STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
August 22, 2011
Stillwater School

MEMBERS PRESENT: Mr. Saal, Mr. Stachura, Mr. Powell, Mr. Sarni, Mr. Hammond, Mr. Lippencott, Mr. Lockwood
MEMBERS ABSENT: Mr. Daingerfield
A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, August 22, 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

Mr. Stachura made a **motion** to approve the minutes of July 25, 2011, seconded by Mr. Lockwood.
Roll Call Vote: Mr. Powell, abstain, Mr. Hammond, abstain, Mr. Saal, yes, Mr. Sarni, abstain, Mr. Lippencott, 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.
Mr. Lockwood reviewed the guidelines for conducting a meeting and asked for the full cooperation of the public. Mr. Lockwood noted that Mr. Daingerfield would be unable to continue with the hearing due to a medical issue and an alternate member would be appointed as soon as possible.
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. Mr. Meese explained the following items would be addressed during the hearing: structural integrity, historic site review process, municipal sites review process, alternate locations on the property – noting other locations on the property that were presented to the fire department were rejected as they would interfere with the fire department operations. Mr. Meese stated both a flag pole and monopole option was presented to the Board.
At this time, Mr. Morgenstern announced to the public that no signs were permitted at the hearing.
James C. Murawski, Professional Engineer, E2 Project Management was sworn in providing his qualifications that were accepted by the Board. In response to questioning by Mr. Meese, Mr. Murawski stated he reviewed the plans for the proposed tower and it would be in compliance with all regulations required for the construction of such a facility. He summarized the required codes and requirements, described the requirements for structure and load, and reviewed the soil logs and analysis, indicating they are suitable for the tower. He provided testimony on wind speeds and stated towers fall at points of maximum stress at the joints of the tower, beginning with the uppermost joint located 30 feet below the top of the tower proceeding in 30 foot increments toward the base. The tower is designed this way to preclude it from falling over at its entire height and to bend onto itself in the event of hurricane winds that would cause other structures to be destroyed. In response to Board questioning, Mr. Murawski stated the tower will buckle at the weakest point; it is designed to be its weakest specifically at a joint, and it will bend horizontally to a certain degree shedding the wind load. If the wind continues at 90 mph, each joint would fail in that fashion. He provided testimony on wind and ice loads for this region at 40 mph speed winds and one-inch thick ice based on criteria from the TIA 222-G specification required by the

International Building Code (NJ). He testified that the proposed tower would fall in increments, should not fail from its base, with the worst case scenario being that half the tower height would be its outermost reach. He stated there have been cases where towers have fallen from their base due to human error or fire during maintenance. He testified that the flag pole option is also designed to fall in increments. He discussed wind sail stating the monopole with antennas and additional carriers would have a much larger wind sail as opposed to the flag pole. He speculated that a tower that is properly maintained would have an indefinite lifespan. Mr. Murawski could not accurately predict if the tower failed at one of the upper joints and not the base whether or not it would hit the church next door.

Mr. Owen asked if Mr. Murawski had reviewed the EIS and Mr. Murawski indicated he had not. In response to further questioning by Mr. Owen, he agreed that he had not been provided with the foundation details and structural loads for the proposed monopole. Mr. Murawski stated he was familiar with the tower that fell in Oswego but was not sure if it had fallen from the base. He agreed that he could not accurately predict what would happen if the tower failed.

Marianne Walsh, Architectural Historian, was sworn in stating her qualifications which were accepted by the Board. Ms. Walsh testified that in accordance with an FCC permit, the Section 106 process was followed. She described the procedure undertaken within a ½ mile view shed radius around the site, which included obtaining information from the State Historic Preservation Officer (SHPO) and State Museum on historic resources, visiting the site, photographs, and determination of historical resources, listed or that may be eligible to be listed. All resulting information was submitted electronically to the Historic Preservation Office (HPO) with the recommendation that the proposed project would not have an adverse effect on the historic resources in the area, and a recommendation that the Village of Swartswood may be eligible for historic designation due to its age and limited improvements. Nextel received approval from SHPO. The local Historic Committee was notified and no comment was made. In response to Board questioning, Ms. Walsh testified the following: The NEPA Screening Checklist was submitted and Executive Summary signed by a colleague at E2PM; the ½ mile radius is recommended by the FCC and SHPO for towers 200 feet or less, and topography and vegetation is taken into consideration. Photographs are taken from County and private roads, and from eligible or listed sites to see the view of the tower from that location. The State did not comment on her recommendation for the Village of Swartswood. The North Shore House property was referred to and Mr. Meese stated the historic analysis would not be reviewed only the process followed. In response to further Board questioning, Ms. Walsh stated if the tower exceeded 200 feet in height the radius would expand to one mile.

Mr. Lockwood noted the Board did not have a copy of the application sent to SHPO. Mr. Meese stated portions of the application were provided with the NEPA checklist and a copy of the full application would be provided on disc to the Board. In response to questioning by Mr. Owen, Ms. Walsh described what constituted a historic resource. In response to questioning regarding Swartswood State Park, Mr. Meese indicated individual properties would not be addressed and the applicant followed the process required by SHPO. In response to further questioning by Mr. Owen, Ms. Walsh agreed A-18, SHPO email dated 3/15/11, indicates there are no historic properties. She testified that she was at the lake, not in a boat in the lake and had determined the ½ mile radius using aerial images and scaled the ½ mile by car and foot. She reviewed portions of the EIS and no mapped sites were found. Mr. Owen referred to the North Shore House property, and Mr. Meese stated that proper procedure was followed as required by SHPO and this issue is not in the jurisdiction of the Board. Ms. Walsh stated she relied on individual field analysis and the SHPO database, not on the maps in the EIS.

Steve Sofman, Nextel representative, was still under oath. Mr. Sofman reviewed and presented the following items marked into evidence:
A-20 List of Township Sites
A-21 Map of Township Sites
He testified that sites were considered in the following areas: Paulinskill Lake Community, Crandon Lakes Community: Owassa Road and Plymouth Lake Community, all residential, small lots; Fairview Lake and Fairview Lake Road area, one of which was Green Acres; property off of Old Schoolhouse Road in a residential neighborhood that was outside of the radiofrequency (RF) area; the DPW and sewage field property which were ruled out from an RF standpoint; Five Points Lane and Anne Road, all residential, small lots; property along Swartswood Lake and Sprout Hill, residential; and the Stillwater Park property. In response to Board questioning, Mr. Sofman stated that of the 130 municipal properties listed, most did not meet setback or other ordinance requirements and were in residential areas. The Neighborhood Commercial Zone was chosen as it is better suited for the proposal than a residential area. He testified that Stillwater Park met RF needs but had wetlands issues. Mr. Sofman stated three properties were able to be developed including the Fairview Lake property which was ruled out due to Green Acres, Stillwater Park, and the DPW property which was ruled out for radiofrequency. Stillwater Park was the only one of the three that met the criteria. He explained the process to determine a suitable site, including site research in the general area of need and determination by the RF engineers as to whether or not a site is developable.
In response to questioning by Mr. Owen, Mr. Sofman stated every effort was made to work with the township. The YMCA property was Green Acres and did not meet the current needs. Stillwater Park was not going to work and the Township suggested the fire department as it is a quasi-municipal property located in the Neighborhood Commercial Zone. He indicated there was no private property list.
William Morrison was sworn in. Mr. Morrison was the Township Mayor at the time the applicant was pursuing property for placement of the tower. He testified that Paulinskill Lake, Crandon Lakes, and Plymouth Lake properties were too small, residential and densely populated. The DPW property was too close to an existing tower. The Stillwater Park location, using the flag pole option, would have been the most suitable but the property is listed on the Recreation and Open Space Inventory (ROSI) and could only be developed for open space and recreation purposes. Mr. Morrison spoke with the NJDEP regarding the possibility of removing the property from the ROSI and replacing it with other property. The Township Attorney recommended not doing so due to the costs and lengthy process for the diversion which is almost impossible to attain. A representative of NJDEP also indicated that a diversion would be very difficult. In response to Board questioning, Mr. Morrison stated the ordinance requires 1)co-location; 2)municipal property; and 3)private property. In this case, co-location could not work as the only existing tower is owned by Nextel and although municipal property such as the DPW or Recycling Center would have worked for a different carrier, the existing Nextel tower location prevented those properties from being suitable. Mr. Sofman indicated there were no existing structures of adequate height located in the township for co-location.
In response to Mr. Owen, Mr. Morrison indicated the township did not apply for a diversion. Mr. Sofman stated most of the property reviewed was zoned residential.
At this point, this portion of the meeting was opened to the public at 8:58 p.m. Mr. Lockwood provided guidelines for the public portion of the meeting.
William Jacobson, 1069 Route 521, Swartswood was sworn in. Mr. Jacobson discussed the historic aspects of Swartswood and the inclusion of Swartswood, Stillwater and Middleville in an historic inventory created by the Township Environmental Commission. He discussed the Sussex County Historic Map of 1860 which includes almost every home in Swartswood, including the church (now a residence) and the courthouse. Mr. Jacobson provided a brief history of Swartswood and he expressed concern with the village not being considered.

In response, Ms. Walsh stated she did review the 1860 map and considered all factors in her review, including both churches, which were photographed. She stated the regulations require that only resources currently listed or eligible for listing are to be considered and she found none within the ½ mile radius. She did recommend Swartswood as a whole for historic district consideration and SHPO reviewed the information and did not concur.
Rory Halpin, 902 Hillcrest Road, Stillwater was sworn in**.** In response to questioning by Mr. Halpin, Mr. Meese stated service would begin as soon as the tower is approved and constructed, and it is for the Nextel network and to assist JCP&L to provide coverage for their service area. Mr. Colasurdo, still under oath, stated the tower would take eight weeks to construct and Mr. Meese indicated a permanent solution was necessary and a temporary structure could not be utilized.
In response to questioning by Mr. Owen, Mr. Sofman explained the process began in 2009 and concluded toward the end of 2010. Mr. Owen asked why municipal property was a priority when the ordinance at that time did not require it. Mr. Meese stated the zoning priority is a permitted use, followed by a conditional use and then variance relief is sought as a last resort. Mr. Meese was not sure what the percentage breakdown would be for JCP&L as compared to Nextel.
Michael Killen, 1023 East Shore Drive, Stillwater was sworn in. Mr. Killen asked about private properties vs. municipal properties; and whether or not federal or state lands were reviewed by the applicant. Mr. Sofman stated it was not required by the ordinance and he was not sure if any were available. Mr. Sofman agreed that the Mayor directed him to the fire department property. Mr. Meese explained the process used, beginning with Mr. Sofman

appearing before the Township Committee, researching township owned lots, which was unsuccessful, and then seeking a conditional use, which happened to be across the street. Mr. Killen referred to the Sunshine Law in the context of the process used to locate the proposed site. Mr. Morrison stated when it was determined the park was not available but suitable for their needs, the fire department property across the street was suggested and he noted the Township had no association with the application once the search concluded. In response to questioning by Mr. Killen, Mr. Morrison indicated he was a member of the Stillwater Fire Department, not Swartswood and Mr. Killen questioned the appropriateness of Mr. Morrison being involved with the search. Mr. Killen expressed concern with the collapse of the tower and Mr. Meese stated the engineer testified to winds at speeds in which all other structures would be destroyed. He asked about the view shed and the negative impact to the State Park. Ms. Walsh stated the view shed is a geographical area where you would expect to see the object you are searching for and she further described the process used. Ms. Walsh noted that SHPO could have reviewed any property they felt was eligible. Swartswood Park was not investigated and she was unsure of its eligibility. Mr. Sofman described the procedure he used to search for suitable properties and noted towers are often located on fire department properties.
Cheire Lozaw, 917 Swartswood Road, Swartswood was sworn in. She asked if Attorney Owen could present his witnesses at this time.
Mark Quick, 141 Silver Lake Road, Frelinghuysen Township was sworn in and he discussed the history of the area, including the French and Indian War, American Revolution and battles fought in Swartswood. He was concerned with the impact on Indian artifacts. Mr. Meese stated a review was completed by an archaeologist as was required by the FCC and Ms. Walsh stated the Native American Tribes in the area were contacted.
William DePue, 901 Stonebridge Road, Stillwater was sworn in providing his professional background. He asked why a diversion was not sought for the property located off of Fairview Lake Road. Mr. Meese stated a diversion permit requires there be no feasible alternative and this application demonstrates there is one.

Paul Adamski, 972 Route 521, Swartswood was sworn in. He asked how many variances would be required. Mr. Lockwood stated there are two use variances and seven bulk variances.
At this point, a brief discussion was held on whether to proceed with Mr. Owen's expert witnesses at this time or continue with the public session. Mr. Meese noted his expert witnesses would not be present at the hearing next month.
Joel Pinsker, 930 Emmons Lane, Stillwater was sworn in and asked about the area of coverage and number of homes in that area. Mr. Bertona, still under oath, stated coverage would be a 1.5 mile radius and he was not sure of the number of homes. Mr. Pinsker stated the topography of the lake is flat and asked why it was not considered. Ms. Walsh stated only a portion of the lower lake is within the ½ mile radius and the lake was not intensely investigated as it is not listed on the historic register. She took photos from the shoreline and notes of structures but did not evaluate the entire lake.
Lorraine Paxton, 911 Aspen Drive, Middleville was sworn in and expressed concern with the fall zone of the tower and falling ice, and the responsibility held by Nextel if it falls on the church. Mr. Colasurdo stated the tower is 152 feet in height, is located 142 feet from the church and it would be the responsibility of Nextel.
At this point, this portion of the meeting was closed at 10 p.m.
Hank Menkes, Menkes Associates, was sworn in stating his qualifications as an electrical engineer and expert in radiofrequency, which were accepted by the Board. In response to questioning by Mr. Meese, Mr. Menkes indicated Menkes Associates was formed in 2010 at the request of the Bridgewater Zoning Board of Adjustment to serve as their radiofrequency engineer. Mr. Menkes testified that he reviewed the following items: A-10 Radiofrequency (RF) Engineering Report/Comprehensive Plan; A-7 through A-9; the minutes relating to the RF testimony during the 3/28/11 meeting; Stillwater Township Ordinance 2010-7; and he also listened to the audio recording of the meeting held on 3/28/11 with respect to the testimony of Robert Bertona. Mr. Menkes referred to Section B of Ordinance 2010-7 and the comprehensive plan requirement. He felt the plan submitted contained a narrative of the plan but lacked credible data. He provided a background on radio frequency engineering including: 1)drive test; 2)data plotted; 3)lack of coverage identified; 4)search ring determination; 5)site acquisition search; 4)crane test; and 5)computer model. Once the computer model is calibrated, you have a reasonably representative indication of the predicted signal strength the new cell site would provide. Mr. Menkes had the following concerns with the comprehensive report:
-A-10 included no RF signal strength from the drive test data, only computer predictions
-no indication of acceptable signal level to meet the communication standards
-no resolution of the plots; no indication over what square area the computer do its calculations
-no inclusion of path loss model used to do the predictions
-no mention of frequency that Nextel is using
-no calibration information
-no indication of drive or crane test
-no antenna locations were included
-no color coded signal legend for the plot indicating what the signal color represents
-no search ring
He testified that A-7 through A-9 lacked appropriate technical detail. Mr. Menkes stated in his opinion, the coverage plots included in the comprehensive plan provide almost full coverage to Hampton but leave more than 25 percent of Stillwater without coverage, and he questioned if Nextel was planning another cell tower site to address the lack of coverage and if so, why was it not included in the plan. He stated that although the township ordinance does not necessarily require all of the technical data referenced, the data included in the plan should be comprehensive, accurate, and produced in accordance with the industry's best practices. In his opinion, the data is less than comprehensive, best practices were not employed and there is no

way of knowing if the information is accurate. In response to Board questioning, Mr. Menkes indicated he had seen ordinances similar to Ordinance 2010-7.
Due to the time constraints and Mr. Meese having many questions for Mr. Menkes, Mr. Morgenstern asked the parties to return to the next meeting at which time the testimony will begin with Mr. Menkes and proceed onto other witnesses presented by Mr. Owen. At this point, Mr. Meese agreed to consent to allow the hearing to be carried to September 26, 2011.
Mr. Lockwood made a **motion** to carry the application to September 26, 2011, at Stillwater School 904 Stillwater Road, Stillwater, New Jersey, no further notice being required, seconded by Mr. Stachura.
Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, yes, Mr. Lippencott, yes, Mr. Stachura, yes, Mr. Lockwood, yes
At this time, a short recess was taken by the Board.
The meeting reconvened and Mr. Sarni rejoined the Board.

BILLS

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

Dolan & Dolan:	General Monthly Meeting – July 2011	$124.50
	Nextel – Escrow	$112.50

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

Other Business: **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.
7/28/11: A letter was submitted by the applicants requesting an extension for condition #8 of the Resolution adopted on December 28, 2009.
Following a brief discussion, Mr. Lockwood made a **motion** to grant an extension of Resolution condition #8 requiring the applicant to obtain a Letter of Interpretation from the NJDEP to 12/31/11, seconded by Mr. Stachura, noting the original compliance date was previously extended to 8/1/11.
Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

At this point, this portion of the meeting was opened to the public and there being no public wishing to speak, this portion of the meeting was closed.

Liaison Report: Committeeman Charles Gross had no report.

There being no further business, Mr. Powell made a **motion** to adjourn the meeting at 10:38 p.m., seconded by Mr. Sarni. In a voice vote, all were in favor.

Respectfully submitted,

_____ _____

Kathy Wunder, Board Secretary Laurence Lockwood, Chairman