

TOWN OF ELLICOTTVILLE
PLANNING BOARD MEETING MINUTES
Monday, April 24, 2023 at the Town Center at 6:00 p.m.

PRESENT: Richard Dayton, Chairman
Sheri Barrera, Vice-Chairperson
Caitlin Croft, Member
Bonnie Koschir, Member
Daniel Kruszynski, Member
Robert Poole, Member
Timothy Zerfas, Member

ALSO PRESENT: Gregory Keyser-Town Planner, Kelly Fredrickson-CEO, Adam Fishel-Marathon Engineering, Terrence Nolan-New Leaf Energy, Matthew McAndrew-Town Supervisor, John Zerfas-Town Board, Chad Neal-Applicant, Joel Tanner-Applicant, Sara Krotz, Randy Kortz, Alicia Brennan, Michael Brennan, Kyle Woodin, Jim Linsler, Carol Krotz, Melissa Hadley, Heidi Sworts, Reno Kelley

Mr. Richard Dayton, Chairman called the meeting to order at 6:00 p.m. and opened the public hearing for **TZP-2023-029, 8030 Jackman Hill Road, Special Use Permit for a cellular antenna co-location by American Tower.** This is an application to allow the co-location of antennas and equipment on the existing telecommunications facility.

Mr. Dayton asked for questions or comments from the people attending. Nothing was submitted.

Moved by Ms. Barrera to close the public hearing for TZP-2023-029, 8030 Jackman Hill Road, Special Use Permit for a cellular antenna co-location by American Tower. Seconded by Ms. Koschir. Ayes all. Carried.

Mr. Dayton advised that the public hearing for TZP-2022-092, 6902 Simmons Road, Special Use Permit for a Tier 3 Solar Energy System by New Leaf Energy will be held at the May 22, 2023 meeting as the public hearing notice was not published in the local newspaper as per local law. However the Board will take questions or comments from the people attending.

Ms. Heidi Sworts of 6693 Simmons Road said that she was unaware of the project as she did not receive a public hearing notice and asked about the company doing the project.

Mr. Terrence Nolan advised that New Leaf Energy has been in business for 15 years with offices in Buffalo, NY.

Ms. Sworts asked, do you have other projects in the area?

Mr. Adam Fishel of Marathon Engineering advised that they completed 2 projects last year. One in the Town of Pembroke and one in the Town of Newstead.

Ms. Kelley said that she did not receive a public hearing notice. She asked if residents can use the electric power?

Mr. Nolan said this is a commercial project, but area residents can subscribe through their electric carrier for a 10 percent reduction in rates.

He presented the original site plan and the revised plan showing the project moved 500 feet to the east away from Simmons Road and behind an existing tree line with a smaller array. The site meets the zoning setbacks and plantings are proposed to mitigate views.

Ms. Sworts asked if weather patterns were considered when locating the panels on the property?

Mr. Nolan said we factored in the weather patterns and the panels will be angled to pick up maximum light from the sun.

Ms. Swortz asked about leakage from the panels and what is the by-product of the panels that could contaminate the ground and water?

Mr. Nolan stated that they have provided a data sheet on the panel materials and we can provide data on the safety of the panels.

Ms. Sara Krotz noted that the information New Leaf Energy provided on the panels is from a Chinese Manufacturer and not an American Company. Does the EPA approve of these panels for use in the United States?

Mr. Nolan said we have revised the project and are open to discussing data and safety concerns.

Mr. Fishel advised that they can provide data on the safety of the panels based on EPA requirements.

Mr. Randy Krotz asked why have you not looked at panels made in the USA instead of in China?

Mr. Fishel said when we started the project the Chinese Company was able to provide the panels so we planned for their product. However now US companies are increasing production of panels made of safer materials and we can now look at purchasing panels from one of them. The Chinese are phasing out production of solar panels.

Mr. Nolan stated that they will make sure the panels meet safety standards.

Ms. Sworts noted that the panels are good for about 30 years. We need to look to the future. Is there a long term plan for replacing defective panels? Where do the used panels go? Will they be buried in the ground?

Mr. Nolan advised that New Leaf Energy has a contract with a Company in Georgia that recycles the panels. We monitor the panels electronically. It costs \$10 to \$15 to recycle a panel. We have a \$800,000 bond in place to cover the cost of decommissioning the project, removing the panels and returning the land to its natural state.

Ms. Sworts stated that this project affects the whole Town and the owner of the property does not live here.

Mr. Nolan advised that the owner of the property does live on the property with access from Dooley Road. The Town of Ellicottville adopted a Solar Law. We as an applicant came in 2 years ago looking to hook up to the substation on Somerville Valley Road. There are not a lot of parcels that are large enough and away from the road to meet the zoning requirements.

Mr. Dayton stated that the Board needs to address other items on the agenda and asked that any other questions or concerns be presented at the public hearing on May 22, 2023 at 6:00 p.m.

Mr. Nolan noted that Cattaraugus County has a moratorium on PILOT agreements until July 2023. Will the Planning Board be willing to act on the application following the May 22, 2023 public hearing pending the lifting of the moratorium in July?

Mr. Dayton stated that we will have to consult the Town Attorney to see if there are any legal issues in doing so.

The Minutes of the March 27, 2023 meeting were read. Corrections were made.

**Moved by Ms. Koschir to approve the Minutes of March 27, 2023 as corrected.
Seconded by Ms. Barrera. Ayes all. Carried.**

Mr. Dayton presented TZIP-2023-029, 8030 Jackman Hill Road, American Tower Special Use Permit to allow the co-location of antennas and equipment on the existing telecommunications facility for discussion.

Mr. Keyser noted that proposed equipment includes an 8'x12' enclosure on a 9'x12' concrete pad with underground trenching and cable connections for power and communications. All work to be completed is within the existing fence line of the current base station. The project will provide a 5G update and higher frequency for the Department of Defense. The structural analysis indicates the tower and foundation can support the proposed equipment. The report has been forwarded to Barton and Loguidice to confirm its conclusions and verify that the analysis was conducted in accordance with best management engineering practices. Per the letter received from Barton and Loguidice there are still outstanding issues.

The Board can table the application or if it feels it has enough information can approve the Special Use Permit conditional on the final report from Barton and Loguidice.

Ms. Barrera asked, can the tower handle the additional antenna and equipment load?

Mr. Keyser said that is one of the items being confirmed by Barton and Loguidice.

Mr. Kruszynski noted that Barton and Loguidice are looking for 6 additional drawings to complete their work.

Ms. Kosher said that the Board should wait for them to receive the complete information and sign off on the project before taking action.

Moved by Ms. Croft to table TZP-2023-039, 8030 Jackman Hill Road, American Tower, Special Use Permit application to allow the co-location of antennas and equipment on the existing telecommunications facility pending receipt of the completed review by Barton and Loguidice. Seconded by Ms. Barrera. Ayes all. Carried.

Mr. Dayton presented TZP-2022-170, 0 Bella Vista, Joel Tanner, Amendment to Approved Final Plan, Holihuts Subdivision.

Mr. Tanner presents his proposal to construct a new 900 square foot single-family residence on 0.30 acres in the Medium Density Residential zoning district in the Holihuts Subdivision. Access is from an existing private driveway. The adjoining properties are predominantly single-family dwelling units. There is one undeveloped parcel adjacent to my property which contains a small pond.

Mr. Keyser advised that the Holihuts Subdivision was approved by the Planning Board on March 15, 1966. The Holihuts Homeowners' Association is the governing body for the subdivision and is the organization that makes and enforces rules for the properties and its residents. Presently, there are approximately 66 developed properties in the subdivision. Public sewers were extended to Holihuts in the 1980's. Although public water supply is accessible to Holihuts, the subdivision is predominantly served by private wells, some of which serve multiple residences. Public water supply was proposed by the Town in 2018, but Holihuts HOA decided the project in 2020.

Mr. Keyser noted that the subject property was created in 1987 which pre-dates the Town's current zoning and subdivision regulations. The immediate area in which the subject property is located contains a pond and indicates on the approved plat that the intended use for this portion of the subdivision is for picnicking and parking. In addition the plat stipulates that "any change, erasure, modification or revision of the plat, as approved, shall void the approval." However, the approval was also subject to requirements and conditions set forth in a resolution that is not available today.

Mr. Tanner stated that he is trying to develop the lot safely. It is a parcel on the tax maps and he has been paying taxes and fees since he purchased the property. He is proposing a sprinkler system on the property and not depend on the local Fire Department. The water line will be extended for potable water and the sprinkler for my lot and the next lot. The original road does not have a turn around for emergency vehicles.

Mr. Fredrickson said that a plan for the water line is needed.

Mr. Tanner said one of the issues is the size of the line. He is proposing a 4 inch line for the 2 properties and not an 8 inch line. I have to connect to the Town water line as it is within 150 feet of my property. I cannot drill a well.

Mr. Kruszynski noted that the sprinkler system for the residence does not solve the issue that there is no turn around for emergency vehicles.

Mr. Tanner said the Holihuts HOA is aware of the issue. My property has been a lot for the last 40 years and they support the development. He wants to work to a resolution. There are 52 voting members in the Holihuts HOA.

Mr. Keyser advised that prior to this application and at the request of Holihuts HOA, the Building Department completed a code review to identify concerns related to the original design and current New York State Building Code. It was determined that the subdivision was never completed, and as presently exists does not match the approved plan. Despite previous development being allowed, the original approval is not valid, and building permits are no longer being granted until Holihuts HOA completes the subdivision or obtains a new plat approval.

Mr. Keyser said that the Planning Board needs to determine if the proposed change is de minimus or substantial. If de minimus, the Planning Board should determine if SEQR review needs to be reopened and whether or not the change is minimal in nature. If the proposed amendment is determined to be de minimus, the Planning Board may waive the requirement for a public hearing and proceed to a determination on the amendment. If the Planning Board determines that the proposed amendment is substantial, the Board shall follow the procedure for review of the Final Plat application, prior to making a decision on the amendment.

Ms. Koschir asked can you divorce yourself from Holihuts?

Mr. Tanner said he has to travel through Holihuts Subdivision to access his lot.

Mr. Keyser advised that Holihuts will have to do a preliminary plat of the subdivision update to the Final Plat and complete the work.

Mr. Barrera asked, If Holihuts does not want to complete the plan, what happens?

Mr. Keyser said it would be up to the Attorneys.

Mr. Dayton said that it appears to be an illegal lot in an illegal subdivision and he would like to seek legal advice from the Town Attorney on how to proceed. He is concerned with the Town's liability and the Board has a responsibility to the Town. He asked Mr. Keyser to set a meeting between the Planning Board and the Town Attorney. Board members agreed to a My 15, 2023 date.

Mr. Dayton presented TZP-2023-144, Chad Neal, Robbins Road, Special Use Permit and Site Plan review of a park golf course for discussion.

Mr. Chad Neal presented his plan for a park style golf course on property adjacent to the Ellicottville Distillery on Robbins Road. The proposed course includes 18 holes covering approximately 7 acres with minimal land disturbance to establish and operate. This will be a walk only course with no carts allowed. The property encompasses approximately 17.20 acres in the Industrial and Conservation Zoning District. The abandoned meadow will be

flatten with a box scraper and seeded with 3 sizes of grass. There will not be any sand traps. This is a recreational facility open during the day only.

Ms. Barrera asked, is the location of the railroad an issue?

Mr. Neal said no, we are not on their property.

Ms. Koschir asked if parking is provided?

Mr. Neal said there are 20 spaces on site for the golf course use.

Mr. Keyser said the application is for a Special Use Permit using the Distillery restrooms and Site Plan approval.

Mr. Keyser advised that the Planning Board should evaluate the application to determine if enough information has been provided to schedule a public hearing and conduct SEQR. A short Environmental Assessment Form has been provided by the applicant. The golf course does not exceed any Type 1 thresholds, nor does it appear to meet any Type 2 definitions. Since there does not appear to be any other involved agencies, the Planning Board should move to classify the project as an Unlisted Action and declare itself Lead Agency for SEQR. If the Planning Board is satisfied with the application material, the Board should move to schedule a public hearing for the May 22, 2023 meeting.

Moved by Mr. Kruszynski to set a public hearing for TZP-2023-144, Robbins Road, Special Use Permit and Site Plan review of proposed park golf course by Chad Neal for May 22, 2023 at 6:00 p.m. Seconded by Ms. Barrera. Ayes all. Carried.

Moved by Mr. Kruszynski to adjourn. Seconded by Mr. Poole. Ayes all. Carried.

The meeting was adjourned at 7:15 p.m.