

**MINUTES  
TOWNSHIP OF WEST ORANGE  
ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
December 6, 2012**

The West Orange Zoning Board of Adjustment held a special meeting on December 6, 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 notice of this meeting was given to the Township Clerk, the West Orange Chronicle, and posted on the Township Bulletin Board on November 14, 2012 in accordance with the "Open Public Meetings Act."

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

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

**ABSENT:** D. Gabry (excused absence)  
W. Merklinger (excused absence)  
L. Zaolino (unexcused absence changed to excused based upon information provided by Ms. Zaolino after the meeting)

**ALSO PRESENT:** E. Keller, Consulting Engineer  
Alice Beirne, Esq., Board Attorney.  
Rose DeSena, Board Secretary  
Harvey Grossman, Public Advocate

**ANNOUNCEMENTS**

Future Meetings: December 20, 2012 (Regular Meeting) – 8:00 PM  
January 10, 2013 (Special Meeting) – 8:00 PM  
January 17, 2013 (Regular Meeting) – 8:00 PM

**SWEARING IN**

Consulting Engineer for the Township of West Orange, Eric Keller, was sworn under oath.

## MINUTES

**Adopt Minutes:** November 8, 2012 (Special Meeting)

Chairman Neuer asked the Board members if they had any comments regarding the minutes from the special Zoning Board meeting held on November 8, 2012. Seeing none, the Chairman asked for a motion to approve.

Mr. Buechler made a motion to approve the minutes; Mr. Sussman seconded the motion and all were in favor.

**Adopt Minutes:** November 15, 2012 (Regular Meeting)

Chairman Neuer asked the Board members if they had any comments regarding the minutes from the regular Zoning Board meeting held on November 15, 2012. Seeing none, the Chairman asked for a motion to approve.

Mr. Steinhart made a motion to approve the minutes; Mr. Bullock seconded the motion and all were in favor.

## APPLICATION

1. **ZB-08-37/Seton Hall Prep. - Kelly Athletic Center**  
700 Prospect Avenue  
Site Plan Amendment

## EXHIBITS

- A-1 – Clearing and Grading Plan dated 5/24/10 - sheet 4-11
- A-2 - Tree Removal Plan dated 5/24/10 – sheet 1 of 1
- A-3 – Overall clearing and Grading Plan dated 9/23/12 – sheet 5 of 14
- A-4 – Tree Removal Plan dated 9/23/12 – sheet 12 of 14
- A-5 – Utility and grading detail dated 9/23/12 – sheet 8 of 14
- A-6 – Detail Layout and dimensioning plan dated 9/23/12 – sheet 6 of 14
- A-7 – Landscaping Plan dated 12/5/12 – sheet 1
- B-1 – Forester memo dated 15/5/12
- B-2 – Settlement agreement - Malanga v Township of West Orange

## DISCUSSION

Robert C. Williams, Esq., attorney for the applicant approached the podium.

Mr. Buechler asked the Board Secretary if the Board received a copy of a Planning report prepared by the Acting Township Planner; the Board secretary said no because one was not submitted. Chairman Neuer stated that the technical report that Mr. Keller submitted was very detailed and sufficient.

Mr. Buechler stated that the original Seton Hall application was a marathon session and said that the adopted resolution was 57 pages long. He asked Mr. Williams if he submitted a sheet showing what conditions in this resolution require modifications. Mr. Williams said that his proposal and Mr. Keller's report detail them.

Chairman Neuer stated that there is one element that he wanted noted for the record. E. Victor Donahue, who does not live within 200' of the Seton Hall Property on Prospect Avenue, received a notice of this hearing and submitted a letter to the Board Secretary and Board Attorney commenting on this application. The Chairman cited a case in the matter of Exxon Company vs. Bernardsville and determined that this letter is not admissible into evidence because the author of the letter is not available for cross examination. Chairman Neuer also cited a case in the matter of Lincoln Heights in which it was recommended that the letter be put into the file and not read by the Board. The Chairman asked the Board members if any of them have seen this letter submitted by Mr. Donahue; each Board member replied no. Chairman Neuer recommended that the Board secretary enter it into the file and said that if Mr. Donahue appears and testifies then he will modify this comment.

Mr. Williams began detailing the original application that was approved by this Board in 2010. He stated that there have been ongoing negotiations between Herb Waldman, Esq. and Board Attorney Alice Beirne in regards to a lawsuit filed by Kevin Malanga v Township of West Orange. Mr. Williams said that a settlement had been made, which required a minor amendment to the site plan, and that the lawsuit was dismissed. He said that this is the reason that they are back before this Board again. Mr. Williams stated that no additional variances are being requested.

Mr. Williams stated that the previous approval was for a bio-retention basin to be located on the left side of the Kelly Athletic field. He said that, after discussions with Mr. Waldman on behalf of Mr. Malanga, it was agreed that the applicant will remove the bio-retention basin and leave it in its natural state. He said that the bio-retention basin will be replaced with a new detention basin located just outside the center field area. Mr. Williams also stated that they will be lowering the baseball field approximately 4' and will be installing a 5' retaining wall where the baseball field is lowered.

Chairman Neuer asked Mr. Williams if there will be any trees in the detention basin. Mr. Williams stated that no trees will be in that area.

Mr. Williams stated that, in doing this, certain revisions are required.

Mr. Williams called his first witness.

Charles J. Stewart approached the podium and was sworn under oath. Mr. Stewart detailed his educational and professional background stating that he is a licensed Professional Engineer, Professional Planner and Land Surveyor in the State of New Jersey. He also said that he has testified before this Board many times. Chairman Neuer accepted Mr. Stewart as an expert witness in the field of Engineering.

Mr. Stewart presented the Clearing and Grading Plan dated 5/24/10 and the Tree Removal Plan dated 5/24/10 and detailed what was previously approved. Chairman Neuer noted that the Clearing and grading plan, sheet 4-11, dated 5/24/10 was pre-marked as Exhibit A-1 and the tree removal plan, sheet 1 of 1, dated 5/24/10 was pre-marked as Exhibit A-2 both for identification.

Mr. Stewart then presented the Overall Clearing and Grading plan dated 9/23/12 and the Tree Removal Plan dated 9/23/12 and detailed the revised plans. Chairman Neuer noted the Overall Clearing and Grading plan, sheet 5 of 14; dated 9/23/12 was pre-marked as Exhibit A-3 and the Tree Removal Plan, sheet 12 of 14, dated 9/23/12 was pre-marked as Exhibit A-4 both for identification.

Mr. Stewart referred to the Utility and Grading details, dated 9/23/12, and the Detail Layout and Dimensioning plan dated 9/23/12 noting the re-location of the bio-detention basin on these plans. Chairman Neuer noted that the Utility and Grading details, sheet 8 of 14, dated 9/23/12 was pre-marked as Exhibit A-5 and the Detail Layout and Dimensioning Plan, sheet 6 of 14, dated 9/23/12 was pre-marked as Exhibit A-6 both for identification.

Mr. Stewart also noted on the plans that the large wooded area near the Shillelagh Club will remain as is. Mr. Stewart stated that the easterly side will remain exactly the same as the prior approval.

Chairman Neuer asked Mr. Stewart to describe the difference between a retention basin and a detention basin. Mr. Stewart said that a retention basin cleans the water and retains it. He said that a detention basin is a standard basin that water goes into it and slowly empties out.

Mr. Buechler asked Mr. Stewart to describe what was previously approved by this Board. Mr. Stewart said they were approved for a ditch that has plants on the bottom of it to absorb the water. He said that this provides for water quality and runoff. Mr. Stewart said that now they added a rain garden which just improves water quality. He said the water will now be discharged through a pipe.

Mr. Sussman said he understands that the original retention basin is eliminated and asked if any water from the detention basin gets discharged or is it retained on the site; Mr. Stewart said it is discharged.

Mr. Buechler said that the resolution should include the rain garden.

Mr. Quentzel asked Mr. Stewart how deep the detention basin is; Mr. Stewart said it will be 4' deep.

Mr. Buechler asked Mr. Stewart if the detention basin should have a safety fence around it to prevent someone from falling in. Mr. Stewart said that there were no fences around any of the basins in the original approval. He said that the basins are not deep and do not get much water in them. Chairman Neuer asked Mr. Stewart how often the basins drain; Mr. Stewart said they drain within 36 hours.

Mr. Keller said someone could jump over the fence, if one was installed around the basin, and it would be harder to get them out. Chairman Neuer asked Mr. Keller if there were any requirements for a fence around the basin; Mr. Keller replied no.

Mr. Stewart continued and said that they increased the size of the underground storm drain and there will be approximately 1,300 feet of pipe.

Chairman Neuer asked Mr. Stewart if there was any greater run-off from the site with these changes; Mr. Stewart replied no.

Mr. Stewart said that the DEP revisited the site, after being called back in to take another look, and found another wetland where the bio-detention basin is. He said that the applicant is amending that aspect of the plans.

Mr. Stewart presented the revised Landscape Plan dated 12/5/12 and detailed it. Chairman Neuer noted that the Landscaping Plan dated 12/5/12 was pre-marked as Exhibit A-7 for identification.

Mr. Williams asked Mr. Stewart if he addressed the storm water issues in Mr. Keller's report dated 11/20/12; Mr. Stewart said that he met with Mr. Keller and they have agreed to comply.

Ms. Weiss asked Mr. Keller if the applicant has agreed to comply with everything in his memo dated 11/20/12; Mr. Keller said yes but there are a couple of items that should be discussed with the Board.

Mr. Stewart stated that he met with the Township Engineer, Mr. Lepore, regarding the merger of the lots. He said that Mr. Lepore would like them to widen Mountain Drive, provide a slope easement and merge the entire lot into one lot on Ridge Road.

Chairman Neuer stated that the deed for the merger must be provided, to the Board, within 90 days.

Mr. Buechler stated that the variances, for this application, were granted in 2010 and no work has been done since the approval. He asked Mr. Williams if he would like to request an extension. Mr. Williams said that he would like to amend the application and request a one year extension for the variances that were granted in 2010. Chairman Neuer accepted the amendment.

Mr. Stewart addressed item #10 in Mr. Keller's report regarding the on-site water main being used to irrigate the fields. He said that they will eliminate that revision and bring in a new water main from Prospect Avenue as originally proposed; Mr. Keller said that will be acceptable.

Mr. Stewart addressed item #23 in Mr. Keller's report regarding the retaining wall around the junior varsity field in the Landscaping plan. He said that they will take the oak trees out and supplement with other plantings as suggested by Mr. Keller.

Chairman Neuer stated that the plantings will be subject to Mr. Keller's approval.

Mr. Stewart addressed item #26 in Mr. Keller's report regarding compliance with the Township's ordinance for shade tree requirements. He said that they have submitted a revised tree removal application and the Township's Forester's reviewed that report and said that the applicant is in compliance. Mr. Keller said that he will defer this to the Township Forester, John Linson.

Mr. Williams stated that conditions #7, 8,10,11,12 & 48 of the original resolution need to be amended. Mr. Buechler referred to Mr. Keller's report regarding the review of conditions provided for in the prior resolution.

Mr. Williams said that the original condition #1 in the resolution of approval no longer applies and will be taken out. He said that the original condition #25 no longer applies and will be taken out.

Chairman Neuer called Herb Waldman, Esq. to the podium. The Chairman asked Mr. Waldman if they could change the original condition #25 in the resolution; Mr. Waldman said yes. Mr. Waldman said that this condition was deemed not applicable based upon settlement of the litigation.

Mr. Williams stated that Mr. Keller advised them that they will need "dam safety approval" from the NJDEP. Mr. Keller said that a detention basin is considered a dam and they must file with the State Department of Environmental Protection for safety approval.

Mr. Williams stated that the revised tree removal application they submitted was reviewed by the Township Forester, John Linson. He said that Mr. Linson submitted a revised memo dated 12/5/12 with his comments. Chairman Neuer asked to have Mr. Linson's memo, dated 12/5/12, marked as Exhibit B-1 and entered into evidence.

Chairman Neuer also asked to have the Settlement Agreement between Mr. Malanga and the Township of West Orange marked as Exhibit B-2 and entered into evidence.

Chairman Neuer stated that the resolution will include the contents of Exhibit B--1, Mr. Linson's report, and a copy of Exhibit B-1 will be attached to the resolution.

Mr. Sussman asked Mr. Stewart to detail what direction the retaining wall will run along the parking lot; Mr. Stewart referred to Exhibit A-6, the Detail plan, and said it will run from east to north and then west. Mr. Sussman asked Mr. Stewart if there is a drop; Mr. Stewart said yes there is a 4' or 5' drop. Mr. Sussman asked if that would require having a fence around it; Mr. Stewart said if it does require a fence around it, then he will comply.

Mr. Bullock asked Mr. Stewart what sewer lines will the expanded drainage piping empty into. Mr. Stewart said it will flow from from east to south and discharge into the detention pond and down to Northfield Avenue. Mr. Keller stated that all of the water is being detained; he said they are not changing the drainage patterns.

Chairman Neuer asked if any members of the public had any questions for Mr. Stewart; there were none.

John Linson approached the podium and was sworn under oath. Mr. Linson stated that he is the Township Forester and detailed his educational and professional background. He said that he is a certified tree expert in the State of New Jersey. Chairman Neuer accepted Mr. Linson as a certified tree expert.

Chairman Neuer referred to Exhibit B-1 and asked Mr. Linson if he composed that report; Mr. Linson replied yes. Chairman Neuer asked Mr. Linson if had any discussions with Mr. Keller or Mr. Stewart regarding the contents of his report; Mr. Linson replied yes and stated that he was pleased about some of the trees being saved. Mr. Linson said he does have some concern regarding the re-planting because there is a tendency to crowd trees closer than they should be. Chairman Neuer told Mr. Linson that whatever the Board approved prior does not change and he can only comment on what is being changed. Mr. Linson said that he sees a conflict root intrusion into the retaining wall area in 20 years if they plant the red oak trees. The Chairman asked Mr. Linson what he would recommend planting instead of the red oak trees; he said that the Pyramidal European Hornbeam would be more appropriate. Chairman Neuer asked Mr. Williams if the applicant would comply; Mr. Williams said yes. Chairman Neuer said that, as a condition, the applicant will work with Mr. Linson to identify species.

Mr. Buechler asked Mr. Linson if he approved the tree removal application; Mr. Linson said yes. Mr. Buechler advised Mr. Linson that in the future to specify his approval in his reports.

Mr. Bullock asked Mr. Linson why the European Hornbeam is preferable to the red oak. Mr. Linson said that the red oak has serious problems with bacteria, which is spread by insects, and the tree could die. He said that the acorns are also a problem because they can do damage to parked cars.

Chairman Neuer asked if any members of the public had any questions for Mr. Linson; seeing none the Chairman asked Mr. Williams to call his next witness.

Joseph Tyrone approached the podium and was sworn under oath. Mr. Tyrone detailed his educational and professional background and stated that he is a Landscape Architect licensed in the State of New Jersey. Chairman Neuer accepted Mr. Tyrone as an expert witness in the field of Landscape Architecture.

Mr. Williams referred to Exhibit A-7 and asked Mr. Tyrone if he prepared the Landscape Plan; Mr. Tyrone replied yes. Mr. Williams asked Mr. Tyrone if Mr. Stewart's comments were accurate regarding Exhibit A-7; Mr. Tyrone replied yes.

Mr. Williams concluded.

Chairman Neuer asked Mr. Waldman to approach. Mr. Waldman asked to have prior approval condition #33 of the resolution amended. He said that he would like to have a copy of the woodland/forest management plan submitted to objector Malanga. Mr. Williams said that he

will provide a copy directly to Mr. Malanga when they submit and have that added into the resolution. Mr. Buechler said that he thinks that this is a bad idea and it will set a precedent.

Mr. Waldman asked to have prior approval condition #45 of the resolution amended. He would like objector Malanga noticed when the pre-construction meeting is being held.

Chairman Neuer asked if there were any members of the public who would like to provide testimony or commentary; seeing none the Chairman closed the public hearing.

Mr. Buechler asked Mr. Williams if the revisions they are seeking include changes to the variances; Mr. Williams replied no stating the changes are just to the site plan and conditions of the prior resolution.

Chairman Neuer opened the floor to the members of the Board for discussion.

Ms. Weiss said that she is delighted and that the applicant did a great job.

Mr. Buechler offered a resolution to approve the application to modify the site plan that was approved by this Board in 2010 and to modify certain conditions of that resolution. He said to add an extension pursuant to the applicable statute for a period of one year for the variances and noted that the extension date will be until December 16, 2013. Mr. Buechler said that the resolution should also reflect that Mr. Linson approved the revised tree removal application. He said that the conditions amended are item #7 which is satisfied, item #'s 8 and 10 to be deleted, item #12 replaced by a rain garden, item #5 no longer applicable, item #48 noting that the memorial plaque remains included but will be relocated near the field house and the resolution will require when the events of prior conditions #33 and 45 will occur.

Mr. Buechler said that he feels it is not appropriate to include Mr. Waldman's request to have prior approval condition #33 amended to include in the resolution having a copy of the woodland/forest management plan submitted directly to objector Malanga. Chairman Neuer said that this would be included in the resolution only if the applicant agrees to it. The Chairman asked Mr. Buechler if that would satisfy; Mr. Buechler replied no because this is a Township function. Mr. Waldman accepted that agreement and that it would not be part of the resolution.

Chairman Neuer added the condition to have the deed for the merger recorded and provided to the Board within 90 days of December 8, 2012.

Ms. Weiss seconded the motion to approve.

The vote was as follows:

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



**DISCUSSION**

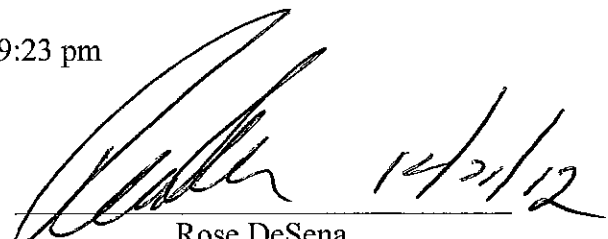
Chairman Neuer stated that the attorney for application ZB-12-18/T-Mobile Northeast, LLC & New Cingular Wireless PCS, LLC, scheduled to be heard at the December 20, 2012 meeting, is requesting a special meeting. He said the reason they are requesting a special meeting is because there is a chance that they may not be heard at the December 20th meeting due to their placement on the agenda as the sixth application.

Chairman Neuer said that the Board already has two meetings scheduled in the month of January and instructed the Board Secretary to advise the attorney to show up at the meeting on December 20<sup>th</sup> so that he can personally request a special meeting.

**ADJOURNMENT**

The meeting was adjourned by Chairman Neuer at 9:23 pm

December 20, 2012

  
Rose DeSena  
Zoning Board Secretary