

**STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Stillwater School
December 17, 2012**

MEMBERS PRESENT: Mr. Daingerfield, Mr. Hammond, Mr. Stachura, Mr. Lippencott, Mr. Sarni, Mrs. Galante, Mrs. Feenstra, Mr. Powell

MEMBERS ABSENT: None

ALSO PRESENT: Board Attorney Morgenstern; Board Engineer Rodman

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, December 17, 2012, at 7:30 p.m. at the Stillwater School located at 904 Stillwater Road, Stillwater, New Jersey. The meeting was called to order by Chairman Powell in accordance with the Open Public Meetings Act. The flag was saluted and roll call taken.

At this point, Mr. Stachura made a **motion** to change the order of the agenda beginning with the Nextel of NY & JCP&L hearing followed by the remainder of the agenda items, seconded by Mr. Lippencott.

Roll Call Vote: Mr. Daingerfield, abstain, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mrs. Galante, abstain, Mrs. Feenstra, yes, Mr. Powell, **yes**

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

Mr. Sarni, Mr. Daingerfield and Mrs. Galante stepped down from the hearing. Notices appeared to be in order.

Greg Meese, Esq. of Price, Meese, Shulman & D'Arminio and Frank Colasurdo, Architect, were present on behalf of the applicant.

Attorney Morgenstern provided a background on the court case, decision and court order by Judge Weisenbeck dated November 15, 2012, remanding the matter back to the Board for approval. He noted the Board is permitted to impose reasonable conditions by Court Order dated December 12, 2012, which he reviewed. Mr. Powell reviewed the meeting procedure.

Mr. Meese mentioned the aesthetics of the tower and landscaping; and stated rather than a shelter, outdoor equipment cabinets that will fall below the height of the fence could be utilized.

Mr. Morgenstern reviewed the issues the Board must consider as follows:

-Flag pole or antenna tower

-Flag to be displayed or not; lighting

-Landscaping and screening: Evergreens will be placed to the right and rear of the compound, and screening placed in front would result in loss of one parking space requiring an additional variance.

-Co-locators: Mr. Meese indicated there would be five canisters located inside the flagpole, with Nextel utilizing two, three would remain for co-locators.

-Lighting: Exterior lighting would be provided for security over the door to the shelter. Mr. Meese indicated it would be a single exterior light, motion detector.

A discussion followed on the items reviewed by Mr. Morgenstern, with Mr. Meese indicating the landscape maintenance would be provided by Nextel. The current plan is for 16 evergreens to be located at the right and rear of the compound. He felt it would be difficult to place screening in the front due to the lack of space, unless one parking space is removed. He noted it would also be hard for plantings to grow in the immediate area of the parking lot. Mr. Meese agreed that Nextel would work in conjunction with the Board Engineer on a landscape plan to ensure compliance to the satisfaction of the Board with screening in the front. One sign would be posted on the site with contact information. Mr. Rodman stated a revised site plan would have to be submitted to the Board and Nextel will have to adhere to such into the future.

Mr. Hammond asked if a light would be necessary if no flag is displayed. Mr. Meese indicated it would not and no aviation lighting would be required as the tower falls below the height requirement for such. A discussion was held on whether or not to display a flag. Options were discussed such as lowering and raising it each day, displaying it on special occasions only, not displaying it at all or displaying a township flag as opposed to an American flag. The Board was polled and based on the following results, the majority felt that no flag should be displayed: Mr. Hammond, Mrs. Feenstra and Mr. Powell wanted no flag displayed; Mr. Lippencott felt it should be displayed on special occasions only; and Mr. Stachura desired a flag to be displayed.

Mr. Powell discussed the developer's agreement and Mr. Morgenstern read the condition into the record as follows:

Applicant shall enter into a developer's agreement with Stillwater Township agreeing to remove the cell tower and equipment compound when the tower is no longer in use, at its own expense. The agreement shall provide that in the event the applicant does not remove the tower and equipment and other improvements within 120 days after it ceases to be used and within 90 days of receipt of written notice to remove them from the Township Officials or their representatives, the Township of Stillwater may enter the site and remove the tower and equipment cabinets and compound and charge the applicant for the cost. The Township shall be granted an easement from the property owner for that purpose. The Township shall have the right but not the obligation to perform the removal and the applicant shall give written notice to Stillwater Township if it ceases using the tower. Mr. Meese objected stating an easement could not be offered as it is under fire department control.

Mr. Powell referred to preliminary/final site plan approval noting an as-built of the location and facility shall be submitted to the Board Engineer to ensure that the facility has been constructed in the location as approved on the preliminary plan.

Mr. Morgenstern read the conditions to be considered as follows:

-Flag pole design with no flag to be installed.

-Landscape screening plan for the front of the compound to be submitted for Board Engineer review prior to the next meeting. Board Engineer to inspect screening after it is planted.

-Applicant shall maintain screening and landscaping and replace when necessary.

-Applicant shall encourage co-locator(s) by constructing a tower of sufficient strength to support up to five concealment canisters. Certification this condition has been satisfied must be submitted to the Construction Official prior to a Certificate of Occupancy being issued.

-Applicant shall keep the fence around the tower locked so that trespassers cannot have access to and climb the tower.

-Applicant shall install a small plaque sign on the compound in front with its name and phone number so the public can notify the owner of any problems concerning the condition of the tower or compound.

-Applicant shall file construction plans with the Construction Official and apply for and obtain a construction permit.

-Sussex County Planning Board approval and satisfaction of conditions.

-No other improvements other than those shown on the site plan shall be constructed.

-Adhere to the conditions shown on the site plan and the representations made in the presentation before the Board.

-No additional lighting except security lighting as proposed. The light over the cabinet door shall be kept off except during maintenance.

-Height of tower shall not exceed 152'6"

-Height of equipment cabinet not to exceed 8'.

-Applicant shall construct the fence as shown on site plan.

-Applicant shall file its license from the FCC for wireless communications service with the Board.

-Applicant shall file a copy of the construction plans with the Board and a copy with the Board Engineer simultaneous with the filing with the Township.

-Applicant's Engineer shall submit written certification to this Board that it has complied with the conditions of this approval in the construction of the improvement.

-No additional septic system shall be installed on the site.

-Applicant shall record the Resolution with the Sussex County Clerk's Office and furnish proof to this Board.

-No Certificate of Occupancy shall be issued until all conditions of the Resolution have been met.

-Applicant shall file an as-built plan to be filed with the Board and must obtain approval of the Board Engineer verifying it complies with the original site plan.

-Applicant shall enter into a Developer's Agreement with Stillwater Township as discussed.

-Terms and conditions of Mr. Rodman's report - #2, 6, 7, 8, 10, 11, 19, and 20

Mr. Meese referred to #2 of Mr. Rodman's report dated 4/22/11 – indicating the access easement is part of the lease, no metes and bounds is included, only a map and description.

-Copy of lease to be provided by applicant with respect to #2 of Mr. Rodman's report.

-Building permit and certification.

-Any approval shall be conditioned on providing the Board with an as-built prior to issuance of a Certificate of Occupancy.

-Sussex County Planning Board approval and Sussex County Soil Conservation District approval or waiver.

-Pre-construction meeting and escrow deposit.

-Tree discrepancy was discussed regarding page Z-7 of the plan submitted indicating 15 trees and it was clarified that there would be 16 trees with a revised landscape plan adding trees to the front of the compound.

-Applicant shall obtain all other required approvals of the Federal, State, County and local government agencies.

-Applicant shall comply with the requirements of the NJDEP with respect to the construction of the tower to avoid disturbing the nesting of the bald eagles.

-Height of cabinet shall be 8'.

-Applicant shall file copy of lease with the Fire Department with the Zoning Board.

-The flag pole will be white with a flat finish.

-Written certification would be submitted indicating all conditions have been satisfied.

Mr. Morgenstern reviewed the appeal process indicating both the Board and the public have the right to appeal. He noted the judge provided a 24-page opinion and Mr. Morgenstern felt the chances on appeal would not be good. He stated the issues were well-defined by the judge and zoning was favorable to the cell tower.

At this point, this portion of the meeting was opened to the public at 8:20 p.m.

Rory Halpin, 902 Hillcrest Road, Stillwater asked if the site applied to ADA regulations. Mr. Meese stated the site is not open to the public. Mr. Halpin asked about maintenance of the fence and db levels, placement and fuel for a generator. Mr. Meese indicated no generator is proposed.

Tim Stefanik, 31 West Lakeside Lane, Hampton resides on Swartswood Lake in close proximity to the tower site. He asked about the research for alternate sites. Mr. Meese stated 199 sites were reviewed and were eliminated due to RF coverage or other reason. Mr. Stefanik asked if co-locators would benefit the public and how will the tower do so. Mr. Meese stated a co-locator could be any other provider with gap in coverage. Nextel will provide coverage to subscribers and JCP&L linemen. The lease is with the fire department and payment is made to that department. Mr. Morgenstern indicated the cell tower would be taxed and the judge determined it benefits the general welfare of the public. In response to further questioning by Mr. Stefanik, Mr. Colasurdo stated the base of the tower would be 50" and the top would be 35". Canisters would house antennas inside the pole.

Maryann Stefanik, 31 West Lakeside Lane, Hampton has been a resident since 1984 and expressed concerns with her close proximity to the site, aesthetics, the flood zone area, a nearby beaver dam and resulting flooding, and the adverse affect on property values. She urged the township to appeal the decision.

Elizabeth Narducci, 925 Swartswood Road, Stillwater has lived in the area her entire life and purchased a home in July 2012 that overlooks the proposed tower site. She expressed concern with property values and the visual impact and asked what will happen when the tower is no longer needed. Mr. Powell stated a developer's agreement allows for Stillwater to remove the tower and require costs to be paid by the applicant and written notice must be provided that the use will be ceasing. Ms. Narducci thanked the Board for denying the tower and asked them to appeal the court decision.

Mike Sheehy, 913 Swartswood Road, Stillwater asked about the appeal process. He stated it cost residents \$30,000 to fight the tower application and he asked the Board to consider appealing the court decision.

Scott Goriscak, 919 Swartswood Road, Stillwater commended the Board on the denial of the application and urged them to appeal the court decision. He felt the brief submitted by the Board Attorney was inadequate and the community does not want the tower.

Yves Helaudais, 197 Newton-Swartswood Road, Hampton expressed concern with the municipal boundary line and felt it had been moved. Mr. Powell explained that testimony was provided under oath by a professional surveyor indicating that the municipal boundary line was accurate. The issue is not under the jurisdiction of the Board.

Linda Helaudais, 197 Newton-Swartswood Road, Hampton urged the Board to appeal the court decision and felt the Board did their job. She stated the community paid over \$27,000 of their own money in opposition to the tower and cost should not be a concern when appealing. She felt the defense in the court case was lacking in details and examples and the best effort was not put into defending the decision.

Mike Sheehy, 913 Swartswood Road, Stillwater asked if the Board chooses to appeal could it be done with a stop work order. Mr. Morgenstern explained the judge ordered approval and no stop work order can be issued even under appeal.

Samantha Stefanik, 31 West Lakeside Lane, Hampton stated her basement had to be pumped due to flooding and the tower would have been blown over onto the church or firehouse during the storm. She expressed concern with the aesthetics of the tower, it being an eyesore, unnecessary in a beautiful area, local eagle nesting, and it being an overall obstruction to the beauty of the area. She felt the decision should be appealed and tower located elsewhere.

Michele Adamski, 972 Route 521, Stillwater read the revised Master Plan on the Stillwater website and had two points of concern: 1) Karst geology/topography of the land, flooding, earthquakes and the resulting sinkholes causing the tower to collapse; 2) Uniqueness of our environment, and keeping it pristine. She noted the Master Plan calls for re-enforcement of the vistas and preservation of such. She agreed with no flag and no lighting. She felt the tower would be obstructing the scenic view and was not in keeping with the Master Plan.

Maryann Stefanik, 31 West Lakeside Lane, Hampton expressed concern with encroachment on the road, church, and fire department, and asked if anyone had investigated the nearby beaver dam and culvert issue. She urged the Board to appeal.

There being no further members of the public wishing to speak, this portion of the meeting was closed at 9:02 p.m.

Mr. Morgenstern listed the variances necessary as follows:

1. Required setback a minimum 120% of the height of the tower from any adjoining lot line (182.59' minimum required). The tower is 73' from adjacent Lot 22 – church; 109'7" from Block 1902, Lot 6, Hampton Township – owned by Helaudais; 166'4" from adjacent Lot 22 on the west and 122'4" from Lot 1.03, owned by the fire department.

2. Minimum of 182.59' from non-appurtenant buildings. The tower is 59' from the fire house, 58' from the pavilion, 88' from the shed on the lot, and 164' from the church on Lot 22.

3. The setback from the base of the tower to residential properties and houses of worship is a minimum of 300' or 300% of the height of the tower whichever is greater and amounts to 456'6". The tower is 109'7" from the residential land to the rear of Block 1901 Lot 6; 166' to Block 1703, Lot 20; 222' from Block 1703, Lot 19, and 73' from Block 1703, Lot 22 – church.

4. The setback from non-residentially zoned lands for non-residential uses. The minimum setback is 182.59'. The tower is 73' from non-residential land, Lot 22 – church.

5. The cabinet or structure shall not contain more than 200 sq. ft. The proposed cabinet contains 240 sq. ft.

6. The proposed cabinet or structure shall not exceed 10 ft. in height. This item has been revised and the cabinet will be a maximum of 8 ft. in height.

7. Location priorities. Such antenna shall be located in accordance with the following prioritized locations:

a) The first priority shall be on real estate owned by the Township of Stillwater.

b) The second priority shall be on an existing tower.

c) The third priority shall be on an existing or proposed water tower, high tension tower or existing structure within the Township of Stillwater.

The proposed use does not comply with these priorities.

8. By requiring landscaping in front of the fenced compound around the cell tower, one additional parking space will be lost and a variance will be required for 30 parking spaces.

Mr. Powell made a **motion** to grant approval of all variances with conditions, seconded by Mr. Stachura.

Roll Call Vote: Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mrs. Feenstra, yes, Mr. Powell, yes
Motion passed 5-0.

Mr. Stachura expressed his dissatisfaction with the decision not to display a flag on the tower flagpole.

Mr. Stachura made a **motion** to grant approval of the preliminary and final site plan, seconded by Mr. Hammond.

Roll Call Vote: Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mrs. Feenstra, yes, Mr. Powell, yes
Motion passed 5-0.

Mr. Stachura made a **motion** to carry the application to the memorializing Resolution on January 28, 2013, seconded by Mrs. Feenstra.

Roll Call Vote: Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mrs. Feenstra, yes, Mr. Powell, yes
Motion passed 5-0.

At this time, Mr. Powell asked the Board for a motion authorizing Board Attorney Morgenstern to appeal the court decision of Judge Weisenbeck on behalf of the Zoning Board. No motion was made and the matter concluded.

At this point in the meeting, Mr. Hammond made a **motion** to take a short recess at 9:17 p.m., seconded by Mrs. Feenstra. All were in favor. The meeting resumed at 9:24 p.m. with Mr. Sarni, Mrs. Galante and Mr. Daingerfield rejoining the Board.

MINUTES

Mr. Daingerfield made a **motion** to approve the minutes of 11/26/12, seconded by Mr. Sarni.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Sarni, yes, Mrs. Feenstra, yes, Mr. Powell, yes

EXECUTIVE MINUTES

Mr. Daingerfield made a **motion** to approve the Executive Session minutes of 11/26/12, seconded by Mr. Sarni.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Sarni, yes, Mrs. Feenstra, yes, Mr. Powell, yes

RESOLUTION

Rae, Block 1401, Lot 25, Cal. No. 581 – Use Variance/Preliminary/Final Site Plan (Riding Arena)

Mr. Stachura made a **motion** to adopt the Resolution, seconded by Mr. Lippencott, with the following conditions applying:

1. The Applicant shall obtain approval of the Sussex County Planning Board or a Letter of No Interest.
2. The Applicant shall construct a minimum of ten gravel parking spaces and have parking for six additional motor vehicles and horse trailers on-site as shown on the variance plan. The surface of the parking spaces may be the existing material which consists of gravel.
3. Applicant may install security lighting on the structures. If any additional lighting is required, it must be approved by the Zoning Board Engineer.
4. Applicant is permitted a maximum of two signs with dimensions of one foot six inches by three feet as proposed in the application
5. Applicant shall pave the first twenty-five feet of the driveway if required by the Sussex County Planning Board.
6. There shall be no loudspeakers or public address system.
7. The Applicant shall comply with the Stillwater Township Storm Water Ordinance if required by the Stillwater Township Engineer with respect to storm water. She shall comply with his requirements with respect to storm water.
8. Applicant shall obtain approval of the Sussex County Soil Conservation District for a soil erosion and sediment control permit.
9. Applicant shall file a revised site plan with this Board showing all accessory structures which shall be approved by the Zoning Board Engineer.
10. Applicant may conduct no more than six horse shows per year. There shall be a maximum of twenty-five persons at each horse show. If Applicant desires to conduct more horse shows, she shall apply for approvals from this Board.
11. The hours of operation for the horse shows shall be the maximum of 8:00 a.m. to 6:00 p.m. or dusk, whichever is earlier.
12. Applicant shall file an As-Built Plan with this Board which shall be approved by the Zoning Board Engineer after construction of the building is completed.
13. The Applicant shall reimburse the Township for the costs of inspections of the property and roads and review of the plan by the Zoning Board Engineer. The Applicant shall post an adequate deposit with the Township as required by the Zoning Board Engineer prior to a building permit being issued and shall replenish the deposit if and when it has been fully utilized. Any unused escrow deposit shall be returned to the Applicant upon the issuance of a certificate of occupancy.
14. All deeds, easements and/or documents shall be reviewed and approved by the Zoning Board Engineer and Zoning Board Attorney.
15. The within variance expires within nine months from the date of this Resolution unless implemented pursuant to the ordinances of Stillwater Township.
16. Applicant shall comply with all other laws, rules and regulations in implementing the variances.
17. No permanent certificate of occupancy shall be issued until all conditions of the Resolution have been met.
18. All taxes and fees shall be paid to the Township of Stillwater.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Sarni, yes, Mrs. Feenstra, yes, Mr. Powell, yes

BILLS

Mr. Daingerfield made a **motion** to approve the following bills, seconded by Mr. Hammond:

<u>Dolan & Dolan:</u>	Meeting – October 2012	\$ 262.50
	General – October 2012	\$ 45.83
	Escrow – Cellco Partnership	\$ 225.00
	Escrow – Cellco Partnership	\$ 450.00
	Nextel Litigation	\$ 375.00
Newton Trophy:	Nameplate – Galante	\$ 8.00
New Jersey Herald:	Cellco Resolution	\$ 19.80

Roll Call Vote: Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Sarni, abstain, Mrs. Galante, yes, Mr. Powell, yes

Correspondence:

- Monthly Budget Update
- R. Morgenstern – Annual Contract Letter for 2013

At this point, this portion of the meeting was opened to the public at 9:26 p.m. There being no further members of the public wishing to speak, this portion of the meeting was closed at 9:26 p.m.

Liaison Report: Committeeman Gross

Mr. Gross reported the Township Committee is working on the annual budget and is doing their best to build the surplus. He commended the Zoning Board on their meeting tonight, however he expressed disappointed and frustration in the decision to not display a flag on the tower. Mr. Stachura agreed and felt a flagpole should have a flag and it should be lit.

There being no further business, Mr. Daingerfield made a **motion** to adjourn the meeting at 9:30 p.m. seconded by Mr. Stachura. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

Eric Powell, Chairman