

**TOWNSHIP OF WEST ORANGE  
PLANNING BOARD  
MINUTES  
JANUARY 2, 2013**

The Township of West Orange Planning Board held a regular meeting on January 2, 2013 at 7:30 P.M., in Council Chambers, 66 Main Street.

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, the West Orange Chronicle and posted on the Township Bulletin Board on December 6, 2012 in accordance with the requirements of the "Open Public Meetings Act".

**PRESENT:** Chairman Bagoff, Jerome Eben, Tekeste Ghebremicael, Gerald Gurland, Lee Klein, Councilwoman Susan McCartney (7:57 P.M.), Ron Weston

**ABSENT:** Joanne Carlucci, Vice Chairman Ben Heller, Jason Lester, William Wilkes II

**ALSO PRESENT:** Paul Grygiel, AICP, PP, Acting Township Planner  
Frank Russo, P.E., Omland Engineering Associates, Inc.  
Patrick Dwyer, Esq., Board Attorney  
Robin Miller, Board Secretary  
Debbie Dillon Audio Transcription Service, LLC

**PLEDGE OF ALLEGIANCE**

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

**ROLL CALL**

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

**ANNOUNCEMENTS**

The next regular Planning Board meeting will be held on **February 6, 2013** in Council Chambers, at 7:30 P.M.

**ADOPT MINUTES**

Adopt the minutes of the November 29, 2012 Planning Board special meeting.

The Board voted on adopting the minutes of the November 29, 2013 special meeting as follows:

Motion: Chairman Bagoff

Second: Mr. Klein

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

Adopt the minutes of the December 5, 2012 meeting.

The Board voted on adopting the minutes of the December 5, 2012 meeting as follows:

Motion: Chairman Bagoff

Second: Mr. Weston

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

**SWEARING IN**

Paul Grygiel, AICP, PP, Phillips Preiss Grygiel LLC, Acting Township Planner.

Frank Russo, PE, PP, Omland Engineering, Professional Planner and Professional Engineer hired by the Township.

**RESOLUTION(S)**

**PB-12-31T/Bow and Arrow Manor, Incorporated**

Block: 151; Lot: 17.01; Zone: B-2

111 Prospect Avenue

Technical Site Plan for interior renovations and elevator installation.

**DISCUSSION**

Chairman Bagoff gave a brief recapitulation of the Application approved at the November 29, 2012 special meeting.

Mr. Eben asked if the Applicant was spending more than \$100,000.00 on the renovation. Chairman Bagoff answered in the affirmative.

Chairman Bagoff called for a vote on the Resolution.

The Board voted on the Resolution as follows:

Motion: Chairman Bagoff

Second: Mr. Eben

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

### **APPLICATION(S)**

#### **PB-12-30/Alcatel Lucent c/o Coral Links Ltd.**

Block: 84.01; Lot: 22; Zone: B-1

10 Marcella Avenue

Conditional Use Site Plan to install two (2) dish antennas on to an existing tower and ancillary equipment beneath tower.

### **EXHIBITS**

A-1 - Revised Site Plans dated 1/2/13, prepared by Ramaker & Associates, Inc. – eight (8) pages.

### **DISCUSSION**

Kevin R. Jones, Esq., Law Offices of Alan B. Zublatt, attorney for Applicant, introduced the Application to the Board. Mr. Jones stated the Applicant proposed to install two (2) microwave antenna dish mounts; at heights of 35 feet and 76 feet, respectively, on to an existing tower at 10 Marcella Avenue. Mr. Jones presented revised site plans to be entered as Exhibit A-1, the revisions addressed the comments of the Omland Engineering memorandum dated December 26, 2012.

Mr. Jones introduced the Applicant's first witness, Frank Pazden, PE, Maser Consulting P.A. Mr. Pazden was sworn in, stated his credentials, and determined by the Board to be an expert in engineering. Chairman Bagoff inquired as to the accuracy of the Ramaker site plan, (Exhibit A-1). Mr. Weston asked Mr. Pazden if he was familiar with the site. Mr. Pazden advised the Board that he had not prepared the plans but had reviewed both sets of plans, the original and revised, and determined them to be accurate; additionally, he had visited the site. Mr. Jones advised the Board that an expert witness from Ramaker & Associates, Inc. was not available to testify. Mr. Dwyer determined that Mr. Pazden could be permitted to introduce testimony to the Board.

Referring to Exhibit A-1 - Sheet A-2, Mr. Pazden said the sheet showed the overall site plan; the existing building structure was under the footprint of the tower. The Applicant's plan was to construct a seven foot high storage building on to a pre-poured concrete pad to the far south end of the existing building for the antennas supporting aperture. Mr. Pazden said there was currently an existing concrete slab on the site; the new structure would be to the east of the existing slab. The two antennas would be situated on the north west side of the tower; one at a height of

35 feet, the other at 76 feet; both within the footprint of the tower.

Mr. Eben asked where the cable tray would be located and at what height; and would excavation be necessary. Mr. Pazden responded the tray would be flush with the ground; the slab would be 4 feet by four feet flush; there would be minor excavation similar to a deck footing.

Mr. Weston said he wanted to know how close the existing fence was to the property line; and would the antennas generate noise. Mr. Pazden said the fence was almost adjacent to the property line, noise levels would be within the industry guidelines.

Chairman Bagoff noted that the existing fence was ten feet from the property line.

Mr. Gurland asked if the Eagle Ridge Complex was within 200 feet of the property. Mr. Jones indicated that Eagle Ridge management had been noticed; all documentation had been submitted to the Board Secretary. Mr. Gurland stated Alcatel did not own the tower; Mr. Jones responded American Tower owned the structure and MCI Telecommunications owned the property. Mr. Gurland responded that at some other towers, maintenance had become an issue; he had not inspected the tower, but was concerned about it rusting. He said that as a condition of approval he would like a letter issued to American Tower indicating the tower must be maintained. Chairman Bagoff interjected that the Township's Engineering Department did tower inspections. Mr. Dwyer inquired if the Applicant would stipulate that the structure owner (American Tower) would maintain the tower. Mr. Jones answered that Mr. Gurland's request was very general. Mr. Weston asked if it would be a precedent to condition an Applicant to maintain a structure they leased. Chairman Bagoff proposed the condition would be to have the lessee get a letter from the owner stating the owner would maintain the structure. Mr. Pazden advised the Board that the tower was inspected every three years; the tower was stainless steel; rust was not an issue. Mr. Eben interjected that he remembered that a structural report had been submitted with a previous Application for the site; it was very important to have the structure maintained. Councilwoman McCartney opined it was not incumbent on the Applicant to maintain the property; it was the responsibility of the tower owner. Mr. Klein stated he agreed with Councilwoman McCartney. Mr. Gurland then inquired if the antenna bolts were made of stainless steel. Mr. Pazden said that typically, the bolts were stainless steel; he then advised the Board that pertaining to the structural analysis, an updated structural report would be provided.

Mr. Grygiel said there might be an issue with the plan; the revised plans indicated the proposed antenna at a height of 35 feet was beyond the footprint of the tower structure; it would project beyond the base of the tower approximately 2.5 feet. Mr. Jones said the Applicant would amend the plan; the antenna would be raised to a height to keep within the footprint of the structure.

Mr. Weston inquired if the Structural Analysis Report dated February 29, 2012 was

correct. Mr. Pazden answered in affirmative; he said that capacity was not an issue. The total square footage of the base of the tower was 1,936 square feet.

Mr. Klein asked if raising the antenna would affect the point-to-point microwave path. Mr. Pazden said no, it would not affect the path.

Mr. Russo asked Mr. Pazden if he disagreed with any comments from the Omland Engineering memorandum dated December 26, 2012. Mr. Pazden indicated he had no problems with the memorandum. He advised Mr. Russo that the height of the building would be twenty-six feet, it would not be visible to the public.

Chairman Bagoff asked Mr. Russo if the Applicant's request for waiver items was acceptable. Mr. Russo said he had no problem with the waiver requests.

Mr. Klein asked about the color of the antenna apparatus; would the color of the materials be uniform. Mr. Pazden said the antennas would be the same color.

Mr. Grygiel asked Mr. Pazden to confirm the height of the proposed equipment cabinet. Mr. Pazden said the cabinet would be approximately seven feet tall on a concrete pad flush with the ground. Mr. Grygiel asked if the Applicant was aware of any existing unused antennas on the tower; and if so did the Applicant know if those unused antennas were to be removed. Mr. Pazden replied in the negative.

Harvey Grossman, Esq., Public Advocate questioned Mr. Pazden. Referring to Exhibit A-1; Sheet A-4; he asked how much higher would the proposed 35-foot antenna have to be elevated to bring it within the footprint of the existing tower. Additionally, Mr. Grossman inquired as to what steps the Applicant could take to ensure the color of the antennas be uniform with the other antennas on the tower. Chairman Bagoff interjected that the Applicant could not be responsible for other antennas already on the tower, Mr. Pazden said the Applicant's antennas would be uniform in color. Mr. Jones advised the Board that the Applicant did not take antenna color in to consideration because most industry antennas were already of a standard color.

Mary Ellen Morrow, 178 Dezenzo Lane, stated she was concerned with the esthetics and proliferation of the antennas; she said she was concerned about the quality of life. She asked how could this be enforced within the Township. Mr. Jones said that the Applicant would comply with all industry standards and other applicable rules. Chairman Bagoff opined it was a matter of code enforcement.

Referring to Exhibit A-1; Sheet A-4, Mr. Klein asked if any of the existing antennas were dormant. Mr. Pazden said that all existing antennas were active.

Mr. Eben questioned Mr. Grygiel regarding the items on the Application checklist that had not been marked Complete. Mr. Grygiel said those unchecked items were not applicable to the Application.

Mr. Jones called the Applicant's next witness, Ben Shidfar, RF, Alcatel-Lucent; Mr. Shidfar presented his credentials, and was accepted by the Board to be an expert

witness in radio frequency. Mr. Jones asked Mr. Shidfar if the proposed antennas met all industry requirements; additionally, he asked if moving the 35 ft antenna to a greater height would affect the point-to-point transmission. Mr. Shidfar said the proposed antennas did meet industry standards and that moving the antenna would not create a problem regarding the point-to-point transmission.

In response to a questions regarding antenna placement and structure capacity posed by Mr. Grygiel and Councilwoman McCartney, Mr. Shidfar said that although too many antennas could create interference, the proposed antennas, even with the new elevation, would still work well.

Mr. Jones introduced James A. Miller, PP, JA Miller Planning Consultants, LLC. Mr. Miller presented his credentials; he was accepted by the Board to be an expert witness in planning. Mr. Miller testified that the proposed cabinet necessitated a "C2" variance because it would be within the side yard setback of ten feet, it was proposed to be at a distance of approximately six feet. He said the variance should be granted because the proposal advanced two purposes of zoning, MLUL Section 2(a) by encouraging the appropriate use of land in a manner which would promote the public welfare; and 2(c) it would provide adequate light, air and open space. He said the plan was a better alternative to the zone plan because the cabinet needed to be located where proposed, otherwise it would impede access to the existing building. He believed the proposed location was the only place available; it would be between two existing structures and a fence, thus it would have little visual impact to the area. Mr. Miller testified that with regard to negative criteria, the proposed antennas and cabinet would serve the public's need for telecommunications; and the equipment was passive in nature with little impact to the area.

Chairman Bagoff inquired if there would be clustering of antennas. Mr. Miller responded that the existing structure was substantial; the proposed antennas were an innocuous light grey color; and that there were no other antennas at the proposed heights.

Mr. Eben stated that the tower was 200 feet tall; he asked if there were aircraft lights on the tower. Mr. Miller said he did not know if lights were on the tower; Mr. Pazden advised that per FAA requirements, an aircraft light was on the tower. Mr. Eben stated that the site was industrial looking, could landscaping pretty-up the site. Chairman Bagoff opined the question was out of the realm for the witness to reply. Councilwoman McCartney said the question of landscaping the site has been addressed in the past. Mr. Weston also inquired if landscaping might enhance the site, or if adding slats to the fence might enhance the area.

The Board deliberated on the Application. Chairman Bagoff stated the Board had agreed to grant the "C2" variance to the Applicant. Mr. Gurland requested that the list of conditions be written on the final construction plans. Councilwoman McCartney suggested that a letter be crafted to the building owner; and to have the Zoning Officer report on the inspection of the structure. Mr. Weston opined that it

was important to establish conditions because many witnesses for this type of Application are out-of-State experts; much of the evidence could be construed as hearsay. It was important for the owner to maintain the property. Chairman Bagoff said it was important for the Applicant to read the Ordinance; as a tenant, the Applicant should be aware of what was expected of the property owner. Mr. Dwyer advised the Board an Ordinance regarding the maintenance of telecommunication towers did not exist. The Board discussed preparing an inventory of all towers and antennas and a modified checklist.

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 update the plans to show all antennas which have been approved for this tower.
8. Applicant to update the Structural Integrity Analysis to confirm that the tower can support all of the antennas which have now been approved.
9. Applicant to raise the antenna originally proposed to be located at a height of 35 feet above ground level to a height of 40 feet which will bring it within the width and footprint of the existing tower, subject to the review and approval of the Board Engineer.
10. Applicant shall comply with all of the items set forth in the review letter from Omland Engineering dated December 26, 2012.
11. Applicant shall follow all federal, state, county and local laws, statutes, ordinances, rules and regulations, and all Telecommunications Industry Association (TIA) protocols regarding the inspection, upkeep and maintenance of the tower and the site.
12. All of these conditions of approval shall be added onto the plans and construction drawings.

Chairman Bagoff called for a vote on the Application.

The Board voted on the Application as follows:

Motion: Chairman Bagoff

Second: Mr. Klein

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

Chairman Bagoff announced a brief recess at approximately 9:08 P.M.; he reconvened the meeting at approximately 9:19 P.M.

Chairman Bagoff noted that Mr. Russo departed the meeting at approximately 9:08 P.M.

## **PRESENTATION(S)**

**Municipal Land Use Law - Planning Board Guidelines (Chairman Bagoff)**

## **DISCUSSION**

Chairman Bagoff announced the presentation regarding the MLUL-Planning Board Guidelines would be adjourned to the 2/6/12 meeting.



## **Planning Board Minutes (Mr. Eben and Mr. Gurland)**

### **DISCUSSION**

Chairman Bagoff announced that Mr. Eben and Mr. Gurland would each have seven minutes to discuss their research findings regarding the subject of Planning Board minutes.

Mr. Eben advised the Board he had written a letter to Chairman Bagoff and had done extensive research including the review of Roberts Rules of Order, Land Use Law, and contacting local Boards including Bloomfield, Belleville and Maplewood. Mr. Eben said each Board he contacted said they listed the individual names of Board members.

Mr. Gurland stated that his issue was that of transparency; since the Board and members of the Public had no access to transcripts, it was important that individual members be identified in the minutes. He opined that he did not understand what the objection was to having the names of individual members listed.

Mr. Weston opined that minutes must reflect Board proceedings; transcripts were a separate issue; the minutes should be concise. Mr. Weston advised the Board that in years past, the issue of minutes had been reviewed. In matters of litigation, the Board minutes did not reflect the actual official written transcript. Subsequently, minutes were policed down. Additionally, Mr. Weston said that not listing the names was more consistent with the Resolutions.

Mr. Gurland said Mr. Weston was right regarding the issue of litigation.

Councilwoman McCartney said that so many of the Board's votes were unanimous; the Board had healthy discussions; it indicated that Applications were vetted out.

Mr. Ghebremicael said he agreed with Mr. Weston that the minutes must be concise.

Mr. Klein said that if a Board member voted no, the minutes should reflect why the member voted no; the minutes should reflect the name of the member asking a question; but also the minutes must be concise.

Chairman Bagoff said it was important to describe why a vote was no; however the role of the Board was not to legislate, but rather be visionaries.

Mr. Dwyer advised the Board that the Rules of Procedures of the Planning Board of the Township of West Orange, included in the duties for the Secretary listed in sub-section "d", was to arrange to make a tape recording of the of the proceedings of each hearing of the Board in accordance with the rules and keep minutes of the proceedings of each meeting. Mr. Dwyer said that only the verbatim transcript was the legal record; for the Secretary to record voluminous minutes, there could be discrepancy from the verbatim transcript, which could affect the public's perception.

Mr. Grossman addressed the Board. He stated Ms. Dillon kept the verbatim record. If there was a difference between record and the notes, the record must take precedence. It was the charge of the Secretary to use judgment to determine what the most appropriate testimony be cited. Mr. Grossman opined it was important to identify testifying witnesses by name; and it was a good idea to indicate the name of the individual Board member who has asked a question to get a feel for what was going on during testimony; if there was a dispute regarding the testimony reflected in the minutes then the Board should be able to review the verbatim transcripts. Mr. Grossman said that sometimes, five members of the Board spoke at once; which put the Board Secretary in an impossible situation to record all testimony.

Chairman Bagoff said the Planning Board was transient; the mind of the current Board has determined individual members be identified and incorporated in future meeting minutes; however, members could not send the Secretary thirty corrections.

#### **Whole House Generators (Chairman Bagoff)**

##### **DISCUSSION**

Chairman Bagoff advised the Board that a special meeting was held on December 13, 2012 to discuss the process of streamlining rules for natural gas generators for townhouse and condominium complexes. Meeting attendees included Geniece Gary-Adams, Zoning Official; Tom Tracey, Construction Official; Patrick Dwyer, Planning Board Attorney; Paul Grygiel, Acting Township Planner; and Everton Scott, PSE&G representative.

Chairman Bagoff gave a brief summary of a lawsuit involving residents building decks at the Pointe at Crystal Lake and the decision made by the presiding Judge. Chairman Bagoff said that in essence, the Judge determined that things were not done maliciously. It was Chairman Bagoff's desire to implement a plan for the Township to move forward to help streamline the process of installing generators, and the rules regarding same. Items discussed at the meeting included places on site plans for where the generators would be allowed; setting up future meetings with Townhouse/Condo management to discuss issues related to generators; and recommending that each complex prepare a site plan. Chairman Bagoff said that the time frame to establish guidelines and contact the complexes management was two to three months. The goal of the plan was not to implement rules, but to provide guidelines. He opined that some complexes might not want to be involved in the process; but once the guidelines had been adopted, they would be sent to the Department of Consumer Affairs.

#### **New Legislation (Patrick J. Dwyer, Esq.)**

##### **DISCUSSION**

Mr. Dwyer advised the Board that with regard to post-hurricane Sandy, there was a

preliminary draft of a bullet-point analysis of issues prepared by the Board of Directors of the Land Use Section of the NJ State Bar Association. Once it had been finalized, he would provide the documentation to the Board.

Mr. Eben stated new legislation would most likely affect the shore area; relaxing the building process, not the code restrictions

MEETING ADJOURNED at approximately 10:19 P.M.

Minutes adopted February 6, 2013



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Robin Miller, Planning Board Secretary

**\*\*THE NEXT REGULAR MEETING OF THE PLANNING BOARD WILL BE  
MARCH 6, 2013 AT 7:30 P.M. IN COUNCIL CHAMBERS \*\***