

**TOWN OF BALLSTON
PLANNING BOARD MEETING**

October 26, 2022 6:30 pm

Town Hall Meeting Room
323 Charlton Road
Ballston Spa, NY 12020

ATTENDEES:

John Van Vorst, Chairman
Dave Blair, Board Member
Andrew Collar, 1st Alternate
Audeliz Matias, Board Member
Michael Zuritis, Board Member
Bill Keniry, Attorney
Matt Vaverchak, Code Enforcement Official
Jenny Lippmann, Engineer

ABSENT:

Ben Baskin, Board Member
Peter DiLorenzo, Board Member
Dale King, 2nd Alternate
Patrick Maher, Board Member

Call to Order

The meeting was called to order at 6:30 pm.

Pledge of Allegiance was led by Chairman Van Vorst.

Announcements

Chairman Van Vorst stated that if anyone saw an earlier agenda there have been some changes: the Wellnow Site Plan has been removed and the Astro Chemical Company Site Plan has been tabled.

Approval of Previous Minutes

Neither the August 31, 2022 meeting minutes nor the September 28, 2022 meeting minutes could be considered for approval as there was not a quorum of members present this evening who were present at those meetings.

OLD BUSINESS

Foreverly House Site Plan (PB 2022-009)

1214 Saratoga Road; SBL 239.-1-10.111

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Site Plan Review for two proposed buildings, each with two residential units, and additional parking. SEQRA Unlisted Action, open.

Ms. Kara Tedford and Mr. Dave Carr of The LA Group, **Mr. Ray O’Conor** and **Ms. Cheryl Hage Perez** of the Veterans & Community Housing Coalition

Ms. Tedford stated that Foreverly house is associated with the Veterans & Community Housing Coalition (VCHC). She asked Ms. Hage Perez to give an overview of the project to refresh everyone’s memory.

Ms. Hage Perez stated that VCHC, located in Ballston Spa, provides housing and support services to veterans who are having a difficult time transitioning from military life to civilian life. They have the only female supportive house in NY State, as well as a male transition home. They also own a two-family home, several apartments, and a 12-unit apartment complex near Wilton. The agency is growing in service and they try to identify gaps in services. Through their Guardian House program, which is a female housing program, they have seen that there are single veteran moms who need help, but due to Veterans Affairs (VA) regulations, their children are not allowed in the Guardian House facility. The VCHC had struggled with this for many years before meeting with Mr. O’Conor, who suggested developing a house for this population. There is no VA, state, or federal funding for the project, so they started a grassroots campaign. The members of Saratoga County have supported the project by offering a variety of pro bono services. Over \$700,000 has been raised for the development of this project. They have worked closely with the Stratton VA, who is confident that this program will benefit the VCHC residents who need this kind of help and support for themselves, and to ensure that their children grow up in a safe, supportive environment.

Mr. O’Conor stated that the veteran moms who are having a difficult time with the transition from military to civilian life have two options; one is to get a voucher from the VA, then they’re sent off to deal with all the issues on their own, or they can give up their children to a family member or put them in foster care. Neither of those options is tolerable, so that’s what set them on this mission to get Foreverly House built.

Ms. Tedford stated that Foreverly House will be located on the same property as the existing Guardian House, at 1214 Saratoga Road. The proposed housing will be behind the Guardian House building, using the existing driveway for access. The number of parking spaces will not change but some handicap parking will be added. The project will be phased as funding is not currently available for the whole project. They are seeking approval for the entire project but one building, containing two units, will be built first. The second building, containing two units, will be built later. The plan for utilities will be water connection out to an existing six-inch lateral. Each unit will have their own water meter, shut-off, and line that connects to the water main. They are proposing two septic systems. Each building will have two units with four bedrooms each, for a total of eight bedrooms per building. The project is in a business district, but is classified as community service on their documents, per the Building Department, as it doesn’t really fit into the category of business. The parcel is 3.86 acres (one acre required), lot width is 356 feet (175 feet required), and lot coverage is 11.6% (40% maximum allowed), and the height will be below the maximum of 40 feet allowed. Ms. Tedford stated that, regarding the

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engineering comment letter question about the type of building materials and appearance, the siding will be gray cement fiber board. She showed a drawing to the Board.

Ms. Lippmann summarized her comment letter and stated that the outstanding items are minor. The project is within 500 feet of an agricultural district so an Agricultural Data Statement must be submitted. Several of her comments are related to parking. She stated that the parking lot is existing; they are just adding the ADA compliant spaces. She stated that it's up to the Board's discretion, but since a new parking lot is not being added, it may make sense to keep some of the existing nonconformances as nonconforming items, with regard to parking stall length and landscaping and green space requirements within the parking lot.

Chairman Van Vorst stated that it is his understanding that the residents do not have vehicles.

Ms. Hage Perez stated that that is correct; occasionally someone comes to visit, the VA support team will come, at times there are community members coming for donations, but the parking lot is never full.

Ms. Lippmann asked if it is confirmed that no sign will be proposed.

Ms. Tedford answered affirmatively, there will be no sign.

Ms. Lippmann recommended that the building elevations be submitted for the next meeting, as an architectural review is a requirement of building code in this district. She stated that the water connection is currently being reviewed by the MJ Engineering water department at the request of the Town Water Superintendent, Joe Whalen. She does not expect any issues, but they will validate capacity for the project. It is not subject to a SWPPP; stormwater management is straightforward.

Chairman Van Vorst polled the Board for questions or comments.

Mr. Blair stated that four bedrooms is a fairly large apartment and asked if there will be restrictions on the people who are staying there and who can live with them; he asked if spouses are allowed to live there or if it can only be the mom and her children.

Ms. Hage Perez stated that they're just single mom bedrooms with their children.

Chairman Van Vorst asked if the Board would feel comfortable proceeding with SEQR.

Ms. Lippmann stated that the only outstanding item is the State Historic Preservation Office (SHPO) letter.

Ms. Tedford stated that the project is currently under review with SHPO. They received a letter from the Department of Environmental Conservation (DEC) that there are no eagles on site.

Ms. Lippmann stated that the site is flagged through the SHPO mapper as being adjacent to or containing archaeologically sensitive areas. In that case MJ Engineering asks for a no impact letter from SHPO, who has become stricter. If it's not a publicly funded or public project they want documentation that documentation from them is required. She stated that Ms. Tedford sent that this week, and that generally a negative SEQR declaration is not issued without that sign-off. She recommended that the Board not issue a negative declaration

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until that documentation is in place but schedule a Public Hearing for the next meeting in anticipation of being able to issue the negative declaration at that meeting.

Chairman Van Vorst asked if County and Fire Department referrals must occur.

Ms. Lippmann answered affirmatively to both; County referral could be initiated, and the fire department will take a look as well.

Mr. Keniry stated that the Board could declare Lead Agency and classify the project as a SEQR Unlisted Action. He agrees with Ms. Lippmann that the prudent course of action would be to stop short of a negative declaration. Assuming the letter is in hand at the next meeting, the Board could then complete SEQR and open the Public Hearing; it's the pleasure of the Board if they then choose to close the Public Hearing and vote on the merits of the application at that meeting.

Chairman Van Vorst asked Mr. Keniry if a motion is needed for County referral.

Mr. Keniry answered no, that it is an administrative action; his recommendation is to send it.

MOTION: Mr. Blair made a motion to name the Town of Ballston Planning Board the Lead Agency in the SEQR process for this Unlisted Action. Ms. Matias seconded the motion. All in favor. **CARRIED.**

MOTION: Mr. Blair made a motion to schedule a Public Hearing for November 30, 2022 at 6:35 pm. Ms. Matias seconded the motion. All in favor. **CARRIED.**

The applicants thanked the Board.

25 Middleline Road Major Subdivision (PB 2022-017)

SBL 238.-2-92

Proposed eight-lot single-family home conservation subdivision including seven single-family homes and public roadway on 72 acres. SEQRA Type 1 Action, open.

Ms. Stephanie Alessandrini of Environmental Design Partnership.

Ms. Alessandrini stated that she is here on behalf of Mark Katz of Katz Excavating, to present on the eight-lot major subdivision at 25 Middleline Road. The parcel is to the west of Ballston Lake, just north of Anchor Diamond Park, south of Charlton Road. This project was originally presented to the Planning Board in July 2017 for a sketch plan review. It was presented again in March 2018 to provide comments; the Planning Board declared it a SEQR Type 1 Action and moved to declare themselves Lead Agency and start a coordinated review. In May 2018 a Public Hearing was opened, the Planning Board made a motion again to declare themselves Lead Agency and that was carried. The applicant took some time to work on the plans, then Covid hit, then came the moratorium, and the change in zoning. Now they're back to pick up that approval process and

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continue to move things forward. She stated that they were informed that with the amount of time that had elapsed this would be considered like a new application, so they resubmitted the revised forms and supporting documentation. They met in September 2022 with the Building Department and then with the Town Designated Engineer to discuss the plan. They are continuing with the eight-lot major subdivision with four lots over five acres and four lots under five acres, so it will be considered a non-reealty subdivision and will not require the Department of Health (DOH) approval. The lots will be serviced by private wells and private septic systems. The parcel is approximately 72 acres, located in the Rural District, consisting of open fields and wooded areas, and an existing residential driveway that services the existing home. There's another driveway that comes off of that to the north that services that home as part of the subdivision. With the road they're building, that homeowner would have access to the cul-de-sac, in order to have access to the main road. Some minor changes from the 2017 and 2018 plans: the road is changing from a private road to a public road that is built to Town standards; there are minor revisions to locations of the proposed homes to move them away from the wetlands. A wetland delineation was performed in August 2022, so adjustments were made to home locations and driveways to avoid any additional impacts. They are aiming to keep impacts under one tenth of an acre and based on their calculations, design, and grading they have achieved that. They are pursuing those permit approvals now with the Army Corps of Engineers. Stormwater will be managed on site close to Middleline Road with a wet retention pond. Seven homes will be constructed plus one existing home which equals eight lots. The existing home is serviced by a septic system and well which will remain in place. Ms. Alessandrini stated that they have received SHPO sign-off. They received Ms. Lippmann's comments. Regarding the eagle, they are working with DEC to receive sign-off. Regarding the number of lots allowed, based on the calculations they are allowed nine lots and they are below that threshold.

Ms. Lippmann stated that the SWPPP comment letter would be coming to the applicant tomorrow. She stated that, generally speaking, there weren't any red flags. It is a conservation subdivision which is required in the Rural District. As Ms. Alessandrini indicated, she thinks there was a typo in the calculations, but it doesn't affect the number of lots they are proposing. Most other comments are minor; she has questions about right-of-way for the cul-de-sac. The zoning says one thing but the detail the applicant is using says something slightly different.

Ms. Alessandrini stated that she didn't know if there was an updated detail.

Ms. Lippmann stated that she doesn't know so she will follow up with the Highway Department.

Ms. Alessandrini stated they will match to that detail. For the conservation, they were planning on conserving about 36 acres of land off lot 7, to the rear, to be considered as part of the development.

Ms. Lippmann asked what the proposed method is of conserving that land, if it would be deed restriction or conservation easement; she asked what the intent is.

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Ms. Alessandrini stated that it would be conservation easement or deed restriction. She will confer with the applicant for their preferred method. The area they plan to restrict is marked out and hatched on the site plans.

Ms. Lippmann stated that the only other comment she wanted to address to the Board is regarding SEQR classification. The project was previously classified as a Type 1 Action. Probably since it was a realty subdivision at that time. They have modified the plans to come out of that classification, so it is no longer considered a realty subdivision. Otherwise, it didn't meet any of the thresholds of a Type 1. It's up to the Board's discretion if they want to do a coordinated review anyway but with the Unlisted Action classification a coordinated review isn't mandatory.

Chairman Van Vorst polled the Board for their opinions.

Ms. Lippmann stated that she doesn't know if the coordinated review was done. The Board at that time classified and did the Lead Agency designation, but she doesn't know if the letters were ever sent.

Ms. Alessandrini stated that she thinks they kept carrying the motion forward, so she doesn't know if they got to that point. There was a public hearing in May 2018, but she doesn't think it was ever officially closed.

Mr. Keniry stated that from what he can see it was never closed.

Chairman Van Vorst asked if it is introduced as a new project, should they start over.

Mr. Keniry answered affirmatively.

Chairman Van Vorst polled the Board as to the SEQR classification, if it should be Unlisted or Type 1.

Mr. Blair stated Unlisted.

Mr. Zuritis agreed, unless there is something pushing it to Type 1.

Ms. Lippmann stated that 100,000 homes triggers the Type 1; with some other triggers then it's only 25% of that, so this proposal is nowhere near the threshold for Type 1 Action.

Chairman Van Vorst polled the Board for questions or comments.

Mr. Blair stated that the retention pond on lot 1 says it will be conveyed to the Town of Ballston, and asked if it is part of lot 1 will there be an easement or something in place to allow the Town to maintain that, since it will be sold to someone as part of their lot.

Ms. Alessandrini stated that there will be an easement.

Ms. Lippmann stated that that will be addressed in the engineering comment letter about the SWPPP. She will confirm but it is her assumption and inclination that any basins would not be conveyed to the Town as the Town does not want to own them. However, an easement and a maintenance agreement would be required in case the property owner isn't maintaining the basin, so the Town would have the ability to come in and clean that out. She stated that they will work through the details of that agreement over the next month.

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Chairman Van Vorst polled the Board for comments.

Ms. Matias stated that she seems to remember another time that the Board discussed a basin in the front of a development.

Mr. Blair stated that it was on Round Lake Road.

Ms. Matias stated that the Town doesn't want to own the basin so there's no benefit to having it in the front. If the Town is taking care of it, she could see having it in the front. She asked if there is a reason and if they tried finding another configuration.

Ms. Alessandrini stated that with the topography that's the most suitable location as drainage flows down the slope and that's the lowest point. To try to grade the basin into another location would require a lot more earth movement and would be more impactful to the site, so that's why they selected that location.

Mr. Collar asked if they already had Army Corps of Engineering approval for the wetlands.

Ms. Alessandrini stated that they don't have it yet, they're working with them now.

Mr. Collar asked who enforces the deed restriction and if it needs to be set back in the woods.

Ms. Alessandrini asked if he was referring to the conservation area.

Mr. Collar answered affirmatively.

Ms. Lippmann stated that deed restrictions become a civil matter.

Mr. Keniry stated that it's a great question because it gets bounced around.

Chairman Van Vorst stated that if you make your neighbor mad, they'll enforce it.

Mr. Keniry stated that the Town doesn't have the capacity to pursue. Generally speaking, there's not active enforcement.

Chairman Van Vorst polled the Board for questions or comments.

Mr. Keniry stated that in the deed there's a reference to a lot line adjustment map and then in the conclusion it states that the property is subject to a permanent easement along Middleline Road as shown on the aforesaid map. He stated that he is not sure if we know where that is. There's another reference that states: also together with and subject to an ingress/egress and utility easement as shown on the aforesaid map. It obviously is not referring to the map the applicant submitted; it's referring to the map mentioned in the deed. Mr. Keniry would like to pin those down and find out what and where they are. The deed that was submitted refers to that map.

Chairman Van Vorst asked if there is a date on the map.

Mr. Keniry stated that the lot line adjustment appears to have been done; it's a Van Guilder map dated November 14, 2007 and was filed in the Saratoga County Clerk's on office June 6, 2008.

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Chairman Van Vorst stated that his recollection is that the property to the north and this property were all one property for generations. The owner of the property to the north is the sister of the current owner of the property to the south. They decided to divide the property roughly in half, so they would each have a portion, which came before the Planning Board in 2007.

Mr. Keniry stated that that is consistent with the minutes; at one point it says is she accepting of this and the representation is yes.

Mr. Blair asked if that created the tax map number 23.-2-44.1.

Chairman Van Vorst answered affirmatively and stated that the easement is over the shared private driveway that they use to access their property.

Mr. Keniry asked if that easement is on the parcel that is the subject of the application.

Ms. Lippmann answered affirmatively and stated that it's on the site plan.

Chairman Van Vorst stated that they are proposing a new Town road which substitutes for the private driveway but is a little bit to the north.

Ms. Lippmann stated that it negates the need for the easement.

Mr. Keniry asked if that homeowner will use the private easement to access the public road or if it will be a complete replacement.

Ms. Alessandrini stated that they will still have access.

Mr. Keniry asked if the lot that had the benefit of the easement will have frontage on the public road.

Chairman Van Vorst answered affirmatively and stated that they will have access through the cul-de-sac.

Ms. Lippmann stated that it's better for that parcel which is landlocked otherwise.

Chairman Van Vorst stated that he has some comments on the Environmental Assessment Form (EAF). On page 2, item B.e, County Agencies is marked no, and he believes that should be yes.

Ms. Alessandrini stated that they would make that adjustment.

Chairman Van Vorst stated that item C.4.b, where it asks what police or public protection forces serve the project site, the answer says Ballston Spa, but the Ballston Spa Police Department only serves the village so the answer should be the Saratoga County Sheriff or the State Police.

Ms. Alessandrini said ok.

Chairman Van Vorst stated that item C.4.d where is asks what parks serve the project site, he assumes they would include the park next door.

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Ms. Alessandrini confirmed that it is Anchor Diamond Park.

Chairman Van Vorst stated that item E.2.f talks about slopes; the plans show several slopes greater than 15% but in the EAF it says that 100% of the slopes are below 15%. He stated that he doesn't know what percent is less than 15% sloped but it isn't 100%.

Ms. Alessandrini stated that they will look at the slope analysis and update the form.

Chairman Van Vorst stated that item E.3.e talks about the Register of Historic Places and he thinks that Hawkwood would qualify as a historic place, as there are historical markers there.

Ms. Lippmann stated that when you do the EAF mapper the form is pre-populated, and it doesn't come up as a historical structure. She suggested the applicant double check.

Chairman Van Vorst stated that the drawing doesn't show the wells and septic of the neighboring properties; they normally do.

Ms. Alessandrini stated that they are depicted but not labeled; they will add the labels.

Chairman Van Vorst polled the Board for questions or comments.

Mr. Collar asked why they kept it to eight lots.

Ms. Alessandrini stated that they didn't go for nine due to space requirements and trying to fit that in while still not meeting the realty subdivision requirement.

Ms. Lippmann stated that, for those who don't know, realty subdivisions must be reviewed by the Department of Health (DOH). The trigger is five or more parcels that are five acres or less. The applicant has four parcels that are less than five acres; to try to squeeze in another one would trigger that extra review.

Chairman Van Vorst stated that the Board will see the applicant next time.

Ms. Alessandrini stated that they have to address the comments on the EAF form before they can move forward; she asked if a Public Hearing needed to be set.

Chairman Van Vorst answered that one would be set eventually but he doesn't think the Board is ready for that yet. He polled the Board and they all agreed to wait on setting the Public Hearing.

Ms. Alessandrini thanked the Board.

NEW BUSINESS

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Dish Wireless Special Use Permit (PB 2022-018)

831 Route 50; SBL 257.-2-16

Special Use Permit for proposed installation of three antennas and associated equipment on the Town-owned monopole, as well as a platform in the fenced-in compound. SEQRA Unlisted Action, open.

Mr. Jack Vandenabeele of Airosmith Development.

Mr. Vandenabeele stated that he is here on behalf of Dish Wireless. They are proposing to install three antennas and associated equipment on the tower owned by the Town at 831 Route 50 in Burnt Hills. The parcel has an existing telecommunication tower and is in the Burnt Hills Commercial District. Dish is proposing to install at 155 feet on the existing 198-foot tower. The structural analysis has been submitted to MJ Engineering. They went to the Town Board for approval of the proposed lease. The load for the proposed Dish Wireless equipment is less than what Sprint previously had on the tower before they decommissioned, and will have less impact visually. He stated that he did not submit a coverage map with the submission but had it with him; he gave the map to the Board to review. He has received the engineering comment letter.

Chairman Van Vorst polled the Board for questions or comments.

Mr. Collar asked if this antenna is replacing the antenna that was there.

Mr. Vandenabeele stated that Sprint and T-Mobile merged, and part of that agreement was that there had to be a fourth carrier. Dish Wireless stepped up to fill that void. In most locations where T-Mobile and Sprint both had antennas deployed in one location, they decommissioned one set. On this tower, Sprint decommissioned all of their equipment from that site and Dish Wireless is going on as a completely new carrier.

Ms. Lippmann stated that she and the Building Department worked with both Sprint and T-Mobile when they merged, for the decommissioning of one; then T-Mobile replaced their equipment on the tower as well. It didn't go to the Planning Board because it was considered just a replacement. The trigger here is that it's a new carrier so they needed a new lease agreement with the Town. That's why the Board is seeing this application and didn't see the others.

Chairman Van Vorst asked why the antennas will be installed at 155 feet and not at the top.

Mr. Vandenabeele stated that above 155 feet is occupied by existing carriers: Verizon, T-Mobile, and AT&T.

Chairman Van Vorst stated that the first page of the Federal Communications Commission (FCC) document lists the license expiration date as April 29, 2022.

Ms. Matias stated that different pages have different expiration dates.

Mr. Vandenabeele stated that they are for different blocks of frequency and he will check for updated licenses.

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Chairman Van Vorst stated that another question is on the structural analysis report; on page five it states that the existing foundation was not analyzed as part of this report. It seems to him that an analysis of the foundation would be critical on a tower that's roughly 200 feet tall. He asked if Mr. Vandenabeele can explain that.

Mr. Vandenabeele stated that he cannot because he's not an engineer.

Ms. Lippmann stated that that has been the case for all of these. Her understanding is that there's no information on that foundation that was made available to MJ Engineering. This is the third for which they have reviewed the structural for the pole itself, all based on the assumption that the tower was built well. That's all they have. The tower stands, it had all the antennas on it previously, and as the applicant stated, what's going on there now is lighter.

Mr. Zuritis stated that the analysis is based on not exceeding the previously proved stresses on the tower.

Ms. Lippmann stated that that is correct.

Chairman Van Vorst polled the Board as to their opinions.

Mr. Zuritis stated that it's acceptable if it does not exceed what was previously placed on the tower; it's a reasonable assumption.

Ms. Lippmann stated that there are only four slots and there are four lots occupied. Two consolidated into one and replaced their equipment and it was all lighter and then the applicant is placing the fourth set which is lighter. There's no way to do a structural analysis on the foundation itself without knowing what's underground.

Mr. Zuritis asked if there are as-built drawings.

Ms. Lippmann answered not that have been made available to MJ, and not that Mr. Vaverchak or Mr. Stickle have seen.

Mr. Zuritis asked when the tower was installed.

Ms. Lippmann stated that she didn't know, maybe in the early 2000s.

Chairman Van Vorst stated that he guessed 12-15 years ago. Originally the antennas were on the water tower but had to be moved for some reason.

Mr. Zuritis asked if it the plans would have been part of a submitted permit package.

Mr. Keniry stated that Kerri and others are looking for that information but haven't been successful yet.

Ms. Lippmann stated that they consider it to be a replacement in kind.

Mr. Blair stated that he thinks it would be in the Town's best interest to do some kind of sonographic analysis to make sure the concrete ballast is structurally sound.

Ms. Lippmann stated that they can't do ground penetrating radar (GPR) because it's too deep.

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Mr. Zuritis asked if they could go back to the original engineering firm who designed it to get copies.

Ms. Lippmann stated that they don't know who that is.

Chairman Van Vorst polled the Board as to if they want to pursue that or if they're comfortable with it.

Mr. Zuritis stated that he's comfortable with less stress than was there originally but thinks that it's in the Town's best interest to get a copy since they own it; it should be on file.

Mr. Blair stated that he's okay with it.

Ms. Matias stated that the count was four when it was originally built.

Mr. Collar stated that it's a relatively new tower and asked if MJ did stress analysis on the base plate.

Ms. Lippman stated that it was done on everything above ground.

Mr. Collar asked if the concerns are for what's underground.

Ms. Lippmann answered affirmatively.

Mr. Zuritis stated that they don't know what is underground, how well the foundation was designed.

Ms. Lippmann stated that they must assume that it was engineered and stamped and permitted; it's owned by the Town. She stated that if the applicant wanted to add additional load, MJ engineering wouldn't be able to say that there was enough foundation there to sustain the load but since it is not exceeding what is there, they made that assumption.

Mr. Vandenabeele stated that he just looked at the FCC website and the first license expiration date is June 14, 2023. They just submitted a previous file.

Ms. Lippmann asked if they are updated yearly or every couple of years.

Mr. Vandenabeele stated that he doesn't know. The FCC auctions off blocks every so often; he didn't know if there is a set time frame.

Chairman Van Vorst stated that the contract agreement with the Town has a 2% increase. For solar projects the annual increase was connected to the Consumer Price Index (CPI). He asked how the applicant got this by the Town with a 2% increase.

Mr. Vandenabeele stated that they negotiated with the Town Attorney Ms. Kaelin and others.

Chairman Van Vorst stated that with inflation at 8%, they got a bargain.

Mr. Vandenabeele stated that it was discussed with the Town Board.

Chairman Van Vorst asked if there should be a SEQR coordinated review.

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Ms. Lippmann stated no, in her opinion. She looked for avenues that this would be a Type 2 Action, but telecommunications require Unlisted. She looked at replacement in kind, but telecommunications are excluded from replacement in kind.

Chairman Van Vorst polled the Board for questions or comments.

Mr. Vandenabeele stated that he looked up the other license and it is also set until June 14, 2023. They just had an older file.

Chairman Van Vorst asked if the Board wanted to declare the Town of Ballston the Lead Agency for this Unlisted Action.

MOTION: Mr. Blair made a motion to name the Town of Ballston the Lead Agency in the SEQR process for this Unlisted Action. Ms. Matias seconded the motion. All in favor. **CARRIED.**

Chairman Van Vorst asked if the Board is ready to schedule a Public Hearing.

Mr. Keniry stated that the Board can be, and can go further on SEQR if they choose, or they can do it next month.

Ms. Lippmann stated that the EAF mapper flagged the project for SHPO; the Board may want to wait for the letter.

Mr. Keniry asked if it has been initiated.

Ms. Lippman stated that it was in the comment letter and asked the applicant if they have submitted yet.

Mr. Vandenbeelee stated that they haven't yet; part of the process is that they must submit for regulatory approval and are waiting on a form from the Town. If they get the form, they can submit for regulatory approval, which involves SHPO review, and should have approval for the next meeting.

Chairman Van Vorst stated that the Board will wait for that determination but can set a Public Hearing.

MOTION: Mr. Blair made a motion to schedule a Public Hearing for November 30, 2022 at 6:45 pm. Mr. Zuritis seconded the motion. All in favor. **CARRIED.**

Ms. Matias stated that photos of how the tower is now and how it would look would be helpful for the public.

Ms. Lippmann asked if they could also get a picture of how it looked a year ago when it had four.

Ms. Matias stated that that would be helpful.

Mr. Vandenbeelee stated that he thinks they have photos or can get them.

Mr. Keniry stated that on larger projects, like if this were a monopole project, the Board would be talking about decommissioning. The Code does provide for it, in terms of the subject of removal. This is a new project to the Board. Something to think about; decommissioning regarding taking off hardware from the tower.

**TOWN OF BALLSTON
PLANNING BOARD MEETING**

October 26, 2022 6:30 pm

Town Hall Meeting Room
323 Charlton Road
Ballston Spa, NY 12020

Mr. Blair asked if the Board has asked for escrow in the past, in case Dish Wireless goes out of business, similar to the discussions about solar farms.

Mr. Keniry stated that can't say because he doesn't know; Kerri is looking for historical information. His initial issue was where are the approvals, is there a special permit as would be required for the tower, and we haven't been able to find anything.

Ms. Lippmann asked if the Town would require a special permit if they built it, because it is its own entity.

Mr. Keniry stated that they should have gone through a legal analysis, governmental versus proprietary, and his thought process is that when you balance those interests this is not really governmental; this is really more proprietary, or a business proposition. Government services are exempt, but if the government is involved in business there should be a site plan review. He doesn't know the history. He doesn't think decommissioning for the tower makes sense, but the Code provides for site plan review and in the telecommunications section for colocation the removal section does apply, which is appropriate for the Board to consider.

Mr. Zuritis asked if a lease agreement covers the decommissioning agreement.

Mr. Vandenabeele stated that there is a section that covers surrender. Dish Wireless would have 60 days for an equipment removal period, and then there would be holdover. If it gets to that point then they must pay 150% monthly rent, prorated for the number of days they go past the equipment removal period.

Chairman Van Vorst asked what would happen if Dish Wireless went bankrupt.

Mr. Vandenabeele stated that he doesn't know.

Ms. Matias asked what if Dish Wireless is bought by another company.

Mr. Keniry stated that they'll step into their shoes. But what if they truly default and walk away; that's the point.

Ms. Matias asked if there is a Special Use Permit required.

Mr. Keniry stated that that is 100% right for the underlying tower, but the coloration piece with respect to the antennas does not require a Special use Permit. He thinks that the original Special use Permit is there, and wonders what the conditions on it are.

Ms. Lippmann stated that she wonders if it was built before it would have required a Special Use Permit.

Chairman Van Vorst asked Mr. Vandenabeele to give some new perspective at the next meeting.

Mr. Vandenabeele asked what the Board would like.

Mr. Zuritis asked what they would estimate is the cost to remove their equipment from the tower.

Mr. Vandenabeele stated that an overestimate would be \$30,000-\$40,000.

**TOWN OF BALLSTON
PLANNING BOARD MEETING**

October 26, 2022 6:30 pm

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Mr. Blair stated that they would need a crane.

Mr. Vandenabeele stated that this a more of an engineering or construction question.

Ms. Lippmann stated that she assumes his company, or someone, has done a decommissioning estimate that could be presented at the next meeting.

Mr. Vandenabeele stated that he will look into that.

Chairman Van Vorst stated that that would be helpful; the Board went through this with the solar arrays. If the company that owns or runs the solar farm goes out of business, somebody must be responsible for removing and decommissioning everything. They set up an escrow account to ensure that if the owner or operator was unable or unwilling to remove the array, that there would be funds available to compensate whoever had to do it. That's what the Board is looking at here. He stated that it would be greatly appreciated if Mr. Vandenabeele could do that for next month.

Mr. Vandenabeele asked what the next step is, if he brings an estimate.

Chairman Van Vorst stated that the Board would probably build an escrow account into the approval.

Ms. Lippmann asked what the life expectancy of the equipment is.

Mr. Vandenabeele stated that the technology generally outpaces the equipment.

Ms. Lippmann asked if he knows how often they replace it.

Mr. Vandenabeele stated that it may need replacement every two years or so, some longer than that and some more often.

MOTION: Mr. Blair made a motion to adjourn the meeting. Mr. Zuritis seconded the motion. All in favor.
CARRIED.

Meeting was adjourned at 7:40 pm.

Respectfully submitted,

Kerri Mains

Kerri Mains
Planning Board Secretary