

OMNIPOINT COMMUNICATIONS (T-MOBILE)
Lot 800 Pratts Mill Road
Case #s 07-59,60,61

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
MARCH 17, 2008

The Board consisted of:

Jeffrey P. Klofft, Chairman
Nancy G. Rubenstein, Acting Clerk
Stephen A. Garanin
Jonas D.L. McCray, Associate
Benjamin D. Stevenson, Associate

This hearing was first convened on December 17, 2007. At that hearing the Board voted to hire a consultant for the purpose of reviewing these applications (including applications for a facility at Maynard Road) to determine whether any alternative sites exist which would provide the coverage needed. The hearing was further continued to January 14, 2008, February 4, 2008, March 4, 2008 and March 17, 2008 pending receipt of a report from the consultant which was received on March 11, 2008. That report entitled "Sudbury, Massachusetts Wireless Facility Analysis", prepared by Mark F. Hutchins, Radiofrequency Engineer, dated March 11, 2008 is incorporated and made part of the record.

The Board was also in receipt of the following:

- Letters dated 2/3/08 & 3/4/08 from Ian Springsteel & Ildi Morris
- Email dated 2/29/08 from Robin Merrill

The hearing was reconvened by Mr. Klofft who noted that in addition to M.G.L., Chapter 40A and the town's Zoning Bylaws, the Board is also governed by the Telecommunications Act of 1996. For the benefit of the residents in attendance he read from the relevant parts of the statute which sets limits on those items which can be discussed. He said issues of health, safety and property values cannot be entertained. In response to questions from the audience, he further clarified the limits within which the Board can act.

With regard to procedure, Mr. Klofft said the Board would first deal with the variances, and then with the special permit. He then read the criteria which must be satisfied before the Board can grant variances.

Attorney Jennifer Lewis was present, representing the applicant, Omnipoint Communications (T-Mobile) for a Use Variance to locate a wireless communications facility outside the Wireless Overlay District, a dimensional variance to locate with 500 feet from a residential lot line and within 1,000 feet from a school building, and a special permit to install and operate a wireless communications facility consisting of a 100-foot monopole and associated equipment at Lot 800, Pratts Mill Road, which is owned by the Sudbury Water District and is zoned Residential A-1. Also present was Sameer Parakkavetty, RF Engineer.

Sameer Parakkavetty said he reviewed two designs – one for a facility located on Maynard Road and one for Pratts Mill Road. He said there is a requirement to fill the gap in the network. A gap is defined as the need for a reliable signal coverage that needs to be maintained in order to make or receive a call without interruption or drops.

Mr. Parakkavetty said he determined the coverage needed by using computer modeling which is the industry standard and is accurate to calculate signal strength. It takes into account topographical features and calculates the signal. He displayed color-coded coverage maps – white has no reliable coverage, green is existing coverage and pink is proposed coverage. Copies of the maps were submitted as part of the application package.

Mr. Stevenson said it appeared the coverage maps denoted in green tended to focus around existing towers which provide good coverage. He asked whether those towers were Omnipoint's or whether they were other carriers' towers.

Mr. Parakkavetty said the coverage was Omnipoint's.

In response to a further question from Mr. Stevenson with regard to co-location, Mr. Parakkavetty said he reviewed all the possible towers from the FCC database and made sure they could not be used.

Mr. Stevenson asked whether there was any evidence of that review or of what other towers may have been considered.

Mr. Parakkavetty said the coverage plots were submitted as part of the application. He also referred to Mr. Hutchins' report. Mr. Klofft said he has the plots but did not see anything in writing attesting to the fact that other alternatives were considered.

Ms. Lewis said Mr. Parakkavetty is the expert that looked at the plots for both sites. He could provide oral evidence this evening.

Mr. Klofft said in certain parts of the report Mr. Hutchins concurred with Omnipoint's RF engineer. His review concluded that there was a gap and the Omnipoint's proposal would fill that gap. However, Mr. Klofft said it was his recollection that there was nothing in that report which speaks about a review of other existing facilities.

Ms. Lewis said Mr. Hutchins did speak to the fact that in Omnipoint's targeted area there were no facilities within the Wireless Overlay District that would meet their objective.

Further discussion followed on the interpretation of the report. Mr. Stevenson said his interest was in making sure that current installations are maximized before additional ones are constructed. Mr. Klofft read from Page 11 of the report which states "The applicant has further demonstrated that existing and planned facility sites cannot be utilized or modified to fill these coverage gaps. It is also not possible to provide service for the identified problem area from any site within the Wireless Services Overlay District."

Ms. Lewis said Mr. Hutchins' report does speak to the fact that Omnipoint has other sites within Sudbury, and even if the frequency of those sites was turned up, they would still not be able to obtain the coverage objective.

In response to questions as to why other carriers may have coverage in this area while Omnipoint does not, Mr. Parakkavetty said although he could not speak to other carriers' networks, Omnipoint operates on an entirely different frequency. He said he did consider all of the existing structures, including towers owned and operated by other carriers.

From the map, Mr. Parakkavetty pointed out the Swedenborg Church steeple- an alternative site which was considered. At an 85-foot height, he said the map clearly shows this would not provide the coverage needed. The second candidate that was considered was 530 Dutton Road – that was also 85 feet. Again, this would also not provide enough coverage to the areas needed. Also considered was a 100-foot pole at 120 Moore Road, which is raw land, and an 80-foot pole at 96 Morse Road, but both would not work to close the gap.

Mr. Stevenson said he still had not seen anything as to the possibilities to co-locate in an existing facility.

Ms. Lewis said Mr. Parakkavetty spoke to the fact that there exists a FCC database, and that database shows all presently constructed and operating poles. He analyzed those poles and ran plots, and there is no existing monopole that that will allow Omnipoint to fill in the gap. She said those plots were delivered to Mr. Hutchins as information to review for his report.

Mr. Klofft said from the point of view of the question of whether there is a significant gap in the PCS coverage, Mr. Hutchins has agreed with Omnipoint's assessment that there is a gap. Mr. Klofft felt that there are still other issues that have to be discussed, but that particular issue has been addressed in the report.

Mr. McCray asked whether there was any way to compute the redundancy in proposed coverage.

Mr. Parakkavetty said he could not do it with the computer model he used. However, he said he might be able to provide a rough estimate.

Ms. Rubenstein said it appears that some of the alternative locations may provide more coverage. She asked where the area was that Omnipoint really needs to fill.

Mr. Parakkavetty replied that it was Route 27.

Mr. Klofft said Route 27 is very different than dealing with smaller streets off of Pratts Mill Road, such as McClean Drive, East Street or Willow Road.

Ms. Rubenstein said it appears that the proposed coverage does not cover what was to be a main street – Maynard Road – Hudson Road – Old Sudbury Road. She said it looks like it covers more of the smaller roads in town.

Mr. Parakkavetty said for the Pratts Mill application, Omnipoint wants to try and cover inside the houses. The Maynard Road application covers more of the traffic.

Mr. Klofft asked whether there is a coverage map which shows the signal level for street coverage. He said given the fact that this application does not propose coverage in a major traffic area, he felt it is relevant to understand what the signal level is in those areas.

Mr. Parakkavetty said he did not have that information this evening but could get it.

Mr. Stevenson asked whether Omnipoint, when determining the area of added coverage, prioritizes in terms of in-building vs. vehicle vs. industry vs. roads.

Mr. Parakkavetty said it is primarily in-building coverage because more people are considering cell phones as a primary phone and they use it inside their homes.

Mr. Klofft asked for input from the audience.

Joseph Green, 22 East Street, resident asked how much of the gap could be closed by using other existing poles.

Mr. Parakkavetty said there are no existing poles to use.

Ian Springsteel, 34 East Street, abutter, said it was brought up that other carriers have coverage in this area. He asked why T-Mobile couldn't co-locate on those locations that those other carriers have.

Mr. Klofft said the consultant in his report says essentially that this is because there are different technologies which work on different frequencies. He gave as an example AM/FM signals.

Mr. Springsteel said there is at least 40-45% conservation land, wetlands in this area. He could not see how Omnipoint would get much additional service out since that area is not inhabited.

There were no further questions. Mr. Klofft asked Ms. Lewis to address the criteria which must be satisfied for the granting of variances.

With regard to conditions relating to the soil or topography affecting the land or structures but not the zoning district, Ms. Lewis said Omnipoint is limited in the fact that this is zoned for residential use and is trying to locate properties outside of the highly populated neighborhoods. This property, owned and operated by the Sudbury Water District, is a large parcel of land which will allow Omnipoint to locate a monopole outside of the concentrated area.

However, the applicant's proposed facility will require a 500-foot setback waiver from the residential lot line, 125 foot fall zone and 1,000 feet from a school. She said nowhere on this property could a monopole be located without the requirement for the dimensional variances.

Ms. Lewis also noted that it was brought to her attention by Mr. Renzi, Water District Superintendent, that there is also a well at this water facility, and the monopole has to be located at least 400 feet from the well. Mr. Renzi and representatives from Omnipoint will be conducting a site walk tomorrow which may result in the monopole having to be shifted approximately 150 feet to meet the well requirements.

Mr. Klofft asked whether this would mean a difference in the abutters to be notified.

Ms. Lewis was not sure, but did not think so.

Robin Merrill, 35 East Street, abutter, said if a new plan needs to be drawn up, she would ask the Board to consider the fall zone.

Mr. Klofft asked whether the relocation might have an impact because of the undulation of the land.

Mr. Parakkavetty said it should stay the same, but he will have to look at the plots.

Ms. Lewis said the hardship goes to the Telecommunications Act of 1996 which was enacted to promote competition not only among different wireless carriers but also among the traditional telephone companies and the new wireless carriers that were coming about. She said there are statistics that indicate 1 out of 8 households in the U.S. has a cellular phone as their primary phone. From 1996 to 2008 there has been a lot of movement in the wireless industry and, under the Telecommunications Act, Omnipoint needs to provide service to its client base. Alternative sites in and around the defined area have been investigated and the RF engineer has determined that the facility must be located within this area to fill in a significant gap in coverage. There is no existing structure or town-owned property in the allowed zoning district in or near the vicinity that will accommodate the applicant's needs.

Accordingly, Ms. Lewis said a literal enforcement of the provision of this bylaw would prevent the applicant from filling in an existing gap in its coverage resulting in a potential loss of subscribers and the ability to effectively compete for subscribers with FCC competitors in the market which is contrary to the Telecommunications Act.

Mr. Klofft felt a question which remains open is the wireless service coverage. He felt the Board needs to see some information on on-the-ground plots – that, for him, the reliability question remains open. He said in-vehicle information has been provided, but on-the-ground reliability is unclear. He would like to see a design with more sensitivity in that area.

Mr. Stevenson said with regard to hardship, he remained concerned about the sufficiency of other alternative sites noting that he hasn't seen any paperwork on other types of co-locating opportunities. He said he has seen conclusions, but no facts to back up those conclusions.

Continuing on, Ms. Lewis said there will be no substantial detriment to the public good if the variance is granted. She said the facility will be designed to minimize visual impact from the proposed facility. The pole will be a stealth design – the antennas will be inside the monopole. The equipment will be placed within a 8-foot high chain link fenced-in compound at the base of the monopole and will be secure and out of view.

Ms. Lewis said in compliance with the bylaw and, to the extent feasible, it will reduce the number of structures needed to provide wireless communications services in this surrounding area by providing co-location potential. The proposed location is adaptable to wireless communications use. It is designed to be at a minimum height necessary to provide adequate coverage to the area and keep potential visual impact to a minimum. It will comply in all respects to RF emission standards established by FCC. It will not have any adverse effect on the value of land and buildings in the neighborhood or on the amenities thereof. It is a passive use and requires no employees on the premises. It has no characteristics that are incompatible with a single residential A-1 zoning district. Specifically, it will generate only about 2 vehicle trips a month for routine maintenance and will be serviced by standard electrical and telephone service requiring no water, septic or other town services. It will serve the general welfare of the inhabitants by providing telecommunications services and emergency response service. It will involve no overcrowding of land or concentration of population because it will be unmanned.

Ms. Lewis said the variance will not substantially nullify or derogate from intent and purpose of bylaw as it will have little visual impact on the surrounding properties since it is currently used by the town for a business use. The antennas will be located within the proposed monopole and the cabinets will be out of view. The installation will allow the applicant to remedy an existing gap in network coverage by the least intrusive means possible thereby minimizing any adverse visual impact.

With regard to precedent, Mr. Klofft said looking at the case law from the ninth circuit, it mentions that if you get to the point where you're treating wireless facility providers differently in what they determine as "similarly situated in terms of structure, placement or cumulative effect in question", you can then be brought to court and be overturned in the case you were discriminating against. He felt that by allowing this particular pole, the Board would in fact be setting a precedent in that this would be a pole that would be in a Residential A-1 district. Further, if this Board were then to hear an application from another carrier for another pole that would have slightly different circumstances, and were to deny on that, it would have a higher legal standard to meet because of the fact that it would be treating different wireless providers differently in similar situations.

Mr. Klofft also said it was not clear that Omnipoint made an argument, except in comment, that this application was the least intrusive method. He said it seemed to him that a 100-foot monopole is in fact the most intrusive method and is the easiest to provide when there are in fact other potential solutions dealing with lower frequency transmitters at lower elevations

– and more of them that are potentially less intrusive. Nowhere in the application did he see where any of those alternatives were even explored.

Additionally, Mr. Klofft said he had somewhat of an issue in that it seems that Omnipoint in particular has “nickel and dimed” their way through the process of trying to provide a coverage in Sudbury, coming with a series of applications one or two at a time without an overall plan for coverage. He said if it is the desire of Omnipoint to have coverage in all of Sudbury, then it is important for this Board and the town to understand where the coverage gaps are - not just for these facilities or the two or three that have been looked at before, but all the facilities, because that is the only way the least intrusive method of applying for all of these particular facilities can be determined. He asked whether Omnipoint does in fact have a plan for the rest of Sudbury that it can then share so that the Board can look at it in its entirety, understand what the coverage is going to be, and create a balance that meets Omnipoint’s needs and the needs of the statute, and does so in the least intrusive way possible. He said it is impossible to determine anything a couple of poles at a time.

Ms. Lewis said Omnipoint doesn’t have a plan – just the coverage maps which were provided.

Mr. Klofft said he was present at other Omnipoint hearings where the facilities presented this evening weren’t considered at that point. He said once these facilities are in, there will be others. He said he had a problem with the piecemeal approach with which Omnipoint is coming to the town looking to create coverage. If there was a plan for the town, then it would become more obvious which ones are more beneficial than others. The Board could then look at the gaps and find less intrusive ways than putting 80 or 100-foot monopoles in Residential A-1 districts which then will cause problems later on when Nextel or Verizon come in.

Mr. Klofft said Sudbury is not anti cell tower or anti cellular communications. However, he said the town would prefer to have these facilities constructed in a rational way that works for both the carriers, the customers, and the citizens who aren’t customers - and it’s difficult to do that right now. He said as the application stands, he didn’t see how it doesn’t substantially derogate from the intent of the bylaw when it isn’t clear that this is the least intrusive way that this could be achieved.

Ms. Lewis said Omnipoint has worked with Sudbury in the past before and is agreeable to continue to do so. However, she said it’s not as though there is this master plan that is not being shared with the town because it would be in Omnipoint’s best interests to sit down and go over potential sites working with the town so that that process is streamlined and then Omnipoint could just build the sites. Her understanding, based on conversations with the team at Omnipoint, is that there is no master plan for Sudbury. She said currently these applications are the only two that she knows of – she has not seen any more proposals for Sudbury.

Mr. Klofft said that did not necessarily mean that Ms. Lewis could say Omnipoint would not be coming back for another year or two.

Ms. Lewis agreed that she could not make that statement because this isn't a static network. The network is always changing and developing based on customer feedback and requirements.

Mr. Klofft countered that the population in Sudbury is largely settled and developed at this point – that this Board sees significantly more redevelopment going on in town than new development. Therefore, Omnipoint knows where the people are and where the roads are. The network may change but the geography of the town and the population densities of the town aren't changing, which is why he felt it difficult to balance the need to allow coverage and do it in the right way without understanding what the whole plan is. Further, he said coming in with one or two applications at a time, which has lately been the case, makes it increasingly difficult when there are situations like this particular one that is in a residential zone A-1 that in his opinion does set the town up for potential problems down the road for discrimination against other carriers who may come in and look for facilities in a residential A-1 district that aren't substantially different.

Further discussion followed on the need to arrive at a solution that will benefit both the town and cell carriers. Ms. Lewis reiterated that Omnipoint has always worked with the town and will continue to do so. She said in this particular case they were limited because they are trying to fill in a gap in coverage in a residential area. She said Omnipoint did look at alternatives but they didn't work for their network standpoint. They were able to enter into a lease agreement with the Water District on this parcel which is an industrial use and which is the application that's before the Board. She said she has a duty to represent the person they are currently in a contract with – and under that contract are required to go through due diligence to obtain approval.

Mr. Klofft said he understood Ms. Lewis has done due diligence in presenting this case, but it would be interesting to look at some of the other similar residential gaps that Omnipoint going to have and what potential alternatives would be there to understand the whether this truly is the least intrusive option for this particular gap. He said that is what is not clear from this application.

Mr. Stevenson said one of his concerns is that it would be the first monopole in a residential area, and to him that set a precedent. He asked if Omnipoint was required to present a master plan.

Mr. Klofft said they were not; however, they are required to show that this is the least intrusive option available. Given the precedent setting nature of doing this in a residential area, he felt it needs to be conclusively proven that this is the least intrusive option.

Ms. Rubenstein agreed. She questioned what would be coming up next and, without a plan, whether the next gap to fill could turn out to have covered this area as well.

In the interest of moving forward, Mr. Klofft said the Board would like to see the following:

- Confirmation that there are no additional abutters as a result of the relocation of the monopole
- A new plan showing where the monopole will be located
- A RF map with a greater degree of sensitivity
- A presentation of other potentially less intrusive alternatives if they exist
- Records of customer complaints would be helpful
- Map showing population data and vehicular traffic

Ms. Merrill brought up access to site during construction and maintenance. She said East Street is privately owned and questioned whether Omnipoint would have access and whether the easement to access is broad enough to be transferable to a tenant.

Ms. Lewis said she would review the easement rights.

The hearing was continued to April 22, 2008.

Jeffrey P. Klofft, Chairman

Nancy G. Rubenstein, Acting Clerk

Stephen A. Garanin

Jonas D.L. McCray, Associate

Benjamin D. Stevenson, Associate

OMNIPOINT COMMUNICATIONS (T-MOBILE)
Lot 0003 Maynard Road
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Attorney Jennifer Lewis was present, representing the applicant, Omnipoint Communications (T-Mobile) for a Use Variance to locate a wireless communications facility outside the Wireless Overlay District, a dimensional variance to locate within 500 feet from a residential lot line and within 125 feet from the property line, and a special permit to install and operate a wireless communications facility consisting of a 100-foot monopole and associated equipment at Lot 0003 Maynard Road which is owned by the Sudbury Water District and is zoned Residential A-1. Also present was Sameer Parakkavetty, RF Engineer.

Mr. Parakkavetty, displayed and explained the coverage maps of the area. Copies of these coverage maps were also submitted as part of Omnipoint's application package. With regard to this facility, Mr. Parakkavetty said there is a coverage gap which means a lack of reliable signal coverage that needs to be maintained in order to make or receive a call without interruption or drops. He determined the coverage needed by using computer modeling which is the industry standard and is accurate to calculate signal strength. It takes into account topographical features and calculates the signal. Mr. Parakkavetty pointed out the gap noting that the proposed monopole location will fill that gap.

At Mr. Klofft's request, Ms. Lewis provided the following information with regard to the variances and special permit:

With regard to special conditions relating to soil conditions, shape or topography, Ms. Lewis said although the property is zoned residential and is not within the Wireless Overlay District, there are two wireless carriers currently located and operating on this property. She said applicant proposes a design that conforms to the existing characteristics of the property including how the property is currently being used and the use of existing structures and vegetation thereby minimizing potential visual impacts.

Ms. Lewis said the design is a stealth design, consisting of a 100-foot monopole and three wireless communications antennas installed within the monopole. The proposed facility will not meet the required 500-foot from any radiating component to the lot line and will not meet the 125-foot fall zone or 180 foot frontage requirement.

Mr. Klofft asked what the distance of the pole was to the nearest lot line.

Ms. Lewis was not sure but said the way they are built now, they don't fall.

Given the location of the existing water tank and the two existing wireless facilities presently located on the property, Ms. Lewis said there is no location on the property that could be utilized without the need for the variances. No other structure in the wireless overlay district is suitable to close the existing coverage gap.

Ms. Lewis said without the requested relief there would be a substantial gap in reliable service coverage in the applicant's network as was shown by the coverage maps and explanation provided by Mr. Parakkavetty. Additionally, the height will allow for co-location by other carriers as required by the bylaw.

Ms. Lewis said in the context of a utility service where the critical criteria in the development of each facility is its ability to integrate with a network of surrounding sites and, subsequently, for each cluster of sites to function within a regional/national network, there is an underlying premise that each site chosen by the applicant for a facility possesses a unique location and topographical characteristics.

Mr. Klofft agreed that this was substantiated by Mr. Hutchins in his report.

The hardship factor goes to the Telecommunications Act of 1996 which was enacted to promote competition and innovation within the telecommunications industry. Ms. Lewis said under its FCC license, the applicant is obligated to provide a reliable product to the population. A carrier's failure to remedy network gaps in a timely fashion can result in a significant loss of subscribers to competing telecommunications carriers. She added that Mr. Parakkavetty testified to this and also provided an affidavit which was included as part of this application.

Ms. Lewis said alternative sites around the geographic area were investigated and there are no existing structures on town property or within the wireless district that would meet the coverage requirements.

A literal enforcement of the bylaw would prevent the applicant from eliminating an existing gap in service coverage resulting in a potential loss of subscribers and the inability to compete with other carriers.

Ms. Lewis said there would be no substantial detriment to public good if the variances were granted. This is a stealth installation – antennas will be interior mounted with a 6-foot high chain link fenced-in compound located at the base of the monopole. It will be unmanned and will produce no waste or noise.

With regard to a question from the Board on height of the monopole, Mr. Parakkavetty replied that they looked at 80-90 foot heights but were not able to utilize a lower level and still allow for co-location.

Discussion followed on the need for a comprehensive plan for wireless service. (This was discussed in depth earlier this evening for Omnipoint's Pratts Mill Road applications) Mr. Klofft said he would follow-through on this with the Planning Director.

Ms. Lewis said the granting of variances would not nullify or substantially derogate from the intent or purpose of the bylaw. The facility will have very little visual impact on surrounding property as it is located in an area currently used by the town for business use and for other wireless facilities.

Mr. Klofft asked if access to this facility is the same as other providers. Ms. Lewis said it was.

Ms. Rubenstein said the coverage map for this property shows population data and vehicular traffic. Mr. Parakkavetty explained how the numbers were arrived at.

Mr. Garanin said it appears that some of the coverage area from this site is going into the Pratts Mill Road site.

The coverage maps were then reviewed and it appeared this might be the case. Also reviewed was the Hutchins report which appeared to show greater coverage than what is proposed by the applicant. Given that the issues on Pratts Mill aren't yet resolved, Mr. Klofft asked whether the applicant would prefer to continue this application as well, as it could possibly affect the height of the monopole.

Although understanding the situation, Ms. Lewis said she would prefer to move forward with this application.

Ms. Lewis then summarized the special permit criteria as contained in the application under Tab 2 which she said tie into the criteria for granting of variances.

Mr. Stevenson asked what the coverage from an 80-foot vs. 100-foot pole would be, and this was provided by Mr. Parakkavetty.

Mr. Klofft asked whether there would be any clearing of trees. Ms. Lewis replied only that necessary to construct the monopole and compound.

In response to further questions, Ms. Lewis said the use is passive in nature and will be compatible with existing uses on the property. There will be twice a month maintenance.

There was no input from the audience. No abutters were present. The hearing was closed.

The following motions were placed and seconded:

MOTION #1: (Case 07-63) "To grant Omnipoint Communications, Inc., subsidiary of T-Mobile USA, Inc., applicant, Sudbury Water District, owner of property, a Variance from the provisions of Section 4353 & 4363 of the Zoning Bylaws, to allow a wireless communications facility to be located within 500 feet from a residential lot line and within 125 feet from a property line."

VOTED: In favor: 5 (unanimous) Opposed: 0

MOTION #2: (Case 07-62) “To grant Omnipoint Communications, Inc., subsidiary of T-Mobile USA, Inc., applicant, Sudbury Water District, owner of property, a Use Variance from the provisions of Sections 4320 & 4330 of the Zoning Bylaws, to locate a wireless communications facility outside the Wireless Overlay District.”

VOTED: In favor: 5 (unanimous) Opposed: 0

MOTION #2: (Case 07-64) “To grant Omnipoint Communications, Inc., subsidiary of T-Mobile USA, Inc., applicant, Sudbury Water District, owner of property, a Special Permit under the provisions of Section 4300 of the Zoning Bylaws, to install and operate a wireless communications facility consisting of a 100-foot monopole and associated equipment, property shown on Town Map E07 as Lot 0003, Maynard Road, Residential Zone A-1, subject to the following:

1. Installation shall consist of a 3-carrier capability monopole in accordance with plans titled Willis Hill Water Tank, Site No. 4BS-0635-D, Sheets T-1, C-1, C-2 & Z-1, dated 12/20/06, prepared by Chappell Engineering Associates, LLC, Concord, MA.
2. Access to the facility shall be consistent with the access utilized by the existing carriers.
3. Removal of large screening during construction will not be allowed except for that which is needed to be removed for the placement of the facility. Following construction, the Applicant will replace needed screening to insure there will be no increase in visual impact as a result of the installation.
4. Fencing material for the compound shall consist of an opaque material.
5. Annual inspection of the battery back-up system is required to insure proper operation.
6. No flag will be flown at the top of the pole.
7. No lighting on the pole will be allowed unless required by the FAA.
8. If required, Omnipoint shall allow a future co-locator to construct a shelter structure capable of enclosing that locator’s equipment in addition to Omnipoint’s ground electronic equipment.
9. Site plan review by the Selectmen is required.
10. This approval granted herein shall expire in five (5) years on March 17, 2013. Continued operation of the facility shall be subject to application for and renewal by the Board of Appeals.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The applicant requires a Use Variance to locate a wireless communications facility outside of a Wireless Overlay District and a Variance to allow the facility to be located within 500 feet from a residential lot line and within 125 feet from the property line. The Board finds that the applicant has satisfied the criteria for granting a variance. Specifically, there are conditions affecting the structure but not generally affecting the underlying zoning district in that although the property is located in a residential zone, it is owned and operated by the Sudbury Water District and includes two wireless communications facilities which are currently operating on the property. Further, the applicant has demonstrated that given the location of the existing water tank and the two wireless facilities, there is no location on the property to site the facility without requiring the dimensional variances.

As evidenced by the coverage maps, the applicant has demonstrated a gap in its network in this area. The Board finds that if the provisions of the bylaw were to be literally enforced, a substantial hardship would result and would prevent the applicant from being able to fill in a coverage gap and serve its existing and future customers. The applicant's engineers have investigated alternative sites in and around the defined geographic area and no existing structure or town-owned property in an allowed zoning district in or near the vicinity of the proposed facility is available to provide the coverage requirements needed.

The Board finds that there will be no substantial detriment to the public good if the variances are granted. The installation will comply with FCC regulations. It will be a stealth facility compatible with the existing structures on the property so as not to be intrusive to the abutting residential zone.

For the above reasons, it is the opinion of the Board that the granting of these variances will not nullify or substantially derogate from the intent and purpose of the Bylaw.

With regard to the Special Permit, the Board finds that the use will be in harmony with the general intent and purpose of the bylaw and in an appropriate location as the facility will be compatible with the other uses on the property, specifically a water tank and two wireless carriers.

Adequate and appropriate facilities will be provided for proper operation. The facility will be constructed in accordance with FCC regulations. It will be properly screened and there will be ongoing maintenance to insure property operation.

The proposed use will not be detrimental or offensive to the adjoining zoning districts or neighboring properties. It will be passive in nature as no noise, smoke, sewage or refuse materials will emanate from the facility. There will be no light at the top of the pole to cause a visual nuisance and the equipment cabinets will be screened to further minimize any impact. The use will not cause any undue traffic congestion in the immediate area since the facility will be unmanned and will require monthly maintenance via the access currently being used by the Water District and the other carriers.

For the above reasons, it is the opinion of the Board that the applicant has satisfied the guidelines for granting a Special Permit.

Jeffrey P. Klofft, Chairman

Nancy G. Rubenstein, Acting Clerk

Stephen A. Garanin

Jonas D.L. McCray, Associate

Benjamin D. Stevenson, Associate