

**VERNON TOWNSHIP LAND USE BOARD
REGULAR MEETING MINUTES
July 22, 2009**

CALL THE MEETING TO ORDER

Mr. Theobald called the meeting to order at 7:23 p.m.

STATEMENT OF COMPLIANCE:

Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975 adequate notice as defined in Section 4D of Chapter 231, P.L. 1975 has been transmitted from the Vernon Municipal Center to the New Jersey Herald, Star Ledger and Advertiser News on January 23, 2009. Notice is posted on the bulletin board and filed with the office of the Township Clerk.

PLEDGE OF ALLEGIANCE

ROLL CALL

Andrew Borisuk	P - arrived at 9:26 pm
Mayor Carew	NP - excused
Richard Spoerl	NP - excused
Martin Theobald	P
Sam Lewin, Alt. #1	P
Chris Hack, Alt. #2	P
David Gornstein	P
Vincent Zinno	P
Gary Grey	NP - excused
Andrea Cocula	P
Jack Smith, Alt #3	NP
Gino Misciagna, Alt #4	NP

ALSO PRESENT

Patrick McNamara, Esq., Bd. Attorney
Louis Kneip, P.E., Bd. Engineer
Jessica Caldwell, Planner

PUBLIC HEARINGS

Cellco Partnership d/b/a Verizon Wireless

LU#1-09-1

Block 130, Lot 1.05

Use Variance & Major Site Plan

(These minutes reflect a summarization of the order of speakers and certain details, only. Detailed testimony can be found in the transcript provided by the applicant's court reporter.)

Mr. McNamara - Opening Comments

Mr. McNamara advised the Public that the Board is constituted tonight as a Board of Adjustment and as such, Mayor Carew and Council member Grey are not eligible to hear D-variance applications as a matter of State law and are recused from these proceedings.

Mr. McNamara went on to explain that the application before the Board tonight is for a telecommunications facility and there is counsel present tonight on behalf of some of the neighbors. The applicant is seeking D-variance relief and site plan approval. The applicant will be allowed to present any witnesses in support of that application. Once those presentations are made, counsel for the objectors, Mr. Weiner, will have the opportunity to cross examine, as will members of the Board, and then members of the Public will have the same opportunity. When the Public wishes to cross examine a witness it should only be as to the testimony the witness has given. Any general comments should be saved until after the applicant's case has been presented and then there will be a separate time for anyone who wishes to make any comments on this application.

Mr. McNamara also advised members of the Public that a Land Use Board cannot take

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testimony or hear anecdotal information regarding alleged health effects from these types of facilities. The Board is precluded from doing so as a matter of Federal law (Federal Telecommunications Act). Every witness will be sworn. The Board will stop taking testimony at 10:00 p.m. It is not anticipated that the applicant will finish tonight and the application will be carried to the first meeting in September. The applicant will not be required to send further notice, if that date is announced here this evening.

Richard Stanzone, Esq., Hiering, Dupignac, Stanzone & Dunn, Toms River, NJ, appeared on behalf of the applicant, Cellco Partnership.

Ira Weiner, Esq., Beattie Padavano, appeared on behalf of Glenwood ACT (Principals: Pat DiStasi, Margaret DiStasi, Andy Pittsger).

Ira Weiner, Esq.

Exhibit marked: Ex 1 - A letter, dated July 20, 2009, from Mr. Weiner.

Mr. Weiner asked if there were any objections or conflicts from the applicant because of his prior involvement in the Town. Mr. McNamara didn't see any conflict and Mr. Stanzone advised he didn't have any conflict.

Mr. Stanzone advised that he will have someone transcribe this meeting from the recording as there was a mix up with having a court reporter present during the meeting.

Mr. Weiner stated that with the illegal work having been done, with additional work to be done, (the full extent of which is unknown), with questions about Highlands issues and work that was performed after the Highlands Act was implemented, and with serious issues concerning ownership and consent of the use of the private road, he suggested that the Board not hear this application tonight. He feels that the illegalities should be cleared up prior to the hearing moving forward.

(Please review the transcript for the complete testimony by Mr. Weiner.)

Richard Stanzone, Esq. 7:45

Concerning dismissing the application, Mr. Stanzone stated that the MLUL was passed in 1976 and in the MLUL there were certain time periods put upon Boards. As such, he didn't feel that this hearing should be stopped from going forward.

The MLUL did not give the right or the power to interpret private disputes between private property owners as with the issue of who legally owns the private road - Silver Spruce Road.

Concerning the Highlands Act, Mr. Stanzone stated that this Board has no jurisdiction over the Highlands Act permit. However, anyone may appeal or provide new information to the Highlands, which can then be argued before the Highlands Board.

Concerning zoning violations, he advised that to his knowledge no zoning violation notices have been given to the Wallaces, either they don't exist or they were given and cleared up. He suggested that the Board has an obligation to proceed with the hearing.

Mr. Weiner commented regarding the argument of whether the road is a part of the application, if the applicant intends to use Silver Spruce Road, it is a private road and you would have to grant use variance relief for the private road over the objection of the owners that own the road. Mr. Weiner feels the road is part of the development. He cited the "Angel" case.

Board Attorney

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Mr. McNamara advised the Board that it does not have the legal authority to conduct its own independent investigation on the merits of the decision made by the Highlands Commission ("HC"). However, Mr. Stanzione is correct when he stated that anyone can advise the HC that they have further information relevant to those proceedings which would result in the HC revisiting or reversing its decision. Permits or approvals can be rescinded as a result of subsequent information made available to the agency that was not available to it at the time of its determination. He recommended that the Board continue to hear the application and if anyone has any information relevant to present to the HC, they are free to do so.

Mr. McNamara commented that it was his understanding that there were code violations issued to the property owner, not the applicant. It is not within the purview of the Board to penalize the applicant for the sins of the property owner in that if there are code enforcement issues, those have to be addressed through the code enforcement officer and either through municipal court proceedings or the local Construction Board of Appeals. Any information in that regard may be given to the Code Enforcement officials of the Township.

Concerning the issue of the private road and access to the property, he cited the case, Mountain Hill v. ZBA of Middletown (403 NJ Super 210) which stated that driveways are so incidental to any main structure and so customary to all structures that

they are permitted accessory structures and uses in every zone.

Mr. McNamara advised the applicant that he will request that the title information (for the private road) be provided to him directly and Mr. Weiner is to provide Judge Harris's decision on the Angel case. Pending further review, it is his recommendation that the Board be allowed to continue tonight subject to the review of the title information and Judge Harris's ruling.

VOTE TO CONTINUE THE HEARING

ROLL CALL was taken to continue to hear the application subject to the caveats that Mr. McNamara requested which were the ownership rights and access with the driveway: THEOBALD - Y, LEWIN - Y, HACK - Y, GORNSTEIN - Y, ZINNO - Y, COCULA - Y.

Mr. McNamara recommended that the Board authorize he and Mr. Kneip to solicit proposals for the Board to hire a radio engineer ("RF expert") to review the reports, provide independent analysis and make a report and testify before the Board. Mr. Theobald suggested hearing the applicant's radio engineer's testimony (Mr. Yorke, below) and then deciding whether to hire their own RF expert.

EXHIBITS MARKED BY MR. MCNAMARA:

- Ex. A-2 - The application under cover letter dated February 17, 2009, from Mr. Stanzi one's firm
- Ex A-3 - The Highlands determination letter of July 9, 2008
- Ex A-4 - The report from PierCon Solutions entitled Independent Analysis of the predicted Radio Frequency Environment ("EMF Report") near a proposed Verizon Wireless Communications Facility, NJ Camp Glenwood, dated September 5, 2008
- Ex A-5 - The Independent Radio Frequency Report regarding proposed wireless communication facility for Cellco Partnership dated October 7, 2008, from PierCon Solutions
- Ex A-6 - A letter dated January 12, 2009, from the Sussex County Planning Board advising that it is not exercising jurisdiction on this application and deems it exempt from review
- Ex A-7 - A letter dated January 29, 2009, from E 2 Project Management, LLC regarding wetland database mapping addressed to Ronald Igneri of

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- Innovative Engineering, Inc. of Toms River, NJ
- Ex-A-8 - A memo to the Vernon Twp. LUB from Tom VanGorder, Fire Official, dated March 17, 2009, noting that "there is nothing presented in this application that requires a comment from the Fire Prevention Office"
- Ex A-9 - A letter addressed to the Township Administrators dated May 2, 2009 - "Suspected Hazardous Substance Discharge Notification" from the NJDEP
- Ex A-10 - The review dated May 5, 2009, by the Board Engineer, Mr. Kneip
- Ex A-11 - The report from Harold E. Pellow & Associates dated May 5, 2009, by Jessica Caldwell, LUB Planner
- Ex A-12 - Sussex County Dept. of Health Immune Services Report, received May 7, 2009, forwarded under cover letter dated May 20, 2009
- Ex A-13 - Environmental Impact Statement prepared by E 2 Project Management of Rockaway, NJ, dated December 9, 2008, received January 8, 2009
- Ex A-14 - A soils map submitted as part of the application
- Ex A-15 - A series of green maps
- Ex A-16 - A set of plans submitted to the Board from Innovative Engineering, Inc. signed and dated December 17, 2008, received January 8, 2009
- Ex A-17 - Initial service of February 19, 2009, deemed superseded per cover letter of July 16, 2009, from counsel for the applicant, affidavit of service and affidavit of Publication (Board finds the Notice is in order)
- Ex A-18 - Copy of December 23, 2008, report by PierCon Solutions
- Ex A-19 - The base map for exhibit board, Verizon Wireless, dated March 11, 2009

FIRST WITNESS

Mr. Edward Yorke, Radio Frequency Engineer for PierCon Solutions, (a company that specializes in wireless communication services), was sworn in by the Board Attorney and his qualifications were accepted by the Board attorney and Mr. Weiner.

Mr. Yorke advised that he prepared both reports for this application. These reports were an independent review and analysis of the proposed project. Mr. Yorke advised that the reports relate specifically to the radio frequency characteristics of the area, the coverage, the coverage gaps, how the proposed site was selected, what coverage it could provide and alternate solutions.

Mr. Yorke gave a general summary of Verizon Wireless business. He discussed the coverage gaps in Vernon Twp., with the terrain being the biggest factor for these gaps. In conclusion, Mr. Yorke agreed with Verizon that there is a significant gap in coverage of 2.5-3 miles, a base station is required inside of the bowl and 130' is the minimum height required at this specific location to provide the coverage as shown.

Mr. Yorke discussed the EMF Report (Ex A-4). The conclusion of this report states that this site will be in full compliance for the NJDEP and the FCC Radio Frequency Exposure limits. He went on to explain how the measurements are taken.

(Please refer to the transcript for the lengthy testimony giving detailed technical information from this witness.)

IRA WEINER, ESQ.

Mr. Weiner cross examined the witness, Mr. Yorke.

(Please refer to the transcript for the detailed cross examination of Mr. Yorke.)

OPENED MEETING TO THE PUBLIC

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Several residents of Vernon and Glenwood came forward to ask questions.
(Please refer to the transcript for the detailed testimony given from the Public.)

CLOSED MEETING TO THE PUBLIC

HEARING CLOSED AND CARRIED

The hearing for the Cellco Partnership was closed at this point and will be carried to September 9, 2009, at 7:00 p.m. without any further notice required. Time is extended to September 30, 2009, with consent to the applicant.

Question to the Board

Mr. Theobald asked the Board members if they should hire an independent RF expert at the expense of the applicant.

Motion

Mr. Zinno made a motion that an independent RF expert is not hired by the Board and to rely on the applicant's RF expert's testimony. Mr. Gornstein seconded the motion. ROLL CALL: BORISUK - Y, THEOBALD - Y, LEWIN -Y, HACK - N, GORNSTEIN - Y, ZINNO - Y, COCULA -N. Vote was 5-2 against hiring their own RF expert.

OPENED MEETING TO THE PUBLIC FOR ITEMS OTHER THAN THOSE LISTED ON THE AGENDA

Mr. Gary Grey discussed how Mr. Stanzione was behaving at the end of the meeting and asked if something could be said to him.

CLOSED MEETING TO THE PUBLIC

MINUTES

July 8, 2009

Mr. Grey discussed that he had a revision to be made to the July 8, 2009, minutes concerning the update of the Master Plan discussion. The vote for these minutes will be tabled until the next meeting of August 12, 2009, after the revised minutes can be distributed. Mr. McNamara advised Mr. Hanlon that if someone requested the minutes, he would be able to provide those minutes even though they had not been approved yet, under the Public Records Act.

RESOLUTIONS

Linda and Donald Weiss

LU # 3-09-5

Block 61, Lot 28

C-Variance for a lot without frontage on a roadway in NJ

The vote for this resolution was tabled to the August 12, 2009, LUB meeting.

NS Enterprises

LUB # 1-09-2

Block 184.01, Lot 6

Ms. Cocula made a motion to approve of this resolution. Mr. Zinno seconded the motion. All were in favor.

LAND USE BOARD DISCUSSION ITEMS

None.

**Appendix A
escrows, board fees and bond reductions**

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Escrows

Board Engineer - Louis M. Kneip, P.P, P.E., CME
Sally Rinker – ZB# 10-06-17 – DOS – 6/10/09-6/15/09 – (\$555.00)
Stanhill Concept – PB# 1-08-1 – DOS – 6/03/09 – (\$83.25)
Regan Trust – LU# 5-09-8 – DOS – 6/08/09 – (\$55.50)
Merck – PB# 11-08-9 – DOS – 6/10/09 – (\$55.50)
Red Oak – LU# 5-09-9 – DOS – 5/26/09-6/24/09 – (\$444.00)
A&P – LU# 4-09-7 – DOS – 6/10/09 – (\$249.75)
NS Enterprises – LU# 1-09-2 – DOS – 6/30/09 – (\$444.00)

Board Attorney – Patrick McNamara, Scarinci & Hollenbeck
The Cedars at Black Creek Reserve – PB# 8-07-12 – Services through 6/30/09 - (\$45.00)
The Great Atlantic & Pacific Tea Co. - LU#4-09-7 – Services through 6/30/09 – (\$320.00)
Red Oak Properties – LU#5-09-9 - Services through 6/30/09 – (\$195.00)
Laura Mineo Noto – LU#4-09-6 - Services through 6/30/09 – (\$60.00)
Cellco Partnership – LU#1-09-1 - Services through 6/30/09 – (\$30.00)
Metairie Corporation – LU#2-09-3 - Services through 6/30/09 – (\$120.00)
Glenn McLaughlin – ZB#11-08-16 - Services through 6/30/09 – (\$30.00)
Christopher Merck – PB#11-08-9 - Services through 6/30/09 – (\$300.00)

Township Planner – Jessica Caldwell, AICP - Harold E. Pellow & Associates
Cellco d/b/s Verizon Wireless – LU# 1-09-1 – DOS – 5/28/09 – (\$140.25)
A&P – LU# 4-09-7 – DOS – 6/25/09 – (\$420.75)
Red Oak Properties – LU#5-09-9 – DOS – 6/25/09 – (\$561.00)
Stanhill Concept – PB# 1-08-1 – DOS – 6/25/09 – (\$70.13)

Motion

Mr. Lewin made a motion to approve the escrows. Mr. Gornstein seconded the motion. One was opposed, Mr. Borisuk. All other members were in favor.

B. Board Fees

Cynthia Davis
Land Use Board Business – DOS 7/06/09-7/11/09 – (\$78.00)

Board Attorney
Land Use Board Business – Services through 6/30/09 – (\$2,000.00)
Northwoods Redevelopment – Services through 6/30/09 – (\$240.00)
Board of Education Historic Building – Services through 6/30/09 – (\$60.00)
MacAfee Redevelopment Initiative – Services through 6/30/09 – (\$75.00)

Township Planner – Jessica Caldwell, AICP – Harold E. Pellow & Associates
Land Use Board Business – DOS 5/28/09 – (\$224.97)
Land Use Board Business – DOS 6/25/09 – (\$187.00)

C. Bond Reductions

None

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D. Request for Escrows to be closed

None

Motion

Mr. Gornstein made a motion to approve of the Board Fees. Mr. Zinno seconded the motion. All were in favor.

Status of Pending Applications

Mr. Kneip reviewed the upcoming applications.

Cellco Partnership dba Verizon Wireless – LU#1-09-1

Deemed Complete & Scheduled for Public Hearing on July 22, 2009

A&P – PB#11-08-10 – Outdoor Storage variance - Continuation of Public Hearing, Not presently scheduled

Noto – LU#4-09-6 - "C" Variance & Stream Buffer Variance, deemed complete and scheduled for public hearing on August 12, 2009

Regan Trust – LU#5-09-8 – Minor Subdivision – Deemed Complete & Scheduled for Public Hearing on August 26, 2009

Mitelin Motors – PB#12-05-13 – Amended Preliminary & Final Major Site Plan – Administratively complete and Scheduled for Extension of Time Request & Public Hearing on August 12, 2009.

Ms. Cocula advised that she will not be available for the August 6, 2009, LUB meeting.

Mr. Lewin advised that the A&P has done nothing about the shopping carts. Mr. Kneip advised that the A&P met with the zoning officer about how they are going to proceed and will come back with a plan showing a screen wall to shield the outdoor goods.

ADJOURNMENT

Ms. Cocula made a motion and Mr. Gornstein seconded the motion to adjourn the meeting at 10:34 p.m. All were in favor.

Transcribed by Cynthia Davis on July 25, 2009.

CERTIFICATION

I, the Board Secretary, hereby certify that the above minutes were approved at the regularly scheduled Land Use Board meeting on August 12, 2009.

Respectfully submitted,

John Hanlon
Board Secretary