

TOWN OF CONCORD PLANNING BOARD  
Town Hall

September 7, 2021  
7:00 p.m.

**ITEM # 1:**

The meeting was called to order by Planning Board Chairman Karl R. Lux, at 7 p.m.

**ITEM #2: Roll Call**

**Present:**

Karl R. Lux, Chairman  
Bruce Luno  
James Jozwiak  
Julie Zybert  
Joseph Edbauer  
Raymond Hilliker  
Michael Cochran

**Also Present:**

Clyde M. Drake, Supervisor  
Darlene Schweikert, Secretary

**ITEM #3: Citizen Participation**

There was no one for Citizen Participation.

**ITEM #4: Comments from Liaison Supervisor Drake**

**Erie County Rail Trail:** Supervisor Drake reviewed with the members his conversations with Barbara O'Brien and Ashley Smith after last month's Planning Board meeting. He had a nice discussion with Ms. O'Brien and she pretty much agreed with everything he said. Supervisor Drake believes that Ms. Smith is not happy with the Rails to Trails committee. Chairman Lux thinks that the Rails to Trails committee used Ms. Smith even though she is still working with them, the contract has not been renewed. Supervisor Drake also spoke to Val from Orchard Park and they are ready to take legal action. She is trying to get Colden, Aurora and Concord to try to get Rails to Trails to do a SEQR. Chairman Lux feels that a SEQR should apply and J. Edbauer agreed. Supervisor Drake had forwarded the Board the pictures of vandalism at one of the adjoining parcels and this is not the first time there has been vandalism. He questioned whether these residents were being vandalized because they have been verbally against the trail. Supervisor Drake said that if they throw residents off the trail because they say it is dangerous, then will they throw everyone off that says it is dangerous. There are steel pylons in the water not even 10 feet away and also old railroad equipment.

Supervisor Drake advised the members that he has three meetings left as Supervisor. During that time, he will bring the Board the Comprehensive Plan and Battery Storage Law for their review. He has been told that in the future every one of the solar projects will have a battery storage hooked into it.

**ITEMS #5: Approval of Minutes**

a) August 3, 2021 – J. Edbauer made the motion, seconded by R. Hilliker, to approve the Minutes as presented. All in favor. Carried.

**ITEM #6: 5G Roll Out**

Supervisor Drake asked the members to review the July 30<sup>th</sup> letter received from Campanelli & Associates. Supervisor Drake advised that this letter did come from a law firm but wanted the members' discussion. It does appear that Amherst is getting 5G and is further ahead in the process. He will contact Amherst to see if they have passed any laws and will also forward to Town Attorney Attea for his review. M. Cochran said that everything will be wireless before long. Are there steps the town can take to limit it? Does the Town want to limit it? M. Cochran does not believe that 5G Ultra will be here in Springville; that the 4G from Verizon will just be enhanced and expanded. The 5G Ultra requires repeater devices to be placed on telephone poles every 1000 feet; and Verizon is working with major cities on this. The network repeater takes signals from nearby cell sites and amplifies the signals. The 5G Ultra would be against some of the Codes but he does not see 5G coming here. These devices are tied together and the bandwidth is huge and the frequency is fast but it does not travel very far. The members will review this if the time comes when 5G is coming to the area.

**ITEM #7: Review Zoning 150-18 language re: trailer/truck bodies**

At the April 6, 2021 meeting the members made changes to the fee schedule to include a fee for all storage sheds up to 144 square feet including any storage unit, shipping container, semi-truck, pods, old box, tractor trailer, etc. This Section 150-18 of our current code lists Prohibited Uses and includes trailers or detached truck body for storage purposes. J. Jozwiak noted that the Code will need to be updated. The members will review this section for the October meeting to bring back language to reword Section 150-18.

**ITEM #8: Business from the Members**

a) J. Edbauer has concerns about the Erie County Rail Trail. He feels the town is being steamrolled. There are signs up giving the appearance that the trail is open. J. Edbauer made a motion to have the Town Board investigate requiring the Erie County Rail Trail to do a SEQR. There is a lot of concern in the community and the vandalism is upsetting. The pool liner that was split is very costly to replace. J. Jozwiak advised that the snowmobile club has received grants and they expect to have the bridges done before snowmobile season and grant money for a building to store the groomer. Chairman Lux shared his conversation with Jake Miller who has been contracted to clear the trail from Sibley Road to Glenwood. If the trail is cleared, it leads people to believe the trail is open. J. Edbauer noted that there is no sign for pedestrian crossings on Genesee Road.

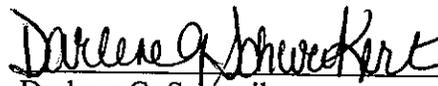
Chairman Lux seconded J. Edbauer's motion. J. Jozwiak abstained from the vote. Motion carried. B. Luno questioned how the trail be open when deer season has been extended. Season has been extended to allow hunters more time to hunt around the holiday season. Late bow season will close December 21<sup>st</sup> and then reopen December 26<sup>th</sup> to January 1<sup>st</sup> for a Holiday Deer Hunt which provides an additional late bow and muzzleloading season for deer in the Southern Zone.

b) J. Zybert asked about the sign that was put up at the corner of Trevett and Genesee Road. Did the resident get a sign permit?

c) Chairman Lux asked if there was any update on the Hoffman Solar Project. Supervisor Drake advised that once the Town passed the newest Solar Law, Delaware River Solar, the company involved in this project, asked the Town to make an exception for their project; the Town Board noted that this is the law the Town is following and no exception would be granted. They left the meeting unhappy and the Town has not had any further contact.

**ITEM #7: Motion of Adjourn**

J. Zybert made the motion, seconded by M. Cochran, to adjourn the meeting at approximately 7:30 p.m. All in favor. Carried. The next meeting is October 5<sup>th</sup>.



Darlene G. Schweikert  
Planning Board Secretary

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July 30, 2021

Lawrence J. Kelly Jr.  
Planning Board Chairman  
Town of Concord  
86 Franklin St., P.O. Box 368  
Springville, NY 14141

Re: The 5G Rollout - controlling the siting of wireless facilities  
within the Town of Concord

Dear Mr. Kelly Jr:

Contrary to what most local governments are being told otherwise, when The United States Congress passed the Telecommunications Act of 1996 (the TCA), it explicitly preserved to State and local governments the "General Authority" to regulate the placement of wireless facilities within their respective jurisdictions.<sup>575</sup>

To make use of the zoning powers which have been preserved to them by Congress, local governments must: (a) update their local zoning code or zoning ordinance to vest it with the power to control the placement of wireless facilities, inclusive of cell towers, small cells, and distributed antenna (DAS) systems within their jurisdiction, and (b) incorporate procedures and evidentiary standards in their code, to ensure that when their Planning Board and/or ZBA decides an application seeking approval for a new wireless facility, they render their decision in a manner which complies with the procedural requirements imposed upon them by the TCA.

Faced with the current "5G Rollout," through which site developers are seeking to install wireless facilities as closely as every 300 feet in residential neighborhoods, it is more important than ever that local governments amend their zoning codes to empower them to prevent the irresponsible placement of wireless facilities within their communities.

At Campanelli & Associates, P.C., we currently provide zoning ordinance reviews to local governments across the entire United States.

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<sup>575</sup> See 47 U.S.C.A. §332(c)(7)(A).

Our firm is regularly retained to review Town zoning ordinances and codes to analyze, among other things:

- (a) the extent to which the local ordinance maximizes the Town's abilities to exercise the powers which Congress preserved to state and local governments under Section 47 U.S.C.A. §332(c)(7)(A) of the Telecommunications Act of 1996 to regulate the placement, construction, and modification of personal wireless service facilities;
- (b) the extent to which the Town's ordinance encompasses provisions to ensure that the Town's Planning Board or ZBA will not violate the constraints of the Telecommunications Act of 1996, which are set forth within sections §332(c)(7)(B)(i)(I), §332(c)(7)(B)(i)(II), §332(c)(7)(B)(ii), §332(c)(7)(B)(iii) and §332(c)(7)(B)(iv) of the TCA, and which thereby potentially minimize the risks of federal litigation to challenge any decision of the respective Town Board pertaining to an application seeking permission to install a wireless facility;
- (c) the extent to which the local ordinance vests the respective Town Board(s) with essential fact-finding functions, and sets evidentiary standards, which are critical for the Board(s) to make decisions wherein the municipality can actually assert control over the placement of wireless facilities, within the powers vested in it under 47 U.S.C.A. §332(c)(7)(A) of the TCA; and
- (d) the extent to which the local ordinance empowers the Town and its Boards to protect its citizens against illegally excessive levels of radiation emanating from Non-FCC compliant wireless facilities that are not registered with the FCC.

In completing such analyses, we provide a written ordinance review, wherein we advise the Town what revisions and additions must be added to its code to achieve those objectives and enable them to prevent the irresponsible placement of wireless facilities within the Town.

If you are interested in having such an ordinance review performed for the Town of Concord, please feel free to call me directly.

Very truly yours,



Andrew J. Campanelli