

Village of Webster
Zoning Board of Appeals Meeting Minutes
Meeting Minutes of September 19, 2016

Community Meeting Hall
29 South Avenue
Webster, NY 14580

Present: Mark Nicholson, Bob Fantauzzo, Bill Baker, Mike O'Connor, Karl Laurer, Atty. David Mayer, Building Insp./Code Enforcement Officer Will Barham, Deputy Clerk Jo O'Neill

Meeting came to order at 7:30pm.

1) Application:

The Village of Webster is currently proposing to install a cell tower on its property located at 1073 Webster Road, Tax ID# 080.17-2-48. The Zoning Board of the Village of Webster will meet to determine if the Village of Webster meets the guidelines for Governmental Immunity from Zoning specifically as it relates to this proposed installation of a cell tower. Property zoned: R1-13.6.

Mark Nicholson indicated that someone will present about the application, then the audience will have time to comment, followed by the board going through the nine points to qualify whether the Village Board is exempt from zoning for this matter.

Presentation:

Jake Swingly, spoke on behalf of the Village of Webster. The Village is proposing to build a cell tower by the water tanks on Webster Road, north of the steel pole barn on the property. Currently there are two water tanks on the sight. The MCWA is leasing the property and is planning on taking down the smaller tank furthest to the south. At that time, the cell carrier's antennas must be removed and put somewhere else. The Village is proposing to build a 195ft tall cell tower on the property where cell carrier antennas can be moved to. They have hired a consultant, Don Carpenter, to advise them on building the proposed tower. About 6 or 7 years ago the Village was looking into using radio transmission for their pump stations to send a signal to the Sewage Treatment Plant. At that time, they didn't have the elevation needed to send the signal. This new tower would have the height needed to consider that again. He passed around a sketch showing the approximate location where the pad and tower would go. The cell companies have indicated that this is an ideal location and height for their antennas for coverage and reception of the signal.

M. Nicholson mentioned that when the MCWA takes down the smaller water tank we aren't able to build the cell tower there, as the piping and connections will be left for possible future use. Additionally, there was a question as to whether the height of the tower could be less than 195ft, say 180ft. The consultant is going to follow up on that question.

J. Swingly also indicated that the tower near the south end of the Fireman's Field is actually a Monroe County emergency communications tower and not a cell tower, although they look very similar. It would not be feasible to use that tower for cell carriers.

Will Barham added that when the cell carriers first came in, they had maps that indicated "black-out" areas that had little or no reception. Our water tank property fills a gap in coverage and reception for their signals, which is why they are on the tanks right now.

Open to Public Comments:

Q: How high is the tallest water tower right now?

A: J. Swingly indicated it is 142ft, although the property has a change in elevation so one tank may appear to be higher than the other.

Q: Why aren't the existing antennas sufficient?

A: J. Swingly replied that they are currently sufficient, but with the MCWA taking down the smaller tank, the antennas will have to come off and go somewhere. By building the cell tower, the antennas will be moved there and the Village will be able to keep the revenue. We are looking to extend the lease with the MCWA to allow time for us to build the tower.

Q: Have they looked into any other feasible locations as far as the black-out areas go?

A: J. Swingly responded that because of the black-out areas, they are very limited as to where their antennas will work best. They basically have a 650ft radius to be able to get the best signal. Moving even 100ft in any direction could result in some signal loss.

Q: Where's the closest cell tower that is similar in size and height?

A: J. Swingly noted that there are cell towers by Schutt's Cider Mill, on Dublin Hill Road, by the Town Hall and on Phillips Road near Xerox, although he is not sure of their height.

Q: Will the new tower decrease the property values?

A: J. Swingly replied that removing an old rusty water tank and putting up a new tower is not likely to change property values.

Peter Elder, 59 Dunning Avenue, acknowledged that many of these questions are not germane as to why we are here tonight, and questioned as to why the Village is seeking immunity from their own zoning, and why they can't proceed with the usual site plan review for this project. For a project of this scope the Village should be subject to its own zoning. They would need a special use permit since the property is zoned R1-13.6. That being the case, there should be maximum public input into a sight plan. As far as the location is concerned, is there a report showing the signal locations? Have there been discussions with the MCWA about the project, and have they given permission to construct the tower since they are leasing the property? The small tank has "Village of Webster" on it. That is an "iconic" community identification. Is there a way to preserve that? Is there a way to put the cell tower on top of the small tank and not take it down? Would it be possible to put cell

technology on top of one of our roofs? I am not opposed to this project, but I do feel that the Village should go through the normal site plan review process, allowing for public input. What is the rush to vote on the Village being exempt from zoning for this project?

David Mayer indicated that Special Use permits are governed by the Planning Board. Any variances needed would need to be approved by the Zoning Board of Appeals.

J. Swingly noted that he does not have the written documentation regarding the signals and black-out areas. Those reports are typically provided by the cell carriers when they want to install an antenna. In addition, he speculated that the maintenance and upkeep involved with keeping the small water tank for the antennas would be more than putting up a new tower. Public interest is important and it applies to everything, not just the visible tower. A lot of people have cell phones now, and depend on the signal they get from their carriers. A cell tower helps to provide the signal people depend on.

D. Mayer mentioned that the Village Board will still have to have a public hearing on the project even if we determine they are exempt from zoning.

J. Swingly added that how we proceed with this project will depend on the decision this Board makes. There may still be Planning Board and Zoning Board of Appeals actions that will need to take place. We will still need to discuss the disposition of that parcel with the MCWA, and whether or not we can extend their lease agreement which ends in December. We need to have an idea of timeframe to get the ball rolling. We also need to take back control of the area where the tower is to go up. We met with the cell carriers and MCWA in August just to discuss some of these possibilities and what's involved. That's when we learned that the MCWA wants to keep the infrastructure where the small tank is in case the large tank ever needs to come down.

Rick Walter, 20 Elm Street, wanted to reiterate what Peter Elder said that this project should go through the complete site plan review process. The Board knew about this issue three years ago. Why didn't we start looking into it then, instead of rushing for a decision now? The tax map shows it as one lot. How will that affect the lease with the MCWA and the ownership of the property? We don't have an exact cost of the tower yet. We don't know the cost of moving the antennas. And we don't know the cost of maintaining the tower. What will the payback be for the cost of the tower? The Village has not done their due diligence. What's the need for an action by the Zoning Board of Appeals now?

J. Swingly responded that the cost of the tower is about \$170,000. Based on that, the payback would be a little less than two years. We are not doing all of the research yet until we know that we can do it. Jake quoted the regulations for the Village to be exempt from zoning, and again stated that we are here to determine if the Village Board is immune to zoning for this project.

Eric Reynolds, 64 Kircher Park, first stated that he is not against the project. He is concerned about the rush to make a decision. There has been three years to investigate this, and is concerned about (#8) the extent that the public interest is served. Because it's a rushed project, we have to ask MCWA for an extension of their contract. Why can't we go through the normal process where the public has more input?

J. Swingly expressed that we would have been in the same position whether it was two years ago or two weeks from now. We would be asking the same question; "Is the Village exempt from zoning for this specific project?"

Don White, Atty. for the Village of Webster, mentioned that this is part of the normal process. If governments weren't allowed to seek limited immunity from their own zoning ordinances, we wouldn't be here. It is allowed, and has been done for years. School districts are absolutely immune from zoning ordinances. They can build where ever they want in any district, and never have to appear before a Planning or Zoning Board. It is not an issue to grant the Village immunity to their own zoning ordinances. The Village is asking for limited immunity. They would be asking the Zoning Board the same thing whether it was today or two years ago. The Village owns the land and has a 40yr. lease with the MCWA. At the end of the lease the Village will still own the land. The MCWA knows about the cell tower, and are not using the area where the proposed tower would be built. The questions about cost are not germane to the decision before the Zoning Board.

R. Walter disputed that the cost of the project is germane. What the Village spends money on is of interest to the public.

E. Reynolds added that we may have gone through this same process if this happened sooner, but it would have been less rushed, and we wouldn't have needed an extension of the contract with MCWA.

M. Nicholson countered that if this had come before the board in June 2015, we would have the same scenario. It would still require a ten-day notice and then we would have 62 days to render a decision. If we fail to render a decision, it is approved by default after 62 days anyway. We, the Zoning Board of Appeals, are not rushed.

P. Elder reiterated that there is a compelling public interest as to why the Village has to be exempt from its own zoning.

Closed to Public Comments:

D. Mayer went through the 9 points we are required to use in determining if the Village of Webster is exempt from zoning for this project (not all were relevant).

1. The nature and scope of the instrumentality seeking immunity.
Response: We are all one. There is no difference.

2. The encroaching government's legislative grant of authority.
Response: There is no encroachment.
3. The kind of function or land use involved.
Response: Is this a public use, governmental use or is it in line with some mercantile use? This point goes together with points #4 and #5.
4. The effect local land use regulation would have upon the enterprise concerned.
5. Alternative locations for the facility in less restrictive zoning areas.
Response: If this is a governmental use, under the case law regarding cell towers, the governmental use comes down to the governmental interest in favor of co-location. There are many case laws on that, which ties in with whether alternative locations in other districts would work just as well. From what we're told, this is the ideal location. M. Nicholson added that we have had multiple carriers come before this board seeking to put their antennas on our tanks. Their engineers keep telling us that this is the ideal location. Will Barham has applications right now from five major cell carriers wanting to put their antennas on our tanks. Three of them provided a propagation study showing it is an ideal location.
6. The impact upon legitimate local interests.
Response: What is the downside, if any, if the Village is not exempt from zoning for this project and has to go through the normal process with Planning and Zoning? We have to predict what we'll do if that happens. What impact will this have on the project?
7. Alternative methods of providing the proposed improvements.
Response: Are there any alternatives? If they are left on the other tanks, the Village will lose that revenue. The studies have shown that this is the ideal location.
8. The extent of the public interest to be served by the improvements.
Response: Will the function change by declaring the Village exempt from zoning for this project? No.
9. Intergovernmental participation in the project development process and an opportunity to be heard.
Response: The Village has been communicating with the MCWA regarding this project.

M. Nicholson then asked the board to consider the totality of the impact or encroachment the government has on this land use regulation, when considering a motion for or against granting the Village Board exemption from its own zoning laws for this project.

J. Swingly added for clarification that we are not talking about two separate government entities. This is one entity asking to be exempt from its own zoning.

Motion: Karl Laurer made a motion to deny the request from the Village for immunity from its own zoning ordinances, and recommend that they go through the normal zoning process. Seconded by Bob Fantauzzo.

Vote: Bob Fantauzzo – Yea
Bill Baker – Nay
Mark Nicholson – Nay
Karl Laurer – Yea
Mike O'Connor – Nay

Motion failed.

Motion: Bill Baker made a motion to approve the request from the Village for immunity from its own zoning ordinances for this matter only. Seconded by Mike O'Connor.

Vote: Bob Fantauzzo – Nay
Bill Baker – Yea
Mark Nicholson – Yea
Karl Laurer – Nay
Mike O'Connor – Yea

Motion passed.

M. Nicholson then asked for a motion to adjourn the meeting.

Motion to Adjourn: Mike O'Connor made a motion to adjourn the meeting. Seconded by Bill Baker. All were in favor. Meeting adjourned at 8:30pm.

The next Zoning Board of Appeals Meeting is scheduled for 7:30pm on October 20, 2016.
Respectfully submitted,
Jo O'Neill, Deputy Clerk