

Draft June Minutes
7/2/2014



Regulatory Programs Committee
June 12, 2014 Agency
Meeting; REW:mlr

Regulatory Programs Committee
June 12, 2014

Committee Members present: Sherman Craig, Chair, Richard Booth, William Valentino and Dede Scozzafava (Department of State), and Art Lussi

Other Agency Members and Designees present: Lani Ulrich, Chairwoman, Daniel Wilt, Robert Stegemann (Department of Environmental Conservation), Bradley Austin, (NYS Department of Economic Development), and William Thomas and Karen Feldman.

Agency Staff present: Terry Martino, Executive Director and James Townsend, Counsel.

Local Government Review Board Representative: Fred Monroe, Executive Director

The Committee convened at 9:30 am.

1. Approval of May Draft Regulatory Programs Committee Minutes

On motion of Mr. Lussi and seconded by Mr. Valentino the Committee unanimously adopted the Draft Regulatory Committee Minutes of the May 2014 Agency meeting with revisions.

2. Deputy Director (Regulatory Programs) Report (R. Weber)

Mr. Weber stated that P2014-7, Camp Gabriels, will be presented to the Board at the July Agency meeting. He said the July date will be more closely aligned with the applicant's plans in a July closing.

Mr. Weber reviewed the monthly statistics of applications received and permits issued. He discussed several projects from the High Profile Report and welcomed questions from the Board.

He mentioned a public comment hearing being held July 2, 2014 for NYCO Project 2013-138 in the Town of Lewis at the Lewis Fire Hall at 1:00 pm.

3) Project

2014-0051	Town of Willsboro
(T. Saehrig)	Town of Willsboro: Essex County
	Resource Management

Mr. Saehrig introduced Mr. Victor Putman, representing the Town of Willsboro.

Mr. Saehrig noted that all the information pertaining to the public hearing held May 21, 2014 at 1:00 pm at the Town Hall in the Town of Willsboro was included on the CD received in the mailing package, and stated the project site is located in both Hamlet and Resource Management land use area.

He presented a slide show describing the applicants request and proposed project site location for a variance to allow construction of two logjam structures and a "rockery crib wall" within the mean high water mark of the Boquet River.

Mr. Saehrig stated the Town of Willsboro administers a Local Land Use Program approved by the Agency under which the Town implements the shoreline restrictions of Section 806 of the Act. The Town of Willsboro Zoning Board approved variances for both the Hamlet and Resource Management portions of the applicants' shoreline stabilization plan.

Mr. Saehrig discussed Agency jurisdiction and project objectives and said the proposed variance site had been occupied by a paper mill during the early to mid-1900's. He described the variance site as highly erodible, lacking in organic materials and with a combination of extreme river flows and stormwater drainage off steep slopes that contribute to shoreline erosion.

Mr. Saehrig showed slides of existing and proposed conditions and the preliminary design, access road plan and erosion control plan of the project site. He explained how the stream diversion, erosion control plan and logjam and rock wall structures will work and said the logjams will be constructed of tree root balls and trunks placed into the bank.

Mr. Saehrig noted the applicants discussed alternative shoreline stabilization plans and had provided alternative analysis study that examined not taking any action, using only rip-rap, and the installation of a single log crib. He said the applicants provided stormwater management plans and Agency staff have confirmed that the plan submitted will prevent impacts to wetlands.

Mr. Saehrig said staff have met with several agencies in the preapplication stage of this project and DEC has a general permit that was issued to Essex County Soil Water and Conservation Service.

Mr. Saehrig discussed the staff analysis and the variance criteria.

Mr. Craig congratulated the Town of Willsboro for taking a pro-active role regarding climate change and possible mitigation.

Mr. Wilt asked if the trees used for the logjams were treated and is the length of expectation for the logjams to last Mr. Saehrig answered the trees are natural wood, possibly Hemlock trees, and will last a very long time.

Mr. Wilt asked what effect would the removal of the dam have? Mr. Saehrig answered that the removal of the dam was considered during the review of the application and would not have any effect on this section of the river.

Mr. Booth asked Mr. Saehrig to explain how installation of logjams and "rockery period crib walls" improves the aesthetic character of the Boquet River, Mr. Saehrig said staff agrees that the placement of the logjams and the "rockery crib wall" will improve the aesthetics of this section of the shoreline. He also stated that it is a public use area with a DEC fishing access directly across the river. He stated that improvement of the aesthetics of the project site is not the highest priority factor in the review of the project, nor in the variance, but it is a factor.

Mr. Weber briefly explained that the proposed project site had been occupied by a paper mill during the mid-1990s and that industrial use contributed to the poor soil conditions making the site highly erodible and lacking in organic material. He explained that the variance is an attempt to use natural products to stabilize and inhibit further erosion.

Mr. Booth reiterated that the Order is stating one of the reasons for granting this variance is aesthetics. Mr. Weber replied that was not the staff intention and that the primary objective is to control the ongoing erosion which will continue to have adverse impacts on the shoreline and water quality of the Boquet River.

Mr. Saehrig pointed out that stabilizing the shoreline in this area is very important for fish habitat and fishing access on the project site.

Mr. Stegemann said there is DEC funding for the improvement of the fishing habitat that will soon expire. He said that the proposed variance would stabilize the shoreline, improve water quality enhancing the fishing habitat, and provide better access to anglers.

Ms. Feldman suggested adding the standard language for invasive species that is usually in all of our permits. Staff agreed.

Mr. Stegemann thanked APA staff for their awareness and prompt and thorough review process and stated this project is a good example of two agencies working together efficiently and in a timely fashion.

Mr. Craig made a motion and it was seconded by Mr. Valentino to add invasive species language to the draft variance. The Committee vote to add invasive species protection to the draft permit was unanimous in favor of the motion.

Mr. Craig made a second motion to move the amended order to include the amended condition Full Agency for approval and the motion was seconded by Designee Scozzafava. Mr. Booth stated he would not vote for the amended permit with the invasive species condition but noted he would vote for an amended permit that makes clear that improved aesthetics were not the primary justification for granting the variance.

Agency Counsel Townsend stated that impacts to the aesthetics is an important consideration and that aesthetics should be deliberated during the review for any variance or permit request. He said the aesthetics may not be the most important factor to be considered in any proposed variance or permit but it should be noted that it was deliberated and included in the review process.

Mr. Booth stated that he is not objecting to amending the proposed variance to include the invasive species condition, he stated again that his objection pertains only to language stating that improving aesthetics to the shoreline is a reason to grant this variance.

Mr. Craig asked Mr. Booth if Regulatory Committee voted on the draft variance with the assumption that staff will change the emphasis from the aesthetics to the shoreline being a reason to justify this variance, the Committee could vote and move to Full Agency for approval. Mr. Booth replied yes and commented that the statement of values that motivate granting this variance is off key.

Mr. Weber commented that the staff intent was not to imply that aesthetics was the reason to justify granting the variance and agreed to review the language in the draft variance.

Mr. Craig asked the for a vote on the amended permit. The Committee vote was 4 in favor and 1 opposed. (Mr. Craig, Mr. Valentino, Mr. Lussi, Designee Scozzafava in favor and Mr. Booth opposed). The Committee agreed that with those edits the revised order would be moved to the Full Agency for approval.

Project

2013-128

(V. Yamrick)

Verizon Wireless

Town of Putnam: Washington County
Rural Use

Ms. Yamrick acknowledged Mr. Jared Lusk, Esq., Authorized Representative, Ms. Kathleen Pomponio representing the project applicant, and Mr. Melewski representing the adjoining landowners present at today's meeting.

Ms. Yamrick presented a slide show which described Agency jurisdiction, project site location and the project description as proposed. She stated the proposed project is a Class A regional project- new structure greater than 40 feet in height - a major public utility use, a Class B regional project requiring an Agency permit for creating a substandard sized lot in Rural Use.

Ms. Yamrick noted the access to the facility will originate from Gull Bay Road (a Town-owned road) along an existing gravel access driveway, and a new 225± foot long access driveway will be constructed to accommodate construction and service vehicles. A vegetative "no cutting" easement will protect trees in the vicinity of the proposed tower.

Ms. Yamrick showed color-coded slides that depicted the existing coverage and proposed coverage of the proposed telecommunications tower at various locations. She also showed a slide depicting two

existing towers owned by a different carrier which illustrated the proposed coverage if the applicant chose to co-locate on both of the existing towers.

Mr. Craig asked if there were any plans regarding the co-location proposal. Ms. Yamrick answered no, Verizon is reviewing the possibility of co-location but that proposal was not part of the staff review of this proposal. She also noted that two areas circled on the slide on NYS Route 9 would not be covered by the co-location alternative.

She briefly discussed four other alternative sites that were considered by the applicant. Ms. Yamrick stated a field visual analysis of the proposed tower and antenna array was performed in 2013. She showed several slides showing areas of potential visibility based on topography, field balloon tests, height and actual areas of visibility.

Ms. Yamrick discussed public comments received, the Town of Putnam Planning Board's approval of the proposed project and proposed conditions. She stated staff determined that this proposed project will comply with the "Towers Policy."

Mr. Booth stated this proposed project is an example of impacts that are felt by close property owners with benefits for a larger area.

Ms. Yamrick reviewed for the Board edits to the draft permit.

Designee Scozzafava asked Ms. Yamrick what the vote at the Town Planning Board meeting. Ms. Yamrick said that the Town vote was unanimous.

A brief discussion ensued regarding the color of the equipment compound and the proposed telecommunications tower. Ms. Yamrick stated that the tower shall mimic the branching structure and needle pattern of a mature white pine tree.

Mr. Craig made a motion and Mr. Valentino seconded the motion to move the proposed permit to Full Agency for approval. The Regulatory Committee vote was 4 in favor and 1 opposed to move the proposed permit to Full Agency for approval. (Mr. Craig, Mr. Valentino, Mr. Lussi, Designee Scozzafava in favor and Mr. Booth opposed).

Mr. Craig requested Ms. Yamrick to bring photos of the constructed tower back to the Agency for review.

Project

2013-171
(A. Lynch)

New York RSA Cellular 2 d/b/a
Verizon Wireless
Town of North Hudson: Essex County
Low Intensity Use

Ms. Lynch stated the Verizon representatives present for the first Verizon presentation were not present for this matter.

Ms. Lynch presented a slide show which described Agency jurisdiction, project site location and the project description as proposed. She stated the proposed project is a Class A and B regional project in Low Intensity Use and a portion of the access drive is a Rivers Project. Ms. Lynch discussed the character of the area and stated access to the tower will be through an adjoining tax parcel.

Ms. Lynch showed slides depicting the mountainous and forested terrain of the proposed project site. She explained that the tower needs to be tall enough to avoid as many obstacles as possible allowing more signal strength to reach the Northway. Ms. Lynch also noted that the proposed tower site has the advantage of existing access along a residential driveway and existing woods roads.

Ms. Lynch discussed the proposed project plans explaining that this is a 65-foot tower with no concealment. She noted that there may be some blasting necessary to construct the access road and that a blasting plan will be provided to the Agency for review prior to undertaking any blasting.

Ms. Lynch showed color-coded slides that depicted existing coverage from a previously approved tower and the proposed coverage of the proposed telecommunications tower. Although there are no plans, she also explained that Verizon may co-locate on a T-Mobile tower to extend coverage at Exit 30.

Mr. Craig asked if an 85-foot tower would be tall enough to allow another company to co-locate on the tower. Ms. Lynch answered that there is physical space on the tower at either height but a 65-foot tower is the minimum that Verizon needs to acquire the coverage they are seeking.

Mr. Booth asked if there were any emergency tower sites in this area that Verizon could co-locate on. Ms. Lynch stated that was not presented as one of Verizon's alternatives. She explained Verizon uses a search ring to identify other possible tower locations to co-locate on and if not available then Verizon searches for sites to build on.

Mr. Craig asked if there was any information on what the coverage would have been on the alternative sites. Ms. Lynch replied no, she does not have that information.

Ms. Lynch discussed the visual analysis methodology and showed several photo simulations illustrating the proposed tower's visibility at 65 feet, as well as the visibility of alternatives (concealed and/or taller), from two viewpoints.

Ms. Lynch stated no public comments have been received by staff and that the Town of North Hudson supports the project.

A brief discussion regarding the proposed permit conditions followed. Mr. Lussi asked about any telecommunications technology regarding necessary separation of antennas for co-location. Ms. Lynch answered that based on her discussions with telecommunication companies they need a separation of at least a foot or two, but that a carrier might not have any interest in co-locating under Verizon unless they have different technology. Mr. Weber commented that there is a general permit that allows for horizontal co-location where two towers use the same access road and utilities.

Ms. Feldman questioned the tree line height compared to the tower height. Ms. Lynch answered the trees are not very tall (approximate canopy height of 40 feet) near the proposed tower.

Maintenance to the access road was briefly discussed. Ms. Lynch noted that staff were not concerned with maintenance of the access road as the first 1,000 feet of the access drive will follow an established driveway that provides access to a private residence. And, unlike in the previous presentation, only the underlying landowners and Verizon wireless will be using the access road. It is not shared with any neighbors.

Mr. Booth reiterated his concern for telecommunication companies to seek emergency towers to co-locate on. He asked Ms. Lynch if staff requests the tower companies to search for emergency towers in the proposed project site area. She answered yes staff encourages co-location on an existing tower if staff are aware of an existing tower that may work for the applicant.

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Mr. Craig also commented on encouraging co-location but also noted that this is a competitive market and companies will propose 65 foot towers if it works for them.

Mr. Craig asked for a motion to move the proposed project to Full Agency for approval. Motion was moved by Mr. Booth and seconded by Mr. Lussi. The Regulatory Committee vote was unanimous in favor of the motion.

5. Old Business: No

6. New Business: No

Adjournment: The Regulatory Committee meeting adjourned at 11:50 am.

Note: The power point presentations referred to herein are on file at the Agency. Copies are also available for inspection on request and can be viewed at http://nysapa.granicus.com/ViewPublisher.php?view_id=2 of this meeting: