

MINUTES OF THE BOARD OF ADJUSTMENT
March 26, 2008

PRESENT: Vice Chair Fleischer, Ms. Cockey, Ms. Holloway, Mr. Rubenstein, Mr. Susswein, and Mr. Whipple; also, Mr. Sullivan, Esq., and Mr. Charreun, Assistant Secretary

ABSENT: Chair Harrison (recused), Ms. English, Mr. Haizel, and Mr. Franco, Secretary

Assistant Secretary Charreun called the roll and announced the special meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

Chair Harrison was not present as he recused himself from the application. Vice Chair Fleischer called the continuation of the application of **Omnipoint Communications, Inc, 153 Park Street**. James Pryor, Esq., appeared as attorney for the applicant. Terry Thornton, Esq., objector and resident of 160 Park Street gave her appearance. There was a discussion regarding procedural issues and Ms. Thornton moved several exhibits into evidence. She asked to be sworn in order to testify to certain facts regarding certain exhibits, and she was sworn. The first exhibit was previously marked for identification as O-1. It was marked during the hearing on May 9th of 2007.

Moved into evidence was:

O-1 Printout of coverage strength of Montclair from Omnipoint website

Marked into evidence were:

O-6 2/25/08 printout off T Mobile website

O-7 T Mobile brochure

Ms. Thornton continued. Exhibit O-1 is a document that was printed off T-Mobile's website on April 19th of 2007. It is a personal coverage check in which the internet user plugs in an address from which it can then determine the level of signal strength in that area. Mr. Solomon, Omnipoint's second radio frequency expert, explained to the Board that Omnipoint makes use of the personal coverage check in order to determine cover needs in an area. Her own address, 160 Park Street, which is across the street from the church site, was used and it shows that the areas sought to be served by this monopole has two bars of coverage. Based on this, you should be able to make calls outdoors, but you may not be able to make calls in buildings. That is how T-Mobile's website describes the coverage and signal strength in this area. O-6 was handed to her at the T-Mobile store that was visited on Route 46 on February 25th, 2008 and it shows the same amount of coverage. They both represent that the area sought to be targeted by the monopole is at two bars of coverage. Mr. Pryor questioned Ms. Thornton on cross-examination and objected to the exhibits.

Ryan Branski, 159 Park Street, was sworn. Mr. Branski described a brochure identified as O-8, which is document that was referenced in cross-examination of the Omnipoint's radiofrequency witnesses. O-8 is a brochure that was provided by the pastor of the church approximately one year ago. The map depicted in the exhibit indicates that within the residential area of this map there are no monopoles. Monopoles are all in less residential areas. Within the residential areas they only use utility pole devices. Mr. Pryor questioned Mr. Branski on cross examination and stated that the exhibit is irrelevant.

Marked into evidence was:

O-8 Brochure given to Mr. Branski by First Evangelical Lutheran Church

Ms. Thornton called Richard Comi, who was sworn and stated his qualifications as an expert on the siting of wireless facilities, in particular, PCS and cellular, and including the review of demonstrations of need.

Marked into evidence was:

O-9 Curriculum Vitae of Richard Comi

Mr. Pryor questioned Mr. Comi and objected to his qualifications as an expert on the siting of wireless facilities, in particular, PCS and cellular, and including the review of demonstrations of need. The Board also questioned Mr. Comi. Mr. Sullivan addressed the Board. Ms. Thornton stated that there is no case in New Jersey that requires, as a predicate for being qualified as an expert on the siting of wireless facilities specifically PCS or cellular, that you have a current employment in the industry. There is no case that requires a license, no case that requires an FCC license, no case that requires that there be a licensed professional engineer. The Board took a short recess. Upon returning, the Board accepted Mr. Comi as a knowledgeable expert to municipalities and others with respect to installations. Ms. Thornton questioned Mr. Comi on direct examination.

Marked into evidence were:

O-10 CFR Section 24.203, Construction Requirements under Title 47

O-11 Certification of Omnipoint Communications meeting its obligation to deliver "adequate service"

O-12 FCC filings of AT&T Cellular and Sprint

Mr. Comi described the Exhibits. The documentation that Omnipoint provided to the FCC for the Metropolitan area indicates that they've met their construction requirement. Their RF experts have testified to the fact that the existing service exceeds the required level in the entire market of New Jersey. If Omnipoint does not proceed to build the transmission facility that is subject to the pending application, Omnipoint will not violate any performance obligation under any statute or regulation as

a licensee. The need for this facility appears to be a business decision. If there is a need it's related to capacity.

Marked into evidence were:

- O-13 Summary of Test Call Data
- O-14 Map laying out Test Call Data
- O-15 Omnipoint's Walnut Street application

Exhibit O-13 is a summary of test call data from calls placed on a T Mobile cellular phone within the geographic area that was specified via Omnipoint's propagation map to be the proposed coverage area from the new cell tower. Ms. Thornton stated that community residents were personally involved in placing the calls. Those witnesses will be before the Board to explain the process. She wanted Mr. Comi's interpretation of this data, with the Board's understanding that the witnesses who actually placed the calls and received the calls will be testifying at the next hearing. The Board questioned Ms. Thornton and the individuals involved were needed to answer certain questions that arose.

Constance Thames, 161 Park Street, was sworn. She was involved in the call test. The phone used was a Samsung model 609. She made most of the calls; all together 80 calls. Deborah Garrison, 149 Park Street, was sworn and stated that she made the rest of the calls. The call test was described by Ms. Thames and Ms. Garrison. The Board questioned these witnesses. Mr. Comi resumed his testimony. The information in O-13 is highly representative of a statistically valid call sample for this size area. The results that are published here state that the completion of 107 out of 111 is over 95 percent. This very much demonstrates that the service in that area is adequate by any standard that is necessary for T-Mobile at the present time. Exhibit O-1, Printout of coverage strength of Montclair from Omnipoint website, shows two or three bars in the entire area proposed to be covered and is consistent with the results of this call test. He also described the prior application by Omnipoint at 56 Walnut Street, which was described as a capacity site by the applicant at that time.

At 11:15 pm, the Board discussed continuing the application. After some discussion, the May 14, 2008 special meeting was canceled and rescheduled for May 28, 2008, to be followed by the already scheduled special meeting on June 11, 2008, which was announced without any further notice. Mr. Pryor granted the Board an extension of time through June 11, 2008. On motion by Mr. Whipple, seconded by Mr. Susswein, the meeting was adjourned.