

REGULAR MEETING

**Lebanon Township Planning Board
Municipal Bldg 530 West Hill Road Glen Gardner, N.J.**

April 7, 2015

The 889th Regular Meeting of the Lebanon Township Planning Board was called to order at 7:04 p.m. by Chairman Gary MacQueen. Present were: Mr. Milkowski, Mr. Schmidt, Mr. Weiler, Mr. McKee, 2nd Alternate Skidmore, Attorney Gallina, Planner Bolan and Engineer Risse. **Excused:** Mr. Rich, Ms. Bleck, Mr. Gerlich and Mr. Piasecki.

Notice of this meeting was published in the "Annual Meeting Notice Schedule" adopted by this board on January 13, 2015, faxed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board in the Municipal Building on April 1, 2015

PRESENTATION OF MINUTES: February 3, 2015 Regular Meeting

Motion by Mr. McKee and seconded by Mr. Weiler to approve the minutes as presented. Unanimously approved.

FYI: Report/Engr. Risse re: Muller Toyota

Engineer Risse said this was a compliance check regarding the conditions in the resolution so they could start construction. Engineer Risse said they had a pre-construction meeting today which went very well.

ITEM FOR DISCUSSION:

a. 3 Green Team Resolutions (See attached info on Sustainable Jersey)

Committeeman Marc Laul was present to discuss the Green Team Resolutions. Committeeman Laul informed the board that the Township Committee in 2012 created the Green Team which had been created by Sustainable New Jersey. Mr. Laul stated the intent is to promote sustainability and green initiative with the community. Mr. Laul said in the board's packets they received the 3 resolutions and the background information on Sustainable Jersey which explains how this all works. One resolution is for green buildings, one for wildlife and third is for sustainable land. What they are looking to do is make rural communities more sustainable. Because of what we already have, this is just a formality of what we are going to do, also we have land use ordinances that far exceed most municipalities. Mr. Laul used Muller Toyota as a good example of doing things that are the most sustainable. Mr. Laul informed the board there are levels, the entry level, the bronze, silver and gold. Each level you achieve gets you more grant money. We are now working on the Bronze level which takes 140 points. Mr. Laul asked if the board had any questions on these resolutions. Mr. Schmidt asked if any of the money is used for land acquisition. Mr. Laul said no, it is to help improve the land we already have and it can also be used for trail maintenance. Chairman MacQueen asked for some history. Mr. Laul said more rural towns have done Rain Gardens. Mr. Schmidt asked if it could be used for construction. Mr. Laul said yes if they are willing to do the thought process to be sustainable. Mr. Schmidt asked what the gain would be. Chairman MacQueen said the Township is already involved with this. Mr. Laul said yes and the Township has a green team consisting of 20 people and their goal is to do more items that are sustainable. Chairman MacQueen asked for some additional history on this subject. Mr. Laul said the green team was passed by the Township Committee in April of 2012 and this to let you know what the green team wants to do and to keep everyone in the loop. These resolutions can be edited to what you want to do to suit your municipality. We have already modified the resolutions to what we want. The green team has received \$2,500.00 for completing the entry level. We could get \$10,000.00 once we complete the bronze level and explained to the board what the green would have to achieve to reach that goal. Mr. Laul said the green team would have to come up with a project idea and submit it to Sustainable New Jersey and let them know this is what we want to do. They will either agree or they can deny the request. Chairman MacQueen asked if there were any more questions from the board and the professionals. There were none. In conclusion Mr. Laul said this will now go back to the Township Committee and they will sign off on the resolutions. The board thanked Mr. Laul for the presentation.

b. Update from Attorney Gallina re: FCC (Collocations- lawsuit)

Attorney Gallina said it's not actually a lawsuit. The FCC proposed new rules regarding collocations on wireless telecommunications facilities. One of the concerns was the proposed new rules could potentially allow building on existing towers with little or no regard to local planning & zoning codes. As part of the public comment, Attorney Gallina submitted a letter on behalf of the Planning & Zoning Board, urging that local zoning continues to have a role in the collocation process. Attorney Gallina said under the Collocation Act, a local government may not deny a request to modify an existing tower or base station provided that the modification does not substantially change the dimensions of the tower or base station. Attorney Gallina went on to say the FCC said in their Report and Order that the statutory provisions requiring a state or local government to approve an eligible facility request implies the appropriate local entity may require an applicant to file a request for approval. The FCC also stated that only requests that meet the criteria for an eligible request are entitled to a mandatory approval. The FCC now defines the term "Substantial change in detail regarding various criteria as an increase in tower height, in width, equipment cabinets, excavation or deployment of equipment outside the current site and failure to comply with prior conditions. Lastly, one new deadline is that the 2014 Report and Order now requires that a state or local

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government shall approve the application for collocations within 60 days of submission if it meets the criteria for mandatory approval. The board thanked Attorney Gallina for the update.

INFORMALS:

Edward Grannis & Simone Soernsen
189 Musconetcong River Road
Washington, N.J. 07882

Block #60 Lot #4
Musconetcong River Road R1 ½

Discussion on building an 18' x 20' Farm Stand

Mr. Grannis said they are in the planning stage. Attorney Gallina asked if all the products they are planning to sell will be grown on their farm. Mr. Grannis said yes. Mr. Grannis said it is a 2 acre parcel, they plan on organic fruits, vegetables and berries. Mr. Grannis said they have been farming for about 3 years since they purchased the property. They are looking to sell their produce to local residents. Attorney Gallina noted that roadside stands are a Conditional Use under Section 400-11B(12). Attorney Gallina said the use is permitted with conditions. There are 6 conditions that have to be met. Attorney Gallina reviewed the 6 conditions for the applicant noting that if all conditions can be met, then the applicant will come before the Planning Board otherwise they will have to go to the Board of Adjustment for relief. Mr. Grannis asked about a foundation, if that would be listed in the ordinance. Chairman MacQueen asked if they were planning on a foundation. Mr. Grannis said it would be an enclosed structure. Attorney Gallina was asked to read all the conditions that are required. Mr. Schmidt asked if they own the back lot along the river. Mr. Grannis said yes. Mr. Grannis said Lot 4 & Lot 1 have been merged. Attorney Gallina referred to the setback requirements and the front yard setback is 50'. The setback is from the property line not the centerline of the road. There was board discussion over the location of the farm stand versus the ROW. Attorney Gallina said depending on where you want to locate the farm stand you may need a Bulk Variance for the front yard setback besides the Conditional Use Variance.

Planner Bolan asked if there is a survey that shows the lots being merged. Mr. Grannis said no he doesn't have a survey showing the merge. But the deeds were filed that merged these two lots. Mr. Grannis asked if the taxes would increase with having the farm stand. Ms. Glashoff said he would have to talk with the Tax Assessor Mary Mastro. Mr. Grannis asked what their next step would be. Attorney Gallina said they would need to see Ms. Glashoff for all the paperwork and she would go over everything with them. Ms. Soernsen said they are part of the Green Team and they have adopted a strip of Musconetcong River Road and they will be doing a clean-up this coming weekend. The applicants thanked the board for all their input.

NEW BUSINESS:

3268120 Nova Scotia Co.
800 Rene' Le' Vesque
Suite 1400
Montreal, Quebec, Canada

Block #9 Lot #8
Sanitorium Road RC

PUBLIC HEARING

Conditional Use for a Co-location on a Cell Tower

Attorney Greg Meese stated he is representing Nova Scotia Co. from Montreal, Quebec Canada doing business as Vigilant Global. Attorney Meese made a presentation to the board stating that this application is very similar to the one he presented to the board last June for MacKay Bros. Attorney Meese said that Vigilant is looking to place two antennas on the 180' tower at 127' and install 1 equipment cabinet. There are two laws that govern this, one is a Federal Law and the other a State law regarding collocations. The State Law doesn't require Site Plan approval for a collocation if the tower isn't going to be increased by 10' and if the compound isn't going to be expanded beyond 2500 square feet. The Federal Law states a board shall approve, not deny as long as it doesn't substantially increase the size of the tower or the equipment compound. The FCC last October issued an order that the tower isn't expanded by 10' or 20' for array of antennas. Attorney Meese said there is no expansion being proposed for this tower. These antennas are being proposed below the height of the tower. In reviewing the Township Conditional Use Ordinance which can be addressed even though the State and Federal Law pre-empts the local ordinance. Attorney Meese informed the board he had two witnesses that will give testimony this evening. At this time Attorney Gallina announced that all the notices are in order and the board can proceed with the public hearing. The following items were marked into evidence: **A1**-Affadavit of Proof of Service, **A2**-Certified List of Property Owners and Utilities, **A3**-Notice to property owners, **A4**-POD Slips, **A5**-Notice in Newspaper, **A6**-Taxes Paid.

Attorney Meese had Chad Schwartz, Civil Engr. sworn in to give testimony. Engineer Schwartz stated that the equipment compound is existing along with the tower of 180'. Engineer Schwartz said the applicant would like to place 2 microwave dish antennae at a height of 127' above ground level and install one 4' x 4' equipment cabinet within the existing compound. Engineer Schwartz noted there will be no new disturbance on the site. Also, there will be no substantial change to the tower or the equipment compound as defined by FCC regulations. Engineer

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Schwartz said a structural analysis was performed and the analysis concluded that there was sufficient capacity. Attorney Meese had Engineer Schwartz comment on the Federal Law and the State Law. Attorney Meese referred to the Resolution of the MacKay application from last June. Engineer Schwartz reviewed the Cell Tower Ordinance 400-15D regarding the conditional use standards for a collocation. Engineer Schwartz also testified that since they are locating on an existing tower on a large lot and it is a remote location alternative technology is not available. At the conclusion of Engineer Schwartz, Mr. Milkowski and Planner Bolan asked a few questions of the witness.

At this time, Kumar Subramani was sworn in to give testimony. Mr. Subramani is an RF Engineer and Architect. Engineer Subramani stated the proposed microwave antennas are located at 127' on the tower. The antennas are for transmitting point to point information between data centers. He informed the board that he does not know the nature of the information being transmitted. Engineer Subramani was asked about the MacKay application and informed the board that the antennas were installed at 90'. At the conclusion of Engineer Subramani's testimony, Mr. Weiler asked about the structural analysis that had been mentioned in prior testimony. Engineer Risso asked to clarify that this is not for cellular service. Attorney Meese said no it is just for private communications. Chairman MacQueen asked how many collocators are on the tower. Planner Bolan thought there were 8. It was determined that there are 8 collocators on the tower. Chairman MacQueen opened the hearing to the public for questions and comments. There were none. During the board's deliberations the board noted that there is no increase in height or width to the tower and the equipment compound will not be expanded or any new ground disturbance. It was also noted that the application satisfies the criteria for site plan exemption per NJSA40:55D-46.2 and the FCCC criteria for approval of a collocation since there is no substantial change to the tower.

At the conclusion of the board's discussion, motion by Mr. Schmidt and seconded by Mr. Weiler to grant Conditional Use Approval for two microwave dish antennas at a height of 127' and install a 4' x 4' equipment cabinet within the existing compound with the following conditions:

- a. The applicant will obtain all other necessary approvals from all other agencies having jurisdiction.
- b. The applicant will pay all necessary fees and escrows payable in connection with this application.

ROLL CALL:	Yes: Mr. Milkowski	Mr. Weiler	Absent: Mr. Rich	Mr. Piasecki
	Mr. Schmidt	Mr. McKee	Mr. Gerlich	Ms. Bleck
	Mr. MacQueen	Mr. Skidmore		

Attorney Gallina will prepare the Resolution to be on the next Agenda on May 7, 2015.

PRESENTATION OF BILLS & REPORT:

- | | |
|-----------------------|-------------------|
| a. John Gallina, Esq. | \$1,123.75 |
| b. Michael Bolan, PP | \$1,022.60 |
| c. Bayer/Risse Engrs. | \$1,593.75 |
| Total: | \$4,369.10 |

It was noted that there were additional bills from the addendum for Planner Bolan of **\$1,022.60** bringing the grand total to **\$5,391.70**. Motion by Mr. Weiler and seconded by Mr. Skidmore to approve the bills as amended. Unanimously approved.

CORRESPONDENCE:

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|-------------------------------------|--|
| a. Law of the Land Articles | e. Ltr. JCP&L re: tree cutting in near future |
| b. NJ Supreme Court Article on COAH | f. Letters from HCPB re: Muller Toyota |
| c. NJLM Articles | g. Ltr/Atty Gallina re: FCC Report & Order on Collocations |
| d. Washington Watch- Cell Tower | h. NJPO Newsletter |

Chairman MacQueen opened the meeting to the public. David Shope of 3 Penwell Road asked a few questions regarding the Green Team and the adoption of the Resolutions.

Being no further business to come before the board, nor comments from the public, motion by Mr. Milkowski and seconded by Mr. Skidmore to adjourn the meeting at 8:14 p.m. Unanimously approved.

CHAIRMAN GARY MACQUEEN

GAIL W. GLASHOFF, PLANNING BOARD CLERK