

RESOLUTION
of the
Town of Pound Ridge Town Board
Adopted at its
March 3, 2011 Meeting

RE: T-Mobile Northeast LLC, Pound Ridge Lions Ambulance Corps, 89 Westchester Avenue, Section 15, Block 9454, Lot 36, Pound Ridge, New York

WHEREAS, the Town of Pound Ridge Town Board has received a Special Permit application filed by T-Mobile Northeast LLC (the “Applicant”) for a wireless telecommunication services facility consisting of a 130-foot tall monopole disguised as a coniferous tree, with eighteen (18) small panel antennas mounted thereon, together with ten (10) related unmanned equipment cabinets at the base thereof within a fenced compound (the “Proposed Action” or “Project”), to be located on property owned by the Pound Ridge Lions Ambulance Corps (the “Owner”) at 89 Westchester Avenue, known as Section 15, Block 9454, Lot 36 on the Town tax map and within the R-2A Zoning District (the “Subject Property”); and

WHEREAS, the purpose of the subject application is to ensure “adequate coverage and capacity” for reliable wireless communications as an essential part of the Town’s primary responsibility to protect the public health, safety and welfare, and to ensure that the Town’s communications are not in any way diminished; and

WHEREAS, the application was filed pursuant to Local Law No. 7 of 1998 entitled “Wireless Telecommunication Services Facilities,” which local law amended the Zoning Law to establish special standards and requirements for such uses as set forth in Section 113-58.1 of the Zoning Law of the Town of Pound Ridge (the “Wireless Law”); and

WHEREAS, such uses are permitted principal uses subject to Special Permit approval by the Town Board pursuant to the requirements of the Wireless Law; and

WHEREAS, pursuant to the Wireless Law, no Special Permit approval shall be granted unless the Town Board makes the findings in writing that the application fulfills all of the purposes and meets all of the requirements of Section 113-58.1 of the Town Code, which purposes are to:

1. Limit the number of ‘wireless telecommunication services facilities’ to the minimum necessary to provide ‘adequate coverage’ and ‘adequate capacity’ to the Town of Pound Ridge;
2. Upgrade the communications systems of the Town’s local public and quasi-public agencies and service providers;

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3. Minimize the impact of such facilities on residential properties through maximum separation among other methods;
4. Encourage the siting of ‘wireless telecommunication services facilities’ on properties and areas which are not used exclusively for residential purposes; and
5. Protect, to the maximum extent practicable, aesthetic qualities, the open space character of the Town of Pound Ridge, the property values of the community, the health and safety of citizens, and a citizen's ability to receive communication signals without interference from other communication providers, while not unreasonably limiting competition among communication providers;” and

WHEREAS, such uses are also subject to the general Special Permit standards of Sections 113-50.A through E; and

WHEREAS, the Applicant has submitted the following materials for review:

1. Sheet Number T-1, titled “Title Sheet,” dated December 13, 2006, last revised on February 9, 2011, prepared by Tectonic;
2. Sheet Number C-1, titled “Plot Plan and Setback Map,” dated December 13, 2006, last revised on May 7, 2008, prepared by Tectonic;
3. Sheet Number C-2, titled “Site Plan and Notes,” dated December 13, 2006, last revised on February 9, 2011, prepared by Tectonic;
4. Sheet Number C-3, titled “Site Detail Plan and Elevation,” dated December 13, 2006, last revised on February 9, 2011, prepared by Tectonic;
5. Sheet Number C-4, titled “Antenna Plan and Details (OCI),” dated December 13, 2006, last revised on February 9, 2011, prepared by Tectonic;
6. Sheet Number C-5, titled “Antenna Plan and Details (AT&T),” dated December 13, 2006, last revised on February 9, 2011, prepared by Tectonic;
7. Sheet Number S-1 titled “Grading and Drainage Plan,” dated December 13, 2006, last revised on May 7, 2008, prepared by Tectonic;
8. Sheet Number S-2, titled “Details,” dated December 13, 2006, last revised on May 7, 2008, prepared by Tectonic;

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9. Sheet Number OP-1, titled “Monopole Options & Antenna Plans,” dated February 9, 2011, prepared by Tectonic;
10. Short Environmental Assessment Forms dated October 15, 2007 and April 4, 2008;
11. Full Environmental Assessment Form (Part 1) dated April 24, 2008;
12. Residential Site Plan Application Forms dated October 15, 2007 and April 7, 2008;
13. Zoning Compliance Worksheets dated October 15, 2007 and April 7, 2008;
14. Plan titled “Viewshed Map – 1 Mile Radius, Pound Ridge, New York,” dated November 14, 2007, prepared by B&E Associates;
15. Report titled “Antenna Site FCC RF Compliance Assessment and Report: “Omnipoint and AT&T”, 89 Westchester Avenue, Pound Ridge, New York,” dated February 14, 2008, last revised on May 19, 2008, prepared by Pinnacle Telecom Group;
16. Report titled “Independent Radio Frequency Report for a Proposed Wireless Communication Facility at Lions Ambulance, 89 Westchester Avenue, Section 15, Block 9454, Lot 36, Town of Pound Ridge, NY, Westchester County; Prepared for Omnipoint Communications, Inc.,” dated February 8, 2008, prepared by PierCon Solutions;
17. Report titled “Independent Radio Frequency Report for a Proposed Wireless Communication Facility at Lions Ambulance, 89 Westchester Avenue, Section 15, Block 9454, Lot 36, Town of Pound Ridge, NY, Westchester County; Prepared for New Cingular Wireless PCS, LLC (“AT&T”),” dated March 5, 2008, prepared by PierCon Solutions;
18. Report titled “Visual Resource Evaluation: Proposed Installation of a 120’ Stealth Flagpole; Site #NY09-303-H “Pound Ridge,” 89 Westchester Avenue, Pound Ridge, New York,” dated January 27, 2008, prepared by B&E Associates;
19. Three (3) color visual simulations, dated May 19, 2008, prepared by B&E Associates;

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20. Six (6) color visual simulations, dated September 21, 2008, prepared by B&E Associates;
21. One (1) color visual simulation, dated January 23, 2011, prepared by B&E Associates;
22. Four (4) color visual simulations, dated February 6, 2011, prepared by B&E Associates; and

WHEREAS, in accordance with the provisions of Section 113-50, the Town Board referred the application to the Planning Board for its advisory review and recommendations; and

WHEREAS, pursuant to Section 113-50 of the Zoning Law, the Planning Board thoroughly considered the above captioned matter and discussed the application, reviewed the site and had special work sessions on this matter; and

WHEREAS, the Planning Board engaged a radio frequency engineering consultant to assist in its review of the application; and

WHEREAS, as part of its deliberations, the Planning Board studied twenty (20) numerous alternatives to the proposed site, in an effort to establish the best possible site or sites necessary to eliminate, avoid or mitigate potential visual impacts, to provide “adequate coverage” and “adequate capacity” to the Town, and to fulfill the other purposes of the Wireless Law; and

WHEREAS, after several months of continuous review, the Planning Board issued a recommendation regarding the application on February 7, 2011, recommending that the Town Board reject the application; and

WHEREAS, public balloon tests were conducted on January 5, 2008 and January 15, 2011 to assess any visual impacts of the proposed facility, and advance notification of such tests was sent directly to nearby neighbors in addition to an announcement regarding same made at a duly held Planning Board meeting; and

WHEREAS, the Town and the Applicant acknowledge that there are significant aesthetic concerns with the proposed monopole, as evidenced by the review of twenty (20) alternate sites, and that in order to mitigate the environmental and aesthetic impacts associated with said concerns, there will be a need for the Applicant and the Town to cooperatively monitor and analyze the changing wireless telecommunication services facility technology over time, and that the Applicant will actively participate in said

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analysis with the ultimate goal of possibly eliminating or modifying the facilities approved by this resolution as the prevailing technology may allow, so as to more adequately mitigate said significant aesthetic concerns; and

WHEREAS, the Applicant has agreed to provide antennas and related equipment on the proposed monopole for the emergency services of the Town as per the schedule attached hereto; and

WHEREAS, the Town Board held meetings and public hearings regarding the application on November 18, 2010, December 13, 2010, January 13, 2011, January 27, 2011, February 10, 2011 and March 3, 2011, at which time all those wishing to be heard were given an opportunity to be heard, and the public hearing was closed on March 3, 2011.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Town Board hereby adopts and incorporates the recitations and statements set forth above as if fully set forth herein.
2. The Town Board affirmatively hereby makes the findings enumerated in Section 113-58.1 and Sections 113-50.A through E of the Zoning Law.
3. The Town hereby allows the modification of the setback requirements of the proposed facilities to be those which are shown on the above listed drawings.
4. In accordance with Article 8 of the State Environmental Quality Review Law and 6 NYCRR Part 617, and based upon the Applicant's representations and acknowledgements, and based upon the review of the EAF and all other application materials that were prepared for this action, the Town Board adopts a Negative Declaration as the Proposed Action will not have any significant adverse impact on the environment.
5. The Town Board hereby approves the Special Permit for a wireless telecommunication services facility consisting of a 130-foot tall monopole, with the top ten (10) feet reserved for emergency services, together with ancillary cabinets and related equipment to be installed/located in accordance with the approved site plan, subject to the conditions below being fulfilled. The monopole shall be constructed to provide for its possible extension to a maximum of twenty (20) additional feet, subject to the issuance of a Special Permit by the Town Board.

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- a. The following conditions shall be fulfilled prior to the issuance of a Building Permit for the Wireless Telecommunication Services Facilities:
- (1) The Applicant shall apply for and obtain a wetlands permit from the Town Water Control Commission in accordance with Chapter 63, Freshwater Wetlands, of the Town Code.
 - (2) A copy of the lease agreement with the property owner, together with any subsequent modifications thereof, shall be provided to the Town Board and a copy shall be filed with the Town Clerk. The Town Board, at its discretion and in cooperation with the involved parties, shall allow certain proprietary information contained in such lease, which is unrelated to the requirements of this local law or the conditions of the approvals for said facility, to be kept confidential.
 - (3) The Applicant's final landscaping plan shall be prepared to the satisfaction of the Planning Board, in connection with the Planning Board's site plan review. The Applicant shall be responsible for ensuring that all proposed vegetation shown on the approved site plan shall be kept free of litter and debris at all times and shall be maintained in a healthy and vigorous growing condition throughout the duration of the use of the site. All vegetation not so maintained shall be replaced with comparable vegetation at the beginning of the next growing season. A note expressly stating this condition shall be added to the approved site plan to be filed with the Town.
 - (4) The Applicant shall pay to the Town all applicable fees, including all professional review fees incurred through the review and approval process, including any professional review fees incurred after the date of the adoption of this resolution, which may be associated with final review, inspection, or processing of the application. In accordance with the Town's Schedule of Fees, the Applicant shall be responsible for the payment of all application review fees incurred by the Planning Board and the Town Board in the review of this Project which are in excess of the application review fees paid by the Applicant to-date. Such fees shall be paid within thirty (30) days of the notification to the Applicant and its Attorney that such fees are due. If such fees are not paid within this thirty (30) day period and an extension therefore has not been granted by the Town Board, this resolution may be rendered null and void. Refunds of any remaining funds within the escrow account for the applications will not be

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made until six (6) months after the issuance of the Building Permit for the Project.

- (5) The Owner and/or Applicant shall provide to the satisfaction of the Town of Pound Ridge a written agreement suitable for filing with the Westchester County Clerk, Division of Land Records to ensure the dismantling, removal and restoration of an abandoned wireless telecommunications services facility. Performance of the removal requirements as set forth therein shall be secured by a bond posted by the Applicant in an amount and for a duration determined to be adequate by the Town of Pound Ridge Consulting Engineer or Building Inspector.
- (6) Prior to endorsement of the final record set of site plan drawings by the Town Supervisor, said plans shall incorporate the following statement:

The Town Board has final site plan approval and reserves the right to refer the proposed site plan herein for discussion, to the Town of Pound Ridge Planning Board for additional review, comments, and recommendations, as the Town Board deems appropriate.

- (7) The Applicant shall provide a written agreement, in recordable form suitable for filing and prepared to the satisfaction of the Town Attorney, acknowledging that it shall be required to allow the collocation of other future wireless telecommunication service facilities unless otherwise unreasonably limited by technological, structural or other engineering considerations and expressly stating that it shall negotiate in good faith with all providers.
- (8) The Applicant and all future owners of the wireless telecommunication services facility shall at all times keep on file in the office of the Town Clerk the name, address, and telephone number of the owner and operator of such facility and of at least one individual who shall have authority to arrange for the maintenance of the premises and facility, and who shall be authorized to accept service of notices and legal process on behalf of the owner and operator(s) of the premises and facility and to bind the owner to any settlement, fine, judgment, or other disposition (other than incarceration) which may result from any civil or criminal action or

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proceeding instituted by the Town against such owner and/or operator(s).

- (9) The Applicant shall return for approval from the Town Board of the final site plan and demonstrate to the Town Board that all of the above mentioned conditions in Section 5 of this resolution have been adequately met.
- (10) The Applicant shall deliver to the Town proof of existing liability and casualty insurance which names the Town as an Additional insured in an amount not less than \$5 million. Said policy shall remain in effect during the term of the Special Use Permit.

When the conditions above have been satisfied, three (3) sets of the above referenced plans shall be submitted for the endorsement of the Town Supervisor. One (1) set of the endorsed plans will be returned to the Applicant, one (1) set will be retained by the Town Board, and one (1) set will be provided to the Building Department. The Applicant must return for amended Special Permit approval from the Town Board if any changes to the endorsed site development plans are subsequently desired.

b. The following are general conditions of this resolution:

- (1) The Town and the Applicant have acknowledged that there are significant aesthetic concerns with the proposed monopole, as evidenced by the review of twenty (20) alternate sites, and that in order to mitigate the environmental and aesthetic impacts associated with said concerns, the Applicant and the Town shall cooperatively monitor and analyze the changing wireless telecommunication services facility technology over time, and the Applicant shall actively participate in said analysis with the ultimate goal of possibly eliminating or modifying the facilities approved by this resolution as the prevailing technology may allow, so as to more adequately mitigate said significant aesthetic concerns.
- (2) As agreed to by the Applicant, the Applicant shall provide antennas and related equipment on the proposed monopole for the emergency services of the Town as per the schedule attached hereto.
- (3) No signs other than exempt signs or as may be required by the Town Board for security or safety purposes shall be erected.

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- (4) The facility shall not be lighted unless otherwise required by the Federal Aviation Administration (FAA).
- (5) Unless otherwise superseded by the Federal Communications Commission (FCC), the design and “use” of the proposed facility, including its cumulative impact with other existing and approved facilities, shall be certified to conform with the maximum “NIER” exposure standards promulgated by the FCC, as amended. Said certification shall include a report prepared in accordance with FCC Office of Engineering and Technology Bulletin 65, as amended. Unless the original certification is based on the maximum capacity of the site and all existing and approved equipment thereon, then the Town Board shall require annual certification of conformance with the applicable emissions standards and the requirements and conditions of Special Permit approval. Certification shall also be required prior to any modification of the facility, at any time the Building Inspector suspects such modification, or upon modification of the FCC standards. The Town Board shall hire a qualified professional of its choosing to review and confirm such in initial and annual certification report, the cost of which shall be reimbursed by the Applicant in accordance with the escrow account procedures of § 113-94 of the Zoning Law. Any violation of the emissions standards shall require immediate discontinuation and correction of the “use” responsible for the violation. Any such violation of these requirements of the Zoning Law or the conditions of Special Permit approval shall be deemed to be an offense punishable by fine and/or imprisonment in accordance with § 113-96 of the Zoning Law.
- (6) Electrical and land-based telephone lines extend to serve the site shall be installed underground.
- (7) The monopole shall be inspected at the expense of the service provider in accordance with the escrow account procedures of § 113-94 of the Zoning Law by a licensed professional engineer at any time upon a determination by the Building Inspector that the monopole may have sustained structural damage, but in no case less than every five (5) years. A copy of the inspection report shall be submitted to the Building Inspector.

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- (8) The Applicant shall be responsible for ensuring that the subject property shall be kept free of debris and litter or refuse at all times.
- (9) The facility shall be dismantled and removed from the property on which it is located when it has been inoperative or abandoned for a period of 180 days from the date on which it ceased operation, or no longer has a valid approval, permit or license, or is otherwise no longer necessary for the provision of “adequate coverage” and “adequate capacity” in the Town of Pound Ridge. The Applicant shall provide to the Town written notification including identification of the date the use of the facility was discontinued or abandoned or no longer has a valid approval, permit or license, or is no longer necessary for the provision of “adequate coverage” and “adequate capacity” in the Town of Pound Ridge by one or more of the service providers, acknowledgement of the requirement to remove the facility and identification of the plans for the removal of the facility.
- (10) In the event the Applicant and/or any co-locator, other than the Town’s emergency service users, shall violate any of the terms and/or conditions of this resolution, the Town reserves the right to revoke this permit and/or assess a fine against the Applicant in an amount of not more than \$500.00 per day while such violation remains uncured.
- (11) As of this time the proposed users of this facility include:
 - (a) T-Mobile; and
 - (b) Town of Pound Ridge emergency services; and
 - (c) ATT.

Any additional or different co-locators shall be required to obtain the approval of the Town Board of the Town of Pound Ridge before locating on this facility.

- (12) The Applicant agrees to indemnify and make whole the Town for reasonable costs, fees and expenses, including reasonable legal fees, incurred by the Town in its defense of any litigation challenging the issuance of this Special Use Permit.

