

**MINUTES OF A MEETING OF THE
VILLAGE OF AVON ZONING BOARD OF APPEALS
THURSDAY, MARCH 15, 2018
6:00 PM; VILLAGE HALL, WHITNEY ROOM**

I. ATTENDANCE

Daniel Freeman, Chairman (6:15 PM)
James Gerace
Richard K. Hite
Ernest Wiard (6:17 PM)

APPLICANT REPRESENTATIVES

Nathan Vander Wal, Nixon Peabody LLP (Verizon)
Colin Fazio, Pyramid Network Services (Verizon)
James Baase, Empire Access

ABSENT

Barbara Sadden

QUORUM, 4 Present, 1 Absent

STAFF

Anthony Cappello, Code Enforcement Officer
Brian Glise, Fire Marshal (6:40 PM)
Gary Margiotta, Deputy Clerk

GUESTS

Katharine Davidson, 41 Hal Bar Road
Richard Davidson, 41 Hal Bar Road
Joseph DiTucci, 513 Collins Street
Jane Garrett, 525 Collins Street
Janet Garrett, 525 Collins Street
Janet Limuti, 135 Clinton Street
Klint Limuti, 135 Clinton Street
Justin Vandermeid, 66 Lacy Street
Lou Anna Vandermeid, 66 Lacy Street
Malinda Wilson, 533 Collins Street

II. APPROVAL OF THE MINUTES

MOTION: hitre moved for approval of the minutes of July 25, 2016, seconded by Wiard. Voting in favor were: Freeman, Gerace, Hite and Wiard. Voting against were: none.

CARRIED, 4 Ayes, 0 Nays

III. OLD BUSINESS

Nothing pending.

IV. NEW BUSINESS

A. Special Use Permit Applications
For 220 Collins Street, and
For 180 Clinton Street

Bell Atlantic Mobile Systems of Allentown, Inc.
d/b/a Verizon Wireless
1275 John Street
West Henrietta, NY

Applications to construct and operate micro wireless telecommunications facilities within the Village rights-of-way near the above mentioned locations. Facilities would consist of 34-foot tall wooden poles with 4-foot, 7-inch antennas on top of them. The facilities are intended to provide improved service within an approximately quarter mile radius of the poles.

B. Special Use Permit Application	Empire Access
For SW corner of Collins & Hosmer Streets	34 Main Street Prattsburgh, NY

Application to place 3-foot wide x 3-foot, 6-inch deep x 5-foot, 6-inch tall cabinet on a concrete pad on a 10-foot x 10-foot easement within the Village right-of-way near the above mentioned location, said cabinet to house and protect fiber optic cables and equipment for use in providing high speed internet, video, telecommunications and security services to business and residential customers in the Village of Avon.

PUBLIC HEARINGS

PLEASE TAKE NOTICE that public hearing will be held before the Zoning Board of Appeals of the Village of Avon on Thursday, March 15, 2018, at 6:00 PM in the Whitney Room at the Village Hall, 74 Genesee Street, Avon, New York on the following matters:

1. Construction and operation of a micro wireless telecommunications facility on a utility pole within the Village-owned right-of-way near 220 Collins Street.
2. Construction and operation of a micro wireless telecommunications facility on a utility pole within the Village-owned right-of-way near 180 Clinton Street.
3. Placement of a cabinet for the housing and protection of fiber optic cables to provide high speed internet, video, telecommunications and security services to residential and business customers in the Village of Avon.

The special use applications had been available for review at the Village Hall located at 74 Genesee Street, Avon, NY, from 8:00 AM to 4:00 PM Monday through Friday.

The Zoning Board of Appeals, at this time, will hear all persons in support of these special use permit applications or objections thereto. Persons may appear in person or by agent or attorney.

Dated: February 27, 2018

By Order of the Zoning Board of Appeals of
the Village of Avon

Background Provided

By Nixon Peabody Attorney

Atty. Vander Wal began, explaining he and Fazio were there on behalf of Verizon Wireless. The first two projects mentioned involved the construction and operation of micro wireless telecommunications facilities intended to provide additional wireless network bandwidth capacity and improved performance within a quarter mile radius around the facilities.

Verizon Wireless, he continued, did have a macro facility at 4350 Avon-Caledonia Road, but certain areas within the Village had become overburdened. Verizon proposed construction and operation of supplemental micro facilities to provide "hot spot" coverage, such coverage most often required around schools and strip malls.

The 180 Clinton Street facility, he said, was aimed at Avon Central School and the surrounding residential area. The location would be on the Village right-of-way near 180 Clinton Street and would provide the additional wireless network bandwidth and improved performance the school district needed. That, he added, would be achieved via an antenna at the top of their utility pole. Vander Wal said there would be nothing on the ground.

Site Selection Questioned

Hite asked how the 180 Clinton Street site had been selected.

Putting a facility on that site would provide a quarter-mile of coverage, Vander Wal said. Was there an existing structure where they could co-locate? If none, what was the simplest and least expensive alternative? Where could they site a pole capable of providing the desired coverage? Verizon had selected the 180 Clinton Street as that site.

But, were there any alternative sites? Hite persisted. Anywhere else Verizon could have located a pole?

The school had been approached, Fazio responded, but Verizon got the site within the Village right-of-way near 180 Clinton Street, moving the facility as little as 100 feet could change things, he added.

Had there been any consideration given to what else might go at 180 Clinton Street? Hite asked, suggesting a sidewalk as one such possibility.

Would Verizon's micro telecommunications facility alleviate the problems they had been having with cable television? Richard Davidson asked.

The Verizon representatives said, "no," but Baase, on behalf of Empire Access, said his company planned to provide cable television services.

Davidson characterized Spectrum as "terrible," noting it had been off all afternoon.

Health Concerns;**Appearances**

Vandermeid asked about radiation.

The level of emissions would be safe, Vander Wal responded. Nixon Peabody had provided an engineer's evaluation that stated the facility would comply with electromagnetic field safety standards by a substantial margin (below 1 percent) in all public accessible areas.

Would it be like standing next to an X-ray machine at the dentist's office? Vandermeid followed-up.

What would the facility look like? Janet Limuti asked.

It would be a 34-foot tall wooden pole with an antenna, 1-foot in diameter, on top of it that would raise the overall height of the facility to 38 feet, 7 inches, Vander Wal responded.

Could children climb on it and "mess" with it? Limuti followed-up.

Everything would be locked and secured, Vander Wal assured her.

Empire Access would be the installing contractor and Baase said the poles themselves would be sunk five to seven feet in the ground.

Were there any Village utilities there? Hite wondered.

Vandermeid said his children were babies. Research on cell towers was limited. He was wary of what Verizon's facility would be bringing into his home.

Cappello noted there was a similar pole in Brighton and it hadn't had any adverse effect on nearby trees.

How close to the street would Verizon's pole be? Hite asked.

6.25 feet, Fazio responded.

Hite said he had always thought a sidewalk would go on that side of the street one day.

A utility pole can be moved fairly easily, Fazio said.

We can put it back as far as you'd like it, Baase added.

Can the Village say, "no," to this application? Vandermeid asked. Had the school been notified? Had parents been made aware?

Many people who should have been notified weren't, Lou Anna Vandermeid contended.

Empire Access

Fiber Optics Cabinet

There was a large transformer by the medical offices parking lot at 470 Collins Street, DiTucci noted. There were utility boxes of one sort or another on both the north and south corners, he added, asking if shrubs could be put around the Empire Access cabinet.

Empire Access could put bushes around its cabinet, Baase offered. The purpose of their project was to provide fiber optics services to homes and businesses in the Village, he added. Their internet, he said, would be the fastest in town and Empire was a local company, when you called them, you'd get a live body, Baase said.

What were the closest communities Empire was in south of Avon? DiTucci asked.

Geneseo, Mt. Morris and Dansville, Baase responded.

Do you have a franchise agreement with the Village? DiTucci asked.

No, that wasn't required, Baase said.

What about putting a white, PVC fence around the cabinet? Wiard asked, suggesting Empire fence-in all the cabinets.

The other cabinets are on private property, Baase said and, with regards to shrubbery, he questioned who would maintain it.

ESL Federal Credit Union owned the property with the sidewalk that ran from East Main Street to Collins Street, Cappello noted.

Empire typically located its cabinets in a space occupied by similar cabinets, Baase said, adding they usually got welcomed in the towns into which they considered expanding.

A certain amount of due diligence was required, Hite said, adding dialogue was good.

When did Verizon propose to start and finish their projects? Lou Anna Vandermeid asked.

Within a month to 10 months down the road, Fazio responded.

**VERIZON WIRELESS
HEARINGS CLOSED
DECISIONS WITHHELD**

Freeman called for motions to move forward on Verizon's special use permits.

Vander Wal pointed out the Board should first issue a negative declaration under the State Environmental Quality Review Act (SEQRA). Verizon had submitted short Environmental Assessment Forms (EAF) as Exhibit F in each of their applications and they were "*pretty straight-forward*," the attorney asserted. Erdman Anthony of Rochester had prepared the forms.

EAFs were completed by the applicant to assist an agency in determining the environmental significance of an action.

The EAFs were pretty self-explanatory, Fazio concurred.

Hite noted many different aspects had been thrown into a single hearing and that had created some confusion. They, as a Board, had not dealt with SEQRA much and, while the EAFs did seem pretty straight-forward, it would have been nice to have devoted a meeting just to them.

Freeman said he felt comfortable moving forward.

"So do I," Wiard agreed.

MOTION: Wiard moved approve Verizon Wireless' special use permit for 180 Clinton Street and to issue a negative declaration under SEQRA for that application. There was no second to his motion.

A negative declaration is a written determination by the lead agency that the implementation of the proposed action will not result in any significant adverse environmental impacts.

Following a discretionary review, the Zoning Board of Appeals should consider a motion for a negative declaration under SEQRA then consider a motion approving the special use permit application, Vander Wal advised.

Hite said he had encountered some "*difficult situations*" where SEQRA wasn't followed in a procedurally correct manner.

Vander Wal suggested the Board close the public hearings on Verizon Wireless' special use applications, seek additional information on SEQRA form and procedure then reconvene the hearing in two weeks and render a decision then.

MOTION: Hite moved to close the Verizon Wireless public hearings and reconvene at 6:00 PM Thursday, March 29, 2018 in the Whitney Room at Village Hall and to use the time until then to obtain additional information on SEQRA form and procedure. Seconded by Wiard. Voting in favor were: Freeman, Gerace, Hite and Wiard. Voting against were: none.

CARRIED, 4 Ayes, 0 Nays

EMPIRE ACCESS

HEARING ADJOURNED

DECISION WITHHELD

Margiotta stated he had not notified nearby landowners of the Empire Access public hearing by certified mail, that he had hand-delivered notices on March 14, 2018. Closer examination of the Zoning Code indicated such notification should have been performed by the applicant.

MOTION: Hite moved to adjourn the public hearing on Empire Access' special use application and reconvene at 6:00 PM Thursday, March 29, 2018 in the Whitney Room at Village Hall and to use the time until then to ensure notification of nearby landowners was achieved by certified mail. Seconded by Gerace. Voting in favor were: Freeman, Gerace, Hite and Wiard. Voting against were: none.

CARRIED, 4 Ayes, 0 Nays

EXECUTIVE SESSION WITH

VILLAGE ATTORNEY REQUESTED

Gerace asked if the Board could meet with Village Attorney Reid A. Whiting for the purpose of receiving legal advice at 5:00 PM Thursday, March 29, 2018, in the Whitney Room at Village Hall. Fellow Board members concurred (no vote taken).

V. ADJOURNMENT

The Board adjourned at 8:07PM (no vote taken).

Gary Margiotta
Deputy Clerk