

**TOWNSHIP OF WEST ORANGE
PLANNING BOARD
MINUTES
March 20, 2013**

The Township of West Orange Planning Board held a postponed regular meeting on March 20, 2013 at 7:30 P.M. in Council Chambers, 66 Main Street, West Orange, New Jersey.

Chairman Bagoff called the meeting to order at approximately 7:30 P.M. It was announced that notification of this meeting was given to the Township Clerk, and posted on the Township Bulletin Board on March 7, 2013, in accordance with the requirements of the "Open Public Meetings Act".

PRESENT: Chairman Bagoff, Joanne Carlucci, Gerald Gurland, Lee Klein, Jason Lester, Councilwoman Susan McCartney (7:34 P.M.), Ron Weston, William Wilkes II (7:45 P.M.)

ABSENT: Jerome Eben Tekeste Ghebremicael, Vice Chairman Ben Heller

ALSO PRESENT: Paul Grygiel, AICP, PP, Acting Township Planner; Frank Russo, PE, PP, Consultant Omland Engineering (7:44 P.M.), Patrick J. Dwyer, Esq., Board Attorney; Robin Miller, Board Secretary; Debbie Dillon, Audio-Digital Transcription Service

PLEDGE OF ALLEGIANCE

Chairman Bagoff requested all persons stand for the Pledge of Allegiance.

ROLL CALL

Chairman Robert Bagoff, Joanne Carlucci, Jerome Eben, Tekeste Ghebremicael, Gerald Gurland, Vice Chairman Ben Heller, Lee Klein, Jason Lester, Councilwoman Susan McCartney, Ron Weston, Williams Wilkes II.

ANNOUNCEMENTS

The next regular Planning Board meeting will be held on **April 3, 2013** at 7:30 P.M. in Council Chambers.

ADOPT MINUTES

Adopt the minutes of the February 6, 2013 Planning Board meeting.

The Board voted on adopting the minutes of the February 6, 2013 meeting as follows:

Motion: Chairman Bagoff

Second: Mr. Gurland

Carlucci:	Y	Eben:	-	Ghebremicael:	-
Gurland:	Y	Heller:	-	Klein:	Y
Lester:	-	McCartney:	Y	Weston:	-
Wilkes II:	-	Bagoff:	Y		

SWEARING IN

Paul Grygiel, AICP, PP, Phillips Preiss Grygiel LLC, Acting Township Planner.
Frank Russo, PE, PP, Consultant Omland Engineering (7:44 P.M.).

RESOLUTIONS

PB-12-34C/County of Essex-South Mountain Recreation Complex

Block(s): 162, 163 & 164; Lot(s): 1, 2 & 13; Zone: R-1

9 Cherry Lane

Courtesy Review Application for re-located paddleboat attraction including new pavilion, sales shed, floating dock, pre-fabricated restroom and parking area improvements.

DISCUSSION

Mr. Dwyer listed the recommendations of the Application as follows:

1. County should ensure that the design and capacity of the rest room facilities are both ADA compliant and sufficient to serve the proposed number of visitors;
2. The County stipulated and agreed to comply with the Township anti-idling ordinance, with the requirement for shade trees in the parking lot pursuant to West Orange ordinance Section 25-12.1(p) and with applicable laws regarding installation of water cooling/drinking fountains;
3. The County agrees to withdraw its prior plans for a similar boat launch facility which was previously reviewed by this Board in May, 2012;
4. In addition to following all applicable building code requirements, the County shall also comply with the County Master Plan for the Turtle Back Zoo Recreation Complex.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Councilwoman McCartney

Carlucci:	Y	Eben:	-	Ghebremicael:	-
Gurland:	Y	Heller:	-	Klein:	Y
Lester:	-	McCartney:	Y	Weston:	-
Wilkes II:	-	Bagoff:	Y		

PB-12-29T/Maria Dominguez d/b/a Pamela Nutricion

Block: 116; Lot: 53.01; Zone: B-1

257 Main Street

Technical Site Plan to lease retail space for a Nutrition Club operated by Herbalife Independent Distributor.

DISCUSSION

Chairman Bagoff advised the Board that the Technical Review Committee approved the Application at its meeting held on February 14, 2013. He requested the Secretary read the conditions of the Approval. The conditions were as follows:

1. Applicant will obtain sign permit;
2. Signage to be approved by Planning Director or Zoning Official;
3. Window display signage may only cover 1/3 of window;
4. No food or beverage preparation or sales will be done on premises;
5. Applicant will obtain a Certificate of Continued Occupancy.

Mr. Gurland said that the Application included two different photos showing proposed signage. Chairman Bagoff advised that the Zoning Official would sign off on signage as stated in the conditions of approval.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Councilwoman McCartney

Carlucci:	Y	Eben:	-	Ghebremicael:	-
Gurland:	Y	Heller:	-	Klein:	Y
Lester:	Y	McCartney:	Y	Weston:	Y
Wilkes II:	-	Bagoff:	Y		

PB-13-01T/A-Team Physical Therapy, LLC

Block: 78; Lot: 2.02; Zone: OB-1

99 Northfield Avenue

Technical Site Plan to lease space to operate an outpatient physical therapy rehabilitation practice.

DISCUSSION

Chairman Bagoff advised the Board that the Technical Review Committee approved the Application at its meeting held on February 14, 2013. He requested the Secretary read the conditions of the Approval. The conditions were as follows:

1. Applicant will obtain sign permit;
2. If full body massage is performed, a massage establishment license must be obtained from the West Orange Health Department;
3. Applicant will obtain a Certificate of Continued Occupancy.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Councilwoman McCartney

Carlucci:	Y	Eben:	-	Ghebremicael:	-
Gurland:	Y	Heller:	-	Klein:	Y
Lester:	Y	McCartney:	Y	Weston:	Y
Wilkes II:		Bagoff:	Y		

PB-13-03T/Crestmont Country Club

Block: 177; Lot: 1

Block: 174; Lot: 1.03

Zone: R-2

750 Eagle Rock Avenue

Technical Site Plan for interior renovations.

DISCUSSION

Chairman Bagoff advised the Board that the Technical Review Committee approved the Application at its meeting held on February 14, 2013. He requested the Secretary read the conditions of the Approval. The conditions were as follows:

1. A routing plan to the lower level;
2. Restroom signage;
3. Direction signs to handicap accessible facilities.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Ms. Carlucci

Carlucci:	Y	Eben:	-	Ghebremicael:	-
Gurland:	Y	Heller:	-	Klein:	Y
Lester:	Y	McCartney:	Y	Weston:	Y
Wilkes II:	-	Bagoff:	Y		

APPLICATION

PB-13-02/Auburn Data Systems, LLC

Block: 84.01; Lot: 22; Zone: B-2

10 Marcella Avenue

Conditional Use and Preliminary and Final Site Plan with waivers to install two (2) dish antennas on to existing telecommunications tower.

EXHIBITS

A-1 – Site Plan Drawings prepared by Glenn J. Scherer, P.E., Malick & Scherer, P.C., dated 2/18/13. (6 pages.)

A-2 – 3/20/13 – Photo simulations (4 photos and key map) prepared by James T. Kyle, PP, AICP, Kyle Planning & Design dated 2/21/13, revised 3/20/13.

Michael T. Lavigne, Esq., Day Pitney LLP, attorney for Applicant, gave a brief description of the Application; he told the Board the proposal was for two dish antennas at a height of 155' to be installed on to existing tower together with connecting cables to be installed in cabinet in existing building adjacent to tower structure. Mr. Lavigne said that consistent with the request made by the Technical Review Subcommittee, testimony would be provided regarding the condition of the tower structure after Super-storm Sandy.

Referring to the Omland Engineering report dated March 4, 2013 pertaining to Applicant's requested checklist waivers, Chairman Bagoff asked the Board if they had any questions. There were no questions from the Board regarding checklist waivers.

Daniel J. Collins, Chief Technical Officer, Pinnacle Telecom Group, LLC, was sworn in and accepted by the Board to be an expert witness in radio frequency emissions. Mr. Lavigne inquired if Mr. Collins had performed an analysis on the proposed antennas. Mr. Collins said he had prepared the Antennas site RF Compliance Assessment and Report dated September 17, 2012. He determined that the

proposed antennas were in compliance with the FCC and the State of New Jersey; the antennas would emit .006% of the allowable FCC emissions.

Mr. Weston inquired if the combined antennas on the structure had any measurable impact. Mr. Collins said there were seven structures with antennas in the area; there was no measurable emissions impact.

Mr. Gurland stated the FCC rules superseded all State and local standards. Mr. Collins advised that the FCC standards were actually more stringent than those of the State of New Jersey.

Councilwoman McCartney inquired if the Application took in to account all prior Resolutions for the property. Mr. Lavigne said that the Application was current; he said the Applicant had worked with Omland Engineering and the Planning Board Secretary.

Mr. Chad Schwartz, PE, Malick & Scherer, P.C., was sworn in and accepted by the Board to be an expert witness in engineering. Referring to Exhibit A-1, Sheet Z-4, Mr. Schwartz described the proposed installation of two antennas, each being eight (8) feet in diameter, both at centerline height of 155 feet. One antenna would be on the southern corner, the other on the eastern corner of the existing tower. Mr. Schwartz said the plans reflected all existing and proposed antennas including those that had been approved but not yet installed. Mr. Schwartz opined that all dishes including those on the Application could physically fit on the tower structure. Referring to the Omland Engineering report dated March 4, 2013, Mr. Schwartz said that with regard to Mr. Keller's comments to Item 8 and Item 11 of the checklist; the revisions could and would be made. Mr. Schwartz noted that Mr. Keller's memo indicated that per the January 4, 2013 Structural Report, the existing structure could accommodate the proposed antennas. In response to inquiry made by Chairman Bagoff for the complete number of antennas on the tower, Mr. Schwartz said the structure would have fifteen antennas including those proposed.

Mr. Grygiel stated that in his review letter of February 25, 2013, he noted that the Applicant had previously applied to the Zoning Board for five antennas; three had been approved; two denied. He asked if this application was for the two antennas that had been previously denied by the Zoning Board or was this Application for two additional antennas. Additionally, Mr. Grygiel asked if the cabinet was the existing cabinet on the property. Mr. Grygiel advised the Board that no bulk variances were required as part of the Application, but the Applicant must comply with the conditional use standards of the zoning ordinance for commercial antennas.

Councilwoman McCartney inquired as to why the Zoning Board denied two antennas that were part of the previous Application.

Chairman Bagoff asked if the antennas constituted clustering.

Andrew T. Haldane, PE, Tower Engineering Professionals, Inc., was sworn in and accepted by the Board to be an expert in civil engineering. Mr. Haldane advised the Board he physically climbed the structure earlier today. The structure was thirty-seven years old, it showed slight signs of age, and its physical condition was good.

Mr. Haldane said he looked at two things – damage from Hurricane Sandy and installation damage from the three most recent antenna installations.

Councilwoman McCartney asked about the industry regulations for inspecting tower structures; how often were they done, and how often did Mr. Haldane report to the structure owner. Mr. Haldane said that the industry standards for tower inspections recommended every three years; the owner of the structure, American Tower, hired him to do periodic inspections. He said this tower had been inspected in 2011, 2012 and 2013. He stated the owner had exceeded the recommended standard.

Councilwoman McCartney asked Mr. Haldane if all antennas on the structure were operational. Mr. Haldane answered that he had inspected the antennas to make sure they were secure, not operational.

Mr. Lester asked if the proposed antennas posed any threat to the integrity of the structure. Mr. Haldane said no; weight stress did not affect the structure as much as wind damage.

Mr. Weston inquired if based on Mr. Haldane's previous analysis, was there a percentage (of antennas installed) where there would be a concern for wind load. Mr. Haldane said that there was a capacity limit, but the structure was a big exposed truss; another brace could be added to the structure; the particular structure could be modified for a long time as long as attention was paid to the connections and the base. Mr. Haldane described the percentage of bracing capacity.

Mr. Klein inquired if all corrections had been made based on Mr. Haldane's prior inspection in 2012. Mr. Haldane said all corrections had been made, and the structure was in better condition than during his previous inspection.

Mr. Russo inquired if Mr. Haldane had a list of tower recommendations based on his site visit of this date. Mr. Haldane said there were a few new areas of surface corrosion; he indicated he would be issuing his current report to American Tower.

Harvey Grossman, Esq., Public Advocate, inquired about the areas of corrosion and the proper procedures for structure maintenance, how often had the structure been inspected. Mr. Haldane said that industry standards recommended the structure be inspected every three years; this structure had been inspected three times during the most recent three year period.

James T. Kyle, PP, Kyle Planning & Design, was sworn in and accepted by the Board to be an expert in planning. Referring to Exhibit A-2 (Photo simulations prepared 3/20/2013), Mr. Kyle described the existing conditions and the proposed changes to the site. He opined the addition of the proposed antennas did not constitute an undue concentration of antennas. He testified there were several other towers in the area that had a variety of antenna types; he opined that for the sake of viability, American Tower would remove any unused antennas that were on the structure.

Chairman Bagoff asked if Mr. Kyle agreed with Mr. Schwartz's testimony that the number of antennas on the structure (including those proposed), would be fifteen. Mr. Kyle answered in the affirmative.

Mr. Weston inquired if there was a definitive number of antennas that would constitute an undue concentration, what criteria would result in undue concentration, and would approving additional towers be of concern to the Board. Mr. Kyle opined that regarding the number of antennas, it would be a judgment call; he stated that regarding the towers, there were already seven towers in the area; he opined that it would be silly to have additional towers erected.

Mr. Gurland stated that Mr. Kyle was not permitted in to Eagle Ridge; he asked how the photos from Eagle Ridge were obtained. Mr. Kyle said the Eagle Ridge photos were existing photos.

Mr. Klein asked about undue concentration; did it have to do with spacing the antennas. Mr. Kyle said it was more about volume; the dishes did not stand out.

Mr. Dwyer asked Mr. Kyle to identify the dishes and there distance to those proposed. Mr. Kyle identified the antennas and said they were at a distance of ten feet.

Mr. Dwyer confirmed with the Applicant and the Board Secretary that they had submitted documentation of owner authorization.

Mr. Weston opined that based on the testimony from professionals, and the new report from Mr. Haldane, the antennas on the structure were at 96% and seemed to be approaching capacity. Mr. Lavigne advised that Mr. Haldane would provide a written summary of his most recent inspection and recommendations.

Conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.
3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any

improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.

4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn.
6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.
7. Applicant to comply with checklist items 8 and 11 as set forth in Omland Engineering's review letter dated March 4, 2013, namely, the signature block should be changed from "Board Engineer" to "Township Engineer" and the site plans should include the ALTA survey provided by iSignal on a previous application to this Board and the site plans should be corrected as needed to comply with said survey.

Chairman Bagoff called for a vote on the Application.

The Board voted on the Application as follows:

Motion: Chairman Bagoff

Second: Mr. Lester

Carlucci:	Y	Eben:	-	Ghebremicael:	-
Gurland:	Y	Heller:	-	Klein:	Y
Lester:	Y	McCartney:	Y	Weston:	Y
Wilkes II:	Y	Bagoff:	Y		

Chairman Bagoff announced a brief recess at approximately 8:48 P.M.; he re-convened the meeting at approximately 8:58 P.M.

Chairman Bagoff noted that Mr. Russo departed the meeting at approximately 8:48 P.M.

DISCUSSION

Recommendation to Township Council regarding potential zoning changes to streamline standby generator installation.

Chairman Bagoff addressed the Board; he said the purpose of the discussion was to determine if the Board should make a recommendation to the Council for their consideration; the Board would work to create a model ordinance for streamlining the installation of standby generators. Chairman Bagoff opined that getting something on the books would make sense; the Board had the opportunity to give

residents the ability to protect themselves and encourage businesses to help the local community in times of emergency. Chairman Bagoff said that Mr. Grygiel and Mr. Dwyer had been working on recommendations.

Mr. Grygiel said there were three main issues:

1. Mandate requiring standby generators for new construction of certain businesses such as service stations, nursing homes and pharmacies;
2. Dealing with general zoning issues defining what a generator is; specifically focusing on emergency standby generators and
3. Where they could be installed, and the standards for installation.

Mr. Dwyer said that there was pending legislation, but it might take time for it to be adopted, if at all.

Chairman Bagoff said that within the Township of West Orange there were twenty-two condominium associations with over twenty-thousand residents. He opined the Board would be serving the community by streamlining the process by offering guidelines for installation that condominium associations might adopt.

There was discussion among the Board regarding making a recommendation to the Council for potential zoning changes.. Some members indicated they had not been provided with a copy of Mr. Grygiel's memorandum dated February 21, 2013. The Board was unable to make a determination; it was decided to continue the discussion at the next Planning Board meeting.

DISCUSSION

OPMA Compliance – New Legislation.

Tabled for an upcoming Planning Board meeting.

Councilwoman McCartney advised the Board that on April 3, 2013, former Montclair Mayor, Jerry Fried, would be making a presentation on *Complete Streets*, sponsored by Essex County.

MEETING ADJOURNED at approximately 10:17 P.M.

Minutes adopted April 3, 2013



Robin Miller, Planning Board Secretary
Township of West Orange

****THE NEXT REGULAR MEETING OF THE PLANNING BOARD WILL BE
MAY 1, 2013 AT 7:30 P.M. IN COUNCIL CHAMBERS****