

**MINUTES  
TOWNSHIP OF WEST ORANGE  
ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
MARCH 27, 2014**

The West Orange Zoning Board of Adjustment held a special meeting on March 27, 2014 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Vice Chairman Buechler 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 March 13, 2014 in accordance with the "Open Public Meetings Act."

Vice Chairman Buechler asked everyone to stand for the Pledge of Allegiance.

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

**PRESENT:** B. Buechler, G. Bullock, P. Neuer, B. Quentzel (8:03),  
W. Steinhart, M. Sussman, A. Weiss

**ABSENT:** D. Gabry (excused absence)  
W. Merklinger (excused absence)

**ALSO PRESENT:** Paul Grygiel, Consulting Planner  
Frank Russo, Consulting Engineer  
Board Attorney, Alice Beirne, Esq.  
Board Secretary, Rose DeSena  
H. Grossman, Esq., Public Advocate  
D. Dillon, Audio-Digital Transcription Service

**ANNOUNCEMENTS**

**Future Meetings:** April 17, 2014 (Regular Meeting) – 8:00 PM  
April 24, 2014 (Special Meeting) – 8:00 PM  
May 15, 2014 (Regular Meeting) – 8:00 PM  
June 19, 2014 (Regular Meeting) – 8:00 PM

**SWEARING IN**

Consulting Planner for the Township, Paul Grygiel and Consulting Engineer for the Township, Frank Russo were sworn under oath.

## **APPLICATION(S)**

### **1. ZB-14-01/Communication Infrastructure Corp.**

Block: 111; Lot: 1.03; Zone: B-2

416 Eagle Rock Avenue

“D” use variance to install two microwave dishes on an existing tower

## **EXHIBITS**

A-1 - Site map and notes sheet A-01 dated 2/20/14

A-2 - Elevation and antenna detail sheet A-03 dated 2/20/14

James K. Pryor, Esq., attorney for the applicant, approached the podium and detailed the application. He stated that the applicant is proposing to install two antennas on an existing tower on Eagle Rock Avenue. Mr. Pryor stated that the existing structure is designed to hold antennas and because of an existing condition of a prior resolution, the applicant must appear before the Zoning Board of Adjustment. He said that he has provided notice for a use variance, for site plan approval and for the removal of this condition so that future applications, for this particular property, will go before the Planning Board.

Vice Chairman Buechler stated for the record that Mr. Pryor is referring to condition #3 on both prior resolutions ZB-08-01 and ZB-07-39 for the Richland Tower site that state no additional antenna will be permitted without further application to the Zoning Board.

Vice Chairman Buechler said that the item that did concern him was condition's #2 of the prior resolution ZB-08-01 and ZB-07-39 regarding the removal of any antenna on the tower that is retired or no longer in service within 90 days following adoption of each resolution. He said that in the photos there appear to be some antennas not being used at that location. Mr. Neuer said that the applicant's structural engineer identified four antennas not being used and that the Board was, and should still be concerned about the abandoned antennas hanging on the tower. Vice Chairman Buechler stated that the property owner is not in compliance with these prior resolution conditions and advised Mr. Pryor to consult with the owner regarding this matter. He said that, legally, this Board can say that this application will not be heard until the owner complies but said that it will be heard tonight and any approval will be contingent upon receiving some form of evidence from the owner stating that the antennas were removed. Vice Chairman Buechler said that no resolution will be issued by this Board if the owner does not comply; Mr. Pryor stated that he understands and will agree to that.

Vice Chairman Buechler said that the Board will determine if this application requires a “D” use variance, which could circumvent most of the testimony, and asked Mr. Grygiel his opinion. Mr. Grygiel stated that his opinion is that no “D” variance is required as stated in his report to the Board. He said that the same issues apply here as on Marcella Avenue and it meets the requirements under the federal laws as long as the tower's height and set-backs did not change.

Mr. Neuer asked Mr. Grygiel if the height of the two dishes being proposed at 260' and 267' triggers a “D” variance because they exceed the allowable height of a maximum of 200' in that

zone by Township ordinance. Mr. Grygiel said that the use is the two dishes and that his opinion is based on the definition of commercial antennas in the West Orange land use regulations ordinance.

Ms. Beirne said that she concurs with the definition of the tower. She said that if there is any doubt, then they will require it to be a "D" variance. Ms. Beirne said that the Board should determine if this application should be heard as a site plan or if it requires a "D" variance.

Vice Chairman Buechler said that the conditions in the prior resolutions were for the owner of the tower and not this applicant. He said that he would require a letter from Richland Towers stating that they do not object to the elimination of condition #3; Mr. Pryor said that he will follow up on that.

Vice Chairman Buechler made a motion that a "D" variance is not required. Mr. Sussman seconded the motion.

The vote was as follows:

Buechler:	Yes	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Merklinger:	-	Weiss:	Yes
Neuer:	Yes	Chairwoman Gabry:	-
Quentzel:	Yes		

Mr. Pryor said that he would like to amend the application and corrected the address on the application.

Mr. Pryor said that this application is before this Board for site plan approval and called his first witness.

Denis F. Keenan approached the podium and was sworn under oath. Mr. Keenan detailed his educational and professional background as a licensed Professional Engineer in the State of New Jersey. Vice Chairman Buechler accepted Mr. Keenan as an expert in the field of Engineering.

Mr. Keenan presented sheet A-01 of the site maps and notes dated 2/20/14, stating that this is the same plan that was submitted with the application. Vice Chairman Buechler said that the Board never received sheet A-01 with that revision date on it. Mr. Keenan said that sheet A-01 is the same as sheet SP-1 of the site maps and notes that was submitted. He said that the copy he is presenting tonight was revised for Construction purposes but is basically the same as the plans that were submitted to the Board. Mr. Russo noted what the differences were on sheets A-01 and SP-1 that was submitted to the Board.

Vice Chairman Buechler asked to have sheet A-01 of the site maps and notes dated 2/20/14 marked as Exhibit A-1 for identification.

Mr. Keenan referred to Exhibit A-1 and detailed the location of the site, the surrounding properties and what is currently on the site.

Mr. Keenan presented sheet A-03 of the elevation and antenna details plan with a revision date of 2/14/14. He said that this plan is the same as sheet SP-2 of the elevation and antenna details plan that was submitted with the application. Vice Chairman Buechler asked to have sheet A-03 of the elevation and antenna details plan marked as Exhibit A-2 for identification.

Mr. Keenan referred to Exhibit A-2 stating that the elevation of the tower is 300' and noted that the structure at the top of the tower increases the elevation to 347'. He also noted where the existing antennas are to be located on the tower and said that the applicant is proposing two microwave dish antenna at heights of 260' and 267'. Mr. Keenan said that the antennas are 6' in diameter and one will point east and the other will point west. He said that at the base of the tower is the equipment cabinet and that all of the equipment will be inside this cabinet.

Vice Chairman Buechler asked Mr. Keenan what the depth of the antennas will be; he said they will be 6' wide and 2.5' deep. Vice Chairman Buechler asked if they will stick out further than the existing antennas on the tower; he said they will stick out further than some of the other antennas on the tower but not all of them. Mr. Keenan said that the Structural Engineer will provide more detail.

Mr. Neuer asked Mr. Keenan who made the determination that the antennas must be 6' in diameter; he said that someone else will answer that question.

There were no further questions for Mr. Keenan from the Board or the Professionals.

Vice Chairman Buechler asked if any members of the public had any questions for Mr. Keenan; there were none.

Mr. Pryor called his next witness.

Mark Gonzalez approached the podium and was sworn under oath. Mr. Gonzalez stated that he is the Director of Engineering for Communication Infrastructure for the last 25 years and designs the communication pads and point to point networks. He said that he has testified before this Board on another occasion and named other companies where he has worked designing and building networks.

Vice Chairman Buechler asked Mr. Gonzales what type of an engineer he is; he said he is a licensed electrical engineer.

Mr. Neuer asked Mr. Gonzalez if part of his design function is where to place the antenna on the tower; he replied yes and detailed how he determines the height to place them.

Mr. Neuer asked Mr. Gonzalez how many of those antennas have fallen off of the tower; he replied none. Mr. Gonzalez said that he has designed thousands of networks. Vice Chairman Buechler accepted Mr. Gonzales' credentials as an expert in electrical Engineering.

Mr. Pryor asked Mr. Gonzalez how West Orange fits into this network that he is designing; he said that there is a tower in Hudson County that transmits to this tower in West Orange and the West Orange tower transmits to a tower in Morris County. Mr. Gonzalez said that this is the network he is designing for Comprehensive Wireless who hired Communication Infrastructure to design the network.

Vice Chairman Buechler asked Mr. Gonzales if this is microwave technology; he replied yes.

Vice Chairman Buechler asked Mr. Gonzalez what the technical reasons are for using 6' antennas. Mr. Gonzalez said that they need the power of a 6' antenna so that it can transmit from one point to another point. He said that this size meets the requirements to reach the other point. Mr. Gonzales said that it operates within the bands of the FCC regulations which also determine the size of the antenna.

Vice Chairman Buechler asked Mr. Gonzalez to define the gain of an antenna; he said that power is transmitted and when it hits the antenna it multiplies and that determines the gain.

Mr. Pryor asked Mr. Gonzalez what the formula is for determining the height of the placement of the antennas; he said that the survey team measures the height of the surrounding trees and buildings to make sure there is a clear line of sight for the transmission.

Mr. Neuer asked Mr. Pryor why Comprehensive Wireless is not the applicant; he said because Communication Infrastructure builds the network. Mr. Gonzalez said that Comprehensive Wireless contracted them to build the network and asked them to take care of it all. Mr. Neuer said that Communication Infrastructure builds the network and then they are gone and have nothing more to do with West Orange. Mr. Pryor said that Comprehensive Wireless could also turn around and sell their antennas if they wanted. Mr. Neuer said that he has a concern about enforcement; he said the actual tenant is Comprehensive Wireless. He said that he finds it disturbing that the carrier is not the applicant. Mr. Pryor said that Communication Infrastructure has an agreement with the property owner and the owner of the tower to design and build this network. He said that there is no requirement in law that it has to be the carrier making the application.

Ms. Beirne stated that she understands the Board's concern for enforcement. Mr. Neuer said that someone from Comprehensive Wireless should be here. Mr. Pryor said that Mr. Gonzalez testified that he is authorized to proceed for Comprehensive Wireless.

Vice Chairman Buechler said that before a resolution is adopted Communication Infrastructure will need written consent from the property owner.

There were no further questions for Mr. Gonzalez from the Board of the Professionals.

Vice Chairman Buechler asked if any members of the public had any questions for Mr. Gonzalez; there were none.

Mr. Pryor called his next witness.

Michael L. Bohlinger approached the podium and was sworn under oath. Mr. Bohlinger detailed his educational and professional background as a licensed Professional Engineer in the State of New Jersey. He said that K.M. Consulting Engineers, Inc. is his employer, he has been working in this field for 52 years and that he has testified before this Board before.

Vice Chairman Buechler asked Mr. Bohlinger to state his relationship with Comprehensive Wireless; he replied he has no relationship with that company.

Vice Chairman Buechler asked Mr. Bohlinger if he is going to testify about the structure; he replied yes. Vice Chairman Buechler accepted Mr. Bohlinger's credentials as an expert in the field of engineering.

Vice Chairman Buechler asked Mr. Bohlinger if he climbed the structure; he replied no. Vice Chairman Buechler asked Mr. Bohlinger how he inspected the tower; he said that he inspected the tower from the ground. Vice Chairman Buechler asked Mr. Bohlinger if he is going to testify to inspecting the tower from the ground; he replied yes. Vice Chairman Buechler asked Mr. Bohlinger how long he was at the site; he replied a half of an hour.

Vice Chairman Buechler stated that the person who prepares the structural analysis report usually testifies as to the contents of that report and asked Mr. Pryor why the preparer of the report is not here to testify tonight.

Mr. Sussman asked Mr. Bohlinger if he had anything to do with the preparation of the report that was submitted to this Board; he replied no.

Mr. Pryor asked Mr. Bohlinger if he inspected the tower and reviewed the structural analysis report that was submitted to the Board; he replied yes.

Mr. Pryor asked Mr. Bohlinger if he has reviewed other structural reports; he replied yes.

Mr. Neuer stated that this Board is not going to accept his testimony regarding someone else's report.

Mr. Pryor stated that he wants Mr. Bohlinger's testimony put on record.

Vice Chairman Buechler said that the structural analysis report that was submitted to this Board is not going to be entered into evidence because this witness did not prepare the report. He said that Mr. Bohlinger only read this report and visited the site for a half of an hour.

Vice Chairman Buechler ruled that Mr. Bohlinger will not be allowed to testify.

Mr. Pryor called his next witness.

James T. Kyle approached the podium and was sworn under oath. Mr. Kyle stated that he is a professional planner licensed in the State of New Jersey and has testified before this Board many times.

Mr. Pryor stated that the planner's report that was submitted to this Board was prepared by another person. He said that Mr. Seidel, the person who prepared the report, was unable to attend the meeting tonight.

Vice Chairman Buechler accepted Mr. Kyle's credentials as an expert in the field of professional planning and stated that although Mr. Kyle can testify he cannot reference a report that someone else prepared. He asked Mr. Kyle if he had anything to do with the preparation of the report submitted to the Board; he replied no.

Vice Chairman Buechler asked Mr. Kyle how many times he was at the site; he replied one time for approximately twenty minutes today.

Vice Chairman Buechler asked Mr. Kyle if he thought that a twenty minute site visit is adequate time to visit a site; he replied yes. He said that typically he would not spend more than twenty minutes on any site.

Mr. Neuer asked Mr. Kyle if he reviewed all of the prior resolutions of approval for this site; he replied yes and said that he reviewed all of the reports also.

Mr. Pryor asked Mr. Kyle what planning elements does he take into consideration to recommend approval of this application; he replied as long as a "D" variance is not required and no changes are being made the applicant would be eligible for a site plan waiver.

Mr. Pryor asked Mr. Kyle if he had any other comments. Mr. Kyle said the addition of the two antennas is not the visual impact; he said that the visual impact is the tower.

Vice Chairman Buechler asked Mr. Kyle what the color of the antennas will be; he said some are white and some are grey, similar to what is on the tower now. Vice Chairman Buechler asked Mr. Kyle what color the 6' antennas on the tower are now; he said that he did not inventory the color of the antennas.

Mr. Neuer stated that Mr. Kyle's testimony is that there will be no visual impact.

Ms. Weiss asked Mr. Kyle what color he would suggest for the antennas; he said that the radome of the dish is white and the back is grey for the majority of the dishes.

There were no further questions for Mr. Kyle from the Board or the Professionals.

Vice Chairman Buechler asked if there were any members of the public who had any questions for Mr. Kyle; there were none.

Mr. Pryor stated that he was going to have Mr. Collins testify to the FCC compliance but his testimony is not needed; Mr. Neuer said that the Board will make compliance as a condition. Mr. Pryor summed up stating that because Mr. Bohlinger could not testify to the structural integrity of the tower, Mr. Keenan testified that they will apply for the appropriate permits and the Board should leave it up to the Township's Construction Official to determine to structural safety of the tower.

Vice Chairman Buechler said that this Board is concerned because some of these towers are aging. He said that they were built in the 1970's and they should be checked periodically.

Vice Chairman Buechler suggested that the Board would be willing to accept the applicant providing them with a letter from the owner of Richland Towers acknowledging the condition regarding the removal of antennas that are no longer in service have been removed; provide the Board with a new owner consent form and a letter from one of the two gentlemen who signed the structural engineer report that was submitted to the Board stating that it is structurally sound and complies with the ANSI/TIA-222-G standard.

Vice Chairman Buechler asked if there was any public comment; seeing none the Vice Chairman closed the hearing and opened it up to discussion from the Board.

Mr. Neuer said that this application does not work for him because the applicant is not going to be here after the antennas are put up. He suggested that Mr. Pryor take an adjournment and come back before the Board with the items that Vice Chairman Buechler suggested instead of having the Board adopt another resolution with conditions that require monitoring and enforcement.

Vice Chairman Buechler said that he agrees with Mr. Neuer. He said that the Board suggests that the applicant adjourns and present the Board with these four items when they come back and then a vote will be taken on the application.

Mr. Bullock said that the Board is limited on enforcement powers and he agrees with receiving the required information up front.

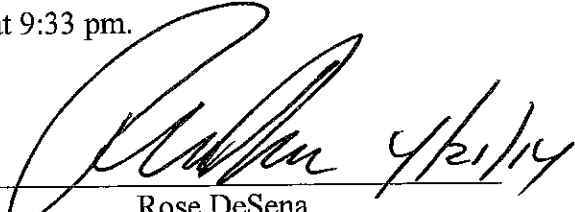
Mr. Pryor said that if he cannot get the certification that all of the antennas that are out of service have been removed, can he give the Board a time frame as to when they will be removed because the applicant has no control of that. Vice Chairman Buechler said that the Board will cross that bridge when they come to it. He said that Richland Towers will not get any new antennas placed on the tower unless the antennas that are out of service are removed.

Vice Chairman Buechler stated for the record that this application will be carried over to the Zoning Board meeting on April 17, 2014 and no further notice will be required.



The meeting was adjourned by Vice Chairman Buechler at 9:33 pm.

Adopted: April 17, 2014

  
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Rose DeSena  
Zoning Board Secretary