

**BOROUGH OF WESTWOOD
PLANNING BOARD MINUTES
PUBLIC MEETING AGENDA
REGULAR MEETING
APRIL 22, 2010**

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Planning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: William Martin
Phillip Cerruti
Ann S. Costello
Richard Bonsignore
James Schluter, Vice-Chairman
Councilwoman Cynthia Waneck
Daniel Olivier (Alt. #1)
Otokar von Bradsky (Alt. #2)
Jaymee Hodges, Chairman

ALSO PRESENT:

Thomas Randall, Esq., Board Attorney
Steve Lydon appeared on behalf of
Ed Snieckus, Burgis Associates, Board Planner
Louis Raimondi, Brooker Engineering,
Board Engineer

ABSENT: Mayor Birkner (excused absence)
Thomas Constantine (excused absence)

4. MINUTES: The Minutes of 4/8/10 are not yet available. Mr. Martin and Mr. Schluter have listened to the recording of the 4/8/10 meeting in its entirety and have signed the certifications. Councilwoman Waneck has not listened to the recording of the 4/8/10 meeting.

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5. CORRESPONDENCE:

- a. Letter from Boswell Engineering RE: An application of the high school and the freshwater wetlands area;
- b. Letter from the Westwood Volunteer Ambulance Corps. RE: Annual Fundraising Carnival at Westwood Plaza from July 27th through July 31st;
- c. Letter from the Westwood Shade Tree Advisory Committee RE: Ketler School construction project;
- d. Letter from Ronald E. Graf, P.E., Radio Frequency Consulting Engineer RE: Verizon Wireless Application;
- e. Memo from Mr. Hoffman RE: Vouchers;
- f. Letter from Mr. John Lamb, Beattie Padovano, LLC dated April 19, 2010 RE: Verizon Wireless Application

6. RESOLUTIONS: None

7. VOUCHERS: A motion to approve the list of Vouchers, totaling \$687.50, was made by Mr. Cerutti, seconded by Mr. Martin and carried unanimously.

8. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS:

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARING
The Board Professionals were sworn in

1. Verizon Wireless - One Westwood Avenue, Block 907, Lot 9-Application for Minor Site Plan Approval with Variances for Proposed Rooftop Wireless Communications Facility - David H. Soloway, Esq., represented the applicant. Mr. Lamb who represents an objector group is present. A court reporter is also present. Mr. Randall stated that based on some questions and issues raised at the last meeting that it would be best if the Mayor and Councilwoman Waneck recuse themselves from the dais. Councilwoman Waneck steps down from the dais. Mr. Soloway does not believe that the monopoles at the borough hall and firehouse are relevant to this application nor does he feel that it is necessary under the borough ordinance to rule out these sites as part of its proofs. Mr. Donohue is here to testify regarding the emails referencing these monopoles. Chairman Hodges states that the board members saw the emails on the dais but they did not receive them and do not have them to reference this evening. Mr. Soloway has some copies but not enough for the board.

John J. Lamb, Esq. represented the objectors, First Westwood Realty, LLC; Jefferson Realty Group, LLC; Bucciarelli Company, Inc.; Richard A. Heck; and Milo, Inc., in this matter. Three of the objectors are within 200ft. Mr. Lamb was retained on Thursday, April 15, 2010 by the objectors. Mr. Lamb states that the meeting from the 4/8/10 meeting is not yet transcribed but has the transcripts for the meeting in February and the two meetings in March. Mr. Lamb has read a summary of the transcripts. Mr. Lamb believes that there is a

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threshold issue in this matter because of problems with the public notice being insufficient. Mr. Lamb stated that the applicant provided with the application a number of deeds of easement. One of the objectors, First Westwood Realty is one of the easement holders. That property is block 719 lots 3 & 4.01 which is referenced in the easement. Mr. Lamb stated that it is incumbent on the applicant to provide notice within 200ft of all of the properties that have any involvement with the application. Mr. Lamb references the Brower Development case that deals with a driveway or access road to the subject property and the court ruled that the applicant must provide notice within 200ft circle around everybody. Mr. Lamb believes that the hearing should be carried until corrected notice is issued. Mr. Lamb stated that the Borough Planner's office is a tenant of 1st Westwood Realty (an objector in this case) and it is a conflict of interest to have him as the Borough Planner in this case. Mr. Soloway stated that Mr. Lamb mischaracterized the Brower Development case. Mr. Soloway stated that this case involved the construction of a road on the easement and the court stated that because of the necessity and use of the proposed road the applicant needed to provide notice within 200ft from the road. All equipment is proposed to be on the roof except for the 3 antennas which the objectors believe is encroaching on the easement but is not at ground level. The applicant is not proposing any work in the area of the easement and therefore would not have any impact on the easement. Mr. Randall stated that he has reviewed the Brower case and states that it could apply but here Mr. Randall believes that the notice is correct. Mr. Lamb states that waiting until the next meeting to renotice would be best. Block 907 lot 11 are the new numbers for Block 719 lots 3 & 4.01. The easement for First Westwood Realty is dated May 1991. The easement for the Gardner property is dated November 19, 1960. Mr. Randall recommends that the application continue.

Mr. Lamb questions if the Borough Planner will remain. The reports have been issued before today and suggests that the planner step down. Mr. Lydon steps down from the dais. Mr. Lamb stated that the objectors have retained and Planner but could not get him up to speed for this evening's hearing. Mr. Soloway states that a completed application was submitted on November 9, 2009 and with the 45 completeness days and 120 days to complete hearing runs tomorrow. Mr. Soloway states that he will not consent to an extension of the hearing. Mr. Lamb stated that if the applicant does not consent to an extension and the case has not been completed the board can dismiss the case without prejudice. If the objector comes in on the last day it does not mean that he has no rights. Mr. Lamb stated that the applicant had expert testimony on January 28, 2010 and then a month and a half later had a new expert testify and asked that the prior testimony be stricken from the record. Mr. Lamb states that the objectors must have the right to present their case.

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Mr. Lamb stated that this application is for a conditional use and must satisfy all the aspects of the conditional use and the applicant does not satisfy any and therefore this application should go before the Board of Adjustment. Mr. Lamb stated that the board needs to consider what is raised in his letter regarding dismissing the application without prejudice. Mr. Randall explains the dismissal and extension for the board. Mr. Randall questions where the objectors have been for the past 6 months. Mr. Soloway states that there has never been any objectors in the audience for the past 6 months. Mr. Soloway states that the board has already ruled that they have jurisdiction. Mr. Lamb states that the MLUL does not say that an objector has no rights no matter when they come into the hearing, ie. 1 month or 6 months. Mr. Lamb stated that the first time an objector could present its case would be when the applicant rests their case. Mr. Lamb is advocating for the borough's interest. Mr. Lamb contacted the Borough Attorney regarding a 3rd party using the municipal tower. Mr. Lamb questioned if the municipal tower was available and stated that it can be cleared up at the next Mayor and Council meeting, next week. Mr. Randall stated that a subpoena will not extend anything. Mr. Lamb stated that the Chair has the power to subpoena. Mr. Lamb read the wireless communications ordinance.

Mr. Martin suggested that the board members discuss the jurisdiction issue. Mr. Martin stated that the easements are tied into the property and believes that the notice should include the easements. Mr. Martin asked how the board would know if there wouldn't be additional objectors if the notice was extended to the easement. Mr. Martin stated that it changes the intensity of the use. Mr. Randall states. Mr. Martin makes a motion that the board has jurisdiction for this application, Mr. Cerutti seconds the motion. On roll call vote, the vote was as follows:

ROLL CALL:

Ayes: Mr. Martin, Mr. Cerruti, Ms. Costello, Chairman Hodges, Mr. Schluter and Mr. von Bradsky.

Nays: None

Abstain: Mr. Bonsignore and Mr. Olivier

The motion is carried.

Mr. Kevin F. Donohue was previously sworn and testified in January 2010. Mr. Donohue referenced an email dated August 1, 2005. Mr. Lamb objected to a document dated in 2005 which is 5 years prior to this application and is not relevant regarding the use of the borough's monopole today. Mr. Soloway stipulated that Verizon Wireless has not approached any borough official within the last six months. Mr. Randall stated that the email is admissible. Mr. Bonsignore agreed with the return of Mr. Donohue. A-15 is marked as a letter to Mayor Wanner of the Borough of Westwood dated August 1, 2005. A-15 explains who Mr. Donohue is and who he works for and expresses Verizon Wireless' interests in the existing monopolies at the Borough Hall as

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well as the firehouse. A-16 is marked as a package of emails beginning 8/14/06 from Mr. Donohue to Mr. Huntington and ending 11/2/06 with a total of 7 pages. Mr. Martin questioned that there is no address on A-15, it only says TSS at the top. The address at the bottom of the page did not copy, the address is, 563 Rt. 303 Blauvelt, NY 10913. It is determined by the board that instead of marking the emails as a package they will be marked individually. Mr. Donohue marks the following emails A-16 - 8/14/06 to Mr. Huntington discussing a bid and providing the borough with a sample of a successful bid and a copy of a standard lease agreement; A-17 9/5/06 to Mr. Huntington discussing new bid; A-18 9/5/06 - from Mr. Huntington requesting Mr. Donohue resend the attachment; A-19 9/5/06 email in which Mr. Donohue resent package to Mr. Huntington; A-20 9/13/06 to Mr. Huntinton asking if he had the chance to review bid specs. A-21 - 9/28/06 to Mr. Huntington asking again if Mr. Huntington had reviewed the bid specs.; A-22 - 11/1/06 to Mayor Wanner providing all the documents that have been previously sent to Mr. Huntington; A-23 - 11/1/06 from Mayor Wanner asking what Verizon is requesting specifically; A-24 - 11/1/06 to Mayor Wanner responding that they are interested in using the pole at the borough hall; A-25 - 11/2/06 to Mayor Wanner asking if he had the chance to follow-up with Mr. Huntington. Mr. Donohue had one meeting with Mr. Huntington approximately September of 2006. Some gentlemen from the fire department were there as well. After that there was no further contact from Mr. Huntington or Mayor Wanner.

Mr. Bonsignore questioned that the Mayor and Mr. Huntington did not respond via email except for the two provided as exhibits. Mr. Bonsignore believed that there was no interest from the borough to go out to bid for the municipal tower. Mr. Donohue stated that not once did the Borough respond. Mr. Donohue stated that after his meeting with Mr. Huntington he attempted 12-14 times via telephone to contact Mr. Huntington. Mr. Olivier states that proper protocol should have prompted the applicant to file an application at that time. Mr. Donohue believed that the Mayor would have taken the request to the Council but he did not. Mr. Donohue did not speak directly to the Mayor & Council at any time. Mr. Bonsignore asked about prior testimony regarding utilizing the municipal tower for anything other than Borough usage. Mr. Randall Mr. Olivier felt that the applicant should have gone beyond what they did. Mr. von Bradsky requested confirmation if a yes or no was given by the Borough. Mr. Soloway stated that an application cannot be made because there was no lease and therefore no right to make such application. Ms. Costello referenced the last email from Mr. Donohue to Mayor Wanner. Mr. Martin questioned the "shelf life" of due diligence from 3.5 years ago. Mr. Randall stated that it is up to the individual board member to determine this. Mr. Martin stated that there is new leadership in the Borough and it should have been addressed again. Mr. Soloway stated that the applicant did not contact the new Mayor. Mr. Martin stated the current Mayor has been in office for 2.5 years. Mr. Cerruti referenced the email from 11/1/06 regarding the bid package. 11/1/06

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email from Mayor Wanner was the last direct communication that Mr. Donohue had with him and never received a response if it was read or not. Mr. Cerruti referenced the telecommunications act and co-location violation and contact with Verizon Wireless legal counsel. Mr. Schluter asked if Mr. Donohue used an electronic read receipt to see if Mr. Huntington or Mayor Wanner read the emails. Mr. Donohue did not. Chairman Hodges asked about his tour of the fire headquarters. They looked at tower and rooftop. Mr. Donohue did not remember the access point to the rooftop. Chairman Hodges asked why they didn't come before the Mayor and Council to discuss this formally. Mr. Donohue was told by Mr. Huntington that he would bring it to the Mayor and Council for discussion. Mr. Donohue was removed from this project at the end of 2006.

Mr. Lamb questioned if Mr. Donohue worked for Verizon Wireless. Mr. Donohue worked for TSS and independent consultant. Mr. Donohue did not know how many different consultants work for Verizon Wireless in New Jersey. Mr. Donohue does not get paid by the hour but by procuring the best leasing option for Verizon Wireless. Mr. Donohue never submitted an option agreement to Mr. Huntington or Mayor Wanner. Mr. Donohue stated that an attorney from Verizon Wireless never contacted the borough. Mr. Donohue was in contact with the borough attorney, Mr. Huntington, because he was told to my Mayor Wanner. Mr. Donohue told Mr. Huntington that if this were to move forward that he would put Mr. Huntington in contact with the legal department of Verizon Wireless. Mr. Donohue did not know when the new mayor, Mayor Birkner, began his term.

Mr. Soloway calls Mr. Randall Holmes, Wireless Communications Consultants, Inc., 3817 Linglestown Road, Harrisburg, PA 17110. Mr. Randall Holmes is sworn in by Mr. Randall. Mr. Holmes began working with Verizon Wireless in 1996 in Pennsylvania and began in New Jersey in the middle of 2007. At that time Mr. Holmes company was given a number of no solution sites and was asked to survey these sites and the Borough of Westwood was one of the sites. Mr. Holmes came to the borough on the 1st or 2nd of October 2007, did a survey of possible sites and then contacted the Borough Clerk and was told to write to Robert Hoffman, Borough Administrator. 10/18/07 letter is marked as A-26 which is a letter to Mr. Hoffman regarding who he was and identified 3 possible municipal options and specifically asked that his letter be discussed with the Borough Council and Mayor. Mr. Holmes received no response in writing and called every 2-3 weeks and left messages for Mr. Hoffman and received no response. Verizon Wireless asked if there was anyone else they could contact. A-27 is marked as a letter dated March 5, 2008 to Chief Robert Saul Jr. of the Westwood Volunteer Fire Department regarding use of the support structure located behind the firehouse and would like to meet with the Chief. Mr. Holmes did not receive a response. In both letters marked A-26 and A-27 Mr. Holmes stated it would bring revenue to the town. Mr. Holmes made approximately 2 additional calls to Mr. Hoffman with no response.

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At that time Mr. Holmes advised Verizon Wireless that it was a no solution site and sent all the material back to Verizon Wireless. Mr. Holmes stated that it is not his habit to go over Mr. Hoffman and contact the Mayor directly.

Mr. Bonsignore had no questions for Mr. Holmes but stated that he was surprised at the lack of response from the Borough in this matter. Mr. Olivier had no questions. Mr. von Bradsky, Ms. Costello, Mr. Martin and Mr. Cerutti agreed with Mr. Bonsignore about the Borough's lack of response. Mr. Schluter agreed with Mr. Cerutti and Mr. Bonsignore. Mr. Holmes states that it is his job to be courteous and did not discuss any other property except borough owned property. Mr. Holmes was paid nothing for this project because he is paid for delivering an interested owner. Chairman Hodges has no questions.

Mr. Lamb asks when Mr. Holmes ended his efforts. Mr. Holmes says he ended this project at the end of March beginning of April 2008. Mr. Soloway stipulated that this was the end and there were no additional consultants that worked on this after Mr. Holmes. Mr. Holmes stated that he specifically requested in his letter that this be discussed with the Mayor and Council and therefore he never came before the Mayor and Council. Mr. Holmes stated that an attorney is only brought in when they begin to work on a lease or any regulated activity. Mr. Lamb asked Mr. Holmes how he is paid. Mr. Soloway objects as to relevance. Mr. Holmes leaves. Mr. Soloway has concluded the testimony on behalf of the applicant.

Mr. Lamb requests that the matter be carried so that he can present the objector's case. Mr. Soloway objects and states that he will not agree to an extension. Mr. Lamb requested that the board contact Mr. Huntington. Mr. Lamb presented a 4/22/10 email from Mr. Huntington to Mr. Lamb stating that a wireless communication center contacted him two weeks ago and Mr. Huntington responded on 4/7/10 that said that he spoke with the Mayor and the Administrator and that they are interested in bidding co-locators on the tower and he will be preparing a bid document which he will send for review. Mr. Soloway objects. Mr. Lamb asked that the email be marked O-1 for identification only and is not in evidence. Mr. Lamb asked the Chairman to subpoena Councilwoman Waneck to testify. Mr. Soloway questions the propriety of calling someone that has sat on the board for all meeting except tonight and has admitted on the record that she is not aware of any formal proposal being brought before the Mayor and Council during her 5 years on the Council. Mr. Randall stated that since Mr. Soloway has already stated that he would not consent to an extension and Councilwoman Waneck is here that the board should proceed and hear her testimony. Mr. Lamb calls Councilwoman Cynthia Waneck, 137 Bramley Court, Westwood, NJ is sworn by Mr. Randall. Councilwoman Waneck stated that since January 2006 no one from Verizon Wireless or its affiliate has come before the Mayor and Council regarding the use of current borough cell towers. Mayor Birkner began

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his term in January of 2008. Councilwoman Waneck stated that it was brought up at one of the Mayor and Council meeting within the last 6 months that the borough should have a Borough First ordinance. This was received by the Council as a good idea and have directed the Borough Attorney and the Borough Administrator to move forward on that. Councilwoman Waneck spoke with Mr. Hoffman regarding this and the Council should have something next month.

Mr. Martin seconded by Ms. Costello motions to extend meeting time beyond the 11:00 pm deadline, carried unanimously.

The ordinance will state that if a provider wants to co-locate or put up a cell tower they would need to consider borough owned property first. Councilwoman Waneck has not yet seen this draft ordinance. Councilwoman Waneck stated that the Mayor and Council is preparing an ordinance and will be introduced at the next meeting on May 4, 2010 for first reading. The communications do not come to the Council.

Mr. Soloway has no questions for Councilwoman Waneck. Mr. Meisel requested the opportunity to ask questions. Mr. Lamb stated that he represents First Westwood Realty and Milo Inc which are owned by Mr. Meisel but not Mr. Meisel in any other real estate capacity. Councilwoman Waneck stated that many of the communications regarding all matters including the Hospital and cell towers that were received by Mayor Wanner never made it to the Council. Councilwoman Waneck agreed with Mr. Meisel's statement that "when someone talks about breakdown in communications, it may have been a breakdown of Mr. Wanner's but not necessarily the governing body." Councilwoman Waneck also stated that Mr. Hoffman was a new administrator at the time he was contacted. Mr. Bonsignore asked if there was a strained relationship between Mayor Wanner and the Borough Attorney. Councilwoman Waneck cannot speak to the relationship between Mr. Wanner and Mr. Huntington. Councilwoman Waneck stated that the procedure would be that the new carrier that wants to come in contacted the borough and Mayor Birkner shared that information with her approximately 2 weeks ago. Mr. Meisel asked procedure of Mayor and Council meetings. Councilwoman Waneck stated that anyone has the opportunity to speak during the public session. Councilwoman Waneck agreed that if Verizon Wireless had come before the entire Mayor and Council then all the Council would have had the opportunity to give their opinion at that time. The Mayor only votes if there is a tie. Mr. Schluter asked about any other company to install a monopole. Councilwoman Waneck stated that prior to the letter received approximately 2 weeks ago she is not aware of any companies requesting an installation. O-1 is an email from Mr. Greg Meese who represents Metro PCS. Councilwoman Waneck agreed that this is the letter she was made aware of 2 weeks ago. Mr. Soloway objected for hearsay. Mr. Lamb objects for all the hearsay regarding the applicant's testimony involving meeting with Mr. Huntington.

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Mr. Lamb again requests that the board subpoena Mr. Huntington to confirm A-16 - A-23 and O-1. Mr. Soloway does not see the relevance. Mr. Lamb stated it is relevant because it is not 5 years old. Mr. Randall stated that a subpoena for Mr. Huntington is mute because the applicant will not extend time therefore the board has to decide if they should dismiss the case without prejudice. Mr. Lamb stated that the Borough is now introducing an ordinance that directly affects this issue. Chairman Hodges expresses his concern regarding the hearsay issues. Mr. Lamb stated that it would be advantageous to the board to subpoena Mr. Huntington. Mr. Soloway does not believe that Mr. Donohue gave hearsay testimony. Mr. Lamb stated that the board cannot complete the deliberation of this matter because it does not have all of the testimony and the applicant will not extend time. Mr. Lamb referenced an unpublished case that the appellate division upheld that is on page 599 sec. 26-5 of the 2010 COX treatise - MTJ Enterprises Inc. v. Board of Adjustment which involves dismissing a case because the applicant refused to extend time. Mr. Lamb has raised in his letter a number of legal issues. Mr. Soloway submits that the board has all the information needed to make a decision. Chairman Hodges requests a census of the board. Mr. Randall stated that the board can only dismiss if they feel that there is further testimony needed. The census on the board is to vote on the merit.

Mr. Lamb began his summation and stated the board is not permitted to vote unless a disclosure statement is on file. Mr. Lamb did not receive this item in his OPRA request. Mr. Lamb referenced the N.J.S.A. 40:55D - 48.3. Mr. Soloway does not have a filed copy of the application and stated that the application was deemed complete. Mr. Randall does not have a copy and stated that it is not listed on any of the cover letters. Mr. Soloway has it on the computer and can print or fax it. Mr. Lamb stated that this was not filed with the application. Mr. Lamb stated that the board internal requirements are due 25 days before a hearing. Councilwoman Waneck stated that the board does not have access to a fax machine at this time. Mr. Randall read the statute for the board and stated that the board has no choice. Mr. Martin made a motion to deny the application. Mr. Soloway consented to the continuance to the first meeting in May. Mr. Lamb requests the second meeting in May because his planner is available. Mr. Soloway objected. Mr. Lamb requested a vote. Mr. Martin stated that the first meeting is a work session and the second is a public meeting. A motion to carry the meeting to 5/27/10 is made by Mr. Martin, seconded by Mr. Cerutti, and carried by a vote of 7 to 1. The board requested that Mr. Huntington, and Mr. Hoffman testify and that Mr. Spatz (covering planner) be contacted for coverage.

9. DISCUSSIONS:

- 1. Letter from the Westwood Volunteer Ambulance Corps. RE: Annual Fundraising Carnival at Westwood Plaza from July 27th**

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through July 31st. Councilwoman Waneck returns to the dais. A motion of approve the request from the Westwood Volunteer Ambulance Corps for their annual carnival to be held on 7/27/10-7/31/10 was made by Mr. Martin, seconded by Mr. Costello, and carried unanimously. Councilwoman Waneck leaves the dais.

10. **ADJOURNMENT:** On motions, made seconded and carried, the meeting was adjourned at approximately 12:15 a.m.

Respectfully submitted,

**MARY R. VERDUCCI, Paralegal
Planning Board Secretary**