Mobile is the provision to require T-Mobile to indemnify the Town of Pound Ridge with respect to any third part litigation. Mr. Gaudioso said that it is the Town's obligation to review this obligation and the Town's duty to defend itself. Any condition has to be reasonably related to the use of land and an indemnity provision is something not related to zoning. There is no nexus between requiring an applicant to indemnify a municipality for a third party challenge.

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T-Mobile is willing to voluntarily offer space on the tower for the Town's emergency services equipment. Our code requires that and they are waiting for the Town's antenna plan and they are also willing to install that equipment during their initial construction phase. However, T-Mobile cannot agree to pay for the cost of such equipment.

Mr. Gaudioso handed out a mock resolution with these comments and hopes that the Town Board will approve the resolution one way or another this evening.

Supervisor Warshauer said that he would like Counsel James Sullivan to review the issues that Mr. Gaudioso raised on behalf of T-Mobile and try to come to some basic agreements. We are very close to site plan approval, so the Town Board can take it and finish it at this point. The visual impact is significant. He feels we have to visit the aesthetics issue a little more and we also need to give T-Mobile the emergency services equipment information. Supervisor Warshauer would like to have them get the approval needed from the Water Control Commission and have them work with our Counsel towards having the resolution ready for our approval at our next meeting.

Mr. Gaudioso is concerned about the pending litigation. He doesn't want to wait. He would like approval tonight. He has to report to the Judge in two weeks.

Councilman Lyman cannot understand that Mr. Gaudioso would want us to adopt a resolution that he was not happy with. Mr. Gaudioso said that he would prefer the Town Board adopt the mock resolution he handed out, but Supervisor Warshauer said that there are several issues that still need to be worked out. Mr. Gaudioso said that his client would rather not wait another month and have the Town Board adopt the resolution even if it isn't exactly what his client wants. They would rather have a resolution adopted tonight than wait. The issues are the issues and he feels they may be able to ameliorate some of the issues. If the Town Board is not going to adopt the resolution tonight, Mr. Gaudioso suggested scheduling a meeting next week instead of in a month because if the Board cannot come to an agreement in a week, they probably won't come to an agreement in a month.

Supervisor Warshauer said that he agrees but would have to schedule the meeting next month because Councilman McConville will be on vacation next week and Councilman Paschkes recused himself from this issue because of his work with the Ambulance Corps. Supervisor Warshauer would like as full a Town Board as possible and is suggesting continuing on April 7, 2011 when they will have a resolution to adopt.

Mr. Gaudioso said that he doesn't have the authority to agree to that. The court will do what the court will do. He would like to know the Town Board's position on the indemnity clause. Councilman Falco finds it hard to understand how a pending litigation and an indemnity clause go together.

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Mr. Gaudioso said that they have bent over backwards by telling the Judge to put off the scheduling order twice. They have revised the plan and done additional renderings to bring it to closure. If they are unable to bridge the gap on these few conditions, the Judge will have to decide that. They will be happy to put up their insurance certificates for protection of the facility. They are not asking to be indemnified themselves. They will take responsibility. The problem comes in if a third party were to sue the Town.

William Harrington, Deputy Attorney for Town of Pound Ridge, said that he echoes what Supervisor Warshauer has said. There are a few issues that he feels confident that the Town Board will work out, especially the indemnity clause issue. It doesn't serve the process any good if the Town Board were to adopt the resolution tonight only to revisit it with amendments. He feels the majority of the Town Board should vote on this at the April 7, 2011 Town Board meeting. The Water Control Commission can put T-Mobile on their agenda the end of March and they may have additional vegetative issues that they want addressed. It would actually enhance the landscaping. Mr. Harrington said that in April, when we speak with the Judge, we will have a very good sense of whether or not this case can be settled.

Mr. Gaudioso said that he senses the Town Board is in the agreement that the site plan issues can be handled here instead of going back to the Planning Board and he can file the plans with the Water Control Commission Board to be on their March 23, 2011 meeting. He is requesting the Town Board help out expediting the discussions between T-Mobile's engineer and the WCC before the WCC meeting. Mr. Harrington said that he doesn't have any control over the WCC but we will certainly put Mr. Gaudioso in touch with the WCC Chair, Bill Bedford, to expedite the dialogue.

Santo Borsellino, Rolling Meadow Lane, has a couple of concerns. He mentioned that T-Mobile will be at 120' on the pole and AT&T will be at 110'. They both said that anything lower on the pole would not give adequate coverage. His concern is if the other co-locators come in and say they cannot be at 90' or lower. We do have the option of a 20' extension on the pole, but Mr. Borsellino would not like to have it be a reality. He also is concerned about a possible second cell tower being erected in close proximity of the other pole. He says it is our problem and not the applicant's problem. He hasn't seen any consideration or photographs of the possible 140' pole versus the 120' pole.

Supervisor Warshauer said that our ordinance requires that unless it can be determined that co-location is not possible, that they would have to co-locate on that tower. It would be a separate application. All the options and what the alternatives are would have to be looked at in order to make sense of what the alternatives would be. We would bring in an expert that would evaluate and determine both adequate coverage and adequate capacity. They would advise us.

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Mr. Borsellino is still concerned about the height of the pole because an applicant like Verizon may come in and say they need to be at 130' or 140' or even 150'. How do we handle that?

Mr. Harrington said that we are dealing with Federal Law and we have to put up a cell tower. Pound Ridge is unique as far as our topography, but unless an applicant can come in and prove that they need a higher location on the tower, Pound Ridge is really not going to let that happen. It is a legitimate concern, but difficult to answer in the abstract and until the applicant comes to the Town Board; we cannot give a definite answer.

Mr. Borsellino said that it seems to him more likely a probability that a carrier would want a higher location.

Supervisor Warshauer said that it is a valid issue and our resolution would have to show the major environmental impact the cell tower will have on our Town. It is clearly something we have been wrestling with as a community.

Councilman Lyman pointed out that the likelihood of Verizon wanting to build a separate tower for them is not very good. Their ability to get their revenue from Pound Ridge is not that dramatic. There isn't a huge market like in the surrounding cities.

John Nathan, Upper Shad Road, is requesting further clarity on timetables in the resolution. He feels that review of technology should be addressed and specified in the resolution because of the chance that technology will change and the pole may no longer be needed. He wrote a clause for the Town Board to consider regarding the environmental and visual impacts the tower will have on the proposed site. He wrote "Whereas, the Town recognizes that in the future alternative wireless communication technologies and/or locations may become available that will render the proposed 89 Westchester Avenue cell tower obsolete and/or unnecessary" and feels that an insert should be put in the resolution saying "The Special Use Permit and Site Plan approval authorized by this resolution shall expire five (5) years after the proposed 89 Westchester Avenue cell tower is constructed....."

Mr. Gaudioso said that our code already has a provision that the tower or portions thereof will be removed if it is no longer necessary. If the applicant proves a need for the facility, they have to right to have one.

Mr. Nathan said again that there is no durational limit and it should state every five (5) years. There should be a clause demanding the applicant and the lawyer to review this permit every five (5) years.

Peter Clough, Westchester Avenue, talked about the color of the pole. A multi-colored scheme should be considered. Supervisor Warshauer said that the Planning Board has

spent significant time on the color of the pole and they picked a color that will blend with the tree trunks and the environment called Umbra SW4008.

Mr. Gaudioso wrapped up the discussion and requested a copy of the antenna and emergency equipment plan as soon as possible. He understands that they would not be sent back to the Planning Board and that the Town Board will help expedite the discussions between T-Mobile's engineer and the WCC before the WCC meeting. He requested the Town Board close the Public Hearing tonight and make a decision on April 7, 2011 leaving the Public Hearing open only for the Water Control Commission Board.

Supervisor Warshauer said he is in agreement with everything except closing the Public Hearing tonight because our environmental findings are tied with the final resolution. It will all come in a package with the goal of closing the Public Hearing, adopting a SEQRA resolution and a final resolution at the April 7, 2011 Town Board meeting.

Daniel Paschkes, Horseshoe Hill Road, suggested making the color of the pole anything but brown. It should be a color that will blend with the sky like light blue or light grey and not stand out.

Board Action: Motion by Councilman McConville, seconded by Councilman Lyman, all voting aye to continue the Public Hearing on the T-Mobile Application for a cell tower at the Ambulance Corps property in Scotts Corners on Thursday, April 7, 2011.

Councilman Paschkes rejoined the Town Board for the rest of the Town Board meeting.

MINUTES: Acknowledge/correct/accept minutes of Town Board meeting of February 10, 2011 and Executive Session of February 23, 2011.

RESOLUTION #: 53 -11

Board Action: Motion by Councilman Lyman, seconded by Councilman Falco, all voting aye on the following:

RESOLVED, that the Town Board hereby accept the Executive Session Minutes of February 23, 2011. The Town Board minutes of February 10, 2011 will be accepted on Thursday, March 10, 2011.

NEW BUSINESS:

Police Department-Authorization to attend two conferences

RESOLUTION #: 54 -11

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Board Action: Motion by Councilman Paschkes, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes Sergeant Armistead and Chief Ryan to attend the Empire State Law Enforcement Traffic Safety Conference on April 26 and 27, 2011 in Syracuse, N.Y. The total cost to attend shall not exceed \$200, AND, BE IT

FURTHER RESOLVED, that the Town Board hereby authorizes Chief Ryan to attend the Northeast Human Trafficking Conference in Hartford, Ct. on March 23, and 24, 2011. The cost shall not exceed \$110.00. Both items are budgeted in the 2011 annual budget.

Assessor Office- request for authorization to attend the NYS Assessor's seminar

RESOLUTION #: 55 -11

Board Action: Motion by Councilman McConville, seconded by Councilman Falco, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes Michele Jordan to attend the NYSAA Annual Seminar on Appraising at Cornell University in Ithaca, N.Y. July 18-22, 2011. The total shall not exceed \$1550.00.

Library Foundation- request for permission to hang a banner in Scotts Corners for their 3rd annual "Taste of Pound Ridge" Event

RESOLUTION #: 56 -11

Board Action: Motion by Councilman Lyman, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the Library Foundation to hang their banner across Westchester Avenue in Scotts Corners on April 14, 2011 and remove it on May 6, 2011. This banner is for the 3rd Annual "Taste of Pound Ridge" and Silent Auction on May 5, 2011 from 6:00 p.m. to 9:00 p.m.

Highway Department – request authorization to advertise bids for road materials
- **request acceptance of resignation**

RESOLUTION #: 57 -11

Board Action: Motion by Councilman McConville, seconded by Councilman Paschkes, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the Town Clerk to advertise bids for road materials.

RESOLUTION #: 58 -11

Board Action: Motion by Councilman McConville, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby accepts with gratitude for his service as a Police Officer and a Highway MEO the resignation of Peter Kelly effective March 22, 2011.

Historical Society – request to fund the creation of a database of Historic properties

RESOLUTION #: 59-11

Board Action: Motion by Councilman Paschkes, seconded by Councilman Falco, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the funding of \$431.05 for the creation of a database for the Pound Ridge Historical Society. This will be transferred from A7450.406 to A7450.400.

FINANCIAL MATTERS:

Tax Receiver – request authorization to refund overpayment and duplicate tax payments

RESOLUTION #: 60 -11

Board Action: Motion by Councilman McConville, seconded by Councilman Lyman, all voting aye on the following:

RESOLVED, that the Town Board hereby authorize the following refunds per memo of February 16, 2011.

<u>Block/Lot</u>	<u>Name</u>	<u>Address</u>	<u>Amount</u>	<u>Reason</u>
9830-21	Jacobs	15 Bengier Rd.	\$31.70	Overpayment
9459-19.9	Fields	35 Siscowit Rd.	\$13,248.53	Dup. Payment

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Water Control Commission- request authorization for bond releases

RESOLUTION #: 61 -11

Board Action: Motion by Councilman Lyman, seconded by Councilman McConville, all voting aye on the following:

RESOLVED, that the Town Board hereby authorizes the release of the following bonds as all of the work has been satisfactorily completed:

Matthew Dancsecs, 74 Scofield Rd, Block 10263 Lot 58, \$5,000, repairs to walls, terrace and stairs

KDG Pound Ridge LLC, 55-57 Westchester Ave., Block 9456 Lot 1.9, \$10,000, fire pond restoration

Joel Seligman, 21 Kitchawan Rd., Block 10052 Lot 14.1, \$2,000 construction of gazebo and deck.

ADJOURNMENT: There being no further business to come before the Board, Supervisor Warshauer adjourned the regular meeting at 10:30 p.m.

Joanne Pace
Dated at Pound Ridge, New York
March 8, 2011