

Mr. Kutosh offered the following Resolution and moved on its adoption:

2/2/12

**RESOLUTION APPROVING USE AND BULK VARIANCES
AND GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL FOR
METRO PCS NEW YORK AT
EASTPOINTE CONDOMINIUM AT 1 SCENIC DRIVE**

WHEREAS, the applicant, METRO PCS NEW YORK, LLC is the contract lessee of property at the Eastpointe Condominium location at 1 Scenic Drive, Highlands, New Jersey (Block 106, Lot 1); and

WHEREAS, the applicant has filed an application to construct wireless telecommunications antennas and supporting equipment on the roof of the existing condominium, together with site plan approval; and

WHEREAS, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

WHEREAS, the Board considered the application at a public hearing on January 5, 2012; and

WHEREAS, the Board heard the testimony of CHRISTOPHER OLSEN, expert in RF design and optimization; ROBERT W. TOMS, Engineer with MTM Design Group; and DAVID KARLEBACH, Professional Planner; and

WHEREAS, no objectors or questioners appeared; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance Application (11 pages); includes affidavit of property owner, FCC Wireless Telecommunications Bureau Radio Station Authorization, disclosure statement, statement of principal points and requested variances, and W9 request for taxpayer I.D.
- A-2 Site Plan Review Application (2 pages)
- A-3 11/4/11 Architectural/Engineering plans by Lou Moglino, Architect, and Robert W. Toms, Structural Engineer, with MTM Design Group, Inc. (3 pages)
- A-4 12/5/11 FCC compliance report by Daniel J. Collins, of Pinnacle Telecom Group (covers site FCC RF compliance assessment and report)
- A-5 Photo simulations (6 in total) prepared by David Karlebach
- A-6 Radio frequency report by Christopher Olsen, of Airwave Solutions, Inc., dated 12/7/11
- A-7 Prior resolutions of the board for antenna locations on Eastpointe:
 - A) 7/2/98 for Omnipoint
 - B) 9/3/98 for Sprint Spectrum
 - C) 2/7/02 for Cingular Wireless
 - D) 6/20/02 for AT&T Wireless PCS, LLC
 - E) 1/6/05 for Nextel
 - F) 4/7/05 for New York SMSA d/b/a Verizon Wireless
- A-8 FCC declaratory ruling dated 11/18/09
- A-9 Monmouth County Planning Board letter dated 12/27/11; and

WHEREAS, the Board additionally marked into evidence, after the close of the hearing and for purposes of the record and for resolution compliance, the following exhibits:

- A-10 1/5/12 Structural report by Robert W. Toms, of MTM

Design Group, Inc.;

A-11 One sheet supplementing Exhibit A-3, revised 1/3/12 by Robert W. Toms; and

WHEREAS, the Board marked into evidence the following exhibits:

B-1 Board Engineer review letter dated 12/28/11 by Robert Keady; and

WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicant is the contract lessee of property located in the MF District.

2. The property is approximately 4.97 acres, housing a 15-story residential condominium building.

3. The current height of the building is approximately 145 feet. The height of the applicant's proposed tallest antenna is 148 feet, 10 inches, which will not be the highest existing antenna on the Eastpointe roof. The applicant seeks a use variance for height, as well as use, since the borough ordinance only permits a height of 35 feet.

4. The proposed antennas and cabinets will be unmanned, and require minimal service calls (approximately once every 4 to 6 weeks).

5. No new trenching will be needed.

6. The antennas will be off-white in color and, therefore, blend in with the existing antennas on the roof.

7. There will be a total of six antennas. Two of the antennas will be 15 feet above the roof level. Two of the antennas will be on frame at the rear, and approximately 14 feet 4 inches above the roofline. The remaining two antennas will be toward the front, on a ballasted frame, and only 6 feet above the roofline.

8. The condominium is a concrete building. The applicant obtained core samples from the site and undertook ground-penetrating radar. According to the applicant's engineer, ROBERT TOMS, the platform is structurally sound, will be on two low steel beams, posting over concrete columns. No other cellular provider will be

using the same column in the area being used by this applicant for location of its equipment cabinets.

9. The building will sustain the additional weight of the additional antennas being installed by this applicant, as well as the equipment cabinet. See Exhibit A-10.

10. There will be no noise created, and there will be no impact on the tenants. The applicant will, therefore, meet DEP requirements on this issue.

14. There will be four equipment cabinets, the highest of which will be 6 feet 3.5 inches above the platform (the platform being 3 feet above the roof level). There is a fifth lightweight cabinet being installed as well.

15. The addition of the applicant's antennas and cabinets will not have any adverse effect on the other cellular service providers. In the unlikely event that a problem does arise, the applicant will take reasonable steps to resolve those problems with the other provider(s).

16. This site has already been developed for wireless telecommunication facilities for multiple providers. As a result, there is no change to the use.

17. There will be no additional building undertaken, nor any affect on the impervious area on the site.

18. There is very little in the way of municipal services to be employed. There will be electric and phone service.

19. The applicant has satisfactorily proven that it has a gap in service, which gap is required to be cured under the applicant's FCC license, and will be covered if its application is granted. At that time, there will be full coverage along the Route 36 corridor, and additional service throughout the borough, and to a greater degree than would have been the case on the proposed site at the Stewart's Root Beer property.

20. The public interest requirement of Sica has been met, since the applicant has obtained an FCC license.

21. The property is particularly suited for this use, since it is centrally located in the service gap, allows the use of an existing structure, serves a major corridor (State Highway 36), and already has several telecommunication uses on site.

22. There will be no increase in population or employment. There will be no use of water or sewer. There will be no traffic caused by granting the application. This application, therefore, is for a benign use. There will be no noise, dust, fumes, odors or the like.

23. In addition, the passersby, as well as residents, have already become acclimated to the site and the antennas thereon. There is very limited visibility to the north, which has a steep wooded embankment. As a result, you won't even be able to see the antennas from that direction. This application, therefore, provides the least intrusive method of installing cellular antennas within the

borough and, therefore, there are virtually no detrimental effects of this application.

24. The Board would typically consider possible mitigating factors; though, with the antennas being painted the same color as the existing area on the roof, there is no need for such a requirement here.

25. The positive criteria far outweigh the negative criteria of this application when you consider the public service being provided and the fact that there will be a safe and secure wireless telecommunication provided. In addition, the property (Eastpointe) has already been developed for the co-location of wireless telecommunication facilities.

26. The applicant's RF emission study satisfied the Board that, on approval, the applicant will make the equipment and panels compliant with FCC standards for RF emissions.

27. In a worst case scenario, the overall RF level is only 1.2108% of the FCC MPE limit and, therefore, is well below the

100% reference for compliance (see page 11 of Exhibit A-4; report by DANIEL J. COLLINS).

28. The Board finds that there will be no impact on the borough's comprehensive zone plan or its master plan.

29. The proposed use will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the application was heard by the Board at its meeting on January 5, 2012, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of METRO PCS NEW YORK, LLC for the installation of wireless telecommunications antennas and equipment on the roof of Eastpointe Condominium at 1 Scenic Drive (Block 106, Lot 1), as shown on the application and plans marked in evidence, be and is hereby approved for the required use and height variances, and preliminary and final site plan approval is hereby given, subject to the following conditions:

1. The applicant's equipment shall be removed when it is no longer needed or used.

2. Once the time to appeal this decision has expired and no one has successfully appealed the board's decision, and the applicant has requested and obtained the required building permit(s), the applicant shall withdraw its pending appeal in the case of Metro PCS v. Highlands Zoning Board of Adjustment, Superior Court of New Jersey, Docket No. L-4669-11.

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

ROLL CALL:

AYES: Mr. Frox, Mr. Britton, Mr. Kutosh, Mr. Knox, Mr. Gallagher, Mr. Braswell

NAYES: None

ABSTAIN: None

DATE: February 2, 2012

Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of the Resolution adopted by the Borough of Highlands Zoning Board of Adjustment at a meeting held on February 2, 2012.

Board Secretary