

**BEFORE THE HILLTOWN TOWNSHIP  
BOARD OF SUPERVISORS**

**APPLICATION OF  
VERIZON WIRELESS**

The applicant, **CELLCO PARTNERSHIP, a Delaware General Partnership, doing business as VERIZON WIRELESS**, has requested Conditional Use permission to establish a proposed F-6 use upon property owned by A & E Partnership, L.P. on Bucks County Tax Parcel No. 15-34-55 and more particularly identified as being located at 1531 Hilltown Pike, Hilltown Township, Bucks County, Pennsylvania. Said proposed use shall use a fifty foot by fifty foot parcel on the 19.79 acre tract for the installation of a monopole cell tower, an eleven and one-half foot by thirty foot equipment shelter within a thirty foot by fifty foot compound enclosed with an eight foot high chain link fence. While the total area of the site to be leased by the applicant is fifty feet by fifty feet, it also has a twenty foot wide access easement from Hilltown Pike. The applicant requests a one hundred and fifty foot monopole tower containing the proposed antennas and a lightning rod all of which is proposed to be one hundred and sixty feet above ground level. The proposed utility use requires Conditional Use authorization pursuant to the existing Hilltown Township Zoning Ordinance.

The Hilltown Township Board of Supervisors advertised the Conditional Use hearing pursuant to the requirements of its Zoning Ordinance; and held a hearing at the Hilltown Township Municipal Building on Thursday, May 31, 2007 beginning at 7:00 P.M. Proof of Publication for the legal advertisement of said hearing is on file at the Hilltown Township administrative office.

The Board accepted an Affidavit of the Hilltown Township Zoning Officer indicating that he had appropriately posted a Notice of the pending Conditional Use hearing upon the property as of May 18, 2007. Additionally, the Board accepted the Affidavit of Darlene Hunsberger, indicating that she sent a copy of the Legal Notice to all of the individuals listed by both the Applicant and by the Hilltown Township Zoning Officer as being adjacent property owners. Further, the Board accepted into the record a copy of the May 15, 2007 review letter of the Hilltown Township Engineer, C. Robert Wynn Associates, Inc. which indicated the recommendation of the Hilltown Township Planning Commission to the Board of Supervisors of Hilltown Township to approve the Conditional Use application. The Proof of Publication was marked as Exhibit T-1; the Zoning Officer Affidavit was marked Exhibit T-2; the Hunsberger Affidavit was marked as Exhibit T-3; and the Engineer's review letter was marked as Exhibit T-4. Party Status was granted to the following individuals who were present at the hearing: William Stahl of 1511 Hilltown Pike, Hilltown, Pennsylvania 18927; Roben and Linda Voigt, 1520 Hilltown Pike, Hilltown,

Pennsylvania 18927; Andrew Braun of 1435 Hilltown Pike, Hilltown, Pennsylvania 18927; John J. Levy of 1432 N. Limekiln Pike, Chalfont, PA 18914; W. M. Watson, Jr. of 1519 Hilltown Pike, Hilltown, Pennsylvania 18927; Frank and Dorothy Virmelson of 1423 Hilltown Pike, Hilltown, Pennsylvania 18927, John and Marjorie Kostishion of 1532 Hilltown Pike, Hilltown, Pennsylvania 18927; and Roy and Alicia Snyder of 1514 Hilltown Pike, Hilltown, Pennsylvania 18927 (herein collectively the "Protestants").

## **DISCUSSION**

Pursuant to the Pennsylvania Municipalities Planning Code and the pertinent Sections of the Hilltown Township Zoning Ordinance, the Hilltown Township Board of Supervisors took testimony at a public hearing on the application of the CELLCO PARTNERSHIP, d/b/a VERIZON WIRELESS for the establishment and installation of a proposed F-6 utility use being a modular telecommunications tower and telecommunications structure. Hilltown Township Supervisors present for the hearing included Chairman Richard J. Manfredi, Vice Chairman John McIlhinney and Supervisor Barbara Salvatore. Additionally, Francis X. Grabowski, Esquire, Hilltown Township Solicitor was present. The Applicant was represented by Edward Wild, Esquire; and representatives of the Applicant in attendance included James Rodgers, Kenneth Farrell, Thomas Stepanski and Andrew Petersohn.

At the hearing, multiple exhibits were introduced by the Applicant; and the Board heard extensive testimony from the representatives of the Applicant as well as the Protestants to the matter. All of the exhibits introduced, including A1-A11, were made a part of the formal record of the matter as were the Township exhibits previously identified herein.

The first expert witness of the applicant to testify was James Rodgers who reviewed the location of the proposed use upon the 19.79 acre tract of land; and reviewed the site plans which indicated the parameters by which the applicant proposes to locate its proposed use. Mr. Rodgers further described the terms of the Lease Agreement with the property owner; and reviewed Exhibit A-4, an excerpt of the Hilltown Township Zoning Ordinance regarding F-6 Uses. He testified that the telecommunications structure would have the dimensions of eleven and one-half feet by thirty feet; and agreed that the structure could be constructed with a pitched roof to make it more compatible with surrounding residential existing structures. The site area would be enclosed within a fenced area. Mr. Kenneth Farrell of CMC Engineers testified that his firm did the site design work; and Mr. Andrew Petersohn, a radio frequency engineer, testified as to Exhibits A-5 through A-11. Mr. Petersohn testified as to the need of cellular telephone tower by use of exhibits A-8 through A-11 which identified the proposed location as an area where the cellular signal of Verizon lacks sufficient strength to permit reliable wireless communications.

The witnesses jointly testified that the proposed use meets all of the provisions of the F-6 Communications Tower and Cellular Telecommunications Facility provisions contained within the Hilltown Township Zoning Ordinance. They testified that the location of the tower and the equipment building shall comply with all natural resource protection

standards; evergreen plantings and buffers will comply with the requirements of the Zoning Ordinance; and an eight foot high security fence will completely surround the tower site. Mr. Farrell testified that the tower shall be designed and constructed to all applicable standards of the American National Standards Institute, ANSI/EIA 222-G Manual as amended. Mr. Farrell stated that the G Manual is the latest edition to the E Manual stated within the Township Zoning Ordinance Section F-6(a)[4]. Further, the experts testified that they will comply additionally with SubParagraphs [5] and through [11] of F-6(a). Pertaining to Section F-6(c), the experts testified that all appropriate Sections shall be met with compliance by the Applicant.

The various Protestants appearing at the meeting voiced their objection to the installation of the proposed Conditional Use indicating their objection to the visual intrusion of the tower and their general objection to the tower aesthetically. Several questions were raised as to why the applicant did not choose to co-locate its proposed use on either the existing water tank within the Hilltown Village or on any Philadelphia Electric high transmission towers in the area. The Applicant's response, through Mr. Petersohn, was that the water tank was not at a location which would provide the desired coverage intended. The representatives of the Applicant further testified that the requirements of the Philadelphia Electric Company were incompatible with the requirements of Verizon Wireless in that any maintenance or repair work on a co-located cellular use involving a Philadelphia Electric Company electric tower would require two years of advance notice. The applicant testified that it could not accept the possibility of a two year loss of use of such a co-location.

While the Board is very mindful of the objections of the Township residents who were in attendance at the hearing and who were granted Party Status, the Board is limited by its own Zoning Ordinance provisions and also by multiple Decisions by the Pennsylvania Courts regarding approval of Conditional Uses. A Conditional Use is a permitted use if the applicant can successfully show that it can meet all of the conditions listed under the Ordinance.

The Hilltown Township Board of Supervisors (the "Board") has reviewed the various legal cases decided by the Courts within the Commonwealth of Pennsylvania; and has determined that a Conditional Use is one which the governing body has determined through its Zoning Ordinance to not be adverse in and of itself. Under the Hilltown Township Zoning Ordinance, F-6 utilities are permitted as a Conditional Use in certain zoning districts with conditions as set forth within the Ordinance. The parcel of property subject to this hearing is zoned RR (Rural Residential) under the existing Hilltown Township Zoning Ordinance; and an F-6 utility use is permitted as a Conditional Use in said district.

The Board is constrained by the Decisions of Pennsylvania Courts such as *In Re Appeal of Cellco Partnership, 2006 Pa. Dist. & Cnty. Dec. LEXIS 411 (Pa. C.P., October 11, 2006)* in which the Bucks County Court of Common Pleas held that once a Conditional Use applicant has proven that the proposed use falls within the applicable Ordinance, the burden of proof shifts to the Protestants to present evidence that the proposed use has a detrimental effect on the health, safety, and welfare of the community. The Court found that mere

speculation of possible harm resulting from a proposed use fails to satisfy the Protestant's burden. Similarly, *In Re Cutler Group, Inc.*, 880 A.2d 39, 2005 Pa. Commw., the Pennsylvania Commonwealth Court determined that a Conditional Use is nothing more than a special exception which falls within the jurisdiction of the municipal legislative body rather than the Zoning Hearing Board. The fact that a use is permitted as a Conditional Use evidences a legislative Decision that the particular type of use is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community. Thus, a Conditional Use must be granted unless the Protestants present sufficient evidence to establish that there is a high degree of probability that the use will cause substantial threat to the community. The evidence of the Protestants cannot consist of mere bald assertions or personal opinions or perceptions of the effect of the use on the community. Moreover, the degree of harm required to justify denial of the Conditional Use must be greater than that which normally flows from the proposed use. In *Visionquest Nat'L v. Bd of Supervisors*, 524 Pa.107, (1990) the Court determined that a Conditional Use Ordinance is evidence that the municipality has determined that the particular proposed use is not adverse to the public interests per se. Once an Applicant for a Conditional Use has presented evidence to establish the specified standards in the Ordinance, the application must be granted unless the Protestants to such an application have presented sufficient evidence that such a use would pose a substantial threat to the community. The same analysis was made by the Pennsylvania Commonwealth Court in the case of *Northampton Area Sch. Dist. v. E. Allen Twp.*, 824 A.2d 372 (2003).

Moreover, as stated by the Court in the *Cellco* case, the Pennsylvania Municipalities Planning Code imposes an obligation upon a Board to render Decisions that are consistent with its governing ordinances and applicable zoning procedures. The Board cannot absolve itself of its legal obligations under its Zoning Ordinance. See also *E.R. Linde Const. Corp. v. Lackawaxen Twp.*, 2006 Pa. Dist. & Cnty. Dec. LEXIS 342.

The applicant testified that it is agreeable to providing for a pitched roof for the equipment structure so as to provide for more design compatibility with other existing residential structures in the area. Additionally, the applicant offered to provide a painted surface to the proposed tower, or any other reasonable option requested by the Board as to the surface color of the tower by the Board, in order to provide the opportunity for the tower to blend into the background conditions as much as possible.

Lastly, the Board has noted that the application and plans (particularly Exhibit A-1) shows an antenna tower elevation of one hundred fifty feet from ground level with a proposed lightning rod on top of the tower which would provide for a total height of one hundred and sixty feet. The drawing number A-1, Tower Profile, Sheet 4 of 5 also indicates that the proposed antennas actually extend to a higher elevation than the proposed one hundred fifth foot monopole. Section F-6(c)[2][e] provides a maximum height of a tower shall be one hundred and fifty feet. The Board interprets this Section of the Zoning Ordinance to reflect that the tower includes the necessary and appurtenant antennas and the proposed lightning rod, and with no discussion by the applicant as to any need of variation from said maximum height, is of the opinion that the total height shall be no greater than one

hundred and fifty feet from ground level and that anything attached to the monopole as an appurtenant part of the monopole falls within said height limitation.

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, CELLCO PARTNERSHIP, d/b/a VERIZON WIRELESS, submitted evidence of its ability and standing to make application to the Hilltown Township Board of Supervisors for Conditional Use application with the submission of Exhibits A1-A11 all for the purpose of requesting Conditional Use permission to install a telecommunications tower and telecommunications building under and subject to the provisions of the Hilltown Township Zoning Ordinance Section 160-23.F6(c)(3).

2. CELLCO PARTNERSHIP, d/b/a VERIZON WIRELESS, as a provider of mobile telecommunication services, constitutes an F6 Utility use for purposes of the Hilltown Township Zoning Ordinance.

3. The Board is of the opinion that the Applicant has complied with all requirements of the Hilltown Township Zoning Ordinance regarding conditional uses in general and with the specific Section enumerated herein regarding the proposed use.

4. The Board finds the testimony of the representatives of the Applicant to be credible and in support of the fact that the proposed use is included and in conformity with the utility use definition and regulations of the Hilltown Township Zoning Ordinance.

5. The Board accepts the testimony of the representatives of the Applicant as to the design of the proposed equipment structure to provide for a design that is compatible with the residential surrounding structures; and shall provide for a pitched roof structure. Additionally, the Board accepts the testimony of the representatives of the Applicant that it will abide by the future desire of the Township at time of application for any building permit, to provide for a more compatible color to the proposed monopole either through paint or otherwise to provide for a more compatible blending of the color of the monopole and appurtenances to the surrounding background.

**CONCLUSIONS OF LAW**

1. Applicant's proposed use constitutes an F-6 utility use pursuant to the Hilltown Township Zoning Ordinance Section 160-23.F6(c)(3).

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 an F6 utility use as set forth within the Hilltown Township Zoning Ordinance and the general conditions for a Conditional Use application as further set forth within the said Ordinance.

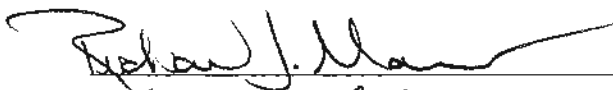
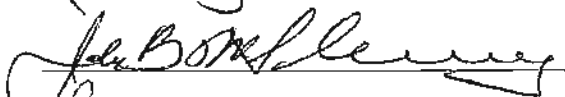
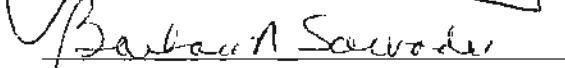
4. The Hilltown Township Board of Supervisors has the right to impose reasonable restrictions and conditions on its approval.

**ORDER**

**AND NOW**, this 11<sup>th</sup> day of June, 2007, the Board of Supervisors of Hilltown Township hereby grants Applicant's request for the Conditional Use subject to the following conditions:

1. The proposed telecommunications tower, including any proposed or future appurtenant attachments such as antennas and lightning rods, shall not exceed the height of one hundred fifty feet from ground level.
2. The telecommunications shelter shall have a pitched roof compatible with existing residential structures in the RR Zoning District in which the proposed use is proposed.
3. Applicant, at the time of submission of an application for a building permit, shall provide evidence of agreement to Hilltown Township that it will provide a color selection to the proposed monopole and all appurtenances proposed or future to be of a color as agreed to by the Township.
4. The applicant shall comply with all other requirements of the Hilltown Township Zoning Ordinance of 1995, as amended; and shall also comply with all of the requirements of the Hilltown Township Engineer's letter of May 15, 2007 (Exhibit T-4).

HILLTOWN TOWNSHIP  
BOARD OF SUPERVISORS

ht/07/Verizon Wireless/ConditionalUseDecision