

Minutes - Board Meeting – 9/9/09

Minutes of the meeting of the Board of Trustees of the Incorporated Village of Mineola held Wednesday, September 9, 2009 at Village Hall, 155 Washington Avenue, Mineola, New York 11501.

PRESENT: Mayor Jack M. Martins
Trustee Lawrence A. Werther
Trustee Paul S. Cusato
Trustee Thomas F. Kennedy
Trustee Paul A. Pereira

ALSO PRESENT: Village Attorney John M. Spellman
Village Clerk Joseph R. Scalero
Deputy Village Clerk Cora T. Kelly

Sunshine Observers: 8 Observers

Mayor Jack M. Martins called the Work Session to order at 6:50 PM.

Resolution No. 258-09

Resolved to approve bills and payroll.

Motioned by Trustee Paul S. Cusato
Seconded by Trustee Lawrence A. Werther

Vote:

<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Mayor Jack M. Martins		
Trustee Lawrence A. Werther		
Trustee Paul S. Cusato		
Trustee Thomas F. Kennedy		
Trustee Paul A. Pereira		

Resolution No. 259-09

Resolved to authorize the Deputy Village Clerk to attend the NYCOM Fall Training School for City and Village Officials from September 21, 2009 through September 24, 2009.

Motioned by Trustee Lawrence A. Werther
Seconded by Trustee Paul A. Pereira

Vote:

<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Mayor Jack M. Martins		
Trustee Lawrence A. Werther		
Trustee Paul S. Cusato		
Trustee Thomas F. Kennedy		
Trustee Paul A. Pereira		

Resolution No. 260-09

BOARD OF TRUSTEES
INCORPORATED VILLAGE OF MINEOLA

-----X

In the Matter of the Application of
METROPCS NEW YORK, LLC

**AMENDED AND SUPERSEDING
DECISION**

For a Special Permit pursuant to Chapter 31 of the Code of the Incorporated Village of Mineola, at premises known as 266 Maple Place, Mineola, New York 11501, known and designated on the Nassau County Land and Tax Map as Section 9, Block 451 Lots 255

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NAME OF APPLICANT: MetroPCS New York

SUBJECT PROPERTY: Section 9, Block 451, Lots 225

STREET LOCATION: 266 Maple Place
Mineola, New York 11501

RELIEF REQUESTED: Application For a Special Permit to install additional telecommunications panels on an existing tower

PUBLICATION & POSTING: All in accordance with applicable laws, rules and regulations.

DATE OF HEARINGS: November 12, 2008 and December 10, 2008

APPEARANCES:

IN SUPPORT: Alfred L. Amato, Esq., Counsel
Paul K. Gartelman of William F. Collins Architects
Donna-Marie Stipo of DMS Consulting Services, Inc.
Peter Papay of Papay Engineering, Structural Engineer
Dave Collins of Pinnacle Telecom Group
Michael Lynch, Appraiser
Atif Zia, Radio Frequency Engineer

DECISION:

The applicant, MetroPCS New York, LLC (hereinafter, "Applicant"), seeks a special use permit from the Board of Trustees of the Incorporated Village of Mineola pursuant to Chapter 31 of the Code of the Incorporated Village of Mineola, entitled "Review Authority", subsection (A), to install six (6) antennas on three mounts on an existing 255 foot tower at a height of 157 feet, 5 inches and to install "base equipment" which the Applicant described as "equipment cabinets located at the base of the tower, on a 16-foot by seven-inch by ten-foot equipment compound pad, basically on a concrete slab". The location of the aforementioned installation is identified as 266 Maple Place, Mineola, New York 11501 (the "Property").

Pursuant to Chapter 31, the Village's local law governing wireless telecommunications towers and facilities, no antenna or tower may be used, changed or altered unless an applicant shall have obtained a Special Use Permit from the Board of Trustees.

The Applicant is a new provider of services in Mineola. Accordingly, the usual

test for demonstrating a gap in service is inapplicable in this instance.

This Board previously considered this application and by decision, filed in the Office of the Village Clerk on April 21, 2009, denied the application. The basis for the denial was that the application constituted the impermissible expansion of a nonconforming use and the impermissible enlargement and extension of a nonconforming structure. The Applicant then commenced an action in the United States District Court, Eastern District of New York alleging, among other things, that the Board's decision violated a Stipulation of Settlement entered into in a prior action. A review of this Stipulation of Settlement shows that the Village agreed that it would not assert in any future application that the addition of antennae, together with any related equipment and/or equipment storage facilities, would constitute the expansion of the nonconforming use. However, the Stipulation of Settlement does not contain a similar prohibition as to the expansion of the nonconforming structure.

At the hearings conducted on this application, Applicant's own engineering report indicated that structural alterations to the existing tower were required before any installation of panels could be supported. The engineer's report further indicated that the existing tower, as currently composed, was not capable of maintaining the Applicant's proposed antennae. Therefore, an increase in panel population would require a structural alteration, arguably the enlargement or extension of the nonconforming structure which would violate the Village Code.

Nonetheless, the Board has reconsidered its prior determination and, upon reconsideration, has determined to approve the application. It is noted, however, that structural alterations to the existing tower are required before any installation of panels pursuant to the instant application can occur. Applicant must therefore comply with all directives of the Village's Building Department with respect to modification of the tower, particularly with respect to safety certifications. Applicant must also comply with Section 30.95 (Structural Alterations) of the Village's Municipal Code which places limits on structural alterations of nonconforming structures.

The approval of this special permit by the Board of Trustees does not authorize any work at the Property. Any such work shall require appropriate permits from the Village's Building Department and any other entity having jurisdiction.

This decision amends and supersedes the prior decision of the Board of Trustees dated April 8, 2009 and filed in the office of the Village Clerk on April 21, 2009.

IT IS THEREFORE RESOLVED, that the special use permit is **APPROVED**.

Motioned by Trustee Lawrence A. Werther
Seconded by Trustee Paul S. Cusato

Vote:

Yes

No

Abstain

Mayor Jack M. Martins
Trustee Lawrence A. Werther
Trustee Paul S. Cusato
Trustee Thomas F. Kennedy
Trustee Paul A. Pereira

Resolution No. 261-09

[Application of 250 Old Country Road, LLC – Decision to be inserted]

Motioned by Trustee Paul A. Pereira
Seconded by Trustee Lawrence A. Werther

Vote:

Yes

No

Abstain

Mayor Jack M. Martins
Trustee Lawrence A. Werther
Trustee Paul S. Cusato
Trustee Thomas F. Kennedy
Trustee Paul A. Pereira

Resolution No. 262-09

BOARD OF TRUSTEES
INCORPORATED VILLAGE OF MINEOLA

-----X

In the Matter of the Application of

METROPCS NEW YORK, LLC

DECISION

For a Special Permit pursuant to Chapter 31 of the Code of the Incorporated Village of Mineola, at premises known as 170 Old Country Road, Mineola, New York 11501, known and designated on the Nassau County Land and Tax Map as Section 9, Block 430 Lot 52

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NAME OF APPLICANT: MetroPCS New York

SUBJECT PROPERTY: Section 9, Block 430, Lot 52

STREET LOCATION: 170 Old Country Road
Mineola, New York 11501

RELIEF REQUESTED: Application For a Special Permit to construct, operate and maintain a public utility wireless communication facility

PUBLICATION & POSTING: All in accordance with applicable laws, rules and regulations.

DATE OF HEARINGS: August 12, 2009

APPEARANCES:

IN SUPPORT: Alfred L. Amato, Esq., Counsel
Donna-Marie Stipo of DMS Consulting Services, Inc.

DECISION:

The applicant, MetroPCS New York, LLC (hereinafter, "Applicant"), seeks a special use permit from the Board of Trustees of the Incorporated Village of Mineola pursuant to Chapter 31 of the Code of the Incorporated Village of Mineola, entitled "Wireless Telecommunications Towers and Facilities", Section 31.4, entitled "Review Authority", subsection (A), for the construction, operation and maintenance of a public utility wireless communication facility upon the property known as 170 Old Country Road, Mineola, New York (known and designated on the Nassau County Land and Tax Map as Section 9, Block 430, Lot 52) (hereinafter, the "Property").

By Notice of Disapproval, dated March 27, 2009, Applicant was advised that no antenna or tower may be used, erected, changed or altered except when authorized by the Board of Trustees as a special use after a public hearing. As a result, Applicant sought relief before the Board of Trustees for a special use permit.

A public hearing on the application was held before the Board of Trustees on August 12, 2009. During the public hearings, the following representations were made by Applicant:

MetroPCS is new to the market and is creating a new network in the area.

* * * *

The building of 170 Old Country Road, otherwise known as the Benchmark building, is a six-story commercial office building. It is located on the north side of Old Country Road, between Main Street and Willis Avenue.

* * * *

The overall facility is just a three-panel antenna and three pieces of equipment. And also there is another carrier currently located on the building and is operating. Two of the panel antennas will be mounted on the bulkhead, all of the equipment, including small GPS antennas, will be mounted on the bulkhead as well.

* * * *

The entire bulkhead will be wrapped in an RF compatible material, surround the equipment, surround the antennas and refinished in terms of color and texture to match the bulkhead such that anywhere from a distance or even at the building will not be discernable from the balance of the bulkhead, it merely appears as an extension.

* * * *

We are planning on revising the building, coming back to this Board, and be in conjunction with that revision, and also how that would appear esthetically.

* * * *

These are radio frequency (RF) panels. They can be any color you would like. But they are currently creamy colored, like canary beige.

* * * *

We could make our extension actually match the dark brick of the building so that it would blend more to the building...We can take the entire bulkhead area and paint it to match the building...And our suggestion would be to paint the bulkhead area to precisely match the building currently, and then our extension would match the building as well. So it blends all as one.

Thereafter, a referral of the application was made to the Nassau County Planning Commission. The Nassau County Planning Commission has recommended that this Board take whatever action it deems appropriate. Based upon the evidence adduced at the public hearing, and the documentation submitted to the Board in support of the application, the Board makes the following findings of fact:

- 1) The Applicant is seeking a special permit to construct, operate and maintain a public utility wireless communication facility upon the Property;
- 2) The overall facility consists of a three (3) panel antenna and three pieces of equipment that will be mounted to the bulkhead;
- 3) The proposal is in compliance with the FCC regulations;
- 4) The proposal will not have a significant impact on the character of the surrounding neighborhood;
- 5) The proposal will not have a negative impact on the real estate values; and
- 6) The Village Code specifically encourages the co-placement of cellular antennae.

Based upon the above findings, it is hereby determined that the proposed use, subject to the conditions stated below, is harmonious to the "B-3" District, will conform to the general character of the neighborhood and that the public health, morals, safety and general welfare of such neighborhood will be secured by the granting of the requested

Special Use Permit. **IT IS THEREFORE RESOLVED**, that the Special Permit is **GRANTED** subject to the following conditions:

- 1) The RF compatible concealment material screen shall be of a color to match the existing façade of the building;
- 2) In the event that the façade of the existing building shall be altered in the future, the RF compatible concealment material screen shall be simultaneously changed to match the new building façade;
- 3) The Board of Trustees shall retain continuing jurisdiction with respect to the concealment material screening.

Motioned by Trustee Thomas F. Kennedy
Seconded by Trustee Paul S. Cusato

Vote:

Yes

No

Abstain

Mayor Jack M. Martins
Trustee Lawrence A. Werther
Trustee Paul S. Cusato
Trustee Thomas F. Kennedy
Trustee Paul A. Pereira

Resolution No. 263-09

WHEREAS, pursuant to Resolution of the Board of Trustees of the Incorporated Village of Mineola, a Request for Proposals (RFP), dated September 12, 2007, for the establishment of an Indoor/Outdoor Multi-Purpose Athletic Complex on Village-owned property located on the north side of East Second Street at the Village boundary (part of which is currently occupied by Soccer Field Number 3), was issued by the Village; and

WHEREAS, a responsive proposal, dated October 9, 2007, was submitted by American Sports Management, LLC; and

WHEREAS, the Board of Trustees favorably considered the proposal of American Sports Management, LLC and authorized the Village Attorney to commence negotiations with said Company with an eye towards the formulation of a development and lease agreement satisfactory to both the Company and the Village; and

WHEREAS, the Village Attorney has reported that after nearly two years of negotiations a satisfactory agreement has not and cannot be reached;

NOW, THEREFORE, it is hereby RESOLVED that negotiations between the Village and American Sports Management, LLC for the establishment of an Indoor/Outdoor Multi-Purpose Athletic Complex are terminated and that a new Request for Proposals for the establishment of such a facility shall be issued.

Motioned by Trustee Lawrence A. Werther
Seconded by Trustee Thomas F. Kennedy

Vote:

Yes

No

Abstain

Mayor Jack M. Martins
Trustee Lawrence A. Werther
Trustee Paul S. Cusato
Trustee Thomas F. Kennedy
Trustee Paul A. Pereira

Resolution No. 264-09

Resolved that the Incorporated Village of Mineola shall issue a Request for Proposals for

the smart growth development of Parking Field No. 5, located on the east side of Third Avenue between First Street and Harrison Street, in conformity with the goals set forth in the Village's Draft Comprehensive Master Plan with particular emphasis upon integrating uses at the site into the Village's downtown business district.

Motioned by Trustee Lawrence A. Werther
Seconded by Trustee Paul A. Pereira

Vote:

Yes

No

Abstain

Mayor Jack M. Martins
Trustee Lawrence A. Werther
Trustee Paul S. Cusato
Trustee Thomas F. Kennedy
Trustee Paul A. Pereira

Mayor Jack M. Martins reported that the Town of North Hempstead zoning hearing held on September 8, 2009 to re-zone the West Side of Herricks Road from Business B to Industrial B was unanimously denied by the Town Council and thanked all that had a part in denying this request; announced the LOSAP Referendum being held on September 10, 2009 and reminded everyone of the 9/11 Remembrance Ceremony at Memorial Park and that in the event of inclement weather it would be held at Village Hall at 7:00 PM.

Mayor Jack M. Martins requested a motion to close the Work Session at 7:17 PM.

Motioned by Trustee Paul S. Cusato
Seconded by Trustee Lawrence A. Werther

Vote:

Yes

No

Abstain

Mayor Jack M. Martins
Trustee Lawrence A. Werther
Trustee Paul S. Cusato
Trustee Thomas F. Kennedy
Trustee Paul A. Pereira

Respectfully submitted,

Joseph R. Scalero
Village Clerk