

**MINUTES OF A MEETING OF THE  
VILLAGE OF AVON ZONING BOARD OF APPEALS  
THURSDAY, MARCH 29, 2018  
5:00 PM; VILLAGE HALL**

**I. ATTENDANCE**

Daniel Freeman, Chairman  
James Gerace  
Richard Hite  
Ernest Wiard

**ABSENT**

Barbara Sadden

**GUESTS**

Nathan E. Vander Wal, Esq., Nixon Peabody, LLP  
Joseph Kirchner, Empire Access

Arthur Gibson, 521 Collins Street  
John Gibson, 521 Collins Street  
Lynne Siragusa, 1850 Lakeville Road  
Joel Stefl, 501 Collin Street  
Margaret Williamson, Florida

**QUORUM**, 4 Present, 1 Absent

**STAFF**

Reid A. Whiting, Village Attorney  
Gary Margiotta, Deputy Clerk

**\* EXECUTIVE SESSION**

**5:00 PM**

The Board met in executive session with Village Attorney Reid A. Whiting for the purpose of receiving legal advice. No action was taken. Wiard left at 5:53 PM.

**QUORUM**, 3 Present, 2 Absent

**\* OPEN SESSION**

**6:00 PM**

Freeman announced the Board was reconvening the public hearings on Verizon Wireless and Empire Access special use permit applications begun March 15, 2018. The Verizon Wireless hearings had been closed pending receipt of additional information on form and procedure associated with the State Environmental Quality Review Act (SEQRA) and the Empire Access hearing had been adjourned pending certified mail notification of nearby landowners.

**A. EMPIRE ACCESS**

34 Main Street  
Prattsburgh, NY

Special Use Permit Application  
Joseph Kirchner, OSP Engineer

Kirchner introduced himself and explained Empire Access wanted to offer telephone, video, cable television, internet and security systems to the businesses and residents of Avon. To do that, they needed an equipment cabinet from which to distribute services. A site at in the Village right-of-way on the southwest corner of Collins and Hosmer Streets had been proposed.

Would this encompass the Town? Siragusa asked.

Kirchner said he didn't want to hedge his bets, but answered, "somewhat." Empire Access would build its backbone then build out, he explained.

In Leroy, Empire Access had built its backbone, then began by serving businesses. They would have to survey the utility poles in Avon, apply to the owners for access then go from there, Kirchner said.

### **Avon Commons Service - Underground Cables**

#### **Hearing & Heart Concerns**

Transmission would be through the air – from the cabinet they wanted to locate at Collins and Hosmer Streets? Arthur Gibson asked.

No, the cabinet would be for “*storage*,” Kirchner responded.

Then, how would I get your service into my home? Gibson followed-up.

Via buried wires, Kirchner answered.

Gibson said he had a pacemaker. Would Empire Access be generating “*small signals*?” he wondered.

They wouldn’t be, Kirchner said, unless Gibson had Wi-Fi in his house. Empire Access, he assured Gibson, would meet all Federal Communications Commission (FCC) Part 15 rules.

Frequencies about 20 megahertz (MHz) can cause tinnitus, Gibson remarked.

Empire Access would operate a completely sealed system, Kirchner responded, stressing, no emissions out of it.

John Gibson asked about Empire Access using fiber optics to transmit Wi-Fi (*wireless local area networking with an indoor range of about 66 feet*).

Empire Access wouldn’t be doing a municipal Wi-Fi system, Kirchner clarified, their fiber optic cables would be sheathed, just like the telephone wires or television cable coming into or house. Once Empire Access had been brought into the customer’s house, the customer might then elect to have Wi-Fi service within the home.

Many people use their laptop computers in one room, Kirchner said, but then wanted to carry on with what they were doing in another room, say accessing a recipe on the internet then wanting to carry the laptop into the kitchen to make the recipe, Kirchner said.

How would service be provided in Avon Commons? Gibson asked.

Buried cable, Kirchner responded.

If one person on the street wanted it, you’d dig through everyone else’s yard to get there? Gibson asked.

Well, we’d have to weigh the cost of doing it, Kirchner said.

Where do you get the content for cable television? Arthur Gibson asked.

Kirchner couldn’t say exactly what channel package would be offered in Avon.

**Exact Location of Fiber Optics Cabinet****Alternative Locations Considered**

Exactly where would the fiber optics cabinet at Collins and Hosmer be? Stefl wondered.

Where? Kirchner responded. Collins Street had 60 feet of right-of-way (R-O-W), extending from shoulder-to-shoulder. Empire Access' cabinet would be north of the boxes that were there, but still within the Village's R-O-W, he said.

Exactly where would the concrete pad (*that the cabinet would sit on*) be? Stefl followed-up.

East of the sidewalk that ran through the ESL Federal Credit Union property from East Main Street to Collins Street, Kirchner said. The R-O-W varied, but it would be east of the sidewalk and 30 feet south from the Collins Street centerline.

What do Village residents want? Stefl asked.

Freeman said he hadn't heard what residents wanted. He asked Kirchner if one cabinet would take care of the entire Village?

Yes, Kirchner said, adding each fiber could carry service to 64 customers.

Residents seemed to want anything that would get them away from Spectrum, Arthur Gibson said, adding Spectrum kept raising his rates – unannounced.

Competition was good for business, Kirchner contended.

Were any other locations considered? Hite asked.

The east side of North Avenue, across from the Episcopal Church, Kirchner began, adding Dream Valley Boulevard near TOPS had also been considered.

Referring to the computer-generated graphics Empire had provided, Hite asked if they had any more definitive representation of where the fiber optics cabinet would be? From what they had been provided, Board members weren't sure the cabinet would be in the Village R-O-W.

How about where Avon Central School's solar field was located or where National Grid's station was behind Salvatore's Pizza – had Empire considered those locations? John Gibson asked.

Empire Access tried to be centrally located and located near where utility poles were located, Kirchner said.

There was lots of land near the solar field and the National Grid station and those locations wouldn't be near anyone's house, Gibson pointed out, adding there were utilities and utility poles there as well.

**What About Accidents?****Were there Hazards?**

If the cabinet were compromised, how would that be handled? Whiting wondered.



With a catastrophic event, Empire Access would be on the scene within two hours, Kirchner responded. They had full construction and maintenance crews as well as contractors on retainer.

Was there an electrocution hazard? the attorney followed-up.

Less danger than a pole going down, Kirchner asserted.

Had any consideration been given to fencing or landscaping? Whiting changed directions.

They could consider it, Kirchner said. They had put in arbor vitae elsewhere, but, generally, tried to keep their footprint as small as possible.

Getting back to Hite's question, Freeman said the Board still didn't have a definitive answer on where the boundaries were.

Empire Access could get the Village a survey the next day, Kirchner said.

The Board didn't want to grant Empire Access its special use permit unless members were sure they weren't encroaching on anyone else's property.

Hite asked Kirchner if Empire Access had considered the municipal parking lot behind his building at 87 Genesee Street?

Kirchner said he would take a look when he left the meeting.

#### **Hearing Closed**

#### **Decision Reserved**

**MOTION:** Hite moved to close the hearing, but to reserve decision pending the receipt and review of a survey map showing the exact location of the fiber optics cabinet. Seconded by Freeman. Voting in favor were: Freeman, Gerace and Hite. Voting against were: none.

**CARRIED, 3 Ayes, 0 Nays**

#### **B. BELL ATLANTIC SYSTEMS OF ALLENTOWN, INC.**

d/b/a Verizon Wireless  
1275 John Street, Suite 100  
West Henrietta, NY

#### **SPECIAL USE PERMIT APPLICATIONS**

NATHAN E. VANDER WAL, ESQ.  
Nixon Peabody LLP

Verizon had applied for special use permits to construct and operate micro wireless telecommunications facilities on 34-foot wooden utility poles with the Village-owned right-of-way near 220 Collins Street and 180 Clinton Street to contend with hot spots.

Freeman said last time the Board had wondered which agency should serve as the lead agency on the State Environmental Quality Review Act (SEQRA). The Board had met with Whiting who had advised them the Zoning Board of Appeals could serve in that capacity.

**MOTION:** Hite moved to designate the Zoning Board of Appeals as lead agency for the purposes of SEQRA on Verizon Wireless' applications. Seconded by Gerace. Voting in favor were: Freeman, Gerace and Hite. Voting against were: none.

**CARRIED, 3 Ayes, 0 Nays**

**Unlisted Action,  
Type 1 or Type 2?**

There was some discrepancy, Hite said, the application identified Verizon's proposal as an "unlisted" action.

Yes, Vander Wal concurred, adding it hadn't been called-out as a Type I action.

The Board hadn't done much with SEQRA, Hite admitted, adding he'd hoped a representative from the Village's engineering consulting firm, the MRB Group, could have been there. He said he'd received conflicting information and wasn't sure the Board was in a position to make a decision.

They could go through Type 2, Vander Wal offered, adding he didn't know to what conflicting information Hite was referring.

Hite said he had been on the Board seven or eight years, but believed this was the first time they'd dealt with SEQRA.

One specific point was item six, Whiting interjected,

*"Is the proposed action consistent with the predominant character of the existing built or natural landscape?"*

This Board, Whiting said, felt Verizon's pole was not consistent with what had been installed on Collins Street (*the other poles in the Avon Commons subdivision*).

The Board had also touched on item 12 b., the attorney continued,

*"Is the proposed action located in an archeological sensitive area?"*

Vander Wal said he could get an answer on 12 b.

Whiting said he was unaware of any "archeological sensitive areas" in Avon.

The Board needed some assurances there was nothing there to worry about, Hite added.

**Clinton Street Application**

**What about the School District?**

Whiting noted the many tall lighting poles on the Avon Central High School grounds.

They may have been considered too high, Vander Wal speculated, it may have been a signal propagation issue. Verizon may have needed a shorter pole to properly target the school.

No one has complained about coverage problems or signal interruption? Whiting asked.

Verizon routinely monitors their signal area with an eye towards the current level of service and the level of service that will be needed in the future, Vander Wal said.

The coverage provided by a micro telecommunications pole, such as the Verizon had proposed for 180 Clinton Street, was a ¼-mile radius, Vander Wal said, this was their "hot spot" coverage zone.

They had mentioned they had approached the school, Freeman noted.

Why not place the pole on school property rather than the public R-O-W? Hite asked.

They had approached the school, Vander Wal said. He was unsure whether they had any correspondence attesting to that or if they had written to the school then followed-up with a phone call. He said he would check for a letter from the school and, if not, get an affidavit from the employee who had made contact.

Co-locating - a shared tower or an antenna on a building - would have been preferable, Hite commented. He mentioned the school's solar field as a possible alternative site, pointing out this micro telecommunications facility of Verizon's was intended to serve the school population.

The first thing they had looked at was an existing tower or building, Vander Wal said. Colin Fazio of Pyramid Network Services said he talked to the school and they'd said it wasn't a possibility.

If Verizon reached an accommodation with the School District, it might mean rental income for the school, Whiting speculated. If that were the case, they might gain some sway by approaching the school's business manager.

### **Request for a Metal Pole**

#### **At Collins Street Site**

Getting back to the Collins Street site, Freeman asked if Verizon could provide a metal pole consistent with others in the subdivision. Did they make them tall enough, he wondered.

A wooden pole would stick out, Hite remarked.

Vander Wal said he would get guidance as far as materials options. The information the Board was requesting should be easily obtainable.

### **Next Meeting:**

#### **6:00 PM Thursday, April 19, 2018**

Vander Wal said he would:

1. Check on alternative materials for the Collins Street pole in response to item 6 on the SEQRA short Environmental Assessment Form (EAF)
2. Find out why item 12 b. (*archeological sensitive area*) on the EAF had been marked "yes," and
3. See if they had something in writing on locating the pole on school property or, in lieu of that, an affidavit from the employee who had spoken with school officials

Board members agreed to meet again at 6:00 PM Thursday, April 19, in the Whitney Room at Village Hall.

**V. ADJOURNMENT**

**MOTION:** Hite moved for adjournment at 7:40 PM, seconded by Gerace. Voting in favor were: Freeman, Gerace and Hite. Voting against were: none.

**CARRIED, 3 Ayes, 0 Nays**

Gary Margiotta  
Deputy Clerk