

**TOWN OF POMPEY ZONING BOARD OF APPEALS MINUTES  
JUNE 1, 2015**

The Town of Pompey Zoning Board of Appeals meeting was held on Monday, June 1, 2015 at 7:30 pm at the Town Highway Garage. Present were: Chairman David Tessier, Kevin Sharpe, Dave Hale, Don Neugebauer, Pat Frazee; Town Attorney Jeff Brown and Code Enforcement Officer Richard Penhall.

Chairman Tessier opened the meeting at 7:30 pm.

This meeting is a continuation of the public hearing for the variance for the Verizon Cell Tower to be increased from 75 feet to 124 feet.

There is a set-back issue for the cell tower, then Attorney Jeff Brown will review the procedure for tonight. After comments, the public hearing will be opened. There will be 3x5 cards on the corner of the table to fill out if you want to speak. We have a three minutes timer to time the speakers. Then, close the public hearing and the Town Attorney will explain procedure for the vote. That is the goal for tonight. Board cannot vote until the public hearing is closed. At that time the comments from the public will be done.

This hearing is continued from the April 27<sup>th</sup> meeting. The Board's next regular meeting would have been on Monday, May 25, but it was a holiday. The next Board meeting will be on Monday, June 29<sup>th</sup>.

CityScape is the consultant hired to study the Verizon application. They are based in Florida. They have a lot of experience. It is an impartial report. We have some answers we have been waiting for. Any comments from the Board regarding the report?

Pat Frazee felt the important point was what their feeling was on the height of the tower.

Chairman Tessier stated that they agree with the 120 foot request to get over the tree tops. They confirm that the 120 feet would fill the gap.

Has Verizon maximized output from the current towers? Verizon confirms that the adjacent cell towers have all been upgraded to 4G. CityScape Report is available if you want to see it. Will now ask the applicant to speak on the report.

Jared Lusk, attorney for Verizon Wireless. He realizes that the Board has a lot of paperwork in front of it.

The three main points raised from opponents are: need, property value and issue of aesthetics.

Ex. PP – CityScape Report. History is generally correct of telecom development. Tab VV – states three surrounding sites have been upgraded to provide 4G.

Verizon does support concealing the structure. Will discuss with the Planning Board when they go to their meeting for the Site Plan Review. Willing to work with them.

Regarding the question of the need for the variance for the tower height, 75 feet is too short. Trees are roughly 90 feet in height. Having more than one 75 foot tower would not fix the problem because there is still the issue of tree height interference, also would be too close together. Case law that deals with cost of multiple towers is all documented in tab VV. Believe they have answered questions in the CityScape Report.

Transcript for 10/27/14 meeting regarding property values. Mrs. Moseson discussed potential impact of towers on property value. Verizon called a firm in Rochester and asked them to do a similar study, but they don't have the data.

Instead Verizon hired Pomeroy Associates, Don Fisher analyzed. Tab SS shows sales data and history in the report. Important to find neighborhoods similar to Indian Hill Road. Needed to find towers in residential, rural and agricultural areas. Same as in Onondaga County. Also Madison County. Similar towers, similar data. Identify homes that had views of tower and which didn't. Looked at sales to make comparisons. There were a lot statistics. Mr. Fisher concluded (page 27) that cell towers do not negatively impact property values, based on real estate sales data. Important to note, residents in this area see the water tower. There are other towers in the area. Property value issue does not hold water.

Also, tab TT, small cells don't fit in the area. Would see a problem with dropped calls.

The series of line graphs show cell use in surrounding area. Several at maximum capacity. Can provide to the Board. Consistently going over maximum usage.

Pat Frazee asked what happen if go over the usage?

Gene DiDimenico, RF Engineer – how much volume being used, average user? Take information and project where the trend is heading. Section saturated. Cannot support. Data slow, dropped calls.

Jared Lusk said three sections show red – reaching capacity. Will provide electronic copy in the AM. One issue that arose, Ex. UU – they preformed their own test. City Scape agreed with need for tower.

Tab BB – upgrade, tab WW – applicable law. Cost is close to 6-7 figures. To build two 75 foot towers doesn't work because of the trees.

Code Enforcement Officer Rick Penhall sent a letter stating the need for front, rear and side setbacks. Verizon disagreed with interpretation. Nevertheless Tab XX shows

slightly modified tower located 88 feet to the west, same height to avoid setback issue. Look at third page, there is a picture.

Between October 27 and April 2 considered this stand of trees. Falcone's only wanted in back corner. Need to relocate to another part of the area. Falcone's directed where to put tower. No other area to relocate. 159 feet meets that setback.

Dave Hale asked where they would be today if Falcone's refused? Was there a plan B?

Jared Lusk stated would be back to square one. Keep looking for a land owner willing to work with them. Ex. G & H, at the beginning, area aerial photos, six additional sites. We need to be in that area.

Another option Verizon investigated was the OCWA water tower. Took three months to investigate, but ultimately the Town Board rejected because the Town owns the tower. The current plan is fully compliant with the Town code except for the height.

He was given a letter at 6 pm tonight from Isotrope Wireless (sent to Board electronically, not seen yet). There are two purposes for the tower, coverage and capacity, to relieve pressure for other sites. Answered the questions in regard to the design. Silo without barn looks like the Washington Monument. Whatever the Board prefers, will go along with.

Attorney Jeff Brown asked if Verizon's proposed 88 foot change to the west, to avoid the setback issue, is the same topography?

Jared Lusk stated that tab XX has aerial photo, trees almost identical. Same distance from Indian Hill Road. Ex. MM – took 40-50 photos, balloon test, line of site. Technology of tower not visible. Provide feasibility of 124 foot tower, 120 foot to top of steel, 4 foot for safety issue. Closest house is Falcone's, 400 plus feet. The nearest neighbor about 600 feet surrounded by trees. Not visible as you drive down Indian Hill Road.

Pat Frazee asked Attorney Brown about readdressing the issue of the water tower?

Attorney Brown stated that that is an issue to be addressed by the Town Board.

Jared Lusk stated that they have tried it twice. Under the shot clock, too much money is involved. Water tower is not ideal.

Dave Hale just wanted to throw out there for the public to hear that his family is from Hale Road and they sold to New Channel. After selling it they began to second guess their decision. A principal at King & King owns a house which faces the tower. Never

heard anybody complain about the tower. Only thing that bothered people was the well drilling. Just wanted to throw that out there. His own personal experience with a tower.

Jared Lusk stated regarding the health issue, as long as the FCC rules are followed, Verizon is less than 1% below maximum.

Don Neugebauer said he is struggling with the peak usage, saying basically reaching our maximum, but community saying they are fine. If the tower does not go up, what happens?

Gene DiDimenico (RF Engineer for Verizon) said it will drop 3G, slower service. Existing Cazenovia, Manlius and Pompey towers have been upgraded to 4G. Signal received is diminished because of distance of other towers as amount of usage grows by more demand. Trying to solve capacity. Works in 3G realm. As time goes by it will get worse. He considers it marginal. Need to place a new site. The existing tower antennas will turn down when new tower is up and running, better coverage for those areas.

Attorney Brown asked about Ex. UU – drive test data provided by residents in November and May, indicating there was no dropped service.

Gene DiDimenico said the graph provided by Verizon shows measured signal levels. Ex. UU green represent sufficient signal level. Next exhibit measures how strong versus unwanted noise. Needs to be adequate service. As you drive you change towers. Colors show the signal strength.

Attorney Jeff Brown understands the concept of dropped calls. Does Verizon data indicate there is a problem?

Gene DiDimenico said as driving along measurements are taken. Now 3G, collecting data for 4G. Migration to 4G, 3G will be going away.

Chairman Tessier asked if there were any more questions for the Board?

Attorney Brown will go over the legal requirements. There is a side setback issue. Question was, could Verizon move the tower site to address that setback? They could do if alternate site setback would not be an issue.

Jared Lusk stated that if the Board decided a tree cap is necessary at the top of the tower to provide effective camouflage it would add 10 feet to the height.

Chairman Tessier would recommend white pine, camouflage as a recommendation to the Planning Board.

Pat Frazee felt it wouldn't exceed the fall zone. Still fall in boundaries of safety zone.

Chairman Tessier stated the Board might need to add 10 feet.

Pat Frazee did not feel that would be necessary.

Chairman Tessier then asked Attorney Brown for his explanation on what the Board can do.

Attorney Brown explained that the Telecommunications Act of 1996 (TCA) governs how the Board must legally evaluate the application. First, the Board's decision cannot have the effect of prohibiting Verizon from providing personal wireless services. To meet its burden, Verizon must show that 1) there are significant gaps in wireless coverage (as evidenced by gap size, # of customers affected, location of gap, dropped call rates, etc.), and 2) the proposed tower is the least intrusive means to close the gap (as evidence by whether the carrier evaluated less sensitive and existing sites, offered to reduce the tower height, offered to camouflage the tower, etc.).

Second, the TCA requires that any decision to deny an application must be in writing and supported by "substantial evidence." New York State law governs this component, and provides that wireless providers are public utilities for purposes of zoning applications. Applications are reviewed under the public necessity standard, which is the context of telecommunications facilities requires carriers to establish that: 1) gaps in coverage exist, 2) the location of the proposed tower will remedy those gaps and 3) the facility represents a minimal intrusion on the community (as evidenced by impact on property values, visual impacts, whether the carrier evaluated alternate sites, etc.).

Chairman Tessier explained these are three items to consider as Board votes: 1) does gap in coverage exist, 2) will tower address gap and 3) impact of tower on community. This is a continuation of the public hearing. 3X5 cards are available, just need name and address. We have heard all of your comments. Appreciated all your homework. Reminder- the Board are citizens of the Town, live here and are very concerned, make sure the right decision is made. We need to be well informed, hearing is not a discussion. Please address comments to the Board. This is not a question and answer. If the Board feels we have enough to make an informed decision, we will do it. Also, we have three minute timer to limit comments. We will take written documents. At least seven copies. Those are the guidelines. Will read the cards as he received them.

At this point, Chairman Tessier reopened the Public Hearing.

Krista Sweetser, 8071 Indian Hill Road. She has a letter from CNY Land Trust, read at the April 17<sup>th</sup> meeting. History of Indian Hill Road. Park is historical marker. It is more than a park. No. 1 distinction Iroquois Indians Confederacy peaked at 1740 people there. Bell taken to Onondaga Hill. There have been a lot of excavations. Archeological map

shows significant digs in Town of Pompey at Indian Hill Road, entire area Verizon is included on archeological map. If approved would wipe out 10,000 years of history.

Matthew Krukin, 4273 Trout Lily Lane. He had a handout for the Board. He is not against growth or technology. He will talk about Jared Lusk's comments. Every day he walks out his door and see the water tower. Will not forget the tower is there.

Now about Jared Lusk's comments. Do understand the 3G service. Going to more efficient technology. Gap can be addressed with technology. Look at Verizon.com, no gap on coverage here. Further south is where the white is, that is where the tower is needed.

Some incorrect statements, being told there are gaps in service. There is no gap in service, disagree with comment.

In closing, summary on last sheet. Board should reject, no gaps, there are alternate sites.

Mark Underwood, 4113 Pompey Center Road. Had a handout for the Board. He has two things to bring up.

Isotope Wireless Report (handed out to Board). Has not heard anyone say they wanted the tower. The gaps in coverage, Matt Krukin talked about. Dropped calls – none. Never below 3 bars.

It is clear Verizon looked no further after receiving the signed contract from the land owner on which the tower is proposed to be built. Question to the Board – if Verizon did not have a signed contract, there are alternative sites. He is an engineer. There are always other ways to solve issues. Two 75 foot towers would be a better solution.

Urge you to vote No for any construction on Indian Hill Road. 100 homes in the area. Come up with a solution within Town regulations.

Chris Moseson, 8202 Indian Hill Road. Had a handout for the Board. Pictures showing activity on Indian Hill Road. Cell towers a visual noise. Take issue with pictures of view. Hobby farms, down to Limestone Creek, can see Oneida Lake. Natural beauty. Cell tower would change the character. Indian Hill Memorial history goes back to 1655. Road is a sanctuary. Is it correct tot build a tower on the road? Does Verizon really care? They have not shown any concern.

We need to preserve what we have. Houses are a variety of styles. Court cases denied towers because of this. Several homes date back to 1800's. Each picture is a thousand words.

Jeff Carmen, 4016 Henneberry Road. Will send info to the Board. Liven here since 1979. Main concern is health issues. He is a doctor with specific qualifications for speaking on the topic. Works with brain disorders and does brain research. Zoning Board needs to think about this.

Dietland Muller-Schwarze, 7995 Number 2 Road West. Had a handout for the Board. At the last meeting, handed out map of view shed. Has seen the camouflaged tower in Connecticut. It is an ugly disguise.

Stan Gorman, 7154 Sevier Road. Has lived adjacent to the tower overlay district near the big towers on Sevier Road.

Has health issue concerns. Go back to report of 10/7/02 – Master Plan Report. Other sites turned up. 2012 towers were not tested. Promised to him in 2002. Make sure frequency is in FCC guidelines.

Todd Caputo, 7966 Indian Hill Road. He recently moved there, 3-4 months ago from Spruce Ridge. Had no idea about a cell tower going up in the area. If you don't know what 3G and 4G are, you need to know.

When you Google Verizon coverage map, shows no gap in coverage. No white. Lived there since January. Never dropped calls. Purchased Broadband. All use 4G, 15 mega bits. No one is dropping calls. Cell phones are a luxury. Not a necessity. People who live there love the beauty of the area. Why put up a tower in the neighborhood? Why do the Falcone's want a tower in their back yard?

Please don't make a decision tonight. How can you make a decision if you don't know the difference between 3G and 4G?

Bill DeBlaay, 7990 Indian Hill Road. New tower will be 88 feet closer to his property. Property is separated from Falcone's by DeVoes.

Objecting to the visual. Property is flat wood. Don't know who would live under a cell tower.

Zachary Underwood, 4113 Pompey Center Road. He is 22 years old. Within the past three years he took up smoking. Lived there all his life. If tower is built, what are the health issues if he stays in Pompey? Could it cause problems? He doesn't think Verizon can say what happens if they switch to another carrier? Their peak won't be the same. People come and go.

David Peckham, 4110 Gibbs Road. The cell tower will cover a huge area. Just happen to be where it will be built. Saying no chance of property devaluation. Who thinks they will get the same price with a 150 foot tower nearby?

Erica Parker, 4113 Pompey Center Road. She is 20 years old. Never had a problem. On the phone all the time. Don't see where it needs to be more efficient. She lives with the Underwood's. Been there a couple of months. Haven't heard anyone say they want the tower.

Sharon Hochstein, 8194 Indian Hill Road. Question for Verizon. Who paid for the study on property values?

Question for the engineer, what does “eventually” mean?

Ken Freer, 4111 Pompey Center Road. Handed copies to the Board a couple of e-mails he sent.

Objection to the SEQR, item 9. Should be moderate to large impact.

Three points to approve gaps. 45 minute drive in fall November 2014, no leaves. Another drive in May 2015, trees have leaves. No dropped calls. No gaps in service. Handed in a DVD that has the latest test that was run.

Richard Moseson, 8202 Indian Hill Road. It is a quiet country road. They are requesting 124 feet. Refer to the third paragraph in CityScape Report where Verizon could expand height of the tower and the Town could not block.

Tower will not be a minimal intrusion on community as required by FCC.

Handout showing coverage of different tower heights using Verizon data. Most of Pompey Pines would not be served. No need to approve over Town's 75 foot limit. Plenty of farmland in Pompey that would not require higher tower. Hope the Board reads the Isotrope Report.

Bob Rabin, 4314 Arbutus Drive. Will summarize so Board can use to make a decision. He lives very close to the site. Board should look at Verizon's credibility. Least intrusive.

As for character issue, character of area is significantly affected. Height of tower is most intrusive. Moved to Pompey for a reason.

The dropped calls reason for the tower. Still no dropped calls even with leaves on the trees. Verizon has no evidence. Have to have proof.

Property review, did not see them discuss dropped calls. Have an obligation to turn down. There are regulations in the Town. Don't set a precedent. Board has everything to make the right decision.

Chairman Tessier thanked everyone for their comments. Close the hearing now?

Motion by P. Frazee, seconded by K. Sharpe to close the hearing. Passed unanimously.

Chairman Tessier asked the Board what do we need to do now?

Pat Frazee stated we need to adjourn the meeting.

Chairman Tessier asked the question do we consider second alternate site?

Attorney Brown stated that the SEQR is already completed.

Motion by P. Frazee, seconded by K. Sharpe to consider the second alternate site, is similar to first alternate site based on footprint, 88 foot move, uses same access road, same topography and vegetation. Passed unanimously.

Attorney Brown stated that this decision means that alternate sites one and two are the same for purposes of SEQR.

Chairman Tessier asked applicant for agreement to extend the FCC shot clock.

Jared Lusk agreed to extend the shot clock to June 30<sup>th</sup>, 2015. Respectfully request the Board not consider any more information, unless questions from a legal standpoint.

Did say at the beginning of meeting, applicant has hired third party expert, read the report. Need project verified. Let's rely on independent information with balloons showing at 150 feet. Tower will be 120 feet, that's the need verified by City Scape Report. Balloons misleading and unfair. Towers need to be above the trees. Many cases can't tell if it is there. Regulation 75 foot towers can't be built to deliver service.

As for application, checked alternate sites. Didn't work. Further south, the harder it is to resolve. Will be relieving pressure on other sites in Pompey, Manlius and Cazenovia.

Chairman Tessier will not be taking any more written information from applicant or the public.

Motion by D. Hale, seconded by P. Frazee to adjourn meeting at 10:20 pm. Next meeting will be on Monday, June 29, 2015 at 7:00 pm at the Town Hall. Passed unanimously.

Respectfully Submitted,

Darla M. Mawson, Secretary  
Town of Pompey Zoning Board of Appeals