

- **J. Lescynski: Concern for ingress/egress onto Wells Bay from Rt. 394.**
- **J. Warner: Concern that this is not the type of business the PB had envisioned in all the work done for the Comprehensive Plan for Stow Central and the corridor to Chautauqua Institution.**
- **M. McNeill: Feels it does not fit in with what the overall Comprehensive Plan is looking for.**
- **S. Senske: Does not feel it looks like what North Harmony is looking for in that specific area.**
- **W. Geist: Abstained from comment.**

Mr. Warner seconded the motion and it was unanimously referred back to the Zoning Board.

Mr. Levesque asked Mr. Lawson what the zoning law is for this particular application. Mr. Lawson stated there is no actual definition of self-storage in the law, but there is for storage structure over 140 sq. ft.. He said through that there is boat storage by Special Permit with a new building and boat storage by right with existing building. Mr. Lawson said he had made the decision based on that, that the application should be a special permit. Mr. Levesque asked Mr. Sampson if he had brought any options for the building (type of architecture, etc.). Mr. Sampson said no, but with variations anything can be done with the buildings. He compared his intended structure and color choices to the nursery and gift shop already located in the area that have evergreen roofs and are a tan color. He also noted that the paint to be used on the building is 40 year paint rather than the 30 year previously stated. He said he would do what ever is needed as far as plantings and building style (within reason). Mr. Levesque said if Mr. Sampson were to make some of those styles available it might be to his advantage because perhaps the PB was not so much against the type of business but what it would look like cosmetically and how it would fit into the overall look envisioned in the Comprehensive Plan. Mr. Lawson said he felt the PB recommendation reflected no problem with self-storage, but an opinion that it was not a type of business suited to that particular property for the reasons listed above. He said Mr. Tordello had asked the board directly what use they thought his property was suited for and the PB did not have an answer. Mr. Stapleton asked if the building next door was commercially used and if there was a lot of ingress/egress there. Mr. Lawson said yes and within that district there are a lot of things that could go there by right under the existing zoning law. Mr. Stapleton asked if the site plan is the same one presented at the last ZBA hearing 3/25/09. Mr. Sampson said yes.

There was further discussion and re-review of Mr. Sampson's plans with specific attention to drainage.

Mr. Lloyd asked if there will be a filter system installed for hydro-carbon abatement. Mr. Sampson said yes. Mr. Lloyd said that filters for this system must be checked and changed yearly.

Mr. Sampson said he would have no problem with planting more trees and signage could be addressed by either complying with the existing code or requesting a Special Permit. He stated that the sign would be placed a minimum of 80' from the road edge.

Mr. Lloyd asked what the occupancy level was for Mr. Sampson's other storage units is. Mr. Sampson said 100%. Mr. Stapleton asked if there was any storage of hazardous materials allowed. Mr. Sampson said it is prohibited in the lease agreement. Mr. Levesque asked if access was 24/7. Mr. Sampson said yes. He said there will be cameras to monitor the premises, but not what the customers are putting into their units. Mr. Levesque asked if the town would be liable for any damages that might come from the unauthorized storage of hazardous materials. Mr. Stapleton said the town would not be liable. Mr. Sampson said they do have insurance that covers the units and the applicants have insurance that covers their stored items.

Mr. Levesque asked if anyone wished to speak regarding the application.

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Mr. Strand said in the Commercial Zoning regulations storage structures over 140 sq. ft. refers to accessory buildings. He said the definition of storage structure states that it shall be less than 150 sq. ft. with larger structures considered to be customary accessory uses. He said the definition of accessory building is a building which is subordinate or serves a principle building (i.e. garage). He said the only other reference to storage by special use permit states wholesale business/warehouse, storage of materials. He said in these guidelines it says that unless a use is specifically included it specifically excluded. He said he was at the PB meeting last night and they were unanimously against the project. Mr. Strand said if the project is permitted at this location it will open the door to more of these types of structures. He said it would be detrimental to other businesses that have invested in the area. He said it is more harmful than beneficial to the people unless it is put into a different district.

Mr. Sampson said the town has already allowed two storage businesses, one in a commercial district and one in an ag-residential district. Mr. Strand said his business is different because the buildings he uses were existing and he made improvements to them. He said his facility is by appointment only.

Mr. Stapleton commented that Mr. Strand was allowed in the AR district, using the same language, to do the same thing by Special Permit that Mr. Sampson is requesting.

Mr. Levesque entered the letter dated 4/23/09, from the County Planning Dept. into the record stating that the second paragraph reads “the proposed action should have no significant county-wide or inter-community impact and that the proposal would be a matter of local concern.” (*Refer to points made in that letter*) Mr. Levesque asked how close the nearest home is to the project. Mr. Sampson said about 250’.

Short Form SEQR review “Stow Self-Storage”:

Mr. Levesque went through each section of the SEQR application and all questions were answered to the board’s satisfaction.

Mr. Levesque motioned for a negative declaration for environmental impacts on the Short Form SEQR on the application of Scott Sampson to build 2 self-storage facilities at property located at the corner of Wells Bay and Rt. 394. Mr. Michalak seconded and the motion was carried unanimously.

Mr. Auer said he was also at the PB meeting and they were overwhelming against the project as the wrong application for the community. He said if this one is allowed what would stop a u-haul from moving in down the street and building another one. He said usually the ZBA sees eye to eye with the PB. Mr. Levesque said the ZBA respects the opinions of the PB and wants to work in harmony with them.

Mr. Strand said in the self-storage business across the nation many people just come in and build these types of units without seeing if an area is already adequately served. He said it is very likely that this would pave the way for other storage facilities. He said there is no market in this area that is not already being served. Mr. Auer said ultimately these units will deteriorate and it is the PB and ZBA’s job to consider what will happen down the road.

Mr. Stapleton asked if the PB would be submitting the draft Comprehensive Plan to the town soon. Mr. Lawson said the survey has been completed but the PB still has more work to be done to complete the plan.

Mr. Sampson reiterated many of his previous statements and asked that the board approve his plan.

Mr. Levesque repeated that the ZBA’s function is not to assess whether or not a business will be successful. He asked if the business fails is there a means of removing the buildings.

Mr. Sampson said sure.

Mr. Auer said that question is inappropriate and leading.

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Mr. Sampson commented that the only public present is 2 persons who are his competition. He said there are no neighbors, etc. present saying "we don't want this".

Mr. Strand provided statistics and demographics that state the market in this area is adequately served. He said once these buildings are built there is no other function for them and they stay there.

Mr. Auer asked if the ZBA could recommend a moratorium on this project until the Comprehensive Plan is complete.

Mr. Stapleton said everything is recommendation and there is no legal authority for this board to do that.

Mr. Sampson said the buildings are somewhat like an erector set and can be changed to other applicable structures (i.e. office buildings). He said they don't just sit there and fall apart.

Mr. Levesque motioned to approve the Special Permit application of Scott Sampson to construct 2 self-storage buildings at property located at Wells Bay and Rt. 394 (Sec. 332.11-1-22.1) provided the following criteria are adhered to:

- **Landscaping is changed to include a barrier on the Rt. 394 edge of evergreens (2 rows staggered of minimum 5' plantings 15' apart)**
- **Structures must have evergreen tint roof and walls must be classic beige.**
- **Wells Bay intersection with Rt. 394 ingress/egress be approved by NYS DOT and plantings placed in such a way as to not obscure visual ingress/egress.**
- **Drainage plans are to be subject to any further future changes as required by the Highway Superintendent.**
- **Signage must be in compliance with zoning code (as suggested by County Planning perhaps a monument etched type sign) and well off the edge of the entrance to Wells Bay Rd.**
- **Structure, drainage, etc. be constructed according to plans as provided and discussed.**

Mr. Lloyd seconded and the motion was carried unanimously.

#3. New Cingular Wireless PCS, LLC ("AT&T" or "Applicant"), successor to Dobson Communications requesting a Special Permit amendment to modify cell towers located at 3357 Route 394, specifically Section 7-1-8.2, 6-1-23 & 24 and 6396 Randolph Rd., specifically Section 13-1-20.1 (new# 382.00-1-57) by replacing 9 existing antennas at the facilities with 6 dual-band antennas and related equipment modifications.

Adam Walters of Phillips Lytle appeared to represent AT&T who has acquired Dobson/Cellular One. He said he had represented Dobson in the initial applications to construct the cell towers located at Tri-James on Rt. 394 and on Randolph Road. He said that AT&T in order to upgrade acquisitions across NY would like to change the type of antennas currently used. He said Chaut. Co. is part of the focus area and they would like to complete the upgrade by summer. He said the cell towers currently have 9 panel antennas. He said there are 3 antennas in each sector. He said the panels are basically flat and fairly wide and long (measurements are 86" tall, 6.5" wide and 8" deep). He said the measurements of the new antennas are 96.5" tall, 15.3" wide and 4.6" deep. Mr. Walters stressed that there will only be 6 of the new antennas going up at each of the two sites, replacing the 9 that exist (2 antennas in each sector vs. the 3 currently used). Mr. Walters said this would mean less visual impact. Mr. Levesque asked what the sq. ft. of coverage would be. Mr. Walters said there would be some additional cabinets and rearrangement of those existing cabinets on the ground inside the fence compound. He said an additional 8x10' pad would be added at the Randolph site to accommodate the cabinets, but no additional pad would be needed at the Tri-James site. Mr. Stapleton asked what is inside the antenna. Ms. Semiday said inside the large antenna are 4 smaller antenna and they each have individual band frequencies, so each contain the 700-900 and the 1700-2100 frequencies.

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She said this increases the frequency range for better coverage. Mr. Walter said AT&T has two licenses, a PCS license and an old cellular license so they cover two frequencies and you get more “bang for your buck”. Mr. Komar asked what they are in megahertz. Ms. Semiday said 1710-2180 megahertz/UHF. Mr. Walters said the current build out equipment is 4G and can be increased. Mr. Walters said from a SEQR standpoint they believe this is a type 2 action, not subject to official review. Mr. Levesque asked for the record if the actual tower would change in height, diameter of structure, or if any structural changes for additional support will be made to the tower. Mr. Walters said no and a letter from the structural engineer was submitted with the application that states the tower is fine as is. Mr. Levesque asked if it was strictly a cabinet and antenna change out. Mr. Walters said there are also cables that run between the antennas. Mr. Stapleton said when he was looking at the license he did see these particular towers listed among the 30 or so identified throughout other counties. Mr. Walters said the licenses are actually federal license (FCC) issued before they can do any build out. He said they are buying bands and you are licensed on the frequency for the metro area.

Mr. Stapleton asked for the record if the bond for tear down was still posted and is still in effect. Mr. Walters said that when AT&T acquired Dobson they also acquired all of their obligations and the bond is still in effect. Mr. Walters said when the site acquisition company gets ready for the build out they will be coming to Mr. Lawson for building permits and if there are any update issues they can be taken care of right away. Mr. Walters stated that under SEQR, type 2 actions, replacements, rehabilitation or restructure of the structure or facility in kind. Mr. Walters suggested that this is replacement in kind and they are reducing the number of antennas and no further SEQR is required. Mr. Stapleton asked Mr. Levesque if he heard anything in the application that suggests any type of adverse environmental effect that would require the board to examine that issue. Mr. Levesque said no and agreed that no further SEQR action is required.

Mr. Levesque motioned to amend the existing Special Use Permit applications of Dobson Communications (now owned by AT&T) authorizing the replacement of 9 existing antennas at the facilities with 6 dual-band antennas and related equipment modifications as outlined in the letters of intent and subsequent drawings submitted for the cell towers located at Tri-James (Rt. 394) and on Randolph Road. Mr. Adamson seconded and the motion was carried unanimously.

The hearing was adjourned at 10:00 PM.

Nancy M. Thomas
Town Clerk