BOROUGH OF FAIR LAWN
ZONING BOARD OF ADJUSTMENT
Special Meeting
of June 7, 2007

Following are the minutes of the Fair Lawn Zoning Board of Adjustment's special meeting held on **Thursday, June 7, 2007**.

Chairman Scott Levy called the special meeting to order at 7:45 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. Nakashian, Mr. Newman, Ms. Spindel, Mr. Sacchinelli, Mr. Diner, Mr. Meer and Mr. Levy.

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

Also in attendance were William Soukas, Board Attorney; Cheryl Bergailo, Board Planner; Karen Kocsis, Court Reporter; 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.

   Joseph O'Neill [attorney for the applicant] came forward along with Mr. Timothy Kronk [applicant's planner].

   Mr. Kronk stated that the stealth monopole would total 62' in height with 6 antennas inside. The original application had a 4'x17' slab and enclosure on the outside of the building and those plans have been modified to put the equipment inside the building. The cables route down the flagpole and will then be underground to the interior of the building and there will be no cables visible on the outside of the building.

   Revision to Exhibit A-6 which depicted a photo of a view of the base of the compound now not showing the equipment cabinets was marked as **Exhibit A-18.**

   Exhibit A-19 was marked as a photo of a balloon test done of existing conditions and a computer simulation photo.

   Exhibit A-20 was marked of 2 photos of the intersection of Esther Court and Morlot Avenue.

   Mr. Kronk referred to Exhibit A-9 of photos from a flagpole from Randolph, New Jersey.

Exhibit A-21 was marked of 2 photos of a 100' flagpole being 24" in diameter of an installation done in Elmwood Park, NJ taken May 16, 2006. The flagpole is 70' to the closest residence. Mr. Soukas asked how far the flagpole was from the building shown in the photograph. Mr. Kronk thought approximately 300' from the flagpole, but the closest building was 70'.

Exhibit A-22 was marked of a replica of Exhibit A-7 of a computer simulation depicting a view looking southwest from the property which showed the water tower in the background. Mr. Kronk stated that the lighting is required to be used to be shown on the flag as required by U.S. Code. The existing flag size that the V.F.W. currently has would be out of proportion to the flagpole. Mr. Kronk checked with flag manufacturers to verify what size flag would be needed with a 60' pole and the recommendation is a 12'x18' flag. Mr. Kronk stated that there would be no detriment to this flagpole.

Mr. Kronk stated that this is in a R-1-2 zone and the applicant has used all of the CA Zones in the municipality and there is a gap in coverage and this is needed. The fact that the carrier does promote the general welfare even though it is not recognized as an inherently beneficial use. There are coverage deficiencies as previously testified by the RF Engineer. The zone map Exhibit A-3 shows the T-Mobile search ring. The VFW property is a non-residential use even though it is in a residential zone. There is the water tower and the school which are not viable sites. The carrier always does want to use an existing structure such as the water tower which was the carrier's first choice but that was not available. Mr Kronk felt they met the requirements of a D-1 and D-6 variance. There would be no impact on traffic and would not cause any detriment to the area. Mr. Kronk stated the Board could impose reasonable conditions in the resolution. The installation started with the equipment cabinets outside and has since been moved inside. The only visibility would be the flagpole itself. Mr. Kronk felt the applicant tried to eliminate all negative aspects of this application and the flagpole is appropriate for this type of installation. Mr. Kronk felt the applicant met the SICA balancing test and this type of flagpole is the smallest that has been proposed. The visibility of the flagpole against the installation of the antenna does not cause a detriment.

Ms. Spindel asked if the VFW wanted to put up a 60' flagpole without the antennas would it have to be that high. Mr. Kronk responded no. Ms. Spindel asked if Mr. Kronk could address real estate values. Mr. Kronk stated he is not a real estate broker and could not address that.

Mr. Levy asked if this would be a detriment to the residential area. Mr. Kronk stated that under the SICA balancing test this is not a detriment.

Mr. O'Neill stated that the only negative previously testified by Mr. Kronk was that you could see it.

Mr. Nakashian asked how many feet is the proposed flagpole away from the water tower. Mr. Kronk referred to Exhibit A-4 and stated the flagpole is 220' from the water tower. The water tower is approximately 70' across the diameter. Mr. Nakashian asked if the antennas could be miniaturized. Mr. Kronk stated they are miniaturized already.

Mr. Karas asked if the VFW property is a nonconforming use. Mr. Kronk responded yes. Mr. Karas asked about Exhibit A-18 of the revision of the equipment cabinets being removed that shows a telephone pole and asked the diameter of the telephone pole. Mr. Kronk responded that he did not know. Mr. Karas asked the diameter of the current flagpole. Mr. Kronk did not know. Mr. Newman stated he measured the telephone pole today and it is 5". Mr. Karas asked if the current flagpole is 40' in height. Mr. Kronk did not know. Mr. Levy stated the proposed flagpole is substantially higher and wider than what is existing. Mr. O'Neill stated the current flagpole is 40' in height.

Mr. Levy asked if this flagpole is intensifying the nonconforming use. Mr. Kronk stated no and is a separate nonconforming use for the zone. Mr. Levy asked about the aesthetics. Mr. Kronk stated that the type of installation is sensitive to the area and would be concealed, as it is a lot less obtrusive by this design of a flagpole. Mr. Levy asked if the view shed throughout the entire area. Mr. Kronk referred to Exhibit A-5, 6, 7 & 8 and felt the 60' height is in line with the trees in the area and the view shed will quickly drop off. The water tower is much more obtrusive. The 2 photos of Morlot Ave. are 250' away from the tower, due to the minimum of the height of the pole, the visibility drops off rather quick and does not have a mile long view shed. The vertical structure of 60' is just above the trees and the utility poles are 40' and this is a minimal visual intrusion and the water tower would be noticed before the flagpole would.

Mr. Levy asked what is the combined impact of the water tower and flagpole. Mr. Kronk stated they would love to go on the water tower but can't and now there would be another structure in the area, but still that structure does not rise to the detriment level. Mr. Kronk stated he performed the balloon test and drove along Route 208. Mr. Levy asked during the wintertime, when the trees have lost their leaves, what would the impact be. Mr. Kronk responded that some of the pictures were taken in January in a worst-case scenario and it still does not have a negative impact.

Mr. Levy stated the picture of Randolph that showed the pole over houses in the area and asked about the character of the neighborhood of Randolph in comparison to this. Mr. Kronk stated he did not show that picture to compare the 2 neighborhoods, but to show the flagpole that was built in a residential area as requested by the Board.

Mr. Karas thought the telephone pole was not 40' and wanted Mr. Kronk to compare the telephone pole to the proposed flagpole. Mr. Kronk estimated that

the telephone pole is 40', which is typical for a residential area. Exhibit A-22 shows the utility pole at 40'.

Mr. Meer asked if the technology down the road, if such a high pole is not needed, would it be lowered. Mr. O'Neill stated that is speculative.

Mr. Newman asked how many stealth flagpoles has Mr. Kronk been involved in. Mr. Kronk responded 10-15. Mr. Newman asked with those applications, has there been questions regarding the height of a proposed flagpole with a current flagpole. Mr. Kronk responded sometimes it comes up and sometimes it does not. Mr. Kronk thought maybe half of those applications had a flagpole that was being replaced with a stealth flagpole. Mr. Newman stated that how the current flagpole compares to the proposed flagpole and asked when doing the balloon test is the height programmed to go to 60'. Mr. Kronk stated it is a very accurate way to determine height. Mr. Newman asked if that method could have been used to determine the height of the current flagpole. Mr. Kronk responded it could have been done. Mr. O'Neill stated that the Engineer gave testimony to the height of the current flagpole and that is what they will rely on.

Mr. Newman stated that utility poles are far smaller in diameter than what is proposed. Mr. Newman asked if it is usual for owners of residential lots to erect 60' flagpoles. Mr. Kronk responded that he has not handled any applications for such. Mr. Newman asked if you would find a 60' flagpole in a residential area. Mr. Kronk responded that it is typical in a commercial area and this is an attempt in complying with the third step in the SICA balancing test. Mr. Newman asked if a 60' flagpole has ever been seen in a residential area. Mr. Kronk did not analyze that.

Mr. Newman asked what would the typical diameter of a flagpole only be. Mr. O'Neill stated that the applicant is not testifying to a flagpole, but a stealth flagpole and the application is for a cellular device. Mr. Newman felt a fair representation has not been made to the SICA balancing test. Mr. Newman felt the fully negative impact has not been fairly represented. Mr. O'Neill stated that they could not build a pole to represent the construction and the only method that could be used is that of photos. Mr. Newman wanted a scale model of the current flagpole, existing building and the proposed flagpole so the Board could fully visualize the impact of the proposed flagpole. Mr. Charipper felt the questioning by Mr. Newman could be construed as testimony. Mr. Kronk stated that the photo simulations are very accurate, and it accurately depicts on how the structure would be viewed and is far more accurate than a scale model would be.

Mr. Levy asked if this method has been used on other cases. Mr. Kronk responded yes with the digital camera that is most accurate to the human eye. Mr. Levy asked if these methods are standard in the industry. Mr. Kronk responded yes due to the technology of the balloon test.

Mr. Newman asked if there would be a visual impact of a scale model. Mr. O'Neill responded no.

Mr. Newman asked about the search ring of Exhibit A-3 and if the search ring included the school. Mr. Kronk stated it comes up to the school, but does not include it. Mr. Newman asked why hasn't the School Board been contacted. Mr. O'Neill stated they attempted contact and received no response and did not attempt again. Mr. Soukas asked if the school were interested, would it be a good site. Mr. O'Neill could not answer if it would be a good site, but a site that they would look at.

Mr. Newman stated there was prior testimony that the school was considered and it was outside the search ring, so why were they contacted. Mr. O'Neill stated the professional is not here and could not answer.

Mr. Levy asked which would be a better location, the school or the VFW. Mr. Kronk stated from a planning perspective he did not analyze the school and was not comfortable in answering the question. Mr. Levy asked if the property is similar. Mr. Kronk responded yes. Mr. Kronk stated the search ring is based on 60' in height and if you go outside the search ring there may be additional height that would be required.

Mr. Newman asked if the search ring covers the property on both sides of Route 208. Mr. Kronk responded yes. Mr. Newman asked if any consideration was given to the stealth tower along Route 208. Mr. O'Neill stated previous testimony was already given to that location. Mr. Levy stated the location of the tower was chosen due to the RF Engineer and this site is the optimum location to provide the coverage needed. Mr. Levy stated there was testimony that along Route 208 it was not looked at as a viable site. Mr. Newman disagreed that that testimony was given.

Mr. Charipper asked if the applicant did not follow up with the school. Mr. O'Neill stated the documents that were provided show the representation that an attempt was made with both the school and the water tower.

Mr. Newman asked if the use is considered a commercial use in a residential zone. Mr. Kronk responded yes. Mr. Newman stated that currently there is a structure of the VFW, which is a considered a nonconforming use and if approved there would be 2 nonconforming uses on the property. Mr. Newman asked if the VFW were to sell the property what would happen to the Master Plan - would it have to revert to a residential use. Mr. Levy stated it is a speculative question. Mr. O'Neill stated that the VFW is not changing and is not permitted and they have done no research to the pre-existing nonconforming use. Mr. Newman stated it is in a residential zone and how putting a 60' stealth tower is different than putting it on another home. Ms. Bergailo stated there would be no difference, as it would still require a use variance. Ms. Bergailo stated the Master

Plan was done in 1992, which was before the proliferation of cell towers, and the Master Plan was revised in 2004 and does not address cell towers much. Ms. Bergailo stated that because the VFW is not a residential use the stealth monopole would fit better with the VFW than with a home. Mr. Newman asked if the VFW is residential looking in appearance. Ms. Bergailo did not think so and thought it looked office like.

Mr. Sacchinelli asked the distance from the pole to the sidewalk. Mr. Kronk stated that testimony was given by the engineer. Mr. O'Neill stated the distance to the property line as previously testified is 29.5'. Mr. Sacchinelli asked how many flagpole/antennas have been installed within high voltage wires. Mr. O'Neill objected to the question to Mr. Kronk testifying on other applications.

Mr. Sacchinelli asked how appropriate is this pole to be close to the sidewalks and the surrounding structures. Mr. Kronk stated that the current property has a flagpole and what is proposed is a concealment of a telecommunications use and this has the minimum of bulk and appearance and fits in with the area. Mr. Sacchinelli stated there could be a potential problem with the proposed flagpole should it come down. Mr. O'Neill stated it would be built to code. Mr. Levy stated that the engineer previously testified it would be built to code and precautions are taken.

Mr. Levy asked if Mr. Kronk were familiar with the traffic on Morlot Avenue. Mr. Kronk stated yes and this would have not impact. Mr. O'Neill felt Mr. Kronk could not answer this question, as he is not a traffic engineer. Mr. Kronk stated structures are built to sustain wind and environmental conditions and the engineers will meet the building codes and the companies building them know what they are doing and this is not something new.

Mr. Newman read from Ordinance Section 125-29A.

A recess was taken at 9:40 p.m. The meeting resumed at 9:50 p.m. and roll call was taken and all members earlier called were present.

Ms. Bergailo asked what color is the flagpole. Mr. Kronk stated the flagpole proposed is white, but they could change it. Ms. Bergailo asked what the least obtrusive color would be. Mr. Kronk stated when they are trying to blend in with vegetation without a flag it would be brown or bronze. With a flag, white is the best color and the legs of the water tank are white and the flagpole would blend in better with the water tank. Ms. Bergailo asked the status of discussions regarding the landscaping. Ms. Bergailo thought landscaping should be added around the building at the corner to hide the meters. Mr. O'Neill agreed to that condition. Ms. Bergailo asked if the flag would stay up 24 hours per day. Mr. Kronk stated it would and that is the requirement for the lighting. Mr. Kronk stated it would be shown on the flag only and not on the pole.

Ms. Bergailo asked if there would be an emergency generator. Mr. Kronk responded no.

Ms. Bergailo asked on the site plan that the building coverage and impervious coverage is incorrect and the existing is 83% where 35% is permitted and building coverage is 20% where 25% is required.

Ms. Bergailo commented that the Board has to consider the negative criteria on the neighborhood. The primary impact is to the immediate neighborhood. The neighborhood is host to a multitude of uses. The neighborhood has the water tower, the VFW, which is an intense use of the property. This proposal adds another use to a site. Also there is a school. In terms of aesthetics, the neighborhood lives with an enormous water tower, there is a layering of impact and has to be considered and whether this site is suitable to the use. The site solves the applicant's problem, but is the impact on the neighborhood greater than the use being proposed. The design speeds of the roadway should be considered. Ms. Bergailo stated there is a growing accumulation of non-residential uses.

Mr. Newman asked how this relates to Ordinance 125-295B. Ms. Bergailo responded the zoning of the property is single family residential use. The purpose of zoning is to protect private property values and set forth a scheme where everyone does the same thing. People rely on zoning when they move into an area. The standardized height in this area is 30' and the height proposed is 62'.

Mr. Newman asked if this layered effect increasing the impact in the neighborhood - could it effect the property values. Ms. Bergailo stated the more non-residential uses that are added to a neighborhood, the more non-residential it becomes. Ms. Bergailo could not testify to the property values.

Mr. Newman asked if the entire search ring is in the residential neighborhood and in terms of the impact to the neighborhood, is the proposed a more substantial detriment to the neighborhood than along Rte. 208. Ms. Bergailo stated that she could only look at this site. Mr. Newman asked if there are other areas that would be better suited. Ms. Bergailo stated the proposed site is small and they are limited - the Board of Ed site is much larger and there are more options as to where it could be located. Mr. Newman asked if certain municipalities require setbacks for this type of use. Ms. Bergailo stated yes and that in Wall Township there is a pending case that the distance setback must be at least the height of the tower so should it fall, it doesn't fall on another structure. Ms. Bergailo stated the impact of a monopole on Route 208 would be less obtrusive as it is a faster roadway and less time for visibility.

Mr. Newman referred to Section 125-295(a) of the Ordinance. Ms. Bergailo was not sure if that section refers to a pole being on a structure.

Mr. Charipper asked if the applicant has met the SICA balancing test. Ms. Bergailo stated she has concerns over non-residential uses on the neighborhood and the visual impact on the stealth impact with the existing impact of the water tower and the impact of the VFW hall itself.

Mr. Soukas asked if the size of the 12'x18' flag - is there any noise that could be addressed. Mr. O'Neill stated there would be no difference in the impact of the size of the flag. Ms. Bergailo stated that she has no knowledge of large flags of noise. Ms. Bergailo stated if the rope were not properly secured, it would cause a clanking noise.

Ms. Bergailo thought it might be better if there would be no flag so there would be no need for a light and noise would not be an issue. Mr. O'Neill stated they could operate it without a flag, but the VFW wants the flag. Mr. O'Neill asked if a 12'x18' flag would make more noise than a standard flag. Ms. Bergailo thought it would. Mr. Newman asked if 60' flagpoles are seen in residential zones. Ms. Bergailo stated that the type of 60' flagpoles are usually seen in a commercial area.

Ms. Spindel asked if the average driver does not look up, and usually would a person look up at 60' and would notice it more the farther you are away. Ms. Bergailo agreed. Ms. Spindel asked if the size of the flag is dictated by the height of the pole and is in proportion. Ms. Bergailo was not sure.

Mr. Newman asked if the diameter and mass impact and if Ms. Bergailo is aware of structures in residential areas that are 22" in diameter. Ms. Bergailo stated sometimes you will see water towers in residential zones, billboards, water sheds, but there is not usually something in that diameter.

Mr. O'Neill asked what the negative impact is with the layering impact. Ms. Bergailo felt there is a visual impact of the structure and the addition of another non-residential use to the neighborhood that tends to effect the character of the neighborhood. Mr. O'Neill asked if the water tank were removed, would it then be more appropriate. Ms. Bergailo stated that is speculative. Mr. O'Neill asked if there were any other negative impacts. Ms. Bergailo stated no. Mr. O'Neill asked if the current flagpole has a light. Ms. Bergailo responded yes as previously testified by the applicant. Mr. O'Neill asked if the difference between the current flagpole and the proposed flagpole in conjunction with the water tower. Ms. Bergailo stated the proposed flagpole presents a visual impact greater than the current flagpole.

Mr. O'Neill asked if the hypothetical questions of other locations such as 208 and the school would the stealth flagpole be a permitted use there. Ms. Bergailo responded no.

Ms. Bergailo again stated that residents rely on zoning when purchasing a property. Mr. O'Neill asked if the people rely on the existence of the VFW when they purchased their home. Ms. Bergailo stated that in zoning you rely on a zoning map and people could have purchased their home and saw the VFW, but do not expect a monopole.

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

Stephen Zoili, 36-01 Lenox Drive, asked if the camera used by Mr. Kronk is accurate, or is there a disparity. Mr. Kronk stated it is accurate. Mr. Zoili asked if Omnipoint could increase the height at a later time. Mr. Levy stated they would then have to come back before the Board.

Joseph Kapon, 11 Sheridan Place, asked the pole in Elmwood Park - what is the distance. Mr. Kronk stated it is 70' to the closest residential building. Mr. Kapon stated there is no specific requirement to measure the size of the flag. Mr. Kronk referred to the U.S. flag code, which does not specify what size a flag needs to be. Mr. Kapon asked if the flag size is 12'x10' during the balloon test did that imply what the flag would look like. Mr. Kronk stated no, it was to visualize the height of the pole. Mr. Kapon asked if the balloon was the size of the flag. Mr. Kronk responded no. Mr. Kapon asked if Ms. Bergailo felt the applicant has proven their case. Ms. Bergailo stated the applicant has moved the equipment inside and the size of the pole is as small as it could be. Mr. Soukas stated the question is inappropriate to Ms. Bergailo.

Michael Reinheimer, 5-17 Karl Street, asked if someone driving down Fairlawn Avenue sees the large flagpole and flag could that distract the driver. Mr. Levy stated it is a speculative question. Ms. Bergailo stated the applicant has testified that it would be seen.

Russ Mench, 30-11 Gordon Place, asked does the utility pole to the closest to the left of the flag and the utility pole on Morlot - are they the same height. Mr. Kronk responded yes.

Mr. Mench asked Ms. Bergailo if there is a stop sign on McKinley more people would take notice of the flagpole. Mr. Mench stated there are 2 schools in the area which increases traffic, and on Morlot Avenue would this add to the distraction. Ms. Bergailo stated it would be visible. Mr. Mench asked if Ms. Bergailo has been to the site. Ms. Bergailo responded yes. Mr. Mench asked if adding this structure would not fit in with the characteristic of the neighborhood. Ms. Bergailo stated this would add another non-residential use to the neighborhood.

Renard Gaddi, 31-14 Gordon Place, asked about the balloon test, as far as that the balloon stays at the appropriate height. Mr. Kronk stated the balloon and the

string and the reel is secured so the balloon stays at the correct height. Mr. Gaddi asked if weather conditions could have effected the test. Mr. Kronk stated the weather conditions were acceptable and the test is accurate. Mr. Gaddi asked what methodology was used to insert the flagpole into the picture. Mr. Kronk stated the computer program uses the information to accurately depict how it will look.

This application was adjourned to July 12. Mr. O'Neill consented to the time for the Board to act.

Estimates:

1. Taylor Design Group for $1,750.00 for Sprint Spectrum.

Mr. Charipper made a motion to approve this estimate and Ms. Spindel seconded the motion.

VOTE: All Present - AYE.

Vouchers:

1. Dr. Eisenstein in the amount of $3,372.00 in reference to the Omnipoint application; and
2. Birdsall Engineering in the amount of $596.00 in reference to the Fair Lawn Fire Dept. Co. #1.

Mr. Charipper made a motion to approve these vouchers and Ms. Spindel seconded the motion.

VOTE: All Present - AYE.

Minutes:

1. Minutes for the May 21, 2007; May 24, 2007 and May 29, 2007 meetings.

Mr. Diner made a motion to approve these minutes and Mr. Sacchinelli seconded the motion.

VOTE: All Present – AYE.

Adjourn

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

VOTE: All Present – Yes.
TIME: 11:10 p.m.

Respectfully submitted,

Carol LoPiccolo
Zoning Board Clerk