BEFORE THE BOARD OF SUPERVISORS OF
EAST FALLOWFIELD TOWNSHIP,
CHESTER COUNTY, PENNSYLVANIA

In Re:

Application of New Cingular Wireless PCS	**:**	**No. C - 1 - 10**
d/b/a AT&T Mobility, Cellco Partnership	**:**	
d/b/a Verizon Wireless and Richard A. and	**:**	
Caroline D. Vermeil for Conditional Use Approval	**:**	

DECISION AND ORDER

AND NOW, this 27th day of July, 2010, the Board of Supervisors of East Fallowfield Township hereby grants, subject to the conditions specified hereinbelow, the application of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("AT&T"), Cellco Partnership d/b/a Verizon Wireless ("Verizon") and Richard A. and Caroline D. Vermeil as co-applicants for conditional use approval pursuant to §§ 27-1733, 27-1902, 27-1903 and 27-1904 of Chapter 27 of the Township of East Fallowfield Code of Ordinances (the "Code"), said Chapter 27 being the codification of the East Fallowfield Township Zoning Ordinance (the "Zoning Ordinance"), to allow the construction of a new 140 foot wireless communications lattice tower to replace the existing 140 foot wireless communications lattice tower, with the placement of antennas on the new tower for AT&T, the co-location of antennas for Verizon on the new tower, the installation of radio-related equipment on the ground within a newly constructed fenced area and utility buildings on the property located at 775 Fairview Road, and enters the following factual findings, conclusions and discussions of reasoning in support of the grant of the Application.

I. Background of the Application

By application received February 9, 2010 ("Application"), AT&T requested approval by the Board of Supervisors of East Fallowfield Township ("Board" and the "Township" respectively) for conditional use approval to allow the replacement of an existing 140 foot lattice tower with a new 140 foot lattice tower for the placement of wireless communication antennas, the installation of radio-related equipment and replacement of an existing equipment building within a newly constructed equipment building on the property located at 775 Fairview Road.

The Application was amended to add as co-applicants with AT&T, Verizon and Richard A. and Carolyn D. Vermeil (collectively "Applicants") and for the co-location on the proposed new tower of wireless communication antennas and the installation of radio-related equipment in a newly constructed equipment building for Verizon on the property located at 775 Fairview Road. The property consists of approximately 100.5 acres and is located within the RA Rural Agricultural Zoning District. The property is also known as UPI (tax parcel) no. 47-8-23.7, and is legally owned by Richard A. and Carolyn D. Vermeil (the "Vermeils").

Notice of the scheduling of a public hearing for April 26, 2010, was published in the Daily Local News, a newspaper of general circulation in the Township, on March 29 and April 5, 2010, and the public hearing was originally opened pursuant to public notice on April 26, 2010. The hearing was then continued for further testimony on May 25, 2010, subject to a new public notice publishing the amendment to the application, which was published on May 13 and May 18, 2010. The hearing on May 25, 2010, was continued on the record to June 28, 2010 with no testimony provided. At the conclusion of the hearing on June 28, 2010, the record was closed. The Applicant's case in support of the Application was presented to the Board through the testimony of Richard A. Vermeil; John Tallman of Tower Economics Company, Inc.; Andrew Petersohn, P.E., radio frequency engineer of dBM Engineering, P.C. and Petro Tsoukalas, tower and site designer of Dewberry; together with the presentation of certain documentary exhibits. Christopher H. Schubert, Esquire of Riley Riper Hollin & Colagraco, represented the Applicant; its Solicitor, Vincent M. Pompo, Esquire of Lamb McErlane PC, represented the Board.

The record in this matter consists of the transcribed notes of testimony taken at the public hearings conducted on April 26, 2010, May 25, 2010, and June 28, 2010, together with the documentary exhibits marked for identification and admitted into the record by the Board. This Decision and Order is promulgated pursuant to Zoning Ordinance §§ 27-1902 & 27-1903.B. and the enabling provisions of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10101 et seq.

The Board granted party status to Deborah Rush, owner of a residence located across Fairview Road from the subject property.

II. Findings of Fact

1. During the public hearing, the following exhibits were presented into the record:

B-1 - Public Notice of Public Hearing;

B-2 - Proof of Publication Required;

B-3 - Affidavit of Posting;

B-4 - East Fallowfield Township Code of Ordinances

Chapter 27, Zoning
Chapter 22, Subdivision and Land Development;

B-5 - Application for Conditional Use;

B-6 - Letter of Christopher Schubert dated March 26, 2010;

B-7 - Application of Deborah Rush for Party Status;

B-8 - Amended Public Notice of Public Hearing;

B-9 - Proof of Publication;

B-10 - Affidavit of Posting;

B-11 – Affidavit of Notice;

B-12 – East Fallowfield Township Historical Commission correspondence;

B-12A – East Fallowfield Township Historic Commission recommendation;

B-12B – East Fallowfield Township Historic Commission's June 20, 2010 meeting minutes;

A-1 - Application;

A-2 - Letter dated April 26, 2010 from Christopher H. Schubert, Esquire, amending the application;

A-3 – Affidavit of Service;

A-4 - Deed to the property;

A-5 – Conservation Easement;

A-6 - Lease documentation for AWACS, Inc.;

A-7 – Letters from AT&T and Verizon providing authorization;

A-8 – Letter dated November 30, 2009 from Brandywine Conservancy to Richard Vermeil;

A-9 - Curriculum Vitae of Andrew Petersohn;

A-10 – FCC Licenses for AT&T;

A-11 – Terrain Map;

A-13 – Propagation plan of AT&T's existing coverage;

A-14 - Propagation plan of AT&T's proposed coverage for antennas placed at 140 feet;

A-15 - Propagation plan of AT&T's proposed coverage for antennas placed at 120 feet;

A-16 – FCC License for Verizon;

A-17 - Propagation plan of Verizon's existing coverage;

A-18 - Propagation plan of Verizon's proposed coverage for antennas placed at 130 feet;

A-19 - Radio frequency emissions report prepared by dBM Engineering, P.C. dated March 2, 2010;

A-20 - Site Plan prepared by Dewberry, last revised March 12, 2101;

A-21 – Photo-simulation of turn out shed;

A-22 Letter dated March 3, 2010, prepared by Christopher Della Penna, P.E.;

A-23 - Letter dated April 5, 2010 from Christopher H. Schubert, Esquire;

A-24 – Letter dated March 17, 2010 prepared by Chester County Planning Commission;

A-23 - Letter dated April 21, 2010 from Christopher H. Schubert, Esquire to David Shields of the Brandywine Conservancy Trust;

A-25 – Letter dated April 21, 2010;

A-26 – Letter dated August 14, 2008 from Township Building Code Official to the Vermeils;

A-28 – December 2008 conditional use application;

A-29 – Letter dated September 9, 2009 from John Ryan, Esq.;

A-30 – Plan prepared by Fred Bissinger, dated May 2010;

A-31 – Letter dated May 25, 2010 from David Shields of the Brandywine Conservancy, Inc. to the Vermeils;

A-32 – Revised Site Plan prepared by Dewberry last revised June 22, 2010;

A-33 – Letter dated June 23, 2010 from Christopher Della Penna, P.E.;

A-34 – Letter dated June 28, 2010 from Christopher Schubert, Esq.

A-35 - Environmental Impact Assessment prepared by ACER Associates, LLC dated April 1, 2010;

A-36- Email dated June 17, 2010 from Christopher Schubert, Esq. to David Shields.

2. Richard A. and Caroline D. Vermeil (the "Vermeils") are the owners of the property located in the Township of East Fallowfield at 775 Fairview Road (the "Property").

3. AT&T is the successor to AWACs lease for the location of wireless telecommunication antennas on the existing tower and related equipment on the Property, and Verizon will enter into a lease agreement to co-locate its telecommunication antennas on the proposed tower and related equipment on the Property.

4. The Property consists of approximately 100.5 total acres, and is located within the RA Rural Agricultural Zoning District.

5. The Property is subject to a conservation easement held by the Brandywine Conservancy.

6. The Property is currently developed with an existing 140 foot lattice tower, with AT&T's wireless telecommunication antennas and a utility shed, secured by a fence, and served by a gravel driveway, with an area of approximately 1,360 square feet. (the "Existing Facility").

7. The Existing Facility was erected in the late 1970s for radio communication on King Ranch, a predecessor in title.

8. Beginning in 2002, the Pennsylvania State Police located telecommunication antennas on the Existing Facility without obtaining conditional use approval from the Board.

9. AWACS, Inc., a predecessor of AT&T, located its telecommunication antennas on the existing tower prior to the enactment of the Township's Wireless Telecommunication Ordinance.

10. After the initiation of a legal action by the Township requiring the State Police to remove the illegal State Police telecommunication antennas or obtain approval from the Board, the State Police removed their telecommunication antennas and equipment.

11. The Applicants plan to remove the Existing Facility and replace it with a new 140 foot lattice tower ("New Tower"), with AT&T locating wireless communication on the New Tower and Verizon co-locating wireless communication antennas on the New Tower, installation of new radio-related equipment in two newly constructed wireless communication equipment buildings, and the construction of a new security fence, creating a new compound with an area of approximately 745 square feet (collectively "New Facility").

12. Tower Economics Company, Inc. will lease the area of the New Facility from the Vermeils and sublease the New Facility to AT&T and Verizon with each having access and use of the New Facility.

13. Tower Economics Company, Inc. shall be responsible for the management and maintenance of the New Facility, but not the individual Applicants' telecommunication equipment.

14. AT&T's proposed antennas, as measured by the top of the antenna, shall be at a maximum height of 140 feet and Verizon's proposed antennas, as measured by the top of the antenna, shall be at a maximum height of 130 feet.

15. AT&T and Verizon are licensed separately by the FCC to provide wireless communication services.

16. The proposed antennas' radiofrequency emissions will be within the Federal Communication Commission guidelines.

17. The location of the proposed antennas for both AT&T and Verizon substantially improve the wireless communication services provided by both entities.

18. The location of AT&T and Verizon antennas above 120 feet is required to provide satisfactory service.

19. The co-location of Verizon's proposed antennas negates the need for erecting an antenna support structure in another location.

20. Parking on the street or shoulder of the street creates a dangerous situation for vehicular traffic along Fairview Road.

21. There is sufficient off-street parking for maintenance vehicles.

22. AT&T's maintenance technicians shall visit the site no less then once every four weeks to inspect the equipment.

23. Verizon's maintenance technicians shall visit the site no less then once every four weeks to inspect the equipment.

24. The Applicants did not submit a proposed maintenance schedule for its facilities.

25. The front yard setback for the RA District is 100 feet.

26. The existing tower is setback 48 feet from the right-of-way, and is a non-conforming structure.

27. The age and design of the existing tower and its foundation are insufficient to support the modernization of telecommunications equipment.

28. The New Tower is an alteration of the existing tower.

29. The New Tower is setback 64 feet from the right-of-way and decreases the front-yard non-conformity of the existing tower.

30. Relocating the New Tower outside the setback will have a negative impact on the viewshed along Fairview Road.

31. Pursuant to the Conservation Easement, Brandywine Conservancy must approve any relocation of the existing tower on the Property. Brandywine Conservancy refused to approve the relocating of the existing tower outside of the front yard setback area, and approved the proposed location.

32. The Applicants did not submit a Structural Analysis Report for the New Tower.

33. The Applicants did not submit a soils study as required under §27-1773.15. of the Zoning Ordinance or a report verifying the stability of the foundation design certified by a licensed structural engineer.

34. The existing utility shed is located approximately 38 feet from the right-of-way and is a non-conforming structure.

35. The Applicants propose to construct two new wireless communication equipment buildings in the New Facility, each with the dimensions of 20 feet by 12 feet and a height of 12 feet with a square foot area of 240 feet.

36. The new wireless communication equipment buildings are designed as "turn out sheds" in accordance with the recommendations of the East Fallowfield Township Historical Commission ("Historical Commission") in order to blend into the surrounding features of the neighborhood.

37. The newly constructed wireless communication equipment building shown on Exhibit A-32 as "Proposed AT&T Equipment Shelter" is an alteration of the existing utility shed and is setback the same distance from the right-of-way as the existing utility shed ("AT&T Equipment Building").

38. The newly constructed wireless communication equipment building shown on Exhibit A-32 as "Proposed Verizon Equipment Shelter" is a new structure within the front yard setback ("Verizon Equipment Building").

39. AT&T Equipment Building shall be used only by AT&T for its radio related equipment.

40. Only Verizon radio related equipment shall be located in the Verizon Equipment Building.

41. Section 27-1733.5 of the Zoning Ordinance limits telecommunication equipment building heights to 8 feet.

42. The existing fence shall be removed and replaced with a new fence in accordance with the Historical Commission's recommendations.

43. Applicants agree to meet with the Historic Commission to determine the style, type, and color of fence to install around the compound, with the right to construct a security fence behind the fence recommended by the Historic Commission as needed.

44. The Applicants have agreed to meet with the Historical Commission to revise the landscaping plan to the Historical Commission's satisfaction.

45. The Applicants have agreed to preserve and maintain all the existing trees surrounding the new compound except the seven depicted for removal on the Exhibit A-32.

46. The Applicants have agreed to install a fence to the Township's satisfaction.

47. The Applicants have agreed to use the coloring requirements as decided by the Township for the New Facility.

48. The Applicants has agreed to provide regular maintenance for the New Facility, including landscaping.

49. By the instant Application, the Applicants seeks to obtain conditional use approval to allow the construction of a new 140 foot wireless communications lattice tower to replace the existing 140 foot wireless communications lattice tower, with the placement of antennas on the new tower for AT&T, the co-location of antennas for Verizon on the new tower, the installation of radio-related equipment on the ground within a newly constructed fenced area and utility buildings on the Property.

III. Conclusions of Law

1. The Board has jurisdiction of this Application for conditional use approval.

2. Approval of the Application as conditioned hereinbelow is consistent with the evidence of record and the criteria and standards specified in §§ 27-1733, 27-1903, and 27-1904 of the Zoning Ordinance.

3. Applicants pursuant to §27-2004.A of the Zoning Ordinance, regulating non-conforming structures, are required to obtain a special exception for the alteration of the existing non-conforming tower and the existing non-conforming utility shed to construct the New Tower and AT&T Equipment Building.

4. Applicants pursuant to §27-1733.5 of the Zoning Ordinance, are required to obtain variance relief to construct the AT&T Equipment Building and the Verizon Equipment Building to a height above 8 feet.

IV. Order

The Board finds and concludes that the Applicant will have met the requirements of the Zoning Ordinance for conditional use approval, if, and only if, the Application is amended and supplemented in accordance with the conditions specified hereinbelow. In granting the Application, the Board has relied upon the testimony, plans and exhibits presented by the Applicant in this proceeding and said testimony, plans, exhibits and documentary evidence are hereby incorporated as additional conditions of approval, the Applicant being strictly bound by all the representations made in the testimony, plans, and exhibits and documentary evidence.

The following conditions are imposed and attached pursuant to §603 (c)(2) of the Municipalities Planning Code and Zoning Ordinance §§ 27-1902.E. and 27-1903.B. Any violation of the conditions during or following construction will be treated as a violation of the Zoning Ordinance. For the purpose of this Decision and Order, and specifically the following

conditions, the term "Applicant" shall include the Applicant's successors and assigns and interests with respect to the Property and the Application:

1. Any material deviation or change from the testimony, plans and exhibits presented on behalf of the Applicant, or from this decision and any conditions imposed hereby shall require an amendment to this decision and order by the Board of Supervisors following proper application and hearing.

2. No building permit shall be issued until the Applicant obtains a letter from the Township Engineer, stating his satisfaction with all outstanding engineering issues as provided on the Township Engineer's letter dated June 23, 2010.

3. By January 31st of each subsequent year after this Decision and Order, AT&T and Verizon, as operators of a wireless communication facility shall each submit to the Township an annual inspection report as required under §1773.14 of the Zoning Ordinance.

4. By January 31st of each subsequent year after this Decision and Order, AT&T and Verizon, as operators of a wireless communication facility shall each submit to the Township an annual report and shall pay the registration fee established by the Board, as required under §1773.27 of the Zoning Ordinance.

5. The Applicants and their agents are prohibited from parking any vehicle along the side of Fairview Road. Prior to the use and occupancy of the site, the Applicants shall pave the initial 25' of the gravel driveway and improve the off-site parking area, to the satisfaction of the Township Engineer.

6. No building permit shall be issued until the Applicant submits a soils study as required under §27-1773.15. of the Zoning Ordinance or a report verifying the stability of the foundation design certified by a licensed structural engineer, to the satisfaction of the Township.

7. No building permit shall be issued until the Applicant has submitted sufficient financial security for the removal of the proposed antennas and cabinets, and has provided in recordable form a declaration of covenants authorizing the Township to enter the Property and remove the New Facility or parts thereof including any necessary subordination agreement from the Brandywine Conservancy, to the satisfaction of the Township Solicitor. AT&T and Verizon shall each submit separate financial security, to the satisfaction of the Township.

8. No building permit shall be issued until the Applicants has submitted a proposed maintenance plan as required by §27-1733.21 of the Zoning Ordinance, to the satisfaction of the Township.

9. No building permit shall be issued until the Applicants has submitted a set of the latest revised plans with signatures, certifications, and/or seals, to the satisfaction of the Township Engineer.

10. No building permit shall be issued until the Applicants submit appropriate easements or other recordable documentations that memorializes all the Applicants rights and obligations to the shared driveway, parking spaces, and facility, including but not limited to maintenance responsibilities, to the satisfaction of the Township Solicitor.

11. No building permit shall be issued until the Applicants obtain the Historical Commission's recommendation of a landscaping plan to the Board's satisfaction and submits in recordable form the Township's landscape covenant, to the satisfaction of the Township Solicitor.

12. No building permit shall be issued until the Applicants obtain the Historical Commission's recommendation for the type, style, and coloring of fence used around the New Facility, to the Board's satisfaction

13. No building permit shall be issued until the Applicants obtain the Historical Commission's recommendation of the coloring of the New Facility, to the satisfaction of the Board.

14. Applicants shall obtain special exceptions for the alteration of the existing tower and existing utility shed, which the Township will not oppose.

15. Applicants shall obtain variances for constructing the AT&T Equipment Building and the Verizon Equipment Building to a height of 14 feet, which the Township will not oppose.

16. The Applicant shall execute and provide to the Township a recordable, notarized copy of a memorandum containing a metes and bounds description of the Property in question and stipulating the terms and conditions of this approval and shall consent to the recording by the Township in the office of the Recorder of Deeds of Chester County within sixty (60) days following the date of this Decision and Order.

17. The Applicant shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Zoning Ordinance.

18. Within thirty (30) days of the date on which this Decision and Order, the Applicant shall reimburse all of the Township's expenses for the review of this application, including but not limited to legal and professional consultant fees, and thereafter, the Applicant shall reimburse all of the Township's expenses for the implementation of these conditions of approval, within thirty (30) days of invoicing.

ADOPTED and **ORDERED** this **27th** day of **July, 2010**.

BOARD OF SUPERVISORS
EAST FALLOWFIELD TOWNSHIP

Chris Amentas, Chairman

Chris Makley, Vice Chairman

George Broadbent, Jr., Member

Gary Barach, Member

Mark Toth, Member

ATTEST:

Denise Miller, Secretary