

**TOWNSHIP OF CHATHAM
TOWNSHIP COMMITTEE MEETING MINUTES
MAY 23, 2007**

Mayor Tubbs called the special meeting of the Township Committee of the Township of Chatham to order at 7:12 P.M.

This special meeting was called pursuant to the provisions of the Open Public Meetings Law. Notice of this meeting was given to both the Chatham Courier and the Daily Record on April 13, 2007. In addition, notice was posted on the bulletin board in the Municipal Building and was filed in the office of the Municipal Clerk on April 13, 2007.

Mayor Tubbs led the flag salute.

Roll Call

Answering present to the roll call were Committeewoman Hagner, Committeeman Hartford, Committeeman O'Connor, Deputy Mayor Brower and Mayor Tubbs.

Agenda

Hearing to consider the Appeal of Mark and Sonja Boyland, et al. regarding the decision of the Board of Adjustment on the application of New Cingular Wireless PCS, LLC, Block 62.09, Lot 2, Fairmount Avenue and Sunset Drive, Chatham Township.

Procedure

Attorney Woodward explained the procedure for the hearing of the appeal. The Township Committee has the obligation to conduct a de novo review of the evidence submitted to the Zoning Board of Adjustment, and no new evidence will be submitted. The Township Committee can overturn the decision of the Board of Adjustment, can remand the case back to the Board of Adjustment, or affirm the decision of the Board of Adjustment with or without any additional conditions. Any decision of the Township Committee requires a majority vote of the full membership of the Township Committee, and a tie vote has the effect of affirming the Board of Adjustment. The appellants will have the opportunity to speak first, and then Cingular Wireless will have a chance to present a rebuttal. The Township Committee may also ask questions of the speakers. After the arguments are finished, the Township Committee will deliberate in public, and the decision of the Township Committee would be put into writing.

Hearing of Appellants

1. Frank Culleny, Sunset Drive Resident, reviewed the key points of the residents' appeal, and stated that he thinks the Cingular antenna will have a detrimental impact on the neighborhood. He said that there is a location on the top of the hill that might be a more appropriate site, and also discussed use of non-intrusive technology. He requested that the Board of Adjustment's decision be overturned until such time that alternatives are explored. Deputy Mayor Brower asked what form the detriment would take, and if there is any evidence of the potential detriment. Mr. Culleny said that an appraisal has not been obtained, but he thinks that the detriment is self-evident. Mayor Tubbs indicated that according to Cingular, their appraiser would testify that there would not be a property value detriment. Furthermore, the residents had decided not to hire an appraiser. Mr. Culleny said that he thought that it should be the Board of Adjustment to hire an appraiser. Committeeman O'Connor asked Mr. Culleny to specify how exactly the antenna would cause a detriment. Mr. Culleny said that it is only a visual detriment, and he is concerned that the visual detriment might affect property values. Committeeman O'Connor and Mr. Culleny then discussed the alternatives to having the antenna at this site. Committeeman Hartford asked about the hiring of an independent consultant. He also asked if the Noise Ordinance was ever taken into account in the testimony. Property maintenance, vegetative buffers and the natural gas pipeline were also discussed. Committeeman Hartford also mentioned that there is a cellular tower currently located in

an area zoned for affordable housing. Committeewoman Hagner cited a change in the application regarding the fencing, and asked if the change would still be considered a detriment. Mr. Cullenly felt that it would still be a detriment with or without the changes.

2. Mark Boyland, Sunset Drive Resident, advised the Township Committee to focus on policy. Committeeman O'Connor asked Mr. Boyland to explain what he would like for the policy to be. Mr. Boyland said that he wants the Township Committee to consider what they want the Township to look like, and what sort of precedent they want to set. He also discussed safety issues, especially since neighborhood children play in the area. Committeeman Hartford asked if the right-of-way predates the zoning laws. He also stated that the high-tension towers were put up at a time when the Township was a totally different place. In regards to the potential health hazards of radio frequency emissions, Committeeman Hartford asked if those concerns had been adequately addressed before the Board of Adjustment. Mr. Boyland indicated that those concerns had been adequately addressed.
3. Michael Kmiecik, Sunset Drive Resident, articulated a frustration with the Board of Adjustment process, and said that neither the Board of Adjustment nor the appellants had the expertise to question the experts who testified on behalf of Cingular Wireless. Additionally, he feels that the detriment to the neighborhood will be the additional height above the tree line. Committeeman O'Connor asked Mr. Kmiecik to specify the areas in which Cingular had not been challenged. Furthermore, Committeeman O'Connor asked Mr. Kmiecik to elaborate on Cingular's failure to demonstrate the need for this tower. Mr. Kmiecik said that no witnesses were brought forward claiming to have had any dropped calls. Mayor Tubbs asked about the lack of challenges to Cingular, and pointed out that several changes were made to the application. Mr. Kmiecik said that the changes that were made were only cosmetic changes, but the basic design never changed.
4. Frank Cullenly added that the changes that were made to the application were the result of opposition from the residents, not the Board of Adjustment.
5. Holly Glunk, Sunset Terrace Resident, discussed safety concerns, especially as it pertains to neighborhood children and RF Emissions. In regard to the RF Emissions, Deputy Mayor Brower pointed out that a lack of knowledge about the potential health risks is not an adequate reason for a reversal. Committeeman Hartford asked if the case was made that the site is an appropriate location for the cellular antenna, and also addressed safety concerns.
6. Kathy Cullenly, Sunset Drive Resident, discussed her frustration with the Board of Adjustment. Committeewoman Hagner asked Attorney Woodward to explain the objection process during Board of Adjustment meetings. Attorney Woodward explained that Board of Adjustment procedures are similar to court proceedings, whereby a witness is under oath, which is why residents are limited to asking questions rather than making objections. Furthermore, the residents are able to enter evidence. Deputy Mayor Brower discussed the flaws in the system of the Board of Adjustment's application process. In regards to PSE&G, Mrs. Cullenly said that they have provided a lot of input despite having not testified before the Board of Adjustment. Mrs. Cullenly also discussed the hiring of experts. Committeeman O'Connor asked if the need for this antenna was demonstrated, to which Mrs. Cullenly replied that she has not been convinced that the new antenna is necessary. Committeeman Hartford discussed the use of cellular phones to call 9-1-1 in the event of car accidents. He also asked if Martha Taweel from PSE&G testified before the Board of Adjustment. Mrs. Cullenly and Committeeman Hartford then discussed having vegetation around the towers, the natural gas pipeline, opposition based on potential health hazards, and the hiring of independent consultants until Mayor Tubbs and Attorney Woodward explained that only evidence that exists on the record could be considered. Mayor Tubbs addressed a letter from Martha Taweel that had been read into the record before the Board of Adjustment. He also asked about objections to the number of antennas to be attached to the structure. Mrs. Cullenly said that her objection is not to the number of antennas to be attached to the tower, but rather the manner in which they are to be attached. Mayor Tubbs also asked about time limits that had been placed on the public during Board of Adjustment meetings. Mrs. Cullenly indicated that there was a comment made directly to her husband.

7. Holly Glunk, Sunset Terrace Resident, addressed a comment that had been made before the Board of Adjustment regarding a boat in her driveway.
8. Mark Boyland, Sunset Drive Resident, said that the Board of Adjustment had created an antagonistic atmosphere toward the neighborhood residents. Mr. Boyland also cited several areas of the Township where his cellular phone is able to receive service, and questioned the need for the antenna.

Hearing of Cingular Wireless

1. Michael Lavigne, Esq., made a presentation on behalf of Cingular Wireless. He clarified the details of the original proposal, and also listed the various experts who testified before the Board of Adjustment. Mr. Lavigne also explained that in order to obtain a D-variance, the applicant must demonstrate that the proposed use promotes the general welfare. According to a NJ Supreme Court decision, an applicant who is the holder of an FCC license is by default promoting the general welfare. Furthermore, the application process took as long as it did because Cingular wanted to make a good faith effort to address the concerns of the Board of Adjustment and the members of the public. Mr. Lavigne discussed a picture attached to a letter sent by a member of the public depicting what they feel the site would look like with the shed in place. There are substantial differences between this depiction and what the shed would actually look like. Mr. Lavigne also addressed the fact that Cingular would not bear the expense of building a tower or antenna if they did not think it was necessary. Additionally, the Center for Municipal Solutions website advises municipalities to co-locate cellular antennas on high-tension electric towers. In regards to the question of the need for the tower, Mr. Lavigne said that a propagation map had been provided. Furthermore, Mr. Lavigne said that the Board of Adjustment hired Dr. Eisenstein as an independent RF expert, and Dr. Eisenstein reported that there is in fact a need for a new antenna. In regards to sound issues, Mr. Lavigne explained that the use of the shelter was added at the request of the Board of Adjustment to help reduce noise disturbances. The original proposal also included a driveway up to the site, but the driveway was removed. The shed at the site has been designed to look like a typical residential shed, the fencing material has been changes, and the height of the antenna has been lowered. In regard to the health concerns, Mr. Lavigne said that the RF emission levels at the site would be less than 1% of the allowable RF emissions. Mr. Lavigne also indicated that the tower would be less impacting than a new house would be. As to why an appraiser was not hired, Mr. Lavigne indicated that boards of adjustment generally do not hire appraisers in situations where the tower itself has already existed for many years.

Committeewoman Hagner asked how the need for a tower is determined. Mr. Lavigne explained that engineers and technicians make the determination of where needs are. If there is a dropped call rate greater than 2%, then there is a need for improved coverage. Committeeman O'Connor pointed out that the geography has not changed, and asked why these issues were not addressed earlier. Mr. Lavigne said that FCC rules and regulations require carriers to provide service to increasing percentages of the population over 5 year intervals. Additionally, in the early days of the industry, cellular phones were primarily used for business purposes, therefore coverage was geared toward that level of demand. Cellular use and demand has grown significantly since then, which has created bandwidth capacity problems that need to be addressed. Committeewoman Hagner asked about the use of synthetic trees as an alternative. Mr. Lavigne said that the Center for Municipal Services advises against such structures because they are unattractive and do not fool anyone. Furthermore, using an existing structure can be a more beneficial use than building a new tower. Deputy Mayor Brower said that Cingular Wireless is looking to promote the general welfare at the expense of some of the Township residents. Committeeman Hartford raised concerns about the height of the tower. Mr. Lavigne explained that the tower is safe as it is, and would be made safer and stronger with the Ft. Worth insert. Committeewoman Hagner asked how companies like Cingular choose between addressing areas with insufficient coverage versus areas that do not have any coverage at all. Mr. Lavigne explained that the decision is based on demand. Furthermore, Cingular is trying to satisfy the mandates of their FCC license, and trying to provide consistently reliable service.

Resident Rebuttal

1. Frank Culleny suggested that other cellular providers might seek to add additional towers and antennas, and they would likely make arguments based on the same logic that Cingular has used. He warned against the further proliferation of cellular towers, and suggested that it would be better to have one central tower rather than several smaller antennas in several neighborhoods.
2. Mr. Boyland reiterated that he thinks this is a policy issue, and suggested that the Township Committee needs to define what is in the public good.
3. Mr. Kmiecik thanked the Township Committee for taking the time to hear the appeal.

Deliberation

Attorney Woodward reiterated that the Township Committee could only consider the evidence on the record. Mayor Tubbs proposed that deliberations be held at a later date. Deputy Mayor Brower suggested that time be taken to further review the exhibits. Committeewoman Hagner agreed with Deputy Mayor Brower that further review would be beneficial. Committeeman Hartford asked if it would be inappropriate for Township Committee members to discuss this topic off the record between this meeting and the next time it is discussed at a public meeting. Attorney Woodward agreed that it should not be discussed except at a public meeting. Mayor Tubbs suggested that the June 14, 2007 meeting be rescheduled to June 6, 2007 at 7:00 PM, and that the deliberation on the appeal would be the first item on the agenda.

The meeting was adjourned at 11:38 PM.

Gregory J. LaConte
Deputy Municipal Clerk