

MINUTES OF THE BOARD OF ADJUSTMENT
June 11, 2008

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

ABSENT: Chair Harrison (recused), Ms. Holloway, Mr. Rubenstein, 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 welcomed Mr. Kenney to the Board and 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.

Mr. Pryor stated that he had faxed a short memo to Mr. Sullivan and to Ms. Thornton indicating that he anticipated cross-examining Mr. Comi and not putting on any radiofrequency rebuttal testimony at this hearing. He also stated that Omnipoint had actually not completed the design visit at the public works garage as he stated at the last meeting. Omnipoint has been in touch with the Township about it, but they haven't sent the people out to do it. He continued his cross-examination of Mr. Comi. Mr. Comi described the 3½ story building with a roof peak height of approximately 40 feet that appears to be the tallest building in Watching Plaza, known as 52-54 Fairfield Street. He responded to questions on clarification of prior testimony relating to collocation on the proposed monopole, distributed antenna systems, and propagation studies. He referred to Exhibit A-3 Omnipoint's Existing and Proposed Coverage, dated 5/9/07, in response to questions about coverage and distributed antenna systems. He responded to questions regarding the calibration of cells sites, dropped calls, and Exhibit O-13 Summary of Test Call Data. He has had laypeople that have conducted a call test before and have testified in a case where they conducted a number of the calls, which occurred in Franklin Square, Long Island, NY. It is his understanding that a sample size of approximately 100 calls for a cell site that covers a reasonably small area, where you achieve greater than 95 percent completion, is statistically valid to prove that there is no gap in coverage which, as the applicant's engineers have testified, would result in less than 1 percent of the calls being completed.

Ms. Thornton questioned Mr. Comi on redirect examination. The capacity issue is a servicing standpoint. All of the carriers are looking to compete with one another and want to provide as good of service as everybody else. The power levels from the existing sites pointing into the area targeted by the proposed monopole can be turned up slightly higher to increase the strength of the signal so that it penetrates the targeted area of the dead zone. The Public Works garage is in the range of 27 to 30 feet in height. There is another building on the Public Works property that is a dome-shaped

building used for storage and that is probably closer to 40 to 44 feet in height. Trees would be far less of an issue for antennas at the Public Works property. In terms of distributed antennas systems, if the power company that owns the poles doesn't allow wireless installation on their poles, it would be not unheard of, and probably quite reasonable, for the distributed antenna system infrastructure provider to put five to eight new poles, to cover the area identified by the applicant, in the right-of-way to contain the equipment. He stated that that the existing catenary structures along the railroad right-of-way would also be feasible for utilization by distributed antenna systems. He further described the building at 52-54 Fairfield Street.

Marked into evidence was:

O-17 Drawing of building at 52-54 Fairfield Street, from a previous Planning Department Application

Mr. Pryor questioned Mr. Comi on recross-examination. Mr. Kenney, the new alternate Board member, who is not presently eligible to vote on the application, left the meeting. Mr. Comi responded to additional questions about his previous work on wireless antennas cases, the Public Works site, and distributed antenna systems.

The Board took a 10 minutes recess at 9:40 pm.

Vice Chair Fleischer called for testimony from fact witnesses. Connie Thames, 161 Park Street, was sworn. She was one of the participants in the call test and was assisted by Ms. Thornton. A Samsung T609 phone with no external antenna was used. They used Exhibits A-2 and 3 as their guide and concentrated mostly on the areas of no or weak coverage. All of the calls made were one minute or longer. They went to homes and tried in-building calls as well.

Marked into evidence was:

O-18 Copies of phone bills reflecting calls referenced in the Summary of Test Call Data

The Board questioned Ms. Thames. Ms. Thames stated that Mr. Comi gave them general instructions for doing the call test. Mr. Pryor questioned Ms. Thames extensively on specifics regarding the call test she was involved in. Ms. Thornton also questioned Ms. Thames.

Deborah Garrison, 149 Park Street, was also sworn. She stated that she was involved in the latter portion of the call test on November 11th, 2007. Ms. Thornton and Ms. Thames had done a significant portion the call test before the end of the summer. People were quite busy at that time and she offered to do a set of calls before the leaves were down. She described her portion of the call test.

Marked into evidence was:

O-19A-D Photographs of trees in area of call test on November 11, 2007

The Board questioned Ms. Garrison. She stated that she used the same phone as Ms. Thames for the part of the call test she completed. Mr. Pryor questioned Ms. Garrison. Ms. Thornton had no questions for Ms. Garrison and asked to question Ms. Thames again. Ms. Thames stated that she called T-Mobile and asked if the phone they were using could display a reading of the dBm level and she was not able to have the phone programmed so that it could display the dBm levels. She stated that the differentials in the time noted on the cell phone study and the times noted on the cell phone bill are due to the fact that the times on her cell phone and her watch are not synchronized. Mr. Pryor questioned Ms. Thames again as well.

The Board, Mr. Sullivan, Mr. Pryor, and Ms. Thornton discussed certain procedural issues and decided to schedule 2 special meetings at this time. Vice Chair Fleischer announced that the application would be continued at special meetings to be held on June 25, 2008, and August 13, 2008, and that no further notice would be given. On motion by Mr. Susswein, seconded by Mr. Whipple the meeting was adjourned.