

TOWN OF MILAN PLANNING BOARD MEETING MINUTES – FINAL
WEDNESDAY, NOVEMBER 6, 2013

MEMBERS PRESENT:

Joan Wyant, Chairman
Kim Godfrey
James Jeffreys
John Mautone
Radford West

MEMBERS ABSENT:

Jeffrey Anagnos

ALSO PRESENT:

Jack Campisi, Town Board

Chairman Wyant opened the meeting at 7:00 p.m.

Public Hearings:

1. **Munsch Two Lot Subdivision:** Chairman Wyant motioned that the Planning Board adjourn the continuation of the public hearing for the Munsch two lot subdivision as requested in an email by the applicant's authorized representative, Mark Graminski, P.E./L.S., to the Planning Board dated November 6, 2013. Mr. West seconded.

Chairman Wyant	Aye	James Jeffreys	Aye
Jeffrey Anagnos	Absent	John Mautone	Aye
Kim Godfrey	Aye	Radford West	Aye

Motion carried 5-0

2. **Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless Special Use Permit/Site Plan Approval:** Scott Olson, Esq., was present for the continuation of the public hearing for this application for special use permit/site plan approval for a communications facility to be located on Academy Hill Road, tax grid number 6572-00-862990. Mr. Olson said they have provided a response to Morris Associates review dated August 30, 2013. They have provided alternative tower designs, both monopole and monopine tree tower. They have revised the plans to deal with most, if not all, that Ms. Axelson asked for. The stormwater pollution prevention plan is still outstanding and should be finalized shortly. There is also a bonding requirement which they are aware of and whenever this Board thinks it's appropriate to get a financial figure, they will be happy to do that. Mr. Olson said the RF need analysis is done even though comments keep coming in about it. This site was not chosen on a whim but was based on a comprehensive search. In the initial analysis and application, they considered all existing tower structures in the town to co-locate to avoid the need for a new tower. When possible, we always want to co-locate instead of building a new tower because it's cheaper, quicker, and would be done by now. We don't propose a new tower unless it is absolutely necessary. We considered JNS, Woody Row, and the Salisbury towers. Our analysis that was provided shows that none of those sites as separate co-location would provide our required service. After Mr. Graiff reviewed first RF submission, he had several comments and requests and one of those was to consider whether a three site solution would work involving this proposed tower, either the Woody Row or JNS tower, and/or

the Near Road tower in Gallatin. He asked if we could use this tower and co-locate on two existing towers. We did that analysis in July and the results shows that would not work as we would still have a minimum of a two mile gap. The sites are too far away to provide the service we need with the topography in the area. Mr. Olson said there is no combination of co-locating on existing sites that would allow the service this one tower would provide. Mr. Graiff pointed out that this tower won't cover every area in town. It is not technologically feasible or possible. We are in the process to get approval to put antennas on the Near Road tower but we are not there yet. That will help out in the northern part of the area. At some point in time, either the JNS or Woody Row tower would complete the trifecta to provide seamless integration. One tower cannot provide all service. Mr. Graiff reviewed our analysis and confirmed that co-location is not a viable option, even a two site co-location. We will still have gaps. There are significant gaps, up to 5 miles, huge gaps, and this was concluded by Mr. Graiff. Mr. Olson said they are the largest gaps he has ever seen. There is no dispute about the need for this tower. The record has a third review by Mr. Rhodes from Cavell Mertz & Associates in Virginia which was provided by Mr. Gordon, Esq. Mr. Olson said we don't agree with everything in the letter. Mr. Rhodes does openly admit there is a significant gap in service as it stands today and it will take multiple sites to close the gap. That is confirming what Mr. Graiff identified in July. Our opponent's expert agrees that it is a significant gap. Mr. Rhodes also confirms using the signal strength of -85dBm is the correct standard for planning purposes. Mr. Olson said that is the truth and is the standard used across the country, not just by Verizon but by other carriers trying to provide service in vehicles. That is the signal strength that is needed to get inside the vehicle and connect with the phone. That standard is not based on a whim but is based on decades of analysis done by scientists at Bell Labs to answer what strength is necessary to overcome signal to noise ratio and signal degrading factors such as trees and leaves, signal from tower to device, utilized, and then return back. -85 dBm is the standard used across the country for in vehicle coverage and the opponent's consultant has recognized that. The dropped call analysis is not appropriate. You have to first look at the zoning law to see what is required. The Telecommunications Act of 1996 addressed procedural issues. That law left municipalities with the right to govern local law. Nowhere in the town's zoning law is anything mentioned about dropped calls. We don't know why that is but it is not relevant. The courts have considered this and realized that there are too many factors involved with a dropped call analysis to glean any relevant information to determine need. RF engineers designing sites don't look at it. They look at RF propagation plots as the basis of determination and confirm modeling through different tests. A dropped call analysis is not an analysis. Calls can be dropped for so many reasons and thus is not a good indication of need. US District Courts have upheld this and agreed it is not relevant to need. Mr. Olson said as such, we don't have any intention of providing it. As far as a potential conflict of interest, Mr. Graiff can defend himself. It is a shameless attempt to try to distract the board from what is really important. We don't see a problem with raising this issue. Mr. Gordon should come up with specific facts to support the allegation that Mr. Graiff has compromised his review. Mr. Gordon has not done that. He hired Mr. Rhodes

who claims he looked at the records but Mr. Rhodes does not say anything negative about the analyses done by Mr. Graiff. If there was a problem with the analyses, why wouldn't their expert advise the Board of that. Mr. Olson said the analyses done by Mr. Graiff was spot on and anyone with a half a second of experience knows that there is need. Mr. Graiff did not compromise anything in this case. Mr. Olson said he sent a letter the middle of October asking Mr. Gordon to identify his clients. It is important to know who the clients are to help identify potential impacts against his clients. Why is that information being withheld? We hope the Board requires this information. Mr. Grotto raised two issues in his letter of November 4th regarding a guest using AT&T service at his house having perfect reception and co-locating on the Gallatin tower. This application is a Verizon application so whether or not other carriers have service is irrelevant. Again, we are trying to co-locate on the Gallatin tower but as has been stated previously, that is not going to solve the problem. Again, if we could co-locate to make this tower go away, we would. It is more costly to build a new tower. We do not build sites that are not necessary.

Ms. Axelson said this is about a piece of land and a proposed use – people commenting, whether a consultant, applicant, member of the public, the issues must be addressed no matter who is commenting. The board needs to determine if there is a visual impact. Ms. Axelson said she thinks we asked for a monopole simulation. There is another style of monopole – a wider pole and the antennas are inside. It is a different design but we did not request that. A monopole simulated is a pole with arms and antennas similar to what is on the proposed lattice tower. Mr. Jeffreys asked if you use the pole with the antennas on the inside, isn't there a limitation on carriers. Mr. Olson said there is a huge limitation as to how we can optimize and who else can co-locate in there. A monopole is a pole with antennas and for the tree, the antennas are hidden in the branches. We provided a photograph with a parking lot in the center showing a monopine. The Gallatin tower is a monopole. Ms. Axelson said she believes everything the Board needs is in the visual analysis. Any sites that need to be considered were considered. There are two viewpoints that have some notable visibility – 7 and 10. Ms. Axelson said she feels a monopine tower would address the town's code and that the Planning Board should direct the applicant to revise the plans to incorporate that design to mitigate visibility if the Board prefers the monopine. Ms. Axelson said she felt, given the landscape, having the monopine stick up green and fuzzy does not stand out as much as the other designs. Mr. Jeffreys asked about SHPPO and said in previous applications, they suggested a monopole with no camouflage. Can this Board override SHPPO? There is a hill in the background which will also mitigate visibility. Mr. Olson said they have been to SHPPO and they gave us a no effect letter as it currently exists. If the design changes, we may have to go back to them and it could not hurt to do that as a courtesy. Ms. Axelson said heading towards SEQRA, we are missing the draining, grading and limits of disturbance. The site is very far back, which is a positive, but also involves a longer road which does, to some degree, follow an existing road, but grading will be required for the road and compound as it is on a slope. We need to see that before we conclude SEQRA. Other than that, there

are a number of comments that remain that have to do with code compliance issues regarding the site plan that can be addressed after SEQRA such as notations on the plans. Also, there is neither a narrative or a map that states any long range plans that in order to cover all the gaps in town, here are general places we might need towers. Mr. Jeffreys thought a narrative would better serve that purpose. Mr. West said we still have the half mile gap which should be addressed. Mr. Olson said we can only address what we have plans for. We are committed to co-locating on the Gallatin tower and we are committed to this proposed tower. We don't have a commitment at this time to either Woody Row or JNS and don't have it funded to do at this time. We know the need is there but we can't just create a plan and we can't create sites and we can't say when the towers would be built. Ms. Axelson said we are not looking for that, a generalized narrative is sufficient which would speak to a general location in this area at some point in time. Mr. Olson said we can provide something that says we recognize that these areas are not currently served and what would be needed at some point in time to provide seamless coverage. Mr. West asked about the three site solution and Mr. Olson said that is what is needed to provide seamless service. Mr. Jeffreys said an example to include would be if this tower goes through and we still have gaps, where are the other gaps relative to parkway travel that need to be addressed. Mr. Olson said he would provide that. Ms. Axelson said she has suggested certain notations for the plans. The engineers can put together language on a couple of pages, we will go back and forth and work out the proper verbiage before they paste them onto the plan. The purpose for the notations is so that the planning and building departments have the same set of facts. All the notes should be in one place on the set of plans. Ms. Axelson asked the Board to let her know when they want her to start working on the SEQRA documents. She will prepare the draft part 2, the visual EAF addendum based on the VRE, and draft a determination of significance.

Chairman Wyant read two letters into the record: from Joseph Grotto dated November 4th and from Victor Richardson dated October 28th, then opened the floor for public comment after reading the Rules of Conduct. Gordon Oliosi, 695 Academy Hill Road, said those last two letters summarize his position as he can see the proposed tower from his home and it would have an impact on the value of his home and the surrounding area. He said we decided to build a house here in Milan due to the beauty of the town. You all are doing your job worrying about gaps. He worries about the community. He said the Board needs to look out for the residents. Some of us use the Taconic and some don't. The Taconic is where the gaps are. If we weigh the gaps on the Taconic versus the community, it sways our way. David Gordon, attorney, said there are essentially two issues with respect to the neighborhood. Is the tower necessary at all and if it is, what is the necessary height? As far as the concept of a gap, there are two gaps of concern. One is the basic and the second is the gap that emerged later on. In the basic gap, there is no coverage at least for Verizon; it is a gap of several miles along the Taconic. It is a significant thing but does something need to be done about it. The idea of making sure drivers on the Taconic have cell service is not the issue it was years ago since we now have issues regarding distracted driving. The Board

should think about how important a social issue it is, worrying about people driving and making calls. This gap might indicate the need for a tower at this location; if so, what height is necessary. In reviewing the file and plots generated using the Mariner tower, the proposed tower, and one other tower in town, it shows a gap not of several miles anymore but a gap of about a third of a mile using the proposed tower at 130 feet. This raises the question of why go to 150 when 130 feet would cover the problem in conjunction with other towers. This is important. This Board has several responsibilities here in addition to accommodating the applicant's need for service - the need to comply with SEQRA, to mitigate impacts, and to comply with the town's code for a special use permit which requires the minimization of the impact to the neighborhood. The ability to fit this tower into the landscape is important and there is a significant difference in the visual impact between 130 feet and 150 feet. If the gap comes down to a third of a mile, what does that gap mean? The gap appears very stark. The question is, what does it mean and are you being led astray. What does it mean in terms of dropped calls. At the critical point here, the colors, the coverage, is generated using specific criteria, -85 dBm. What the white means is not a complete loss of coverage but it means going below -85 dBm. Your job is to determine what does that mean in reality as you balance the need for coverage with the needs of the community. Mr. Olson mischaracterized the letter from Mr. Rhodes. Mr. Gordon read excerpts from the letter and said the letter does not support their analysis. This board has different things to weigh which is our point. In the interest of Mr. Graiff, the simple analysis is that Mr. Graiff is the landlord of Verizon in a different town which raises the question of his judgment. Mr. Olson suggested we should go into an analysis of the facts. Mr. Gordon said we can but that is not the point here. The Board retained a consultant to assist it and the people of the town expect your consultant will bring an unbiased set of views to the table. That is not clear at this point. At critical junctures, the question has been raised to Mr. Graiff and he has almost conclusively supported the applicant at enough junctures that Mr. Olson says Mr. Graiff can cover this. We don't know what is generating these analyses and it raises a serious question and skepticism if this is being handled properly. We want to know if 150 feet is necessary and how many calls will be lost at 130 feet. Mr. Olson mentioned a court decided that was not necessary. We don't know the factors used to make that assessment - was it in a town of significant beauty? The court may have had a different set of factors, In this case, this Board might well determine the number of lost calls is significant. You must balance the needs of coverage against the needs of the town. A gap of 1,500 to 2,000 feet is something a driver would go through in a matter of minutes. We and this board do not know how many calls would be lost. Under SEQRA, this seems to be an important factor and it is important for the board if you are going to go to 150 feet. We do appreciate that they are moving forward with the Mariner tower. The technical information has all been simulations. There have not been any drive tests where you would typically go to a site, bring in a crane, put on a signal, and drive by. Mr. Graiff, said you don't have to do this here because you can't access the site easily. You can access the existing towers and you can determine what the need is here. These are significant gaps. It is not just a question of whether a tower is

needed. There is the failure to do the drive test, to characterize the existing sites, and to look at alternatives. The analysis is in the file, is 130 feet close enough to solve the problem without going any higher than necessary. Mr. Gordon said his goal here, is to try to create clarification, he is not trying to obscure or raise extraneous issues, but has raised significant concerns. Jack Grumet said after the last meeting, he did a thoroughly unscientific test of his own. He took his AT&T cell phone and drove down the Taconic – he said he had two to three bars the whole length of Taconic from North Road to Jackson Corners, and could hold a conversation that whole route. He went a bit further to Jackson Corners where he had three bars, from there he went up Academy Hill Road to Briggs Mountain having two to three bars and making phone calls to test. He said he was surprised at the coverage. Three or four months ago, he did not have coverage so he thinks AT&T utilized another tower, probably the Gallatin tower. If AT&T can provide better than adequate service the whole length of the Taconic, up Jackson Corners and Academy Hill, why can't Verizon? He said in looking at the town zoning code, 200-21, one of the requirements of an applicant is to maximize the use of existing towers and they have an obligation to do so before they build other towers. If an existing tower is not feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Planning Board. If AT&T can do this, why can't they? Maybe we don't need another tower. He has concerns for the residents and it is a safety issue. The regulations don't require the tower to be in Milan. If they can co-locate in Gallatin and provide the superior service that AT&T can provide using existing towers, they should do so. Mr. Grumet said he would like to see the applicant do more thorough research and tell the Board why they can't co-locate and provide the superior service AT&T can using existing towers. He said it makes me question the RF analysis they allude to. If I can do this and they are showing it is not possible, he would ask the Board to consider that. Al LoBrutto said as a follow up on Mr. Grumet's comments, apparently our law wants these guys to co-locate on existing towers. That is what is in our law. We need an independent contractor do that test. Verizon will pay for it. Do the wave test, go to each tower, put on a transmitter, send around a truck and the truck maps the signal and will tell you decibels. Now you have a good idea, the gold standard, of what is being covered and what is not. That will provide the need for a new tower. Our zoning law says we can have adequate coverage. What is adequate? Does it mean coverage on the whole Taconic or can you have gaps. All we are seeing now is a simulation from Verizon, not an actual test. No one else is doing simulations. Our RF engineer has not done the tests himself and he owns a tower that the present applicant is on now. At the last meeting, they were in discussions with Graiff about their contract. This is too close for comfort. Mr. LoBrutto said he wants an independent contractor to do a wave test and if that is done, we would then have something to work with.

Hearing no more public comment, Chairman Wyant motioned to adjourn the public hearing until the December 4th Planning Board meeting. Mr. West seconded.

Chairman Wyant	Aye	James Jeffreys	Aye
Jeffrey Anagnos	Absent	John Mautone	Aye
Kim Godfrey	Aye	Radford West	Aye

Motion carried 5-0.

Mr. Olson said in summary of the comments raised during the public hearing, he did not try to misrepresent anything – he just read from the Cavell letter. The letter states that multiple towers will be necessary to mitigate the gap in Verizon’s coverage on the Taconic. If this individual is qualified, he will realize we are looking at a significant gap. The letter is an example of non-clarity. There are numerous statements in the letter that point to a lack of experience. When Mr. Gordon said no one is doing simulations anymore, Mr. Olson said he disagrees wholeheartedly. That is what the industry does. Drive test and wave tests are typically not done because the simulations are so accurate. The propagation analysis and simulations are still relevant and demonstrate need. Mr. Jeffreys asked if the broadcast and telephone equipment that Verizon uses are identical to what AT&T uses. Mr. Olson said no. Mr. Jeffreys asked if it is within the Board’s purview under the Telecom Act to tell you how to build your network. Mr. Olson said this Board can’t dictate what signal strength we can use. There is interplay with SEQRA to look at the visual impacts but this Board has no right to tell us what signal strength we use. Mr. Jeffreys said he brought that up because he did some research and found that in the Town of Hampton, the Board did try to do that and the court’s answer was that the Board cannot dictate that. Your engineers determine what is best. Mr. Olson said Bell Labs did the research on what signal strength is necessary and it has evolved since then. It is not a whimsical analysis. Everybody agrees if you are going to plan for and dispatch facilities for in car, it is -85dBm. Mr. Jeffreys said he is just trying to clarify what the responsibilities of this Board are in terms of planning. We are not engineers and it is outside of our responsibilities to worry about that. This is what the applicant are presenting and it is adequate in terms of what our code says. Mr. Gordon said the question is not to choose what signal strength they design their system at - this board can’t do that. You are required to look at the environmental analysis. The point is not what signal strength is there, the point is how good is their coverage at different heights. Using the Mariner tower and either Woody Row or JNS and this proposed tower at a lower height and what we have is a short gap of a third of a mile along the Taconic – what does that mean? This Board does not have to determine what the signal strength will be. You need to determine whether that provides adequate coverage for the people along the Taconic. That is not determined by just looking at -85dBm. Below -85dBm, there is an existence of coverage. Do we need to provide for in vehicle coverage? If there an accident or a problem, there is a very strong likelihood that people will have the opportunity to make their calls outside their autos. How many people in emergency situations are in vehicles? There is a distinction between the service they are using to design their system and this Board’s assessment of what happens

when a gap appears. If you can mitigate impacts using a slightly lower tower, we might be able to compromise. Mr. Olson said we do believe this service is a public safety aid. The fact is, there is an initiative at the Federal level to expand and to increase wireless service. Courts have routinely held that we have an obligation and a right to cover those areas not properly covered. It is not all about public safety but that is a benefit. We have a significant gap in service and under Federal law, we have a right and obligation to fill those gaps and services. Mr. LoBrutto said the law is very clear – they have to prove they cannot go on existing towers. Only information we have been looking at at this point is their information. These tests are simulations. It is incumbent on this Board to have an independent company to do a test and do a wave tests and present the material to board. There is the report from Mr. Gordon’s engineer and Mr. Graiff’s reports as well as Verizon’s information. We have seen competing information from different sources. Mr. Jeffreys said the analysis that was done for Verizon was done by an outside agency. Rick Andros is a contractor hired by Verizon. Mr. LoBrutto said the wave test should be done then you have the gold standard. Mr. Jeffreys said he has reviewed the minutes from when the other towers were installed in town and that test was never done, not even for the town’s own tower. Why not, all of a sudden, should this Board require that test by done. Why single out a carrier just because someone asks us to do that. We are not allowed to design their network. This Board must make its decisions based on information presented to this Board. Ms. Axelson said this Board has hired consultants that specialize in this. Mr. Jeffreys said the appropriate next step is to have Verizon answer questions laid out by our Planner and to provide our information to Mr. Graiff and have him respond back to us knowing there have been allegations that Mr. Graiff has somehow not been professional or has been compromised. We also recognize the fact that our Town Engineer was the one who recommended Mr. Graiff to us and Mr. Paggi has a stellar reputation. Mr. LoBrutto said he would like see an independent analysis of existing towers. Mr. Olson said he understands the community’s concerns. We have proven that we cannot co-locate. There is nothing in the zoning code that requires a continuous wave test. The reality is CWT’s are highly unlikely and happen infrequently. The courts have accepted the propagation and simulations we have provided to you. Mr. Graiff is a PE first and his obligation first and foremost is to be up front and honest with the Board in terms of his certification. You can rely on him in terms of his review.

Administrative Items:

- Approval of Minutes: Mr. Jeffreys motioned that the Planning Board accept the minutes of October 2, 2013 as presented. Mr. West seconded.

Chairman Wyant	Aye	James Jeffreys	Aye
Jeffrey Anagnos	Absent	John Mautone	Aye
Kim Godfrey	Aye	Radford West	Aye
- Motion carried 5-0.

Applications:

- 1. Milan Market Change of Use:** Lou Rabadi appeared before the Board to discuss a possible change of use for the Milan Market located at 1615 Route 199, tax grid number 6571-04-935404 in the Hamlet zoning district. He said he has been waiting for the Chestnut Mart gas station to begin construction and they have. As a result, Mr. Rabadi would like to change his business and move away from the convenience store business. He is proposing to close down in December and take a few months to work to get his approvals. He is proposing a restaurant/bar tavern which is a permitted use with site plan approval in this zoning code. He would like to serve breakfast and lunch, then close the restaurant portion and open the bar side, serving alcohol and finger foods. He would plan on closing one or two days a week. Mr. Jeffreys asked him if he talked to his neighbors. Mr. Rabadi said he has not talked to anyone yet but will. He will put a petition in front of the store to see if he can get signatures. He will make some modifications to the building, exterior and interior. He is proposing to use the same square footage that is there now. Chairman Wyant suggested he get in touch with the NYS DOT as their approval will be necessary as well as the approval of the Board of Health. He would like to retain the lease space if possible but may use some of its square footage to put in bathrooms. The clerk will research as to whether or not he can have two uses on the same lot. Mr. Jeffreys said the single use would be a restaurant/bar. Mr. Rabadi is proposing a restaurant by day and a bar by night. He would primarily use the parking in the front of the building but has extra parking in the back. He already has curbing. Mr. Rabadi said he would have a chef and staff for the restaurant. Mr. Jeffreys said the liquor authority will tell you where to put the bar – is that correct and Mr. Rabadi said yes, they will. Mr. Rabadi will make preliminary contact with the outside agencies and will come back to the Board.

- 2. Schreiber Conversion:** Stephen Schreiber appeared before the Board regarding his proposed conversion from a commercial use to a residential use on his property located at 775 Route 199, tax grid number 6371-08-965834 in the Hamlet zoning district. Mr. Schreiber said he wants to convert the barn, which is now a commercial use, into a one bedroom apartment with a 24 x 32 footprint. The parking would be behind the building. Mr. Schreiber submitted floor plans. He said years ago, there was a house trailer on the property and the well and septic are remaining from that. He did contact the Board of Health, Jim Napoli, who said the well and septic are pre-existing.

Chairman Wyant motioned to set the date for the public hearing for this application to be held at the December 4th Planning Board meeting. Mr. West seconded.

Chairman Wyant	Aye	James Jeffreys	Aye
Jeffrey Anagnos	Absent	John Mautone	Aye
Kim Godfrey	Aye	Radford West	Aye

Motion carried 5-0.

Discussion Items:

- The Board agreed that Brian Trudell’s escrow account should be set at an initial deposit of \$500 for the attorney review of his ODA paperwork.

Mr. West motioned that the Planning Board adjourn the meeting at 10:00 p.m. Mr. Jeffrey seconded.

Chairman Wyant	Aye	James Jeffrey	Aye
Jeffrey Anagnos	Absent	John Mautone	Aye
Kim Godfrey	Aye	Radford West	Aye

Motion carried 5-0.

There is no workshop scheduled for November. The next regular meeting is scheduled for Wednesday, December 4th. The meeting is held at the Town Hall and starts at 7:00 p.m.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board