

LAWRENCE TOWNSHIP ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
WEDNESDAY, DECEMBER 1, 2010, 7:30 P.M.

**Present:** Stephen Brame  
Bruce Kmosko  
Robert Kulak  
Cathleen Lewis  
Samuel Pangaldi Jr., Alt. #2  
Charles E. Lavine, Vice Chairman  
Peter Kremer, Chairman

**Absent:** Leona Maffei (Absent/excused)  
John Gladwell, Alt. #1 (Absent/excused)

**Also Present:** Brenda Kraemer, P.E., Assistant Municipal Engineer  
Brian Slauch, Planning Consultant, Clark•Caton• Hintz  
David M. Roskos, Special Attorney, Sterns & Weinroth  
Sara A. Summiel, Recording Secretary

1. Statement of Adequate Notice

Adequate notice of this meeting of the Lawrence Township Zoning Board has been provided by filing the annual meeting schedule with the Municipal Clerk as required by law; by filing the agenda and notice with the Municipal Clerk, posting prominently in the Municipal Building, and mailing to the Trenton Times, the Trentonian and the Lawrence Ledger newspapers on Friday, November 19, 2010.

2. Public Participation : (None)

3. RESOLUTIONS

Resolution of Memorialization 20-10z approving Use Variance Application ZB-9/10 and Minor Site Plan Application No. SP-6/10, CLEARWIRE US, LLC, One Vinch Avenue, Tax Map Page 23.03, Block 2312, Lot 112.

Mrs. Lewis moved and Vice Chair Lavine seconded to approve Resolution No. 20-10z.

**AYES:** Brame, Kmosko, Kulak, Lewis, Lavine Kremer  
**ABSENT:** Maffei, Gladwell  
**INELIGIBLE TO VOTE:** Pangaldi

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**RESOLUTIONS - Continued**

**Resolution of Memorialization 21-10z approving Use Variance Application No. ZB-4/10 and Minor Site Plan Application No. SP-3/10, T-MOBILE NORTHEAST, LLC, Lawrence Station Road, Tax Map Page 41.01, Block 4103, Lot 1.**

Mrs. Lewis moved and Vice Chair Lavine seconded to approve Resolution No. 21-10z.

AYES: Brame, Kmosko, Kulak, Lewis, Lavine, Kremer

ABSENT: Maffei, Gladwell

INELIGIBLE TO VOTE: Pangaldi

4. **Application No. ZB-18/05 & SP-4/05 (CELLCO PARTNERSHIP – VERIZON WIRELESS), Use Variance and Preliminary & Final Site Plan, 3730 Lawrenceville Road, Tax Map Page 70.02, Block 7001, Lots 54 and 55.**

The hearing was recorded.

Chair Kremer advised the Board that the subject application is a Remand on the use variance. Mr. Roskos stated his review of the Public Notice was found to be in order. The Board took jurisdiction.

The following new Board Member, Sam Pangaldi, has signed an Affidavit stating his review of the entire record (transcripts) and is eligible to vote upon the application.

Richard D. Stanzione, Esq., represented the applicant. Also present was Certified Shorthand Reporter, Jacqueline M. Wahler, C.C.R.

Also present was Jonathan E. Drill, Esquire, (Stickel, Koenig & Sullivan), representing Objector, Maria Yang, residing on Tomlyn Drive.

Mr. Roskos stated that the carrier's application has been remanded to the Board to re-evaluate the applications based upon the instructions given by the Appellate Division of the Superior Court. He referred to Page 4 and Page 33 of the Decision that was rendered in September, which instructed the Board is to re-evaluate the plaintiffs' application without consideration of the Carter Road site, as an alternative available site for the plaintiffs to construct their telecommunication tower. He addressed the Board's denial and stated

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that the Appellate Division felt that the driving force behind the denial was the alleged availability of the Carter Road site as an alternative available site. He stated that the Court believed the Board's improper consideration of this site irreparably tainted its decision to deny the application.

He stated that the Board is required to review the application and deliberate based on the record developed, without the Carter Road Site; and therefore, the Board would review the prior record with no new witnesses or new exhibits.

He advised the Board that both Mr. Stanzione and Mr. Drill have been informed about their opportunity to make their statements with respect to the Court's opinion, reference to legal standards, the record and the Board's new deliberation. He referred to a letter dated November 9, 2010, from Mr. Drill stating the objectors' appellate rights with regard to this issue. Although Mr. Stanzione agreed with the process of the re-evaluation, Mr. Drill did not since the objectors would not be allowed to present any new evidence.

Mr. Roskos proceeded to advise the Board of the procedure to be followed with regard to the re-evaluation of the subject application, as part of its deliberation. As part of the Board's deliberation, Mr. Roskos gave an overview of the four required steps in how the Board is to analyze the D-1 cell tower use variance case and its uniqueness in weighing the positive and negative criteria using the Sica balancing test. He explained that the Board must determine whether the public benefit of the proposed communication facility outweighs the detriments. He noted that the applicant has met the first requirement of the positive criteria since the applicant holds a FCC license. Also, he stated that the Board should address any associated variances, site plan issues, and any reasonable condition to be imposed on the applicant. He stated that following the public comment period and Township's Professionals' review of their reports and applicable zoning law, the Board will deliberate. He added that once the Board deliberates no additional comments will be accepted. He explained that the applicant must receive five (5) affirmative votes for approval and each Board member must articulate their reason for their vote. He stated that a new Resolution must be adopted by the Board following the rendered decision of approval or denial. (Attachment No. 1 – Reports)

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Mr. Drill stated his concerns with regard to the process of the Township Professionals' review about the developed record. He was concern that the Professionals would add to the developed record.

Mr. Slaugh, Township's Professional Planner, was placed under oath and gave highlights of his Report dated January 26, 2006. He described the existing conditions, surrounding land uses, variances and exceptions, permitted uses, use variance, potential conditional use, maximum impervious surface ratio, site suitability and topography, negative criteria with regard to low water levels, tree protection/buffering for the proposed 140 ft. tall monopole at the Peterson's Nursery. (Mr. Stanzione stated his objection to Mr. Slaugh's statement with regard to Item 4.6 and the soil strata.) (See Attachment No. 1 – Reports)

Mrs. Kraemer, Township's Assistant Engineer, was placed under oath and gave a highlight of her Report dated April 5, 2006. She reviewed the following items with regard to the permitted impervious coverage, increase width of access road, stormwater management, drainage, the removal of existing billboards, fence height variance at compound, clarification for removal of trees, and justification of (4) proposed parking spaces. (See Attachment No. 1 – Reports)

Mr. Drill, representing the Objectors, gave his summation and addressed the Sica balancing test and questioned whether the conditions imposed would reduce the negative impact. He addressed the detrimental effects that the proposed tower would have on the nearby residences. He addressed the growth of the existing matured trees and did not feel that the proposed tree type monopole would reduce the negative impact because of its height. He felt that the applicant should have amended the application to remove the billboards and reduce the height of the tower to at least 100 feet. He proceeded to address the detrimental effects on a residential zoning district dealing with cell towers and made reference to a case in West Paterson that was denied in 2000 (Northeast Towers vs. W. Paterson Zoning board of Adjustment). He proceeded to state that the Board should deny the applicant's proposal to construct a 140 foot cell tower on the basis that it would result to be a substantial detriment to the public good since it violates the intent and purpose of the zone plan and zoning ordinance.

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Public Comment was closed.

Mr. Stanzione proceeded to make his statement and addressed the suitability of the site where the proposed four licensed wireless communication carriers propose to collocate. He named the four carriers to be Verizon Wireless, AT&T, Nextel, and Sprint. He added that he is in receipt of a letter of interest from T-Mobile, as a fifth carrier. With regard to the billboards, Mr. Stanzione requested to amend the application to eliminate the billboards and stated their willingness to accept as a condition of any approval the Board grants. A brief discussion followed by the Board's Attorney and it was stated that until the billboards are removed, no building permit would be issued. The applicant accepted. Mr. Stanzione proceeded to address the permitted use at the time the applicant was filed and the denial of the applicant's 120 foot tower proposed 13 years ago. He referred to Exhibit A-20 (Report prepared by Ms. Malone of V-COMM) and addressed the significant gap in coverage along Route 206 that was also confirmed by Ms. Malone. With regard to the gap in coverage, Mr. Stanzione expressed the importance to have the ability to communicate and since there is no service in that area, the public's welfare will be the positive criteria to balance through the Sica balancing test. He added that the proposed tower would solve a substantial area that needs coverage. With regard to 911 calls, he explained that E-911 service has been mandated by the FCC and that since many people are no longer using the landline phones and just their cell phones, adequate service would improve communications; provide emergency services; and give one the ability to make emergency calls. He described the seven-acre large wooded lot to be particularly suited because of its physical characteristics. Also, he stated that the applicant would meet all the setback requirements of the Township's Wireless Communications Ordinance.

With regard to the detrimental impacts and visual concerns, Mr. Stanzione reviewed Exhibits A-27 thru A-33 (Photos) explaining that the tower would not be a substantial negative impact since it has to be seen. Also, he added that prior testimony never indicated that it would not be seen.

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Mr. Stanzione proceeded to identify various Supreme Court cases and their decisions with regard to hearings about cell towers. With regard to parking, the applicant stated their willingness to reduce the parking spaces from four to two and a 12-foot wide gravel driveway instead of 18 feet in width. With regard to the impervious coverage, the applicant stated their willingness to reduce. Mr. Stanzione expressed the need to have sufficient wireless coverage against the minimal detrimental impacts and asked the Board to vote in favor of the application.

Mr. Roskos addressed the Board with regard to their deliberations and felt that it would helpful if they reviewed the Appellate Division decision in terms of reliable service on Pages 23 and 24 of the RF testimony.

Mr. Roskos requested that Mr. Stanzione's letter dated October 26, 2010, is made part of the record. With regard to a letter from the Stokes Family Limited Partnership stating why the Board should deny the application, Mr. Roskos explained that the Board has to ignore the letter since the family is not present to be cross-examined. Also, Mr. Roskos advised the Board to engage in a Sica balancing test process and impose conditions necessary for the benefits to outweigh the detriments

Lengthy discussion took place by the Board with regard to the established gap, wireless coverage for E-911 service, topography, design of the tower, impervious coverage, moving the tower away from Tomlyn Drive and further towards Route 206, reducing the parking and width of the driveway. Also, as part of the Transcript, each Board Member stated their concerns and suggested conditions to be imposed on the applicant. Further discussion took place by the Board with regard to the site plan, type of tower and its height. With regard to the site plan, Mr. Roskos stated that the applicant would return with a revised site plan at a scheduled hearing. Mr. Drill addressed the proposed cell tower and stated that his client would rather see a 145 foot monopole than a 145 foot tree pole.

*Chair Kremer moved and Vice Chair Brame seconded to approve the application, use variance, amending the motion to include the height variance of 145 feet, removal of billboards, provision for two parking spaces, no variance for impervious coverage, move the tower as close as possible to the front setback without significantly compromising the quality and coverage of service, bifurcate application with the applicant returning for a final site plan hearing to be re-noticed.*

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Exhibits: None

Witnesses: None

Placed Under Oath: Township Professionals (Brenda Kraemer and Brian Slauch).

Public Comment:

- Sonya Marcus, 18 Tomlyn Drive, stated that the tower will be literally in her back yard and 200 feet from her property. She stated concerns about the negative impact and her inability to sell their home.
- William Hom, 9 Tomlyn Drive, stated that he has lived at this residence for 17 or 18 years. He urged the Board not to give approval for the 140 foot monopole. He felt that the photographs did not speak to the true height of the monopole since he was present during the crane testing. He proceeded to stated how the tower would be a great, negative impact to the area. Also, he stated concerns about the site's suitability since Bristol Meyers or the Hun School was not willing to allow construction on their property.
- Elizabeth Hosny, 20 Tomlyn Drive, stated that she is a new homeowner. Also, she stated her concerns about the application and the negative impact the height of the tower would have because of the slope of the land.
- Milton Grannatt, 10 Tomlyn Drive, stated his concerns about the proposed application. He felt that the applicant did a poor job in selecting a site. He proceeded to state concerns about the loss of the community and the negative impact on the Township of Lawrence, if the neighbors were to apply for a property tax revision. Also, he asked to the Board to do the right thing and abide by the Master Plan.

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Public Comment – continued

- Victor Bakunoff, 3760 Lawrenceville Road, stated his concerns about the proposed application and addressed the violation of privacy when the workers visit the billboard area. He stated that since his ownership of nine years, there have been massive flooding problems from an environmental standpoint. Also, he stated concerns about the traffic.
- Leonard DiDonato, 2 Tall Timber Drive, stated his concerns about the non-conforming uses on the property and questioned whether there were variances associated with the billboard. He proceeded to give new evidence with regard to the variances at the Quakerbridge Mall and the Mercer Mall. (*Objections were stated from Chair Kremer and Counsel. Mr. DiDonato was requested to make comments only related to the record.*) Mr. DiDonato felt that he was being denied to speak his peace.

*Chair Kremer moved and Mr. Brame seconded to approve the application, including use, subject to all stated conditions and recommendations contained in the Township Professionals' reports.*

AYES: Brame, Kmosko, Kulak, Lewis, Pangaldi, Lavine, Kremer  
ABSENT: Gladwell, Maffei

5. Old Business/New Business/Correspondence: None
6. Adjournment

There being no further business to come before the Board, the meeting was adjourned at 10:56 p.m.

Digital audio file of this meeting is available upon request.

Respectfully submitted,  
*Sara A. Summiel (emailed)*

Sara A. Summiel  
Recording Secretary

MINUTES APPROVED: *S. Summiel* 1/6, 2011