

George Leveille
Chairman

Nicholas Behuniak
Member

Thomas Coffey
Member

Christine Motta
Member

Kate Powers
Member

Stephen Rice
Member

John Smolinsky
Member

TOWN OF BETHLEHEM
Albany County - New York
PLANNING BOARD
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DELMAR, NEW YORK 12054
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Sam Messina
Town Supervisor

Michael Morelli
Director of DEDP

Jeffrey Lipnicky
Town Planner

Robert Leslie
Senior Planner

Terrence W. Ritz
Asst. Engineer, L.S.

Keith Silliman
Counsel

Deborah Kitchen
Assistant to the Board

MINUTES
September 21, 2010

1 A meeting of the Town of Bethlehem Planning Board was convened in public session in the Bethlehem
2 Town Hall, 445 Delaware Ave., Delmar, NY at 6:00 p.m., on Tuesday, September 21, 2010. Attendance
3 was recorded as follows:
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<u>Board Members Present</u>	<u>Board Members Absent</u>	<u>Counsel Present</u>	<u>Town Staff Present</u>
George Leveille Nicholas Behuniak Thomas Coffey Kate Powers Stephen Rice John Smolinsky	Christine Motta	Keith Silliman	Michael Morelli Robert Leslie Terrence Ritz Deborah Kitchen

5

Others Present

Chuck Jesmain	Rosemarie Thomas	Chuck Preska	Tony D'ADamo
Gary Barkman	R. David Kissinger	Adams Walters	Lee Rosen
Haim Ben-Eliezer	Chuck Radliff, Sr.	James Loder	
Odelia Ben	Amy Muskier	Thomas Butler	

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7 Chairman Leveille called the meeting to order and noted the presence of a quorum:

8

9 **Public Comment on Regular Agenda Items**

- 10 • Town Squire Façade Upgrade (Site Plan Amendment)
11 • Kendall Square (Site Plan)

12

13 There were no public comments.

14

15 **Public Hearing – ESCO Towers – 75 Van Dyke Road, Delmar (Site Plan/Special Use Permit)**

16 Chairman Leveille stated that the first order of business was to open the public hearing. He called for a
17 motion to open the hearing, forgo the reading of the public notice, which appeared in the September 15,
18 2010 issue of The Spotlight, and indent the notice into the minutes.

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20 Upon motion offered by Mr. Smolinsky, seconded by Mr. Rice, and approved by all Members present, the
21 hearing was opened at 6:02 p.m.

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Upon motion offered by Mr. Smolinsky, seconded by Mr. Coffey, and approved by all Members present, the following notice was indented into the minutes:

Notice is hereby given that the PLANNING BOARD of the TOWN OF BETHLEHEM, Albany County, NY, will hold a PUBLIC HEARING on Tuesday, September 21, 2010 at 6:00 p.m., at the Town Offices, 445 Delaware Ave., Delmar, NY, on the application of ESCO Tower Inc., AT & T Mobility-Upstate NY and Cellco Partnership, d/b/a Verizon Wireless, 75 Van Dyke Road, Delmar, NY 12054, concerning a Special Use Permit / Site Plan application for a 120 foot high telecommunication facility (cell tower) project that is shown on a map entitled "Overall Site Plan, Delmar-Van Dyke Road", dated May 5, 2009, revised July 15, 2010, submitted by the Carpenter Consulting Group, 168 North Water Street, Rochester, NY 14604. Individuals with disabilities who are in need of an accommodation in order to participate should contact the Town Clerk's Office at 439-4955, Ext. 1183. Advanced notice is requested.

Chairman Leveille asked the applicant to make a brief presentation before the Board opens the hearing to receive public comment.

Adam Walters, Attorney, and James Loder, Engineering, of Phillips Lytle LLP, were present to provide information and answer questions, on behalf of the applicants, Thomas Butler & James Loder. Mr. Walters also noted that Charles Preska, the property owner, was also present. Mr. Walters stated that the applicant has addressed the Town's comments and the final site plan is before the Board for consideration. The project involves the development of a 120' telecommunication facility on the Preska Farm. Access to the site is off Van Dyke Road through existing farm roads. The applicant has leased a 100 foot area near the Niagara Mohawk power lines. The lease area was expanded to include surrounding trees that will help to screen the telecommunication facility. At present, two carriers have contracted to use the tower (ATT at 120 feet & Verizon at 110 feet). Two equipment sheds will be constructed at the base of the tower. The sheds will be surrounded by a fenced compound.

Mr. Walters noted that he is aware that a letter was submitted by the "Bethlehem Parents Against Cell Towers" expressing concern about Radio Frequency (RF) health effects from cell towers. Mr. Walters stated that the applicant has provided information about radio frequency emissions and health safety. The Board was also provided with Federal Communications Commission (FCC) guide for local zoning officials which explains in detail how the FCC sets the maximum permissible exposure levels (MEL) for cell towers and how they enforce and apply their regulations. Included with the submission was a third party engineer's calculations showing the RF emissions with both carriers operating at full power compared to the safe level set by the FCC.

Mr. Walters stated that Radio Frequencies cause molecules to accelerate and the result is heat, similar to a microwave oven. Several agencies have studied RF emissions since the 1930's including the FCC which established a safe level that is fifty times less than what science has demonstrated to be a health effect. In 1996, Congress passed the telecommunications act which specifically ruled that local zoning officials may not consider health effects as a reason for denying an application for a cell tower provided the applicant demonstrates that they are in compliance with the FCC Maximum Permissible Exposure (MPE) level. The study that was submitted to the Town shows that the proposed tower is 1% of the (MPE) level which means that, if the FCC determined that health effects could be observed at 10,000 watts, the (MPE) level set by the FCC would be 50 times less, or 200 watts. The proposed cell tower on Van Dyke Road will operate at 1% of the 200 watt maximum, or 2.

71 As recently as last year a petition was submitted to the FCC to reconsider the health levels that were set. A
72 hearing was held and the FCC declined to revisit the analysis indicating that the current science on RF
73 emissions remains very sound and very well established.
74

75 Mr. Silliman noted that the Town's Engineer, Ronald Graiff, was asked to review the June 2, 2010
76 submission prepared by Millennium Engineering. After doing so, Mr. Graiff concurred with the results and
77 found that the tower is in compliance with the FCC regulations. Therefore, it would be inappropriate for
78 the Planning Board to consider health effects and human exposure issues in reviewing and making a
79 decision about the special use permit application.
80

81 Chairman Leveille thanked Mr. Walters for his summary and opened the floor for public comment.
82

83 Haim Ben-Eliezer, 43 Dowers Way, Delmar

84 -Is not a Physician or Lawyer

85 -Is a parent & grandparent of children attending Eagle Elementary

86 -Has conducted own study about the effects of magnetic fields on humans

87 -There are cases which show that magnetic fields are linked to illness such as anemia, brain tumors

88 -There is no study in existence that can say for sure there is no danger

89 -If there is a chance that even one child could develop a brain tumor or leukemia it is not worth the risk

90 -Wants to appeal to the Board Member's conscience

91 -This is a crucial decision

92 -To vote in favor of the project might cause people to get sick

93 -Does not wish to discuss a personal experience

94 -Please do not approve the cell tower near Eagle Elementary
95

96 Odelia Ben, 43 Dowers Way, Delmar

97 -4 years ago, eight year old grandchild, developed a brain tumor

98 -Brought grandchild from Israel to see a Professor in the United States

99 -Professor asked if grandchild had lived near a cell tower - the answer was yes

100 -Grandchild died at the age of nine

101 -Wonders how the Board will sleep at night if the project is approved because children will be exposed

102 -This is not about money it is about the children

103 -People will not be safe

104 -Asking ... begging the Board to say no to the cell tower

105 -A neighbor has already sold their house because they don't want to be in the area
106

107 Upon motion offered by Mr. Smolinsky, seconded by Mr. Coffey and approved by all Members present,
108 the public hearing was closed at 6:18 p.m.
109

110 Mr. Behuniak referred to the letter submitted by the "Bethlehem Parents Against Cell Towers" and stated
111 that he has learned that there was a conflict with the public hearing tonight because some of the schools
112 were holding open house. Potentially there would be more people who would like to speak on the subject.

113 Does the Board have the ability to provide the public with more time to express an opinion? Chairman

114 Leveille stated that both of the proposed cell tower projects were on the Planning Board agenda numerous

115 times and the public has been provided with ample opportunity to express their opinion. Furthermore, the

116 Board is prohibited from considering the issue of public safety. Very few people have spoken to the Board

117 about either project (ESCO Tower or Independent Towers). If the issue was critical, people would have

118 been present to address it regardless of whether or not there was open house at the school. Given the fact

119 that the Board cannot consider health issues, and the fact that only two people showed up to comment at the
120 public hearing, he does not see any merit in holding another public hearing.
121

122 Mr. Silliman stated that the law reads as follows: “in cases where such compliance exists, the subject of
123 electromagnetic field safety is totally preempted”. The Board cannot address the issue at all. In fact, to do
124 so could lead to a challenge of the decision as arbitrary and capricious.
125

126 Mr. Rice stated that he does not think anyone who is a parent, or grandparent, could listen to heartfelt
127 commentary that was heard this evening and not feel something. The Board is faced with a difficult
128 challenge because it is prescribed what it can and can’t take into consideration. He agrees with the
129 Chairman that there have been numerous public forums and opportunities to hear testimony. He thinks it is
130 a very difficult issue but he believes the Board has met the requirement to hear public commentary. While
131 he sympathizes and empathizes with anyone who puts their children’s health first and foremost, the Board
132 must follow the prescribed rules. He concurs with Chairman Leveille.
133

134 Mr. Smolinsky stated that he would not be enthused about holding another public hearing for all of the
135 reasons previously stated. Any citizen is free to write a letter or send comments to the Board. No decision
136 is being made at this time; the Board is simply listening to public testimony. There is at least another two
137 week period until the Board meets again. If someone had a conflict this evening but wishes to provide a
138 comment to us, they are welcome to do so, just as citizen’s do routinely. He noted that it is not helpful
139 when the Board receives letters that are unsigned/anonymous, that reference undocumented information.
140

141 Ms. Powers stated that she shares Mr. Behuniak’s concerns and commends him for bringing the issue to the
142 Board’s attention. She also stated that she can sympathize with the individuals who did come forward to
143 express their concerns. She believes that cell tower use is something that we don’t know the effects of and
144 it may be larger than just a study. She hopes that there will be evidence down the road to demonstrate that
145 it is not harmful. She also noted that there are legal constraints to what the Board can consider and the fact
146 that the Board would be subject to challenge if it were to go beyond those legal boundaries. She agrees
147 with Chairman Leveille that the issue has been considered for several months and it is the first time that the
148 public has come forward to express their opinion about the issue. She is inclined to move forward and
149 would be open to receiving correspondence or attending personal meetings with concerned residents. At
150 this time, however, she is inclined to move forward.
151

152 Mr. Behuniak said he would be inclined to close the public comment period at this juncture based on what
153 the other members brought up. Chairman Leveille noted that Planning Board meetings are open to the
154 public and anyone who wishes to express an opinion about a project listed on the agenda is welcome to do
155 so at the beginning of each meeting, during the public comment period. He then called for a motion to
156 close the public hearing.
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158 Upon motion offered by Mr. Smolinsky, seconded by Ms. Powers and approved by all Members present,
159 the public hearing was closed at 6:25 p.m.
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161 Upon motion of Mr. Behuniak, seconded by Mr. Rice, and approved by all Members present, further
162 discussion of the ESCO Tower project was tabled.
163

164 **Town Squire Façade Upgrade, 329 Glenmont Road, Glenmont, NY – (Site Plan / SPA 110 A-D)**

165 Mr. Morelli stated that the owner/applicant, Schuyler Companies, is seeking approval to renovate the
166 existing blue metal façade at the Town Squire Plaza. The project was last before the Planning Board on
167 September 7, 2010 at which time Schuyler Companies was asked to submit renderings of similar changes
168 they had made to the Newton Plaza, in Latham. In a memo to the Board, dated September 16, 2010, Mr.
169 Morelli indicated that the proposed project is considered a Type II action pursuant to SEQR and is therefore
170 exempt from environmental review. The applicant desires to start work this fall.
171

172 Tony D'ADamo, Capital Architecture, and Chuck Jesmain of Schuyler Companies were present to provide
173 information and answer questions. Mr. D'ADamo presented images to show the proposed changes which
174 include modifications to the height and depth of the façade as well as installation of individual store logos
175 and accent lighting, including gooseneck lighting. Channel letter signs will replace box signs whenever
176 possible. Changes to the Price Chopper storefront include painting some of the masonry components to
177 blend in with the tan/clay color scheme that has been selected. Additional improvements to individual store
178 fronts will be the tenant's responsibility. In response to a question related to occupancy rate, Mr. Jesmain
179 stated that Schuyler owns 37 shopping centers with 362 tenant spaces. There are currently nine (9) vacancies
180 as compared to a year ago when there were 22 vacancies. It is believed that the on-going improvements will
181 continue to have a positive impact on leasing and occupancy rates.

182
183 Chairman Leveille asked the Board Members if they had any further questions or comments. Hearing none,
184 he called for a motion to consider the approval document.

185
186 Upon motion by Mr. Behuniak, seconded by Mr. Rice and unanimously approved by all Members present,
187 the Site Plan Approval (SPA 110-D) Resolution was approved.

188
189 **Kendall Square, Feura Bush Road, Glenmont, NY (Site Plan Amendment / SPA 162-A1)**

190 The project last appeared before the Planning Board on July 6, 2010 at which time the Board granted Site
191 Plan approval to construct up to 40,000 sq. ft. of commercial space and 110 residential dwelling units on a
192 vacant 16.96+/- acre parcel located on the northeast corner of Elsmere Avenue and Feura Bush Road.

193
194 Lee Rosen of Rosen Development was present to provide information and answer questions. He stated he
195 is seeking an amendment for item line 9.C. of Site Plan approval document SPA 162 which states that:
196 "Prior to the issuance of a Building Permit, the applicant shall obtain a Highway Work Permit from the
197 New York State Department of Transportation (NYSDOT) for proposed work associated along Elsmere
198 Avenue (NYS Route 335) and Feura Bush Road (NYS Route 910A)". Mr. Rosen stated that this condition
199 relates to the conveyance of a five (5) foot strip of land to NYSDOT for future improvements. The
200 conveyance requires further review and might delay the issuance of a Highway Work Permit. Mr. Morelli
201 stated that he has spoken with Kevin Novak from NYSDOT and was told that the work permit is ready to
202 be issued but the maps and legal descriptions for the conveyance have not been reviewed by NYSDOT's
203 real estate and legal division. Mr. Rosen stated that NYSDOT has indicated that the permit can be issued
204 because he has submitted the paperwork. In an effort to keep the project moving forward, the applicant
205 is seeking an amendment to item line 9.C. as follows: "prior to the issuance of a Certificate of Occupancy
206 the applicant shall obtain Highway Work Permit from NYSDOT..."

207
208 Chairman Leveille asked what happens if NYSDOT does not issue a work permit. Mr. Rosen stated that he
209 sees no reason why they would not issue the permit and he would not move forward with site
210 improvements and construction if he thought there would be a problem with obtaining a permit.

211
212 Mr. Rosen stated that he is also seeking approval to amend the entrance and façade for two (2) 8-unit
213 buildings, #1 and #2. The buildings originally had a center entrance. He would like to relocate the
214 entrance doors to the ends/sides of the building near the parking areas for the convenience of the residents.
215 He would also like to install two smaller gables on the front and rear elevations instead of only one large
216 center gable.

217
218 Chairman Leveille asked the Board Members if they had any further questions or comments. Hearing none,
219 he called for a motion to consider the SEQR Resolution and Site Plan approval document.

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221 Upon motion by Mr. Smolinsky, seconded by Mr. Coffey, and unanimously approved by all Members
222 present, the SEQR Resolution – Classification of Action and Negative Declaration Resolution was
223 approved.

224
225 Upon motion by Mr. Smolinsky, seconded by Ms. Powers and unanimously approved by all Members
226 present, the Site Plan Approval (SPA 162 A-1) was approved.
227

228 **MINUTES**

229 Upon motion by Ms. Powers, seconded by Mr. Behuniak, the Members voted to approve the September 7,
230 2010 minutes, as written.
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232 **NON-AGENDA ITEMS**

234 **Member Training**

235 Information was distributed to the Members regarding two upcoming workshops offered by the Capital
236 District Regional Planning Commission and New York State Department of State – Division of Local
237 Government Services. Zoning Board Overview will be held on November 8, 2010 and Planning Board
238 Overview will be held on November 22, 2010. Members interested in attending either workshop should
239 contact Debbie Kitchen.
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242

243 **Streamlined Process for Reviewing Renovation Projects**

244 Mr. Silliman suggested that the Members consider a way to provide for certain types of improvements, such
245 as façade renovations, to be made within a plaza without a need for the applicant to come back for an
246 amendment each time individual stores are upgraded. The applicant would need to provide the Planning
247 Board with the parameters they intend to operate under for the entire plaza. The Planning Board would grant
248 one approval so that if the applicant stays within the approved parameters the Board would not have to
249 review each storefront separately. Using the Town Squire façade improvement project as an example, Mr.
250 Silliman stated that the applicant is a good member of the community and thinks it would be worth the effort
251 to find a way to lump the little things together so the Board does not have to review the same renovation
252 project multiple times. This would save time and reduce expenses.
253

254 Chairman Leveille stated that the Board could approve a general design vernacular that staff could use when
255 reviewing proposed renovation projects. Mr. Morelli stated that when a site plan amendment application is
256 received for façade renovations/improvements in a mall, plaza or shopping center, Town staff could develop
257 generic language that would allow future proposals to move forward without having to return to the Board for
258 independent review so long as they are consistent with the Board's original approval. If a proposal involves
259 renovations/improvements beyond the set parameters, the project would need to undergo a more substantial
260 review.
261

262 **MEETING SCHEDULE**

263 Tuesday, October 5, 2010 – Postponed

264 Tuesday, October 19, 2010, at 6:00 p.m. – Regular Meeting
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266 **MEETING ADJOURNED**

267 Upon motion by Mr. Smolinsky, seconded by Mr. Rice, and approved by all Members present, the meeting
268 was adjourned at 6:51 p.m.
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270
271 Respectfully submitted,

