

Town of Milton Planning Board July 14, 2010

Attendance: Leal (Chair), Lacey, Zlotnick, Frolish, Woolbright, Whittel, Staulters, Scatena (alternate), Pozefsky (attorney), Robinson (engineer), Howe (zoning official), Talmadge (secretary).

The meeting was opened with the Pledge to the Flag.

Whittel made a motion to approve the 6/9/10 minutes. Staulters made a second, Woolbright abstained, all other members voted in favor.

Public hearing Palus subdivision on Stone Church Road

Terry Humiston, land surveyor, represented the applicant – reintroducing the subdivision – 50 acres divided into two lots utilizing the single lot exemption for a future building lot and the remaining acreage with the existing home.

Zlotnick made a negative SEQR declaration and advised the chairman to sign the EAF on behalf of the board, Staulters made a second, all members voted in favor.

The public hearing was opened.

There were no public comments, everyone had an opportunity to speak, and the public hearing was closed.

Whittel made a motion to approve the subdivision map dated 5/21/10, Lacey made a second, and all members voted in favor.

Continue SBA cell tower lighting request – Sodeman Road

Frolish stepped down and alternate member Scatena took his place on the board.

Christopher Fisher, attorney for Cuddy and Feder, and Clinton Papenfuss, SBA Airspace Analyst, represented the application.

Mr. Fisher reintroduced the application;

Initially a misstatement was made regarding no lighting on the tower.

Currently there is a white daytime and a red nighttime light installed.

It is not turned on.

A visual assessment test was done – FAA was consulted – Clint Papenfuss consulted with FAA and a steady red beam on the tower was rejected.

There are two options.

Red at night, orange bands of paint or a dual system as is installed now.

These are the only two options available.

Height of tower is 1 ½ ft over the 150 ft limit.

A plan will take off 3 ½ ft and the light will be reinstalled at 150 ft.

Leal indicated the board had received a report from the private consultant Ken Patterson.

Robinson read the report into the record (report attached to minutes).

Howe indicated that the applicant had begun mitigation of the tower height.

Fischer explained the tower will be lowered to 150 ft within a week or so.

Board discussion and comments ensued.

Staulters stated strobe lights are a problem and the beam of light pointing upward would be better than the horizontal beam that was tested – a shield was also suggested.

Fischer explained the tower light must be seen from the airport as they roll down the runway - a shield would block some of the light from the ground.

Leal asked if the lighting was due to the height of the tower.

Pappenfus indicated the power lines also would need need a light – if the tower is lighted then the power lines will not need to be lighted.

Leal asked if FAA regulates a homeowner.

Pappenfus stated any construction or alteration within a 100-1 slope that is within 10,000 ft of the end of the runway is regulated – FCC regulates SBA the FAA has no enforcement arm - the tower is not in compliance with FAA.

Leal inquired if FCC has a requirement then why not just put the light in?

Fischer stated they are trying to work this out - SBA purchased the tower and then found out about the lighting requirement.

Leal inquired if SBA would be in trouble if a plane hit the tower?

Fischer stated that No – “You would be.”

Leal stated the town was misinformed or lied to when the tower was approved – at that time the applicant stated that no light was required – the board approved the tower site with no light.

Pappenfus indicated the town would not want orange and white paint on the tower, asking, what law do we follow?, the Town or Federal?

Pappenfus stated everyone wants cell coverage - it needs lighting even at ground level.

Fischer indicated FAA says it needs to be lighted – and in March of 2007 applicant Padula said it did not need a light.

Whittel indicated that key fact is what got the tower approved – they should have come back in and told the board there was a FAA problem – those are the facts – the applicant told the board that no light would be required up to 150 ft in height – the facts have been stretched.

Pozefsky advised the board approved the tower without a light up to 150 ft - there is some case law that indicates they have a vested right to the tower up to the 150 ft - if actual fraud could be proven, it may be a different story – this board cannot get into the representation of the light.

Leal asked if the board could tell them to take it down.

Pozefsky advised they have a vested right to the tower at 150 ft.

Lacey referred to the SEQR and #25 was left blank, the SEQR is in the name of Optasite and not SBA.

Fischer indicated that no FAA approval is needed and that Optasite does business as SBA - Clough Harbor updated the EAF.

Lacey referred to the whole situation as something that really smells.

Whittel made a motion to adjourn into executive session to discuss potential legal action.

Pozefsky advised the board cannot go into executive session for hypothetical reasons.

Leal indicated he has some legal questions – If the tower lights are not on, where is the town's liability.

Pozefsky advised the town is exposed to liability – based on a mistake – this board said no light – we could be liable.

Lacey stated the board made decisions based on no light and based on incorrect information – that is why they have a tower.

Pozefsky indicated if the tower had not been built then OK, but they have a vested right to keep the tower as it is.

Fischer agreed with the legal interpretation.

Fischer explained the service area and the need to provide the service to the community and indicated that any tower along Route 29 would need a light.

Whittel inquired where no light would be required.

Pappenfus explained that no matter what is done with the tower a light has to be on the hill there.

Robinson indicated the consultant is saying if the location is required for cell coverage on Rt 29 – an article 78 would be successful – it is a utility and the law is on their side.

Whittel inquired what type of lighting?

Papenfuss indicated they are proposing red at night and white at day – both strobe. If painted the paint would be bands from top to bottom.

Scatena inquired about the airport elevations – litigation could take months and there is a safety problem – could a lower intensity light be used?

Papenfuss stated the white light intensity was a mistake at night – the light will be red and will come on at sunset - shielding could be incorporated but the shield cannot face to the airport.

Papenfuss indicated he is not an expert at shielding but 360 degrees has to be seen from the airport – the only reason the light is not on is because the board asked not to.

Whittle - what will the applicant will do to make the situation better?

Papenfuss - it is not an inexpensive fix.

- Fisher agreed they would look at lighting with a shield.

Whittel asked for as much shielding as possible.

- Fisher indicated they would consult with a lighting expert – it has to be seen at 360 degrees from the runway.

Leal added the board is aware the FAA is requesting the lighting and he is worried about if something happens and the tower is not lit.

Scatena added it is a very difficult situation – he would like the people satisfied and would want safety of airplanes – visual sight is what is mostly used by the pilots at that airport.

Leal indicated based on the information provided, a light is needed but the approval condition says no light and with the height restriction of 150 - makes this project in violation and it cannot be approved now.

- Fisher indicated they would lower the height before the next meeting.

Leal asked if they intend to turn on the light temporarily.

Fisher indicated the light is not fully operational at this time – they do not want to be forced into a violation being issued by town code enforcement.

Pozefsky advised that the board may motion to remove the condition of no light temporarily.

Fisher stated that during construction the light will be moved down and reattached and at that time the light will be turned back on.

Whittel stated the board would like to see the tower lowered as soon as possible and inquired what else in short term would make the tower visible?

Fisher stated that there is a notice at Saratoga County airport it is registered as 157 ft.

Leal addressed the Visual EAF

FAA approved for Red and White lighting.

FAA asked if the applicant wanted markings.

If painted instead would it be OK with FAA?

- Pappenfuss stated he will provide a detail for the shield.

Staulters indicated a shield will not protect many of the people affected – it really stinks – would like to test the law and ask them to take the tower down.

After discussion Zlotnick made a negative Visual SEQR motion declaring this a type II action, Whittel made a second, Staulters voted No and all other members voted in favor.

Public hearing was opened.

Tom Boghosian read a statement into the record (in file).

Fisher responded the law says that there is no lighting unless it is required for public safety – the light could have been turned on and court action could have followed – it is a legal requirement for the light.

Ray Ingles of Sodeman Road - asked if the FAA determination mandates the light, stated he was told no light would be on the tower, believe that he and others have vested right as citizens, stated these professionals own thousands of towers and do not make mistakes, if the light is required then would want some consideration, the light is a safety hazard to the public.

Tony Zanella of Stone Church Rd would want the tower painted only and no lighting.

Rick Sherman of Stone Church Rd agreed with all comments – would have stopped the extension from 120 ft to 150 ft if they had been told there would be a light required., the light is an issue, the tower should be brought down to National Grid height so it would not be offensive.

John Munter of Sodeman Rd indicated he is very concerned about a light, if it was disclosed that a light would be required then he would not have agreed to participate in it. The airport runways have been extended – is this the reason? What minimum distance to not require a light? If National Grid requires a light do the oak trees require a light? Decisions should be based upon accurate information. A cell company is a repetitive business – they knew about the airport – due diligence was to make all of the facts known.

Fischer stated that Optasite did due- diligence as the lighting requirement was in the application.

Fisher stated that in lieu of a white light in daytime painting could be done.

Leal asked if a reduction of height would eliminate that need.

Papenfuss indicated the same lighting is required – and further explained the slope service.

Bruce Boghosian inquired about the cell company having a vested right.

Pozefsky indicated that there is case law and it is up to the board to instruct if they want it.

Bruce Boghosian of Jockey Street stated the FAA controls over 150 ft above the ground, a aviation easement needs to be obtained by the FAA or County Airport, Where is it written that it is mandated to have the light? Approval said no light. What article 78 is the town going to take – theirs or these people? The applicant is in violation – invoke the bond and remove the tower in the name of safety. Take light off, reduce height and then they should come back to the board.

Kathy Boghosian of Middle Line Road stated the airport is visual and it is getting bigger, the cell tower is close, as a resident they pulled the wool over yours and my eyes. Reduce the height for no light or take the tower down. Are dealing with light pollution and it is sickening – house is a disco, Flashing lights set off migraines, Rights are being violated.

Rick Sherman of Middle Line Road indicated that he and his neighbors were here first and also has vested rights.

Fisher responded to comments - Trees, navigation easements and etc have nothing to do with existing towers, Towers under the tree lines will not work, Town code doesn't prohibit lighting, the town asked for no lighting and the applicant said yes to that request. The tower will be 150 ft, the light is currently not turned on, and a partial waiver until the decision is made would be welcome.

- Leal asked for the applicant to show the FAA requirement.

Fisher referred to original application- all paperwork says it needs markings and lighting.

Leal asked Bruce Boghosian to help him out by clarifying where to find recommendation vs. requirement and his statement they cannot mandate.

Boghosian stated SBA should apply at 149 ft and not 150 ft and see what happens – also the board should ask if they control the airspace under 150 ft.

Leal asked about the word recommendation – where is it?

Fisher stated it is a condition – physical construction of the tower is different from air easement.

Leal asked if the applicant would ask about the 149 ft.

Papenfuss indicated he guarantees lighting will be required.

- Leal stated it is not unreasonable to request that they ask about 149 ft – the board is requesting it.

Painting and lights were discussed further discussed.

The public hearing would continue.

Recess.

Board reconvened.

Frolish returned to the board.

Continue review Norton subdivision Galway Road

Mr. Norton represented his application.

Since his last appearance at the board he had pursued a variance that was approved and has filed a lot line adjustment.

The wording has been added to the map and a copy of the deed has been submitted.

The surveyor created a 50 ft strip of land for right of way.

No new curb cut will be required from the county.

Pozefsky advised he is OK with the reference on the map to the deed. The language agreement is OK and a copy of the deed will be supplied to the board for the next meeting. Parcel two access is in the easement.

Whittel stated he sees no conditions as per county comments for driveway as there is no new curb cut.

Howe agreed.

The public hearing was scheduled for August 11th at 7:05PM.

Site Plan review Geyser Vacuum Mixed Use facility.

David Swinton represented his application.

Property is in the Town Center zoning district.

3 phase project

1. Remove existing garage and add retail.
2. Building addition for residence – owner occupied.
3. Add storage facility.

Streetscape is not shown on the plan – have excluded due to expense – town grant money will be in the future – ask removal of this requirement pending town doing the work in the future.

Have added a variety of rooflines and the building will be attractive.

Leal indicated the town is excited about small business but he does not see the board's ability to waive the requirements in TC zone - if the work never happens then the board would have gone against the TC requirements – it has been ages ago that the town got that grant.

Swinton explained the whole idea is to have a nicer place – the amount of streetscape required is economically impossible.

Leal explained there is a provision in the code that if it is not practical then escrow money is allowable.

Site discussion ensued.

There is no public water and sewer available and there is enough acreage for septic.

Robinson indicated erosion and sediment controls need to be shown on the plan.

Howe explained this is a substantial modification under 180.87 – in past the applicant is required to install streetscape – the town applied for the grant – 40 ft of pavement with curbing, walks, lights and trees – the holdup is water and sewer. Multi family is permitted in TC.

Leal stated the board needs to address the streetscape requirement prior to discussing site plan details.

The money could be put in escrow.

No plan is certain - the board would look at the site plan again when the applicant is ready.

Zoning change request at Carlton Hollow

Don Zee, attorney, represented T&B Associates

Jim Staulters stepped down and Armand Scatena took his place on the board.

Leal indicated that a referral from the town board had been received and they are seeking the planning board's recommendation for a zoning change from a Senior PDD to Mixed Use at the Carlton Hollow site.

Zee indicated some board members commented at the workshop they were concerned about a precedent being set with a zoning change – it is not the planning board issue – are only asking if Multi Family zoning is appropriate.

Zee indicated the buildings have been modified to 8 units each. Traffic would increase slightly.

Frolish indicated he had looked at everything involving the zoning change and wonders what benefit it would be to the town – the assessments are less than 100%, the comprehensive plan addressed the need for senior housing, any other developer in the future can ask for a zoning change, would not be fair to the residents of the town because developers speculations are not working out – spot zoning is a concern – as a Senior project it is acceptable, as a Mixed Use project it does not benefit the town.

Zee responded that changing from condos to condos - the benefits are less expensive units – there is a market for young people and single parents – in the town there are 68 Senior condos already and the town has 20 condos that are not senior – will create more affordable housing.

Scatena inquired about the marketability of Mixed Use vs. Senior – noting the Master Plan creation was intensive and a lot of effort went into it.

Zee indicated it is a case by case situation – adding the master plan should be looked at for updating – the market has had analyses and is changing – senior condos are not economically feasible.

Scatena referred to Queensbury – 60 units for seniors have been approved and they are only ½ hour away and the need is great.

Woolbright indicated the question is not what makes sense in a business plan – the town gave us zoning and a master plan – do we think the town is served well by changing the map vs. something else – it makes sense to have it R1 – surrounded by Single Family, we are here to talk about what makes sense.

Frolish added that they have 68 units already.

Leal indicated the PDD met the regulations for Senior Housing and the zoning was changed with the PDD from R1 to a PDD with Senior Housing.

Frolish added the assessments are less and he sees no benefit to the town to make the zoning change.

Zlotnick added that if they want a different use then they should start over with a new project.

Zee stated they are asking for a zoning change.

Leal added that the zoning change request is not consistent with the Master Plan – he personally came to the many public hearings and the Master Plan represents over 17,000 people – the PDD was in the zoning and it allowed Senior Housing and it met with what the public wanted – yes, things change – if the Master Plan were reviewed and changed too then OK, but at this time there are places in the town for Mixed Use – I like the idea – do not think it is right here – the TC zone would be happy to entertain it. The county has looked at this request and is in favor of rejecting it although we were not given an official recommendation due to the town board being the referring authority – market conditions can change and when the property was purchased it was purchased as R1 – it then became a Senior PDD – it does not meet the Comprehensive Plan.

Whittel added he is not in favor of this change – Mixed Use with too much density for kids – they need more land for activities for kids and young families.

Frolish made a motion for a negative recommendation for a zoning change from Senior PDD to Mixed Use at Carlton Hollow PDD.

Whittel made a second to the motion. All members voted in favor.

There was no other business.

The meeting was adjourned.