



IN CITY COUNCIL

JULY 21, 2014

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
T-Mobile Northeast, LLC
12920 38th SE Street
Bellevue, WA 98006
Order No. 14-1005821B

Locus:
460 Boston Post Rd.
Assessors Map 73, Parcel 31

DECISION

The City Council of the City of Marlborough hereby GRANTS the application of T-Mobile Northeast, LLC as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: July 30, 2014

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 30th day of July, 2014.

This is to certify that twenty (20) days have passed since the filing of the within decision and an appeal has been filed within such time.

Given at Marlborough this 5th day of September, 2014.

Given under Chapter 40A Section 17 of the General Laws.

A TRUE COPY
ATTEST


City Clerk



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ORDERED:

DECISION ON AN APPLICATION TO MODIFY SPECIAL PERMIT

T-MOBILE NORTHEAST LLC (OMNIPPOINT HOLDINGS, INC.)

Order No. 14-1005821B

460 Boston Post Road East

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 97-7201B submitted by T-Mobile Northeast LLC, having a usual place of business at 15 Commerce Way, Suite B, Norton, MA 02766 as provided in this Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is T-Mobile Northeast LLC (Omnipoint Communications, Inc.), with its principal office located at 12920 SE 38th Street, Bellevue, WA 98006.
2. Previously, the City Council granted to Omnipoint Holdings, Inc., a wholly owned subsidiary of T-Mobile USA, Inc., a special permit to locate and operate a wireless communications facility located at 460 BOSTON POST ROAD, Marlborough, MA (hereinafter, "the Original Special Permit"). In 2006, Omnipoint Holdings, Inc. converted into a limited liability company named T-Mobile Northeast LLC. The Original Special Permit is recorded at the Middlesex South District Registry of Deeds, Book 27967 Page 258.
3. The site is located at 460 Boston Post Road East, owned by Trinity Countryside Limited Partnership, and is further described as shown on the Marlborough Assessors Maps as Map 73, Parcel 31 (hereinafter, "the Site").



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4. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter, "the Application"), the Applicant seeks permission to allow replacement of three (3) of the panel antennas currently located on the wireless communication facility with three (3) newer models. Applicant also seeks to replace the existing stealth canister with a new canister 36" in diameter and to enlarge the ballast footing of the mount to 12' x 12' to accommodate the new antenna, and to add one (1) fiber optic cable (1 5/8" O.D.), and fiber jumpers to the wireless communication facility (hereinafter, "the WCF Project"), all substantially as depicted on a set of plans entitled "Site Name: BO149/450 Boston Post Rd, Marlboro, MA 01752, Middlesex County, Site Number: 4DE5149A," by AEG Advanced Engineering Group, P.C., 500 North Broadway, East Providence, RI 02914, dated 2/24/14, a copy of which was provided in the Special Permit Application (hereinafter, "the Plans").
5. The Applicant is the Wireless Communication Facility owner and the lessee of the Site's owner for purposes of the Application.
6. The WCF Project is located in the Business and A-1 Residence zoning districts. Wireless communication devices are allowed by grant of special permit in the Business and A-1 Residence zoning districts.
7. The modification of the Original 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.
8. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector, on behalf of the City Planner, 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.
9. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
10. The City of Marlborough City Council held a public hearing on the WCF Project on June 16, 2014, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.



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11. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.
12. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the WCF Project's compliance with the applicable Special Permit criteria.
13. 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 WCF 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.
- B) The Site is an appropriate location for the WCF Project and the WCF 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 WCF 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 modification of the Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 9:**



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- 1) The WCF 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 Modified Special Permit, as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance.
- 2) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Application, as amended, are herein incorporated and become a part of this Modified Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) Applicant agrees to 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 Applicant's existing WCF.
- 4) The issuance of this Modified Special Permit may be further subject to Site Plan Review in accordance with the City of Marlborough's Ordinance, as determined by the Building Inspector prior to the issuance of an actual building permit. Any additional changes, alterations, modifications or amendments, as may be required by any Site Plan Review, shall be further conditions attached to this Modified Special Permit and shall be further approved by using a building permit application so long as the changes, alterations, modifications or amendments fall within the scope of section 6409 of the 2012 Federal Tax Relief Act. No occupancy permit shall be issued until the Applicant complies with all such further conditions, if any.
- 5) Applicant shall minimize the visual impacts of the WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.



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- 6) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the WCF Project only in cases of power outages to the WCF 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. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant. If any liquid or hazardous material is used by Applicant in conjunction with the temporary generator, Applicant must employ a secondary containment system.

- 7) As soon as practicable but in any event within one (1) month after the occupancy permit has been issued to the Applicant by the City of Marlborough's Building Inspector for the WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the 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 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 WCF Project; (ii) include a professional opinion by a qualified third party certifying that the WCF Project fully complies with all applicable health and safety standards; and (iii) 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 WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the WCF Project that may increase the actual output of radio frequency energy emitted by the 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 WCF Project has been increased; (iii) provide measurements of the actual output of all radio



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frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) include a professional opinion by a qualified 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 health and safety standards.


- 8) In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Modified Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Inspector for a building permit concerning the WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the Building Inspector's office when the Applicant applies for the building permit, as well as a copy to the City Council's office and to the City Solicitor's office.
- 9) All conditions set forth in the Original Special Permit shall apply to this Modified Special Permit.

Yea: 9 - Nay: 1 - Abstained: 1

Yea: Delano, Page, Elder, Tunnera, Irish, Landers, Ossing, Pope, & Robey

Nay: Oram

Abstained: Clancy


Signed by City Council President
Patricia A. Pope

ADOPTED
In City Council
Order No. 14-1005821B