



IN CITY COUNCIL

Marlborough, Mass., _____ JUNE 25, 2007

ORDERED:

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

In City Council
Order No. 07100-1499C

Application of:
Omnipoint Communication, Inc.
Subsidiary of T-Mobile USA, Inc.
15 Commerce Way, Suite B
Norton, MA 02766

Locus:
265A Lakeside Ave.
Map 79, Parcel 23

DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of Omnipoint, Inc., LLC as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: July 12, 2007

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 12th day of July, 2007.

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.
Given at Marlborough this 2nd day of August, 2007.

Given under Chapter 40A sec. 11 of the General Laws.

A TRUE COPY
ATTEST:

City Clerk



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ORDERED:

**DECISION ON A SPECIAL PERMIT
Omnipoint Communications, Inc.,
a wholly owned subsidiary of T-Mobile USA, Inc. ("Omnipoint")**

Re: 265-A Lakeside Avenue, Marlborough, Massachusetts.

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., having a usual place of business at 15 Commerce Way, Suite B, Norton, MA 02766, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., which has a business address of 15 Commerce Way, Suite B, Norton, MA 02766.
2. Through its Application for a Special Permit, the Applicant seeks permission to allow co-location of two non-penetrating antenna canisters or mounts (containing a total of three antennas) to the existing rooftop, as well as placement of the associated equipment cabinets on an equipment platform also located on the roof (hereinafter "Project"), as depicted on a set of plans entitled "Holiday Inn Marlboro" by Dewberry-Goodkind, Inc., last revised 12/20/06 as submitted with the Special Permit Application (hereinafter "Plans").
3. The location of the proposed Project is 265-A Lakeside Avenue and the property owner at this site is Manfeld Hotel Enterprises ("Owner"). The site is more particularly identified on the Assessor's Map of the City of Marlborough as Parcel No. 23 of Plate 79 (the "Property").
4. The Applicant is a lessee of the Owner, for the purposes of this Special Permit Application.
5. The Property is split-zoned LI-Limited Industrial and B-Business. The Application pertains to the portion of the Property located in the LI-Limited Industrial zoning district. Wireless Communication Facilities are allowed by grant of Special Permit in the LI-Limited-Industrial Zoning District.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Ordinance of the City of Marlborough.



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7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the City Planner certified that the Special Permit application materials conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Project on April 23, 2007 for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Applicant's Special Permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, applicable to the proposed Wireless Communications Facilities.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY
COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT
AND TAKES THE FOLLOWING ACTIONS**

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the Project and the Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this Approval.



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- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Facilities, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its proposed WCF to minimize the adverse impact of the proposed WCF on the abutting neighborhood and on nearby residential properties.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:**
- 1) The wireless communications facility ("WCF") shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All Plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 - 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may lawfully apply to the construction, maintenance and operation of the Applicant's WCF.



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- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit. In addition, no portion of the Applicant's WCF shall exceed forty-eight (48) feet above ground level. Given that the dimensions of all of the Applicant's equipment "are shown in illustrative fashion" only, as per General Note 1 on Sheet No. Z-1 submitted with the Application, any increase in the elevation of any portion of the Applicant's WCF above forty-eight (48) feet above ground level will require a prior formal amendment to this Special Permit by the City Council. Further, given that the final location of equipment is "pending full structural analysis," as per Note 3 on Sheet No. Z-2 submitted with the Application, any change in location of the Applicant's WCF from that depicted on the plans submitted with the Application will require a prior formal amendment of this Special Permit by the City Council.
- 5) Applicant shall minimize the visual impacts of the WCF by screening and/or color coordination as depicted on the Plans, which shall match the existing flue pipes, and other demonstrative evidence submitted as part of the Application for Special Permit.
- 6) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the WCF. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the WCF only in cases of power outages to the WCF beyond Applicant's control and not caused by the Applicant or any of its agents. In the event a temporary generator is used pursuant to this Condition, the noise produced by said temporary generator shall not be audible beyond the boundaries of the Site. Batteries used in the operation of the facility shall be disposed of off-site at the expense of Applicant.
- 7) The Applicant shall not permit any party, other than the City, to utilize the screening or color coordination, in any fashion or manner, for any WCF or associated equipment other than the WCF and the associated equipment expressly allowed by the grant of Special Permit.
- 8) No operation of this WCF shall commence until the Applicant has received written approval from the Building Inspector that all the above conditions have been satisfied.



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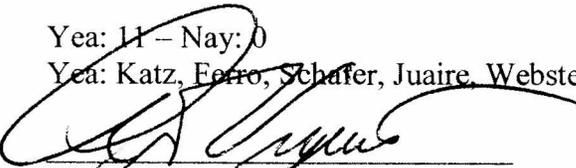
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- 9) Applicant shall be subject to site plan review and approval as required by Section 200-56C of the Zoning Ordinance of the City of Marlborough and in accordance with this Special Permit. Any additional changes, alterations, modifications or amendments as required by site plan review and approval shall be further conditions attached to this Special Permit, and no use and occupancy permit shall be issued until Applicant complies with all conditions.
- 10) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of Special Permit, whichever is earlier, and the subsequent payments to be due and payable on or immediately after January 2 of each calendar year in which the WCD referenced to in this Permit is still in operation.
- 11) To the extent permitted by the Owner, the Applicant will allow the installation, operation and maintenance of municipal Communications Devices, and will allow the City to use the ingress, egress, utilities and access easements granted by the Owner to the Applicant in the Rooftop Lease With Option, at no cost to the City of Marlborough, so long as such installation, operation, maintenance and use does not interfere with the Applicant's WCF. All other carriers leasing space from the Applicant shall be prohibited from interfering with said municipal Communications Devices, as well as with City use of said easements, regarding the Property.
- 12) In accordance with the provisions of Mass. Gen. Laws c. 40A, s. 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the city clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed.

Yea: 11 – Nay: 0

Yea: Katz, Ferro, Schafer, Juair, Webster, Clancy, Towle, Ossing, Pope, Vigeant, Levy


Signed by City Council President
Arthur G. Vigeant

ADOPTED
In City Council
Order No. 07100-1499C