

Minutes of the regular meeting of the Town Board of the Town of Durham held June 16, 2009 at the Town Building in Oak Hill, NY.

Present: Gary Hulbert - Supervisor
 Jerry Cunningham – Councilperson
 Jodi Wood – Councilperson
 William Carr – Councilperson

Absent: Linda Sutton – Councilperson

Secretary: Chris Kohrs – Town Clerk

Others: Tal Rappleyea – Attorney
 Wes Moore – Highway Superintendent
 Larry Cooke – Code Enforcement Officer
 Sean Frey – Legislator

Mr. Hulbert called the meeting to order at 7:36 p.m. with fifty-three in attendance.

Mrs. Wood motioned to approve the minutes of May 5 & 19, 2009 seconded by Mr. Cunningham, all were in favor motion carried. (Hulbert-yea, Cunningham-yea, Wood-yea, Carr-yea, Sutton-absent)

Legislator Frey reported the year to date sales tax revenue for Greene County is down; the legislature is asking each department area to keep spending to a minimum. He met with Congressman Scott Murphy regarding the grant submitted for the East Durham Beautification Project. Congressman Murphy will set up a meeting with the board in the near future to discuss the project.

Highway Superintendent Moore reported the following; blacktopped sections of Stone Bridge Ext., Grand Rd. and Wachter Blvd. to cover rough sections of road surface before oil and stoning. Twenty-four thousand dollars has been spent to repair one quarter of Hillcrest Road, as the funding allotted for the repair of Hillcrest has been used the remaining repairs will be done in 2010. He will be using riprap material and renting an excavator to repair some erosion problems on some of our large culverts. Next week he will be oil and stoning a section of Cochrane Road, all of Elliot Place and Stone Bridge Ext. In addition, he will seal Prink Lane and Bananti Road. He expects to use approximately 45,000 gallons of CRS-2P oil and 1200 tone of #1 stone for these projects.

Mr. Carr motioned to approve the request of Highway Superintendent Moore to modify the 2009 CHIPS program as follows: Remove the oil and stone project for Stone Bridge Road (DA-5112-1.224) for \$33,000 and replace it with McCafferty Road (DA-5112-1.226) to the Albany County line. Based on the amount of traffic over Stone Bridge Road, for safety reasons, it would be better to pave this road in 2010. Motion seconded by Mr. Cunningham, all were in favor motion carried. (Hulbert-yea, Cunningham-yea, Wood-yea, Carr-yea, Sutton-absent)

Legislator Frey stated Greene County Highway Plans to pave County Route 22 this summer.

Building Inspector Cunningham reported issuing the following: two septic replacements, three garage permits, two deck permits, three addition/alteration permits and two demolition permits.

Code Enforcement Officer Cooke reported performing fourteen inspections resulting in six new violations. Two prior violations have been closed as the violators have come into compliance. He also issued one commercial building permit and one demolition permit. Two commercial site plan reviews should be forthcoming. He will be performing fire inspections on all commercial establishments (required once every three (3) years) and places of public assembly of over fifty people (required annually).

Judge Tirpak reported collecting \$2,255.00 in court fees. Judge Kennedy reported collecting \$1,860.00 in court fees.

Attorney Rappleyea reported he is continuing to work on cell tower application CT-2008-01, reviewing the lawsuit against Weldon House Inc. and Diamondback Motocross and drafting a proposed use form for town parks.

Town Clerk/Collector Kohrs reported \$476,083.79 taxes remain uncollected; in comparison to 2008, we are 1% behind in taxes collected.

Twenty-six surplus bids were received and opened.

Mr. Cunningham motioned to accept the surplus bids as follows:

1986 4x4 Pick-up	Jim Diresta	\$1,600.00
1985 4x4 Truck	Andrew Ferraioli	\$1,201.00
1985 Blazer	Post Bros.	\$ 501.29
1975 International Fire Truck	Independent Logging	\$1,234.56
1985 GMC Tow Truck	Windham Truck & Equip	\$2,001.51

Motion seconded by Ms. Wood. All were in favor motion carried.

Supervisor Hulbert closed the regular meeting and opened the public hearing for the Cell Tower application CT2008-01 at 8:07 p.m. explaining interested parties would be given two minutes to make their statement and all questions and statements would need to be made to the board not to those in the audience.

Dan Schweigard, Infinigy Engineering & Surveying representing Independent Towers gave an overview of the project. They are proposing to erect a 90' monopole capable of hosting four to five cell applicants. As of this date, they do not have a signed contract with a carrier; however, once they do they would like to begin the project.

Jeff Fumei vacant property owner on Mackey Road inquired what research has been done regarding health effects for surrounding property and what compensation is offered to the

property owners reduce property values should the application be approved. He also stated he is opposed to application.

Attorney Rappleyea addresses the health issue question explaining that there is a federal law, which prevents the municipalities from denying a communication tower based on health concerns.

Mr. Fumei asked if the applicant had information on the research pertaining to the electromagnetic emissions emitted.

Mr. Schwiegard did not have the information with him and offered to provide them.

Mr. Fumei asked that the hearing be continued based on the fact the information he requested was not available.

Frank Pastier of 24 McCafferty Road stated he is opposed to the application. He asked for information regarding the current wave lengths emitted the high tension power lines located near the proposed communication tower and how will the additional electromagnetic emissions will effect the area. He asked an engineer be hired to articulate what is coming from the current power lines and the safety issues combined and potential advancement for the power lines.

Mr. Schwiegard stated if the board requests Independent Towers could hire an independent radio wave specialist to measure the current power line emission output and the potential emission should the tower be approved.

Supervisor Hulbert stated much of the emission information is available through the New York State Power Authority.

Joe Thornton of Allan Teator Road stated he is in favor of application and offered to put the tower on his property.

Bob Haller, Durham Ambulance Squad and resident of Tuscany Meadows expressed he is in favor of the application. There are numerous times the rescue squad needs to reach REMO and the radios cannot get through due to the valleys in the town. Cell service would enable the medics to communicate with the hospitals and could aid in the saving of a life.

Mr. Caputo vacant property Route 81 stated he believes the high-tension power lines contributed to the death of this sister and he is not in favor of the application.

Attorney Robert Gagen speaking on behalf of the Pastiers stated he had reviewed the Town Clerk's records. The Special Permit Law for Telecommunications section 34-C7 required the town when considering an application needed show what steps would be made to minimize the potential negative effects of neighbors' financially, health and aesthetically. The applicant would need to show inventory of additional site locations considered and demonstrate why none of sites would be appropriate. It is his opinion not

enough information was submitted. Also missing was how approval of this application would specifically benefit the town.

Councilman Carr stated in his opinion the simple lack of continuous service throughout the town would indicate why the tower would directly benefit the town. He also stated that there are no other communication towers in the town to permit the possibility of collocation option.

Mr. Gagen clarified his comment pertaining to collocation to mean other structures that could host the communication equipment i.e.) structures, silos, radio towers, etc. The application needs to demonstrate that there are no other viable structures for collocation. No discussion regarding aesthetic effects. A realtor has communicated that placement of a communication tower will cut the value of the surrounding property in half. He asked the board to consider that. Questioned if the property is located in an agricultural zone, the application states it is not. He asked the board to explore other alternative sites.

Mr. Schwiegard acknowledged there are many locations within the Town of Durham that would welcome the tower; the problem lies in that the locations are not the most optimal for the town. This location provides the most benefit for the coverage of the town, the natural shrub barrier addresses the aesthetic concern as it will help to conceal the tower from the road way. He is willing to consider a couple of additional sites and show this site to be the best for the town. Addressing the question how does it directly benefit the Town, they are willing to provide space on the tower to the local emergency services at a free or reduced rate.

Hope Benson, residing on Stonitch Road, voiced her support for the tower.

Alan Pavese, residing on Wright Street voiced his support for the tower.

Mr. Fumei suggested moving tower to town property. Councilman Carr answered that would not be a problem if the town owned property that was conducive to a tower location.

Attorney Rappleyea explained procedurally the next step, presuming all who wished to be heard have been heard and the board feels they have enough information we would close the public hearing. The board would review the environmental assessment form, required by DEC. The board would vote declare a negative declaration or a positive declaration. If the board declares a positive declaration the applicant would be required to do an environment impact statement (take a several months to complete), if negative declaration the board would move forward to vote on the application where to approve or disapprove the application based on the information which has been submitted. The applicant has stated they would like to submit additional information with respect to the power lines and the accumulative effects of the tower next to them as well as additional RF plots, other collocations and locations within the town.

Mr. Fried asked if he was correct in understanding the tower would not be built until there was a signed carrier with a FCC License. Mr. Rappleyea confirmed the town law states it cannot be built on speculation. He also asked if everyone understood that a

signed carrier would only help those who subscribe to their service not all cell phone users. Mr. Rappleyea responded it is his understanding that the study uses the average coverage of all carriers to show the potential coverage area. Cell towers like to have the line of sight technologies so that from town to town you do not drop a call.

Mr. Pastier questioned if the set back is adequate if the 90' monopole tower is extended to the 120'.

Councilman Carr stated that once the tower is constructed at 90' the applicant would need to appeal to the town on a case-by-case basis, for a variance to increase the height. They would need to demonstrate that no collocation spots are available.

Mr. Schweigard stated that the collocation between 70-90' is so similar that they currently do not see the immediate need to extended it above 90'.

Attorney Rappleyea asked if the proposed set back had been moved to meet the necessary set back for 120'. Mr. Schweigard stated they have considered moving the foundation but are reluctant to do so as there is a natural hedgerow that currently providing a visual screen. To move the location 30-40' closer to McCafferty road would require them to clear that hedgerow.

Larry Cooke, Town Code Enforcement Officer and resident of Woodard Road supports application. Feels the town is currently behind the rest of the country regarding to cell phone use. His does not work in 80% of the town. It is his opinion that most of the residents are in favor the cell service and in fact own cell phones. Unfortunately, they do not want the tower in their back yard "NIMBA".

Attorney Rappleyea recommended the board close the public hearing to verbal comment and leave it open for written comment until July 7, 2009.

Ms. Wood motioned to closed the public hearing to verbal comment and oral comment but leave it open for a period of fourteen days to June 30 for the applicant to provide additional information and for the public to submit written material information, and until July 7 for anyone to submit a rebuttal to what is submitted. Motion seconded by Mr. Cunningham, all were in favor motion carried. (Hulbert-yea, Cunningham-yea, Wood-yea, Carr-yea, Sutton-absent)

Public hearing closed at 8:55 p.m.

Mr. Carr motioned to approve the request from the MJQIC&SC, Inc for the town to lease buses from the Cairo-Durham Central School District for Irish Arts Week. MJQIC&SC Inc. will incur the expense for the rental. To approve Supervisor Hulbert to sign the contract between the School District, Town and MJQIC&SC, Inc., motion seconded by Ms. Wood. All were in favor motion carried. (Hulbert-yea, Cunningham-yea, Wood-yea, Carr-yea, Sutton-absent)

Mr. Cunningham motioned to accept the surplus bids as follows:

1986 4x4 Pick-up	Jim Diresta	\$1,600.00
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1985 GMC Tow Truck	Windham Truck & Equip	\$2,001.51

Motion seconded by Ms. Wood. All were in favor motion carried. (Hulbert-yea, Cunningham-yea, Wood-yea, Carr-yea, Sutton-absent)

Ms. Wood motioned to approve the following transfer(s) seconded by Mr. Carr. All were in favor motion carried. (Hulbert-yea, Cunningham-yea, Wood-yea, Carr-yea, Sutton-absent)

FROM:	GENERAL	\$18,000.00
TO:	A8020.400 PLANNING	\$18,000.00

Abstract #910, consisting of 2009 Vouchers #479 through #492 for \$30,060.52 was reviewed and approved for payment. The total was broken down as follows:

Highway Funds	\$1,896.17
Trust & Agency	\$28,164.35

Abstract #911, consisting of 2009 Vouchers #493 through #550 for \$94,413.17 was reviewed and approved for payment. The total was broken down as follows:

General Funds	\$46,802.78
Highway Funds	\$46,942.84
Street Lighting	\$ 667.55

Ms. Wood motion to adjourn at 9:14 p.m. seconded by Mr. Carr.

Minutes approved:

Chris Kohrs, Town Clerk