

**BEFORE THE HILLTOWN 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-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 157 foot high telecommunications tower attached to an existing 145 foot high PECO Energy Company transmission tower with associated switching equipment to be installed at the base of the transmission tower on a ten foot by sixteen foot concrete pad. 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, September 28, 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 the 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. correspondence of July 30, 2009) 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 September 28, 2009 on the application of METRO PCS PENNSYLVANIA, LLC for the establishment and installation of a proposed cellular telecommunications tower 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 certain equipment at the base of said transmission tower 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. Manfredi. 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 Christine

Johnson, Senior Site Acquisition and Zoning Specialist for the applicant; Traian Popescu, Senior RF Engineer for the applicant; and Philip Vitale of CMX Engineering and representing the applicant.

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; and the following individuals requested Party Status in the matter: Edward Rumer, Patt Webster, Tammy Suyematsu, William Halberstadt, David McClure, Katharine Williamson and Jean Williamson. 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 30, 2009 review letter of the Township Engineer; and attached to T-5 is the September 23, 2009 letter of the Township Engineer addressed to the Board of Supervisors in which it is reported that the Hilltown Township Planning Commission unanimously recommended approval of the conditional use application subject to the completion of the outstanding items contained within the July 30, 2009 review letter noting, however, that Item No. 1C is not applicable since the proposed antennas are to be mounted on a structure supported by a PECO tower; and Items 4 and 5 are not applicable due to the amount of impervious surface and disturbance proposed by the application.

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 (revised to reflect the recommendations of the Township Engineer); a structural review 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 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 Township Solicitor, as moderator, then stated that the hearing would be recessed to allow for the individuals who had requested Party Status to review all of the Exhibits and to address questions directly to the applicant off the record. Approximately one-half hour later, the moderator reconvened the official hearing; and stated that if any of the individuals who had been granted Party Status wanted to ask their questions on the record or to ask any additional questions that they could do so. Various questions and statements were given by several of the granted Party Status individuals; and direct response was given by the hereinbefore identified witnesses of applicant.

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 the comments made by several of the parties who had been granted Party Status were framed as an inquiry as to whether the applicant had considered another existing PECO Energy Company transmission tower. Under the Hilltown Township Zoning Ordinance of 1995, as amended, it is not the requirement or obligation of the applicant to prove to any extent that other sites are not suitable or are more suitable. The burden upon the applicant is to prove that its chosen site complies with the Hilltown Township Zoning Ordinance of 1995, as amended. 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 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 PECO Energy Company.

2. Based upon the testimony presented and the Exhibits accepted by the Board, applicant intends to attach its proposed 157 foot transmission pole to an existing PECO Energy Company transmission tower located on property near 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 on a proposed 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 and also supplemental direct testimony given to questions and statements of the Party Status requesters 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 a 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.

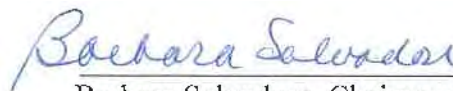
5. The Hilltown Township Board of Supervisors has the right to impose reasonable restrictions and conditions on its approval.

**ORDER**

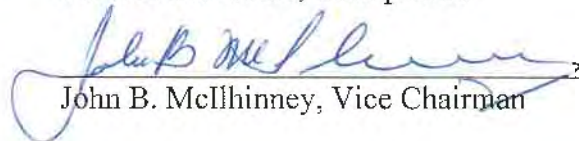
**AND NOW**, this 28th day of September, 2009, the Board of Supervisors of Hilltown Township hereby grants applicant's request for the conditional use subject to the following conditions:

1. The proposed use by METRO PCS PENNSYLVANIA, LLC shall be for the attachment of a tower not to exceed 157 feet in height to an existing 145 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 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 requirements of C. Robert Wynn Associates, Inc. letter of July 30, 2009, as amended by said C. Robert Wynn Associates, Inc. letter of September 23, 2009 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 160 square feet of new impervious surface is being proposed as part of the application.
4. 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, Chairperson



John B. McIlhinney, Vice Chairman

Richard J. Manfredi, Supervisor