PLANNING BOARD **APRIL 18, 2024**
BOROUGH OF WANAQUE

REGULAR MEETING

Meeting called to order by Councilman Dominick Cortellessa with a salute to the flag at 7:04PM

READING: Open Public Meeting Announcement
This is Regular Meeting of the Wanaque Planning Board and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends on January 28, 2024, and the placement of a notice in both the Suburban Trends and Herald News/Record on April 3, 2024 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque, on the Borough's website, and a copy thereof has been on file with the Borough Clerk.

ROLL CALL: Councilman Dominick Cortellessa, Members Kevin Platt, David Slater, Jack Crilly, and Mary Leonard

PRESENT: Attorney Steven Veltri

ABSENT: Engineer Michael Cristaldi

RECUSED MEMBER ABSENT: Mayor Daniel Mahler

ELIGIBLE VOTING MEMBERS ABSENT: Chairman Gilbert Foulon and Vice Chairman Joseph Graceffo

NON-VOTING MEMBERS ABSENT: Members Angela Demetriou and Jack Jordan

COMMUNICATIONS/REPORTS: None

APPLICATION:

PB2023-02 – T-Mobile Northeast LLC & Mobilitie
205 Conklintown Road, Wanaque, NJ (Block 210/Lot 1.01)
Motion to Rescind/Vacate An Approval and a Possible Re-Vote

Councilman: At the March meeting, Member Crilly made a Motion To Rescind & Vacate regarding the Approval of the Cell Tower Site Plan, with a Second by Member Slater. Since Members who previously voted on this important plan were not present, the Motion, with a Possible Re-Vote, was moved to tonight. Member Crilly, for the record, it is important to state your reasoning for your Motion to Rescind & Vacate before we vote on the Motion.

Attorney Veltri: Before he does that, let me just put a couple things on the record. We wanted to give Notice and the opportunity to be heard to the parties and to the interested members of the public and having considered that, we've clearly posted this on our Agenda, we published a Notice in the paper, and we sent certified mailings out to all interested parties within 200'. Again, we did that to try to have a fair process here tonight and let everyone know what the Motion was. We do have a Motion, and I would like to hear from the Maker of the Motion on why he's making it and then the Board will vote on the Motion tonight. If the Motion is approved, we will not be Re-Voting on the Application tonight. The reason for that is we had 7 Members voting at the February meeting, and only 5 are present tonight. We have spoken to them, they could not make the meeting for personal reasons tonight, but we clearly told them it was imperative for them to attend the next meeting because we do intend to Re-Vote on the Application if, the Motion that is pending tonight, is passed. I just wanted to put that on the record so that members of the public were aware of what was going on. I think the attorneys are aware of it and we will say it again but, if there is going to be another hearing in May, <u>you will not be re-noticed</u>. We will announce the date and time of the meeting before you leave tonight, but you will not get another Notice in the mail.

Councilman: Thank You Steve; Member Crilly

Member Crilly: Upon final instruction on my vote, you know I had looked at the alternatives that I had presented and the one that was in the wooded area in between the Quick Chek and the High School, I thought was a less bad location than the prior one. I was under the impression that, if I was to vote no, that by default you could go back and have it right behind the football field and football grandstand which, in my opinion, was an even worse location. But, I truly don't want it at the High School at all and, quite frankly, I had to look to the Ordinance and I'm looking at Section 114.102B. and I can see four (4) items within there that I am well within my means to Vote No on this particular Plan. That's basically the reason I misunderstood. I did not understand what a Stale Ordinance or Stale Plan was at that point and that was my overriding factor for my Yes Vote.

Attorney Veltri: Let me just clarify what we are doing and where we are going. You are not voting tonight either way, but this is a Motion to Rescind, and so I just want to put a couple of things on the record in terms of the history of this thing so the record is clear. This Application was for Preliminary & Final Site Plan Approval for property located at 205 Conklintown Road to construct a wireless communication facility at Lakeland High School. This particular Application included a proposed construction of a 120' monopole with a 10' lighting rod and related equipment, including a T-Mobile array of consisting of 9 antennas. The Board held Public Hearings on December 21, 2023, January 18, 2024 and February 15, 2024. The Board heard from numerous witnesses, including agents from the owner of the property. They heard expert witnesses from both the Applicant and the Objectors presented an expert. There were numerous objections from members of the public that were put on the record. There were 11 written Exhibits that were entered into evidence. They heard arguments from Counsel and actually received written arguments from both the Applicant and the Objector's Attorney.

On February 15, 2024, the Board voted to Approve the Preliminary & Final Site Plan Approval by a 4 to 3 Vote. But what happened just prior to the vote, and I was not here in the room, I was on Zoom that night, I was asked to give some comments to the Board and I did and one of the comments I made concerned a June 2010 Site Plan Approval, which was Granted by the Board. The reason that comment was made one of the questions in the Application asked for prior approvals and there was a prior approval. Clearly, that approval is different than this Application. It was for a monopole, but it was a different number of antennas, it was on the same site but in a different location on the site. So this Application was not a Re-Application for the prior approval. It was a new Site Plan approval and I should have made that more clear when I made the comment. The 2010 monopole was never constructed. I erroneously stated, at that meeting, just prior to the vote, that the 2010 Site Plan approval was still valid. I should have been more clear and more accurate by stating that the approval was a stale approval under our Ordinance. It was null and void by the lapse of time, but it was subject, and is subject, to Re-Application to this Board by the Applicant based upon the standards that are in the Ordinance. Allegedly, based upon arguments that we received, my statement created a fundamental misunderstanding whether the Applicant had a vested right to construct the wireless communication facility as approved in 2010 without having an obligation to reapply to the Board. And, allegedly, this mistake, unduly influenced and tainted the vote of at least one Board Member and that Member was identified as Member Crilly. We received notification of the issue by Attorney Berg on February 25th and he requested a Motion to Reopen, Reconsider and Hold a New Vote. On February 4th (should be March 4th) I wrote to the Board clarifying the validity of prior Site Plan Approvals in Wanaque and the standards of review for any Re-Application of Stale Approvals. On March 15th Mr. Meese wrote his response and then Mr. Berg, on March 20th, wrote a written reply. So those documents are in the record and were sent to all the Board Members.

On March 21st we had a public meeting and the Motion To Rescind And Vacate was made by Member Crilly and seconded Member Slater. We didn't discuss the Motion that night because no one had notice that that was what Member Crilly was going to do, which is why we are having the meeting tonight. Everyone was put on notice, including the 2 Members who couldn't attend tonight. They are aware that the Motion is being discussed tonight. As I said, we then noticed and sent certified mailings out and, at this point, having heard

Member Crilly's position, I just want to be sure that what I'm saying, the allegations that I've mentioned are, in fact, what you are saying Jack.

Member Crilly: Well, yes. Again, as I stated, I looked at the site, not liking it at the High School, and I thought the Yes was the lesser option, if you know what I mean, in that regard. So I misunderstood your instruction.

Attorney Veltri: Based upon my instruction, you believe that the Applicant had vested to construct the 2010 facility without coming back to the Board?
Member Crilly: Correct.
Attorney Veltri: Now, you got the clarification on the law from me on March 4th, correct?
Member Crilly: Yes.
Attorney Veltri: And do you believe that your understanding of my comment in the February Meeting tainted your vote?
Member Crilly: Yes.
Attorney Veltri: Altered your vote?
Member Crilly: Yes.
Attorney Veltri: And you want an opportunity to revote now based upon the clarification that you have?
Member Crilly: Yes.

Councilman: Anything else Steve?
Attorney Veltri: I don't have anything else, but clearly, if anyone else has questions.
Councilman: We are going to open it up. Jack thank you very much for what you said.

Councilman: Before we vote on the Motion, I would like to open it up to the Public for a public discussion. Anyone from the Public would like to come forward? Hearing none, we'll close the public discussion.

Councilman: Do we have comments from the Attorneys?

Attorney Meese: I would just like to reiterate some of the comments made in my letter to the Board dated March 15th. First there is no basis to reopen the vote. The vote was made; the vote was approved. This is for a use that is permitted at the High School.
Councilman: Can everyone hear?
Attorney Meese: I am sorry. The allergies have just killed me and I have hard time, and I've been speaking all day so I'm trying my best. I'll try my best to speak up, but I just lost my voice and it's just been a tough allergy season.
Attorney Meese: This is for a permitted use at the High School. Under your Ordinance, the Council has approved the Lease with the High School. There are no variances involved

in this Application. T-Mobile has been paying rent at the High School since 2010. The won the bid at the High School. The High School wants this facility and they came here and told you that in person. They sent you a letter to that affect. Your Ordinance requires that, if there was a prior application, that be disclosed. One of your Ordinance revisions, 144-93 says the "Board shall, upon application, hear and consider the application, taking into consideration any previous approvals given…" So it was proper for Counsel to mention the prior approval on this Application and I don't think Mr. Crilly was alone in thinking this was a better location than that was originally approved by this Board. The fact that the Application is different really is of no moment whatsoever. Mr. Berg presented, in his argument, well that was a faux flagpole and this is a monopole. That was the first time the flagpole issue had come up. If you recall, during the testimony, we had offered to the Board a faux tree and the reason for that is because a tree can accommodate the types and numbers of antennas that are deployed today where as a monopole cannot. The flagpole has limitations due to its slenderness. You can't get all of the cables up inside and you have to stack antennas on top of each other, which limits the usability as I think you have found out with your flagpole right out front of this Municipal Building. It is hard to expand it. So, again, I submitted the report from Ms. Boschulte in response to Mr. Berg just to reiterate that the Applicant is fine with the faux tree, the proposal in the woods, if that's what the Board would want to do, but a flagpole is not really appropriate in this setting given the requirements that the carriers have today for their facilities.

With respect to the design of the tower, it is also consistent with what your Ordinance states that pole should be galvanized, steel finish or subject to the Board's consideration of something else, and we've agreed to that. The caselaw indicates that if there's a fraud or mistake that would warrant the reopening of a hearing, I don't think that is what we had here. Certainly, there was no fraud and the issue of whether the original approval was still valid isn't the type of mistake that warrants the reopening of a hearing. That application was approved appropriately in 2010 and, frankly, I think it was approved appropriately two months ago. It is a permitted use and the Municipal Land Use Law with respect to Site Plans it's very clear. It is one of the few places in the Municipal Land Use Law that uses the word, "shall". If the Application meets the requirements of the Ordinance, it "shall" be approved. It is a directive. It's not a may; it's a shall. It is a command. Here, we have an Application that does comply with the Ordinance.

Lastly, the Wanaque Code does not have any procedures for reopening hearings. The Planning Board Rules, and I reached out to the Board Secretary and Counsel, and there are no Rules for reopening of hearings. While the Municipal Land Use Law would permit it with appropriate Rules in place, there are no Rules in your Ordinance, nor Board Rules. For those reasons, I don't think it is appropriate to reopen and I would ask you not to do so. Thank You.

Attorney Berg: Good evening and thank you for having this hearing tonight.
The issue tonight is a Motion on whether to Rescind the Approval and to Re-Vote it next time and the reasons for rescinding it are absolutely clear. Mr. Crilly said he was misled by the erroneous instruction from Mr. Veltri. And that's why his vote, which was the determinative vote. It was a 4-3 vote. If he flips from a yes to a no, that changes the outcome of the vote and the Site Plan Approval will be Denied instead of Approved. So it is critical that he be allowed to change his vote because he was misled by the instruction, which Mr. Veltri admits, was erroneous in this instance. So you need to be able to do this Re-Vote and you need to Rescind in order to do the Re-Vote. Now the law is crystal clear that a Board is allowed to re-open and correct an error that has been made. No one is saying that there is fraud here, but there was a mistake in the instruction that was given that certainly misled Mr. Crilly. We don't know if it affected the other votes of the people who voted in favor. They'll have a chance to Re-vote as well if you pass this Motion tonight. But it is clear that you need to Rescind before we get the Re-Vote and the grounds are well-stated on the record here as to the reason. The fact that Mr. Meese believes that the original decision was the right decision is irrelevant. You'll get that change to Re-Vote hopefully at the next meeting.
The original approval was for a different tower, in a different time and a different world. We are talking about 2010 versus 2014 (should be 2024) so that is really irrelevant once we wipe out the fact that there is no absolute right now to rebuild that tower in the location closer to the High School. That is all irrelevant. Now you vote on their current Application for the tower in the wooded location and you decide whether or not that meets your Town Ordinance. The Borough Council did not vote to approve this tower under the law. All they did was say, okay, under the law, we have to agree that it can be considered by this Board and this Board has the duty to examine the Ordinance and to decide whether or not this proposed tower complies with the Ordinance. I gave you my massive letter months ago that explained all the reasons why there are eight goals in your Telecommunications Ordinance here and this particular proposed tower fails all of those goals. I am not going to go into that now, but when you Re-Vote, you have to consider all those goals of your statute and this one clearly doesn't meet any of those goals. But, right now, tonight, all you have to do is vote on whether or not you are allowed to Re-Vote at the next meeting. I think it is clear that, for the reasons I stated in my letter, and the reasons we heard on the record tonight, it is really mandatory that you do Vote to Rescind tonight and to allow the whole Board, the Voting Members, who voted the first time, to Re-Vote next time.
Thank You.

Councilman: Any questions from the Board?

Member Slater: I think Mr. Berg misspoke. He said 2010 and 2014. I think the gap is 2010 to 2024.
Attorney Berg: Exactly, thank you.

Member Crilly: And I want to correct something for the record about Attorney Veltri and the instruction to me. I don't put it on him, I put it on myself, okay. Just so everyone is clear about that. I kind of made a leap in logic that I should not have made. So I just want to get that on the record.

Councilman: Thank you. I appreciate that. Do you have any comments.

Attorney Veltri: I don't. I think the facts were set forth pretty clearly. There is a Motion pending and it is time to Vote.

Councilman: Since we have a Motion and a Second, along with Member Crilly's understanding of why he voted incorrectly in his mind, and we have Members who are not here tonight due to also being involved in the Voting and have valid reasons for not being here, we'll take a Vote on Member Crilly's Motion.

<u>MOTION TO RESCIND APPROVAL OF FEBRUARY 15, 2024:</u> made by Member Crilly, seconded by Member Slater. Voting yes were Councilman Cortellessa, Members Platt, Slater, Crilly and Leonard

Councilman: The Motion has passed.

Attorney Veltri: When is our next meeting?
Councilman: The next meeting is May 16, 2024.
Attorney Veltri: Okay, so for all the members of the public that were noticed and came out tonight, May 16th at 7:00pm is the next meeting. This will be on the Agenda for a Vote. We are not taking any further testimony or evidence. It will be a straight Vote based upon all the evidence and testimony that we've heard. You will not be re-noticed so if you are interested in that Vote, please appear on that date and at that time.

Attorney Berg: Can I appear by Zoom? My daughter is graduating from Tulane Law School the following day.
Attorney Veltri: If we can accommodate him, that's fine with me.
Councilman: Can we establish Zoom capability?
Construction Official: Quite frankly, they only purchased one month.
Attorney Berg: Or I can call in if you have a phone line that can listen.
Construction Official: We can arrange a call in.
Attorney Berg: That's fine.
Councilman: We'll figure out the best way to do it, even if it's an open phone call.
Attorney Berg: Great, thank you.

Councilman: Considering the passing of the Motion, and everything else that was discussed, we'll have a Re-Vote on May 16th.

VOUCHERS: submitted by Steven J. Veltri, Esq. for attendance at the April 18, 20024 Meeting in the amount of $400.
MOTION TO APPROVE VOUCHERS: made by Member Crilly, seconded by Member Slater. Voting yes were Councilman Cortellessa, Members Platt, Slater, Crilly and Leonard

MINUTES: from the February 15, 2024 Meeting and March 21, 2024 Meeting
MOTION TO APPROVE: made by Member Slater, seconded by Member Crilly. Voting yes were Councilman Cortellessa, Members Platt, Slater, Crilly and Leonard

MOTION TO ADJOURN AT 7:32PM: Motion made by Member Crilly seconded by Member Platt. Voting yes were Councilman Cortellessa, Members Platt, Slater, Crilly and Leonard

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Jennifer A. Fiorito, Planning Board Secretary