

**BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Special Meeting
Of May 29, 2007**

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's special meeting held on **Tuesday, May 29, 2007**.

Chairman Scott Levy called the special meeting to order at 8:05 p.m. and declared that the meeting was being held in accordance with the Open Public Meeting Law.

Roll Call: Present were: Mr. Karas, Mr. Newman, Ms. Spindel, Mr. Sacchinelli, Mr. Diner, Mr. Meer and Mr. Levy.

Absent were: Mr. Charipper, Mr. Nakashian, Mr. Blecher and Mr. Salerno (Mr. Salerno recused himself).

Also in attendance were William Soukas, Board Attorney; Cheryl Bergailo, Board Planner; Dr. Bruce Eisenstein, RF Engineer for the Board; Karen Kocsis, Court Reporter; Ann Peck, Assistant Zoning Officer; and Carol LoPiccolo, Zoning Board Clerk.

Commercial Old Business:

1. Application #2006-100, Omnipoint Communication, Inc.
33-02 Morlot Avenue, Block 2410, Lot 49-56, Zone R-1-2
The proposed antenna flagpole requires a use variance as per Section 125-57.D.(d)[1] use variance.

Mr. Soukas stated proper notice has been served previously by the applicant and no new notice was required to be served to the public by the applicant for this meeting. This application has been carried since the previous meeting of March 1 and notice of tonight's meeting was on the Fair Lawn website and published in the newspaper.

Joseph O'Neill [attorney for the applicant] came forward. Mr. Warnett marked the revised site plan dated February 13, 2007 as **Exhibit A-10**. Mr. Warnett stated that the equipment cabinets have been relocated within the building and referred to Z-4 of the plan. The cables have been re-routed through the building and underground through the flagpole. The only thing visible from the outside would be the flagpole. The room is 11'x15' that would house the equipment cabinets.

Ms. Spindel asked if the flagpole is at the best location on the property. Mr. Warnett stated it is basically in the same location as the current flagpole and is about 40' from the equipment cabinets and could not get any closer to the cabinets.

Mr. Karas asked what is the height of the flagpole. Mr. Warnett stated the existing flagpole is 41' and the proposed would be 22' higher than that. Mr. Karas asked what will be the diameter of the monopole at the base. Mr. Warnett responded 24" at the bottom and 22" at the top. There will be 6 antennas in the pole. The amount of antennas is necessary to get the signal.

Mr. Newman asked what is the size of the flag itself. Mr. Warnett responded 12'x18'. Mr. Newman asked if the flag would be flown 24 hours a day. Mr. Warnett stated it would be lit so it could be flown 24 hours per day. Mr. Newman asked if there would be a noise of the flag flapping. Mr. Warnett did not think so. Mr. Newman asked about the light directed towards the flag. Mr. Warnett stated a new light would be a shielded directional floodlight and would have a 1' candle to the flag. It could be put on a switch to turn it on and off. Mr. Newman asked how bright would the light be at the base. Mr. Warnett stated it would be directed upwards and would not spread much light at the base. Mr. Newman asked if the homes would be effected by the light. Mr. Warnett stated at the base it would be 400 watt and would be shielded and there should not be any effect.

Mr. Sacchinelli asked how many flagpoles like this are in the area now. Mr. Warnett stated he did not have that information. Mr. Sacchinelli asked how many of these type of flagpoles are struck by lightning. Mr. Warnett stated there would be a ground rod outside of the building and did not know of any being hit by lightning. Mr. Sacchinelli felt the pole would be too high. Mr. O'Neill stated it would be built to the construction code.

Mr. Levy asked if Mr. Warnett was familiar with the water tower. Mr. Warnett stated he was and the water tower is higher than the flagpole. Mr. Levy stated that there are other things that are higher than the flagpole and would probably attract the lightning.

Ms. Bergailo was sworn in.

Ms. Bergailo felt there should be some plantings at the base of the flagpole and the lighting might be too much at the base and you would want to detract the eye from the base. Mr. O'Neill stated they would have to get the property owners' consent but Omnipoint has no objection to removing the light and/or the flag. The VFW would be responsible for the maintenance of the flag. The pole is a functioning flagpole and the flag could be taken down every night should the light be removed.

Mr. Levy opened the meeting to the public within 200'. The following members of the public came forward and were sworn in:

Michael Bodner, 8 Lafayette Place asked the height of the flagpole. Mr. Warnett responded it would be 60'. Mr. Bodner asked what is the height of the current flagpole. Mr. Warnett responded 40'. The height requirement for the zone is 30'.

Ms. Myrna Beck, 5-18 Estler Court, asked what the building coverage is and impervious coverage. Mr. O'Neill responded the building is 14.5%. 29.9% would be the impervious coverage. Ms. Beck asked if the building will support the weight of the equipment cabinets. Mr. Warnett stated the building will support the weight. The cabinets will weigh a total of 2,500 lbs. Ms. Beck asked if the plans were available to be viewed by the public. Mr. Levy stated the plans were available at the Zoning Office. Ms. Beck asked if the flagpole would interfere with the sight of traffic. Mr. Warnett stated it is not in the sight triangle. A 4' concrete pad sticking out about 8" would be the base of the triangle.

Doris Eis, 5-17 Philip Street, asked how strong is the pole going to be. Mr. Warnett stated the site is designed to meet the requirements of the construction code and EIA and TIA codes. Mr. Levy stated it would withstand normal occurrence of wind, rain, car accident, etc. as per the code.

Mr. Newman asked if the codes take into consideration a vehicle accident. Mr. Warnett stated there is no data.

Mr. Eddie Shemesh, 4-01 McKinley Street, stated he has not had a problem with service and does not feel there is a need for this monopole.

Monis Young, 36-19 Lindsay Road, asked if the pole is larger than a SUV tire. Mr. O'Neill responded no. Mr. Young asked if this is typical of a flagpole. Mr. Warnett stated yes for a stealth flagpole. Mr. Young felt this does not look like a flagpole. Mr. stated that if this were a residential home, would this application be here today. Mr. O'Neill would not answer a hypothetical question and stated the current use is a pre-existing use. Mr. Young asked if they were aware the water tower application was denied for this use. Mr. Levy stated that does not effect this application.

Mr. Joseph Kapon, 11 Sheridan Place, asked is the code the same for the pole as for a residential area and a rural area. Mr. Warnett responded the same BOCA code would be used and it does not differentiate between the rural area or residential area. Mr. Kapon asked if the Board would decide this code. Mr. O'Neill responded they would have to comply.

Mr. Harvey Rubenstein, 28 Rutgers Terrace, asked if the cables for the flagpole would be metal or rope. Mr. Warnett responded it would be a nylon rope. Mr. Rubenstein asked if there will be rungs on the flagpole for maintenance. Mr. Warnett responded no.

Mr. Levy asked if the pole would be located higher than the street curb. Mr. Warnett stated it would be slightly higher than the street curb. Mr. Levy asked if there is any signage. Mr. O'Neill stated there is a sign on the building.

Mr. Newman asked if the 60' flagpole is the actual measurement of the flagpole itself. Mr. O'Neill stated yes with another 2' for the gold ball and was measured from the center of the street. Mr. Warnett stated it is measured from the base of the pole from ground level and they do not have the measurement from the center of the street. Mr. Levy stated there is approximately a 1'-2' difference from the center of the street to the concrete pad.

Mr. Samuel Roznitsky, 34-14 Linwood Road, asked the diameter of the pole of the tower is 20" at the base, and at the top would be 22". Mr. Roznitsky asked how it is determined to have that diameter. Mr. Warnett stated it is dictated by the need of the size of the antennas. Mr. Roznitsky asked if the flag when there is no wind will it cover the area where the antenna is located. Mr. Warnett stated it might. Mr. Roznitsky asked if the rope for the flag will be on the inside or outside of the pole. Mr. Warnett stated it would be on the outside with support at the top and the bottom.

Mr. Fred Noy, 5-22 Esther Court, asked where is a list of other sites. Mr. O'Neill responded they could not provide a list as the facilities are not built yet.

Mr. Michael Bodner asked what is the size of the current flag. Mr. Warnett did not know. Mr. Bodner wanted to know the size to have a comparison of the existing and the proposed.

Ms. Myrna Beck asked if the flagpole is similar to the one at Path Mark and Kmart. Mr. Warnett was not familiar with that site.

Mr. Eugene Ritkov, 24 Esther Court, asked if there would be any changes to the structure of the building to support the equipment cabinets. Mr. Warnett previously stated no. Mr. Ritkov asked what is the distance to the closest house from the flagpole. Mr. O'Neill stated the closest property is across the street. Mr. Ritkov felt the closest structure is too close and there could be damage from the flagpole should it fall.

Craig Miller, 5 Ramapo Terrace, asked if lightning hits the pole, are there any water lines under the property and would those water lines be effected. Mr. Warnett stated they are exceeding the building code and the water lines would not be effected.

Mr. Levy closed the meeting to the public.

Dr. Bruce Eisenstein, [RF Engineer for the Board] was accepted as an expert and was sworn in. Syed Mujtaba [RF Engineer for the applicant] was qualified as an expert witness and was sworn in. Dr. Eisenstein stated he read the transcripts of 11/20/06 and 12/18/06 and asked for the Exhibits depicting the coverage for the proposed site.

Mr. Mujtaba depicted **Exhibit A-1** and showed where coverage was lacking in the area and where coverage would be if approval is granted. The coverage gap to be filled is approximately 1 mile around Rt. 208 and would provide in building coverage.

Dr. Eisenstein asked what is the power level. Mr. Mujtaba stated it is neg 76 and neg 84. Dr. Eisenstein asked if he is familiar with industry standards to justify in building coverage. Mr. Mujtaba stated that is within industry standards, but is not published within a code book. Dr. Eisenstein asked if that has been accepted by the Court as an acceptable level. Mr. O'Neill responded it has been, specifically in the Lakewood case.

Dr. Eisenstein stated that previous residents in the transcript stated that they have received coverage in those areas as depicted as not having coverage. Mr. Mujtaba responded that it is possible to make calls but it is not reliable. Mr. O'Neill stated that is at ground level, not inside a vehicle or a building. Dr. Eisenstein stated that if someone can make a call in those areas, what would the applicant respond to that. Mr. Mujtaba stated they could make a call but it may not be as clear of a call. Mr. O'Neill stated this is designed to work when not having the best circumstances such as weather, foliage, etc.

Dr. Eisenstein requested the Exhibits be done at both neg 95 and neg 85 to indicate the roll off. The Base Map Coverage Map showing 2 power levels was marked as **Exhibit A-11**. Coverage from the proposed site was marked as **Exhibit A-12**. Existing on air coverage was marked as **Exhibit A-13**. Mr. Penoso's letter dated 2/13/07 was marked as **Exhibit A-14**.

Dr. Eisenstein depicted the base map coverage map and there is a gap in coverage. There are parts of Route 208 and other areas in residential areas which is a significant gap. The proposed site fills the gap. The composite plot shows seamless coverage across the area. Mr. Mujtaba agreed with Dr. Eisenstein although did not agree with the power levels. Dr. Eisenstein stated that in building coverage it is not a good thing to get into because there are too many variables. Neg 85 is a good level. Dr. Eisenstein agreed with the Pinnacle Telecom report dated October 17, 2006.

Dr. Eisenstein talked about alternate sites and how far would the search ring go. Mr. Mujtaba described the area and where a location is suitable to locate an antenna to give the coverage needed. The diameter of the search ring is .2 mile. Dr. Eisenstein stated that the height of the antenna is not high at 60'.

Dr. Eisenstein asked if there were any other structures that could have been used. Mr. Mujtaba stated they approached the Middle School on Morlot Avenue but it is not available. Mr. O'Neill marked a letter from Joanne Kwasniewski dated 5/20/05 saying that the water tower is not available and was marked as **Exhibit A-15**. A letter from Omnipoint to Bruce Watson of the Board of Ed was marked as

Exhibit A-16. That letter was unanswered. These sites would be viable, but cannot be used.

Mr. Levy asked if the 60' pole gives adequate service, can someone within a building could still not have service. Mr. Mujtaba agreed. Mr. O'Neill stated they are seeking for 95% reliability. Dr. Eisenstein asked where that number of reliability came from and the reliability should be 98%. Dr. Eisenstein stated that with wireless there is the probability with the working of a product goes up with the stronger the signal is.

Mr. Levy asked if the 76 and 84 is the standard used by T-Mobile - is that below the standard of the industry. Mr. O'Neill stated Mr. Mujtaba said that there are different levels when you are outside, inside a car, inside a building.

Mr. Levy asked if the Lakewood case lowers the numbers. Mr. O'Neill read from N.J. Super. 252 Lakewood. Mr. O'Neill stated the ranges need to be measured and there are industry standards as to how the networks work and the Court said you need to rely on expert testimony. Dr. Eisenstein stated that in his opinion that neg 85 is an appropriate coverage. Anything less than that would give them a better signal at neg 76, and the Board could grant them that, but they do not need it. Dr. Eisenstein stated that the higher power level refers to the distance from the antenna and the higher the level the weaker the signal.

Mr. Levy asked if the flagpole was lower and a higher energy - what would that be. Dr. Eisenstein stated that it is irrelevant. A mobile phone has to be able to reach the antenna site and this design works. You can't raise the power of the phone, because it would effect the size of the phone and the battery life would be shorter. Providers have to provide a signal that would work on any phone as per FCC regulations. You want to keep the power down at the pole. You can't lower the pole because it will block the network from working.

Mr. Levy asked if the Morlot Ave. cloverleaf at Route 208 would be better suitable. Mr. Mutaba stated it is outside the search ring and would not be able to connect the sites. It is .3 miles to an existing site and it coverage would be duplicated. Dr. Eisenstein stated that is not recommended because then the call would be dropped. A little bit of overlap is what is needed.

Mr. Newman stated that there is a significant gap in coverage and they meet the criteria for a gap in coverage. Dr. Eisenstein stated the proposed site fills the gap. Mr. Newman asked if they need to demonstrate a gap in coverage in their frequency or all frequencies. Dr. Eisenstein stated each one of the providers have to apply for their spectrum and then provide the coverage as dictated by the FCC. No one else has T-Mobile frequencies. Mr. Newman asked does the coverage have to be just for T-Mobile or for all carriers to be a gap in coverage. Mr. O'Neill stated that would be discrimination against a carrier if another carrier has coverage and feels that would suffice. Dr. Eisenstein stated that a gap for the user

of a customer of T-Mobile has a gap in coverage even though another carrier may not. Dr. Eisenstein stated that there is close to 1 mile of a gap coverage on Route 208.

Mr. Newman asked what the direction would the school be to the proposed site. Dr. Eisenstein stated it is to the east. Mr. Newman asked if the Board of Ed site would be suitable as well. Dr. Eisenstein stated it would be suitable. Mr. O'Neill stated that is irrelevant since the site is not available.

Mr. Soukas asked if that was the extent of the letter to determine the availability of the site. Mr. O'Neill marked as **Exhibit A-17** an e-mail sent by Richard Konner to the Board of Ed to seek availability with no response which would indicate that they are not interested.

Mr. Karas asked the 208 cloverleaf would not be appropriate since it would provide double coverage. Dr. Eisenstein stated it would be in the coverage area and would not work. Mr. Karas asked if power lines generate electro magnetic waves. Dr. Eisenstein responded yes, but that is a different form of a wave that is used for a cellular device. Dr. Eisenstein talked about the difference of the power watts compared to that of a cellular device.

Ms. Spindel asked if this is inherently beneficial. Dr. Eisenstein stated that the courts have decided that although it is not inherently beneficial the Zoning Board should look at it as being inherently beneficial and it serves the public good.

Ms. Spindel asked if there is any other design that would be better suited for the area. Dr. Eisenstein stated it is a design issue and he has seen windmills, clock towers, silos, flagless flagpoles, pine tree designs, etc. Dr. Eisenstein stated a simple pole without a flag is less obtrusive.

Mr. Newman asked if the area of the water tower was the first choice to locate a site. Mr. O'Neill stated that was previously testified to. Mr. O'Neill stated the Borough had the water tower as one of the sites for a commercial antenna zone and then revoked that zone and that would require a use variance. Mr. O'Neill read Ms. Kwasniewski's letter where the Borough rejected the water tower as a site. Mr. Newman asked if other options were presented such as a pole on the site. Mr. Levy stated the whole site is not an option whether it were to go on top of the water tower or on the site itself.

Mr. Levy opened the meeting to the public within 200' and the general public.

Myrna Beck, stated there are 3 approved sites within the Borough and could an antenna be made larger which would give more extensive coverage. Mr. O'Neill stated no. Dr. Eisenstein agreed with Mr. O'Neill. Ms. Beck asked if T-Mobile is located on Banta Place and Morlot Avenue. Dr. Eisenstein stated they are already there. Ms. Beck stated that the T-Mobile website shows where there is lack of

coverage. Ms. Beck showed a print out of a coverage map from the website. Mr. O'Neill had Ms. Beck read from the print out where the map may change and does not include in building and in vehicle coverage.

Fred Noy, asked if they can sell service to another company. Mr. O'Neill stated they have their own signal and can not look into another company. Mr. O'Neill stated they can co-locate but not share the same antenna. Dr. Eisenstein agreed that they cannot share the antenna.

Mr. Michael Bodner, asked how far is it to the existing tower to the west. Dr. Eisenstein stated it is about 3/4 mile and to the east it is 1 1/2 mile. Mr. Bodner asked if there was a site further to the east would that be better. Dr. Eisenstein stated if everything was equal, they would be better served to the east. Mr. Bodner asked what a search ring is. Dr. Eisenstein described the search ring which is something that tells the carrier where potential sites are needed.

Mr. Levy asked if the area to the east has been researched. Mr. O'Neill stated that the area is residential in nature and the only area that is willing to negotiate with the applicant is the V.F.W.

Mr. Harvey Rubenstein asked if Dr. Eisenstein is familiar with a company that uses repeater sites. Dr. Eisenstein stated that could be used where there is a gap in coverage, but is not appropriate for this area and is only used in extreme rural areas.

Mr. Rozitsky, 34-14 Linwood Road, asked if the expert testifies that the Pinnacle Telecom report is correct. Mr. Levy stated that Dr. Eisenstein has agreed with that report. Mr. Rozitsky asked if the report deals with the exposure level to people according to FCC requirements. Mr. Levy stated that it was previously testified that they fall within FCC requirements. Mr. Rozitsky referred to the diagram that shows the antenna to a person as 6.6'. Dr. Eisenstein stated that they take a person who is 6.6' tall to measure the radiation which measures a worst case scenario. Mr. O'Neill stated they are well within FCC regulations. Mr. Rozitsky stated that on page 6 referring to a diagram of a pattern of emissions and is that typical. Dr. Eisenstein stated that is the exact model that will be used. Mr. Rozitsky felt the antenna will effect someone on the ground. Mr. Rozitsky stated he is an RF Engineer with an MSEE degree from Kaunas Polytechnic Institute in Lithuania, an MBA degree from Rutgers University and 30 years experience in Radar Industry. Mr. O'Neill asked what companies did Mr. Rozitsky work. Mr. Rozitsky worked for MRI in Long Island in 1986-1989. Mr. Newman disagreed with the testimony of Mr. Rozitsky and he should not be accepted as an RF Engineer and should only be asking questions as a resident.

Mr. Soukas stated that Mr. O'Neill stands by the report offered and Dr. Eisenstein has agreed with the report and a resident cannot assail the report itself. Dr. Eisenstein stated that the report states it is 250 times below the lowest level and

differences in the report would not even change the calculation. The calculations in the report are standard and anything Mr. Rozitsky could offer would not change the outcome of the report and this applicant is in compliance with FCC rules and they will only purchase FCC equipment. Mr. Rozitsky stated he disagreed with the report.

Mr. O'Neill formally objected to Mr. Rozitsky as being accepted as an expert.

Mr. Joseph Kapon, 11 Sheridan Place, asked Mr. Majtabya to depict the map showing the coverage. Mr. Kapon asked if service is there, why does the service have to be enhanced. Dr. Eisenstein stated that 50% of the time it is better and 50% it is worse. The design level is done under worse case scenarios and under emergencies is when the cell phone is needed most.

Michael Bodner asked how many people are in the gap area. Mr. O'Neill stated it is not designed for people but for coverage. Mr. Bodner felt that a lot of people would be effected by this coverage.

Myrna Beck asked if the drop calls statistics on Route 208 were ever submitted. Mr. O'Neill responded that is not relevant to this application.

Russ Mench, 30-11 Gordon Place asked if Dr. Eisenstein is familiar with the area. Dr. Eisenstein stated he has seen the site but is not familiar with the area. Mr. Mench asked if putting a 60' flagpole meets the characteristic of the neighborhood. Mr. Levy stated that is a planning question. Mr. O'Neill stated they will have to bring back their planner.

Monice Young, 36-19 Lindsay Road, asked how many cell towers are in Fair Lawn. Dr. Eisenstein thought it would be 3. Mr. Young felt the coverage is fine in the area. Mr. Young asked if Dr. Eisenstein has ever testified for any cell phone companies. Dr. Eisenstein stated no. Mr. Young asked for a list for all cell phone towers. Ms. Peck stated he could file an OPRAH form and it would have to be researched. Mr. Young felt the residents should have an expert to represent them. Mr. Young asked if an antenna was put on 208 and drop the one on Plaza Road, would that cover the entire area. Mr. Montabya stated there is already coverage there and it would open up other gaps. Mr. Young asked if it is possible to put a stronger antenna on Route 208 to cover all of Fair Lawn. Mr. Montabya responded no. Mr. Young asked is there a stronger technology that could be used so that only 1 antenna could be used. Mr. Montabya stated no.

Mr. Newman asked Dr. Eisenstein what would happen if an antenna were put on Route 208 and the one on Plaza Road. Dr. Eisenstein referred to **Exhibit A-11** and then there would be a different gap in coverage to the north and northeast.

Mr. Levy closed the meeting to the public.

Mr. O'Neill requested to be carried to a special meeting date of June 7 and waived the time requirements for the Board to act. Dr. Eisenstein would not be required to attend.

Adjourn

Mr. Newman made a motion to adjourn this meeting. Mr. Sacchinelli seconded the motion.

VOTE: All Present – Yes.

TIME: 11:40 p.m.

Respectfully submitted,

Carol LoPiccolo
Zoning Board Clerk