

**TOWN OF POMPEY ZONING BOARD OF APPEALS MINUTES  
SEPTEMBER 29, 2014**

The Town of Pompey Zoning Board of Appeals meeting was held on Monday, September 29, 2014 at 7:00 pm at the Town Hall. Present were: Chairman David Tessier and members Kevin Sharpe, Don Neugebauer and Dave Hale. Also Code Enforcement Officer Rick Penhall and Town Attorney Jeff Brown.

Chairman Tessier opened the meeting and introduced the Board. He then stated that there were two items on the agenda, Tupnor, Inc., Sweet Road continued from last month and Syracuse SMSA Verizon Wireless.

**TUPNOR, INC.:** Decision on a front line variance at property located on Sweet Road in the Hamlet of Pompey Hill. Hearing was closed last month and decision was adjourned until tonight.

Applicant would like to build a single family home. Last month we had not heard from SOCPA and we wanted more information. SOCPA no position, but comments on site distance, sewage disposal plans and driveway could be conditions if we approve.

Rick Penhall was asked for a tax map of all adjacent properties in the neighborhood, couple of area photos. Had an e-mail from Tim Chrysler. Letter from Robert O'Leary, attorney and the Board has reviewed the ECC environmental form. Reviewed procedures for area variance, type 2 action, no further environmental action needed. There was a question on the difference between the tax map and the survey map. When considering size of lot use the survey map. One map shows 212 feet on one side and 208 feet on the other side. The other map shows 211 feet depth. Would someone like to make a motion?

Motion by D. Hale, seconded by K. Sharpe for a type 2 action and that the ZBA be the lead agency. No further environmental review is required. All in favor.

Motion by D. Hale, seconded by D. Tessier to approve the front yard variance from 100 feet to 99 feet as presented with the three conditions set forth by SOCPA; 1. Access to Sweet Road will be determined by the availability of site distance; 2. Applicant is required to obtain a permit from the Onondaga County Department of Transportation for proposed driveways and prior to any proposed work withing a county road right-of-way and 3. The Onondaga County Health Department must accept or approve, any existing or proposed sewage disposal plans, prior to issuance of a building permit. Motion did not pass. For: David Tessier and David Hale. Against: Kevin Sharpe and Don Neugebauer.

Chairman Tessier then gave an explanation of type 1 (shopping center, large parking lot) and type 2 action (residential area variance). Generally they don't have environmental issues. Also there are unlisted types. Each has a procedure to follow.

We also have Area Variance Criteria. At the end of the discussion, we weight the benefit to applicant to the health/welfare of the community after Board makes a decision.

1. No
2. No
3. No
4. No
5. Yes

Attorney Jeff Brown stated that this can be brought up again when the fifth member of the Board is here at the meeting. It is up to the applicant to bring it back to the Board.

**SYRACUSE SMSA LIMITED PARTNERSHIP, d/b/a VERIZON WIRELESS:**

Public hearing on an area variance to construct and operate a 150' wireless telecommunications tower (with 4' lightning rod) on property owned by Trudy Falcone, located near 8144 Indian Hill Road.

Chairman Tessier read the application into the record. The Town's limit for Wireless Towers is 75'. they are asking for 150', plus lightning rod adds 4'. He read the items in Ex. F of the application. These are the same five questions that the Board asks for area variance requests.

The procedure will probably be lengthy. In order for the tower to be built they will also need site plan approval from the Planning Board. Tower is beyond height allowed, so they need a variance from the Board. They did make an informal presentation to the Planning Board at their last meeting. If the variance is approved, they would then go to the Planning Board for site plan; wetlands, fencing, set back.

Our Town law for cell towers are primary and secondary zones. Primary zone is the more desirable spot for towers. This one falls into secondary type 1 action (full environmental assessment review). Submitted long form approved by both Boards. For purpose of SEQR, both Boards ZBA and Planning Board need to agree on lead agency. Tonight the hearing is for the variance. Will keep the hearing open tonight. This Board would have to keep the hearing open until SEQR is take care of. Will open hearing tonight. One decision the Board needs to make tonight, decide who will be the lead agency. We have not had to do this previously. Now, we will ask the applicant to give a presentation, then questions from the Board, discuss, then open up the hearing. The Board will take written comments. If this continues, it will go to the Planning Board. If you have something to give to the Boards, make enough copies. Keep comments, short, concise.

Jared Lusk, Nixon, Peabody LLP was present. Also, Jim Hodgeson and Jean Genedidomenico, radio frequency engineer.

The Buellville site suffers from coverage deficiency. Ex. G in the application shows important point, wireless public utility is not subject to regular area variance rules. To

deliver reliable cell service, Court of Appeals set forth standards to be permitted to use variance. Basically demonstrate need for variance. Under law entitled to variance.

Verizon Wireless lack of communication in Buellville along Pompey Center Road, #2 Road West and #2 Road East and to improve Cazenovia Road, Watervale Road and Broadfield Road. Ex. G – picture shows purple- existing coverage, white- uncovered area. Would turn area purple, continuous wireless coverage. Requesting 150 foot tower and green area would be coverage provided by tower. Have gone to great lengths in Ex. G. Urge the Board to read it.

He also has a sheet showing orange with coverage of 100 foot tower and coverage of 125 foot tower. The summary is we need to go with the 150 foot tower to get all the coverage to deliver service, identifies area where tower would need to be. Ex. G, page 4, written narrative based on topo and existing coverage. Ring shows where tower needs to go. Leads to Ex. H which goes into detail sites that were looked at. Individual parcels A, B, C, D, E, F and G were looked at to see if would work or not. Also need owner that would lease the property. Search process has been on for 4-5 years in an effort to lease property. Preference would be to co-locate at Site A – OCWA Water Tank. Co-locate on tank or next to tank. Within the last month OCWA has indicated they are not willing to lease to Verizon.

They have talked to Moseson and they did not want to lease to Verizon. Arbutus Park has 15.78 acres Federal Wetlands, not interested. Falcone had three locations identified as potential sites. First, D on map, owner not agreeable to putting tower there. Second, F, no tower at that location and third, E, 8144 Indian Hill Road. Only parcel in search area to get a lease to deliver service. Needs to be within search area.

Don Neugebauer asked if site E is the only site to put the tower on? Specific spot?

Jared Lusk stated this is the only place can put it. Specifics of site plan. Aerial photo of Falcone property drive would be into the trees and not visible.

Issue of town ordinance of 75 feet. This site meets every need for primary site, preferred location 1330 feet from Pompey Center Road. It is 700 feet from Pompey Center road. Only 600 feet from a preferred location. 150 foot tower, 12x30 equipment shelter needed to operate tower, 8 foot fenced in area would be 6 feet or higher. Co-location if host additional antennas without expanding foot print.

Down the road is better. Measure trees, related to height of trees. Move on this parcel.

Chairman Tessier said Primary need some height variance. Any other questions from the Board?

Jared Lusk handed in the Certified letter information that was sent out to neighbors.

Chairman Tessier stated this is a two step process with Zoning Board of Appeals handling the variance request and the Planning Board for the site plan.. One comment from SOCPA is that the applicant be advised that any delineated wetlands must be confirmed by the U.S. Army Corps of Engineers and appropriate permits must be obtained for any proposed development or drainage into wetlands on the site.

The Board was sent one letter from Sharon and Yaacov Hochstein. Board and applicant have copies of the letter.

Chairman Tessier said a decision on lead agency needs to be decided tonight. Each Board gets copies of everything. It is a coordinated review. This Board need to take a vote on lead agency.

Don Neugebauer feels that it would be in the Town's best interest for the Zoning Board of Appeals to be the lead agency.

Attorney Jeff Brown stated that if the Planning Board and ZBA can't reach an agreement on the lead agency, then the DEC would make a decision.

Chairman Tessier stated he would entertain a motion for the Zoning Board of Appeals to be the lead agency.

Motion by K. Sharpe, seconded by D. Neugebauer for the Zoning Board of Appeals to be the lead agency on the coordinated review of the Verizon Wireless Tower Application at 8144 Indian Hill Road. Motion passed 3-1. Dave Hale opposed. Chairman Tessier, Kevin Sharpe and Don Neugebauer in favor.

Chairman Tessier then opened the Public Hearing. This is the beginning of a long process starting tonight. The hearing is for us to hear from the public. Need to address the Board. Questions probably won't be answered tonight. Hear everybody first. Be as brief as possible. The Planning Board will spend time on the details of the project. We will deal with the variance request.

Sharon Hochstein of 8194 Indian Hill Road. We are individuals on Indian Hill Road, not Buellville. Just found out about the meeting with certified letter. Neighbor has been working on for four years, we had just one week.

The Board has a copy of their letter Their house is approximately 400 feet from the tower. She then reviewed the issues that were pointed out in their letter to the Board including the proposed access road would run along their property line 14 feet from the kitchen and bedroom windows. Other issues are the decibel level, tower fires, fall zone, propane tanks. When you Google cell phone towers you find possible flooding, pollution of wells, Federal Wetlands, noise pollution, would antennas or other pieces fall off? Will

there be flashing lights? It is too dangerous to place cell phone towers where there are homes. If allowed, then you are breaking your own zoning laws. No property is safe.

Richard Moseson of 8202 Indian Hill Road. He gave copies of his presentation to the Board. They are within 75 feet. Only learned about it seven days ago. Verizon Wireless has been working on for four years and has submitted misleading/inaccurate information. He stated they have all seen the water tower from various points in the Town of Manlius and Pompey. Proposed cell tower would be more viable than the water tower.

He has drove down Indian Hill Road, through one of the areas shown in white on the "before" map, and had 3G coverage the entire way.

They moved there 18 years ago because of Pompey's spaciousness. Worried about precedent if Verizon is allowed to build the tower. This morning he did some balloons from his back yard to show height of tower. He gave the Board a photograph showing how high the tower would be seen from his back yard and another from Pompey Center Road in from of the Olsson's house that you can compare with the photo Verizon has provided.

He then made comments about the Pompey zoning regulations section titled "Communication Tower Overlay Zone District" and another titled "Local Telecommunication Facilities". He also reviewed the Primary site and Secondary site regulations (included in his letter).

He finished with asking the Board to refuse to grant the variance.

Dietland Mueller-Swartz – No. 2 Road West. He can see the water tower now and the cell tower would be closer. No. 2 Road was not informed of the project. Need sufficient time to study. Feels the view of tower would lower property value. It is a scenic area. Planned tower violates the visual impact. Feels it is misrepresented saying that No. 2 Road needs more coverage. Aesthetic situation mars the landscape. Feels the variance should not be granted.

Ken Freer of 4111 Pompey Center Road. He has two categories to present. Appearance of the cell tower – ugly. Does not fit the character of the neighborhood. He then handed the Board a copy of his presentation and a petition signed by 164 people against the tower.

A tower can have up to 13 antennas and can expand to three other cell phone carriers. The tower might be too close to the Indian Hill Memorial Park.

He has a concern regarding the fall zone – if the tower fell east almost one half would be on his property. It is way to close to neighboring properties. Also concerned property

values would go down 15-30%. Was thinking of doing add on to home, now seriously rethinking.

The Town requires the applicant to send certified letter three weeks in advance of meeting, we only had one week. Have signatures from 164 people that do not want the tower. It isn't just 4-5 people, it is entire area around Indian Hill Road.

This is a self created need. Haven't talked to anyone having problems with coverage. They are creating need, marketing issue for them.

If we had more time there would have been more signatures. Topics on the petition were health, safety, precedence of tower, if allowed. Encourage the Board to say no to the request.

David Peckham of 4110 Gibbs Road. On map produced shows old area covered and new area that would be covered. Feels white area still not covered with new tower.

Feels it would be first of many towers to come to the area. 150 feet is huge. Sub-let to others. Looking at residential area. Verizon wants to turn into commercial. There are Federal Wetlands down near the base, stops right at road. Wetland delineation in the project area needs to be checked on. This project would result in undesirable changes for the neighborhood.

Kevin Sharpe then asked where there is currently 3G service in the area and where the other towers are located.

Jared Lusk will get that information.

Chris Moseson of 8202 Indian Hill Road. He is worried about real estate values and how it impacts them. He then gave the Board a copy of his presentation.

It included a picture of a cell tower burning. Where is it going to fall? Where is the water? Think about this in your back yard.

Had just a week to prepare to delve into real estate value concern. Large community concern, lot of opposition. Feels it is an eyesore, fire and fall hazard. Perceived as impact on health. All contribute to falling real estate value. They have created places of their dreams. Currently has a project on hold. Children have cherished memories of where they grew up. Commercial business does not belong in a residential area. Clearly articles out there that property values are decreased. Realtors agree if public feels it is a problem, then it is a problem. Please look at Pompey Web site. Urge the variance not be granted.

Marc Stogran of 8439 Indian Hill Road. He is close to one mile east of the site. His observation of Verizon presentation is compliments to Jared Lusk.

Points he has a problem with. He didn't see any residents stating they would benefit from the tower. Rosenburg decision, ask Jeff Brown, did it involve no coverage or covered by another carrier?

Main point here is he has spent years in aviation and is familiar with FAA regulations. Also a first responder and speaking as a resident of Pompey Center Road. Many incidents where he has responded to accidents with severely injured people flown from scene in a helicopter. Counted no fewer than five locations where helicopter could land to airlift a patient to the hospital. Think about that. Draw a line. FAA specifies when can fly. Private pilots have different flight rules. Designated based on weather. Special variance FAA 135.690 EMS helicopters no other aircraft. Cloud ceiling 500 feet over ground. Would be under clouds, 250 feet over ground. EMS helicopters run into low towers. Everyone killed. As a resident of Pompey, doesn't want to see Pompey on list. Totally disagree. Hope you consider the facts.

Sanja Chhablani of 4408 Pompey Center Road. Heard the attorneys description as long as utility said it needs to be built. Board needs to decide if necessary. Question, part of responsibility – what is necessary/what isn't? Do we have experts? Urge not to rush into. Faithfully determine what is necessary.

Chairman Tessier stated that no, were don't have expertise. Board has options. Ask applicant for more information. Town does have authority to hire experts.

Jessica Fetterman of 4282 Trout Lily Lane, Arbutus Park. A lot of neighbors did not receive the letter. Property value, may not be able to sell.

Googled – is it safe to live near cell towers. No definitive answer. In five years have never had an issue with coverage. Need to investigate why tower is needed.

Public perception. She has two young children. Have to decide to raise children near a tower. Investment not able to recoup if didn't want to live near a tower. Never had issues with coverage.

Frank Niles of 4256 Trout Lily Lane. He is a Verizon user. Never lost coverage. House if 3G.

Need to ask Verizon reps would you really want to see this tower in your yard? We have a vote, a say and we don't want it. It doesn't benefit us. They are just doing their job. Know where we live we don't want to see a tower, don't want to see water tower. Do you really want one in your back yard?

Chairman Tessier stated we will continue this meeting the last Monday of the month.

Kathy Freer stated they are 600 feet off Pompey Center Road. Her backyard has the best view. One last comment – she hosts a lot of meetings, etc. and her brother said “goes to God's country”. Let's keep it that way.

Kristina Sweetser of 8071 Indian Hill Road. Visibility. She works in East Syracuse. Goes home by 481 south and can see the water tower on her way home. On Rt. 92 can see the water tower. Has lived there since 1992. Has dial up for internet. Has a land line for 911. Turned off TV six and a half years ago. Speed is not a necessity.

Chairman Tessier stated they will coordinate with the Planning Board. Response back until both Boards are satisfied. A couple of other parts of the process – long environmental form and ECC comments.

Jared Lusk said will go to Planning Board once this process is completed.

Chairman Tessier said will have to look at coordinated review.

Russ Ward of 4145 Trout Lily Lane, Arbutus Park. Just moved in 30 days ago at the end of the street. 40 acres of forever land. If he had known there would be a tower wouldn't have moved there. If a tower goes up he will be selling. His request to the Board is to weigh everything very carefully. Benefit to community would be very little.

Doug Fetterman of 4282 Trout Lily Lane. All politics local, but Federal Law, we may not overcome. What is legal obligation of Town to let people know of possible tower? Town legal obligations. Verizon Wireless legal obligations. Big taxpayers moved out because wanted a new home in the country.

What to do to protect future homeowners. What is Town going to do?

Chairman Tessier stated the Board got the application a month ago. Notification mailed out in a certain radius, certified. Decision is greater benefit to applicant or to the Town. It is a half mile notice for towers.

Marc Stogran can stand on his lawn and Verizon phone works. Can't see the cell tower. Smoke and mirrors. Works if you don't see cell tower.

Location for tower will also build an access road. Even less space available, goes up alongside neighbor's pond.

Chairman Tessier said this hearing will be continued. No more notice. Next Board meeting will be October 27 at 7:00 p.m. Will vote tonight to continue.

Kevin Sharpe said we have a beautiful town to take into consideration. We all move here for the same reason.

Don Neugebauer said the Board has a sense of what everyone is saying.

Chairman Tessier stated the Board will make an informed decision.

Board requests of the applicant: 1. OCWA not interested, need in writing; 2. height of water tower; 3. height/location of other Verizon Wireless towers in the Town.

Will be working on a coordinated review with the Planning Board.

Chris Moseson asked about looking at the application.

Chairman Tessier stated that there is a copy at the Town Hall. Motion by K. Sharpe, seconded by D. Hale to adjourn meeting at 9:50 p.m.

Respectfully Submitted,

Darla M. Mawson, Secretary  
Town of Pompey Planning Board