



# IN CITY COUNCIL

Marlborough, Mass., JANUARY 3, 2011

**ORDERED:**

## **NOTICE OF DECISION GRANT OF SPECIAL PERMIT**

In City Council  
Order No. 10/11-1002715B

Application of:  
MetroPCS Massachusetts, LLC  
285 Billerica Rd.  
Chelmsford, MA 01824

Locus:  
860 Boston Post Rd. East  
Map 61, Parcel 16

### **DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 10/11-1002715B**

The City Council of the City of Marlborough hereby **GRANTS** the application of MetroPCS Massachusetts LLC, as provided in the **DECISION** and subject to the following Procedural Findings and Findings of Facts and Conditions.

Decision filed: January 11, 2011

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 11<sup>th</sup> day of January, 2011.

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

A TRUE COPY  
ATTEST:

A handwritten signature in black ink, appearing to read "Lisa M. [unclear]", is written over the printed name of the City Clerk.

City Clerk



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ORDERED:

**DECISION ON A SPECIAL PERMIT  
METROPCS MASSACHUSETTS, LLC  
CITY COUNCIL ORDER NO. 10/11-1002715B**

Re: 860 Boston Post Road East, Marlborough, MA

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to METROPCS MASSACHUSETTS, LLC, having a usual place of business at 285 Billerica Road, Third Floor, Chelmsford, MA 01824, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The applicant is METROPCS MASSACHUSETTS, LLC, which has a business address of 285 Billerica Road, Third Floor, Chelmsford, MA 01824 (hereinafter "Applicant").
2. Through its Application for a Special Permit (hereinafter "Application"), the Applicant seeks permission to install a wireless communication facility onto the existing wireless communications tower consisting of six (6) wireless communications antennas, along with the supporting equipment cabinets which will be located on the ground adjacent to the existing equipment compound (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "BOS0623A BOSTON POST ROAD" 860 Boston Post Road East, Marlborough, MA 01752, Middlesex County," prepared by Dewberry-Goodkind, Inc., 280 Summer Street, 10<sup>th</sup> floor, Boston, MA 02210, dated 8/27/08, last revised 12/13/10 Revision #6 (hereinafter "Plans").
3. The location of the Proposed WCD Project is 860 Boston Post Road East, Marlborough, MA. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 61, Lot 16 (hereinafter "Site"). The owner of record for the Site is the City of Marlborough.
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The Site is zoned Rural Residential (RR) and Business (B). The Proposed WCF is located in the Rural Residential (RR) portion of the Site. Wireless communication devices are allowed by grant of Special Permit in Rural Residential Zoning Districts.



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## ORDERED:

6. The Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.
7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector certified that the Special Permit application materials are complete and 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 Proposed WCD Project on November 22, 2010, 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 Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the Proposed WCD Project.

**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.



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## ORDERED:

- B) The Site is an appropriate location for the Proposed WCD Project and the Proposed WCD 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.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Proposed WCD Project to minimize adverse impact 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 a Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 12:**
  - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Application, as amended during the application/hearing process, and in compliance with the conditions of the grant of this Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
  - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of the 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 apply to the construction, maintenance and operation of the Proposed WCD Project.
  - 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.



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### ORDERED:

- 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 6) 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 the Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCD referenced in this Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. The temporary generator shall be operated in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 431 of the City Code.
- 8) No operation of the Proposed WCD Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.
- 9) Applicant's Proposed WCD Project shall be subject to site plan review, if applicable.



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## ORDERED:

- 10) In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South District 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, and before the Applicant has applied to the Building Commissioner Inspector for a building permit concerning the Proposed WCD Project. Applicant shall provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.
- 11) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Inspector for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCD Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall i) provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall include a professional opinion by a third party certifying that the Proposed WCD Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall i) state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall include a professional opinion by a third party certifying that the Applicant's changes or



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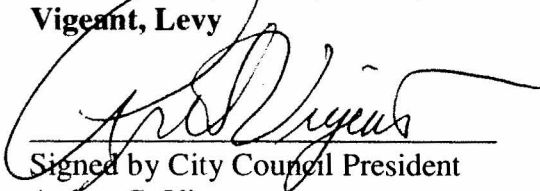
**ORDERED:**

upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.

- 12) Subject to final agreement between the City of Marlborough and the Applicant, the Applicant shall execute a lease agreement with the City of Marlborough to be drafted by the City Solicitor, approved by the Chief Procurement Officer and executed by the Mayor, and the Applicant shall provide the necessary insurance and indemnification provisions as required by said lease.

**Yea: 11- Nay: 0**

**Yea: Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Vigeant, Levy**

  
Signed by City Council President  
Arthur G. Vigeant

ADOPTED  
In City Council  
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