

When the gentleman from Homeland Towers, LLC appeared at the December 13, 2017 town board meeting to discuss in rather vague terms the intent of the town to sign a lease option to locate a 190 ft. cell tower in Sherrillbrook Park a few things struck me as curious.

- the cell tower was going to be near the water tank
- the area of the park where it would be sited was zoned Low Density Residential
- he didn't think it would require park alienation

At the end of the discussion, the town board was asked to approve Resolution 233 of 2017 "that upon the expiration of the permissive referendum period, the Town Supervisor is authorized to execute all documents required to complete the Option and Ground Lease Agreement subject to the review and approval of the Town Attorney for the Town as to form and content."

After a date error was corrected to the first legal notice, a second legal notice was advertised in the January 10, 2018 Observer Dispatch. Since the public seemed to have been left out of the loop, I sent a FOIL request for any information regarding the tower. I also included in my FOIL request the procedures that needed to be followed for park alienation; and asked for any documents that would prove that proper procedure was followed.

Gail replied to my FOIL request email that same day with a forward to the entire town board and Attorney Cully asking that they respond by January 22, 2018.

January 22nd came and went, but no information was forthcoming. Realizing that the town supervisor would be able to sign the lease/option at his pleasure any time after February 2, 2018 and believing that apparently there was no information for the public, I sent a follow-up email to the town clerk on January 31, 2018, with copies to the town board and Attorney Cully asking for certification that no documentation exists. Within a matter of hours, I received some of the information requested in my FOIL.

That information revealed that...

- Apparently, town council members were not involved in the email exchange between an Albany attorney; 3 people from Homeland Towers; 2 people from an engineering firm and 1 person from Verizon; only the town attorney and the previous town supervisor were involved.
- The site map was dated March 6, 2017; seven months before the subject was mentioned at the December 13, 2017 town board meeting.
- The Environmental Assessment Form filed out by Homeland Towers was dated May 12, 2017; six (6) months before the subject was mentioned at the December 13, 2017 town board meeting.
- According to the email dated November 15, 2017 from Vince Xavier of Homeland Towers to Attorney Herb Cully,

"Per my discussions with the supervisor we would like to have the lease in final form to be voted on by the Town Board on 12/13."

"Can you please provide any comments to the attached lease or design as soon as possible so that we could meet the supervisors goal?"

"Please call me with any questions. In order to meet this goal time is of the essence. Once I receive your comments we would like to have a call with the Supervisor and yourself to finalize. Please call me any time with any questions."

Here's some history on Sherrillbrook Park that this town board needs to be aware of...

According to the minutes of a July 31, 1961 Special Town Board Meeting which are attached—

- Supervisor Evan Roberts reported that on July 28, 1961 a contract was signed with Mr. William Borden to purchase 90 acres for a park at the price of \$20,000 subject to the town receiving three-fourths of the cost of acquisition from the State.
- The town board also moved to proceed immediately with the possible acquisition of the Yeandle parcel that lies northerly and northwesterly of New Paris Road and adjoins the Borden tract for a price not to exceed \$20,000 again subject to state assistance.
- Then the town board continued with discussion relative to filing an amended application on the Borden Site for the transfer of funds allocated to a Sauquoit Valley site that was denied by the state and amend the Borden application in order that the Rte 12. Park site be enlarged by acquiring adjacent parcels.

The town board adopted a resolution to amend the Borden application for State funds from \$30,000 to \$60,000 “for the Acquisition of contiguous sites to the Borden Tract”.

According to the October 18, 1961 minutes the town board also resolved to purchase the Yeandle Estate for the sum of \$20,000 and the Owens Estate for \$6,000 to create a public park and...

- Resolved that said lands contiguous to the Borden Tract be established as a town park.
- As discussed, it was resolved that the purchase of said land is further conditioned upon the payment of the NYS Comptroller and the NYS Council of Parks

Using online resources, one of the articles I found was from the July 16, 1969 Utica Observer-Dispatch:

- **N.Hartford Gets Aid for Park**

NEW HARTFORD--*The Town of New Hartford has been awarded two state grants in aid totaling \$75,000 for the first stage development of the town's Sherrill Brook Park off Route 12-and the Chadwicks Town Park. It was announced today by Governor Rockefeller.*

The grant was made under provision of New York's "Next Step" outdoor recreation program and will be matched by equal sums by local units of government.

A grant of \$60,000 was awarded to the 204-acre Sherrill Brook Park for development of entrance roads and parking, trails, park shelter, picnic area, athletic fields, play areas and landscaping.

The Chadwicks Town Park will receive \$15,000...

According to the Sept. 19, 1987 obituary of Mrs. Richard Updike Sherman, a prominent New Hartford family, the name Sherrillbrook was chosen by children in the Town of New Hartford to honor the Sherman farm that they named Sherrillbrook because it was part of the Old Sherrill farm and had a brook running through it. You can see the brook on the everythingtrail.com map. It runs right along the trail system marked by the red lines on the map. The trail runs right past the water tank. Therefore, the EAF appears to need some corrections.

My files indicate that all town parks, to include the Recreation Center and the Rayhill Trail, were developed with the use of state and/or federal dollars. Therefore, under the Public Trust Doctrine, they are all dedicated as parkland that cannot be **“sold, leased, exchanged or used for non-park purposes without authorization from the New York State Legislature.”**

I spoke with past supervisor, Pat Tyksinski, after the October 19, 2015 town board meeting held to adopt the 2016 Preliminary budget. The budget plan at that point was to offset \$150,000 of park expenses by charging a non-resident fee in Sherrillbrook Park. I mentioned that the park had received state funds and there was a

signed agreement that would need to be taken into consideration. Tyksinski informed me that he already had the town attorney reviewing the park agreements. So obviously both the previous town supervisor, Pat Tyksinski, and the town attorney were fully aware of the 1969 grant agreement signed between NYS DEC and the Town of New Hartford.

The agreement signed on July 16, 1969, clearly outlines the conditions for any future use of Sherrillbrook Park; yet, the supervisor & town attorney went ahead and negotiated the deal with the cell tower company behind closed doors.

Page 7, Paragraph 24:

- **“The Municipality shall not at any time sell, convey or convert any property or facility acquired or developed pursuant to the agreement to other than a public outdoor recreation use without the express authority of an act of the Legislature.”**

Our two town officials were aware of the agreement; they had an obligation to make that information available to the public and the councilmen before any vote to sign a lease/option took place on December 13, 2017. They also had an obligation to hold a Public Hearing long before any legal notice was advertised in the paper which only gave the public 30 days to respond.

The 1969 park grant agreement was the reason that Resolution 141 was adopted on May 13, 1998, after a duly held Public Hearing. There were several open discussions held regarding the siting of the water tower. Gail Wolanin Young had to certify that a majority of the town board voted in open session to go to the legislature with a Home Rule Request to “authorize the town of New Hartford to discontinue certain park land and convey such land to the Upper Mohawk Valley Regional water board for purposes of constructing a water supply tank parcel for park purposes.” I have the complete legislation package...it will be published on New Hartford NY Online for anyone that is interested.

The 2014 zoning map is the current zone map which clearly shows that about half of Sherrillbrook Park is now zoned LDR including the water tank property represented by the small circle on the current zone map. In 1998, the part of the park where the water tank was to be sited required alienation legislation before the project could go forward. If the park was in a LDR zone in 1998, it apparently did not change the fact that legislation was required to site the water tank in that part of the park. Why then, would the previous town supervisor and town attorney believe that siting a cell tower near the water tank not require alienation inclusive of public discussion before asking the town board to adopt the resolution on December 13, 2017?

If the park wasn't in the LDR zone prior to the 2014 rezoning and was changed sometime between 1999 and 2014 due to re-zoning, we should find out why the zoning was changed. Did someone mistakenly color outside the lines when the zoning map was created or was there a reason for the LDR zone for half the park?

Bottom line...All the town's parks, including the Recreation Center which is located in the village and the Rayhill Trail that are both considered town parks, have received state and/or federal funds and are covered under the Public Trust Doctrine to it is impractical to believe that any of them should be zoned in other than a PR zone, particularly as a “purely single-family neighborhood”, which is the town code definition of LDR. The fact is, very little can be done in the town parks without first consulting the **New York State Office of Parks, Recreation and Historic Preservation**.

Further, the town's code, Chapter 107-B Telecommunications Facilities A (1) and A (2) refers to siting telecommunication towers in planned development and important preservation/conservation areas (parks):

“is the least desirable area to site a telecommunications facility”; and,

“areas identified in the town's open space/recreation plan as important preservation/conservation areas should be avoided to the maximum extent possible”

To prevent any future misunderstandings as to what development might be allowed in Sherrillbrook Park or any other town park, the zoning map needs to be amended to indicate that the entire park parcel is in the PR zone.

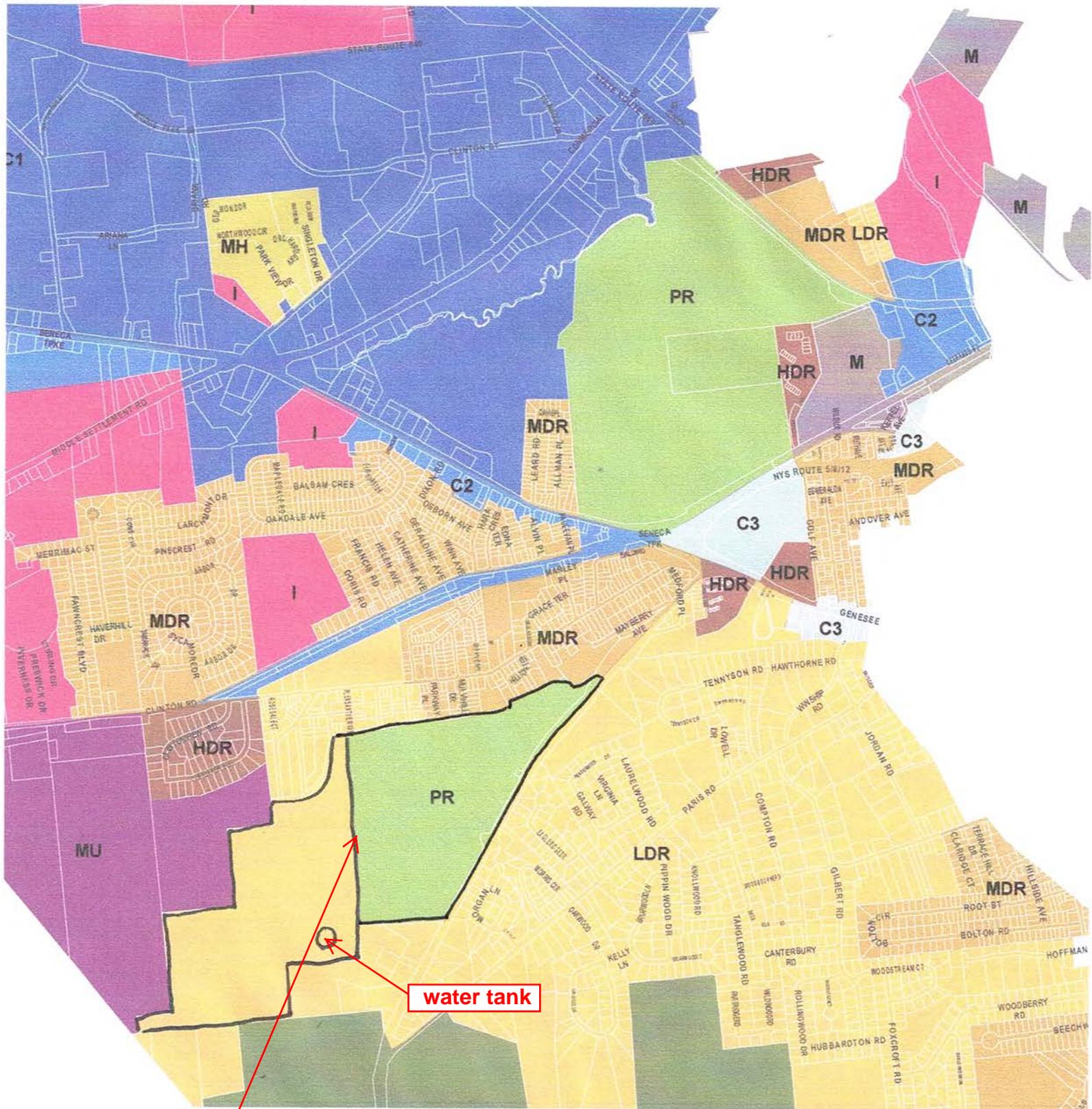
Along with the zoning map change, I think we can agree that there are no “uses of right” in any state or federally-funded park. Nothing can be sited in a state or federally-funded park without express authorization of the State Office of Parks and/or the legislature. Therefore, Schedule A and any language in the current town code that refers to permitted uses in a town park needs to be amended to reflect the stipulations included in each grant agreement that has been signed.

Finally, the resolution adopted at the December 13, 2017 board meeting and the one adopted at the January 3, 2018 town board meeting need to be rescinded. Any future desire to site a tower or any other structure in the town parks needs to be done in the view of the public following the proper procedures.

Gentlemen...This deal, which appears was a year or more in the making was done behind closed doors. None of the procedures required by the state in the signed grant agreement were followed; the board vote was rushed through at the end of the eleventh hour before the new supervisor took office.

As a taxpayer, I am angered at the way business has been conducted in our town over the past several years. It's time to start openly conducting town business in the view of the public, following proper procedures and the law instead of running this town as if it were a kingdom and taxpayers are the peasants with no say!

Attachment A



entire area (green + yellow) outlined in black is park

Green Zone = PARK
Yellow Zone = LDR

Attachment B



Red lines equal trails in the LDR zone