

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
MEETING
February 16, 2012**

The West Orange Zoning Board of Adjustment held a regular meeting on February 16, 2012 at 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Neuer called the meeting to order at approximately 8:00 P.M. It was announced that notification of this meeting was given to the Township Clerk, the West Orange Chronicle, and posted on the Township Bulletin Board on November 29, 2011 in accordance with the "Open Public Meetings Act."

Chairman Neuer asked everyone to stand for the Pledge of Allegiance

Alice Beirne, Esq., Board Attorney, read the Opening Statement.

PRESENT: Bruce Buechler, Gregory Bullock (8:03 pm), Deborah Gabry, Phil Neuer, Bart Quentzel, Eric Sacks, Mark Sussman, William Steinhart

ABSENT: Alice Weiss (excused absence)

ALSO PRESENT: Susan Borg, A.I.C.P., P.P., A.I.A.
Board Attorney: Alice Beirne, Esq.
Board Secretary, Rose DeSena
Harvey Grossman, Public Advocate

Chairman Neuer noted for the record that, even though there was a court stenographer at the meeting, the only official transcript for this meeting, as with all of our meetings, is Ms. Dillon's transcript.

ANNOUNCEMENTS

Future Meetings: March 15, 2012 (Regular Meeting) – 8:00 PM
April 19, 2012 (Regular Meeting) – 8:00 PM
May 17, 2012 (Regular Meeting) – 8:00 PM
June 14, 2012 (Regular Meeting) – 8:00 PM

MINUTES

Adopt Minutes: January 19, 2012 meeting

Chairman Neuer asked if there were any comments regarding the minutes. Mr. Buechler made a motion to adopt the minutes as submitted and Ms. Gabry seconded. All were in favor.

Noted for the record that Chairman Neuer was present but not voting

SWEARING IN

Township Professional, Planning Director Susan Borg was sworn under oath.

DISCUSSION

1. ZB-11-17/Canterbury Village – Final Site Plan Approval

Chairman Neuer stated that Eric Keller sent a memo to the Board stating that he has reviewed the final plans for Canterbury Village and they are in accordance with the approvals granted by this Board. The Chairman stated that he will sign them and requested that the Board Secretary do likewise.

2. ZB-10-15a/Cambria Suites – Request for an extension

Note for the record that Mr. Steinhart recused himself and stepped down from the dais.

Donna Erem, attorney for applicant, approached the podium. She stated that she has submitted all of the paperwork that was requested by the Board, along with the monthly report for February and is here on behalf of her client requesting an extension.

Chairman Neuer stated that her client did not give the Board the 30 day notice, which was required if they wanted to request an extension. He said that Ms. Erem was not at the meeting when it was imposed but that it was her responsibility to know from her colleague who attended the meeting. Chairman Neuer stated that her associate, who was present at that meeting, did know. He said that if the Board does grant another extension, May 1st will be the deadline to let the Board know.

Ms. Erem stated that on January 23, they didn't know that there was going to be a problem; she couldn't reach Mr. Mielbye so therefore she could not give the Board that information.

Chairman Neuer stated that the Board asked for some evidence, from the applicant, showing that the contract for closing on the property didn't expire. He stated that Ms. Erem submitted a copy of the 22nd amendment to that contract that extended the closing date to April 2, 2012.

Chairman Neuer continued by saying that the applicant is now requesting an extension for filing the sub-division deeds. He stated that the Board had imposed a February 17, 2012 deadline and they are asking that it be extended to May 31, 2012. Ms. Erem stated that she disagreed with the Chairman and said that, because they are asking for this extension, it is not required. Mr. Buechler asked Ms. Erem why she was here if Board approval is not required. Ms. Erem said that it is just a matter of record and that she needs to protect her client.

Mr. Buechler suggested entertaining another formal resolution and stated that if the applicant seeks further extensions that they will have to file a new application for whatever time they think they need.

Chairman Neuer stated that if the financing and land swap is not consummated and the applicant is prepared to change the parking, then they will have to submit a new application. He also

stated that if the financing is not in place that the Board requires a 30 day in advance notice which is May 1, 2012.

Ms. Borg asked why the applicant will need a new application and the Chairman stated that the Board cannot keep extending it indefinitely; that is not permitted by the Municipal Land Use Act. Mr. Buechler stated that this application has been pending for months and the Board rushed the hearing and decision so they could get the funding.

Ms. Erem stated that everyone has been working very hard to keep it together and there are some facts she cannot disclose to the Board. Mr. Buechler stated that the Board has accommodated the applicant for sixteen months but something has to happen here. He made a motion to pass the resolution, extending the deadline until May 31, 2012, and the applicant must notify the Board by May 1, 2012 if they need another extension or if they need additional time to file a new application. Ms. Erem asked for clarification and Mr. Buechler said that if May comes and goes, the extension is expired.

Chairman Neuer summarized by saying that the Board will grant the extension until May 31, 2012, subject to the applicant continuing to submit monthly reports. He said that the Board requires that, whether they file a new application or seek an extension, the applicant must notify the Board by May 1, 2012. Chairman Neuer stated that approving the extension will be up to the Board and he seconded the motion made by Mr. Buechler.

Vote was as follows:

Buechler:	Yes	Steinhart:	Recused
Bullock:	Yes	Sussman:	Yes
Gabry:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Neuer	Yes
Sacks:	Yes		

RESOLUTIONS

- ZB-11-15/GigaBeam** **Application denied without prejudice**
 Block: 84.01; Lot: 22; Zone: B-2
 "D" variance for use to place two (2) six foot dish antennas on an existing tower and necessary equipment to be cabinet mounted on H-frame at ground level.

Chairman Neuer asked if there were any comments from the Board. Mr. Buechler stated that he gave his comments to Ms. Beirne regarding the Bankruptcy Code and made a motion to adopt the resolution with the changes. Ms. Gabry seconded.

Vote was as follows:

Buechler:	Yes	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Gabry:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Neuer	Present but not voting -
Sacks:	-		Did not attend hearing

2. **ZB-11-22/Ali** **Application approved 1/19/12**
 Block: 120.02; Lot: 33 & 34; Zone: R-T
 94 Watchung Avenue
 Seeking "C" variance to rebuild a garage

Chairman Neuer asked if there were any comments from the Board. Mr. Buechler stated that he gave Ms. Beirne his comments before the meeting and made a motion to adopt the resolution with the changes. Mr. Sussman seconded.

Vote was as follows:

Buechler:	Yes	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Gabry:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Neuer	Present but not voting -
Sacks:	-		Did not attend hearing

3. **ZB-11-21/Blenden** **Application approved 1/19/12**
 Block: 174; Lot: 25; Zone: R-5
 26 Lakeview Avenue
 Seeking "C" variance for impervious lot coverage for an addition
 and replacing existing deck with a smaller deck

Chairman Neuer asked if there were any comments from the Board. Seeing none, he asked for a motion to adopt. Ms. Gabry made a motion to adopt; Mr. Sussman seconded.

Vote was as follows:

Buechler:	Yes	Steinhart:	-
Bullock:	Yes	Sussman:	Yes
Gabry:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Neuer	Present but not voting -
Sacks:	-		Did not attend hearing

APPLICATION(S)

1. **ZB-12-02/Auburn Data Systems, LLC**
 Block: 84.01; Lot: 22; Zone: B-2
 10 Marcella Avenue
 Seeking a "D" variance for conditional use and a "C" variance for rear set back
 to install five (5) antennas on an existing tower and an electronic equipment
 cabinet

EXHIBITS

A-1 - Compliance report prepared by Pinnacle Telecom Group dated 8/24/11
A-2, B-2, C-2, D-2, E-2, F-2 – Photographs

DISCUSSION

Michael Lavigne, attorney for the applicant, approached the podium.

Chairman Neuer stated that there was a letter of authorization from the property owner, included in the application package, signed by Lisa E. Kahn and asked Mr. Lavigne who owns the property. Mr. Lavigne stated that MCI is the owner of the property. Chairman Neuer said that the letter neither says anything about MCI nor does it identify who Ms. Kahn. He stated that he is concerned if the Board can even proceed with this application. Mr. Lavigne stated that MCI is located in Dallas, Texas and that the tower company received approval from them to file and pursue this application. Ms. Beirne asked Mr. Lavigne if he knew who Lisa E. Kahn was and he said he didn't know. Ms. Beirne stated that they can proceed with the application but the Board cannot vote until we receive the owner's proper authorization. She said that if the authorization comes from Ms. Kahn, then she should identify herself as being authorized by MCI to sign for them and to provide a proper entity resolution.

Ms. Borg asked if they needed a letter from the tower owner also. Chairman Neuer stated that the only approval required is from the property owners. Mr. Buechler stated that, because there is a license agreement, the property owner did give approval.

Mr. Lavigne stated that the applicant is proposing to install five antenna dishes on an existing 200' lattice tower at 10 Marcella Avenue. He said that the dishes will be mounted at 155' and 90' above ground level.

Mr. Lavigne stated that there are many towers in that location. He also stated that at one time there were a number of these dishes on this tower but today it is completely stripped of those dishes.

Mr. Lavigne gave the background of the applicant stating that they are an FCC licensee and the purpose of the antennas will be to transmit data from New York to Chicago.

Chairman Neuer said that Ms. Borg stated in her report that this is a private company and the use is limited to their clients only and will not service the general public. Mr. Lavigne said that they do have customers that use their company to transmit data by microwave link to New York to Chicago. Ms. Borg asked why they need these specific dishes. Mr. Lavigne stated that they presently use landlines and his expert can answer that question.

Mr. Lavigne stated that he filed an OPRA request and requested copies of all prior resolutions for 10 Marcella Avenue. He stated that he only received Planning Board resolutions and asked if any applications had come before the Zoning Board. Ms. Borg stated that there was only one last year but the applicant filed bankruptcy and it was denied without prejudice.

Mr. Lavigne stated that he is questioning the conditional use “D” variance as part of the application. Ms. Borg stated that the application requires three “D” variances. Chairman Neuer stated that this is the Board that hears these types of applications. Mr. Buechler stated that if Mr. Lavigne thinks otherwise he should speak now.

Mr. Lavigne stated that he would like an interpretation of the zoning ordinance 25-4 for commercial antennas because he believes what his applicant is proposing falls under that. Ms. Beirne said that she agrees with him and that it does fall under commercial antennas according to the ordinance. Mr. Lavigne stated that he is questioning the “D” variance for more than one principal use. Ms. Beirne stated that it was already determined that every carrier has been a different use. Chairman Neuer questioned how Ms. Borg came to the conclusion about two uses. Ms. Borg stated that each antenna grouping is a different use. Chairman Neuer asked Mr. Lavigne if he would like to amend the application to include an interpretation asking if it is more than one principal use and Mr. Lavigne said yes. Chairman Neuer also asked Ms. Beirne if it is considered more than one principal use and she stated that they have always considered them a different use and it is more than one use on a principal lot. Chairman Neuer asked for a motion to approve amending the application; Mr. Bullock made the motion and Mr. Buechler seconded.

The vote was as follows:

Buechler:	Yes	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Gabry:	Yes	Weiss:	-
Quentzel:	Yes	Chairman Neuer	Yes
Sacks:	-		

Chairman Neuer stated that it is a conditional use. Mr. Quentzel stated that he is conflicted and feels that it’s a commercial antenna and not a different use. Chairman Neuer stated that, historically, when you have a different antenna on the same tower it is a different use and that is how the Board has historically considered similar matters.

Mr. Lavigne stated that, with it being a conditional use, the ordinance for the height is under 200’. He questioned if it was still a “D” variance. Mr. Buechler stated that the ordinance requirement is under 200’; Mr. Lavigne said that they do meet that requirement. After some discussion the consensus was that the applicant does not need a height variance.

Mr. Lavigne presented his first witness. Mr. Dan Collins approached the podium and was sworn under oath. Mr. Collins stated that he was an FCC compliance expert; he has an electrical degree and has testified before this Zoning Board before in September, 2011. Chairman Neuer accepted his credentials as an FCC compliance expert.

Mr. Collins stated that his report was included in the application package. Chairman Neuer asked Mr. Collins if he was to ask him to read his report, would he testify that it was accurate. Mr. Collins replied yes and Chairman Neuer admitted Mr. Collins’ compliance report into evidence as exhibit A1.

Mr. Collins described the radiation from the microwave transmission radio frequency as being very low. Mr. Quentzel asked if the height of the dishes affects the radiation. Mr. Collins stated that distance reduces the radiation transmission and the higher the dishes are the better. Mr. Sussman asked if something has such low power, than how does it transmit the power. Mr. Collins stated that the reflecting rod transmits the power. Chairman Neuer asked Mr. Collins for an explanation of some of the wording in his report. Mr. Grossman asked if the point to point microwave transmission affects cell phones, television or wi-fi transmissions and Mr. Collins replied no.

Chairman Neuer asked if there were any questions from the Board. Seeing none he asked if any members of the public had any questions for Mr. Collins.

Ms. Yanmeng Gan approached the podium stating she lived at 140 Leonardo Drive. Ms. Gan stated that she lived in the Eagle Ridge Townhouses above the site and is very concerned about health issues and asked if there were any. Mr. Collins stated that there were none. Ms. Gan stated that there will be five dishes on the tower and Mr. Collins stated that all five dishes are a total of 5 watts. He stated that this is less than your microwave oven gives off in your home. Chairman Neuer asked how many of those dishes are going to be pointed towards the townhouses and Mr. Collins said there will be no more than two pointed in that direction.

Ms. Gan stated that her cell phone signal in her home is interrupted and they lose the signal all of the time. She wanted to know if these dishes will further aggravate the situation. Mr. Collins replied no that they do not cause interference to cell phone. Chairman Neuer stated that he understands her health concerns and that he also loses calls at that spot and no one knows what causes it. He stated that cell phone service is not perfect.

There were no other questions from members of the public.

Ms. Borg asked Mr. Collins if the dishes were smaller could they still function. Mr. Collins said to ask the radio frequency engineer that question. He said that if the dish was smaller it would require more power to travel the same distance and that no microwave dish could exceed the FCC standards.

There were no more questions for this witness.

Mr. Lavigne called his second witness. Mr. Anthony Suppa approached the podium and was sworn under oath. Mr. Suppa stated he was a civil engineer licensed in the State of New Jersey and an expert in civil and structural engineering. Chairman Neuer accepted his credentials as an expert in engineering.

Chairman Neuer stated that for the record there was no engineering report included with the application package.

Mr. Suppa presented an engineering report. He detailed the existing conditions of the site, as described in the report, and noted that the tower had 37 antennas on it at one time. Mr. Buechler asked who removed them. Mr. Suppa replied that he did not know. Mr. Lavigne stated that Mr.

Suppa did not prepare this report and that it was prepared by American Tower. Chairman Neuer asked if the author of this report was present tonight and Mr. Lavigne replied no.

Mr. Buechler asked Mr. Suppa if he had performed any independent analysis concerning the structure of the tower. Mr. Suppa replied that he did not but will testify that he will come to the same conclusions as in the reports. Mr. Lavigne asked if there are building codes for the antenna attachments. Mr. Suppa replied yes and said that the tower company's report is consistent with this. Chairman Neuer asked if detailed construction plans will be submitted to the Township's Building Department and Mr. Suppa replied yes he will submit them.

Chairman Neuer stated that no one is here to authenticate the engineering report. He said that the Board understands the witness is allowed to make his statements even though he never made any tests himself. The Chairman stated that he is not going to admit heresay and that structural integrity is very important to this Board. He said that, not knowing the structural integrity of the tower, adding five large dishes and not knowing how heavy they are, the Board will not enter this report into evidence. Mr. Sussman asked Mr. Suppa how much the dishes weigh. Mr. Suppa stated that the 8' dishes weigh 400 lbs. and the 10' dishes weigh 600 lbs. each.

Mr. Buechler asked when the tower was originally constructed and Mr. Suppa replied he would have to look that up. Mr. Lavigne stated that the tower was constructed in 1976. Mr. Bullock stated that he would like an additional update from a 1976 report. Mr. Lavigne stated that there are two reports and the one Mr. Suppa is referring to is new.

Chairman Neuer stated that he cannot accept that report. He said that if they are not accurate, they are asking the Board to take it on faith and therefore he has a problem with this testimony.

Mr. Suppa described the equipment and detailed where it will be placed. Mr. Lavigne asked Mr. Suppa if the applicant is proposing any lighting or signage and Mr. Suppa replied no.

Chairman Neuer recessed the meeting at 9:44 pm

The meeting resumed at 9:55 pm

Chairman Neuer asked Mr. Suppa if he visited the site and Mr. Suppa replied yes. Chairman Neuer asked if he performed any kind of inspection of the tower noting any loose bolts, cracking or peeling and Mr. Suppa replied that he did not.

Mr. Buechler asked how the dishes were brought in and attached to the tower. Mr. Suppa said by crane. Mr. Buechler asked if the witness was just assuming that is how the prior dishes were brought to the site. Mr. Suppa said that he was just guessing. Mr. Buechler asked Mr. Suppa if his testimony is all assumption and Mr. Suppa replied yes.

Mr. Grossman stated that Mr. Suppa's opinions on the structure are based solely on the 1984 engineering report. Mr. Suppa stated that they are based on the 2011 signed and sealed report from American Tower. Mr. Grossman asked if he did a layout of the site when he visited it and Mr. Suppa said yes. Mr. Grossman asked if he evaluated the tower itself and Mr. Suppa replied

no. Mr. Grossman asked if he knew of any structural changes to the tower since 1976 and Mr. Suppa replied no.

Mr. Grossman asked Mr. Suppa if he reviewed the aerodynamics and Mr. Suppa said that he reviewed where the dishes will be placed on the tower. Mr. Grossman asked what would happen if they became detached from the tower during a storm; would they fly through the air. Mr. Suppa stated that he could not answer that question. Mr. Grossman asked Mr. Suppa what wind velocity they could sustain. Mr. Suppa stated that he did not do an evaluation of the wind velocity; it was not part of his presentation. He said that it is included in the report that the Board is not entering as an exhibit. Chairman Neuer stated that the Board will decide if the report is based on solid foundation.

Mr. Quentzel asked Mr. Suppa who has the responsibility if something happens; would it be the owner or the entity performing the installation? Mr. Suppa stated that the tower would be responsible and the next witness will testify to that.

Ms. Borg stated that the tower is made of steel and asked if it would rust. Mr. Suppa stated that it's galvanized and shouldn't rust but it can. He said that periodic inspections will be done. Ms. Borg asked if the Board will ask for an inspection report because she wants to know the condition of the tower. Chairman Neuer stated that the Board will take that into consideration.

Ms. Gabry asked Mr. Suppa if the dishes are welded on. Mr. Suppa stated that they are not welded but fastened to pipe mounts with sway bars and hurricane clamps.

Chairman Neuer asked if any members of the public had questions for this witness; there were no more questions for Mr. Suppa.

Mr. Lavigne called his next witness. Mr. James C. Wolfson approached the podium and was sworn under oath. Mr. Wolfson detailed his education and work experience. He stated that he was a radio frequency specialist in routing microwave link systems and design. Mr. Buechler asked what the difference is between a radio frequency engineer and a radio frequency specialist. Mr. Wolfson stated that the engineer is licensed and he is not licensed. Mr. Buechler asked if Mr. Wolfson submitted a report to the Board and Mr. Wolfson replied that he did not.

Chairman Neuer accepted his credentials as a radio frequency specialist in routing microwave link systems and design.

Mr. Lavigne asked Mr. Wolfson if he took photos of the site and tower and Mr. Wolfson replied yes. He stated that he personally took the photos being presented and they accurately depict what is up there on the site. Chairman Neuer entered the photographs into evidence as Exhibits A2 through F2.

Mr. Wolfson described what was in the photos. He stated that there are 37 point to point dishes at different locations between Chicago and West Orange.

Ms. Borg asked why they would need five dishes instead of two dishes. Mr. Wolfson stated that there are five locations from this tower; four to the east and one to the west.

Mr. Lavigne asked Mr. Wolfson why they are dish style and not panel style. Mr. Wolfson stated that FCC does not allow panel antennas; they do not meet the requirements.

Mr. Lavigne asked Mr. Wolfson how the dishes are installed. Mr. Wolfson stated that there is a pulley on top of the tower and they hoist the dish up. He said that they use anchor men and it is not necessary to use a crane. Mr. Quentzel asked Mr. Wolfson if there was any other location in this area that they looked at and Mr. Wolfson stated that they looked at many.

Ms. Borg asked Mr. Wolfson if the dishes could be smaller if they put more towers in other locations. Mr. Wolfson stated that he would have to talk to his customer and see if he wants to change his requirements.

Mr. Lavigne asked Mr. Wolfson if he ever used larger dishes than the one's being proposed. Mr. Wolfson said yes, that they have used 12' dishes.

Ms. Borg asked if all the antennas look the same. Mr. Lavigne stated that he spoke to the applicant and they would match, as close as possible, the dish to the color of the tower.

Mr. Bullock asked Mr. Wolfson how much the cover on the dish weighs. Mr. Wolfson stated that he didn't know. Mr. Bullock asked if the radome covers ever come off and Mr. Wolfson stated that they rarely see one come off. Mr. Wolfson stated that the radomes are attached on and stretched over the lip of each dish. He said they bolt the clamps and pull the radomes over the antenna. Ms. Borg asked if the radomes can be grey instead of white. Mr. Wolfson stated that they have not developed a paint that stays on the material. Ms. Borg said that she thinks they would look better all one color. Mr. Lavigne said he will put that question to his client. Ms. Borg asked if part of the maintenance is painting it. Mr. Wolfson stated that the maintenance is only for avoidance of interference of the wave. Mr. Lavigne said he will ask his client if painting could be part of the maintenance.

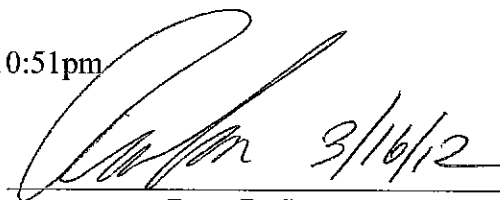
Chairman Neuer advised Mr. Lavigne that the meetings end promptly at 11pm. Mr. Lavigne stated that he only has the Planner left as a witness. Chairman Neuer advised him that he can start but he recommended that they come back to the next meeting on March 15th. He also said that they will be placed first on the agenda for that meeting. Mr. Lavigne checked with his Planner's availability and agreed to come back on March 15th.

Chairman Neuer asked the Board secretary to send the Township's consulting engineer, Eric Keller, a copy of the applicants engineering report. He also stated that the applicant needs to submit the owner's authorization by March 5th, ten days before the next meeting.

ADJOURNMENT

The meeting was adjourned by Chairman Neuer at 10:51pm

February 16, 2012

A handwritten signature in black ink, appearing to read 'Rose DeSena', with the date '3/16/12' written to the right of the signature.

Rose DeSena
Zoning Board Secretary