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PLANNING BOARD

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Michael Hale

Joel Koval

Eric Ophardt

Kim Paulsen

Tom Werner

(alternate) Eric Prescott

**Planning Board Meeting**  
**November 27, 2012**

Those present at the November 27, 2012 Planning Board meeting were:

Planning Board: R. Ferraro, Chairman, M. Hale, J. Koval, K. Paulsen, T. Werner  
E. Prescott – Alternate Member

Those absent were: E. Andarawis, E. Ophardt

Those also present were: J. Scavo, Director of Planning  
J. Bianchi, M J Engineering and Land Surveying, P. C.  
M. Montague, Environmental Specialist  
L. Renzi, Counsel  
J. Dean, Secretary

Mr. Ferraro, Chairman, called the meeting to order at 7:00p.m. All in attendance stood for recitation of the Pledge of Allegiance.

Mr. Ferraro announced that Mr. Prescott would be sitting as a full voting member in the absence of Mr. Andarawis and Mr. Ophardt.

Mr. Ferraro announced that the Town of Clifton Park G.R.E.E.N. Committee will sponsor a free presentation entitled Save Energy, Save Money at the Clifton Park – Halfmoon Library on Monday, December 10, 2012 from 7:00p.m. to 8:30p.m. The committee will provide information regarding many simple ways to save energy – and money – with rebates and money-saving incentives. Topics will include free or reduced cost energy audits, NYSERDA's EmPower program, weatherization assistance, and low-interest loans and incentives to support energy efficiency upgrades for one to four unit buildings.

Mr. Ferraro reported that Mr. William Engleman has filed an Article 78 lawsuit, claiming that the Planning Board did not properly complete SEQRA documents and review relative to the application entitled Ushers Road Light Industrial Shovel Ready Site, Phase II filed by DCG Development Company and approved by the Planning Board at its September 25, 2012 meeting.

### **Minutes Approval:**

Mr. Hale moved, seconded by Ms. Paulsen, approval of the minutes of October 23, 2012 as written. Ayes: Paulsen, Hale, Prescott, Koval, Ferraro. Noes: None. Abstained: Werner.

### **Public Hearings:**

[2012-034] **Clifton Common Independent Towers** – Proposed installation of a telecommunications tower on a 110' pole with antennae and utilities in a 50' x 80' enclosed area, Clifton Common, Vischer Ferry Road – SEQRA determination, preliminary public hearing with possible approval of Special Use Permit #80894 and site plan approval. SBL: 271.-5-36

Mr. Ferraro explained that, in accordance with a recent judicial decision, the Planning Board must issue a SEQRA determination prior to the opening of the public hearing and review of this application. Since the application requires two separate actions – approval of the Special Use Permit and site plan approval – two determinations pursuant to SEQRA must be issued.

The Board first considered the Special Use Permit application. Mr. Koval moved, seconded by Mr. Werner, to establish the Planning Board as Lead Agency for this application, an unlisted action, and to issue a negative declaration pursuant to SEQRA. The motion was unanimously carried.

Board members then addressed the site plan component. Mr. Hale moved, seconded by Mr. Prescott, to establish the Planning Board as Lead Agency for this application, an unlisted action, and to issue a negative declaration pursuant to SEQRA. The motion was unanimously carried.

Mr. Ferraro, Chairman, called the public hearing to order at 7:05p.m. The Secretary read the public notice as published in the Daily Gazette on November 19, 2012.

Ms. Jacqueline Phillips-Murray, legal representative for Independent Tower Holdings and AT&T, presented this application that was last considered by the Board on October 23, 2012. Ms. Phillips-Murray submitted certified mailing receipts for the 500' notification to adjoining property owners for both submission of the preliminary application and the balloon test conducted on November 17, 2012. The speaker then presented a brief overview of the application that remains as presented at the October 23, 2012 meeting, explaining that an existing light pole will be replaced by a 130' high telecommunications tower. The equipment cabinet will be located in a less visible area of the Clifton Commons property and will be enclosed by stockade fencing. She explained that propagation studies indicating the need for enhanced cell phone service was provided by the applicant: validation of that information was made by the

town's engineering consultant. Ms. Phillips-Murray reported that the proposed tower meets all governing standards for such construction including the town's requirement that the tower be located at least 500 feet from the nearest residence.

Mr. Scavo reported that Mr. Myers, Director of Building and Development, offered no additional comment on this application.

Mr. Scavo stated that all of his previous comments have been adequately addressed. The Planning Department has received sign-off letters from the NYS Office of Parks, Recreation, and Historic Preservation as well as the FAA. Mr. Scavo explained that he consulted the Planner at the Albany International Airport who assured him that, because the tower is less than 200' high, the proposed installation meets all regulatory thresholds.

Mr. Montague, Environmental Specialist, reported that the ECC found this application acceptable.

Ms. Judy Ehrlich, 13 Plaid Place, requested clarification of the SEQRA action taken by the Board. Ms. Phillips-Murray explained that each application presented to the Planning Board must be reviewed pursuant to the State Environmental Quality Review Act to determine if the proposed action will negatively impact the environment. She reported that the application submitted on behalf of her applicant, Independent Towers Holding, LLC, included a Long Environmental Assessment Form, rather than the required short form, even though there was "no presumption of significant environmental impacts." The speaker informed Ms. Ehrlich that, based upon the environmental information provided, the Board determined that the proposed action would have no significant environmental impact. In response to Ms. Ehrlich's question regarding the location of the proposed equipment cabinet, Ms. Phillips-Murray indicated its location on the aerial map. Ms. Ehrlich reported that she had observed the balloon test from the playground that adjoins the ice arena and was surprised to learn that the families enjoying the playground that day had no idea why the balloon was placed at the site. She encouraged the Board to "actually inform people" of [the details of] the proposal. Mr. Ferraro pointed out that the applicant had fully complied with all notification requirements and that legal notices were published as required. Ms. Ehrlich presented Mr. Ferraro with a copy of a report prepared by the International Association of Fire Fighters – Division of Occupational Health, Safety, and Medicine that discusses "critical questions concerning the health effects and safety of RF/MF radiation" and asked that Board members consider its contents when reviewing cell tower applications.

Mr. Fei Han, 11 Hempstead Commons, described himself as a scientist and stated that "no one can say positively that this tower will not have negative impacts" on those who reside near it or those who use Clifton Commons for recreation and sporting events. He asked that the Board consider the possible potential health risk it poses and deny the application. Ms. Phillips-Murray provided a response to Mr. Han's concerns, explaining that federal legislation prohibits local Planning and Zoning Boards from denying applications seeking approvals for the construction of telecommunications towers based upon the possibility of negative health impacts. Federal government rulings, in fact, state that the towers provide services that are "essential for

public safety.” As requested by Mr. Renzi, Ms. Phillips-Murray defined the concept of *preemption* explaining that federal laws take precedence over local legislation. She directed those in attendance to the FCC website and the section entitled *Local Officials Guide to Wireless Facilities* that clearly outlines the responsibilities of those individuals serving on a local level to ensure that telecommunication facilities are approved and constructed in accordance with federal laws. Ms. Phillips-Murray also noted that the proposed tower is considered “categorically excluded” from mandatory Non-Ionizing Electro-magnetic Radiation (NEIR) analysis because the antennas are located on a pole at a height greater than 10 meters above ground. Mr. Ferraro commented that even though the proposed tower is “categorically excluded” from local regulation, the proposed emissions fall well within prescribed parameters. He also noted that the Code of the Town of Clifton Park requires engineering review for every telecommunications tower application. As mentioned at the Planning Board meeting of October 23, 2010, that review was conducted by Mr. William P. Johnson, RF Engineering Consultant from the Rochester Institute of Technology. In Mr. Ferraro’s opinion, the Planning Board has worked to ensure that its due diligence obligations have not only been met but exceeded.

In response to Mr. Han’s comment that “new homeowners and parents” will “think twice about taking risks [those potentially harmful to health],” thus impacting Clifton Park’s economy, Mr. Ferraro stated that all communities must adhere to federal laws: most will have cell towers located within their boundaries. Additionally, Mr. Ferraro noted that the propagation studies submitted and reviewed by the town’s consultant clearly indicates that there is a gap in coverage and that the proposed installation will increase the functional reliability of the service area.

Ms. Ehrlich stated that she believes that the placement of the tower will impact the value of her property. In response to observation that the proposed tower would be placed on town-owned property rather than private land, Mr. Ferraro stated that the code applies to all properties regardless of ownership.

Mr. Koval pointed out that the application contained information regarding the amount of emissions to emanate from the tower: he noted that they are likely insignificant compared to the devices and electronic equipment most people use on a daily basis.

There being no further public comment, Ms. Paulsen moved, seconded by Mr. Werner, to close the public hearing at 7:42p.m. The motion was unanimously carried.

Ms. Paulsen stated that one town resident wrote to say that he was appreciative of the town’s notification requirements and that he had observed the balloon used to test visibility. He found that the balloon was barely visible through the trees even though the leaves were mostly gone and he believes that the tower will minimally impact adjoining residents. Mr. Hale recalled “the early days of cell tower reviews” when agencies and boards retained visual and health experts to help with the decision-making process. He supported Mr. Koval’s comment regarding the strength of the emissions and stated that he was “comfortable” with approval of the application. Mr. Ferraro expressed his confidence that the Board had completed its due diligence with regard to this application noting that the Board required the preparation of a Long Environmental Assessment Form, encouraged the applicant to conduct a second balloon test to

assess visual impacts, sought comment from not only the FAA but also the Planner at the Albany International Airport, required multiple notifications to property owners within 500 feet of the project site, considered the technical engineering reports prepared by Mr. William Johnson, a recognized expert in telecommunication facility tower review, and encouraged mitigation of visual impacts such as location of the equipment cabinet at a distance from the tower and its enclosure with stockade fencing.

Mr. Koval offered Resolution #16 of 2012, seconded by Ms. Paulsen, to grant approval of Special Use Permit #80894 to permit construction of a telecommunications tower within a PIR zone pursuant to Section 208-58(C) and 208-95(B) of the Town Code. Ayes: Hale, Paulsen, Prescott, Werner, Koval, Ferraro. Noes: None.

The Board then considered site plan approval.

Mr. Hale moved, seconded by Mr. Werner, to grant preliminary and final site plan approval to this application conditioned upon satisfaction of all items listed in the comment letter issued by the Planning Department. The motion was unanimously carried.

### **Old Business:**

[2012-035] **Root Canal Experts** - Proposed 270 SF addition to existing 1-story building, 930 Route 146 – Possible SEQRA determination, preliminary site plan review and possible determination. SBL: 277.-4-14

Mr. Flanders, consultant for the applicant, presented this application that has been revised to address issues of concern raised at the October 23, 2012 Planning Board meeting. He reported that the Zoning Board of Appeals approved the several variances at its November 20, 2012 meeting. Pursuant to Section 208-35C, a lot size of 40,000 SF is required; since 14,092 SF is available, a variance of 25,908 SF was granted. Section 208-35C also requires that there be 180 feet of frontage at the building line: since the lot has 91.32 feet of frontage, a variance of 88.68 feet was approved. Pursuant to Section 208-35D, 25 foot minimum side and rear yard setbacks are required: since the lot has 7.6 feet available on the west side, 9.6 feet available on the east side, and 24.1 feet available to the rear, the maximum variance granted was 17.4 feet. Pursuant to Section 208-35D(3), the maximum lot coverage permitted for the building and parking is 50%: since the coverage would total 54% of the site, a 4% variance was granted. Pursuant to Section 208-35D(4), a 10' buffer is required: since only 7.6' is available, a variance of 2.4' was granted. The plan has been revised to show the location and specifications for the proposed connection to the Clifton Park Water Authority system. Though the Saratoga County Sewer District has approved the proposed types and sizes of piping, final approval from that agency is pending since the location of the proposed connection requires the establishment of an easement over an adjoining property.

Mr. Scavo reported that Mr. Myers, Director of Building and Development, found the application acceptable.

Mr. Scavo requested that the site statistics table be revised to reflect changes to the site plan.

Mr. Montague, Environmental Specialist, reported that, after review of the data presented, the ECC made the following recommendation. In keeping with the recommendations and goals of the Town Comprehensive Plan, the applicant should retain existing vegetation to the maximum extent practical and/or use landscaping and grading to provide visual and auditory buffering between the project and adjacent roadways and properties.

Mr. Bianchi reported that M J Engineering and Land Surveying, P.C. reviewed the latest submission for the proposed site improvements and offered the following comments. It is understood that the applicant has applied for and obtained the necessary relief from the Town Zoning Board of Appeals, allowing the Planning Board to consider acting on this application. It is suggested that the Site Statistics table be updated to include the latest relief granted by the Town Zoning Board of Appeals, similar to all other instances of relief granted and identified on the map. The project now proposes to provide municipal water by way of extending an individual service from the existing Clifton Park Water Authority (CPWA) water main located along NYS Route 146. This proposed connection is subject to the CPWA's review and approval. Any action that the Planning Board may take on this application should be conditioned upon receipt of CPWA's approval for connection. The plans should show the estimated size and materials of construction for the proposed water service as well as the proposed location for the curb stop. These items need to be reviewed and approved by the CPWA. The proposed connection to the CPWA's water main along NYS Route 146 may require work within the NYSDOT right-of-way, depending on the exact location of the existing water main. Prior to construction, it is suggested that the Planning Board make it a condition that the applicant furnishes the Town with a copy of the NYSDOT Utility Work Permit for any activities within the NYSDOT right-of-way, if it is deemed necessary by that agency. The project now proposes to provide municipal sewer service by extending a 6-inch service from the building to an existing sewer main owned and operated by the Saratoga County Sewer District No. 1 (SCSD). This proposed connection is subject to the SCSD's review and approval. Any action that the Planning Board may take on this application should be conditioned upon receipt of SCSD's approval for connection. The plans note 6-inch SDR21 pipe. Since the SCSD's normal standard for laterals is SDR26, confirmation that the stated materials of construction are correct should be provided. The sewer connection will be routed through what is believed to be private lands, adjacent to the applicant's parcel. There should be confirmation that the applicant has been provided a right of access crossing the private property for the purpose of sewer installation as noted on the plans. There should be a notation on the plans indicating that all areas disturbed for utility installations must be restored.

Though the Trails Subcommittee of the Open Space, Trails, and Riverfront Committee provided a comment on this application that recommended the installation of a bicycle rack near the building's entranceway, Board members agreed that such an amenity would likely not be used by those visiting the office for "a medical procedure such as a root canal." They agreed that the applicant could determine if installation of a rack was reasonable.

Mr. Koval expressed his appreciation for the applicant's willingness to address the concerns of the Board: he believes that the proposed improvements will enhance the site. Ms. Paulsen echoed Mr. Koval's sentiments, stating that she looks forward to upgrades to the property that will improve its visual appeal. Mr. Hale, too, found the proposal appealing.

Mr. Prescott moved, seconded by Mr. Hale to establish the Planning Board as Lead Agency for this application, an unlisted action, and to issue a negative declaration pursuant to SEQRA. The motion was unanimously carried.

Mr. Hale moved, seconded by Mr. Koval, to grant preliminary and final site plan approval to this application conditioned upon a sign-off from the Saratoga County Sewer District and satisfaction of all items included in the final comment letter issued by the Planning Department. The motion was unanimously carried.

### **New Business:**

There were no items of new business scheduled for this evening's meeting.

### **Discussion Items:**

#### **Stormwater**

Mr. Ferraro introduced Mr. Myers, Director of Building and Development, and Mr. Dan Mathias and Mr. Chuck Bassett, members of the Environmental Conservation Commission who were in attendance. He then explained that he had encouraged their presence at the meeting because the discussion item involved an "informal discussion" of stormwater management regulations and methods with a particular focus on infiltration practices and implications for short and long-term maintenance of a property's "external improvements" by individual homeowners. He noted that such responsibilities may not only include aesthetic components such as maintenance of landscaping and rain gardens but also elements of the overall stormwater management system. Mr. Ferraro explained that the evening's discussion was prompted by an application to amend approvals regarding the handling of run-off and stormwater within the Bradford Pointe subdivision.

Mr. Myers commented on the changes that were made to the Bradford Pointe subdivision, stating that the current plan for the management of stormwater and drainage appears to be working well. In his opinion, it is much better than the point collection system originally proposed and approved. Discussion ensued regarding the benefits of an infiltration system, enforcement, and legal liability issues.

Mr. Hale explained that professional perspectives regarding the handling of stormwater have changed. Whereas, traditionally, it was an accepted practice for developers to install a collection system that directed stormwater to retention ponds that were conveyed to a municipality that assumed responsibility for its maintenance, stormwater management

professionals are now utilizing vegetation and green infrastructure methods to provide infiltration of water more evenly across a development site.

Mr. Bianchi presented a matrix utilized by some municipalities that provides a “process of elimination for selecting stormwater management practices that are suitable for a project site.” He views the matrix as a useful pre-planning tool to determine site-specifically which stormwater management methods would work best for potential development sites.

Various issues including enforcement of maintenance responsibilities, clustering to create more effective methods of stormwater control, impacts of run-off to existing properties, deed restrictions to ensure continued maintenance after the transfer of property, and educational initiatives to increase public awareness of newer stormwater regulations were discussed. Mr. Ferraro concluded the conversation by noting that, although no decisions were made, the dialog increased Board members’ awareness of importance of effective stormwater management design and the need to establish guidelines for long-term maintenance of approved systems.

Mr. Prescott moved, seconded by Mr. Koval, adjournment of the meeting at 8:55p.m. The motion was unanimously carried. The next meeting of the Planning Board will be held as scheduled on December 11, 2012.

Respectfully submitted,

Janis L. Dean,  
Secretary

cc: Planning Board Members, Planning Department, Supervisor, Assessor, Zoning Board, Department of Building and Development, Town Clerk, Town Board Members, Highway Superintendent, Lou Renzi, Town Attorney, Tom McCarthy, Town Attorney, Paul Pelagalli, Town Attorney, ECC, Clifton Park Water Authority

**NOTICE OF DECISION**

**Resolution #16 of 2012**

**APPROVAL**  
**Special Use Permit**

At a meeting of the Planning Board of the Town of Clifton Park, Saratoga County, New York, held at the Town Office Building, One Town Hall Plaza, on November 27, 2012 there were:

Present: R. Ferraro, Chairman, M. Hale, J. Koval, K. Paulsen T. Werner  
E. Prescott – Alternate Member

Absent: E. Andarawis, E. Ophardt

Mr. Hale offered Resolution #16 of 2012 and Mr. Werner seconded, and

Whereas, an application has been made to this Board by Independent Tower Holdings, LLC for approval of Special Use Permit #80894 to permit the installation of a telecommunications tower at the Clifton Common pursuant to Sections 208-58(C) and 208-95(B) of the Town Code;

Whereas, pursuant to Section 276 of the Town Law a public hearing was advertised and was held on November 27, 2012 in the Town Office Building,

Whereas, the Planning Board was established as Lead Agency for this application, an unlisted action, and a negative declaration was issued pursuant to SEQRA, and

Whereas, it appears to be in the best interest of the Town that said application be approved,

Now therefore, be it resolved that the Planning Board approves the application of Independent Tower Holdings, LLC for approval of Special Use Permit #80894 to permit installation of a telecommunications tower within the PIR zoning district at the Clifton Common pursuant to Sections 208-58(C) and 208-95(B) of the Town Code.

Resolution #16 of 2012 passed 11/27/2012

Ayes: Hale, Paulsen, Prescott, Werner, Koval, Ferraro

Noes: None

R. Ferraro,

Chairman