

Section 24: Webber Hill Road Contract Zone

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KENNEBUNK VOTE

WHEREAS, by a duly authorized and properly called vote of the Town of Kennebunk held on November 3, 2009, a portion of a certain parcel of real estate located at Webber Hill Road, Kennebunk, Maine, Tax Map 13, Lot 60 was rezoned by vote of the Town on said date, with said vote authorizing the Town of Kennebunk to enter into a Contract Zoning Agreement; and

WHEREAS, the parties to the Contract Zoning Agreement have executed the said agreement;

NOW, THEREFORE, the Board of Selectmen hereby authorizes and directs the Town Clerk to attest this Order and then to record a copy of the same in the York County Registry of Deeds to provide record notice of the re-zoning as set forth in the same Contract Zoning Agreement.

Town of Kennebunk

Dated: December 23, 2009

By: Wayne E. Berry, Chairman
Kennebunk Board of Selectmen

A TRUE COPY ATTEST:

Joanna M. Moran
Joanna M. Moran, Town Clerk

SEAL

Doc# 2009061144
Bk 15786 Pg 642 - 652
Received York SS
12/29/2009 11:56AM
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CONTRACT ZONING AGREEMENT

This Contract Zoning Agreement is made this 23rd day of December, 2009 by and between the Town of Kennebunk, a body corporate and political located in the County of York, and the State of Maine (hereafter, "the Town") and Wilbur C. Cluff, Jr., an individual with an address of 128 Mills Road, Kennebunkport, Maine, 04046 (hereafter "Cluff"), and Global Tower Partners (hereafter "GTP"), c/o ATO Realty, 202 US Route 1, PMB 250, Falmouth, Maine, 04105.

WHEREAS, Cluff is the owner of a parcel of real estate located at Webber Hill Road, in Kennebunk, Maine, Tax Map 19, Lot 60, as depicted on the plan of land prepared by Oest Associates, Inc. and attached hereto as Exhibit A and incorporated herewith (hereafter "the Property");

WHEREAS, the Property is currently located in the Rural Residential District under the Kennebunk Zoning Ordinance (hereafter the "Ordinance");

WHEREAS, the Property is currently undeveloped;

WHEREAS, Cluff has entered into a lease agreement with GTP pursuant to which GTP has leased a small portion of the Property measuring 100 feet by 100 feet (hereafter "the Compound Area") for the purposes of constructing and operating a personal wireless service facility, otherwise known as a telecommunication facility under the Ordinance;

WHEREAS, GTP wishes to construct and operate a telecommunications facility, including a tower, on the Compound Area;

WHEREAS, Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc. ("T-Mobile") intends to co-locate a wireless communications facility on the tower to be constructed and operated by GTP;

WHEREAS, the location of the Property, along with the topography and tree cover and other vegetation on the Property make the Property an ideal location for such a telecommunication facility;

WHEREAS, Cliff and the Town believe that a telecommunication facility on the Property is an appropriate use, and is compatible with other uses allowed by right and by special exception in the Rural Residential District;

WHEREAS, Cliff and the Town wish to create a separate zone known as the Webber Hill Road Contract Zone which will enable a telecommunication facility to be permitted by special exception on the Compound Area, within the said separate zone;

WHEREAS, the Town has authority to enter into a contract re-zoning for the Property pursuant to 30-A M.R.S.A. §4352, and Article 13(3) of the Ordinance;

WHEREAS, after notice and hearing and due deliberation on the re-zoning phase, the Kennebunk Planning Board recommended re-zoning of the Compound Area;

WHEREAS, the Planning Board and the Board of Selectmen have determined that the re-zoning will be pursuant to and consistent with the Town's Comprehensive Plan; and

WHEREAS, the re-zoning has been authorized at a Town Meeting.

NOW, THEREFORE, in consideration of the mutual promises made to each other, the parties covenant and agree as follows:

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1. The Town will amend the Zoning Ordinance and map to create and make reference to the Webber Hill Road Contract Zone as depicted on Exhibit A.
2. Subject to final Planning Board approval and after public hearing, Cluff and/or his successors or assigns shall be authorized to use the Compound Area for any of the uses set forth in the description of the Webber Hill Road Contract Zone attached hereto as Exhibit B, and incorporated herewith, including, but not limited to, a telecommunication facility.
3. Cluff shall record the Contract Zoning Amendment in the York County Registry of Deeds, and shall submit proof of recording to the Town's Code Enforcement Officer and Planner.
4. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Compound Area and shall be amended only upon further written agreement of the Town and Cluff or his successors in interest to the Property.
5. The above restrictions, provisions and conditions are an essential part of the re-zoning, shall run with the Property and shall bind Cluff, his successors in interest and any assigns of the Property or any party in possession or occupancy of the Property or any part thereof and shall inure to the benefit of and be enforceable by the Town.
6. If any of the restrictions, provisions, conditions or portions of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed as separate, distinct and independent provisions and such determination shall not affect the validity of the remaining portions

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7. Except as expressly modified herein, the use and occupancy of the Compound Area shall be governed by and complied with the provisions of the Ordinance.

8. In the event that Cluff or his successors or assigns fail to develop or operate the Compound Area in accordance with this Agreement or in the event of any other breach of any conditions set forth in this Agreement, the Board of Selectmen of the Town shall have the authority, after written notice to Cluff or his successors or assigns, and reasonable opportunity to cure, to terminate this Agreement or to recommend to the Town that it should rezone the Compound Area to Rural Residential or any successor zone. In the event of such a re-zoning, the Compound Area shall then be used for only such uses or otherwise allowed by law. The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Ordinance through the provisions of 30-A M.R.S.A. §4452.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement
as of the 23rd day of December 2009.

Town of Kennebunk

[Signature]
Witness

By: W. Berry, Chairman B.S.
Its Board of Selectmen, Duty Authorized

STATE OF Maine
COUNTY of York

Subscribed and sworn to, before me, by Wayne E. Berry, duly
authorized Board of Selectmen of the Town of Kennebunk on this 23rd day of
December, 2009.

Kathleen Nolette
Notary Public/Justice of the Peace

My Commission Expires:

KATHLEEN NOLETTE
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES: 4/22/13

Cliff J. Cluff Jr.
Witness

Wilbur C. Cluff Jr.
Wilbur C. Cluff Jr.

STATE OF Maine
COUNTY of York

Subscribed and sworn to, before me, by Wilbur C. Cluff Jr., on this 3 day
of December, 2009.

Cliff J. Cluff Jr.
Notary Public/Justice of the Peace

My Commission Expires: 6-9-10

Global Tower Partners

K. De Jesus
Witness

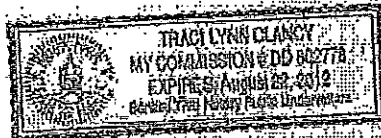
By: Terry Arment SVP
Duly Authorized

STATE OF Florida
COUNTY of Palm Beach

Subscribed and sworn to, before me, by Terry Arment, duly
authorized Sec. Vp. of development Global Tower Partners on this 8th day of
December, 2009.

Traci Lynn Clancy
Notary Public/Justice of the Peace

My Commission Expires: _____



LEGEND

STATION	STATION PLATFORM
STATION BUILDING	STATION TRACK

CONTRACT ZONE (100th St. Station)

SITE PLAN

Article 8, Page ____
Section ____
Webber Hill Road Contract Zone

EXHIBIT B WEBBER HILL ROAD CONTRACT ZONE

A. Purpose

To create a new zone to be known as the Webber Hill Road Contract Zone which will permit the uses allowed in the Rural Residential District as set forth in the Ordinance, as the same may be amended or changed from time to time, as well as permitting telecommunication facilities by special exception.

B. Permitted Uses

The following uses are permitted in the Webber Hill Road Contract Zone:

1. The following resource protection uses:

- 1-1 Forest management
- 1-2 Harvesting of wild crops

2. The following resource production uses:

- 2-1 Agriculture
- 2-2 Horticulture
- 2-3 Keeping of horses
- 2-4 Timber harvesting

3. The following residential uses:

- 3-1 Single family detached dwellings
- 3-2 Accessory apartments

4. The following institutional uses:

- 4-1 Cemeteries
- 4-2 Churches
- 4-3 Libraries
- 4-4 Municipal uses
- 4-5 Non-residential facilities for educational, scientific and nature interpretation purposes

5. The following commercial uses:

- 5-1 Kennels

6. The following recreation and marine uses:

- 6-1 Outdoor recreation
- 6-2 Summer camps

7. The following utility uses:

- 7-1 Essential services

8. The following accessory uses:

- 8-1 Accessory uses and buildings
- 8-2 Home occupations
- 8-3 Renting of rooms; furnishing of board, not to exceed four rented bedrooms

C. Special Exceptions

The following uses may be permitted only upon approval as special exceptions in accordance with Article 7 of this Ordinance:

1. The following commercial uses:

- 1-1 Day care centers

2. The following recreation and marine uses:

- 2-1 Permanent or temporary piers, docks and wharves

3. The following utility uses:

- 3-1 Public utilities

4. The following commercial uses:

- 4-1 Telecommunication facilities

D. Prohibited Uses

Uses not allowed as permitted uses or special exceptions are prohibited within this district.

E. Standards

(1) Space and bulk standards

- (a) Lots that are part of subdivisions created after the date of adoption of this Ordinance (November 2, 1993) and lots that are the result of

an amendment or revision of a subdivision approved prior to 11/2/93 shall comply with the terms of Article 9, Open Space Standards.

- (b) For all other lots, the following space and bulk standards shall apply:

Minimum net lot area	3 acres
Minimum net lot area per dwelling unit	3 acres, provided that, except for accessory apartments, only one such dwelling is allowed per lot; and provided that accessory apartments shall not require an increase in the minimum net lot area
Minimum lot width	200 feet
Minimum setbacks	
Front yard	35 feet
Side yards (each)	20 feet
Rear yard	50 feet
Shoreland area	Per Article 8, Section 16
Maximum height for Telecommunication facilities	150 feet
Maximum height for all other structures	35 feet
Maximum lot coverage	15 percent

(2) Performance standards

Uses within the Webber Hill Road Contract Zone shall conform to all applicable performance standards of this Ordinance, including but not limited to the following:

- | | |
|------------------------------|------------------------|
| (a) Soils | Article 10, Section 2 |
| (b) Private outdoor lighting | Article 10, Section 6 |
| (c) Signs | Article 10, Section 7 |
| (d) Off street parking | Article 10, Section 9 |
| (e) Home occupations | Article 10, Section 14 |
| (f) Accessory apartments | Article 10, Section 15 |
| (g) Keeping of horses | Article 10, Section 18 |
| (h) Kennels | Article 10, Section 19 |

F. Overlay Districts

- (1) Any lot or use within the Shoreland Area Overlay District shall additionally comply with the provisions of Article 8, Section 16, and of Article 10, Section 3, of this ordinance.

- (2) Any lot or use within the Historic Preservation Overlay District shall additionally comply with the provisions of Article 8, Section 17, and of Article 12 (Historic Preservation) of this Ordinance.

G. Flood Plains

Any construction or development within a flood plain, as defined by the Kennebunk Flood Plain Management Ordinance, shall additionally comply with the terms of that ordinance.

H. Site Plan Review

Any proposals as described in Article 11 (Site Plan Review), Section 3 of this Ordinance shall be subject to site plan review and approval prior to receipt of a building permit or plumbing permit.