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**TOWN OF BETHLEHEM  
BOARD OF APPEALS**

**July 21, 2010**

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 Ave, Delmar New York

**PRESENT:**

Daniel Coffey, Board of Appeals Chairman  
Michael Moore, Board of Appeals Counsel  
Lennie Micelli, Board of Appeals Member  
David DeCancio, Board of Appeals Member

Keith Silliman, Planning Board Counsel  
Mark Platel, Assistant Building Inspector  
Justin Harbinger, Assistant Building Inspector  
Rob Leslie, Planner  
Ron Graiff, P.E.

Roger and Barbara Monthie, applicant  
Dan Schweigard, applicant

Chuck Radliff, Sr.  
Alex Yatsevitch  
Michael Cooper  
Dalia Ben  
Mary Regal  
Tim McCarthy  
Ben Meyers  
Nancy Sprissler  
Ethan Sprissler  
Charlie Valentine  
Amy Conway  
Haim Ben  
Tom Butler  
Richard Comi  
Bill Schanck  
Lior Huli

41 Chairman Coffey called the meeting to order at 7:01pm noting that there is a quorum with three  
42 (3) members being present as well as Attorney Michael Moore.

43  
44 **PUBLIC HEARING**

45 **Roger Monthie, 38 Roweland Avenue, Delmar,** for an area variance under Article V, District  
46 Regulations, Section 128-30, Core residential District, C. (3) Maximum coverage.

47  
48 Mark Platel advised the applicant is proposing to construct a 216 square foot accessory structure  
49 that along with the existing 324 square foot accessory building will create a total of 540 square  
50 feet or 6.21% lot coverage. The allowable square footage for accessory structures on this lot is  
51 435 square feet or 5% of the lot. All other zoning requirements in a core residential zoning  
52 district will be maintained and the current use of the property is as a single family dwelling.

53  
54 To forego the reading of the Public Hearing, Chairman Coffey requested a motion to indent the  
55 Public Hearing notice into the record. Mr. Micelli moved, seconded by Mr. DeCancio, all in  
56 favor.

57  
58 Chairman Coffey advised the procedure to be used is to hear the Applicant's presentation,

59 entertain any questions or comments from the audience, hear anyone wishing to speak in favor  
60 of the Applicant and anyone desiring to speak in opposition. All comments and questions should  
61 be directed to the Board.

62  
63 Mr. Monthie presented on his own behalf. He stated the two car garage is just large enough to  
64 accommodate two cars and there is very little additional room to store his lawnmower and snow  
65 blower. There isn't enough room to store many of his other tools and equipment used to  
66 maintain the property. There is a small amount of storage space in his basement, but as he gets  
67 older, it is getting more difficult to carry large tools and ladders out of the basement when  
68 needed. Some items need to remain outdoors under tarps. He would like to add a shed to the  
69 property for additional storage. He is requesting a variance because the size of a shed that is  
70 large enough to store the equipment he owns would put him over the maximum for accessory  
71 structures. The structure he would like to purchase is a pre-built shed that would fit the  
72 character of the neighborhood.

73 Before applying for the variance, Mr. Monthie discussed his intentions with the neighbors that  
74 abut his property and all were in support. Chairman Coffey noted the names of the neighbors  
75 who wrote declarations of support for the variance.

76 They are:

77 Dave & Sandra Banas, 41 Hawthorne Avenue

78 Scott & Meg Bassinson, 36 Roweland Avenue

79 Kevin & Rebecca McIlvain, 40 Roweland Avenue

80

81 Chairman Coffey noted he visited the property and the proposed location for the shed is behind  
82 the garage and not visible from Roweland Avenue. He also noted the shed would meet setback  
83 requirements. Mr. Platel confirmed the variance requested is for the accessory structure  
84 maximum square footage and that the total lot occupancy would still be in compliance at under  
85 20%. Attorney Moore asked what size shed would meet the code requirements. Mr. Platel  
86 advised the current remaining area for accessory structures is 111 square feet, indicating a shed  
87 approximately 10-feet x 10-feet would meet zoning requirements. The shed the Monthies would  
88 like to add is 12-feet x 18-feet. Chairman Coffey asked why the larger shed is needed. Mr.  
89 Monthie explained he determined the size of the shed by adding up the sizes of all the items he  
90 needs to store.

91

92 Chairman Coffey asked if there was anyone present who would like speak for or against the  
93 application. No one responded.

94

95 Closed public hearing at 7:11pm.

96

## 97 APPLICATIONS

98 None.

99

## 100 DISCUSSION

### 101 **Thomas Paonessa, Proposed Grove Subdivision, North Bethlehem**

102 Discussion and possible action on SEQR for area variances under Article XIII, Area Schedules,  
103 Section 128-100, Schedule of Bulk and Area Requirements.

104

105 Chairman Coffey reminded the board that at the July 7, the vote passed to approve the variance,  
106 but the issue of SEQRA still needed to be resolved. Since the subdivision will go before the  
107 Planning Board, the first item for discussion is whether to do a coordinated or uncoordinated  
108 review. His recommendation was to proceed with an uncoordinated review and the other  
109 members present agreed. Mr. DeCancio moved to continue with the uncoordinated review, Mr.  
110 Micelli seconded, all in favor.

111

112 Chairman Coffey reviewed Part II, Impact Assessment, of the SEQRA for Unlisted Actions. All  
113 items were answered that there would be no impact. It was noted under item C1, the action  
114 would probably change traffic patterns to the benefit of the area, and under item C5, the action  
115 would initially generate nominal growth by creating three new lots, but that subsequent growth  
116 would not be expected. In answering item D, Attorney Moore advised the neighborhood is not

117 designated by the town as a Critical Environmental Area (CEA).  
118

119 Under Part III, Determination of Significance, Chairman Coffey indicated that the proposed  
120 action will not result in any significant adverse environmental impacts and Attorney Moore  
121 advised he would prepare the Negative Declaration and Resolution.  
122

123 Mr. Micelli moved to authorize Chairman Coffey to complete Part III of the SEQRA form as  
124 reviewed, seconded by Mr. DeCancio, and the motion passed with all members present in favor.  
125

126 **RESOLUTION**

127 **Yasemin Fuels, 414 Route 9W, Glenmont** for an Area Variance under Article VI,  
128 Supplemental Regulations, Section 128-59, Signs.  
129

130 Mr. DeCancio moved to approve the resolution as drafted, Mr. Micelli seconded and the  
131 resolution passed with all members present in favor.  
132

133 **MINUTES**

134 The minutes of the July 7, 2010 meeting were approved on a motion from Mr. Micelli, seconded  
135 by Mr. DeCancio with all in favor.  
136

137 Attorney Moore advised the Monthie application is a Type II action under SEQRA.  
138

139 Chairman Coffey recused Attorney Moore, introduced Attorney Keith Silliman.  
140

141 **PUBLIC HEARING**

142 **Independent Towers, Elm Avenue, Delmar.** for an area variance under Section 128-61; F.  
143 Special Use Permit Facilities, Location.  
144

145 Mr. Platel advised the applicant is proposing to construct a 90 foot monopole tower that will be  
146 located 112 feet from the existing Bethlehem School District Operations and Maintenance  
147 Building. The proposed tower is required to be a minimum of 300 feet from any building on a  
148 private or public school property that is, or is able to be, occupied or habitable. All other Town  
149 zoning requirements relating to the proposed tower as far as height and location would be in  
150 compliance. For the Boards information the proposed facility also is required to receive a  
151 special use permit and site plan approval from the planning board.  
152

153 To forego the reading of the Public Hearing, Chairman Coffey requested a motion to indent the  
154 Public Hearing notice into the record. The motion made by Mr. DeCancio and seconded by Mr.  
155 Micelli passed with all members present in favor.  
156

157 Chairman Coffey advised the procedure to be used is to hear the Applicant's presentation,  
158 entertain any questions or comments from the audience, hear anyone wishing to speak in favor  
159 of the Applicant and anyone desiring to speak in opposition. Chairman Coffey reminded  
160 everyone that all comments and questions should be directed to the Board.  
161

162 Dan Schweigard presented on behalf of the applicant, Independent Towers Holdings (ITH). He  
163 indicated the reason for the appearance before the Zoning Board for a location variance is  
164 because the proposed site is 112-feet from the Bethlehem School District Operations and  
165 Maintenance Center. Town code requires a 300-foot minimum setback from an occupied or  
166 inhabitable structure. The proposed location was chosen based on existing conditions on the  
167 property. The intent was to place as far away from the school as possible while paying mind to  
168 the existing deed restrictions, wetlands, and future potential developments by the Operations and  
169 Maintenance Center. The proposed tower is to be contained within a six-foot chain link fence  
170 compound within the secure area maintained by the Operation and Maintenance Center.

171 The proposed service provider on the facility is Sprint PCS. A consultant representing Sprint  
172 PCS has provided preliminary reports to demonstrate need for the facility at a height of 90-feet.  
173 The 90-foot height is based on local zoning law. The tower will be designed to be extendable  
174 to accommodate potential future users.

175  
176 After clarifying that emissions are not a consideration before the board, Chairman Coffey asked  
177 if an OET-65 is included in ITH's application. Mr. Schweigard confirmed an emissions report  
178 completed by Scinetics Corp. (Louis Cornacchia, B.E.E.) was included in his application and  
179 also presented to the School Board. The report found the theoretical highest combined  
180 cumulative emissions from the proposed tower with all major carriers (Verizon Wireless, T-  
181 Mobile, Sprint Nextel, and AT&T) would be well below maximum acceptable FCC level at less  
182 than 1.95%. Mr. DeCancio asked if Mr. Schweigard or the School District had an opportunity to  
183 review the 2008/2009 President's Cancer Panel Report. Mr. Schweigard had not and had no  
184 specific info about whether the School District has.

185  
186 Chairman Coffey noted there are two cell tower applications before the town, ITH's application  
187 and ESCO Towers' application, and since the proposed sites are within less than a mile of each  
188 other, it was likely only one would be approved. Based on this assumption, Chairman Coffey  
189 asked Mr. Schweigard if he could demonstrate why the town should choose ITH. Mr.  
190 Schweigard advised his company responded to the RFP put out by the District and was awarded  
191 the project based on the financial model ITH provided. At this stage of the process, Mr.  
192 Schweigard advised, he and ITH are following due process in applying for the appropriate  
193 permits and working with the appropriate boards, as required. To that point, he noted ITH is in  
194 the process of conducting a full view shed analysis and presented a draft map created by a  
195 preliminary balloon test ITH conducted. The height used for the balloon test was 90-feet.  
196 The draft map was submitted for the ZBA file. Mr. Schweigard reviewed the map in detail and  
197 advised why he believes this preliminary map indicates the tower would be visible from only  
198 certain areas in leaf-on and leaf-off conditions. Chairman Coffey noted for the record that the  
199 Planning Board has requested both cell tower applicants (ITH and ESCO Tower) conduct  
200 balloon tests as part of the SEQRA review and that the ITH application is before the Zoning  
201 Board for a setback variance not related to visibility.

202  
203 Mr. DeCancio noted an error in the application that indicated ITH was looking for a height  
204 variance. Mr. Schweigard agreed the application should be corrected. Chairman Coffey noted  
205 that the carrier on ITH's application, Sprint, could operate at 90-feet and asked Mr. Schweigard  
206 whether the tower would need to be expanded in the future to be appropriate to co-locate  
207 additional carriers, such as AT&T and Verizon. AT&T and Verizon are both included on the  
208 ESCO Tower application. Mr. Schweigard advised that 90-feet is the minimum acceptable by  
209 Sprint to locate on the proposed tower, but other services that might work below 90-feet. The  
210 examples he stated were internet services providers, satellite services providers, and fire and  
211 emergency services. The monopole tower structure ITH is proposing would be expandable by  
212 segments of 40-feet. Mr. Schweigard advised there are the custom design options available  
213 when considering a monopole.

214  
215 Mr. Schweigard doesn't have input from AT&T or Verizon, so their specific data is not included  
216 on his application. Both carriers have indicated they are reluctant to support two proposed  
217 towers simultaneously. Due to the proximity of the proposed sites, he would like to make the  
218 case that since the data in ESCO's application supports co-location at the Van Dyke site, he  
219 would like to extrapolate that conclusion to apply to the ITH site. ITH has a letter of intent from  
220 Sprint. Mr. Schweigard advised it is standard practice in the industry to provide a letter of intent  
221 instead of a lease commitment when a site is not approved. In response to Chairman Coffey's  
222 question, Mr. Schweigard advised the lease agreement with the School District was for \$2000  
223 per month or approximately \$24,000 and would escalate a few percent a month. The current  
224 agreement does not call for a rate increase for adding carriers. Mr. DeCancio asked if another  
225 location on the property was considered that would not require a setback variance. Mr.  
226 Schweigard advised ITH did extensive research on the school property and found restrictions,  
227 largely due to wetlands and resulting deed restrictions. ITH concluded the proposed location is  
228 the only viable site on the property.

229  
230 Mr. Schweigard advised the proposed location has been reviewed and there was no interference  
231 with National Grid transmission lines or underground gas lines. Maintenance at the site would  
232 be very limited. Mr. Micelli asked about other potential sites within a couple of miles in more

233 rural, undeveloped areas of town. Mr. Schweigard advised the coverage is much better from the  
234 proposed location and a tower put a couple of miles outside of town would almost certainly have  
235 to be built above the maximum height allowable by code.  
236

237 Chairman Coffey mentioned a Siena Research Institute Poll, conducted on request by ITH. Mr.  
238 Schweigard said if the poll showed the public was overwhelmingly opposed to a cell tower on  
239 School District property, ITH would not pursue the site. ITH also appeared before the School  
240 Board for the purpose of reviewing the Emissions Report and because the level of emissions was  
241 so low, the School Board decided to move forward with the RFP for the site. Mr. Schweigard  
242 indicated the main selling points for his application are the low visibility of the site and revenue  
243 to the School District. He mentioned there are enough similarities between ITH's site and  
244 ESCO's site, that it might be concluded that a 120-foot tower at either location would satisfy the  
245 needs of the carriers on the both applications.  
246

247 Chairman Coffey introduced Ron Graiff, P.E., RF consultant contracted by the Town of  
248 Bethlehem. Using the RF maps on transparencies, Mr. Graiff reviewed the application and his  
249 findings on ITH's submissions, first by indicating the area on a map where the applicant claims  
250 there is a gap in reliable coverage (along portions of State Highway 443 between Longmeadow  
251 Drive to the west and Borthwick Avenue to the east and along the Delmar Bypass between Elm  
252 Avenue and Van Dyke Road and along Van Dyke Road traveling north from the Delmar  
253 Bypass). The calculated model indicates large gaps where the signal level falls below -85 dBm  
254 along State Highway 443 between Van Dyke Road and Elm Avenue as well as along the Delmar  
255 Bypass between Elm Avenue and Van Dyke Road. Mr. Graiff continued by demonstrating that  
256 when the drive test data map is layered over the calculated map, there is no correlation between  
257 the claimed calculated gaps and the actual measured gaps. He pointed out interpretation of the  
258 coverage gaps is challenging because the dBm bin (or range) sizes are too broad. A coverage  
259 gap could indicate a drop in signal level large enough to drop a call or it might not. Mr. Graiff  
260 further pointed out that many of the coverage gaps are so small as to possibly not affect service.  
261 Additionally, the calculated coverage at -85dBm from the site at 86 feet above ground fills some  
262 gaps in coverage, but most notably, Mr. Graiff presented, it does not fill gaps along Van Dyke  
263 road or State Highway 443. His conclusion is the calculated propagation model is not reliable,  
264 because it is not supported by the drive test data, and even if it was, the model doesn't support  
265 the need for the site at this location.  
266

267 Alex Yatsevitch, resident, asked for clarification on the possible causes for gaps in coverage and  
268 Mr. Graiff explained what environmental factors might interfere with or attenuate the signal.  
269

270 In accordance with town code, Mr. Graiff had also asked the applicant to consider alternative  
271 sites for the Sprint antenna. Because, as previously stated, the model hasn't been verified, the  
272 alternate site analysis is somewhat half complete. However, Mr. Graiff was able to provide  
273 some consideration. He reviewed site by site and demonstrated the alternate sites throughout  
274 town would not improve coverage to the specified area.  
275

276 Charlie Valentine, resident, asked for clarification on validity of the model. Mr. Graiff repeated  
277 his original assertion that the data has not been verified, but the alternate sites need to be  
278 reviewed as part of the application. Mr. DeCancio asked if the Elm Avenue water tank was  
279 considered as an alternate site. Mr. Graiff advised Sprint is currently on that site.  
280

281 Mr. Graiff advised the net sum of his report is the need hasn't been demonstrated. If ITH wants  
282 to demonstrate a gap, they should change the bin size to reflect a 3dBm range. Mr. Graiff also  
283 specified that the carrier, Sprint, should provide a coverage calculation from the ESCO site at  
284 86-feet.  
285

286 Ben Meyers, resident, advises he gets no coverage in the area from his place of business on  
287 Delaware Avenue to Greenville. He is in favor of a cell tower at the proposed site.  
288

289 Chairman Coffey asked if Mr. Schweigard wanted to respond to Mr. Graiff's comments. While  
290 Mr. Schweigard appreciates Mr. Graiff's expertise in the area, he questions whether the margin

291 of error could be interpreted differently. That being said, he will respond to Mr. Graiff's request  
292 to decrease the bin size to 3dBm at 90-feet. In his future submittal, Mr. Schweigard also plans  
293 on demonstrating the difference in strength between 90-feet and 100-feet. Mr. Graiff noted  
294 another way to validate the data is by using a Continuous Wave (CW or crane) Drive Test,  
295 considered to be very reliable. If the applicant's calculated data could be correlated by a CW  
296 Test, the model would be considered to be reliable.

297  
298 Richard Comi, resident, introduced himself as an RF Consultant who advises municipalities, but  
299 was present at the meeting as a town resident. He asked if any of the National Grid transmission  
300 lines along the Extension had been considered as an alternate site. Mr. Graiff advised they had  
301 and National Grid has provided a letter of refusal indicating no interest in locating a cell antenna  
302 on their lines. Mr. Comi also wanted to raise the question of capacity. Mr. Graiff advised a  
303 capacity issue was not presented in the application. Mr. Comi questioned if Sprint should be  
304 identified on the application as Sprint Nextel. He also questioned whether the balloon test  
305 procedure specified the appropriate sized balloon. Rob Leslie advised the balloon would be 4-  
306 feet.

307  
308 Haim Ben, resident, also asked why capacity is not being considered. Mr. Graiff reiterated the  
309 application was submitted based on a perceived need for coverage. He added that based on the  
310 current population density, in his opinion, there should be sufficient capacity in this area for  
311 years to come.

312  
313 Charlie Valentine, resident, noted the view shed map presented by the applicant was old and  
314 may be misleading due to clearing of trees since the photo was taken. Mr. Schweigard admitted  
315 the photo was a couple of years old and pointed out the visibility area was determined by tests  
316 conducted this week. Mr. Valentine asked if there would be a difference between Sprint on the  
317 proposed Elm Avenue tower and Sprint on the proposed ESCO tower. Mr. Graiff advised in his  
318 professional opinion, no difference. He supported this by comparing the elevations at both sites  
319 and found them to be basically the same.

320  
321 Bill Schanck, resident, does not support the site. He believes it would have a negative effect on  
322 property value and would have a negative effect on the town. He also feels the information  
323 presented at the hearing demonstrates the applicant will need to come back for a height variance  
324 at some point. He also wanted to make a point that he feels there is not enough known about  
325 long-term continuous exposure to low electromagnetic radiation and the effects on human  
326 population. The board and the public in attendance were reminded the effect of emissions is not  
327 a consideration before this board.

328  
329 Amy Conway, resident, is opposed to both proposed towers. She cited an article published in  
330 the July/September 2010 International Journal of Occupational and Environmental Health that  
331 makes a correlation between health issues in humans and living in proximity to a cell tower.

332  
333 Haim Ben, resident, expressed his familiarity with studies that point to the effects of cell tower  
334 exposure on children. His concern is there may not be enough known about all the potential risks  
335 of cell towers to humans and the connection between exposure to radiation and malignancies.  
336 He feels there was no need demonstrated and was surprised there were not more people  
337 attending to oppose the application. He also called the integrity and validity of the data into  
338 question.

339  
340 Lior Huli, resident, said that in the sixties, there was not enough known about the negative  
341 health effects of cigarette smoking until more extensive studies were done. He expressed his  
342 concern that there could be a similar situation with exposure to radiation from cell towers.

343  
344 Mr. Graiff wanted to clarify again, as he had several times during the public hearing, that he  
345 doesn't speak on behalf of the applicant, but that the effects of radio frequency waves have been  
346 well-documented since 1897. In response, Mr. DeCancio referenced and quoted specifics from a  
347 report by the National Cancer Institute.

348

349 Nancy Sprissler, resident, doesn't want a cell tower in her neighborhood. She anticipates  
350 another variance would be required to extend the ITH tower to a more functional height for co-  
351 locating and is concerned about the effect on property values of building either proposed cell  
352 tower.

353 Chairman Coffey left the public hearing open.

354 He advised that public notice on the scheduled balloon tests was published in the Spotlight and  
355 updates to the balloon test schedule, if needed, will be published on the town website. Also,  
356 neighbors within 200-feet were being noticed, similar to the public hearing notice. Mr.  
357 DeCancio asked if residents at the public hearing could be noticed personally. Attorney  
358 Silliman advised that is not practical. Chairman Coffey reiterated the balloon test schedule and  
359 reminded everyone to check the town website for updates.

360

361 Chairman Coffey appointed Mr. Micelli as acting Chairman for the August 4 ZBA Meeting.

362

363 **Added:**

364 **DISCUSSION**

365 **Roger Monthie, 38 Roweland Avenue, Delmar,** for an area variance under Article V, District  
366 Regulations, Section 128-30, Core residential District, C. (3) Maximum coverage.

367 Chairman Coffey reminded the board that Attorney Moore had ruled the request was Type II  
368 under SEQRA. He noted the applicant demonstrated a need for an accessory structure for  
369 storage, the proposed addition would not affect the character of the neighborhood, and the  
370 neighbors are in support of the project.

371

372 Mr. Micelli moved to approve the variance, Mr. DeCancio seconded, and the motion passed with  
373 all members present in favor.

374

375 The meeting was closed on a motion from Mr. Micelli and seconded by Mr. DeCancio with all in  
376 favor at 9:50pm.

377

Respectfully submitted.

378

Robin Nagengast