

**STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
September 26, 2011
Stillwater School**

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

MEMBERS ABSENT: Mr. Daingerfield; Mr. Powell

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, September 26, 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.

Catherine Feenstra was appointed as Alternate #2 by the Township Committee on 9/6/11 and sworn in by the Municipal Clerk.

MINUTES

Mr. Hammond made a **motion** to approve the minutes of August 22, 2011, changing all references to the acronym SHIPO to SHPO, seconded by Mr. Stachura.

Roll Call Vote: Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, abstain, Mr. Lippencott, yes, 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 Mrs. Feenstra.

David Owen, Esq. was present on behalf of five individuals opposing the application: Ken and Kathleen Bradley, 10 East Shore Drive; Robert Shankman, 8 East Shore Drive; and Yves and Linda Helaudais, 197 Newton Swartswood Road.

Greg Meese, Esq. was present on behalf of the applicant. He explained his RF expert, Mr. Bertona, was unable to complete a supplemental report due to other issues that arose as a result of the recent storms and would not be present at the meeting tonight. Mr. Bertona would attend the next meeting, providing information requested by Mr. Menkes.

Charles Gross, Stillwater Township Committeeman, read the following memorandum into the record:

Date: September 23, 2011

To: Stillwater Township Zoning Board of Adjustment

From: Stillwater Township Committee

Re: Calendar Number 569, JCP&L and Nextel of NY

On Thursday, September 22, 2011, an article appeared in the New Jersey Herald with a picture depicting flooding in the area of the proposed tower. Due to the recent storms and the flooding of residences, businesses, fire houses and the church, the Stillwater Township Committee voted with unanimous approval at their September 6th meeting to hire a contractor to rectify the problems causing the Neldon Brook flooding. Work commenced on Thursday, September 22, 2011 to address the problem. Therefore, it is our belief that this concern will be addressed. Stillwater Township Committee

A copy of the memorandum was marked into evidence as **ZBA-1** and provided to both the applicant and objector.

Frank Colasurdo, Architect was still under oath. Mr. Colasurdo reviewed the revised plan marked as **A-22** dated 9/6/11, Overall Site Plan, Page Z-3. He testified that the compound has been changed to a 43' x 27.3' rectangle shaped structure and the flagpole design has been incorporated into the revised plans. The tower is 152'2" including the flag pole ball and is 73' from the eastern property line. In response to Board questioning, Mr. Colasurdo testified the tower would be 59' from the fire department; 164' from the closest structure; 109'7" from Block 1703, Lot 6; 73' from the nearest non-residential property; the maximum area of the equipment

shed is 240 sq. ft.; and the equipment shelter is 11'3" in height. Mr. Colasurdo agreed to see if reducing the size of the equipment shed would be an option. The light pattern was reviewed by Mr. Colasurdo indicating there is a motion sensor light located above the shed door; shielded, and directed downward. There is a 250 watt upright with a canister to illuminate the flag. The flag could be lowered each day if not lit; or a flagless pole could be installed. The flag is provided and maintained by the applicant. Board concern was expressed with maintenance of the flagpole, flag and compound and whether or not a manual would be provided. Mr. Meese stated a site inspection is conducted at least once a month and maintenance of the flag and equipment could be addressed in the resolution. Mr. Colasurdo addressed the flooding to the site, stating it would have no effect on the ability to support the structure, the foundation will survive a hurricane and the shelter floor is located 18" above grade. FEMA maps indicate annual flooding every 500 years of a foot or less. In response to Board questioning, Mr. Meese indicated he did not have statistics on the compromise of public safety due to the lack of wireless communication and he referred to the Wireless Communications and Public Safety Act 10/26/99, P.L. Appeal 106-81, Section 2. Mr. Meese indicated there are no plans at this time to request an additional cell tower to provide coverage to the western portion of the Township. He stated the proposed tower will be able to accommodate one or two additional providers, and carriers are notified once approval is granted. Any additional carriers may require a height expansion. The tower will also be used to improve JCP&L coverage and push to talk service. Mr. Colasurdo referred to pages Z-4 and Z-5 of the site plan, indicating there will be room for at least two co-locators as designed. The illumination of the flag and structural integrity of the compound during flooding was further discussed and Mr. Rodman would review the township lighting ordinance requirements and flood study for the next meeting.

At this point, Mr. Lockwood reviewed the public procedure to be followed during the meeting.

In response to questioning by Mr. Owen, Mr. Colasurdo testified the following: The seating capacity of the firehouse is 92 confirmed by the fire department; the initial plan had the tower 75'5" from the fire department and it is now 59'; and the required setback to the firehouse is approximately 180'. The north and west property line setbacks and residential property separations have decreased. The first 100' of the tower pole will be steel and the next 50' will have chambers for antennas, covered by a white fiberglass composite. The flag will be 12' x 18' operated on a pulley system, and will remain up at night illuminated by a 250 watt light; and there will be minimal noise as it will be subdued by the trees. During a power outage a series of batteries will keep power running for 4-8 hours and a generator will be brought in if necessary.

Hank Menkes, Menkes Associates, was present on behalf of the objectors and still under oath **In response to questioning by Mr. Meese,** Mr. Menkes stated he has testified before two other boards, both times on behalf of the objectors. He has never testified or been employed by an FCC carrier but did work as an equipment supplier to AT&T, Verizon, and Sprint, and conducted drive and crane tests for Verizon. He is vaguely familiar with Nextel technology but has not worked with it. He stated that at the last meeting he provided a generic description of a reasonably complete RF engineering process based on 20 years of experience in the wireless industry. He has experience with AT&T, Verizon, and T-Mobile with local Zoning Boards, has reviewed applications with respect to radiofrequency (RF), has provided an opinion on behalf of objectors and has been involved with two T Mobile cases in Bridgewater. Mr. Menkes testified on antenna spacing and installation depending on frequency, elevation and topography. With reference to Table A/Table 1 of Mr. Bertona's Radio Frequency Report and Comprehensive Plan, Mr. Menkes stated he reviewed the coverage based on the dots on the map provided which included visual topographic representation, but no lines of constant altitude or additional information. Mr. Menkes stated he did not review topography maps or USGS map to see if there would be any interference for a radio signal. He stated he could not tell from the data provided by the applicant what the topography or elevation was. He agreed if he referred to a topo map he could, based on distance, frequency and height of antenna, determine if topography would interfere. He stated that

based on the distances depicted on the map there may in fact be a gap in coverage however he could not make that determination with the data provided. He noted a drive test was not included and he does not know if one was done and he agreed it would be reasonable to use computer modeling to determine coverage. He did not conduct a drive test of Nextel's coverage in and around Stillwater, or computer modeling and does not have the equipment to do so; and did not inspect the subject site or surrounding neighborhood. He did not research other existing tall structures to locate on and he did review the zoning ordinance with respect to telecommunications facilities. Mr. Menkes was aware that Nextel did pursue municipal properties and existing structures based on prior testimony. Mr. Menkes stated the comprehensive plan should have had a significant amount of data to support the proposal and it was missing. He agreed a drive test and path loss data are not required by the zoning ordinance. Mr. Menkes stated there was no indication of the database used or antenna orientation plans and noted approximately 25 percent of the western portion of the township would be left uncovered; the ordinance requires complete coverage. He stated his testimony was relative to the completeness of the comprehensive plan; it is up to the Board to ask for the data. Mr. Meese stated the data Mr. Menkes referred to is not required by the Township Code and a report and supplemental information would be provided by Mr. Bertona for the next meeting.

In response to Board questioning, Mr. Menkes testified that in his experience carriers like to co-locate because it is easier, noting a pole may have room but there is no way to know if it will meet a carrier's coverage needs. He explained area face technology used by carriers and discussed determining if additional cell coverage is necessary. He stated the comprehensive plan was inadequate because it was difficult to determine the completeness and accuracy of the data. A discussion was held on the height of the tower, and Mr. Menkes stated the height of the proposal may be due to topography or size of coverage area. He noted the gap in coverage he referenced in prior testimony is based on the map submitted implying gray areas as gaps. Mr. Meese indicated questions on the height of the tower and co-locator coverage could be answered by Mr. Bertona. Mr. Meese stated coverage data for a portable cell tower could be obtained using a transmitter test on a crane, and he could recommend doing so if necessary. In response to further Board questioning, Mr. Rodman agreed to contact Mr. Vreeland on the stream designation of Neldon's Brook and to obtain more information on whether the NJDEP was contacted for the dredging operations and on future flooding during the occurrence of a 500 year event.

Charles Gross, Township Committeeman, was sworn in, which applied to his prior testimony. He testified the dredging was to remove debris and the stream flow would remain the same. The NJDEP provided a 30 day time period in which to complete the project. He provided history on the flooding and further described the project process.

Anthony Ashley, Swartswood Fire Department member and former Chief, 1056 Route 521 was sworn in.

In response to questioning by Mr. Meese, Mr. Ashley stated he reviewed the revised site plan dated 9/12/11 which the fire department approved. He testified there was between 6 to 8 inches of water in the area of the proposed compound during the flooding. The fire department is the proposed landlord and supports the application.

In response to Board questioning, Mr. Ashley testified the fire department will be the recipient of a monthly lease fee and there is no agreement with the Township with respect to the budget. He stated the tower could not be relocated to the front of the property as a door, four windows and oil tank would have to be eliminated. The septic system is located at the rear of the building preventing the tower from being placed in that area. Mr. Ashley indicated the flooding was the worst he has ever seen in the 14 years he has been a department member. He stated the fire department is funded through donations, fundraisers and township contribution. The Swartswood Fire Department provides fire protection to the entire township in conjunction with another township fire department. Mr. Morgenstern asked the percentage raised by the fire department as compared to the township contribution. Mr. Meese objected. Mr. Ashley testified the property

would be taxable if the tower is constructed, and money would be received from Nextel and any co-locators.

In response to questioning by Mr. Owen, Mr. Ashley testified he has been a member of the fire department for 14 years and does not believe the occupancy at a fire house event has exceeded 92 and the parking lot is usually full during events. Mr. Ashley agreed that the property is currently tax exempt and following construction of the tower will be taxable. Mr. Meese objected stating Mr. Ashley was not qualified to answer the tax questioning.

Peter Steck, Professional Planner, Maplewood, was sworn in on behalf of the objectors, stating his qualifications which were accepted by the Board.

In response to questioning by Mr. Owen, Mr. Steck testified he had reviewed the application, plans and reports. He submitted the following exhibits marked into evidence:

O-9 Swartswood State Park map

O-10 Letter from Robert Morgenstern, Board Attorney, 6/21/11, re: Letter received from Stephen Roseman, Esq., on behalf of Hampton Township

O-11 Letter from Stephen Roseman, Esq., on behalf of Hampton Township, dated 5/31/11

O-12 Seven page handout by Peter Steck, dated 8/22/11, labeled P1 through P7

O-13 8 ½ x 11 handout by Peter Steck, dated 9/26/11, labeled P-1A (amendment to O-12)

Mr. Steck reviewed O-12 including pages P1 through P7. He discussed the municipal boundary line referring to O-13, aerial photograph from the NJDEP "I'Map" site, depicting superimposed lot lines, and indicating the proposed tower location is in Hampton. He reviewed the proposal and placement of the tower, noting the fire department property is currently tax exempt and could be taxable following construction. He stated parking spaces may be lost, and he described the structure and equipment shelter. He stated the applicant has indicated JCP&L will own and use services of the cellular facility, however that does not make it a utility and it is not an inherently beneficial use. The applicant has not provided the usage percentage for Nextel as compared to JCP&L. Mr. Steck described the surrounding area consisting of low density, residential land, public land and a church assembly use; Hampton to the northeast, Swartswood Lake to the north and small parcels, some residential to the northwest, with Stillwater Park located across the street in a low lying area. There will be no landscaping from the street view screening the base or compound, the proposed tower location is scenic, fairly flat, and is located near large bodies of water used by the public. He referred to O-12, page 1, #2 depicting a portion of the zoning map, noting according to the 2006 Open Space Plan the tower location is at the edge of an area classified as a natural heritage priority site. Page 2 shows the tower is in the area of a proposed greenway and trail. He stated Swartswood State Park was the first state park in New Jersey, which is significant in preserving open space. He reviewed the zoning ordinance with respect to the Neighborhood Commercial Zone (NC), with Residential-7.5 zone located to the west and Commercial Recreation (CR) across the street from the proposed location. He noted the ordinance for cell towers was changed fairly recently and it is a conditional use in the NC zone. The former ordinance did not state a preference for tower placement on municipal property as was testified to and when the search began the ordinance priority was for existing towers not municipal property. The new ordinance, 2010-07 adopted 9/21/10, requires a comprehensive plan and a goal of co-location. He stated the approval is for one facility but will change the priority of the site for additional carriers who will require equipment areas and a possible tower height increase. Mr. Steck referred to O-13, describing what a suitable site would require and discussed the adjoining property line setbacks: 73' to the southeast; 109' to the northeast; and 122' to the northwest, all inadequate. The proposal will be 59' from the closest structure; 58' to the pavilion; 88' to another shelter, all well short of the requirements; and two principle uses on one lot. He stated if the tower falls it could fall on the fire department or on electrical lines toward the church property. He reviewed separation distances to other land uses. The ordinance requires 300 percent of the height of the tower, or 456 feet. The distance to the northeast is 109'; to the northwest is 222' to lot 19; and 166' to lot 20; all substantially less than required. Mr. Steck referred to O-12 and reviewed

the balloon test, referring to page P-2, P-4 photos 9, 10, 11; P-5 photos 12, 13, 14; P-6 photos 15, 16; P-7 photos 18, 19, 20 and 21, bald eagle nest and its proximity to the site.

He testified there is an issue with the visual impact of the tower and with the all night lighting. He made the following conclusions: the applicant has to submit sufficient proofs for site suitability; JCP&L involvement does not change the nature of the application; and the percentage of usage for Nextel compared to JCP&L has not been provided. A number of variances are required including two principle uses on one lot or a "d" and "d3" variance. He stated the issue of revenue is not a land use consideration. Mr. Steck felt the issue was site suitability and he discussed the fall zone and public safety issue, ordinance setback requirements most of which have been violated by a substantial amount, the aesthetics of the proposal and separation from sensitive uses. He concluded the site is not suitable based on the zoning ordinance as it is too close to buildings on the site, it is in an area of highly sensitive aesthetics, in an area of rural character, an area that floods, difficult to access during flooding to provide generator power, the applicant has not met the burden of proof and approval will be detrimental to the public good and impairment to the zone plan and ordinance.

In response to questioning by Mr. Meese, a lengthy discussion was held on whether or not there was an ordinance preference for municipal property when the search for a site originated with respect to Section 240-114(J)(2)(a)(2) (2005) referring to existing towers and to compliance with the Local Public Contracts Law when using municipal property. Mr. Meese referred to photographs 14 through 21 and a discussion was held on the visibility of the tower compared to the NC zone. Mr. Steck was not aware of any tall structures in the area and he stated towers are not permitted in any zone but are a conditional use in the subject NC zone. In response to further questioning by Mr. Meese regarding better suited areas, Mr. Steck stated areas of 80 foot trees would better shield the tower, mature trees would shield the bottom half of the tower, and a large wooded site at a higher elevation with a smaller tower would have much less impact. Mr. Meese asked if there were any such properties located in the NC zone. Mr. Steck testified he did not review other properties in the NC zone to the extent he reviewed the applicant's proposal. He believed the first priority is for municipal owned property, and secondly existing towers; followed by an existing or proposed water tower, high tension tower, or existing structure in or outside of Stillwater. Mr. Meese asked that since the applicant could not meet the three priorities, didn't it make sense to look at the zone that permits it as a conditional use. Mr. Steck stated many standards were violated by the application and there may be other properties of a larger lot size, where there will be only one principle use, tree cover, higher elevation, and that are less aesthetically offensive. He stated a reliable search ring is needed. Mr. Meese referred to the zoning map and a discussion was held on the surrounding zones with respect to suitability; to the north is the Recreation Commercial (RC) zone where towers are allowed as a conditional use; to the east is a residential zone in Hampton; to the west are the CR zone across the street from the proposal, an NC zone and Swartswood Lake, large lots, some in the residential zone; some lots are low lying and in the historic Swartswood Village area; and to the far west is a free standing NC zone. Mr. Steck felt the lack of suitability opens up other areas and Mr. Meese asked Mr. Steck to cite case law to support such. Mr. Steck stated the site makes no common sense and cited a similar case in Bedminster that was denied and the Court upheld the decision. Mr. Meese stated the decision was overturned a few years later and the tower was approved. Mr. Steck stated a search ring indicating the eligible sites is needed and the applicant has presented no evidence of any other site in the NC zone that would evaluate standards. A discussion was held on the objective, goals and purposes of the ordinance and Mr. Steck agreed that service may be provided where there is a gap, if there is a gap and stated the negative criteria has not been met. He referred to the purpose statement and stated the ordinance has to be considered in its entirety not just the location in the NC zone. If it cannot be located on a municipal property, then there are other considerations, including properties outside of the NC Zone. Mr. Steck expressed concern with the visibility and aesthetic aspects, the visibility from Swartswood Lake, as well as the 120

percent distance and public safety issue, and the lack of shielding from the street view. He agreed there would be no smoke, fumes, vibration or traffic generated by the proposed tower. He felt the ordinance suggested two things: a larger lot to accommodate the tower and more insulation from residential uses. Mr. Meese addressed the municipal boundary issue, and Mr. Steck agreed if the land surveyor correctly interpreted the deeds then the established line would be more accurate than the NJDEP line. Parking was discussed and Mr. Steck stated any lost parking spaces would result in the building capacity being reduced. He could not testify on whether or not other parking was available. At this point, Mr. Lockwood announced that due to time constraints with the building use no public comment could be taken at this time and he invited all public to the next meeting.

Mr. Meese agreed to consent to allow the hearing to be carried to October 24, 2011, consenting to extend the time of decision to October 25, 2011.

Mr. Stachura made a **motion** to carry the application to October 24, 2011, at Stillwater School, 904 Stillwater Road, Stillwater, New Jersey, no further notice being required, seconded by Mr. Lockwood.

Roll Call Vote: Mr. Hammond, yes, Mr. Saal, yes, Mrs. Feenstra, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mr. Lockwood, yes
Mr. Sarni rejoined the Board.

RESOLUTION

New Image Landscape Services (owned by David and Hilary Manser) Block 2401, Lot 19.06, "d" variance relief was granted to permit a commercial landscaping/lawn service business to operate in a residential zone.

Mr. Sarni made a **motion** to adopt the Resolution, seconded by Mr. Stachura, the following terms and conditions applying:

NOW, THEREFORE, BE IT RESOLVED by the Stillwater Township Zoning Board of Adjustment that the Resolution granting a use variance to David and Hillary Manser dated December 28, 2009, is hereby amended in the following respects:

1. The grant of the variance is extended until December 31, 2011.
2. The time for the Applicant to obtain a Letter of Interpretation from the New Jersey Department of Environmental Protection is extended until December 31, 2011.
3. The deadline for the Applicant to obtain site plan approval from this Board is extended until December 31, 2011.

BE IT FURTHER RESOLVED that the Zoning Board of Adjustment hereby reserves decision on the following issues:

1. Whether the Applicants will be required to construct a pole barn, and
2. Whether the Applicants will be required to remove the plastic shed and storage container.

These issues will be determined at the time of site plan review by this Board.

This approval is subject to the following terms and conditions:

1. Applicant shall comply with Paragraph No. 1 of the report of Ted Rodman, P.E., dated July 23, 2010.
2. The wooden pallets and tires shall be removed immediately if they have not been removed already.
3. A list of equipment stored on site should be supplied to this Board immediately.
4. All other terms and conditions of the Resolution of this Board dated December 28, 2009 shall remain in full force and effect unless specifically altered by the within Resolution.

Roll Call Vote: Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

BILLS

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

Dolan & Dolan: General Monthly Meeting – August 2011 \$ 317.50

199.50	General: August 2011	\$
	Nextel – Escrow	
\$1,137.00	Manser (New Image) – Escrow	\$ 37.50
	Tanis – Escrow	\$ 61.50
<u>New Jersey Herald:</u>	Notice – Meeting to be held at Stillwater School 8/22/11	\$ 13.45
	Notice – Meeting to be held at Stillwater School 9/26/11	\$ 14.15
<u>Escrow Refund:</u>	Molinet Application	\$ 225.50
Roll Call Vote: Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, abstain, Mr. Lippencott, yes, Mrs. Feenstra, yes, Mr. Stachura, yes, Mr. Lockwood, yes		

Liaison Report: Committeeman Charles Gross had no report.

There being no further business, Mr. Stachura made a **motion** to adjourn the meeting at 10:42 p.m., seconded by Mr. Sarni. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

Laurence Lockwood, Chairman