



CAPE COD COMMISSION

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DATE: December 12, 2000

TO: Omnipoint Holding, Inc. (Omnipoint)

FROM: Cape Cod Commission

RE: Jurisdictional Determination
Cape Cod Commission Act, Section 12(j)

APPLICANT: Omnipoint Holdings, Inc.

PROJECT #: JD-20038

PROJECT: Omnipoint/Osterville Communications Tower

BOOK/PAGE: 11265/245

DECISION OF THE CAPE COD COMMISSION

SUMMARY

Pursuant to Section 12(j) of the Cape Cod Commission Act ("Act"), the Cape Cod Commission (Commission) hereby finds that the monopole proposed at 195 Old Mill Pond Road, Osterville MA is not subject to mandatory review under Section 3(i) of the Development of Regional Impact (DRI) Enabling Regulations, Barnstable County Ordinance 90-12, as amended. Further, the project is not exempt under Section 22 of the Cape Cod Commission Act. The decision is rendered pursuant to the vote of the Regulatory Committee on December 11, 2000.

PROJECT DESCRIPTION

Omnipoint Holdings, Inc. (Omnipoint) proposes to construct a 70-foot wooden monopole communications tower which will replace an existing 50-foot telephone pole located at 195 Old Mill Road in Osterville, MA. Omnipoint seeks to install this wireless communications facility to provide modest wireless service coverage throughout Osterville. The proposed 70-foot monopole will provide for the installation of wireless communication equipment to include an antenna panel and associated coaxial cable. The antenna will be flush mounted, and will be 72"

tall, 8" wide and 2" deep. The antenna will be connected to a ground-mounted equipment cabinet.

The cabinet is proposed within a 15x14 foot fenced area and will be located at the base of the proposed tower. Omnipoint proposes to surround the cabinet area with a stockade fence. The base equipment cabinet will contain computer and climate control equipment, and small auxiliary batteries for back-up power. Thirty-six square feet of additional impervious surface will be added to the subject property as a result of the installation of the equipment cabinet. The project is located within an RC Residential Zoning District and in an Aquifer Protection Overlay District.

PROCEDURAL HISTORY

The Commission received a request for a Jurisdictional Determination (JD) from the Barnstable Planning Division on November 15, 2000. The application was deemed complete on November 22, 2000. A duly noticed public hearing was conducted pursuant to Section 5 of the Act by the Regulatory Committee on December 11, 2000 at the Cape Cod Commission. The public hearing and record were closed on December 11, 2000. The Regulatory Committee voted unanimously on December 11, 2000 that the project was not subject to mandatory review as a DRI.

Materials submitted for the record:

From the Town of Barnstable:

- Request for a Jurisdictional Determination dated November 2, 1990
- Jurisdictional Determination application received November 15, 2000
- Application, photos and maps for Site Plan approval provided by Omnipoint dated November 15, 2000

From the applicant:

- Letter from VoiceStream (Omnipoint) regarding proposed development dated November 21, 2000
- Affidavit of historic property use from Trustee of Osterville property dated December 4, 2000
- Historic photographs of the utility pole, identifying that the pole was used for communications as part of trucking company, submitted to Committee on December 11, 2000

From Cape Cod Commission staff:

- Letter to Omnipoint and applicant regarding complete application dated November 22, 2000
- Regulatory Committee public hearing notice dated November 24, 2000
- Staff report dated December 6, 2000

The application and notices of public hearings relative thereto, the Commission staff's notes, exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

The Commission heard oral testimony at the December 11, 2000 Regulatory Committee public hearing from Mr. Mike Almada of Omnipoint Holdings, Inc. Mr. Almada expressed his support for the project, stating that it was Omnipoint's desire to provide the necessary in-fill wireless coverage throughout Osterville by locating and constructing smaller monopole facilities. Mr. Peter Morin, counsel for Omnipoint, stated that the staff report, while technically correct based upon a strict interpretation of Section 3(i) of the Enabling Regulations, was incorrect in the interpretation of the definition of the historic use of the utility pole. Photos were introduced showing that the tower was used for two-way radio communication, and that the utility pole did meet the definition of a wireless communication tower found in Section 1 of the Enabling Regulations.

Mr. Greg Smith, Staff Planner for the Cape Cod Commission, presented the staff report and stated that the proposed project triggered DRI review based upon Sections 1 and 3(i) of the Enabling Regulations, and Section 22 (e) of the Cape Cod Commission Act.

FINDINGS

The Commission has considered the request of the Town of Barnstable for a Jurisdictional Determination regarding the proposed Omnipoint/Osterville Communications Tower, and based on consideration of such request and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General

1. The Omnipoint project consists of the construction of a 70-foot communications tower and equipment cabinet that will replace an existing 50-foot communications pole. If the Commission finds that the project differs in any way from the submitted sketch plans, the Commission may reconsider this Jurisdictional Determination.
2. The existing 50-foot pole is a Wireless Communications Tower as defined in Section 1 of the Enabling Regulations based upon the historic use of the pole as a two-way radio tower for a trucking business.
3. The project does not qualify as a DRI under Section 3(i) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended, which requires DRI review of "construction of any wireless communication tower exceeding thirty-five (35) feet in height from the natural grade of the site on which it is located but not including the reconstruction or replacement of an existing wireless communication tower on the same site, provided that the reconstruction or replacement does not exceed the height of the existing wireless communication tower by more than twenty (20) feet. Said twenty feet shall be measured from the height of the existing wireless communication tower in existence on June 30, 1997."

4. This project is not exempt under Section 22 of the Cape Cod Commission Act. In particular, Section 22(e) of the Act states that the provisions of the Act shall not apply to any development which has received a special permit or variance under Chapter 40A prior to July, 1989. The applicant has applied for but not yet received a special permit from the Barnstable Zoning Board of Appeals. Therefore, the project is not exempt under Section 22(e) of the Act.

CONCLUSION

Based on the findings above, the Commission hereby concludes that the Omnipoint Communications Tower at 195 Old Mill Pond Road as proposed in the Jurisdictional Determination, is not subject to mandatory review under Section 3 of the Enabling Regulations. Further, this project is not exempt under Section 22 of the Cape Cod Commission Act. This decision is rendered pursuant to a vote of the Regulatory Committee on December 11, 2000.

David J Ansel
David Ansel, Chair

12/11/00
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 11th day of December 19 2000

Katharine L Peters
Name, Notary Public

My commission expires:

