

BEFORE THE HILLTOWN TOWNSHIP
BOARD OF SUPERVISORS

APPLICATION OF
NEW CINGULAR WIRELESS PCS, LLC

The applicant, NEW CINGULAR WIRELESS, PCS, LLC d/b/a AT&T of 200 North Warner Road, King of Prussia, Pennsylvania 19406, has requested conditional use permission to establish a proposed F-6 Cellular Telecommunications Facility upon premises owned by the PECO Energy Company, at Diamond Street and Mill Road in Hilltown Township; and more particularly identified as Bucks County Tax Parcel Number 15-22-229-1. The proposed use shall consist of a 150' +/- high telecommunications pole (Fort Worth Power Mount) attached to an existing 137' 6" high PECO Energy Company transmission tower with associated equipment to be installed at the base of the transmission tower in an 11' 6" by 20' equipment building. The proposed use requires conditional use authorization pursuant to the Hilltown Township Zoning Ordinance of 1995, as amended.

The Hilltown Township Board of Supervisors advertised the conditional use hearing pursuant to the requirements of its zoning ordinance; and held a public hearing at the Hilltown Township Municipal Building on Monday, November 8, 2010 at 7:30 P.M. Proof of Publication for the legal advertisement of said hearing is on file with the Hilltown Township office. Additionally, certifications relating to the posting of the property, mailing of the legal notice to nearby residents and a copy of the Hilltown Township recommendation letters (C. Robert Wynn Associates, Inc. correspondence of October 8, 2010 and November 4, 2010) were introduced into the record.

DISCUSSION

Pursuant to the Pennsylvania Municipalities Planning Code and the pertinent Sections of the Hilltown Township Zoning Ordinance of 1995, as amended, the Hilltown Township Board of Supervisors took testimony at a public hearing on November 8, 2010 on the Application of NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T for the establishment and installation of a proposed cellular telecommunications pole to be attached to an existing PECO Energy Company transmission tower near the intersection of Diamond Street and Mill Road within Hilltown Township (Bucks County Tax Parcel No. 15-22-229-1) and for the installation of a 11'6" by 20' equipment building at the base of said transmission tower which will house the power supply and other pertinent and necessary equipment for the use of the antennae.

Hilltown Township Supervisors present for the hearing included Chairman John B. McIlhinney, Vice Chair Barbara A. Salvadore, and Supervisor James Groff. Additionally, Francis X. Grabowski, Hilltown Township Solicitor, was present; and he presided as moderator for the hearing. The applicant was represented by Jack D. Wuerstle, Esquire. In addition to the Board's official stenographer, Gail McCarthy, the witnesses of the applicant included Scott Pilecki, Site Acquisition and Zoning Specialist

for the applicant; Brock Riffel, RF Engineer for the applicant; and John Baptista of Advantage Engineering who was the Site Designer.

The Township Solicitor, as moderator, invited anyone in the audience who desired to have Party Status to the matter to fill out a "Party Status Request" form. No one requested party status.

The Township Solicitor introduced into the record as Township Exhibits the following: T-1 is the official filed application for the conditional use; T-2 is the Proof of Publication of the Legal Notice which appeared within the Doylestown Intelligencer; T-3 is the mailing notice certification; T-4 is the posting notice certification; T-5 is the October 8, 2010 review letter of the Township Engineer; and T-6 is the November 4, 2010 review letter of the Township Engineer. The Hilltown Township Planning Commission unanimously recommended approval of the conditional use application subject to the completion of the outstanding items contained within the October 8, 2010 review letter noting, however, that the setback criteria set forth in Item No. 1D are not applicable since the proposed antennae are to be mounted on a structure supported by a PECO tower and that the structure in question (a transmission pole) is not a separate tower. In addition, with respect to Item No. 1.B, the applicant proposed a \$3,500.00 fee in lieu of required buffer plantings.

Attorney Wuerstle provided the Board with Exhibits A-1 through A-10 which are respectively the following: the Deed of the subject property; the Letter of Authorization from the property owner; the curriculum vitae of the site designer; the revised site plan (revised to reflect a re-positioning of the equipment building); a structural report; a letter clarifying the structural report, the curriculum vitae of the radio frequency engineer; the Federal Communications Commission license; the chart of existing coverage; and the chart of proposed coverage. All ten Exhibits offered by applicant were accepted by the Board into the record.

Attorney Wuerstle requested the opportunity, which was granted by the Board, to make an offer of proof of the testimony that would have been presented by the identified witnesses of the applicant if they were to testify in person. The three witnesses were thereupon sworn; and all stated that the offer of proof given by Attorney Wuerstle would have been their testimony in full if they had, in fact, testified directly. Various questions were asked by individuals in the audience and by the Board members and answered by applicant's representatives.

The Hilltown Township Board of Supervisors (the "Board") has reviewed the various legal cases in the Commonwealth of Pennsylvania, and has previously determined that a conditional use is one which the governing body has determined to be not adverse in and of itself. Under the Township Zoning Ordinance of 1995, F-6, Cellular Telecommunications Facilities are permitted as a conditional use in each zoning district with conditions. The parcel of property subject to this hearing is currently zoned RR (Rural Residential) under the current Zoning Ordinance; and an F-6 Cellular Telecommunications use is permitted as a conditional use in said district if in compliance

with the requirements of the Hilltown Township Zoning Ordinance of 1995, as amended; and, in more specificity, when combined with an existing non-residential structure.

The Board is also mindful of the fact that the existence of a conditional use provision in a zoning ordinance indicates generally that the use is consistent with the zoning plan of the Township. We are further of the opinion that we must grant a conditional use where the applicant has demonstrated compliance with the specific requirements set forth in our Ordinance. The burden is upon those who would protest the use to come forward with substantial evidence that the proposed conditional use, if created, would be detrimental to the health, safety or general welfare of the public. The Board notes that no one in the audience requested party status and that no audience member commented or argued against the application. Thus, the Board is of the opinion that the applicant has demonstrated compliance with the objective standards of the Hilltown Township Zoning Ordinance of 1995, as amended; and has adequately demonstrated that the proposed use falls within the given category specified within said Ordinance.

The evidence given and the Exhibits accepted indicate that the appropriate and applicable conditions of the 1995 Zoning Ordinance have been met. Access to the site is safe; and no traffic improvements are necessary. Additionally, the evidence submitted by the applicant's expert witnesses demonstrates that there will be no negative impact to the community with the proposed use.

Based upon the testimony and evidence presented at the hearing, the Hilltown Township Board of Supervisors, following public discussion and due deliberation, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The applicant, NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T, submitted evidence of its ability and standing to make application to the Hilltown Township Board of Supervisors for conditional use approval by submission of a photocopy of an existing Letter of Authorization from the PECO Energy Company.

2. Based upon the testimony presented and the Exhibits accepted by the Board, applicant intends to attach its proposed 150' transmission pole to an existing PECO Energy Company transmission tower located on property the intersection of Diamond Street and Mill Road in Hilltown Township on Bucks County Tax Parcel No. 15-22-229-1. Said installation shall include telecommunication equipment at ground level to be located in an equipment building having the dimensions of 11' 6" by 20'.

3. The Board is of the opinion that the safety analysis performed by the applicant with respect to the structural integrity of the application is credible and meets all applicable safety limits and that the proposed site is safe; and that no hazardous traffic condition will be created.

4. The Board is of the opinion that the proposed use is compatible with surrounding existing uses.

5. The Board found the testimony presented by way of an offer of proof and also supplemental direct testimony given to questions to be credible and in support of the application.

CONCLUSIONS OF LAW

1. Applicant's proposed use constitutes a utility pursuant to Section 406 F-6 of the Hilltown Township Zoning Ordinance of 1995, as amended.

2. The proposed use is a use permitted by a conditional use request within the zoning district within which the proposed site is located.

3. The proposed use meets the specific conditions for utility use as set forth within the Hilltown Township Zoning Ordinance of 1995, as amended; and also meets the general conditions for a conditional use application as further set forth within the Hilltown Township Zoning Ordinance of 1995, as amended.

4. Applicant, having met its burden of demonstrating compliance with the specific objective criteria of the Zoning Ordinance for approval of the Conditional Use, shifted the burden of proof to those opposing the Application, who then failed to demonstrate that the approved Application would produce any adverse effects.

5. The Hilltown Township Board of Supervisors has the right to impose reasonable restrictions and conditions on its approval.

ORDER

AND NOW, this 22nd day of November, 2010, the Board of Supervisors of Hilltown Township hereby grants applicant's request for the Conditional Use subject to the following conditions:

1. The proposed use by NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T shall be for the attachment of transmission pole (Forth Worth Power Mount) not to exceed 150' in height to an existing 137'6" foot high PECO Energy Company transmission tower, as depicted and shown upon Exhibit A-4 submitted and accepted by the Hilltown Township Board of Supervisors as a part of the record of the hearing; and further for the installation of ancillary equipment as also depicted upon Exhibit A-4, which shall be housed and located in an equipment building having the dimensions no greater than 11' 6" by 20'.

2. The proposed use shall be limited to cellular telephone use operation. Except as otherwise specified herein, the requirements of the C. Robert Wynn Associates, Inc. letter of October 8, 2010, as amended by the C. Robert Wynn Associates, Inc. letter

of November 4, 2010, shall expressly be conditions of the grant of said conditional use.

3. The Board has determined that a stormwater management application is not required for the proposed use in that the plan indicates that only 550 ± square feet of new impervious surface is being proposed as part of the application.

4. The Board has further determined that a land development application is not required due to the limited scope and impact of the application.

5. The grant of conditional use is conditioned upon the applicant providing an agreement to the Township guaranteeing the removal of telecommunication facilities should they cease to be used for receiving or transferring communication signals.

6. The applicant shall provide the Township with yearly inspection reports documenting that the facility has been inspected and that it is being maintained in accordance with applicable federal, state and local safety requirements.

7. In lieu of buffer plantings otherwise required by the Zoning Ordinance, the Applicant has offered, and the Township has agreed to accept, the sum of \$3,500.00, payable at issuance of building permit.

HILLTOWN TOWNSHIP
BOARD OF SUPERVISORS

John B. McIlhinney, Chairman

Barbara Salvadore, Vice Chairperson

James Groff, Supervisor