

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**May 28, 2008**

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

ABSENT: Chair Harrison (recused), Ms. English, Ms. Holloway, 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 announced 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 was also present.

Ms. Thornton recalled Richard Comi, who was still under oath. Mr. Comi clarified certain topics from his prior testimony at the March 26, 2008 meeting.

Marked into evidence was:

O-16 Letter from Ms. Thornton to Montclair Zoning Board dated 5/20/09 with attached exhibits A, B and C

There was some discussion between the Board, Ms. Thornton, and Mr. Pryor on the relevancy of exhibits A, B and C of O-16. Mr. Sullivan stated that the Board could consider it and give it whatever credibility and weight the Board members deemed necessary. Mr. Pryor objected and stated that Mr. Comi should not be allowed under applicable law to cite an unpublished opinion in support of his call test. Mr. Sullivan overruled the objection.

Mr. Comi described the scope of and the nature of the call test that was done in the Nextel matter in New Rochelle, NY. He also described possible alternative locations for antenna equipment from a technical point of view, to which Mr. Pryor objected as well. Ms. Thornton stated that the Appellate Division has affirmed denials by a Zoning Board recognizing that where the record reflects a "mere suggestion" of the possibility of alternative sitings that do not call upon such an extensive forbearance on zoning standards that it is acceptable for a Zoning Board to exercise its discretion and deny. Mr. Comi proceeded to describe alternative locations. He stated that the Township public works garage location is more suitable technologically since there are fewer trees near it. It would also be feasible to install a roof mounted antenna array at that facility as well that could be camouflaged with stealth materials. He also stated that antennas on buildings at Watchung Plaza would also provide the additional coverage sought by the applicant. He stated that a distributed antenna system is also a technologically feasible alternative to the use of a monopole at the proposed location.

The Board questioned Mr. Comi. He stated that if it is an issue of capacity instead of coverage, the proposal can be made much less obtrusive and absolutely doesn't need anything relevant to an 80-foot pole. Ms. Thornton stated that nothing had been reported to her since the town council action authorizing the process for the solicitation of bids for wireless antennas to be located at the public works garage. Mr. Pryor stated that Omnipoint has had what's referred to in the industry as a "design visit" at the public works garage, which is basically an authorization by the township to send Omnipoint representatives there to assess the feasibility of an installation. Assistant Secretary Charreun clarified the zoning ordinance as it pertains to wireless antenna installation on municipal structures. Mr. Comi described the distributed antenna system that is currently being considered in Mount Vernon, NY.

The Board took a 10 minutes recess at 9:30 pm.

Mr. Pryor cross-examined Mr. Comi. Mr. Comi stated that he had not done any propagation tests for any alternative sites. He would consider his opinion an accurate view based on his expert analysis of thousands of propagation maps, hundreds of which have come from T-Mobile. He answered questions on the Asset software that Omnipoint uses for the computer modeling of their network and the parameters that have to be input into that software in order to obtain the appropriate coverage data. He responded to questions regarding the commercial buildings and the flagpole in Watchung Plaza. He stated that he was not aware of any approved distributed antenna systems in New Jersey and described his knowledge of other distributed antenna systems operating elsewhere in the United States. He answered a series of questions about his testimony regarding Omnipoint's revenue, as well as questions regarding measuring signal strength, and call tests. He also spoke about issues relating to an application in Woodbury, NY that he was involved in.

Marked into evidence was:

A-18 Letter dated 1/17/06 from Mr. Comi to Woodbury Planning Board  
Chairman, George Sewitt

Vice Chair Fleischer announced that the application would be continued at the already scheduled special meeting on June 11, 2008 and that no further notice would be given. On motion by Mr. Rubenstein, seconded by Mr. Whipple the meeting was adjourned at 12: midnight.