



## PLANNING BOARD

P.O. Box 1305  
Littleton, Massachusetts 01460

### WIRELESS TELECOMMUNICATIONS TOWER AND FACILITY BYLAW SPECIAL PERMIT RECORD AND DECISION 7 NEW ESTATE ROAD/WESTLAWN CEMETERY

Monday, February 09, 2009

**APPLICATION:** SPECIAL PERMIT FOR WIRELESS  
TELECOMMUNICATIONS FACILITIES

**PROPERTY LOCATION:** 7 New Estate Road  
Map U-37, Parcel 1

**DESCRIPTION:** Application for installation, operation, and maintenance of a wireless telecommunications facility, including a 100-foot "flagpole type" monopole, antennas, coaxial cables, and radio communications equipment pursuant to MGL c 40A and Littleton Code Article XXI, Wireless Telecommunications Towers and Facilities, section 173- 28 through 173-133.

**APPLICANT:** Omnipoint Communications, Inc.  
a wholly owned subsidiary of T-Mobile USA, Inc.  
15 Commerce Way, Suite B  
Norton, MA 02776

**OWNER:** Littleton Board of Cemetery Commissioners  
7 New Estate Road  
Littleton, MA 01460

**DATES OF LEGAL NOTICES:** August 21 and 28, 2008

**DATES OF HEARING:** September 4, October 30, and November 20, 2008

**MEMBERS PRESENT:** Janet LaVigne, Steve Wheaton, Gregg S. Champney, Mark Montanari, and Richard Crowley

**REFERENCE PLANS:** "Littleton Cemetery 7 New Estate Road Littleton, MA Site No 4BS-0639-B" (5 Sheets); dated 7/24/08; prepared by EG Advanced Engineering Group, P.C. with the following sheets:

- T-1 Title Sheet
- C-1 Plot Plan, Site Plan & Notes
- Z-1 Site Plan & Locus Map
- Z-2 Elevation & Enlarged Site Plan (as last modified 11/19/08 and submitted to the Planning Board on 11/20/08)
- Z-3 Details

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**APPLICATION:** On August 6, 2008, the application, plans, supporting documentation and the application fee were submitted to the Planning Board. The Planning Board found that the application was substantially complete.

**HEARING:** Following proper notification, the Public Hearing was opened on Thursday, September 4, 2008 at the Littleton Town Office at which all those interested were given an opportunity to be heard. The Public Hearing was continued on Thursday, October 30, and to November 20. The Hearing was closed on November 20, 2008.

**FINDINGS:** Following the Public Hearing, the Planning Board, based on the application, and together with the materials and testimony provided at the hearing, made the following specific findings regarding the land in question and the proposed use:

**The location and the proposed tower**

This site is a 40-foot by 40-foot parcel, with accompanying access drive, located in Westlawn Cemetery. The site is municipal property and is in a residence zoning district. A wireless telecommunications tower and related facilities are allowed by special permit at this site.

This is the second site at which Omnipoint has attempted to address the affected coverage area in Littleton. Omnipoint previously attempted to address this coverage area with a facility on private land in a residence district, located at 169 King Street. Omnipoint was denied the zoning relief necessary to build at 169 King Street, and lodged appeals in United States District Court for the District of Massachusetts and in Land Court. In an attempt to resolve that litigation, the present site was made available to Omnipoint as an alternative to 169 King Street. This involved a lengthy municipal process involving the Cemetery Commissioners, the vote of the Annual Town Meeting to make the site available as the location of a wireless telecommunications facility, the public procurement process, and a Land Lease Agreement with the Town.

It appears that the site was not surveyed, however. When Omnipoint submitted its current application it appeared for the first time that the site did not allow compliance with Section 173-131.B.(4) (“[t]he base of all towers shall be no closer than three (300) hundred feet to a dwelling in a residential district”). The Board of Appeals granted a variance of this requirement on December 8, 2008. This variance has the effect of making Omnipoint eligible for the grant of a special permit despite its noncompliance with this particular requirement.

In addition, Omnipoint has proposed a tower of 120 feet in height. This height does not comply with Section 173-131.B.(5) (“[t]ower height shall not exceed 100 feet measured from the base of the tower to the highest point of the tower or its projection”). The Board of Appeals granted a variance of this requirement on December 8, 2008. This variance has the effect of making Omnipoint eligible for the grant of a special permit despite its noncompliance with this particular requirement.

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The 120-foot height is specified in the Land Lease Agreement with the Town. This height is intended to provide for co-location of two additional wireless services providers plus space for Town antennas. When the Land Lease Agreement was executed, however, it was not known that the base of the proposed tower would be within 300 feet of the nearest residential dwelling. Based on the proximity of this tower to the nearest residential dwelling, the fact that a 100-foot tall tower will address Omnipoint's coverage needs, and the fact that the tower is not needed at this time by any Town department, the Planning Board finds that a height of 120 feet is too high for this site and the grant of a special permit is only appropriate at a reduced height of 100 feet.

**Findings pursuant to Section 173-7.C**

*Criteria. Special permits shall only be granted if it appears to the special permit granting authority that no significant nuisance, hazard or congestion will be created and that there will be no substantial harm to the neighborhood or derogation from the intent of this chapter.*

The tower and its related facilities do not constitute a significant nuisance, and will not create significant hazard or congestion. The tower and its related facilities will comply with all applicable local, state and federal safety rules and regulations, and will generate approximately two vehicle trips per month for routine maintenance and inspection.

The tower and its related facilities will not cause substantial harm to the neighborhood or derogation from the intent of this chapter. This use is allowed by special permit on this property, and while the tower does not comply with the special permit requirements of Sections 173-131.B.(4) and (5), Omnipoint has obtained variances of these sections. In addition, the Planning Board has imposed a set of conditions that will mitigate the visual effects of the tower on the surrounding area.

**Findings pursuant to Section 173-131**

- A *The tower and its facilities shall be located in accordance with the Federal Communications Commission (FCC) and the Federal Aviation Administration (FAA) Regulations in effect at the time of construction. The operation of the Tower and its facilities shall comply with all requirements of these agencies during the entire period of operation.*

Omnipoint is licensed by the FCC to construct and operate a wireless telecommunications network. It provided satisfactory documentation and testimony that the tower and its facilities will not violate FCC or FAA regulations presently in effect, and that the operation of the Tower and its facilities will comply with applicable requirements during operation.

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- B.(1) *To the extent feasible all service providers shall co-locate on a single tower. Towers and accessory building shall be designed to structurally accommodate the maximum number of users.*

This tower, as conditioned below with a maximum height of 100 feet, will allow co-location of one additional wireless services provider. Given that this tower will be closer than 300 feet to the nearest dwelling in a residential district (Section 173-131.B(4)), the Planning Board finds this to be the maximum number of co-locators that may be accommodated at this site.

- B.(2) *New towers shall be considered only upon a finding by the Planning Board that existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower.*

There are no existing or approved towers within the affected coverage area that can accommodate the wireless telecommunications equipment to be located in this tower. Consideration of this new tower is therefore appropriate.

- B.(3) *If it is demonstrated to the satisfaction of the Planning Board that the siting of proposed facilities on municipal land, or within an existing church steeple is not feasible, then the towers and facilities shall be located on Industrial Land within five hundred (500) feet of a divided highway.*

This tower is located on municipal land. No such demonstration is required.

- B.(4) *The base of all towers shall be no closer than three (300) hundred feet to a dwelling in a residential district. Facilities shall comply with existing setback requirements.*

The base of this tower will be located approximately 230 feet from the nearest dwelling in a residential district, a difference of 70 feet. In a decision dated December 8, 2008, the Board of Appeals granted Omnipoint a variance of Section 173-131.B.(4). This variance has the effect of making Omnipoint eligible for a special permit despite noncompliance with this specific requirement.

The facility will comply with existing setback requirements.

- B.(5) *Tower height shall not exceed 100 feet measured from the base of the tower to the highest point of the tower or its projection.*

The proposed tower is 120 feet in height. In a decision dated December 8, 2008, the Board of Appeals granted Omnipoint a variance of Section 173-131.B.(5). This variance has the effect of making Omnipoint eligible for a special permit despite noncompliance with this specific requirement.

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- B.(6) *Fencing shall be provided to control access to the base of the tower which fencing shall be compatible with the scenic character of the Town and shall not be of barbed wire or razor wire.*

Omnipoint will provide chain link fence with (as conditioned below) grey-green screening slats. The fence will be completely surrounded by Arbor Vitae a minimum of 6 feet tall spaced no more than 4 feet apart and existing mature trees will be preserved to the satisfaction of the Planning Board. This fence will control access to the base of the tower, will be compatible with the scenic character of the Town, and will not be of barbed wire or razor wire.

- B.(7) *Access shall be provided to a tower site by a roadway which respects the natural terrain, does not appear as a scar on the landscape and is approved by the Planning Board and the Fire Chief to assure emergency access at all times. Consideration shall be given to design which minimizes erosion, construction on unstable soils and steep slopes.*

The access to be provided is consistent with the requirements of this section. The site will be accessed in part by using an existing paved roadway. Where new access is required, it will not be paved. The site plan for this site was reviewed and approved by the Fire Chief. The new access is not located on steep slope and requires minimal grading. The new access therefore minimizes erosion, construction on unstable soils, and steep slopes. The exact location of the new access will be determined in the field in order to preserve mature trees. As conditioned below, emergency access will be provided at all times

- B.(8) *The applicant shall demonstrate to the satisfaction of the Planning Board that the location of the tower is necessary and that the size and height is the minimum necessary for the purpose.*

The location of the tower is necessary. Omnipoint submitted coverage plans showing a need for service in this coverage area, and submitted traffic counts showing that a significant number of people travel through this coverage area every day. In addition, Omnipoint has previously been denied a special permit and a variance needed to build a tower at 169 King Street, which is private residential land within this same coverage area. After Omnipoint appealed those denials, it pursued this site as an alternative to 169 King Street, and participated in a lengthy municipal process in order to gain access. The Planning Board is aware of no alternative location that is less intrusive to the interests protected by the zoning bylaw.

The proposed height of 120 feet, however, is not the minimum necessary for Omnipoint's purpose. This height was chosen to allow co-location of two additional wireless services providers plus space for the Town's antennas. The Planning Board finds that 100 feet is the minimum height necessary for

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Omnipoint's purpose. Omnipoint provided a coverage map for 100 feet labeled "Figure 4: BS639/Littleton Cemetery—Proposed Coverage at 100ft" at the Public Hearing on November 20, 2008. This coverage map shows that Omnipoint can serve its coverage needs at 100 feet. At that Public Hearing, the attorney representing Omnipoint also stated that 100 feet meets the coverage objective.

- B.(9) *There shall be no signs, except for announcement signs, no trespassing signs and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall conform with the sign requirements of this bylaw.*

As conditioned below, there shall be no signs except for announcement signs, no trespassing signs and a sign giving a phone number where the owner can be reached on a 24-hour basis. These signs will comply with the sign requirements of the zoning bylaw.

- B.(10) *To the extent feasible all network interconnections from the communications site shall be installed underground.*

Omnipoint has provided for underground connections to the extent feasible. The utility connections to this facility are mainly underground.

- B.(11) *The tower shall minimize, to the extent feasible, adverse visual effect on the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, lighting standards and screening.*

The adverse visual effects of the tower have been minimized to the extent feasible. Omnipoint submitted the "Elevation and Enlarged Site Plan," last revised on November 19, 2008, showing that the tower and related facilities have been placed as far away from the nearest residential properties as the 40'x40' site allows. As conditioned below, the tower shall be reduced from 120 feet in height to 100 feet in height, and the fenced compound shall be reduced proportionally to eliminate the space allocated for the equipment of one co-locator and the Town. The tower will be painted brown-gray below the tree line and light blue above the tree canopy. In addition, Arbor Vitaes, minimum 6 to 8 feet tall and planted 4 feet on center, will be installed along the all sides of the fence, excluding the gate.

- B.(12) *Removal of Abandoned Towers and Facilities. Any tower or facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such tower and facility shall remove same within ninety (90) days of receipt of notice from the governing authority notifying the owner of such abandonment.*

*If such tower or facility is not removed within said ninety (90) days, the Town may cause such tower or facility to be removed at the owner's expense. If there are two*

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*or more users of a single tower, then this provision shall not become effective until all users cease using the tower.*

As conditioned below, the tower and facility shall be considered abandoned if not operated for a continuous 12-month period. If abandoned, the owner will be required to remove them within 90 days after receipt of notice.

**Additional findings**

1. The Board finds, pursuant to Section 173-133 D that the applicant demonstrated that no additional lighting of the tower would be required, and that the installation would comply with Mass. Department of Public Health and FCC regulations concerning radio frequency emissions.
2. The site will enhance cell phone service in the area.
3. The balloon test (visual demonstration) was conducted as requested by the Planning Board.
4. Battery back-up is to be provided to this site (no generator is proposed).
5. Emergency access is to be provided at all times.

**Federal Telecommunications Law**

This special permit application concerns a wireless telecommunications facility. In addition to the special permit requirements of the bylaw, the Planning Board considered whether denying Omnipoint's application would have had the effect of prohibiting the provision of personal wireless services within the meaning of the Telecommunications Act of 1996. On this topic, the Planning Board finds:

1. Omnipoint demonstrated the existence of a gap in its coverage in the area around this location. Specifically, Omnipoint submitted evidence that it lacks adequate coverage in a sizeable area surrounding the site, and that a significant number of people travel through this coverage area every day.
2. Omnipoint has already been denied the zoning relief necessary to build a facility on private residential land at 169 King Street, and the record discloses no alternative site that is less intrusive to the interests protected by the zoning bylaw.

**DECISION:** At the Board meeting of Thursday, February 5, 2009 Mr. Champney made a motion, seconded by Mr. Montanari, to **grant** the applicant a Wireless Telecommunication Special Permit as described herein with the following **conditions**:

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1. The operation of the tower and its appurtenant equipment shall comply with all applicable FAA and FCC regulations.
2. The height of the installation shall not exceed 100 feet, measured from the base of the tower to the highest point of the tower; only the “finial” shall be allowed to extend past the 100-foot limit.
3. The tower shall be equipped with flag-raising and lowering equipment to accommodate utilizing the tower as a working flag pole; a “finial” shall also be added.
4. The monopole shall be brown-gray in color at tree trunk height to match trees in the area and light blue above the canopy level to minimize visual impact.
5. To the extent feasible, the footprint of the fenced compound shall be reduced in size to eliminate the space proposed to be devoted to the equipment of one co-locator and the Town. This reduction shall be performed so as to keep the footprint of the fenced compound as far away as possible from the nearest residential properties.
6. Only the minimum amount of clearing necessary to accommodate the reduced compound area is allowed. Tree removal, tree crown pruning, ground clearing, and screening shall be subject to on-site review and approval by the Planning Board. The Planning Board must be notified 48 hours prior to these activities, with such notification including the day and time the clearing work will be done.
7. Grey-green slats shall be installed in the chain link fencing to screen the interior compound equipment such that no equipment can be seen through the fencing.
8. Arbor Vitaes, minimum 6 to 8 feet tall and planted 4 feet on center, shall be installed along all sides of the fence, excluding the gate.
9. There shall be a sign posted on the gate of the fenced compound providing emergency contact information, including a phone number where the owner can be reached on a 24-hour basis.
10. There shall be no signs at the site except for announcement signs, no trespassing signs, and the aforementioned emergency contact sign. These signs shall comply with the Town’s sign bylaw (Town of Littleton Article VIII, Section 173-34 through 172-41, inclusive).
11. Equipment within the fenced compound, including the raceway, shall be painted grey-brown in color.
12. Total noise at the 40-foot by 40-foot compound property line shall not exceed 50 dB.

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13. The applicant shall maintain the access roadway, including the pavers located between the gravel portion of the roadway and the existing pavement.
14. Access to the site shall be maintained at all times and under all weather conditions.
15. No lights shall be placed on this tower or at this site.
16. If the tower is not operative for a continuous period of twelve months, it shall be considered abandoned, and the owner shall remove it within 90 days of receipt of notice from the governing authority notifying the owner of such abandonment.
17. The applicant, prior to issuance of a building permit, shall submit a bond in the amount of \$30,000 for the removal of the tower, all equipment, and return of the site to the original grading.
18. If the antennas are not operative for a continuous period of twelve months, the antennas shall be considered abandoned, and the owner shall remove them within 90 days of receipt of notice from the governing authority notifying the owner of such abandonment.
19. The applicant, prior to issuance of a building permit, shall submit a bond in the amount of \$5000 for the removal of the antennas.
20. This Special Permit shall not become effective until this Special Permit is recorded at the Registry of Deeds.
21. This Special Permit shall expire in 5 years.

The Board voted 5 to 0 to **grant** the Special Permit with the above conditions.

Each Board member voted as follows:

|                           |            |
|---------------------------|------------|
| <b>Janet LaVigne</b>      | <b>AYE</b> |
| <b>Steve Wheaton</b>      | <b>AYE</b> |
| <b>Gregg S. Champney</b>  | <b>AYE</b> |
| <b>Mark Montanari</b>     | <b>AYE</b> |
| <b>Richard S. Crowley</b> | <b>AYE</b> |

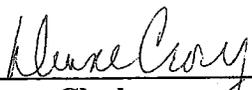
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**Appeals, if any, shall be made pursuant to Section 17 of Chapter 40A, Massachusetts G.L.,  
and shall be filed within 20 days after the date this decision is filed with Town Clerk.**

**Signed:**

**Date Filed with Town Clerk:** February 9, 2009

  
\_\_\_\_\_  
**Gregg S. Champney, Clerk**

  
\_\_\_\_\_  
**Town Clerk**

**TOWN CLERK CERTIFICATION:**

To Whom It May Concern:

I, Diane Crory, Clerk of the Town of Littleton hereby certify that twenty days have elapsed since the filing of this decision by the Planning Board for this Wireless Telecommunications Facility Special Permit and that no appeal concerning said decision has been filed, or that any appeal that has been filed has been dismissed or denied.

\_\_\_\_\_  
Town Clerk Diane Crory  
Littleton, Mass.

\_\_\_\_\_  
Date