

# **Planning Board**

TOWN OF BRUNSWICK  
336 Town Office Road  
Troy, New York 12180

## **MINUTES OF THE PLANNING BOARD SPECIAL MEETING HELD MARCH 30, 2023**

PRESENT were RUSSELL OSTER, CHAIRMAN, DONALD HENDERSON, J. EMIL KREIGER, LINDA STANCLIFFE, DAVID TARBOX, KEVIN MAINELLO and ANDREW PETERSEN.

ALSO PRESENT were CHARLES GOLDEN, Brunswick Building Department, and WAYNE BONESTEEL, P.E., Review Engineer to the Planning Board.

Chairman Oster reviewed the agenda for the meeting, as posted on the Town sign board and Town website. Chairman Oster stated that this was a special meeting of the Planning Board, and the only item of business on the agenda was an amendment to a site plan and special use permit submitted by Blue Sky Towers for property off Creek Road.

Jared Lusk, Esq., representing Blue Sky Towers, was patched into the meeting via telephone. Mr. Lusk stated that Attorney Gilchrist had requested additional information from the applicant at the March 2, 2023 Planning Board meeting, and that the applicant had provided that information. Mr. Lusk also stated that the applicant's request remains a Section 6409 eligible facility request. Attorney Gilchrist reviewed Section 6409 of the Federal Spectrum Act, stating that the Act requires that a local government must approve an eligible facility request for modification of an existing cell tower that does not substantially change the physical dimensions of said tower. Attorney Gilchrist stated that the only inquiry allowed under federal law is whether the application qualifies as an eligible facility request, and the applicable standard in this case is

that the proposed modification cannot increase the height of the cell tower by either 10% of the tower's height or by 20 feet above the highest existing antenna array on the tower, whichever is greater. Attorney Gilchrist also stated that the modification cannot defeat the concealment element. On that issue, Attorney Gilchrist discussed federal regulation and guidance which provides that the only inquiry is whether the proposed extension continues to include the concealment feature, meaning whether the design continues to include a pine tree feature, and that the increase in height alone is not considered an impact to the concealment feature. Attorney Gilchrist then handed out a series of documents and began reviewing the timeline of events. Attorney Gilchrist stated that AT&T initially submitted a Letter of Intent to the Town to lease space from Blue Sky Towers, LLC on a proposed cell tower, which was dated March 18, 2019. Next, Attorney Gilchrist reviewed a letter dated June 8, 2020 submitted by Blue Sky Towers and AT&T, submitted in response to public comments made at the Joint Public Hearing with the Zoning Board of Appeals. Attorney Gilchrist brought attention to Comment 21 in the response to public comment letter, noting that it listed AT&T as one of only two proposed carriers on the cell tower. Attorney Gilchrist stated that once the preferred alternative location for this tower was determined during the prior Planning Board review, Blue Sky Towers and AT&T submitted a revised plan for the cell tower with the maximum height of 85 feet on September 18, 2020, which listed the AT&T "Antenna Orientation" at 66 feet on the cell tower. Attorney Gilchrist stated that the applicants also submitted a revised Environmental Assessment Form (EAF) dated October 12, 2020. Attorney Gilchrist noted that the revised EAF named Blue Sky Towers and AT&T as the applicants, and that the cell tower was proposed to be 85 feet tall. Attorney Gilchrist stated that the cell tower was approved at the March 18, 2021 Planning Board meeting based on the September 2020 plan. Attorney Gilchrist stated that in April 2021, AT&T sent notice to Blue Sky Towers requesting the AT&T antenna be raised to a

height of 95 feet, meaning the tower would require an extension. Attorney Gilchrist stated that in October 2021, AT&T prepared a revised plan showing the tower with a 20-foot extension and showing the AT&T array at 95 feet. In early 2022, the Town received an application for an extension of the cell tower with the AT&T antenna at 95 feet, but this extension application was not pursued at that time. Attorney Gilchrist stated that a second cell tower extension application was later submitted, which is the application currently before the Planning Board. In reviewing the current application materials with Mr. Bonesteel, Attorney Gilchrist noted that Tab F of the submission was missing pages 15-26, which concerned the cell tower sublease with AT&T. Attorney Gilchrist stated that he requested pages 15-26 of said Tab F on March 13, which were submitted by Mr. Lusk on March 17 via email. Attorney Gilchrist then reviewed the submitted information, in which the General Counsel for Blue Sky Towers stated that originally, AT&T confirmed that a height of 66 feet would work for the 80-foot monopine proposal, but ultimately, AT&T reneged that confirmation and stated that it would not satisfy its coverage needs. The General Counsel for Blue Sky Towers also stated that nothing more was executed with AT&T until after the tower was approved. Attorney Gilchrist noted that while AT&T informed Blue Sky Towers that the 85-foot tower was not tall enough in April 2021, the Town was never informed. Attorney Gilchrist also reviewed the updated plan for the cell tower sublease dated October 15, 2021, which was about seven months after the tower was approved and showed a height of 105 feet. Attorney Gilchrist stated that the Planning Board could request more information concerning the timeline with respect to the AT&T position on this tower, but that federal law limits municipal requests for additional information under Section 6409 of the Federal Spectrum Act to the determination of whether the current application is an eligible facility request. Attorney Gilchrist also stated that the Federal Spectrum Act states that an applicant is required to answer a request

for additional information only once, and that the Planning Board could not request any additional information that was not included in the original request, and the applicant is under no obligation to provide additional information on the AT&T timeline. Mr. Bonesteel stated that it must be clear whether the application qualifies as an eligible facility request and that any additional information requested must pertain to that issue only. Member Stancliffe asked how the Federal Spectrum Act identified a cell tower, if it had to be an already existing tower, or if it already had co-locators. Attorney Gilchrist stated that the Federal Spectrum Act defines the tower as an approved cell tower, then read the definition of “cell tower” according to the Federal Spectrum Act. Chairman Oster stated that it was still unclear from the additional documents submitted why AT&T changed its proposed height on the cell tower from 66 to 95 feet, and that why and when the proposed height of the tower changed should be clearly established. Attorney Gilchrist stated that the Planning Board could request this information, but noted that the applicant would not have to respond under the restrictions of the Federal Spectrum Act. Chairman Oster asked why if AT&T knew in April 2021 that its antenna array being located at 66 feet on the tower would not work, and that the tower had not yet begun construction, then why did AT&T not immediately come in for an amendment. Mr. Lusk responded on behalf of Blue Sky Towers, and reviewed an email from the General Counsel for Blue Sky Towers, which discussed the dates when AT&T made its decisions, then argued that there has been no misrepresentation or intent to deceive by the applicant, and that Blue Sky Towers was hopeful that the AT&T antenna array would continue at 66 feet, that Blue Sky Towers continued to work with AT&T on the location of its antenna array on the tower, but it was ultimately determined that the 66-foot height would not work for AT&T. Mr. Lusk stated that he had spoken to an AT&T representative that afternoon, who confirmed that the decision that 66 feet was not high enough for its antenna array was made internally at AT&T before the Planning Board

approved the 85-foot cell tower, but that AT&T did not provide this information to the Planning Board as many things continued to be in flux. Mr. Lusk also noted that even though this information was not legally relevant to the current application, AT&T had still provided it in good faith. Attorney Gilchrist stated that he had not forwarded the complete email from the Blue Sky Towers General Counsel due to it potentially including attorney-client privileged communications, but now that Mr. Lusk had read it into the record to the Planning Board, he would distribute it in full to the Planning Board members. The Planning Board deliberated as to whether there was enough information to schedule a public hearing, and agreed that there was. A public hearing on this application is scheduled for April 20, 2023 at 7:00pm.

The index for the March 30, 2023 Special meeting is as follows:

1. Blue Sky Towers – amendment to site plan and special use permit (April 20, 2023).

The proposed agenda for the April 6, 2023 regular meeting is currently as follows:

1. Grab – minor subdivision (public hearing to commence at 7:00pm).
2. Rau – waiver of subdivision.
3. Gardner – special use permit.
4. Reiser – waiver of subdivision (tentative).

The proposed agenda for the April 20, 2023 regular meeting is currently as follows:

1. Blue Sky Towers – amendment to site plan and special use permit  
(public hearing to commence at 7:00pm).