

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
March 3, 2011**

Mr. Braswell called the meeting to order at 7:47 p.m.

Mr. Braswell asked all to stand for the Pledge of Allegiance.

Mrs. Cummins read the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board of Adjustment and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Braswell,
Mr. Kutosh

Late: Mr. Knox arrived to the meeting at 7:51 P.M.

Absent: Mr. Anthony, Mr. Cervantes

Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Robert Keady, P.E., Board Engineer

Resolution Approving Board Engineer Contract

Ms. Ryan offered the following Resolution and moved its adoption:

**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH**

**RESOLUTION AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
T & M ASSOCIATES**

WHEREAS, the Borough of Highlands Zoning Board has a need for professional engineering services as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, such professional engineering services can only be provided by licensed professionals and Robert Keady, P.E. of the firm of T & M Associates, Eleven Tindall Road, Middletown, N.J. 07748-2792 is so recognized; and

WHEREAS, the Chief Financial Officer has determined and certified in writing that the value of the contract will exceed \$17,500; and

WHEREAS, this contract is to be awarded for an amount not to exceed **\$1,800.00** plus reimbursable expenses for Professional Engineering Services provided to the Borough of Highlands Zoning Board for the period January 1, 2011 through June 30, 2011; and

WHEREAS, T&M Associates has completed and submitted a Business Entity Disclosure Certification which certifies that T&M Associates has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year and that the contract will prohibit T&M Associates from making any reportable contributions through the term of the contract, and

WHEREAS, T & M Associates has completed and submitted a Political Contribution Disclosure form in accordance with P.L. 2005, c 271; and

WHEREAS, certification of availability of funds is hereby provided by the Chief Financial Officer of the Borough of Highlands as follows:

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I hereby certify funds are available in the SFY 2011 municipal budget:

Current Fund:
1151-3757

Stephen Pfeffer, Chief Financial Officer

WHEREAS, the Local Public Contracts Law N.J.S.A. 40A:11-1 et. seq. requires that notice with respect to contracts for professional services awarded without competitive bids must be publicly advertised;

NOW, THEREFORE, BE IT RESOLVED BY THE Borough Council of the Borough of Highlands as follows:

1. T & M Associates are hereby retained to provide professional engineering services as described above for an amount not to exceed **\$1,800** plus reimbursable expenses.
2. The contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a) because it is for services performed by persons authorized by law to practice a recognized profession. The Mayor and Borough Clerk are hereby authorized to sign said contract.
3. A copy of the Resolution as well as the attached approved contract shall be placed on file with the Borough Clerk of the Borough of Highlands.
4. The Borough Clerk is hereby directed to publish notice of this award as required by law.

Seconded by Mr. Gallagher and adopted on the following roll call vote:

ROLL CALL:

AYES: **Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Kutosh,
 Mr. Braswell**
NAYES: **None**
ABSTAIN: **None**

**ZB#2010-2 Metro PCS, New York, LLC
Block 108 Lot 2.01
Unfinished Public Hearing**

Present: **Michael Beck, Esq., Applicants Attorney
 Paul Drobbin, Esq., Attorney for Highland Developers - Objectors
 Dave Collins, FCC Compliance Expert
 Martin Truscott, P.P. Board Professional Planner
 Robert Keady, P.E., Board Engineer
 Court Reporter**

Mr. Beck gave a recap of this application. This application is for property located at 450 Highway 36.

Mr. Knox arrived to the meeting.

Mr. Beck continued and stated that the applicant is before the board this evening seeking preliminary and final site plan approval along with conditional use variance and bulk variance approval to construct its wireless communications facility by extending the existing 80 foot monopole to 130 feet and locating six panel antennas at a center line height of 130 feet, a maximum height of 132 feet 4 inches and locating two radio and two ___ cabinets on a pad located at the base of the pole. The existing fence compound will be extended to accommodate Metro's equipment and Metro plans to match the 8 foot board on board fence that already surrounds the other carriers equipment at the site. The property is located in the H-O Zone. They were last here on September 2, 2010 and did not finish. The objector was to supply them with an exhibit that showed where the three approved but not constructed buildings in the mobile park and they did.

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The following was marked into evidence this evening:

- A-19: Letter to Mr. Beck from Mr. Drobbin dated 9-21-11;
- A-20: Aerial Photo of location of proposed approved buildings provided by Mr. Drobbin;
- A-21: Overlay
- A-22: Paper on Board exhibit

Mr. Baxter swears in Robert Keady, P.E., Board Engineer and Martin Truscott, P.P., Board Professional Planner.

Mr. Beck calls Mr. Collins up to testify who has been previously sworn in.

Mr. Collins stated the following during his testimony and response to questions from the board:

1. On September 02, 2010 he previously testified here and that he is familiar with Exhibit A-13.
2. The FCC license requires them to build out their network and provide coverage to their customers.
3. In order for them to provide coverage that they need for subscribers, they first seek out existing structures so they can co-locate their antennas to provide the coverage rather than building new.
4. He is familiar with the site and Eastpointe Condo's.
5. Exhibit A-20 is the proposed building and the three high rise building would not be an issue of non compliance. The proposed antennas don't point toward the new buildings, which he further explained.
6. Even if antennas pointed directly toward the buildings they would still be in compliance.
7. He explained calculation compliance method.
8. He described measurement methods for effects of antennas.
9. Anything above 2500 megahertz, the board questioned frequency numbers.
10. He further spoke about radio frequency. He explained that a kitchen has the highest radio frequency emissions but its below the limit.
11. He spoke about cell phone radiation emission levels.

Mr. Drobbin then began to cross examine Mr. Collins.

Mr. Collins stated the following during cross examination:

1. Coverage is not his area of expertise.

There were no further questions from the public for Mr. Collins.

Mr. Baxter swears in Daniel Penesso of 130 Clinton Ave, Clinton NJ.

Mr. Penesso stated the following during his testimony and response to questions from the board:

1. He described his professional and educational background as at RF Expert and stated that he has a Bachelor of Science in electronic engineering.
2. He has reviewed the transcripts of the September 2, 2010 meeting where Hardik Ghandi testified with regard to the radio-frequency design and the areas of the municipality in which Metro PCS is seeking to cover the size of the gap in coverage.
3. There is nothing in Mr. Gandi's testimony that he disagrees with.
4. He explained that Metro PCS is a fairly new carrier and have launched a network in providing voice, data and 911 services similar to the existing carriers like Verizon and AT & T. They are building up their network to serve the subscribers in the area.
5. By virtue of the Metro PCS's FCC license they have a duty to build out their network in order for them to provide coverage. They first seek out existing structures so that they can co-locate their antennas onto provide the coverage they need for their subscribers rather than building a raw land or new build site to provide coverage.
6. In this case Metro is able to locate an existing structure that is currently at a height of 80-foot and at the top of that monopole are other carriers' antennas.

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7. The distance that is needed in between antennas on a monopole so there is no interference is ten feet center to center.

8. He then spoke about the coverage goal exhibits referring to exhibits A-17 prepared by Mr. Ghandi. He has been involved in the design of this site and he has reviewed the exhibits and they are accurate. A-17, the green area depicts the existing coverage and white depicts the areas they are trying to cover.

9. He then spoke about how they looked at the Eastpointe Condo building. He stated that Eastpointe would be a preferred candidate but they could not get a lease so they had to look elsewhere.

10. 130 feet is the minimum height to provide the needed coverage.

11. He then explained cell phone coverage areas.

12. He described the dead zone areas.

13. No other existing structures at this time so they pursued the subject property.

14. They did not look at any raw land or other structures.

15. Verizon is using both facilities the subject site and the Eastpointe Condo roof.

16. They have not contact Verizon about locating on monopole at 80 feet because a height of 80 feet would not provide the needed coverage.

17. Drive Tests shows the predicted coverage, which he explained how they came up with this information.

Mr. Braswell – we are clear on justification on the height and location and we hear that Eastpointe is a preferred site.

Mr. Gallagher questioned what Eastpointes objection were.

Mr. Beck explained that Mr. DeStephano previously testified as to his negotiations with Eastpointe. He recalls in his testimony there were issues with the spacing on the roof top as well as the Fire Department had concerns with the number of antennas on the roof top.

Mr. Baxter questioned if this application were approved and then Metro is subsequently acquired by another carrier who is on the roof at Eastpointe would that mean the sufficient height needed at Stewarts would no longer be needed at that pointe.

Mr. Penesso replied that it would depend on what they are doing. He does not feel that it would mean a dismantle of an antenna. He spoke about ordinances that require when an antenna is not in use they dismantle it.

Mr. Beck had no objection to that.

Mr. Penesso continued his testimony as follows:

20. He then showed Exhibit A-21 to the board which showed an overlay of the coverage at a height of 96 feet which does not meet the hand off to the west and on east of Route 36. They need 130 feet to provide the coverage.

21. He referred to Exhibit A-20 and explained that this cell site would still provide coverage even if the buildings that were recently approved were erected.

22. He continued to describe the proposed cell coverage area with the proposed high rise buildings. The high rise buildings won't hinder cell phone coverage.

23. He described how change in topography affects cell phone coverage.

24. Eastpointe Condo is a preferred location.

25. He described Exhibit A-22 which is the coverage at 130 feet. Exhibit A-22, he explained that the areas of coverage. The green is reliable in building, which is negative 76 DEM, that is the signal strength. The lower the number, the stronger the signal strength in vehicle negative 85. He further stated that the yellow is in vehicle which is negative 85.

26. He spoke about minimum cell coverage and reliable coverage and further described the areas of coverage.

The Board called for a five minutes recess at 9:13 p.m.

Mr. Braswell called the meeting back to order at 9:24 p.m.

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Roll Call:

Present: Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Knox, Mr. Kutosh,
Mr. Braswell

Absent: Mr. Anthony, Mr. Cervantes

Mr. Drobbin then began his cross examination of Mr. Penesso.

Mr. Penesso stated the following during cross examination:

1. He is an outside contractor of Metro PCS and he also works for T-Mobile and AT&T.
2. Mr. Ghandi prepared the exhibits which he reviewed and he listened to Mr. Ghandi's testimony.
3. He is not a Professional Engineer.
4. The exhibits here were reviewed by him and he has not made any changes.
5. None of the exhibits need to be changed due to the three high rise buildings. The building will be a substantial height but will not affect the coverage. The only areas that may be affected are these structures which are north and west which he pointed out on Exhibit A-20. It may reduce the in building coverage for these areas but it will not reduce the in vehicle coverage.
6. He stated that radio waves can pass through structures but they can get weakened.
7. Eastpointe – no coverage north of Eastpointe because of drop in elevation.
8. The objection of this site is to cover up and down Route 36 & South which he further described.
9. A building is not going to reduce coverage drastically to be inoperable, that's why we did the drive test. He then described the process of drive testing.
10. Mr. Ghandi's comment – he does not take issue with that. The issue is we are providing cellular mobile coverage meaning we are not going to direct our antenna out towards the north where there is only a small portion of subscribers that would be covered and the signal would propagate out into the water. We are going to cover up and down the major thoroughfare, which is Route 36 and then south. So east and west and south and because the antennas have a 65 degree pattern of beam width that will also cover this portion where the proposed location is going to cover that area sufficiently.
11. He responded to questions of radio-frequency waves and of Sandy Hook coverage.
12. The antennas are not being oriented to be impeded by the existing buildings. The antennas are going to go up, as you can see based upon exhibit A-20. The coverage that is being provided to each sector is fanned out at 65 degree beam width of pattern, so you can see based upon the drive test data that is collected.
13. He then described how a drive test is conducted.
14. He did not use a tool, he is stating that based on his expertise opinion and based on the data that has been presented and collected. These exhibits were prepared by Mr. Ghandi did use the tool when preparing these exhibits.
15. Correct they only took into account buildings that existed.
16. Eastpointe site – he does not know if its possible to mount the antennas on the side of Eastpointe's building.
17. He stated that Eastpointe Condo building was a primary candidate but they were not able to enter into a lease agreement.
18. He stated again, there would be some loss of signal strength with the three high rise buildings but there would not be a significant amount to render the application inoperable. It would provide sufficient signal strength for our subscribers.
19. The areas behind the buildings will be covered.
20. No, he does not know if there is any vacant land suitable for this.
21. If they were to be able to put a cell tower on roof of Eastpointe or on the three high rise buildings it would increase the footprint of coverage shown slightly.

Mr. Baxter and the Board questioned drive test and uncovered areas and the signal strengths in different colored areas on exhibits.

The Board questioned Mr. Penesso.

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Mr. Penesso stated that he also stated that their target users are in vehicle users but there will be a benefit to in house users as well. He continued to respond to board questions about areas of coverage.

Mr. Drobbin then cross examined Mr. Penesso again.

Mr. Penesso responded as follows:

1. He is not familiar with any FCC rules or recording requirements as to drop the lost calls that Metro PCS needs to keep and deliver to the FCC but carriers monitor their data.

Mr. Truscott then questions Mr. Penesso about his targeted coverage and antenna systems.

There were no further questions for Mr. Penesso.

Mr. Beck wanted to verify that all questioning of Mr. Penesso was completed because he won't be able to attend the next meeting. There were no comments or objections to this witness being finished.

Mr. Kutosh offered a motion to carry this hearing to the April 7th meeting with no further public notice required, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Fox, Mr. Gallagher, Mr. Britton, Mr. Kutosh, Mr. Braswell

NAYES: None

ABSTAIN: None

Approval of Minutes:

Mr. Gallagher offered a motion to approve the February 3, 2011 Zoning Board Meeting Minutes, seconded by Mr. Kutosh and approved all were in favor.

Mr. Kutosh offered a motion to adjourn the meeting, seconded by Mr. Gallagher and all were in favor.

The Meeting adjourned at 10:20 P.M.

Carolyn Cummins, Board Secretary