

**STILLWATER TOWNSHIP  
ZONING BOARD OF ADJUSTMENT  
November 28, 2011  
Stillwater School**

**MEMBERS PRESENT:** Mr. Powell, Mr. Stachura, Mr. Sarni, Mr. Saal, Mr. Hammond, Mrs. Feenstra, Mr. Lockwood

**MEMBERS ABSENT:** Mr. Daingerfield; Mr. Lippencott

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, November 28, 2011, at 7:30 p.m. at the Stillwater School, 904 Stillwater Road, Stillwater, New Jersey. The meeting was called to order by Mr. Lockwood in accordance with the Open Public Meetings Act.

The flag was saluted and roll call taken.

**MINUTES**

Mrs. Feenstra made a **motion** to approve the minutes of October 24, 2011, seconded by Mr. Powell.

**Roll Call Vote:** Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, abstain, Mr. Sarni, abstain, Mrs. Feenstra, yes, Mr. Stachura, yes, Mr. Lockwood, yes

**HEARING**

**Nextel of New York, Inc. & JCP&L**, Block 1703, Lot 21, Cal. No. 569

Mr. Sarni cited a conflict and stepped down from the hearing. Certification was submitted to the Board by Mr. Powell for the October 24, 2011 meeting.

**Greg Meese, Esq.** was present on behalf of the applicant.

**Robert Bertona, Radio Frequency Engineer**, was still under oath. Mr. Bertona conducted a crane test since the last hearing to address the issues raised by the Board and the objectors. Mr. Bertona referred to the **Radio Frequency Report/Overall Comprehensive Plan dated 11/18/11** which was marked into evidence as **A-23** and he reviewed the RF signal strength, drive test data, noting the test was conducted at multiple heights – 100', 125', and 150'. He reviewed the path loss equation, orientation of the existing antennas, color coded original plots and technical data; all information was included in the supplemental report. The crane test was conducted on November 2, 2011. He described the crane test which was transposed onto models, and indicated a lower height would result in a smaller signal. Mr. Bertona stated the results of the testing confirmed the prior data provided to the Board. He reviewed and described the following maps (included in the report): Composite Coverage for 150'; Composite Coverage for 125'; Composite Coverage for 100'. He explained that if the proposed tower was less than 150' there would be gaps in coverage on main roadways such as Route 610 and Route 622 and at 100' there was no coverage along those roads. Mr. Bertona further testified that the testimony previously supplied was accurate and the maps provided support the height requirement. In response to Board questioning, Mr. Bertona explained that the acronym dBm is a level in reference to the measurement of decibels referring to a milliwatt and RSSI is the Relative Received Signal Strength. Mr. Bertona described dBm with respect to signal strength from strong to dead. He stated the standard is 85 by Motorola based on IDEN Technology and not all carriers use the same standard. Mr. Bertona reviewed pages 7 through 12 (maps included in the Radio Frequency Report/Overall Comprehensive Plan A-23) describing the driven route and collected data for that route; and he reviewed the coverage area for heights of 100', 125' and 150'. Mr. Bertona reviewed the composite map of existing site coverage with the proposed site as opposed to a map showing existing coverage without the site. Mr. Bertona described the western portion of the township where there is a gap in service and pointed out Route 610, Stillwater Road; and the area of Route 94, which is not shown on the map. In response to further Board questioning, Mr. Bertona testified it would not be possible with current technology to improve gaps using existing Nextel sites, and adjusting or modifying a site could result in loss of coverage elsewhere. He noted the sites operate at an extremely low power so as not to interfere with themselves. He agreed there would be seasonal differences in signal strength based on full trees as opposed to those without leaves. He stated there are no plans at this time to erect another tower to address the gap in coverage. Mr. Bertona further described the crane test and the results, explaining the frequency range for the tower which is between 806-821 megahertz (MHz) to receive and 851-866 MHz to transmit. He presented a graph/spreadsheet of technical details regarding the surrounding Nextel antenna facilities marked into evidence as **A-24**.

**William Masters, Professional Planner**, was still under oath. Mr. Masters presented a New Jersey Department of Environmental Protection (NJDEP) **NJDEP IMAP for Natural Heritage Priority Sites (NHPS), dated 11/28/11** and marked as **A-25**. He indicated it was the same map included in the exhibit presented by Mr. Steck. He described the map and the priority site locations. He stated natural heritage priority sites are essentially a designation of natural habitats for potential rare and endangered species as determined by the NJDEP. Mr. Meese stated the purpose of the NHPS program is to identify the most critically important natural areas in the state in order to provide that data to planners, developers, and conservation agencies for use in resource management, environmental impact assessment, and public and private land protection efforts. Mr. Masters agreed. Mr. Masters noted the south side of Swartswood is included in the NHPS and the north side, including the subject site, is not. Mr. Masters discussed Mr. Steck's opinion that one should abandon conditionally permitted properties when deviation from a conditional use standard occurs to seek residential sites where a tower is neither a permitted or conditionally permitted use. Mr. Masters disagreed with Mr. Steck's opinion and he referred to case law, Coventry Square vs. Westwood. The case determined the governing body of the community designated the zone for a particular use subject to certain conditions, and also set forth the analysis that it is not the burden of

the applicant to determine whether or not a site is well suited. He discussed the concerns expressed on tower failure and testified the percentage of towers that have fallen is very small and was due to maintenance and construction installation issues.

Mr. Masters described the following eight colored photographs depicting cell towers marked into evidence as **A-26**:

Photograph #1: Firehouse and church in Ironia

Photograph #2: Same area at a different view from a residential property

Photograph #3: Firehouse in Hibernia, Rockaway Township, 110' in height and 18' from the firehouse

Photograph #4: Green Village Firehouse in Chatham, 100' flagless tower, 58' from the firehouse, noting the second story of the firehouse is used for social events.

Photograph #5: Firehouse in Wanaque Boro, 135' in height, 110' from the firehouse

Photograph #6: Municipal Building in Wanaque Boro, 110' in height, 30' from the nearest residence

Photograph #7: Garden State Parkway, grass median, Washington Township, monopole between 140' 150' in height at milepost 166.5

Photograph #8: Ramapo High School, monopole cluster flushmount 130' in height, 15' from the school building.

He stated these facilities exist with other primary uses on the same property in close proximity.

Mr. Masters presented six colored photographs taken from two vantage points (West Shore Drive/Lotus Terrace near the Boathouse Restaurant and from the boat launch at Cove Lane).

Mr. Masters described the following six colored photographs depicting views of the crane and simulated flag pole tower, marked into evidence as **A-27**:

Photograph #1: View from West Shore Drive/Lotus Terrace, 6/10 mile from the site depicting the crane

Photograph #2: View from same location, flag pole simulation

Photograph #3: View from same location, flagless pole simulation

Photograph #4: View from the boat launch/Cove Lane depicting crane, noting it is lower than the ridge line

Photograph #5: View from the same location, flag pole simulation

Photograph #6: View from the same location, flagless pole simulation

In response to questioning by Mr. Meese, Mr. Masters testified the tower would be less visible at the subject site than if it was closer to the lake at the municipal park site or other Neighborhood Commercial (NC) properties located along Route 622. Mr. Masters further discussed the suitability of the site and stated he believed the site continues to be a particularly well suited site notwithstanding the deviations from the conditional use standards of setback and separation. He stated the firehouse is a quasi-public land use, proprietary to the township. Mr. Masters referred to the prior testimony of Mr. Steck regarding the percentage usage of Nextel vs. JCP&L, stating Sprint/Nextel and JCP&L are a joint venture under First Energy and one of the goals of the tower is to improve communications between the operating systems center and linemen within six operating companies of FirstEnergy critical during inclement weather and other emergencies. The application assumes an inherently beneficial use.

In response to Board questioning, Mr. Masters testified none of the poles depicted in A-26 were 150 feet in height, and he was not aware of any in this area of that height, it is strictly an RF issue. Mr. Masters clarified that the Coventry Square case involved a bus company in Westwood and was a landmark case for boards to analyze D3 type variances, establishing the criteria for D3 analysis. He noted it is not the burden of the applicant to show the site is suited, but that it continues to be suited. With respect to tower failures, Mr. Masters indicated he was only aware of three such cases nationally, all due to either improper maintenance or construction installation. Mr. Masters indicated he has no familiar experience with an application that sought a residential site instead of a permitted conditional use zone; and when the use is provided for in certain zones, he is not aware of abandoning those properties to seek residential properties. He stated there are three zones where wireless communications are permitted in Stillwater and many touch the shoreline of Swartswood Lake or are closer to the lake than the subject site. With reference to A-26, he stated most of the sites are similar to the subject site as they are located next to a firehouse, one next to a church, the poles are closer to the structure than the fall zone and he noted firehouses across the state have these type of uses and he was involved with two of the properties depicted in Green Village and Ironia. With reference to A-27, he agreed he could locate both locations the photographs were taken from on a map, West Shore Drive/Lotus Terrace and the boat ramp at Cove Lane. He testified the distance depicted from the West Shore area was 3,000 feet and from Cove Lane was 8,000 feet. In response to further board questioning, he stated one of the original photo simulations was taken from the Little Swartswood Lake area.

**At 8:57 p.m. this portion of the meeting was opened for public questioning of Mr. Bertona and Mr. Masters. Mr. Lockwood reminded the public of the procedure to be followed during the public session.**

**Ken Bradley, 10 East Side Drive, Little Swartswood** was sworn in and referred to exhibit A-27 and questioned the population per square mile in areas of the towers, the zoning requirements, number of variances needed, and if Mr. Masters felt it was more important to remain in the NC

zone, on an unsuited site, unsafe zone, requiring 11 variances, than it is to seek a larger property. Mr. Masters felt the site was suited and safe. Mr. Bradley referred to the four existing tower sites in the area, noting Newton is on a water tower that is 50 years old; Fredon is on a 32 acre residential/agricultural site; Stillwater is on a 55 acre residential site; and Hampton is on 119 acre residential site. He felt there would be many large tracts of land that would be suitable in the area. Mr. Masters did not feel it was necessary to seek a residential property requiring D1 variance relief when there is a fire department location that is a quasi-public type use. Mr. Bradley questioned Mr. Masters about a discrepancy in his testimony regarding the distance from the subject site to Swartwood Lake. Mr. Masters would have to review his testimony.

**Joel Pinsker, 930 Emmons Lane, Stillwater** was sworn in and asked Mr. Bertona if the models accurately predicted the drive test results, could the same technology be used to predict other areas in the township using a smaller tower. Mr. Meese objected as the applicant should not be required to seek other sites and he referred to the legal memorandum submitted during the summer on the subject. Mr. Pinsker felt an alternate location should be sought using the technology as it would be cheaper for Nextel and fewer variances would be required. He felt the application should be denied by the Board. Mr. Lockwood asked if the technology could be used to identify sites and Mr. Bertona replied yes.

**Linda Grau, 263 Swartwood Road, Hampton** was sworn in and in response to several questions by Ms. Grau regarding the role and responsibilities of the Zoning Board, Mr. Lockwood and Mr. Morgenstern provided a brief overview of the process based on Stillwater ordinances, noting decisions are made based on the Municipal Land Use Law, case law, and the township ordinances. Mr. Meese noted this portion of the meeting was for questioning of the experts. Mr. Lockwood reminded the public of the legal proceeding and to conduct themselves accordingly. Ms. Grau stepped down to allow further public questioning of the expert witnesses.

**Randall Sprague, 982 Route 521, Stillwater** was sworn in and questioned the height necessary for co-locators. Mr. Bertona could not speak for co-locators as they operate at a different frequency and transmit at a different power level with a different link budget than Nextel. He stated the 150' height is needed in this particular case to fill a gap in coverage.

**Jim Stark, 6 East Side Drive, Little Swartwood Lake** was sworn in and asked if any photos were taken of the crane test from the East Side Drive area. Mr. Masters stated they were not; there were photographs of the balloon test last year from the backside of Little Swartwood Lake and he could provide them if necessary as they were not presented as part of the application.

**Sally Cable, 98 Mary Jones Road, Hampton** was sworn in asking several questions. In response Mr. Meese stated Nextel would be responsible financially for the removal of the tower if no longer necessary, it could be a condition of approval and specific information would be provided. He stated the tower would be 150' in height with co-locators lower than 150'. All co-locators would have their own equipment and shelters depending on their needs. The lead tower company is normally responsible for maintenance of any co-locators or it could be contracted out. Ms. Cable referred to the towers that collapsed due to fire and wind. Mr. Colasurdo, still under oath, stated the tower that caught fire was due to a welder conducting maintenance on a very cold day and turning his torch up as high as it could go to make the type of weld needed. Mr. Meese noted the township could require a bond to be posted for the tower removal.

**Ken Bradley, 10 East Side Drive, Little Swartwood Lake** was sworn in asking several questions. He referred to the 150' composite map regarding coverage using an overlay to cover other municipalities and showing white areas as gaps in coverage. In response, Mr. Bertona indicated the models were almost 100 percent accurate in their prediction. He stated the white areas depicted on the map presented by Mr. Bradley indicate a small, unreliable signal and are areas of low population. The western portion which is not covered in Stillwater is not depicted on the map and there are no plans to cover the white areas based on the low population. Mr. Bradley stated according to the map more than half of Stillwater is not going to have reliable coverage. Mr. Bradley submitted a Sprint newsletter marked as **O-14, entitled "Sprint to phase out iDEN in 2013,"** which is the proposed network for the new tower; and **part 2 of O-14 is a FAQ, two page sheet, re: Sprint Direct Connect.**

**Rose Sanford, 905 Mt. Benevolence Road, Stillwater** was sworn in and asked why the tower is being placed in such a low lying area rather than at a higher elevation using a smaller tower. Mr. Meese explained municipal zoning is centered in this location and higher areas are non-permitted zones. The location was chosen based on the ordinance. Mr. Morgenstern stated the zoning ordinance designates general location and zone and is adopted by the Township Committee.

**Mr. Bertona** responded to the article submitted by Mr. Bradley, marked as O-14 on phasing out the iDEN network, stating there is currently no CDMA service in Stillwater and once iDEN is phased out, the plans are to transmit push to talk over CDMA called QChat and the tower would be converted from iDEN to CDMA. There would still be a need for the tower site. He stated CDMA is already on the four existing sites in the area. Mr. Bertona agreed cell sites would be reduced starting in 2013, as the existing sites would be used in conjunction with the Sprint sites, but they would not know exactly which ones for a very long time.

**Cheire Lozaw, 917 Swartswood Road, Swartswood** was sworn in and asked if there was a buffer zone requirement from a Natural Priority Heritage Site. Mr. Masters indicated the proposed tower site is not within a Natural Priority Heritage Site and there is no buffer required. The demarcation boundary is Swartswood Road. Ms. Lozaw referred to the microburst tornadoes in the area and asked the effect on the tower. Mr. Colasurdo stated the monopoles are based on a windspeed of 90 miles per hour, the Building Code regulation for the area. He disagreed that the tower would have fallen during a microburst.

**Brian Adams, 10 Sunset Lane, Fredon** was sworn in and asked how many of the towers depicted in the photographs presented were adjacent to historic state parks. Mr. Master indicated none that he was aware of.

**Denise Current, 955 Fairview Lake Road, Stillwater** was sworn in stating the area not being serviced is a remote area; however her business serves children and they as well as the elderly persons in those areas need the service. She asked why service is not provided in remote areas. Mr. Bertona testified Nextel considers Stillwater as remote and that is the specific reason they are here to construct a tower.

**Mike Sheehy, 913 Swartswood Road, Stillwater** was sworn in and asked if Verizon submits an application to construct a tower on the same property would the Board have to approve it. Mr. Morgenstern explained the ordinance requires co-location and it is very rare to have two towers on one site. It would not be an automatic approval as it would depend on proofs, need, height, etc.

**Ken Bradley, 10 East Side Drive, Little Swartswood** was sworn in and referred to the 1996 Telecommunications Act prohibiting Zoning Boards from discriminating against one carrier or another. He stated approving so many variances for this site would set precedent and it would be very hard to deny another carrier. Mr. Morgenstern stated each case is different and stands on its own merits; with co-location being strongly urged.

**Samantha Stefanik, 31 West Side Lake Lane, Hampton** was sworn in and asked if other carriers would have to go higher than the proposed height. Mr. Bertona stated he did not know what another carrier would require. Mr. Meese stated they could go below the 150' or the Board could require the tower to be built with a foundation to allow future tower extension.

**At this point, this portion was closed to the public at 9:56 p.m.**

Mr. Stachura made a **motion** to carry the application to Tuesday, December 20, 2011 at the Stillwater School, 904 Stillwater Road at 7:30 p.m., no further notice being required, seconded by Mrs. Feenstra.

**Roll Call Vote:** Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, yes, Mr. Stachura, yes, Mrs. Feenstra, yes, Mr. Lockwood, yes  
Mr. Sarni rejoined the Board at this time.

#### **OTHER BUSINESS**

**Scalley, Block 2401, Lot 13.02, Cal. No. 519**, requesting an extension of approval

Mr. Stachura made a **motion** to grant a nine-month extension on the variance approval for Scalley, Block 2401, Lot 13.02, Cal. No. 519, said extension expiring on August 31, 2012, seconded by Mr. Sarni.

**Roll Call Vote:** Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mrs. Feenstra, yes, Mr. Lockwood, yes

#### **BILLS**

Mr. Powell made a **motion** to approve the following bills, seconded by Mr. Stachura:

|                           |                         |          |
|---------------------------|-------------------------|----------|
| <b>Dolan &amp; Dolan:</b> | Escrow – Nextel         | \$174.00 |
|                           | Escrow – Nextel         | \$199.00 |
|                           | Escrow – Tanis          | \$ 75.00 |
|                           | General – November 2011 | \$129.50 |
| <b>New Jersey Herald:</b> | October Meeting Notice  | \$ 13.80 |

**Roll Call Vote:** Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, abstain, Mrs. Feenstra, yes, Mr. Stachura, yes, Mr. Lockwood, yes

#### **Correspondence:**

NJPO Planner: September 2011  
2012 Appointments

**Liaison Report:** Committeeman Gross reported that a temporary CFO has been appointed and the status of the finance office is being addressed.

There being no further business, Mr. Saal made a **motion** to adjourn the meeting at 10:01 p.m., seconded by Mr. Stachura. In a voice vote, all were in favor.

Respectfully submitted,

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Kathy Wunder, Board Secretary

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Laurence Lockwood, Chairperson