

Town of Southborough
Board of Appeals
Southborough, Massachusetts 01772
17 Common Street
P.O. Box 9109
Southborough, MA 01772-9109
508-485-0710

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Paul J. Berry
Town Clerk
Town House
Southborough, MA 01772

NOTICE OF DECISION
APPLICATION FOR
A SPECIAL PERMIT MODIFICATION

Massachusetts Department of Transportation
New Cingular Wireless PCS, LLC ("AT&T" - Lessee)
101 Breakneck Hill Road
(21-1)

The Board of Appeals of the Town of Southborough held a public hearing in the Hearing Room of the Southborough Town Offices, 17 Common Street on Wednesday, August 24, 2011 at 7:35 P.M. with regard to the petition of New Cingular Wireless PCS, LLC. The petitioner is seeking a *Special Permit Modification* under **Sections 174-8-11-B, 174-8.11(D), 174-19-(A), 174-9(A) and 174-9(E) with reference to a previously approved Special Permit.** The petitioner proposes to install additional antennas on the existing telecommunication tower.

Sitting as a Board: Matthew C. Hurley, Chairman
Regina McAuliffe
Edward D. Estella
Thomas Bhisitkul
Tara Bayko

For Petitioner: Michael K. Davis, Esq.
Brown Rudnick, LLP
121 South Main Street, Providence, RI

Peter Fales | Site Acquisition
Centerline Communications LLC
960 Turnpike Street, Suite 28 | Canton, MA 02021

Board member, Leo F. Bartolini, Jr., announced for the record that he would not participate in the public hearing because one of his relatives moved into property near

101 Breakneck Hill Road.

Chairman Hurley disclosed for the record that Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., the law firm at which he works, has done work for AT&T, primarily by attorneys in the firm's Washington, D.C. office. Mr. Hurley has not handled any work for AT&T and neither Mr. Hurley nor Mintz, Levin is involved in the matter before the ZBA. However, out of an abundance of caution, Mr. Hurley has disclosed these facts for the public record. Neither the applicant nor any member of the public attending the hearing had any objection to Mr. Hurley sitting on the board for this matter.

Board member Thomas Bhisitkul disclosed that one of his clients considered a business arrangement with one of the petitioner's vendors. Although there is no conflict of interest, Mr. Bhisitkul was advised by the State Ethics Commission to publicly disclose these facts to avoid even the appearance of impropriety. Neither the applicant nor any member of the public attending the hearing had any objection to Mr. Bhisitkul sitting on the board for this matter.

Board member, Tara Bayko, disclosed that she was employed for fifteen years with Verizon.

The Petitioner did not raise any issues concerning the public disclosures made by the sitting Board members and was without objection to their participation in the public hearing process.

The Chairman read the emergency exit procedure as required by the Board of Selectmen.

Evidence Presented

1. Petitioner requested that the Board grant a Special Permit Modification to the original Special Permit granted June 18, 1999. The Petitioner described the relief sought in detail and submitted that the modifications would include a new stealth cylinder with a diameter of 38" and the replacement of two (2) existing antennas with three (3) new UMTS/GSM antennas and three (3) LTE panel antennas.
2. Petitioner submitted that the Special Permit Modification will permit the upgrading of services with a new LTE (Long Term Evolution) Technology. In order to install the new technology on the existing antenna site, it is necessary to replace the existing 30" stealth concealment canister with a new one that has a diameter of 38". Petitioner will then replace the two (2) existing antennas with three (3) new UMTS/GSM antennas and three (3) LTE antennas. All of the antennas and associated cabling will

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be inside of the flagpole and replacement concealment canister. Petitioner will also be installing three (3) TMA's, six (6) Radiohead Units and one (1) Surge Arrestor inside of the proposed replacement concealment cylinder.

3. Petitioner submitted that both the existing antennas and proposed antennas are at a centerline height of 102 feet.
4. Petitioner submitted that the site is adjacent to the Massachusetts Turnpike.
5. Petitioner submitted that the proposal meets the requirements for the granting of a Special Permit Modification. There will be minimal visual impact, no overall changes in the appearance of the facility, the facility will remain unmanned, will cause no smoke and/or dust, and will not impact traffic.
6. Petitioner submitted that the facility will benefit the Town of Southborough by providing better wireless services, including broadband and improvement in the occurrence of dropped calls. Additionally, the Special Permit Modification will eliminate the need to construct another tower.
7. Petitioner submitted that the estimated cost of the proposed improvements to the site will be approximately Thirty-Five Thousand (\$35,000.00) Dollars, well below 50 % of the assessed value of the existing wireless communications facility. The Southborough Board of Assessors has set a valuation of One Hundred Twenty-Five (\$125,000.00) Thousand Dollars on the existing wireless communications facility.
8. Petitioner submitted that the Special Permit Modification will have no detrimental impact on the site or on the surrounding neighborhood.
9. Petitioner submitted the Maximum Permissible Exposure Study prepared by SAI Communications, dated July 27, 2011. The report concluded that the maximum site measurement at ground level was 4.695% of the FCC standard for Uncontrolled/General Public Maximum Permissible Exposure (MPE). Theoretical calculations also show the site will still be within FCC Standard for Uncontrolled/General Public Maximum Permissible Exposure at ground level with AT&T's addition of LTE Technology.
10. Peter J. Goodney of 5 Sunrise Drive addressed the history of the wireless site, stating that the Town agreed to permit the removal and replacement of an old lattice-style tower with a monopole with a limit of three users to improve the unsightly appearance of the site. Now years later, there are four users, and the appearance of the once smooth monopole is morphing out of control.

11. Acacia A. Warren of 6 Sunrise Drive expressed concern for RF exposure and its impacts on her family.
12. Chairman Hurley explained that state and federal regulations control the wireless industry and that proposals submitted to the Southborough Board of Appeals for local permitting must first meet the requirements set by state and federal agencies.
13. Petitioner submitted that the FCC has established Maximum Permissible Exposure (MPE) limits for general population exposures and occupational exposures. The measurements, recorded on July 27, 2011, revealed the worst-case spatially averaged measured value to be 4.695% of the FCC MPE limits at ground level for uncontrolled/general public as outlined in the FCC OET Bulletin 65. The areas in the vicinity of 101 Breakneck Hill Road, Southborough, MA were surveyed and found to be within the mandated uncontrolled/General Population limits for Maximum Permissible Exposure (MPE) as delineated in the FCC's Radio Frequency exposure rules. In addition, MPE theoretical calculations for AT&T show that the site will still be within the FCC Standard for Uncontrolled/General Population Maximum Permissible Exposure (MPE) with the addition of the LTE700 and LTE2100 Technology.
14. The Public Hearing was closed at 8:05 p.m.

Findings and Decision

- 1) The Board finds that the grant of the Special Permit is in harmony with the intent and purpose of the zoning by-law. It is not in conflict with the public health, safety, convenience or welfare and is not detrimental or offensive to the neighborhood or destructive of property values therein. The Board specifically finds that the proposal to upgrade the wireless facility at 101 Breakneck Hill Road with new LTE (Long Term Evolution) Technology will have no adverse impact on the neighborhood or general vicinity.
- 2) The Board finds that the extension, alteration or change to the legally nonconforming structure shall not increase the extent of the nonconformance in size or impact and that the cost thereof shall not exceed 50 percent of the assessed value of the nonconforming structure at the time of application. The estimated cost of the improvements is \$35,000.00, and the assessed valuation of wireless communications facility is \$150,000.00.

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- 3) The Board finds that the proposal's benefits to the Town will outweigh any adverse effects for the Town or the vicinity. The proposal will serve the public convenience and welfare by aiding in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads.
- 4) The Board discussed the abutter's concerns for RF exposure and finds that the Petitioner has submitted evidence that the facility is in compliance with FCC standards as outlined in the Maximum Permissible Exposure Study by SAI Communications, Charleston N. Sibal, Senior RF Engineer and Philip A. Chura, RF Field Engineer, 260 Cedar Hill Street, Marlborough, MA 01752, dated July 27, 2011, attached herewith as Exhibit #1.
- 5) The Board discussed the abutter's concern that the monopole has increased in size and impact since its original installation. The Board finds that the monopole has been modified over the years, including the installation of the stealth concealment canister to lessen the visual consequences of additional antennas. The Board opined that any further changes to the site will consider the abutter's concerns; and, moreover, will be carefully scrutinized to ensure that the monopole remains structurally sound.

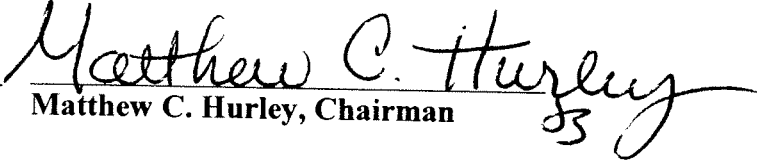
Therefore, the Board of Appeals, based on the evidence presented at the hearing, including but not limited to the facts presented above, voted on a Motion made by Chairman Hurley and seconded by Board Member McAuliffe to **Grant** the **Special Permit Modification** as requested, per the Plans attached herewith as Exhibit #2, with the following conditions:

- 1) Petitioner shall meet all requirements of the Town's Wireless By-Law, as well as all applicable federal and state regulations governing the site and its use by the applicant, including but not limited to all applicable Federal Communications Commission (FCC) regulations;
- 2) All conditions and specifications of the original Special Permit issued on June 18, 1999 shall remain in full force and effect.

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**In favor: Estella, McAuliffe, Bhisitkul, Bayko, Hurley
Opposed: None**


Matthew C. Hurley, Chairman

Notice: Appeals, if any, shall be made pursuant to Massachusetts General Law, Chapter 40A, s.17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Southborough, Massachusetts.



The Commonwealth of Massachusetts
Town of Southborough
Board of Appeals

Date: August 29, 2011

Certificate of Granting of a Special Permit
(General Laws Chapter 40A, Section 11)

The Board of Appeals of the Town of Southborough hereby certifies that a Special Permit Modification has been granted:

To: Massachusetts Department of Transportation
New Cingular Wireless PCS, LLC ("AT&T" - Lessee)
101 Breakneck Hill Road (21-1)

Town: Southborough, MA 01772

affecting the rights of the owner with respect to land or buildings at:

101 Breakneck Hill Road (21-1)
Southborough, MA

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the Planning Board and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Matthew C. Hurley

Town Clerk