

**TOWN OF BETHLEHEM
BOARD OF APPEALS**

June 17, 2009

A regular meeting of the Board of Appeals, of the Town of Bethlehem, Albany County, New York was held on the above date at the Town Offices, 445 Delaware Avenue, Delmar, New York. Chairman Hodom presided.

PRESENT: Michael Hodom, Board of Appeals Chairman
Michael Moore, Zoning Board Counsel
James Potter, Town Board Counsel
Lennie Micelli, Board of Appeals Member
Ken Umina, Board of Appeals Member
Matt Watson, Board of Appeals Member
David DeCancio, Board of Appeals Member

Justin Harbinger, Assistant Building Inspector

AGENDA: Gregg Sagendorph, Jr.
Esco Tower and AT&T Mobility

Chairman Hodom called the meeting to order at 7:00pm.

PUBLIC HEARINGS

Gregg Sagendorph, Jr.

The Board had received an application for a variance under Article V, Section 128-30 (C) (1) for 62 Harrison Avenue, Delmar. The applicant proposes to move a garage.

Mr. Platel said the applicant is proposing to relocate the existing fourteen (14) foot by twenty (20) foot detached garage to the front / side yard of the lot. For a corner lot the required setback for an accessory structure is twenty (20) feet and the proposed setback is five (5) feet, which is fifteen (15) feet shy of the minimum required setback.

The property is located in a Core Residential Zoning District and is currently occupied as a single family dwelling.

A motion to indent the Public Hearing notice was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday, June 17, 2009, at 7:00 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on application of Gregg Sagendorph, Jr. for a Variance under Article V, Districts, Use and Area Requirements, Section 128-30, (C) (1), front and side yard setbacks, of the Code of the Town of Bethlehem for a garage, for property at 62 Harrison Avenue, Delmar, NY 12054.

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Gregg Sagendorph, Jr., the applicant, presented. Both Mr. and Mrs. Sagendorph were present. They are proposing to relocate their garage. Presently the garage is located twenty (20) feet off the property line and in the center of the back yard. They would like to move it to within five (5) feet of the property line. They have grass area all the way around the garage and there is a deep ravine on the backside of the lot. The yard is not fenced in and that's another reason they were seeking this variance. Four (4) years ago they acquired a variance for a front porch. They have also put on dormers and re-sided the house. They are now turning their attention to the garage. It's a different color from the house and they would like to re-side it and fence in the yard. If the garage were to the edge of the property, it would be easier to fence in the yard. They have two (2) children, ages two (2) and four (4) and another one on the way. It is difficult to watch both children in the yard with the location of the garage. They had met with Mr. Platel and tried to come up with a setback that would meet some requirement. They looked to the required setback of an accessory building and it's five (5) feet in their district. There are power lines to the rear of the property that have a ten (10) foot right-of-way. They will be in compliance with that right-of-way. They are on a corner lot and one of the streets is a paper street, Bower Court. Mr. Sagendorph doesn't believe the paper street will ever be built because the property behind them has purchased the Town's right-of-way of twenty-five (25) feet. The Town would need to purchase that property back from the home owner in order to build the street. The Sagendorph's garage, if allowed to move, will be in line with the home behind them, once it is moved. Another reason he didn't think Bower Court would be built is because Murrin Drive is already built and that would place two through streets only one house apart.

Chairman Hodom asked Mr. Platel why Bower Court was chosen as the front yard. Mr. Platel said that is one of two (2) front yards, as is the case with all corner lots. He said in this case Bower Ct., even though it is a paper street, qualifies as the other street. Bower Ct. has a fifty foot right-of-way along Mr. Sagendorph's property but beyond that property it reduces to twenty-five (25) feet. Chairman Hodom asked Mr. Platel what the Town standard was for the width of a new street. Mr. Platel said it would be a minimum fifty (50) foot right-of-way. Chairman Hodom said it seemed very unlikely that Bower Court would be built because of the Town standard for street width. He asked Mr. Sagendorph to describe where the existing garage is currently located relative to the house. Mr. Sagendorph said the existing garage is fifteen (15) feet off the rear of the house. The house is thirty-two (32) feet wide and on the back side of that, twenty (20) feet is garage. They want to pick up the garage and turn it ninety degrees. Rather than the garage door being off Bower Ct., it would be parallel with Bower Court.

Mr. Sagendorph said he has lived in the house for six (6) years. Chairman Hodom asked if he had discussed his plans with his neighbors. Mr. Sagendorph said he had spoken with the neighbors. He said they told him they would help move the garage.

Chairman Hodom asked how Mr. Sagendorph had arrived at the proposed setbacks he showed on the plans. Mr. Sagendorph said the five (5) feet was from the requirements for an accessory building and the rear yard was because of the power line ten (10) foot right-

of-way. Chairman Hodom asked Mr. Platel what the setback would be if Bower Ct. were considered a side yard. Mr. Platel said five (5) feet.

Chairman Hodom asked if they would need a new driveway. Mr. Sagendorph said the driveway would need to be altered on the second half. The curb cut would not change. Chairman Hodom asked Mr. Sagendorph if it was difficult to see the children in the yard with the current location of the garage. Mrs. Sagendorph said it was difficult to keep track of them and would be easier to see them with the garage moved.

Chairman Hodom asked them if they had considered an attachment of the garage to the house. Mr. Sagendorph said the rear entry to the house is on the other side and the terrain of the lot limits where a garage could be placed.

Chairman Hodom asked if the main concern was for the safety of their children. Mrs. Sagendorph said yes and it would also give them more usable play area. Mr. Watson asked if they would have the siding on the garage match the house. Mr. Sagendorph said yes.

Mr. Brookins, 59 Harrison Avenue, said he had been a Zoning Board member for ten (10) years and was now a Planning and Zoning Consultant. He said he has lived across the street from the applicants for six (6) years and has lived in the neighborhood for thirty-one (31) years. He thought the Sagendorphs had established their need and he didn't think there was any other solution. They wanted more yard space for their use and it would have minimal impact on the neighborhood and the request would not adversely impact the neighborhood. He thought it would improve it by putting the garage in line with other garages on the street. He thought the request was minimal and he didn't think it was a self created hardship. Mr. Sagendorph had purchased the property with the garage located where it is. He supported the variance request.

There being no further comments, the hearing was declared closed at 7:16pm.

Esco Tower

Chairman Hodom said Mr. Moore has a conflict of interest with this project and has recused himself. Mr. Potter, the Town Attorney, will sit in for this project.

Mr. Platel said the applicant is proposing to construct a Telecommunications Tower that will exceed the maximum height allowed for such structures and also not meet the minimum setback for towers to both property and power lines. The proposed tower will be one hundred twenty (120) feet tall exceeding the ninety (90) foot allowable for towers in a Residence "A" Zoning District by thirty (30) feet. The tower would be located eighty-seven point five (87.5) feet from the adjacent property line which is ninety-two point five (92.5) feet shy of the minimum required and one hundred seventeen point five (117.5) feet from the National Grid power lines which is sixty-two point five (62.5) feet shy of the same one hundred eighty (180) foot minimum setback. Also for the Board's information the applicant's application does mention the possibility of expansion for this

tower to one hundred fifty (150) feet. Any future expansion to this tower will required the applicant to follow the same procedure that it is going through at this time requiring both a Zoning Variance from the Zoning Board and Special Use Permit from the Planning Board. As stated earlier the property is located in a Residential "A" Zoning District and the current use of the property at this time is agricultural and residential.

A motion to indent the public hearing notice into the record was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a public hearing on Wednesday, June 17, 2009 at 7:15 p.m., at the Town Offices, 445 Delaware Avenue, Delmar, New York to take action on an application from Esco Tower for a Variance under Article VI, Supplementary Regulations, Section 128-61, (F) (7) (B) and Section 128-61 (F) (9) of the Code of the Town of Bethlehem for construction of a wireless telecommunications facility, on property located on Van Dyke Rd. (96.00-1-22.1), Delmar, NY 12054.

Chairman Hodom said before continuing with the public hearing, Town Counsel, Mr. Potter had some comments concerning the application.

Mr Potter said in addition to making a decision on the requested variances, there are other issues that need to be addressed. SEQR being one of them. SEQR does apply to this application. The Board needs to make a preliminary determination whether this is a Type 1 action, a Type II action or an Unlisted Action. Normally applications on residential properties would be a Type II action and the Zoning Board wouldn't have to go any further with SEQR. This is a height variance which would be an unlisted action and the applicant on their Environmental Assessment form indicated that it was an unlisted action. Once that preliminary determination is made then the Board must address the issue of whether there are ant any other Boards that the applicant must apply to. Under the Town's Telecommunications Law, the applicant has to apply for a Special Use Permit and Site Plan approval from the Planning Board. The next issue to be addressed under SEQR is whether the Board will proceed with a coordinated review or an uncoordinated review. If the Board proceeds under an uncoordinated review, then the Board makes a SEQR determination for its purposes alone as to whether there will be adverse environmental impacts that can or cannot be adequately mitigated. Then the determination on the variances would be made. If the Board decides to proceed with a coordinated review then this Board would coordinate SEQR review with the Planning Board. Instead of two (2) environmental reviews, there would only be one. A notice would be sent to all other involved agencies, which is the Planning Board, advising them the application had been submitted and asking them if they want to assume Lead Agency status. Either Board may be Lead Agency, though in this case it is the Zoning Board's decision to make. In terms of whether a coordinated or uncoordinated review is desirable, the applicant will probably want an uncoordinated review. If they are successful with obtaining the variances, they will then proceed with the Planning Board.

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The advantage with the coordinated review is there are overlaps that will be considered by this Board and the Planning Board. The big issue is the potential visual impacts. There are mitigation steps that the Planning Board would take under consideration with the Telecommunications Act used for Site Plan review that this Board might also consider for the variance application. Under the Telecommunications Law the Planning Board is authorized to attach, among others, a condition that would attach additional setback sideline or rear line requirements. Another would be the utilization of stealth techniques to minimize the visual impact of the facility. Another is measures to insure that proper maintenance of plantings and landscaping to effectively shield the tower compound from adjacent properties. Under the visual appearances section it states that unless the structure can not achieve the applicant's purposes as disclosed in the application, the Planning Board shall have the authority to require the applicant to furnish an alternative proposal, using stealth techniques or some other alternative structure at the proposed site rather than a conventional tower to better achieve the least impact on the visual environment. The Planning Board under their environmental review would be looking at a lot of the same issues as the Zoning Board. That would suggest that a coordinated review might be desirable. The Town Planning staff, at the applicant's expense, has engaged a telecommunications consultant to analyze the tower application. It would be more efficient from the consultant's perspective to have one environmental review.

If the Zoning Board decides to proceed with a coordinated review, that determination would be made first, then a notice would be sent to the Planning Board. They have a certain amount of time to respond as to whether they want to be lead agency.

There is also an issue as to the timeliness of the application. Originally the applicant came in and filed an application with the planning department in 2008, was denied and informed that variances would be needed. The applicant then worked with the planning staff to get the application up to Town requirements. They had requested an additional sixty (60) day time period in which to make the application to the Zoning Board. The Zoning Law states that applications shall be made within sixty (60) days of the building inspector's determination. The Board may consider as to whether the Town can be stopped from enforcing the time limits under these circumstances. The applicant worked with the planning staff to submit materials that had been requested. There was an ongoing dialogue with the applicant and the planning staff. That information was submitted by the applicant. The Zoning Board would make an interpretation of the law in this circumstance. One determination that could be made is that the sixty (60) day time period was effectively extended through estoppel by the planning staff's continued request for information.

Mr. Potter said those are the two (2) issues beyond the variances that the Zoning Board will need to address.

Chairman Hodom asked if the applicant had submitted a schedule of correspondence between the applicant and the Town and the responses between the two. Mr. Potter said he was referring to Jackie Murray's letter. He has spoken to her about this. Ms. Murray said Mr. Preska applied for and received a denial letter from Mr. Platel on March 26,

2008. On May 29, 2008 an extension of the time period was granted by the building department. She said from that point the applicant has actively worked with the Town's staff to develop a complete application for the Planning Board because the Planning Board would be determining Site Plan. Mr. Potter said he has spoken with Mr. Leslie, Senior Town Planner, and he has indicated that there was an ongoing dialogue between the Planning Department and the applicant. Ms. Murray said her letter had been submitted as part of an application to the Planning Board for a one hundred seventy-five (175) foot tower. Per the Planning Department's request to review a new tower that is located in the Town of New Scotland, the applicant has discovered that they could change the application proposal. They submitted a new application for one hundred twenty (120) foot tower. She said there was another provision of the law that her client went through prior to being represented by counsel; getting a denial letter from the building inspector to establish standing. That was un-necessary because they needed a special use permit. She referred the Board to NYS Town Law which is also mirrored in the Town Zoning Law Section 128-90(g). This states that if an applicant has to apply for a special use permit, it's not necessary to get a denial letter. It is their position that they should not be prejudiced for going through an un-necessary process. Ms. Murray said she was the attorney for Esco Tower and ATT Mobility Upstate New York. They are co-applicants. She wanted to start fresh with the application for the one hundred twenty (120) foot facility. Mr. Potter said he did not fully agree with Ms. Murray's interpretation of the Section 274-A of Town Law. He did agree that the application before the Board was for a one hundred twenty (120) foot tower. Another determination for the Board is whether this is a new application or a modification of an existing application. Ms. Murray said they had submitted a new application with applicable fees. She said it was a significant change. Chairman Hodom asked if the sections of the law she referred to were part of the submission. Ms. Murray said she reproduced the language that's in NYS Town Law and mimicked in the Town Zoning Law. She said it was on page 5 of their narrative. Chairman Hodom asked for a copy of the March letter for the Board. He also asked Ms. Murray to make copies of the sections of the law she quoted. Chairman Hodom said there were new issues brought up and he wanted the Board to have all the material.

Ms. Murray, Esq. said she would explain the nature of the application, the site of the application, the description of the variances requested and the unique standard of review that is applicable because this is a wireless telecommunications facility. She will then show how they can meet the standard. She said the site selected for the project is unique. It sits on a one hundred eleven (111) acre parcel that is zoned residential agricultural and is vacant. It is used for agricultural purposes. She said it meets all the of the significant setback requirements set forth in the Code such as the three hundred foot setback from a daycare centers, residences, etc. She said it would be difficult to find another site that would meet those requirements and meet the needs of the western portion of the Town. The site for the facility is located on the portion of the parcel that has vegetation, an existing utility easement and won't require a conversion of the agricultural use on the parcel. She said Esco Towers set out to use the existing vegetation as a buffer and the portion of the parcel that would allow Mr. Peska to continue his agricultural use. They also took advantage of the view shed of the eighty-five (85) foot lattice support structures

for national grid utility lines. She said the photographic simulations show that the vegetation on the site work as a buffer from most view points. The use of the area of the vegetation necessitated the variances. The setback variances are necessary because of the presence of the utility lines. The code requires one and one half the times the height of the facility away from the utility lines or any property lines. They looked at that section of the Code in the most conservative way and treated the deeded easement of National Grid as a property line. If the Board disagrees, it would be one less variance they will need. The two setback variances are necessary because of the existence of the power lines. The height variance is needed because the Code says the height of the tower cannot be higher than three (3) times the allowable height in the underlying zoning district. The height in the Residential A zone is thirty (30) feet. They want to install a tower that is one hundred twenty (120) feet. That facility will be expandable to one hundred fifty (150) feet. They want to put in a foundation and tower strong enough to expand now as it is being constructed. The Town's Code encourages co-location. If their facility is expandable, it will meet the spirit of the Code for the future. They have received interest in the facility by two (2) other carriers in addition to the co-applicant, AT&T Wireless. Verizon had submitted a letter of intent to co-locate on the facility. They submit these letters for any facility yet to be built unless they are the developer of the facility. Those are the variances they are requesting. They are over eleven hundred (1,100) feet away from the high school. The use is allowed in the RA district with a special use permit from the Planning Board.

Ms. Murray said when wireless telecommunication was new in the early 90's, the state and the federal government had the foresight to see the technology would be a necessity for the public. The standard of review for variances of wireless telecommunications or other utilities in New York is different. The standard is whether there is a need for the facility to provide telecommunications service in the area and whether there are compelling reasons, economic or otherwise. The economic or otherwise is the distinguishing factor because under the traditional variance standard they would have to show there wasn't any other economically viable use of the land. That is the reason for the different standard. She hoped that the Board was in agreement that this is the standard that applies.

Ms. Murray said in order to meet that standard, along with the application materials, they submitted radio frequency propagation plots. They illustrate AT&T's existing service in the area. It shows AT&T's lack of in-building service in the western portion of the Town. She said she would explain the propagation plots as best she can but a AT&T radio frequency engineer was not present; answers to questions she can't field would be submitted in writing or with more plots. She said the other people in attendance for the project was Mr. Preska, the land owner; Mr. Loder and Mr. Butler from Esco Tower and Mr. Woodward, a representative from AT&T.

Chairman Hodom said a radio frequency engineer representing the Town was present and he would be making verbal comments and would also be submitting written comments that would be provided to the applicant.

Ms. Murray said the Exhibit 1 propagation plot shows there isn't much AT&T in-building service along the Delaware Avenue corridor or the adjacent areas. Mr. DeCancio asked if weather impacted the tests. Ms. Murray said the plots are generated using radio frequency propagation software. The variables are USGS topographic mapping. They can include other variables such as vegetation height, they can put in the development type in the area and the density of the development. She said the plots the carriers use are used so they can make an investment. She said the carriers don't build sites unless it is in their best interest. They want to use plots that are reliable and based on good data. They don't want to build facilities unless it is necessary. The radio frequency plots were created in house by AT&T. She said these plots are based on experience. They have built thousands of towers all over the nation. AT&T checks that their modeling tool is accurate. Ms. Murray said the legend on the plots was based on the signal level. AT&T's network requires a -74 DBM in order to have in-building coverage. That would give them the highest coverage. In areas that the plots illustrate only on-street reception, if you are in that area, you are not likely to have wireless service in-building. The reason this has become an issue is because a lot of the carriers have seen an exodus from land line phones and the consumer reliance on consumer services on wireless phones, such as WEB searches, blackberry use and texting. Chairman Hodom asked if certain areas could be blocked such as schools so they couldn't text while in school. Mr. Woodward said a carrier could not block a signal. Mr. DeCancio said there are jamming things that can be done. It is done in certain places such as prisons. So there is technology to block. Chairman Hodom asked if the DPM's listed were minimum readings required to have reception in an area. Ms. Murray said those were AT&T's threshold. She said there wasn't in-car coverage in a large portion of the area. Mr. DeCancio said Verizon's letter never said they had a problem with their reception in the area. Ms. Murray said they had submitted, in their prior application, data related to their use of a one hundred seventy-five (175) foot tower, that demonstrated their lack of service. They normally show two things with a tower application; the lack of service and the tower height needed to remedy the lack of service. After modifying the height for the proposal, they are waiting for other plots from Verizon at the new level. Ms. Murray said she would supply the Board with the plots from Verizon at the one hundred seventy-five (175) foot height. Mr. Butler said it had been submitted with the prior application but they would supply the information to the Board. Ms. Murray said the next plot shows AT&T service at the one hundred forty (140) foot spot on the 4G Scotland Tower adjacent to the New Scotland Church. That one hundred fifty (150) foot tower was not approved and built until after their one hundred seventy-five (175) foot tower application was submitted. That tower enabled them to revise the height in this application. That tower did not completely take care of AT&T's coverage in the western portion of the Town. The next plot shows the coverage that can be achieved via the collocation on the 4G tower in New Scotland. The plot also shows the coverage that can be achieved by AT&T at one hundred twenty (120) feet on the proposed tower. The Town had asked the applicant to review the use of the Elm Avenue water tank. They plotted to see if that site would fill AT&T's coverage along Delaware Avenue. That plot shows that would cover the south portion of the Town but not the Delaware Avenue in-building coverage. The next plot shows the coverage area when AT&T is on all three (3) of the sites. Chairman Hodom asked if their primary desire was for in building coverage. Ms. Murray said this would also improve in car

coverage in the Delaware Avenue corridor. Ms. Murray said in building signals were at a higher strength and therefore other areas would improve.

Ms. Murray said they used the plots to show need for the facility, even using other alternatives. They looked at their existing sites and any other sites they could feasibly co-locate on. Mr. DeCancio commented that the applicant keeps referring to Verizon's coverage gaps in their narrative but Verizon's letter never states that they have a coverage problem. Ms. Murray said they would provide the plots from the old application. She said the last plot relates to the Town Hall tower. They had reviewed that site at the request of the planning staff. They looked to see if they could collocate on the rooftop of Town Hall. It had been requested to do plots at sixty (60) feet but they determined that Town hall is forty-one (41) feet in height and did a plot at that height. The plots show they did not gain any significant coverage to the west at the forty-one (41) foot height. Chairman Hodom asked why they couldn't erect a tower on the roof of Town Hall that would bring it up to sixty (60) feet. He wondered why staff had picked sixty (60) feet as a height to explore. Mr. Penman, an engineer for the town, said they had done an estimate as to the height of Town Hall. Mr. Woodward said the expansion over forty-one (41) feet could not be done. The antennas are eight (8) feet in height by two (2) feet in width. They want to install six (6) of the antennas. It's a lot of weight. He said there is a concern with wind load. When roof top installations are done, they are generally done on "sleds" bolted to the roof. They would be concerned with the structural integrity of the roof of Town Hall. To raise it twenty (20) feet would be too high. Mr. Micelli asked who utilized the existing tower at Town Hall. Mr. Penman said it was for police, fire and their telecommunications. Ms. Murray said they were also asked to look at that tower. Included in the application is a structural analysis of that tower that shows that the tower would need to be rebuilt in order to be able to support the new telecommunications towers. They have not received any confirmation that the emergency services would be interested in co-locating with the wireless telecommunication providers. She said that usually the emergency services do not want unauthorized personal on their towers. She said the tower is not structurally capable of accommodating their services and the code requires the applicant to look at alternatives for collocation if a structure needs reasonable refurbishment. This tower would need to be totally replaced. Also using the Town Hall site wouldn't lend itself to future collocation and greater variances would be needed to locate at this facility. That is why they prefer the Preska Farm site. Mr. Micelli asked if a one hundred twenty (120) foot or ninety (90) foot tower would be sufficient if they could meet the requirements on the Town Hall site. Ms. Murray said she did not know. They did not speculate. She thought a lot of residents would be concerned with variances needed for a larger tower at Town Hall. She repeated that the Preska Farm was unique because of the size, location and the fact that the agricultural use would not need to be disturbed. Mr. DeCancio said another uniqueness of the site is the close proximity of the high school. There are about five thousand (5,000) students in attendance. He said they were also in close proximity to Eagle Elementary School. He asked if the applicant had any studies that showed the dangers of cell tower electromagnetic fields. Ms. Murray said the Preska site meets Town's setback requirements from schools. There is a study published by the FCC that outlines the standards for determining environmental effects of radio frequency emissions. She said they would submit a study based on those

requirements. Mr. DeCancio asked how long ago those standards were written. Ms. Murray thought it was 1996. Mr. DeCancio said it was 1986, ten (10) years before the act was passed. He asked if the FCC was a health agency. Ms. Murray said it points back to the standard of review of telecommunication facilities. She said because those services are considered essential to the public good, Congress enacted the Telecommunications Act of 1996. That act preempted state and local governments from regulating health effects of wireless telecommunication facilities. They vested that into the FCC. As applicants, they are required to provide documentation that they meet the federal regulations. Mr. DeCancio asked if Ms. Murray knew of any municipalities that had challenged that in court and what the outcome was. Ms. Murray said she would send a few cases to the Board. It is an issue that has been heavily litigated. She said that state and local governments were preempted by federal law. Mr. DeCancio asked if she knew of any local governments that have instituted moratoriums based on the process of applications coming before Boards. Ms. Murray said courts have ruled against those. She said one of the more famous cases was in Guilderland. A Judge had voted in favor of applying the Rosenberg Use Variance standard. She said moratoriums are routinely struck down in regards to wireless telecommunications if that moratorium caused a delay in provision of wireless service. The Act of 1996's intention was to promote the deployment of new wireless telecommunication technology. The preamble of the Telecommunications Act specifically speaks to that. This service has become essential. Mr. DeCancio asked if Ms. Murray knew the status of President Obama's cancer panel that is exploring cell tower radiation risks. She did not, they follow the current law. Mr. DeCancio asked the amount of radiation that would be released by the proposed tower. She said she would supply the Board documentation from AT&T that shows maximum permissible exposure study and the radio frequency emissions from the tower. Mr. Micelli asked if the track area was included in the eleven hundred (1,100) foot setback. Ms. Murray said the setback was to the property line. Z2a on Exhibit 3 shows the property lines. She asked what the Board had done in the past for other cell towers and health concerns. Chairman Hodom said they had asked for reports to be submitted. She said she would provide the information. She said she would provide to the Board; a MPE, Maximum Permissible Exposure, report from AT&T, Verizon's plots, copies of Town Law and Zoning Code sections that speak to whether a letter is needed from the building inspector to apply for a variance when an applicant needs a special use permit.

Chairman Hodom asked if the plots submitted showed every tower or site where there is telecommunication. Ms. Murray said the plots show coverage for some sites that are not on the plots. Chairman Hodom asked about the New Scotland tower in the church steeple. Ms. Murray said that was a Sprint tower and it's not available for co-location. There isn't any room for other carriers. Chairman Hodom asked for a narrative about that location. He asked if they have shown all the other towers in Town. Ms. Murray said on page 9 of the narrative it lists the sites where AT&T had already co-located. The plots show coverage for AT&T on their own towers or where they are currently collocated. Mr. DeCancio asked if the list was of all the towers in Town or just the ones that AT&T were on. She said if there was a tower they were not on and that tower was available, they did a coverage plot for that location. Ones that were not available were not included. Chairman Hodom asked if the towers at Camp Pinnacle could be used. Ms. Murray said

she had looked at those towers for other applications she had worked on and they wouldn't duplicate the service of the proposed tower. The topography of the Helderbergs had something to do with it. She didn't have any data but she would ask their RF engineers to look at that and respond. Mr. Penman said before working for the Town he had worked on towers that were sited in Voorheesville. It was his understanding that the Camp Pinnacle Towers were too far away to be workable for this area.

Mr. Decancio asked Ms. Murray to explain the term "repeaters". She said you need an existing signal in the area to be amplified and redirected into a given area where service needs to be improved. If there is an existing signal in the area, also needed would be a series of repeaters to redirect into the targeted spots. Repeaters don't provide blanket coverage. Mr. Decancio asked if they tried to mask the tower. Ms. Murray said for this particular site they had chosen a lattice structure to blend with the existing lattice structures of national grid. They thought that would best blend. Chairman Hodom said the Board could discuss stealth issues. Ms. Murray said if they were not properly sited, they usually stuck out more. Mr. Decancio asked if a ninety (90) foot tower would be high enough for the project to go forward. Ms. Murray said it would not. Their determination was the lowest they could go and still have the coverage they need is one hundred twenty (120) feet. She was asking the Board to consider a greater variance to promote collocation. They would build a facility that could be extended and with the greater variance, a collocater would not need to come back to the Board.

Mr. Potter asked if they would encounter a segmentation issue if they came back later with a request for a one hundred fifty (150). Ms. Murray said that was exactly why they were raising the issue of the possibility of a higher tower now. SEQR says as long as the issue is addressed it will not raise a segmentation issue. The impacts of the tower to be built now and the future impacts of an expansion to accommodate a collocation should both be addressed now. If the SEQR review is done with that in mind, there isn't any need for further SEQR review if the tower expands in the future because the SEQR determination will be for the one hundred fifty (150) foot tower. NYS does just that for cell towers on state lands. The Board could also defer to the Planning Board. Ms. Murray thinks an uncoordinated SEQR review would be more efficient. She said if they don't get their variances, they don't need to go to the Planning Board. She requests the Zoning Board to do an uncoordinated review and then the Planning Board would not be involved. She questions why they would need to be involved for a Special Use Permit. She mentioned that the NYS SEQR handbook says it is more efficient to not involve other agencies if it is not needed. The Zoning Board can always make a recommendation to the Planning Board. Mr. Potter stated that the standard of review Ms. Murray keeps referring to, compels the Board to grant the variances. He asked if it was her position that the Board had to grant variances or did she believe that the Zoning Board could deny the variance application. Ms. Murray said the Board needed to review the materials submitted. She felt they have showed a compelling need; she said if the Board had questions, the applicant would like the opportunity to have their RF engineer address those questions. She was there to explain to data that supports granting the variances. Mr. Decancio asked Ms. Murray to have their RF engineer do a minimum height analysis for a tower at ninety (90) feet. Mr. Potter wanted to know the height of the national grid

utility towers and the tree line. Ms. Murray responded eighty-five (85) feet for the towers and forty (40) feet for the tree line. She thought that height was conservative. Mr. DeCancio asked for AT&T's position on the two (2) proclamations by the governors of Colorado and Connecticut regarding health issues.

Chairman Hodom said if the Zoning Board approved the variances, the applicant would need to go to the Planning Board for a Special Use Permit. Mr. Platel said variances were granted with a time line. He asked if the Board granted a variance for one hundred fifty (150) foot tower there would be a two (2) year limitation. If they came back with a collocation over that time period, they would still need to come back to the Board. The Board can give an extension of time. Mr. Potter said the important item was the SEQR analysis would take into account the visual analysis of the one hundred fifty (150) foot tower. That would not need to be duplicated at a later date. Ms. Murray said she could submit SEQR language they have used in the past concerning segmentation. She asked the Board to submit any additional questions or requests for more information and she would supply it to the Board.

Chairman Hodom asked if the applicant had agreed to the escrow. Mr. Leslie said though the agreement has been signed and funds were submitted from Esco Tower, they have not received AT&T's share of the escrow. The Planning Department had requested that Mr. Grave, the TDE for the Town, initiate his review based on the funds currently received.

Chairman Hodom asked Ms. Murray if there was any health or safety concerns with the construction of the tower, specifically the failure of the tower and the possible falling of it onto the national grid transmission lines. He asked if the applicant considered it a health and safety issue. Ms. Murray said the applicant didn't want their investment to fall. The structure would be to all NYS building code standards. They would provide a structural analysis. Chairman Hodom asked, if Verizon can transmit and get coverage at one hundred ten (110) feet, why couldn't AT&T? Ms. Murray said that would be part of the minimum height analysis.

There are three (3) variances being requested; two (2) setback and one (1) height. Both setback variances are necessitated by the power lines; one from the lines themselves and the other from the property line of the power company. Chairman Hodom ask why the tower couldn't be located one hundred fifty (150) feet from national grid's property line. Ms. Murray said they had tried to put it in an area that was near the vegetation and in an area that would blend with the utility lines. They did not want to disturb lands that were being used for agricultural purposes. He asked if their coverage would be affected if the tower was located two hundred twenty-five (225) feet from the national grid property line. Ms. Murray said she would contact the land owner. Mr. Preska, the land owner, said the biggest impact would be that the vegetation could not be used for cover and it would put the tower in the middle of his field. Chairman Hodom said he was looking for methods to mitigate multiple variances and that would be a solution. He asked the color of the lattice tower. Ms. Murray said it would be a galvanized steel. The utilities being brought to the site were electric and telecommunications. She said a diesel generator would be on the site in case of power failure. Chairman Hodom asked if they had

contacted national grid. Mr. Butler said the Town had requested that but they have not received a response. Chairman Hodom asked for a copy of the letter that was sent. He asked if there were any other areas in Town considered for the tower. Ms. Murray was not sure. Normally site acquisition experts go to an area and look for potential sites. Once the site is selected, the permit application comes to her. She would get the information from the carriers.

Ronald Graff, independent radio consultant engineer and TDE for the Town. He is a licensed engineer in NYS and has been a practicing radio frequency engineer for about forty (40) years. He applied for and designed for some of the very first sites built in the United States. He has assisted municipalities in New York, New Jersey, Connecticut, Vermont and Pennsylvania. He said that he had worked on the site in the Adirondacks for the stealth pine cell tower. He also performs health and safety studies for carriers in the downstate areas. Many of those municipalities require that the health & safety reports be signed by a NYS professional engineer specializing in radio frequency engineering. When he does those, he is attesting to fact that the report done by someone else meets the requirements of the Federal Government and NYS Health department. He said that NYSDOH does have standards to regulate radio emissions. Those standards mirror the federal government standards, they have been set by American National Standard Institute, ANSI, and Institute of Electrical and Electronic Engineers (IEEE). Those are standard setting societies. The TCA preempts the Board consideration of any zoning or planning hearing but there are specific incidents where they are not preempted. If the tower were on a roof top, the carrier would need to show compliance with roof top exposure. If the height of the tower were less than ten (10) feet, the applicant would have to determine OET compliance. He said the application before them was in the exempt category. Mr. Graff said even though they are exempt, the Boards he has worked with before always ask for a study to be done to make them feel more comfortable. The studies always demonstrate that the towers, except roof top towers, are well below the maximum exposure.

Mr. Graff said he received the application on Saturday. He did not have the time to prepare a report yet but was prepared to give verbal comments. He said the application is not complete, doesn't deal with any of the issues associated with the proper siting of a telecommunications facility and the determination that there is a need for the facility. Typically when a carrier goes to a municipality looking for a site to fill a gap, they issue a search ring. It gives the site acquisition engineer an area to look in to place a pole because of a lack of coverage. It's usually a half mile in radius. The application was lacking that search ring. He said the plots are un-numbered, unsigned and they don't meet the standards for an exhibit. None of the plots show a gap in coverage. AT&T has two systems they work from and these plots don't identify which system they are showing. AT&T does use GSN, the global system for mobile. Looking at the legend the signal level claimed is -74dbm for in building coverage and -82 for in car coverage, -92 for street coverage; these are inconsistent with levels typically used by AT&T. AT&T typically would be -75 in building, -84 in car, -90 street. This is a reverse system; the bigger the number, the weaker the signal. For example a signal of -75 would be ten (10) times the signal strength of -85. It's a logarithmic system. AT&T will use -75 in cities

such as Manhattan that have a lot of concrete and steel. In the suburbs the in building signal is usually the same as in-vehicle. He said service in wood frame buildings is the same as in-car service. He said Town Hall is closer to the type of building that would need a stronger signal but even in the interior portions of this building there is a signal. The applicant can say whatever signal levels they require but it is inconsistent from what he has seen in other applications. The bars on phones really don't mean anything. That was from when there was an analog system. For a digital system one bar is the same as all bars. The commission defines the coverage a carrier has to provide is substantially beyond mediocre. That level is for relicensing. In his professional opinion, if there aren't any gaps in coverage, it's a lot better than mediocre. On the next plot, because of the scale, it is very difficult to make out the areas or the roads. When he carefully examined the lot, he couldn't find a road that didn't have coverage. The details of the model that came up with these plots is usually submitted with the application with an explanation and signed by an engineer. Usually AT&T subcontracts out their work for propagation plots. Ms. Murray said AT&T engineers had done the plots so he would be interested in hearing what they had to say and have the ability to ask the engineer questions. The map scales, if done on a USCGS 7.5 minute topographic map with the coverage overlaid on that would be easier to identify the land uses, roads so the Board could get a better feel for the area. His immediate opinion is that there are no gaps in service.

Mr. Graff said the applicant hasn't done an alternate height analysis and the presentation of the maps are flawed. A basic plot would show a base map with a plastic existing coverage map to over lay on the first plot. They should then have a different map, in a different color to show the proposed coverage. Then the depth of coverage and the breath of coverage could be seen. This should also be done with an alternate site. The manner in which these plots were developed the composite is all one color and you can't tell which site is supplying what coverage. An overlay would give the information necessary to make an informed decision as to whether there is a need for the tower. He said he always asks for a drive test. All the carriers do this on a regular basis to test the strength of their signals. They determine their signal strength by the time of year. They come up with drive test measurements of the existing system. Those can be presented on an overlay map on the coverage predictions map and see if they match. He said there were about fifteen or more models that can be used and those models can be used in different ways. That is why verifications are needed with drive tests. There was a visual analysis with a crane. Mr. Graff thought it was missed opportunity. The applicant said Verizon did a drive test analysis with the crane up. He said the applicant is AT&T and he keeps hearing about Verizon. If they had the crane up, why wasn't a drive test done by AT&T at that time. Those are continuous drive tests and the crane is lowered to different heights. Mr. Potter asked Mr. Graff if the tests were done for Verizon would also apply to AT&T. Mr. Graff said they wouldn't because you don't know where the Verizon sites are located, they use a different modulation scheme, they might have different transmitter power and they have different antenna types. They are two (2) distinct systems even though they share towers. A CW drive test and alternate height analysis will give the Board the information needed to be able to make an informed decision. He asked if the Town Hall was ever propagated. Did the applicant ever supply a coverage map that said the site wouldn't work. He said in other municipalities, the municipalities are exempt from

zoning laws. He said the structural analysis of the Town hall tower showed it was overloaded. He said it does show how well the towers are made, because even with overload, it hasn't fallen or blown over and he didn't believe it would. The towers are built better than bridges with redundant safety measures included. He said fire departments are very willing to go onto carrier towers.

Mr. Graff said without gaps in service, he was not sure why AT&T wanted to build this tower. He said a gap in service longer than one quarter mile is considered a significant gap. He said the water tower should be plotted individually so it can be seen better. He said whoever writes an analysis for the Board should sign their work and list their qualifications. He said there is a statement that says, "with respect to the Elm Avenue water tank, AT&T's collocation at that site will not result in an any coverage overlap or interference with service of AT&T's existing facilities or the proposed one hundred twenty (120) foot facility". He said those sites are only one half miles apart. He didn't know how there wouldn't be overlap unless they are only using 2 sectors.

Mr. Graff said the existing sites plot should include more information for each of the sites. With a one hundred twenty (120) foot tower, if it's pointed at the horizon, the line of site would be eleven (11) miles. If the tower is tilted 7 degrees , the signal crashes into the ground about fifteen hundred (1,500) feet from the tower. A question is whether all the sites around are maxed out and fully doing their jobs or is there a reason it is not. He said his job was to tell the Board what they needed from the applicant to do a fair and critical evaluation of the application.

Mr. Watson asked Mr. Graff to supply the Board with a list of recommended documentation the Board should be looking for from the applicant. Chairman Hodom asked Mr. Graff for a written report covering all the items he thought they were lacking and a few suggestions on anything else as well. The report would be supplied to AT&T and they will need to respond to that report. Mr. Graff could have the report to the Board by June 25, 2009. Ms. Murray asked if it was acceptable to the Board for AT&T's RF engineer to contact Mr. Graff directly if there is clarification needed once they have the report in hand. Chairman Hodom said he preferred a conference call with Mr. Graff, AT&T's engineer and Mr. Leslie and Mr. Penman from the Town. He wanted to make sure the town staff was kept informed.

Mr. Graff said as far as blocking calls, there are devices sold on the internet. It puts out RF in the area that blocks cell phones from picking up signals.

Mr. DeCancio asked if the DBM's being asked for by AT&T was comparable or stronger than other carriers in the area. Mr. Graff said they were asking for strengths that were ten (10) times stronger. Chairman Hodom asked what the standard was for a suburban/rural area. Mr. Graff said it would be -84 DBM's. He said they still haven't shown a gap in service. He wanted to see a response from national grid that they would not allow carriers on their towers. Chairman Hodom asked the applicant to ask national grid if they would allow carriers on their towers and supply the response to the Board.

Mr. DeCancio wanted the applicant to do a MPE because the safety and health of the children and residents of the Town was a concern of the Board. Mr. Graff said the majority of information should be information about AT&T's signals and existing towers. It is the only way to determine the minimum height necessary.

Mr. Graff said for the next meeting, the applicant should have a presentation on a large Board and maybe individual reports for the Board members. Chairman Hodom asked the applicant for the individual overlay reports for each of the Board members.

A motion to adjourn the hearing to a date uncertain was offered by Mr. DeCancio, seconded by Mr. Watson and approved by all Board members present.

Chairman Hodom said once all the materials were in, the applicant could come back to the Board and another date could be set for the continuation of the hearing.

APPLICATIONS

Jim Sheldon

The Board received an application for a variance under Article VI, Section 128-55 (B) (2) for parcel 86.06-1-19 on Grant St., Delmar, NY. The applicant proposes to move a lot line to correct an encroachment.

A motion to set the public hearing for July 1, 2009 at 7:00PM was offered by Mr. Umina, seconded by Mr. Micelli and approved by all Board members present.

Carol Cady

The Board received an application for a variance under Article XIII, Section 128-100. The applicant proposes to demolish an existing home and rebuild.

A motion to set the public hearing for July 1, 2009 at 7:15 was offered by Mr. Umina, seconded by Mr. Micelli and approved by all Board members present.

The Board reviewed the draft minutes of June 3, 2009 prepared by staff.

A motion to approve the minutes of June 3, 2009 as drafted was offered by Mr. Micelli, seconded by Mr. Watson and approved by all Board members present.

A motion to adjourn was offered by Mr. DeCancio, seconded by Mr. Micelli and approved by all Board members present.

The meeting adjourned at 10:20pm.

Respectfully Submitted,
Nanci Moquin

For an official copy of the minutes, please visit the Town Hall, 445 Delaware Avenue, Delmar, NY or call 439-4955.