

TOWN OF ERWIN

Zoning Board of Appeals

MINUTES 09/26/17 MEETING

PRESENT: Frank Thiel, Ruth Fisher McCarthy, Bridget Ackerman, Mariana Huber, Jay McKendrick, Ralph Truitt (Alternate), Wes Strzegowski (Alternate)

GUESTS: Jeff Davis, Lisa Massi, Rita McCarthy, Barb Lucas

CALL TO ORDER:

At 7:06 PM, Chairman Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY, 14870.

MINUTES:

Minutes of the 08/22/17 meeting were approved by unanimous consent.

2017-14

USE VARIANCE APPLICATION FROM UP STATE TOWER, LLC AND BUFFALO-LAKE ERIE WIRELESS SYSTEMS FOR A COMMUNICATIONS TOWER IN A MULTI-USE DISTRICT WHERE COMMUNICATIONS TOWERS ARE NOT PERMITTED. VARIANCE OF §130-6 AND APPENDIX A USE REGULATION TABLE IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **44** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader on September 17, 2017.

This is an Unlisted Action under the State Environmental Quality Review Act

The property is located in an M-U Multi-Use District.

Applicant seeks to erect a cell tower on Massi Greenhouse property at 244 Victory Highway.

Communication Towers are permitted in Industrial and Rural Districts.

RESOLUTION TO CLASSIFY THIS AS AN UNLISTED ACTION AND TO DECLARE THE ZONING BOARD OF APPEALS LEAD AGENCY.

MOTION: RUTH FISHER MCCARTHY

SECONDED: BRIDGET ACKERMAN

DISPOSITION: 5 - 0

Jeff Davis of Barclay Damon LLP presented the application. Attorney Davis noted that Up State Tower LLC and Erie Wireless Systems are new entries in the wireless tower market and they would like to establish coverage throughout the I86 corridor. There is currently no coverage in the Town of Erwin. A 120' tower with an antenna on top is proposed for the rear portion of the Massi property at 244 Victory Highway. There would be no lighting. An existing gravel path would be extended to the area. The equipment would be on a concrete pad within a 50' x 50' fenced area. The proposed structure is designed with a breakpoint

at a height of 100 feet, the industry standard. In the event of a storm the top section would fall within a 20 foot radius of the tower.

Attorney Davis explained that the proposed location of the tower was selected to be within a geographic area or "search ring" where there would be sufficient overlapping coverage between cell towers for the network to function properly. He noted that the system is low power and the signal does not bend around obstructions. Cell towers must be within line-of-sight of each other and the maximum distance between towers has decreased with the increase in the amount of data transmitted by phones accessing the internet.

Chairman Thiel noted that most properties within the Town of Erwin, including several located within the search ring, do not require a variance. Chairman Thiel provided Attorney Davis with a map of the Town highlighted to show all the properties in Town (Attachment 1) which would not require a variance. He further noted that very few owners of property in the permitted areas, one being the Town of Erwin, were even approached. It was noted that a property on Race St, which is far outside the search ring, had been considered suitable enough to seek a lease.

Attorney Davis responded that suitable locations are determined by RF engineers using a computer generated model based on locations of nearby towers/leases, local topography and other factors. The search ring provides information on the optimum area for the real estate person to search for landowners willing to lease land. Placement within or fairly close to the search ring is not the sole factor in determining suitability and sometimes they are not able to acquire a lease within the optimum area. He noted that he would check with his clients regarding whether all possible sites had been considered and justification of the site chosen.

Chairman Thiel asked how other providers such as AT&T and Verizon are able to provide service without such towers. In response, Attorney Davis indicated that he did not know where all the competitor's antennas were located however, they must exist.

Member Mariana Huber asked if competitors had been approached regarding sharing a tower. Attorney Davis responded "yes" and noted that co-location is always preferable because it is a far less expensive and faster option than building a tower. Building a tower is the last resort.

Member Ralph Truitt asked whether a taller tower relocated to an area within the search ring where a variance is not required would be an alternative providing the same coverage. Several potential sites were suggested for consideration.

Chairman Thiel stated that search efforts for a suitable site appear to have been very limited. He also questioned the design of the tower regarding the engineered breakpoint noting that a 120 foot tall tower could fall on anything within a 120 foot radius of the tower.

Attorney Davis responded that the design is an industry standard and the structure is designed for collapse rather than falling over.

Member Truitt noted that falling over is a possibility if the base of the tower was struck by a truck. Attorney Davis noted that bollards could be placed around the base for protection and that the only buildings within the 120 foot radius that are in jeopardy are owned by the lessor, Thomas Massi.

Attorney Davis also noted that antennas are needed where the phones are being used which is within residential areas. Residential areas typically have a limited number of properties large enough to allow a 120 foot radius clearance. Historically, with 2G networks, antennas were located on hilltops and provided good coverage. Today with 5G networks and large amounts of data being transmitted, the cell antennas

must be located closer together and closer to users. Member Bridget Ackerman noted that she had personally experienced poor reception due to distance from a cell tower.

Member Mariana Huber noted that the FCC license provided had expired. Attorney Davis said that the license has been renewed and he would forward a copy.

Member Mariana Huber questioned how many residents of the Town of Erwin would benefit from the addition of the new cell service provider and that adequate coverage already exists from other providers. It is noted that the FCC supports having access to multiple providers in order to foster competitive prices.

Member Ralph Truitt questioned if there is provision for tower removal in the lease agreement. Attorney Davis noted that there such a provision.

Member Ruth Fisher McCarthy asked what the average distance between towers is in order for the network to work properly and if there is any overlap. Attorney Davis noted that between 2 and 2.5 miles is typical and provides the necessary 15% overlap.

THE ZONING BOARD REVIEWS THE LONG EAF

A list of errors on the EAF noted by the Town are attached (Attachment 2). Responses by Attorney Davis to the individual errors are noted on the attachment.

Chairman Thiel announced that the Board would review Part II of the EAF. At that time the applicant requested that both applications be tabled. He noted that he had been asked to provide additional information to the Zoning Board, that changes to the variance request may result and it would make no sense to review possibly irrelevant material.

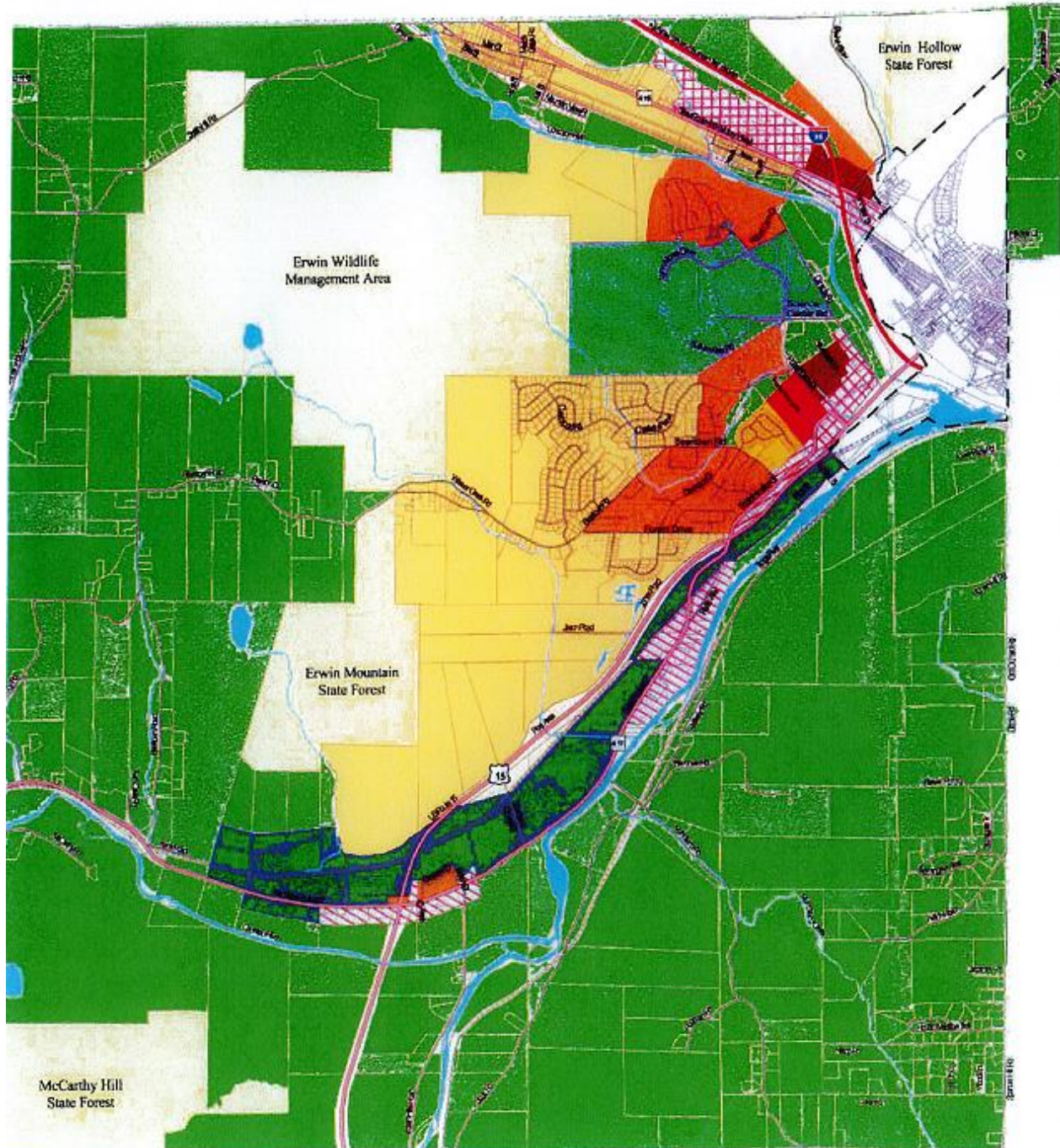
The Board noted that the deadline for submittal of information for the October Zoning Board meeting had passed and the earliest date for continuance would be at the November meeting. Attorney Davis noted that he did not know the time necessary to provide the information requested by the Board and acknowledged the application to be incomplete. Attorney Davis also acknowledged that the Town acted quickly in response to the application.

RESOLUTION TO TABLE APPLICATIONS 2017-14 AND 2017-15 AT THE REQUEST OF THE APPLICANT.

MOTION: JAY McKENDRICK
SECONDED: RUTH FISHER McCARTHY
DISPOSITION: 5 - 0

MEETING ADJOURNED BY UNANIMOUS CONSENT AT 8:48 PM.

ATTACHMENT 1



0 2000 Feet

GREEN = ZONES WHERE CELL TOWER ARE PERMITTED

ATTACHMENT 2**Errors and omissions to EAF as submitted:**

Item A Project location has a zip code of “14807”. Should be “14870”.

Item A Property Owner address has a zip code of “14807”. Should be “14870”.

Item B.h states there are no Federal Agencies. The FAA and FCC should be listed.

Attorney Davis noted that no Federal approval is required unless further study required.

Item C.2.a. Applicant shows that the adopted comprehensive land use plan includes the site and includes specific recommendations for the site where the proposed action would be located. There is no discussion of what the recommendations are and how the proposed action does or does not meet such recommendations.

Attorney Davis noted that the question requires a yes or no answer.

Item C.3.b. asks if the use is permitted. Applicant checked “yes”. The answer should be “no”. The use is not permitted in that zone.

Agreeing that a special use permit by itself is not sufficient approval, Attorney Davis noted the answer will be revised to “No” on the EAF.

Item C.4.a The applicant stated “Painted Post School District”. The answer should be “City School District of the City of Corning, New York”.

Item C.4.b The applicant stated “Painted Post PD”. The answer should be “Steuben County Sheriff and NYS Police.”

Item C.4.c. The applicant stated “Painted Post FD”. The answer should be “Coopers Plains Long Acres Fire Department and American Medical Response (AMR)”.

Item D.1.g. Does the action include new non-residential construction? The applicant stated “no”. The answer should be “yes”.

Item D.2.l. The applicant showed construction hours as “business hours” Monday through Sunday and including holidays. What are the proposed “business hours”, and does the applicant intend to construct on Saturday, Sunday and holidays?

Attorney Davis noted that construction hours will be specified.

Item D.2.m.i. The item asks for details including sources, time of day and duration. The applicant’s answer of “business hours” does not address these specifics.

Item E.1.a. The applicant indicated only industrial and commercial uses were adjoining or near the site. Such uses also include residential, forest and rural.

Item E.1.d. asks if there are any facilities serving children nearby. The applicant stated “no”. The Wesleyan Church is adjacent and has a school.

Item E.2.o. The applicant answered “yes”, but did not specify the species or their impact upon it.

Item E.3.f. The applicant indicates that the site is located in or adjacent to an area designated as sensitive by SHPO but does not indicate what the sensitive site is or their impact upon it.

Item E.3.g. The Erwin house, on the adjacent parcel, is of historic importance as the home of the founder of the Town of Erwin and a stop on the underground railroad.

Attorney Davis noted the question specifically relates to historic sites on the project property rather than adjacent properties.

Item E.3.h. The applicant answered “no”, but it is within five miles of the Erwin Hollow State Forest.