

MINUTES

**WORK SESSION MEETING – EDEN TOWN BOARD
2795 EAST CHURCH STREET
EDEN, NEW YORK
AUGUST 15, 2001
7:30 P.M.**

TOWN BOARD MEMBERS PRESENT:

GLENN R. NELLIS	-	SUPERVISOR
EDWARD C. KRYCIA, JR.	-	COUNCILMAN (Deputy Supervisor)
MARY LOU PEW	-	COUNCILWOMAN
VINCENT V. VACCO	-	COUNCILMAN
GEORGE F. ZITTEL	-	COUNCILMAN

OTHERS PRESENT:

Mary Jo Hultquist	-	Town Clerk
DianaRae Walker	-	Deputy Town Clerk

Call To Order:

Supervisor Nellis called the Work Session of the Eden Town Board to order at 7:35 P.M.

Pledge of Allegiance:

Supervisor Nellis led the assembly in the Pledge of Allegiance to the flag followed by a moment of silence.

MOTION was made by Councilman Krycia to close the Work Session of the Eden Town Board to go into public hearing; seconded by Councilman Vacco; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis closed the Work Session of the Eden Town Board at 7:37 P.M.

MOTION was made by Councilman Zittel to open the public hearing on the request from Gerald Mammoser for a Special Use Permit to place a trailer on his property at 3940 Hardt Road for temporary housing of migrant farm workers; seconded by Councilwoman Pew; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis opened the public hearing at 7:37 P.M.

7:30 P.M.
Public Hearing

**Request from Gerald Mammoser for a Special Use Permit to place a trailer on his property
at 3940 Hardt Road for temporary housing of migrant farm workers**

Supervisor Nellis stated that the purpose of the public hearing was to hear comments from residents. Supervisor Nellis also stated that the Eden Planning Board recommended that a Special Use Permit be issued for the temporary migrant workers trailer. However, they would like this permit to be reviewed on an annual basis. The Planning Board feels that if Mr. Mammoser is going to need migrant worker accommodations on a yearly basis, he should consider putting in a permanent labor camp like some of the other farmers have already done. Copies of the Eden Planning Board's recommendation and the request letter from Gerald Mammoser are on file the Town Clerk's office.

Supervisor Nellis asked if there were any comments by residents, there were none. Councilman Zittel stated that he understands the intention of the town that trailer would only to be permitted on a temporary basis for agricultural request and he felt there was no reason why this project shouldn't be considered.

Councilman Vacco stated that he asked Mr. Mammoser where the trailer would be located and was told that the trailer would be located in the back wooded area. Councilman Vacco felt it was a great idea.

MOTION was made by Councilman Krycia to close the public hearing; seconded by Councilman Zittel; All – "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis closed the public hearing at 7:40 P.M.

MOTION was made by Councilwoman Pew to re-open the Work Session of the Eden Town Board; seconded by Councilman Zittel; All – "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis re-opened the Work Session of the Eden Town Board at 7:40P.M.

Supervisor Nellis requested to add two items to the agenda that were as follows:

- 4.) Stormwater Management and Erosion Control Law
- 5.) Feasibility Study as relates to a site plan for light industries in the south end of town

Supervisor Nellis then asked the Town Board members if they were ready to act since there were no public comments regarding the request for a Special Use Permit from Gerald Mammoser to place a trailer on his property at 3940 Hardt Road for temporary housing of migrant farm workers.

MOTION was made by Councilman Zittel to approve the Special Use Permit to place a trailer on Gerald Mammoser's property at 3940 Hardt Road for temporary housing of migrant farm workers with the restrictions suggested by the Eden Planning Board that the permit is to be reviewed on an annual basis and if Mr. Mammoser would need migrant worker accommodations on a yearly basis that he would consider putting in a permanent labor camp; seconded by Councilwoman Pew; All – "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

New and Unfinished Business:

1.) Amendments to the Code of the Town of Eden

Supervisor Nellis indicated that Town Board members have received a summary report from the Hamlet Revitalization Committee that was set-up as part of the recommendations of the Comprehensive Master Plan. The Hamlet Revitalization Plan includes establishing and identifying hamlet boundaries and the Central Business District with four sub-areas; the Hamlet Transition Area, Residential/Office Area, Central Business Area and Industrial/Economic Development Area. There was one change having to do with apartments associated with commercial businesses. The proposal is that restrictions on the amount of two apartments be eliminated and that parking would be prohibited in front on the street.

Supervisor Nellis then requested that a public hearing be scheduled on the Hamlet Revitalization Plan report for September 12, 2001 at 8:15 P.M. Copies of the document would be available in the Town Clerk's office and Supervisor's office for review.

MOTION was made by Councilman Krycia to schedule a public hearing regarding the Hamlet Revitalization Plan on September 12, 2001 at 8:15 P.M.; seconded by Councilman Vacco; All – "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

2.) Consideration – Proposed Drainage District – Weller Tract II, Phase 2 Subdivision

Supervisor Nellis stated that a public hearing was held regarding the "Petition for Establishment of Drainage District for Weller Tract II, Phase 2 Subdivision" on August 8, 2001. Supervisor Nellis then asked if the Town Board members were ready to consider the Drainage District.

Councilwoman Pew asked whether the Town Attorney, William Trask had an opportunity to review the document. Supervisor Nellis replied that he had and had made some revisions.

MOTION was made by Councilman Zittel to approve the adoption of the following resolution, which was read by Supervisor Nellis:

WHEREAS, the Town of Eden has proposed forming a Drainage District for the Weller Tract II, Phase 2 Subdivision, and

WHEREAS, in compliance with Part 617 of the implementing regulations pertaining to Article 8 (SEQR) of the Environmental Conservation Law, the Eden Town Board has reviewed the proposed Drainage District, and received positive recommendations from it's Boards, Committees and consultant, and

WHEREAS, the Drainage District will not adversely affect the natural resources of the State and/or health, safety, or welfare of the public and is consistent with social and economic considerations.

WHEREAS, the drainage basin is to be maintained by the Highway Department and charged to the District as indicated in the letter.

WHEREAS, concerns regarding the drainage easements on individual homeowner's land. The Drainage Committee recommends that the District be allowed to maintain these drainage easements in the event that the individual homeowners fail to properly maintain said easements.

WHEREAS, in the event the District has to maintain individual homeowner's easements, charges will be levied against the homeowners.

NOW THEREFORE, BE IT RESOLVED, that the Eden Town Board has determined that the proposed Drainage District is not anticipated to result in any significant effect on the environment, and that a Negative Declaration is hereby issued, based on the following basis: The Drainage system design itself was reviewed previously and included in a SEQR Negative Declaration, and the District itself will have no direct or indirect effects on the environment.

Seconded by Councilwoman Krycia. Before being put to vote Councilman Zittel asked "Who decides what the maintenance is that a homeowner is responsibly for?" Discussion ensued clarifying the definition of "maintenance". Fran McLaughlin of 8383 Sonnybrook Drive stated that he believed that there was already a law regarding easements. Supervisor Nellis stated that he would ask legal council and the Zoning Code Enforcement Officer to clarify whether a definition exists. It was agreed upon that the Motion be subject to a satisfactory definition of "maintenance". The Motion was then put to vote; All – "Ayes"; Opposed? – None; Abstain? – None; Motion carried

MOTION was made by Councilman Krycia to approve the adoption of the following resolution:

**RESOLUTION AND ORDER OF THE TOWN OF EDEN, NEW YORK,
ADOPTED AUGUST 15, 2001, MAKING CERTAIN
DETERMINATIONS WITH RESPECT TO THE ESTABLISHMENT OF
A SPECIAL IMPROVEMENT DRAINAGE DISTRICT TO BE KNOWN
AS WELLER TRACT II PHASE 2 DRAINAGE DISTRICT, IN SAID TOWN**

WHEREAS, the Town Board of the Town of Eden (herein called “Town Board” and “Town”, respectively), in the County of Erie, New York, has received a signed and dated petition, pursuant to Section 191 of the Town Law, for the establishment of Weller Tract II Phase 2 Drainage District (the “District”), which petition is signed by the owners of taxable real property situate in the proposed District, owning in the aggregate at least one-half of the assessed valuation of all the taxable real property of the proposed District, as shown upon the latest completed assessment roll of said Town, and, if there be resident owners, including the signatures of resident owners of taxable real property owning taxable real property aggregating at least one-half of the assessed valuation of all the taxable real property of the proposed District, owned by resident owners according to the latest completed assessment roll; and

WHEREAS, said petition described the boundaries of the proposed District in a manner sufficient to identify the lands included therein as in a deed of conveyance and was signed by the petitioners and acknowledged or proved in the same manner as a deed to be recorded; and

WHEREAS, following preparation of a map, plan and report by Nussbaumer & Clarke, Inc., competent engineers duly licensed by the State of New York, for the proposed establishment of Weller Tract II Phase 2 Drainage District, in the Town of Eden, in the County of Erie, New York, and the construction and installation of a detention basin, and related site work (the “Drainage Improvement”); and

WHEREAS, the Town Board has given due consideration to the impact that the District may have on the environment and on the basis of such consideration, the Town Board has found that no substantial adverse environmental impact will be caused by such District; and

WHEREAS, the Town Board and the Town have complied in every respect with all applicable federal, state and local laws and regulations regarding environmental matters, including compliance with the New York State Environmental Quality Review Act, comprising Article 8 of the Environmental Conservation Law and, in connection therewith, a duly processed negative declaration and/or other applicable documentation has been filed in the office of the Town Clerk; and

WHEREAS, a Public Hearing in the matter was duly held by the Town Board on the 8th day of August, 2001, commencing at 8:00 o’clock P.M. at the Eden Town Hall, at which all interested persons desiring to be heard were heard;

NOW, THEREFORE, upon the evidence adduced at such Public Hearing, be it

RESOLVED BY THE TOWN BOARD OF THE TOWN OF EDEN, IN THE COUNTY OF ERIE, NEW YORK AS FOLLOWS:

Section 1. It is hereby determined that:

- (a) the petition was duly signed and acknowledged as required by Law, and it is otherwise sufficient;
- (b) all the property and property owners included within the proposed District hereinabove referred to in the recitals hereof are benefited thereby;
- (c) all the property and property owners benefited are included within the limits of the proposed District; and
- (d) it is in the public interest to establish the District.

Section 2. The District is hereby approved, as hereinafter described, and shall be designated and known as the Weller Tract II Phase 2 Drainage District, in the Town of Eden, and shall be bounded and described as follows:

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Eden, County of Erie and State of New York, being part of Log 29, Township 8, Range 8 as shown on map entitled "Weller Tract II – Phase 2" filed in the Erie County Clerk's Office under cover 3070 and being more particularly described as follows:

BEGINNING at a point in the southwest corner of subdivision lot 6 as shown on map filed in the Erie County Clerk's Office under cover 2550; thence N 88 – 11' - 06" E, along the southerly line of map cover 2550, a distance of 375.94 feet; thence S63 – 54' - 43" E, along the southerly line of map cover 2550, a distance of 265.89 feet; thence S02 – 56' – 54" E, along the westerly line of map cover 2550, a distance of 285.52 feet; thence S75 – 09' – 41" W, along a northerly line of map cover 2550, a distance of 23.64 feet; thence S14 – 48' - 01" E, along the westerly line of Map Cover 2550, a distance of 384.85 feet; thence S01 – 01' 20" W, a distance of 28.04 feet; thence S87 – 31' – 58" W, along the north line of Brenner by Liber 7559 of deeds at page 587, a distance of 705.75 feet; thence N 00 – 00" – 00" E, a distance of 826.33 feet to the point of beginning, containing 11.73 acres more or less.

Section 3. The permission of the State Comptroller is not required with respect to the establish of the District with respect to the establishment of the District pursuant to Section 194 of the Town Law.

Section 4. The Town Clerk of the Town of Eden is hereby authorized and directed within ten (10) days of the adoption of this resolution, to file certified copies thereof, in duplicate, in the office of the State Department of Audit and Control at Albany, New York.

Section 5. This Resolution and Order shall be effective immediately.

Seconded by Councilman Vacco; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried

3.) Decision on Nextel Tower Special Use Permit Request

Supervisor Nellis read a memo that was received from John Cappellino of ECIDA regarding the “road crossing Weidner Property”. A copy of the memo is on file in the Town Clerk’s office. The memo stated the intention of the County through the management of the ECIDA to provide to Anne Weidner a license to use a portion of the County owned railroad.

Supervisor Nellis also read a memo from the Eden Planning Board stating their recommendation to issue the Special Use Permit with the following conditions:

1. Nextel make every effort to access the tower site from either March or Shadagee Road rather than Route 62 in order to eliminate having to cross the Railroad Tracks located on the entrance from Route 62. The Planning Board is concerned that crossing the tracks may necessitate the railroad having to put in a crossing and the train having to blow its whistle every time it passes over the entrance, possibly interfering with the character of the neighborhood.
2. A light not be placed on top of the tower unless mandated by the FAA. If one is mandated, it should be a steady red light, not a blinking strobe light.

Supervisor Nellis stated that a memo was received from Nextel regarding the alternate accesses and why they were not feasible. Lastly, Supervisor Nellis stated that the FAA does not require a light on the tower, however after speaking with Paul Shephard, Emergency Squad about Mercy Flight, it was requested that a steady red light be placed on the tower, which was also supported by the Eden Emergency Squad.

Gerald Brophy of Nextel stated that his company was in agreement with John Cappellino regarding the conditions of use required at the railroad crossing. Mr. Brophy noted they are in the process of changing the license to read 30 years instead of the 15 years referenced on Mr. Cappellino’s memo. Mr. Brophy also stated that Nextel previously stated they would light the tower if either the FAA or the Town of Eden requested it.

Councilman Zittel stated his concern that the ECIDA license document had not been completed. Mr. Brophy stated that Nextel would not proceed without the proper license issued by the ECIDA.

Lastly, Councilwoman Pew stated that it has been a pleasure to work with Nextel and Mr. Brophy and that Nextel has been very accommodating and considerate of the residents, site and area when choosing the site. Mr. Brophy expressed his pleasure in working with a town that has a good ordinance in place, which provides good information and a Technology Committee to assist. There was no further discussion.

MOTION was made by Councilman Zittel to approve the adoption of the following resolution:

WHEREAS, the Town of Eden has received a Site Plan/Town Special Permit application from Nextel Partners, Inc., for the construction of a cellular communication tower at 8174 North Main Street; and

WHEREAS, in compliance with Part 617 of the implementing regulation pertaining to Article 8 (State Environmental Quality Review – SEQR) of the Environmental Conservation Law, the Eden Planning Board and Town Board have reviewed this proposed project; and

WHEREAS, the project will not adversely affect the natural resources of the State and/or the health, safety, and welfare of the public, and is consistent with social and economic considerations;

NOW THEREFORE BE IT RESOLVED, that the Eden Town Board has determined that the proposed project is not anticipated to result in any significant effect on the environment and that a Negative Declaration (Notice of Determination of Non-Significance) is hereby issued;

BE IT FURTHER RESOLVED, that the Supervisor be authorized to sign the environmental assessment form.

Seconded by Councilwoman Pew; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried

MOTION was made by Councilwoman Pew to approve the adoption of the following resolution:

WHEREAS, Nextel Partners, Inc. (“Nextel”) has applied under the Town of Eden Telecommunication Facilities Local Law for a Special Permit to construct a cellular communication tower at 8174 North Main Street, Eden, NY, and

WHEREAS, the Eden Planning Board has recommended issuance of the Special Use Permit with certain conditions, and

WHEREAS, the Eden Town Board has conducted a public hearing as required by law, and

WHEREAS, the Eden Town Board has issued a negative declaration for such project under SEQRA.

NOW, THEREFORE, BE IT RESOLVED, that the Eden Town Board does hereby approve the issuance of a Special Permit to Nextel to construct a cellular communication tower at 8174 North Main Street, Eden, NY, subject to the following conditions:

1. Nextel shall allow free use of the tower by the Town by allowing co-location of one (1) antenna cluster used for municipal purposes, including, but not limited to, emergency services (fire, police, etc.).
2. Nextel shall, in good faith, use its best efforts to allow co-location on the tower to other telecommunications carriers' facilities.
3. The tower and all appurtenant facilities shall be maintained in good order and repair. Nextel shall maintain records of all maintenance; such records to be available to the Town upon request.
4. Nextel will provide proof that it has obtained an easement for the railroad crossing.
5. The Special Permit shall be renewable every two years.
6. Every two years, Nextel shall provide a certification of structural safety for the tower from a licensed NYS professional engineer based upon an on-site inspection of the tower by such engineer.
7. Every two years, Nextel shall provide a certification that the radio frequency emissions do not exceed allowable federal or state limits.
8. The tower shall be removed at Nextel's sole cost if the facility becomes obsolete or fails to be used for its intended purpose for 12 consecutive months. Nextel shall provide a bond running to the Town of Eden sufficient to cover the costs of demolition and removal and the sufficiency of the bond shall be confirmed at least every 4 years by an analysis and report to be provided by a NYS licensed Professional Engineer, at Nextel's sole cost.
9. Aside from normal maintenance, there is to be no modification to the tower or any of the appurtenant facilities without the prior approval of the Town through a validly issued amendment to the Special Permit.
10. The Special Permit shall be non-transferrable and non-assignable without Town approval in the form of a validly issued amendment to the Special Permit, except for transfers to an entity which owns or is owned by Nextel. Prior to any such transfer or assignment, the Town must be notified, in writing of Nextel's intended assignment or transfer and may, in the case of a transfer to a related entity, require proof that the new entity meets the above-stated qualifications. Prior to any transfer or assignment, the Town must be provided with such information as may reasonably be required by the Town to identify principals and contact persons for the new entity and to otherwise satisfy the Town that the new entity will comply with all of the conditions and requirements of the Special Permit.
11. The Town shall be involved in any decision involving lighting requirements and may require Nextel to provide shields to minimize visibility of lighting on the ground,

subject to any decisions which are under the exclusive control or jurisdiction of the Federal Aviation Administration.

12. A steady red light, not a blinking strobe light will be placed on top of the tower.

Seconded by Councilman Vacco; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried

4.) Stormwater Management and Erosion Control Law

Supervisor Nellis stated that the Drainage Committee has worked hard on the proposal and that William Trask, Town Attorney has reviewed the draft and Supervisor Nellis recommended that a public hearing be scheduled for September 12, 2001 at 8:30P.M. Copies will be available in the Town Clerk’s office and Supervisor’s office.

MOTION was made by Supervisor Nellis to schedule a public hearing regarding the proposed Stormwater Management and Erosion Control Law for September 12, 2001 at 8:30 P.M.; seconded by Councilwoman Pew; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

5.) Feasibility Study as relates to a site plan for light industries in the south end of Town

Supervisor Nellis stated that at the Town request, Wendel Duchscherer put together a proposal for professional services to do a “Feasibility Study” on an area south on Route 62 where the old canning factory existed and where Crescent Manufacturing currently exists. There is about 20 acres that is developable, so a proposal was put together and shared with the owner of the property as well as with the Erie County Industrial Development Agency and an Economic Development Specialist for Niagara Mohawk. Erie County has committed \$3,000.00, Niagara Mohawk \$1,500.00 and ECIDA a minimum of \$1,000.00 with in kind services provided by the Town. The total cost would be about \$7000.00 to study this industrial park area.

Supervisor Nellis asked the Town Members permission to proceed with the Feasibility study and to come up with a site plan to use this area.

MOTION was made by Councilman Krycia to proceed with the Feasibility Study; seconded by Councilman Vacco; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor’s Report:

Supervisor Nellis stated that he nothing to report beyond what was discussed tonight.

Hearing of Visitors:

Ronald Steinmetz of 9443 Jennings Road
Steven Piwowar of 8257 East Eden Road

Adjournment:

MOTION was made by Councilman Vacco to close the Work Session of the Eden Town Board; seconded by Councilman Zittel; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis closed the Work Session of the Eden Town Board at 8:49 P.M.

Respectfully submitted by,

Mary Jo Hultquist
Town Clerk