

RESOLUTION NO. R-99- 953

RESOLUTION APPROVING WAIVER REQUEST W98-007(A)  
WAIVER FROM REQUIRED DIMENSIONAL CRITERIA  
PETITION OF OMNIPOINT COMMUNICATIONS MB OPERATIONS LLC.  
BY CLIFFORD HERTZ, AGENT  
(OMNIPOINT CLINT MOORE TOWER)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the Board of County Commissioners, pursuant to Article 5 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 92-20, as amended) is authorized and empowered to consider, approve, approve with conditions or deny Waiver from Required Dimensional Criteria for Communication Towers; and

WHEREAS, the notice and hearing requirements, as provided for in Article 5 of the Palm Beach County Unified Land Development Code have been satisfied; and

WHEREAS, Waiver Request W98-007(A) was presented to the Board of County Commissioners at a public hearing conducted on May 11, 1999; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 5, Section 5.8 (Compliance with Time Limitations) of the Palm Beach County Unified Land Development Code (ULDC) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners made the following findings of fact:

1. This request for Waiver from required setback from residential zoning district along the west property line ( $\pm 51.44$  feet) complies with the intent of Section 6.4.D.22 of the ULDC.
2. This Waiver from Required setback from residential zoning district along the west property line ( $\pm 51.44$  feet) , will not be injurious to the uses in the area adjacent to the structure and otherwise will not be detrimental to the public welfare.
3. This Waiver from Required setback from residential zoning district along the west property line ( $\pm 51.44$  feet) is not granted based solely upon or in large measures due costs associated with complying with all requirements of section 6.4.D.22.
4. This Waiver from Required setback from residential zoning district along the west property line ( $\pm 51.44$  feet) , will not result in an incompatibility between the proposed tower or communication facility and adjacent uses.
5. This Waiver from Required setback from residential zoning district along the west property line ( $\pm 51.44$  feet) is necessary within the defined search or propagation study area as all other waiver alternatives have been exhausted.
6. This Waiver from Required setback from residential zoning district along the west property line ( $\pm 51.44$  feet) , is the minimum waiver that will make possible the reasonable use of the parcel of land, building or structure.

7. This Wavier from Requiredsetback from residential zoning district along the west property line (~~±51.44~~ feet) , is consistent with the purposes, goals, objectives, and policies of Palm Beach County Comprehensive Plan and with relevant and appropriate portions of Article 6, Supplementary Use Standards of the Palm Beach County Unified Land Development Code.
8. This Wavier from Requiredsetback from residential zoning district along the west property line (~~±51.44~~ feet) , will not be injurious to the area involved or otherwise detrimental to the public welfare.
9. This Waiver from Requiredsetback from residential zoning district along the west property line (~~±51.44~~ feet) based upon documentation submitted by the applicant is necessary within the defined search or propagation study area as existing towers or other structures do not possess the capacity to allow reasonable technical service.
10. This Waiver from Requiredsetback from residential zoning district along the west property line (~~±51.44~~ feet) based upon documentation submitted by the applicant is necessary within the defined search or propagation study area as existing towers or other structures are not of sufficient height to provide reasonable service.
11. This Waiver from Requiredsetback from residential zoning district along the west property line (~~±51.44~~ feet) based upon documentation submitted by the applicant is necessary within the defined search or propagation study area due to governmental regulations or restrictive covenants which preclude location of tower.

WHEREAS, Article 5 of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Waiver Request W98-007(A), the petition of Omnipoint Communications MB Operations LLC., by Clifford Hertz, agent, for a Waiver (W) from the minimum setback requirement to a residential zoning district along the west property line in the Agricultural Reserve Zoning District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on May 27, 1999, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Roberts moved for the approval of the Resolution.

The motion was seconded by Commissioner Marcus and, upon being put to a vote, the vote was as follows:

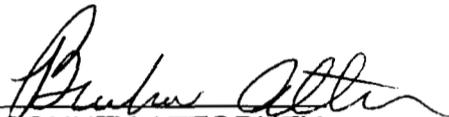
Maude Ford Lee, Chair	--	Aye
Warren Newell, Vice Chair	-	Absent
Karen T. Marcus	--	Aye
Carol A. Roberts	--	Aye
Mary McCarty	--	Absent
Burt Aaronson	--	Aye
Tony Masilotti	--	Aye

The Chair thereupon declared that the resolution was duly passed and adopted on May 27, 1999.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

DOROTHY H. WILKEN, CLERK

BY:   
COUNTY ATTORNEY

BY:   
DEPUTY CLERK

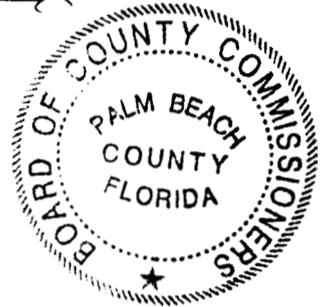


EXHIBIT A  
LEGAL DESCRIPTION

**COMPOSITE LEASE SITE LEGAL DESCRIPTION:**

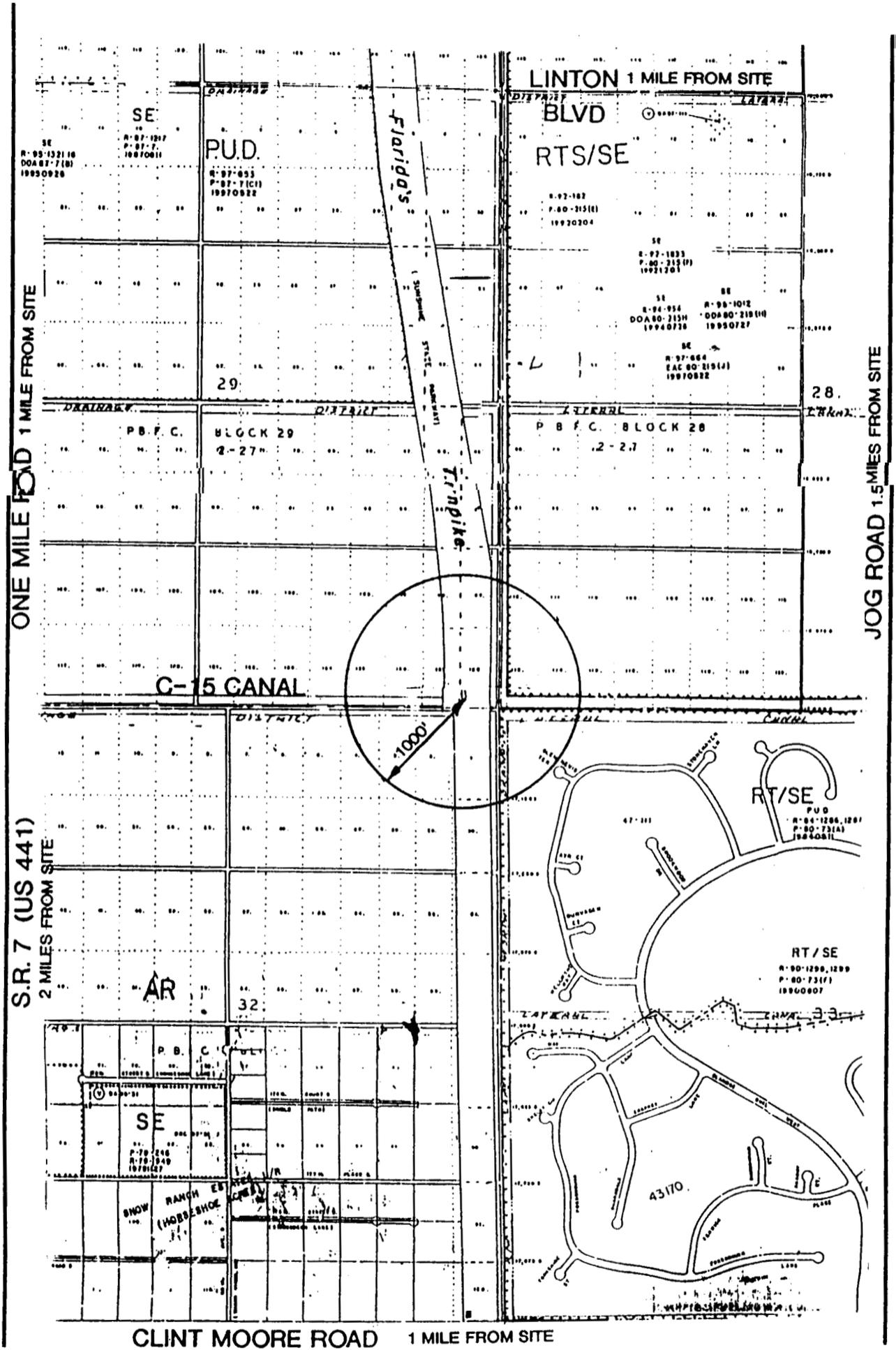
A PARCEL OF LAND LYING IN SECTION 29, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING A PORTION OF THE RIGHT-OF-WAY OF THE SUNSHINE STATE PARKWAY (N.K.A. THE RONALD REGAN MEMORIAL TURNPIKE) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCE** AT THE SOUTHEAST CORNER OF SAID SECTION 29, AS ESTABLISHED BY THE PALM BEACH COUNTY SURVEY SECTION; THENCE NORTH 38°08'43" WEST (GRID BEARING), A DISTANCE ~~OF~~ 469.75 FEET, TO THE NORTHEAST CORNER OF THE EXISTING OMNIPOINT TOTAL LEASE PARCEL AND THE **POINT OF BEGINNING** OF THE FOLLOWING DESCRIBED COMPOSITE LEASE SITE:

THENCE SOUTH 03°45'37" EAST, ALONG THE EAST LINE OF SAID EXISTING OMNIPOINT TOTAL LEASE PARCEL, A DISTANCE OF 96.00 FEET; THENCE SOUTH 86°14'23" WEST, ALONG THE SOUTH LINE OF SAID EXISTING OMNIPOINT TOTAL LEASE PARCEL, A DISTANCE OF 12.50 FEET; THENCE NORTH 03°45'37" WEST, ALONG THE WEST LINE ~~OF~~ SAID EXISTING OMNIPOINT TOTAL LEASE PARCEL, A DISTANCE OF 96.00 FEET, TO THE NORTHWEST CORNER OF SAID OMNIPOINT TOTAL LEASE PARCEL; THENCE CONTINUE NORTH 03°45'37" WEST, ALONG A NORTHERLY PROLONGATION OF SAID WEST LINE, A DISTANCE OF 30.00 FEET; THENCE NORTH 86°14'23" EAST, A DISTANCE OF 12.50 FEET; THENCE SOUTH 03°45'37" EAST, ALONG A NORTHERLY PROLONGATION OF THE EAST LINE ~~OF~~ SAID OMNIPOINT TOTAL LEASE PARCEL, A DISTANCE ~~OF~~ 30.00 FEET, TO SAID NORTHEAST CORNER OF THE EXISTING OMNIPOINT TOTAL LEASE PARCEL AND THE **POINT OF BEGINNING**.

CONTAINING 1,575 SQUARE FEET, OR 0.0362 ACRES, MORE OR LESS.

EXHIBIT B  
VICINITY SKETCH



## EXHIBIT C

### CONDITIONS OF APPROVAL

#### A. ALL PETITIONS

1. Development of the site is limited to the uses and site design as approved by the Board of County Commissioners. The approved site plan is dated May 17, 1999. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING)

#### B. TOWER

1. Palm Beach County and the State of Florida shall have the right to co-locate communication equipment on the subject tower at no charge, provided the placement of County or State equipment does not interfere with the petitioner's equipment or operations and shall be subject to the structural capacity of the tower and the approval of FDOT. (ONGOING: PREM)
2. Prior to site plan certification by the DRC, the petitioner shall comply with the shared use provisions of the ULDC, Section 6.4.D.22.k. (shared use), as may be amended. Additional square footage on the site of the tower approved, to accommodate additional unmanned users only, may be permitted administratively subject to approval by the DRC. (DRC: ZONING)
3. All liquid propane tanks associated with the use of the communication tower shall be double walled and installed underground in accordance with Palm Beach County Fire Rescue and Environmental Resource Management requirements. (BLDG PERMIT: FIRE/ERM)
4. Temporary diesel powered generators shall only be permitted on site in the event of natural disaster and shall be removed once power and operations are restored to the tower. (ONGOING: FIRE/ERM/HEALTH)
5. Should the requisite authority, such as the FCC or OSHA, having jurisdiction over the same, determine that the Tower and/or facilities are dangerous to the public's health, safety and welfare, Palm Beach County shall have the right to require the tower and/or facilities to be removed or made safe within sixty (60) days written notice. (ONGOING: FIRE/ERM/HEALTH)
6. No microwave dishes shall be permitted on the tower except in the event of natural disaster. In the event of natural disaster, microwave dishes may be temporarily installed on the tower until such time as land lines are restored. (ONGOING: BLDG PERMIT/ZONING)
7. If tower lighting is required by the requisite authority such as the FAA, the lighting shall include a screening device to direct light away from the ground. The lighting shall also include a dual lighting system consisting of red lights for nighttime and high or medium intensity flashing white lights for daytime and twilight. (CO: BLDG - Zoning/FAA)
8. The communication tower shall be limited to a monopole structure, a maximum of 148 feet high, measured from finished grade to highest point. Only one tower shall be permitted on the subject property. (DRC: ZONING - Bldg)

9. Use of the site shall be limited to the tower and accessory equipment. No other use shall be permitted on the subject property. (ONGOING: CODE ENF - Zoning)

E. ENGINEERING

No engineering conditions.

F. COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)
2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:
  - a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or
  - b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
  - c. A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
  - d. Referral to code enforcement; and/or
  - e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or a majority vote of the Code Enforcement Board to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 5.8 of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (MONITORING)