

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
MEETING
March 15, 2012**

The West Orange Zoning Board of Adjustment held a regular meeting on March 15, 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: B. Buechler, G. Bullock, D. Gabry, P. Neuer, B. Quentzel (8:05),
E. Sacks (8:04), W. Steinhart, M. Sussman, A. Weiss

ABSENT:

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

ANNOUNCEMENTS

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

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.

MINUTES

Adopt Minutes: February 16, 2012 meeting

Chairman Neuer asked if there were any other comments regarding the minutes, other than the ones Mr. Buechler and himself gave to the Board Secretary. Seeing none the Chairman asked for a motion to adopt. Mr. Buechler made the motion and Vice Chair Gabry seconded.

All were in favor

SWEARING IN

Township Professional, Planning Director Susan Borg and Consulting Engineer, Eric Keller were sworn under oath.

RESOLUTIONS

- 1. **ZB-10-15a/JF Holding Company AMEND PRIOR RESOLUTION**
 Block: 155; Lot: 40.02, 40.03 and 40.04; Zone: P-C/OB-1
 Rooney Circle
 Preliminary and final site plan approval with "C" and D" variances
 and a minor subdivision

Chairman Neuer asked the Board if there were any comments or questions regarding this resolution. Seeing none he asked for a motion to adopt.
Mr. Buechler made a motion to adopt and Vice Chair Gabry seconded.

Vote was as follows:

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

APPLICATION(S)

- 1. **ZB-12-02/Auburn Data Systems, LLC**
 Block: 84.01; Lot: 22; Zone: B-2
 10 Marcella Avenue
 Seeking a "D" & "C" variances for installing five (5) antennas on an existing tower.

EXHIBITS

- A-1 - Compliance report prepared by Pinnacle Telecom Group dated 8/24/11
- A-2 - F-2 - Photographs
- A-3 - American Tower Engineering report dated 3-23-11
- A-4 - Planners Report prepared by James Kyle dated 1-31-12
- A-5 - Photo board of four photographs
- A-6 - Photo board of eight photographs

DISCUSSION

Michael Lavigne, attorney for the applicant, approached the podium. He explained what the applicant was proposing and detailed what occurred at the Zoning Board meeting on 2/16/12.

He listed all of the witnesses that testified for the applicant, at that meeting, and what they testified about.

Mr. Lavigne stated that the applicant has submitted all of the follow up items that the Board requested at the last meeting i.e. the owner's consent letter and copies of a structural analysis report. Chairman Neuer stated that Eric Keller reviewed the structural analysis report and submitted his comments to the Board. The Chairman asked that American Tower's engineering report marked as exhibit A-3. Chairman Neuer stated that Mr. Keller's comments will be admissible but noted that they were not based on an actual inspection of the tower.

Mr. Buechler asked Ms. Borg if 10 Marcella Avenue and 12 Marcella Avenue are separate block and lots. She replied yes. He referred to a photo in the application package and asked Ms. Borg where the third tower in the photo was. There was a brief discussion, between Mr. Buechler and Ms. Borg, about where this tower was located. Chairman Neuer stated that this tower was not part of the application. Mr. Buechler noted that there are three lots and three very large antenna towers and the Board cannot ignore the fact regarding the impact it has on the neighborhood. Chairman Neuer stated that the third tower that Mr. Buechler is referring to is probably the tower near the bowling alley on Eagle Rock Avenue.

Chairman Neuer addressed Mr. Lavigne and said that he still harbors reservations about putting 2500 pounds on a tower that the applicant has not provided any inspection reports for as defined in Mr. Keller's report. He stated that, for the record, this is a major concern of his and the applicant has provided nothing that satisfies his concerns. Chairman Neuer told Mr. Lavigne that he needs to address this issue before he closes his case. He also stated that Mr. Suppa testified at the meeting last month that he stood at the base of the tower and looked up and said "it looks good"; the Chairman said that was not good enough.

James T. Kyle approached the podium and was sworn under oath. He detailed his educational background and stated that he is a licensed Planner in the State of New Jersey and the Planner for the Town of Oxford. Chairman Neuer accepted his credentials as an expert in professional planning.

Mr. Kyle presented his report that was submitted with the original application package dated January 31, 2012. Chairman Neuer asked Mr. Kyle if he asked him to read his report, would he testify that it was accurate. Mr. Kyle replied yes. Chairman Neuer asked to have Mr. Kyle's report marked as exhibit A-4.

Mr. Kyle stated that this report was prepared before the application was amended to exclude the conditional use and height variance. He stated that the report reflects much more than is required and began by detailing the positive criteria.

There was some discussion regarding the public airwaves use as being beneficial. Chairman Neuer said that Mr. Kyle's report did not state that it was an inherently beneficial use and Mr. Kyle agreed. Mr. Kyle stated that they are taking an existing tower and placing microwave dishes on it and that the tower was essentially designed for this; specifically for microwave transmission.

Mr. Kyle continued and stated that, since the towers have been there since 1976, the residents are used to seeing them. He also stated that the reason they want to use this specific tower is so they do not have to build another tower.

Mr. Kyle stated that the cabinet, which houses the equipment, will be located inside an existing building located on the site under the tower.

Mr. Kyle presented a photo board of four photos that were taken by Mr. Wolfson, the applicant's radio frequency specialist who testified at the last meeting, and Chairman Neuer entered them into evidence as exhibit A-5. Mr. Kyle described the first photo that showed antennas on the tower. Chairman Neuer asked if that photo depicts the conditions of the tower today. Mr. Kyle replied no and said that the photo was taken approximately three years ago. Chairman Neuer asked what is different about the tower today and Mr. Kyle stated that the antennas are presently not on the tower. Chairman Neuer asked Mr. Kyle if there were any other differences and Mr. Kyle replied no.

Mr. Buechler asked Mr. Kyle how often he visited the site and Mr. Kyle replied twice. Mr. Buechler asked if he was in West Orange often and Mr. Kyle replied no but stated that he has been all over the neighborhood on two separate occasions.

Chairman Neuer stated that he wanted to address the public safety issue and said that there is no structural report. Mr. Kyle said that the towers are inspected every five years. Chairman Neuer asked Mr. Kyle who makes those reports and where are they. Mr. Kyle said that he was not sure who actually prepared the reports but assumed that they are kept on file somewhere. Chairman Neuer asked Mr. Kyle if he was aware that an inspection report was never submitted to this Board. Mr. Kyle replied yes, he knew that, but he felt that an inspection report does exist. The Chairman asked Ms. Borg if she has a copy of that report and Ms. Borg replied no. He asked Mr. Keller if he has a copy of that report and Mr. Keller replied no.

Mr. Kyle continued his testimony and detailed the negative criteria; reading from his report. He stated that microwave dishes are used for fast and efficient communication; especially sensitive data. He went on to describe the benefits for companies and their clients and why microwave is better than fiber optics especially if there is a natural disaster. Mr. Buechler stated that if there was a natural disaster, all communication equipment will be down. He said that towers will go down, just like all other equipment, and told Mr. Kyle that the example he is using is not good. Chairman Neuer stated that if a natural disaster did happen, one of their 500 or 600 lb. dishes could come crashing down on a resident.

Mr. Kyle presented another photo board and Chairman Neuer asked to have it entered as Exhibit A-6. Mr. Kyle said the photos are pictures of existing antennas taken from a distance. Chairman Neuer asked if Mr. Kyle prepared all eight of the photos and Mr. Kyle replied yes. Mr. Kyle explained how the towers visually looked when taken from different locations. Ms. Borg asked Mr. Kyle where he took the photos and Mr. Kyle said that he took them from the Eagle Ridge Condo property. She asked if he took them from a distance or if he was closer to the tower and Mr. Kyle replied that he took them midway from the tower.

Mr. Kyle, still referring to the photos, stated that a visual impact already exists with the tower already there. He noted that the residents of Eagle Ridge will only see the back side of the dish antenna after it is installed. Ms. Borg asked if Mr. Kyle had a photo of the back of the dish so that they could see what it would look like and Mr. Kyle replied no. Mr. Lavigne stated that, at the last meeting, the applicant agreed to paint the dishes and the radomes to match the tower.

Mr. Buechler asked Ms. Borg if the towers predated the Eagle Ridge Condos and Ms. Borg said that they did.

Mr. Kyle stated that there are five towers on Marcella Avenue. He said that there will not be a major visual impact on the area because there are large dish antennas on another tower on Marcella Avenue.

Chairman Neuer asked the Board members if they had any questions for Mr. Kyle.

Mr. Bullock said that Mr. Kyle's report stated that this tower is structurally sufficient to handle these dishes but yet there was no attempt to get a structurally sound inspection report. He asked Mr. Kyle if he thought that a 36 year old structure didn't need a current inspection report and asked if he thought this was normal. Mr. Kyle said that all that they ever get is a New Jersey licensed structural engineer report which usually suffices. Mr. Keller stated that he is not aware if an inspection report even exists. The applicant is supposed to conduct a structure report, according to the industry guidelines, but no one has seen one.

Ms. Borg asked Mr. Kyle if there have been any inspections in the past 36 years specifically ones that checked for corrosion or deterioration of the metal. Mr. Kyle stated that this is a stainless steel tower and stainless has a higher resistance to corrosion. He said that if the Board needs a current inspection report they will provide.

Ms. Gabry asked Mr. Kyle if someone would have to subscribe to the services that are going to be transmitted from these towers or would it be available to the public. Mr. Kyle stated that they would have to subscribe.

There were no other questions for Mr. Kyle from the Board.

Ms. Borg asked how much faster microwave is from fiber optic and how much cheaper it is. Mr. Kyle stated that he has no opinion regarding that.

Chairman Neuer asked if there were any members of the public that had any questions for Mr. Kyle based on his testimony.

Joseph Burns approached the podium and stated that he lives at 364 Styles Court in the Eagle Ridge complex. He said that his question is regarding the stability of the tower and asked Mr. Kyle if this tower could sustain 120 mph winds. Chairman Neuer stated that Mr. Kyle cannot answer that question because Mr. Suppa, the applicant's engineer, testified to that at the last meeting. The Chairman asked Mr. Lavigne if he would like to call Mr. Suppa to the podium to answer that question and Mr. Lavigne said yes. Mr. Suppa approached the podium and

Chairman Neuer said that he is still under oath from the last meeting and told Mr. Burns to ask him his question. Mr. Burns asked Mr. Suppa if the tower could sustain winds up to 120 mph. Mr. Suppa said yes; that velocity will not take the dishes off of the tower. Chairman Neuer asked Mr. Suppa what the maximum wind velocity they could sustain and Mr. Suppa said that he believes it is well over 120 mph.

Dr. Henry Zackin approached the podium and stated that he lives at 372 Digaetano Terrace. He said that his question is in regards to Mr. Kyle's comment regarding minimal visualization due to vegetation. Dr. Zackin asked Mr. Kyle if he walked out of his house every day and saw the towers and Mr. Kyle replied no. Dr. Zackin asked if he drives by them every day and Mr. Kyle replied no. Dr. Zackin asked Mr. Kyle what he based his comment regarding the tower and dishes not having a negative visual impact on the area and Mr. Kyle replied that he based it on simulations.

Mr. Buechler asked Dr. Zackin if he lived in the Eagle Ridge Condo development; Dr. Zackin replied yes. Mr. Buechler asked Dr. Zackin if the condos were built after the tower and Dr. Zackin replied yes.

Mark Levy approached the podium and stated that he lives at 344 Araneo Drive. He asked Mr. Kyle on what he based his comment on regarding the residents being used to seeing the tower. Mr. Kyle stated that the longer someone see's something the less it has a visual impact. Mr. Levy said that the towers predated the condos and they have to accept them but why do they have to accept the dishes. Chairman Neuer explained to Mr. Levy that the witness did not say that they have to accept them. Mr. Buechler stated that there are photos showing the tower having dishes on them three years ago. Chairman Neuer said they testified at the last meeting to having 37 antennas on the tower at one time.

Dr. Zackin stated that he had another question and Chairman Neuer explained the rules of the Zoning Board meeting regarding residents asking questions. The Chairman stated that Dr. Zackin can ask another question after all members of the public have asked their first question. Seeing no other questions from other members of the public Chairman Neuer said that Dr. Zackin can ask another question. Dr. Zackin approached and asked Mr. Kyle if he knew what impact the addition of these dishes to the towers would have on real estate values. Chairman Neuer stated that Mr. Kyle is not a realtor.

Joseph Burns approached the podium again and asked why the applicant chose our community and not another community. Chairman Neuer stated that Mr. Collins, the applicant's FCC compliance expert, answered that question at the last meeting and said that the reason is because this tower is located on top of a mountain and that is the best location.

Chairman Neuer recessed the meeting at 9:30 pm.

The meeting resumed at 9:42 pm.

Mr. Lavigne stated that there were no more witnesses.

Chairman Neuer said that this is the time for comments and asked if any member of the public wished to address the Board.

Mark Levy approached the podium and was sworn under oath and stated that he is the President of the Eagle Ridge Condo's Owner's Association. Chairman Neuer told him that he cannot speak for all of the Eagle Ridge Condo property owner's that he could just speak for himself. Mr. Levy stated that, as a resident, he listens to the concerns of the others that live closer to the towers. He said that other residents also have concerns regarding the property values of the condos and that it will be an eyesore. Mr. Levy stated that the dishes will definitely have an impact and that he feels that there are other areas the applicant can put them. Mr. Levy said that he wants to do what is right for his community.

Dr. Henry Zackin approached the podium and was sworn under oath and stated that he lives in the Eagle Ridge Condo's and is in direct site line of the towers. Dr. Zackin said that they just completed many renovations to the condos and that they maintain their properties. Dr. Zackin stated that he has been told by many realtors that people who come to look at the condos mention seeing the towers. He said that there is no vegetation that blocks the view and that he doesn't see any benefit from the towers because they are just for commercial use. Dr. Zackin stated that the towers are unsightly now and if they add these dishes it will become even worse.

Mr. Joseph Burns approached the podium and was sworn under oath. He stated that he concurs with what the past two individuals said. Mr. Burns said that you cannot avoid seeing the towers and that anything you add to them will not add to the aesthetics.

Mr. Grossman approached the podium and addressed the Board. He stated that his concern is the absence of the structural report and testimony about the structural integrity of the tower. Mr. Grossman asked the Board to condition the application on having the applicant submit a structural report.

Mr. Lavigne summarized by detailing how many towers are currently in that area. He explained how West Orange is the appropriate location for these microwave dishes and that the unmanned facility is also a plus. Mr. Lavigne said that there are photos showing that, at one time, there were larger dishes on the towers and the ones that they are proposing are smaller. He addressed the structural report issue and stated that the applicant did submit a structural analysis even though they did not submit an actual structural report regarding the adequacy of this tower. Mr. Lavigne said that the applicant would be more than happy to submit a current inspection report of the physical inspection of the tower and requested that the Board make it a condition.

Chairman Neuer closed the hearing and opened the floor for comments from the Board.

Ms. Weiss stated that she knows that she cannot vote on this application tonight because she did not attend the meeting on 2/16/12 but she would still like to give her opinion as a realtor. Chairman Neuer asked her if her comments are limited to what she heard at the meeting tonight and she stated that her comments are from her experience as a realtor. Ms. Weiss said that the towers, in question, have played a negative part in selling a condo near the towers. She said that there is definitely some validity about it having a negative effect on these neighbors who live in

Eagle Ridge. Ms. Weiss also said that all of the photos look very different from the real towers and dishes.

Mr. Sussman said that the inspection report is an issue for him and that the Board should make it a condition as part of the approval to get one every five years.

Mr. Buechler stated that he is going to approve this application conditioned upon a structural inspection report, performed within the past 12 months, being submitted to the Board and that no construction permits given until the report is submitted. He said that Marcella Avenue has five separate towers on it and if people purchase homes where there are pre-existing structures then they are going to have to deal with that. Mr. Buechler also stated that 12 Marcella Avenue's tower had large dishes on it and now they are down. He said that he did have some concerns about Mr. Suppa's testimony regarding the fact he only did a visual inspection of the tower. Mr. Buechler said that the law in the State of New Jersey is pro cell tower antennas.

Mr. Quentzel stated that there should be some kind of preliminary report done by the Construction Official before this application is approved. He said that the applicant should paint the dishes the same color as the tower. Mr. Quentzel said that his approval is based on the fact that the towers were there before the condos were.

Ms. Gabry wants to see regular maintenance inspections performed every five years. Mr. Buechler stated that if the Board does approve this application that there is a requirement, as stated in Eric Keller's report, that all inspections shall be in accordance with the EIA/TIA 222G and submitted to the Township.

Ms. Borg stated that she sees this a little different. She agrees that the tower was built before the condos but by putting the dishes on the tower will change the appearance and make it look worse. Ms. Borg stated that she personally was responsible for getting a lot of the old dishes taken off of the towers. The companies eventually stop using them, she said, and they just leave them up there.

Chairman Neuer started by explaining the function of the Zoning Board and said that they are a creature of statute. He stated that applicants are before this Board to ask them for relief from a zoning ordinance. The Chairman stated that the Board is being asked to add to the existing towers. He said that he is not sure that adding to them will have a negative impact on the property values and there is not enough evidence of this to deny the application. Chairman Neuer said that these dishes, in his opinion, will not benefit the general public. He then stated that someone not wanting it in their back yard is also not enough evidence to deny and that he is having a hard time coming to a decision.

Chairman Neuer stated that he is going to vote no on this application because he thinks that the application is deficient and he has safety concerns regarding the weight of the dishes. He said that he is not convinced that this can be done in a safe manner and he will endorse that a maintenance report is submitted every five years and fines given if they do not comply.

Mr. Buechler offered a resolution to approve the application subject to conditions. He said that the dishes and radomes must be painted to match the tower and they must maintain the painting. Mr. Buechler said that before any construction permits are issued or work done that the applicant must submit a current structural report to the Planning Department with a copy to Mr. Keller. He continued by saying that if the applicant has any questions or comments they must submit them to the Board secretary. Mr. Buechler stated that if the structural report is adequate then Mr. Keller is to submit a letter to the Board and to the Board secretary stating such. He said that the applicant, or subsequent owner, must submit to the Planning Department every five years, an updated structural report in accordance with the EIA/TIA 222G as referenced in Mr. Keller's report. Mr. Buechler stated that if any of the dishes are not used for six months or more then they are to be removed within 90 days and if they do not do so then they will be suspended from operation.

Mr. Quentzel stated that he would like to add some sort of escrow to the conditions if the applicant does not remove the dishes. Mr. Buechler said he doesn't agree because the Town would have to keep track of the monies and that a violation notice is sufficient. Chairman Neuer asked Ms. Borg if the Town ever required escrow before and she replied no. Mr. Steinhart said that if they are not removed then the Town has the right to remove them and place a lien on the property. Mr. Beirne stated that she is not sure the Zoning Board can do that.

Mr. Buechler made a motion to approve and Mr. Sussman seconded. The vote was as follows:

Mr. Bullock stated that Ms. Borg had a compelling discussion and he was not satisfied that the negative outweighed the positive and he is voting no.

Ms. Gabry voted no.

Mr. Quentzel stated that the towers were there for a long time and the applicant agreed to match the color of the dishes to the tower so he is voting yes.

Mr. Steinhart stated he based his vote on comments he made during the discussion and he is voting yes.

Mr. Sussman said that he is reiterating his comments and said he is voting yes.

Chairman Neuer stated that the vote is four to three so therefore the application is denied.

Buechler:	Yes	Steinhart:	Yes
Bullock:	No	Sussman:	Yes
Gabry:	No	Weiss:	-
Quentzel:	Yes	Chairman Neuer	No
Sacks:	-		

2. **ZB-11-23/World Class Wireless, LLC**
Block: 84.01; Lot: 22.01; Zone: B-2
12 Marcella Avenue
"C" and "D" variances to install two 6' dishes on an existing tower and necessary equipment.

DISCUSSION

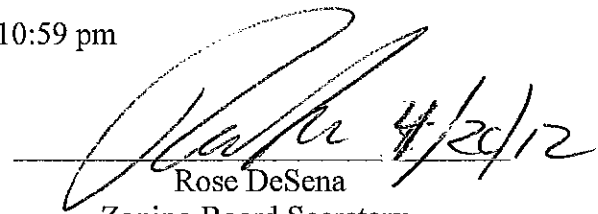
Eric Goldberg, attorney for the applicant, approached the podium. Chairman Neuer suggested that the applicant come back to the next meeting because the Zoning Board meetings end at 11:00 pm. He said the next meeting is April 19th and that they will be first on the agenda. Mr. Goldberg agreed.

Ms. Gabry said that the application does not state who owns the property. She asked if the applicant is the owner and Mr. Goldberg said no. Mr. Goldberg stated there are three or four people who own the property. He said that there is a signed lease that was submitted with the application and there is a section of that lease that authorized the applicant.

ADJOURNMENT

The meeting was adjourned by Chairman Neuer at 10:59 pm

March 15, 2012


Rose DeSena
Zoning Board Secretary