



spoke to the environmental impact around the land (about 17 acres) to prohibit the movement of wildlife; one spoke about the gate not being appropriate to our community, and one spoke to the fact that this was illegal construction in the first place and shouldn't be approved. Ms. Elliot stated that this landowner also owns the adjacent 70 acres to this property, which isn't fenced in at all, a fact that the Planning Board may not have been aware of. She stated that several homes in the area have fences. There was a question as to who did the fencing, and Ms. Elliot reported that Berkshire Fence constructed it during the middle to the end of September, and that the owner was not aware of the fence ordinance. ZEO Walt Simonsmeier stated that Highway Superintendent Joe Rickert wrote a letter stating that he has no problem with the fence. Mr. Simonsmeier also informed the ZBA that we have no zoning regarding a gate at all. The Public Hearing was opened at 7:23PM.

John Graham, who lives next door, stated that he has no problem with the fence. He said he doesn't necessarily like the way it looks, but there are other places in Chatham who have fences that he doesn't like. He stated that he can't see the fence from his property.

Elle Dietemann wondered why there was a limit on height. Ms. Dietemann stated that she wouldn't like to see this as a precedent because of environmental concerns, nor does she wish to see us as a gated community. Mr. Simonsmeier reminded the Board that if the setback had been met, an 8 foot fence, everywhere but in the front, is allowable. He doesn't feel this is an environmental issue at all. Mr. Khosrova stated that he has reservations about this- - that if the fence had come to us prior to construction, he would have asked about alternatives. Plus, we shouldn't encourage those who haven't followed the code, and he worries about precedent being set. Chairman Everett wondered how much of the actual fence would have to be moved if this isn't approved. Ms. Elliot stated 200 linear feet would have to be moved back. Currently, natural landscaping had been used, and removing part of the fence back would leave some trees unprotected. Bob Leary feels that complying with the setback on Rock City Rd. wouldn't be too difficult to do. Walt Simonsmeier reminded the Board that the fence is what the violation was for, not the gate which is allowable. Chairman Everett stated that he really has no issue with this other than precedent setting. One of the Board members feels that it is the applicant's responsibility to find what is in the code that would allow him to keep the fence. He also questioned whether the applicant would agree to move the fence back if and when it needed replacement or repair. He wished to go through the criteria to make a more informed decision.

John Kraham stated that we are speaking of only 35' regarding environmental impact, not the entire fence. The code was read to the neighbor and it was

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stated that if the fence is moved, trees will be killed which is an environmental impact. Elle Dietemann stated that fences do have environmental impact. Allowing this is something that shouldn't be done, because of the precedent it will set. Fences have impact on wildlife, and an analysis supporting this can be done to make an informed decision. Mr. Khosrova stated that we have requirements for due diligence, and he's not satisfied that it has been accomplished. Suzanne Williams felt that the information presented at the last meeting was sufficient to make a decision. Ms. Williams moved that the Board accept the height variance conditioned that it be granted only for the approximately 35 feet directly behind each end of the gate. Mitchell Khosrova seconded the motion. Atty. Rappleyea reviewed the standard: will there be an undesirable change in the neighborhood? The Board is satisfied that it would not; is there another method that can be employed? They will move much of the fence back to the setback; is this substantial? Not if the fence is moved back; is it self-created- yes, but this alone does not drive a decision. Cindy Elliot requested that this Public Hearing be continued next month so she could advise the applicant, but the Board feels that enough information is now available to make a decision. The motion was reviewed and carried unanimously.

**VERIZON WIRELESS- SPECIAL USE PERMIT AND SITE PLAN REVIEW TO CO-LOCATE ON EXISTING CELL TOWER ON HARMON HEIGHTS ROAD. INFORMATIONAL**

This project is unable to go to Public Hearing because the adjoining property holders were not contacted, but the representative, Scott Olson, requested to present the project and field any questions. The request is to place 12 antennas at the 115' level, which is lower than the tip of the tree, and have the typical equipment shelter at the base. Chairman Everett read the Planning Board's recommendation- - - to accept this as long as all codes are met. The structure will be placed within the existing fencing, and some of the pines around the area may be replaced. Mr. Everett asked if the antennae will be within the limits of the camouflage, to which Mr. Olson replied that they will try to do that. Chairman Everett asked for some photos or simulations of the site for the next meeting. Paul McCreary made several comments which will be put in writing for our records. An escrow account of \$3500 will be created for engineering fees. This will go to Public Hearing next month. Mitchell Khosrova complimented the applicant on the package presented to the Board.

**FAIRPOINT COMMUNICATIONS- PUBLIC UTILITY SPECIAL USE PERMIT  
REQUEST ON RT. 203- PUBLIC HEARING (cont.)**

Bill Mulrein and Stephen Hermance are representing Fairpoint. Mr. Everett asked how the discussion went with property owner Gilmour, and Mr. Mulrein

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reported that it was unsuccessful and that the facility will be moved entirely into the state right-of way. A new site plan will be provided. Mr. Everett asked the applicant if they had permission from Mr. Gilmour to remove the pad from his property. David Gilmour requested permission to address the Board, which was granted.

Mr. Gilmour apologized for not being at the meeting in April, as the notice had been misplaced, however he has been in communication with the applicant since September. He feels it is an abominable application with no regard to the danger of the intersection, or any efforts to look into an alternative site, but rather just moved into what was believed to be the right-of-way. Mr. Gilmour felt that wasn't fair at all, particularly since this is a view shed that should be protected. Taxes on this property are paid on the full-value, and alternative sites were not even considered. He feels the whole process has to start over. He feels that there are other places, perhaps right on the same property that could be used. He doesn't feel he could agree to be a party to this existing application because a rigorous evaluation was not done. Mitchell Khosrova stated that the Board requested in June that the applicant supply a visual narrative on alternatives, and that Fairpoint has been reprimanded about this. Engineer McCreary reiterated that NYS does own the right of way. Chairman Everett stated that for this Board to continue with this project a new site plan with proper setbacks would be required. Mr. Khosrova stated that alternative sites would need to be reviewed that would have less impact. Suzanne Williams wondered if setbacks would be met if the box is moved from the present site. Mr. Hermance stated that it would be further from the road than it presently is. Ms. William stated that alternatives mean more than moving this 10'. Mr. Mulrein said that this is a key location, and if it is moved from here there would be considerable construction through the hamlet with cables and there would be technical changes. For example, the Little Lake Rd. area would no longer be able to have broadband service.

George Vollmuth stated that it was never understood why it was placed where it is, and that he believed it could be elsewhere. The community was never given a chance to come up with alternatives. Mr. Gilmour reiterated that he may have some ideas as to locations close to this hub. He stated that he is a reasonable person and there may be alternatives right on the property that could be explored, such as that close to Doris

Appel's property. Perhaps lower profile cabinets could be used. Dave Everett wondered about the standards for the life of the equipment. Kary Jablonka feels that more information regarding alternatives in view of the geography of the land needs to be provided in "layman" terms, including why these alternatives would or would not work. The residents wish to preserve the historical nature of their community. What is needed is alternative locations and why they are or are not suitable, alternative technology and alternative screening. George Vollmuth stated that he would be glad to help.

Mr. Mulrein stated that utilities have a right to be in state/town/local rights-of-way, and that Fairpoint believed that they were in that. If a state right-of-way is not available, they attempt to get a perpetual easement, but they prefer not to encumber properties. Mr. Mulrein stated that he would consult with their engineering staff regarding the Board's request. Engineer McCreary stated that any location in a right-of-way would require a permit. This Public Hearing will continue at the next meeting.

#### **FAIRPOINT COMMUNICATIONS- PUBLIC UTILITY SPECIAL USE PERMIT ON RT. 32- PUBLIC HEARING (cont.)**

The requested landscaping plan was reviewed. The Corsey family approved it and the neighbor also agreed to it. The Public Hearing was closed at 9:20 PM. The Short Form SEQRA application, which shows no significant adverse effects to the following: air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems was reviewed. Also, there are no aesthetic, agricultural, archaeological, historic, or other natural or cultural resources or community or neighborhood character concerns. There are no significant effects to vegetation or fauna, fish, shellfish or wildlife species, significant habitats or threatened or long or short-term effects identified. Since this is the case, Mitchell Khosrova moved that there is no significant adverse environmental impact with this project, and should be accepted. This was seconded by Kary Jablonka and carried unanimously. Suzanne Williams moved that this Public Utility Special Use Permit request by Fairpoint Communications be approved contingent upon the landscape plan being completed and County Planning Board approval. Kary Jablonka seconded the motion and it carried unanimously. \$50 approval fee will be sent by Fairpoint.

The meeting was adjourned at 9:25 PM.

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David Everett, Chairman

Respectfully submitted,

Marilyn Cohen, clerk