



above it we will be requiring super silt fences which are actually chain link fences with poles driven into the dirt instead of the typical hay bales, stakes and mesh fences.

Mr. Vivona noted it was actually all three. Storm wash out takes out the hay bales, which then takes the mesh fencing and blows it out at the bottom. With the chain link fence it would hold all that in place. I also think we should say that anything dealing with the extreme steep slopes has to have frequent inspections.

Mr. Shaw felt that the conditions that we put in the Warren resolution requiring the weekly inspection, etc. we should use as standard conditions.

Mr. Vivona noted that Susan Dr. is a big circle and if you go down Ormont then there is Mountain Avenue. They are now building seven houses. It was not clear how this was done with "Steep Slope" unless they are going around the crest.

Mr. Shaw said that because it was a subdivision the Planning Board would have jurisdiction to grant bulk variances. He was sure they got steep slope approval as part of the subdivision approval.

A question was raised about a possible road connection to Susan Dr.

Mr. Vivona said they were coming up off of Mountain and there is some little side road. You can see sewer pipes going in.

Mr. Styple said he had not looked at the site as yet because of the snow but he was not looking forward to seeing houses built up there.

Mr. Vivona said that other than the steep slopes he could not think of anything else. We have to see how this antenna thing plays out. It might be passed state/nationwide.

Mr. Shaw said there was a pending regulation which the FCC is considering which essentially would remove Board jurisdiction for cellular tower applications. For the some that have already been approved once as a location you can basically co-locate on it and put additional things on it.

Mr. Vivona commented that if they have a free hand he was afraid they would do it haphazardly. If you look at the transmission shop across from McDonalds' you will see a tower behind it where they a giant container and wires everywhere. It looks really bad.

Mr. Shaw said there is a requirement for any use variance to demonstrate that the sight is particularly suitable for the use. There has to be some review and comparison of other locations. He felt the biggest thing retaining local jurisdiction has is that there is that level of additional review. There would be no restraint on these carriers as to where they want to put it if we didn't have at least some local level of review. This would deal with collating on an existing tower or tower that has a new height.

Mr. Nelson if they were putting up a brand new tower that should come before a Board. Another thing was the use of a water tower.

Mr. Shaw said if there were not already antennas on that water tower this exemption does not apply. One of the issues we will have to address in the context is the argument by ATT that because of those existing four roof antennas which have no local approvals of any kind does that establish that as a base station for an exemption under FCC regulation. I will be reviewing whether there is any basis for distinguishing that FCC ruling from the conditions that we have here.

Mr. Vivona asked if technically those roof antennas were legal/illegal.

Mr. Shaw said they had no approvals. They are antennas that are located on property which is owned by a public utility. Now, arguably, a public utility is exempt from local zoning. Arguably they wouldn't have to get our approval to put these antenna's up. There are two PSEG antennas' along with the Police Department and Fire Department. There were never any Board approvals for them to be put there. Whether that would be a basis for distinguishing that holding in requiring them to still get variances is a decision we will have to make.

Mr. Nelson – they put them up and never came before any board and yet if a cell tower wants to run it then there is an uproar over basically the same idea. That is crazy. Basically - It's a play on words.

Mr. Shaw said that what was in affect was a case that was decided by the FCC which interpreted the regulation to provide a base and structure on which any kind of communication antenna are based so you wouldn't need the local approvals. His opinion is still out on that. As to the FCC exemption, he did not personally think it was a good idea because he felt there should be some level of local oversight to insure that it is placed properly rather than just putting it where they want. This would control them from taking the easiest, simplest place which is not necessarily the best place.

Mr. Weston said it was his understanding that standards in Europe are much tighter than in the US. The way they get around that as far as making their cell systems work is they have small antennas everywhere.

Mr. Shaw said he knew that the League of Municipalities has given their opinion on it.

Mr. Weston had a printout where one organization advises these municipalities on these issues. In their commentary they said that you could be sure in your next meeting that the attorney for the cell company will be waving this at you as a done deal. It is not a reg yet. It's an interpretation.

Mr. Nelson commented about everyone stating that cell phones are so dangerous for you, our own cordless phones have the same frequencies and yet no one worries about those.

Mr. Vivona – getting back to resolutions – when we hear a case like this case on Susan Dr., if it is a straight forward thing we grant a variance and everyone is happy. If it is something that has major concerns then we put contingencies in the resolution. We will still grant the variance but the applicant has various things they must address. If you are building on the side of a mountain...personally I don't think any of those lots should have been sold.

Mr. Shaw said that once they were approved in 1964 they were existing lots. If the town was to take the position that they were so steep that they couldn't be developed they the town would have to condemn the property.

Mr. Nelson thought an important thing to remember is that you not creating the approval for that person, but for the lot. So if they sell the lot(s) the approval stays with the lot. Even though they had to approve the case for the existing owner that approval carried on.

Mr. Shaw said the one protection we have had, which hasn't been in place for a while, is the town has an ordinance which specifies that if you have a variance and you haven't commenced construction within one year from variance is issued the variance will lapse. But, back in 2007 the Corzine administration pushed through the permit extension act which has been renewed, despite the fact that the town(s) has an ordinance stating it has to be used in one year. By doing so the state extended every building permit, zoning approval, etc. for a period of time. They kept extending it and he believed that next year the permit extension act is to expire.

Meeting Adjourned

Respectfully submitted  
Mary Ann Fasano

Transcribing Secretary