

**CHEMUNG COUNTY PLANNING BOARD
MEETING NOTES
NOVEMBER 21, 2019**

Present:

Ronald Panosian, Chair
Andrew Avery
Joseph Peters
Henry Dalrymple
Joseph Coletta
Liane O'Brien
Mary Jo Yunis
Robert Lewis
Nicolette Wagoner, Staff
Scott Shaw, Staff
Tanya McGee, Staff
Nanette Moss, Staff

Excused:

Elisabeth Corveleyn

1. Call to order

2. Approval of Meeting Notes

Motion made by Robert Lewis, seconded by Joseph Peters to approve the October 24, 2019 Meeting Notes as drafted. All members in favor, none opposed, motion carried.

3. Visitor Comments (accepted after each referral review) – None

4. Zoning Referrals

A. TOWN OF SOUTHPORT – Approval of Site Plan and Zoning Use Variance – Up State Tower Co LLC and Buffalo-Lake Erie Wireless Systems

Present: Matthew Kerwin, Barclay Damon Law Firm o/b/o Up State Tower Co LLC and Buffalo-Lake Erie Wireless Systems

DISCUSSION: R. Panosian advised that the petitioner submitted a site plan and zoning use variance request in conjunction with construction of a cell tower. N. Wagoner reported that we recommended local determination for the site plan in February 2018. That motion stated that the application presented no countywide impacts, with the following comments: that the town consider visual impacts and submit a decommissioning plan, that the applicant should use the appropriate RF thresholds, and lastly, confirm the need for co-location. The applicant states that all suggestions have since been resolved. Blue Wireless is proposing a 160' tower, which exceeds the radius of the available area, as damage could occur to the surrounding houses in case of a fall. Matthew Kerwin reiterated that Blue Wireless is proposing the tower in the industrial zoning district at the end of

Morley Place on a property owned by Budd Street Properties LLC. When selecting the property site, the applicant considered Blue Wireless coverage objectives, Town zoning code, and existing structures in the area belonging to Blue and others. They also considered available alternatives, existing towers, and tall structures that might provide an opportunity for co-location, and determined that none of the existing structures would serve as a feasible co-location site.

Wireless companies receive a FCC license from the government to provide wireless service. When they identify a gap in service in an area, they first look within a search ring. In this case, the search ring is near Clemens Center Parkway, a portion of the industrial corridor, commercial neighborhood and commercial regional zones. Two districts, AR and Industrial, currently allow for new towers, with AR being a half a mile from the proposed site. Additional alternatives (Exhibit 6) include properties to the north and south which present the same restrictions from a variance and tower height set point that would be currently facing on the proposed property.

Blue Wireless focused on locations within the search ring to find the best spot to best alleviate RF issues, coverage issues, work within the code, and work within Blue Wireless existing network while also addressing the Town's concerns. The October 9 submission provided propagation maps that predict coverage from different locations and show views from various areas. The propagation maps show coverage at the proposed site at 160' and 140'. The difference in coverage is unacceptable to the applicant, who stated that they need a 160' tower to avoid blockage from trees and existing buildings. N. Wagoner noted that the Town Planning Board had met in early November and deemed the application incomplete, but Blue Wireless had since remedied this with SEQR and propagation maps. The Southport ZBA tabled the request last night pending an expert review of the maps; however, Kerwin feels the maps are self-explanatory, showing coverage for all of the surrounding towers. N. Wagoner asked Kerwin what the applicant's response was to the concern about the two homes within the fall zone and he mentioned that he was not aware there were concerns regarding the homes in the fall zone, only the tower height and the setback. Additionally, Kerwin stated the properties within the industrial corridor are thin and narrow and locating them elsewhere within the Industrial corridor would not change the dynamic of the relief requested.

While the towers are sturdy, the purpose of having a tower with a height of 140', would allow for the area of the tower to collapse over on itself in the event of a significant storm event. R. Lewis inquired to Kerwin about wind speeds and was advised that these towers can sustain 90 mph winds with 1-2' of ice. M. Yunis inquired as to why the applicant could not construct a 120' tower and co-locate for supplemental coverage. Kerwin answered that they prefer not to have a situation where they place multiple facilities on different structures to address a single coverage objective, as the result may not provide the same level of coverage. According to Kerwin, there are no feasible, existing structures in close proximity that would provide co-location opportunity aside from the towers. M. Yunis mentioned other towers that are obviously covering the area, and Kerwin clarified that they do not belong to Blue Wireless, as outlined within the propagation maps. R. Panosian asked if the ZBA tabled or gave a conditional approval subject to the professional review, and Kerwin clarified that the board took no action. R. Panosian said that he wants to hear the results of the professional review of the documents, and Kerwin replied that the Town has larger propagation maps as of the previous week. Additionally, Kerwin stated that the board had questions in their

initial response that they had not set forth our evaluation of alternative sites, which were located within the application. The ZBA did not yet schedule a hearing.

N. Wagoner asked what happens upon the expiration of the 150-day shot clock and Matthew Kerwin said that they want to work with the town, seeking a determination from each board. He noted that they submitted photo simulations, and the 100 pages of photos of the proposed site showed a number of different locations around town as well as photos of the existing towers in the area. From a visual standpoint, the applicant does not feel that the proposed tower is different from the existing towers in the area, all of which are visible and provide a required level of service. R. Panosian asked if the shot clock would not start if the application was incomplete and N. Wagoner noted that it starts upon application submittal to the Town, in this case, October. J. Coletta asked if the tower height was between 150' and 160' structural standards for cell towers and Matthew Kerwin explained that standards are set according to what the need is to provide service. Depending on the carrier and topography, if the gap is smaller, a lower antenna height could address the issue, and if the gap were larger, a taller antenna would address the issue. Topography, buildings, and trees cause further degradation to signal strength and propagation. A. Avery showed that from the proposed tower to the closest structures is approximately 159.75'—it would be close but would not likely hit the structures in event of a fall.

R. Panosian said that much of this discussion is similar to the February 2018 motion. M. Yunis suggested that this case is of local determination with the comment that co-location (proof that Blue cannot co-locate on an existing tower) is still an issue. R. Panosian asked N. Wagoner to review the February 2018 comments, and she noted the following: General aesthetics—the town should discuss visual impacts from the applicant and request that the tower be as visually unobtrusive as possible; Decommissioning plan—the applicant should submit a plan for decommissioning. Matthew Kerwin said that they agreed to provide a decommissioning plan adding that this is in process. N. Wagoner continued with correct RF thresholds—that the applicant should use the appropriate RF thresholds for general public; and Confirmation of need—the applicant should provide data demonstrating that co-locating on an existing tower is not an option. R. Panosian asked if the decommissioning plan, assuming it is provided, would be the same. M. Yunis suggested making suggestions regarding visual impacts of the height variance. R. Panosian asked if there were any further discussion, question or comments; there being none, he called for a motion for local determination with comments.

MOTION: Made by Mary Jo Yunis, seconded by Henry Dalrymple, recommending local determination of the proposed site plan and zoning area variance stating no Countywide or inter-municipal impact along with comments that they consider visual impacts, submit a decommissioning plan, use the appropriate Radio Frequency threshold, need for co-location. Members in favor, all; opposed, none. Motion carried.

B. CITY OF ELMIRA— Amendment to Section 260 for Business G (Gateway Commercial Zoning District) – City of Elmira

Present: Jason Crane, Comptroller, Edger Enterprises; Jeremy Hourihan, Assistant Corporation Counsel, City of Elmira

DISCUSSION: R. Panosian advised that Edger Enterprises proposed an amendment to the City's zoning ordinance. N. Wagoner reported that the applicant seeks a zoning use amendment to the Gateway Commercial zoning district with the intent of allowing development of a 13,000 square foot trucking/warehouse facility. The proposed development would be located directly off the I-86 exit into Elmira on Church Street. N. Wagoner has concerns regarding the proposed use fearing Article 78 proceedings, as it is not an appropriate use for the Gateway Commercial district per the zoning ordinance. Reading from the code, Wagoner stated, "Gateway Commercial is a mixed-use district, characterized by its location along a major thoroughfare and proximity to commercial, cultural employment centers. Traffic and activities of this area lessens the desirability for single family living while the accessibility and exposure provide an environment suitable for certain professional and business offices. The location of commercial and office uses in this district is not necessarily related to retail trade, rather they should complement basic services to residential uses. All development should maintain a high quality as to enhance through landscape plantings and minimal curb cuts along E. Church St., the City's primary gateway." Wagoner stated that currently, the first visual coming into the City of Elmira is this long-vacant lot. The vision of this as stated in the City's Comprehensive Plan and zoning documents is that this is intended to be a welcoming first impression area. The City is utilizing DRI money to rezone this area along with the rest of downtown. She suggested that rather than changing the allowable uses on this site as we are 90% of the way through rezoning, that the applicant work with the consulting team to discuss their vision for the site and perhaps their intended use could be permitted. Wagoner suggested that perhaps the applicant could locate the truck bays behind, do better landscaping, and provide appropriate lighting for this area. She noted additional concerns regarding traffic impacts, trucks coming in and out of Clune Parkway, and the overall functionality and appropriateness of that use. R. Panosian restated that the City is targeting this as one of the areas to address in the rezoning taking place now. N. Wagoner indicated the proposed project is shown within the proposed T5 area in the new zoning. When adopted in early 2020, the new code will yield more flexibility and emphasis on form over use. She offered to work with the applicant on creating a development that is more appropriate for the gateway in terms of form, rather than an industrial manufacturing development. Wagoner would like to see traffic data (estimated number of trucks entering and leaving the site), noting that this stretch of Church Street is busy during peak hours, especially when making a left turn onto Church. A. Avery said it is critical to understand that Church Street is a NYSDOT highway, east of where railroad tracks used to be. Avery continued that NYSDOT has control over that intersection and at the very least; they will want a traffic study and/or Traffic Impact Study (TIS). The driveway as it exists now is not appropriate for a trucking terminal, so the geometry will need adjustment. The TIS may show that the development would require a traffic signal, which the state would require the developer to pay for (\$120,000 to \$180,000 depending on the needs of the signal). R. Panosian asked if we were aware of the City's stance on this before it came to us, and Wagoner clarified that it went to the City Planning Commission at the same time. Jason Crane noted that he heard concerns and indicated that the proposed use is on the far back portion of the site in an inconspicuous spot that will be difficult to see. M. Yunis asked if the proposed location is below the highway; rather, it is adjacent to the exit. R. Lewis asked if Edger owns the land all the way to Judson St. and if so could the trucks go onto Judson St. instead of

Church St. Crane stated that they are considering that change. A. Avery said he wanted to make sure Edger is aware of the cost that could be involved with DOT with the roadway, the driveway, the traffic statement, plus the potential traffic signal. Jason Crane said that he would take into consideration the pricing upon development. N. Wagoner recommended waiting and work with us on the existing zoning that the City is adopting in the upcoming months instead of requesting a zoning amendment. Crane asked if the project could move forward with site plan approval, to which N. Wagoner replied that the timing for this project is very good in terms of where we are currently with zoning. Crane expressed concern that if the City denies the zoning amendment that the applicant will lose the opportunity. He added that they are in the middle of negotiating with this prospective lessee.

N. Wagoner displayed a draft of the use table proposed for that area that showed light industrial as a permitted use. It is possible that the City could add trucking terminals as a permitted use, requiring a special use permit. Crane asked what would be the concern to recommending the zoning amendment request after negotiating as compared to waiting three months. Wagoner explained that if the board amends the zoning for this particular use, it is allowed anywhere in the Gateway Commercial zoning district. The Gateway Commercial District extends to downtown and abuts the Chemung River. If the City allows the trucking/warehouse use in the Gateway Commercial zone, then anyone could develop a trucking/warehouse business on Water Street. Wagoner explained that her interpretation is that the proposed project goes against the spirit of City's planning documents. Crane said his concern is that we are talking about working on this in three months, would the same issues not exist then? A. Avery said no, as the new zoning could allow it. Jason Crane said based on that fact, why is he unable to get approval today? M. Yunis said she would assume it might allow it, but would provide the city more input in terms of aesthetics.

Jason Crane said with regard to aesthetics, he would like to go through site plan approval and address those things at that time and Wagoner replied that it is a City decision, and County Planning is an advisory board. Jason Crane asked that the board consider that this is going to be coming to fruition three months from now and personally could not see any reason why it couldn't come to fruition today. N. Wagoner said it gets back to protecting the City from a potential legal issue, potentially construed as spot zoning or an Article 78 from someone saying this does not go with the spirit of our planning documents. M. Yunis asked if the applicant considered requesting rezoning to Light Industrial for just their parcel. Assistant Corporation Counsel Jeremy Hourihan advised that that was the initial plan because there is some Light Industrial that borders this area. Crane asked if there is a method to communicate with the committee to assuage concerns about how the project may look. N. Wagoner said the Zoning consultant and/or committee could meet with Edger and City officials to come up with a solution. R. Panosian said that the issue is that the City is undertaking this broad zoning review and here we are going to take a position that may or may not coordinate with plans.

N. Wagoner said she does not recommend approval based on the spot zoning concern and the other concerns she has stated. It is her preference to work with Edger as part of the new zoning instead of amending the zoning as it is now. R. Panosian asked if there is a forum to speak with the committee that is working on the zoning. N. Wagoner said yes; further, we could recommend disapproval and the City could override it with a supermajority. R. Panosian noted it would be local determination at

that point. He asked if there were any other questions or comments. N. Wagoner reiterated that our recommendation does not impact the chances of this project moving forward, it would just be doing it in a different way. Jason Crane said it impacts it from the fact that we have to assure this group that is negotiating with us because of a lease. N. Wagoner recommended that City Council not approve this request. R. Panosian said if there are no other questions or comments, we are looking for a motion, and the recommended motion is that we not recommend approval pertaining to spot zoning, that the DRI zoning project is 90% complete, and traffic concerns. A. Avery asked what effect this motion would have on the City, to which N. Wagoner advised that City Council can override it with a super majority, and that they initially voted to forward this to us as a unanimous board. R. Panosian imparted to Jason Crane that we are an advisory board where we review and give comment back to the city. Jason Crane said he respects the opinion given. R. Panosian said there ought to be a comment about A. Avery's observation regarding NYSDOT. A. Avery said this would need to go in front of NYSDOT for review and Jason Crane said they planned to do that. N. Wagoner said that was her recommendation and that the CCPB could make a different motion. M. Yunis asked if we could add the comment that we recommend that the applicant meet with the zoning committee to which N. Wagoner was positive and noted it would be an invitation.

MOTION: Made by Mary Jo Yunis, seconded by Joseph Coletta, recommending that City Council not approve the proposed zoning ordinance amendment along with comments that there are concerns pertaining to spot zoning, suggesting waiting for the zoning review the City is undergoing at this time, that this will need to go in front of NYSDOT for review, that we recommend that the applicant meet with the zoning committee to discuss their desires for their proposed project. Members in favor, all; opposed, none. Motion carried.

C. CITY OF ELMIRA– Amendment to Rezone Property from Industrial A/Light Industrial to Industrial B
– City of Elmira

Present: Kim Middaugh, Attorney for Shulman Co., Inc. and OBK, LLC; Jeremy Hourihan, Assistant Corporation Counsel, City of Elmira

DISCUSSION: R. Panosian advised that the applicant has proposed rezoning of its property at 185 and 197 E. Washington Avenue within 500' of Clemens Center Parkway, from Industrial A/Light Industrial to Industrial B. N. Wagoner reported that the applicant wishes the change in zoning to accommodate recycling and junkyard activities. Kim Middaugh noted that the junkyard and recycling business on the front parcel is a pre-existing non-conforming use. Schulman would like their uses to be consistent with zoning. Middaugh stated that this proposal conforms to the comprehensive plan, which promotes industrial uses in this area. N. Wagoner clarified that the Schulman site is now Light Industrial and they are requesting that only the front two parcels to be zoned General Industrial, as junkyards are a permitted use in that district. N. Wagoner expressed her concern that this would also allow adult uses as a permitted use.

N. Wagoner asked how the current zoning was restricting their business, to which Middaugh stated that it is a pre-existing non-conforming use in existence for years but the owner wishes to have consistency. M. Yunis asked if they were Industrial at one time, and then became Light Industrial, or have they always been pre-existing non-conforming lots. R. Panosian said that the use has not

changed but the zoning may have at some point. Kim Middaugh was not aware of when it changed. The only other use nearby is the county transit garage down Clemens Center Parkway. R. Panosian voiced a concern about spot zoning, as the applicant's request to rezone two parcels would result in an "island" of General Industrial in the middle of a Light Industrial zone. N. Wagoner had a similar concern. Middaugh said because it ties in with the use that has been occurring, and not as though it's all of a sudden totally irrelevant to what has been occurring on there or what is being recommended in the comprehensive plan. M. Yunis asked if there were any changes anticipated with the property. Middaugh advised that she knew of none, the purpose of the request is to have consistency with their use. Schulman is working with the DEC and EPA on a clean up. If zoning were consistent, this would allow for the clean up to happen much faster and easier. R. Panosian asked if the City had any concern regarding this spot rezoning and was advised by Kim Middaugh that they did not. R. Panosian said this is for one property owner within a field of otherwise zoned property.

Avery asked if the City had considered adding recycling to the Industrial A, which would negate the need to change these parcels to Industrial B and allow for the expedited clean up. N. Wagoner was amenable to that because of her concerns about as-of-right adult uses. R. Panosian read aloud the definition of spot zoning: "Spot Zoning refers to the rezoning of a parcel of land to a use category different from the surrounding area usually to benefit a single owner or a development interest. Size of the parcel is relevant but not determinative. Illegal spot zoning occurs whenever the change is other than part of a well-considered and comprehensive calculated to serve the general welfare of the community." Scott Shaw added that if it the action is consistent with the comprehensive plan of the city or their planning objectives it would not necessarily be spot zoning. If someone were to challenge this rezoning, however, the courts that would decide whether or not it is spot zoning. R. Panosian asked how one determines consistency to which Middaugh advised that industrial uses in this area are part of the comprehensive plan. R. Panosian noted that if the City added recycling as a permitted use in Light Industrial, then any property within the city could house a recycling business. A. Avery questioned if that was what the City wants to do. R. Panosian said that such an action would affect a large area.

Kim Middaugh noted the clean up that Shulman is trying to complete could happen more economically in General Industrial than in a Light Industrial zone. N. Wagoner asked what difference the zoning made and was advised by Middaugh that the DEC and EPA base their clean up on the zoning versus the use. R. Panosian noted that if a remedy exists that keeps this from being spot zoning (or perceived as such), he has no problem with it; however, the spot zoning issue makes me shy away from it as does the adult use issue. M. Yunis said it sounds like spot zoning because the purpose would be to reduce the cost of clean up. R. Panosian added it would be to benefit one party. H. Dalrymple asked if adult use is permissible as of right in that zone and special use permit not needed and N. Wagoner replied that site plan approval would be needed. Scott Shaw added that a special use permit may be needed but it is still permitted.

A. Avery asked if Industrial Park Boulevard was Industrial B, which it is. N. Wagoner noted that the parking area south of Kennedy Valve is also zoned Industrial and R. Panosian said the use has been fine with the community forever; further, he noted that as long as this isn't spot zoning, he doesn't have a strong issue with the proposal. A. Avery asked if the City could do an overlay to prevent spot zoning. M. Yunis said the City would still have the adult use issue.

A. Avery recommended local determination, allowing the City to determine whether it wants to take that risk. N. Wagoner recommended local determination with these comments to the City for their consideration for approval, including the idea to add recycling as a permitted use to the Light Industrial district. A. Avery clarified that Middaugh said it doesn't help Schulman with the EPA issue for clean-up, if it is still Light Industrial instead of General Industrial. M. Yunis asked if deed restriction would be an option and to which A. Avery said that's an issue with the owners. R. Panosian asked if the Board thought it was a local determination and include comments and observations, i.e. adult use potential, spot zoning, and suggest overlay or converting all parcels to Light Industrial or allowing recycling in the Light Industrial. R. Panosian called for a motion for local determination with comments cited.

MOTION: Made by Mary Jo Yunis, seconded by Robert Lewis, recommending local determination of the proposed rezoning stating no Countywide or inter-municipal impact along with comments that the rezoning might be construed as spot zoning and would allow adult uses as-of-right, suggesting City consider adding an overlay to the Industrial A/Light Industrial District or allowing recycling in Light Industrial zoning districts. Members in favor, all; opposed, none. Motion carried.

5. Visitors Comments: None.

Planning Commissioner's Report:

N. Wagoner presented items at today's meeting for discussion.

Board Training:

R. Panosian commented that it was a good board training held in October.

Meeting adjourned at 4:02 p.m.