

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
February 3, 2009
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The special/regular meeting of the Board of Adjustment was called to order by Chair Santo at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIRMAN'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Daily Record and Observer Tribune as a special meeting in accordance with the Open Public Meetings Act on January 15, 2009 and was posted on the bulletin board of the Phoenix House on the same date. Also, in accordance with the Open Public Meetings Act, it was published in the Daily Record on January 29, 2009 as a regular meeting subsequent to the Board reorganization and posted on the bulletin board of the Phoenix House.

ATTENDANCE

Mr. Palestina – Absent
Mr. Peck – Present
Mr. Peralta – Absent
Mr. Schumacher – Present

Mr. Seavey - Present
Mr. Smith - Present
Mr. Santo - Present

Also Present:

Mr. MacDonald, Attorney
Mr. Ferriero, Engineer
Mr. Denzler, Planner

#####

PUBLIC COMMENT

Chair Santo opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

APPROVAL OF MINUTES

On motion by Mr. Seavey, second by Mr. Smith and carried, the minutes of the regular meeting of December 2, 2009 and the special reorganization meeting of January 20, 2009 were approved as written.

HEARINGS

Markham, Richard & Susan – Hardship Variance: **Continuation**
Block 2201, Lot 10.05, 243 Pleasant Valley Road

At the request of the applicant, the Board will carry the application to the March 3, 2009 regular meeting without further notice. Mr. MacDonald, Esq. made a public announcement.

#####

Omnipoint Communications, Inc. and New York SMSA Limited Partnership d/b/a Verizon Wireless – Use and Other required variances: **Continued**

Block 801, Lot 20, Kings Shopping Center

Present: Richard Schneider, Esq., Attorney for the Applicant

Exhibits: L-1: Presentation prepared by F. Lupo
L-2: Backup to presentation
L-3: Appellate Decision: Conifer – Mendham Township
L-4: BOA Minutes 9-23-03
L-5: BOA Minutes 9-3-03
L-6: Press Release – Verizon re Cold Hill Rd.

- L-7: Penn Township, PA Brief
- L-8: Omnipoint vs. Easttown Township Case
- L-9: Sprint vs. Willoth Brief
- L-10: AT&T vs. Ho-Ho-Kus Brief
- L-11: Communications Co. Charlottesville vs. Albermarle County
- L-12: FCC Press Release – 5-13-99
- L-13: Cellular One vs. Todd Case
- L-14: DAS technology
- L-15: NextG Network Overview
- L-16: Photo Mendham Plywood
- L-17: Photo Fallen Towers
- L-18: Army Corps Engineers – Ice & Falling Towers
- L-19: USCOC Iowa vs. Des Moines Case
- L-20: Photo Kings Parking Lot
- L-21: Five Photos of Loading Zone
- L-22: Four Photos dated 1-6-09
- L-23: Secured Equipment Area in Public Proximity
- L-24: Photo: Daytop from Adams Street
- L-25: Photo: Conifer from Main St.

Chair Santo explained that given discussions at the previous hearing, the public would be given an opportunity to speak first at the meeting. Mr. MacDonald, Esq. questioned the public on who would like to speak for the purposes of allocating time. Upon completion Chair stated that the public comment would take two meetings.

Mr. MacDonald, Esq. swore in Messrs. Ferriero and Danzler who were attending their first meeting of the year.

Chair opened the meeting to public comment by the interested parties.

Ms. Susan R. Kaplan, Esq., 19 Aberdeen Drive in the Mendham Commons stated that she is a Land Use Attorney and has been personally involved in cell tower cases including Conifer Drive. She would be speaking as a concerned citizen who has resided in Mendham Borough since 1986. She accidentally heard about the cell tower through a Mendham Township Library page. She is in Kings Shopping Center on a daily basis, and no one there knows about the proceedings. There was reference to the possible placement of the tower on Association property in the Mendham Commons Association newsletter. She contacted Association members who were unaware of the specific location at the shopping center and the effect it would have on the residents of Mendham Borough. She expressed concern for parking, for the handicapped, traffic accidents and apothecary parking at the Shopping Center site. There is a petition being circulated.

Responding to Mr. Schneider, Esq. on her involvement in the Conifer Drive tower, Ms. Kaplan stated that she had litigated in Lawrence Township and that she had retained an expert appraiser who was also retained by Mendham Township. Her files had been subpoenaed as related to the expert reports. Fourteen hearings followed, a majority of which dealt with property values.

Mr. Frank Lupo, 17 Dean Road spoke on behalf of several Dean Road residents including Ms. Howe and Mr. Pierson. Since the last meeting, they have educated themselves on the cell tower application. Many questions remain on the positive and negative criteria. He stated that he had conducted research and reviewed Cox as relates to land use law and the Federal Telecommunications Law. He would like the people of Mendham to understand how the tower will affect their everyday lives.

Mr. Lupo provided the Board with Exhibit L-1 a presentation that he had prepared and Exhibit L-2, the background information relating to L-1. Mr. Schneider, Esq. was in agreement with marking the exhibits, but not entering them to the record until the foundation of the exhibits was established.

Mr. Lupo began by stating that at first he thought the issue was about a tower in “his backyard”, but now he realizes that it has to do with Mendham. It will affect the entire community. Granting the variance will cause him and other residents undue hardship as property owners in the Borough of Mendham. There will be a proliferation of towers that will have a negative impact on the history of Mendham. He referenced several quotes from the Master Plan relating to the Main Street Corridor, the importance of the gateways, and wireless facilities.

Referring to the demographics, Mr. Lupo stated that they have not changed in the area. The shopping mall was built in the 1960s. It has not changed since the tennis courts were built in the 1970s. The homes in the area have not changed. The Commons was constructed in 1985. A

traffic study completed in 2005 indicates that the traffic has not changed and the roads have not been widened. There have been no changes, but there is now a gap.

Mr. Lupo continued that the main road through the Borough is 1.9 miles long and there is one tower located along it. There is a tower in the Township that went live in November 2007. Both towers are surrounded by trees and not in public areas. In terms of Omnipoint, they were a fifth carrier added to the existing bell tower at 140 ft. He referenced 2003 Board of Adjustment minutes in which the carrier indicated that coverage was not an issue and that use of the existing tower would eliminate the need for the construction of a new tower.

Referring to a Verizon press release, Mr. Lupo stated that the new Conifer tower was to provide improved coverage in Mendham along Route 24 between Cold Hill Road, Indian Head Road and Tempe Wick Road. The applicant is saying there is no coverage up Cold Hill Road. He cited that the RF Engineer from the Confer briefs testified that there would be continuous coverage along Route 24 and hand off to the tower at Daytop.

Mr. Schneider, Esq. stated that while Mr. Lupo could express his opinion, there are references to quotes from the record without context. Mr. MacDonald, Esq. noted Mr. Schneider's concern and clarified with Mr. Lupo that the citations were from the Court decision as pertained to Conifer Drive, and that he was also utilizing the minutes from the September 2003 Board of Adjustment meetings as foundation.

Mr. Lupo summarized his points to date indicating that there had not been any demographic change in the area and the applicant's expert witness stated that they had adequate service. There was a press release in 2007 indicating that there was adequate service on Cold Hill Road. He reviewed testimony by radio frequency engineers in the Conifer tower case that had conducted drive tests in Mendham Township. Continuing, Mr. Lupo reported on some Federal opinions referencing approvals or denials when there is another carrier. He concluded that once an area is sufficiently serviced by a wireless service provider, the right to deny applications becomes broader. Mendham has two cell towers, one at Conifer and one at Daytop, and they are 3.1 miles apart forming a cumulative impact.

When Mr. Lupo wanted to enter quotations from Penn Township and Easton, Mr. Schneider, Esq. stated that he wanted to distinguish between factual presentation and legal argument. In terms of legal argument, the claims made in the cases are all prohibition or discrimination claims which arise under the Federal Telecommunications Act. Mr. MacDonald, Esq. advised that he inferred that Mr. Lupo was laying a foundation for his factual argument and was doing his best to provide a legal foundation for that argument which he assumed relates negatively to the application. Mr. MacDonald, Esq. requested that they continue until all of Mr. Lupo's materials were presented and his ultimate position known.

Referencing potential denials of applications, Mr. Lupo stated that from his work, just because a tower comes to a board does not mean that they cannot deny it. Under the Telecommunications Act, if there is no proven gap, there is an opportunity to deny the application. Based on review of Albemarle County and Ho-Ho-Kus, local zoning authority is not overridden by commercial desire to provide optimal service to all current and potential customers. Mr. Lupo acknowledged that while is not an attorney; he was trying to put the puzzle together.

Mr. Lupo continued with his opinion that the Borough could say no. Citing from Easttown and Newtown cases, he quoted reference that to determine a gap the applicant would need to include evidence that the area the new facility will serve is not already served by another provider. Ho-Ho-Kus opinions relate that carriers need to provide that they are unable to either connect to the land base telephone network or maintain a connection that support reasonable uninterrupted communication. Quality of service and whether the gap affects a significant number of users is used to evaluate the gap based on the Conifer application.

Mr. Lupo reported that he could not find the data for this application. He was looking for the caller traffic volume test, drive test, call data test, and/or customer complaint list with a customer complaint map. He referenced a denial of an application from Hempstead that did not have a customer complaint list.

Mr. MacDonald, Esq. confirmed with Mr. Schneider, Esq. that the Appellate Decision placed into evidence was reversed by the Supreme Court. He also advised that pieces of decisions, opinions and newspaper articles might be relevant to the global concept, but the details of the context were needed such as whether the municipality had a wireless ordinance like Mendham Borough or whether the cases were proceeding as use variances similar to Daytop and previous applications at the Black Horse and Daytop School. The law and the standard of proof is different. Mendham Borough now has a wireless ordinance and the applicant needs to satisfy the conditions and the

Board needs to determine whether they have. The property under discussion is a permitted location under the ordinance adopted by the governing body. He asked that Mr. Lupo keep that in mind when making his argument.

Referring to Dr. Eisenstein's comments, Mr. Lupo stated that there is no discussion on how the number of users are affected, particularly before 11/14/07 when the FTA focuses on the user's access to the national telephone network, not to create an optimal network. Design leveraging assumptions and predictions using computer models dated from 6-4-08 were used as evidence. Two different methodologies are being used and drive testing or another scientific method should be used as opposed to assumptions and predictions. The propagation maps are limited to one level of reception. He stated that in Easttown it was determined that there is no Federal requirement for minus 84 or minus 85 dbm. It is a design qualification. He questioned dropped calls at other dbms.

Addressing the height, Mr. Lupo stated that in testimony for the Kings location, the RF engineer stated that the simulation was done at 130 ft. for Daytop, not at 140 ft. which is its current height. Mr. Ferriero clarified stating that the tower at Daytop is taller than the antenna mounting height. The antennas are at least 10 feet below the top of the tower. A variance granted for the height of the tower is higher than the mounting heights of the antennae from which the propagation analysis is completed. The 10 ft. discrepancy is consistent with the design of the tower.

Mr. Lupo stated that he thought he had read a statement that it is at 130 ft., but it is really at 140 ft. and the tower is actually 154 ft. in physical height at its peak.

After clarification that Verizon was on line on the Conifer tower, Mr. Lupo questioned when the maps were completed as he believed that they were done prior to Conifer going live. It was his opinion that they do not represent an actual representation of the signal strength in the Mendham area. He referenced the ordinance checklist and the requirement that strength plotting for all existing stations should be shown on the map. He questioned whether a lower tower of 87 or 80 feet might work.

Mr. Lupo summarized his presentation to date indicating that his point is that Federal law allows us to deny the application. We have sufficient service in the area. We do not have the test to back up that there is a gap. We do not have users that are affected by the gap.

In response to Mr. Peck on whether he was advocating for a lower tower, Mr. Lupo agreed. He stated that we are trying to put more antennae into a slender tower and going higher to address multiple providers. There may be a way to go lower and larger. There are also other technologies available. He stated that he did not object to towers, but that there is an appropriate solution for the Borough.

Having completed his presentation on his issues associated with the Federal Telecommunications Act, Mr. Lupo moved to discussion on Municipal Land Use. He stated that the responsibility as stated in the Master Plan is for Mendham Borough and that there is no Federal requirement that we need to put a tower up to service an area outside our borders.

When Mr. Lupo referred to a past application and its associated coverage, Mr. Schneider, Esq. objected stating that the application was for AT&T and did not deal with the current applicants. Mr. MacDonald, Esq. clarified for Mr. Lupo that each carrier has a different web and a different setup. What would work for AT&T at a site might not work for Omnipoint or Verizon or Sprint.

Referring to the Master Plan, Mr. Lupo reviewed that a wireless facility should be designed to provide coverage with the Borough. Installation of wireless facilities create a negative visual impact on the Borough and can potentially negatively impact property values without providing benefit to the Borough residents. He recommended that if coverage is needed in the Township toward Tempe Wick, they should consider the water tower on Horizon Drive that was identified in the Conifer appeal.

Addressing Mr. Kronk's planning report specifically as relates to 911, Mr. Lupo stated that all carriers connect to 911. It should not be part of the positive criteria. Mr. Schneider, Esq. objected stating that the use serves the general welfare whether it is 911 or not. It has been upheld in case law. As a matter of law the use serves the general welfare and it is conditionally permitted in Mendham Borough. Mr. MacDonald, Esq. agreed and stated that it should be factored into the presentation.

Moving on to discussion of the property given its location in the Main Street Corridor, Mr. Lupo stated that there are special design elements in the area. Part of the ordinance is to preserve and protect visual historic and natural environment. The least intrusive means should be used if gaps

are proven. There is no minimal visual impact of the tower if there are no trees to hide it. There are roads and a totally cleared 13 acre site. The tower is not compatible with the general character of the area and it is at a different magnitude than anything else in the vicinity. The visibility study is inconclusive and limited, only containing four photos. It is not what is requested by the ordinance. Pictures are needed from all affected areas. He referenced a letter from the Historic Preservation Commission that could not fully endorse a structure of any magnitude in the Main Street Corridor. They asked the Board of Adjustment to explore more advanced technology such as DAS.

Mr. Lupo continued that empirical data was needed to determine the least intrusive amount of overlap and the least intrusive height. The site is not suitable because it does not scale. The more carriers, the higher the tower and the more cabinets at the base and the more parking we lose. There was extensive discussion about aesthetics in the Southwestern Bell Mobile Systems versus Todd case.

Next Mr. Lupo addressed mitigation through siting, screening and landscaping, stating that there is no evidence on record that adjacent sites were reviewed. No evidence exists that properties in the East Business District, but not in the Main Street Corridor were approached. No alternate solutions in the form of technology or property to fill the alleged gaps were proposed that would be less intrusive or more fitting to the area.

Addressing alternate technology, Mr. Lupo explained that the DAS technology, Distributed Antenna Systems, consists of small antennas on top of telephone poles. They are distributed throughout the neighborhood about 3 or 4 feet. He provided a copy of a presentation from NextG that is a provider of services. They were able to use this particular solution in Lemoine Township to replace a 165 foot proposed tower.

Mr. Schneider, Esq. objected to entering a presentation from a third-party source through a witness that was not qualified.

Mr. MacDonald, Esq. advised that the Board was not accepting any characterization of the DAS materials. They are marketing materials. They would be marked and it would be noted that the materials exist. The Board would not be making any findings or accepting any implications that the DAS system could replace the antenna, but as he requested, they would look at the materials. They will acknowledge that the Historic Preservation Commission did refer to DAS.

Returning to Mr. Peck's previous question on whether he felt there should be multiple 90 ft. towers in the Borough, Mr. Lupo stated no, but that he thought there should be a more suitable location. On a trip past Backer Farm on Ironia Road, he noticed a barn and a silo. He questioned whether a silo next to the lumberyard barn might not be more suitable. Responding to the Chair's question on whether the owner of the lumberyard would be agreeable, Mr. Lupo stated that he did not have conversations with him and he did not know.

After discussion on the fact that testimony had been presented at other meetings in depth, Chair recommended that Mr. Lupo obtain copies of the discs of the meetings from the Board Secretary. Chair stated that DAS technology had been discussed, but it did not give the applicant the type of coverage that they needed, and it would be more intrusive to the community as a whole as opposed to a single monopole. They require 90 ft. poles and equipment cabinets at each base and it is a proliferation of boxes and fencing throughout the community. The Board also looked at other alternatives such as a windmill, but the Historic Preservation Commission stated it should not be a focal point. The flagpole was discounted as under Federal statute it has to be illuminated 24 hours a day.

Summing up, Mr. Lupo stated that in his opinion a silo is more suitable for Mendham. He stated that a pole in the parking lot does not work for Mendham and read a quote on health hazards. He also cited wind and ice load concerns. Referring to Oswego where a tower fell, he stated that in his opinion, setbacks should create fall zones. Responding to Mr. MacDonald, Esq. on whether he had any detail as to the reasons for the fall, Mr. Lupo stated that he did not, and he did not have any examples from New Jersey.

Board took a 10 minute break.

After the break Mr. Lupo referenced a fact sheet from the Army Corps of Engineers related to the distance that ice falls from a tower. He also presented an Eighth Circuit Court of Appeals opinion relating to ice from Des Moines, Iowa.

Next Mr. Lupo explained that he realized that the area under discussion for the tower is actually defined as roads in a public area in our ordinance. Every area or section within the shopping

center has a declared road for the entire length, one-way streets, two-way streets, and it is also governed by the local police. It is a dangerous area to put a 130 ft. tower. It is a public area and there is a traffic control map. The proposed tower is located on one of the declared streets.

Mr. Ferriero clarified advising that the section of the ordinance to which Mr. Lupo is referring permits the Borough under Title 39 of the state law to enforce traffic regulations on private property. They are not public roads. It is a public space. Title 39 enforcement is done at the request of the property owner to have the town enforce such things as one-way traffic circulation, handicap parking stalls and stop signs. It allows the police to issue tickets. They are not roads, but parking lot aisles and driveways to the parking lot.

Addressing the applicant's planning report relating to the first location, Mr. Lupo stated that the report indicates that it is not possible to locate the facility elsewhere on the property in order to achieve a greater setback due to disturbance of existing development in the parking circulation area. It is shielded from the public and residential users to a greater extent. The first location is probably more intrusive to the Main Street Corridor and it contradicts much of the Master Plan. The site is not suited as both locations create dead-end parking that will cause traffic issues.

In discussion with Mr. Lupo on the circulation impact of the parking spaces, Mr. MacDonald, Esq. advised that parking spaces replaced the original tower location. They are not creating the dead end that was created when the tower was there. Mr. Ferriero clarified that on the south side of the parking adjacent to the Apothecary there are eight stalls which function as an aisle that connects a center aisle between two banks of parking with the aisle that runs behind the pharmacy. So, it would limit circulation; however if the only issue is the eight parking spaces the stalls can be reoriented and made up through some re-striping. Chair added that the owner of the shopping center stated that their intent is to re-pave and re-stripe the parking lot. Mr. Ferriero added that the 8 parking spots are not an impediment to the application.

After further discussion on the size of the parking spaces, Mr. Lupo requested that they be shown on plans.

Mr. Lupo raised the issue of where the snow would be placed if a tower were located in the new proposed location. Cars tend to park in the middle of the circulation area in front of the snow when spaces are needed. It was Mr. Lupo's opinion that the snow would be piled in other parking spaces if a tower were constructed, and additional spaces would be lost.

Next, Mr. Lupo addressed the loading zone. He questioned why there was a new bumper on the loading zone if it was not being used. It has several backup marks. He believes the loading zone is actively being used. His cost benefit analysis would not put a new bumper on a loading zone that was not being used. In addition, he has noted a car parked in the parking space to which the dumpsters are to be moved. That eliminates more parking.

To further address his opinions that the location is not scalable and not safe, Mr. Lupo compared the cabinet areas at Daytop (10,000 sq. ft.), Conifer (6,700 sq. ft.) and Kings (1,200 sq. ft.) based on testimony and site plans. As the number of carriers increases, the cabinets would need to expand, resulting in more lost parking. Mr. MacDonald, Esq. advised that details are important. At the present time, the flagpole as proposed can only accommodate three users. If a fourth user comes forward in the future, the point might be relevant, but now it is fixed.

After questions on the height of the tower and how many carriers it would accommodate, Mr. Schneider, Esq. clarified stating that at the request of the Board the applicant increased the height to 130 ft. for the specific purpose of accommodating up to four carriers. By going from 120 ft. to 130 ft. a fourth carrier could be accommodated. Based on discussion, it was not feasible to build to 120 ft. and extend to 130 ft. given the need for cable management. Chair Santo stated that based on the discussion the height would be designed for four carriers, but the base station would be designed for three and expanded should a fourth applicant come forward. Mr. Lupo noted that from the plans he only saw a cabinet large enough to house the Verizon and Omnipoint equipment.

Mr. Lupo's final point dealt with the intrusion of the proposed use into an existing area that is the gateway of Mendham, and the Mendham Racquetball Club swimming pool. The Club is used as a residential center for families and residents of the community. His opinion was that it is substantially detrimental to the public good and substantially impairs the intent and purpose of the zone plan and zoning ordinance. It will place a shadow over the pool at certain times of the day and parking spaces for swim meets will be lost. There will be a blind spot when backing out into the roadway which accesses the lumberyard. It will be an attractive nuisance since it is directly in the walking path for an individual. Replacing 12 foot trees with boxwood contributes to the continued separation of the intent of the ordinance and the Master Plan. It will be an intrusive

presence in the general neighborhood and nearby residents. It cannot be effectively mitigated by screening or landscape.

Mr. Lupo requested to enter a petition. Mr. Schneider, Esq. objected. Mr. MacDonald, Esq. explained to Mr. Lupo that the Board conducts itself in a quasi-judicial manner. With a petition we do not know exactly what people are objecting to, and Mr. Schneider, Esq. cannot cross-examine them. That presents an evidentiary dilemma. Mr. Lupo stated that they were not objectors, just interested parties like himself wanting to learn more. Ms. Kaplan noted that there is a page of explanation with the petition. Mr. MacDonald, Esq. advised that if they want answers to their concerns, they need to come to the meeting.

Summarizing, Mr. Lupo expressed concern that the tower would negatively impact the gateway to Mendham. He moved here away from sprawl commercial uses just randomly going up. He believes that the proof necessary on the impact of the scenic view and need for the tower have not been provided. He has personally done 20 phone tests from every isle in Kings to a land line and withheld a call for a one-minute time period. He also called T-Mobile and Verizon and gave them his zip code. They said that the service here is outstanding for both. Mr. Schneider, Esq. stated the Ho-Ho-Kus case specifically stated that a layperson's own phone test is not admissible. Mr. MacDonald, Esq. confirmed that Mr. Lupo was neither an RF Engineer nor expert witness and the testimony could not be accepted. Board noted it was his opinion.

Mr. Lupo addressed the concept of proliferation. Daytop can be seen from various areas and Conifer is also in Mendham. A third tower will be right in the middle.

Chair acknowledged the amount of work that Mr. Lupo had put into his presentation. The Board appreciated it.

Responding to Mr. MacDonald, Esq. on the proffer of the exhibits, Mr. Schneider, Esq. stated that he had serious objections to numerous exhibits. There is case law and citations from transcripts without context. There are legal conclusions cited from cases while the cases speak for themselves. There are titles of exhibits referring to falling ice and attractive nuisances. There are references to public roads, but they are not public roads. Photographs have been taken without reference to location from which they were taken. He had an overriding objection on the basis of foundation for the numerous exhibits and the manner in which they were presented. While Mr. Lupo did a commendable job in terms of his diligence, Mr. Schneider, Esq. stated that he believes he is wrong on his analysis of the case law. He objects to the exhibits on the basis of foundation, relevancy, and citing cases that are not the final cases.

Chair opened the meeting to public comments from Mr. Connolly, 22 Hampshire Drive who stated that he was representing Mendham Commons. He advised the Board that the Commons has several locations on their property that could be considered possible alternatives to the current site in the Kings parking lot. The property is located in the quarter acre residential zone and the ordinance that was enacted in April 2008 prohibits a tower from being located in that zone. An exception would need to be made.

Chair Santo stated that the Board does not make the site decision. The site is presented by the applicant. Mr. Connolly stated that he had spoken with Mr. Schneider, Esq., and he does not have an interest at this time. Mr. Schneider, Esq. confirmed that Mr. Connolly had called him, but he advised him that he did not have the independent ability to know whether the Commons met the applicant's radio frequency objectives. There are some environmental constraints on the property. Further, he did advise Mr. Connolly that based on Mendham Borough's wireless communication ordinance, wireless communications facilities are specifically prohibited within residential zones. The applicant would need to prove to rule out permitted conditional uses first. The applicant was not in a position to pursue that.

Mr. MacDonald, Esq. advised Mr. Connolly that if the Mendham Commons has a long-term interest in making their property available for this use, the first step would be to speak to the Planning Board and the Governing Body who are the entities that establish the locations in the ordinance. Mr. Connolly stated that he would report back to the Commons board.

Mr. Lupo commented that the revenues the Commons would receive for a tower would offset the cost to maintaining the Commons. Also the tower would not be in the view shed coming into Mendham. It is a good alternative.

After final Chair comments for the continuation at the March 3, 2009 meeting, Mr. Schneider, Esq. stated that the matter is carried to the March 3rd meeting of the Board and there will be no additional public notice. This is their notice that the matter is carried.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Santo adjourned the meeting at 10:55 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, March 3, 2009 at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

Respectfully submitted,

Diana Callahan
Recording Secretary