

The January 26, 2009 meeting of the Planning Board of the Township of Chatham was called to order at approximately 7:30 p.m. by Chairperson Joel Jacobson. The Open Public Meetings Act Statement was read into the record. The agenda for the meeting included Memorialization of Resolutions for Rosepond, LLC and Pellegrin; and Hearings for Metro PCS and Devco Associates.

- - -

Roll Call

Board members present included Mr. Jacobson, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Ciccarone, Mr. Cohn, Mr. Hurring, Mr. Sullivan and Mr. Ali. Board professionals in attendance included attorney Mr. Robertson, engineer Mr. Ruschke and planner Mr. Banisch.

- - -

Oath of Office

Mr. Robertson administered the Oath of Office to Mr. Ciccarone, Mr. Sullivan, Mr. Ali, Mr. Browne and Mr. Cohn.

- - -

Reorganization of the Board

Mr. Jacobson asked for nominations for the position of Board Secretary. Mr. Caprioglio nominated Mr. Cohn. There were no other nominations and all members voted in favor of Mr. Cohn for the position.

- - -

Discussion Items

NJPO Course Offerings

Mr. Jacobson advised Board members that the New Jersey Planners Organization announced the course offerings. Mr. Robertson stated that courses were required for new members. Mr. Jacobson stated that all members were permitted to avail themselves of the courses.

Developers' Fees

Mr. Jacobson asked about the status of the collection of developers' fees; Mr. Robertson stated he was waiting to hear from Mr. Woodward, the Township's attorney, regarding this issue. Mr. Jacobson felt it was unlikely the developers' fees prior to October 2008 would be able to be collected.

- - -

Minutes

After consideration of the minutes from the November 17, 2008 Planning Board meeting, Mr. Hurring moved to approve the minutes and Mrs. Chambers seconded, with all in favor.

Mr. Browne moved to approve the minutes from the December 1, 2008 meeting and Mr. Hurring seconded, with all in favor.

Regarding the minutes from the January 12, 2009 meeting, Mr. Browne moved to approve and Mr. Hurring seconded, with all in favor.

- - -

Memorializing Resolutions

Rosepond

Mr. Robertson reviewed the Resolution for Rosepond for Amended Site Plan approval. Mr. Hurring moved the Memorializing Resolution be approved and Mr. Cohn seconded. At voice vote, Board members Mr. Jacobson, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Cohn and Mr. Hurring voted "yes" and Mr. Ciccarone abstained.

Pellegrin

Mr. Robertson reviewed the Resolution for Timothy Pellegrin for Change of Lot Line. Mr. Caprioglio moved to approve the Memorializing Resolution and Mr. Hurring seconded. Mr. Jacobson, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Cohn and Mr. Hurring voted in favor and Mr. Ciccarone abstained.

Board Professionals Contracts

Mr. Jacobson stated that at the Reorganization Meeting, the Planning Board approved the reappointment of each of the Board's professionals (John Ruschke, William Robertson and Frank Banisch), subject to reviewing the underlying contracts. After brief discussion, it was determined that the condition of approval was satisfied.

- - -

Applications

Metro PCS New York

Attorney David Solloway was present on behalf of the Applicant, Metro PCS, to request Preliminary and Final site plan approval and conditional use for a co-location application at the tower at the Department of Public Works property on Southern Boulevard.

Metro PCS is seeking to install 6 panel antennas at a height of 90' with support panels on a 7' by 14' concrete pad.

Mr. Solloway presented Gary Musciano, architect for the Applicant and he was sworn in and qualified. Mr. Musciano testified that he had prepared the site plan and visited the site.

Mr. Musciano referred to Exhibit A1, (dated 1/26/09), which was described as *Drawing Z-4* and is part of the Application package. Exhibit A1 showed a large view of the existing tower and compound at the DPW property. Mr. Musciano stated the tower was erected in 1999 by Verizon and since that time, OmniPoint, Verizon Cingular and Sprint have all located on the tower. Mr. Musciano testified that the proposed Metro PCS equipment would be monitored remotely and no variances were required for the Metro PCS Application.

Mr. Solloway referred to Mr. Ruschke's memo dated November 21, 2008 and Mr. Ruschke reviewed the issues noted in the memo. Mr. Ruschke pointed out the wetlands in the area and asked if the Applicant would raise the control panel; Mr. Musciano presented Exhibit A2, *Drawing Z-3*, which shows an updated version of the wetlands delineation flags and the buffer setback. Mr. Musciano stated that the wetlands were delineated in August and the 50' buffer was noted based on the DEP file and the equipment is located outside of the buffer. Mr. Musciano testified that the controls would probably be elevated a few feet.

Mr. Ruschke asked about fans on the controls; Mr. Musciano testified that there were small cooling units and while there was a small humming sound emitted, he assured Mr. Ruschke that the sound would meet the property line noise requirement.

Mr. Solloway presented Dan Collins, radio frequency engineer, who was sworn in and qualified. Mr. Collins testified that he conducted an analysis of levels of radio frequency emissions and stated that the levels were in compliance with FCC regulations. Mr. Collins presented Exhibit A3, titled "*Antenna Site FCC RF Compliance Assessment and Report*"

dated May 6, 2008, which supports Mr. Collins' assertion of compliance. Mr. Collins reviewed the techniques for assessment.

Mr. Ruschke and Mr. Banisch concurred with the Township's arborist that no additional landscaping would be required.

Mr. Jacobson opened the meeting to the public; there were no comments made from the public.

Mr. Hurring moved to approve the Application for Preliminary and Final Site Plan and conditional use and Mrs. Chambers seconded. At roll call vote, all Board members voted "yes".

- - -

Devco Associates

Attorney Robert Russell was present with the Applicant Mark Devlin of 80 Candace Lane regarding property located at 7 Sycamore. Mr. Devlin is the managing member of Devco. Mr. Devlin was present to request relief from limits of disturbance for the property at 7 Sycamore.

Mr. Devlin was sworn in. Mr. Devlin testified he and his wife bought the lot and signed an agreement to build a home at 7 Sycamore Lane in July of 2003 from developer/builder Sycamore Custom Living (Gerry Long). The plans were submitted and approved. Over a period of 2-1/2 years, Mr. Devlin testified that there were problems with the developer and the construction was erratic. In February 2006, Sycamore Custom Living filed for bankruptcy. Prior to filing for bankruptcy, the builder had cleared the lot, constructed the foundation, framed the house and put the roof and windows in and then all

worked stopped. Mr. Devlin stated he worked toward a settlement with the bankruptcy court to buy out the property as it was and hire another builder to complete construction.

Mr. Devlin stated that at the time of hiring the second builder, the house was approximately 50% complete. Mr. Devlin testified that there were piles of dirt on the property from the previous builder. Mr. Devlin stated that the second builder just completed the interior work and put up the exterior siding. Upon completion, the plan called for a retaining wall in the front facing the cul-de-sac and dry wells for roof runoff and a permit was filed by Mr. Devlin to take two trees down that were leaning in towards the house.

Mr. Russell stated there was a conservation easement behind the property and asked Mr. Devlin if he could find the monuments for the delineation of the easement; he said "no", that they were covered in dirt that had been pushed down the slope behind the house. Mr. Russell asked Mr. Devlin if he knew how many trucks of dirt he had removed from the property; Mr. Devlin stated he had hundreds of trucks removing dirt and rocks. Mr. Devlin stated it looked to him that there was more dirt piled there than should have been and wasn't sure if it came from the building of the road or the building of the other homes.

Mr. Jacobson asked Mr. Ruschke if a lot grading plan had been submitted. Mr. Ruschke said there was an approved lot grading plan. Mr. Ruschke stated the essence of the Application was that the land was disturbed beyond the approved limits of disturbance. Mr. Russell stated the original developer submitted the lot grading plan in 2002. Mr. Russell stated the violation of the grading plan was a result of the work of the original developer. Mr. Ruschke stated the approval was given to the plan in December 2003 and was submitted by Sycamore Custom Living. It was determined that inspections were conducted during the

building process, but Mr. Ruschke stated that the grading did not come up during regular inspections. At the time that Mr. Devlin applied for a Certificate of Occupancy, the issues with the lot grading plan came to light.

Mr. Devlin stated he had placed both the house at 7 Sycamore and his current residence at 80 Candace Lane on the market, with no sales at this time. Mr. Devlin stated he has no Certificate of Occupancy for the Sycamore house. Mr. Devlin stated that three of his neighbors wrote letters of support to be submitted to the Board; the letters were marked Exhibits A1, A2 and A3.

Mr. Russell presented Thomas Bodolsky, engineer for the Applicant and he was sworn in and qualified. Mr. Bodolsky testified that he reviewed the original lot grading plan. Mr. Bodolsky distributed Exhibit A4, a Grading Plan Excerpt, which was a copy of the original lot grading plan. Mr. Bodolsky also submitted Exhibit A5, Slope Delineation Plan and Exhibit A6, which was a copy of the as-built drawings that records the slopes in key areas. Mr. Bodolsky stated that topography was analyzed prior to 2002, but he does not know what the grades were at that time. But, Mr. Bodolsky stated he knew that in 2002 there were more 25% slopes than in 1999. Mr. Bodolsky stated in creation of the road, the fill was put on Mr. Devlin's lot.

Mr. Jacobson referred to Mr. Ruschke's letter to the Applicant dated December 2, 2008 and remarked that there were twelve incomplete items. Mr. Bodolsky suggested the Applicant would request a waiver on the items unless the Board required them. Mr. Bodolsky stated that Exhibit A5 shows the topography of the lot when Mr. Devlin acquired the lot.

It was determined that the limits of disturbance were exceeded in two locations and would require a variance. Through the review of the Exhibits and testimony, it was determined that the areas where the limits of disturbance and steep slopes were exceeded, the slopes are stable and remediation would make the slopes unstable.

Mr. Russell stated a variance could be granted because the benefits of keeping the slopes stable in back outweighed the detriments, which would mean a correction that would make the slopes unstable.

Mr. Ruschke also felt that additional inspection needed to be completed to insure stabilization. Mr. Ruschke stated the inspection would have to wait until spring, with a deadline date of April 15, 2009. The Applicant agreed to post a performance bond of \$5,000 to cover Mr. Ruschke's inspection and any other stabilization costs.

Following additional discussion, Mrs. Chambers moved to authorize Mr. Robertson to draft a Resolution of approval and Mr. Hurring seconded, with all in favor. Mr. Ciccarone had recused himself prior to the start of the hearing. The hearing was carried to March 16, 2009, with no further notice required.

- - -

There being no further business, the January 26, 2009 meeting of the Planning Board of the Township of Chatham was adjourned.

Respectfully submitted,

Katherine T. Hollerith
Recording Secretary