

## REGULAR MEETING

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

**February 22, 2012**

The Regular Meeting of the Lebanon Township Board of Adjustment was called to order at 7:30 p.m. by Chairman Bruce Terzuolo. Present were: Mr. Kozlowski, Mr. MacQueen, Mr. Perry, Mr. Abuchowski, Mr. Nagie, Mr. Eberle, 1<sup>st</sup> Alternate Maurizio, 2<sup>nd</sup> Alternate Machauer, Attorney Gallina, Planner Bolan and Engineer Risse.

Notice of this meeting was published in the "Annual Meeting Notice Schedule" adopted by this board on January 25, 2012, 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 February 15, 2012.

**SWEAR IN:** Al Nagie Class IV – Regular 4 Year Term

Mr. Nagie was sworn in by Attorney Gallina. Congratulation Mr. Nagie

**PRESENTATION OF MINUTES:** January 25, 2012 Regular Meeting

Motion by Mr. Maurizio and seconded by Mr. Kozlowski to approve the minutes with minor corrections. Unanimously approved.

### **UNFINISHED BUSINESS:**

New Cingular Wireless Block #24 Lot #37  
340 Mt. Kimble Ave Wilde Lane RC 7½  
Morristown, N.J. 07962

### **CONTINUATION OF A PUBLIC HEARING Conditional Use/Site (Amended Site Plan with Topography) Plan/Variances**

Chairman Terzuolo announced that all cell phones and electronic devices are to be turned off. Chairman Terzuolo said this is a continuation of a public hearing on an amended site plan with topography, conditional use/site plan and variances. Chairman Terzuolo informed the applicant that the wrong site address is listed on the site plan. Attorney Gallina also noted that on the addendum for the site topography the address needs to be corrected. Attorney Fairweather said they will fix both. Engineer Scherer referred to the site topography plan and asked that it be marked into evidence. **A14**-Addendum Site Topography dated November 28, 2011 prepared by Mallick and Scherer. Attorney Fairweather asked if the board had additional questions regarding the topography. Chairman Terzuolo asked if the board had questions. Mr. Eberle had a lot coverage question and asked how much impervious coverage is allowed in the Highlands. Engineer Scherer said he did not do any calculations but impervious coverage is based on lot size and believed it was 3% for an approval. The applicant is asking for a waiver since we are on existing impervious surface. Engineer Scherer said to create new impervious coverage without a very good reason, the applicant would be denied by the Highlands. Chairman Terzuolo asked about the height of the tower. Engineer Scherer stated the height is 180'. Attorney Fairweather said that AT&T has to submit all of its towers to the FAA bank, so they know where the towers will be. This has to be done with all towers which are under 200' which do not require a permit or a special permit from the FAA unless it is by an airport. Mr. Machauer asked in constructing the tower and all the amenities will the applicant be able to get equipment up the gravel road without disturbing trees during the construction faze. Engineer Scherer said yes. You may need to trim a little but the road is wide enough to get vehicles up there with cranes etc.

Planner Bolan referred to the schedule on Z4 and noted that a variance for a minimum setback of the tower from any property line was a 300' requirement and 252' is proposed. Engineer Scherer said it was incorrect because they assumed it wasn't a residential zone. Planner Bolan referred to the variances where the setback from an existing residence in a residential zone be 1000' and 500' is proposed and asked if he knew the number of residences that are within the 1000'. Engineer Scherer said their Planner will have a diagram with that information. Planner Bolan referred to the structural capability of the tower which had been testified to. Engineer Scherer said the tower isn't designed but it will be designed per all codes of the State of New Jersey which is the International Building Code. Planner Bolan said that they are showing two other locations on the tower, one at 158' and the other at 168' and could the tower support additional arrays beyond the two proposed with the possibility of four. Engineer Scherer said yes, if the board wanted four carriers then the tower can be designed for four. Planner Bolan said that would also relate to the equipment compound, the leased area is bigger then the fenced area.

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Engineer Scherer agreed there is plenty of room and still be within the impervious coverage area. Planner Bolan asked about the sign the applicant plans on using. Engineer Scherer said it is a placard type sign that is shown on the plan. Planner Bolan asked about a landscaping plan. Engineer Scherer said any landscaping wouldn't do well on a gravel area. Engineer Scherer said it is a very dense area with coverage. Planner Bolan asked about color since two different colors are being shown depending on whether it is a mono-pole or a mono-pine. Engineer Scherer said the mono-pine is brown with the leaves being green.

Mr. Machauer asked if this could be an attractive nuisance and create problems. Engineer Scherer said it can happen where there has been vandalism done to the facility. Mr. Machauer asked if the gate will be locked and would there be a motion detection light that will come on. Engineer Scherer said yes. Attorney Fairweather said if there is a breach on the shelter, a silent alarm goes off at the hub which is tied to an AT&T Central Monitor. Mr. Maurizio asked about the electrical service. Engineer Scherer said they are proposing the service to be underground. Mr. Maurizio asked if it will be tied into a phone line. Engineer Scherer said yes. Engineer Risse said since you are staying on the existing impervious coverage the mono-pole will be 180' or the mono-pine 185' and asked if that was correct. RF Engineer Joseph said he went out to the site with a GPS and topography map to try to evaluate the actual highest point on the property. It turned out that the area would need to have trees removed and it would fall under the Highlands conditions. They needed to have the mono-pole where we wouldn't need to disturb any trees.

Planner Bolan referred back to the topography map stating where the field to the east of the dwelling is relatively the same height, the topography doesn't have the field and the two driveways on it. Engineer Scherer said it is approximately the same elevation. Planner Bolan asked if the driveway going up to the dwelling would be considered impervious and beyond that it would not be considered impervious. Engineer Scherer said yes, there is an old gravel road in the area and it becomes just an existing clearing. At this time, Chairman Terzuolo asked if there were any questions by interested parties. Attorney John Schmidt said he is representing Amanda Mesa who is an adjoining property owner. Attorney Schmidt asked if the area being used for the cell tower was 820 square feet. Engineer Scherer said yes 30' x 28'. Attorney Schmidt asked how far the tower would be from the property line. Engineer Scherer said 252'. Attorney Schmidt asked if there was any consideration as to how close to the neighbor's houses were when picking the site for the tower. Engineer Scherer said no. Attorney Schmidt asked to have a letter from Engineer Scherer marked into evidence. **O-1**-Letter from Engineer Scherer dated November 28, 2011. Attorney Schmidt asked if the reason the area of impervious coverage was picked was to be able to get Highlands's approval. Also, by having the tower on existing impervious coverage you would be able to get an exemption. Engineer Scherer said correct. Attorney Schmidt asked how close the tower would be to the existing house on the property. Engineer Scherer said 150' to 200'.

Attorney Schmidt asked once the facility is built and the branches are up, you would not notice the antennas especially from the distance of the roadway approximately 1000' and would it be visible from neighboring houses. Attorney Fairweather objected to the question. Attorney Schmidt read from the transcript of the first hearing which stated "when the facility is built and the branches are up you would barely notice the antennas especially from the distance from the roadway approximately 1000 ft." At the conclusion of Attorney Schmidt's questions, a redirect examination was done by Attorney Fairweather of Engineer Scherer. Chairman Terzuolo asked if there were any other questions by interested parties. The following person Richard Kornicke had questions of Engineer Scherer.

Attorney Fairweather said she had one more witness. Planner James Dowling was sworn in at this time. Attorney Fairweather had the following marked into evidence: **A-15** photo location aerial, **A-16** aerial showing the distance to residences. Attorney Fairweather said they have a series of 4 photo simulation boards which was marked at **A-17 (1-4)**. Planner Dowling made a presentation to the board, stating the property consists of 33 acres in the RC zone off of Route 513 on Wilde Lane. Planner Dowling went through the conditional use standards which are permitted in the RC zone. The structure is approximately 5' at the base and about 1½' at the top of the pole. There will be 12 antennas which are 12" wide and they're about 4½' in height. The equipment compound at the bottom with the shelter which is a structure about 10'-11 tall and about 12' by 24'. All the equipment goes in the shelter with a door on one end. There will be a board-on-board fence surrounding the equipment compound. The compound is 252' to the closest property line and 575 to the rear property line and 341' to a front property line.

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Planner Dowling reviewed for the board the variances that are needed. Planner Dowling said since they don't have an existing structure, it is a conditionally permitted use in all districts with meeting a series of specific conditions. Those conditions are to show need which the applicant did through the RF Engineers testimony in terms of the gap in service. The ordinance has a priority schedule which lists the priorities. Priority #11 would be a new tower in a residential transportation zone. A D1 Variance is needed since they will be a second principal use on the property. The applicant also needs bulk variances which they are in need of a C variance for having residences within 1000'. Planner Dowling referred to the D1 versus the D6. There is case law in New Jersey concerning wireless communications, but you still need to show positive and negative criteria for a D variance. The positive criteria means we need to show special reasons exist and to show that the general welfare has been met. Planner Dowling said this site is particularly suited and there are a bunch of reasons. One being the gap in service, also this lot is a large lot consisting of approximately 32 acres; it has a heavy tree line and the area where the tower will be located is already disturbed. Regarding the negative criteria, with this site they will not create a substantial detriment. There is no glare, vibration, smoke, odor which is not like a traditional commercial use, there is minimal noise associated with the use. There is no lighting on the tower but there will be a motion sensor on a timer so someone could come to the site at night.

Planner Dowling showed the board three photographs. The first one is an existing photo showing the balloon, the second one is a photograph of the simulation showing the tower and the third is a simulation showing the tree pole. Exhibit **A17(2)** which is the existing view of the site looking northeast from Meiers Lane. The third photo simulation is a view of the site from Route 513 near Buffalo Hollow Road. **A17(4)** is a view of the site looking west from the west end of Doefield Road. After reviewing all the photos for the board, Planner Dowling referred to the negative criteria and questioned whether we want to impair the zone plan or the zone elements by granting the variance by this "D" variance. This use is conditionally permitted and the applicant feels they meet the conditions. Planner Dowling said he believes the variance would advance the purposes of the wireless ordinance which is to protect the community from adverse impacts of towers and by locating on this site it certainly will do just that.

Planner Dowling said they can paint the monopole any color the board wishes. It is usually galvanized steel, but they can be painted any color and the antennas can be painted sky blue with the gray to fade in. Planner Dowling said the benefits outweigh the detriments. Regarding the bulk variances referring to the 1000' from residences. **A16** shows the distances to residential homes. With the 1000' standard there are 15 residences within the 1000' with the closest one being 560' from the tower. This would be a C2 variance and by granting a C2 variance the purpose of the MLUL would be advanced. The FCC license shows that we serve the general welfare. They will be consistent with all national, international building codes which advances the public health and safety aspect. Planner Dowling said the C Variance can be granted without substantial detriment with the nearest residence being 560' away and there is exceptionally heavy tree coverage. Also, the benefits of the deviation substantially outweigh the detriments because it improves access to telecommunications, emergency use and multi-carrier poles. At the conclusion of Planner Dowling's testimony, Chairman Terzuolo announced the board will take a recess at this time at 8:55 p.m.

When the board reconvened at 9:10 p.m. Chairman Terzuolo asked if the board had questions of Planner Dowling. Mr. Eberle asked if the applicant had looked at other locations on the property and referred to the other road that went up to the field. Planner Dowling asked if he was referring to the Christmas trees. Mr. Eberle said yes. Mr. Eberle asked if it was going to be a problem getting trucks and equipment up the lane and having emergency access. Planner Dowling said he has been involved in numerous sites that have comparable gravel roadways and there hasn't been a problem. Mr. Abuchowski asked if there was about 450' of woods along with under growth. Planner Dowling said yes. Mr. Abuchowski asked if the base of the pole and the structure would it not be visible from the house and asked what the height of the trees were within the 450' Planner Dowling said from testimony at the last meeting the height of the trees was 130' -150'. Mr. Abuchowski noted they would have to physically look through the trees on an upward angle in order to see anything. Planner Dowling said yes.

Mr. MacQueen said in the ordinance one of the reasons to allow a tower in a residential zone was if it were in a residential transportation zone. Planner Dowling said yes that would be one of the preferred locations. Planner Dowling said it is a combination of a residential zone and a transportation corridor since it is on Route 513. Mr. MacQueen asked how many houses are affected at the other site on Route 513. Planner Dowling said between 30-35 residences within the 1000'. Mr. MacQueen referred to a comment made earlier about fire apparatus being able to

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get up the lane and noted that the applicant would have a crane going up the lane to set the tower. Would this be like a tandem axle, truck crane? Engineer Scherer said yes. Mr. Kozlowski noted he went up to the site and it seemed like a logically good location for a tower. Mr. Kozlowski asked if there would be a chance of getting broadband wireless services through the home and does this come from these towers. RF Engineer Joseph said they are designing the tower to accommodate their current technology and future 4G LT data technology. Mr. Machauer asked what has been the biggest objection to cell towers. Planner Dowling said generally health concerns and once an applicant indicates that they are within the guidelines the Federal government has established, the boards are pre-empted from consideration for health effects. Mr. MacQueen asked how large the shelter would be if they have 5 servers on the tower. Planner Dowling said a shelter is usually about 10'x20' depending on the carrier. Engineer Risse asked if there was an area on the property for the tower in order to eliminate the variances for the 1000'. Planner Dowling did not think the variances could be eliminated but could be reduced. At the conclusion of the board's questions, Chairman Terzuolo opened the hearing to the public. Attorney John Schmidt said he has questions of Planner Dowling. Chairman Terzuolo informed Attorney Schmidt that he had 16 minutes for his questions because the board has housekeeping items to take care of and the board adjourns at 10:00 p.m.

Attorney Schmidt had many questions of the witness. At the conclusion of the questions, the following people also had questions of the witness: Ms. Fulloon and Mr. Kornicke. At the conclusion of the public's questions of Planner Dowling, Chairman Terzuolo asked Ms. Glashoff for another date to continue with the public hearing. Ms. Glashoff offered March 14, 2012 at 7:30 p.m. Attorney Gallina stated that this application will be the only thing on the agenda for that evening. Attorney Fairweather asked Attorney Schmidt what experts he plans to bring to the next meeting. Attorney Schmidt said at the present time he is planning on bringing an RF Engineer, possibly a Planner and Appraiser.

Attorney Gallina announced to the public this matter will be continued at the next meeting of the board on March 14, 2012 at 7:30 p.m. No further notice will be given.

**PRESENTATION OF BILLS:**

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| a. John Gallina, Esq. | \$ 593.75 – Attend Bd Meeting, phone conf.<br>Sec regarding notice |
|                       | \$ 468.75 - Escrow ( <b>New Cingular Wireless</b> )                |
|                       | \$ 93.75 – Escrow ( <b>Davara Industrial Center</b> )              |
| b. Michael Bolan, PP  | \$ 331.00 – Attend Bd Meeting 1/25/2012                            |
|                       | \$ 213.00 – Escrow ( <b>New Cingular Wireless</b> )                |
| c. Bayer/Risse Engrs. | \$ 437.50 – Attend Bd Meeting 1/25/2012                            |
|                       | \$ 625.00 – Escrow ( <b>New Cingular Wireless</b> )                |
| d. Court Stenographer | \$ 200.00 – Attend Bd Meeting 2/22/2012                            |
| <b>Total:</b>         | <b>\$2,962.75</b>  |

Ms. Glashoff referred to the addendum to the agenda with additional bills from Planner Bolan in the amount of **\$369.20** which brings the grand total to **\$3,331.95**. Motion by Mr. Kozlowski and seconded by Mr. Eberle to approve the bills as amended. Unanimously approved.

**CORRESPONDENCE:**

- a. Memo from Mayor Wunder dated January 30, 2012
- b. Law of the Land
- c. Law Bulletin – February 2012

Being no further business to come before the board, nor comments from the public, motion by Mr. Nagie and seconded by Mr. Abuchowski to adjourn the meeting at 9:50 p.m. Unanimously approved.

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**CHAIRMAN BRUCE TERZUOLO**

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**GAIL W. GLASHOFF, BOARD SECRETARY**