

MINUTES OF A MEETING AS HELD BY THE  
TOWN OF AURORA PLANNING & CONSERVATION BOARD

March 6, 2024

Members Present: Doug Crow, Chairman  
Timothy Stroth  
Jeanne Beiter  
Chris Contento

Alternate Member: Alice Brown

Absent/ Excused: Angela Griffis  
Laurie Kutina  
Norm Merriman

Also Present: Liz Cassidy, Code Enforcement Officer  
David Schwing  
Laurie Felton Schwing  
Doug Ford  
Kurt Harlock  
Sue Langendorfer  
Brett Morgan of Airosmith Devt. / Vertical Bridge/ Verizon Wireless  
Anthony J. Serianni

Chairman Doug Crow presided over the meeting which began at 7:00 p.m. at the Town Hall, 575 Oakwood Avenue, East Aurora, NY. He led the recitation of the Pledge of Allegiance to the Flag.

Administrative Business:

- A. Alice Brown today, is a voting member.
- B. Acknowledgement of several new people in the audience. Provide the background of the Planning Board. The Planning Board is a volunteer advisory board, appointed by the town, to advise and make recommendations to the Town Board. The Town Board makes the final decisions. At the time of the Town Board meeting, a formal public hearing is held as well. It is not uncommon, for the Town Board vote to be taken at the following meeting.

Chairman, Doug Crow addressed the following matters:

1. Requests a motion to approve the minutes from February 7, 2024, Planning Board meeting.

**Tim Stroth made a motion to accept the minutes of the February 7, 2024, meeting. Seconded by Jeanne Beiter. Motion carried.**

PUBLIC COMMENTS: Chairman, Doug Crow ask for attendees for any short comments prior to hearing from the applicants. None at this time,

OLD BUSINESS: None

NEW BUSINESS:

**1. Zoning Code Change request for 1686 Davis Rd., SBL 199.01-3-9 and 1688 Davis Rd. SBL 199.01-3-10, owned by John R. Herbst**

The property owner, John R. Herbst, states he is a long-time resident of 81 years, on this property. It has been owned by generations. He owns the property on both sides of it. Presently the two parcels are R1. He has observed multiple other properties near his location are zoned commercial as well. He is considering selling; however, multiple buyers are deterred by the fact that it is zoned residential. He feels it would be most advantageous if both were zoned commercial. Use of the property to remain the same currently.

Chairman, Doug Crow reconfirms with Mr. Herbst, that the property to the north, and property to the south are owned by him as well. The lots to the south are vacant lots. The property to the north has a newly built structure.

Tim Stroth reconfirms there a total of five parcels. Two to south are owned by Mr. Herbst son, John H. Herbst. The next two parcels are the ones currently looking to have rezoned commercial. The remaining parcel to the north is occupied by applicant. Tim Stroth asks Liz Cassidy if there are any previous concerns regarding offsets that we should be concerned about?

Liz Cassidy is unsure of previous concerns. Mr. Herbst is not making any physical changes.

John Herbst reiterates that multiple buyers have looked at the property. Most uninterested due to it not being zoned commercial. The present structure is actually on both parcels.

Chairman, Doug Crow agrees that said parcel have the look of a commercial property and agrees it would be best sold as a commercial property. Asking Mr. Herbst if he has an interested party.

Mr. Herbst states a potential buyer was looking to purchase for a smoke shop business. He states he chose not to even consider that possibility. Currently a dental group is interested, which has multiple other locations.

Chairman, Doug Crow inquires if it a dental practice.

Mr. Herbst, confirms. He also states other tentative buyers are considering an auto repair shop, and a woodworking shop.

Chairman, Doug Crow suggests a C2 zoning code may be more appropriate. Reconfirms with Liz Cassidy, that sort of business would only require C2.

Liz Cassidy confirms. All possibilities mentioned would fall into C2 zoning.

Mr. Herbst states he does not want any heavy industry there.

Tim Stroth reconfirms with Liz Cassidy, that the two properties that are in question are 1686 and 1688 Davis Rd. Also, request to clarify property lines.

Liz Cassidy confirms.

Multiple people talking with the conclusion that the two parcels are best zoned for C2 due to the intent of use in the future. It will complement the surrounding area.

Chairman, Doug Crow asks if anyone comfortable making a motion.

Chairman, Doug Crow makes a motion that the Planning Board make a recommendation to the Town Board to change the present zoning classification from R1 to C2, consistent with usage.

Chris Contento seconds the motion.

Chairman, Doug Crow asks the Planning Board for a vote.

A vote is taken.

Ayes- 4, noes-1 (Stroth) Motion carried.

**2. Request for a Site Plan and SUP for 4399 Transit Rd. owned by Murray's Nursery, to erect a freestanding monopole wireless telecommunication tower by, Vertical Bridge-Verizon Wireless**

Brett Morgan of Airosmith etc. and Anthony Serianni, of Seaman Norris, LLP as counsel for Vertical Bridge REIT, LLC and Verizon Wireless states they are requesting a site plan and SUP following modifications to previous plan. It is for a cell tower located at 4399 Transit Rd. It is a 135-foot freestanding monopole telecommunication tower. It will be located to the southeast of the parcel, taking into consideration all required setbacks. The project basically consists of a 135 ft pole, with 9 panel antennas, the installation of a chain link fence, 8ft. in height, underground routing for power,

Chairman, Doug Crow, reconfirms that the original proposed location of the tower has been adjusted with regards to fall zones. It would now be adequately away from the road, being at least 135 feet.

Anthony Serianni, confirms. It is illustrated in site plan sketch, exhibit D in packet.

Chairman, Doug Crow, asks if there are any buildings within the 135-foot radius of tower. Inquiring about property to east, and to the south.

Anthony Serianni, states the property to the south is 190 feet, and the property to the East is 690 feet.

Chairman, Doug Crow, asks what the position with the possibility is of co- locating with other structures, such as area water towers. What is typical?

Brett Morgan states when he does an initial scrub or search, that is the first option to seek out other structures, as it is easier and less expensive. It also benefits everyone, without having to go through a more formal process of getting approval for installing a new tower. The alternative location would have been The Erie County water tower. Referred to page 5 of 9, exhibit H. The Erie County Water Department has no interest in co-location, due to congestion. Further search was unable to find any other compatible structures to co-locate with in the designated area.

Chairman, Doug Crow, asks what drives the need for an additional tower.

Brett Morgan noted, the previously used Omni antennas limited the number users on the network. Now in today's times families are using multiple devices, which increases the need for more network space. The towers need to be spaced accordingly. If they are too far apart, It will create a gap in service. That is when you can experience dropped calls and lose seamless wireless service. If they are too close together and they are overlapping it creates internal network interference.

Chris Contento, inquires if this is declined by the Town Board, how would you address this situation. What other options are available to use.

Brett Morgan, states there are alternative technology options called small cells, which are single antennas installed on utility poles. They would need to be installed on hundreds of polls a couple hundred feet apart to do the same thing. That is commonly used in a historic district, where a tower is not an option. Based on FCC licensing and the way the federal law is written if we prove the need, it becomes not discretionary end to the municipality. Under New York State law, we are a public utility. Security comes into play, which can be critical in an emergency. Once installed it would open to other carriers such as AT&T, Sprint as a co-location option to them. They are built and designed for multiple carriers.

Jeanne Beiter inquires how long the lease is for with Murray Brothers if approved. How long is the life span of these towers?

Brett Morgan responds it is a 25-year lease written in five-year blocks. The life span is a very long time since they are made of galvanized steel and as technology changes, they are designed to be modified in multiple ways. As technology changes equipment tends to be smaller. Modifications are not uncommon down the road as technology changes.

Jeanne Beiter asks what would happen if Murray Brother should sell?

Anthony J. Serianni states it transfers to new ownership.

Jeanne Beiter asks where is the data to back up the need for this tower?

Anthony J. Serianni states it can be found in section G of this application.

Jeanne Beiter asks in other communities where visibility of the tower is a concern, have you modified the appearance of the tower?

Brett Morgan states the current monopole design is essentially similar to a stadium light pole. It is a slender, thin design minimizing the view shed.

Chris Contento asks what the spikes on the purple lines on the chart are referenced as daily match busy hour.

Brett Morgan suggests was there a festival in town or a huge sporting event that could have caused that spike?

Chairman, Doug Crow acknowledges we have a national football stadium. We have large music festivals such as Borderland.

Brett Morgan states there are approximately 15 small cells that service the stadium parking lots alone.

Tim Stroth asks in your experience what is your number one complaint from residents where there is a tower?

Brett Morgan states if it is lit, which is over two hundred feet, it is a FFA requirement. That is the number one complaint. In this case lighting is not required. It is a quiet facility. It has a backup generator in case there is a power outage. This particular location setback requirements were also easily met, which is on a positive note as well.

Tim Stroth inquiries regarding the minimum fencing code of 100 by 100 feet which is not in the plan.

Brett Morgan states they will be asking for a waiver. It would reduce the amount of space.

Liz Cassidy states the Town Board could opt to grant that waiver. There is also a proposed waiver for additional screening of the surrounding area.

Charman, Doug Crow ask for any additional questions. He asks for somebody to make a motion.

Chairman, Doug Crow makes a motion for the Planning Board to recommend to the Town Board to approve the site plan for the monopole tower with the two exemptions for the fencing and screening.

Tim Stroth seconds the motion.

A vote is taken.

Ayes 4, noes 1 (Contento), in favor of approval. Motion carried.

Chairman, Doug Crow makes a separate motion to recommend to the Town Board to approve the application for the SUP for the installation of a monopole at 4399 Transit Road.

Tim Stroth seconds the motion.

A vote is taken.

Ayes- 4, noes- 1 (Contento), in favor of approval. Motion carried.

Chairman, Doug Crow announces the next step for this topic will be the Town Board meeting. At that time there will be a formal public hearing as well.

Multiple people talking regarding audience comments, prior to the votes taken.

Chairman, Doug Crow reminds the audience that he had asked for input comments prior to topic discussions.

**3. Chairman, Doug Crow opens the floor for public comments.**

David Schwing introduces himself. He is the resident at 4485 Transit Road. His view is that there is a theme to this project, to squeeze this tower into an area where it does not belong. There seems to be a loophole in the zoning in the surrounding residential area. The only reason Murray Brothers is zoned agricultural is because it is a nursery. Every other lot around this nursery is residential. There is already a tower in this area at 725 Davis Road. It is approximately 1.5 miles away and services T Mobile, AT&T, and Verizon. He has worked in this area and has never had a problem with his cell phone coverage. He feels that the new tower would not benefit the citizens of our town. But would primarily benefit the surrounding towns. He feels it would depreciate property values. There is also a nearby federal wetland, that runs along Smokes Creek. There are concerns that a new tower could interfere with wildlife and impact the migratory animals as well.

Chris Contento asks Mr. Schwing is he will be able to the tower from his residence.

David Schwing replies absolutely. It will be the tallest thing in view. He is the second lot away to the south of Murray Brothers. Setbacks for the tower is required to be 5500 feet from the nearest resident. The proposed site is only 504 feet. Again, stating it is being squeezed in where it does not belong.

Chairman, Doug Crow states the site was previously closer. Changes were made to comply.

Laurie Felton Schwing who also resides at 4485 Transit Road is opposed to this project for a SUP and site plan for a 135-foot cell tower to be constructed at 4399 Transit Road. As per their application submitted February 12, 2024, Verizon Wireless and Vertical Bridge responded to the Town of Aurora, that the tower would bring health, safety, and general well-being to the community. Also, it would bring harmony with the appropriate and orderly development of the district in which it is located. I am voicing my opposition today because this could not be further from the truth. This proposed 135-foot cell tower will not only create visual pollution as it will be the tallest structure in the area. It does not fit in with the esthetics and character of this residential area. The proposed site is in very close proximity to a 39.47 acre federally protected wetland. The special concern is how the tower may impact the unique wildlife critical habitat for animals and migratory birds.

Chairman, Doug Crow asks for any additional questions. None.

Doug Ford who resides at 1515 Quaker Road presents his statement that no one in the proposed tower area has a problem with their cell phone reception. A survey of the area

neighbors confirms that. He believes there are locations that would be less obtrusive to the neighborhoods that would increase the reception in the areas of concern. The proposed tower would be close to a designated scenic byway. He mentions an alternative location at the water tower north of transit which is approximately 70 feet. Perhaps that might be feasible. There is also plenty of area in the lower parts of Transit Road where the poor reception is. It would be far off the road, out of the way, and away from houses. There are golf courses, wooded areas, and even a water tower further down at Seneca and Transit Road. There is also a lot of commercial property on Southwestern Boulevard. He feels the proposed location of the cell tower is out of place and does not belong there. As for his wife and himself, they have lived in their home for twenty-four years. They are directly across an open field that would force us to look directly at the tower. They enjoy the sunset which now will include a cell tower. His son made a good point to him. A landscaper destroying a landscape. He does not understand why the landowner would want to place a cell tower in the middle of their nursery, unless they are being paid a hefty sum of money.

Kurt Harlock resides at 1531 Quaker Road recently purchased with his fiancé two years ago, which is directly adjacent to Murray's Nursery. It was purchased from a family friend, a pastor who had occupied the residence since the fifties. One of his wishes was that they maintain aesthetic beauty. Mr. Harlock stated he has grown up right down the road from his property all his life. He makes his point regarding the line of site of the tower. His concern of the impact of property values upwards of 20 percent. Using a bit more conservative information from Journal of Real Estate, Finance and Economics. The study cited those properties within .7 kilometers in site of tower has a 9.8 decrease in property value using fair market value. In addition, there have been a significant number of studies regarding health factors. According to the 1996 telecommunications act, the Town Board cannot deny an application based on it being unhealthy. The studies conducted by the FCC are from the eighties and nineties, which is outdated information.

Susan Langendorfer resides at 1369 Quaker Road. About three quarters of a mile down the street from the proposed site. She states she is opposed to the construction of the proposed tower. She is requesting an additional balloon test to include her property. Her favorite view from her home is her kitchen window which overlooks, an area not obscured by utility poles, but only trees and natural landscape. She wants to know specifically how it will affect her. She feels this tower will affect her mental health and her property value. Is there a nondisclosure clause in the lease. What is the monthly or annual lease agreement, how much it is worth?

Chairman, Doug Crow states that those are questions for the applicant, at the time of the Town Board meeting. That level of information is not in the application.

Susan Langendorfer asks why we need another tower. The tower on Ellicott Road is visible for miles. It is only three miles away. Multiple neighbors have discussed that when you are proposing a site for a new tower you are supposed to be looking for a property with an existing structure, or a municipal or government owned property. Why not the water tower which is municipal property. We have been told that the water authority was not interested. I initiated a

FOIL request and received a reply that after a diligent effort there is no record of any such inquiry.

Chairman, Doug Crow responds that Foils can be difficult because if one person said something and did not keep a record of that, it is difficult to track. The applicant acknowledged today they did not perform a formal request to the water authority.

Susan Langendoerfer reiterates she is completely opposed to the proposed location of the cell tower.

Chairman, Doug Crow thanked the audience speaker for their input regarding the proposed cell tower. He stated before the conclusion of discussions he wished to raise the fact that the majority of East Aurora is agricultural. Even in the immediate residential area of the proposed tower only 300-feet from the road is zoned residential. Beyond that is indeed agricultural.

Chairman, Doug Crow turns the conversation to the Planning Board. Given the additional information is there a need for a revote?

Tim Stroth reminds that the Planning Boards role is to evaluate the information provided and make a recommendation to the Town Board that holds the hearing. Our role here is to look at the merits of this application and the information we have been provided. He personally does not believe he would change his vote.

Chairman, Doug Crow reiterates to the audience and speakers that as much as we appreciate the opinions and feed back added to our discussions it is also important to be heard by the Town Board. It is the Town Board who ultimately makes the decisions. He states he personally would not change his vote. But he would be happy to perform a revote if the other members of the board feel it necessary. Doug asks if anyone is willing to make a motion?

Alice Brown states she would not change her vote as well.

Someone in the audience asks how they would be notified when the public hearing at the Town Board meeting is.

Liz Cassidy responds it is posted in the Advertiser. The neighboring property owners will also be notified by mail. The recommendations for both applications will be reviewed at the next meeting. Liz reiterates that residents are welcome to attend any meeting so they can observe the discussions as well as the process.

Chairman, Doug Crow states that it seems where we are now there is no need for a revote as all voting members have agreed their present votes would not change. He addresses the audience and encourages them to attend the public hearings and continue to be heard by the Town Board.

Chairman, Doug Crow thanks all who attended this evening's meeting. He asks for a motion to adjourn.

Jeanne Beiter makes a motion to adjourn.

Tim Stroth seconds the motion.

Motion carried.

Chairman, Doug Crow adjourns the meeting at 9:15 p.m.

**THE NEXT SCHEDULED MEETING WILL BE WEDNESDAY April 3rd, 2024, AT 7:00 P.M. AT THE TOWN HALL, 575 OAKWOOD AVENUE, EAST AURORA, NEW YORK**