

**BEFORE THE HILLCROSS TOWNSHIP  
BOARD OF SUPERVISORS**

**APPLICATION OF  
METRO PCS PENNSYLVANIA, LLC**

The applicant, **METRO PCS PENNSYLVANIA, LLC** of 510 Virginia Drive, Fort Washington, Pennsylvania 19034, has requested conditional use permission to establish a proposed F-1 utility use upon premises owned by the North Penn Water Authority, at Clear view Road, in Hilltown Township; and more particularly identified as Bucks County Tax Parcel Number 15-1-58-3. The proposed use shall consist of the installation of antennae upon the existing north water tank along with associated switching equipment. Said switching equipment shall consist of equipment cabinets to be installed at the base of the water tank on a ten foot by sixteen foot concrete pad with connection to the antennae by a cable bridge. The proposed utility use requires conditional use authorization pursuant to the Hilltown Township Zoning Ordinance of 1995.

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, August 24, 2009 at 8:00 P.M. Proof of Publication for the legal advertisement of said hearing is on file with the Hilltown Township office. Additionally, certifications relating to posting of the property, mailing of the legal notice to nearby residents, and a copy of the Hilltown Township recommendation letter (C. Robert Wynn Associates, Inc. of July 6, 2009) were also introduced into the record.

**DISCUSSION**

Pursuant to the Pennsylvania Municipalities Planning Code and the pertinent Sections of the Hilltown Township Zoning Ordinance of 1995, the Hilltown Township Board of Supervisors took testimony at a public hearing on August 24, 2009 on the application of METRO PCS PENNSYLVANIA, LLC for the establishment and installation of a proposed utility use including the attachment and installation of antennae to the existing north water storage tank owned by the North Penn Water Authority on Clearview Road and for the installation of certain equipment at the base of the said water tank which equipment houses the power supply and other pertinent and necessary equipment for the use of the antennae with the equipment to be located on a concrete pad with the dimensions of ten feet by sixteen feet.

Hilltown Township Supervisors present for the hearing included Chairperson Barbara Salvadore, Vice Chairman, John B. McIlhinney and Supervisor Richard J. Mansfredi. Additionally, Francis X. Grabowski, Hilltown Township Solicitor, was present; presided as moderator for the hearing. The applicant was represented by Jack D. Wuerstle, Esquire. In addition to the Board's official stenographer, the witnesses of the applicant included Joseph F. Fitzsimmons, John P. Wolstenholme and Sheldon Burke. No one requested party status to the matter; and no one other than the applicant provided testimony.

At the hearing, 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 July 6, 2009 review letter of the Township Engineer; and T-6 is the August 24, 2009 review letter of the Township Engineer providing the Hilltown Township Planning Commission recommendations. Attorney Wuerstle provided the Board with Exhibits A-1 through A-9 which are respectively the following: the Deed of the subject property; the Lease Agreement relating to the use of the property; the curriculum vitae of the design engineer; the site plan; a structural review letter; 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 9 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.

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-I utilities are permitted as a conditional use in each zoning district. The parcel of property subject to this hearing is currently zoned LI (Light Industrial) under the current Zoning Ordinance; and an F-I utility use is permitted as a conditional use in said district.

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. No testimony was given, nor did anyone appear to give testimony in opposition to the application. The Board is of the opinion that the applicant has demonstrated compliance with the objective standards of the 1995 Zoning Ordinance of Hilltown Township; 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 witness regarding electromagnetic energy demonstrates that there will be no possible health effects associated 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, METRO PCS PENNSYLVANIA, LLC, submitted evidence of its ability and standing to make application to the Hilltown Township Board of Supervisors for conditional use application by submission of a photocopy of an existing Lease Agreement with the North Penn Water Authority.

2. Based upon the testimony presented and the Exhibits accepted by the Board, applicant intends to use an existing North Penn Water Authority water tank located on Authority property at Clearview Road in Hilltown Township on Bucks County Tax Parcel No. 15-1-58-3 to install telecommunication equipment at the ground level and adjacent to the tank. Said equipment is as identified by Exhibit A-4; and is comprised of equipment to be located on a concrete pad having the dimensions of ten feet by sixteen feet.

3. The Board is of the opinion that the safety analysis performed by the applicant with respect to potential public exposure to radio frequency energy in the environment surrounding the proposed cellular installation is credible and meets all applicable health and safety limits required under Federal and State requirements.

4. The Board is of the opinion that access to the proposed site is safe; and that no hazardous traffic condition will be created.

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

6. The Board found the testimony presented by way of an offer of proof 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-1 of the Hilltown Township Zoning Ordinance of 1995.
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; and also meets the general conditions for a conditional use application as further set forth within the Hilltown Township Zoning Ordinance of 1995.
4. The Hilltown Township Board of Supervisors has the right to impose reasonable restrictions and conditions on its approval.

## **ORDER**

**AND NOW**, this 24th day of August, 2009, 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 METRO PCS PENNSYLVANIA, LLC shall be for the attachment of antennae to the existing northern North Penn Water Authority water storage tank 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 further depicted upon Exhibit A-4 which shall be housed and located upon a concrete pad having the dimensions no greater than ten feet by sixteen feet.
2. The proposed use shall be limited to cellular telephone use operation. The Township, based upon the recommendation of the Hilltown Township Planning Commission, hereby approves a fence height of six feet which is consistent with existing chain link fence height installed currently around the base of the tank.
3. The Board accepts the offer of the sum of \$3,500.00 by applicant in lieu of installing an evergreen screen around the perimeter of the security fence; and said amount is to be paid at the issuance of the building permit for the use.

4. The Board has determined that a stormwater management application is not required for the proposed use in that the plan indicates that only 280 square feet of new impervious surface is being proposed as part 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.

HILLTOWN TOWNSHIP  
BOARD OF SUPERVISORS

Barbara Salvadore

Barbara Salvadore, Chairperson

John B. McIlhinney

John B. McIlhinney, Vice Chairman

Richard J. Manfredi

Richard J. Manfredi, Supervisor