

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
MEETING
SEPTEMBER 22, 2011**

The West Orange Zoning Board of Adjustment held a regular meeting on September 22, 2011 at 8:00 PM at 66 Main Street, West Orange, NJ in Council Chambers.

Chairman Philip Neuer called the meeting to order at approximately 8:03 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 17, 2010 in accordance with the "Open Public Meetings Act."

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

PRESENT: Bruce Buechler, Gregory Bullock, Deborah Gabry, Phil Neuer, Bart Quentzel, William Steinhart (8:07 pm), Mark Sussman, Alice Weiss (8:07 pm)

ABSENT: None

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

ANNOUNCEMENT OF FUTURE MEETING DATES

Future Meetings: October 24, 2011 (Special Meeting Golda Och) 7:30 P.M.
October 27, 2011 (Regular Meeting) – 8:00 P.M.
November 17, 2011 (Regular Meeting) – 8:00 P.M.
December 8, 2011 (Regular Meeting) – 8:00 P.M.
January 19, 2012 (Regular Meeting) – 8:00 P.M.

MINUTES

Adopt Minutes: August 18, 2011 regular meeting

Alice Beirne questioned Chairman Neuer regarding the vegetable garden area Susan Borg included in her report for application ZB-11-12/Gaeta. She asked if the applicant needed anything more than mulch in the area after the garden was gone. Ms. Beirne also asked if the applicant had consulted with Susan Borg regarding this as stated in the 8/18/11 minutes. Susan Borg stated she has not heard from the applicant at all.

Chairman Neuer recommended keeping it consistent with just the vegetable garden and mulch.

Chairman Neuer asked for a motion to approve the Minutes containing and incorporating this recommendation; Ms. Gabry made the motion and Mr. Sussman seconded.

All were in favor.

Note: Ms. Weiss and Mr. Steinhart were not present at the 8/18/11 meeting and were present at the 9/22/11 meeting but not voting on these Minutes.

Adopt Minutes: September 19, 2011 Special meeting for Golda Och

Chairman Neuer asked if any Board member had any comments or corrections regarding these minutes, besides those submitted previously by Messrs. Neuer and Buechler. Seeing no other comments he asked for a motion to adopt.

Mr. Sussman made a motion to adopt and Ms. Gabry seconded.

All were in favor.

SWEARING IN

Township Professionals, Planning Director Susan Borg

RESOLUTIONS

ZB-11-12/Gaeta

APPLICATION APPROVED 8/18/11

Block: 113.01; Lot: 131,132; Zone: R-T

18 Park Terrace

Seeking a "c" variance for side yard set- back for an existing deck

DISCUSSION

Chairman Neuer asked if there were any questions or comments other than the previous one's regarding the vegetable garden.

Seeing none Ms. Gabry made a motion to adopt and Mr. Sussman seconded.

The vote was as follows:

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

ZB-11-16/Nissel

APPLICATION APPROVED 8/18/11

Block 179.08; Lot: 12; Zone: R-5

40 Mayfair Drive

"c" variances for front and side yard set-backs for building a handicap ramp

Chairman Neuer asked if there were any questions or comments.

Ms. Beirne stated that the last time the Board approved an application to install a handicap ramp it was conditioned upon the ramp having to be removed when the house was sold. She asked the Chairman if that should be included in this resolution.

After some discussion between Board members, Chairman Neuer said to include the condition that the ramp must come out if the house is sold by the applicant or if the home is no longer occupied by a handicapped person. The ramp must be removed within 60 days of the transfer of title or the departure of the handicapped individual.

Ms. Gabry made a motion to adopt and Mr. Sussman seconded.

The vote was as follows:

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

APPLICATIONS

- ZB-11-05/Carp, Gerald and Ellen** **CARRIED FROM 6/16/11**
Block: 82.02; Lot: 13.05; Zone: R-1
63 Ridge Road
Seeking "C" variances for the height of an existing fence and setbacks of an existing tennis court

EXHIBITS

- A-11 (pre-marked) Enlarged plot plan dated 6/6/11
- A-12 Curriculum Vitae Elizabeth C. McKenzie AICP, PP

DISCUSSION:

Chairman Neuer stated that, before we begin, there will be a mandatory break at 9:30pm and the meeting will end at 11:00 pm. He also stated that the goal, as always is for the Board to be able to conclude all of the applications on the agenda tonight.

Charles Lorber, Esq., attorney for the applicant, approached the podium. Chairman Neuer described the application; stated that it was first heard on 5/16/11; mentioned all of the previous witnesses; stated it resumed on 6/16/11 and, at that time, the applicant requested an adjournment until 9/22/11. Mr. Lorber stated that was correct.

Chairman Neuer asked Mr. Lorber if all of the applicant's Municipal court hearings were over and he stated no, that there were two more dates.

Mr. Buechler stated that he recently received several pages of court transcripts but they do not match up to the transcript pages that Mr. Lorber previously sent to them. Mr. Lorber stated that his secretary sent them and he wasn't sure what she sent.

Mr. Buechler said his second question was regarding the tennis court and asked if anyone had used it to play on since the last meeting. Mr. Lorber said no one has played. Chairman Neuer asked Mr. Carp to approach and stated there was no need for him to be sworn in because he was sworn in on 5/19/11. The Chairman asked Mr. Carp if the net was down and has the tennis court been used. Mr. Carp stated that he and his wife had used the court, once or twice, to lob balls. He said that they couldn't play on the court because it wasn't prepped and they pretended to volley the ball. Mr. Buechler stated that the reason he asked was because there was a representation that the tennis court was not to be used. Mr. Carp stated that he did not recall that but Mr. Lorber stated that he did. Mr. Buechler said that this request was not honored. Mr. Carp stated that it was his error and he would have never used the tennis court if he knew that. He also stated that they joined a tennis club to play tennis this summer. Mr. Lorber stated that he had made that representation. Mr. Buechler said that the Board has to assume that Mr. Lorber relayed that back to Mr. Carp but Mr. Carp stated that he did not recall it.

Chairman Neuer stated that he was confused and asked Mr. Carp if he said that he played tennis or did he volley. He went on to say that if you volleyed then you were playing the game.

Chairman Neuer stated for the record, and in the presence of Mr. Carp, that the net will come down and the tennis court will not be used for any reason or purpose until the Board approved the use of that facility.

Mr. Lorber asked Michael Lanzafama to approach the podium. Chairman Neuer stated there was no need to swear Mr. Lanzafama in because he was sworn in on 5/19/11. He stated that, at the last meeting, there was an impervious issue and noted that they re-noticed with the impervious variance included.

Ms. Gabry stated that she was not at the 6/16/11 meeting and asked Chairman Neuer if she would be allowed to vote at this meeting. Chairman Neuer stated that all they did was adjourn so she would be able to vote. Mr. Sussman stated that he was also not at that meeting and Chairman Neuer stated all the Board members that were present on 5/19/11 can vote this evening.

Mr. Lorber presented a revision of Exhibit A-11, an enlarged plot plan, which was previously marked at the 5/19/11 meeting. He stated that it had been revised on June 6th. Chairman Neuer asked if there has been a revision since June 6th and Mr. Lorber said no.

Mr. Lorber stated that Mr. Lanzafama testified at the last meeting regarding the height of the fence and, at that time, the question came up about impervious coverage. He said that the Board did not have enough information regarding the striping on the play area of the tennis court and the distances to the Seton Hall Property. Mr. Lorber stated that he took Mr. Lanzafama back to

the tennis court to look at it again and then proceeded to ask Mr. Lanzafama what he saw at that time.

Mr. Lanzafama pointed to the plot plan, describing all of the measurements regarding the tennis court play area and also the set-backs from the fence. He continued pointing out all impervious coverage areas on the lot that could be reduced to meet what is permitted. He also addressed the 5' encroachment on the Seton Hall property. He stated that they looked at two different areas to address this, one being the walk way on the south side and reducing a portion of an existing driveway by 257 sq. feet.

Mr. Buechler asked if there were any special drainage features in the tennis court area. Mr. Lanzafama stated that when he went back to look and that there were none near the tennis court or cabana area but near the inlet on Ridge Road there might be a drain.

Chairman Neuer asked, from an engineering standpoint, is there any reason why the 5' cannot be removed from the Seton Hall end of the property and added to the other side. Mr. Lanzafama said that the tennis court was established and set in the soil and if they "put a ribbon around it" you will get differential of settlement in the soil which will interfere with the playing surface.

Chairman Neuer asked if there were any questions for Mr. Lanzafama. Ms. Borg wanted to know the composition of the walks that they would remove. Mr. Lanzafama replied that they are brick pavers. Ms. Borg asked if they were set in concrete and he replied no they were set in stone dust. Ms. Borg asked if they would replace what they removed with grass and he replied yes. Ms. Borg also asked what material the driveway is made of and Mr. Lanzafama replied it was macadam.

There were no more questions for Mr. Lanzafama.

Mr. Lorber called his next witness. Mr. Thomas R. Farley, 67 Ridge Road, approached the podium and was sworn under oath. He stated he is a retired attorney and lived on Ridge Road for 45 years. He stated that the driveway on Mr. Carp's property on Ridge Road services his house. Mr. Buechler asked if he enters his property by the roadway on Mr. Carp's property on Ridge Road and Mr. Farley said yes. Mr. Farley pointed out the driveway and the access road for his property, on the plot plan, and stated that the easement would be beneficial for his use and not Mr. Carp's property. Mr. Buechler asked Mr. Farley if he had any objection to the tennis court and he replied no and that he had no objection to the 10' fence either.

Chairman Neuer asked if there were any other questions for Mr. Farley and there were none.

Mr. Lorber called his next witness. Ms. Elizabeth C. McKenzie approached the podium and was sworn under oath. She stated her qualifications as a licensed planner in the State of New Jersey and had her own consulting firm. Chairman Neuer asked if she had testified in front of any Boards in the State of New Jersey and if she is qualified as a witness and Ms. McKenzie replied yes, that she has even testified in West Orange once. Chairman Neuer accepted her qualifications as an expert in the field of planning.

Ms. McKenzie offered the Board her resume and Chairman Neuer asked that it be marked as Exhibit A-12.

Chairman Neuer asked why Ms. McKenzie's report was not attached with the application. Ms. Borg stated that she never realized there was going to be a request for a "D" variance and that the rule is you only need a report from a planner when they are requesting a "D" variance.

Chairman Neuer asked if the Board recommends Ms. McKenzie proceeding based on her summary attached to the application; the Board allowed her to proceed. Ms. McKenzie stated that she is prepared to testify on the additional impervious coverage this evening besides her argument that will prove why the "C" variances should be granted.

Ms. McKenzie began by describing Mr. Carp's property; specifically the area that encroaches the Seton Hall property and how nicely Mr. Carp had landscaped it. She stated that the fence that also encroached onto the Seton Hall property has since been removed. Ms. McKenzie stated that the 5' set-back that is required is for the purpose of doing maintenance around the building. She stated that a tennis court or a shed can be maintained without that 5' distance. She also stated that even though screening or buffering is not required they can provide it. She noted that the Seton Hall property has an extremely wooded area of about 300' before it actually gets to the football field.

Ms. McKenzie went on to explain that the tennis court could be cut back, but to move it over would compromise the surface. She claimed that the cabana and the pergola would also have to be removed and this would create a lot of disturbance in the neighborhood. She stated that if they can find a solution, without moving the tennis court, they will comply. She also stated that the tennis court is out of the way and not near any other property except Mr. Farley, the neighbor who testified, and he stated that he does not have a problem with it.

Mr. Buechler asked Ms. McKenzie why the cabana had to be removed because there is 30-40' from the property line to the back area. Chairman Neuer asked why they would tear down the pergola when they can just go around the other way to move the tennis court; he stated that he's just not buying it.

Ms. McKenzie stated that in order to relocate the tennis court, changing anything would disturb the neighborhood. Chairman Neuer stated that violation of our set back law is also disturbing.

Ms. McKenzie continued by saying that there is quite a bit of lawn area before you get to the Seton Hall property. She stated that the tennis court has been there for a long time and it is attractive to the site; it might not be necessary to take that step to relocate the hard surface area of the court. That is her argument, she said.

Mr. Buechler said to Ms. McKenzie that she stated the tennis court is attractive to the neighborhood but yet said that no one is near the Carp property. Ms. McKenzie responded by saying that the tennis court and all of the landscaping is already there now and is attractive. She said that she's not saying it was done correctly but just saying that it's already there now and asking how they can correct this.

Chairman Neuer stated that there is no one here to tell the Board that the pergola has to be moved. Ms. McKenzie stated that it's all about shifting the tennis court and adding it to the other end and that's what she said she was saying.

Ms. McKenzie stated that her second point is regarding the height of the fence. Chairman Neuer said that before you start, Mr. Dimilia the expert witness that testified at the 5/19/11 meeting stated that 8' is acceptable for the fence. Ms. McKenzie stated that they are proposing the fence remain 10', for the extra protection to keep the balls from going on to other properties. Chairman Neuer asked if the fence is going to be 10' around the tennis court only and Ms. McKenzie said yes, not around Mr. Carp's whole property.

Chairman Neuer stated that you previously testified that there is 300' or more of wooded area on the Seton Hall property so how would anyone know if there was a tennis ball there.

Ms. McKenzie stated that she is making an argument to say that the fence she is asking for serves the purpose of keeping the tennis balls in; it existed for 22 years and has not been a detriment.

Ms. McKenzie went on to say that the impervious surface coverage is a different argument. She pointed to the easement on the plot plan and stated that Mr. Carp gets no benefit from this driveway; it is for emergency service and for his neighbor only. Chairman Neuer stated that he thought that was the only access to Mr. Farley's property. Ms. McKenzie said yes and for that reason they cannot rip it up.

Chairman Neuer asked Ms. McKenzie to make her argument for the C1 hardship variance. She stated that it's the only access to the adjoining lot. Ms. McKenzie also stated that 30% is allowed so people can improve their lots to a certain level. She said that if you take this driveway out then you are imposing a hardship on the property. Chairman Neuer stated that the driveway is not causing the variance; the tennis court is. He continued by saying if you reduce the size of the tennis court and rebuild it, then there would be no variance. Chairman Neuer also stated that no member of this Board wants to see Mr. Farley's access to his house eliminated.

Mr. Buechler stated that Mr. Carp bought his property knowing that the 30% restriction was there and he has difficulty accepting the reason she is offering. Ms. McKenzie stated that mistakes were made along the way and Mr. Carp realizes that and the neighbors benefit from the attractiveness of his property. Chairman Neuer stated that does not explain the impervious hardship; he is not concerned with the detriments but with the benefits that she is explaining.

Mr. Buechler stated that Mr. Carp does landscape the property and that's a fact. He said the issue is the positive and negative criteria. He agreed that no one is going to raise an issue with Mr. Farley's access or the fence; the issue is impervious coverage and should the tennis court be moved. He continued to say that part of the problem is that the Board has to make sure the land use law is being followed.

Ms. Borg stated that Ms. McKenzie was the first witness to say that they can remove the back of the tennis court area plus the encroachment area on the Seton Hall property

Chairman Neuer stated that they will recess until 9:30pm. He also stated that he heard Ms. McKenzie say that there is no problem carving off the back of the tennis court area. He went on to say that they all heard her say that they would comply and Ms. McKenzie said that she misspoke.

The Board recessed at 9:22 pm.

The Board resumed at 9:32 pm.

Chairman Neuer stated that the Board will probably not reach all of the applications on the agenda.

Mr. Carmen Campanile, attorney for Vincent Longo, approached the podium and requested to be carried, without noticing, to the October 27, 2011 meeting. Chairman Neuer stated that application ZB-11-40/Longo is adjourned to October 27, 2011 at or after 8 PM and there will be no further notice.

Chairman Neuer stated that the attorney for the applicant, Giga Beam, has informed him that they will wait to see what happens. He also said that the applicant, Slomack, will wait.

Ms. Borg asked if they would consider changing the surface of the driveway to a pervious surface. She said instead of the macadam, they could make it blocks. Ms. Borg also stated that the only hardship there would be finances for Mr. Carp. Mr. Lorber asked if the Municipality permitted pervious pavers for a driveway. Mr. Buechler stated that some do not but many people have made pervious driveways to avoid a variance. Chairman Neuer stated that it's a private road and less traffic travels on it. He continued by saying that if they did change the driveway to a pervious surface then they would not need a variance. Mr. Lorber stated that they didn't know that was an option and that they appreciated the suggestions.

There were no further comments or questions for Ms. McKenzie.

Mr. Lorber summarized by stating that the tennis court has been here for 22 years. He also stated that the transcript he submitted to the Board proved that the summons was dismissed because no permits were required at that time. Mr. Lorber stated that Mr. Carp will reduce his fence to 8' if the Board would allow him to put some netting up. He also stated that, at this point in time, there would be too much disruption in the neighborhood if they were to tear up the tennis court. Mr. Lorber stated that the only neighbor that can see it has testified that he is fine with it. He also stated that the application needs to be amended to include the impervious variance.

Chairman Neuer asked Mr. Lorber if his client will take Ms. Borg's suggestions and he replied that they will meet any conditions.

Chairman Neuer stated that the Board does not react positively when one comes before them to ask for forgiveness rather than first seeking permission in accordance with the law. He continued by saying that no one on this Board harbors any ill feelings towards Mr. Carp because

of the Seton Hall application. The Chairman stated that they would never punish him and we do not operate that way as a Board.

Chairman Neuer stated that as for the application itself, it is fairly benign. The netting on the top of the 8' fence would be ugly. He will recommend the 10' fence to the Board and make a condition that any impervious surface that can be made pervious that they do so to get it down below 30%.

Chairman Neuer stated that he wants to give them an alternate condition which would be to bring the fence further onto Mr. Carp's property and not more than 3' into the side area. The Chairman stated that Mr. Carp has to make a decision ten (10) days before the 10/27/11 meeting.

The Board agreed with Chairman Neuer's suggestion.

Ms. Borg suggested that the Board include a condition making a set time for the work to be completed. She also suggested that the net must be taken down and the tennis court must not be used.

The application was approved with a side yard set-back; 10' high fence surrounding the tennis court and reducing the impervious coverage to 30% and bringing everything off of the Seton Hall property or the alternative of bringing the fence further onto Mr. Carp's property and not more than 3' into the side area. The approval will be in the resolution with options.

Mr. Buechler stated that an email must be sent to Ms. Borg by 10/17/11 informing her of what option they have chosen so the resolution can be made.

Chairman Neuer stated that the work must be completed by 5/31/2012 to comply with the resolution and all required permits will be obtained. He also stated that the other condition will be that the net will not be installed and the tennis court not utilized even for virtual play.

CONDITIONS:

- Work completed by 5/31/2012
- All required permits will be obtained
- The net will not be installed
- Tennis court not utilized even for virtual play
- Make any impervious surface pervious to get it down below 30% or
- Bring the fence further on Mr. Carp's property and not more than 3' into the side area

Chairman Neuer made a motion to approve; Mr. Buechler seconded.

The vote was as follows:

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

2. ZB-11-09/Slomack

CARRIED FROM 7/14/11

Block: 112.01; Lot: 20; Zone: R-1

1 Long Branch Way, Llewellyn Park

“D” variance for height on newly constructed house

EXHIBITS

A-1 Colored grading plan

A-2 Variance Report prepared by Nicholas J. Wunner dated 6/27/11

DISCUSSION

Mr. Lance Slomack, applicant, approached the podium and was sworn under oath. Chairman Neuer stated that the Board already knows what the applicant is requesting because the members read the application.

Nicholas J. Wunner, engineer for the applicant, approached the podium and was sworn under oath. Mr. Wunner stated that he is a licensed engineer and planner in the State of New Jersey. He stated that he has testified in many towns before, as an expert in his field, but never in West Orange. Chairman Neuer accepted his credentials as a licensed engineer and professional planner.

Mr. Wunner stated that Mr. Slomack is here applying for a “D” variance because the house they are building is 8’ too high. He said that only one part of the house is too high because the walk out basement is causing a low spot. Mr. Wunner stated that, in order to fix this, they would have to take out all of the windows on the bottom and that would leave an 8’ drop off if they did.

Mr. Wunner pointed to a site plan and Chairman Neuer asked that it be marked as Exhibit A-1. Mr. Wunner began to describe the details of the house and noted that the garage was not low because they would get water in it if it was.

Mr. Wunner explained that he interpreted the ordinance height from the roof to the lowest elevation of the house which creates the variance. He stated that the rest of the house is maintained in compliance. Mr. Wunner went on to explain that part of the house slopes off and becomes a little low. Chairman Neuer asked if any elevation exceeds the 35’ and Mr. Wunner stated only on the east side; the basement windows cause it to exceed by 4’.

Mr. Wunner stated that his report explains how they tried to fit the house in the existing area and Chairman Neuer asked that his report be marked as Exhibit A-2. Mr. Wunner went on to say that the house fits in with the existing houses in the neighborhood and the height is in the back of the house and cannot be seen. He stated that the walk out basement caused them to be in violation of the code.

Chairman Neuer asked Mr. Wunner to state for the record that his report says that the house fits in with the neighborhood; there are similar houses to the one Mr. Slomack is having built; that it would be a hardship to reconstruct the house and that Mr. Slomack took all of the necessary steps to get permits.

Mr. Buechler asked what the heights of the other houses were in the neighborhood. Mr. Wunner stated that it would be impossible for him to measure the height of other houses but some appeared to look higher than Mr. Slomack's house.

Mr. Buechler asked Mr. Slomack if he is still working with the same architect. Mr. Slomack replied that they are not working with him but they do speak to him. He stated that the only reason they chose him as the architect is because he is from the area and they figured he knew the regulations. Mr. Slomack stated they now have a project manager.

There were no members of the public that wanted to speak.

Chairman Neuer asked if there were any questions or comments.

Ms. Borg stated that she agrees with their planner.

Mr. Buechler stated that the applicant went to Town Hall to get building permits and, through no fault of the applicant, got short changed from the contractor. He stated that exhibit A-2 shows that the criteria was met and even though they took the roof down two feet it still never complied. Mr. Buechler made a motion that the Board approves this application with no conditions.

Mr. Sussman stated that the house was beautiful and with the size of the lot, the scale of the house will have very little impact on the neighborhood.

Mr. Steinhart seconded it.

The vote was as follows:

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

3. ZB-11-15/GigaBeam

CARRIED FROM 7/14/11

Block: 84.01; Lot: 22; Zone: B-2

“D” variance for use to place two (2) six foot dish antennas on an existing tower and necessary equipment to be cabinet mounted on H-frame at ground level.

EXHIBITS

A-1 Antenna site RF Compliance Assessment & Report dated 8/17/11

DISCUSSION

James K. Pryor, Esq., attorney for the applicant, approached the podium. Mr. Pryor stated that the applicant is proposing to place two (2) dishes on an existing tower at 10 Marcella Avenue. He stated that it's a conditional use and requires a variance. Mr. Pryor explained that this is not a cellular dish but a discreet network; point to point transmission from Newark to Marcella Avenue across New Jersey to the Midwest. Mr. Pryor then stated that they transmit only data and Giga Beam has been contracted to build the network for their customer.

Chairman Neuer stated that the Board needs to know who Giga Beam is, who Midsummer Capital is and who owns Midsummer Capital. Mr. Pryor stated that he will have that information for them at the next meeting on 10/27/11.

Mr. Buechler asked why the H-frame is needed and why can't they use the existing building for their equipment. Mr. Pryor stated that he has witnesses that will also testify to that at the next meeting.

Chairman Neuer stated that Ms. Borg's report states that she would like to see the dishes camouflaged. Mr. Pryor stated that they will provide testimony that explains these dishes are designed the way they are for technical reasons.

Mr. Pryor stated that his first witness, Dan Collins, will testify regarding the FCC regulations. He also stated that he will have a witness at the 10/27/11 meeting, who is from California and will discuss the operation. Mr. Pryor stated that the site engineer is here and can testify tonight.

Chairman Neuer asked if he was suggesting that this was an inherently beneficial use and Mr. Pryor stated that he is just saying the site is suited for this use.

Chairman Neuer said to note for the record that in Ms. Borg's report the tower is 200 feet high and not 2000 feet high.

Mr. Pryor called his first witness and Dan Collins approached the podium and was sworn under oath. Mr. Collins stated he is an FCC compliance expert and Chairman Neuer accepted his credentials as an expert in that field.

Mr. Collins began his testimony by stating that he prepared a report and the dishes will be installed according to FCC standards. Giga Beam is proposing to install two (2) 6' point to point transmission dishes mounted on an existing tower. He also stated that all antenna operators are subject to be in FCC compliance with signal exposure. Mr. Collins stated that Giga Beam calculated using a six (6) gigahertz band and then explained the formula they use for this. He also stated that 95% of the energy transmitted does not reach the ground.

Chairman Neuer asked to have a copy of Mr. Collins report marked as Exhibit A1 and told Mr. Pryor to send it them via email.

Mr. Collins continued his testimony by explaining the reason for the 6' dishes is because that's the minimum size they can use in microwave congested areas to get the signal out. He went on to explain that these systems need this kind of antenna to transmit to Newark to Summit to Chicago. Ms. Weiss asked where in Summit was the dish located and Mr. Collins stated that it's not constructed yet. He said that if they do not get permission to construct it in Summit then it will be in Randolph where it was already approved.

Ms. Weiss stated that the photo they have makes the dish look small but in reality it's huge. Mr. Collins stated that on page 11 of his report he has pictures of 10' dishes. Chairman Neuer asked if they went to Marcella could they see a 10' dish and Mr. Collins replied yes; the large dishes that are there now are 10' dishes. Ms. Weiss stated that she only asked so they could go out and see it before the next meeting.

Mr. Sussman asked if it had to be a point to point precise beam and Mr. Collins replied yes that it has to be accurately pointed.

Ms. Weiss asked if they were denied, where would they go and Mr. Pryor said they would find another spot. Ms. Borg stated that there are other towers, specifically in East Orange. Chairman Neuer stated that it would be helpful if they knew if there were other spots. Mr. Pryor stated that it was researched and Marcella is the best location.

Mr. Bullock asked the identities of the parties at the different addresses in the application. Mr. Pryor stated that, at the 10/27/11 meeting, they will explain the entire background of Giga Beam.

There were no more questions for Mr. Collins.

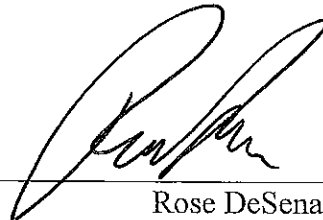
Chairman Neuer stated, for the record, Giga Beam did not give permission for an extension. Mr. Pryor asked to have it carried over to the next meeting on 10/27/11 thereby granting the extension of the statutory time for decision.

Chairman Neuer stated, for the record, that this application will be carried over to the 10/27/11 meeting and no further notice will issue.

ADJOURNMENT

The meeting was adjourned by Chairman Neuer at 10:56 pm

September 22, 2011

 10/28/11

Rose DeSena
Zoning Board Secretary