

Chairman Larry Ruth called the meeting to order at 7:34 P.M. Members present were Gene Bavis, Elaine Leasure, Larry Ruth, Deborah Amsler and Peter Schillaci. Also present was Phil Williamson, Norm Druschel, Brendan Bystrak and Patti Marini.

Elaine Leasure made a motion, seconded by Pete Schillaci, to dispense with the formal reading of the legal notice. Motion carried.

Elaine Leasure made a motion, seconded by Gene Bavis, to approve the minutes of January 17, 2007 meeting as presented.

Roll Vote:	Gene Bavis	Aye
	Elaine Leasure	Aye
	Larry Ruth	Aye
	Deb Amsler	Aye
	Peter Schillaci	Aye

Motion carried.

**1. Application of Mr. Thomas Mayberry for Preliminary and Final Subdivision Approval for a 3-Lot Subdivision of Gananda Retail Center located approximately 200' northeast of Canandaigua Road and Fairway 7 intersection in the Gananda Community. Property is zoned PD.**

Mr. Thomas Mayberry owner of the property was present and explained that he is seeking to subdivide the Commercial Retail Center that is currently one parcel into three separate lots. Site Plan approval was previously granted in November 2004.

The Board was in receipt of a letter from the Wayne County Planning Department, dated February 1, 2007 that stated:

“At the regular meeting on January 31, 2007, the Wayne County Planning Board reviewed the referral of the Gananda Retail Center and determined it to be of no intermunicipal or countywide impact. The Board recommended this referral be returned to the Town to be handled as a local matter.”

Phil Williamson stated that there were no legal concerns. The Board did not have any questions for the applicant.

Brendan Bystrak stated that Parrone Engineering prepared the subdivision map, dated January 10, 2007. Robert Seeley of Shelley Associates has also reviewed the map and signed the mylar.

Chairman Ruth opened the public hearing. There were no comments from the public.

Gene Bavis made a motion, seconded by Elaine Leasure to closed the public hearing.

Motion carried.

**RESOLUTION  
RE: Commercial Retail Center  
Three Lot Subdivision  
Tax # 062.113-0000-345.929**

WHEREAS, Thomas Mayberry, has made application for a three lot subdivision, of a commercial retail center, and

WHEREAS, this is a Type II action and no further SEQRA determination is necessary; and

WHEREAS, the engineer report, prepared by Shelley Associates, PE, LS, PC, dated, January 29, 2007 has been satisfactory address by the applicant, and

WHEREAS, a public hearing was duly advertised and held on February 12, 2007; and

NOW, THEREFORE, upon consideration by the Planning Board, of all written and oral submissions and testimony by the applicant and public comment, and the Planning Board having given this matter due deliberation; it is

RESOLVED, that the Planning Board of the Town of Walworth grants Subdivision Approval based upon the following findings of fact; and subject to compliance with the following conditions of approval:

**FINDINGS OF FACT**

- 1) Planning Board meeting held on November 8, 2004, approved the application of Mr. Thomas Mayberry for preliminary and final site plan for the Gananda Retail Center in the PD zoning district. This application is for the subdivision of property where site plan approval has been granted and two of the three proposed structures have been developed on the site.
- 2) The applicant has satisfied the comments outlined in the engineering report.
- 3) The application is non-residential and exempt from the Parks and Recreation Fee.

**CONDITIONS OF APPROVAL**

- 1) The applicant will obtain all required approval signatures and have map filed in the Wayne County Clerks office as required by town code.

The within Resolution was moved by Planning Board member, Pete Schllaci, seconded by Gene Bavis, Planning Board member, and voted upon by members of the Planning Board as follows:

Roll Vote:	Gene Bavis	Aye
	Elaine Leasure	Aye
	Larry Ruth	Aye
	Deb Amsler	Aye
	Pete Schillaci	Aye

Motion carried.

Adopted by the Planning Board on: February 12, 2007

**2. Application of Mr. James Bremer for Special Use Permit to erect a private, noncommercial antenna system for ham radio use licensed by the FCC. Property is located at 390 Hillside Circle, west of Cream Ridge Road. Property is zoned R.**

James Bremer owner of property located at 390 Hillside Circle was present to discuss the application. He explained that he has applied for a Special Use Permit for the installation of an amateur radio support structure and antennas at the rear of his property. He began with a brief opening statement. He made the following points.

- Support structure is approximately 80 feet tall, with the total height with mast and antennas will be 93 feet.
- First appeared before the Board at a work session on August 17, 2005 and again at a public hearing on September 12, 2005. In response to requests from neighbors a question and answer period was held.
- Subsequent to the meeting, Mr. Bremer retained the services of Attorney Albert Millus to guide him through the legal issues involved.
- More recently, application has been reviewed by Art Williams, Town Attorney who wrote to the Board that the FCC has jurisdiction on matters of radio frequency interference.
- Brendan Bystrak, Town Engineer also reviewed the application and presented a letter to the Board at the January 17, 2007 work session.
- At the January 17 work session, Mr. Bremer agreed to have a review by an NYS Licensed Professional Engineer (Mark S. Adams, dated February 5, 2007).
- Proposal shows installation of anti-climb barrier.
- Revised site plan moves the base of the tower to comply with Town setback requirements.
- After review by Mark S. Adams, it was determined that the Rohn 45G should be installed instead of the Rohn 25G tower originally proposed. The main difference is that the 45G is 18" on a side vs. 12" for 25G. Also, the 45G will only require guy wires in two places (top and middle) vs. three with the 25G. The overall height remains unchanged. (letter to Phil Williamson, dated February 6, 2007).

There were no further questions from the Board.

Chairman Ruth opened the public hearing.

**Ron Howard – 356 Hillside Circle** – Mr. Howard stated that he lives adjacent to Mr. Bremer on the backside of the Bremer property. He expressed that the proposed 93 ft. structure with guy wires will be an "eyesore" in the middle of a residential neighborhood. Further, it will be a detriment to anyone trying to sell his or her home and will have a negative impact on property values. The location of the Bremer property is such that the tower will be visible to the residents along two roads. This is a residential neighborhood not a farm neighborhood and Mr. Howard voiced, "I have a genuine concern that this tower should not be erected in this location whatsoever".

**Richard Nightingale – 411 Hillside Circle** – Mr. Nightingale stated that that has lived in his home for about one year and that he shares the same concerns as Mr. Howard in regard to the impact that the tower will have on the property value of homes in the neighborhood. Mr. Nightingale has spoken to Phil Williamson about the zoning regulations in regard to structures that can be erected on one's property. He stated that he has questioned real estate agents and most of them have said that a tower will have a negative impact when selling a house. A second concern is that preliminary research indicates that there might be health issues associated with these types of towers. Mr. Nightingale stated that there are children in the neighborhood, and on a personal level he and his fiancé hope to have children in the future. The final concern is interference. He stated that it is his understanding that when Mr. Bremer lived in another neighborhood, a similar tower did create problems of interference. Mr. Nightingale stated that he has wireless internet access, satellite radio and television and a number of wireless types of devices that there could be interference on. "Most importantly for me, is the devaluation of the property and the overall aesthetics of the neighborhood. This is why I adamantly oppose the approval of this project."

**Shelley Davis – 359 Hillside Circle** - She stated that she lives on the cul-de-sac near Mr. Howard. She is concerned about the value of her property decreasing. Another concern is interference. She explained that her fiancé owns expensive audio equipment, and while living in Brighton, similar towers have caused problems in the past. "But, the biggest thing is that I do not want to look at that tower every single day of my all my life and I'm worried about my property value."

**Todd Russell – 367 Bills Road** – Mr. Russell said, "My yard backs up to Mr. Bremer's property and every time I pull into my driveway and look at the front of my house I will see this tower. I will be able to see it no matter where I am. I have a pool and deck in my backyard and the tower will be a constant eyesore. I have lived in my home for four years and already my assessment has gone up \$20,000 since I moved in". He stated that all his concerns have already been addressed and he shares everyone's concern about property values.

Chairman Ruth stated that the health and safety concerns have been investigated and the data indicates that there is not a health and safety issue. He also stated that initially they had thought that the tower could be located where there would be more screening, but the Town ordinance requires that the tower must be located such that if it were to fall it would fall within the perimeter of owner's property.

Pete Schillaci questioned if there had been any studies conducted that show whether these towers actually do decrease home values of the neighborhood? Gene Bavis stated that the Board has addressed that question with various cell tower projects and there is some difference of opinion. Most appraisal experts say that it does not appear to have a significant impact.

Pete Schillaci stated that he is sympathetic with the feelings of those present. Chairman Ruth stated that while he too can understand the concerns that have been raised, the Board is not empowered to deny approval based on the basis of "visual pollution" or because the neighbors do not want it in their neighborhood. As long as federal and state laws are adhered to, the Board cannot prohibit the tower from being erected.

**Richard Nightingale – 411 Hillside Circle** –Mr. Nightingale questioned, "Will there be lights on the tower?" Chairman Ruth answered, "No".

Mr. Nightingale questioned, "What is the appeal process for the decision?" Chairman Ruth stated, "You would have to appeal to the FCC if you have feel the criteria has not been met. It would be a legal matter." Gene Bavis added that you could sue the Town if you can show that we have not followed the Town ordinances, but to the best of our knowledge we have met all the criteria. Chairman Ruth added, the one exception is that if the tower were located where it should not be, this would be a Town issue. Chairman Ruth stated that he appreciates that all those affected are here to voice their concerns and have their questions answered.

"Who would be the person to consult regarding the impact the tower has on property values?" Chairman Ruth stated that any concerns in regard to devaluation of property should be brought to the attention of the Town Board. Supporting documentation as to why you feel your property value has decreased can be presented and discussed with Karen Ambroz, Tax Assessor.

**Susan Beck – 411 Bills Road** – Ms. Beck stated that she concurs with all the concerns of the neighbors. She questioned, "What happens to the Tower if the homeowner moves? Is it a permanent structure, or can it be disassembled and taken down?" Chairman Ruth stated that the person who erects the structure is responsible? The Special Use Permit goes with the homeowner, not the property. Elaine Leasure read the following condition of approval, "Per section 180-12-B(6) of the town code the Planning Board upon granting such Special Use Permit



intensity of use of land including agricultural, open space or recreational resources or in its capacity to support existing uses; that the granting of the applicant's application will not encourage or attract a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action; and the project will not impair historical or archeological resources or wildlife or natural resources, I MOVE in regard to the pending application that the action is one that will not have significant adverse impact on the environment and that a Negative Declaration be declared.

Roll Vote:	Gene Bavis	Aye
	Elaine Leasure	Aye
	Larry Ruth	Aye
	Deb Amsler	Aye
	Pete Schillaci	Aye

Motion carried.

**RESOLUTION**  
**RE: James Bremer**  
**Special Use Permit**  
**390 Hillside Circle**  
**Tax # 016.114-0000-310.8670000**

WHEREAS, Mr. James Bremer, has made application for Special Use Permit to be use at 390 Hillside Circle for installation a private ham radio tower and antennas, and

WHEREAS, Town Engineer's report was prepared dated January 16, 2007 has been satisfactory addressed and

WHEREAS, a public hearing was duly advertised and held on February 12, 2007; and

WHERE AS, the Planning Board as Lead Agent has declared a Negative Declaration in the SEQR process.

NOW, THEREFORE, upon consideration by the Planning Board, of all written and oral submissions and testimony by the applicant and public comment, and the Planning Board having given this matter due deliberation; it is

RESOLVED, that the Planning Board of the Town of Walworth grants James Bremer the Special Permit based upon the following findings of fact; and subject to compliance with the following conditions of approval:

**FINDINGS OF FACT**

- 1) The applicant has an Extra Class Amateur Radio License and has been licensed by the FCC since 1976. Further, the applicant has an Emergency Communication Training Certificate to provide emergency communications in the event of man made or natural disasters.
- 2) On January 15<sup>th</sup>, 2007 the Town Attorney reviewed the application materials and determined that the application was complete and that no Radio Interference (RFI) Study was required given the FCC exclusive jurisdiction over all RFI related issues, therefore Mr. Bremer application is complete without having to submit RFI documentation and without having to refer the application to an outside expert.
- 3) The proposed location of the private antenna "Ham Radio Tower is located within a "R" Zoning District, (Single Family Residential) as permitted by town code section 180 -12 B (6).
- 4) The proposed tower and radio antennas are not for commercial use, and are permitted provided their height shall not exceed a height which shall be permitted, after applying all applicable federal laws, rules and regulations, that the town authorities legitimate purpose to protect the health safety and or aesthetics conditions of the community, section 180 -12 B (6). Federal Preemption related to the application was outlined on page 4 of the application. Federal Commission Order PRB-1, 101FCC2d 952, 50 Fed Reg. 38813 (September 25, 1985) " nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonable amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose".

- 5) A revised plan was submitted by the applicant on January 17, 2007, showing relocation of the tower foundation from the western and southern property lines to conform with section 180 -12 B (3) such that the setbacks from the property line exceed the proposed overall height of the tower and antennas.
- 6) On February 6<sup>th</sup>, 2007 the applicant informed the Code Enforcement Office that an alternate tower has been selected based upon the structural analysis requested in the Town Engineer's report.
- 7) That the location of the tower and existing vegetation will provide screening of the tower and antennas to the adjoining properties and vehicular traffic on the local roads.

**CONDITIONS OF APPROVAL**

- 1) The tower and its foundation design need to be reviewed, stamped and signed by a New York State Licensed Professional Engineer. Provide calculations for ice and wind loading using a wind speed of 70 mph, based on EIA/TIA-222-E "Structural Standards for Steel Antenna Towers and Antenna Supporting Structure".
- 2) Installation of the anti-climbing barrier.
- 3) No lighting shall be installed on the tower or antenna unless required by the FCC or FAA.
- 4) That the location of the tower shall be such that if a failure occurs, the tower and antennas would fall onto the applicant property only, per town code.
- 5) Per section 180-12-B(6) of the town code the Planning Board upon granting such Special Use Permit require the removal of the antenna if the same is not operated or utilized for a continuous period for 60 days.

The within Resolution was moved by Planning Board Member, Gene Bavis, seconded by Elaine Leasure, Planning Board Member, and voted upon by members of the Planning Board as follows:

Roll Vote:	Gene Bavis	Aye
	Elaine Leasure	Aye
	Larry Ruth	Aye
	Deb Amsler	Aye
	Pete Schillaci	Nay

Motion carried.

Adopted by the Planning Board on: February 12, 2007

**3. Application of Cricket Communications, Inc. of Rochester for a Special Use Permit and Site Plan Approval to co-locate telecommunications antennas on the existing telecommunications tower and to locate its related equipment within the existing fenced compound used for such purposes. Property located at 88 Bills Road. Property is zoned R.**

Chairman Ruth read a letter from the Wayne County Planning Board, dated February 6, 2007 that stated that they had reviewed the application at the January 31, 2007 meeting and recommended approval.

Mr. Reuben Ortenberg, attorney for Cricket Communications was present to discuss the application. He explained that the intent a Special Use Permit and Site Plan Approval to collocate a fifth set of antennas on an existing telecommunications tower. The antennas will be the lowest set of antennas on the tower at 180 feet. A small equipment cabinet will be located on a metal platform at the base within the fenced compound.

Mr. Ortenberg presented photos of the current site and photo simulations of what the site will look like with the proposed antennas that shows that the visible effect is almost negligible.

Mr. Ortenberg explained that the intention of Cricket is to have coverage along Route 441. Cricket believes that location of this site (ROC-442) will be the best place to accomplish this.

Brendan Bystrak, Town Engineer expressed concern about the possibility of a coverage gap located between tower ROC-442 and ROC 508, the Carey Lake area between Canandaigua Road and West Walworth Road. This low point in the highway may be a "no window coverage" area that could potentially cause dropped calls to Cricket subscribers. The question was raised, would there be a future need for an additional tower?

Joseph Ndiaye, Radio Frequency Engineer for Cricket was present to address this concern. He explained the technical measures that will be taken to reduce dropped calls. Mr. Ndiaye explained that he does not foresee dropped call to be a significant issue. With regard to the need for any additional towers he stated that there would need to be a much greater population growth and higher traffic volume to justify the cost of adding another tower, which is unlikely. Cricket avoids building new towers as it is inefficient and costly and prefers to co-locate on existing towers. Discussion ensued about possible future co-locations, on Towers ROC-514 and ROC-508 that would address the need to provide expanded coverage in the Town. Mr. Ndiaye stated that the budget for these co-locations has not been allocated at this time.

There were no further questions from the Board.

Chairman Ruth opened the public hearing.

Mr. Peter Giovenco stated that he is the property owner of 88 Bills Road and 82 Bills Road. He leases the property that the cell tower uses to a third party.

Mr. Giovenco expressed discontent about the maintenance of the property where the cell tower is located. There has been little maintenance of the road and a fifth antenna will add more traffic. This year to date the road has not been plowed and since nobody can see where the road is there will be ruts in the grass. Mr. Giovenco explained that there has not been any Spring cleanup and the only maintenance is done by himself. Further, the fence is in disrepair and the evergreens originally used for screening are dying because of neglect and an overgrowth of weeds. He would like to have the situation rectified.

Chairman Ruth asked if they had brought to the attention of the Town the lack of maintenance. Phil Williamson stated that any maintenance of land is over private property and not enforceable by the Town. Mr. Giovenco stated that that it was his recollection that the original approval did include visual screening. Phil Williamson stated that he would look at the original approval to verify whether the approval included screening and maintenance. Chairman Ruth stated that Arthur Williams, Town Attorney should also review the document. Gene Bavis stated that maintenance of the road could be a health and safety issue in regard to emergency vehicles being able to get to the cell tower. He asked to inspect the proposed plans.

Mr. Giovenco stated that in the future he hope to develop a subdivision on his land and he has a concern about the height of the antenna at 180 feet and the visual impact it will have to future homes along the ridge. He questioned the possibility of radio frequency interference.

Mr. Ortenberg stated that he wanted it to be clarify that maintenace would not be the responsibility of Cricket Communication. He stated that maintenance issues don't really have any bearing with this application.

Elaine Leasure made the motion to close the public hearing, seconded by Pete Schillaci.

Motion carried.

**Resolution**  
**RE: Cell Tower Antenna**  
**Special Use Permit and Site Plan**  
**88 Bills Road**  
**Tax #060.224-0000-994.569.1**

WHEREAS, Cricket Communications Inc. has made application for Special Use Permit and Site Plan approval to co-locate antennas on the existing tower located at 88 Bills Road, and

WHEREAS, the Planning Board has classified the application as a Type II action with no further action under SEQR is necessary by the board, and

WHEREAS, Town Engineer report was prepared dated January 16, 2007 and  
WHEREAS, THE Towns RF Consultant (William Johnson) has reviewed the application prepared a report dated February 10, 2007, and

WHEREAS, a public hearing was duly advertised and held on February 12, 2007; and

NOW, THREFORE, upon consideration by the Planning Board, of all written and oral submission and testimony by the applicant and public comment, the Planning Board having given this matter due deliberation; it is

RESOLVED, that the Planning Board of the Town of Walworth grants Special Permit and Site Plan approval based upon the following findings of fact; and subject to compliance with the following conditions of approval:

#### FINDINGS OF FACT

- 1) Town of Walworth Planning Board approved the original tower application on August 20, 1997. Note #4 on the approved plans indicated that the tower will be designed to accommodate 4 additional carriers/platforms. These provisions for additional co-locations were require to reduce the need for additional towers in the community.
- 2) Structural analysis was performed in conformance with TIA/EIA-222 Rev F Standard and local building code for basic wind speed of 70 mph (fastest mile, 85 mph 3-second gust) and a reduced wind speed with ½” solid ice for the tower and guy wires.
- 3) All transmission lines shall be distributed over 3 tower faces, with no more than (12) lines exposed to the wind on any one face as outlined in the application materials and structural analysis.
- 4) The existing tower is located with R-Residential Zoning District and is permitted per Town Code Section 180-43.4(D)(b)(8) and further the application conforms to the co-location on existing telecommunications towers, Town Code section 180-43.4(D)(2)(a)(1).
- 5) The view shed study within the application materials indicate no adverse environmental impact with the addition of antennas for a fifth provider on the existing tower, 180-43.4(D)(10).
- 6) The applicant shall obtain from the Building Inspector of the Town, a certificate of occupancy prior to placing the telecommunication tower in service or its antennas, if it is sharing use (co-locating) of an existing tower or structure, Town Code section 180-43.4-1.

#### CONDITIONS OF APPROVAL

- 1) Provide a master plan for the wireless network in accordance with Town Code Section 180-43.4(D)(13). “A grid or Map of all the applicant’s existing telecommunication tower sites within the town and within four miles of the town’s corporate boundaries outside the town with designation of site areas proposed or projected by the applicant and height of the towers proposed or projected for installation within tow years of the date of the application and/if available, any plan of installations beyond two (2) years”.
- 2) The applicant will provide a RF propagation plot for the additional co-location sites in the Town of Walworth, Tower ROC 508 and ROC 514. The applicant will define all coverage’s gaps within their proposed wireless network in the Town of Walworth and address the need or any additional tower site within the town’s jurisdictional limits.
- 3) Satisfaction of the Town Engineer’s comments related to factor of safety for the foundation design in accordance with applicable state codes.

The within Resolution was moved by Planning Board Member, Elaine Leasure, seconded by Gene Bavis, Planning Board Member, and voted upon by members of the Planning Board as follows:

Roll Vote:	Gene Bavis	Aye
	Elaine Leasure	Aye
	Larry Ruth	Aye
	Deborah Amsler	Aye
	Pete Schillaci	Aye

Motion carried.

Adopted by the Planning Board on: February 12, 2007

**4. Letter to withdraw application by Mr. Emil Weber to subdivide property located at 4805 Ontario Center Road. Property is zoned: RR-2.**

The Board was in receipt of a letter from Mr. Emil Weber, dated January 15, 2007 that stated:

“In regard to this subdivision, I have decided not to subdivide the property at 4805 Ontario Center Road.”

Phil Williamson explained that at the October 18, 2006 Planning Board meeting preliminary and final subdivision approval was granted for property located at 4805 Ontario Center Road. The subdivision map was not filed with the County; therefore, the land was never officially subdivided. No further Planning Board action is required to withdraw the application.

Chairman Ruth adjourned the meeting at 9:16 PM.

Gail Rutkowski, Clerk