

# ZONING BOARD OF APPEALS

January 9, 2006

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, January 9, 2006, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

<b>PRESENT:</b>	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Joan Turner	-	Member
	Bill Flaherty	-	Member
<b>ABSENT:</b>	Victor Carlson	-	Member
	Tim Pagones	-	Counsel

**Vincent Cestone** - Since Tim Pagones is not here, we are not going to have the resolutions. Review of Minutes for November 7<sup>th</sup> and November 21<sup>st</sup>, any changes, corrections or deletions.

**Joan Turner** - I submitted a minor correction to Kim for November 7<sup>th</sup>

**Vincent Cestone** - Okay, Motion to accept?

**Joan Turner** - I'll so move

**Bill Flaherty** - I have a couple of comments that I would like to make about some of those meetings

**Joan Turner** - Okay

**Bill Flaherty** - On November 7<sup>th</sup> meeting, you want to change fishing on page 31 to finishing

**Kim Shewmaker** - I guess spell check wouldn't pick that up

**Bill Flaherty** - And on November 21<sup>st</sup> minutes on page 21, I'm sorry, on page 17 insert ingress in the blank and it should read ingress and egress. And on page 21 where Dorothy Gilman was speaking insert Board in the blank about three quarters of the way down. And that's it.

**Vincent Cestone** - Okay I have a motion to accept the minutes as amended

**Bill Flaherty** - I so move

**Lenny Lim** - And I'll second

**Vincent Cestone** - All in favor?

**All board members** - Aye

**Vincent Cestone** - We can't do any of the resolutions, we can't do the reviews for completeness. The only thing I want to talk about is Omnipoint. Omnipoint is being hardnosed about giving us, giving Comi the RF propagation maps that we talked about and also about the landscaping. They don't want to do the landscaping either for Kelly. So what Comi is suggesting that we do is that we instruct them that, they are saying that they can't get a good coverage at the rating that Comi was asking. So Comi is suggesting that we instruct them that they have to do a drive test at negative 95 and negative 85 and prove that they can't get coverage. And also to get an engineer, a third party engineer to explain to this board why negative 95 is acceptable for Cingular, Verizon and Sprint but not Omnipoint T-Mobile, it's the same company. Omnipoint and T-Mobile are the same company. Maybe they have an inferior technology who knows. I find it hard to believe but and then the final thing that they submit a landscaping plan to our consultant. And that we not put them on the agenda until they submit this information to our engineer and once we get that information then we can put them back on the agenda as opposed to having them come every two weeks and rehash this same thing.

**Lenny Lim** - The last time they were here they were pretty hostile to the board. Do you know why they are doing this?

**Joan Turner** - It is not the policy is what he said

**Vincent Cestone** - Well, they have a history with Comi's organization. The only thing that I can guess is that is the problem because Snyder and Snyder have always been a little bit hardnosed in comparison to the other attorneys

**Lenny Lim** - Yeah but almost anything we've actually asked for to produce, even that time we asked them to come in and put a crane up, they actually had to put that 100 foot crane up that time, no one ever accused with \_\_\_\_\_ for this stuff

**Vincent Cestone** - I know. So they are backing us into a corner. I don't, this is a slam dunk for them. If they can provide this information, they are going to get this. If they provided this back in June or July whenever it was that they applied, they would have been operating by now. I don't understand it myself. I really don't understand it. This is like a no brainer for them.

**Joan Turner** - I don't know if they are backing us into a corner as much as they have stalemated us at the moment. You are insisting they are refusing.

**Vincent Cestone** - They are backing us up to a point where we are going to have no choice but to deny them and then they are going to sue us. And I don't, we don't want to deny them. I don't think you people want to deny them.

**Joan Turner** - No but we want them to comply with these requests

**Vincent Cestone** - That's right

**Joan Turner** - And these are reasonable requests

**Lenny Lim** - They sure are reasonable. Including landscaping. How can they say they don't want to do landscaping. I don't get it. I really don't

**Bill Flaherty** - I don't understand it either I mean that is such a miniscule thing in terms of cost

**Lenny Lim** - The amount of money they will be getting out of these poles

**Bill Flaherty** - It's a communication company, I just don't understand

**Vincent Cestone** - Their legal fees are more than the landscaping

**Bill Flaherty** - Oh absolutely. I mean for maybe a thousand bucks they can landscape it

**Vincent Cestone** - Even \$5,000

**Bill Flaherty** - It is still a miniscule amount. But find too that the attorneys sometimes a little arrogant in their approach to the board and what they, they want it their way it is quite evident and they don't want to compromise in any way from their normal routine of how they go about doing business. I get the impression that this is the way they want it and if they are challenged like you did, they certainly didn't take that under advisement

**Vincent Cestone** - They are not doing this in the best interest of their applicant

**Joan Turner** - Are they a viable company T-Mobile and Omnipoint? Their P&L's are good, they are thriving, are they a thriving company?

**Vincent Cestone** - Oh yeah

**Joan Turner** - They are very good, they are a solid company.

**Vincent Cestone** - This is not about money. Because it is costing them more money than if they went okay okay okay and provided the information. The only time that I've seen applicants are fighting to not provide information is because they can't justify the site.

**Joan Turner** - That's right

**Vincent Cestone** - So my guess is that it is either the attorney or the site is not really needed and they are just grabbing pole space

**Joan Turner** - Right

**Lenny Lim** - Because we have asked other companies to do the drive by test and we've asked other companies to give us the maps, we have every company providing everything that we've asked for.

**Vincent Cestone** - And the thing that gets me is T-Mobile has done all the stuff before us previously. It is only this application. So what does that tell us? It is either the attorney fighting or they don't need the site.

**Bill Flaherty** - How many tower sites do we have in Town?

**Vincent Cestone** - 5 or 6 and we have two more that are pending. One by the Garrison Firehouse substation and another one either on Albany Post Road or Lane Gate Road, one of the two.

**Bill Flaherty** - And we have no jurisdiction over the number of towers

**Vincent Cestone** - No we can't dictate to them

**Lenny Lim** - It is supposed to be by coverage so we had them do coverage maps and from the last thing I remember there was no gaps up and down 9

**Vincent Cestone** - So that's the story. Ma'am do you have something to say to us? I am sorry if you are here for something

**Audience member** - I heard. I was hoping Tim was going to show up but since, I can show you the project. It's up to you.

**Lenny Lim** - We can't do completeness's, we don't have the files

**Joan Turner** - We don't have a file on it

**Lenny Lim** - I just hope nothing has happened to Tim because normally he is always here or calls.

**Vincent Cestone** - I hope he didn't have an accident or something

**Joan Turner** - I hope his family is alright

**Vincent Cestone** - So next meeting when the people from Omnipoint are here we have to provide a united front in support of what we want. I don't think we are asking for anything unreasonable. I really don't

**Bill Flaherty** - I don't think so either.

**Lenny Lim** - It is something that every other provider has done for us

**Bill Flaherty** - I think too, I was reading an article in the New York Times not too long ago where a Town, I think Mamaroneck or somewhere down in Westchester, are challenging Sprint in relation to the placement of a cell tower within I think 200 feet of a school and the parents there have united there against the place of it and there is a lawsuit pending.

**Vincent Cestone** - Well the funny thing is

**Bill Flaherty** - And it is based on supposedly, health reasons

**Vincent Cestone** - But there are none

**Bill Flaherty** - That's right there are no health reasons.

**Vincent Cestone** - Okay I make a motion to close the meeting

**Lenny Lim** - Second

**Vincent Cestone** - All in favor

**All Board Members** - Aye

**Kim Shewmaker** - So everything is on for the 23<sup>rd</sup>?

**Vincent Cestone** - right

**NOTE:** These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

**DATE APPROVED:** January 23 2006

Respectfully submitted,

Kim Shewmaker  
Secretary