

MARCH 22, 2010

**NOTICE OF DECISION  
GRANT OF SPECIAL PERMIT**

In City Council  
Order No. 09/10- 1002161F

Application of:  
Verizon Wireless  
400 Friberg Parkway  
Westborough, MA 01581

Locus:  
Map 76, Parcel 1  
303 Boundary St.  
Map 76, Parcel 1

**DECISION**

The City Council of the City of Marlborough hereby **GRANTS** the Application of Verizon Wireless (Bell Atlantic Mobile of Massachusetts Corporation, Ltd and Cellco partnership) for the installation and operation of a Wireless Communications Facility (WCF) at 303 Boundary St. based on the Findings of Facts and Conditions attached hereto.

Decision filed: April 12, 2010

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on April 12, 2010.

**APPEALS**

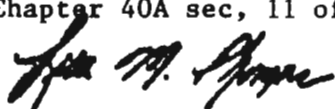
Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, Ma.

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 3rd day of May, 2010.

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

A TRUE COPY  
ATTEST:



City Clerk



# IN CITY COUNCIL

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ORDERED:

## CITY OF MARLBOROUGH

### DECISION ON A SPECIAL PERMIT PETITION

CITY COUNCIL ORDER NO. 09-1002161

### FINDINGS OF FACTS AND RULINGS

The City Council of the City of Marlborough hereby grants a Special Permit to Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Cellco Partnership, d/b/a Verizon Wireless, having a usual place of business at 400 Friberg Parkway, Westborough, Massachusetts, 01581, for a Wireless Communications Facility ("WCF") at the Marlborough Westerly Wastewater Treatment Plant ("WWTP") located at 303 Boundary Street in Marlborough, based upon and subject to the following evidence, findings of facts and conditions.

#### EVIDENCE

The Applicant is Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Cellco Partnership, d/b/a Verizon Wireless, having a usual place of business at 400 Friberg Parkway, Westborough, Massachusetts, 01581.

The Applicant is licensed by the Federal Communications Commission (FCC) to operate as a personal wireless services provider for the development and operation of personal wireless services facilities, as those terms are defined under the FCC Regulations and the 1996 Telecommunications Act, codified at 47 U.S.C.A., Section 332, and the Applicant's facility falls under the definition of a Wireless Communication Facility (WCF) as defined in the City of Marlborough Zoning Ordinance.

The Applicant responded to a request for proposals (RFP) issued by the City of Marlborough's Procurement Office for the lease of city-owned land at the WWTP for the installation of a WCF. The Applicant was later issued a notice of award by the City's Procurement Office and a notice to proceed with the applicable permitting process, including this Special Permit process. Contingent upon issuance of this Special Permit as well as of other permits and approvals required by law, the Applicant will become a tenant of the City of Marlborough under a lease agreement with the City.



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The Marlborough City Council is authorized to grant a Special Permit for a WCF at the WWTP, pursuant to the following Articles and Sections of the Marlborough Zoning Ordinance: Article VI, Section 650-25 on WCF; Article VIII, Section 650-59 on Special Permits generally; and Article III, Section 650-17, on allowable uses, which lists WCF as an allowable use under a special permit in the table of uses. The municipal use at the City's WWTP is located in an RR Zone (Rural Residential), and the table of uses lists WCFs as allowed by special permit in the RR Zone.

The Applicant's Special Permit application was received by the City Clerk on March 19, 2009, and was accompanied by other supporting documentation and information, including the required Engineering Plans and Drawings prepared by SFC Engineering Partnership, Manchester, New Hampshire, entitled "Marlborough West" and dated May 7, 2008, with a most recent revision date of February 23, 2010, (the "Engineering Drawings"). The application and support documentation and engineering plans show that the Applicant's WCF is to consist of a 150-foot monopole-type tower, which may be designed to be extendable, as shown on Sheet S-4 of the SFC Engineering Drawings, which will support the antenna/cable equipment of the Applicant and up to four other wireless carriers. The WCF will also include an approximately 50 x 50 foot fenced compound area (approximately 2,500 square feet) enclosing the Applicant's 12 x 30 foot equipment/generator shelter, propane tank and accessory equipment, along with future equipment areas for the other wireless carriers. An area for parking vehicles and for electric and telephone utility equipment is shown on the outside of the fenced compound. The Applicant's WCF is to be located at the rear of the City's WWTP and the Applicant shall install and maintain a twenty-foot wide (20-foot) gravel-covered roadway leading from Boundary Street to the fenced compound, with electric and telephone utilities to be run underground from Boundary Street to the Applicant's WCF.

The City Planner reviewed the Applicant's Special Permit application prior to its filing with the City Clerk, determining that: the application was complete; the application met all information requirements; that no variances were required; and that the application conformed to the special permit rules and regulations.

The Applicant's Special Permit Application was received by the City Clerk on March 19, 2009, and the City Council formally received and acknowledged the application at a public hearing on March 23, 2009, delegating preliminary review of the application to the City Council's Wireless Communications Committee. The application was then formally posted and advertised by the City Clerk, with the required mailing of abutter notices based on a certified assessor list, as required by local and state law, with the first hearing scheduled for May 11, 2009. The hearing was closed with the City Council's decision on the application to be made following a final review by the City Council's Wireless Communications Committee. By written agreement of the Applicant, the time for the



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City Council to take final action on the Special Permit application was timely extended several times, most recently to March 31, 2010.

The Applicant held the required balloon visibility study on Monday, May 4<sup>th</sup>, 2009, with the Applicant posting the required newspaper notice and providing additional notice by mail to surrounding residential properties and to the City Council and other City Officials. A second balloon visibility test was held in January 2010, with the Applicant posting the required newspaper notice.

The City Council's Wireless Communications Committee conducted further review of the Applicant's proposed WCF at a meeting held at City Hall on June 9, 2009, June 30, 2009, November 30, 2009, February 9, 2010, and February 23, 2010, prior to its rendering a final recommendation to the full City Council. At its final review meeting on February 23, 2010, the Wireless Communications Committee voted to recommend that the City Council grant the requested zoning relief under the Special Permit.

The City Council, in reviewing the Applicant's special permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25, and considered the general special permit requirements pursuant to Article VIII, Section 650-59, of the City of Marlborough Zoning Ordinance, as applicable to the Applicant's proposed WCF.

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

The Applicant has complied with all of the Rules and Regulations promulgated by the Marlborough City Council pertaining to the Application for a Special Permit for a WCF.

The WWTP Site is an appropriate location for the WCF 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 conditions of this Approval.

The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to WCFs, enumerated in Article VI, Section 650-25, and Article VIII, Section 650-59, of the City of Marlborough Zoning Ordinance, by siting and designing the proposed WCF to minimize any adverse impact of the WCF on nearby properties.



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The facility is located in a rear area of the WWTP and is approximately 1,000 from the nearest residential lot line.

There are no existing or previously approved tower structures in the vicinity of the WWTP to accommodate the Applicant's wireless equipment.

The development and use of a wireless communications facility at the WWTP by FCC-licensed wireless telephone carriers will provide a desirable communications service that benefits the safety, convenience and welfare of the residents, businesses, travelers and government users in the City of Marlborough.

There will be a minimal visual impact of the WCF from the neighborhood, streets and residential properties in the vicinity because: a) the facility is in the rear area of the WWTP property which is surrounded by wooded areas; b) the facility is approximately ¼ mile from the nearest residential lot line; c) the height of the WCF monopole shall not exceed 150-feet, but may be designed to be extendable to a higher height if desired by the Applicant upon further prior review and approval by the City Council; and d) the Applicant's balloon-visibility tests indicated that the Applicant's monopole-tower at the proposed location did not appear to be visible from the public roadways throughout the residential areas near the facility and was only partially visible along short segments of Boundary Street and Robin Hill Road.

It is therefore generally found that the Applicant's WCF and its characteristics will have a minimal impact and will not be in conflict with public health, safety, convenience and welfare, and shall not be detrimental or offensive, provided the conditions imposed herein are met.

The final location of the Applicant's WCF is approximately 192 feet due north from the original location presented at the first City Council hearing, and this final location was selected to ensure a safe distance from the WWTP facility. The Applicant has provided an updated viewshed report dated November 24, 2009, prepared by SFC Engineering, and the update indicates that, given the height of the tower is not increasing and given the ground elevation is not changing, the visual impact at the final tower location will be very similar to the impact from the original location. According to the SFC update, the final location is not expected to be visible at any new locations along the public ways accessible to the Applicant. The final location to the north is further away from the nearest residential properties along Boundary Street to the south, and minimizes the impact to the floodplain by maintaining the same ground elevation as the original location, while still maintaining a significant distance from the wetland and riverfront buffer areas to the east and Millham Reservoir to the west. The WWTP is a large tract of



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wooded land, consisting of 11 acres (Map 76, Lot 1) and 152 acres (Map 76, Lot 2), and bounded on the east by undeveloped land owned by the Commonwealth (Map 64, Lot 5, consisting of 30 acres) and the WCF shall be a significant distance from the nearest residential property (over 1,000 feet), based on the Engineering Drawings, and the final location meets the requirement that that view of the tower from other areas of the City shall be as minimal as possible and shall be screened from abutters and residential neighbors to the extent feasible.

**THE CITY COUNCIL, PURSUANT TO ITS AUTHORITY UNDER MASS. GENERAL LAWS, CHAPTER 40A, AND THE CITY OF MARLBOROUGH ZONING ORDINANCE, GRANTS THE APPLICANT ITS SPECIAL PERMIT SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicants WCF monopole-type tower shall be constructed in substantial conformance with the Engineering Drawings prepared by SFC Engineering Partnership of Manchester, New Hampshire, with a most recent revision date of February 23, 2010, which drawings are made a part hereof.
2. The Applicant's monopole-type tower shall be built to a height of one-hundred-fifty feet (150 feet) and may be designed by the Applicant so that the tower may be made extendable in height for any future expansion and use by the Applicant or other wireless carriers. Any request to extend the height of the monopole-type tower above 150 feet (not including any required grounding or lightning rods or municipal antennas) by the Applicant or any other future users shall require the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.
3. The Applicant's monopole-type tower shall provide for closely-mounted antenna array systems on the outside of the tower and shall be designed to accommodate the antenna/cable equipment and other related wireless equipment and accessories of the Applicant and at least four other wireless telecommunication service providers, as shown on Sheet S-4 of the Applicant's Engineering Drawings prepared by SFC Engineering and dated February 23, 2010, which are made a part hereof.
4. Pursuant to Article VI, Section 650-25, Subsection E (12), the Applicant's monopole-type tower shall not utilize any flashing lights or strobe lighting.



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5. The Applicant's WCF shall be located in the rear of the WWTP as shown on the Applicant's Engineering Plans prepared by SFC Engineering and dated February 23, 2010, which are made a part hereof.
6. Any future expansion of the ground-based WCF fenced-compound by the Applicant or any other users shall require the prior review and approval of the City of Marlborough Department of Public Works and the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.
7. Any future users of the monopole-type tower shall require the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.
8. The Applicant may maintain and modify the Applicant's wireless equipment on the monopole-type tower as shown on Sheet S-4 of the Engineering Drawings, provided that i) the height of the monopole-type tower is not increased, ii) the tower is structurally satisfactory to accommodate any modified equipment, iii) the modified equipment is similar in appearance to the equipment shown on said Sheet S-4, and iv) the Applicant obtains a building permit for any such modifications.
9. The Applicant's monopole-type tower shall be a grayish color. The walls of the applicant's equipment shelter shall be an earthy-tone, such as gray or tan.
10. All electric and telephone utilities connected to the Applicant's WCF shall be via underground conduits, and the routing and direction of the underground utility conduits shall be within the twenty-foot access road leading from Boundary Street and, further, shall be reviewed and approved by the Site Plan Review Committee which, however, shall retain the discretion, if the Committee deems it appropriate, to authorize the utilities to be connected to the Applicant's WCF via overhead utility pole lines. Any license or easement to be granted by the City to a utility company or companies in conjunction with the utilities referenced in this condition shall have a term not exceeding the term of the lease to be entered into between the City and the Applicant for its WCF authorized under this Special Permit.



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11. The Applicant's WCF shall comply with all applicable Federal Communication Commission (FCC) regulations, Federal Aviation Administration (FAA) regulations, and any other applicable federal, state or local law, ordinance or regulation.
12. 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.
13. If the Applicant's monopole-type tower is no longer in use by the Applicant or any other wireless carrier or other user, then the Applicant shall be required to remove the tower within thirty (30) days of such non-use, along with any other WCF equipment, and shall restore the premises to its original condition, except for reasonable wear and tear and below-grade concrete foundations.
14. The Applicant shall post a performance bond from a surety authorized to do business in the Commonwealth of Massachusetts, to ensure removal of the WCF if its use is completely discontinued.
15. The Applicant's lease agreement with the City shall permit the City of Marlborough to have municipal and public safety communication equipment installed by the Applicant, at the Applicant's sole expense, at the top of the Applicant's monopole-type tower, so long as the municipal communication equipment is ready and available for installation at the time when the Applicant is installing the tower and/or other equipment thereon. Such municipal use of the tower i) shall not interfere with the Applicant's current or future use of the monopole-tower and the fenced-compound, ii) shall not be placed between the height levels of 80 and 145 feet without the Applicant's approval, and iii) shall require the municipal entity to notify the Applicant in advance of the manufacturer, dimensions and frequencies of any proposed radio equipment. The lease shall also permit the City of Marlborough to utilize ground space outside the fenced compound at no rental cost to the City.





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16. Compliance With Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough ordinance, prior to the issuance of the actual Building Permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Building Permit and no Occupancy Permit shall be issued until all conditions are complied with by Applicant. Further, any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to this Special Permit, and any non-compliance with said changes, alterations, modifications or amendments shall constitute a violation of this Special Permit. Any other provision of this paragraph notwithstanding:

- a) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Wireless Communications Committee 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.
- (b) Notwithstanding condition (a) hereof, engineering changes may be made to said plans by the Site Plan Review Committee as long as said changes do not change the use of the Project as approved herein, increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the WCF shown on the plan.

17. 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 Commissioner for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF 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 WCF 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 WCF Project; ii) include a professional opinion by a third party certifying that the Proposed WCF Project fully complies with all applicable radio frequency emission standards promulgated by the Federal Communications Commission ("FCC") and any other applicable health and safety standards; and (iii) provide measurements of the actual output of the total radio



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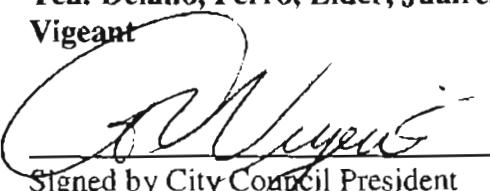
frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCF Project in compliance with all applicable radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF 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) provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; (iii) 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) include a professional opinion by a third party certifying that the Applicant's changes or 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 radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards.

18. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 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, and said recording shall be made before a Building Permit is issued. Upon said recording, Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

End of evidence, findings of facts and decision.

**Yea: 11- Nay: 0**

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

  
Signed by City Council President  
Arthur G. Vigeant

ADOPTED  
In City Council  
Order No. 09/10-1002161F