

Mr. Kerwin, referring to drawings, explained this is a 160 foot tower, a monopole design, which is not a solid structure but a hollow structure. It is proposed at the Five Mile Point Speedway property, with access to their leased portion from Williams Street through a dedicated access utility easement. There will be turn around parking and some trees in the area will need to be removed. The distances from the property line to the nearest buildings and homes is 1020 feet to the north, 200 feet to the east, 122 feet to the south and 367 feet to the west. The nearest residence on Williams Street is 652 feet. The nearest building on the property is 467 feet away. This property is owned by Andrew Harpell as well as others around the speedway. They are not proposing any changes to the speedway.

Mr. Kerwin, referring to drawings, went on to say the leased area is 50X50, tower will be placed in the middle of that compound, with access by a proposed 15 foot gravel utility easement with 12 foot gravel drive. Electricity would be run underground. He pointed out on the drawings where the equipment would be placed within the compound. There is space for an additional five co-locaters at the site, which is required by the code. The antennas themselves would extend 3-4 feet above the tower and they are also adding a lighting rod which is five feet. They are also proposing a structure breakpoint, which is a technique and/or design used throughout the industry that allows for a weak point in the tower. If there was a significant storm, with sustained winds of 100 mph, everything above that point would then fall over and drop to the base of the tower. All towers like this are constructed pursuant to applicable code requirements. There is a federal standard that applies to these towers called the ANSI, which sets forth the requirements for the structural standpoint on how the towers need to be designed and built. As far as the breakpoint, it doesn't mean the tower is weak. The whole tower is built to required structural specifications. Everything below that point is just a little bit stronger and everything above is built to standard. Chairman Diffendorf stated that our Town Engineer will review all of that.

Mr. Kerwin explained this is a function of need. They have a license for the county to provide their service. That license will expire in 2025. When that license expires the FCC is going to evaluate what kind of job they did to build out that network. If you didn't do a great job they may not issue that license renewal. There is a gap in Blue Wireless services that needs to be addressed.

Mr. Kerwin explained to the Board the process of finding a site for the cell tower, either on an existing structure if available or a new site all while following the town's code. There were no existing towers in their search area. They did evaluate some town properties but nothing would work for this. There are no industrial properties or rural properties within their search area. Had any of those worked for them they would have pursued that.

Mr. Kerwin explained to the Board there is an existing tower located on Court Street in Binghamton and a future tower to the south of Kirkwood that showed in building coverage and in vehicle coverage areas. Between those two areas, where they want to build the new tower at the speedway, there is no coverage. There is a gap in service they need to address, a service the FCC authorizes them to address. This will be 4G LTE coverage, which is the standard now. The 5G LTE will be coming at some point. The tower will cover a 3 ½ to 4 mile stretch along Route 11.

Mr. Graves, referring to Article 9, had some comments with their responses and suggested that the Board takes these into consideration when making their recommendation to the Zoning Board. Those comments are as follows:

Page 9 B. – The land owner, if different than the Applicant, shall also sign the application and shall agree to remove any existing violations and make all existing facilities compliant with this Local Law. The land owner is different than the applicant here and there isn't any signature or statement in the application.

Page 9 #11 – It says it should state the basis for the calculation, which he doesn't see. Perhaps it could be an inclusion. Mr. Kerwin asked the basis from a structural standpoint and Mr. Graves stated requesting the number, type and design of the facilities antennas and the basis for the calculations of the tower's capacity to accommodate multiple users. He added structurally and the ability to have multiple frequencies and multiple antennas on the same structure. You should include that as an addendum that the ZBA can review.

Page 9 #18 & Page 10 #21 – It is requesting certification and there are also a couple more requests for certification on Page 11. Mr. Graves stated he understand these things are addressed throughout the application but he doesn't see an actual certification where there is a signed certification that the NIER levels are within the thresholds. These should all be conditions to approval to recommend to the ZBA. It would be smart that no building permit be issued until the ZBA approves those studies.

Page 11 H. & I. – More certifications.

Page 25 Section 924. Liability Insurance and Section 925. Indemnification – This is required in the Special Use Permit.

Page 29 Section 929. Relief – It talks about any relief the applicant is looking for from the requirements from this article. It looks as if they requested it to the extent that insurance or indemnification requirements on the applicant that are not required of applicants for other special use permits and they are looking for relief from that. Mr. Graves asked Mr. Kerwin to elaborate on what they mean by other special use permits, special use permits in general or special use permits for cell towers. Mr. Kerwin stated just in general. He requests that they be treated like others in the town for different uses. If someone needs a special permit to do something in the town not involving cell towers, he wasn't sure if they were required to obtain the same coverage and indemnity that they are being asked to provide. They asked to be treated the same as anyone else. Mr. Graves stated he believes cell towers are not treated the same as other special use permits simply by nature of what is required in this Article 9. To the extent that there was another cell tower that would come in yes, the same insurance and indemnification would apply.

Mr. Graves went on to say in the application you stated specific insurance coverage requirements shall be discussed with the Town prior to approval to ensure that it is appropriate and legal and asked if Mr. Kerwin had any specific concerns about what might make it inappropriate or not legal. Mr. Kerwin stated this goes back to the pre-application meeting he had with Chad and representatives of the town. They have never had to provide this kind of indemnity before in the jurisdictions they work in. It is an unusual provision asking them to indemnify the town without question for things that are outside their control. Mr. Graves stated he doesn't agree with outside of your control. The indemnification is limited to things that relate to the construction, location and use of this cell tower. The purpose of that is if the tower breaks and it falls on an innocent bystander walking by and for some reason the town is sued for liability. In those situations that is what the indemnification is for, specifically related to the tower itself. The ZBA and the town in general will enforce these provisions and seek to have these provisions in the special use permit. Mr. Kerwin stated it is an unusual provision and never encountered it before. They are happy to work with the town to address their concerns. It goes back to the previous meeting and wanting equal treatment under the law. Mr. Graves commented if you are talking equal treatment under cell towers then yes, it is equal.

Mr. Graves suggested the following conditions if the Planning Board votes to recommend to the ZBA that they grant the special use permit:

1. Where Article 9 requires a certification that those certifications be provided.

2. That the geomorphologic study be completed and given to the ZBA prior to approval or at the ZBA's discretion it could be a condition of approval.
3. No building permit would be issued until it is received and approved by the ZBA.
4. The indemnification and insurance required by Article 9 be unaltered and a condition of the approval.
5. The property owner should sign the application.

There was a discussion regarding the application being updated to include the basis for the calculations. When asked if that was a condition Mr. Graves stated what he is proposing is that the Planning Board recommend that before approving the application that information should be included in the application with the application updated so the ZBA can consider it.

Motion by Jim Bukowski and second by Dan Wasson to make a recommendation to proceed with the application for the cell tower with the following conditions:

1. Where Article 9 requires a certification that those certifications be provided.
2. That the geomorphologic study be completed and given to the ZBA prior to approval or at the ZBA's discretion it could be a condition of approval.
3. No building permit would be issued until it is received and approved by the ZBA.
4. The indemnification and insurance required by Article 9 be unaltered and a condition of the approval.
5. The property owner should sign the application.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

JOEY BOATS MARINE CENTER:

Chairman Diffendorf explained that this has been to the ZBA. There were thoughts that this might require a use variance and it was determined by Code that it did not. The proposed business is similar to the business that was previously there and did not require a variance.

Referring to the Short EAF, Part 1 Kevin Balachick questioned #3, total acreage of the site of the proposed action is 5.2 and total acreage controlled by the applicant is 3 acres. Mr. Morgan stated that is the usable acreage for what he is able to work on. Chairman Diffendorf stated because of the terrain and Mr. Morgan agreed and explained that the original property, the way it was put together, includes an apartment complex that is not involved with what he is doing. What they figured from the lot use and the building and what goes along with that it is 3 acres of total usage. Mr. Graves asked what he plans on physically disturbing at one acre and Mr. Morgan stated that was talking about the lot. They cleared some brush and trees and put down some millings to make a flat piece of land. It doesn't change any runoff. That lot is used for staging and storage. Mr. Graves asked if that was already done and Mr. Morgan stated yes. They have a little more leveling to do. Kevin Balachick asked if that was the separate property across the street and Mr. Morgan explained that across the street is two lots split by a fence and the building operates across the street from that. Kevin Balachick asked if this is all under the same tax map number and Chad Moran stated yes. Currently they are working with

Mr. Boyd to subdivide it and working with the tax assessor to see if they can do just his business on a separate tax map.

Mr. Graves questioned #5, why he thinks it is not a permitted use under the zoning regulations and Mr. Morgan explained that goes back to when they thought they had to petition for a variance at the prior meeting. Chairman Diffendorf stated that could be updated to yes.

Mr. Graves clarified that the brief description of the proposed action is to conduct business in the marine field such as service, sales, storage, retail accessory sales, trailer service and sales, anything pertaining to the marine business. That contemplates a lot of different potential uses which are all going to be subject to whether it is permitted in the zoning district. He asked Mr. Morgan if he is permitted to do all of these uses based on the prior use of the property and Mr. Morgan stated that is what the ZBA had determined. As far as the time they closed their business and ownership being taken over by the buyer and himself being able to access it and then eventually starting the business in late summer and then they originally needed the variance and working with Chad they are here now. Chad reminded the Board they had done this about a year and a half ago for McAvoy. McAvoy never did anything but there were conditions and Joe had met all of those conditions other than the storage outside. That is what they were going for and he eluted he may want to do sales at a later date. The only condition he couldn't meet based on before was no outdoor storage. He is proposing to wrap the boats with shrink wrap and store them. Mr. Morgan stated that is not a year round situation.

Mr. Graves stated he saw the meeting minutes from Mr. McAvoy's site plan application but he wants to caution that he doesn't think the Planning Board should consider those. It is a different thing that didn't pan out. That is not what the Planning Board is being asked to consider tonight. Mr. Morgan stated he is not working on cars, which was a big thing. They are not doing anything on broken down cars or eyesores. What they would work on comes in on a trailer and leaves on a trailer. There is no yearlong storage. He comes from a business that had been in business for 30 years and they are continuing on.

Mr. Graves asked Chad what Mr. Morgan is asking for tonight and Chad explained to conduct business and do the outdoor storage, with the grandfathered effect of Cunningham using it for the same thing, outdoor storage. Mr. Graves asked you are going to do storage, services and sales and the sales are of various things such as boat and trailer sales but also boat accessories and Mr. Morgan agreed and added a small ships store to sell rope or oil. Mr. Graves asked if he was doing any service there currently and Mr. Morgan stated yes, service is what they have been doing and storage. He has not sold any boats and doesn't have a boat dealer's license yet. Mr. Graves asked if he was asking for more than just storage, you are asking to be able to service boats which is what you have already done and Mr. Morgan stated yes. Chairman Diffendorf asked him if he wanted to do business just as stated here and Mr. Morgan stated yes. Jim Bukowski commented we went from McAvoy which was essentially service and the concern was leaving junk vehicles and trash outside to service and that is why we were restricting storage. This is something completely different, this is a retail business for boats. What we are looking at is storage outside and dealing with a boat service and sales. Kevin Balachick stated he agreed with not looking back at the other stuff because it is totally different but he thinks they have to look at service, sales and everything. We are back to are these all permitted under the zoning. Mr. Graves stated your position is that storage is permitted because the previous use of the property up until less than a year ago, they were still storing stuff there and Mr. Morgan agreed. Mr. Graves asked if it was also his position that service and retail sales are grandfathered in from the previous use as well and Mr. Morgan stated he couldn't answer that. He knew the basis of what the Cunningham's did out of that property. Mr. Graves stated the Code Enforcement Officer says yes, this is a permitted use for one reason or another. He wants to make sure the Board understands the use that is being requested so they can consider the site plan application. Chad Moran stated it is a non-conforming use and they are trying to carry that over, try to stay in the realm of what it was.

That was the thing with the rezone, they could rezone it as B1 and it borders to the cell tower or Harpell. They do have the apartments, which is RM. Jim Bukowski stated there is also a service station down there, Batzel's. Chad Moran stated that is PUD commercial, then B1, and on the other side is PUD RM, which borders this property, which is PUD RM. If you rezone to B1 you will have a non-conforming with an apartment.

Mr. Graves stated the Code Enforcement Officer is allowed to interpret what is a permitted use and what is not a permitted use. Permitted uses in the PUD district include automobile repair shop. Boats don't meet the definition of automobile under the code. Automobile says motor vehicles that drive on public highways. If you are looking at it as a repair shop perhaps it could be considered automobile repair shop or at least in terms of the use if that is Chad's interpretation. We need a basis to look at what you are asking us to do which is storage, services and sales and say somehow these are permitted on this property, whether it is grandfathered or a permitted use under the code. Mr. Morgan stated he thinks he has stated what his intentions are for that. He has worked with Chad to get there. He is not fresh in the business, he has been around for quite some time. He has done very well. He can only see himself as a benefit to the area, bringing in new business. Mr. Graves agreed and stated he thinks it is a great business to be in but he wants to make sure the Board determines whether it is ok. Kevin Balachick stated we have to look at the three items, the storage, the sales, and the repair and what is covered under the PUD now. Mr. Graves stated you do take into consideration the grandfathering. Kevin Balachick commented that you mentioned vehicle repair is a permitted use in the PUD which he thinks is very similar to what he is doing, a boat instead of a vehicle. You are doing engine repair. Mr. Morgan stated the trailer is considered a licensed vehicle. Kevin Balachick stated next is storage and sales. If they are either grandfathered from a previous condition or if it is under the permitted use. Chairman Diffendorf stated Chad has made that determination that it is grandfathered. Chad Moran stated that he and Keegan Coughlin determined that. Kevin Balachick asked for all three, not just storage and Chad stated sales is another question. Mr. Morgan stated when we talk about the sales that is not in stone yet. They are focused on the service and storage.

Mr. Graves explained if the Planning Board approved you to do service and storage for the reasons Chad has discussed and you want to do sales at some point in the future you are either withdrawing that piece from the application and not asking for that tonight and Mr. Morgan stated he doesn't think he has retail sales on the application. It was included and Mr. Morgan stated if that is the case they could cross that off. Mr. Graves stated the Planning Board could say you are authorized to do A and B but not C. If at some point in the future you want to do C and you want to come back and amend your site plan you can do that. You would have to ask Chad if it was a permitted use or does it need Planning Board approval. If it is not a permitted use you can get relief from the ZBA with a use variance.

Mr. Morgan explained the main focus was to keep the boats there. Chairman Diffendorf stated he needs to understand what Chad and Keegan determined and what was allowed on that property and Chad explained the storage would be ok because it was within the scope of what Cunningham had. They had the outdoor storage. The servicing of the boats and the ship's store. The sales is what we were going to talk about later but if he is willing to withdraw that now and see how he does. Chairman Diffendorf stated we can allow the sales. Mr. Graves stated you need to look at it in the context of the site plan and what is permitted in that district. Mr. Graves stated he doesn't see where sales is permitted in the PUD district. He went on to say it isn't his decision, that is what the code says. Chairman Diffendorf stated that he knows the Town Board is going to look at changing that PUD to a B1. Jim Bukowski stated it only makes sense, every business around there, you have storage, there is a repair shop with Batzel and a racetrack that is entertainment and they have sales.

Getting back to the Short E.A.F., #5 both questions should be answered yes. Question #9 should be answered yes. Question #10 should be answered yes. Question #11 should be answered yes. All changes that were made were initiated by the applicant and are included in the file.

Mr. Graves reviewed with the Board Part 2 – Identification of Potential Project Impacts on Full Environmental Assessment Form, which is included in the file.

The Planning Board reviewed Part 3 – Determination of Significance of the Short Environmental Assessment Form and determined that the Determination of Significance will not result in any significant adverse environmental impacts.

Motion by Gordie Woolbaugh and second by Kevin Balachick that the Planning Board, as lead agency in this Unlisted Action, declare a negative declaration for the purpose of SEQR, since based on the review of the short form EAF and the updated site plan, the proposed action will not result in any significant adverse environmental impact in the Town of Kirkwood.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

Mr. Graves added that there were 239 comments received from the County when this was before the ZBA. For the record, the Planning Board is considering these comments because as far as he is aware there hasn't been any new documentation. The documentation that was provided was the same as for the ZBA. Mr. Morgan confirmed no new documentation. Chad Moran stated he spoke to Lora Zier on January 7, 2020 and asked if she wanted a new set and she said no.

SITE PLAN REVIEW – JOEY BOATS MARINE CENTER:

Chairman Diffendorf asked if there will be floor drains in the building and Mr. Morgan stated there are drains there but they will be capped and covered. A custom plate is being made. Chairman Diffendorf asked if any chemicals were being stored inside and Mr. Morgan stated they will have waste oil for the heater. Chad Moran stated it will be double walled. Chairman Diffendorf asked if the waste oil was inside the building and Chad stated it is inside the building inside a secondary catch basin.

Kevin Balachick asked for repairs and such are you going to be using that for the waste oil or do you have any storage of oil and Mr. Morgan stated they have gallons. Kevin asked if there was bulk storage or 55 gallon drums and Mr. Morgan stated the 55 gallon drums come at the end of the season to service the boats but it is kept in the same area as the waste oil is kept.

Mr. Graves, referring to the Performance Standards, Section 501 of the zoning code, the ones that would apply would be open outdoor storage, screening is required such as a fence or hedge, some kind of visual barrier at least 6 feet high. He asked if he planned on doing a visual barrier for the storage across the road and Mr. Morgan stated nothing initially unless something was being pushed upon them. Part of the main building does

have a fenced area that stays closed. Along the border on Francis is also fenced, with privacy screening. Chairman Diffendorf commented that the boats are so big it is almost impossible to screen them.

Mr. Graves asked how many boats would there be in there at one time for service on the property and Mr. Morgan stated anywhere from 12-24 staged to be worked on. That number changes all the time. Jim Bukowski asked if he would be servicing the boats outside, just inside and Mr. Morgan stated yes, just inside. Jim asked how many can fit inside the garage and Mr. Morgan stated five boats.

Mr. Graves stated just as a bench mark for vehicle repair, service station the code requires two parking spots per bay plus one per employee on a single shift. If you were working on five boats and again, just a bench mark, 10 parking spots plus one per employee on shift. That is for vehicles, not boats. The Planning Board doesn't have to abide by those, it is just what is required. Mr. Morgan stated there is parking in front for customers and on the side for employees. Kevin Balachick stated proposed six regular spots, one handicap with overflow across the street. Chad Moran explained the way they proposed it one regular parking on the left, one on the right with the loading dock in the middle, the handicap with the eight foot and around the fence is 4 employee parking and overflow across the street.

Mr. Graves explained just so the Board is aware the following must be in a site plan with the Board waiving any of these requirements, the site plan is not to scale. They are supposed to be prepared by a professional but Marchie can waive that requirement. The proposed layout of the street including location of the driveways, ingress and egress. Plan showing proposed utilities and if required easements and private sewage system, which was covered. Location and type of exterior lighting. Location and dimension of exterior signs including ground and wall signs. There is a Developers Clause which says on behalf of you you certify and agree that these plans meet all the requirements and you understand that the Town of Kirkwood specs take precedence over anything you have in your application and you basically agree that the Town of Kirkwood's code is legitimate. Any of those can be waived by the Planning Board.

Chairman Diffendorf stated you are right about that, there should be better drawings. Typically on these existing buildings they are more lenient. Mr. Graves stated you have the right to do that.

Motion by Jim Bukowski and second by Gordie Woodbaugh to approve the site plan for services, storage and sales with the condition that the floor drains be plugged.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

Chairman Diffendorf stated next month they will have the Broome County Sportsman's Club.

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February 10, 2020
Planning Board Meeting Minutes

Motion by Kevin Balachick and second by Dan Wasson to adjourn the meeting. The meeting was adjourned at 8:29 pm.

Respectfully Submitted,

Mary Kay Sullivan
Secretary, Kirkwood Planning Board

cc: Planning Board Members
Gayle Diffendorf
John Finch, Jr.
Katie Legg

Dan Griffiths
Scott Snyder
William Graves
Code Department