

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
August 6, 2012**

APPROVED 9/10/12

1. OPENING OF THE MEETING

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

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is Regular Meeting of the Westwood Zoning 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, Chairman
Raymond Arroyo, Vice-Chairman
Robert Bicocchi (arrived 8:20 pm)
Vernon McCoy
Matthew Ceplo (Alt #1)
Guy Hartman (Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Steve Lydon, Burgis Associates,
Board Planner
Catherine Gregory appeared on behalf of
Steve Lydon in the KMACK South
application

ABSENT: Michael Bieri (excused absence)
Eric Oakes (excused absence)
Christopher Owens (excused absence)

4. MINUTES - The **Minutes of the 7/2/12 meeting** were carried to the next meeting.

5. CORRESPONDENCE:

1. Report from Brooker Engineering, dated 7/5/12
RE: Drake;

2. Report from Brooker Engineering, dated 7/12/12
RE: Sickinger Family Trust;

3. Report from Brooker Engineering, dated 7/13/12
RE: Snyder;

4. Report from Brooker Engineering, dated 7/17/12
RE: KMACK North II;

5. Memo from Burgis Associates dated 7/16/12
RE: Foody;

6. Memo from Burgis Associates dated 7/16/12
RE: Millennium Health Care;

7. Memo from Burgis Associates dated 7/17/12
RE: Foody;

6. VOUCHERS: A motion to approve vouchers totaling \$6,512.50 was made by Mr. Arroyo, seconded by Mr. Bicocchi, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. Kowal, 98 Cypress Street, Block 404, Lot 19 - Appeal - The Board attorney read the Resolution of approval into the record. A motion for approval was made by Mr. Arroyo and seconded by Mr. McKoy. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Arroyo, Mr. McKoy, and Mr. Martin voted yes. The remaining members were not eligible to vote.

2. Foody, 1 Brookside Avenue, Block 706, Lot 12 - Variance Application - The Board attorney read the Resolution of approval into the record. A motion for approval was made by Mr. Bicocchi and seconded by Mr. McKoy. There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi, Mr. Arroyo, Mr. McKoy, and Mr. Martin voted yes. The remaining members were not eligible to vote.

8. PENDING NEW BUSINESS:

1. Drake, 177 Woodland Avenue - Site Plan Approval - Conditionally complete; to be noticed and listed for 9/10/12;

2. KMACK North II - Site Plan Approval - Incomplete per review of Mr. Raimondi; David Lafferty, Esq. appeared on behalf of the applicant and requested permission to notice for the 9/10/12 meeting;

9. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:

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

1. Metro PCS New York, 182 Center Avenue - Variance and Site Plan Approval - Mr. Owens recused. A court reporter was present on behalf of the applicant. Mr. Jenkins continued and reviewed from last meeting and brought the Board up-to-date on the applicant's efforts to work with the Borough.

Mr. Rutherford advised the Borough has retained an RF consultant to evaluate the Borough's technical needs at the firehouse.

Robert Toms, PE, MTM Design Group, came forward, previously sworn, and having testified at the last meeting as to the structural adequacy of the building, was open to the public for questions. There were no interested parties. Mr. Toms stepped down.

Said Mujgaba, 130 Clinton Road, Fairfield, NJ, was sworn in, qualified and accepted, qualified in radio frequencies engineering. He works for Metro PCS in that capacity. Metro PCS is licensed by the FCC. Exhibit A5, a signal propagation map illustrating Metro PCS's existing and proposed coverage in the Borough of Westwood, was part of the RF report by Airwave Solutions dated 12/16/11, attached as Exhibit 1. Mr. Martin noted this report was not prepared by Mr. Mujgaba, which he acknowledged. He did not prepare this report or map. Mr. Martin stated the Board would want the engineer that prepared the report to testify about it. We can proceed with the testimony, but need the engineer to appear. Mr. Rutherford advised we

would not mark this report into evidence at this time. Mr. Mujgaba stated it was prepared under his supervision, and in other towns he testified. Mr. Martin responded it is from a totally different company, not from an employee of Metro PCS.

Mr. Rutherford agreed and stated they would allow the witness to lay down the facts, and have the other engineer appear. Mr. Jenkins put his objections on the record and questioned the witness. The next exhibit was a second Propagation Map showing the coverage of the surrounding sites along with the proposed facility. He asked the witness to describe the exhibit. It depicts the proposed boundary around the subject site with the coverage available, represented by dots. This was Exhibit 2 of the Airwave Report, and was marked A6. The blue color represented coverage for Metro PCS customers. A significant gap in coverage was evidenced by the areas in white. The idea in having this site is to provide continuous coverage. The height shown as proposed would enable this coverage to be provided.

Mr. Raimondi asked, as per the approved the sites shown as dots, which was the site to the West. Mr. Mujgaba responded he did not know; it was not on the map. Perhaps the engineer that prepared the exhibit could advised, Mr. Martin commented. Mr. Raimondi asked if there would still be a gap with the site to the West. The witness said they are a new carrier, and so they are building sites. This is the coverage they have now and are going to get. Coverage and height are affected by topography. Mr. Lydon, noting the topography was flat and there were not many trees, asked why they are showing little coverage in the Hillsdale site. He also asked for the height of the antennas. The response was 125' for the monopoles and 118' for the antennas. Mr. Lydon asked if it was for a temporary or approved facility. It was for the approved facility, Mr. Mujgaba said, and he was not sure if there was a temporary facility. Mr. Rutherford asked Mr. Jenkins to have a witness with knowledge of this subject testify. Mr. Jenkins suggested they conclude with this witness and come back. Mr. Lydon asked, and Mr. Mujgaba said 125' and 118' for River Vale, and 108' in Emerson.

Mr. Martin asked if there was any dialogue with the Borough. Mr. Jenkins responded Metro PCS is asking to go on an existing structure, but cannot if none are available.

Mr. Rutherford advised his understanding was that at the moment the applicant has shown needs that would require modification to the fire department, and they have hired a consultant to analyze the technical requirements. The Borough would advise after receipt of the consultant's report. Mr. Jenkins stated Metro PCS does not want to seek other structures, but if one does not exist, they have to propose another location. Mr. Martin asked if there were data services and if it was the same power level. The response was yes. The white area with the red dot was the proposed location. The witness said it was not reliable service; you may or may not have coverage. It is a prediction. What about inside a building, Mr. Martin asked. It is a line of sight technology. If inside, each wall has a loss of power. They are a new carrier, and their goal is to provide decent service for their customers in the area and build their foundation. Mr. Jenkins noted as part of the FCC license, they have to provide seamless coverage. In Emerson the antennas are lower, Mr. Lydon commented. Is it possible that the computer simulation is wrong, Mr. Martin asked. Mr. Jenkins stated they would continue with the engineer who prepared the report at the next meeting. There were no further questions at that time and no interested parties.

The Board proceeded with the RF Compliance witness. Daniel Collins, Chief Technical Officer, Pinnacle Telecom Group, LLC, was sworn in, qualified and accepted. Mr. Collins testified as to the assessment of the standards of the RF fields emanating from the site. The conservative figure was 2.1% of the FC limit, which is 42 times below. The levels around the site are $\frac{1}{4}$ of 1%. By federal law, no municipality can impose a stricter standard than the FCC standard. If you are in compliance with the State level, then you are compliance with the municipal level. Basically he testified it was safe, Mr. Martin noted, and he agreed.

Mr. Lydon questioned the witness per his report page 11, bottom paragraph, regarding a survey of the heights of nearby buildings, those having three or four stories or less, and asked if it would have impacts on the result, and Mr. Collins responded no. Mr. Ceplo asked how RF compares with other sites and areas. Mr. Collins explained with all the items in our homes, especially refrigerators, in comparison it averages 5%. What about the difference in carriers. Verizon can load up its frequency bands, as it

has access to more than Metro PCS. Most towns have fire ambulance radios that have more frequencies. Mr. Hartman asked about malfunctions. Mr. Collins said it's like computers. They just shut down. There were no further questions from the Board and none from the public.

The matter was carried to 9/10/12, with a time extension under the MLUL and Telecommunications Act as agreed to by Mr. Jenkins.

2. Care One at Valley, 300 Old Hook Road - Variance & Site Plan Approval, Block 2001, Lots 51 and 64 - Robert Bicocchi recused. At the request of the applicant, the matter was carried to 9/10/12 for a vote when a full Board is expected.

3. Niarra, 312 Kinderkamack Road; 199 Fairview Avenue, Block 811, Lots 4 & 12 - Variance - Carried to 9/10/12 at request of the applicant with no further notice required.

4. Van Grouw, 27 Ruckner Road - Appeal - No appearance by applicant and no correspondence received for several months. Mr. Rutherford requested permission to write to the applicant for the status of the application.

5. Snyder, 73 Lyons Place - Variance Application - Deemed completed and listed for 9/10/12, with notice required.

6. Sickinger, 484 4th Avenue - Variance and Site Plan Application - Incomplete per Mr. Lydon and should be listed under pending new business. There has been no notice.

The Board took a recess from 9:30 to 9:45 p.m.

7. KMACK South, 40 Kinderkamack Road, Block 1607, Lots 12, 13 & 14 - Variance & Site Plan Approval - Catherine Gregory appeared on behalf of Steve Lydon, Board Planner, who was recused on KMACK South and departed. Mr. Lafferty represented the applicant. Mr. Adelson continued under oath. The Tree Exhibit was prepared by Edgewater Associates and marked A6. The Shrubs and Ground Covers Exhibit was A7. Mr. Adelson continued, briefly reviewing all the sheets of the site plan.

Questions of the engineer followed. Mr. Raimondi asked at the last meeting if the buildings would have air conditioning or facilities on the roof. His response was yes, and Mr. Raimondi asked if they could be seen from the adjoining structures. Mr. Adelson indicated that would be a question for the architect, however there is a fairly substantial parapet around the building. Mr. Raimondi asked about a rain garden. Mr. Adelson felt it was not necessary for this project. Mr. Martin asked if there would be problems with maintenance behind the building, and Mr. Adelson said the landscaper would go back for maintenance. The testimony of the witness was concluded.

Before proceeding with the next witness, Mr. Lafferty asked for guidance, wherein they would limit the use close to a use that was compliant. They were not seeking to bind the Board or for any polling. Mr. Martin asked instead of general retail like in the prior application, did they have ideas of proposed uses. Mr. Lafferty advised yes, one is permitted and one is close. Mr. Martin commented the list of uses is being expanded, and he would not want to see him restricting himself and then have to start all over at the Planning Board. Mr. Rutherford asked if there would be a notice issue here, as he noticed for general retail use. Mr. Lafferty said they would notice for the next meeting. Mr. Rutherford said they can hear your client but there would not necessarily be feedback. The Board would act accordingly. Mr. Martin suggested they could also carry the matter to after the Council acts, even though time is a factor. Mr. Lafferty would like to have the client testify and then decide.

Nicholas Aynilian, with offices at Westwood, NJ, was sworn in as the applicant and principal of KMACK South. He would like to present discussions he has had after taking a stronger look at the application. They wanted full, unfeathered retail on both sides, but now they are looking at third different types of users they are speaking with. Because of their nature, he wanted to introduce these uses, but is respecting the sentiment and not expecting any opinions. One operator is a grocery, farmer's market type operator—not his first choice. Two users are close to the LB3 uses, tire sales and installation use, and the third category was banks. He has two Letters of Intent, and he can be in Leases by September, but he does not want to do it without running it by the Borough first. The tire use is close. For the bank, he would not need a use variance.

He is trying to do the right thing. There is an appeal pending for the application that was denied. He started at the Planning Board level and was committed to going further, building out these eyesores. He wants a little guidance.

Mr. Martin responded the process is not as subjective and we are not capricious. The Master Plan gives us guidance. We cannot sit here stating which use is good or not. Here is a situation where your planner can help you tremendously. She can look at the LB1 and LB2 Zone, which are close to the LB3 Zone and can formulate a plan. You can then make a credible argument. We cannot prejudge. Mr. Martin deferred to Mr. Rutherford, asking if there was an appeal. Mr. Rutherford explained Mr. Lafferty advised an appeal has been filed in KMACK North. One has nothing to do with the other. This Board is not a policy-making body. The arguments you are making tonight are arguments for the Planning Board and Mayor and Council. This Board cannot make an advisory opinion. We make a decision based on facts, with all the arguments. It is not a matter of negotiating or accommodating or making an agreement. This Board does not operate that way.

Mr. Aynilian explained he was looking for a temperature test to see if he was going the right way. He did not want to spend seven months before the Board. The suggestion to put off may not be a bad idea, although he wished he had the luxury of time. He continued to ask the Board for assistance. Mr. Rutherford advised we operate like a judge and a jury. We hear facts and make decisions. We do not have the statutory authority to do otherwise. Mr. Martin suggested he consult with his attorney and planner for advice in a very useful way. Mr. Lafferty stated they were just trying to find out what retail uses would allow them to narrow their application. Without feedback from the Board, they are compelled to proceed with the application as is. Mr. Martin reiterated he should review the Master Plan with his planner and feels this guidance should be sufficient. Mr. Aynilian would continue to negotiate with the LOI's for those three uses and in the meantime, if the uses are changed, he can look at them. Mr. Lafferty stated there would be an amendment to the application to have more definitive uses. They would let it ride until September. He is trying to be practical and not have a repeat of KMACK North.

(ZB 8/6/12 Minutes)

The matter was carried to the 9/10/12 meeting with consent to an extension of time.

There were no further questions, comments or discussions and no interested parties.

10. DISCUSSION: None

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 10:40 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary