

The reorganization meeting of the Liberty Township Land Use Board was held in the Municipal Building, 349 Mountain Lake Road, Great Meadows, New Jersey on 18 January 2012 and called to order at 7:32 p.m. by the Municipal Clerk, Diane Pflugfelder, RMC/MMC. The Municipal Clerk opened the meeting with the Pledge of Allegiance and notice that the meeting was being held in compliance with the Open Public Meetings Act N.J.S.A.10:4-6.

Present: Mayor John Inscho, Carl Cummins, Peter Karcher, Member-elect Wayne Jarvis, Member- elect Erik Tibak and Member-elect Dave Schaaf

Absent: Dan Grover, Rudy Pasko, Ray Sosnovik, Member-elect Joanne Ward and Peter Wicki

Municipal Clerk, Diane Pflugfelder, RMC/MMC administered the Oath of Office to Wayne Jarvis, who will serve as LandUse Board Member, Class IV for a four-year term expiring 31 December 2015.

Municipal Clerk, Diane Pflugfelder, RMC/MMC administered the Oath of Office to Eric Tibak, who will serve as LandUse Board Member, Class IV for a four-year term expiring 31 December 2015.

Municipal Clerk, Diane Pflugfelder, RMC/MMC administered the Oath of Office to Dave Schaaf, who will serve as LandUse Board Member, Alternate #3 for a two-year term expiring 31 December 2013.

APPOINTMENT OF CHAIRPERSON

The Municipal Clerk asked for nominations as Chairperson of the Township of Liberty Land Use Board. A motion by John Inscho to appoint Carl Cummins as Chairperson of Liberty Township Land Use Board, 1-year term, expiring 31 December 2012 carried.

APPOINTMENT OF VICE-CHAIRPERSON

A motion by Carl Cummins to appoint Erik Tibak, as Vice-Chairperson of the Township of Liberty Land Use Board for a term of 1 year, expiring 31 December 2012 carried.

APPOINTMENTS

A motion by Carl Cummins to adopt the following Resolution carried.

Resolution Authorizing Contract with
Richard Schneider, Esq of Vogel, Chait, Collins & Schneider (attorney),
Eric Snyder (planner) and John Hansen of Ferriero Engineering (engineering firm)
for Professional Services 2012.

WHEREAS, There exists a need for the retention of firms of consultants to render professional advice to the Land Use Board on planning problems and to review applications for development, and

WHEREAS, The contract is based on an hourly rate commencing on 1 January 2012 through 31 December 2012 and funds are available in the appropriation to the Land Use Board, and have been certified by the Local Finance Officer, and

WHEREAS, The Local Public Contracts Law (NJSA 40A:11-1 et seq.) requires that the Resolution authorizing the award of contracts for "Professional Services" without competitive bids on the contract itself must be available for public inspections;

NOW THEREFORE BE IT RESOLVED by the LandUse Board of the Township of Liberty as follows:

1. The Chairperson and Secretary of the Land Use Board are hereby authorized and directed to execute the attached agreements with Richard Schneider, Esq./Vogel, Chait, Collins & Schneider; Eric Snyder, PP ; and, John Hansen/Ferriero Engineering Inc.
2. These contracts are awarded without competitive bidding as a “Professional Service” in accordance with NJS 40A:11-5 (1)(a) of the Local Public Contracts Law because the above firms have served as the Board’s Professionals for more than one year and have special knowledge as to planning problems and conditions in the Township, which knowledge is particularly valuable to the Land Use Board.
3. A notice of this action shall be printed once in the official newspaper of the Township of Liberty

AYES: Cummins, Inscho, Jarvis, Karcher, Schaaf and Tibak
 OPPOSED: None recorded
 ABSTAINED: None recorded

A motion by Carl Cummins to appoint Kathy Dossena as the Land Use Administrator carried.

AYES: Cummins, Inscho, Jarvis, Karcher, Schaaf and Tibak
 OPPOSED: None recorded
 ABSTAINED: None recorded

APPROVAL OF MINUTES

A motion was made by Wayne Jarvis to adopt minutes of 21 December 2011. Following discussion, a motion by Erick Tibak to amend the minute title to read Minutes – December 21, 2011 and adopt the amended minutes carried.

AYES: Cummins, Inscho, Jarvis, Karcher, Schaaf and Tibak
 OPPOSED: None recorded
 ABSTAINED: None recorded

RESOLUTIONS

A motion by Wayne Jarvis to adopt the following Resolution carried.

Memorializing Resolution of the Land Use Board of the
 Township of Liberty, Granting C Variance, D Variance (Conditional Use)
 And Minor Site Plan Approval Relating to the Property
 Located at Block 2, Lot 17 on the Tax Maps of the Township of Liberty

APPLICATION NO. 04/11

WHEREAS, Auburn Data Systems, LLC (hereinafter the “Applicant”), as the applicant with respect to property located at 28 Far View Road, also known as Block 2, Lot 17, on the Township of Liberty Tax Maps, located entirely within the R-3 Zone District, and acting with the authorization of property owner American Towers, Inc., having applied to the Township of Liberty Land Use Board (herein the “Board”) for minor site plan and conditional use variance approval, in accordance with site

plan prepared by Malick & Scherer, P.C., Whitehouse Station, New Jersey, as last dated September 13, 2011 and consisting of six sheets; and

WHEREAS, The Board conducted a public hearing on this Application on December 21, 2011 in accordance with all of the procedural requirements of the Liberty Township Land Development Ordinance and Municipal Land Use Law; and

WHEREAS, The Board hereby makes the following findings of fact and conclusion of law;

1. The subject property consists of approximately 9.76 acres and is located in both Liberty Township and Hope Township. The wireless facility straddles the municipal boundary and is accessed from a long driveway off Far View Road. The Liberty Township lot is in the R-3 Zone.

2. The Board notes that the boundary delineation identified by the site plan, as prepared by licensed surveyors, differs materially from the boundary line depiction provided by Google Earth software. For purposes of the Board's review, the boundary line depicted by actual land surveyors was deemed more representative of the actual municipal borderline. By that measure, the Applicant's proposed activities within the Township of Liberty consisted of the installation of a single microwave antenna – all other proposed additions to the tower and to ground equipment were proposed within neighboring Hope Township and subject to separate review and approval by an appropriate land use board within the neighboring municipality.

3. Communication facilities are a conditional use in the R-3 Zone subject to Section 105-62.1B. The use fails to meet all conditions of a conditional use permitting the tower and, as such, is non-conforming. The violation cannot be cured as the tower is higher than the permitted height (350 feet v 120 feet), closer to the rear lot line (137 feet v 350 feet) and closer to the easterly side lot line (116 feet v 350 feet) than permitted. None of these existing conditions will change. However, as the applicant proposes to add an antenna to the portion of the tower that falls within Liberty Township, the Board is presented with an intensification of the non-conformity, requiring conditional use variance and minor site plan approval.

4. Under these circumstances, minor site plan approval together with a variance under N.J.S.A. 40:55D-70d(3) is required. The Board received two review memos from its professionals: (1) December 4, 2011 memo from Township Planner Eric K. Snyder; and (2) December 6, 2011 letter from Township Engineer Paul Ferriero. Based on their review, these professionals recommended that the Applicant present testimony in support of an argument that the additional use of the tower may be permitted through an analysis of the impact of the additional equipment and usage of the tower as they relate to the height and setback requirements and further whether or not the impact would be a substantial negative impact on the neighborhood and zone plan.

5. The Applicant appeared through counsel, Michael Lavigne, Esq., of the firm Day Pitney, Parsippany, New Jersey. The Applicant presented the sworn testimony of four witnesses – all were qualified by the Board as experts in their respective fields, as follows: (1) James Wolfson, Radio Frequency Engineering; (2) Daniel Collins – FCC emissions compliance; (3) Francis McAndrew – Site Engineering; and (4) James Kyle – Professional Planning.

6. Mr. Wolfson testified about the design parameters that led to the selection of this tower to be included in a long chain of similar installations stretching between Chicago and New York City to provide a high speed data/communications link. Unlike the cellular antenna installations, the design of microwave communications requires each antenna to physically “see” the next antenna in the chain. It is for that reason that very tall towers are preferred rather than considerably shorter monopole-type installations.

7. Mr. McAndrew next testified primarily as to what the Applicant was not proposing: no additional lighting and no emergency backup generator. Mr. McAndrew testified that a structural analysis prepared by a New Jersey-licensed professional engineer was obtained to confirm that the additional equipment proposed by the Applicant could be safely carried by the tower. That structural analysis will likely be required by the Township Construction Code Official at the time building permits are sought by the Applicant.

8. Mr. Kyle presented three marked exhibits, A-1 (2010 Aerial Photo and Parcel Boundary Map); A-2 (photo simulation board) and A-3 (photos of dead/distressed spruce trees). Mr. Kyle's testimony offered planning rationales for the granting of the D-3 conditional use variance relief sought by the Applicant, and relied upon the Municipal Land Use Law's purposes of zoning "G", "I" and "M." He testified that the original construction of the tower predated the Township's conditional use standards, and thus is incapable of satisfying several standards. More importantly, Mr. Kyle confirmed that the installation of the lone antenna would not exacerbate the existing non-conformities, such that the subject property remained suitable for the wireless communications use.

9. Furthermore, Mr. Kyle requested that the Board not require the Applicant to replace approximately four (4) dead/distressed spruce trees that appear to have been planted by a prior applicant as a condition of approval. Mr. Kyle's testimony demonstrated that the distressed spruce trees were not providing any buffering or screening that was not otherwise already being provided by existing rock outcropping. The Board recognizes that watering newly planted trees at such a challenging location is difficult and time consuming, and will not place that burden upon the Applicant. However, the Board will ask its Secretary to write a letter to the property owner requesting (not directing) that replacement trees be planted as a courtesy to the Township and its residents.

10. Fourth, and finally, Mr. Collins summarized the contents of his August 31, 2011 report, that cumulative radiation emissions from all existing and proposed antennas at the tower – operating at maximum power – would be equivalent to 0.003765 of the permissible federal level.

11. No members of the public appeared for the hearing and no public comment was provided. There was no opposing testimony, evidence, nor other arguments heard by the Board in connection with this case that would prevent the grant of minor site plan and conditional use variance approval that has now been requested from the Board.

12. The Board finds and concludes that the limited additional equipment to be installed near to the top of the existing tower within the Township of Liberty – consisting of a single microwave antenna – with all other proposed equipment located across the border in Hope Township – would not result in any, let alone substantial detriment to the zone plan or neighboring properties, which represents a *de minimis* addition given the tower's size and length of service.

13. The Board similarly finds and concludes that the grant of two (2) bulk variances for maximum building height (top of antenna to add four feet to the existing tower height) and for minimum landscaping buffer (no additional landscape buffering to be required) would not result in a substantial detriment to the zone plan or neighboring properties.

NOW, THEREFORE, BE IT RESOLVED By the Land Use Board of the Township of Liberty that the Application of Auburn Data Systems, LLC, with respect to Lot 17, Block 2, is hereby approved subject to the following:

1. That the Board's minor site plan and conditional variance approval is issued in

accordance with the submission made by the Applicant consisting of a six page site plan set prepared by Malick & Scherer, P.C., Whitehouse Station, New Jersey, as last dated September 13, 2011.

2. No exterior lighting or backup power generator shall be permitted absent further application to, and approval by, this Board.
3. Approval (or letter of no interest) from the Warren County Planning Board.
4. Prior to issuance of construction permits, the Applicant shall provide five (5) sets of plans for signature.
5. In the event that Applicant's communications facilities are abandoned or not operated for a period of one year, the same shall be removed, at the option of the Township, at the sole expense of the operator.
6. All fees, taxes, assessments, escrows and other monies due to the Township of Liberty shall be paid in full.

AYES: Cummins, Inscho, Jarvis, Karcher, Schaaf and Tibak

OPPOSED: None recorded

ABSTAINED: None recorded

A motion by Carl Cummins to adopt the following Resolution carried.

Memorializing Resolution of the LandUse Board of the Township of
Liberty Granting Minor Subdivision/Re-Subdivision Approval Relating
to the Properties Located at
Block 23, Lots 33, 33.01 and 34 on the Tax Maps of the Township of Liberty

APPLICATION NO. 03/11

WHEREAS, Dirk Swaneveld, as owner of the property known as 39 Lakeside Drive East, Belvidere, New Jersey (Block 23, Lot 33; R-4 Zone), (hereinafter the "Applicant"), acting with the authorization of Robert Badini, 8 Park Street, Belvidere, New Jersey (Block 23, Lot 34; R-1 Zone) and Steve Hooter, 2 Park Street, Belvidere, New Jersey (Block 23, Lot 33.01; split zoned between R-1 and R-4 Zones), owners of adjoining properties that are joined in the minor subdivision request in this case, having applied to the Township of Liberty Land Use Board (herein the "Board") for minor subdivision approval and/or re-subdivision approval for lot line adjustments between these three (3) property owners, in accordance with subdivision plan prepared by Douwe Dykstra, Professional Land Surveyor of Dykstra Associates, Newton, New Jersey, as dated January 21, 2011, last revised August 8, 2011 and consisting of three sheets; and

WHEREAS, The Board conducted two public hearings on this Application on November 21, 2011 and December 21, 2011 in accordance with all of the procedural requirements of the Liberty Township Land Development Ordinance and Municipal Land Use Law; and

WHEREAS, The Board hereby makes the following findings of fact and conclusion of law;

1. The Applicant, Dirk Swaneveld, appeared *pro se* together with Mr. and Mrs. Badini and Mr. Hooper. All participating property owners were sworn and the witnesses collectively explained the reasons behind the minor subdivision request.

2. None of the participating lots conform to their respective zones for lot area.
3. Lot 33.01 is proposed to serve as the donor lot and will be reduced in area from 0.273 acres to 0.149 acres. The subdivision will eliminate the existing split zoning on Lot 33.01 so that the remainder will be zoned exclusively R-1. Since the minimum lot area in the R-1 zone is 2.0 acres, the proposed subdivision creates a greater degree of non-conformity requiring a variance for lot area. By contrast, Lots 33 and 34 increase in size, reducing the non-conformity in each case.
4. The dwellings on the three lots are pre-existing non-conforming as to setbacks and these conditions will not change and no variances are otherwise required. The Zone Requirements Chart on the cover sheet of the Dykstra subdivision plan set details the pre-existing non-conforming setbacks and other bulk criteria for all three lots.
5. A paved driveway (west of Lot 33) provides mutual access to Lots 33 and 33.01 to Lake Drive East, whereas Lot 34 has direct access to Lot 34.
6. The minor subdivision plan, as proposed, would continue to result in a separate adjoining property, known as 4 Park Street, Block 23, Lot 33.02, having no frontage to a public right of way or private street. The Board observed that preferable alternative lot line adjustments could be drawn to eliminate the isolated lot condition by providing Lot 33.02 with at least marginal frontage upon Park Street. Lot 33.02 reportedly benefits from usage of an existing driveway to Park Street via an access easement over servient Lots 33.01 and 34. The Board recognized that Lot 33.02 would continue to enjoy unfettered access to Park Street notwithstanding the proposed lot line adjustment or the absence of frontage.
7. Before the Board voted to approve the lot line adjustment as presented, and in effect provide offer its imprimatur of approval upon an otherwise undesirable and anomalous situation involving the maintenance of Lot 33.02 as an isolated lot in perpetuity, the Board asked the Applicant to make contact with the owners of Lot 33.02 to determine whether they would be interested in participating in the Application in order to remedy the existing isolated lot condition. The Board adjourned its hearing of the Application on November 21, 2011 to December 21, 2011 to provide the Applicant and opportunity to make the requisite inquiry.
8. The Applicant presented to the Board its letter, dated November 22, 2011, that was addressed to Sean & Jennifer Harrison, the owners of record of Lot 33.02. The letter provides in pertinent part:

I would like to formally update you on the Minor Subdivision Application that was presented to the Planning Board on November 21, 2011 at the Liberty Township Building.

I am not sure if you are aware that the Badini's, Mr. Hooter and the Swanevelds are looking to adjust the lot lines to make the property line more practical for each owner. There are easements in our deeds that relate to access to our properties which certainly can complicate matters. Specifically, you currently have a driveway easement through Steve Hooter's property. Our proposed minor subdivision maintains that easement and access to your property as it stands with ***no change in location, access or use*** of your driveway. However, if you would be interested in acquiring the driveway and having deeded frontage on Park Street you would be required to be part of the subdivision application. We anticipate the cost to be between \$8,000 and 15,000 dollars per property owner, depending on the additional costs that will be incurred. If you are interested in being part of this Minor Subdivision application, please respond back to me in writing by December 9, 2011. At that time,

you will need to include a deposit check for the sum of \$4,000 made out to: Ken Krause, Esq. (the attorney) to confirm your commitment to the application. (original emphasis)

9. The Applicant presented proof that it mailed this letter by certified mail, return receipt requested, and regular mail. Though the certified mail letter was returned marked "unclaimed," the version sent regular mail was not returned as undeliverable by the Postal Service. The Board therefore accepts the presumption that the owners of Lot 33.02 received the Applicant's letter and chose NOT to participate with the Application.
10. Adjusting the lot lines as proposed would improve the ability of each impacted property to utilize the full extent of their lot. The benefits to Lot 33.01 are particularly noteworthy, in that access to the rear yard septic system without crossing over property lines is not possible under the existing configuration, and this lot may also in the future seek to install direct driveway access to Park Street (potentially subject to the approval of this Board at a future date).
11. No new construction is planned or proposed in the future as part of this Application and request for lot line adjustment.
12. No members of the public appeared for the hearing and no public comment was provided. There was no opposing testimony, evidence, nor other arguments heard by the Board in connection with this case that would prevent the grant of minor subdivision approval that has now been requested from the Board.
13. The Board finds and concludes that the lot line adjustment and re-subdivision of the property is appropriate. The minor subdivision of these properties to adjust the lot lines as proposed will correct access and usability issues and will result in an improved condition for all three participating lots. This is a desirable goal and objective under the controlling ordinances, and therefore makes it appropriate for the Board to issue the relief requested by the Applicant in this case.
14. The Board further concludes that the re-subdivision of the property will cause and create positive benefits and advantages to the three participating lots without any detriment to or any other negative effect on either the subject properties or adjoining properties that would argue against the grant of the re-subdivision of the property requested in this case.
15. The Board further finds and concludes that the creation of and maintenance of less non-conforming lots in the residential districts in the Township of Liberty is a goal and objective of the Land Subdivision Ordinance, the Zoning Ordinance, and the Master Plan for the Township of Liberty. The re-subdivision of the property with the lot line adjustment now approved by the Board will reduce the extent of non-conformities prevalent within this area of the Township and will be consistent with the goals and objectives of these measures and therefore it is appropriate to allow the relief requested by the Applicant in this case.
16. The Board further finds and concludes that the minor subdivision requested can be approved as proposed and presented since it involves no new construction, nor does it require relief by way of subdivision exception or zoning variance except as noted above. The re-subdivision also does not require any extension of any public improvements or facilities. Therefore the re-subdivision of the property

through the minor subdivision now before the Board in this case is appropriate for the approval of the Board as requested.

NOW, THEREFORE, BE IT RESOLVED By the Land Use Board of the Township of Liberty that the Application of Dirk Swaneveld, with respect to Lots 33, 33.01 and 34 in Block 23, is hereby approved subject to the following:

1. That the Board's minor subdivision approval is issued in accordance with the submission made by the Applicant consisting of a three page subdivision plan set prepared by Douwe Dykstra, Professional Land Surveyor of Dykstra Associates, Newton, New Jersey, as dated January 21, 2011, last revised August 8, 2011, submitted to the Board and testified to by said property owners during these proceedings; and
2. That the Applicant shall undertake to perfect said subdivision within the time period and in the manner provided by N.J.S.A. 40:55D-47; and
3. Prior to recording, the Applicant shall submit all deeds required to effectuate the approved minor subdivision to the Board for review and approval by the Board Engineer and Board Attorney.
4. A driveway maintenance agreement for the shared driveway serving Lots 33 and 33.01 shall be submitted to the Board Engineer and Board Attorney for review and approval.
5. All fees, taxes, assessments, escrows and other monies due to the Township of Liberty shall be paid in full.

AYES: Cummins, Inscho, Jarvis, Karcher, Schaaf and Tibak

OPPOSED: None recorded

ABSTAINED: None recorded

2012 PUBIC MEETING DATES

Chairperson Cummins announced that the following schedule of Regular Meetings of the Liberty Township Land Use Board 2012 would be accepted.

Pursuant to the provisions of the Open Public Meeting Act, 10:4-18 and referring to subsection 3(d) Chapter 231 P.L. 1975, the following is the schedule of regular meeting for the Land Use Board of the Township of Liberty, County of Warren, to be held in the year 2012;

February 15	March 21	April 18	May 16
June 20	July 18	August 15	September 19
October 17	November 26*	December 19	January 16, 2013

*Fourth Monday

All meeting will be held at 7:30 pm on the 3rd Wednesday of the month unless otherwise specified above, at the Municipal Building, 349 Mountain Lake Road, great Meadows, NJ. Formal action may be taken at all meetings.

2012 SITE PLAN COMMITTEE

Chairperson Cummins announced that 2012 Site Plan Committees would be the following;

January – April 2012: Tibak, Jarvis and Wicki

May – August: Ward, Pasko and Karcher

September – December: Schaaf, Sosnovik and Chairperson Cummins

BILLS

A bill was presented by Richard Schneider for professional services rendered in December 2011. A motion by John Inscho to authorize payment of said bill carried.

AYES: Cummins, Inscho, Jarvis, Karcher, Schaaf and Tibak

OPPOSED: None recorded

ABSTAINED: None recorded

PUBLIC COMMENT

At 7:47 pm Chairperson Cummins opened the floor to public comment. No public being present, public comment was closed at 7:48 pm.

LANDUSE BOARD APPOINTEES

Chairperson Cummins announced that there are currently three unfulfilled Land Use Board positions and asked those present to consider eligible and interested municipal residents.

ADJOURNMENT

There being no further business, a motion by Carl Cummins to adjourn the meeting carried.

AYES: Cummins, Inscho, Jarvis, Karcher, Schaaf and Tibak

OPPOSED: None recorded

ABSTAINED: None recorded

Meeting adjourned at 8:50 p.m.

Diane M Pflugfelder RMC/MMC
Municipal Clerk/Administrator
Minutes Approved XXXX