

The purpose of the Hearing is to hear the appeal of Homeland Tower, LLC from the decision of the Town Conservation Board to deny the application of Homeland Tower, LLC and New York SMSA Limited Partnership d/b/a Verizon Wireless for a wetlands permit sought in connection with an application for a Special Use Permit to erect a wireless telecommunication service facility consisting of a 180-foot monopole with antennas, together with related equipment at the base thereof within a multi-carrier equipment compound.

**PRESENT**

Richard Shea	Supervisor
John Van Tassel	Councilman
Michael Leonard	Councilman
Robert Flaherty	Councilman
Stephen Gaba	Town Attorney

**ABSENT**

Nancy Montgomery            Councilwoman

Town Clerk Merando read the Hearing Notice.

Robert D. Gaudioso, Attorney representing Homeland Towers, LLC and New York SMSA Limited Partnership d/b/a Verizon Wireless addressed the Town Board stating as a preliminary matter he is uncertain how this appeal is capable of going forward pursuant to §93-3-9G6. The Conservation’s board determination was filed with the Town Clerk and was to be forwarded to the applicant by Certified Mail/return receipt requested. He stated that for the record he had not received said determination via Certified Mail. He noted that they filed the appeal paperwork as simply a matter of course. There is a requirement that any appeal be made within 14 days as per §93-10 of the Town’s Wetlands Code. So as an initial matter Mr. Gaudioso stated that he is not sure that this application is right for a Public Hearing, in fact the resolution/determination is not on record as of yet.

Mr. Gaudioso reiterated that he is not in receipt of the determination. With that being said he would give a brief statement on the proposed project.

Stephen Gaba, Town Attorney responded saying he believed that the Conservation Board minutes (only) reflected the decision. He then asked Mr. Gaudioso if he wanted to go forward and then reserve the right to come back after it’s sent to you. Mr. Gaudioso commented that this matter is in pending litigation. He believes that the procedural posture of the application pursuant to the town law is very important to both the applicant and the town and its residents. Not only substantial compliance but absolute compliance with procedural requirements of the town code, he believes it is wise for all the parties involved. Mr. Gaudioso stated that he is happy to proceed and

provide opposition on the substance of the application. He is happy to hear any public comment on this matter and maybe hold the hearing over. Stephen Gaba stating that since Mr. Gaudioso is present, he should be allowed to make a presentation and any comments that the public may have on this matter and the appeal hearing be left open. The decision will be forwarded via certified mail/return receipt to the applicant and the hearing will be continued at a later date. The continuation of the appeal hearing will be held on May 2, 2018 at 7:00 p.m. at the Town Hall, 238 Main Street, Cold Spring, New York.

Mr. Gaudioso then spoke of the substance of the Special Use Permit Application that was filed with the Zoning Board of Appeals for a personal wireless facility. In order to access the facility from Vineyard Road, the application proposed that an access drive through a wetland buffer. The access drive was originally proposed as twelve feet, it was requested that it be extended to fifteen feet wide to possibly one hundred ninety feet long all within the buffer area. It goes from Vineyard Road through the buffer, there is no impact, no disturbance to the actual wetlands. In fact the wetlands that triggers the buffer is approximately .22 acre man-made Stormwater basin, which was part of the original sub-division of this property. From that basin there is an outflow to an approximately 24 inch pipes underground that lead to a rip-rap outflow. The access drive and the utilities will go over and through that portion. There are two trees that are proposed to be removed in that area, the access drive which he mentioned before is about 15 feet wide. The tree consist of an eight foot locust, and a twelve inch hickory. He cited the code, specifically §93-7 that this is an application of minor significance, because there is no building or structure proposed within the wetland buffer. In fact, the underground utility line is specifically exempt from the definition of a structure under the town code §93.

Mr. Gaudioso stated that based on the materials that they submitted, which they have asked to be incorporated in entire application that was submitted into the Conservation Board are the same materials that were submitted to the Zoning Board. They believe that the criteria for the wetlands permit based on this minor significance of an access drive and utility within a wetland buffer as related to the man-made Stormwater basin.

Supervisor Shea opened up comments to the public.

Paul Eldridge of 100 Rockwald Road, Cold Spring addressed the Town Board stated that he is very familiar with the property that's being discussed. In addition to the road that was put in for Vineyard Road, the culvert and the two retention ponds, there is a watercourse that begins on Coopers property goes into a creek bed along his property at the base of a very steep hillside. That water runs down to a wet area at the base of his property right next to Fadden's property. He went on to say that the waters go from the wetlands, into that retention pond. He referenced the map that shows this area. If you follow that watercourse that water goes into that retention pond in an effort to take water off of Vineyard Road. This watercourse flows down to Mazzazino, then under the Route 9 to a much bigger pond. He noted that this is an inter-connected waterway. That's one factor, another factor is that there is a series of pipes in ground right in the

area where this tower is going to be built. Noting that the center of the tower will be less than 200 feet from his property. That being said he continued to explain that this particular space, where the pad will be and the tower, along with the access road goes through an area that has at least 10 to 15 pipes. Plastic PVC 4 inch pipe that come out of the ground. Some of those pipes come out on an angle and some straight, with heights from 4 inches to 10 inches even 5 to 8 feet, with caps on some. Mr. Eldridge has asked if there was any indication as to why they are there. There is a stone wall in the area that had been broken to enable the pipes to be installed right up against the stone wall. He pointed out that in order to get the large machinery in there to dig the trenches they opened a section of the wall about twenty feet wide which they never repaired.

Mr. Eldridge also stated that he submitted multiple color photographs showing the pipes to the Conservation Board. Homeland Towers had a consultant who wrote a letter that contained comments that the pipes appear to be a project that was abandoned and that they were laying on the ground. Mr. Eldridge commented that they are indeed not laying on the ground. As a matter of fact, if you were to look into the pipe you see water.

Mr. Eldridge then researched any possible activity at that site in the building and planning department. As per Tara, she found nothing for that site. He then went to the Putnam County Health Department only to find out that there was a record on that. Apparently, there was going to be a septic system installed, the Health Department ascertained that there was too much water for that installation and that someone would have had to bring in a lot of fill to achieve an acceptable septic system. He went on to say, that he is not sure whether or not the project was abandoned due to the cost of bringing in the fill or what. The bottom line is that it is a very wet area. If you review the documents on this project, the applicant indicates that they are going to build the tower at that site. There is also no indication from the applicant what their plans are for the existing pipes. He believes that if they intend to put the base there, they would have to go pretty deep, seeing that the water level is very high. This question has remained unanswered to this date. He did note, that it seems as though that area isn't as wet as it was years ago, those pipes have diverted the stream, thus the wetlands along his property is a lot drier than it used to be. The residents along the stream have noticed that they never used to see it dried up, but that has occurred from time to time. He stated that since there are so many ponds and or retention ponds which lead to a wetlands across Route 9 to a larger pond is significant enough that further research need to be addressed.

Councilman Van Tassel asked Mr. Eldridge if the occasional dry is seasonal. Mr. Eldridge responded saying that typically it runs all the time, it's rarely dry.

Roger Gorevic of 60 Round Hill Road addressed the Town Board stating that a site visit is warranted right now, as there are so many trees down at this time due to the recent storms. It is clearly an area that should not be developed. He also noted that he had been told that drainage and or septic was tested at that site, thus the installation of the

existing pipes. And it was determined at the time, that this was the wrong place to put it, as the town would never approve it. Citing that this area is too wet, Mr. Gorevic stated that Homeland Towers has dismissed this issue. Mr. Gorevic stated that he could supply the Town Board with names of contractors involved in the installation of the pipes. He believes the construction of a tower at that site is a danger to all residing adjacent to that site and the community at large. He encouraged the Town Board to review all of the application by Homeland Towers, as this proposal is wrong for this community and this site.

Supervisor Shea asked Mr. Eldridge if what he found at the Putnam County Health Department was an application for a septic system. Mr. Eldridge replied that the Health Department had their notes on the septic system and doing the deep-hole tests. Mr. Eldridge believes that the project was abandoned by the property owner.

Mr. Gaudioso interjected that this issue has been thoroughly reviewed by the Town Engineer and the Natural Resource Officer, which a letter in the file that indicates a review has been completed and it was determined that there was no impact on the proposed project. The issue of the pipes has been vetted by the engineer and the NRO. Mr. Eldridge disagreed with Mr. Gaudioso's comments. There are notes in the file, whereby the Engineer commented that there were water issues at that site.

In response Mr. Gaudioso stated that the facility itself is not in a wetland nor is it in a wetland buffer. Also, the application is merely for the access drive that goes through a buffer. There will be no impact to the drainage pipes that were represented before or this being a link as part of an intermittent stream of this drainage basin. That was all documented in the May 11, 2017 JMC letter. Therefore, the pipes will not be disturbed, in fact, the whole area will be improved if there is any damage that has previously occurred with the inflow and outflow. All setbacks for the facility are within those setbacks as set forth in the town code. He went on to say that there is no septic system involved with this application, or a water supply. The issues of wet ground or not wet ground are simply unrelated to construction issues. Without this access, to this portion of the property, he believes that this statement would indicate that nothing could be built there. That would result in the taking of this portion of the property, because you can't get access.

Cali Gorevic asked how deep the foundation will go for the tower. Mr. Gaudioso responded saying that the foundation design has not been submitted as part of the building permit application. There could be various foundation designs, some designs are 6 or 8 feet deep, others could possibly go up to 20 feet. He stressed that there is no foundation design as of yet.

Allen Jordon of 24 White Rocks Lane explained that he resides in what will be within 900 feet of the project. He gave his opinions with regard to the existing stream, which largely agreed with Mr. Eldridge's concerns with the water courses. His concerns are that if water gets diverted due to this project, he is just downhill from it and can't imagine the possible damage that could result.

Max Garfinkle, Natural Resource Officer added that the letter that he and Ron Gainer compiled stated that he couldn't speak of the impact of the pipes overall. He did say that they queried the records at the town and visited the site, found it was consistent with what Mr. Gaudioso found. He noted that there are town files available, which discusses what was going on with the pipes. If you follow the paper trail, you can piece together a story about the decisions that were made. For example, not to place the septic system there, rather bring it closer to the residence at the top of the hill. The other point he made was that the stream is dry or perceived as dry, is actually an intermittent stream, which is also something that the town regulates. Beyond the 2.2 acres pond there, they also regulate the buffer of that stream as well, which needs to be taken into consideration. Mr. Garfinkle believes that the description of the project is spot on with what would be effecting the area.

Allen Jordon went on to say, that where his property is located, the stream follows down through the backside of it, which then feeds into an area that is again his property. Due to that fact, he is unable to utilize that portion as it is truly a wetland. He is truly puzzled with the flow of the water, it must be going somewhere else, as there is wildlife in that area. He is convinced that his property and the downhill portion of the area is all wetlands.

Max Garfinkle asked that the town council also double check the classification for a minor project. He went on to say that under his interpretation of a minor project, no heavy equipment can be used during construction it has to be hand work.

Mr. Gaudioso stated that we are talking about two different things. What Mr. Gaudioso mentioned before for clarification, was not whether it was a minor or major project, which he believes have their own definitions. He explained that what he was referencing was actually §93-9G6, which defines it not necessarily as a minor or major project, but rather as a project of minor significance. There is a distinction there's a major project, which is what this was that required the coordinated public hearing with the Zoning Board under the full public hearing process. Even though it's a major project for procedural reasons under the code, it's still listed as one of minor significance. Due to the fact that there is no structure or building within the wetland buffer. He added just to clarify, they did revise the plans a number of times, there are a number of letters in response to Max's comments. The plans include full erosion/sediment control measures details. They re-located the access drive once to preserve a number of trees which is all included in the record. He stated if there are any questions, he would be happy to answer them. If there are any additional details or measures of approval, they are happy to consider them as well.

Roger Gorevic returned to the matter of the decision not being sent to the applicant within the 14 day requirement. He stated that the Conservation Board read into the minutes as to their reasoning for denial. Whether it's been discussed tonight or not, they were very clear. It was a lengthy statement as to why, and he can't believe that this should be disregarded at this particular point.

Stephen Gaba interjected that the board has all the minutes before it, however, the applicant hasn't received them. The applicant is entitled to get them via certified/return receipt. In order for the town to respond to it, the applicant has asked that the Hearing be adjourned. Supervisor Shea reinforced that as a matter of procedure, the town is required to do that.

Paul Eldridge just wanted to confirm that there is documentation in the town regarding the proposed septic system. He was informed that there was a file on record and is available for viewing.

Steve Sterling of Lane Gate Road referenced a comment made by Mr. Gaudioso stating that a design for the pad has yet to be decided. He went on to say that he understands that the design falls under the building permit application, however, he questioned when and where does that come up for review by the public.

Supervisor Shea explained that the town engineer would review any construction documents. Before any permit is issued for construction, the town's Code Enforcement Officer and the engineer would review the plans. Mr. Sterling then asked if any issue that would come up at that time, would then be addressed. The response from the Supervisor was it would at that point, have to be addressed. The town would not allow an unsafe structure.

Nicholas Rockwell stated he is building Cold Spring Farm at the base of that site. It is his understanding that the applicant will be using Vineyard Road for access. He recalled an issue when he was contemplating using Vineyard that there was a limit on the maximum number of lots that can use that road. It was then suggested that another road would have to be constructed for ingress and egress. Supervisor Shea interjected that generally that applies to how many homes are involved.

Max Garfinkle noted for the record saying that the Stormwater technical mechanisms that are used for any water that may run over the site is proposed to be piped through the setback of the intermittent watercourse and related area so (inaudible) from a wetlands standpoint. Mr. Gaudioso stated that he believes that issue has been on the plans since day one and he hasn't heard any objections to that, if there is any issues, the applicant would be happy to consider it.

Supervisor Shea stated that the town has a lot to consider on this matter, and the Hearing will remain open until the continuation of the hearing is conducted on May 2, 2018 at 7:00 p.m. at the Town Hall, 238 Main Street, Cold Spring, New York.

#### **RESOLUTION #85-2018**

The following Resolution was presented by Councilman Van Tassel, seconded by Councilman Flaherty and unanimously carried;

Hearing – Denial of Wetlands Permit – Homeland Towers, LLC  
April 11, 2018

**RESOLVED**, that the Town Board hereby adjourns the appeal of Homeland Tower, LLC from the decision of the Town Conservation Board to deny the application of Homeland Tower, LLC and New York SMSA Limited Partnership d/b/a Verizon Wireless for a wetlands permit sought in connection with an application for a Special Use Permit to erect a wireless telecommunication service facility consisting of a 180-foot monopole with antennas, together with related equipment at the base thereof within a multi-carrier equipment compound until May 2, 2018 at 7:00 p.m. at the Town Hall, 238 Main Street, Cold Spring, New York.

Respectfully submitted by,

Tina M. Merando  
Town Clerk