BEFORE THE HILLTOWN TOWNSHIP
BOARD OF SUPERVISORS

APPLICATION OF
T-MOBILE NORTHEAST, LLC

The applicant, **T-MOBILE NORTHEAST, LLC,** has requested conditional use permission to establish a proposed F-6 use upon property owned by George C. Egly, Jr. and Eileen M. Braccio, Co-Trustees of the Nancy J. Egly Irrevocable Credit Shelter Trust upon Bucks County Tax Parcel No. 15-17-75-1 and more particularly identified as being located at 767 Minsi Trail within Hilltown Township, Bucks County, Pennsylvania. The proposed use is a request to mount nine (9) antennas upon an existing telecommunications tower at 125 feet above existing grade and to place audio and electronic equipment in a small compound at the base of the existing tower. The existing tower is owned by Crown Atlantic Company, LLC and is constructed to a height of 145.5 feet above existing grade; and contains cellular telecommunication antennas of other tenants. 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 Monday, March 26, 2007. Proof of Publication for the legal advertisement of said hearing is on file at the Hilltown Township administrative office.

Additionally, 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 on March 19, 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 the Applicant as being adjacent property owners. Further, the Board accepted into the record a copy of a February 12, 2007 review letter of the Hilltown Township Engineer, C. Robert Wynn Associates, Inc.; and also accepted into the record the applicant's application and exhibits A-1 through A-9 as well as a supplemental structural engineering report.

No visitors to the Hearing requested party status.

DISCUSSION

Pursuant to the Pennsylvania Municipalities Planning Code and the pertinent Sections of the Hilltown Township Zoning Ordinance, the Hilltown Township Board of Supervisors requested an offer of proof from the applicant's Attorney, William E. Benner, Esquire, as to the testimony that would be presented if the witnesses were to testify directly. The witnesses in attendance included Larry Washington and Philip Burtner. Both witnesses were sworn in; and both testified that the information presented in Exhibit form and the information presented by the offer of proof by Attorney Benner was accurate and presented what would have been their individual testimony if so given to the Board. The Hilltown Township

Supervisors present for the hearing included Chairman Richard J. Manfredi, John B. McIlhinney and Barbara Salvadore. Additionally, Francis X. Grabowski, Esquire, Hilltown Township Solicitor was present. The Applicant was represented by Attorney Benner.

At the hearing, multiple Exhibits were introduced by the Applicant; and the Board received the offer of proof from Attorney Benner as well as certain direct testimony from the applicant's representatives in response to questions from the Board. All of the Exhibits, including A-1 through A-9 (as supplemented by a structural report), the application and all of the hereinbefore referenced items were made a part of the formal record of this matter.

The Hilltown Township Board of Supervisors (the "Board") has reviewed the various legal cases in the Commonwealth of Pennsylvania; and has determined that a conditional use is one which the governing body has determined to be not adverse in and of itself. Under the Hilltown Township Zoning Ordinance, F-6 utilities are permitted as a conditional use in each zoning district with certain conditions as enunciated. The parcel of property subject to this hearing is currently 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 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. We are of the opinion that this has not occurred in this instance. Aesthetics, general fear and speculation do not constitute substantial evidence to indicate a substantial threat to the community. The applicant in this case has demonstrated compliance with the objective standards of our Ordinance; and has further demonstrated that the proposed use falls within the given category specified within the Ordinance.

The offer of proof by applicant indicated that there is an existing cellular telecommunications tower located upon the site and enjoys a height of 145.5 feet from existing grade. The existing tower is currently owned by Crown Atlantic, LLC; and applicant proposes to attach its nine (9) antennas at a height of 125 feet upon the tower from grade level. The telecommunications equipment would be located at the site of the existing tower. The Exhibits indicate and dealt with the issues of ownership, assignment of the lease, a structural analysis report, a Federal Communications Commission compliance report, documents and mapping concerning propagation coverage, a copy of a conditional use Decision dated September 9, 1996 issued by the Hilltown Township Board of Supervisors for the same site and the conditional use plans. The Exhibits, the offer of proof and the testimony of the representatives of the applicant indicated that the proposal meets the general provisions of the Hilltown Township Zoning Ordinance Sections and also is in conformity with the requirements of the Hilltown Township Engineer review letter of February 12, 2007.

As a result of the structural analysis of the existing transmission tower and further testimony given by Larry Washington and Philip Burtner, it appears that the requirements of compliance with the ability to withstand wind gusts have been met; and that in all other respects, the proposed conditional use application complies with the requirements of the Hilltown Township Zoning Ordinance.

Based upon the testimony, the offer of proof and the 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, T-MOBILE NORTHEAST, LLC, 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 through A9 all for the purpose of requesting conditional use permission to install nine (9) antennas to the existing telecommunications tower located at 767 Minsi Trail (Bucks County Tax Parcel No. 15-17-75-1) under and subject to the provisions of the Hilltown Township Zoning Ordinance Section 160-23.F6.

2. T-MOBILE NORTHEAST, LLC, 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.

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.

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 26th day of March, 2007, the Board of Supervisors of Hilltown Township hereby grants Applicant's request for the conditional use subject to the following conditions:

1. The nine (9) antennas proposed by applicant shall be attached at a height no greater than one hundred twenty five feet (125') on the existing tower located upon the parcel and currently owned by Crown Atlantic Company, LLC.

2. In accordance with Section 160-23.F(6)(d)[2] of the Hilltown Township Zoning Ordinance, design information associated with proposed equipment building shall be submitted to the Township to verify that the equipment, and/or building is at the minimum height necessary to house equipment of the facility.

3. In accordance with Section 160-23.F(6)(d)[8] of the Hilltown Township Zoning Ordinance, approval is hereby conditioned upon the agreement by applicant to promptly remove its facility should it cease to use such facilities for receiving a transferring telecommunications signals.

4. The proposed improvements have been determined to cause only a "de minimis" increase in stormwater runoff; and as a result, the applicant has offered a fee in lieu of stormwater management facilities in an amount as determined by the Hilltown Township Stormwater Management Ordinance and its regulations; and said fee shall be paid at the time of application for the appropriate zoning permits and building permits.

HILLTOWN TOWNSHIP
BOARD OF SUPERVISORS

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