

**MINUTES**  
**Eden Planning Board**  
**July 29, 2008**

**MEMBERS PRESENT:**

Mark Agle  
William Zittel  
Kevin O' Gorman  
Andrew Romanowski  
William Mahoney (Alt)  
Dennis Brawdy  
Juanita Majewski

**MEMBERS ABSENT:**

Anthony Weiss

**GUESTS:)**

Dana Braun (Engineer – Wendel Duchscherer)  
Scott Henry (Town of Eden Building Inspector)  
Jennifer Wright (Verizon Wireless)  
John Engelbert (Verizon Wireless)  
Andrew Przybysz (Verizon Wireless)  
Ed Krycia, Jr. (Town Council)  
Renee Adams (Dog Breeding/Kennel)

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Chairman, Mark Agle called the July 29, 2008 Planning Board meeting to order at 7:08 p.m.

Mark asked if anyone had any corrections or additions to the June 2008 minutes.  
**Motion to approve as printed by William Zittel, seconded by Andrew Romanowski, hearing no further comments or corrections. Vote: all “Ayes” motion carried.**

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**NEW & UNFINISHED BUSINESS:**

***1. Renee Adams – Dog Kennel Request***

The site plan in front of us tonight is the latest plan that reflects the revisions that the Zoning Board required. The next step is that we take action on the site plan and make the recommendation to the Town Board for a Special Use Permit.. The revisions made to the plan now show the outside fenced [dog run] area to scale and there is a blow up of that area as well, and then the vegetative screening. This screening couldn't practically be put along the property line, as suggested by the ZBA, because the property line runs right down through the ravine and actually right along the creek. The screening was put at the nearest point of

activity: around the end of the driveway turn-around and thus being effectively between the neighbors' property and the drive access.

William Zittel made the comment that Mrs. Adams has done everything that we had requested.

Dana recapped the project stating that the short EAF form had been submitted and there is not significant environmental impact the Planning Board will need no SEQRA determination. The Applicant has complied with the screening requirements, and with the additional fencing she is now meeting the outdoor recreation space requirements by combining the house area, and the ZBA has granted the required variances. The next step would be to have a determination on the site plan, and a recommendation to the Town Board on the Special Use Permit. .

Mark Agle commented that prior to the Towns public hearing, we made a recommendation for their consideration relative to this application. We had discussed at that time whether or not to include some of the conditions included in that recommendation again when we make our recommendation concerning the final site plan.

Dana stated that, I have provided a draft of this recommendation that does include some of those conditions; namely the size of the dogs to be permitted, the number of dogs, and that the permit is to be non transferable and subject to annual review.

**Motion made by William Zittel to approve the current site plan as submitted. Motion seconded by Kevin O’Gorman: Vote: Unanimous - All “Ayes” – motion carried.**

Mark commented that he would make the recommendation to Town Board on behalf of the Planning Board now that we have completed all of our requirements and reviews at this meeting.

**Recommendation to Town of Eden Town Board**  
**(Adams Site Plan for a dog kennel and breeding facility)**

- 1. The Planning Board of the Town of Eden determined that the proposed use is a Type 2 action under SEQR and therefore no determination of environmental impact is required.**
- 2. The Planning Board of the Town of Eden determined the Site Plan is in accordance with Town Zoning Code and that the applicant has complied with all requested revisions.**
- 3. The Planning Board of the Town of Eden has obtained the**

- documentation indicating that all required variances were granted by the Zoning Board of Appeals for this site plan.
4. That based upon the foregoing, the Planning Board of the Town of Eden has approved the site plan.

Therefore, it is hereby recommended that the following conditions be made part of the Kennel Special Use Permit, if granted by the Town Board:

- a. That the permit is made to be specific as to the size of dogs (9 to 16 lbs range)
- b. That the permit also be specific as to the maximum number of adult dogs (over one year of age) being set at no more than 10
- c. That the permit is nontransferable
- d. That the permit is subject to annual review.

**Motion made by Mark Agle to submit the foregoing Recommendation to the Town Board on behalf of the Planning Board for the Adams Site Plan, Motion seconded by William Zittel. Vote: Unanimous - All "Ayes" – motion carried.**

## ***2. Verizon Tower Application***

Mark stated that the next item on the agenda is the Verizon Tower site plan at Swartz Field. If you recall, we reviewed this preliminarily at the last meeting although the submission was made too late for us to actually have time to take action and complete our independent agency review under SEQR. During the course of this intervening month we have been able to review everything in our packet on the SEQR, including the visual EAF and long form EAF. Does anyone have any questions on that first of all? Before we get into general discussion, I was informed in writing by the Town Attorney that this site would be on the agenda for action at the August 13<sup>th</sup> meeting of the Town Board. For that meeting, they are seeking our recommendation concerning the Site Plan before us. At their meeting, it is then their call as to approving the actual site and taking whatever action they deem appropriate on the SUP. One other issue that came up at our last meeting was whether or not the Recreation Board had actually seen this current plan and had a chance to comment. They have; and in fact this latest plan that we have in front of us tonight reflects the comments of the Recreation Advisory Board (RAB). At the request of the RAB, Verizon has agreed to relocate the overhead electrical service line that has been there for years, that actually cuts across the open field area, underground along the access road with the other utilities. The soccer field has to be moved to the north to be clear of this access road and therefore Verizon has agreed to locate the electrical service underground along the roadway. The RAB is satisfied with that and has given their consent for the plan back to the Supervisors office.

General Discussion – William Zittel said that with the location of this [tower] in the middle of the woods, there will be more than sufficient natural screening.

Mark said that typically that [screening] is one of the things that we would review: whether or not any visual screening would be required on a project. I believe Verizon has explained that this site location takes advantage of the natural coverage already there and that this mature vegetation screens out the Tower to the extent as possible, at least at the lower elevation. William Zittel asked the amount that they have to clear to do what they need to do is still going to leave enough of a vegetative screening buffer around the site? Verizon confirmed that they will only remove the vegetation necessary to accommodate the site and all other existing vegetation will remain around the site as a screen.

Kevin O’Gorman said that the Zoning Board granted this [setback variance] and I just want in the minutes, that if it collapses as designed, ½ the distance of its height, then so be it. But if it does not, then they [Verizon] violated the terms of our approval and then they would be legally responsible.

Mark asked if Verizon had any comment and Jennifer Wright from Verizon said that in the lease agreement there is a liability provision.

Mark said that, assuming we go forward with this, the Planning Board will probably state that for the record in our recommendation. How, or if, the Town Board or the Town Attorney choose to incorporate that into any SUP or lease agreement, is up to them.

William Zittel stated that it is true for anywhere on the 360-degree radius of the tower, if it falls in the park, if it falls anywhere, they are liable.

Mark said it’s supposed to perform as designed, engineered, and certified, by a licensed professional engineer.

Bill Mahoney asked that, if the lease area is 100’ x 100’ and the tower is 197’ high, then if it falls in half, half will fall outside of that?

John Engelbert from Verizon said that it is designed to hinge on itself.

Mark said he understands that the first 100’ is designed more rigidly and then the other 97’ would fold.

Mark asked, so the steel members and the structural support roughly half up are of a more rigid nature are meant to stay self supporting, so if it’s going to fail it will at that design failure point, like the crumple zone in the hood of your car?

Juanita Majewski asked Dana Braun if she knew of any towers collapsing?

Dana replied by asking Verizon representatives if they knew of any.

Andrew Prszby said that in the 12 years and the only towers he has ever seen fail are by human error. He has been to towers in hurricane areas and that was the only thing still standing.

Dana asked if there were any other discussions on the SEQR form?

Mark said that if there were no other comments relative to SEQR, then we could go ahead and make a SEQR Declaration on behalf the Planning Board's review.

### **Dana Braun read the Resolution for the SEQR Negative Declaration**

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#### **Resolution for the SEQR Negative Declaration** (Upstate Wireless d/b/a Verizon)

**Whereas**, the Town of Eden Planning Board has reviewed the site plan application and found it to be in compliance with all applicable standards and has received necessary variances from the Town of Eden Zoning Board of Appeals; and

**Whereas**, the Town of Eden Planning Board reviewed the SEQR documentation, completed a uncoordinated review on June 9, 2008, determining themselves as lead agent and with no significant concerns made known by interested and involved agencies; and

**Whereas**, the Town of Eden Planning Board has completed Part 2, Part 3, and the Visual Addendum of the EAF and identified all potential impacts and mitigations;

**Whereas**, the Town of Eden Planning Board has found no occurrence of significant impact to the Town of Eden and that the development is in accordance with the zoning of the Town;

**Now, Therefore, Be It Resolved**, that the Planning Board of the Town of Eden hereby issues a Negative Declaration of environmental impact for the development of this project.

**Motion made by Mark Agle to make the foregoing SEQR Negative Declaration, Motion seconded by Andrew Romanowski: Vote: Unanimous - All “Ayes” – motion carried.**

Mark added that on the site plan itself, it's our responsibility to make a recommendation to the site plan itself as far as meeting the bulk requirements of the Zone and any other elements of the plan. Ultimately the selection and approval of the site itself is an activity for the Town Board through the special use permit process which includes the required public hearing. Based on the memo we received from the Town Attorney, it is their intention to act on that matter but it's going to be this site will be the subject of that action. Verizon has revised this plan to the extent that we've asked them and it also reflects the Recreation Advisory Board's input. Does anyone have any further discussion on this plan [Site Plan]?

William Zittel asked if the access road itself is Verizon's responsibility for maintenance and upkeep and not to create a drainage problem?

Mark said that “yes”, they have a 30' easement for utilities and access and anything that they install along that easement area is their requirement to maintain.

William Zittel also asked does that meet the specifications of whatever we have to meet.

Mark replied “yes”.

**Mark Agle made a motion to approve this Site Plan that is submitted in front of us [dated 6/17/08, last revised 7/28/08], Motion seconded by Andrew Romanowski: Vote -Unanimous all in favor “Ayes” – motion carried.**

Based upon the foregoing, **Mark made a Motion to submit the following Recommendation to the Town Board regarding this site.**

**The Planning Board of the Town of Eden has completed all required reviews at its' July 29, 2008 meeting the following determinations/approvals were given:**

- 1. The Planning Board of the Town of Eden issued a Negative Declaration of environmental impact for the development of this project. This determination was based on completion of the Part 2, Part 3, and Visual Addendum for the SEQR process.**
- 2. The Planning Board of the Town of Eden determined the Site Plan is in accordance with Town Zoning Code and that the applicant has complied with all requested revisions.**
- 3. The Planning Board of the Town of Eden has obtained the documentation indicating that all required variances**

were granted by the Zoning Board of Appeals for this site plan.

4. That based upon the foregoing, the Planning Board of the Town of Eden has approved the site plan.

Therefore, it is hereby recommended that the following condition be made part of the Verizon Tower Special Use Permit, if granted:

- Prior to any future expansion by Verizon beyond the 100x100 lease area as shown on the current site plan, a modification/amendment to the site lease may be required by the TB.
- **That the concerns of the Buffalo Southern Railroad, in regards to the potential of the Tower collapsing over the railroad tracks be recognized. These concerns indicate that if the tower does not perform as designed and represented by the applicant and their engineer in the case of collapse, the applicant shall be liable for all additional damages incurred from the Tower collapse. (The Tower is designed to be a 195 foot self-supporting tower. Located on the tower will be a maximum of four cellular carriers, twelve antennas, three mounts, twelve coax lines, and two eight foot microwave dishes. As per international buildings code, the tower will be designed to support the aforementioned load at a sustained wind speed of 90 mph and at a sustained wind speed of 40 mph with one inch of radial ice. In the situation of collapse, the tower will collapse by breaking midway and falling back on itself. This design will limit the collapse to a radius of approximately one half the height of the tower.)**
- Prior to the relocation of the utilities as shown on the site plan, with a revision date of July 29, 2008 the applicant and or their contractors will notify the Recreation Board or it's Director to verify the relocation will not impact any activities as planned at Swartz Field, will contact the Director accordingly.

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The Planning Board of the Town of Eden respectfully submits this recommendation for the Verizon Cellular Tower to the Town Board for their use in determining if the Verizon Special Use Permit will be granted for this site plan and use.

Kevin O'Gorman stated that he would like it to read in the Recommendation

that we are approving the site plan not necessarily the site.

Mark said he did not have a problem with that.

William Zittel asked, would it be better if it said site plan review meets our approval and it did not say anything about the site?

Kevin O’Gorman said, not necessarily the site.

Mark - “yes, I understand the distinction you are making.”

Kevin O’Gorman said that in any other case, if we approve the site plan and it goes to the Town Board and gets approved, so we are approving this?

Mark said, “Well, the site plan we are approving, yes”.

Mark said that since the original motion was never seconded, I make a new motion restating the Recommendation as read into the minutes prior with the only revision being that the last paragraph shall be revised to say that: The Planning Board of the Town of Eden respectfully submits this Recommendation for Verizon Cellular Tower to the Town Board for their use in determining if the Verizon Special Use Permit will be granted for this site and the proposed use.

**Mark made the Motion to submit the Recommendation to the Town Board, Seconded by William Zittel. Vote: those in favor, all “ayes” - Carried.**

### ***3. Mandatory Training***

Mark said that at our last meeting the Town Board adopted a Training Requirement change we suggested both for the Planning and Zoning Boards. The Town Board members can attend the training as well. The year is already half over and we should start thinking about fulfilling these requirements. I thought that maybe in light of all the Special Use Permit applications we have had this year maybe Dana Braun of Wendel Duchscherer could do a presentation for us, the ZBA, and the Town Board regarding the proper chain of events in processing these applications.

Dana said that they could address issues for one hour and then maybe have a discussion for an hour.

Mark suggested that we see how our agenda is for the next meeting and if there looks like there is not a lot on the agenda, maybe have an hour-long session on this topic and the Zoning and Town Boards would be invited too.

### ***4. Tim Horton’s***

Dana updated the Board on Tim Horton’s, they got the DOT signoff they are

pretty much just working out things with Erie County, they had to do revisions to their drainage, storm water plan.

Juanita asked about the school zone placements, and Dana said that to the best of her knowledge, the Speed Limit Review Committee that the Town Board authorized, has been talking to John McCarthy (Police Dept Lieutenant) and school zones can go 1300 feet North and South from where the entrance to where the school. However they're [zone limits] set by the New York State DOT. The signs are where they are now because that is where the DOT set them. I believe there are also people from the Boys and Girls Club of Eden involved in taking a look at expanding the zone as well.

### **Other Discussion**

Bill Mahoney made a suggestion that one idea for the Mandatory Training is having a class on what the different Boards are responsible for and the procedures they have to go through step by step. It would be a learning experience but for some it would be a refresher course.

Dana said that they could run through scenarios and each board would state what they would go through.

Mark added that we could also go through SEQR issues, such as: what are unlisted actions, what are type two actions, some general guidelines, etc.

**Mark Agle made the motion to adjourn the meeting at 7:51p.m. Seconded by William Zittel. All "Ayes" motion carried.**

The next meeting is tentatively scheduled for August 26, 2008 @ 7:00p.m.

Respectfully submitted,

Diane Herzog  
August 5, 2008