

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, November 18, 2010, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman William H. Tower, Member Peter Jeffery, Member Duffy Johnston, Member William Leggett, Member Irene Myers, Member Jackie Robinson, and Susan Driscoll.

ABSENT: Attorney Dowd, and Roy Rogers, Building Inspector.

Chairman Tower asked if there were any additions or deletions to the October minutes. Duffy Johnston made a motion to accept the minutes as written and was seconded by Peter Jeffery. All in Favor. Motion Carried.

Chairman Tower stated the Mr. Richard Engel was not advertised so this was an informal discussion. The Business Manager of Forbes Homes presented a letter to the Board dated November 17, 2010 stated that he was representing Mr. Engel. He stated the property was located at 2161 Lake Road, and he was looking for a 1.34" variance, side set. Fifteen feet is required and the current plans call for 13.66' to accommodate the house. He stated that the house will be back 400' feet. The Board told him that the next meeting was going to be held on December 16, 2010 and that he should attend the Planning Board meeting also.

Chairman Tower stated that the next item on the agenda was Neal Freiermuth, 893 Lockport Road, to renew his special use permit to operate a small home business at residence. Last month it was tabled for 30 days.

Chairman Tower read the following:

Special Use Permits:

Retail Property Trust v Board of Zoning Appeals of Town of Hempstead and Village of Garden City, 281 A.D.2d 549, 722 NYS.2d 244 (2nd Dept. 2001) – It is impermissible for a Zoning Board to deny a special use permit solely on the basis of generalized objections and concerns of the community members.

In the Matter of Gordon & Jack v. Peterson, 626 N.Y.S.2d 824 (2nd Dept. 1996) – A special permit application may not be denied solely on the basis of generalized community objections.

Chairman Tower stated he is ready to go forward with this permit. He asked the Board if everybody understood what he just read. I think the permit should be granted for five years. I would entertain a motion to discuss.

Irene Myers questioned in last month's meeting in which Attorney Koryl stated that Mr. Burns had an application for a variance some time ago for a pole barn that was turned down. It was noted that Mr. Burns was never formally denied a special use permit.

Duffy Johnston made a motion to renew the Application of Neal Freiermuth, 893 Youngstown-Lockport Road under Sections 401.3, 704.2, 705 and 710 to operate a small home business at residence for five years and was seconded by Peter Jeffery. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Tower-yes. Motion Carried to approve application for five years.

Mr. Neal Freiermuth approached the Board to say that he was blind sighted about what happened at last month's meeting. He stated that Mrs. Sirianni, 808 Youngstown-Lockport Road sold her house on September 14, 2010, and it was listed on August 13, 2010 and she received \$5,000 less than her asking price. Mr. Freiermuth stated that it doesn't sit well that his permit is only for five years because of this. He stated that they came before the Board and lied. The whole deal was wrong. Mr. Freiermuth thanked Chairman Tower and the Board for the opportunity to speak. Chairman Tower stated that he did not have the Case Law to read into last month's meeting. I wasn't prepared for a community objection. Mr. Freiermuth stated that you

cannot run a concrete business on Lockport Road. Chairman Tower stated that he was sorry for the delay.

Chairman Tower stated the next item on the agenda was Upstate Cellular Network d/b/a Verizon Wireless. A. Darren Miller from Nixon Peabody was present along with John Englebert from Verizon Wireless. He indicated that No. 9 of the Special Use Permit No. SP-296-2008 stated "This Special Permit is not assignable or transferable, and its privileges extend only to the above-name applicant." The tower was supposed to be built before the first quarter of 2010. It is important that we do get the site up and running. Verizon proposed to sell the site to Global Tower Partners. (Multiple entities). There are various different entities. The special permit has to be amended to remove No. 9 to assign the permit to Global Tower Partners. Duffy Johnston stated the permit is good until October 23, 2033. Chairman Tower stated that he discussed this twice with Attorney Michael Dowd. All that has to be done is to amend the name of the company from Verizon Wireless to Global Tower Partners. There was some discussion among the Board members. Irene Myers asked, "Who is responsible for the bond?" Chairman Tower stated Global Tower. We are having a name change from Verizon to Global Tower. Mr. Miller stated they will start building the tower immediately. He also stated that Verizon plans to co-locate on the tower. Duffy Johnston stated he doesn't want people constructing a tower without putting anything on it. William Leggett asked if they have a customer. Mr. Miller stated Verizon will be the cellular provider. Peter Jeffery questioned about a timely fashion putting a cellular provider. Mr. Miller stated it is their intent to build right away and get a carrier. Chairman Tower stated it is a dead area. Peter Jeffery stated if we just changed the name on the permit as written so that there is a provider on the tower. Jackie Robinson read No. 6 of the permit. "This permit shall automatically terminate and become null and void in the event the tower ceases to be used for telecommunication purposes for a period exceeding one year. In this event the applicant shall remove the tower and all the appurtenant structures and facilities."

Chairman Tower stated that you should be able to approve the permit as written. It is only a name change. There was no public input on this because it is only a name change.

Mr. Giarrizzo approached the Board as asked why it was put in the paper. Chairman Tower stated it was a mistake about a public hearing. Normally they are publicized as a courtesy. This permit has already been approved before. They didn't pay the \$100 fee. It was not supposed to be advertised. It is only a name change from one name to another. Duffy Johnston stated it was granted for 25 years. Chairman Tower stated it was dated October 23, 2008 and amended March 19, 2009. I chaired both of those meetings. Because it is only a name change, you did not have to be notified. I am sorry about that. It is a service to the community. This permit has already been issued. There is only the name change from Verizon to Global Partners. Duffy Johnston stated that when these towers come before us our hands are almost tied. These things go through. If they can prove there is a need, the town cannot stop it. Mr. Giarrizzo stated that he lives under the shadow of the tower. Chairman Tower stated that you knew the tower was there. It has to be lighted. Peter Jeffery read No. 4 "The tower shall be lighted day and night with a non-strobe ten foot red lighting subject to the Federal Aviation Agency and US Coast Guard regulations."

Duffy Johnston made a motion to assign the permit from Upstate Cellular Network to Global Tower Partners and its Corporate Affiliates and everything else in the permit remains the same and was seconded by Peter Jeffery. Chairman Tower asked if there was any further discussion and asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Irene Myers made a motion to close the meeting and was seconded by Jackie Robinson. The meeting was adjourned at 8:05 pm. The next regular meeting will be held on Thursday, December 16, 2010.

Respectfully submitted,
Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals