

The Planning Board of the Town of Cicero held a meeting on **Monday, October 20, 2008** at **7:00 p.m.**, in the Town Hall at 8236 South Main Street, Cicero, New York 13039.

Agenda:

- Approval of the Planning Board minutes from October 1, 2008 (**approved**)
- Site Plan, Syracuse SMSA Limited Partnership d/b/a Verizon Wireless, 6005 McKinley Road, Proposed Wireless Telecommunications Facility, Nixon Peabody, LLP (**approved**)
- Site Plan Sketch Review, Morgan Physical Therapy, 5740 South Bay Road, Proposed Physical Therapy Clinic, B. Dean Johnson, Architect (**to return**)
- Informal Discussion: B&C Storage

PRESENT:

Patrick Leone, Chairman  
Richard Cushman, Board Member  
William Purdy, Board Member  
Christopher Rowe, Board Member  
Sharon May, Board Member  
Jason Mott, Board Member  
Robert Smith, Board Member  
Heather Cole, Esquire, Wladis Law Firm  
Wayne Dean, Director of Planning & Dev.  
Mark Parrish, P.E., O'Brien & Gere  
Tonia Mosley, Clerk

ABSENT:

Scott Harris, Ad-Hoc Board Member

The meeting was opened with the Pledge of Allegiance led by Mrs. May.

Mr. Leone noted the locations of the three fire exits in the room and that there was no formal public hearing tonight. He acknowledged the importance of public input and encouraged those who want to speak about an agenda item to do so by raising their hand and being recognized by the Chairman. Please use the microphone when speaking and silence all cell phones. Raise your hand if you can not hear the proceedings

**APPROVAL OF THE PLANNING BOARD MEETING  
MINUTES FROM OCTOBER 1, 2008**

**Mr. Smith made a motion** to accept the Planning Board minutes from the October 1, 2008 meeting. **Mr. Cushman seconded the motion.** The motion was **approved** with the following vote:

Mr. Cushman: Yes  
Mr. Purdy: Yes

Mr. Rowe:	Abstain
Mrs. May:	Yes
Mr. Mott:	Yes
Mr. Smith:	Yes
Mr. Leone:	Yes

**SITE PLAN, SYRACUSE SMSA LIMITED PARTNERSHIP  
D/B/A VERIZON WIRELESS, 6005 MCKINLEY ROAD  
PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY  
NIXON PEABODY, LLP**

Representatives: Thomas Greiner, Esquire, Nixon Peabody, LLP  
Ric Andras, Project Radio Frequency Engineer  
Theresa Reed, Site Acquisition Specialist

Mr. Greiner introduced himself and his peers reviewing comments from the last Planning Board meeting. The Board asked if we could locate further west and/or if we could locate on the same parcel further north, away from the houses on McKinley Road. We have a submission dated October 14<sup>th</sup> which addresses those questions.

We went out along Sneller, Pardee and Mud Mill Roads. We have propagations showing those potential sites. Going further west and with FAA constraints on height, we found another set of neighbors (trading one neighborhood for another) and gaps which opened up to the east. So, we concentrated on going north on the same parcel. We were able to locate a spot not on any wetlands, which does not require any wetland permits, that splits the difference between McKinley and Mud Mill.

Mr. Greiner reviewed the possibilities associated with proposed sites A through D and their propagations. We found the coverage for Site D with a tower height of 145' (at the top of the antenna) to be fine. It is 800 plus or minus feet north of where we originally applied or 1100 to 1200 feet to the closest house. We satisfy the RF objective while minimizing land use impacts as much as possible.

Mr. Parrish noted the applicant does go through some wetlands, but they are disturbing below any threshold that would need any permit.

Mr. Leone added the applicant has to work on an easement road which goes all the way back.

Mr. Parrish: That is shown on the site plan. We had written a letter on Location D previously. Based upon this new location, comments in that letter are still applicable with the exception of some of the setbacks which would be greater than they were previously.

Mr. Leone introduced Mr. Johnson who has done some consulting work on behalf of the Planning Board.

William Johnson, Professor, RIT: Since the last hearing several sites were submitted to the applicant to get a sense of where a good location might be. Those were shown in the exhibits we just saw. Every proposed site showed that it was not capable at 145' of covering the target objective area that Verizon has for this site. The site the applicant is currently proposing has a fairly equal center down between the residences. At 145' they are able to get the coverage they are looking for. The coverage is not excessive. This site is a good balance between our concerns and the coverage concerns of Verizon.

Mr. Smith: You were going to look at the American cell tower off Route 31 next to the child care area. If they were to use that would it provide the same coverage?

Mr. Johnson: They are on that site. This is part of the composite.

Mr. Leone: So it is your professional opinion that this is a reasonable location for the area they are trying to cover and it is a reasonable distance between the two sets of residential areas?

Mr. Johnson: That is correct. I realize that there are visual impact problems to all of the residents in the area, but positioning the cell tower between Mud Mill and McKinley Roads to get that approximate 100' setback to the closest home is a good solution. They are able to get good coverage, at least as good as the originally proposed site.

Mr. Smith: In your opinion, this is the best site we can come up with?

Mr. Johnson: That is correct. None of the other sites provide coverage like this particular site--assuming that the adjacent neighboring sites don't move and nothing changes with those, this is a good solution.

Mr. Leone asked Ms. Cole, Mr. Parrish and Mr. Dean if they had any other comments. They replied no. He asked if there were comments from the audience before the Board acts. There was no response.

**Mrs. May made a motion** regarding SEQR. She read: Be it further resolved that the Planning Board of the Town of Cicero hereby determines that the proposed action will not have a significant effect on the environment and that this resolution shall constitute a negative declaration for the purposes of Article 8 of the Environmental Conservation Law of the State of New York. **Mr. Smith seconded the motion.** The motion was **approved** with the following vote:

Mr. Cushman:	Yes
Mr. Purdy:	Yes
Mr. Rowe:	Yes
Mrs. May:	Yes
Mr. Mott:	Yes
Mr. Smith:	Yes
Mr. Leone:	Yes

**Mr. Leone made a motion** to approve the site plan for the Verizon Wireless telecommunications facility called the Mud Mill Tower Location D at 145 feet in height as submitted in your latest package dated October 14, 2008 and a site plan date of October 14, 2008.

Mr. Smith: I would like to say an awful lot of work went into this. They moved the site. Dr. Johnson did a great job. Thank you. It has been a while getting here. You have worked with us and I appreciate that. I think that we got the best that we could.

**Mrs. May seconded the motion.** The motion was **approved** with the following vote:

Mr. Cushman:	Yes
Mr. Purdy:	Yes
Mr. Rowe:	Yes
Mrs. May:	Yes
Mr. Mott:	Yes
Mr. Smith:	Yes
Mr. Leone:	Yes

**SITE PLAN, SKETCH REVIEW, MORGAN PHYSICAL THERAPY  
5740 SOUTH BAY ROAD, PROPOSED PHYSICAL THERAPY CLINIC  
B. DEAN JOHNSON**

Representatives: B. Dean Johnson, Architect  
Gary Morgan, Applicant

Mr. Johnson introduced himself and Mr. Morgan. We have gone through the Zoning Board of Appeals and received several variances for the project. I believe the variances were for two setbacks.

Mr. Dean explained. They were for the front setback off South Bay Road decreasing from 50' to 36' and the driveway distance.

Mr. Leone noted you have flipped the entrances a bit.

Mr. Johnson added we originally had the addition on the south side of the building where the parking lot is currently shown on the South Bay side. The flip reduces the impact of the parking and gets the driveway entrance further away from South Bay Road, further down Warren Street. The addition is now on the north side of the property. Mr. Morgan currently leases space kiddy-corner across the street. He has purchased this building. There used to be a garage that is currently living space. We are going to remove that portion of the building.

Mr. Leone: Are you putting a pool in?

Mr. Morgan: That idea has been scratched.

Mr. Purdy: The best part of your building is going to face away from South Bay Road. My concern is having it look as good in the back as it does in the front. The back is what everyone is going to see.

Mr. Johnson: The entrance does because it faces the parking lot.

Mr. Leone noted compared to what there is there today, this would be a step up. It makes sense for the property to work this way. I give the applicant a lot of credit. The property is zoned appropriately. Now we need to find the appropriate building to fit the use determination. Can you tell the Board about landscaping, lighting, and buffering between the parking lot and the residential area?

Mr. Johnson noted there is a 6' high solid fence indicated along the south side of the parking lot.

Mr. Leone asked if the applicant was going to park right along the fence or if there would be some green space between.

Mr. Smith remembered discussing a solid fence.

Mr. Johnson: There is no green space between.

Mr. Leone: What is on the property line to the south?

Mr. Johnson responded there is a residence on the other side of the fence. Going further down Warren Drive, the next property is a residence.

Mr. Leone: What goes down South Bay Road?

The Board responded a flower shop—a commercial entity.

Mr. Leone: Are you doing any buffering along that edge?

Mr. Johnson: We have not indicated any at this time.

Mr. Morgan noted the hours of operation—7 a.m. to 7 p.m., five days per week.

Mr. Purdy: Not every neighbor likes a six foot fence blocking their view. I realize we like to control headlight glare etc., but I would like to see you contact the neighbor asking him if he really wants his view blocked. Maybe the neighbor would be content with a four foot fence that does not block his visibility.

Mr. Morgan: That is a rental facility.

Mr. Leone agreed it was something that should be looked at. All of your cars are pulling in this way. If it is not vegetation, you might think about carrying that fence part of the way up. Where would you put your dumpster containers? (Mr. Johnson responded.) They have to be enclosed. Is the area next to the dumpster greenspace?

Mr. Johnson: Yes with an all grass lawn out in front. We would only be carrying the sidewalk half way up.

Mr. Leone: Would anyone like to see more plantings along the corner of South Bay and Warren? Do you want to see anything else in the area?

Mr. Smith: Less is better for more visibility.

Mr. Leone asked about snow storage and building lights.

Mr. Johnson responded they would probably lose some parking spaces in the winter. I suspect we will have building flood lights.

Mr. Leone reminded them of the need for downcast lighting—no scatter off of the property.

Mr. Parrish noted the need for lighting cut sheets. I have not had a chance to review the plan in detail yet, but we will get comments to you. That will certainly be one of them. In regards to disturbance and storm water issues, the lot is less than an acre in total.

Mrs. May asked for the number of employees.

Mr. Morgan: 4

Mr. Leone asked about drainage in the area.

Mr. Dean: I don't know of any problems. We recently installed some drainage in that area. They run from this area and go across to the north.

Mr. Parrish noted we will have to take a look at that.

Mr. Leone: You need to get your detailed plans into Mark. He needs to take a look at your layout and we will put you back on the agenda.

Mr. Dean noted this has been sent to County Planning. Does the Board want to see a sidewalk anywhere?

The Board decided no because of the bridge. There is no place to go. Without knowing what is going to be done with the bridge it is a moot point.

Mr. Smith requested color schemes for the final submission.

**INFORMAL DISCUSSION:**

**B & C STORAGE**

Ms. Cole stated you will probably all remember this is the proposed self storage facility that was going to go in across from the high school in a General Commercial zone. The applicant came before this Board a couple of times and was eventually told by the former Director of Planning that the use was not permissible in a General Commercial zone because it was not one of the specifically listed uses for GC. The applicant appealed that to the ZBA who said we think that it is consistent with the statement of general intent for GC and we think that it is permissible. Basically, the ZBA said go back to the Planning Board for site plan approval. It came back to this Board. This Board said we are looking at Section 210-12 C7 of the code which states: other commercial uses are permitted in commercial districts if the Planning Board finds that the proposed use meets the statement of intent and is of the same general character, size, scale and intensity as those allowed. This Board then said we do not think that is a good use for the site, we are going to deny you site plan approval. The applicant said we think the ZBA's interpretation is binding upon you. They brought an Article 78 action asking our local trial court to review it. Essentially the local trial court agreed with this Board---that you have the authority to make that determination under this provision of your code. But, that on the record before it, in the minutes, the local court could not say that you fully considered both of those issues. The order was to remand it back to you, send it back to you, for you to fully consider both of those two issues. The applicant said we think the trial court is wrong and appealed it to the next level appellate court. We argued before

the appellate court in September and finally got a decision in October. That decision upheld the local trial court and basically said send it back to the Planning Board for a fully complete determination on those two issues---whether this is a permissible use in a GC zone. In light of that decision, our office, in addition to doing the necessary filings associated with that decision and things of that nature, sent a letter to B & C's counsel advising them that this evening we would give an informal presentation on the issue reminding the Board of the procedural history. We asked if B & C would like to be placed upon an up-coming agenda for this Board to reconsider that issue. We reminded them of when your meetings are and when agendas are finalized. We have not heard from them yet, but it was only sent to them at the end of last week. So, we are waiting to hear back about what they would like to do.

Mr. Leone: Is it the use of storage in the particular location or is it General Commercial through-out the Town?

Ms. Cole: You are asking whether this is site specific or whether this is specific to any GC zone within the Town. The Court's decision says to determine whether that provision of the code applies and is appropriate-- in which case it is a permitted use. I have to take that as being what ever decision you make on this issue is going to apply to anyone else in this same situation.

Mr. Smith: It would be a precedent?

Ms. Cole: You would be establishing a precedent, depending upon what you do.

Mr. Leone: What is the sense in having a code in this incidence, which has it as a listed use in Industrial?

Mr. Smith: It is warehousing.

Mr. Leone: If the Town feels differently, the rule needs to be changed. I understand that the code or this Board can not list every single use. That is why the code says or other uses that the Planning Board feels is consistent with the neighborhood. Where it is a defined use how can the Planning Board say go ahead a do it anyway?

Ms. Cole: I would say if or when the applicant chooses to come back to you for that final determination, those are the types of things that you need to consider. At that time when you issue a final second determination on the issue, you should fully articulate why the proposed use does or does not meet the statement of general intent for GC and whether it is of the same general size, scale and intensity of those allowed now. The reasoning that you are discussing now could be in support of either or both of those two things.

I have put the ball in their court so to speak because I am not sure the applicant wants to pursue this any further. Certainly, if they would like to, it is their right to do so. I have asked them to contact us if they would like to do that and if so, when.

Mr. Purdy noted that he was on the ZBA when the variance was given and explained why that Board did what it did. We looked at traffic. With self storage there is a minimal amount of traffic. We do not need another gas station, industry, etc in this area which already has a heavy traffic flow. At the time I felt that self-storage was the best fit as a use for the property.

More discussion occurred.

Ms. Cole: Because the applicant is not here tonight and because this is an informal discussion, I do not want to get too much into the details of the rights or wrongs of the decision. We should save that for when the applicant is able to be here and is able to be a part of the discussion. I just wanted to make sure the Board had the procedural history and that you were aware that the applicant might be coming back before you. It is something to keep thinking about.

Mr. Smith: Assuming that we affirm our original decision and that we have all of the proper wording, etc. together, what would be their next step?

Ms. Cole: They could start the same process all over again. They could commence an Article 78 action to have your second determination reviewed in the local trial court.

Mr. Smith: They would be paying legal fees?

Ms. Cole: For their own counsel, absolutely.

**Mrs. May made a motion** to adjourn. **Mr. Smith seconded the motion.** The motion was **approved** unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD,  
THE MEETING WAS ADJOURNED AT 7:47 P.M.

Dated: November 3, 2008

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Tonia Mosley, Clerk

