

**ITEM # 1:**

The meeting was called to order by Planning Board Chairman Zittel at 7:00 p.m.

**ITEM #2: Roll Call**

**Present:**

Kenneth Zittel, Chairman  
George Donhauser  
Joseph Edbauer  
James Jozwiak  
Julie Zybert  
Bruce Luno

**Also Present:**

Darlene Schweikert  
Andrew Bazinet, Crown Castle  
Fred Hofmann  
Hank Duwe  
Colin Edbauer  
Connor Edbauer

**Excused:**

Gregory Waterman

**ITEM #3: Citizen Participation**

a) **Crown Castle- Smith/Genesee Road Cell Tower.** This is a continuation from last month's meeting regarding the additional information needed to proceed with the tower. The members received the Murray Law Firm correspondence dated December 7, 2010 at the start of tonight's meeting. Chairman Zittel noted that he had talked to Ray Smith and that Mr. Smith sold his lease rights to TriStar. Mr. Bazinet noted that to get additional land for the fall zone, Crown Castle cannot go directly to Smiths based on their agreement. Crown Castle is in the process of working on purchasing that lease back so that Crown Castle can go directly to the Smiths to resolve this issue. Mr. Bazinet noted that one of the members had contacted Murray Law firm and this December 7<sup>th</sup> correspondence is in response to G. Donhauser's questions. G. Donhauser noted that the Smiths sold this lease for cash money and according to Jacqueline Phillips Murray, attorney, this new lease holder is a vulture and that this new lease holder holds people hostage when they need anything additional regarding the lease. B. Luno asked what Town Attorney Barone's response was to this last letter. D. Schweikert noted that the letter came in right at 5 o'clock so this letter has not yet been reviewed by Town Attorney Barone. D. Schweikert had already advised Town Attorney Barone of the information that G. Donhauser had obtained from the Murray Law Firm. There is a stipulation in the agreement that said Smiths could not be contacted to obtain additional lands. G. Donhauser noted that their attorney made a good point; even without the fall zone, the tower would stand land totally on Smith's property. There is a waiver provision in our Code; he would still like to see Crown Castle correct the fall zone issue but he would have no problem approving this and allowing Crown Castle a year to get the fall zone issue straightened out. Chairman Zittel noted that if the Town were to grant a waiver, he thinks it makes the Town liable if something happens up there.

D. Schweikert noted that Town Attorney Barone had told her that the Planning Board should err on the side of caution because for insurance purposes if something happens, and the Town had issued a Waiver and an accident were to happen up there, he is not sure if the Town's insurance would cover any claim. The members feel that this needs to get resolved. Mr. Bazinet noted that he wanted to clarify what he believed the issue is. It is not that they don't meet the fall zone; we don't meet the fall zone in 2 directions. He referred the members to their attorney's December 1<sup>st</sup> correspondence and they reviewed the map attached and showed the members the areas where they did not meet the fall zone but it is still within the Smith property. Hank Duwe asked if the original tower fell within the 520 box and it did; it meets the fall zone requirements. Chairman Zittel noted that this should have been addressed in the beginning and maybe things would have gone smoother. Mr. Bazinet noted that this issue was brought to light from the town engineer at the November meeting. Chairman Zittel noted that the town engineer is not willing to sign off on this issue. Mr. Bazinet noted that he has had many contacts with the town engineers and the attorney's have been working on trying to solve this issue and that is how the waiver issue came to light. Our Code does allow the Town Board to grant a waiver. Mr. Bazinet wanted to make sure that all the other issues from last month's meeting have been satisfied. Darlene noted that Mark Alianello, the town engineer, in his December 6<sup>th</sup> correspondence indicated that he was satisfied with all other matters. The fall zone is still an open issue. Darlene gave Mr. Bazinet a copy of that Alianello letter for his file. Chairman Zittel noted that one of his concerns is that if the Town issues a waiver with time constraints to correct the matter; there are times when the correction never happens but once everything is done; there are no consequences at that point. Mr. Bazinet noted that they are in the beginning stages of trying to buy the lease back or trying to obtaining more land from the new lease holder and these agreements usually take several months. The Public Hearing is scheduled on this cell tower application on December 9<sup>th</sup>. G. Donhauser noted that under our Code the Town does have a time frame in which we have to act; 62 days from the Public Hearing date. The members would like to hear what Town Attorney has to say about the liability concerns. J. Jozwiak asked Mr. Duwe what his thoughts were. Mr. Duwe noted that he is at the meeting because he owns the property adjacent to this parcel and there is an item in the Code that for a residence there has to be a 500 foot set back. If you have a 500 foot set back, the fall zone can't be in the set back zone. He is curious how this could affect the future development of his land. If there is a restriction of 500 feet from this property line, he feels this will just about cut his property in half. Discussion as to why it is 500 feet. The members thought that maybe it had to do with radio waves. Mr. Duwe thought that he would be grandfathered because there was no Code when the first tower was put up there. There was no 500 foot restriction when that tower was put up. Mr. Bazinet noted that he believes the overall concern to satisfy the Code is public safety. The purpose is to keep the tower confined so that if it does fall, to keep it within the fall zone and not hit another property line or structure. He feels that the Board could put a condition that nothing is constructed within the fall zone and Mr. Duwe told him that this

is already a given in the fall zone; it is the 500 foot set back that is the issue. Mr. Bazinet then thought that Mr. Duwe could get a waiver from the Town in regard to that set back matter. Mr. Duwe noted that unless he has something solid, a waiver does not sound too substantial and if he came back in a couple years and wanted to do something on his property, someone may say that that waiver should not have issued. Right now it is in the Code. J. Edbauer noted that it is in the Code that the Town Board may modify this condition for the 500 feet; Section 137-9(a). This set back requirement could also affect Goodremote as well as G. Donhauser. Mr. Bazinet questioned whether the 500 foot rule applied to the parcel that the tower is on? J. Zybert noted that the way she reads it property lines do not come into play. Mr. Duwe noted that the reality is that it would be limiting the use of that property. Much discussion about this section of the Code; whether the 500 feet is from the center of the tower or the end of the fall zone. Mr. Duwe refers to 137-9(d) and interprets it differently. Mr. Duwe feels that if the waiver is established, his property is being sacrificed. The members feel that Mr. Duwe would not be sacrificing 500 feet but he would be sacrificing about 250 feet. Mr. Duwe disagrees and still believes it is 500 feet. Once the tower is built, what would keep Mr. Duwe from building? The Code says 50 foot set back, but to start out when a tower is built, it is 500 feet but after that it would be just the 50 foot set back. Anything that happens after the tower is built, would be separate. It is to protect the property owner during the initial stages. Discussion about enforcement of these set backs. Mr. Duwe and the members did not reach any agreement as to this set back area. Chairman Zittel asked if any of the members wanted to make a motion. Since the members feel they need a legal interpretation on this matter, G. Donhauser made the motion that Town Attorney Barone decide what is legal so that the Town can resolve the question as to the fall zone and if a waiver with conditions is appropriate and how this affects Mr. Duwe, seconded by B. Luno. All in favor. Carried. Chairman Zittel noted that the Public Hearing and the Town Board meeting are scheduled for December 9<sup>th</sup>. G. Donhauser does not believe that this will be resolved on Thursday night. Mr. Bazinet thanked the Board and left the meeting at 8:05 p.m. Mr. Duwe also left at this time.

**ITEM #4: Approval of Minutes**

a) November 2, 2010

Chairman Zittel asked for comments or questions regarding last month's minutes. J. Jozwiak made the motion, seconded by J. Edbauer, to approve the minutes as presented. All in favor. Carried.

**ITEM #5: Business from the Floor**

a) Chairman Zittel informed the Board that Supervisor Eppolito would like the Board to review the zoning on the new Zoar Road. Chairman Zittel asked Mr. Hofmann to attend the meeting. The idea would be to

make this section Commercial. It appears that the Town/Village Master Plan shows this new road to be commercial. Once it would become developed, the area would be annexed to the Village. Chairman Zittel had a copy of the Assessor's Map of the area for review. Mr. Hofmann noted that the Town tends to be reactive and they should be proactive; if the Town wants to have commercial expansion, the Town and the Village need to stop fighting and make plans to do what they need to do to get water and electric out there so that when someone says they want to build a commercial property out there, those utilities will already be there. It bothers him that we have lost all the Town property to the Village but so be it. We would not have all that assessed valuation if it had not been done. They are not big sites but they are good sites because the expressway is on one side and Spooner Gulf on the other so there should be no complaints about noise. Discussed the property owners and how much land is out on that new road and how much depth could be rezoned because we usually don't rezone the whole parcel. Mr. Hofmann wondered if the Town had talked with the property owners. Chairman Zittel noted that this request to discuss the rezoning came from the Supervisor and not a landowner. The members believe that the Town should contact the landowners for their feedback. To avoid having residences built there, it would have to be an industrial park because residential can still go in a commercial area. Those landowners would then have to pay Village taxes. Mr. Hofmann noted that he does not want the rezoning to come to his property. Chairman Zittel noted that he agrees with Mr. Hofmann that the neighbors should be involved but on the other hand there are not that many other places to put commercial businesses for the good of the area. The Town is going to have to approach these people to discuss this matter. Discussion about approximate cost to put in utilities in that area and if the Village had the wherewithal to do this. Discussion about whether the new businesses would put up the initial investment to provide the utilities. The members believe the Town Board should contact the landowners. The Master Plan called for this to be a Planned Business Park. It appears that under our Code this area would need to be rezoned to a Planned Industrial District which does not allow residential housing. Discussion as to whether we could include other areas in a PID area; like by the golf course.

b) J. Edbauer noted that he will bring his proposed language on manufactured homes/trailers to next month's meeting.

- c) J. Zybert noted that she had attended a training seminar and she had the handouts for the members to review. One of which was on manufactured homes/trailers so she gave it to J. Edbauer to review.
- d) G. Donhauser noted that he had read in the paper that the State is not going to do the outside wood burning stove law. Appears the Farm Bureau may have been involved in that decision.
- e) Darlene had contacted Town & Topics magazine and got the DVD regarding "Watershed" and some of the members will be getting together next week Tuesday, December 14<sup>th</sup>, to watch the DVD as part of their required training for the year. The members will let Darlene know who attended this training.
- f) J. Edbauer needs more training so he will watch the video "Dollars & Sense" for the balance of his training. He will pick up the video from Darlene. He did not attend this training when the rest of the members watched it for training credit.
- g) Darlene will make contact with TVGA early 2011 to see if a training session could be held at Springville so that members could get training done earlier in the year.

**ITEM#6: Motion to Adjourn**

J. Edbauer made the motion, seconded by J. Jozwiak, to adjourn the meeting at approximately 9:00 p.m. All in favor. Carried.

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Darlene G. Schweikert