

STATE OF NEW YORK  
COUNTY OF NIAGARA

ZONING BOARD OF APPEALS  
TOWN OF PORTER

The Regular Meeting of the Town of Porter Zoning Board of Appeals was held on Thursday, October 23, 2008, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

**PRESENT:** Chairman William H. Tower, Member Joe Fleckenstein, Member Peter Jeffery, Member Duffy Johnston, Member William Leggett, Member Irene Myers, Attorney Michael Dowd, and Assessor Karen Schmidt.

**ABSENT:** Building Inspector, Roy Rogers

Chairman Tower called the meeting to order at 7:30 pm Chairman Tower asked if there were any additions or deletions to the previous month's minutes. William Leggett made a motion to accept the minutes as written with the exception of Lake Street; it should be Lake Road and was seconded by Joe Fleckenstein. Chairman Tower asked for a Roll Call Vote. **All in Favor. Motion Carried.**

Chairman Tower read the following:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 267 of the Town Law and Local Law No. 1 of 1968, as amended, of the Town of Porter, Niagara County, New York, a PUBLIC HEARING will be held by the Zoning Board of Appeals at the Town Offices, 3265 Creek Road, Youngstown, NY on October 23, 2008, at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

**Application of Upstate Cellular Network d/b/a Verizon Wireless, 175 Calkins Road, Rochester, NY.** Under Sections 401.3Y, 562.3(c), 705 & 710, a special permit and variance is required to construct and operate a 150' monopole telecommunication facility adjacent to 2792 Dickersonville Road (Tax Map 33.00-2-11.1), Ransomville, NY 14131. Under Section 562.3(G) of the Town of Porter Zoning Code limits the height of freestanding towers to 100 feet. The proposed tower is 150 feet tall with a 5 foot long lightning rod attached to the top. The property is located between Lake Street and Youngstown Road in an ARR-100 Zoned District in said Town.

Chairman Tower asked if anyone from the audience wished to speak. None. William Leggett made a motion and was seconded by Joe Fleckenstein to close the public part of the hearing. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried to close the public part of the hearing.**

Attorney Darren Miller, John Engelbert were present representing Verizon. Attorney Darren Miller stated that Verizon is a public utility providing service to the Porter area and its customers using cell technology for communication. Because it is a public utility it is a different structure than land use applications in terms of zoning. They have chosen this location because it fulfills the needs. He presented photos showing the existing towers in the area. T-Mobile still does not cover all the area. There are very few areas that have trees. Most trees cover or camouflage the base. Joe Fleckenstein questioned the coverage. It looks like most of downtown Ransomville doesn't have coverage. You have taken care of the lake. Attorney Miller stated that some of the white areas are there because of level reception. Some coverage is at a street level and some at a car level. There are smaller tiny pockets. Most of the area is covered. Joe Fleckenstein asked if they are planning on another tower. No. Verizon is working with the surrounding sites to cover additional areas. There are working with existing sites to make sure there is additional coverage.

Site Plan: The Planning Board mentioned that they would like an expanding tower to 175 feet. It is possible but there is a concern with using a monopole to 175 feet. Verizon would like to use a lattice tower. Joe Fleckenstein questioned why not put up 190 foot tower. Historically, monopoles higher than 150 on the warmer days they heat up, expand and the antennas rotate. William Leggett asked how close to the property? 260 feet from the North lot line.

Presented Photo Simulations: It has the least amount of disturbance to the property. In the application there was a six foot chain link fence with a two foot barbed wire. Verizon would like to increase the six foot chain link fence to eight feet without the barbed wire. There will be nothing on the bottom of the pole for fifteen feet. William Leggett asked the question regarding co-location. There will be room for four users total. Duffy

Johnston asked about the light on the tower. It will be lit according to FAA regulations.

Chairman Tower read the following Planning Board recommendations: "The Planning Board recommends approval of the site plan upon town engineer approval of the State Environmental quality Review. The Zoning Board is the lead agency in this project. The Planning Board feels that excellent documentation has been presented for this request. The Planning Board further recommends that the design of the tower be 150-175' as necessary in the future for up to three addition co-locations on the tower. The Planning Board requests that the town engineer review the SEQR form and report back to the town on their findings."

Chairman Tower read the following Niagara County Planning Board recommendation: "The Niagara County Planning Board recommended approval." There is a letter dated October 3, 2008 from CRA Infrastructure & Engineering, "The project will not result in any large and important impacts and, therefore, is one which will not have a significant impact on the environment. Therefore, a negative declaration shall be prepared."

Duffy Johnston asked the distance on the tower between each co-location -- generally, 8 to 10 feet between each. Irene Myers asked if you go above 150' will the tower be a monopole. John Englebert stated a lattice tower has no wires but a wider base. A lattice tower will disappear in the distance. William Leggett questioned if you will have trouble selling the fourth location on the tower. John Englebert stated the lower you go on the tower; the coverage doesn't cover as far a location. Duffy Johnston stated we should approve a 175' tower so that another customer doesn't want o come in a put up another tower.

Attorney Dowd summarized the Full Environmental Assessment Form on Applicant Upstate Cellular Network d/b/a Verizon Wireless, 175 Calkins Road, Rochester, NY 14623. Telephone #585-321-5457 John Engelbert. Name of Owner: Mark J. Senek & Timothy J. Senek, 2087 Youngstown Wilson Road, Ransomville, NY 14131 Telephone #716-622-0724 Timothy Senek. (Appendix A) page 1 of 21. He stated that there are a series of questions the Board has to answer. The document was prepared by Verizon, the Engineers have approved, there are no critical areas, historical area and if the Board is satisfied with the questions and answers then we can continue.

Attorney Dowd read the following:

1. Will the Proposed Action result in a physical change to the project?  
NO
2. Will there be an effect to any unique or unusual land forms found on the site? NO
3. Will Proposed Action affect any water body designated as protected?  
NO
4. Will Proposed Action affect any non-protected existing or new body of water? NO
5. Will Proposed Action affect surface or groundwater quality or quantity? NO
6. Will Proposed Action alter drainage flow or patterns, or surface water runoff? NO
7. Will Proposed Action affect air quality? NO.
8. Will Proposed Action affect any threatened or endangered species?  
NO
9. Will Proposed Action substantially affect non-threatened or non-endangered species? NO
10. Will Proposed Action affect agricultural land resources? NO
11. Will Proposed Action affect aesthetic resources? NO There is a small to moderate impact
12. Will proposed Action impact any site or structure of historic prehistoric or pale ontological importance? NO
13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities? NO
14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617;.14 (g)? NO
15. Will there be an effect to existing transportation systems? NO
16. Will proposed action affect the community's sources of fuel or energy supply:? NO
17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action? NO
18. Will Proposed Action affect public health and safety? NO
19. Will Proposed Action affect the character of the existing community?  
NO
20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts? NO

“If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

Joe Fleckenstein made a motion and was seconded by Irene Myers that the project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a negative declaration will be prepared. Chairman Tower asked for a Roll Call vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried.**

Attorney Dowd commented to the Board about the conditions of the permit – lease for 25 years; 150’ expandable to 175’ lattice tower; lighting; co-location. Verizon stated that since the tower is below 200’ historically, the FAA doesn’t require a light. Attorney Dowd asked if Verizon had to talk to the Coast Guard. Verizon replied “no”. The red light can be slow or steady as a warning beacon. Attorney Dowd asked if it is going to be a lattice tower because it is going to be expanded. Consider the fact that there is a difference in the type of the tower allowing a lattice style tower that can be expanded to 175’. Irene Myers commented that the duration is 25 years and the property must be maintained.

Duffy Johnston made the following recommendation and was seconded by Joe Fleckenstein to approve the application of Upstate Cellular Network d/b/a Verizon Wireless for a Special Use and Area Variance to operate a 150’ lattice style expandable to 175’ telecommunication tower for a period of 25 years, a steady red light; a gate on the road going to the tower; \$50,000 removal bond; built within the compliance of site plan; no barbed wire fence; 8’ high fence; co-location for 4 and the property must be maintained. Chairman Tower called for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried.** Chairman Tower stated the next item on the agenda was:

**Application of Lon Flick, 1587 Lake Road, Youngstown, NY 14174.**

It was noted that Mr. Flick was not present. Irene Myers made a motion to deny the application of Mr. Lon Flick and was seconded by Joe Fleckenstein. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. All in Favor to **Deny** the Application. Motion Carried.

Karen Wieland-Schmidt reminded the Board about the meeting on Monday, October 27 for the proposed Zoning Manual.

Irene Myers made a motion to close the meeting and was seconded by Joe Fleckenstein. The meeting was adjourned at 8:50 pm. The next regular meeting will be held on Thursday, December 11, 2008.

Respectfully submitted,

Nancy Smithson, Secretary  
Town of Porter Zoning Board of Appeals