

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

**In Re:**

**Application of T-Mobile Northeast LLC : No. C - 1 - 08  
for Conditional Use Approval :**

**DECISION AND ORDER**

AND NOW, this 24th day of June, 2008, the Board of Supervisors of East Fallowfield Township hereby denies, based on the reasons specified hereinbelow, the application of T-Mobile Northeast, LLC for conditional use approval pursuant to Section 1733 of the East Fallowfield Township Zoning Ordinance of 2002 (the "Zoning Ordinance") to construct a wireless communication facility on the property located at 450 Doe Run Road, Coatesville, Pennsylvania, and enters the following factual findings, conclusions and discussions of reasoning in support of the denial of the Application.

**I. Background of the Application**

By application dated December 31, 2007 and received by the Township on January 2, 2008 (the "Application"), T-Mobile Northeast, LLC (the "Applicant") requests approval by the Board of Supervisors of East Fallowfield Township ("Board" and the "Township" respectively) for conditional use approval to construct a wireless communication facility consisting of a 80' high flag monopole and related equipment, on a 15' by 30' foot parcel surrounded by a 6' high chain link fence topped with barbed wire. The fenced in facility containing the wireless communication facility and related equipment is situate on land consisting of approximately 6.7 acres of land that is located within the O-I Office Industrial Zoning District and is currently used as a self-storage facility. The property is identified as UPI (tax parcel) no. 47-4-62.

Notice of the scheduling of a public hearing for February 26, 2008, was published in the Daily Local News, a newspaper of general circulation in the Township, on February 5, 2008 and February 12, 2008, and the hearing was commenced and conducted as advertised. Additional

hearings were held on March 25, 2008, April 29, 2008 and May 19, 2008. The record was closed at the end of the hearing conducted on May 19, 2008.

At the hearing conducted on February 26, 2008, the following individuals were named as Parties in opposition to the Application: Thomas A. Madonna, Jr., Mark Marucci, Jeff and Meredith Coppolino, Jennifer K. Trotto, Shannon Nicolas, and Mark and Lori Herson. At the hearing conducted on March 25, 2008, Joseph Reed was named as an additional party in opposition to the application.

The Applicant's case in support of the Application was presented to the Board by Donald T. Petrosa and Dennis Dunn, attorneys with the law firm of Petrikin, Wellman, Damico, Brown & Petrosa, in Media, Pennsylvania. The Applicant presented its case through the testimony of Rick Harding, Kenneth R. Foster, Ph.D, P.E., Mario Calabretta, P.E. and Christopher Milotich; together with the presentation of certain documentary exhibits. Its Solicitor, Steven G. Soles, of the law firm of Lamb McErlane PC, represented the Board. Thomas A. Madonna, Jr., Mark Marucci, Jeff and Meredith Coppolino, Jennifer K. Trotto, Shannon Nicolas, Mark and Lori Herson, and Joseph Reed proceeded before the Board pro se. Mark and Lori Herson put on a case in opposition to the Application through the testimony of Mark Herson and Lori Herson together with the presentation of certain documentary exhibits.

The record in this matter consists of the transcribed notes of testimony taken at the public hearings conducted on February 26, 2008, March 25, 2008, April 29, 2008 and May 19, 2008, together with the documentary exhibits marked for identification and admitted into the record by the Board. This Decision and Order is promulgated pursuant to Section 1902 of the East Fallowfield Township Zoning Ordinance 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.

## **II. Findings of Fact**

1. During the public hearings, the following exhibits were presented into the record:  
B-1 - T-Mobile Northeast, LLC Conditional Use Application, dated December 31, 2007;

- B-2 - Proof of Publication;
- B-3 - Public Notice;
- B-4 - January 30, 2008 review letter by Township Engineer Christopher Della Penna, P.E.;
- B-5 - Affidavit of Posting;
- B-6 - Memorandum of Township Planning Commission, dated February 26, 2008;
- B-7 - Letter from Chester County Planning Commission, dated February 21, 2008;
- B-8 - April 28, 2008 letter by Township Engineer Christopher Della Penna;
- B-9 - April 19, 2008 letter from Christopher Milotich;
- B-10- Aerial Map of 450 Doe Run Road;
- A-1 - Deed;
- A-2 - Site Lease with Option;
- A-3 - Resume of Rick Harding and Radio Frequency Report;
- A-4 - Informational printout from Federal Communications Commission Website summarizing license;
- A-5 - Plot Showing Existing Coverage;
- A-6 - Plot Showing Proposed Coverage;
- A-7 - December 28, 2007 Report of Kenneth R. Foster & Associates;
- A-8 - Resume of Philip Burtner, P.E.;
- A-9 - CMX Plans for T-Mobile, revised December 28, 2007;
- A-10- January 30, 2008 review letter by Township Engineer Christopher Della Penna, P.E.;
- A-11- CMX Reply to Township Engineer's Review Letter, dated February 12, 2007;
- A-12- Environmental Impact Assessment;
- A-13- CMX Plans for T-Mobile, revised March 24, 2008;
- A-14- CMX Plans for T-Mobile, revised April 14, 2008;
- A-15- CMX Reply to Township Engineer's Review Letter, dated April 14, 2008;

- A-16- Certification of Notice;
- A-17- April 19, 2008 letter from Christopher Milotich;
- A-18- May 19, 2008 letter from Rick Harding to Christopher Milotich;
- A-19- March 24, 2008 letter Crista K. Chapman;
- A-20- Impact of Telecommunications Tower Upon Values of Residential Properties, dated August, 2005 by Appraisal Associates;
- LH-1- Lori Herson's April 29, 2008 outline bibliography and source list, with accompanying exhibits;
- MH-1- Mark Herson's April 29, 2008 collection of photos and maps;
- MH-2- Flag pole cut-out depicting 9" diameter;
- MH-3- Flag pole cut-out depicting 36" diameter.

2. The Applicant is T-Mobile Northeast, LLC, a wireless service provider. The Applicant submitted a summary of the information pertaining to a federal broadband license obtained from the Federal Communications Commission's (the "FCC") website. The information on the FCC webpage printout states that "T-Mobile License LLC" is the licensee. The Applicant did not submit evidence into the record to demonstrate that the Applicant is licensed by the FCC or is permitted to carry out its broadband services under T-Mobile License LLC's license.

3. The hearings on the subject application were held in compliance with the requirements of the Pennsylvania Municipalities Code and the East Fallowfield Township Zoning Ordinance.

4. The proposed site of the Wireless Communication Facility is located on property consisting of approximately 6.7 acres known as 450 Doe Run Road, Coatesville, Pennsylvania and identified as Tax Parcel Number 47-04-0062 (the "Property"). The Property is zoned for office/industrial use in the O-I zoning district. The Property is currently used as a self-storage facility.

5. A Safe Self Storage, LLC (the “Owner”) is the record owner of the Property. The Owner acquired the Property by a deed dated May 20, 1999 and recorded with the Recorder of Deeds of Chester County at Record Book 4576, Page 1030.

6. The Site Lease With Option (the “Lease”) submitted by Applicant provides the Applicant with an option to lease approximately 450 square feet of land (the “Leased Premises”) on the Property for the use of “transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related Facility . . . .” The Lease states that the “Option shall be for an initial term of fifteen (15) months” commencing on the “Effective Date” as that term is defined in the Lease. The Lease defines the “Effective Date” of the Lease as “the date of execution by the last party to sign” the Lease. The Lease is signed by the Owner’s representative on December 14, 2007. The Lease is not signed by the Applicant.

7. Section 1(b) of the Lease requires the Applicant to notify the Owner in writing of the Applicant’s intent to exercise the option under the Lease. There is no evidence on the record, or in the Lease, that Owner exercised the option.

8. The Applicant is proposing to replace the existing 60’ tall flagpole on the Property with a new 80’ tall wireless communications flag monopole and related cabinets and equipment (the “Wireless Communication Facility”). As depicted on the site plan prepared by CMX, the existing 60’ flagpole is located on a concrete pad adjacent to the Property’s existing driveway and is set back approximately 80’ from Doe Run Road. The existing 60’ flagpole is approximately ten to twelve inches in diameter at the base and approximately six inches in diameter at the top. The Applicant proposes to construct an 80’ flag monopole in a 15’ by 30’ compound area that is located approximately 114’ from Doe Run Road. The proposed 80’ monopole will be white in color and will be 36” in diameter at the base and approximately 18” in diameter at the top of the pole.

9. The Applicant's electromagnetic safety expert, Kenneth R. Foster, Ph.D, P.E., presented testimony and an expert report concerning the radiofrequency electromagnetic energy exposure limits.

10. The proposed Wireless Communication Facility will consist of three panel antennas mounted within the flag monopole with their centers at a height of 77' above grade. The antennas will be grouped into three sectors, with one antenna per sector.

11. The radiofrequency electromagnetic energy exposure limits established by the FCC for the general population are 1,000 microwatts per square centimeter. At ground level at any distance from the flag monopole, the upper limit maximum exposure for the proposed flag monopole will be no greater than three microwatts per square centimeter. At a distance equal to twenty-six feet above ground level at any distance from the flag monopole, the upper limit maximum exposure will be no greater than 5 microwatts per square centimeter. At any distance above the ground (including in the direct beam of the antenna) at a distance more than 300' from the antennas, the upper limit maximum exposure for the flag monopole will be no greater than 15 microwatts per square centimeter.

12. The Wireless Communication Facility will be fully automated and monitored from a remote site off the Property. Once every two months a technician will visit the site for routine maintenance, unless otherwise necessitated by an emergency. The Applicant does not propose to construct a dedicated parking space for the Wireless Communication Facility. The Applicant will utilize one of the Property's four existing parking spaces to park the technician's vehicle.

13. The Philadelphia Electric Company ("PECO") owns and operates an existing high voltage electric transmission utility tower approximately one-quarter mile northeast of the Property located on the northeast side of IMS Drive (The "Northeast PECO Tower").

14. The Northeast PECO Tower is approximately 89' tall. The ground level of the Northeast PECO Tower is approximately 20' below the ground level of the proposed site for the Wireless Communication Facility on the Property.

15. The Northeast PECO Tower is located in the O-I zoning district.

16. The Applicant did not contact PECO, orally or in writing, to request permission to install communication antennas on the Northeast PECO Tower.

17. PECO owns and operates another existing high voltage electric transmission tower located approximately 700' to the northwest of the rear of the Property (the "Northwest PECO Tower"). The Northwest PECO Tower is similar in height and construction to the Northeast PECO Tower. The Northwest PECO Tower is located in a residential zoning district.

18. The Applicant did not contact PECO, orally or in writing, to request permission to install the communications antennas on the Northwest PECO Tower.

19. The Northeast PECO Tower and the Northwest PECO Tower are located within the PECO right-of-way that runs parallel to the rear boundary of the Property. As depicted on Exhibit B-10, PECO's utility towers are located approximately every 800' within the PECO right-of-way.

20. Applicant's expert, Rick Harding, is currently employed as a radio frequency consultant. Mr. Harding has provided consulting services to T-Mobile since 2002.

21. Mr. Harding testified regarding the Wireless Communication Facility on the Property, specifically that the Applicant can provide reliable in-building and outdoor coverage to surrounding homes and to extend the coverage area along Doe Run Road, Strasburg Road and southwest of Coatesville.

22. Mr. Harding issued a one page, four paragraph expert report dated February 26, 2008 concerning the Applicant's proposed Wireless Communication Facility on the Property. Mr. Harding states in his expert report that he evaluated "surrounding communications facilities" to determine if "modifications could be preformed [sic] such as adding equipment, antennas, and/or repeaters to improve coverage" in the area. Mr. Harding concluded that "due to such factors as distance, terrain, equipment limitation and area needed to be covered, there are no modifications to existing facilities which could be done to substantially improve the service in this area where T-Mobile has unreliable or no coverage."

23. Mr. Harding's expert report does not indicate, specifically or generally, what "surrounding communications facilities" he evaluated and what tests, if any, he made to reach his conclusion that such facilities could not be used to extend or infill the Applicant's service in the service area. Mr. Harding's report does not reference either the Northeast PECO Tower or the Northwest PECO Tower.

24. There is no evidence in the record that Mr. Harding visited the Property in person.

25. In his expert report, and in his testimony, Mr. Harding opined that "the proposed Communications Antennae and WCF will substantially improve the level of wireless communications service provided to T-Mobile's customers who are the consumers of such services in this area and thus will advance the provision of Wireless Communications Service."

26. Mr. Harding did not offer any direct testimony about the Northeast PECO Tower or the Northwest PECO Tower.

27. Under cross-examination by party opponent Thomas Madonna Jr., Mr. Harding testified only that "there was PECO to the north. Actually the elevation is approximately 20 feet lower, and it's on the other side of the hill. So we would need a lot more height to try and provide coverage to the south. Actually, it wouldn't even reach this far." This is the only testimony Mr. Harding offered with respect to the PECO towers.



28. Mr. Harding's expert report states that he evaluated "surrounding communications facilities"; however, Mr. Harding did not personally visit or evaluate either the Northwest PECO Tower or the Northeast PECO Tower to ascertain whether or not the Applicant could install antennae or other equipment on either of the towers to adequately extend or infill the Applicant's communications system.

29. The propagation maps prepared by Mr. Harding show existing cell phone communication facilities sites as depicted by blue dots on the maps. The propagation maps do not delineate the location of the Northeast PECO Tower or the Northwest PECO.

30. Christopher Milotich, the Applicant's site acquisition specialist, testified that he was responsible for locating a suitable site for the proposed telecommunications monopole. Mr. Milotich testified that he selected the Property as the site for a proposed monopole because of its high ground elevation in relation to the proposed coverage area and because the Property currently contains a 60' flagpole. Mr. Milotich testified that the Applicant was merely replacing the existing flagpole with a new flagpole that is only 20' taller.

31. Mr. Milotich testified that he looked at the Northeast PECO Tower, but did not pursue the Northeast PECO Tower as an alternative location because it is approximately 20'-25' below the ground level of the Property.

32. Mr. Milotich testified that the Applicant's radiofrequency engineers rejected the Northeast PECO Tower because the topography of the land prevented the Northeast PECO Tower from providing coverage in the proposed coverage area. Mr. Milotich did not submit any corroborating reports, tests or other information prepared by the Applicant's radiofrequency engineers which he used to make his decision not to pursue the Northeast PECO Tower.

33. Mr. Milotich testified also that he did not pursue the Northeast PECO Tower because of height restrictions imposed by the Federal Aviation Administration for structures situate near airports.

34. Mr. Milotich testified that he did not investigate the Northwest PECO Tower because it was located in a residential zoning district and further testified that he did not think the Township would want the cell phone antenna in a residential zoning district.

35. The Applicant's radiofrequency engineer did not evaluate the Northwest PECO Tower to determine whether it could be used to adequately extend or infill the Applicant's communication system.

### **III. Conclusions of Law**

1. The Board has jurisdiction to render a decision on the Applicant's Conditional Use Application pursuant to Section 913.2 of the Pennsylvania Municipalities Planning Code (the "MPC"), 53 P.S. § 10913.2.

2. The Applicant has standing as the holder of an option under the Lease.

3. The Applicant failed to meet its burden of demonstrating that the proposed improvements meet all of the express standards and criteria that relate to the Conditional Use requested. Specifically, the Applicant failed to demonstrate that it complied with the conditions imposed by Section 1733(W) of the East Fallowfield Township Zoning Ordinance because the Applicant did not contact the owners of structures of suitable location and height within a one-mile radius of the Property to ask for permission to install the communications antenna on an existing structure and because the Applicant failed to demonstrate by a fair preponderance of the credible evidence that it could not adequately extend or infill its communication system through the use of such structures.

4. Since the Applicant failed to meet its burden of demonstrating that the proposed improvements meet all of the express standards and criteria that relate to the conditional use requested, this Board need not address whether the parties in opposition to the Application met their burden of proving that the proposed use will have a detrimental effect on the welfare of the community.

#### **IV. Discussion**

A “conditional use” is defined by the Pennsylvania Municipalities Planning Code (the “MPC”) as “a use permitted in a particular zoning district.” 53 P.S. § 10107. The MPC further provides that zoning ordinances may contain provisions for conditional uses which shall be allowed “pursuant to express standards and criteria set forth in the zoning ordinance.” 53 P.S. § 10603.c.2. Where a particular use is permitted in an area by conditional use, it is presumed that the local legislative body has already considered such use for the area in terms of general matters such as health, safety and the general welfare, as well as the general intent of the zoning ordinance. See Shamah v. Hellam Township Zoning Hearing Board, 648 A.2d 1299 (Pa. Cmwlth. 1994). While the fact that a use is permitted as a conditional use evidences a municipal decision that the particular use is not *per se* adverse to the public interest, its approval or denial must be in accordance with the terms of the zoning ordinance. McGinty v. ZBA of Pittsburg, 717 A.2d 34 (Pa.Cmwlth. 1998).

A conditional use applicant must demonstrate that it is entitled to a conditional use by establishing compliance with the specific objective criteria for the use detailed in the zoning ordinance. Bray v. Zoning Board of Adjustment, 410 A.2d 909 (Pa.Cmwlth. 1980). An applicant need only show that the proposed use is within the provisions of the applicable zoning ordinance. Evans v. Zoning Hearing Board of Easttown Township, 396 A.2d 889 (Pa. Cmwlth. 1979). Pursuant to Section 1902(D) of the East Fallowfield Township Zoning Ordinance, the Applicant must prove compliance with the enumerated standards governing conditional uses set forth in the zoning ordinance by a fair preponderance of the credible evidence. Failure of the applicant to establish his compliance with all of the standards shall, in the discretion of the Board, be deemed

a basis for a determination that the applicant has not met the requirements for which a conditional use may be granted.

Once the applicant meets its burden, a presumption arises that the use is consistent with the health, safety and general welfare of the community. Kern v. Zoning Hearing Board of Tredyffrin Township, 449 A.2d 781 (Pa. Cmwlth. 1982). The burden then shifts to any objectors to establish that the proposed use is not, in fact, consistent with the promotion of health, safety and general welfare in the community. Bray v. Zoning Board of Adjustment, 409 A.2d 909 (Pa. Cmwlth. 1980). The protestants must present sufficient evidence to establish that there is a high degree of probability that the use will cause substantial threat to the community. In re: Appeal of the Cutler Group, Inc. from the Decision of the Board of Supervisors of East Vincent Township, 880 A.2d 39 (Pa. Cmwlth. 2005). Such evidence must be more than a mere speculation of harm Szewczyk v. Zoning Board of Adjustment of the City of Pittsburgh, 654 A.2d 218 (Pa. Cmwlth. 1995) (citing Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 329 A.2d 912, 917 (Pa. Cmwlth. 1974)). In addressing claims of possible health concerns posed by cell phone towers, Section 332(c) of the Federal Telecommunications Act, 47 U.S.C. § 332(c), provides that “no state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission’s regulations concerning such emissions.” See also Westinghouse Elec. Corp. v. Council of Township of Hampton, 686 A.2d 905 (Pa. Cmwlth. 1996).

Section 1733 of the Zoning Ordinance governs the use, construction and siting of “Wireless Communication Facilities”, commonly referred to as cell phone towers. Pursuant to Section 1904 of the Zoning Ordinance, the specific standards listed in Section 1733 are in addition to the General Standards and Criteria listed in Section 1903 of the Zoning Ordinance and to the base district regulations.

Among the purposes of Section 1733 in protecting the health, safety and general welfare of the Township’s residents, is to accommodate the need for Wireless Communication Facilities, while minimizing the number of Wireless Communications Towers to be constructed so as to

minimize the adverse visual effects and number of such facilities in the Township. See Zoning Ordinance, Section 1733.A(1)-(3). In furthering the enumerated purpose of limiting the number of towers, Section 1733 of the Zoning Ordinance specifically requires applicants to fully investigate and rule-out existing structures located within one-mile of a proposed cell phone tower site before authorizing the construction of a new cell phone tower. The siting of Wireless Communications Towers is governed generally by Section 1733.C and specifically by Section 1733.W of the East Fallowfield Township Zoning Ordinance. Section 1733.C provides in part:

[t]he applicant for conditional use approval must prove by a preponderance of evidence that the applicant cannot adequately extend or infill its communications system by the use of equipment, such as repeaters, antennae or other similar equipment installed on existing structures, such as utility poles or other tall structures. This requirement will be deemed to have been satisfied through the submission of a report or testimony by a qualified radio frequency engineer, verifying that the proposed Communications Antennae (or other Wireless Communications Facility component) will advance the provision of Wireless Communications Service.”

Section 1733.W provides:

If the applicant proposes to build a Communications Antenna Support Structure (as opposed to mounting the Communications Antenna(e) on an existing structure), the applicant shall demonstrate that it has contacted the owners of structures of suitable location and height (such as smoke stacks, water towers and buildings housing existing Communications Antenna Support Structures) within a one (1) mile radius of the site proposed, and asked for permission to install the Communications Antenna(e) on an existing structure, as set forth in this paragraph, or demonstrate that the applicant cannot adequately extend or infill its communication system through the use of such structures.

The Board of Supervisors finds that the Applicant failed to present the requisite credible evidence to prove that the Applicant could not use the Northeast PECO Tower or the Northwest PECO Tower, or for that matter any other tall structure within one mile of the proposed site, to extend or infill its communication system. Before this Board discusses the specific reasons in support of its conclusion, it is necessary to address what exactly the Applicant must demonstrate

under Section 1733 of the Township's zoning ordinance to construct a new cell phone tower in lieu of utilizing existing structures.

Section 1733.C of the East Fallowfield Township Zoning Ordinance requires an applicant to prove that it cannot adequately extend or infill its communication system by the use of communications equipment installed on existing structures "such as utility poles or other tall structures." Section 1733.C deems this requirement met if the applicant submits an expert report or produces testimony from a radio frequency engineer verifying that the proposed facility will "advance the provision of Wireless Communication Services." Section 1733.W of the East Fallowfield Township Zoning Ordinance further requires the applicant to demonstrate that it has contacted the owners of structures of a suitable location and height "such as smoke stacks, water towers and buildings housing existing Communications Antenna Support Structures" within one mile of the proposed site to request permission to install the antennae on "an existing structure" or demonstrate that the applicant cannot "adequately extend or infill its communication system through the use of these structures."<sup>1</sup>

Section 1733.C and Section 1733.W of the Zoning Ordinance each contain separate and objective criteria that the Applicant must satisfy in order to obtain approval of the requested use. Even though the location requirement found in Section 1733.C may be deemed satisfied through the submission of an expert report, as pointed out by Applicant's counsel at the hearing, this does not mean that the Applicant does not have to demonstrate compliance with the requirements of Section 1733.W. It is clear from the plain language of these sections that each serve separate

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<sup>1</sup> The Applicant argues that Section 1733.W of the Zoning Ordinance is not applicable in this case because Section 1733.W is invoked only if telecommunication facilities are already installed on the structures. The Applicant argues that since neither the Northeast PECO Tower nor the Northwest PECO Tower contains telecommunications facilities, Section 1733.W is not applicable. We reject the Applicant's argument because the Applicant's interpretation of Section 1733.W is incorrect. Presumably, the Applicant is arguing that the modifier "housing existing Communications Antenna Support Structures" applies to all existing structures. However, the phrase "housing existing Communications Antenna Support Structures" modifies only "buildings" and not "such as smoke stacks and water towers". The placement of the modifier in the ordinance supports this conclusion. And as a practical matter the term "housing" connotes that the antenna is located within or inside of an object or protective covering, and neither a water tower nor a smoke stack can "house" a communications antenna since the antenna cannot be located inside the smoke stack or the water tower. Even if the Applicant's interpretation of Section 1733.W was correct, the Applicant did not submit any evidence into the record to demonstrate that neither of the PECO towers contains telecommunications facilities, and thus, the Applicant would not be able to support its statutory construction argument because of the lack of evidence.

purposes. The purpose of section 1733.C is “merely to confirm” that the Applicant has made a threshold determination that the component for which approval is sought will substantially improve the level of wireless communication service. On the other hand, the purpose of Section 1733.W is to require the Applicant to investigate and rule-out the use of existing structures before deciding to construct a new structure on the proposed site.

Although the Applicant submitted an expert report and produced testimony from a radiofrequency engineer concluding that the proposed structure will advance the provision of wireless communication service, we find no provision indicating that the submission of such a report would in any way satisfy the requirements of Section 1733.W of the Zoning Ordinance. Moreover, we find no language permitting the Board to consider Section 1733.W to be met by submission of such a report. Therefore, it is clear the Applicant must also demonstrate by a fair preponderance of the credible evidence that it cannot use existing structures within one mile of the Property, namely the Northeast PECO Tower or the Northwest PECO Tower, to extend or infill its communication system.

It is uncontroverted that the Applicant did not request permission from PECO to use either the Northeast or Northwest PECO Towers. There is also no evidence in the record to demonstrate the Applicant’s radio frequency engineer evaluated the Northeast PECO Tower or the Northwest PECO Tower or any structure for that matter, to ascertain if they could be used to extend or infill the Applicant’s communication system. Rather, it is clear from the testimony and documentary evidence submitted by the Applicant that the Applicant did not rule out these structures before deciding to construct the flag monopole on the Property. The Applicant submitted a one page expert report prepared by its radio frequency engineer, Rick Harding. In that report, Mr. Harding discusses generally that he evaluated “surrounding communications facilities” but he does not specifically reference what “facilities” he is referring to. There is no reference to the Northeast PECO Tower that is located one-quarter mile away to the northeast of the proposed site and there is no reference to the Northwest PECO Tower that is located 700’ behind the Property. During his direct testimony, Mr. Harding did not discuss at all the Northeast PECO Tower and the Northwest PECO Tower. Mr. Harding’s only reference to existing structures during his direct testimony was to the “existing sites” depicted by blue dots on the propagation maps that he prepared. The “existing structures” indicated by the blue dots are

existing cell phone communication structures, not surrounding structures, and most certainly not the PECO towers. The Board also concludes based on Mr. Harding's testimony that the "existing structures" indicated by blue dots on the propagation maps are the "surrounding communications facilities" referenced in Mr. Harding's expert report, not suitable structures located within one mile of the proposed site.

Mr. Harding's only testimony about a PECO tower was elicited on cross-examination by Thomas A. Madonna Jr. who asked Mr. Harding about other sites considered by the Applicant. Mr. Harding testified that there was a PECO tower to the north that was 20' feet lower and on the other side of the hill from the proposed site. Mr. Harding's testimony was presumably in reference to the Northeast PECO Tower and he said only that the applicant would need more height to try and provide coverage to the south using the PECO tower. Mr. Harding provided no testimony on what specific investigation was performed to determine the Northeast Tower was not of a suitable height or even what a suitable height might be given the tower's location. Other than his unsubstantiated statement that the tower was not high enough, Mr. Harding did not provide any other specific reason why the Applicant could not use the PECO Tower. Apart from that brief exchange between Mr. Harding and Mr. Madonna, there is no evidence in the record whatsoever about an investigation of either of the PECO towers. All of the evidence in the record about the Northeast PECO Tower and the Northwest PECO Tower was presented by Christopher Milotich, who is not a radio frequency engineer. Because there is no credible evidence whatsoever in the record that the Northeast PECO Tower and the Northwest PECO Tower could not be used to adequately extend or infill the Applicant's communication system, the Applicant has failed to meet its burden of demonstrating compliance with Section 1733.W of the Zoning Ordinance and therefore has failed to demonstrate compliance with the express standards and criteria set forth in the Zoning Ordinance. Therefore, the Applicant's conditional use applicant must be denied.



**ADOPTED** and **ORDERED** this 24th day of June, 2008.

**BOARD OF SUPERVISORS  
EAST FALLOWFIELD TOWNSHIP**

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**George Broadbent, Chairman**

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**Chris Makely, Vice Chairman**

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**Garth Monaghan, Member**

**ATTEST:**

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**Denise Miller, Secretary**