

MINUTES OF THE APRIL 7, 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 WARSHAUER; COUNCIL MEMBERS: DANIEL PASCHKES, RICHARD LYMAN, PETER FALCO AND PAUL McCONVILLE

ALSO PRESENT: TOWN ATTORNEY, JAMES J. SULLIVAN, ESQ.
TOWN CLERK, JOANNE PACE

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

CALL FOR EXECUTIVE SESSION: None

ANNOUNCEMENTS:

The Supervisor's Forum will be held on Saturday, April 9th, 10:00 a.m. at the Town House and the focus will be on Senior Safety and other issues of concern to our Senior Residents.

PUBLIC HEARING: Continuation of the Public Hearing on the T-Mobile Wireless Communications Application for a Cell Tower at the Ambulance Corps to serve Scotts Corners.

Board Action: Motion by Councilman Lyman, seconded by Councilman Falco, with Councilman Paschkes recusing himself, all voting aye to open the Public Hearing on the T-Mobile Wireless Communications Application for a Cell Tower at the Ambulance Corps to serve Scotts Corners.

At the last meeting, Counsel was directed to work on some of the issues in the draft resolution being considered for the T-Mobile application. A final revised draft resolution has been presented to the Town Board.

Mr. Robert Gaudio, Snyder & Snyder, said that he has received the landscaping and site plan comments and has no objection to either one. There was one comment asking that the emergency equipment on the ground be shown and he assumes that would also include emergency equipment that would be located inside the building.

Supervisor Warshauer said that one of the things the applicant has asked of the Town Board is to adopt separate resolutions for T-Mobile and AT&T. Tonight the Town Board will act on the resolution for T-Mobile only and AT&T will submit a separate application as a co-locator on the T-Mobile tower. Anthony Morando, of Cuddy & Feder, representing AT&T, said that AT&T actually does have an application filed with the Town Board dated April 8, 2008 as co-applicant with T-Mobile. He respectfully requests that the Town Board approve AT&T this evening. On March 31, 2011, New Cingular Wireless PCS, LLC (AT&T) provided two documents to Town Attorney James Sullivan for his review which included a clean copy of their proposed Draft Resolution for

AT&T's proposed collocated facility and a copy of a redlined version of T-Mobile's Draft Resolution of Approval. AT&T simply removed those provisions from the T-Mobile Resolution that are irrelevant and/or inapplicable to AT&T. This week they followed up with the Town Attorney and again redlined the copy because there were minor revisions to the proposed resolution.

Counsel Sullivan said that he has talked with Robert Gaudio and it is understood that there will be separate resolutions. For the past two meetings, the focus has been on the T-Mobile resolution. Counsel Sullivan said that he will work with Mr. Morando to tailor their resolution to expedite the process. The Town Board clearly understood that there were to be two separate resolutions and has not read the proposed AT&T resolution as of yet. Mr. Morando said that logistically, it is cleaner to have two separate resolutions, not two applications, because they were always co-applicants. Councilman Falco asked who is the applicant and Mr. Morando said that T-Mobile is the primary applicant and AT&T is co-applicant.

There was some confusion with the request by AT&T to have a separate resolution. The Town Board interpreted that to mean a separate application going before the Town Board in a Public Hearing. Mr. Morando objected to that and said they have been a co-applicant with T-Mobile from the start and only requested a separate resolution for logistical reasons. He said it is discriminatory to ask them to go through another Public Hearing process and he objects to that.

Counsel Sullivan said that the Town Board has not reviewed the AT&T resolution and needs time to read it. The process can be expedited but it cannot be approved tonight. Mr. Gaudio said that to clarify things, AT&T was included all along and named in the Public Notice for T-Mobile's Public Hearing.

Supervisor Warshauer said that the Town Board can close the Public Hearing and review the AT&T resolution for adoption at a future Town Board meeting. It basically mimics the T-Mobile resolution with a few provisions removed that were not relevant to AT&T. In his opinion there would be no need for an additional Public Hearing to approve that resolution, since all of the AT&T requirements for co-location have been included in the T-Mobile application.

John Nathan, Upper Shad Road, said that there is no merger clause in the T-Mobile application that binds the resolution to the successor. He thinks it is inappropriate to close the Public Hearing tonight for AT&T. He would like the public to be able to read and comment on AT&T's resolution. Supervisor Warshauer said that the Town Board was aware throughout the application process that AT&T was a co-locator. All of their site plan and special permit issues have been addressed. If it wasn't for them asking the Town Board to separate their resolutions, we would be considering a single resolution tonight. Closing the Public Hearing doesn't end the opportunity for public participation, which anyone who has attended our town board meetings knows I encourage. In order for the Town Board to act on the T-Mobile resolution, procedurally, the Public Hearing first has to be closed.

Mr. Gaudioso said that zoning is specifically for the use, not the user. Whoever is the successor is bound by the prior approval. John Nathan asked to have a clause in the resolution stating that. Mr. Gaudioso said that he had no objection to putting it in the resolution.

Mr. Nathan commented about technology change and is happy to see that the Town Board agreed to put it in the resolution. He wants to make sure that whoever takes over T-Mobile is bound by a clause to agree to deal with technology change and take down the obsolete cell tower. He is surprised, however, to see that the 5 year revisit clause was not put into the resolution. The resolution states "In accordance with Section 113-58.1(R)(1) of the Town Zoning Code, the Applicant's facility or portion thereof shall be dismantled and removed within 180 days after it has been inoperative or abandoned for a period of 180 consecutive days, or no longer has a valid approval, permit or license, or is otherwise no longer necessary for the provision of "adequate coverage" or "adequate capacity" due to significant technological advancements. The Applicant shall provide to the Town written notification including identification of the date the use of its facility was discontinued or abandoned or no longer has a valid approval, permit or license, or is no longer necessary for the provision of "adequate coverage" and "adequate capacity" in the Town of Pound Ridge, acknowledgement of the requirement to remove the facility or portion thereof and identification of the plans for the removal of the facility. In the event the Applicant's facility or portion thereof is required to be removed, the Town acknowledges that the emergency service antennas and equipment must also be removed from the Subject Property, unless the Town, the Owner and the Applicant all agree upon fair market consideration paid to the Applicant and Owner. The Town reserves the right to hold a hearing, upon reasonable notice to and opportunity to be heard by the Applicant and Owner, no sooner than ten years after the date of this resolution, and no more often than every 5 years thereafter, to determine whether the Applicant's facility or portion thereof has been inoperative or abandoned for a period of 180 consecutive days, or no longer has a valid approval, permit or license, or is otherwise no longer necessary for the provision of "adequate coverage" and "adequate capacity."

Peter Clough, Westchester Avenue, said that technology change takes time and most of the time 10-15 years is reasonable. He believes T-Mobile will keep up with the changes and the issue will be self-healing.

John Nathan is adamant about getting a clause in the resolution to protect the Town. He feels 10 years is too long.

Councilman Lyman said that it is important to know the resolution is not a decree from the Town Board but a negotiation. There has been a lot of give and take in the negotiation. We are also under the gun of a lawsuit to reach a settlement and agreement with a Federal Judge. Councilman McConville agreed and added that the main issue is to provide better cell service.

Supervisor Warshauer said that the main issue is the aesthetic issue and certainly there are several places in the resolution that addresses the tower being removed, so there is some flexibility for us. It is only a matter of time before technology drastically changes. The Town Board has the ability to work together with the applicant to have discussions should a technology that significantly reduces the visual impact of that tower becomes available.

Mr. Nathan is concerned and wants to know if the Town has the power under the statute to address the applicant when we feel the cell tower is no longer necessary and to take it out. Counsel Sullivan said that the Town Board can always have a discussion with the applicant. This is not litigation; it is an effort to balance competing interests and address the aesthetic concerns and equally improve the cell service in Town. He feels this resolution is a good effort to achieve the objective of improving cell service.

Peter Avellino, Pine Drive, sees nothing specific in the resolution that holds the applicant to remove the cell tower regardless of technology. Does the Town Board have the power to have the tower removed? Councilman Lyman said that if technology renders the equipment on the tower obsolete and no longer necessary for the provision of adequate coverage the Town Board can ask the applicant to remove the tower. Mr. Avellino disagrees and feels that the resolution does not say that and therefore, would like the revisit clause to be five years versus ten years. Mr. Nathan strongly disagrees with Mr. Avellino regarding his interpretation of the Town's powers under the existing Cell Tower Law regarding removal of the tower.

Josina van der Maas, So. Bedford Road, said that technology does take a fair amount of years to become a viably commercial product. The old technology would co-exist before a complete change over. Just because new equipment is available, it doesn't mean you discard the old right away. Realistically, ten years is not bad.

Rachel Weismann, Rolling Meadow Lane, said that once the tower is up, that is when most people will say the clause should have stated a revisit every 5 years versus every 10 years. They will see the actual impact and regret not changing the clause when they had a chance.

Board Action: Motion by Councilman Falco, seconded by Councilman McConville, all voting aye to close the Public Hearing on the T-Mobile and AT&T Wireless Communications Applications for a Cell Tower and co-locator at the Ambulance Corps property in Scotts Corners.

There was discussion about the Resolution for T-Mobile, specifically regarding cost of the emergency equipment, since the final equipment list was finalized last week and the applicant has not had the time to review it. In addition, Mr. Gaudioso stated that he has no objection to the landscaping issues and will add "or in the building" to "on the ground". He also has no objections to the engineering fees and other consulting fees that had been incurred.

The other issue is the color of the monopole. The Planning Board had recommended that the tower color be umbra (brown) to blend in with the trees. The Town Board discussed making it a dual color to blend in with the trees and sky and suggested using the umbra on the bottom of the monopole and a silver grey at the top. After much discussion, the two color concept agreed to was rombus (gray) on the top and umbra (brown) at the bottom.

RESOLUTION #: 68-11

Board Action: Motion by Councilman Falco, seconded by Councilman McConville, the Town Board polled and motion passing 4-0 with Councilman Paschkes abstaining on the following:

RESOLVED, that the Town Board hereby accepts the resolution as proposed, subject to finalizing the contribution for emergency equipment and the other conditions identified in the resolution.

Regarding the AT&T Resolution, the Town Attorney was directed to prepare a final draft resolution for consideration at a future town board meeting.

MINUTES: Acknowledge/correct/accept minutes of Town Board Meeting March 3, March 10, 2011 and Work Session February 23, 2011 and March 23, 2011.

RESOLUTION #: 69-11

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

RESOLVED, that the Town Board hereby accepts the minutes of the Town Board Meeting March 3, March 10, 2011 and the Work Session February 23, 2011 and March 24, 2011 with the corrections noted.

NEW BUSINESS:

Pound Ridge Community Church – Approval of banner for the Lobster Festival May 21, 2011

The Pound Ridge Community Church is having their annual Lobster Day on Saturday May 21, 2011 and would like authorization from the Town Board to allow them to hang a banner in Scotts Corners at the corner of Westchester Avenue and Trinity Pass. They wish to hang the banner on Friday, May 6, 2011 and remove it on Monday, May 23, 2011.

RESOLUTION #: 70 -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 Pound Ridge Community Church to hang a banner in Scotts Corners promoting Lobster Day on Saturday, May 21, 2011. They will hang the banner on Friday, May 6, 2011 and they will remove the banner on Monday, May 23, 2011.

Pound Ridge Partnership-Request for a special event permit and authorization to erect a banner in Scotts Corners for the “Pound Ridge Pride Festival” on Sunday, June 5, 2011

The Pound Ridge Partnership represented by Alison Boak, Chair of the Partnership and Susan Grimson of the Lionheart Gallery is requesting permission to hang a banner across Westchester Avenue for the “Pound Ridge Pride Festival” on Sunday, June 5, 2011. They will hang the banner on Friday, May 23, 2011 and they will remove the banner on Monday, June 6, 2011. They also submitted a Special Event Permit Application describing the activities which include beautifying the Town by picking up garbage and debris in Scotts Corners, planting flowers and painting the street signs that need attention. This will be followed by a Block Party to help bring camaraderie to the Town. There will be a B-B-Q with the food donated by the PRPBA. The public will pay for the food and the money will go towards beautification projects in Scotts Corners. They are requesting the closure of Westchester Avenue between Blind Charlie’s and Plum Plums Cheese Shop. There will be Police presence to redirect the traffic behind the stores. Music will be considered and presented to the Town Board for approval.

RESOLUTION #: 71 -11

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

RESOLVED, that the Town Board hereby authorizes the Pound Ridge Partnership to hang a banner across Westchester Avenue for the “Pound Ridge Pride Festival” on Sunday, June 5, 2011. They will hang the banner on Friday, May 13, 2011 and take the banner down on Monday, June 6, 2011. They also grant the Special Event Permit to the Pound Ridge Partnership.

Request by the Lance Armstrong Livestrong Foundation for a Special Event Permit for their Cycling Event on Sunday, April 10, 2011.

Rica Mendes of South Salem, N.Y. along with Rock the Ride & Run for Livestrong is in charge of a bike tour/race, kid’s bike and 5K for residents who want to show support for loved ones who have died or have fought cancer and want to do something in a situation where they are otherwise helpless. The bike course will go from Trinity Corners to New Canaan, and back, starting at 10 am and estimated return between 12 and 1:30 pm. The runners/walkers will follow the sidewalk to the multi-use path and back without needing

to go into the road. The children's ride is scheduled to begin after the last runner/walker returns to prevent congestion. At the Fancher Road intersection, the plan was to have everyone dismount, walk across the road, and re-mount once back on the trail. Rica has submitted the application for Use of Shopping Center along with the Special Event Permit Application. Rica has also submitted a Certificate of Insurance with the Town listed as Certificate Holder. The Town Board agreed to allow only the Bike event as long as its course starts at Trinity Shopping Center, goes left on Westchester Ave. and proceeds into New Canaan, Ct. and then returns to Trinity Shopping Center on the same route. The portion of the event to use the bike path has been denied because of safety concerns which includes the run or kids bike run on the bike path or down Westchester Ave.

RESOLUTION #: 72-11

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

RESOLVED, that the Town Board hereby authorizes Rica Mendes of South Salem, N.Y. along with Rock the Ride & Run for Livestrong to hold a Bike event as long as its course starts at Trinity Shopping Center, goes left on Westchester Ave. and proceeds into New Canaan, Ct. and then returns to Trinity Shopping Center on the same route on Sunday, April 10, 2011 at 10:00 a.m.

Highway Department – authorization to attend Highway School

RESOLUTION #: 73 -11

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

RESOLVED, that the Town Board hereby authorizes Highway Superintendent Vincent Duffield to attend the annual Highway School in Ithaca, N.Y. June 6-8, 2011 at the cost not to exceed \$500. This is budgeted and will come out of A5010.415.

Highway Department-consider awarding highway material bids

The Road Materials bids were held on Thursday, March 31, 2011 at 10:00 a.m. at the Town House in the presence of Town Clerk Joanne Pace, Deputy Town Clerk Carole Wollenweber, Superintendent of Highways Vincent Duffield and Highway Administrator Assistant, Diana Centonze and several vendors. The complete bid package and results is attached to the minutes.

RESOLUTION #: 74 -11

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

RESOLVED, that the Town Board hereby accepts the all inclusive bid from Safety Marking for line striping, AND BE IT

FURTHER RESOLVED, that the Town Board hereby accepts the lowest bid from Suburban Carting for 2 yard, 8 yard, 10 yard and 30 yard roll-offs refuse services, AND BE IT

FURTHER RESOLVED, that the Town Board hereby accepts the lowest bid from Thalle Industries for road sand, Putnam Materials for ¾” white item #4, ¾” trap rock, ¾” stone and 1 ½” stone and Wingdale for 1 ½” trap rock, AND BE IT

FURTHER RESOLVED, that the Town Board hereby accepts the bid from Peckham Materials for the bituminous bid, AND BE IT

FURTHER RESOLVED, that the Town Board hereby accepts the bid from Clove Excavators for laid-in-place bid, AND BE IT

FURTHER RESOLVED, that the Town Board hereby accepts the lowest bid from Howard Toms Tree Service for tree work bid, AND BE IT

FURTHER RESOLVED, that the Town Board hereby accepts the lowest bid from Reed Limited for envirobrine bid, AND BE IT

FURTHER RESOLVED, that the Town Board hereby accepts the lowest bid from AC&S and Wiltse for large dump w/operator, AC&S for skidsteer w/operator and Witse for large excavator w/operator, mini-excavator w/operator, and excavator w/operator & hydrolic rock hammer.

Garden Club – request to donate two trees for planting at the Town House and New Historic District Preserve

RESOLUTION #: 75 -11

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

RESOLVED, that the Town Board hereby accepts with gratitude the Garden Club’s donation of two trees for planting; one at the Town House and one at the Historic District Preserve, donated to the Town by Mary Moat.

Appointment of New Member to the Landmarks & Historic District Commission

Board Action: Motion by Councilman Lyman, seconded by Councilman McConville, all voting aye to hold an Executive Session on Thursday, April 14, 2011 at 6:00 p.m. to interview a prospective new member to the Landmarks & Historic District Commission.

Pound Ridge Historical Society- request that the Town donate a Historic Document to them for display at the Museum

The Pound Ridge Historical Society is requesting the donation by the Town of a Historical Document found by Trustee Larry Brotmann while researching various old Town documents. The document is a list of students in District No. 4 in Pound Ridge dated March 19, 1814.

RESOLUTION #: 76-11

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

RESOLVED, that the Town Board hereby puts the historical document listing the names of students in Pound Ridge's District No. 4 dated March 19, 1814 on loan with the Pound Ridge Historical Society. It will be put in the Pound Ridge Museum on a temporary basis to be recalled at the Town Board's discretion and subject to the Town developing a formal policy regarding care and storage of our historical documents.

FINANCIAL MATTERS

Finance Department – request approval for 2011 budget adjustments

Steve Conti, Director of Finance, is requesting approval for a 2011 budget adjustment. The taxable value of the Town has declined since the adoption of the 2011 budget. A budget adjustment of \$17,731 as an increase to the Fund Balance appropriation would offset this decline and maintain the tax rate of 12.3101 that was adopted in the budget.

RESOLUTION: #77 -11

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

RESOLVED, that the Town Board hereby approves the 2011 budget adjustment of \$17,731 as an increase to the Fund Balance per memo dated 4/6/2011 from Steve Conti, Director of Finance, necessary to maintain the tax rate of 12.3101, adopted in the 2011 budget.

Recreation Department – request authorization to refund deposit fee for Conant Hall

RESOLUTION #: 78 -11

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

RESOLVED, that the Town Board hereby authorizes the following refund:
George Bazos, 26 Autumn Ridge Road, Pound Ridge, N.Y., four hundred dollars (\$400) for use of Conant Hall on March 18, 2011 for a birthday party.

Celebrations- request approval for payment in advance of audit for Memorial Day

RESOLUTION #: 79 -11

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

RESOLVED, that the Town Board hereby authorizes the payment in advance of audit for the Mt. Kisco Scottish Pipes and Drums (\$1,000.00) for the Memorial Day Celebration and payment in advance of audit for the Bearcats Entertainment (\$1,000.00) for performing in the Memorial Day Parade and Ceremony on Monday, May 30, 2011.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 10:40 p.m.

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