Case No. 85-96-XA

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY et al.

v.

GRACE L. STANDIFORD et al.

In the Court of Appeals of Maryland

Petition Docket No. 576
September Term, 1987
(No. 499, September Term, 1987 Court of Special Appeals)

## ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: February 24, 1988

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COUNTY BOARD OF APPEALS
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ZONING OFFICE

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PHYLLIS COLE FRIEDMAN, People's Counsel for Baltimore County, Old Courthouse, 2nd Floor, Towson, Maryland, 21204,

and

PEGGY A. PATTERSON, 1733 Masemore Road, Parkton, Maryland, 21120,

and

RONALD P. MEYER, 17212 Masemore Road, Parkton, Maryland, 21120,

and

MICHAEL J. STACHELEK, 17206 Masemore Road, Parkton, Maryland, 21120,

and

JOSEPH PARKER, 17120 Masemore Road, Parkton, Maryland, 21120,

Appellants,

vs.

BOARD OF APPEALS, Baltimore County, Maryland, Old Courthouse, 2nd Floor, Towson, Maryland, 21204,

Appellee.

IN RE: CASE NO. 85-96-XA

IN THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
Civil General Proceedings

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### ORDER FOR APPEAL

NOW COMES, Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, Maryland, and Peggy A. Patterson, Ronald P. Meyer, Michael J. Stachelek and Joseph Parker, by their attorney, Michael P. Tanczyn, Esq., Appellees, jointly and individually, and respectfully enter an Appeal from the decision of the Board of Appeals of Baltimore County dated April 22, 1986 to the Circuit Court for Baltimore County.

Phyllis Cole Friedman
PHYLLIS COLE FRIEDMAN, ESQ.
People's Counsel for Baltimore County
Old Courthouse, 2nd Floor
Towson, Maryland 21204
(301) 494-2188

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the other named Appellees
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823

I HEREBY ADMIT receipt of a copy of the Order for Appeal in Case No. 85-96-XA.

JUNE HOLMAN, Secretary
Board of Appeals of Baltimore County, Maryland

I HEREBY CERTIFY that, on this 21st day of May, 1936, a copy of this Order of Appeal was mailed, postage prepaid, to Newton A. Williams, Esq., Nolan, Plumhoff & Williams, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for Cellular One.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

---

IN RE
THE PETITION OF GRACE L. STANDIFORD
CASE NO. 85-96-XA

IN THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
Case No. 27/121/86CG-1981

### PETITION TO ACCOMPANY ORDER FOR APPEAL

NOW COMES, Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, Maryland, and Appellants Peggy A. Patterson, Ronald P. Meyer, Michael J. Stachelek and Joseph Parker, by their attorney, Michael P. Tanczyn, Esq., and pursuant to Maryland Rule B(2)(e) respectfully avers that:

1. ACTION APPEALED FROM: The Baltimore County Board of Appeals considered the Petition of Grace L. Standiford for Cellular One for a Special Exception for a wireless transmitting and receiving facility in a RC-2 Zone in Case 85-96-XA over five hearing dates as well as a Petition for Variance to permit front, side and rear yard setbacks of 20 feet in lieu of the required 35 feet. The Board by Order dated April 22, 1986 approved the Special Exception for a wireless transmitting and receiving facility in an RC-2 Zone with conditions and dismissed the Petition for Variances. The Protestants to the Special Exception before the Board of Appeals, the nominal Appellants, as well the People's Counsel appealed the approval of the Special Exception to the Circuit Court for Baltimore County.

2. The action of the Board of Appeals in granting the Special Exception requested with conditions was arbitrary, capricious and unlawful for the following reasons:

(A) The People's Counsel and the Protestants were denied a fair hearing of this matter by virtue of the fact that, in accordance with Rule 7(G) of the Board's Rules of Practice and Procedure, the County Board of Appeals at the request of the Petitioner, Cellular One, established ground rules for testimony of expert witnesses at a meeting on February 21, 1985. The parties were ordered to name their experts in advance and to provide a summary of direct testimony in writing well before the hearing. The Board's directions were summarized in a letter dated February 16, 1985, actually February 26, 1985, of the Petitioner, attached as Exhibit 1 to the People's Counsel's Motion for Mistrial or Reconsideration. Notwithstanding the above ground rules, the Petitioner, on May 14, 1985, produced without warning a previously undisclosed expert witness, Arthur W. Guy. Despite objection of the People's Counsel and other Protestants, Dr. Guy was permitted to testify. The purpose of the original ground rules was to give all parties an opportunity to prepare in advance for cross-examination of expert witnesses and to enhance the likelihood of full review of scientific issues in the case. People's Counsel and the Protestants were deprived of an opportunity to prepare for Dr. Guy's testimony. Furthermore, as his appearance was not anticipated, People's Counsel and the Protestants did not have available Dr. Allen Frey, its own consultant to assist in preparation for cross-examination. Furthermore, in addition to producing Dr. Guy without prior notice or warning, the Petitioner, Cellular One, through counsel, manipulated and exploited this situation to produce not only a new expert witness but also additional testimony concerning public health or safety in the merits of the proposed wireless transmitting and receiving tower. Under the aforesaid circumstances, People's Counsel did cross-examine Dr. Guy under protest. Following the opportunity to cross-examine and on later review with Dr. Allen Frey, People's Counsel was of the opinion, concurred in by the Protestants, that prejudice remained that the allowance of Dr. Guy's testimony involved denial of due process of law. The Petitioner Cellular One refused to have Dr. Guy return to afford the Protestants an opportunity for cross-examination with Dr. Frey present.

(B) Second, in an open hearing on May 9, 1985, following testimony concerning Petitioner, Cellular One's, FCC application and various references thereto, People's Counsel and Protestants requested the production of the entire FCC application. At that time, Petitioner, through its counsel for Cellular One, stated that said application would be provided and/or copies by Monday, May 13, 1985. Not only did Petitioner fail to produce said documents and thereby prevent effective cross-examination of Petitioner's witness, but also Petitioner later refused outright to provide the documents by letter dated May 31, 1985 from counsel of Cellular One to the Acting Chairman, County Board of Appeals. That only subsequently following direction from the Board of Appeals were a huge box of papers having to do not only with the application of the Petitioner for an FCC license but also numerous other irrelevant items as well as duplicates of the items proposed were presented to the Board of Appeals for review by People's Counsel and the Protestants. That the Petitioner's failure to timely follow through as promised with the copies of the FCC application and forwarding it later at the direct order of the Board of Appeals of Baltimore County effectively prevented the Protestants and People's Counsel from having cross-examination prepared to question Cellular One's representatives about the change of the desirable grid points for location of the tower, which caused the Board to be misled in its conclusions and findings of fact that the tower could only be located at the location proposed by the Petitioner, Cellular One, contrary to the evidence in the case which had to be presented in a bifurcated manner due to the delay in tendering the FCC application by the Petitioner, Cellular One.

(C) The Board of Appeals did not give proper weight to the factual, undisputed facts and misconstrued the law as to the requirements of the Baltimore County Zoning Regulations, Section 1A01.2.C. that it must find the Special Exception use requested will not be detrimental to the primary agricultural uses in its vicinity or be on ground in active agricultural production.

(D) The action of the Board is contrary to the evidence of record which was substantial and overwhelming on all material issues as to the uniqueness of the area and its use as farmland, its proximity to a State park, that the use would obstruct natural

## CIRCUIT COURT FOR BALTIMORE COUNTY
## CIVIL GENERAL

DOCKET 27 PAGE 121 CASE NO. 86CG1981 CATEGORY A PEAL

| | ATTORNEYS |
|---|---|
| PHYLLIS COLE FRIEDMAN,<br>People's Counsel for Baltimore County<br>PEGGY A PATTERSON<br>RONALD P. MEYER<br>MICHAEL J STACHELEK<br>JOSEPH PARKER<br><br>IN RE THE PETITION OF GRACE L. STANDIFORD | Phyllis Cole Friedman Esq.<br>People's Counsel for Baltimore<br>County Old Courthouse 2nd Fl<br>(04) 494-2188<br><br>Michael P Ranczyn Esq.<br>Suite 106 606 Baltimore Ave.<br>(04) 296-8823 |
| BOARD OF APPEALS<br><br>GRACE L. STANDIFORD<br>AMERICAN TELESERVICES, INC. ON BEHALF OF THE<br>WASHINGTON/BALTIMORE CELLULAR TELEPHONE COMPANY<br>t/a CELLULAR ONE<br><br>Appellees and Petitioners | Stephen J. Nolan<br>Nolan, Plumhoff &Williams<br>204 W. Penna Ave. (04) 823-7800 |

1-14-87 DE to rule Suit Bd of Appeals

CV GEN 861981 #

CV-CCOS 70.00
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#34025 C001 R02 T14143
05/21/86

(1) May 21,1986- Appellant's appeal from the decision of the Board of Appeals of Baltimore County.

(2) May 22, 1986 - Certificate of notice fd.

(3) May. 26, 1986 -- Appellants Amended Order for Appeal fd.

(4) May. 29, 1986 - Appellants Petition to Accompany Order for Appeal fd.

(5) June 12,1986- Plaintiff's Motion to extend time for transmission of record of testimony and record and affidavit fd.

(6) June 25, 1986 App. of Stephen J. Nolan for Appellees and Petitioners and Same Day Answer to Petition to Accompany Order for Appeal fd.

(7) July 9, 1986 = O rder of Court Granting Appellants Motion to Extend time is Granted fd. (JSS)

(8) Aug 22, 1986 - Transcript of Record fd.

(9) Aug 22, 1986 - Notice of Filing of Record fd. Copy sent.

(10) Sept. 22, 1986 - Pltff's Motion to Extend Time for Submission of Appellant's Memorandum fd.

(11) Oct. 3, 1986 = Appellants Memorandum of Law fd

(12) Nov 10, 1986 - Stipulation fd.

(13) Nov. 17, 1986 - Appellees' Reply Memorandum of Law fd.

(14) Nov. 21, 1986 - Pltff's (People's Counsel for Baltimore County) Notice of Recent Court of Special Appeals Decision fd.

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DOCKET 27 PAGE 121 CASE NO. 86CG1981


## CIRCUIT COURT FOR BALTIMORE COUNTY
## CIVIL GENERAL

DOCKET 27 PAGE 121 CASE NO. 86CG1981 CATEGORY A PEAL

| | ATTORNEYS |
|---|---|
| PHYLLIS COLF FRIEDMAN,<br>People's Counsel for Baltimore County<br>PEGGY A PATTERSON<br>RONALD P. MEYER<br>NICHAEL J STACHELEK<br>JOSEPH PARKER<br><br>IN RE THE PETITION OF GRACE L. STANDIFORD | Phyllis Cole Friedman Esq.<br>People's Counsel for Baltimore<br>County Old Courthouse 2nd Fl<br>(04) 494-2188<br><br>Michael P Ranczyn Esq.<br>Suite 106 606 Baltimore Ave.<br>(04) 296-8823 |
| BOARD OF APPEALS<br><br>GRACE L. STANDIFORD<br>AMERICAN TELESERVICES, INC. ON BEHALF OF THE<br>WASHINGTON/BALTIMORE CELLULAR TELEPHONE COMPANY<br>t/a CELLULAR ONE<br><br>Appellees and Petitioners | Stephen J. Nolan<br>Nolan, Plumhoff &Williams<br>204 W. Penna Ave. (04) 823-7800 |

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J.W.

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DOCKET 27 PAGE 121 CASE NO. 86CG1981

CASE NO.

Nov.26,1986 Hon. Leonard S. Jacobson. Hearing had. Decision of the Court held sub-curia. Counsel to submit Memorandum of Law to the Court.

(15) Jan 14, 1987 - Memorandum Opinion and Order of Court that this case is remanded to the Board for further proceedings consistent herewith, and it is so Ordered, this 13th day of Jan, 1987 fd. (LSJ)

(16) Feb. 11, 1987 - Deft's Order for Appeal to the Court of Special Appeals fd. (See 3/255)

(17) Feb. 26, 1987 = Order from the Court of Special Appeals for Prehearing Conference fd.

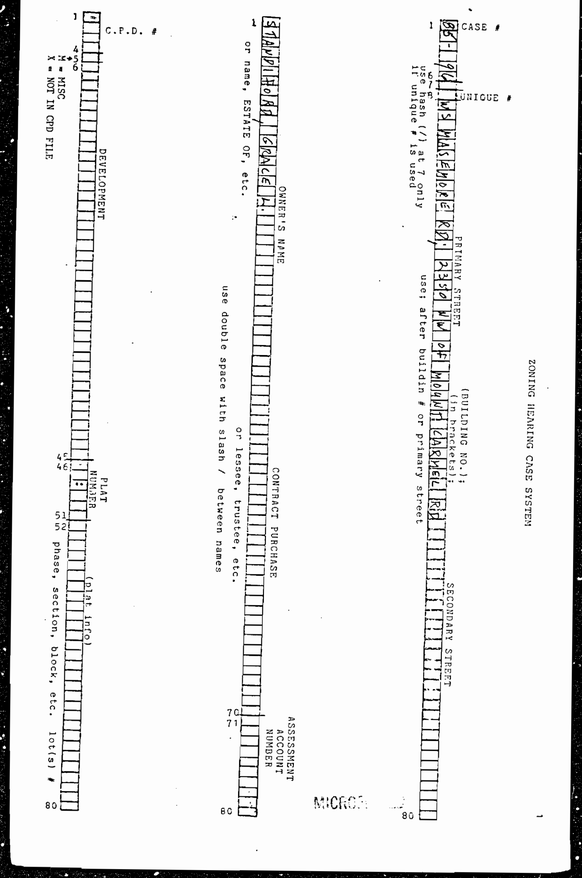
(18) april 13, 1987 - Correspondence fd.

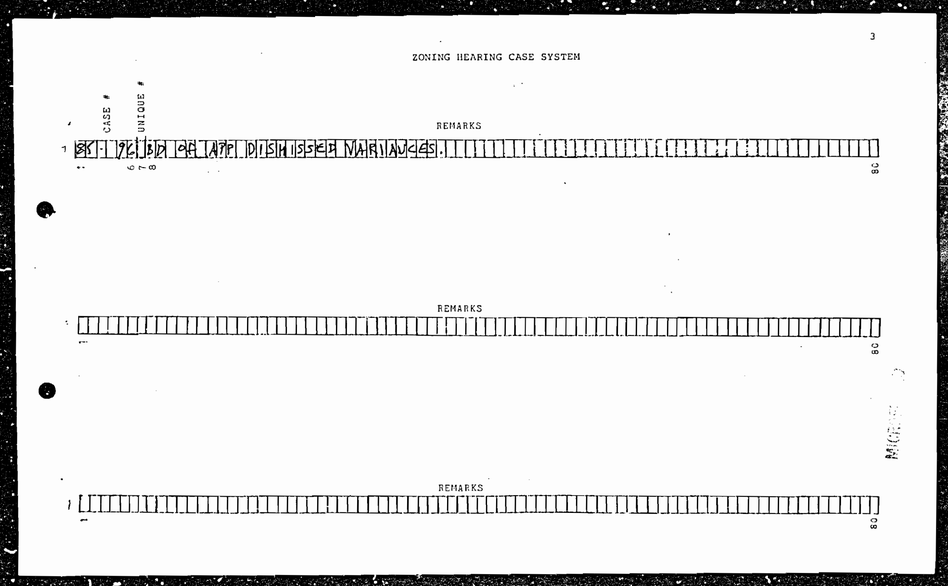
(19) April 15, 1987 - Order of Court from the Court of Special Appeals Directing the Preparation of the Transcript fd. (JJB)

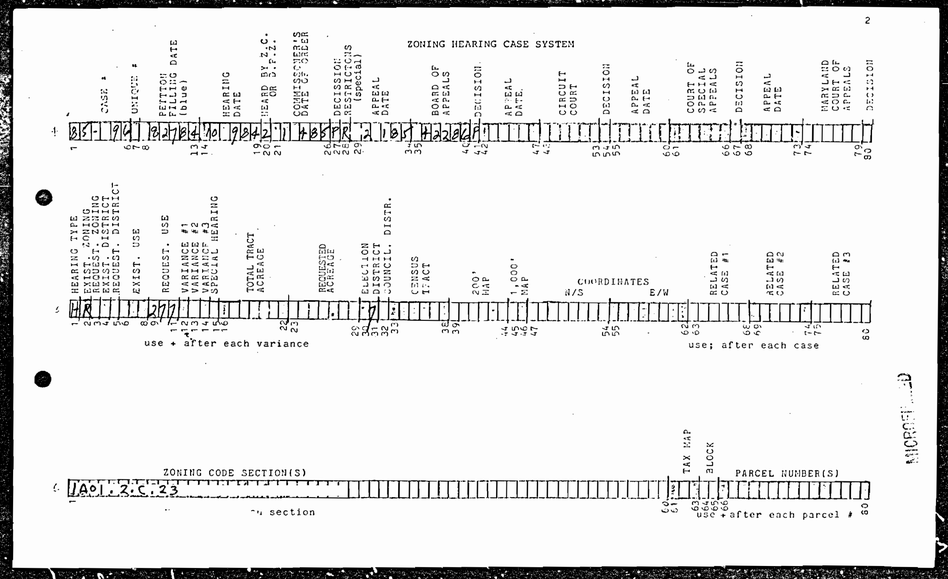
June 8th,1987 Original papers mailed by certified mail to the court of Special Appeals of Maryland.

True Copy Test
SUZANNE MENSH, Clerk
Per Marie Smith
Deputy Clerk

MICROFILMED



85-96-XA

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
27th day of August, 1984.

ARNOLD JABLON
Zoning Commissioner

Received by: Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

Petitioner Mrs Grace L. Standiford
Petitioner's Attorney

MICROFILMED

RE: PETITION FOR SPECIAL EXCEPTION
PETITION FOR VARIANCES
W/S of Masemore Rd., 2350' NW of Mt. Carmel Rd., 7th District
GRACE L. STANDIFORD, Petitioner

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 85-96-XA

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 17th day of September, 1984, a copy of the foregoing Entry of Appearance was mailed to Grace L. Standiford, 410 Scarsdale Rd., Baltimore, MD 21224, Petitioner; and E. A. Griffith, Agent, 204 Investment Building, Towson, MD 21204.

Peter Max Zimmerman

MICROFILMED

PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES

7th Election District

LOCATION: West side of Masemore Road, 2350 feet Northwest of Mt. Carmel Road

DATE & TIME: Tuesday, October 9, 1984, at 1:30 p.m.

PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Exception to permit a wireless transmitting and receiving facility in an R.C.2 Zone and Variances to permit front, side, and rear yard setbacks of 20 feet in lieu of the required 35 feet.

Being the property of Grace L. Standiford, as shown on the plat filed with the Zoning Office.

In the event that these Petitions are granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

MICROFILMED

September 10, 1984

Ms. Grace L. Standiford
410 Scarsdale Road
Baltimore, Maryland 21224

NOTICE OF HEARING

RE: Petition for Special Exception and Variances
W/S Masemore Road, 2350' NW of Mt. Carmel Road
Grace L. Standiford - Petitioner
Case No. 85-96-XA

TIME: 1:30 p.m.

DATE: Tuesday, October 9, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: E.A. Griffith
204 Investment Bldg.
Towson, Maryland 21204

Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 131969

DATE 8/6/84 ACCOUNT 01-615.000

AMOUNT 200.00

RECEIVED FROM Edward C. Griffith

FOR Filing Fee for Item #36
SE + Var.

C 116****2000:1d 607F

VALIDATION OR SIGNATURE OF CASHIER

HELEN DELICH BENTLEY
2d DISTRICT, MARYLAND

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEES:
WATER RESOURCES
ECONOMIC DEVELOPMENT

COMMITTEE ON MERCHANT MARINE AND FISHERIES
SUBCOMMITTEES:
MERCHANT MARINE
PANAMA CANAL/OUTER CONTINENTAL SHELF
OVERSIGHT AND INVESTIGATIONS

# Congress of the United States
House of Representatives
Washington, DC 20515

1810 LONGWORTH BUILDING
WASHINGTON, DC 20515
202-225-3061

DISTRICT OFFICE:
200 EAST JOPPA ROAD
TOWSON, MD 21204
301-337-7322

The Honorable Donald P. Hutchinson
Baltimore County Courthouse
400 Washington Ave.
Towson, Maryland 21204

Dear Mr. Hutchinson:

As the Congresswoman representing the Second District of Maryland, I am often called upon to assist in areas that due not fall within the jurisdiction of the Federal government. However, I always try to be as helpful as possible.

Therefore, I am enclosing a copy of correspondence I recently received from a concerned constituent. I believe you will find this letter self-explanatory, and I would appreciate your comments regarding this matter.

Your time and effort in responding to this request is greatly appreciated. Please forward your response to my Towson District Office address listed above.

I look forward to hearing from you soon.

With warmest regards,

Sincerely,

Helen

Helen Delich Bentley,
Member of Congress

HDB/pc
Enclosure

MICROFILMED

The Honorable Helen Delich Bentley
Congress of the United States
200 East Joppa Road
Towson, Maryland 21204

RE: Case No. 85-96-XA
Grace L. Standiford,
Petitioner

Dear Mrs. Bentley:

I am in receipt of your letter and the accompanying letter from your constituents, Mr. and Mrs. Williams, dated May 15, 1985.

Please be advised that the issue to which the Williams refer is presently before the County Board of Appeals on an appeal of a decision by the Deputy Zoning Commissioner. As you know, the Board is a quasi-judicial body which will render a decision after a public hearing. I am sure that all of the concerns raised by Mr. and Mrs. Williams will be raised before the Board. Since the Board is an independent judicial body, it would be inappropriate for me to intervene. However, the Williams can be assured that Baltimore County, as well as its citizens, will be bound by whatever decision is rendered, subject to any appeal to the Circuit Court of Baltimore County.

Sincerely,

DONALD P. HUTCHINSON
County Executive

DPH/AJ/srl

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

August 27, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 36, 38, 39, and 40 ZAC-Meeting of August 21, 1984
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for item numbers 36, 38, 39, and 40.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/ccm

85-96-XA

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI, JR.
DIRECTOR

August 30, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 36 Zoning Advisory Committee Meeting are as follows:

Property Owner: Grace L. Standiford
Location: W/S Masemore Road 2350' N/W from Mt. Carmel Road
Existing Zoning: R.C. 2
Proposed Zoning: Variance to permit a building setback of 20' in lieu of the required 35' and Special Exception for a wireless transmitting and receiving facility.

Acres: 1.06
District: 7th.

The items checked below are applicable:

A. All structures shall conform to the Baltimore County Building Code 1981/Council Bill 4-82 State of Maryland Code for the Handicapped and Aged; and other applicable Codes.

B. A building/ & other / miscellaneous permit shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Non-reproduced seals and signatures are required on Plans and Technical Data.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within 6'0 for Commercial uses or 3'0 for One & Two Family use group of an adjacent lot line shall be of one hour fire resistive construction, no openings permitted within 3'0 of lot lines. A firewall is required if construction is on the lot line, see Table 401, line 2, Section 1407 and Table 1402, also Section 503.2.

F. Requested variance appears to conflict with the Baltimore County Building Code, Section/s _____.

G. A change of occupancy shall be applied for, along with an alteration permit application, and three required sets of drawings indicating how the structure will meet the Code requirements for the proposed change. Drawings may require a professional seal.

H. Before this office can comment on the above structure, please have the owner, thru the services of a Registered in Maryland Architect or Engineer certify to this office, that, the structure for which a proposed change in use is proposed can comply with the height/area requirements of Table 505 and the required construction classification of Table 401.

I. Comments - The Tower and Building plans, and plans review data sheet shall be signed and sealed by a Registered in Maryland P.E. in the structural field. This engineer shall upon completion of the tower shall certify to this office that it has been constructed to meet his plans and the Baltimore County Building Code.

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 (Plans Review) at 111 W. Chesapeake Ave., Towson.

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEBrcs

MICROFILMED

duck and goose flightways, interfere with crop dusting, State sponsored gypsy moth spraying, failed to give proper weight to the multi-million dollar planned development by the Capital Planning Division of the Department of Natural Resources for the Masemore Road section of the Gunpowder State Park, the AT&T right of way overflight immediately adjacent to the tower of the national security communication lines, all of which antedated the proposed use of the property, and the the substitution of a wireless transmitting and receiving facility for what was described as one of the most productive farm properties in Baltimore County with a farm as a primary use in RC-2 Zone.

(E) The Board did not properly weigh the evidence and apply the law in that the Petitioner failed to meet its burden regarding Section 502.1 of the Zoning Regulations with regard to the potential hazard from fire, panic or other dangers proposed by this tower; Section 502.1(E), interfere with adequate provisions for schools, parks (emphasis supplied), water, sewage, transportation (emphasis supplied) or other public requirements, conveniences or improvements (emphasis supplied); Section 502.1(G), be inconsistent with the purposes of the property zoning classification or in other ways inconsistent with the spirit and intent (emphasis supplied) of the Zoning Regulations; Section 502.1(A), be detrimental to the health, safety or general welfare of the locality an the impact on State wildlands in the immediate vicinity.

(F) That because of the procedural errors of the Board



of Appeals the Protestants' and People's Counsel's constitutional rights to a fair and full hearing were prejudiced and violated when the Opinion and Order of the Board of Appeals is fully considered, including all inferences, conclusions and its ultimate decision.

(G) That the Opinion of the Board was signed and ostensibly considered by only two members of the Board of Appeals while three members of the Board of Appeals heard the case in chief.

WHEREFORE, the Protestants and People's Counsel respectfully pray this Honorable Court:

A. Reverse the decision of the Board of Appeals and deny the Special Exception request without remand;

B. In the alternative, if it finds additional testimony or information is necessary, reverse the Board of Appeals' Decision and remand with instructions for the further information to be received;

C. Charge the Petitioner Cellular One, with the costs of this proceeding and the costs of taking this Appeal, including preparation of the transcript; and

D. Grant such other and further relief as this Honorable Court deems just and proper in the premises.

Phyllis Cole Friedman

PHYLLIS COLE FRIEDMAN, ESQ.
People's Counsel
Old Courthouse, 2nd Floor
Towson, Maryland 21204
(301) 494-2188

Michael P. Tanczyn

MICHAEL P. TANCZYN, ESQ.
Attorney for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823

RECEIVED
COUNTY BOARD OF APPEALS
1986 MAY 29 P 2:29

I HEREBY CERTIFY that, on this 23rd day of May, 1986, a copy of the foregoing Petition to Accompany Order for Appeal was hand delivered to June Holmen, Secretary, Board of Appeals for Baltimore County, Second Floor, Old Courthouse, Towson, Maryland, 21204, and to Newton A. Williams, Esq., Nolan, Plumhoff and Williams, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for Cellular One and Grace L. Standiford, Petitioners.

Michael P. Tanczyn

MICHAEL P. TANCZYN, ESQ.

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COUNTY BOARD OF APPEALS
1986 MAY 24 P 2:29



| | | |
|---|---|---|
| IN RE | * | IN THE |
| THE PETITION OF GRACE | * | CIRCUIT COURT FOR |
| L. STANDIFORD | * | BALTIMORE COUNTY |
| CASE NO. 85-96-XA | * | Case No. 27/121/86CG-1981 |

* * * * * * * * * * * * * * *

**MOTION TO EXTEND TIME FOR SUBMISSION OF APPELLANT'S MEMORANDUM**

NOW COMES, Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, Maryland, and Appellants Peggy A. Patterson, Ronald P. Meyer, Michael J. Stachelek and Joseph Parker, by their attorney, Michael P. Tanczyn, Esq. and respectfully avers:

1. That the record in this case was filed on August 23, 1986 and that the time within which Appellant's Memorandum should be filed will expire on September 22, 1986.

2. That this was a lengthy case of over five (5) hearing days and counsel just received the transcript two (2) weeks ago.

3. That Appellants request an extension of ten (10) days for the filing of the Memorandum.

4. That counsel for Appellants has consulted with counsel for Cellular One and with People's Counsel, who were in agreement with this request.

WHEREFORE, Appellants respectfully request this Honorable Court extend the time within which to file Appellant's Memorandum for a period of ten (10) days to be due on or before



October 2, 1986.

Phyllis Cole Friedman

PHYLLIS COLE FRIEDMAN, ESQ.
People's Counsel
Old Courthouse, 2nd Floor
Towson, Maryland 21204
(301) 494-2188

Michael P. Tanczyn

MICHAEL P. TANCZYN, ESQ.
Attorney for Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823

I HEREBY CERTIFY that, on this 19th day of September, 1986, a copy of the foregoing Motion to Extend Time for Submission of Appellant's Memorandum with proposed Order was mailed, postage prepaid, to June Holmen, Secretary, Board of Appeals for Baltimore County, Second Floor, Old Courthouse, Towson, Maryland, 21204, and to Newton A. Williams, Esq., Nolan, Plumhoff and Williams, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for Cellular One and Grace L. Standiford, Petitioners.

Michael P. Tanczyn

MICHAEL P. TANCZYN, ESQ.

RECEIVED
COUNTY BOARD OF APPEALS
1986 SEP 22 A 10:31



Case No. 85-96-

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY et al.

v.

GRACE L. STANDIFORD et al.

In the
Court of Appeals
of Maryland

Petition Docket No. 576
September Term, 1987
(No. 499, September Term, 1987
Court of Special Appeals)

PCF
PMT

**ORDER**

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
*Chief Judge*

Date: February 24, 1988

RECEIVED
COUNTY BOARD OF APPEALS
1988 FEB 26 P 12:06

| | | |
|---|---|---|
| PHYLLIS COLE FRIEDMAN, People's Counsel for Baltimore County, | * | IN THE |
| PEGGY A. PATTERSON | * | CIRCUIT COURT |
| RONALD P. MEYER | * | FOR |
| MICHAEL J. STACHELEK | * | |
| JOSEPH PARKER | * | BALTIMORE COUNTY |
| Appellants | * | |
| vs. | * | |
| BOARD OF APPEALS, | * | |
| GRACE L. STANDIFORD | * | |
| AMERICAN TELESERVICES | * | |
| Appellees | * | CASE NO. 86-CG-1981 |
| | ********** | Zoning Case No. 85-96-XA |

MEMORANDUM OPINION AND ORDER

This case comes before the Court on remand from the Court of Special Appeals of Maryland. This case was appealed to the Court of Special Appeals following the decision of the Honorable Leonard S. Jacobson of this Court who remanded the decision of the Board of Appeals of Baltimore County on procedural grounds.

The Court of Special Appeals remanded to this Court for consideration the substantive issues raised in the Appellants' original appeal from the Board of Appeals of Baltimore County. This Court having reviewed the entire record, together with memoranda and argument of counsel, renders the following opinion.

This case evolves from the April 22, 1986 decision of the Board of Appeals of Baltimore County which essentially affirmed the decision of the Deputy Zoning Commissioner in granting Appellees (Grace L. Standiford, et al.) a Special Exception to permit a wireless transmitting and receiving facility in an RC-2 zone, subject to certain conditions.

Unhappy with the result, the office of the People's Counsel for Baltimore County and four neighboring property owners took appeal from the Board's decision, which is now the subject of this case on remand.

Appellants assert in their memoranda of May 29, 1986 and of October 3, 1986, that the action of the Board of Appeals in granting the special exception was arbitrary, capricious and unlawful because:

1. The Board of Appeals was misled by the failure of Appellees to produce their FCC application in a timely manner to allow review of the documents prior to presentation of Appellees' case before the Board of Appeals.
2. The Board of Appeals misconstrued Section 1A01.2.C of the Baltimore County Zoning Regulations by failing to give proper weight to the facts before it.
3. The action of the Board was contrary to the evidence of the record before it.
4. The opinion of the Board of Appeals is a nullity because it was signed by two (2) members while three (3) members of the Board heard the case in chief.

Appellants now also assert that Bill No. 64-86 which became effective on July 27, 1986 governs this appeal as Judge Jacobson's decision of January 14, 1987 invalidated Appellees' granted special exception and made any reaffirmation of the special exception subject to the requirements of the new bill.

In reviewing the decision of the Board of Appeals, this Court can not substitute its judgment in a zoning case as to the wisdom or soundness of the action of the Board of Appeals if its decision is supported by substantial evidence and the issue is fairly debatable. Montgomery County v. Woodward &

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

9-6-84

Re: Zoning Advisory Meeting of 8-21-84
Item # 36
Property Owner: Grace L. Standiford
Location: W/S Masemore Rd.
NW of Mt. Carmel Rd.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

( )There are no site planning factors requiring comment.
(X)A County Review Group Meeting is required.
( )A County Review Group meeting was held and the minutes will be forward by the Bureau of Public Services.
( )This site is part of a larger tract; therfore it is defined as a subdivision. The plan must show the entire tract.
( )A record plat will be required and must be recorded prior to issuance of a building permit.
( )The access is not satisfactory.
( )The circulation on this site is not satisfactory.
( )The parking arrangement is not satisfactory.
( )Parking calculations must be shown on the plan.
( )This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( )Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( )Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( )The amended Development Plan was approved by the Planning Board on
( )Landscaping should be provided on this site and shown on the plan.
( )The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
( )The property is located in a traffic area controlled by a "D" level intursection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
(X)Additional comments:

Access easements for the driveway should be established if it is to be use in connect with tower and residential or farm use of owner.

Eugene A. Bober
Eugene A. Bober
Chief, Current Planning and Development

cc: James Hoswell

MICROFILMED

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

September 10, 1984

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Grace L. Standiford

Location: W/S Masemore Road 2350' N/W from c/l Mt. Carmel Road

Item No.: 36 Zoning Agenda: Meeting of 8/21/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Pat Q. Keller 9/10/84 Noted and Approved: George M. Kaigmott
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

MICROFILMED

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 1, 1984

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

000

Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

M's Grace L. Standiford
410 Scarsdale Road
Baltimore, Maryland 21224

RE: Case No. 85-96-XA (Item No. 36)
Petitioner - Grace L. Standiford
Variance and Special Exception Petition

Dear M's Standiford:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may have a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,
Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Gerhold, Cross & Etzel
412 Delaware Avenue
Towson, Maryland 21204

MICROFILMED

17338 Masemore Road
Parkton, MD 21120
October 1, 1984

County Executive Hutchinson:

Dear Mr. Hutchinson:

We live on Masemore Road in north Baltimore County. This area is zoned RC-2. There are farms and private residences on this road and on the adjacent Mt. Carmel Road, Evna Road, etc.

American Teleservices has asked for a zoning exception to allow the construction of a 200 foot tower on the Standiford property, approximately 2/3rds of a mile north of Mt. Carmel Road. The zoning hearing number is 85-96-Xa, hearing set for Oct. 9 at 1:30.

It was my understanding that the purpose of zoning was to protect the integrity of neighborhoods. Such a tower will not only deface the skyline for local residents, but Masemore Road is also a major entrance for the Gunpowder Park where hundreds of visitors come every summer.

There are many other points that I might raise or question but I really wonder why they are attempting to put an industrial facility in a residential neighborhood when there is land for sale in the area between I83 and York Road which I understood was to be the industrial corridor.

Can you help us have this facility located in a more appropriate area?

Very truly yours,
Peggy A. Patterson
Peggy Patterson

pap

MICROFILMED

17338 Masemore Road
Parkton, MD 21120
October 1, 1984

Councilman Smith

Dear Councilman Smith:

We live on Masemore Road in north Baltimore County. This area is zoned RC-2. There are farms and private residences on this road and on the adjacent Mt. CarmelRoad and Evna Road, etc.

American Teleservices has asked for a zoning exception to allow the construction of a 200 foot tower on The Standiford property, approximately 2/3rds of a mile north of Mt. Carmel Road. The zoning hearing number is 85-96-XA, hearing set for Oct. 9 at 1:30.

It was my understanding that the purpose of zoning was to protect the integrity of neighborhoods. Such a tower will not only deface the skyline for local residents, but Masemore Road is also a major entrance for the Gunpowder Park where hundreds of visitors come every summer.

There are many other points that I might raise or question but I really wonder why they are attempting to put an industrial facility in a residential neighborhood when there is land for sale in the area between I83 and York Road which I understood was to be the industrial corridor.

Can you help us have this facility located in a more appropriate area?

Very truly yours,
Peggy Patterson
Peggy Patterson

pap

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

October 2, 1984

Ms. Grace L. Standiford
410 Scarsdale Road
Baltimore, Maryland 21224

RE: Petition for Special Exception and Variance
W/S of Masemore Rd., 2350' NW of Mt. Carmel Road
Grace L. Standiford - Petitioner
Case No. 85-96-XA

Dear Ms. Standiford:

This is to advise you that $57.03 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,
ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 135823

DATE Oct. 23, 1984 ACCOUNT R-01-615-000
AMOUNT $57.03
RECEIVED FROM American TeleServices
FOR Advertising and Posting Costs of Case No. 85-96-XA (Grace L. Standiford)

B 056******5703A 234F

VALIDATION OR SIGNATURE OF CASHIER

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon, Zoning Commissioner Date September 18, 1984

FROM Norman E. Gerber, Director, Office of Planning and Zoning

SUBJECT Grace L. Standiford, No. 85-96-XA

This office fails to see why sufficient area cannot be leased so as to negate the need for a variance.

Norman E. Gerber, Director
Office of Planning and Zoning

NEG/JGH/sf

GRACE L. STANDIFORD
85-96-XA
9/18/84

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

85-96-XA
Cert Title
99

TO Arnold Jablon, Zoning Commissioner Date October 4, 1984

FROM Councilman James T. Smith, Jr.

SUBJECT Proposed Radio Tower on Masemore Road

The attached correspondence is for your review.

OCT 8 AM

EWG:mtf
Attach.

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P. E.
DIRECTOR

October 4, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #36 (1984-1985)
Property Owner: Grace L. Standiford
W/S Masemore Rd. 2350' N/W from centerline Mt. Carmel Rd.
Acres: 1.06
District: 7th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat subeitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General Comments:

There are no public facilities involved; therefore, this office has no comment.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Very truly yours,
JAMES A. MARKLE, P.E., Chief
Bureau of Public Services

JAM:EAM:DPM:ss

MICROFILMED

BALTIMORE COUNTY, MARYLAND
EXECUTIVE OFFICE
TOWSON, MARYLAND 21204

Donald P. Hutchinson
COUNTY EXECUTIVE

October 5, 1984

Mrs. Peggy Patterson
17338 Masemore Road
Parkton, Maryland 21120

Dear Mrs. Patterson:

I am writing in regard to your recent letter concerning a zoning hearing for a special exception for the construction of a 200 foot tower.

As County Executive, I am prohibited from intervening in judicial matters. But I have sent your letter to the Zoning Commissioner for his consideration.

As per your daughter's conversation with my aide, Judy Sussman, if it is at all possible, I would suggest that you provide testimony at the hearing.

I regret that I have not been able to aide you in this matter, but if I can be of future assistance, please contact my office.

Sincerely,

Donald P. Hutchinson
County Executive

DPH:pmcf

MICROFILMED

17338 Masemore Road
Parkton, MD 21120
November 1, 1984

Mr. Francis X. Kelly
124 Tregarone Road
Timonium, MD 21093

Dear Mr. Kelly:

On October 15 I wrote asking that you help residents of the Mt. Carmel Road area defeat a request for a special exception that would allow Cellular One to construct a 200 foot tower on Masemore Road. The second hearing on his matter will be held on request (85-96-XA - Standiford Property) will be held on November 9.

Masemore Road is one of the main entrances to the Gunpowder State Park. The Department of Natural Resources has written a letter to the Zoning Board expressing their objections. This is a unique area which should not be destroyed, particularly when there are commercial areas nearby which would serve Cellular One's purpose equally well.

Over 800 citizens have signed our petitions. We need your influence in defeating the current request and in designing legislation that would place more effective limits on such commercial encroachment. Please help us.

Very truly yours,

Peggy A. Patterson

MICROFILMED

OCT 22 1984

17338 Masemore Road
Parkton, MD 21120
October 15, 1984

Francis X. Kelly
308 James Senate Office Building
Annapolis, MD 21401

Dear Mr. Kelly:

As an 18 year resident of Masemore Road, I care about my neighborhood. American Teleservices is attempting to secure a Special Exception (85-96-XA) which would allow them to put a 200 foot tower on the Standiford Property which is located on Masemore Road about 2/3rds of a mile north of Mt. Carmel and is adjacent to my property. Masemore Road is west of I-83. Our area has an RC2 zoning ... farms and homes are in the area. Many of the homes on Masemore and on Brandy Springs Road will be looking directly at the tower. Obviously, a 200 foot tower will be visible for miles. I understand average woods height is less than 50 feet.

It is my understanding that Baltimore County planned that the area between I-83 and York Road would be the commercial area. There are several pieces of land with good elevation for sale in the immediate area of I-83 and Mt. Carmel Rd. If such a tower must be constructed, then it should be placed in such an area.

The citizens in this area have retained legal help from Michael Tanczyn and have gone through the first day of the zoning hearing. The hearing will continue on November 9 at 11 a.m. To date, a group of local people have collected over 700 signatures in support of our position. Because of the proximity to Gunpowder State Park, the Department of Natural Resources has written a letter stating their concern and objections to the tower.

Please help us see that this tower is placed in a more appropriate location ... not in the middle of our neighborhood. Thanks for any help you can give us.

Sincerely,

Peggy A. Patterson

MICROFILMED

10/15/84
to JJ
8

15-83
Request Copy of Decision

TORREY C. BROWN, M.D.
SECRETARY
JOHN R. GRIFFIN
DEPUTY SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
CAPITAL PROGRAMS ADMINISTRATION
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

FRED L. ESKEW
ASSISTANT SECRETARY
FOR CAPITAL PROGRAMS

OCT 15 8 AM
ZONING DEPARTMENT
By

October 11, 1984

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Jablon: GRACE L STANDIFORD

I understand that case #8596-XA in the Hereford/Parkton area of the county is presently under review for a variance and special exception in order to place a mobile phone tower on property off Masemore Road. Although the Gunpowder Falls State Park land is not directly adjacent to the project site, it is extremely close by, and DNR's Land Planning Services has certain reservations about a possible 200± foot tower. See attached acquisition/master plan map for the relationship of the tower to the Park.

Our concern is primarily one of anticipated visual impact; a 200 foot tower will certainly be visible for a long distance. This section of the park is particularly scenic, and in fact includes a designated Wildlands Area on the State land west of Falls Road up to the Prettyboy Reservoir property. A tower of this size, in its presently proposed location will be an obtrusive element in the landscape, detracting from the aesthetic qualities of the Hereford section of Gunpowder Falls State Park.

269-3656
TELEPHONE:
TTY FOR DEAF-BALTIMORE 269-2609, WASHINGTON METRO 565-0450

MICROFILMED

Jablon, Arnold
October 11, 1984
Page 2

I would hope that you could take the issue of visual impact from the Park into account in your decision. In any event, I would very much appreciate being informed of the outcome of the case.

Sincerely,

Tolly Peuleché

Tolly Peuleché
Chief, Resources Planning

TWP:lgt
Enclosure

cc: Bill Simmons
Helga Dorsey

85-1076
99 - cert to

11/9/84
to JJ
9

SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

FRANCIS X. KELLY
STATE SENATOR
10TH LEGISLATIVE DISTRICT
BALTIMORE COUNTY
COMMITTEE:
BUDGET & TAXATION
CAPITAL PROJECTS
JOINT COMMITTEE ON BUDGET & AUDIT
JOINT COMMITTEE ON SPENDING AFFORDABILITY
JOINT COMMITTEE ON FEDERAL RELATIONS
VICE CHAIRMAN, SPECIAL JOINT COMMITTEE ON
HEALTH INSURANCE FOR UNEMPLOYED
GOVERNOR'S COMMISSION ON DRINKING DRIVER

ANNAPOLIS OFFICE:
JAMES SENATE OFFICE BUILDING
ROOM 207
841-3606

DISTRICT OFFICE:
ONE SHAWAN ROAD
HUNT VALLEY, MARYLAND 21030
252-5025
HOME
252-3469

ZONING DEPT
By

November 7, 1984

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

It has come to my attention that a hearing will be held on Friday, November 9th, regarding the special exception request made by Cellular One to construct a 200 foot tower on Masemore Road in Parkton (85-96-XA - Stafford Property).

I have enclosed for your information copies of correspondence I have recently received from constituents with regard to this zoning request. As you will see by the letters, the residents of the Masemore Road area do not want this tower constructed at the requested site for many good reasons, and I share their concerns.

I am confident that you will give careful and thorough consideration to the concerns expressed by myself and the residents of this area prior to making your decision on the special exception request.

I thank you in advance for taking the time to read this correspondence, and I urge you to contact me if you have any questions, if you wish to discuss this matter further, or if I can be of any assistance to you.

Sincerely,

Francis X. Kelly

FXK:tlc
Enclosures
cc: Peggy A. Patterson

MICROFILMED

85-1176
99 - cert to

GRACE L STANDIFORD
#8596-XA
11/2/84
to JJ
9

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

ELLEN R. SAUERBREY
TENTH LEGISLATIVE DISTRICT
BALTIMORE COUNTY
COMMITTEE:
ECONOMIC MATTERS

DISTRICT OFFICE:
4122 SWEET AIR ROAD
BALDWIN, MARYLAND 21013
592 2200

ANNAPOLIS OFFICE:
ROOM 309
LOWE HOUSE OFFICE BUILDING
841-3200

November 19, 1984

Ms. Jean M. H. Jung
Deputy Zoning Commissioner
Planning and Zoning Office
Courts Building
M. S. 3406
Towson, Maryland 21204

Dear Jean:

I would like to reiterate my concern regarding the request for zoning exceptions to place radio towers in residential and farming communities. Since zoning issues are a local, not state government responsibility, I have generally avoided becoming involved in these decisions. However, I am very concerned with the preservation of the rural, pastoral character of northern Baltimore County.

While I understand the legitimate need for radio towers, it would seem that there are more appropriate areas where commercialization is already present, in which such towers should be sited. I would like to urge you not to allow the special exception for the Cellular One tower proposed for Masemore Road.

I would appreciate your sending me a copy of the zoning decision when it is rendered.

Sincerely,

Ellen R. Sauerbrey

ERS:eak

MICROFILMED

85-1055

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

THOMAS W. CHAMBERLAIN, SR.
TENTH LEGISLATIVE DISTRICT
BALTIMORE COUNTY
ENVIRONMENTAL MATTERS COMMITTEE

HOME ADDRESS:
307 GALWAY ROAD
LUTHERVILLE-TIMONIUM
MARYLAND 21093
HOME PHONE 252-0543

LEGISLATIVE OFFICE:
309 LOWE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
LEGISLATIVE PHONE 841-3760

26 November 1984

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
Courts Building
Towson, Maryland 21204

Dear Mrs. Jung: GRACE L STANDIFORD

RE: 85-96-XA

This is to confirm the telephone call in which my legislative aide discussed the request for a special exception to allow a radio tower on the Standiford Property.

As was indicated earlier in the month I support the community in their opposition to the granting of this special exception. If cellular One/Bell Atlantic goes off this would be ... to be the first of a number of such requests. It seems to me that this would be premature in the policy evolving by the council in terms of this new technology. Therefore a delay in the granting of an exception would seem to be in order.

Thank you for inviting me to attend the hearing today but it did not seem necessary to be personally present. You have my position on file along with that of other interested citizens.

Sincerely,

Tom

Thomas W. Chamberlain, Sr.

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

January 4, 1985

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

G. Scott Barhight, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Exception and Variances
W/S of Masemore Rd., 2,350' NW of Mt. Carmel Rd. - 7th Election District
Grace L. Standiford - Petitioner
No. 85-96-XA (Item No. 36)

Dear Mr. Barhight:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,

Jean M.H. Jung

JEAN M.H. JUNG
Deputy Zoning Commissioner

JMHJ/mc

Attachments

cc: Michael Tanczyn, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204

The Honorable Ellen R. Sauerbrey
4122 Sweet Air Road
Baldwin, Maryland 21013

Mr. Tolly Peuleche'
Chief, Resources Planning
Capital Programs Administration
Tawes State Office Building
Annapolis, Maryland 21401

The Honorable Francis X. Kelly
One Shawan Road
Hunt Valley, Maryland 21030

The Honorable Thomas W. Chamberlain, Sr.
307 Galway Road
Lutherville, Maryland 21093

People's Counsel

MICROFILMED

Law Offices
Michael P. Tanczyn, P.A.
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

February 1, 1985

Baltimore County Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: 8596 XA
Masemore Road Wireless Transmission Tower

Dear Sir:

I represent the protestants, Mr. and Mrs. Patterson, Ms. Helga Dorsey, Mr. and Mrs. Ronald Meyer, Mr. Michael Stachelek, Mr. and Mrs. Joseph Parker, Mr. and Mrs. Sherlock Gillet, Mr. and Mrs. John Raffensparger, Mr. and Mrs. Glenn Durst and the Citizens Alliance for Northern Baltimore County, who appeal from that portion of the Deputy Zoning Commissioner's Order of January 4, 1985 granting a special exemption for a wireless transmitting tower with conditions.

Enclosed you will find our check for the requisite filing

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 004347
DATE ... ACCOUNT ...
AMOUNT $ ...
RECEIVED FROM ...
FOR ...
MICROFILMED
VALIDATION OR SIGNATURE OF CASHIER

ry truly yours,

chael P. Tanczyn

FEB 1 AM

ZONING DEPARTMENT

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 823-7800

J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR.*
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

OF COUNSEL
RALPH E. DEITZ
9026 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(301) 922-2121
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

February 6, 1985

Mr. William Hackett, Chairman
County Board of Appeals
Court House
Towson, Maryland 21204

Re: Petition for Special Exception
W/S of Macemore Road N/W of Mt. Carmel Road
Seventh Election District
Grace L. Standiford - Petitioner
No. 85-96-XA (Item No. 36)

Dear Mr. Hackett:

By letter dated February 1, 1985 to the Baltimore County Zoning Commissioner, Mr. Tanczyn, attorney for the protestants, has requested an appeal from the Deputy Zoning Commissioner's Order of January 4, 1985 granting the special exception requested. Although the letter was filed in a timely fashion, the substance of the letter does not comply with the rules of practice and procedure of the County Board of Appeals.

Rule 3A of the Rules of Practice and Procedure indicate that:

> No appeal shall be entertained by the Board of Appeals unless the Notice of Appeal shall state the names and addresses of the persons taking such appeal.

The appeal letter does not state the addresses of any person attempting to appeal the Deputy Zoning Commissioner's Order. As the appeal does not comply with the Board's rules, it is respectfully requested that the appeal be dismissed.

In the event that the Board chooses to deny my motion for dismissal, it is respectfully requested that this case be set in for at least three (3) consecutive hearing days. The hearing before the Deputy Zoning Commissioner spanned three (3) days. On two (2) of the hearing days, the hearing was not concluded until after 7:00 p.m. By a carbon copy of this letter to Mr. Tanczyn,

Mr. William Hackett
February 6, 1985
Page 2

I am requesting that he contact me so that we can approach the Board regarding appropriate scheduling.

Thank you for your kind attention to this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Jean M. H. Jung, Deputy Zoning Commissioner
Phyllis C. Friedman, People's Counsel for Baltimore County
Michael P. Tanczyn, Esquire
Ms. Kathryn M. Buie

COUNTY BOARD OF APPEALS
RECEIVED
FEB 11 P 2:20

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

February 11, 1985

G. Scott Barhight, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Exception and Variances
W/S Masemore Rd., 2,350' NW of Mt. Carmel Road
Grace L. Standiford - Petitioner
Case No. 85-96-XA

Dear Mr. Barhight:

Please be advised that an appeal has been filed by Michael Tanczyn, attorney for the protestants, from the decision rendered by the Deputy Zoning Commissioner of Baltimore County, in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,

ARNOLD JABLON
Zoning Commissioner

AJ:aj

cc: The Honorable Ellen R. Sauerbrey
4122 Sweet Air Road
Baldwin, Maryland 21013

Mr. Tolly Peuleche'
Chief, Resources Planning
Capital Programs Administration
Tawes State Office Building
Annapolis, Maryland 21401

The Honorable Francis X. Kelly
One Shawan Road
Hunt Valley, Maryland 21030

The Honorable Thomas W. Chamberlain, Sr.
307 Galway Road
Lutherville, Maryland 21093

People's Counsel

MICROFILMED

Law Offices
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CHARTERED
204 WEST PENNSYLVANIA AVENUE
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(301) 823-7800

J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR.*
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
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ROBERT S. GLUSHAKOW

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9026 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(301) 922-2121
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

February 16, 1985

COUNTY BOARD OF APPEALS
RECEIVED
FEB 27 A 9:51

William R. Evans, Esquire
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Grace L. Standiford
Case No. 85-96-XA

Dear Mr. Evans:

This letter is to confirm the Board's instructions during our meeting with Messrs. Tanczyn and Zimmerman on February 21, 1985. It is my understanding that this case will be heard on at least three (3) full hearing dates. The hearing dates presently scheduled are May 2, May 9, and May 14, 1985.

During our meeting you also indicated the Board's directions relative to Rule 7G of the Board's Rules of Practice and Procedure. A synopsis of the direct testimony of each of the petitioner's expert witnesses must be submitted in writing by March 22, 1985. The protestants must provide a summary of the direct testimony of any of their expert witnesses, in writing, by April 22, 1985. It is my understanding that although the petitioner's experts will all be named by March 22, 1985, if the petitioner decides to offer additional expert testimony to rebut any expert testimony indicated by the protestants, the petitioner will have a full opportunity to do so.

Pursuant to our discussions, a copy each of the expert reports is to be provided to opposing counsel and the Zoning Advisory Committee, through Mr. Nicholas Comodari.

Should you, Mr. Tanczyn or Mr. Zimmerman disagree with the contents of this letter, please contact me immediately. Thank you for taking your time to meet with us and attempt to simplify what might be a long and complicated set of hearings. Your cooperation is greatly appreciated.

Very truly yours,

G. Scott Barhight

GSB:ylm
cc: Michael P. Tanczyn, Esquire
Peter M. Zimmerman, Esquire

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

February 21, 1985

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 85-96-XA — GRACE L. STANDIFORD
for SE - Wireless Transmitting and receiving facility in an RC-2 zone

W/S Masemore Road, 2350' NW of Mt. Carmel Road
7th District

1/4/85 - DZC GRANTED SPECIAL EXCEPTION

ASSIGNED FOR: THURSDAY, MAY 2, 1985 at 10 a.m.
THURSDAY, MAY 9, 1985 at 10 a.m.
TUESDAY, MAY 14, 1985 at 10 a.m.

cc: G. Scott Barhight, Esquire ✓ — Counsel for Petitioner
Michael Tanczyn, Esquire ✓ — Counsel for Protestants
The Hon. Ellen R. Sauerbrey — Requested Notification
Mr. Tolly Peuleche', Chief Resources Planning Capital Programs Adm. — " "
The Hon. Francis X. Kelly — " "
The Hon. Thomas W. Chamberlain, Sr. — " "
Phyllis Cole Friedman
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James E. Dyer

Edith T. Eisenhart, Adm. Secretary

GERHOLD, CROSS & ETZEL
*Registered Professional Land Surveyors*
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
823-4470

CARL L. GERHOLD
PHILIP K. CROSS
JOHN F. ETZEL
WILLIAM G. ULRICH
GORDON T. LANGDON

EMERITUS
PAUL D. DOLLENBERG
FRED H. DOLLENBERG

March 15, 1985

To whom it may concern:

JOHN F. ETZEL, Registered Professional Land Surveyor, Licenseed by the State of Maryland in 1959, Registration No. 2882.

Partner in the firm of Gerhold, Cross and Etzel, Land Surveyors, 412 Delaware Avenue, Towson, Maryland 21204.

Graduate of Johns Hopkins University, B.S. Degree in Civil Engineering, 1963.

Has appeared and testified as an expert witness in Circuit Court in the matter of boundary disputes, traffic accidents, etc.

Has appeared as an expert witness in the Zoning Appeals Court.

Holds a Real Estate Brokers License issued by the State of Maryland, 1980. Associated with LeRoy J. Haile, Inc., 13 W. Chesapeake Avenue, Towson, Maryland 21204

Signed John F. Etzel
John F. Etzel LS No. 2882

NCIC

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 823-7800

OF COUNSEL
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RUSSELL J. WHITE

J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR. *
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN *
G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

*ALSO ADMITTED IN D.C.

HAND-DELIVERY

March 22, 1985

MAR 25 AM
ZONING DEPARTMENT
By .....

William R. Evans, Esquire
County Board of Appeals
for Baltimore County
Room 200 Courthouse
Towson, Maryland 21204

Re: Grace L. Standiford
Case No. 85-96-XA
Summary of Expert Witness Testimony

Dear Mr. Evans:

Please accept this letter as the Petitioner's summary of the testimony of expected expert witnesses pursuant to your instructions during our meeting on February 21, 1985. The curriculum vitae or resume of each of these witnesses is provided. A brief summary of the testimony of each of these expert witnesses will be set forth in this letter.

The first witness to be presented by the Petitioner will be a company spokesperson. In all probability, this person will be Kathryn M. Condello (Babe). Mrs. Condello will be offering testimony regarding the proposed site and the future plans of the Petitioner.

The following individuals will be qualified as experts in their respective fields and will offer expert opinions regarding certain relevant issues in this case:

1. John F. Etzel, Registered Professional Land Surveyor,

2. Dr. Rajendra Singh, Electrical Engineer,

3. Donald J. Neubauer, Civil Engineer,

MICROFILMED



4. Carey W. Burch, Environmental Planner and Terrestrial Ecologist,

5. John P. Larson, Environmental Planner,

6. Edward A. Griffith, Realtor-Appraiser,

7. William F. Kirwin, Land Planner, Landscape Architect.

The curriculum vitaes or resumes for each of the a've individuals are enclosed.

Mr. Etzel will explain the site plan and testify as to its compliance with the Baltimore County Zoning Regulations and the Zoning Advisory Committee comments. He will describe the site and compare it to other RC 2 and agricultural areas of Baltimore County. From the viewpoint of a professional land surveyor, and based upon his experience, he will offer his opinions regarding the issues raised by Baltimore County Zoning Regulations Section 502.1 and Section 1A01.2.C. He will also offer conclusions based upon the standard of review found in Schultz v. Pritts, 432 A.2d 1319 (1981).

Dr. Singh will provide an explanation of a cellular grid network. He will explain how the system is designed and why a site is needed in the requested location. Dr. Singh will also testify as to whether the proposed tower will cause any frequency interference. A general explanation of cellular radio telephones will be offered, including explanations of design, cost, FCC restrictions, etc. Dr. Singh will also testify as to potential health hazards which may or may not be associated with the proposed tower.

Mr. Neubauer, a structural engineer, will describe the proposed tower and explain its construction. Mr. Neubauer will offer testimony relative to the safety of the tower and any potential effects of the environment on the proposed tower. From the viewpoint of a civil engineer, and based upon his experience, Mr. Neubauer will offer testimony regarding the issues raised in Baltimore County Zoning Regulations Section 502.1, Section 1A01.2.C, as well as opinions regarding the standard in the Schultz case.

Mr. Burch will first testify as a terrestrial ecologist regarding the environmental impact of the proposed tower. Additionally,

MICROFILMED



Mr. Burch will offer testimony regarding the potential asethetic and visual effects of the proposed tower. From the viewpoint of an environmental planner and terrestial ecologist, and based upon his experience, Mr. Burch will offer testimony and opinions regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard described in the Schultz case.

Mr. Larson, also an environmental planner, will provide an overview of the research regarding any health hazards which may be associated with the proposed tower. Mr. Larson will offer opinions regarding the existence of any health hazards. He will also offer testimony and opinions regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard provided by the Schultz case.

Mr. Griffith is a realtor-appraiser. Mr. Griffith will describe the site and the general location. He will testify that the tower will have no adverse impact upon the value of land in the vicinity. He will also testify from the viewpoint of a realtor-appraiser, and based upon his experience regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard provided by the Schultz case.

Mr. Kirwin will describe the proposed site as well as the general vicinity. From the viewpoint of a land planner and landscape architect, and based upon his experience, he will testify regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard in the Schultz case.

On behalf of the Petitioner, I respectfully reserve the right to offer other and different expert testimony in rebuttal to any expert testimony provided by the protestors-appellants. Additionally, I respectfully request the opportunity to provide additional expert testimony as may become relevant.

Should you or the panel members of the County Board of Appeals have any questions regarding this submission, please feel free to contact me. It is my understanding that the protestors-appellants will provide a summary of their expert testimony, in writing, by April 22, 1985.

Thank you for your cooperation.

Very truly yours,

G. Scott Barhight

GSB:med
Enclosures

See page 4 for c.c.s.

MICROFILMED



c.c.s. Michael P. Tanczyn, Esquire
(with enclosures)
Peter M. Zimmerman, Esquire
(with enclosures)
Honorable Ellen R. Sauerbrey
(with enclosures)
Mr. Tolly Peulecho
(with enclosures)
Honorable Francis X. Kelly
(with enclosures)
Honorable Thomas W. Chamberlain, Sr.
(with enclosures)
Honorable Jean M. H. Jung
(with enclosures)
Mr. Nicholas Commodari
(with enclosures)
Mrs. Kathryn M. Condello
(with enclosures)
Mr. John F. Etzel
(without enclosures)
Dr. Rajendra Singh
(without enclosures)
Mr. Donald J. Neubauer
(without enclosures)
Mr. Carey W. Burch
(without enclosures)
Mr. John P. Larson
(without enclosures)
Mr. Edward A. Griffith
(without enclosures)
Mr. William F. Kirwin
(without enclosures)

Law Offices
Michael P. Tanczyn, P.C.
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

March 25, 1985

COPY

G. Scott Barhight, Esq.
204 West Pennsylvania Avenue
Towson, MD 21204

Re: 8596 XA

Dear Mr. Barhight:

According to my understanding, reports of the Petitioner's expert witnesses were to be in my hands by last Friday, March 22, 1985. I am writing because the mail has been delivered today, and I note that I still do not have those reports. Please see that they are delivered at once, or let me know when I might expect to receive them.

Very truly yours,

Michael P. Tanczyn

MPT/ed
cc: Chairman, Board of Appeals
Peter Max Zimmerman, Esq.
Ms. Peggy Patterson

COUNTY BOARD OF APPEALS
'85 MAR 26 A 8:13

Law Offices
Michael P. Tanczyn, P.A.
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

March 27, 1985

William R. Evans, Esq.
County Board of Appeals
Old Courthouse
Towson, MD 21204

Re: 85 96 XA - Standiford

Dear Mr. Evans:

I am sure that, by now, you have probably received the summary of the Petitioner's attorney concerning his expert witnesses, which I received March 26, 1985.

After briefly reviewing what was sent, I spoke with Mr. Barhight to tell him that, in my opinion, his summary was too general and not the report of his nominated expert witnesses and, therefore, did not comply with the representations made to the Board of Appeals to furnish experts' reports in advance to be critiqued by opposing sides in order to save time in the presentation of this case to the Board of Appeals.

Having made that undertaking, I do not feel that Mr. Barhight's clients have presented the reports of experts and with the passage of each day bringing us closer to the scheduled start of these cases, it is the position of the Protestant-Appellants that the Petitioners ought be required to produce the expert reports as proposed by them in an effort to conserve the time of the Board of Appeals and that the matter ought be postponed until they do so and rescheduled once they have submitted their reports.

The decision of the Board of Appeals to either grant or deny the special exception sought is of great import to my clients who are residents of the site and who have legitimate concerns that questions which could be answered by expert reports are fully answered before the Board makes its decision and that they are subject to reasonable notice and scrutiny by cross-examination.

Therefore, I request that you give us your decision as to whether the Petitioner's presentation of its case shall be delayed until they submit the expert reports and the Protestants



are given the time described in the first letter to critique them as countenanced by the agreement reached in your chambers.

Thank you very much for your time and attention to this matter.

Very truly yours,

Michael P. Tanczyn

MPT/ed
cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.
Ms. Peggy Patterson
Mr. Ron Meyer

COUNTY BOARD OF APPEALS
'85 APR 2 A 8:00

Law Offices
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204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 823-7800

OF COUNSEL
RALPH E. DEITZ
9026 LIBERTY ROAD
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RUSSELL J. WHITE

J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR. *
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN *
G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

*ALSO ADMITTED IN D.C.

April 2, 1985 HAND DELIVERED

William R. Evans, Esquire
County Board of Appeals of
Baltimore County
Room 200, Court House
Towson, Maryland 21204

Re: Grace L. Standiford
Case No. 85-96-XA

Dear Mr. Evans:

I am in receipt of Mr. Tanczyn's letter dated March 27, 1985. As further delay would not be in the interest of the Petitioners, my expert witness summary was intended to simplify matters rather than complicate them. However, Mr. Tanczyn feels that my summary was inadequate and in response, has requested a postponement of the previously scheduled hearing dates.

My notes and personal recollection of our February 21st meeting lead me to believe that my three (3) page summary with the twenty-one (21) page attachment was a sufficient summary of the Petitioner's experts qualifications and direct testimony. It is important to point out that each of these experts appeared on behalf of the Petitioner before the Deputy Zoning Commissioner and were each subjected to lengthy cross-examination by Mr. Tanczyn. The opposition has been given more than a summary, they have viewed almost the entire case.

Mr. Tanczyn also complains that the experts did not provide a report themselves. If such report were available, they would surely be provided. However, the Petitioner has not requested that any of the experts prepare written reports in preparation for this case. If the opposition would like to bear the expense of such preparation, this can certainly be discussed. I would also like to make reference to my letter to you dated February 16th regarding this matter. In that letter, which should

William R. Evans, Esquire
April 2, 1985
Page 2

be dated February 26th, I confirmed our February 21st meeting. In the letter I stated that a synopsis of the testimony of the Petitioner's expert witnesses would be submitted by March 22nd. This has been done.

I strongly suggest a conference call between yourself and Counsel in this case. Delaying this case on the grounds proposed by Mr. Tanczyn would be unreasonable and unfair.

I respectfully request that action be taken as quickly as possible on this matter, so as not to strengthen Mr. Tanczyn's arguments for delay. Thank you for your kind attention to this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire
Mrs. Kathryn M. Condello

RECEIVED
COUNTY BOARD OF APPEALS
1985 APR -4 A 11:04

**Baltimore County, Maryland**
PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
*People's Counsel*

PETER MAX ZIMMERMAN
*Deputy People's Counsel*

April 5, 1985

The Honorable
William R. Evans
Acting Chairman,
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Grace L. Standiford, Petitioner
Zoning Case No. 85-96-XA

Dear Mr. Evans:

The Petitioner's identification and description of the general subject matter of expert testimony is not consistent with the understanding that the text of direct testimony be provided. Therefore, we are not in a position at this time to identify our experts.

Because the purpose of the procedure involving advance filing of direct testimony was to save time, then the case would need to be postponed if that procedure is to be retained. In the alternative, if the case is to go ahead May 2nd and May 9th, then we would contemplate the right to request a continuance, if necessary, to respond to the Petitioner's case and assemble such experts as may be necessary. We believe this is appropriate in particular because the state of the art in evaluation of microwave towers is evolving, and we cannot anticipate at this time the specifics of the Petitioner's testimony.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

cc: Michael P. Tanczyn, Esquire
G. Scott Barhight, Esquire

PMZ:sh

RECEIVED
COUNTY BOARD OF APPEALS
1985 APR -5 P 2:13

**County Board of Appeals of Baltimore County**
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

April 2, 1985

G. Scott Barhight, Esquire
204 W. Pennsylvania Avenue
Towson, MD 21204

and

Michael P. Tanczyn, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

Re: Case No. 85-96-XA
Grace L. Standiford

Gentlemen:

I have reviewed Mr. Tanczyn's letter of March 27, 1985, and Mr. Barhight's reply thereto.

Although I can appreciate Mr. Tanczyn's concern, the rules do not require a production of expert reports and if they did so, one can only produce that which is available. Obviously, the expert reports are non-existent.

In any event, in my view, Mr. Barhight has summarized the anticipated testimony of the experts and Mr. Tanczyn can cross-examine those experts.

Further delay of this proceeding would serve an injustice to all concerned. Mr. Tanczyn's request for postponement is denied.

Please attempt to reach any stipulations which will serve to expedite this matter.

Very truly yours,

William R. Evans, Acting Chairman

Law Offices
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204 WEST PENNSYLVANIA AVENUE
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WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

OF COUNSEL
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9026 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(301) 922-2121
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

April 11, 1985

Honorable William R. Evans
Acting Chairman
County Board of Appeals of
Baltimore County
Room 200, Court House
Towson, Maryland 21204

Re: Case No. 85-96-XA
Grace L. Staniford

Dear Mr. Evans:

On April 9, 1985 I received Mr. Zimmerman's letter dated April 5, 1985. As your ruling by letter dated April 2, 1985, indicated the appropriateness of the summary of expert testimony which I provided on behalf of the petitioner, I respectfully object to Mr. Zimmerman's refusal to identify his experts.

Since your letter also denied Mr. Tanczyn's request for postponement, I respectfully request that Mr. Zimmerman's request for postponement also be denied. Had Mr. Zimmerman been present at the Deputy Zoning Commissioner's Hearings, as was Mr. Tanczyn, he would have had ample opportunity to cross-examine each of the petitioner's proposed experts. Additionally, I see no justification for Mr. Zimmerman's unsupported statement that "the state of the art and evaluation of microwave towers is evolving." The issues before the Deputy Zoning Commissioner were clearly delineated. The protestants should have no greater difficulty in obtaining experts then the petitioner.

In light of your earlier ruling, I respectfully request an Order from the Board confirming that the People's Counsel must comply with your February 21st instructions. It would be unfair to require the petitioner to provide information without imposing the same requirements upon the protestants.

Honorable William R. Evans
April 11, 1985
Page 2

If I can be of any further assistance to you in this matter, please do not hesitate to contact me. Thank you for your kind attention to this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Peter Max Zimmerman, Esquire
Deputy People's Counsel

Michael P. Tanczyn, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
1985 APR 12 A 9:23

**County Board of Appeals of Baltimore County**
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

April 19, 1985

Peter Max Zimmerman
Deputy People's Counsel
Room 223 Courthouse
Towson, MD 21204

Re: Case No. 85-96-XA
Grace L. Standiford, Petitioner

Dear Mr. Zimmerman:

I am in receipt of yours of April 5th, 1985, and Mr. Barhight's reply thereto.

This case shall not be postponed.

I do not believe it unreasonable for you to identify your experts pursuant to the informal agreement on February 21st. Please proceed to do so immediately.

Very truly yours,

William R. Evans, Acting Chairman

WRE:e

cc: G. Scott Barhight, Esquire
Michael P. Tanczyn, Esquire

**Baltimore County, Maryland**
PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
*People's Counsel*

PETER MAX ZIMMERMAN
*Deputy People's Counsel*

April 19, 1985

The Honorable
William R. Evans
Acting Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Grace L. Standiford, Petitioner
Zoning Case No. 85-96-XA

Dear Mr. Evans:

In reference to the above case, People's Counsel anticipates at this time that it will call the following expert witness concerning the health effects of microwave towers:

Allan H. Frey, Ph.D
Technical Director
Randomline Inc.
Huntingdon Valley, PA.

A copy of his resume is enclosed.

In addition, the People's Counsel may also sponsor a representative of the Department of Natural Resources of the State of Maryland concerning environmental questions. We will provide further details on this as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

Enclosure

cc: Michael P. Tanczyn, Esquire
F. Scott Barhight, Esquire

PMZ:sh

RECEIVED
COUNTY BOARD OF APPEALS
1985 APR 19 P 4:03

Law Offices
**Michael P. Tanczyn, P.A.**
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

April 22, 1985

Honorable William R. Evans
Acting Chairman
County Board of Appeals
Room 200, Courthouse
Towson, MD 21204

Re: Zoning Case No. 85-96-XA
Grace L. Standiford, Petitioner

Dear Mr. Evans:

In connection with the above case, my clients anticipate at this time that they will call the following expert witnesses concerning the health effects of microwave towers:

Allan H. Frey, Ph.D. (resume previously sent)
Technical Director
Randomline, Inc.
Huntingdon Valley, PA

Representative of State of Maryland
Department of Natural Resources

We will provide further details as necessary and appropriate.

Very truly yours,

Michael P. Tanczyn

MPT/ed
cc: F. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.

RECEIVED
COUNTY BOARD OF APPEALS
1985 APR 23 A 9:37

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

April 22, 1986

Michael Tanczyn, Esq.
118 W. Pennsylvania Ave.
Towson, Md. 21204

Re: Case No. 85-96-XA
Grace L. Standiford

Dear Mr. Tanczyn:

Enclosed herewith is a copy of the Opinion and Order signed today by the County Board of Appeals in the above entitled case.

Very truly yours,

June Holmen, Secretary

Encl.
cc: Newton Williams, Esq.
Hon. Ellen R. Sauerbrey
Mr. Tolly Peuleche'
Hon. Francis X. Kelly
Hon. Thomas W. Chamberlain, Sr.
Phyllis C. Friedman
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean M.H. Jung
James E. Dyer


J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM M. HESSON, JR.*
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

*ALSO ADMITTED IN D.C.

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TOWSON, MARYLAND 21204
(301) 823-7800

OF COUNSEL
RALPH E. DEITZ
9026 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(301) 922-2121
RUSSELL J. WHITE


April 26, 1985 HAND DELIVERED

Honorable William R. Evans
Acting Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

Re: Grace L. Standiford, Petitioner
Zoning Case No. 85-96-XA

Dear Mr. Evans:

I am in receipt of Mr. Zimmerman's letter dated April 19, 1985 and Mr. Tanczyn's letter dated April 22, 1985 wherein each named their expert witnesses for the above case. Both identify Dr. Frey and an unnamed representative of the Department of Natural Resources for the State of Maryland.

Pursuant to the informal agreement of February 21, 1985, as well as your April 19th letter ruling, the protestants and People's Counsel were to identify their expert witnesses by name and qualifications by April 22, 1985. As both gentlemen have failed to identify the name and qualifications of the representative of the Department of Natural Resources, I strongly object to their offering of this expert witness to testify in this matter.

It is a violation of our informal agreement and clearly unfair to permit People's Counsel and the protestants to offer an expert witness not properly identified. The petitioners have complied with the agreement. People's Counsel and the protestants should at least be required to identify the expert witness by name and qualifications.

On behalf of the petitioner, I respectfully request an Order from the Board either denying People's Counsel and the protestants the opportunity to present this unidentified expert witness, or in the alternative, requiring that this expert be identified fully by May 1, 1985.

Honorable William R. Evans
April 26, 1985
Page 2

I am sorry that what was meant to be a simplification of the process through the February 21, 1985 informal agreement has turned out to require your constant attention. However, in order to adequately represent my client, I must object to this failure by the People's Counsel and the protestants to be fair and abide by the informal agreement.

Thank you for your kind attention to this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Peter Max Zimmerman, Esquire
Michael P. Tanczyn, Esquire
Mrs. Kathryn M. Condello

RECEIVED
COUNTY BOARD OF APPEALS
85 JAN 24 A 9:21 EDT

Baltimore County, Maryland
PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188


PHYLLIS COLE FRIEDMAN
*People's Counsel*

PETER MAX ZIMMERMAN
*Deputy People's Counsel*


April 29, 1985

The Honorable
William R. Evans
Acting Chairman
County Board of Appeals
Room 200, Courthouse
Towson, Maryland 21204

RE: Grace L. Standiford, Petitioner
Zoning Case No. 85-96-XA

Dear Mr. Evans:

In reference to the above case, to accomodate the schedules of various experts, the parties have agreed that the Petitioner will present its expert testimony concerning the issue of health on May 9th at the commencement of the hearing at 10:00 a.m. Mr. John P. Larson and Dr. Rajendra Singh will at that time testify for the Petitioner. We are making this arrangement in order that Allan H. Frey, Ph.D., may arrange his schedule to be present during the portion of Petitioner's case pertinent to his area of expertise.

We understand that, depending on the length of the examination and cross-examination, the testimony may extend into the afternoon. In addition, it is anticipated that the Protestants will call Ms. Tolly Pelueche', of the Maryland Dept. of Natural Resources, probably on May 14th.

I trust that this is satisfactory to the Board of Appeals. I also believe that this will fit into an orderly presentation of the case.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

cc: F. Scott Barhight, Esquire
Michael P. Tanczyn, Esquire

PMZ:sh

RECEIVED
COUNTY BOARD OF APPEALS
85 APR 29 A 8:57

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

April 29, 1985

G. Scott Barhight, Esquire
204 W. Pennsylvania Avenue
Towson, MD 21204

Re: Zoning Case No. 85-96-XA
Grace L. Standiford, Petitioner

Dear Mr. Barhight:

I am in receipt of Mr. Zimmerman's letter of April 29, 1985.

I assume the issue is now moot.

Very truly yours,

William R. Evan, Acting Chairman

WRE:e

cc: Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991


THOMAS W. CHAMBERLAIN, SR.
TENTH LEGISLATIVE DISTRICT
BALTIMORE COUNTY
ENVIRONMENTAL MATTERS COMMITTEE

HOME ADDRESS:
307 GALWAY ROAD
LUTHERVILLE-TIMONIUM
MARYLAND 21093
HOME PHONE: 252-0543

LEGISLATIVE OFFICE:
308 LOWE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
LEGISLATIVE PHONE 841-3350


14 May 1985

Mr. William T. Hackett
Chairman, Board of Appeals
Court House
Towson, Maryland 21204

Dear Mr. Hackett:

Re: Cellular One, Masemore Road

As a resident of Baltimore County I have worked hard to prevent commercial development west of I-83, regardless of the type of encroachment proposed.

I would strongly urge the Board of Appeals to reject the application of Cellular One for a wireless tower on Masemore Road. It seems to me that it is unnecessary for this tower to be constructed west of I-83 in a residential area. There must be a requirement that all other potential sites in the north county be thoroughly investigated, and actively sought, before granting this exception.

Sincerely,

Thomas W. Chamberlain, Sr.

cc: Mrs. Patterson

RECEIVED
COUNTY BOARD OF APPEALS
85 MAY 15 P

MAY 20 1985

17112 MASEMORE ROAD
Parkton, Maryland 21120
May 15, 1985

Mrs. Helen Delich Bentley
Shell Building
200 E. Joppa Rd., Suite 400
Towson, Maryland 21204

GRACE L. STANDIFORD
Re: Zoning Petition No.
85-96-XA
To Permit a Wireless
Facility in an RC-2 Zone

Dear Mrs. Bentley:

We lived at 10629 York Road in Cockeysville for 35 years and moved to Parkton 6 years ago to get away from a commercial area. We picked this area because it reminded us of Cockeysville when we first moved there - all homes and open land. Now we are fighting to keep a 200 foot tower from being placed in the midst of our homes. We are in the proximity of the GunpowderState Park and thought that this surely would be a deterrent for this project. It seems that we are wrong, because it was intimated at a meeting, by a person who should know, that no matter what the citizens do or say Baltimore County still intends to let this tower go up.

Factors to consider: currently there is no commercial development west of I83; tower would hurt property values; Masemore is unique because it is an important entrance to the Gunpowder State Park so appearance of the area is important; zoning regulations prohibit the construction of anything that is contrary to the spirit and intent of current zoning, which is RC2 rural conservation - agriculture. Also, I am not convinced that enough long term studies have been made that this is not a health hazard. True, studies have been made on rats, as to the affect of radiation, but people are taller, and bigger masses than rats and will be here longer than 6 months (length of studies). Can they give us a written guarantee that our health will not be affected, say 10 years down the road?

We have been fighting the above since September, 1984 and you may not be aware of it since we have gotten NO newspaper coverage, and I understand there are underlying reasons for this.

I sincerely hope that you can assist us in this matter and at this point in time anything would be most appreciated.

Sincerely,

Emily L. Williams
H. Oliver Williams
Phone: 343-1009

RECEIVED
MAY 29 1985
EXECUTIVE OFFICE


Law Offices
Michael P. Tanczyn, P.A.
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824


May 15, 1985

Honorable Keith Franz, Esq.
County Board of Appeals
2nd Floor, Old Courthouse
Towson, MD 21204

Re: Case 85-96-XA

Dear Mr. Franz:

I am writing to update you on the status of the witnesses' testimony schedule as of this time.

Joseph Matricciani, Esq., President of the Citizens' Coalition of Northern Baltimore County, in a telephone conversation today, told me that he has a prior committment which will prevent him from appearing as a witness on June 5, 1985, one of the dates scheduled tentatively for resumption of the above case.

Mr. Zimmerman also advised me today that he was awaiting a call back from Dr. Frey with his schedule.

Mr. Zimmerman has discovered that he has a prior trial running from July 1, 1985 through July 3, 1985.

Because of my committment to C & GS in the time period June 13, 1985 through June 27, 1985, I am required to ask that this matter be rescheduled and that you grant a date where the counsel for the parties are available in conjunction with the witness dates, which we should get from Dr. Frey tomorrow. I would propose the following dates as times for Mr. Zimmerman and I as follows:

Wednesday, July 10, 1985 beginning at 11:30 a.m. (I have a Master's Hearing in Baltimore City at 9:30 a.m.)

Wednesday, July 31, 1985 at 10:00 a.m.

Wednesday, August 7, 1985 at 10:00 a.m.

In the time period July 13, 1985 through July 27, 1985, I will be at summer camp with the 58th Infantry Brigade at lovely

Honorable Keith Franz, Esq. May 15, 1985
Re: 85-96-XA Page 2

Pt. Pickett, Virginia, and will be unavailable during that time period as well.

I know that these are differnt dates from the dates proposed by the Board. I think so far the prior committment of Mr. Zimmerman to a trial and the non-availability of a witness on June 5, 1985, who also happens to be a practicing attorney, is further evidence of the wisdom shown by this Board in assigning three dates when this matter was scheduled for hearing in February of 1985, a couple months in advance of the actual hearing dates, than our rehashing the reasons which we know have caused this hearing to extend beyond the three scheduled days, the introduction of an additional unexpected expert witness on behalf of the Petitioner.

As soon as we hear from Dr. Frey, we will check these dates out with him and make sure he is available on as many of them as possible and get back to you. In the interim, copies of this letter will be circulated to other counsel to review the dates and respond to the Board concerning these proposed dates and we will be hearing back from you on the scheduling of this matter.

Very truly yours,

Michael P. Tanczyn

MPT/ed
cc: Peter Max Zimmerman, Esq.
Joseph Matricciani, Esq.
G. Scott Barhight, Esq.

COUNTY BOARD OF APPEALS
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'85 MAY 17 A 10 28

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G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

OF COUNSEL
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9026 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(301) 922-2121
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

May 17, 1985 HAND DELIVERED

Honorable Keith S. Franz
Acting Chairman
County Board of Appeals
for Baltimore County
2nd Floor, Court House
Towson, Maryland 21204

Re: Zoning Case No. 85-96-XA
Grace L. Staniford, Petitioner

Dear Mr. Franz:

I am in receipt of Mr. Tanczyn's letter to you dated May 15, 1985. As Mr. Tanczyn's letter points out, the Protestants are proposing to further delay the hearing in this matter. On behalf of my clients, I must strongly protest this extended delay for the scheduling of the fourth and final day of these hearings.

Although delay usually only effects the Petitioner through financial hardship, in the present case, delay of these hearings may have a greater detrimental effect. The Protestants are currently lobbying the Planning Staff, the Planning Board and the County Council to remove wireless transmitting and receiving facilities by special exception in the DR and RC zones of Baltimore County. The Planning Staff's report will probably be presented to the Planning Board early in June, 1985. The potential consequences of these lobbying efforts should be obvious.

In his letter, Mr. Tanczyn attempts to place the blame for the necessity of an additional hearing date on the Petitioner. He points to the introduction of an "additional unexpected expert witness" as being the reason for an additional hearing date. I strongly believe this to be false.

The record clearly shows that Dr. Frey was not available during the May 14th hearing to either participate in the cross-examination of Dr. Guy or to appear as a witness himself. It was

Honorable Keith S. Franz
May 17, 1985
Page 2

the expectation of both the Board and Petitioner's counsel that Dr. Frey would be available. Additionally, Mr. Joseph Matricciani, who cannot appear as a witness on June 5th was not present during the May 14th hearing. Another hearing date was made necessary merely because the case has not been completed. There is no other reason.

There are, however, many reasons why this case is being delayed. As the Petitioners strongly objects to this highly prejudicial delay, I respectfully request that the Board act immediately to schedule a reasonable hearing date. Specifically, I respectfully request that the Board make an additional hearing available during the month of June, including but not limited to, hearing dates on Saturday and/or Sunday.

The Petitioner agrees that a full hearing in this matter is necessary. The Petitioner has not opposed the scheduling of a fourth hearing date. However, the Petitioner clearly deserves a prompt resolution of this matter. The Petitioner will be available on whatever date is proposed!

Thank you for your kind attention to this matter. I will be contacting you by telephone on Monday, May 20th, to further discuss this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Honorable LeRoy B. Spurrier (hand delivered)
Honorable Diana K. Vincent (hand delivered)
Michael P. Tanczyn, Esquire
Peter M. Zimmerman, Esquire
Mrs. Kathryn M. Condello

Law Offices
Michael P. Tanczyn, P.A.
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

May 22, 1985

Keith S. Franz, Esq.
Board of Appeals
2nd Floor, Old Courthouse
Towson, MD 21204

Re: 85-96-XA
Masemore Road
Grace L. Standiford

Dear Mr. Franz:

When we last appeared before you on May 14, 1985, I advised you that I would be unavailable due to a committment to attend Command and General Staff College for the military from June 15 - 28, 1985. Since that time, I have been advised that my school dates have been changed to my first and second choice, June 2 - 14, 1985. I am writing you today to appraise you of the change, yesterday and effect of freeing me up June 19, 1985 after 11:00 a.m., which has the have a District Court case in Baltimore City beginning at 8:45 a.m. in the matter of Dr. Salomy vs Johnson and Wednesday, June 26, 1985.

I have not as yet, however, heard back from Dr. Frey as to his availability, although Peter Zimmerman may have. nor have I received a copy of the transcript of Dr. Guy's testimony nor the applications for authority I understand Mr. Barhight agreed to provide.

If you have any questions of me, I will do whatever I can to assist you in getting this matter set in. I would think that having Dr. Guy's transcript in hand and reviewed by Dr. Frey as well as the FCC applications, FAA advisory extension, would expedite the proceedings the day next scheduled. I look forward to Mr. Barhight's cooperation in forwarding that information.

Very truly yours,

Michael P. Tanczyn

MPT/ed
cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.

COUNTY BOARD OF APPEALS
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'85 MAY 23 P 3 01

Mr. Hackett

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G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

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RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

May 28, 1985 HAND DELIVERED

Honorable Keith S. Franz
Acting Chairman
County Board of Appeals
for Baltimore County
2nd Floor, Court House
Towson, Maryland 21204

Re: Zoning Case No. 85-96-XA
Grace L. Standiford, Petitioner

Dear Mr. Franz:

I am in receipt of Mr. Zimmerman's letter dated May 16, 1985 and Mr. Tanczyn's letter dated May 22, 1985. As another week has gone by without the new hearing date being properly scheduled, I must again protest this delay of the above matter.

On behalf of my client, I respectfully request that the Board take immediate action to schedule the fourth day of this hearing. Counsel for the petitioner will be available on whatever day is selected.

Thank you for your kind attention to this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Honorable LeRoy B. Spurrier (Hand Delivered)
Honorable Diana K. Vincent (Hand Delivered)
Michael P. Tanczyn, Esquire
Peter M. Zimmerman, Esquire
Mrs. Kathryn M. Condello

COUNTY BOARD OF APPEALS
RECEIVED
'85 MAY 28 P 2 54

ACKNOWLEDGMENT OF NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

FEDERAL AVIATION ADMINISTRATION
Airspace & Procedures Branch AEA-530
Eastern Region, Federal Building
J. F. Kennedy Int'l. Airport
Jamaica, New York 11430

AERONAUTICAL STUDY NO:85-AEA-0547-OE

CONSTRUCTION LOCATION
place name HEREFORD MD

latitude 39-36-00 longitude 76-41-30

height in feet agl 200 amsl 826

CELLULAR ONE
KATHRYN CONDELLO
1 CENTRAL PLAZA-11300 ROCKVILLE PK.
ROCKVILLE, MD 20852
CONSTRUCTION PROPOSED: ANTENNA TOWER

The Federal Aviation Administration hereby acknowledges receipt of notice dated 05/13/85 concerning the proposed construction or alteration described above.

A study has been conducted under the provisions of Part 77 of the Federal Aviation Regulations to determine whether the proposed construction would be an obstruction to air navigation, whether it should be marked and lighted to enhance safety in air navigation, and whether supplemental notice of start and completion of construction is required to permit timely charting and notification to airmen. The findings of that study are as follows:

The proposed construction would not exceed FAA obstruction standards and would not be a hazard to air navigation.

Obstruction Marking and Lighting are not necessary.

If the structure is subject to the licensing authority of the Federal Communications Commission, a copy of this acknowledgement will be sent to that Agency.

NOTICE IS REQUIRED ANYTIME THE PROJECT IS ABANDONED OR THE PROPOSAL IS MODIFIED

THIS DETERMINATION EXPIRES ON 12/24/85 UNLESS APPLICATION IS MADE TO THE FCC BEFORE THAT DATE, OR IT IS OTHERWISE EXTENDED, REVISED OR TERMINATED.

signed Glenn A. Sales Manager Airspace and Procedures

issued in JAMAICA, NY on 05/15/85

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(301) 823-7800

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NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR.*
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
G. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW

OF COUNSEL
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RANDALLSTOWN, MARYLAND 21133
(301) 922-2121
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

May 31, 1985

Honorable Keith S. Franz
Acting Chairman
County Board of Appeals
for Baltimore County
2nd Floor, Court House
Towson, Maryland 21204

Re: Zoning Case No. 85-96-XA
Grace L. Standiford, Petitioner

Dear Mr. Franz:

As you are aware from my May 28th correspondence, I am in receipt of Mr. Tanczyn's letter of May 22, 1985. Although at that time, we were not in receipt of a copy of Dr. Guy's testimony, I am now in receipt of the transcript.

Pursuant to Mr. Tanczyn's request, enclosed is a copy of the FAA Advisory Extension.

One of the items requested by Mr. Tanczyn was the FCC Application. Upon researching the availability of this application, I have discovered that providing the application will be unduly burdensome. The complete application with supporting documentation, testimony, amendments and modifications amounts to approximately 12,000 to 16,000 pages. If Cellular One were subpoenaed, certainly we would provide the Board with the existing copy of this entire package. However, as Mr. Tanczyn is requesting a photocopy of the entire application, I respectfully refuse to comply with his request.

Cellular One is not refusing to provide any information within reasonable limits. However, the FCC application is a public record, and can be reviewed and/or copied by the protestants at their expense. To require Cellular One to provide a copy of this extremely lengthy set of documents, is an extraordinary demand which I believe is beyond the scope of the Board's requirements.

Honorable Keith S. Franz
May 31, 1985
Page 2

Should you have any questions regarding this information, please feel free to contact me. Thank you for your continued cooperation in this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm
Enclosure
cc: Michael P. Tanczyn, Esquire (w/encl.)
Peter M. Zimmerman, Esquire (w/encl.)
Mrs. Kathryn M. Condello

COUNTY BOARD OF APPEALS
RECEIVED
'85 JUN -3 A 11 26

RE: PETITION FOR SPECIAL EXCEPTION
W/S MASEMORE ROAD
2350' NORTHWEST OF
MT. CARMEL ROAD
7th DISTRICT

GRACE L. STANDIFORD,
Petitioner

: BEFORE THE
: COUNTY BOARD OF APPEALS
: FOR BALTIMORE COUNTY
:
: Zoning Case
: No. 85-96-XA

ANSWER TO PETITONER TO MOTION
FOR MISTRIAL OR RECONSIDERATION

Grace L. Standiford, Petitioner, by G. Scott Barhight and Nolan, Plumhoff & Williams, Chartered, her attorneys, answers the Motion for Mistrial, or in the Alternative, for Reconsideration previously filed by People's Counsel for Baltimore County, and states that:

1. The Motion has no basis in fact or law. The Board's Rules, Maryland case law and the events of these proceedings all require that the Motion be dismissed.

2. Rule 7 of the Rules of Practice and Procedure sets forth the Board's rule as to evidence. Rule 7a, in part, states:

> "Any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the county board of appeals. Proceedings before the board being administrative in nature, the board will not be bound by the technical rules of evidence but will apply such rules to the end that needful and proper evidence shall be most conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties."

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Maryland case law supports Rule 7a. Administrative agencies are not bound by the technical rules of evidence, as long as they observe the basic rules of fairness as to parties appearing before them. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981).

The rights required by due process before an administrative agency typically include the right to rebut adverse evidence, through cross-examination and other appropriate means. Boehm v. Anne Arundel County, 54 Md. App. 457, 459 A.2d 590 (1983). However, it is the substance, not the form, of the fairness which governs. When a party has the opportunity, however informally granted, to examine and challenge evidence, the requisite of procedural fairness has been met. Dal Maso v. Board of County Commissioners, 238 Md. 333, 337, 209 A.2d 62, 64-65 (1965).

3. In the present case, the requisite fairness has been provided. Contrary to the ascertions of Peopel's Counsel, Dr. Guy was not produced without warning. During the May 9, 1985 hearing, the Board requested additional studies and information from the Petitioner regarding the emissions levels associated with the proposed tower. All the parties expected that additional expert reports and testimony were to be provided at the May 14, 1985 hearing.

4. People's Counsel and the Protestants were not deprived of an opportunity to prepare for Dr. Guy's testimony. The general subject matter of his testimony was identical

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NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-2-

to that of an earlier witness, Mr. John Larson. Each testified about the health affects of the emissions associated with the tower. Counsel was also warned during the May 9th hearing that additional specific information would be provided quantifying the emissions levels around the tower. The substance of Dr. Guy's testimony was no surprise. The only surprise was that Dr. Guy, whose research was referred to by opposition counsel to attempt to impeach Mr. Larson, was the conduit of the information. People's Counsel and Protestant's Counsel were quite familiar with Dr. Guy's work.

5. People's Counsel states that Dr. Frey was not available to assist in the cross-examination because Dr. Guy's appearance was not anticipated. However, this assertion is contrary to the Board's understanding and Petitioner's understanding of Dr. Frey's availability. The record shows that the Board and counsel for Petitioner believed that Dr. Frey was not only going to be present on May 14th, but that he was also going to testify.

6. People's Counsel mistates any representations made by the Petitioner regarding who would answer the Board's request for specific information. The record will show that Petitioner only promised to provide the information in whatever manner possible given the short period of time involved. Neither Mr. Larson nor Dr. Singh had the facilities to provide this information so quickly and neither were available to testify on May 14, 1985.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-3-

7. The Board's request for additional information was not made in a vacuum. Obviously, whatever numerical figures were provided would need to be related to any health affects associated with the levels of emissions described.

8. After hearing objections and argument by People's Counsel and counsel for Protestants, the Board ruled that Dr. Guy need not appear again to submit to additional cross-examination with Dr. Frey present. The Petitioner has no intention of further delaying these proceedings and does not intend, at this time, to call Dr. Guy as a witness again.

9. The Board's rules and Maryland case law require a fair hearing. They do not require the Petitioner or the Board to prepare a case for People's Counsel or Protestants. They also do not require that endless delay be imposed upon a Petitioner so that People's Counsel and Protestants can have their expert, who was supposed to be present at the initial cross-examination session, be made available to assist in a second cross-examination session.

10. People's Counsel and Protestants had a full opportunity, which they employed, to cross-examine Dr. Guy. They also have a full opportunity to rebut Dr. Guy's testimony with their own expert witnesses.

11. It is important to note that under the informal pre-hearing expert witness disclosure agreement, had Petitioner

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-4-

provided Dr. Guy as a rebuttal witness (even by surprise), it would clearly not be contrary to the Board's rules or the agreement. The County Board of Appeals is not the Circuit Court!

12. The due process rights of the opposing parties has not been violated. A fair hearing has been provided. The rights of the parties have been preserved.

WHEREFORE, Petitioner respectfully requests that the County Board of Appeals deny the Motion for Mistrial or, in the Alternative, for Reconsideration, and grant such other and further relief as may be appropriate.

G. SCOTT BARHIGHT

NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
204 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-7800

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 11TH day of June, 1985, a copy of the foregoing was mailed postage prepaid to Peter Max Zimmerman, Esquire, Deputy People's Counsel, Court House, Towson, Maryland 21204 and Michael P. Tanczyn, Esquire, 118 West Pennsylvania Avenue, Towson, Maryland 21204.

G. SCOTT BARHIGHT

RECEIVED
COUNTY BOARD OF APPEALS
'85 JUN 11 P 3 36

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-5-

RE: PETITION FOR SPECIAL EXCEPTION
PETITION FOR VARIANCE
W/S Masemore Rd. 2350' NW of
Mt. Carmel Rd., 7th District

GRACE L. STANDIFORD,
Petitioner.

* BEFORE THE
* COUNTY BOARD OF
* APPEALS OF
* BALTIMORE COUNTY
*
* Case 85-96-XA

* * * * * * * * * * * * * * * * * *

ANSWER TO MOTION FOR MISTRIAL OR,
IN THE ALTERNATIVE, FOR RECONSIDERATION

NOW COMES, Michael P. Tanczyn, Esq., attorney for the remaining Protestants and for response to the People's Counsel's Motion says:

1. That they concur in the covered events contained in the People's Counsel's Motion and join in and adopt that Motion by reference thereto.

2. That they respectfully request the Board of Appeals grant the relief prayed by the People's Counsel in such form as it deems appropriate.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for Protestants
118 West Pennsylvania Avenue
Towson, MD 21204
(301) 296-8823

I HEREBY CERTIFY that, this 5 day of June, 1985, a copy of the foregoing was mailed, postage prepaid, to Phyllis Friedman and Peter Max Zimmerman, Esq., Office of the People's Counsel, 2nd Floor, Old Courthouse, Towson, Maryland, 21204, and to G. Scott Barhight, Esq., 204 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for petitioner.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

RECEIVED
COUNTY BOARD OF APPEALS
'85 JUN 7 AM 10 03

1

RE: PETITION FOR SPECIAL EXCEPTION
W/S of Masemore Road, 2,350 N.W.
of Mt. Carmel Road
7th Election District

GRACE L. STANDIFORD, et. al
Petitioners

* BEFORE THE
* COUNTY BOARD
* OF APPEALS
* OF
* BALTIMORE COUNTY
*
* Case No.: 85-96-XA

** ** ** ** ** ** ** ** ** ** ** ** ** **

PETITIONERS' REPLY MEMORANDUM

Grace L. Standiford, and American TeleServices, Inc., on behalf of the Washington/Baltimore Cellular Telephone Company (t/a Cellular One), Petitioners, by G. Scott Barhight and Nolan, Plumhoff & Williams, Chartered, their attorneys, in reply to the Memorandum filed by Peoples' Counsel and Protestants, states the following:

Schultz v. Pritts

The opposition agrees that Schultz v. Pritts, 291 Md. 1 (1981) governs the Board's decision in this matter. However, the Petitioners disagree with the opposition's characterization of the clear mandate of Schultz.

The opposition would have the Board believe that if the site in question or the areas around the site have any unique aspects, whatsoever, that any requested special exception should be denied. If this were the case, then no petitioner would ever obtain a special exception. One of the primary tenants of land use is that all property is unique.

Merely being unique is not enough. Schultz states that before a

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COUNTY BOARD OF APPEALS
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LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

special exception can be denied, the requested use must have adverse effects above and beyond those inherently associated with the use, regardless of its location. 291 Md. at 22, 23.

The impact of the relatively short, unpainted, unlit tower with extremely low levels of safe radio-frequency emissions, is in no way greater than would be experienced in any R.C. 2 zone in Baltimore County. As the testimony of Mr. Kirwin and Mr. Griffith pointed out, the R.C. 2 zoned areas are characterized by farmland, assorted agricultural uses, minor residental development, woodlands, open spaces, waterways, wildlife, park lands and recreational areas. The Masemore Road area is a microcosm of these characteristics.

The Baltimore County Council knew when it enacted Bill No. 178-79, permitting wireless transmitting and receiving facilities by special exception in R.C. 2 zones, that towers would have some adverse impact. That is the nature of any special exception use. There are several special exception uses permitted in R.C. 2 zones which clearly would have a much more significant impact, i.e., sludge disposal, sanitary landfills, controlled excavations, offices and airports. It is undisputed that towers are not well received by communities, whether they be in Hereford, Kingsville, or Pikesville. However, as Schultz points out, the County Council made a policy decision to permit these towers in the R.C. 2 zones.

The law only requires that the towers have no significantly greater detrimented impact because of their location and that they not be detrimental to the primary agricultural uses in their vicinity. The only real impact that the tower will have is one of visibility.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

2

**Baltimore County, Maryland**

PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
*People's Counsel*

PETER MAX ZIMMERMAN
*Deputy People's Counsel*

June 7, 1985

The Honorable
Keith S. Franz, Acting Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Grace L. Standiford, Petitioner
Zoning Case No. 85-96-XA

Dear Mr. Franz:

In view of the filing by this office of the Motion for Mistrial or, in the Alternative, for Reconsideration, the scheduling of the next hearing day depends on the outcome of that Motion. Until the motion is decided, it is unclear which expert witnesses will be in attendance that day.

In any event, without prejudice to our position set forth in the Motion for Mistrial, the date of July 31, 1985 is acceptable. We also note that on May 14, 1985, at the conclusion of the hearing, we had suggested June 12, 1985 as a possible date, but Petitioner rejected it.

I am willing to explore other dates in July, but cannot confirm availability without speaking to Michael Tanczyn, Esquire, who is on military duty.

I would also respectfully request that a separate hearing for oral argument be heard on the Motion for Mistrial. If the Motion is granted, the scheduling question may be moot or may require consideration of Arthur W. Cuy's schedule as well as Protestants' experts. Accordingly, we will be in a much better position to consider any scheduling matter upon resolution of the preliminary Motion.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

cc: G. Scott Barhight, Esquire
Michael P. Tanczyn, Esquire

PMZ:sh

COUNTY RECEIVED BOARD OF APPEALS
85 JUN 7 P 2:48

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LAW OFFICES
**NOLAN, PLUMHOFF & WILLIAMS**
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J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR.*
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
G. SCOTT BARHIGHT
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204 WEST PENNSYLVANIA AVENUE
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OF COUNSEL
RALPH E. DEITZ
9026 LIBERTY ROAD
RANDALLSTOWN, MARYLAND 21133
(301) 922-2121

RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

June 10, 1985 HAND DELIVERED

Honorable Keith S. Franz
Acting Chairman
County Board of Appeals
for Baltimore County
2nd Floor, Court House
Towson, Maryland 21204

Re: Zoning Case No. 85-96-XA
Grace L. Standiford, Petitioner

Dear Mr. Franz:

As you are aware, the last hearing in this matter occurred on May 14, 1985. As it will be four (4) weeks on June 11, 1985 since that hearing, I believe that more than ample time has been available to schedule the fourth and final hearing day in the above matter.

Please schedule this case for a hearing as soon as possible. You do not need to confirm my availability for a hearing date in order to arrange the schedule. Someone from this office will be available regardless of the date.

Your prompt attention to this matter will be greatly appreciated. Thank you for your continued efforts in this regard.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Honorable LeRoy B. Spurrier (Hand Delivered)
Honorable Diana K. Vincent (Hand Delivered)
Michael P. Tanczyn, Esquire
Peter M. Zimmerman, Esquire
Mrs. Kathryn M. Condello

---

**County Board of Appeals of Baltimore County**
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 10, 1985

G. Scott Barhight, Esq.
Nolan, Plumhoff & Williams
204 W. Pennsylvania Avenue
Towson, Md. 21204

Re: Case No. 85-96-XA
Grace L. Standiford

Dear Mr. Barhight:

I am in receipt of your letter of June 10, 1985.

Responding to your request for a hearing date regarding the above case, I would first like to hold a scheduling conference for this. This conference will be on Tuesday, June 18, 1985, at 9 a.m. in the Board's office. I am also requesting that Mr. Zimmerman and Mr. Tanczyn attend. Please let me know if this date is agreeable with you.

Very truly yours,

Keith S. Franz

cc: Peter M. Zimmerman, Esq.
Michael P. Tanczyn, Esq.

---

Law Offices
**Michael P. Tanczyn, P.A.**
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

June 14, 1985

County Board of Appeals of Baltimore County
Room 200, Court House
Towson, MD 21204

Re: Case No. 85-96-XA
Grace L. Standiford

Gentlemen:

I am in receipt of a copy of your letter to Mr. Barhight of June 10, 1985. I have been on two (2) weeks' military training, just returning this afternoon.

I am scheduled on June 18, 1985 to try State vs Hawkins in the Towson District Court at 9:00, be near Annapolis for an MVA hearing at 11:00, be at my office for an appointment with a client at 2:00 and be at a dentist appointment at 4:00. I will send my secretary to this meeting with my book. I would ask that this not be scheduled immediately after my summer camp from July 13 to 27, 1985.

Very truly yours,

Michael P. Tanczyn

MPT/ed
cc: G. Scott Barhight, Esq.
Peter Max Zimmerman, Esq.

COUNTY RECEIVED BOARD OF APPEALS
85 JUN 17 P 2:31

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**County Board of Appeals of Baltimore County**
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

June 18, 1985

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 85-96-XA — GRACE L. STANDIFORD
for SE - Wireless Transmitting and Receiving Facility in an RC-2 zone
W/S Masemore Road, 2350' NW of Mt. Carmel Road
7th District
1/4/85 - DZC GRANTED SPECIAL EXCEPTION

ASSIGNED FOR: WEDNESDAY, JULY 10, 1985 at 11:00 a.m. (Motions will be heard here)
WEDNESDAY, JULY 31, 1985 at 10:00 a.m.

cc: G. Scott Barhight, Esquire — Counsel for Petitioner
Michael Tanczyn, Esquire — Counsel for Protestants
The Hon. Ellen R. Sauerbrey — Requested Notification
Mr. Tolly Peuleche' — "
The Hon. Francis X. Kelly — "
The Hon. Thomas W. Chamberlain, Sr. — "
Phyllis Cole Friedman
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Norman E. Gerber
James E. Dyer

Edith T. Eisenhart, Adm. Secretary

---

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

A. WADE KACH
TENTH LEGISLATIVE DISTRICT
BALTIMORE COUNTY
WAYS AND MEANS
COMMITTEE

HOME ADDRESS:
14 FOLLY FARMS COURT
REISTERSTOWN, MARYLAND 21136
HOME PHONE 833-3717
LEGISLATIVE ADDRESS:
(JANUARY-APRIL)
309 LOWE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
LEGISLATIVE PHONE 841-3390

June 18, 1985

William T. Hackett, Chairman
Board of Appeals
Court House, M.S. 2205
Towson, Maryland 21204

Standiford

Dear Chairman Hackett:

This letter is in reference to the erection of a 200 cellular radio transmission tower on Masemore Road.

I feel that this is an inappropriate site for the construction of a tower as the area is made up of homes and farms; thus many of the occupants will be looking directly at the tower. Because of the proximity to Gunpowder State Park, it will be an eyesore to the users of the park. The proposed site is west of I-83, and Baltimore County has kept all commercial development east of I-83. There are adequate commercial areas in Baltimore County for placement of such a tower.

I am also concerned about an imposing health hazard to residents nearby if the tower is to be used for microwave transmission. I urge you to do what you can to see that a moratorium is imposed on the construction of radio transmission towers in the County.

Thank you for your consideration, and please keep me informed on this issue.

Sincerely,

A. Wade Kach

AWK:mms

COUNTY RECEIVED BOARD OF APPEALS
85 JUN 26 A 10:44

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Law Offices
**Michael P. Tanczyn, P.A.**
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

July 2, 1985

Honorable Keith S. Franz
Baltimore County Board of Appeals
Old Courts Building
Towson, MD 21204

Re: Standiford - 85-96-XA

Dear Mr. Franz:

I have been advised by one of my witnesses, Helga Dorsey, a licensed realtor in the State of Maryland and nearby resident to the proposed site of the tower, that she will not be able to attend and testify on July 10, 1985 due to her prior committment to be on a legislative action committee for the National Board of Realtors which is meeting in SanFrancisco during that week.

Mrs. Dorsey testified before the Deputy Zoning Commissioner. I would appreciate it if the Board would agree to hearing from her on July 31, 1985, the next date set aside for this hearing.

Her testimony is not cumulative to the other protestant witnesses based on her testimony before Mrs. Jung and I look forward to having the opportunity to present her testimony to you on July 31, 1985 if you agree to do so.

Very truly yours,

Michael P. Tanczyn

MPT/ed
cc: Peter Max Zimmerman, Esq.
G. Scott Barhight, Esq.

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85 JUL -5 P 2:16

7/5/85: Sent cc to KSF

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LAW OFFICES
**NOLAN, PLUMHOFF & WILLIAMS**
CHARTERED

J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR.*
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
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OF COUNSEL
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RANDALLSTOWN, MARYLAND 21133
301 922-2121

RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

July 3, 1985 HAND DELIVERED

Honorable Keith S. Franz
Acting Chairman
County Board of Appeals
for Baltimore County
2nd Floor, Court House
Towson, Maryland 21204

Re: Zoning Case No. 85-96-XA
Grace L. Standiford, Petitioner

Dear Mr. Franz:

I am in receipt of Mr. Tanczyn's letter dated July 2, 1985. I have no objection to Mrs. Dorsey testifying at the July 31st hearing date. As Mr. Tanczyn has indicated, Mrs. Dorsey did testify before the Deputy Zoning Commissioner and her testimony is not cumulative in nature.

On June 21, 1985 a box of materials was produced to the Board of Appeals office in response to your request for the FCC application information. If the Board or any of the parties have any questions regarding these materials, please do not hesitate to contact me.

By letter dated June 28, 1985, I received a copy of the National Law Journal article previously requested.

Thank you for your continued cooperation in this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Peter Max Zimmerman, Esquire
Michael P. Tanczyn, Esquire
Mrs. Kathryn M. Condello

COUNTY BOARD OF APPEALS RECEIVED
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LAW OFFICES
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J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM M. HESSON, JR.*
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
C. SCOTT BARHIGHT
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.

July 16, 1985

Honorable Keith S. Franz
Acting Chairman
County Board of Appeals
for Baltimore County
2nd Floor, Court House
Towson, Maryland 21204

Re: Zoning Case No. 85-96-XA
Grand L. Standiford, Petitioner

Dear Mr. Franz:

In anticipation of the July 31, 1985 hearing date, I am writing to request the Board's thoughts on whether the Board would prefer oral closing arguments, written memoranda, or both.

The petitioner has no preference. However, if an oral presentation will not be necessary on July 31st, I would prefer notice of this so as not to prepare for closing argument.

By carbon copy of this letter to counsel, I am requesting that they express any preference they may have on this issue.

I am looking forward to your reply. Thank you for your cooperation.

Very truly yours,

G. Scott Barhight

CSB:ylm

cc: Peter Max Zimmerman, Esquire
Michael P. Tanczyn, Esquire
Mrs. Kathryn M. Condello

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COUNTY BOARD OF APPEALS
'85 JUL 17 P 12 08

Called. Notified no closing arguments
7/17/85. Sent cc to Mr Franz

PEOPLE'S COUNSEL'S EXHIBIT 1

Baltimore County, Maryland
PEOPLE'S COUNSEL
RM. 223, COURT HOUSE
TOWSON, MARYLAND 21204
494-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

July 17, 1985

The Honorable
William T. Hackett, Chairman
County Board of Appeals
Room 200, Court House
Towson, Maryland 21204

RE: Bell Atlantic Mobile Systems,
Petitioner, Zoning Case No.
85-244-XA

Dear Chairman Hackett:

Please consider this letter as People's Counsel's Memorandum in the above case.

After careful consideration, we believe that the evidence fails to prove or demonstrate the safety of radiofrequency radiation emissions from the proposed tower. This is of particular concern because the tower sits on school property. In this connection, the absence of representatives from Bais Yaakov School for Girls at the hearing is a real concern.

The expert evidence came from an engineering background. The only long term, low level study produced positive cancer results in rats. The effects of RF radiation apparently are cumulative. There is considerable uncertainty in the scientific community as to the proper standard. The Russian standard is not far above the levels expected from the proposed facility. Dr. Guy admitted that the results of his group's study suggested the tightening of the American standard.

The problem is so perplexing that E.P.A. has failed to come up with a standard, despite study by various groups over a period of years. An added factor in the present case is that the most exposed population will be children.

Under any circumstances, based on the evidence here, we do not believe it would be prudent for the County Board of Appeals to approve any towers of the nature proposed here. We are aware that similar towers already exist in the Baltimore-Washington Metropolitan Area and, presumably, nationally. We cannot eliminate those in this specific case. However,



The Honorable
William T. Hackett, Chairman
County Board of Appeals

July 17, 1985

we intend to bring the matter to the attention of the County Council in their legislative review of the entire problem.

Very truly yours,

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel

cc: John B. Howard, Esquire
Jeffrey N. Pritzker, Esquire
Theodore Losin, Esquire

PMZ:sh

Charles Bennett Colton, P.E.
CONSULTING MECHANICAL ENGINEER
11018 PARK HEIGHTS AVENUE • OWINGS MILLS MARYLAND 21117
(301) 363-4068

August 3, 1985

RECEIVED
COUNTY BOARD OF APPEALS
'85 AUG -5 AM 10 51

County Board of Appeals
Room 200
Court House
Towson, Maryland 21204

Attention: William T. Hackett, Chairman

Re: Bell-Atlantic Mobile Systems, Petitioners; Case No. 85-244-XA

Dear Mr. Hackett:

This letter is with regard to the subject case and my concern that a decision to allow Bell-Atlantic Mobile Systems to operate its tower at this location might pose a disruption to to communications in the neighborhood. Subsequent to the erection of the "cell" tower by Bell-Atlantic I started to experience interference problems with my cordless phone which I had been using for over two trouble-free years. Upon contacting Bell about this matter, I was told that they were using state-of-the-art technology and that they had never experienced a complaint like mine before. After I described the problem and how I had concluded that it was their tower causing the interference, they promised to look into the matter. I subsequently supplied them with technical data relating to my cordless phone. From this data and other research they conducted, they concluded that the FCC approved phone design does not preclude it from being interfered with by their tower and its support equipment. In fact, on August 2 Mr. Edward Quinn of Bell-Atlantic Mobile Systems advised me that there is equipment at the Owings Mills "cell" tower site, as well as other sites, used as part of the power back-up system that will indeed radiate interference in the frequency range utilized by my phone.

In as much as this facility was claimed to be state-of-the-art and by their own admission has a component that can cause local communications interference I would strongly suggest that their petition be denied even if this specific item of equipment can be suitably modified. Their claim of non-interference with the surrounding area has been demonstrated to not be true. Further, the proximity of a device like this



tower constantly emitting electromagnetic radiation so close to a school for girls, as well as my house and my two daughters, raises concern on my part regarding the long-term health effects of this facility.

In light of the above and the apparent lack of consideration of these concerns in siting this equipment because they were viewed as non-problems, I would urge that the subject petition be denied and that any other tower siting under consideration not be approved until these issues are dealt with in a manner that allows for all parties to be adequately informed on these highly technical issues so that all parties rights, health, welfare and safety are protected.

In view of the impact that my request has on the petitioner, please feel free to pass this letter on to the appropriate parties at Bell-Atlantic Mobile Systems, Inc.

Very truly yours,

Charles B. Colton

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COUNTY BOARD OF APPEALS
'85 AUG 5 PM 1 51

PEOPLE'S COUNSEL'S EXHIBIT 2

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

August 7, 1985

John B. Howard, Esq.
210 Allegheny Ave.
Towson, Md. 21204

Re: Case No. 85-244-XA
Bell Atlantic Mobile Systems

Dear Mr. Howard:

The Board is in receipt of the enclosed correspondence dated August 3, 1985.

The Board is somewhat concerned about the issues stated in this correspondence. We would appreciate any comments you may have regarding this. Consideration will be afforded any requests to address and rebut the allegations contained in this letter.

Very truly yours,

William T. Hackett, Chairman
County Board of Appeals

WTH:h
cc: Jeffrey N. Pritzker, Esq.
Theodore Losin, Esq.
Peter M. Zimmerman, Esq.

Bell Atlantic
Mobile Systems
180 Mount Airy Road
Basking Ridge, N.J. 07920
(201) 953-2281

Edward F. Weingart
Director
Network Design and Implementation

August 14, 1985

William T. Hackett, Chairman
County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204

RE: Bell Atlantic Mobile Systems, Inc.
Case No. 85-244-XA

Dear Mr. Hackett:

I am in receipt of your correspondence of August 7, 1985, regarding a letter from Mr. Charles Colton and I appreciate the opportunity to comment on the allegations presented.

Bell Atlantic Mobile Systems has installed and is operating Cellular Radio transmitter stations at seventy-five (75) locations in the mid-Atlantic region. To date we have only one documented case of interference caused by any of our cell sites. This situation was discovered last year shortly after our Pittsburgh system went into service and was caused by a defect in a power supply manufactured by a leading power supply manufacturer. After isolating the cause of the interference, we worked with the manufacturer and installed a modification to the circuitry to correct the problem.

Since that time we have been modifying all power supplies on a routine basis to avoid a possible reoccurrence at any other location. The power supply at the Bais Yaakov School has been modified and should not present a problem. I must point out however that this is not a radio transmitter generated interference but would be more analogous to the type interference that would be caused by an automobile ignition or a vacuum cleaner.

In over eighty (80) years of equivalent cell site air time that we have been operating, there have been no other cases of interference caused by our equipment and to my knowledge there has never been a complaint of interference to a cordless phone.

We have gone on record that we do not cause interference under all but the most unusual situations but if we do, we will take whatever steps are necessary to rectify the situation at our expense. We have been in contact with Mr. Colton and are attempting to arrange for a visit to his premises to experience this interference and to determine beyond a doubt if our cell site is causing the problem.

Exhibit 3



The issue of electromagnetic radiation is again raised in connection with our cell site. I believe that the testimony of Mr. R. C. Peterson adequately addresses this issue and requires no further explanation from me at this time.

I trust this letter answers any questions you may have and alleviates the concern of the Board.

Very truly yours,

Edward F. Weingart
Director - Network Design
and Implementation
Bell Atlantic Mobile Systems, Inc.

EFW:sls

**Bell Atlantic**
Mobile Systems

Edward F. Weingert
Director
Network Design and Implementation

180 Morris Ave Road
Basking Ridge, N.J. 07920
(201) 953-2281

August 22, 1985

William T. Hackett, Chairman
County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204

RE: Bell Atlantic Mobile Systems, Inc.
Case No. 85-244-XA

Dear Mr. Hackett:

In my letter of August 14, 1985, I indicated that we were in the process of arranging a visit to Mr. Colton's home to determine if our cell site at the Bais Yaakov School is causing the interference to his cordless telephone.

We visited Mr. Colton on August 15, 1985, and after analyzing the information gathered, we concluded that the interference is not being caused by our cell site. The interference he is experiencing is not unlike that being experienced by many other consumers who own cordless telephones of that vintage. The following quote from the September 1983 issue of Consumer Reports should be of interest:

> "The manufacturers acknowledge that cordless phones can pick up all manner of noise or strange radio signals from power lines, TV sets, computers, auto ignition systems, vacuum cleaners, other phones, and the like. They can periodically beep, burp, burble, and squawk, and sometimes even ring when no one is calling. For now, you only defense in some instances is to switch off the handset."

We will be happy to provide any details or information you may require regarding this matter.

Very truly yours,

EFW:sls

bcc: R Hoffman
J. Howard

Exhibit 4

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2/21/85 - Notified of appeal hearing scheduled on THURSDAY, MAY 2, 1985 at 10 a.m.
THURSDAY, MAY 9, 1985 at 10 a.m.
TUESDAY, MAY 14, 1985 at 10 a.m.

G. Scott Barhight, Esq.
Michael Tanczyn, Esq.
The Hon. Ellen R. Sauerbrey
Mr. Tolly Peuleche'
The Hon. Francis X. Kelly
The Hon. Thomas W. Chamberlain, Sr.

6/18/85 - Above notified of CONTINUED HEARINGS set for WEDNESDAY, JULY 10, 1985 at 11 a.m. and WEDNESDAY, JULY 31, 1985 at 10 a.m.

Case completed

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**Law Offices**
**Michael P. Tanczyn, P.A.**
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

September 9, 1985

Baltimore County Board of Appeals
Courthouse, Room 200
Towson, MD 21204

Re: Petition of Grace L. Standiford
Case No. 85-96-XA

Gentlemen:

Enclosed herewith please find the Memorandum of the Protestants to be filed in this matter.

Very truly yours,

Michael P. Tanczyn

MPT/ed
Enclosure

cc: Peter Max Zimmerman, Esq.
G. Scott Barhight, Esq.
Ms. Peggy Patterson
Mr. Ronald Meyer
Ms. Helga Dorsey

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COUNTY BOARD OF APPEALS
'85 SEP 10 A 10 44

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**County Board of Appeals of Baltimore County**
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 22, 1986

Newton A. Williams, Esq.
204 W. Pennsylvania Ave.
Towson, Maryland 21204

Re: Case No. 85-96-XA
Grace L. Standiford

Dear Mr. Williams:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Encl.
cc: Hon. Ellen R. Sauerbrey
Mr. Tolly Peuleche'
Hon. Francis X. Kelly
Hon. Thomas W. Chamberlain, Sr.
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer

---

**BALTIMORE COUNTY, MARYLAND**

**INTER-OFFICE CORRESPONDENCE**

TO: Patrick D. Hanley, Esquire, Office of Law — Date: January 23, 1987

FROM: Keith S. Franz, County Board of Appeals

SUBJECT: Case No. 85-86-XA, Grace L. Standiford, et al

The subject case was remanded to the Board of Appeals by Judge Jac[illegible] January 13th (see attached copy of Opinion and Order).

The following questions need to be answered concerning this remand:

- Are we to call in the expert witness in question to be available for cross-examination by People's Counsel, or is it necessary to schedule a complete hearing?
- If a hearing is scheduled the following questions arise:
  - There are at present only two members on the Board of three who heard this case originally. If a two-member board is not satisfactory, do we start at the beginning?
  - What happens if the hearing is scheduled and one of the two remaining Board members is no longer on the Board? Does this mean the case is heard from the very beginning?

If you have any questions or wish to discuss any of the above, please contact me.

Attachment

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**BALTIMORE COUNTY, MARYLAND**

**INTER-OFFICE CORRESPONDENCE**

TO: Keith S. Franz, County Board of Appeals — Date: February 2, 1987

FROM: Office of Law

SUBJECT: Case No. 85-86-SZ, Grace L. Standiford, et al

RECEIVED
COUNTY BOARD OF APPEALS
1987 JUN 24 A 8:45

You have requested our advice on several questions presented as a result of a recent remand of the above entitled matter by the Circuit Court.

Questions Presented

1. Since one of the members of the Board panel has left the Board, what procedure should be utilized if an objection is raised concerning the absence of a quorum?
2. Should the record hearing commence with cross-examination of the expert witness?

Discussion

(Quorum Issue)

Sec. 603 of The Baltimore County Charter in pertinent part provides:

Sec. 603. Rules of practice and procedure.

Subject to the approval of the county council, the county board of appeals shall have authority to adopt and amend rules of practice and procedure to cover the conduct of its proceedings. Such rules may include matters relating to filing fees, meetings and hearings conducted by the board...and all other matters deemed appropriate or necessary for the board to conduct its proceedings. Said rules and regulations when approved by the county council shall have the force and effect of law... .

Rule 1.c. of the rules of Practice and Procedure of County Board of Appeals provides:

> c. Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except that, in the event of illness or death of a sitting member, upon agreement of counsel of record of parties of record, two (2) members may continue to sit for purposes of concluding any matter before the

CPS-008

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board of appeals.

This rule was approved by Sec. 1 of Bill No. 59, 1979. It clearly requires the presence of three members to conclude this matter, in the absence of an agreement to the contrary in cases of illness or death of a sitting member. In that event, two may sit and conclude the matter. Also cf. McQuillin Mun. Corp., Sec. 13.30 (3rd Ed.):

> ... where the law requires a certain number to constitute a board, as for example three members, and only two are appointed or qualify, it has been held that they cannot legally do an act authorized to be done by a majority of the board because no official board exists of which they would be a member.

We note that the Order of the Board that gave rise to the appeal was signed only by two members of the Board, viz, yourself and Mr. Spurrier. Perhaps this was with the express agreement of counsel for the parties. If not, and no issue was made of it on appeal, an argument could be made that the parties consented by implication and therefore have waived their right to raise the quorum issue at this point. In either event, we feel that any objection at this point to a two member quorum should be overruled. On the other hand, if there was no express agreement earlier and if the issue was raised but not reached by the Court on appeal, and if the objection continues to be advanced, then we believe that Rule 1.c would be violated if less than the required quorum of three members is present. Because it appears from your request that the third individual is no longer a member of the Board, we recommend that the Board declare a mistrial and start the entire proceeding afresh in that event. This ruling hopefully will afford the parties the opportunity to test that ruling by appeal, without the Board hearing any additional testimony.

(Expert witness procedure)

The Circuit Court Order remanded the matter to the Board for proceedings consistent with the Opinion. The opinion found error in the Board's refusal to grant a continuance to enable counsel to prepare to cross examine the expert witness, Dr. Arthur William Gay. Assuming that the Board does not need to declare a mistrial for the reason discussed above, we think that it would be appropriate for the Board to schedule a hearing at which the sponsor of the witness produces him for cross-examination. Counsel should be required to comply strictly with the applicable provisions of Rule 7g of the Rules of the Board. If any party wishes to offer other evidence, we think that that should be permitted to the extent that it replies to or rebuts evidence adduced during the cross-examination and redirect examination of Dr. Gay and after compliance with Rule 7g. Finally, counsel should be afforded the opportunity to argue the merits of the entire case at the conclusion of the proceeding.

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This letter of advice should not be construed as a formal opinion of the Office of Law.

Patrick D. Hanley
Assistant County Attorney

pdh/ges

Lothrop, Inc., 280 Md. 686, 706, 376 A.2d 483 (1977), cert. den. 434 U.S. 1067, 98 S. Ct. 1245, S.S.L.Ed. 2d. 769.

The Board of Appeals held five (5) separate hearing days before granting Appellants a special exception subject to eleven (11) conditions enumerated by the Board. The five days of testimony were taken during the period between May 2, 1985 through July 31, 1985.

Based on its narrow scope of review, this Court does not find merit in regard to Appellants' first three contentions. This Court is of the opinion that the decision of the Board of Appeals is based on substantial evidence and the issues raised by these contentions are fairly debatable.

Appellants assert that the Board of Appeals did not comply with Rule 1(c) of Appendix C of the Baltimore County Code in rendering its decision. Rule 1(c) states:

> c. Three (3) members of the Board of Appeals, as designated by the Chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except that, in the event of illness or death of a sitting member, upon agreement of counsel of record or parties of record, two (2) members may continue to sit for purposes of concluding any matter before the Board of Appeals.

The April 22, 1986 decision of the Board was made after hearings before all three (3) board members. The decision itself was signed by only two (2) of the three board members. This Court notes that the third board member attended the hearings in regard to this matter. Knowing the above, this Court does not find basis to reverse the decision o. the Board on the grounds that the third board member did not "participate" in the decision.

Appellants additionally contend that the special exception granted to Appellees must meet the requirements of Bill 64-86 which became effective subsequent to the granting of the special exception on July 27, 1986. In correspondence to this Court, dated June 24, 1988, counsel for the People's Counsel for Baltimore County wrote:

> until Judge Jacobson reversed the County Board of Appeals' decision, the Petitioner did have a valid permit and the tower was legally in place. Because both built and approved by the Board before the effective date of Bill 64-86, the new bill could not at that time apply. However, because of the pendency of the appeal, the tower and perm were at risk and subject to the consequences of furthe. roceedings.
>
> The argument of Bill 64-86 would apply would not be ripe or appropriate unless and until the Board decision suffered a reversal. Only when Judge Jacobson reversed, effectively invalidating the permit, did Bill 64-86 become applicable to this property.

This Court agrees with Appellants' counsel that Bill 64-86 would not apply unless and until the Board's decision suffered a reversal. This Court does not, however, agree that Judge Jacobson's decision effectively invalidated the permit making the requirements of Bill 64-86 applicable to the subject property.

Judge Jacobson's decision remanded this case to the Board of Appeals on the procedural grounds that there had been a "denial of administrative process" during the hearings before the Board of Appeals. The Court of Special Appeals of Maryland found no such denial of administrative process and reversed this decision holding that "the Circuit Court errred in reversing on procedural grounds."

Judge Jacobson's decision of January 14, 1987 neither addressed nor reversed on the basis that the Board was not supported by substantial evidence in its decision to grant the special exception to Appellees. Rather, the decision remanded the cause to the Board of Appeals strictly on a finding that the Appellants were procedurally denied their due process rights to a full and fair hearing, specifically by the Board receiving the testimony of Dr. Arthur W. Guy.

This Court is of the opinion that the temporary finding of improper procedure pursuant to Judge Jacobson's decision was a reversal based on the procedure used by the Board in issuing Appellees a special exception. The decision was not an attack or invalidation of the permit issued pursuant to that special exception itself. This Court, therefore, believes that the permit issued to Appellees was not directly invalidated by Judge Jacobson's decision of January 14, 1987.

Accordingly, the Special Exception granted to Appellees on April 22, 1986 is not controlled by Bill 64-86 which became effective on July 27, 1986 since only the procedural grounds in granting the special exception were temporarily found improper not the Board's authority to grant a special exception under the evidence presented in this case.

It is, therefore, the opinion of this Court that the decision of the Board of Appeals in granting Appellees a special exception was valid when made and remains valid.

Having not found merit in any of Appellants' contentions under this Court's scope of review, it is the decision of this Court that the Board of Appeals' decision of April 22, 1986 should be affirmed.

Therefore, it is this 8th day of August, 1988, by the Circuit Court for Baltimore County,

ORDERED that the decision of the Baltimore County Board of Appeals be and is hereby AFFIRMED.

A. OWEN HENNEGAN, JUDGE

COPIES SENT:
Phyllis Cole Friedman, Esquire
Michael P. Tanczyn, Esquire

| | | |
|---|---|---|
| IN THE MATTER OF<br>GRACE L. STANDIFORD<br>W/S MASEMORE ROAD, 2350'<br>NORTHWEST OF MT. CARMEL ROAD<br>7th DISTRICT | : | IN THE<br>CIRCUIT COURT<br>FOR |
| RE: SPECIAL EXCEPTION FOR A WIRELESS TRANSMITTING AND RECEIVING FACILITY IN AN RC-2 ZONE | : | BALTIMORE COUNTY<br>AT LAW |
| PHYLLIS COLE FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY,<br>AND<br>PEGGY A. PATTERSON, ET AL,<br>PLAINTIFFS | : | CG Doc. No. 27<br>Folio No. 121<br>File No. 86-CG-1981 |
| ZONING FILE NO. 85-96-XA | : | |

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Keith S. Franz and LeRoy B. Spurrier, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Newton A. Williams, Esq., 204 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for the Petitioner; Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Towson, Md. 21204, Counsel for Plaintiffs; Phyllis Cole Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiff; Peggy A. Patterson, 1733 Masemore Rd., Parkton, Md. 21120, Ronald P. Meyer, 17212 Masemore Rd., Parkton, Md. 21120, Michael J. Stachelek, 17206 Masemore Rd., Parkton, Md. 21120, and Joseph Parker, 17120 Masemore Rd., Parkton, Md. 21120, Plaintiffs; Honorable Ellen R. Sauerbrey, 4122 Sweet Air Rd., Baldwin, Md. 21013; Mr. Tolly Peuleche', Chief, Resources Planning Capital Programs Administration, Tawes State Office Bldg., Annapolis, Md. 21401; Honorable Francis X. Kelly, One Shawan Rd., Hunt Valley, Md. 21030; and Honorable Thomas W. Chamberlain, Sr., 307 Galway Rd., Lutherville, Md. 21093, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.



June Holmen
County Board of Appeals of Baltimore County, Rm. 200, Court House, Towson, Md. 494-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Newton A. Williams, Esq., 204 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for the Petitioner; Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Towson, Md. 21204, Counsel for Plaintiffs; Phyllis Cole Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, Plaintiff; Peggy A. Patterson, 1733 Masemore Rd., Parkton, Md. 21120, Ronald P. Meyer, 17212 Masemore Rd., Parkton, Md. 21120, Michael J. Stachelek, 17206 Masemore Rd., Parkton, Md. 21120, and Joseph Parker, 17120 Masemore Rd., Parkton, Md. 21120, Plaintiffs; Honorable Ellen R. Sauerbrey, 4122 Sweet Air Rd., Baldwin, Md. 21013; Mr. Tolly Peuleche', Chief, Resources Planning Capital Programs Administration, Tawes State Office Bldg., Annapolis, Md. 21401; Honorable Francis X. Kelly, One Shawan Rd., Hunt Valley, Md. 21030; and Honorable Thomas W. Chamberlain, Sr., 307 Galway Rd., Lutherville, Md. 21093, on this 22nd day of May, 1986.

June Holmen
County Board of Appeals of Baltimore County

| | | |
|---|---|---|
| IN THE MATTER OF<br>GRACE L. STANDIFORD<br>W/S MASEMORE ROAD, 2350'<br>NORTHWEST OF MT. CARMEL ROAD<br>7th DISTRICT | : | IN THE<br>CIRCUIT COURT<br>FOR |
| RE: SPECIAL EXCEPTION FOR A WIRELESS TRANSMITTING AND RECEIVING FACILITY IN AN RC-2 ZONE | : | BALTIMORE COUNTY<br>AT LAW |
| PHYLLIS COLE FRIEDMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY,<br>AND<br>PEGGY A. PATTERSON, ET AL,<br>PLAINTIFFS | : | CG Doc. No. 27<br>Folio No. 121<br>File No. 86-CG-1981 |
| ZONING FILE NO. 85-96-XA | : | |

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Keith S. Franz and LeRoy B. Spurrier, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 85-96-XA

| | |
|---|---|
| August 27, 1984 | Petition of Grace L. Standiford for a special exception from Sec. 1 A 01.2.C.23 to permit a wireless transmitting and receiving facility in an RC-2 zone. |
| August 27, 1984 | Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for Oct. 9, 1984 at 1:30 p.m. |
| September 20 | Certificate of Publication in newspaper - filed |
| September 20 | Certificate of Posting of property - filed |



| | |
|---|---|
| September 18, 1984 | Comments of Baltimore County Director of Planning - filed |
| October 1 | Comments of Baltimore County Zoning Plans Advisory Committee-filed |
| October 9 | At 1:30 p.m. hearing held on petition by Deputy Zoning Commissioner |
| January 4, 1985 | Order of the Deputy Zoning Commissioner to permit a wireless transmitting and receiving facility in an R.C. 2 zone is granted, subject to restrictions. |
| February 1 | Order for Appeal to C.B. of A. from Order of Deputy Zoning Commissioner |
| May 2 | Hearing on appeal before Board of Appeals |
| May 9 | Continued hearing before the Board |
| May 14 | Continued hearing before the Board |
| May 29 | Motion for Mistrial or Reconsideration from People's Counsel for Baltimore County |
| June 7 | Second Motion for Mistrial from People's Counsel |
| June 7 | Answer to Motion for Mistrial by Michael Tanczyn, Esq. counsel for Protestants |
| June 11 | Answer to Petition to Motion for Mistrial or Reconsideration from G. Scott Barhight, Esq., on behalf of Petitioner |
| July 10 | Hearing before the Board of Appeals |
| July 31 | Continued hearing before the Board |
| August 1, | Post Hearing Memorandum from People's Counsel for Baltimore County |
| August 15 | Petitioners' Memorandum in Support of Petition for Special Exception from G. Scott Barhight, Esq., on behalf of Petitioners. |
| September 10 | Post-Hearing Memorandum from Michael P. Tanczyn, Esq., on behalf of Protestants. |
| September 16 | Petitioners' Reply Memorandum from G. Scott Barhight, Esq., on behalf of Petitioners. |
| April 22, 1986 | Order of County Board of Appeals ordering that the Special Exception requested to permit a wireless transmitting and receiving facility in an RC-2 zone be GRANTED, subject to restrictions. |



| | |
|---|---|
| May 21, 1986 | Order for Appeal filed in the Circuit Court for Baltimore County by Phyllis Cole Friedman, People's Counsel for Baltimore County, and Michael P. Tanczyn, Esq., counsel for Plaintiffs-Protestants. |
| May 22 | Certificate of Notice sent to all interested parties. |
| May 29 | Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County |
| June 11 | Petition for extension of time to file transcript extended to Aug. 23, 1986 |
| August 22 | Transcript of Testimony filed - 6 volumes |

EXHIBITS IN THIS CASE WERE PRESENTED BEFORE THE BOARD OF APPEALS BY THE SAME NUMBER AS ASSIGNED BEFORE THE ZONING COMMISSIONER, HENCE, THE DISCREPANCY IN NUMERICAL ORDER. THE EXHIBITS PRESENTED AT THE ZONING COMMISSIONER'S HEARING ARE ALSO BEING FORWARDED TO THE CIRCUIT COURT AS PART OF THE CASE FILE, PER §22-27 and §22-28 OF THE BALTIMORE COUNTY CODE AND A LIST OF THESE EXHIBITS IS ATTACHED TO SAME.

| | | |
|---|---|---|
| Petitioner's Exhibit No. | 1 | - Photos (a, b & c) showing tower sites in Prince George's County |
| " " " | 8 | - Site Plan showing location of tower and support building, 8/17/84 - Gerhold, Cross & Etzel |
| " " " | 16 | - Acknowledgment of Notice of Proposed Construction or Alteration, #84-AEA-2093-CE |
| " " " | 17 | - Letter to Weldon Hale from Kathryn M. Buie, 11/1/84 |
| " " " | 19 | - Letter from Weldon P. Hale to Kathryn M. Buie, 11/13/84 |
| " " " | 20 | - Map prepared by Carey W. Burch showing tower site (proposed) |
| " " " | 21 | - Two page letter with attachment to Arnold Jablon, 11/11/84 |
| " " " | 22 | - Map showing Cellular Circles and site location of towers |

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 22, 1986

Michael Tanczyn, Esq.
606 Baltimore Ave., Suite 106
Towson, Md. 21204

Re: Case No. 85-96-XA
Grace L. Standiford

Dear Mr. Tanczyn:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice; also invoice covering the cost of certified copies of necessary documents.

Very truly yours,

June Holmen, Secretary

Encls.
cc: Phyllis C. Friedman
Peggy A. Patterson
Ronald P. Meyer
Michael J. Stachelek
Joseph Parker

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 22, 1987

Howard E. Friedman, Clerk
Court of Special Appeals
of Maryland
Annapolis, MD 21401-1698

RE: Case No. 86-CG-1981
(Grace L. Standiford)

Dear Mr. Friedman:

We would appreciate your noting our request for a copy of the Opinion in the subject case when it is filed by the Court of Special Appeals.

Thank you.

Sincerely,

Kathleen C. Weidenhammer
Administrative Secretary

BALTIMORE COUNTY, MARYLAND

2/27/87 (Pretrial) Check re Docket

RECEIVED
FEB 10 1987
ZONING OFFICE

INTER-OFFICE CORRESPONDENCE

TO Bettye du Bois -Zoning Office Date February 9, 1987

FROM Kathi Weidenhammer - Board of Appeals

SUBJECT Case No. 85-96-XA
Grace L. Standiford

Bettye:

I wasn't quite certain exactly what information you needed from the subject file. I hope the attached are the documents you needed. If you need anything further, please call me.

Attachment

MICROFILMED

CURRICULUM VITAE

Arthur W. Guy

ADDRESS: Office
Bioelectromagnetics Research Lab.
Center for Bioengineering, RJ-30
88805 University Hospital
University of Washington
School of Medicine
Seattle, Washington 98195
(206) 543-1071

Home
18122 60th Pl., NE
Seattle, Washington 98155
(206) 486-6439

MARITAL STATUS: Married

CHILDREN: Four

DATE OF BIRTH: December 10, 1928

PLACE OF BIRTH: Helena, Montana

EDUCATION:

1947-1952 United States Air Force Radar Technical School, Keesler Field, Mississippi

1952 Northern Montana College, Havre, Montana

1955 B.S., Electrical Engineering, University of Washington, Seattle, Washington

1957 M.S., Electrical Engineering, University of Washington, Seattle, Washington

1966 Ph.D., Electrical Engineering, University of Washington, Seattle, Washington

POSITIONS HELD:

1/56 - 3/57 Research Assistant, Department of Electrical Engineering, College of Engineering, University of Washington, Seattle, Washington

Research on the excitation and control of multi-modes in waveguides

1

RANDOMLINE, INC.
COUNTY LINE & MANN ROADS
HUNTINGDON VALLEY, PA. 19006
TELEPHONE (215) 357-0777

ALLAN H. FREY, Ph.D., is Technical Director of Randomline, Inc., a research and consulting firm that specializes in new applications of evolving technologies and in multidiscipline pure and applied research. He is responsible for work involving the disciplines of biophysics, engineering, optics, physiology, and experimental psychology. He has been associated with Randomline, Inc., since 1966.

His biophysical research since 1959 has been broad and extensive. This includes research on the biological interactions of electromagnetic fields (DC thru optical frequencies), holography, olfaction, visual and auditory perception, aerosol physics, and earthquake prediction. Approximately seventy reports of his research and his analytical reviews have been published in a diversity of journals and books, such as the Biophysical Journal, Psychological Bulletin, Psychological Review, Science, Journal of Applied Physiology, IEEE Transactions in Microwave Theory and Technique, Human Factors, Aerospace Medicine, Journal of Comparative and Physiological Psychology, International Journal of Neurosciences, Bulletin of Environmental Contamination and Toxicology, etc.

In addition to his published papers, he has given numerous lectures on his research in the U. S. and abroad. He has lectured in and been a consultant in the USSR at the invitation of the Soviet Academy of Sciences. He has also lectured in and been a consultant in the People's Republic of China at the invitation of the Chinese government. He has also given invited lectures in Czechoslovakia, Poland, Israel, Germany, and Japan. He also has been awarded one patent and has two applied for.

Frey has been called upon or listed as a consultant by personnel of the Department of Defense (U.S. Air Force, Navy, and Army), the States of New York, New Hampshire, and California, the National Academy of Sciences, the National Science Foundation, the National Institutes of Health, and other public agencies, as well as a number of private firms. He has served on various technical committees and has been a guest editor of a journal. He is a member of the Biophysical Society, Psychonomic Society, the New York Academy of Sciences, the Optical Society of America, the Society of Photo-Optical Instrumentation Engineers, and a senior member of the Institute for Electrical and Electronics Engineers.

Before his association with Randomline, he was a senior member of the Institute for Research at State College, Pennsylvania. Concurrently, he had a senior appointment at the electronics information systems research and development firm of HRB-Singer. Also concurrently, he did research as an invited scientist at the National Institutes of Health in Bethesda, Maryland. Prior to 1963, he did research for three and a half years at General Electric's Advanced Electronics Center at Cornell University in Ithaca, New York.

QUALIFICATIONS OF DR. RAJENDRA SINGH

ASSISTANT PROFESSOR

The City College, New York

August 1983 - Present

Teaching graduate level courses in signal detection theory and mobile communications. Involved in research in areas of spread spectrum and mobile radio communications.

Kansas State University

August 1980 - August 1983

Teaching graduate and undergraduate level courses. Involved in research in the areas of spread spectrum, mobile radio communication systems and computer communications.

ENGINEERING CONSULTANT

Blooston and Mordkofsky

August 1983 - present

Work involves mobile radio related problems.

ASSOCIATE PRINCIPAL ENGINEER

Harris Corporation

May 1980 - August 1980, May 1981 - August 1981

Worked on spread spectrum, satellite communications and traffic theory.

RESEARCH ASSISTANT

Southern Methodist University

July 1978 - May 1980

Worked on frequency channel assignment and modulation schemes for mobile radio communications. Also worked on spread spectrum applications to mobile radio communications, packet switching in land mobile radio and computer networks.

DONALD J. NEUBAUER, CONSULTING ENGINEER
5712 THIRTY-SECOND STREET, N.W. WASHINGTON, D.C. 20015

CURRICULUM VITAE OF DONALD J. NEUBAUER

Born: 6 July, 1922, Virginia, Minnesota

Education:

Virginia Junior College 1940-42

University of Minnesota 1942-44 Bachelor of Civil Engineering
1946-47 Master of Science

Professional Career:

University of Minnesota
Research Assistant 1947

Thorshov & Cerny, Architects-Engineers
Minneapolis, Minnesota
Chief Engineer 1947-1952

During the first two years duties involved structural and civil engineering design, preparation of engineering plans and specifications and supervision of construction of all phases of building design. For the remaining period, office title was chief engineer with the responsibility for the design of all engineering aspects of a building project including mechanical and electrical and the coordination of design with the architectural aspects. Duties also included the responsibility for the supervision of construction phase of all office projects. Some 350 projects were planned and executed during this period including 17 medical projects, 5 electric power generator plants and numerous schools, industrial, commercial, religious, governmental, institutional and civil engineering projects. Projects were located in Minnesota, Wisconsin, North Dakota, South Dakota, Iowa, Illinois and Ohio. Estimated cost of constructions $120,000,000.

Sherlock, Smith and Adams, Architects-Engineers
Montgomery, Alabama
Chief Engineer 1953-55

Duties consisted of design responsibility for structural and civil engineering aspects of building design with overall design responsibility for electrical and mechanical engineering phases. Types of projects included military facilities, airport design and construction, hospitals built under construction management procedures, schools, churches, highways, shopping centers, industrial facilities and commercial buildings. Projects were located in Alabama, Florida, Kentucky, West Virginia and Bermuda. Estimated construction cost: $50,000,000.

Versar

CAREY W. BURCH, AICP, Senior Environmental Planner

EDUCATION:
M.S., Urban and Regional Planning
Florida State University, 1978
B.S., Forestry and Wildlife Management
Virginia Polytechnic Institute, 1976
Member, American Institute of Certified Planners

EXPERIENCE SUMMARY:

Six years of experience in the management of multidisciplinary teams involved in environmental baseline studies, environmental assessments, hazardous waste studies, water resource planning studies, and resource management. Chief of the Environmental Evaluations Branch for two years. Team Leader in an environmental assessment of clean-up alteratives of a hazardous waste Superfund site in Waukegan, Illinois. Task Manager under five quick-response, task-oriented contracts. Over seven years of experience in environmental/urban planning and natural resources management.

Over six years of experience in the analysis of regulatory programs through assessments of their interactions with other governmental programs, their environmental impacts, compliance, and post permit effects. Regulatory experience includes work with the Corps dredge and fill permit program under Section 10 and Section 404; EPA regulations for Section 402 (point source permits) of the CWA, the open dump inventory program under the Resource Conservation and Recovery Act (RCRA), and the hazardous waste consolidated permit program; Fish and Wildlife Service (FWS) regulations involving 404 permits, endangered species, and critical habitats; Office of Surface Mining reclamation programs; as well as Federal Energy Regulatory Commission permit and environmental regulations. Extensive involvement with federal and state regulations affecting wetlands, floodplains, and endangered species. Experience with local planning and zoning regulations.

Eight years of experience in environmental assessments and field work involving wetlands investigations, endangered species, habitat analysis, biological inventories, public involvement, land reclamation, land use, aesthetic impact deter-

EDWARD A. GRIFFITH

QUALIFICATIONS OF APPRAISER

EDUCATION

PRINCETON UNIVERSITY, BACHELOR OF ARTS
COMPLETED COURSES I AND II OFFERED BY THE SOCITY OF REAL ESTATE APPRAISERS
COMPLETED REAL ESTATE BROKERS COURSE AT THE UNIVERSITY OF MARYLAND
COMPLETED REAL ESTATE LAW COURSE AT CATONSVILLE COMMUNITY COLLEGE

MEMBERSHIPS AND LICENSES

THE GREATER BALTIMORE BOARD OF REALTORS
SOCIETY OF REAL ESTATE APPRAISERS
LICENSED REAL ESTATE BROKER IN THE STATE OF MARYLAND
VICE CHAIRMAN OF THE BALTIMORE COUNTY PLANNING BOARD (1968-1972)
VICE CHAIRMAN OF REAL ESTATE BROKERS' ROUND TABLE
BALTIMORE COUNTY APPRAISERS' SOCIETY
AMERICAN ARBITRATION ASSOCIATION
TREASURER OF MARYLAND ENVIRONMENTAL SERVICES
LICENSED MORTGAGE BROKER
VICE CHAIRMAN OF AIRPORT ZONING APPEALS BOARD (1974-1982)

EXPERIENCE

THIS APPRAISER HAS BEEN ACTIVE IN THE REAL ESTATE PROFESSION SINCE 1963 AND HAS BEEN ENGAGED IN APPRAISING SINCE 1974.

COURT TESTIMONY

BALTIMORE COUNTY TAX APPEALS BOARD
BALTIMORE COUNTY CIRCUIT COURT
BOARD OF PUBLIC WORKS, STATE OF MARYLAND
BOARD OF ZONING APPEALS, BALTIMORE COUNTY
BOARD OF ZONING APPEALS, BALTIMORE CITY

CLIENTS

MARYLAND DEPARTMENT OF GENERAL SERVICES
MARYLAND STATE HIGHWAY AUTHORITY
BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY OFFICE OF LAW
VARIOUS SAVINGS AND LOAN ASSOCIATIONS
VARIOUS LAW FIRMS

JOHN P. LARSON
VICE PRESIDENT

EDUCATION

Bachelor of Science, San Diego State University
Chemistry (major), Mathematics (minor)

Graduate Study, San Diego State University

PROFESSIONAL ORGANIZATIONS/ACTIVITIES

American Chemical Society, Division of Environmental Chemistry (certified member)
American Association for the Advancement of Science
Commercial Arbitration Panel for the American Arbitration Association
Association of Environmental Professionals
Technical Advisory Committee, San Diego County Telecommunications Task Force (1984)

EXPERIENCE

1980-present Vice President, RECON

As staff supervisor, has been responsible for the performance of 18 professionals with expertise in a variety of fields, including water quality, air quality, archaeology, paleontology, noise, socioeconomics, and planning. Responsible for staff task assignments, budget and schedule compliance, weekly staff meetings, and overall quality control for all environmental studies. Provides guidance for staff project managers, especially for more controversial projects. Also responsible for legal and regulatory requirements of federal, state, and local jurisdictions.

As corporate officer and member of the board of directors, regular work tasks also include participation in planning and administering corporate expenses and development of policy and review of performance.

1977-1980 Senior Environmental Consultant, RECON

As senior project manager, responsibilities included both administrative and technical tasks. Primarily responsible for the preparation of environmental impact reports (EIRs) for a variety of discretionary actions and projects. Examples of discretionary actions include general plan amendments, annexations, assessment districts, tentative subdivision maps, and major use permits. Projects range from sand and gravel operations, light industrial developments, and sewer plants to planned communities and housing

**Versar, Inc.**

CAREY W. BURCH, AICP, Senior Environmental Planner

EDUCATION:

M.S., Urban and Regional Planning
Florida State University, 1978
B.S., Forestry and Wildlife Management
Virginia Polytechnic Institute, 1976
Member, American Institute of Certified Planners

EXPERIENCE SUMMARY:

Six years of experience in the management of multidisciplinary teams involved in environmental baseline studies, environmental assessments, hazardous waste studies, water resource planning studies, and resource management. Chief of the Environmental Evaluations Branch for two years. Team Leader in an environmental assessment of clean-up alteratives of a hazardous waste Superfund site in Waukegan, Illinois. Task Manager under five quick-response, task-oriented contracts. Over seven years of experience in environmental/urban planning and natural resources management.

Over six years of experience in the analysis of regulatory programs through assessments of their interactions with other governmental programs, their environmental impacts, compliance, and post permit effects. Regulatory experience includes work with the Corps dredge and fill permit program under Section 10 and Section 404; EPA regulations for Section 402 (point source permits) of the CWA, the open dump inventory program under the Resource Conservation and Recovery Act (RCRA), and the hazardous waste consolidated permit program; Fish and Wildlife Service (FWS) regulations involving 404 permits, endangered species, and critical habitats; Office of Surface Mining reclamation programs; as well as Federal Energy Regulatory Commission permit and environmental regulations. Extensive involvement with federal and state regulations affecting wetlands, floodplains, and endangered species. Experience with local planning and zoning regulations.

Eight years of experience in environmental assessments and field work involving wetlands investigations, endangered species, habitat analysis, biological inventories, public involvement, land reclamation, land use, aesthetic impact deter-

CARL L. GERHOLD
PHILIP K. CROSS
JOHN F. ETZEL
WILLIAM M. ULRICH
GORDON T. LANGDON

EMERITUS
PAUL G. DOLLENBERG
FRED N. DOLLENBERG

GERHOLD, CROSS & ETZEL
*Registered Professional Land Surveyors*
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
823-4470

March 15, 1985

To whom it may concern:

JOHN F. ETZEL, Registered Professional Land Surveyor, Licensed by the State of Maryland in 1959, Registration No. 2662.

Partner in the firm of Gerhold, Cross and Etzel, Land Surveyors, 412 Delaware Avenue, Towson, Maryland 21204.

Graduate of Johns Hopkins University, B.S. Degree in Civil Engineering, 1963.

Has appeared and testified as an expert witness in Circuit Court in the matter of boundary disputes, traffic accidents, etc.

Has appeared as an expert witness in the Zoning Appeals Court.

Holds a Real Estate Brokers License issued by the State of Maryland, 1980. Associated with LeRoy J. Haile, Inc., 13 W. Chesapeake Avenue, Towson, Maryland 21204

Signed John F. Etzel
John F. Etzel L.S. No. 2662

# PETITION FOR SPECIAL EXCEPTION 85-96-XA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for 1 A 01.2.C.23 to permit a wireless transmitting and recieving facility in an RC-2 Zone

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
E.A. Griffith
(Type or Print Name)
E.A. Griffith - agent
Signature
204 Investment Bld
Address
Towson MD 21204
City and State

Attorney for Petitioner:
(Type or Print Name)
Signature
Address
City and State

Attorney's Telephone No.:

Legal Owner(s):
Grace L. Standiford
(Type or Print Name)
Grace L. Standiford
Signature
(Type or Print Name)
Signature
410 Scarsdale Rd
Address Phone No.
Balto MD 21224
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
G. Scott Barhight
Name
204 W. Penn. Ave Towson 823-7800
Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 22th day of August, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of October, 1984, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1 (over)

MICROFILMED

Grace L. Standiford
W/S Masemore Road, 2350' NW of Mt. Carmel Road
85-96-XA
7th

85-96-XA
#36

# PETITION FOR ZONING VARIANCE 85-96-XA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1 A 01.3B3 for front, side & rear yard setbacks of 20 feet in lieu of 35 feet in an RC 2 Zone

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

Practical difficulty - lease parcel measured 100' by 100'

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
E.A. Griffith - Agent
(Type or Print Name)
E.A. Griffith
Signature
204 Investment Bld
Address
Towson MD 21204
City and State

Attorney for Petitioner:
G. Scott Barhight
(Type or Print Name)
Signature
204 W. Penn. Ave
Address
Towson
City and State

Attorney's Telephone No.: 823-7800

Legal Owner(s):
Grace L. Standiford
(Type or Print Name)
Grace L. Standiford
Signature
(Type or Print Name)
Signature
410 Scarsdale Rd. 2840753
Address Phone No.
Balto MD. 21224
City and State

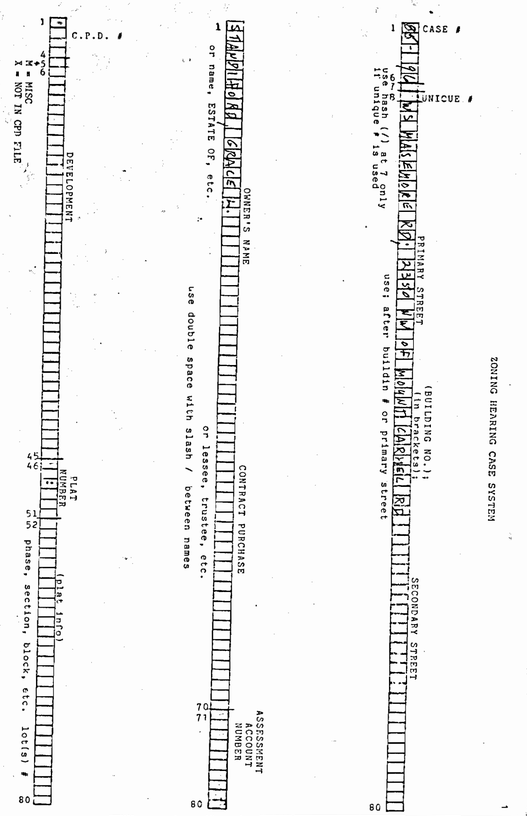
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
E.A. Griffith (Agent)
Name
204 Investment B/D Towson MD 823 4578
Address Phone No.

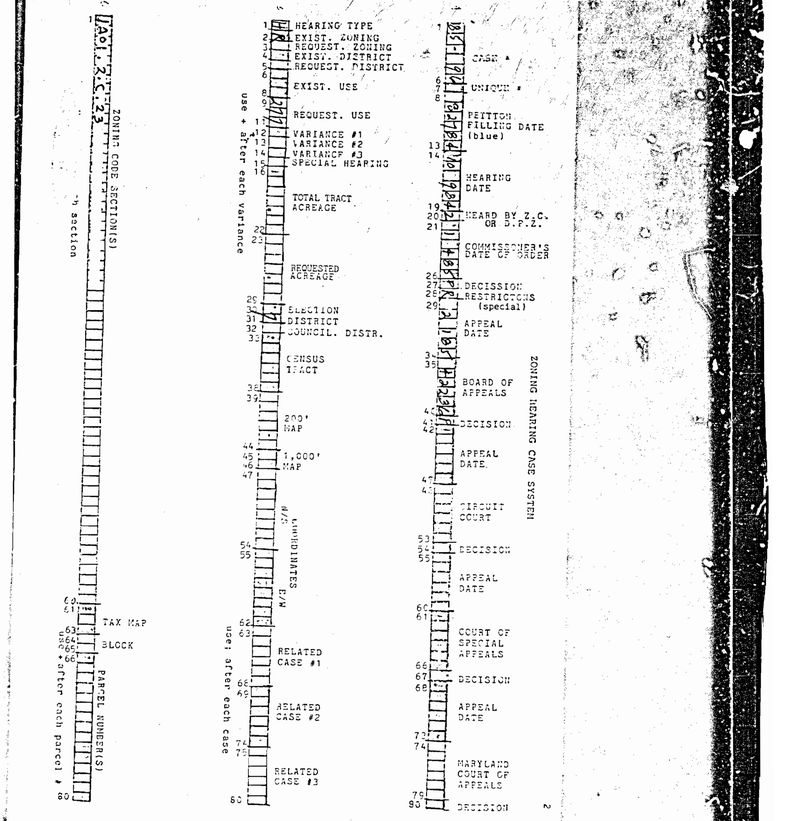
ORDERED By The Zoning Commissioner of Baltimore County, this 27th day of August, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of October, 1984, at 1:30 o'clock P.M.

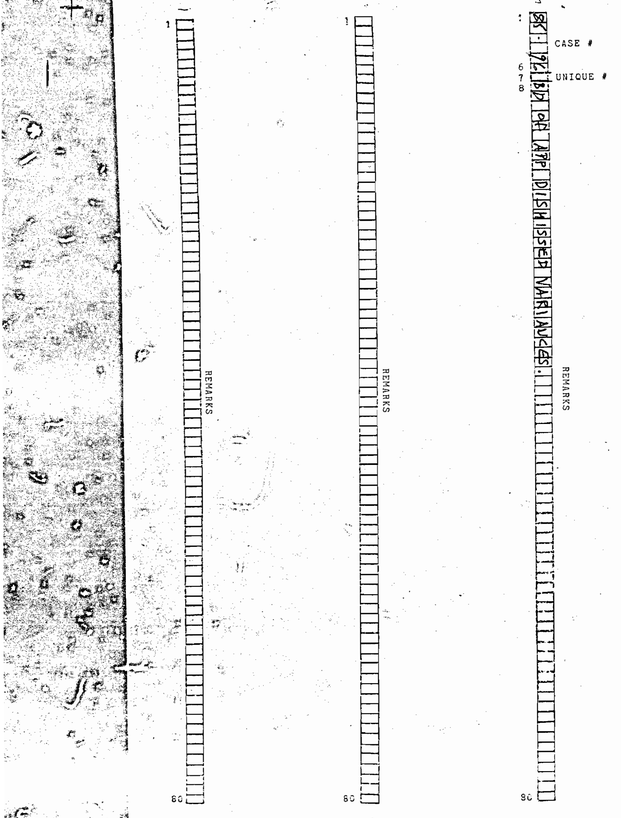
Zoning Commissioner of Baltimore County.

MICROFILMED

(over)




RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR VARIANCES
W/S of Masemore Rd., 2350' NW of Mt. Carmel Rd., 7th District : OF BALTIMORE COUNTY

GRACE L. STANDIFORD, Petitioner : Case No. 85-96-XA

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 17th day of September, 1984, a copy of the foregoing Entry of Appearance was mailed to Grace L. Standiford, 410 Scarsdale Rd., Baltimore, MD 21224, Petitioner; and E. A. Griffith, Agent, 204 Investment Building, Towson, MD 21204.

Peter Max Zimmerman

Case No. 85-96-XA
Item No. 36
Date: February 1, 1985

W/s Masemore Road, 2,350' NW of Mt. Carmel Road
7th Election District
Grace L. Standiford-Petitioner

- X 1. Copy of Petition
- X 2. Copy of Description of Property
- X 3. Copy of Certificate of Posting (wrong)
- X 4. Copy of Certificates of Publication
- X 5. Copy of Zoning Advisory Committee Comments
- X 6. Copy of Comments from the Director of Planning
- 7. Planning Board Comments and Accompanying Map
- X 8. Copy of Order to Enter Appearance
- X 9. Copy of Order - Zoning/Deputy Zoning Commissioner
- X 10. Copy of Plat of Property
- 11. 200' Scale Location Plan
- 12. 1000' Scale Location Plan
- 13. Memorandum in Support of Petition
- X 14. Letter(s) from Protestant(s) (6 letters with attachments)
- 15. Letter(s) from Petitioner(s)
- X 16. Protestants' Exhibits 1 to 19
- X 17. Petitioners' Exhibits 1 to 19
- X 18. Letter of Appeal

G. Scott Barhight, Esquire — Counsel for the Petitioner
204 West Pennsylvania Avenue
Towson, Maryland 21204

Michael Tanczyn, Esquire — Counsel for the Protestants
188 West Pennsylvania Avenue
Towson, Maryland 21204

The Honorable Ellen R. Sauerbrey — Request Notification
4122 Sweet Air Road
Baldwin, Maryland 21013

Mr. Tolly Peuleche' — Request Notification
Chief, Resources Planning
Capital Programs Administration
Tawes State Office Building
Annapolis, Maryland 21401

The Honorable Francis X. Kelly — Request Notification
One Shawan Road
Hunt Valley, Maryland 21030

The Honorable Thomas W. Chamberlain, Sr. — Request Notification
307 Galway Road
Lutherville, Maryland 21093

Zoning Appeal - Case No. 85-96-XA
Page Two

Phyllis C. Friedman, Esquire — People's Counsel
Norman E. Gerber — Request Notification
James Hoswell — " "
Arnold Jablon — " "
Jean M.H. Jung — " "
James E. Dyer — " "

MICROFILMED

11-10-87

2/27/87 Request Checks Issued

**BALTIMORE COUNTY, MARYLAND**

RECEIVED
FEB 10 1987
ZONING OFFICE

**INTER-OFFICE CORRESPONDENCE**

TO Bettye du Bois -Zoning Office Date February 9, 1987

FROM Kathi Weidenhammer - Board of Appeals

SUBJECT Case No. 85-96-XA
Grace L. Standiford

Bettye:

I wasn't quite certain exactly what information you needed from the subject file. I hope the attached are the documents you needed. If you need anything further, please call me.

Attachment

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| | | |
|---|---|---|
| IN RE | * | IN THE |
| THE PETITION OF GRACE | * | CIRCUIT COURT FOR |
| L. STANDIFORD | * | BALTIMORE COUNTY |
| CASE NO. 85-96-XA | * | Case No. 27/121/86CG-1981 |

* * * * * * * * * * * * * * *

**MOTION TO EXTEND TIME FOR TRANSMISSION OF RECORD OF TESTIMONY AND RECORD**

NOW COMES, Phyllis Cole Friedman, Esq. People's Counsel for Baltimore County, Maryland, and Appellants Peggy A. Patterson, Ronald P. Meyer, Michael J. Stachelek and Joseph Parker, by their attorney, Michael P. Tanczyn, Esq., and respectfully avers:

1. That an Appeal was taken on May 21, 1986 in this matter.

2. That the time required to transcribe the extensive testimony and prepare the record for transmittal to the Circuit Court for Baltimore County will exceed the thirty (30) days provided by Maryland Rule B(7)(A) as more particularly described in the affidavit of the reporter, Carolyn Peatt, attached hereto and prayed to be made a part hereof by reference.

3. That Maryland Rule B(7)(B) provides that, for cause shown, the Court may direct that the record be transmitted in a longer time not to exceed ninety (90) days after receipt of the Petition for Appeal filed in this Court on May 29, 1986.

WHEREFORE, the Appellants respectfully pray this Court Order that the time within which the record and transcript be



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| PHYLLIS COLE FRIEDMAN, People's Counsel for Baltimore County, Old Courthouse, 2nd Floor, Towson, Maryland, 21204, | * | IN THE |
| and | * | CIRCUIT COURT FOR |
| PEGGY A. PATTERSON, 1733 Masemore Road, Parkton, Maryland, 21120, | * | BALTIMORE COUNTY |
| and | * | Civil General Proceedings |
| RONALD P. MEYER, 17212 Masemore Road, Parkton, Maryland, 21120, | * | |
| and | * | |
| MICHAEL J. STACHELEK, 17206 Masemore Road, Parkton, Maryland, 21120, | * | |
| and | * | |
| JOSEPH PARKER, 17120 Masemore Road, Parkton, Maryland, 21120, | * | |
| Appellants, | * | |
| vs. | * | |
| BOARD OF APPEALS, Baltimore County, Maryland, Old Courthouse, 2nd Floor, Towson, Maryland, 21204, | * | |
| Appellee. | * | |
| IN RE: CASE NO. 85-96-XA | * | |

* * * * * * * * * * * * * * * * * * * *

FILED
COUNTY BOARD OF APPEALS
'86 MAY 21 P 2:09

**ORDER FOR APPEAL**

NOW COMES, Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, Maryland, and Peggy A. Patterson, Ronald P. Meyer, Michael J. Stachelek and Joseph Parker, by their attorney, Michael P. Tanczyn, Esq., Appellees, jointly and individually, and respectfully enter an Appeal from the decision of the Board of Appeals of Baltimore County dated April 22, 1986 to the Circuit Court for Baltimore County.

PHYLLIS COLE FRIEDMAN, ESQ.
People's Counsel for Baltimore County
Old Courthouse, 2nd Floor
Towson, Maryland 21204
(301) 494-2188

MICHAEL P. TANCZYN, ESQ.
Attorney for the other named Appellees
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823

I HEREBY ADMIT receipt of a copy of the Order for Appeal in Case No. 85-96-XA.

JUNE HOLMAN, Secretary
Board of Appeals of Baltimore County, Maryland



I HEREBY CERTIFY that, on this 21st day of May, 1986, a copy of this Order of Appeal was mailed, postage prepaid, to Newton A. Williams, Esq., Nolan, Plumhoff & Williams, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for Cellular One.

MICHAEL P. TANCZYN, ESQ.



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transmitted to the Circuit Court for Baltimore County be extended to on or before August 23, 1986.

PHYLLIS COLE FRIEDMAN, ESQ.
Baltimore County People's Counsel
Old Courthouse, 2nd Floor
Towson, Maryland 21204
(301) 494-2188

MICHAEL P. TANCZYN, ESQ.
Attorney for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823

I HEREBY CERTIFY that, on this 11 day of June, 1986, a copy of the foregoing was mailed, postage prepaid, to June Holmen, Secretary, Board of Appeals for Baltimore County, Second Floor, Old Courthouse, Towson, Maryland, 21204, and to Newton A. Williams, Esq., Nolan, Plumhoff and Williams, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for Cellular One and Grace L. Standiford, Petitioners.

MICHAEL P. TANCZYN, ESQ.

FILED
COUNTY BOARD OF APPEALS
'86 JUN 12 P 2:11



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| IN RE | * | IN THE |
| THE PETITION OF GRACE | * | CIRCUIT COURT FOR |
| L. STANDIFORD | * | BALTIMORE COUNTY |
| CASE NO. 85-96-XA | * | Case No. 27/121/86CG-1981 |

* * * * * * * * * * * * * * *

**AFFIDAVIT IN SUPPORT OF EXTENSION OF TIME TO TRANSMIT RECORD**

STATE OF MARYLAND, COUNTY OF BALTIMORE; to wit:

I HEREBY CERTIFY that, on this 11 day of June, 1986, before me the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared CAROLYN PEATT, who satisfactorily identified herself to me and who made oath in due form of law that:

1. She is over eighteen (18) years of age and competent to make this oath.

2. An extension of time will be necessary in her opinion to transcribe the record in this case for submission to the Circuit Court for Baltimore County for several reasons:

A. On the date that this appeal was noted, four other appeals were similarly noted on the same date and time which this reporter is responsible for transcribing.

B. The Standiford Petition was heard at the Board of Appeals over five different full hearing dates and involves a substantial amount of transcription, which will take a substantial amount of time to properly perform.

3. The reporter avers that an extension of sixty (60) days would be prudent, although she does not believe that it will take her a total of ninety (90) days in order to transcribe the entire proceedings.

4. All of the above facts are true.

CAROLYN PEATT, AFFIANT

NOTARY PUBLIC
Commission Expires July 1, 1990

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| | | |
|---|---|---|
| IN RE | * | IN THE |
| THE PETITION OF GRACE | * | CIRCUIT COURT FOR |
| L. STANDIFORD | * | BALTIMORE COUNTY |
| CASE NO. 85-96-XA | * | Case No. 27/121/86CG-1981 |

* * * * * * * * * * * * * * *

**ORDER**

UPON CONSIDERATION of the Appellants' Motion to Extend Time for Transmission of Transcript of Testimony and Record and any response thereto, it is, by the Circuit Court for Baltimore County, this ____ day of _____, 1986,

ORDERED, that the time within which to file the transcript of testimony and the record in this matter be and the same hereby is extended with the transcript and record to be filed with the Clerk of this Court on or before August 23, 1986.

JUDGE

11-10-87

IN RE * IN THE
CIRCUIT COURT FOR
THE PETITION OF GRACE * BALTIMORE COUNTY
L. STANDIFORD *
CASE NO. 85-96-XA * Case No. 27/121/86CG-1981

* * * * * * * * * * * * * *

PETITION TO ACCOMPANY ORDER FOR APPEAL

NOW COMES, Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, Maryland, and Appellants Peggy A. Patterson, Ronald P. Meyer, Michael J. Stachelek and Joseph Parker, by their attorney, Michael P. Tanczyn, Esq., and pursuant to Maryland Rule B(2)(e) respectfully avers that:

1. ACTION APPEALED FROM: The Baltimore County Board of Appeals considered the Petition of Grace L. Standiford for Cellular One for a Special Exception for a wireless transmitting and receiving facility in a RC-2 Zone in Case 85-96-XA over five hearing dates as well as a Petition for Variance to permit front, side and rear yard setbacks of 20 feet in lieu of the required 35 feet. The Board by Order dated April 22, 1986 approved the Special Exception for a wireless transmitting and receiving facility in an RC-2 Zone with conditions and dismissed the Petition for Variances. The Protestants to the Special Exception before the Board of Appeals, the nominal Appellants, as well the People's Counsel appealed the approval of the Special Exception to the Circuit Court for Baltimore County.

2. The action of the Board of Appeals in granting the Special Exception requested with conditions was arbitrary,



capricious and unlawful for the following reasons:

(A) The People's Counsel and the Protestants were denied a fair hearing of this matter by virtue of the fact that, in accordance with Rule 7(G) of the Board's Rules of Practice and Procedure, the County Board of Appeals at the request of the Petitioner, Cellular One, established ground rules for testimony of expert witnesses at a meeting on February 21, 1985. The parties were ordered to name their experts in advance and to provide a summary of direct testimony in writing well before the hearing. The Board's directions were summarized in a letter dated February 16, 1985, actually February 26, 1985, of the Petitioner, attached as Exhibit 1 to the People's Counsel's Motion for Mistrial or Reconsideration. Notwithstanding the above ground rules, the Petitioner, on May 14, 1985, produced without warning a previously undisclosed expert witness, Arthur W. Guy. Despite objection of the People's Counsel and other Protestants, Dr. Guy was permitted to testify. The purpose of the original ground rules was to give all parties an opportunity to prepare in advance for cross-examination of expert witnesses and to enhance the likelihood of full review of scientific issues in the case. People's Counsel and the Protestants were deprived of an opportunity to prepare for Dr. Guy's testimony. Furthermore, as his appearance was not anticipated, People's Counsel and the Protestants did not have available Dr. Allen Frey, its own consultant to assist in preparation for cross-examination. Furthermore, in addition to producing Dr. Guy without prior notice



or warning, the Petitioner, Cellular One, through counsel, manipulated and exploited this situation to produce not only a new expert witness but also additional testimony concerning public health or safety in the merits of the proposed wireless transmitting and receiving tower. Under the aforesaid circumstances, People's Counsel did cross-examine Dr. Guy under protest. Following the opportunity to cross-examine and on later review with Dr. Allen Frey, People's Counsel was of the opinion, concurred in by the Protestants, that prejudice remained that the allowance of Dr. Guy's testimony involved denial of due process of law. The Petitioner Cellular One refused to have Dr. Guy return to afford the Protestants an opportunity for cross-examination with Dr. Frey present.

(B) Second, in an open hearing on May 9, 1985, following testimony concerning Petitioner, Cellular One's, FCC application and various references thereto, People's Counsel and Protestants requested the production of the entire FCC application. At that time, Petitioner, through its counsel for Cellular One, stated that said application would be provided and/or copies by Monday, May 13, 1985. Not only did Petitioner fail to produce said documents and thereby prevent effective cross-examination of Petitioner's witness, but also Petitioner later refused outright to provide the documents by letter dated May 31, 1985 from counsel of Cellular One to the Acting Chairman, County Board of Appeals. That only subsequently following direction from the Board of Appeals were a huge box of papers



having to do not only with the application of the Petitioner for an FCC license but also numerous other irrelevant items as well as, duplicates of the items proposed were presented to the Board of Appeals for review by People's Counsel and the Protestants. That the Petitioner's failure to timely follow through as promised with the copies of the FCC application and forwarding it later at the direct order of the Board of Appeals of Baltimore County effectively prevented the Protestants and People's Counsel from having cross-examination prepared to question Cellular One's representatives about the change of the desirable grid points for location of the tower, which caused the Board to be misled in its conclusions and findings of fact that the tower could only be located at the location proposed by the Petitioner, Cellular One, contrary to the evidence in the case which had to be presented in a bifurcated manner due to the delay in tendering the FCC application by the Petitioner, Cellular One.

(C) The Board of Appeals did not give proper weight to the factual, undisputed facts and misconstrued the law as to the requirements of the Baltimore County Zoning Regulations, Section 1A01.2.C. that it must find the Special Exception use requested will not be detrimental to the primary agricultural uses in its vicinity or be on ground in active agricultural production.

(D) The action of the Board is contrary to the evidence of record which was substantial and overwhelming on all material issues as to the uniqueness of the area and its use as farmland, its proximity to a State park, that the use would obstruct natural



duck and goose flightways, interfere with crop dusting, State sponsored gypsy moth spraying, failed to give proper weight to the multi-million dollar planned development by the Capital Planning Division of the Department of Natural Resources for the Masemore Road section of the Gunpowder State Park, the AT&T right of way overflight immediately adjacent to the tower of the national security communication lines, all of which antedated the proposed use of the property, and the the substitution of a wireless transmitting and receiving facility for what was described as one of the most productive farm properties in Baltimore County with a farm as a primary use in RC-2 Zone.

(E) The Board did not properly weigh the evidence and apply the law in that the Petitioner failed to meet its burden regarding Section 502.1 of the Zoning Regulations with regard to the potential hazard from fire, panic or other dangers proposed by this tower; Section 502.1(E), interfere with adequate provisions for schools, parks (emphasis supplied), water, sewage, transportation (emphasis supplied) or other public requirements, conveniences or improvements (emphasis supplied); Section 502.1(G), be inconsistent with the purposes of the property zoning classification or in other ways inconsistent with the spirit and intent (emphasis supplied) of the Zoning Regulations; Section 502.1(A), be detrimental to the health, safety or general welfare of the locality an the impact on State wildlands in the immediate vicinity.

(F) That because of the procedural errors of the Board



of Appeals the Protestants' and People's Counsel's constitutional rights to a fair and full hearing were prejudiced and violated when the Opinion and Order of the Board of Appeals is fully considered, including all inferences, conclusions and its ultimate decision.

(G) That the Opinion of the Board was signed and ostensibly considered by only two members of the Board of Appeals while three members of the Board of Appeals heard the case in chief.

WHEREFORE, the Protestants and People's Counsel respectfully pray this Honorable Court:

A. Reverse the decision of the Board of Appeals and deny the Special Exception request without remand;

B. In the alternative, if it finds additional testimony or information is necessary, reverse the Board of Appeals' Decision and remand with instructions for the further information to be received;

C. Charge the Petitioner Cellular One, with the costs of this proceeding and the costs of taking this Appeal, including preparation of the transcript; and

D. Grant such other and further relief as this Honorable Court deems just and proper in the premises.

Phyllis Cole Friedman
PHYLLIS COLE FRIEDMAN, ESQ.
People's Counsel
Old Courthouse, 2nd Floor
Towson, Maryland 21204
(301) 494-2188

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(301) 296-8823

RECEIVED
COUNTY BOARD OF APPEALS
'86 MAY 24 P 2 29



I HEREBY CERTIFY that, on this 24th day of May, 1986, a copy of the foregoing Petition to Accompany Order for Appeal was hand delivered to June Holmen, Secretary, Board of Appeals for Baltimore County, Second Floor, Old Courthouse, Towson, Maryland, 21204, and to Newton A. Williams, Esq., Nolan, Plumhoff and Williams, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, attorney for Cellular One and Grace L. Standiford, Petitioners.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

RECEIVED
COUNTY BOARD OF APPEALS
'86 MAY 24 P 2 29



IN RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCES
W/S Masemore Rd., 2,350' NW of Mt. Carmel Road
7th Election District
Grace L. Standiford,
Petitioner

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 85-96-XA

* * * * * * *

Entry of Appearance

Please enter our appearance on behalf of the Zoning Commissioner of Baltimore County as a party in the above captioned matter, pursuant to Section 501.6, B.C.Z.R., and I hereby request that any and all notices be forwarded to our office, including but not limited to hearing dates and/or preliminary or final Orders.

Malcolm F. Spicer, Jr.
Malcolm F. Spicer, Jr.
Baltimore County Attorney
Old Court House
Towson, Maryland 21204
494-4420

Douglas I. Sachse
Douglas I. Sachse
Assistant County Attorney

Certificate of Mailing

IT IS HEREBY CERTIFIED that on this 11th day of February, 1985, copies of the foregoing Entry of Appearance were mailed, postage prepaid, by first class delivery to People's Counsel for Baltimore County, Petitioner(s), and or Protestant(s) in the above captioned matter.

Douglas I. Sachse
Douglas I. Sachse
Assistant County Attorney

11-10-87

Bettye duRais
Case # 85-96-XA
11/7/87

RECEIVED
JAN 20 1987
ZONING OFFICE

| | | |
|---|---|---|
| PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al | : | IN THE |
| Appellants | : | CIRCUIT COURT |
| Vs. | : | FOR BALTIMORE COUNTY |
| GRACE L. STANDIFORD, et al | : | CASE NO. 86 CG 1981 |
| Appellees | : | Docket 27 |
| | : | Page 121 |

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COUNTY BOARD OF APPEALS RECEIVED FOR FILING 1987 JAN 16 P 2:40

MEMORANDUM OPINION AND ORDER

This case presents an appeal by the Office of the People's Counsel for Baltimore County and four protesting property owners (Appellants) from an Opinion and Order of the Board of Appeals of Baltimore County (Board), dated April 22, 1986. By the terms of its Order, the Board granted the Appellees herein a Special Exception to permit a wireless transmitting and receiving facility in an RC-2 zone, subject to certain conditions which were enumerated by the Board. The Board's April 22, 1986 Opinion and Order was issued following five separate hearing days during the period May 2, 1985 through July 31, 1985.

The matter came before the Board as the result of the Appellants' initial appeal of a Order of the Deputy Zoning Commissioner of Baltimore County dated Janaury 4, 1985 in case number 85-96XA, which zoning order granted the requested Special Exception subject to certain restrictions.

The appeal of the Board's Order, essentially affirming the decision of the Deputy Zoning Commissioner, raises three separate issues, namely:



1. Is the decision of the Board clearly erroneous or is it supported by substantial evidence on the record taken as a whole?

2. Were the Board's administrative hearings conducted in accordance with constitutional, statuto. and procedural requirements?

3. Was the Order of the Board rendered in such a manner as to fully comply with the applicable rules of practice and procedure which govern decisions of the Board?

Because this Court will reverse the decision of the Board and remand the case to the Board for further proceedings consistent herewith based upon the second of the three issues raised here, this Court sees no need to set forth in great detail the complex factual testimony before the Board. Nor is there a need to address issues number one and three. It shall be sufficient for the purposes of this opinion to state that the Board had before it a proposal for a special exception to the Baltimore County Zoning Regulations to permit the erection of microwave radio towers in an RC-2 zone. The Appellants, protestants below, raised questions before the Deputy Zoning Commissioner and the Board concerning the effect of microwave radio transmissions on the health of the residents of the area and other issues which are best characterized as environmental in nature.

Specifically, the second question presented by the Appellants' argument is whether their due process rights to a full and fair hearing were violated due to the Board's receipt of testimony and other evidence from Dr. Arthur W. Guy, who was produced by the Appellees on the third day, May 14, 1985, of five hearing days in direct response to the Board's directive on the second hearing day that "someone" testify on the characteristics of the power densities emitted at the base of the subject tower.



Appellants contend that the Board acted unlawfully in permitting Dr. Guy, an expert in electrical engineering, bioengineering and bioelectromagnetics, to testify over their objections in view of the fact that he was not listed and disclosed by Appellees as part of the pre-hearing directive passed by the Board on February 21, 1985, pursuant to the Board's procedural rule, Rule 7(g). That directive required the disclosure by both sides of the names of their experts with a text of their direct testimony to be supplied sufficiently before the hearing so that each side would have an opportunity to review and evaluate the complex scientific issues presented by the proposed project. The Appellees were required to submit their list of experts by March 22, 1985 and the Appellants by April 22, 1985.

On March 22, 1985, Appellees' counsel wrote to the Board listing their experts and summarizing those experts' testimony, attaching curricula vi ae for each named individual. In addition, counsel requested "the opportunity to provide additional expert testimony as may become relevant".

Following an exchange of other correspondence concerning experts between counsel for the parties and the Board, the Board ordered compliance with its directive to identify experts. Dr. Arthur William Guy, the expert witness around whom this controversy swirls, was not named on the list of either side. It was only on the third day of the hearing that counsel for Appellees announced to the Board:

> MR. BARHIGHT: Mr. Chairman, last week on Thursday at the hearing, we requested certain additional information from Cellular One. ... Cellular One was able to engage the services of one Dr. Guy to respond to the best of his abilities to the requests of the Board. I have provided this report to counsel beforehand. I just received this report this morning. ... I would like to offer this into evidence through Dr. Guy's testimony and provide him as a witness today.

Excerpts from the colloquy that ensued between counsel and the Board Chairman are as follows:

> MR. FRANZ: Has opposing counsel seen the report?
>
> MR. TANCZYN: We got it about ten minutes before you got here.
>
> MR. BARHIGHT: Which was about a half hour after I got it.
>
> ...
>
> MR. BARHIGHT: I would like to call Dr. Guy to the stand.
>
> MR. TANCZYN: We object... Based on the fact that Dr. Guy has never been disclosed either per the February directive of witnesses proposed to be called who were experts, we are going to object. We are certainly taken aback. I don't care if he got the report this morning... If we had been told last week or ten minutes before the hearing that Dr. Guy was going to be called as a witness, we would have had a chance to get somebody here to evaluate his testimony as we did with the other witnesses last week. I don't think it is fair to call him when the rules that were established in February have not been kept by these folks.
>
> MR. FRANZ: I asked some specific questions at our hearing last Thursday, and I am presuming, I have not seen this report myself at all, that those questions have been answered. If that is the case, I am satisfied that Dr. Guy is capable of providing those answers... I recognize that this puts you on short notice, but the issue raised last week and a defense to that issue could have been known or planned for as of that time. If you feel there is any need to review this document in greater length and provide witnesses to rebut it, we will take that into consideration and possibly grant you that opportunity.
>
> ...



> MR. TANCZYN: My only problem is in proceeding in that way, as you know, Dr. Frye was here last week and he was of great assistance, in my opinion, and I beleive Mr. Zimmerman's, in helping to formulate direct questions to Mr. Larson.
>
> ...
>
> MR. FRANZ: ... I want you to understand that this Board does not follow the strict rules of evidence. It is our responsibility to create a record upon which we can make an informed decision. We permit hearsay testimony in certain circumstances. We permit people who might not have a full standing in a legal sense to provide their opinions. We permit individuals to expound on areas that involve expertise sometimes when they may not be otherwise qualified. We are here to gather information, and with that in mind, I am going to permit as much information as possible out on this issue. We are not experts in this field. The Board is not. We want to learn as much as we can to make an informed decision. So we are going to permit this testimony.
>
> MR. TANCZYN: ... Really, all we are really talking about is having a fair and full hearing. Had we known that this fellow was going to be proposed and he was going to make up a report, Dr. Frye could have been made available and would have been made available.
>
> MR. FRANZ: Let me say this. We are going to put the matter to rest. We are going to hear Dr. Guy on the witness stand... I am going to permit the testimony. I would like to get on with it. All of your objections are noted. I understand the basis of your objection. I think they are legitimate objections. The underlying response is we want to have as much information as possible. I am going to permit that. (Tr. Vol. I, p. 36-48).

Dr. Guy was then duly sworn and testified extensively concerning highly technical matters regarding the possibility of adverse health effects of radiation of power densities generated by cellular communications antennae on humans and animals. (Tr. Vol. II, p. 3-28). At the conclusion of Dr. Guy's direct testimony, Appellants' counsel requested of the Board "that cross be held up until we get Dr. Frye



here". Dr. Frye had earlier been identified as an expert on whom the Appellants had relied for both expert opinion and for technical consultation to assist counsel in cross-examination in this difficult and specialized field of bioengineering.

The Chairman of the Board refused this request with the following comments:

> MR. FRANZ: -- Dr. Frye might be helpful to you. It was also my understand[ing] that he was going to be here today to testify. I know that circumstances arise which sometimes make it difficult for witnesses to be present or your planning may change. I also know that this witness was a surprise. [Referring to Dr. Guy - emphasis added]. But again, it is the basis of his testimony or the results, rather, of his testimony that is helpful to us. (Tr. Vol. II, p. 31).

Appellants were then left with no choice but to attempt to cross-examine Dr. Guy without first having the opportunity to review his report or consult with their expert (Dr. Frye) concerning either the report or Dr. Guy's direct testimony.

Subsequent Motions for Mistrial alleging prejudice as a result of not having had full opportunity to effectively cross-examine Dr. Guy were presented to the Board. At a later hearing (day 4, July 10, 1985) the Board denied the Motion with the followign comments:

> THE CHAIRMAN: ... Before we begin the testimony today, since our last hearing there was a motion by People's Counsel for a mistrial or, in the alternative, for a reconsideration. The Board has had the opportunity to review that motion. There is also a second motion for a mistrial and we have reviewed the answer of the Petitioner as well as the response by the attorneys for the Protestants. I'm going to respond to that at this time... The crux is that at our second hearing date there had been an agreement that in response to questions that the Board had, that they would be responded to by witnesses who had previously testified [emphasis added] on behalf of the Petitioners and that,



> in fact, when the third hearing date came, a different witness, Dr. Guy, came and answered these questions as well as others that were posed by the Petitioner's counsel. The People's Counsel's expert, Dr. Alan Frey, was not available, apparently, on the day of the third hearing ... and, at that time, People's Counsel requested that either Dr. Guy be available for cross-examination at a time when their expert would be able to assist them in preparation for the cross-examination or that Dr. Guy's testimony be stricken because notice was not sufficiently provided to enable them to properly prepare for cross-examination. Our position at that time, and our position today, is the same. We believe that the presentation of any witness in this matter is beneficial to the Board and we are not persuaded that the absence of an expert to assist counsel in cross-examination is prejudicial to their presentation of their case, the strong points of their case, or the merits of the Petitioner's case in this instance. There's been a sufficient amount of time since the last hearing to obtain a copy of the transcript of Dr. Guy's testimony and have an expert review it for its sufficiency and to rebut that testimony. The only area that might be questionable is the opportunity that may have been lost to cross-examine Dr. Frey [Dr. Guy]. The Board recognizes the significance of such cross-examination and the expression that People's Counsel has made that it is critical to proper presentation, to give a full presentation of their case. Nevertheless, People's Counsel and counsel for Protestants did have an opportunity to cross-examine him at that time... the mere fact that Dr. Frey was not present does not persuade us that his testimony should be stricken or that a new hearing should be held. Any assistance that People's Counsel needed in preparation of their case was not denied to them other than possibly a conflict in scheduling that their expert may have had, and we are not satisfied that the prejudice, if there is any, is sufficient enough to warrant a mistrial or require Dr. guy to make himself available for further cross-examinations. So the motion will be denied in both respects. (Tr. 7/10/85, p. 2-5)

THE RIGHT TO CROSS-EXAMINE

A consideration of the impact of all of the aforegoing on the Appellants' right to procedural due process must begin with an examination of the Board's own Rule of Procedure under which this whole



matter was being considered. That rule provides:

> g. The direct testimony of all 'expert' witnesses shall be submitted in writing, accompanied by copies of all exhibits to which reference is therein made, unless such are of a voluminous nature or within the files of, or readily available to, the Board of Appeals, in which case adequate reference shall be made thereto. All of which shall be submitted to the Board at least fifteen (15) days prior to the first scheduled hearing date, and copies thereof shall be served upon all attorneys of record (or parties of record if not represented by counsel) at the same time. Said "expert" witness shall be personally present at the oral hearing for affirmation of the written statement and exhibits previously submitted and for cross-examination. This rule shall apply to all "expert" witnesses; i.e., whether witnesses for the Petitioners, the Protestants, the People's Counsel, or any other parties of record. No exception shall be granted except in extraordinary circumstances and for a reason satisfactory to the Board, given by the Party requesting such exception, indicating that the circumstances requiring the exception are of an unusual and extraordinary nature. BALTIMORE COUNTY CODE, 1978, Appendix C, Rule 7 g.

Couched in terms of the mandatory "shall", the rule was first violated by the allowance of Dr. Guy's testimony and the acceptance of his written report on the third day of the hearing, without the required 15 day notice and, contemporaneously with such notice, service on the adverse party of "copies of all exhibits to which reference therein is made". The rule was further violated when the Appellants were denied the right to an informed cross-examination of Dr. Guy. It should be noted that this Court adds the word "informed" in the preceding statement. That adjective is not part of the Board's rule, but case law makes it clear that the right to cross-examine witnesses has been interpreted to mean a right of reasonable cross-examination. For example, Teon v. Prince George's County, No. 317 Sept., 1986, filed November 10, 1986 held:



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However, this impact, although minor given the height of the tower, is identical to the impact that would be realized wherever the tower was erected. Additionally the tower will have no detrimental impact upon any agricultural use in it vicinity.

The opposition asserts that the proposed location is not the best location for the tower. That may be true. However, other sites or alternative locations are irrelevant. Schultz requires a case by case analysis of every special exception requested. It does not require the Board, the Petitioner or the protestants to search the whole of Baltimore County for the perfect site, or a better site. If this site meets the legal requirements, a special exception should be granted.

Health Effects

The opposition failed to present any expert testimony to indicate that the requested use will pose any danger to health. Instead, they choose to ignore the uncontradicted testimony of the acknowledged expert on the subject, Dr. Guy.

Dr. Guy investigated the long terms effects on rats of microwave emissions of a much greater power level than that associated with the proposed tower. The opposition would have you believe that the statistical results of this study conclusively show that these higher emissions cause tumors in rats. However, the following cross-examination of Dr. Guy indicates that the study can only be used as a guide for future experiments:

> Q. Did those results surprise you?
>
> A. They surprised me, yes. It didn't surprise me that we did see effects, because this was felt from the beginning that even though there was no effects from the microwaves, that we were going to see an effect by chance. There were over 150 end points we're



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looking at. The statisticians tell us when you look at that many end points, some of them are going to come out positive by chance.

> Therefore, the experiment can only be used as a guide for planning future experiments. If we see effects somewhere, we can't construe that as a real effect until additional studies are done. (See Transcript of Dr. Guy testimony, pages 37-38)

The opposition attempts to capitalize on Dr. Guy's conclusions by asserting that this testimony proves tha the "science on this subject is at a relatively primitive stage." What they fail to remember is that Dr. Guy's study involved much greater levels of emissions than those that will be produced by the proposed tower. Dr. Guy's testimony directly contradicts their assertion that there is confusion over the effects of these very low levels of radio frequency emissions:

> Q. Are there any long-term studies-would it be productive scientifically to have any long-term studies at the power density levels, exposure levels, that you have with towers out in the field?
>
> A. Actually, the Russians have been doing that for some years. They have been doing graded studies, close-related studies. They find the level where effects start taking place is above the ten microwatts per square centimeter. I doubt that anybody would fund any studies below that level. It has already been shown. (emphasis added) (Id. at 39).

As the results of Dr. Guy's analysis of the radio frequency environment in the vicinity of the proposed tower indicates, the maximum possible power density is 2.92 microwatts per square centimeter. This is more than three times less than the Russian standard, the most conservative general population standard in the world.

The opposition wants to create confusion. Dr. Guy was not confused or confusing. His expertise, opinions, and the basis for his opinions are clear. This tower will be safe.



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It is appropriate to point out that the Baltimore County Department of Health has made no assertion that this tower will not be safe. Only the opposition asserts any danger. But this assertion of danger blows away under the winds of cool, objective scrutiny. No facts are in the record, and no facts exist, that show the proposed tower to be anything but safe.

Effects on Agriculture

The law requires the Board to find that the special exception use requested will not be detrimental to the primary agricultural uses in its vicinity. B.C.Z.R. Section 1A01.2.C. The law does not require the Board to find that no productive farm land will be used for the special exception requested.

Counsel for Protestants makes a statement on pages 7-8 of his Port-Hearing Memorandum which is a clear misrepresentation of the law. I can only hope that this statement was merely an oversite. He asserts that Petitioners' brief failed to quote a portion of B.C.Z.R. Section 1A01.2.C. relevant to these proceedings.

Counsel for Protestants, on pages 7-8, asserts that Section 1A01.2.C requires the Board to find that the use proposed would not itself be situated on land more appropriately used for primary agricultural uses. He should know that this section does not apply to this petition. It only applies to uses permitted under Section 1A01.2.C.24, which are certain "agricultural support"uses. It is recommended that the Board read this section themselves to confirm Petitioners' assertion.



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People's Counsel asserts, on p. 4 of its Post-Hearing Memorandum, that the tower will have a direct impact by reducing the potential agricultural use of the subject property. Their own expert, Paul Solcman, agreed that the very small area taken from potential production was insignificant. Mr. Solcman even agreed that the rent realized from the tower by the property owner could support the agricultural uses of the property. Let us not forget that the property owner, who has no obligation to anyone to farm her land, desires to have this tower placed on her property.

People's Counsel (p. 4) also asserts that the tower "sets a tone as a potential precedent." There is no requirement in law that the Petitioners present evidence regarding the "tone" set by and "potential" precedents of the proposed tower.

People's Counsel boldly asserts that the Board will be signalling a lack of committment to agriculture and discourage farmers in the vicinity to commit their resources. Notwithstanding the fact that it is the legislative province of the County Council and not the Board to determine whether towers are permitted by special exception, this argument is absurd and irrelevant. Furthermore, if their statement is true, then where were the masses of concerned and angry farmers during the hearing. The farmer who actually tills the soil on the Standiford fact never voiced any objections. He answered this inhibition to his committment of resources by continuing to farm the land. Farmers will not flee Baltimore County if this tower is erected.

Effects on Parks

There is no question that one of the adverse effects of any tower, anywhere, is that you can see it. It is visible. It is impossible to



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hide a two hundred foot tower. Mature trees can only screen the lower and larger portion of the tower. If the tower is located in a deep depression, the height of the tower must be increased to be effective.

As the Petitioners' expert, Mr. Burch, testified, the tower will be visible to the surrounding areas. Undoubtedley, when the County Council decided to permit towers (note: there is no height limitation for a tower in the zoning regulations) they knew they would be visible.

Ms. Peuleche' would like to create a park where all views are perfect and pristine. However, those who enjoy the Gunpowder State Park in the Hereford area may already have to view from certain vantage points high-power transmission lines, electricity and telephone poles and lines, roads, stores, gas stations, houses, barns, etc. - those man-made objects which make up any rural environment.

The addition of the proposed tower will have insignificant impact upon the park and its enjoyment. The visual impact, as described by both Ms. Peuleche' and Mr. Burch, will be minimal. However, the views will be a little less perfect. It should be noted that Mr. Solcman testified that all the man-made elements of a rural environment, i.e. power lines, roads, buildings, houses, are inconsistant with the character of a park.

If the tower were to be located within the park, then I could understand why it should not be permitted. The reason parklands are preserved is to separate and protect certain areas from the normal changes to which those areas immediately outside the boundaries of the parks are suseptible. The tower will be located well outside these boundaries. The purpose and enjoyment of this park is not being compromised.



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Effects on Air Travel

The opposition asserts that the tower will have an adverse impact beyond that associated with any tower. AT & T pilots, cropdusters, gypsy moth sprayers and hot air balloonists are all to be endangered. Yet, not one representative of any of these groups has appeared in opposition.

With all due reapect, the Federal Aviation Administration (FAA), not the Board, is responsible for this safety issue. The FAA has approved this tower. The federal requirements have been met. The tower has been deemed safe.

Effects on Wildlife

The opposition agrees that this open grid tower will somehow be detrimental to migratory waterfowl. There is no testimony in the record which indicates that the proposed tower will be any more dangerous to birds than any other tall objects, like trees, buildings and hillsides. The only expert testimony offered was that of Mr. Burch. He stated that the tower will have no impact on the migratory wildfowl population.

Fire Hazard

Protestants assert that the tower will be a danger from fire. There is no expert testimony to indicate that the tower will cause this danger.

To the contrary, in order to obtain building permits, the tower must comply with all Baltimore County building and fire codes. Additionally, there is no adverse or negative comment from the Baltimore County Fire Department.



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Frequency Interference

On page 3 of its Memorandum, People's Counsel asserts that there may be problems regarding frequency interference. However, the only evidence in the record (See testimony of Dr. Singh) indicates that the proposed tower will not interfere with television, radio, etc.

Petitioner strongly objects to the attachment of Exhibits 1 and 2 to People's Counsel Memorandum. The record has been closed. To permit additional evidence to be considered is in direct violation of the basis of all evidence law. In the present violation of the rules of evidence, the Petitioner has been totally denied any opportunity for cross-examination.

In addition to People's Counsel unfairly providing new evidence, they have failed to provide the Board with the whole story. Upon investigation of the Board's files, I discovered the responses of Bell Atlantic to Exhibits 1 and 2. These responses, letters dated August 14 and 22, 1985 to the Board from Mr. Weingart are attached as Exhibits 3 and 4.

Again, the only evidence in the record, which is totally uncontradicted, asserts there will be no frequency interference.

Conclusion

The Petitioners have clearly met their burden of proof. However, the opposition prefers to ignore the facts. People's Counsel say they want the Board to signal to other Petitioners that it "will not tolerate intrusion and degradation of environmentally sensitive areas of northern Baltimore County." But what they really want is for the Board to substitute the policy of the County Council as reflected in the zoning



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regulations with the policy preferred by People's Counsel. With all due respect, this is obviously outside the Board's province.

The facts presented before the Board show that all the legal requirements have been met. Petitioners respectfully request that the special exception requested be granted.

Respectfully submitted,

G. SCOTT BARHIGHT

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204 W. Pennsylvania Avenue
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Attorneys for Petitioners

Certificate of Service

I HEREBY CERTIFY, that on this 16th day of September, 1985, that a copy of the foregoing Petitioners' Reply Memorandum was mailed, postage prepaid to: Michael P. Tanczyn, Esquire, 118 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Protestants and Peter M. Zimmerman, Esquire, Room 223, Court House, Towson, Maryland 21204, Deputy People's Counsel.

G. SCOTT BARHIGHT

GSB/jmg
9/16/85



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On one hand, we have the well-established rule of administrative law that:

> [H]earsay evidence is admissible before an administrative body in contested cases and, indeed, if credible and of sufficient probative force, may be the sole basis for the decision of the administrative body.

Redding v. Board of County Commissioners for Prince George's County 263 Md. 94, 110-11 (1971), cert. denied, 406 U.S. 923, 92 S.Ct. 1791, 32 L.Ed.2d 124 (1972). On the other hand, the Court of Appeals has firmly established that:

> [W]hen an administrative board or agency is required to hold a public hearing and to decide disputed adjudicative facts based upon evidence produced and a record made, that a reasonable right of cross-examination must be allowed the parties.

Hyson v. Montgomery County, 242 Md. 55, 67 (1966) (emphasis supplied). See also Rogers v. Radio Shack, 271 Md. 216, 219 (1974); Town of Somerset v. Board, 245 Md. 52, 65 (1966); Dembeck v. Shipbuilding Corp., 166 Md. 21, 27 (1934); American Radio-Tel. Serv. v. Pub. Serv. Comm'n, 33 Md.App. 423, 435 (1976).

The language quoted above from Hyson, supra, relied upon heavily by the Court in Tron, supra, goes on to say:

> Professor Davis, op. cit., §7.05, states the proposition in this manner: "When the adjudicative facts are in dispute, our legal tradition is that the party affected is entitled not only to rebut or explain the evidence against him but also to 'confront his accusers' and to cross-examine them". We have no intention of attempting to promulgate a comprehensive rule respecting the type or the amount of cross-examination that the Council must provide at hearings on applications for reclassification. The rationale of the cases and authorities is that reasonable cross-examination, which is required for a full and true disclosure of the facts, having due regard to the circumstances of each particular case, the nature of the proceedings, and the character of the rights which may be affected by it must be permitted; and that is as far as we are required to go at this time. (emphasis supplied).

Given the complexities of the issues under consideration by the Board, i.e., the potential for adverse health effects from radio-frequency transmissions on the surrounding population and the environmental impact of the transmission towers on the surrounding agricultural land, this Court equates the "reasonable right of cross-examination" commanded by the requirement of procedural due process in administrative hearings to include an opportunity to evaluate the expert testimony of Dr. Guy, before Appellants be required to cross-examine. Clearly, the Board's own Rule 7 g contemplates such an opportunity by its requirement of 15 days notice. Even if the Board chose to waive that notice, it could only do so in extra-ordinary circumstances and for a reason satisfactory to the Board, in accordance with the provisions of the rule itself.

As Judge Bishop pointed out in Tron, supra, as in the case sub judice, although Maryland's Administrative Procedure Act does not apply to this proceeding, its terms are persuasive in adjudicating this matter. In contested cases within the ambit of that Act, each party must be given the right to cross-examine the opposing party's witnesses. MARYLAND STATE GOVERNMENT CODE, §10-208(e)(3). This fact coupled with the mandate of Hyson, supra, clearly demonstrates that the right to cross-examine witnesses is a requirement of administrative adjudicatory hearings.

Unlike Tron, supra, and Hyson, supra, cross-examination was permitted herein, but counsel's request to delay cross-examination "until we get Dr. Frye here" was refused. Were this a case heard under the Maryland Rules of Procedure, where after discovery, an undisclosed expert witness is offered at trial, he should not be allowed to testify, Hadid v. Alexander, 55 Md. App. 344, at 351, 462 A.2d 1216 (1982).



An alternative sanction would be to allow a continuance to permit the opposing party to depose the expert or otherwise prepare for proper cross-examination. c.f. Montgomery Ward v. McFarland, 21 Md. App. 501 (1974). None of those procedures were offered by the Board. Recognizing the non-disclosure and resulting "surprise", the Board Chairman summarily dismissed the Appellants' objections and ordered them to proceed with cross-examination. (Tr., Vol. II, p. 31).

As was pointed out in argument before the Board on Appellants' Motions for Mistrial, rebuttal testimony could not have cured the defect complained of.

> MR. ZIMMERMAN: ... this question of radio frequency radiation health effects is the subject of considerable uncertainty and cross-examination is particularly important in demonstrating the lack of qualifications and basis for an expert witness. Upon reviewing the matter with our expert later after May 14, I became more convinced that we lost the opportunity to totally destroy the credibility of the main expert witness for the Petitioner who was brought in at the last minute ... we ... had lost our opportunity to demonstrate unequivocably to the Board that Dr. Guy had no basis to give any logical opinion which is something that we think could be inferred from his background... we could not demonstrate that without being able to ask the type questions where we needed some intense biological testimony and preparation for that. It's not the type of testimony or the type of questioning one can spin off off the top of one's head. (Tr. 7/10/85, p. 6 & 7).

Given the complexities of the issue before the Board, the particular and unique character of the subject matter of the expert testimony, and the character of the rights which may be affected by the proceeding, this Court holds that permitting the surprise witness to testify to facts which were ultimately dispositive of the issue, in violation of its own rule, and without giving the opponents an opportunity to prepare for reasonable cross-examination, amounts to a denial of administrative due process.

Accordingly, this case is remanded to the Board for further proceedings consistent herewith, and it is so ORDERED, this 13th day of January, 1987.

Leonard S. Jacobson

LEONARD S. JACOBSON, JUDGE

COPIES SENT TO:

Peter Max Zimmerman, Esquire
Michael P. Tanczyn, Esquire
Stephen J. Nolan, Esquire
County Board of Appeals





IN RE THE PETITION OF GRACE L. STANDIFORD Case No.: 85-96-XA

* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Case No.: 27/121/86-CG-1981

APPELLEES' ANSWER TO PETITION TO ACCOMPANY ORDER FOR APPEAL

GRACE L. STANDIFORD and AMERICAN TELESERVICES, INC., on behalf of the Washington/Baltimore Cellular Telephone Company (t/a Cellular One), Appellees herein, and Petitioners below, by Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered, their attorneys, file this answer, pursuant to Md. Rule B9, in reply to the Appellants' Petition to Accompany Order for Appeal filed hereinbefore and they respectfully represent as follows:

1. Appellees herein admit the allegations contained in Paragraph No. 1 of the Petition to Accompany Order for Appeal.

2. Appellees deny the allegations contained in Paragraphs 2(A) through 2(G) of the aforesaid Petition.

3. Further answering the Appellants' Petition on appeal, Appellees state that the Opinion and Order of the County Board of Appeals of Baltimore County (the "Board") dated April 22, 1986 are not arbitrary, capricious or unlawful but are supported by substantial evidence and in full accordance with law. Appellees further state that the Board committed no prejudicial errors whatsoever in its conduct of the hearings or in rendering its decision and order.

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WHEREFORE, your Appellees pray that the Opinion and Order of the County Board of Appeals of Baltimore County dated April 22, 1986 and granting the underlying Special Exception be AFFIRMED, and that costs of these proceedings be assessed against the Appellants.

Stephen J. Nolan
STEPHEN J. NOLAN

Nolan, Plumhoff & Williams, Chartered
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
204 W. Pennsylvania Avenue
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(301) 823-7600

Attorneys for Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 1986, a copy of the foregoing Appellees' Answer to Petition to Accompany Order for Appeal was mailed, postage prepaid to: Phillis Cole Friedman, People's Counsel, Old Court House, 2nd Floor, Towson, Maryland 21204, Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204 and Edith Eisenhart, Administrative Secretary to the County Board of Appeals, Old Court House, 2nd Floor, Towson, Maryland 21204.

Stephen J. Nolan
STEPHEN J. NOLAN

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LAW OFFICES NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

SJN-6/25/86



Batty

| | | |
|---|---|---|
| IN THE MATTER OF GRACE L. STANDIFORD W/S MCHENRY ROAD, 2350' NORTHWEST OF MT. CARMEL ROAD 7th DISTRICT | : | BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 85-96-XA |
| RE: SPECIAL EXCEPTION FOR A WIRELESS TRANSMITTING AND RECEIVING FACILITY IN AN RC-2 ZONE | : | |

OPINION

This matter comes before the Board on a request for a Special Exception to permit a wireless transmission and receiving tower in an RC-2 zoned property. The testimony before this Board was as comprehensive and detailed on the issues raised as we have ever seen. In all, we received testimony from nineteen (19) witnesses, many of whom were expert witnesses, and received into evidence scores of exhibits. This hearing took five days to complete. The Board was extremely impressed by the quality of content presented by all sides in this matter.

The decision in this case has been a most difficult one for the Board. We are presented with a proposal for a large, aesthetically unpleasant and potentially dangerous structure and are that is proposed to be placed in a most rural agricultural area of our county and in close proximity to one of its richest natural resources, the Gunpowder State Park. Present day technology has provided the ability to create a remote, wireless telephone network and the general population has welcomed this product in such great numbers that its place as a utility is firmly established and will become only more entrenched as this industry expands from its infancy. The juxtaposition of these compelling yet competing interests is at the heart of this controversy.

After very lengthy debate and reflection over the issues, this Board finds that the Special Exception requested should be granted. We are guided, of course, by Baltimore County Zoning Regulation Section 502.1 and

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Grace L. Standiford
Case No. 85-96-XA

Section 1A01.2.C. We must further apply the often quoted standard of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), which has been cited by all parties as favoring their positions. The analysis of these requirements will be addressed in detail below. Initially however an understanding of the factual standing of this request is in order.

Petitioners propose to construct a 210 foot high wireless transmitting and receiving tower and adjacent accessory building approximately 40 feet by 24 feet to contain electronic and maintenance equipment. The tower as proposed is a three (3) sided structure of 24.67 feet per side at its base and approximately 4 feet per side at the top. The property on which the facility is to be located is zoned RC 2 and is situated within the confines of a working agricultural field that is presently planted in field corn. The primary use of the neighborhood surrounding this site is agricultural. There are, however, a number of residences in the general vicinity, one of which qualify as a residential subdivision (at many of which are times situated in farmland that is actually being use for farming purposes. The site is located within one-half mile of the Hereford Section of the Gunpowder State Park.

Petitioners' tenant has received a license from the Federal Communications Commission to provide cellular phone service in Maryland under the trade name of Cellular One, ("Cellular"). As part of the FCC mandate, Cellular must provide service to all Maryland highways. In order to accomplish this, it is necessary that Cellular maintain numerous transmission and receiving facilities across a geographical grid of Maryland and other States. The proposed tower is one cell of the entire grid, which when combined as a network will provide a blanket of reception and transmission for users of the telephone utility.

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Testimony before the Board indicated that the subject facility was the last Cell to be approved in the network that would service the entire Maryland region. As a result of this condition and the relative geographical coverage areas of the existing or approved Cells, the location of this last facility was extremely limited. When compounding this requirement with the topographical conditions necessary for location of such a facility, it was testified that the subject site is the only viable location for this tower.

Before the granting of a Special Exception, this Board must conclude that the conditions stated in Section 502.1 of the Baltimore County Zoning Regulations have been met. Section 502.1 states:

> 502.1 - Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> a. Be detrimental to the health, safety, or general welfare of the locality involved;
> b. Tend to create congestion in roads, streets or alleys therein;
> c. Create a potential hazard from fire, panic or other dangers;
> d. Tend to overcrowd land and cause undue concentration of population;
> e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
> f. Interfere with adequate light and air;
> g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
> h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The Protestants and People's Counsel contend that the use as proposed would create a potential hazard from fire, panic or other dangers (502.1.c), would interfere with adequate provision for parks or other public conveniences or improvements (502.1.e), be inconsistent with the purposes of the RC-2 zoning classification and be detrimental to the primary agricultural uses in the



vicinity (502.1.g and 1A01.2.c), and be detrimental to the health, safety or general welfare of the locality primarily as a result of potential adverse health effects from radio frequency emmissions (502.1.a). Each of these points will be addressed.

FIRE HAZARD

Testimony of the long time residents of the area demonstrated that this location is not served by public water and that fire protection service comes from the Hereford Volunteer Fire Department located several miles from the property. The fear is that there exists the possibility that lightning could reflect from one of the uprights of the tower onto adjacent land and cause a fire. The land adjacent to this property is farmed in field corn which is permitted to stand and becomes very dry. Testimony showed that a field fire occurred in a neighbor's property which caused considerable damage within the past few years. Further, it was argued that the stream from which water could be drawn was re-routed following Tropical Storm David and may not be available for this site, should there be a fire at this location.

Upon the testimony presented, the Board is of the opinion that the potential hazard from fire is not inordinate. The possibilities alluded to were not sufficient for the Baltimore County Fire Department to provide an adverse or negative comment on this project. The testimony of Donald J. Neubauer, a Petitioner's Engineering expert, satisfied the Board as to the minimal risk from lightning causing fire around this tower.

AIRPLANE AND HELICOPTER DANGER

Protestants provided John Raffensberger, an experienced pilot, who described the potential dangers to pilots that would exist with a 200 foot tower on the site. The Board is nevertheless satisfied that AT&T pilots



serving the high tension electrical lines near the site, crop dusters and air ballonists should be capable of avoiding this tower. We are satisfied that very little or no aviation activity would take place at tower elevations as there is activity for in the area as was described by the Protestants. The tower is an obstacle and one that can be avoided by anyone flying in the area. The existence will be a known ownership and we are satisfied that it will be marked. It may be noted that the Federal Aviation Administration has approved the size and location of this tower as satisfying their requirements for air traffic safety. It should be further noted that in view of the height and other conditions of the tower, the FAA do not find it necessary to require the tower to be painted or lighted.

EFFECT ON SCENE

The people of this community are proud of the Hereford section of the Gunpowder State Park. Testimony from Tillo Jelinek, a State Planner responsible for drafting the Gunpowder State Park plan, indicated that the tower would be visible and obtrusive from specific sites in the park. There is simply no escaping the fact that for a transmission tower to be effective, it must stand well above the topographical outline of an area. It was clear by the testimony that this obstruction would be one of a number of obstructions visible from the park in those few locations where it would be visible at all. The existence of the high tension electrical lines which cut a huge path in the natural terrain so as to permit large connecting structures along the breadth of the park at this location, and other visual attractions that flow from the existence of residential development in this area are additional significant obstructions.



The existence of this additional obstruction from the park perspective is not overwhelming. Once into the park, of course, a visitor loses sight of this tower. There is no dispute that this tower will be seen from numerous vantage points around the site location. Even a condition to interconnect with a tower of this nature would be placed in a primarily agricultural vicinity. The Board however remains that the location of this tower is not detrimental but would rather that it were located elsewhere in the area.

EFFECT ON THE FUTURE AGRICULTURAL USE OF LAND

It is without dispute that the purpose of the RC-2 zoning classification is to foster provisions favorable to a continued agricultural use of portions of agricultural areas of Baltimore County by preventing intrusive forms and patterns of urban uses. The County Council has however, permitted the use as an exception to this category to critical facilities and therefore is presumed to appreciate the potential disadvantages of placing a transmission and receiving tower on agricultural property.

Section 1A01.2.C requires us to determine that the tower requested would not be detrimental to the primary agricultural uses in the vicinity. The site requires approximately one acre to support the use requested. The Board is satisfied that such an intrusion is significant in view of the vast acreage of productive farm land in this neighborhood. We are also satisfied that the use in general here would not restrict the farming ability of lands in this vicinity in any significant way. Aside from the visual impact, we do not believe that construction of the requested tower would be detrimental to the primary agricultural uses in this area. With respect to the potential adverse effect on residential and migratory wildlife, the Board heard a great deal of speculation but no definitive expertise on the subject. The Board does not

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have independent expertise on the subject, however we would note that this object should certainly be visible to wildlife and should pose no greater danger than other tall objects such as trees or buildings.

HEALTH EFFECTS FROM RADIO FREQUENCY TRANSMISSIONS

The issue of radiofrequency emissions was vigorously argued by all sides in this matter. It is in the Board's opinion a critical issue which if not overcome by the Petitioners would require us to deny this or any other petition for the use requested. The Board received a tremendous amount of highly expert evidence on the potential adverse effects that transmission and reception from this facility will have on the immediate and surrounding geography. In particular, the Board refers to the comprehensive testimony of Dr. Arthur W. Guy, who is noted internationally for his expertise on the biological effects of radiofrequency energy. Dr. Guy based his conclusions upon reasonable and appropriate variables that coincide with those conditions as they would exist with the proposed use. It is his conclusion that the highest power density emitted from this tower will be 68 times less than the most stringent standard recognized in the United States and more than three times less than the most conservative standard in the World, the U.S.S.R. standard. He further states that there is no literature showing adverse effects on humans at power levels indicated by this request. He states with "perfect confidence" that power levels at this tower are safe. Additional testimony from other witnesses supported the opinions of Dr. Guy that the emissions from this facility will be well below all advisory standards that exist in the World.

The Board was surprised with the relatively small amount of literature published internationally on this subject. In view of the pervasive use of such radiofrequency transmissions, we would have expected much greater

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research. It was also obvious to the Board that the international community of experts in this field maintain vastly different opinions as to which levels of intensity of these emissions are safe. Though we believe that the amount of literature in this field is small, we are satisfied that the present knowledge is authoritative and dependable. We nevertheless believe that continuing measures to insure the relatively low emissions must be taken and we will so Order below.

EFFECTS OF PARTICULAR LOCATION PROPOSED

The Board greatly sympatnizes with the plight of the Protestants in this case. The proposed tower will certainly be visibly obtrusive to the residents and visitors of this neighborhood. Upon agreement of all counsel, the Board had the opportunity to visit this site after the tower was erected pursuant to the contingency stated in the Deputy Zoning Commissioner's Order and it was clear to us that this tower presented a visual break against the natural terrain. The Protestants provided this Board with vigorous and diverse arguments as to the conditions of this locale which they claimed to be unique that caused detriment to the health, safety or general welfare of their neighborhood. Though this opinion has refuted that the impact of any of these concerns is substantial, we do recognize that the erection of this tower and the use of radiofrequency transmissions and receptions will certainly have some effect on the neighboring environment.

The Baltimore County Council has seen fit to permit the erection of wireless transmitting or receiving facilities as a principle use by special exception in an RC-2 zone. Though such a use may appear inconsistent with the primary purposes of the RC-2 classification, we are required, pursuant to Schultz v. Pritts, to accept adverse effects inherently associated with such a use thoughout this zone if we hold that the standard for approving a special exception under Section 502.1 has been met. We believe that standard has been met. We further believe that the facts and circumstances



of the particular location proposed would not have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. The existence of radiofrequency emissions, aesthetic considerations, fire hazards, etc., are no greater here than on any proposed location for such a tower with an RC-2 zone. No one wants a project of this nature in his neighborhood, and the Board fully appreciates that fact. Ultimately, however, we cannot say that the location requested is any more detrimental to there neighbors than would be the effect on other neighbors if the proposed use would be placed in their RC-2 neighborhood.

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 22nd day of April, 198[illegible], by the County Board of Appeals, ORDERED that the Special Exception requested to permit a wireless transmitting and receiving facility in an RC-2 zone be GRANTED, from and after the date of this Order, subject to the following:

1. The wireless transmitting and receiving facility shall have a maximum height of 200 feet, including all antennae, and a platform no more than [illegible] feet wide at the top.
2. The tower and the entire accessory building shall be enclosed within a locked, chain-link fence at least 8 feet high. The fence shall be no closer than 6 feet from the exterior boundary of the accessory building. No ladder attached to the tower shall be placed within 15 feet of the base of the tower or within 10 feet of the nearest part of the accessory building.
3. The tower shall be unpainted or painted gray and shall not be lighted nor have strobe lights unless specifically required by FCC or FAA rules or regulations.
4. At such time as the use herein permitted is terminated, or the useful life of the tower has expired, the tower shall be removed. Petitioner shall immediately provide Baltimore County with a performance bond that shall ensure the future appropriate removal of the tower and accessory building.

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5. All plats required for permits shall be drawn by a Maryland registered professional engineer qualified in structural design. This engineer shall also certify that the tower was installed in conformance with the permit issued and signed. Every year, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses certifying that the aforesaid structure continues to meet all safety requirements. Any operating in default to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.
6. All present and prospective FAA standards and regulations, State regulations or local requirements as are or may be from time to time related to said facility in order to operate shall be met at all times. In furtherance of this requirement Petitioner shall, yearly to the Baltimore County Department of Health semi-annually, the levels of all emissions at the face of the tower, and at points around the circumference of the tower at 50 feet from the base, 100 feet from the base, 150 feet from the base, 200 feet from the base. Nothing in this Order shall prevent the Baltimore County Department of Health from requiring a more limited or comprehensive verification of emissions from this tower.
7. This Order shall be used solely for the erection of the wireless structure as may be necessary for cellular phone service or as may be requested for use by Baltimore County. The right to permit the appropriate use of this tower by other utilities upon application to the Zoning Commissioner and appeal to this Board is reserved, but we may be appropriate if it would not supersede any of the restrictions of this Order and would restrict the proliferation of towers in this area of the County.
8. No microwave frequency transmission or reception shall be permitted on this tower.
9. The tower shall be properly grounded to minimize the possibility of fire.
10. A landscape plan, designed to minimize the visual impact of the building and lower portion of the tower, shall be submitted to and approved by the Current Planning and Development Division.
11. This Opinion and Order shall be recorded amongst the Land Records of Baltimore County.

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11-10-[illegible]

IT IS FURTHER ORDERED that the Petition for Variances to permit front, side and rear yard setbacks of 20 feet in lieu of the required 35 feet, be and the same are hereby DISMISSED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Keith S. Franz, Acting Chairman

Lenore R. Gruntrier

Law Offices
Michael P. Tanczyn, P.A.
118 West Pennsylvania Ave.
Towson, Maryland 21204
(301) 296-8823
(301) 296-8824

February 1, 1985

Baltimore County Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: 8596 XA
Masemore Road Wireless Transmission Tower

Dear Sir:

I represent the protestants, Mr. and Mrs. Patterson, Ms. Helga Dorsey, Mr. and Mrs. Ronald Meyer, Mr. Michael Stachelek, Mr. and Mrs. Joseph Parker, Mr. and Mrs. Sherlock Gillet, Mr. and Mrs. John Raffensparger, Mr. and Mrs. Glenn Durst and the Citizens Alliance for Northern Baltimore County, who appeal from that portion of the Deputy Zoning Commissioner's Order of January 4, 1985 granting a special exemption for a wireless transmitting tower with conditions.

Enclosed you will find our check for the requisite filing

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No

DATE _____ ACCOUNT _____

AMOUNT $ _____

RECEIVED FROM _____

FOR _____

MICROFILMED

VALIDATION OR SIGNATURE OF CASHIER

FEB 1 AM

BALTIMORE COUNTY DEPARTMENT

ry truly yours,

chael P. Tanczyn

Zoning Regulations have been met and the special exception should be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 4th day of January, 1985, that to permit a wireless transmitting and receiving facility, in a R.C.2 Zone, is GRANTED, from and after the date of this Order, subject to the following:

1. The wireless transmitting and receiving facility shall have a maximum height of 200 feet, including all antennae, and a platform no more than 4 foot wide at the top.
2. The tower and accessary building shall be enclosed within a locked, chain-link fence at least 8 feet high.
3. The tower shall be unpainted or painted gray and shall not be lighted nor have strobe lights unless specifically required by FCC or FAA rules and regulations. The color of the fence shall be black or brown.
4. At such time as the use is terminated, the tower shall be removed.
5. All plats required for permits shall be drawn by a Maryland registered professional engineer qualified in structural design. Said engineer shall supervise and certify the tower upon completion before an occupancy use permit can be issued. Every five years, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure continues to meet all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.
6. EPA standards and guidelines relating to radiation emissions shall be met at all times.
7. Antennae, dishes or other wireless transmitting and receiving apparatus on the tower shall be limited to those providing cellular phone service or utilized by Baltimore County.
8. The tower shall be properly grounded to minimize the possibility of fire.
9. A landscape plan, designed to minimize the visual impact of the building and lower portion of the tower, shall be submitted to and approved by the Current Planning and Development Division.



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IT IS FURTHER ORDERED that the Petition for Variances to permit front, side, and rear yard setbacks of 20 feet in lieu of the required 35 feet be and the same are hereby DISMISSED.

Deputy Zoning Commissioner of
Baltimore County



PET: PETITION FOR SPECIAL EXCEPTION AND VARIANCES
W/S of Masemore Rd., 1,200' N of Mt. Carmel Rd. - 7th Election District
Grace L. Standiford - Petitioner
No. 85-96-XA (Item No. 8596)

: BEFORE THE

: COUNTY BOARD OF APPEALS

: OF BALTIMORE COUNTY

: : : : : : : : : : : :

The petitioner seeks a special exception for a wireless transmitting and receiving facility in an R.C.2 Zone and variances for front, side, and rear yard setbacks of 20 feet in lieu of the required 35 feet, as more particularly described on Petitioner's Exhibit 2, and variances and a waiver to allow the antenna to have more than one platform and to allow the antenna to be more than 200 feet high, as more particularly described on Petitioner's Exhibit 3, and a waiver to allow the proposed tower to be located within 1,200 feet of a residential dwelling as opposed to the required 1,500 feet, as more particularly described on Petitioner's Exhibit 4, and variances

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

October 2, 1984

Ms. Grace L. Standiford
410 Scarsdale Road
Baltimore, Maryland 21224

RE: Petition for Special Exception and Variance
W/S of Masemore Rd., 2350' NW of Mt. Carmel Road
Grace L. Standiford - Petitioner
Case No. 85-96-XA

Dear Ms. Standiford:

This is to advise you that $57.03 is due for advertising and posting of the above property.

This fee must be paid and our zoning sign and post returned on the day of the hearing before an Order is issued. Do not remove sign until day of hearing.

Please make the check payable to Baltimore County, Maryland, and remit to Mrs. Arlene January, Zoning Office, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 135823

DATE Oct. 23, 1984 ACCOUNT R-01-615-000
AMOUNT $57.03
RECEIVED FROM American TeleServices
FOR Advertising and Posting Costs of Case No. 85-96-XA (Grace L. Standiford)

VALIDATION OR SIGNATURE OF CASHIER

PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES — CERTIFICATE OF PUBLICATION

LOCATION: West side of Masemore Road 2350 feet Northwest of Mt. Carmel Road
DATE & TIME: Tuesday, October 9, 1984 at 1:30 p.m.
PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Exception to permit a wireless transmitting and receiving facility in an R.C.2 Zone and Variances to permit front, side, and rear yard setbacks of 20 feet in lieu of the required 35 feet.

Being the property of Grace L. Standiford, as shown on the plat filed with the Zoning Office.

In the event that these Petitions are granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

9/20/84-83013-3478

CERTIFICATE OF PUBLICATION

TOWSON, Md., 10/23, 1984

THIS IS TO CERTIFY, that the annexed advertisement published in the TOWSON TIMES, a weekly newspaper distributed in Towson, Baltimore County, Md., once a week for 1 consecutive weeks, the first publication appearing on the 11th day of Sept 1984.

The TOWSON TIMES

Cost of Advertisement: $ 27.03

MAY 20 1985

17112 MASEMORE ROAD
Parkton, Maryland 21120
May 15, 1985

Mrs. Helen Delich Bentley
Shell Building
200 E. Joppa Rd., Suite 400
Towson, Maryland 21204

RE: Zoning Petition No. 85-96-XA
To Permit a Wireless Facility in an RC-2 Zone

Dear Mrs. Bentley:

We lived at 10629 York Road in Cockeysville for 35 years and moved to Parkton 6 years ago to get away from a commercial area. We picked this area because it reminded us of Cockeysville when we first moved there - all homes and open land. Now we are fighting to keep a 200 foot tower from being placed in the midst of our homes. We are in the proximity of the Gunpowder State Park and thought that this surely would be a deterrent for this project. It seems that we are wrong, because it was intimated at a meeting, by a person who should know, that no matter what the citizens do or say Baltimore County still intends to let this tower go up.

Factors to consider: currently there is no commercial development west of 183; tower would hurt property values; Masemore Rd. unique because it is an important entrance to the Gunpowder State Park so appearance of the area is important; zoning regulations prohibit the construction of anything that is contrary to the spirit and intent of current zoning, which is R.2 rural conservation - agriculture. Also, I am not convinced that enough long term studies have been made that this is not a health hazard. True, studies have been made on rats, as to the affect of radiation, but people are taller, and bigger masses than rats and will be here longer than 6 months (length of studies). Can they gave us a written guarantee that our health will not be affected, say 10 years down the road?

We have been fighting the above since September, 1984 and you may not be aware of it since we have gotten NO newspaper coverage, and I understand there are underlying reasons for this.

I sincerely hope that you can assist us in this matter and at this point in time anything would be most appreciated.

Sincerely,
Emily L. Williams
H. Oliver Williams
Phone: 343-7009

RECEIVED
MAY 29 1985
EXECUTIVE OFFICE

September 10, 1984

Ms. Grace L. Standiford
410 Scarsdale Road
Baltimore, Maryland 21224

NOTICE OF HEARING

RE: Petition for Special Exception and Variances
W/S Masemore Road, 2350' NW of Mt. Carmel Road
Grace L. Standiford - Petitioner
Case No. 85-96-XA

TIME: 1:30 p.m.

DATE: Tuesday, October 9, 1984

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

cc: E.A. Griffith
204 Investment Bldg.
Towson, Maryland 21204

Zoning Commissioner
of Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 131969

DATE 9/26/84 ACCOUNT 01-615-000
AMOUNT $20.00
RECEIVED FROM Grace L. Standiford
FOR Filing Fee for Case No. 85-96-XA

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY — TRANSMITTAL MEMO

TO: Arnold Jablon
FROM: Judy Sussman
DATE: 9/6/85
SUBJECT: Proposed Tower in Parkton Area

SEP 6 AM

DPH

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 7th Date of Posting: 9-21-84
Posted for: Special Exception and Variance
Petitioner: Grace L. Standiford
Location of property: W/S of Masemore Road 2350' N/W of Mt. Carmel Road
Location of Signs: East side of Masemore Road, across from Gunpowder State Park entrance
Remarks:
Posted by: [signature] Date of return: 9-21-84
Signature
Number of Signs: 1

Petitioner's Exhibit No. 23 - Letter to Cathryn Condello, May 12, 1985, including report of power density

" " " 24 - Letter and material used by Dr. Guy (letter dated 5/10/85 to Dr. Guy from Cathryn Condello)

" " " 25 - Letter to Kathryn Buie, dated 10/3/84, from Jonathan L. Wiener

Protestants' Exhibit No. 2 - Map of Baltimore County showing frequency cellular sites

" " " 3 - (a) Large zoning map - Butler 2E - two sections attached (200' scale)

" " " 13 - Certification of Resolution of the Board of Directors of the Citizens' Alliance of Northern Baltimore County, Inc.

" " " 18 - Plat of subject property with photos attached

" " " 20 - Book "Gunpowder Falls State Park - Master Plan"

" " " 21 - Aerial photo Falls 1975

" " " 22 - Plat showing State Park

" " " 23 - Map of Gunpowder Falls State Park, Dept. of Natural Resources

" " " 24 - Photo showing fog and trees

" " " 25 - Copy of 2 photos of Gurst property

" " " 26 - ARTS Testimony Vol. I b - Cellular (6 testimonies)

" " " 27 - Letter from Jonathan L. Wiener, 12/5/83, to Federal Communications Commission w/attachments



Protestants' Exhibit No. 28 - Letter from Daniel A. Rowley to Federal Communications Commission, 12/14/83 with attachments

" " " 29 - Letter from Jonathan D. Blake to Federal Communications, 12/15/83, with attachments

" " " 30 - Letter from Mr. Blake to Federal Communications Commission, dated 12/28/84

" " " 31 - Letter, dated 1/22/85, from Mr. Weiner to Federal Communications Commission

People's Counsel's Exhibit #1 - Booklet - Nicholas H. Steneck, "The Microwave Debate," Chapters 3 and 7, 1984

" " " #2 - Booklet - Lawrence L. Kunz, et al., "Effects of Long-Term Low-Level Radiofrequency Radiation Exposure on Rats," Vol. 8, April 1985

" " " #3 - Letter concerning Paul Solomon's qualifications and proposed testimony -MISSING NEVER IN BD. OF APPEALS FILE

" " " #4 - Senate of Maryland Bill No. 369, 1/27/84

August 22, 1986 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, as are also the use district maps, and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceedings, but your Respondents will produce any and all such



rules and regulations, together with the zoning use district maps, at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

Edith T. Eisenhart

Edith T. Eisenhart, Adm. Secretary

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al. * IN THE
Appellants * CIRCUIT COURT
v. * FOR
GRACE L. STANDIFORD, et al. * BALTIMORE COUNTY
Appellees * Case No. 86CG1981
* Docket 27 Folio 121

ORDER FOR APPEAL BY GRACE L. STANDIFORD AND AMERICAN TELESERVICES, INC.

On behalf of GRACE L. STANDIFORD and AMERICAN TELESERVICES, INC., please enter an appeal to the Court of Special Appeals from the Memorandum Opinion And Order of the Circuit Court for Baltimore County entered in this action on January 13, 1987.

Stephen J. Nolan

Nolan, Plumhoff & Williams, Chartered
204 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-7800

Attorneys for Grace L. Standiford and American Teleservices, Inc.

Dated: February 11, 1987

RECEIVED
COUNTY BOARD OF APPEALS
'87 FEB 12 A 9:46

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11th day of February, 1987, a copy of the foregoing Order for Appeal by Grace L. Standiford and American Teleservices, Inc. was mailed, postage prepaid to Phyllis Cole Friedman, People's Counsel, Old Court House, 2nd Floor, Towson, Maryland 21204; Peter Max Zimmerman, Deputy People's Counsel, Old Court House, 2nd Floor, Towson, Maryland 21204; Michael P. Tanczyn, Esquire, Suite 606, 606 Baltimore Avenue, Towson, Maryland 21204; and Kathi C. Weidenhammer, Administrative Secretary to the County Board of Appeals, Old Court House, 2nd Floor, Towson, Maryland 21204.

Stephen J. Nolan

1.94A

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al : IN THE
Appellants : CIRCUIT COURT
: FOR BALTIMORE COUNTY
Vs. : CASE NO. 86 CG 1981
GRACE L. STANDIFORD, et al : Docket 27
Appellees : Page 121

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MEMORANDUM OPINION AND ORDER

This case presents an appeal by the Office of the People's Counsel for Baltimore County and four protesting property owners (Appellants) from an Opinion and Order of the Board of Appeals of Baltimore County (Board), dated April 22, 1986. By the terms of its Order, the Board granted the Appellees herein a Special Exception to permit a wireless transmitting and receiving facility in an RC-2 zone, subject to certain conditions which were enumerated by the Board. The Board's April 22, 1986 Opinion and Order was issued following five separate hearing days during the period May 2, 1985 through July 31, 1985.

The matter came before the Board as the result of the Appellants' initial appeal of an Order of the Deputy Zoning Commissioner of Baltimore County dated Janaury 4, 1985 in case number 85-96XA, which zoning order granted the requested Special Exception subject to certain restrictions.

The appeal of the Board's Order, essentially affirming the decision of the Deputy Zoning Commissioner, raises three separate issues, namely:

FILED JAN 14 1987

1. Is the decision of the Board clearly erroneous or is it supported by substantial evidence on the record taken as a whole?

2. Were the Board's administrative hearings conducted in accordance with constitutional, statutory and procedural requirements?

3. Was the Order of the Board rendered in such a manner as to fully comply with the applicable rules of practice and procedure which govern decisions of the Board?

Because this Court will reverse the decision of the Board and remand the case to the Board for further proceedings consistent herewith based upon the second of the three issues raised here, this Court sees no need to set forth in great detail the complex factual testimony before the Board. Nor is there a need to address issues number one and three. It shall be sufficient for the purposes of this opinion to state that the Board had before it a proposal for a special exception to the Baltimore County Zoning Regulations to permit the erection of microwave radio towers in an RC-2 zone. The Appellants, protestants below, raised questions before the Deputy Zoning Commissioner and the Board concerning the effect of microwave radio transmissions on the health of the residents of the area and other issues which are best characterized as environmental in nature.

Specifically, the second question presented by the Appellants' argument is whether their due process rights to a full and fair hearing were violated due to the Board's receipt of testimony and other evidence from Dr. Arthur W. Guy, who was produced by the Appellees on the third day, May 14, 1985, of five hearing days in direct response to the Board's directive on the second hearing day that "someone" testify on the characteristics of the power densities emitted at the base of the subject tower.



Appellants contend that the Board acted unlawfully in permitting Dr. Guy, an expert in electrical engineering, bioengineering and bioelectromagnetics, to testify over their objections in view of the fact that he was not listed and disclosed by Appellees as part of the pre-hearing directive passed by the Board on February 21, 1985, pursuant to the Board's procedural rule, Rule 7(g). That directive required the disclosure by both sides of the names of their experts with a text of their direct testimony to be supplied sufficiently before the hearing so that each side would have an opportunity to review and evaluate the complex scientific issues presented by the proposed project. The Appellees were required to submit their list of experts by March 22, 1985 and the Appellants by April 22, 1985.

On March 22, 1985, Appellees' counsel wrote to the Board listing their experts and summarizing those experts' testimony, attaching curricula vitae for each named individual. In addition, counsel requested "the opportunity to provide additional expert testimony as may become relevant".

Following an exchange of other correspondence concerning experts between counsel for the parties and the Board, the Board ordered compliance with its directive to identify experts. Dr. Arthur William Guy, the expert witness around whom this controversy swirls, was not named on the list of either side. It was only on the third day of the hearing that counsel for Appellees announced to the Board:

> MR. BARHIGHT: Mr. Chairman, last week on Thursday at the hearing, we requested certain additional information from Cellular One. ... Cellular One was able to engage the services of one Dr. Guy to respond to the best of his

Misc

V-1171


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204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 823-7800

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NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR. *
THOMAS J. RENNER
WILLIAM F. ENGLEHART, JR.
STEPHEN J. NOLAN *
G. SCOTT BARHIGHT
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ROBERT S. GLUSHAKOW

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(301) 922-2121
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.


HAND-DELIVERY

March 22, 1985

MAR 25 AM
ZONING DEPARTMENT
By .....

William R. Evans, Esquire
County Board of Appeals
for Baltimore County
Room 200 Courthouse
Towson, Maryland 21204

Re: Grace L. Standiford
Case No. 85-96-XA
Summary of Expert Witness Testimony

Dear Mr. Evans:

Please accept this letter as the Petitioner's summery of the testimony of expected expert witnesses pursuant to your instructions during our meeting on February 21, 1985. The curriculum vitae or resume of each of these witnesses is provided. A brief summary of the testimony of each of these expert witnesses will be set forth in this letter.

The first witness to be presented by the Petitioner will be a company spokesperson. In all probability, this person will be Kathryn M. Condello (Buie). Mrs. Condello will be offering testimony regarding the proposed site and the future plans of the Petitioner.

The following individuals will be qualified as experts in their respective fields and will offer expert opinions regarding certain relevant issues in this case:

1. John F. Etzel, Registered Professional Land Surveyor,

2. Dr. Rajendra Singh, Electrical Engineer,

3. Donald J. Neubauer, Civil Engineer,

MICROFILMED

William R. Evans, Esquire
County Board of Appeals
for Baltimore County

March 22, 1985
Page 2

4. Carey W. Burch, Environmental Planner and Terrestrial Ecologist,

5. John P. Larson, Environmental Planner,

6. Edward A. Griffith, Realtor-Appraiser,

7. William F. Kirwin, Land Planner, Landscape Architect.

The curriculum vitaes or resumes for each of the above individuals are enclosed.

Mr. Etzel will explain the site plan and testify as to its compliance with the Baltimore County Zoning Regulations and the Zoning Advisory Committee comments. He will describe the site and compare it to other RC 2 and agricultural areas of Baltimore County. From the viewpoint of a professional land surveyor, and based upon his experience, he will offer his opinions regarding the issues raised by Baltimore County Zoning Regulations Section 502.1 and Section 1A01.2.C. He will also offer conclusions based upon the standard of review found in Schultz v. Pritts, 432 A.2d 1319 (1981).

Dr. Singh will provide an explanation of a cellular grid network. He will explain how the system is designed and why a site is needed in the requested location. Dr. Singh will also testify as to whether the proposed tower will cause any frequency interference. A general explanation of cellular radio telephones will be offered, including explanations of design, cost, FCC restrictions, etc. Dr. Singh will also testify as to potential health hazards which may or may not be associated with the proposed tower.

Mr. Neubauer, a structural engineer, will describe the proposed tower and explain its construction. Mr. Neubauer will offer testimony relative to the safety of the tower and any potential effects of the environment on the proposed tower. From the viewpoint of a civil engineer, and based upon his experience, Mr. Neubauer will offer testimony regarding the issues raised in Baltimore County Zoning Regulations Section 502.1, Section 1A01.2.C, as well as opinions regarding the standard in the Schultz case.

Mr. Burch will first testify as a terrestrial ecologist regarding the environmental impact of the proposed tower. Additionally,

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William R. Evans, Esquire
County Board of Appeals
for Baltimore County

March 22, 1985
Page 3

Mr. Burch will offer testimony regarding the potential asethetic and visual effects of the proposed tower. From the viewpoint of an environmental planner and terrestrial ecologist, and based upon his experience, Mr. Burch will offer testimony and opinions regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard described in the Schultz case.

Mr. Larson, also an environmental planner, will provide an overview of the research regarding any health hazards which may be associated with the proposed tower. Mr. Larson will offer opinions regarding the existence of any health hazards. He will also offer testimony and opinions regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard provided by the Schultz case.

Mr. Griffith is a realtor-appraiser. Mr. Griffith will describe the site and the general location. He will testify that the tower will have no adverse impact upon the value of land in the vicinity. He will also testify from the viewpoint of a realtor-appraiser, and based upon his experience regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard provided by the Schultz case.

Mr. Kirwin will describe the proposed site as well as the general vicinity. From the viewpoint of a land planner and landscape architect, and based upon his experience, he will testify regarding Baltimore County Zoning Regulations Sections 502.1 and 1A01.2.C, as well as the standard in the Schultz case.

On behalf of the Petitioner, I respectfully reserve the right to offer other and different expert testimony in rebuttal to any expert testimony provided by the protestors-appellants. Additionally, I respectfully request the opportunity to provide additional expert testimony as may become relevant.

Should you or the panel members of the County Board of Appeals have any questions regarding this submission, please feel free to contact me. It is my understanding that the protestors-appellants will provide a summary of their expert testimony, in writing, by April 22, 1985.

Thank you for your cooperation.

Very truly yours,

G. Scott Barhight

GSB:med
Enclosures

See page 4 for c.c.s.

MICROFILMED

William R. Evans, Esquire
County Board of Appeals
for Baltimore County

March 22, 1985
Page 4

c.c.s. Michael P. Tanczyn, Esquire
(with enclosures)
Peter M. Zimmerman, Esquire
(with enclosures)
Honorable Ellen R. Sauerbrey
(with enclosures)
Mr. Tolly Pellecha
(with enclosures)
Honorable Francis X. Kelly
(with enclosures)
Honorable Thomas W. Chamberlain, Sr.
(with enclosures)
Honorable Jean M. H. Jung
(with enclosures)
Mr. Nicholas Commodari
(with enclosures)
Mrs. Kathryn M. Condello
(with enclosures)
Mr. John F. Etzel
(without enclosures)
Dr. Rajendra Singh
(without enclosures)
Mr. Donald J. Neubauer
(without enclosures)
Mr. Carey W. Burch
(without enclosures)
Mr. John P. Larson
(without enclosures)
Mr. Edward A. Griffith
(without enclosures)
Mr. William F. Kirwin
(without enclosures)

MICROFILMED


CARL L. GERHOLD
PHILIP K. CROSS
JOHN F. ETZEL
WILLIAM G. ULRICH
GORDON T. LANGDON

GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
823-4470

EMERITUS
PAUL G. DOLLENBERG
FRED H. DOLLENBERG


March 15, 1985

To whom it may concern:

JOHN F. ETZEL, Registered Professional Land Surveyor, Licenseed by the State of Maryland in 1959, Registration No. 2882.

Partner in the firm of Gerhold, Cross and Etzel, Land Surveyors, 412 Delaware Avenue, Towson, Maryland 21204.

Graduate of Johns Hopkins University, B.S. Degree in Civil Engineering, 1963.

Has appeared and testified as an expert witness in Circuit Court in the matter of boundary disputes, traffic accidents, etc.

Has appeared as an expert witness in the Zoning Appeals Court.

Holds a Real Estate Brokers License issued by the State of Maryland, 1980. Associated with LeRoy J. Haile, Inc., 13 W. Chesapeake Avenue, Towson, Maryland 21204

Signed John F. Etzel
John F. Etzel L.S. No. 2882

85-96-A
10-99-Case file

To JA


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204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
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ROBERT L. HANLEY, JR.
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(301) 922-2121
RUSSELL J. WHITE

*ALSO ADMITTED IN D.C.


February 6, 1985

FEB 11 AM
ZONING DEPARTMENT
By

Mr. William Hackett, Chairman
County Board of Appeals
Court House
Towson, Maryland 21204

Re: Petition for Special Exception
W/S of Hacemore Road N/W of Mt. Carmel Road
Seventh Election District
Grace L. Standiford - Petitioner
No. 85-96-XA (Item No. 36)

Dear Mr. Hackett:

By letter dated February 1, 1985 to the Baltimore County Zoning Commissioner, Mr. Tanczyn, attorney for the protestants, has requested an appeal from the Deputy Zoning Commissioner's Order of January 4, 1985 granting the special exception requested. Although the letter was filed in a timely fashion, the substance of the letter does not comply with the rules of practice and procedure of the County Board of Appeals.

Rule 3A of the Rules of Practice and Procedure indicate that:

> No appeal shall be entertained by the Board of Appeals unless the Notice of Appeal shall state the names and addresses of the persons taking such appeal.

The appeal letter does not state the addresses of any person attempting to appeal the Deputy Zoning Commissioner's Order. As the appeal does not comply with the Board's rules, it is respectfully requested that the appeal be dismissed.

In the event that the Board chooses to deny my motion for dismissal, it is respectfully requested that this case be set in for at least three (3) consecutive hearing days. The hearing before the Deputy Zoning Commissioner spanned three (3) days. On two (2) of the hearing days, the hearing was not concluded until after 7:00 p.m. By a carbon copy of this letter to Mr. Tanczyn,

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Mr. William Hackett
February 6, 1985
Page 2

I am requesting that he contact me so that we can approach the Board regarding appropriate scheduling.

Thank you for your kind attention to this matter.

Very truly yours,

G. Scott Barhight

GSB:ylm

cc: Jean M. H. Jung, Deputy Zoning Commissioner
Phyllis C. Friedman, People's Counsel for Baltimore County
Michael P. Tanczyn, Esquire
Ms. Kathryn M. Buie

MICROFILMED

85-96-A


THOMAS W. CHAMBERLAIN, SR.
TENTH LEGISLATIVE DISTRICT
BALTIMORE COUNTY
ENVIRONMENTAL MATTERS COMMITTEE

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

HOME ADDRESS:
307 GALWAY ROAD
LUTHERVILLE TIMONIUM,
MARYLAND 21093
HOME PHONE (301)252-5543
LEGISLATIVE OFFICE:
306 LOWE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
LEGISLATIVE PHONE 841-3390


Dear Mr. Chairman:

This is to confirm my telephone call to your office of this morning requesting the postponement of the hearing scheduled for Grace L. Standiford, Case No. 85-96-XA, which has been set for Wednesday, March 27, 1985 at 10:00 A.M.

As you know, I am the Senior Senator from the 10th District and I am presently involved in the Legislative Session in Annapolis. Therefore I have to be in Annapolis on each day that the Senate is in session.

Thank you for inviting me to attend the hearing today but it did not seem necessary for me to personally appear. You have my position in file along with that of other interested citizens.

Sincerely,

Thomas W. Chamberlain, Sr.

11-10-87

85-094-A

GRACE L. STANDIFORD
RE: V-XA

ELLEN R. SAUERBREY
TENTH LEGISLATIVE DISTRICT
BALTIMORE COUNTY

COMMITTEE
ECONOMIC MATTERS

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

DISTRICT OFFICE:
4122 SWEET AIR ROAD
BALDWIN, MARYLAND 21013
592-2091

ANNAPOLIS OFFICE
ROOM 309
LOWE HOUSE OFFICE BUILDING
841-3390

November 19, 1984

Ms. Jean M. H. Jung
Deputy Zoning Commissioner
Planning and Zoning Office
Courts Building
M. S. 3406
Towson, Maryland 21204

Dear Jean:

I would like to reiterate my concern regarding the request for zoning exceptions to place radio towers in residential and farming communities. Since zoning issues are a local, not state government responsibility, I have generally avoided becoming involved in these decisions. However, I am very concerned with the preservation of the rural, pastoral character of northern Baltimore County.

While I understand the legitimate need for radio towers, it would seem that there are more appropriate areas where commercialization is already present, in which such towers should be sited. I would like to urge you not to allow the special exception for the Cellular One tower proposed for Masemore Road.

I would appreciate your sending me a copy of the zoning decision when it is rendered.

Sincerely,

Ellen R. Sauerbrey

ERS:eak

17338 Masemore Road
Parkton, MD 21120
November 1, 1984

Mr. Francis X. Kelly
124 Tregaron Road
Timonium, MD 21093

Dear Mr. Kelly:

On October 15 I wrote asking that you help residents of the Mt. Carmel Road area defeat a request for a special exception that would allow Cellular One to construct a 200 foot tower on Masemore Road. The second hearing on his matter will be held on request #85-96-XA - Standiford Property) will be held on November 9.

Masemore Road is one of the main entrances to the Gunpowder State Park. The Department of Natural Resources has written a letter to the Zoning Board expressing their objections. This is a unique area which should not be destroyed, particularly when there are commercial areas nearby which would serve Cellular One's purpose equally well.

Over 800 citizens have signed our petitions. We need your influence in defeating the current request and in designing legislation that would place more effective limits on such commercial encroachment. Please help us.

Very truly yours,

Peggy A. Patterson

Peggy A. Patterson

17338 Masemore Road
Parkton, MD 21120
October 15, 1984

Francis X. Kelly
302 James Rebert Office Building
Annapolis, MD 21401

Dear Mr. Kelly:

As a 15 year resident of Masemore Road, I care about my neighborhood. Under the Telecommunications Act of 1984, a Special Exception (SE) hearing, which would allow them to put a 200 foot tower on the Standiford Property which is located on Masemore Road about 2 tenths of a mile north of Mt. Carmel Road is scheduled for my property. Masemore Road is west of I-83. The area has an RDP zoning. Many residences are in the area. Most of the homes on Masemore and on Mount Carmel Road will be able to receive the tower. Specifically, a 200 foot tower would be visible within two miles. I understand a hedge around the property would be 50 feet.

It is my understanding that Baltimore County planners feel the area between I-83 and the Gunpowder would be the ideal area. There are no existing structures of this size in the area for sale or lease. The area is used by DNR and Mt. Carmel Road is to be made into a scenic route. Therefore, it should be placed in a different area.

The Mt. Carmel Area Citizens Association has been working together and have gone through the first step in the zoning hearing. The hearing officer ruled in favor of the petitioner. We have collected over 800 signatures of residents opposed to the SE hearing. Each person in the area will be writing to Governor Harry Hughes, the Department of Natural Resources Secretary Torrey Brown and Senator Francis X. Kelly to express their concern and to encourage them to act.

Please help us stop the construction of a tower. We have enjoyed the peace and quiet of the area and do not want the commercialization.

Thank you for your help.

Sincerely,

Peggy A. Patterson

OCT 22 1984

85-094-A

GRACE L. STANDIFORD
RE: V-XA

TORREY C. BROWN, M.D.
SECRETARY

JOHN R. GRIFFIN
DEPUTY SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
**CAPITAL PROGRAMS ADMINISTRATION**
TAWES STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401

FRED L. ESKEW
ASSISTANT SECRETARY
FOR CAPITAL PROGRAMS

October 11, 1984

OCT 15 8 AM
ZONING DEPARTMENT
By

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Jablon: GRACE L. STANDIFORD

I understand that case #8596-XA in the Hereford/Parkton area of the county is presently under review for a variance and special exception in order to place a mobile phone tower on property off Masemore Road. Although the Gunpowder Falls State Park land is not directly adjacent to the project site, it is extremely close by, and DNR's Land Planning Services has certain reservations about a possible 200+ foot tower. See attached acquisition/master plan map for the relationship of the tower to the Park.

Our concern is primarily one of anticipated visual impact; a 200 foot tower will certainly be visible for a long distance. This section of the park is particularly scenic, and in fact includes a designated Wildlands Area on the State land west of Falls Road up to the Prettyboy Reservoir property. A tower of this size, in its presently proposed location will be an obtrusive element in the landscape, detracting from the aesthetic qualities of the Hereford section of Gunpowder Falls State Park.

TELEPHONE 269-3656
TTY FOR DEAF: BALTIMORE 269-2609, WASHINGTON METRO 565-0450

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Jablon, Arnold
October 11, 1984
Page 2

I would hope that you could take the issue of visual impact from the Park into account in your decision. In any event, I would very much appreciate being informed of the outcome of the case.

Sincerely,

Tolly Peuleche'
Chief, Resources Planning

TWP:lgt
Enclosure

cc: Bill Simmons
Helga Dorsey

85-094-A

SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

November 7, 1984

Mr. Arnold Jablon
Zoning Commissioner
Baltimore County
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

It has come to my attention that a hearing will be held on Friday, November 9th, regarding the special exception request made by Cellular One to construct a 200 foot tower on Masemore Road in Parkton (85-96-XA - Stanford Property). GRACE L.

I have enclosed for your information copies of correspondence I have recently received from constituents with regard to this zoning request. As you will see by the letters, the residents of the Masemore Road area do not want this tower constructed at the requested site for many good reasons, and I share their concerns.

I am confident that you will give careful and thorough consideration to the concerns expressed by myself and the residents of this area prior to making your decision on the special exception request.

I thank you in advance for taking the time to read this correspondence, and I urge you to contact me if you have any questions, if you wish to discuss this matter further, or if I can be of any assistance to you.

Sincerely,

Francis X. Kelly

FXK:tlc
Enclosures
cc: Peggy A. Patterson

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Zoning Commissioner  Date: October 4, 1984

FROM: Councilman James T. Smith, Jr.

SUBJECT: Proposed Radio Tower on Masemore Road

The attached correspondence is for your review.

OCT 8 AM
By

EWG:mtf
Attach.

BALTIMORE COUNTY, MARYLAND
OFFICE OF
TOWSON, MARYLAND 21204

October 5, 1984

Mrs. Peggy Patterson
17338 Masemore Road
Parkton, Maryland 21120

Dear Mrs. Patterson:

I am writing in regard to your recent letter concerning a zoning hearing for a special exception for the construction of a 200 foot tower.

As County Executive, I am prohibited from intervening in judicial matters. But I have sent your letter to the Zoning Commissioner for his consideration.

As per your daughter's conversation with my aide, Judy Sussman, if it is at all possible, I would suggest that you provide testimony at the hearing.

I regret that I have not been able to aide you in this matter, but if I can be of future assistance, please contact my office.

Sincerely,

Donald P. Hutchinson
County Executive

DPH:pmcf

MICROFILMED

17338 Masemore Road
Parkton, MD 21120
October 1, 1984

County Executive Hutchinson:

Dear Mr. Hutchinson:

We live on Masemore Road in north Baltimore County. This area is zoned RC-2. There are farms and private residences on this road and on the adjacent Mt. Carmel Road, Evna Road, etc.

American Teleservices has asked for a zoning exception to allow the construction of a 200 foot tower on the Standiford property, approximately 2/3rds of a mile north of Mt. Carmel Road. The zoning hearing number is 85-96-Xa, hearing set for Oct. 9 at 1:30.

It was my understanding that the purpose of zoning was to protect the integrity of neighborhoods. Such a tower will not only deface the skyline for local residents, but Masemore Road is also a major entrance for the Gunpowder Park where hundreds of visitors come every summer.

There are many other points that I might raise or question but I really wonder why they are attempting to put an industrial facility in a residential neighborhood when there is land for sale in the area between I83 and York Road which I understood was to be the industrial corridor.

Can you help us have this facility located in a more approp 'ate area?

Very truly yours,

Peggy Patterson

pap

17338 Masemore Road
Parkton, MD 21120
October 1, 1984

Councilman Smith

Dear Councilman Smith:

We live on Masemore Road in north Baltimore County. This area is zoned RC-2. There are farms and private residences on this road and on the adjacent Mt. CarmelRoad and Evna Road, etc.

American Teleservices has asked for a zoning exception to allow the construction of a 200 foot tower on The Standiford property, approximately 2/3rds of a mile north of Mt. Carmel Road. The zoning hearing number is 85-96-XA, hearing set for Oct. 9 at 1:30.

It was my understanding that the purpose of zoning was to protect the integrity of neighborhoods. Such a tower will not only deface the skyline for local residents, but Masemore Road is also a major entrance for the Gunpowder Park where hundreds of visitors come every summer.

There are many other points that I might raise or question but I really wonder why they are attempting to put an industrial facility in a residential neighborhood when there is land for sale in the area between I83 and York Road which I understood was to be the industrial corridor.

Can you help us have this facility located in a more appropriate area?

Very truly yours,

Peggy Patterson

pap

85-96-XA

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 27th day of August, 1984.

ARNOLD JABLON
Zoning Commissioner

Petitioner Mrs. Grace L. Standiford Received by: Nicholas B. Commodari
Petitioner's Attorney
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon, Zoning Commissioner Date September 14, 1984

FROM Nicholas B. Commodari, Chairman, Zoning Plans Advisory Committee

SUBJECT Item #36 (1984-1985)

This office fails to see any significant effect caused by Council Bill No. 56-84 upon the above referenced petition.

Nicholas B. Commodari
Chairman, Zoning Plans Advisory Committee

NBC:bsc

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 1, 1984

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

M's Grace L. Standiford
410 Scarsdale Road
Baltimore, Maryland 21224

RE: Case No. 85-96-XA (Item No. 36)
Petitioner - Grace L. Standiford
Variance and Special Exception Petition

Dear M's Standiford:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:bsc

Enclosures

cc: Gerhold, Cross & Etzel
412 Delaware Avenue
Towson, Maryland 21204

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

February 11, 1985

G. Scott Barhight, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Exception
and Variances
W/S Masemore Rd., 2,350' NW of
Mt. Carmel Road
Grace L. Standiford - Petitioner
Case No. 85-96-XA

Dear Mr. Barhight:

Please be advised that an appeal has been filed by Michael Tanczyn, attorney for the protestants, from the decision rendered by the Deputy Zoning Commissioner of Baltimore County, in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the County Board of Appeals.

Very truly yours,

ARNOLD JABLON
Zoning Commissioner

AJ:aj

cc: The Honorable Ellen R. Sauerbrey
4122 Sweet Air Road
Baldwin, Maryland 21013

Mr. Tolly Peuleche'
Chief, Resources Planning
Capital Programs Administration
Tawes State Office Building
Annapolis, Maryland 21401

The Honorable Francis X. Kelly
One Shawan Road
Hunt Valley, Maryland 21030

The Honorable Thomas W. Chamberlain, Sr.
307 Galway Road
Lutherville, Maryland 21093

People's Counsel

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

January 4, 1985

JEAN M.H. JUNG
DEPUTY ZONING COMMISSIONER

G. Scott Barhight, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Exception and Variances
W/S of Masemore Rd., 2,350' NW of Mt. Carmel Rd. - 7th Election District
Grace L. Standiford - Petitioner
No. 85-96-XA (Item No. 36)

Dear Mr. Barhight:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,

JEAN M.H. JUNG
Deputy Zoning Commissioner

JMHJ/mc

Attachments

cc: Michael Tanczyn, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204

The Honorable Ellen R. Sauerbrey
4122 Sweet Air Road
Baldwin, Maryland 21013

Mr. Tolly Peuleche'
Chief, Resources Planning
Capital Programs Administration
Tawes State Office Building
Annapolis, Maryland 21401

The Honorable Francis X. Kelly
One Shawan Road
Hunt Valley, Maryland 21030

The Honorable Thomas W. Chamberlain, Sr.
307 Galway Road
Lutherville, Maryland 21093

People's Counsel

BALTIMORE COUNTY
DEPARTMENT OF PUBLIC WORKS
TOWSON, MARYLAND 21204

HARRY J. PISTEL, P.E.
DIRECTOR

October 4, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #36 (1984-1985)
Property Owner: Grace L. Standiford
W/S Masemore Rd. 2350' N/W from centerline
Mt. Carmel Rd.
Acres: 1.46
District: 7th

Dear Mr. Jablon:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highway Improvements

There are no public facilities involved; therefore, this office has no comment.

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Very truly yours,

JAMES M. MARKLE, P.E., Chief
Bureau of Public Services

JAM:EAM:DFM:ss

11-10

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

9-6-84

Re: Zoning Advisory Meeting of 8-21-84
Item # 36
Property Owner: Grace L. Standiford
Location: W/S Wesmore Rd. NW of Mt. Carmel Rd.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

( )There are no site planning factors requiring comment.
(X)A County Review Group Meeting is required.
( )A County Review Group meeting was held and the minutes will be forward by the Bureau of Public Services.
( )This site is part of a larger tract; therfore it is defined as a subdivision. The plan must show the entire tract.
( )A record plat will be required and must be recorded prior to issuance of a building permit.
( )The access is not satisfactory.
( )The circulation on this site is not satisfactory.
( )The parking arrangement is not satisfactory.
( )Parking calculations must be shown on the plan.
( )This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( )Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( )Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( )The amended Development Plan was approved by the Planning Board on .
( )Landscaping should be provided on this site and shown on the plan.
( )The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is .
( )The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may became more limited. The Basic Services Areas are re-evaluated annually by the County Council.
(X)Additional comments:

Access easements for the driveway should be established if it is to be used in common with tower and residential or non-use owners.

Eugene A. Bober
Chief, Current Planning and Development

cc: James Hoswell

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

August 27, 1984

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 36, 38, 39, and 40 ZAC-Meeting of August 21, 1984
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for item numbers 36, 38, 39, and 40.

Michael S. Flanigan
Traffic Engineering Assoc. II

MSF/cam

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
494-4500

PAUL H. REINCKE
CHIEF

September 10, 1984

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Grace L. Standiford

Location: W/S Wesmore Road 2550' N/W from c/l Mt. Carmel Road

Item No.: 36 Zoning Agenda: Meeting of 8/21/84

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals of feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Noted and Approved:
Planning Group
Special Inspection Division
Fire Prevention Bureau

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

August 30, 1984

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 36 Zoning Advisory Committee Meeting are as follows:

Property Owner: Grace L. Standiford
Location: W/S Wesmore Road 2550' N/W from Mt. Carmel Road
Existing Zoning: R.C.2
Proposed Zoning: Variance to permit a building setback of 25' in lieu of the required 35' and Special Exception for a wireless transmitting and receiving facility.
Acres: 1.47
District: 7th

The items checked below are applicable:

A. All structures shall conform to the Baltimore County Building Code (BOCA/1981), the State of Maryland Code for the Handicapped and Aged, and other applicable Codes.

B. A building permit shall be required before beginning construction.

C. Residential: Three sets of construction drawings are required to file a permit application. Architect/Engineer seal is/is not required. Separate mechanical and electrical drawings will be required.

D. Commercial: Three sets of construction drawings with a Maryland Registered Architect or Engineer shall be required to file a permit application.

E. An exterior wall erected within ft. of a property line shall be of fire resistive construction. No openings permitted within this wall if closer than ft. Openings are required if construction is on the property line. Section 509 and table 505 and table 401, of the B.O.C.A. Code.

F. The parking area shall be constructed in accordance with the Baltimore County Building Code and the A.N.S.I. A117.1 - 1980.

G. A change of occupancy shall be applied for, along with an alteration permit application, and three complete sets of drawings indicating how the structure will meet the requirements for the new use, shall be required. Drawings may be prepared by an architect or engineer.

H. Before this office can comment on the above structure, please submit wall, floor, roof design drawings and details, and window and door schedules. These drawings are required to be prepared by an architect or engineer registered in the State of Maryland in accordance with Section 518 of the B.O.C.A. Code.

I. Comments - The Tower and Building plans, and plans review data sheet shall be signed and sealed by a Registered in Maryland P.E. in the structural field. This engineer shall upon completion of the tower shall certify to this office that it has been constructed to meet his plans and the Baltimore County Building Code.

NOTE: These comments reflect only on the information provided by the drawings submitted to the office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired, additional information may be obtained by visiting Room 122 of the County Office Building at 111 W. Chesapeake Avenue, Towson.

Very truly yours,

Charles E. Burnham, Chief
Plans Review

CEB:rrj

The Honorable Helen Delich Bentley
Congress of the United States
200 East Joppa Road
Towson, Maryland 21204

RE: Case No. 85-96-XA
Grace L. Standiford,
Petitioner

Dear Mrs. Bentley:

I am in receipt of your letter and the accompanying letter from your constituents, Mr. and Mrs. Williams, dated May 16, 1985.

Please be advised that the issue to which the Williams refer is presently before the County Board of Appeals on an appeal of a decision by the Deputy Zoning Commissioner. As you know, the Board is a quasi-judicial body which will render a decision after a public hearing. I am sure that all of the concerns raised by Mr. and Mrs. Williams will be raised before the Board. Since the Board is an independent judicial body, it would be inappropriate for me to intervene. However, the Williams can be assured that Baltimore County, as well as its citizens, will be bound by whatever decision is rendered, subject to any appeal to the Circuit Court of Baltimore County.

Sincerely,

DONALD P. HUTCHINSON
County Executive

DPH/AJ/srl

HELEN DELICH BENTLEY
2d District, Maryland

COMMITTEE ON
PUBLIC WORKS AND
TRANSPORTATION
SUBCOMMITTEES
WATER RESOURCES
ECONOMIC DEVELOPMENT

COMMITTEE ON
MERCHANT MARINE
AND FISHERIES
SUBCOMMITTEES
MERCHANT MARINE
PANAMA CANAL/OUTER
CONTINENTAL SHELF
OVERSIGHT AND INVESTIGATIONS

# Congress of the United States
## House of Representatives
## Washington, DC 20515

1610 Longworth Building
Washington DC 20515
202-225-3061

District Office
200 East Joppa Road
Towson MD 21204
301-337-7222

The Honorable Donald P. Hutchinson
Baltimore County Courthouse
400 Washington Ave.
Towson, Maryland 21204

Dear Mr. Hutchinson:

As the Congresswoman representing the Second District of Maryland, I am often called upon to assist in areas that due not fall within the jurisdiction of the Federal Government. However, I always try to be as helpful as possible.

Therefore, I am enclosing a copy of correspondence I recently received from a concerned constituent. I believe you will find this letter self-explanatory, and I would appreciate your comments regarding this matter.

Your time and effort in responding to this request is greatly appreciated. Please forward your response to my Towson District Office address listed above.

I look forward to hearing from you soon.

With warmest regards,

Sincerely,

Helen

Helen Delich Bentley,
Member of Congress

HDB/pc
Enclosure

DONALD J. NEUBAUER, CONSULTING ENGINEER
[illegible]

CURRICULUM VITAE OF DONALD J. NEUBAUER

Born: 6 July, 1922, Virginia, Minnesota

Education:

Virginia Junior College 1940-42

University of Minnesota 1942-44 Bachelor of Civil Engineering
1946-47 Master of Science

Professional Career:

University of Minnesota
Research Assistant 1947

Thorshov & Cerny, Architects-Engineers
Minneapolis, Minnesota
Chief Engineer 1947-1952

During the first two years duties involved structural and civil engineering design, preparation of engineering plans and specifications and supervision of construction of all phases of building design. For the remaining period, office title was chief engineer with the responsibility for the design of all engineering aspects of a building project including mechanical and electrical and the coordination of design with the architectural aspects. Duties also included the responsibility for the supervision of construction phase of all office projects. Some 350 projects were planned and executed during this period including 17 medical projects, 5 electric power generator plants and numerous schools, industrial, comercial, religious, governmental, institutional and civil engineering projects. Projects were located in Minnesota, Wisconsin, North Dakota, South Dakota, Iowa, Illinois and Ohio. Estimated cost of construction: $120,000,000.

Sherlock, Smith and Adams, Architects-Engineers
Montgomery, Alabama
Chief Engineer 1953-55

Duties consisted of design responsibility for structural and civil engineering aspects of building design with overall design responsibility for electrical and mechanical engineering phases. Types of projects included military facilities, airport design and construction, hospitals built under construction management procedures, schools, churches, highways, shopping centers, industrial facilities and comercial buildings. Projects were located in Alabama, Florida, Kentucky, West Virginia and Bermuda. Estimated construction cost: $50,000,000.

MICROFILMED

DONALD J. NEUBAUER, CONSULTING ENGINEER Page 2.

Professional Career (cont'd):

Smith, Hinchman and Grylls, Architects-Engineers
Washington, D. C.
Partner 1955-58

Duties consisted of responsibility for engineering design and coordination along with production of architectural and engineering construction documents and supervision. Part was taken in the overall design of projects. Project designs such as shopping centers, motels and medical facilities included transportation studies of surrounding areas and the general impact of these projects upon these areas. Types of projects included were medical facilities, shopping centers, motels, schools, military facilities and feasibility studies. Projects were located in the District of Columbia, Maryland, Virginia, New York, New Jersey, Pennsylvania, Missouri, Morocco, Mexico and Costa Rica. Estimated construction cost: $20,000,000. A partial list of projects:

Berwick Hospital, Berwick, Pennsylvania - given award for excellence in design.

Children's Hospital, San Jose, Costa Rica.
American-British-Cowdry Hospital, Mexico City, Mexico.
Campus Facilities, Organization of American States, Turrialba, Costa Rica.
Montgomery County Schools, Montgomery County, Maryland.

Donald J. Neubauer, Consulting Engineer
Washington, D. C. 1958-1966

Practice consisted mostly of civil and structural engineering design although a considerable portion of the practice involved project design assistance, project management and project production assistance. Consultation for construction problems was furnished on all projects. For part of this period an office was maintained in San Jose, Costa Rica. Projects were located in the District of Columbia, New York, Texas, Minnesota, Colorado, Virginia, Maryland, West Virginia, Costa Rica and Nigeria. Estimated construction cost: $200,000,000. Partial list of projects:

| | |
|---|---|
| Thomason General Hospital, El Paso, Texas | $ 5,300,000 |
| Northwest-Northeast-Braniff Passenger Terminal Building, Idlewild Airport, New York City (including A-E construction inspection) | $10,000,000 |
| Children's Hospital, San Jose, Costa Rica (complete A-E construction services) | $ 3,000,000 |
| U. S. Air Force Sonic Fatigue Test Laboratory, Layton, Ohio | $ 7,000,000 |
| Men's Dormitory, Moorehead State College, Moorehead, Minn. | $ 800,000 |
| St. Ann's Home for the Aged, Duluth, Minnesota | $ 2,500,000 |
| U. S. Government office building remodeling, Washington, D.C. | $11,000,000 |
| Partial air-conditioning of Department of Commerce Building Washington, D.C. (assisted mechanical engineer) | $ 6,000,000 |
| Improvement of the National Zoo, Smithsonian Institute, Washington, D.C. | $ 2,500,000 |

1-10

Professional Career (cont'd):

| | |
|---|---|
| Radiation Lab for USGS, Denver, Colorado | $ 800,000 |
| Ground Planes for U.S. Navy at Patuxent, Maryland and Dahlgren, Virginia | $ 1,200,000 |
| Medical Clinic, Fairmont, West Virginia | 800,000 |
| Columbia Plaza (Urban Renewal), Washington, D.C. | $20,000,000 |
| Presidential Plaza (Urban Renewal), Syracuse, New York | $ 5,000,000 |
| Office Building, National Institutes of Health, Washington, D.C. | $ 5,300,000 |
| Miscellaneous military projects, fallout shelter surveys, industrial buildings, missile launching site | |

Metcalf and Associates, Architects and Engineers
Washington, D.C.
Partner 1966-1972

Duties consisted of responsibility for overall project production and coordination of associated consultants on multi-discipline projects. Majority of the projects were medical facilities in some cases involving the development of sites up to 500 acres in size. Most of these site development/master planning projects involved area impact studies, a part of which was involved with public and private transportation systems, present and future. Most of the medical projects involved a major impact on existing utility and transportation facilities. For most of this period, the partnership maintained an office in Lagos, Nigeria to facilitate contracts with the Nigerian Government. Projects were located in Maryland, the District of Columbia, Virginia, West Virginia, Delaware, Florida, Alabama, Louisiana, Nigeria, Brazil, Gabon, Laos, Liberia, Puerto Rico. Estimated construction cost: $155,000,000 and master planning for an additional $400,000,000 worth of projects. Partial list of projects:

| | |
|---|---|
| Anne Arundel General Hospital, Annapolis, Md. | $ 5,700,000 |
| Doctors' Hospital Master Plan, Washington, D.C. | 100,000,000* |
| The Fairfax Hospital, Fairfax, Virginia | $14,000,000 |
| Tuskegee Hospital and Master Plan, Tuskegee Institute, Alabama | $ 3,700,000** |
| Mayaguez School of Nursing, Mayaguez, Puerto Rico | $ 870,000 |
| Presbyteria Hospital, San Juan, Puerto Rico | $20,000,000* |
| Zaria Hostel, Zaria University, Zaria, Nigeria | $ 100,000 |
| Montgomery General Hospital, Olney, Md. | $ 7,100,000 |
| Potomac Gardens Housing, Washington, D.C. | $ 5,100,000 |
| Washington Zoological Park, Washington, D.C. | $ 9,100,000 |
| Monrovia Embassy Staff Quarters, Monrovia, Liberia | $ 250,000 |
| Embassy Office Building, Vientiane, Laos | $ 200,000 |
| Wilmington Medical Center, Wilmington, Delaware | 250,000,000* |
| Community Hospital of Brooklyn, Brooklyn, N. Y. | $15,000,000* |
| St. Joseph's Hospital, Parkersburg, West Virginia | $ 4,000,000 |
| Animal Research Facility, University of Lagos, Lagos, Nigeria | $ 600,000 |



Professional Career (cont'd):

| | |
|---|---|
| Teaching Hospital, University of Lagos, Lagos, Nigeria | $ 8,400,000 |
| Medical-Dental School, Lagos, Nigeria | $14,000,000 |

Donald J. Neubauer, Consulting Engineer
Washington, D.C. 1972-Present

Providing consulting services in civil and structural engineering; medical facilities planning, design and construction; site planning; construction management; project development and design/build contracts. Partial list of clients:

Fairfax Hospital, Fairfax, Virginia
St. Charles Hospital, Toledo, Ohio
Government of Honduras
Alexandria Hospital, Alexandria, Virginia
Mt. Vernon Hospital, Alexandria, Virginia
MCI Corporation
World Health Organization
Government of Costa Rica
Continental Trailways
Massachusetts Mutual Life Insurance Co., Real Estate Investment
Potomac Electric Power Co.
Architectural and Construction Organizations, Legal Firms

Military Service:

U.S. Army Corps of Engineers
Engineer Survey Co. in Philippine Islands 1944-46

Registered Engineer:

Alabama, District of Columbia, Maryland, Minnesota, New Jersey, New York, Pennsylvania, Texas, Virginia, West Virginia, Delaware, Ohio, Louisiana, Colorado

Membership:

American Society of Civil Engineers, Society of American Military Engineers, American Concrete Institute, American Society for Testing and Materials, American Welding Society, Post Tensioning Institute, International Association of Bridge and Structural Engineers, International Society for Soil Mechanics and Foundation Engineering, American Association for the Advancement of Science.

Papers:

Acoustic Society of America 1961 Annual Meeting co-authored "Structural Design for Sonic Loads."

* Master Planning Only
** Construction Only

JOHN P. LARSON
VICE PRESIDENT

EDUCATION

Bachelor of Science, San Diego State University
Chemistry (major), Mathematics (minor)

Graduate Study, San Diego State University

PROFESSIONAL ORGANIZATIONS/ACTIVITIES

American Chemical Society, Division of Environmental Chemistry (certified member)
American Association for the Advancement of Science
Commercial Arbitration Panel for the American Arbitration Association
Association of Environmental Professionals
Technical Advisory Committee, San Diego County Telecommunications Task Force (1984)

EXPERIENCE

1980-present Vice President, RECON

As staff supervisor, has been responsible for the performance of 14 professionals with expertise in a variety of fields, including water quality, air quality, archaeology, paleontology, noise, socioeconomics, and planning. Responsible for staff task assignments, budget and schedule compliance, weekly staff meetings, and overall quality control for all environmental studies. Provides guidance for staff project managers, especially for more controversial projects. Also responsible for legal and regulatory requirements of federal, state, and local jurisdictions.

As corporate officer and member of the board of directors, regular work tasks also include participation in planning and administering corporate expenses and development of policy and review of performance.

1977-1980 Senior Environmental Consultant, RECON

As senior project manager, responsibilities included both administrative and technical tasks. Primarily responsible for the preparation of environmental impact reports (EIRs) for a variety of discretionary actions and projects. Examples of discretionary actions include general plan amendments, annexations, assessment districts, tentative subdivision maps, and major use permits. Projects range from sand and gravel operations, light industrial developments, and sewer plants to planned communities and housing projects. Through the preparation of these documents, managed an interdisciplinary team of resource investigators and coordinated with the project applicant, other project consultants, and regulating agencies. Performed technical studies pertaining to noise generation, air and water quality, and soils. Completed 45 major projects.

1976-1977 Teacher, La Jolla Country Day

Served as a chemistry and general science instructor to high school students.

1970-1976 Laboratory Technician and Teacher's Assistant, Grossmont Union High School District

Duties included teaching and tutoring chemistry, physics, biology, mathematics, and computer programming and responsibility for capital equipment and supplies budgets, inventory functions, and vendor relations.

1971-1973 Soils Scientist, San Diego State University Foundation

Responsible for elements of soils research conducted under National Science Foundation and County of San Diego grants. Work involved field sampling and laboratory analysis of chemical constituents pertinent to nutrient cycling in soils, specifically concerned with changes in nutrient levels resulting from wildfire and vegetative type conversion.

1971-1977 Soils Scientist & Archaeological Researcher (self-employed)

Developed and applied orthophosphate analysis for soils on archaeological sites.

Participated in surveys and excavations of sites and areas in southern California. Topographic, plane table/alidade mapping for soil and archaeological research projects throughout southern California.

SPECIFIC PROJECTS

1984-1985 Directed preparation of Master Environmental Impact Report and permit applications for four cellular grid mobile telephone cell sites in San Diego, Rattlesnake Mountain in Santee, and La Mesa, California.

1984 Testified at Planning Commission hearing regarding microwave emission health and safety effects for the Keyes repeater station use permit, Stanislaus County, California.

1984 Testified at special use permit hearing regarding microwave health and safety effects for the Minooka repeater station, Kendall County, Illinois.

EDWARD A. GRIFFITH

QUALIFICATIONS OF APPRAISER

EDUCATION

PRINCETON UNIVERSITY, BACHELOR OF ARTS
COMPLETED COURSES I AND II OFFERED BY THE SOCITY OF REAL ESTATE APPRAISERS
COMPLETED REAL ESTATE BROKERS COURSE AT THE UNIVERSITY OF MARYLAND
COMPLETED REAL ESTATE LAW COURSE AT CATONSVILLE COMMUNITY COLLEGE

MEMBERSHIPS AND LICENSES

THE GREATER BALTIMORE BOARD OF REALTORS
SOCIETY OF REAL ESTATE APPRAISERS
LICENSED REAL ESTATE BROKER IN THE STATE OF MARYLAND
VICE CHAIRMAN OF THE BALTIMORE COUNTY PLANNING BOARD (1968-1972)
VICE CHAIRMAN OF REAL ESTATE BROKERS' ROUND TABLE
BALTIMORE COUNTY APPRAISERS' SOCIETY
AMERICAN ARBITRATION ASSOCIATION
TREASURER OF MARYLAND ENVIRONMENTAL SERVICES
LICENSED MORTGAGE BROKER
VICE CHAIRMAN OF AIRPORT ZONING APPEALS BOARD (1974-1982)

EXPERIENCE

THIS APPRAISER HAS BEEN ACTIVE IN THE REAL ESTATE PROFESSION SINCE 1963 AND HAS BEEN ENGAGED IN APPRAISING SINCE 1974.

COURT TESTIMONY

BALTIMORE COUNTY TAX APPEALS BOARD
BALTIMORE COUNTY CIRCUIT COURT
BOARD OF PUBLIC WORKS, STATE OF MARYLAND
BOARD OF ZONING APPEALS, BALTIMORE COUNTY
BOARD OF ZONING APPEALS, BALTIMORE CITY

CLIENTS

MARYLAND DEPARTMENT OF GENERAL SERVICES
MARYLAND STATE HIGHWAY AUTHORITY
BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY OFFICE OF LAW
VARIOUS SAVINGS AND LOAN ASSOCIATIONS
VARIOUS LAW FIRMS

PERSONAL DATA: WILLIAM F. KIRWIN

Born: Troy, New York, 1938
Married: Marie Taranto Kirwin
Children: Colene Marie Kirwin
Marielana Kirwin

Occupation: Consultant, Landscape Architect/Land Planner

Registered: Maryland, 1971, No. 8
West Virginia, 1972, No. 78
Delaware, 1976, No. 39

Education: B.S. Landscape Architecture, 1961, New York State College of Environmental Science and Forestry
B.S. Science, 1961, Syracuse University
Juris Doctor Law, 1968, University of Baltimore

Post Graduate Courses in Public Administration
New York State Graduate School of Public Affairs Albany

Honors and Awards:

Boy Scouts of America, Eagle Scout

Professional Associations:

Former Associate, Maryland School For The Blind, Professional/Educational
Former President and Member, Maryland Association of Landscape Architects
Former Member, Maryland Interprofessional Committee on the Environment
Former Member, Landmark Preservation Commission, Baltimore County
Former Member, Baltimore County Planning Board, Planning Board designate Regional Planning Council, Former Chairman, Baltimore County Planning Board
Guest Lecturer, Environmental Law and Design University of Maryland and College of Notre Dame
1975-1976 President's Committee to Develop Barrier Free Standards for Handicapped for HUD

Employment: 21 Years
Land Planning/Landscape Architect
William F. Kirwin, Inc.

Firm's Responsibilities:

Large land planning projects in private and public sector. Vast experience in college campus planning, hospital site planning, natural environmental and park planning, streetscape, malls, etc.

Special Expertise:

Skilled in communication technique through participation on boards and commission as chairman.

**Versar.**

CAREY W. BURCH, AICP, Senior Environmental Planner

EDUCATION: M.S., Urban and Regional Planning
Florida State University, 1978
B.S., Forestry and Wildlife Management
Virginia Polytechnic Institute, 1976
Member, American Institute of Certified Planners

EXPERIENCE SUMMARY: Six years of experience in the management of multidisciplinary teams involved in environmental baseline studies, environmental assessments, hazardous waste studies, water resource planning studies, and resource management. Chief of the Environmental Evaluations Branch for two years. Team Leader in an environmental assessment of clean-up alternatives of a hazardous waste Superfund site in Waukegan, Illinois. Task Manager under five quick-response, task-oriented contracts. Over seven years of experience in environmental/urban planning and natural resources management.

Over six years of experience in the analysis of regulatory programs through assessments of their interactions with other governmental programs, their environmental impacts, compliance, and post permit effects. Regulatory experience includes work with the Corps dredge and fill permit program under Section 10 and Section 404; EPA regulations for Section 402 (point source permits) of the CWA, the open dump inventory program under the Resource Conservation and Recovery Act (RCRA), and the hazardous waste consolidated permit program; Fish and Wildlife Service (FWS) regulations involving 404 permits, endangered species, and critical habitats; Office of Surface Mining reclamation programs; as well as Federal Energy Regulatory Commission permit and environmental regulations. Extensive involvement with federal and state regulations affecting wetlands, floodplains, and endangered species. Experience with local planning and zoning regulations.

Eight years of experience in environmental assessments and field work involving wetlands investigations, endangered species, habitat analysis, biological inventories, public involvement, land reclamation, land use, aesthetic impact determinations, stormwater control assessments, shoreline/riparian erosion control, and impact forecasts. Experienced in impact analyses of terrestrial ecology from development projects or release of toxic materials.

Six years of experience in socioeconomic analyses, land use studies, hazardous waste disposal and solid waste planning, water resource management, recreation analysis, and urban and regional planning.

AREAS OF QUALIFICATION: Extensive work in analyzing regulatory programs for wetlands, solid waste disposal, flood plains, endangered species, surface water quality, dredge and fill activities, and the coastal zone for EPA's Office of Solid Waste in connection with their RCRA-mandated inventory of solid waste disposal facilities. Investigated state and local hazardous waste disposal controls for EPA's Toxics Integration Program. Assisted with two assessments of regulatory programs under Section 404 of the Clean Water Act for the Army Corps of Engineers, Baltimore. Lead role investigating the Section 404 ramifications of converting pocosins into farmland and preparing Section 404 general permits for forest industries and kaolin-mining industries in Georgia while with the Army Corps of Engineers, Savannah.

Team Leader for an environmental assessment of clean-up alternatives for the Superfund (hazardous waste) site at Waukegan, Illinois. Performed an environmental assessment of a major diversion of water from Lake Michigan at Chicago. Project Manager for environmental assessments of 71 alternative barge fleeting areas, 29 alternative harbor sites, the relocation of a natural gas compressor station and connecting pipelines, and a flood control cutoff channel. Project manager on classification of 100 surface impoundments according to RCRA criteria. Extensive wetlands investigations for the Fish and Wildlife Service and the Corps, Baltimore. Assessment of stormwater mitigation techniques for the FAA and FHWA. Preparation of aesthetic impact documentation for various development projects including new post offices.

RECEIVED
COUNTY BOARD OF APPEALS
'85 SEP 10 A 10 44

RE: PETITION FOR SPECIAL EXCEPTION W/S Masemore Road 2350' NW of Mt. Carmel Road, 7th District,

GRACE L. STANDIFORD, Petitioner.

* BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

* Case No. 85-96-XA

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POST-HEARING MEMORANDUM

The Protestants, by their attorney, Michael P. Tanczyn, Esq., pursuant to instructions of the County Board of Appeals of Baltimore County, presents their memorandum in opposition to the grant of the request for special exception:

I. Statement of the Case

The proposed special exception without variances is for wireless transmitting or receiving facility on lands zoned R.C.2, presently being productively farmed for field or standing corn used to feed livestock, in northern Baltimore County, in close proximity to the Hereford Section of the Gunpower State Park. The site is located very near a natural bird flightway for ducks and geese and is near a substantial number of residential dwellings and near official State wildlands. Traditionally, the area is flown over by AT&T contract helicopter pilots along the AT&T right of way to the immediate south of this proposed tower site and the entire area has been the subject of aerial cropdusting and aerial gypsy moth spraying.

The Petitioner, as the moving party, has the burden of meeting the requirements of Baltimore County Zoning Regulations



Section 502.1 as well as the provisions of Section 1A01.2.C. As the Petitioner and People's Counsel have set out in their memorand. the provisions of Section 502.1 and 1A01.2.C., those sections will not be repeated in this memorandum.

In the case commonly cited of Schultz vs Pritts, 291 Md, 432 A 2d 1319 (1981), at page 1327 is stated "These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone." The Protestants believe that they adduced through their own witnesses the unique aspects of the general neighborhood not present in other R.C.2 zones or in other parts of this R.C.2 zone, which will be amplified herein.

The second basis for their objections simply stated is that this Petition for Special Exception is antithetical and at odds with the legislative preamble for R.C. zones in general and R.C.2 zones in particular and at irreconcilable odds with 1A01.2.C. of the Baltimore County Zoning Regulations.

The Petitioner failed to meet its burden regarding Sections 502.1 and 1A01.2.C. of the Zoning Regulations:

1. 502.1.C. Create a potential hazard from fire, panic or other dangers. Testimony from the longtime residents in



this area adduced that the area is not served by public water, that the fire protection service comes from the Hereford Volunteer Fire Department located east of I-83 and several miles from the property. Further testimony from Mr. Ron Meyer and Mrs. Patterson recalled a fire in Mr. Meyer's present residence prior to the time he purchased it which caused a considerable amount of property damage. In their testimony they recalled the volunteer fire department using water from a stream which then flowed through the Patterson/Standiford tract and down through Mr. Meyer's property, which was then located in the lowlands between Masemore Road and the subject site.

The further testimony was that since that fire Hurricane David occurred and in the course of passing through the area caused the stream to reroute upstream so that the water supply is not presently available to put out any fires. In accordance with the standard of Schultz vs Pritts, the testimony was also clear, both from the civil engineer, Mr. Neubauer's, admission that, although he had not visited the site, the possibility existed that lightening could reflect from one of the numerous upright or crossmembers of this towers into adjacent lands. Testimony from numerous sources was that the land is and has been for at least several decades or more productively farmed with a crop called field corn. Field corn was defined by numerous witnesses for the Protestants as well as witness for the People's Counsel as standing corn or corn allowed to stand in the fields and which is later used to feed cattle during the



wintertime and whose stalks become very dry and, in fact, by testimony of another Protestants witness, a field fire occurred in the standing corn of a neighbor in past years which caused considerable damage.

Due to the relocation of the stream, which proved adequate in the past to service the fire at Ron Meyer's present residence, and the increased incidents of fire from reflected lightening once a structure has been erected to reflect the bolts of lightening into the standing corn immediately surrounding the tower, it becomes clear that the risk of hazard from fire, panic or other dangers is increased by the erection of the tower on this site.

Also included in this portion of the Regulations is the concern expressed by the Protestants' witness, Mr. Raffensberger, an experienced pilot, of the hazards unique to this site which this 200 foot tower would pose, not only to the AT&T helicopter pilot if buffeted by winds while running his frequent inspection overflight at low level for the AT&T underground signal lines, but also for the gypsy moth spraying and the aerial cropdusting planes done in the agricultural zone in farming good agricultural properties.

2. Section 502.1.E. Interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements. The resident Protestants testified as to the use made of the Gunpowder State Park and Mr. Matricciani testified as President



of the Citizen's Alliance of Northern Baltimore County as to the considerable amount of time dedicated by committee representatives in his group in coordination with State officials for the planning of the Hereford section of the Gunpowder State Park.

The Protestants' witnesses included the State Planner, who wrote the plan for the Gunpowder State Park as the principal authoress, Ms. Tolly Peuleche'. Ms. Peuleche' testified at great length and from numerous Protestants' exhibits as to the plans for the park, her inspection of not only the proposed site of the tower but also her trip to the park to determine general points of observation where the tower would be obtrusively visible, which she generally defined in her testimony as being out of character with the rural parkland established character for this neighborhood. She stated that the State had expended considerable amounts of money to develop this park in harmony with nature and was dependent on local zoning officials or zoning boards, including the Board of Appeals of Baltimore County, to decide cases with a sensitivity to the rural wildlife nature of the Gunpowder State Park, which is a recreational resource utilized not only by the nearby residents but by individuals who live in more urban residential areas where towers of the type proposed by the Petitioner are more common who come to escape and get back to nature.

Testimony was also propounded by Ms. Peuleche' and numerous Protestants' witnesses as to the utilization of the



Gunpowder State Park by all types of recreational purposes, including hotair balloonists and pictures were submitted of hotair balloonists which had landed in the vicinity of the proposed tower. The hazards posed to hotair balloonists by a 200 foot unlit tower which is approximately 140 feet higher than the height of the existing treelines and located on a promentary should be self-evident.

3. Section 502.1.G. Be inconsistent with the purposes of the property zoning classification or in any other way inconsistent with the spirit and intent of the zoning regulations. Clearly the Zoning Regulations contain the preamble for R.C. zones and they, to put it simply, evidence a legislative preference for agricultural use of land in R.C.2 zones, where the topography is complementary, to be the number one permitted use and, in fact, the land which is the subject of this Petition where the tower is proposed, including a good portion of the access road to be built from the existing road, lies within lands which heretofore have been for more than two decades planted in standing corn and farmed, by Paul Soloman's testimony, one of the most productive farmers in Baltimore County.

It is because of the Schultz vs Pritts standard that comparison of this site with other available sites becomes germane. In that regard, the testimony presented by the Petitioners in the location of theoretical centers of grid coordinates for an interlocking grid system shows significant change in the locations of the Bel Air grid and the Hereford grid



as well as the Carroll County grid, which is relevant to illustrate that this one-acre-plus site off Masemore Road is not the only place where the Petitioners could place their tower. The Bel Air site, for instance, was moved a distance between five and ten miles, depending on the testimony, and a measurement of the difference in position on the two grids of the theoretical location, and, in fact, on the application to the Federal Communications Commission, portions of which were introduced in this proceeding, the Petitioner notified the FCC that it wished to place its tower on lands of another east of I-83 in Hereford and the Petitioner admitted, through the testimony of Mrs. Condello, that it has never advised FCC of the Masemore Road site.

Therefore, the unique aspects of this particular piece of property, which is being productively farmed for standing corn, including the area where the proposed site for the tower has been staked out for more than a year, which prior to its staking was also in standing field corn and which lies adjacent to an AT&T right of way, which is weekly flown by a helicopter pilot to determine if the line has been tampered with or is in poor repair, appears to fly in the face of the preamble and R.C.2 zone prioritization of uses which state that agriculture shall be the primary and preferred use due to the ever dwindling amount of farm acreage in Baltimore County.

Of further relevance is the portion of 1A01.2.C. not quoted by the Petitioner in its brief which states that the



zoning board find not only that the use proposed would both support the primary agricultural use in its vicinity but further would not itself be situated on land more appropriately used for primary agricultural uses. The Petitioner's testimony and arguments concerning the amount of land being taken out of productive agricultural use notwithstanding, the Regulation clearly requires the Board to determine that the proposed use will not take land which more appropriately could be used for farm land. This property clearly has been for more than two decades used for farm land and productively so.

Further, the spirit and intent of the R.C. zoning regulations certainly must include a consideration of the rural nature of the neighborhood and its use by animals in the wild, both residential and migratory. With regard to migratory waterfowl, despite the testimony of the Petitioner's witnesses that they could find no evidence of migratory waterfowl passing in or near the site; and their further opinions that the passage of migratory waterfowl would not be significant to them in any event, the testimony of the Protestants' witnesses, primarily the residents who have lived there, many for almost three decades, including Mrs. Patterson, Ms. Dorsey, Mr. Meyer, Mr. Stachelek and others, the property just north of the 84-acre Standiford tract on which the one-plus acre leasehold of the Petitioner is proposed with the tower located within that area, almost directly north of that proposed tower site is the pond on the Patterson property appropriately called "Patterson's Pond", which has

CAREY W. BURCH (Continued)

microwave relay stations, mooring structures, flood control structures, natural gas pipelines, and sewer facilities. Additional work in all phases of environmental assessments on other projects. Assistant Project Manager on an environmental inventory of Northwest Florida while with Florida Resources and Environmental Analysis Center.

Project manager for preparation of environmental guidelines for dike fields for U.S. Army Engineers Waterways Experiment Station. Senior environmental planner for development of management measures to mitigate highway stormwater runoff pollutants for FHWA. Prepared guidelines to mitigate environmental impacts for several development projects and Corps permit assessments.

Assessed socioeconomic impacts of hazardous waste cleanup in Waukegan, Illinois. Extensive work in socioeconomic assessments for various environmental impact assessments and baseline studies under several Corps of Engineers quick-response tasks. Background in urban and regional planning; Master's thesis developed approach to identify areas of major development potential.

PROFESSIONAL AFFILIATIONS:

American Forestry Association
American Planning Association

PUBLICATIONS/PROJECT:

"Environmental/Aesthetic Impact Assessment of a Proprosed Microwave Relay Station." United States Transmission Systems Inc. March 1985.

"Assessing Natural Resource Damages from Hazardous Substances: An Examination of Existing Schemes and Methods." Environmental Law Institute, February 1985.

"Environmental Assessment for Municipal Connection of Sewage Discharge Lines: Naval Supply Center, Cheatham Annex, Williamsburg, VA." U.S. Navy Atlantic Division. December 1984.

"Environmental/Aesthetic Impact Assessment of a Proposed Microwave Relay Station." American Teleservices Inc. November 1984.

Versar

CAREY W. BURCH (Continued)

"Environmental Assessment for Central Avenue Plan Expansion, Navy Public Works Center, Norfolk, VA." U.S. Navy, Atlantic Division, October 1984.

"Asbestos Assessment - Norfolk and Southern Railroad." June 1984.

"Versar Ecosystem Model." Putnam, Hayes, Bartlett. October 1983.

"Environmental Guidelines for Dike Fields." Army Engineers Waterways Experiment Station." September 1983.

"Environmental Assessment of Alexandria Post Office." H. D. Nottingham Associates. August 1983.

"Consolidation and Summary of Public Comments on Proposed Federal Radiation Protection Guidance for Occupational Exposures." EPA No. 68-02-3181, Task 11. May 1983.

"Environmental Assessment of Burke Post Office. Van Desian. March 1983.

"Environmental Assessment Review, USPS, Fort Lincoln Site." USPS No. 700.12. December 1982.

"Environmental Assessment of Waukegan, Illinois Superfund Site (PCBs)." November 1982.

"Danville Main Post Office Asbestos Assessment." USPS. November 1982.

"Risk Assessment for Hauling PCB-Contaminated Hydraulic Fluids." March 1982.

Mississippi River Navigation System: Environmental Evaluations of Proposed Mooring Facilities." (DACW43-80-D-0025) March 1982.

"Virginia Surface Impoundment Assessment for Valley Region." (Agreement 8-25-81) February 1982.

"Fish and Wildlife Cumulative Environmental Impact Study Methodology, Illinois River Flood Control Projects." (DACW43-80-D-0025) October 1981.

"Phase I: Feasibility Study Methodology for Assessing Exposures from Disposal of Toxic Substances." Draft Report (EPA Contract No. 68-01-6271, Task 11) October 1981.

"A Biological Sensitivity Analysis of Fleeting for the Port of Metropolitan St. Louis (St. Louis Harbor Study)." (DACW43-80-D-0025) July 1981.

Versar

CAREY W. BURCH (Continued)

"Kanawha Valley Toxics Integration Study: Source Identification and Emissions Quantification" (EPA Contract No. 68-01-6160, Subcontract No. A10756) June 1981.

"Allegheny River Mile 0 to Mile 14.5 Sections 10 and 404 Regulatory Program Planning and Management Guidelines." (DACW59-79-D-0001) October 1980.

"A Limited Biological Resources Evaluation of 29 Alternative Harbor Sites." DACW43-80-D-0025. 1980.

Environmental Assessment, Proposed Shoal Removal, Washington Channel, Washington, D. C." (DACW31-78-D-0007) 1980.

"Final Environmental Assessment Report on the Relocation of the Equitable Gas Company Owned Skin Creek Compressor Station and Connecting Pipelines." (DACW31-78-D-0007) 1980.

"Evaluation under Section 404(6) of the Clean Water Act for Unit 4 of the James G. Fulton Reach of the Chartiers Creek Flood Protection Project." (DACW59-79-D-0001) 1980.

"Environmental Impact Assessment of Southern Pacific Communications Company's Proposed Bartonsville, Maryland Transmit/Receive Earth Station." Southern Pacific Communications Company, April 1980.

"Guidance Manual for the Classification of Solid Waste Disposal Facilities." EPA Contract No. 68-01-4767. 1980.

"Environmental Assessment - Proposed Increased Lake Michigan Diversion at Chicago." (DACW35-79-C-0036) 1979.

"Environmental Impact Assessment and Section 404(b)(1) Evaluation, Rehabilitation of Emsworth Locks and Dams, Ohio River." (DACW59-79-D-0001) 1979.

"Regular Permit Program: Project Compliance and Adequacy of Environmental Assessments." (DACW31-78-D-0007) 1979.

"Mitigative Measures for Improving Stormwater Quality." (FWS Order No. 51410-0175) 1979.

"Environmental Assessments of General Permit, NABOP-F 6P-2,3,6." (DACW31-78-D-0007). 1979.

"Environmental Inventory of Northwest Florida." Florida Resources and Environmental Analysis Center. 1978.

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Versar

CAREY W. BURCH (Continued)

"Section 404, CWA, General Permit and Environmental Assessment for Kaolin Mining Activities in Georgia." U.S. Army Corps of Engineers. Savannah, Georgia. 1977.

1984 Testified at Town Council hearing regarding microwave health and safety effects for the Portland satellite station and junction, Jacoult, Washington.

1984 Testified at Board of Supervisors hearings regarding microwave health and safety effects for the Carrollton repeater, Isle of Wight County, Virginia.

1983 Provided testimony for zoning hearing regarding microwave emission health effects and interference for MCI Telecommunications terminal facility in Palo Alto, California.

1983 Provided testimony for zoning variance hearing regarding microwave emission health effects for the Clark Lake repeater station, King County, Washington.

1982 Directed preparation of environmental studies for microwave relay and junction stations at North Peak, near Cuyamaca Rancho State Park, and Mount Woodson in San Diego County for MCI Telecommunications. This work involved research into the public health and safety issues associated with radio-frequency and microwave radiation.

1981-1982 Prepared comprehensive literature survey, numerical projections, and a variety of large-scale exhibits and overlays dealing with potential effects of acid rainfall on soils, water bodies, and agricultural lands in San Diego.

1981 Project manager for preparation and processing of environmental studies and a conditional use permit for a satellite receiving station, microwave link, and other telecommunications facilities on Black Mountain in San Diego for Southwestern Cable TV.

1981 Developed computer simulation of runoff values and urban pollutant concentrations for 16 sub-basins draining into Paradise Marsh, National City, California.

1980-1981 Completed analysis of environmental impacts for 500-kV electrical substation for San Diego Gas & Electric Company. Concerns included effects of electric magnetic radiation, aesthetics, public controversy, and geology and soils.

1979-1980 Prepared and managed permit applications, reclamation plan, and environmental impact report for 600-acre sand and gravel surface mine. Involved extraction and processing of 1.5 million cubic yards per year for a period of 30 years.

1979-1980 Prepared environmental assessment and a substantial portion of the planning document for Port Hueneme Construction Battalion Base Master Plan. Issues addressed included soils and foundation stability, groundwater quality, and cultural and biological resources on approximately 1,600 acres.

1978-1979 Analyzed feasibility and developed cost estimates for a program to mitigate impacts of erosion, dust generation, and noise from a proposed off-road-vehicle park in San Diego County.

1976 Developed and implemented technique for rapid quantitative field measurements of orthophosphate concentrations in soils at archaeological sites.

REPORTS AND PUBLICATIONS

Larson, John P.

1984 Regulatory Response to the Proliferation of Telecommunications Structures. Presented at the Association of Environmental Professionals 1984 Annual Conference in Sacramento, California. April.

1984 Aesthetics and Health Impacts of Microwave Repeater Stations. Presented at Bureau of Land Management Desert Advisory Council meetings in Lancaster, California. November.

1978 Santee Off-Road-Vehicle Park Feasibility Study: Mitigating Off-Road-Vehicle Impacts. County of San Diego Integrated Planning Office, San Diego, California.

1971 Nutrient Cycling in Soils after the Laguna Fire. Ecological and Economic Effects of the Laguna Fire, Dr. Paul Zedler (ed.). San Diego State University, San Diego.

MICROFILMED

## QUALIFICATIONS OF DR. RAJENDRA SINGH

**ASSISTANT PROFESSOR**

The City College, New York

August 1983 - Present

Teaching graduate level courses in signal detection theory and mobile communications. Involved in research in areas of spread spectrum and mobile radio communications.

Kansas State University

August 1980 - August 1983

Teaching graduate and undergraduate level courses. Involved in research in the areas of spread spectrum, mobile radio communication systems and computer communications.

**ENGINEERING CONSULTANT**

Blooston and Mordofsky

August 1983 - present

Work involves mobile radio related problems.

**ASSOCIATE PRINCIPAL ENGINEER**

Harris Corporation

May 1980 - August 1980, May 1981 - August 1981

Worked on spread spectrum, satellite communications and traffic theory.

**RESEARCH ASSISTANT**

Southern Methodist University

July 1978 - May 1980

Worked on frequency channel assignment and modulation schemes for mobile radio communications. Also worked on spread spectrum applications to mobile radio communications, packet switching in land mobile radio and computer networks.

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**RESEARCH ASSISTANT**

Southern Methodist University

July 1978 - May 1980

Worked on mobile radio spread spectrum and computer communications.

**RESEARCH ASSISTANT**

Southern Methodist University

September 1977 - June 1978

Modeled and analyzed a turbo compressor system for control purposes.

**TEACHING ASSISTANT**

University of Maine at Orono

September 1976 - June 1977

Taught basic circuits course.

**RESEARCH ASSISTANT**

University of Maine at Orono

September 1975 - June 1976

Worked on growth of ternary compound signal crystals, diffusion and study of electrical properties in ternary compounds, and fabrication of solar cells using ternary compounds.

**RESEARCH ASSISTANT**

University of Maine at Orono

Summer 1975

Assisted in developing a laboratory for crystal growth.

My publications and technical reports include:

[1] Rajendra Singh, "Performance of Direct Sequence Spread Spectrum System with Long Period and Short Period Code Sequences," published in March, 1983 IEEE Transaction on Communication. Also presented at the International Conference on Communication, Denver, Colorado, June, 1981.

[2] Rajendra Singh, Earl Knich and G. Kowalski, "User Capacity of a Demand-Assigned Satellite Communication System With a Hybrid TD/FDMA UPLINK and a TDM Downlink," published IEEE Trans. on Comm., special issue on Digital Satellite Communications, January, 1983. [Also presented at the ICC 1981.]

[3] Rajendra Singh, S.S. Rao and S.C. Gupta, "Analysis of a Mobile Radio Communication System with Two Types of Users and Priority, " Published in IEEE Trans. on Comm., November, 1982. [Also presented at the ICC 1981.]

[4] Rajendra Singh, S.S. Rao and S.C. Gupta, "Routing in Computer Communication Networks: An Approach Based on Sequential Procedures," presented at the International Symposium on Information Theory, Sant Monica, CA 1981.

[5] S.D. Mittleman and Rajendra Singh, "Electrical Properties of Cadmium and Zinc Doped $CuInS_2$," published in the Journal of Solid State Communications, Vol. 22, pp. 659-662, 1977.

[6] Rajendra Singh, A.K. Elhakeem and S.C. Gupta, "Hybrid Diversities in Spread Spectrum Mobile Radio Network Employing Random Access Codes," presented at the ICC 1982 in Philadelphia.

[7] S. Elnoube, R. Singh and S.C. Gupta, "Performance of Frequency Channel Assignment Schemes in Combined Mobile Telephone and Dispatch Systems, " Published in IEEE Trans. on Vehicular Technology, August, 1982. [Also presented at the ICC 1981.]

[8] S. Elnoubi, R. Singh and S.C. Gupta, "A new Channel Assignment Scheme in Land Mobile Radio Communication," presented at the National Telecommunication Conference, Washington, D.C., 1979.

[9] R. Singh and R.E. Nasburg, "A Suboptimal Stochastic Control Scheme with Quadratic Cost and Quantized Measurements," presented at Information Science and Systems Conference, Princeton, NJ, March 1980.

[10] Rajendra Singh, "Channel Assignment Schemes and Traffic Capacities for the Mobile Radio Systems," presented at the Vehicular Technology Society's Annual Conference, Washington, D.C., 1981.

[11] Rajendra Singh, "Some Issues Concerning Traffic Capacities of the Cellular Mobile Radio Communication Systems," published in Teleprotor Magazine, July, 1982.

[12] R.E. Nasburg and R. Singh, "A System Parameter Change Detection Technique," presented at the IEEE's International Symposium on Information Theory, Les Ares, France, June 1982.

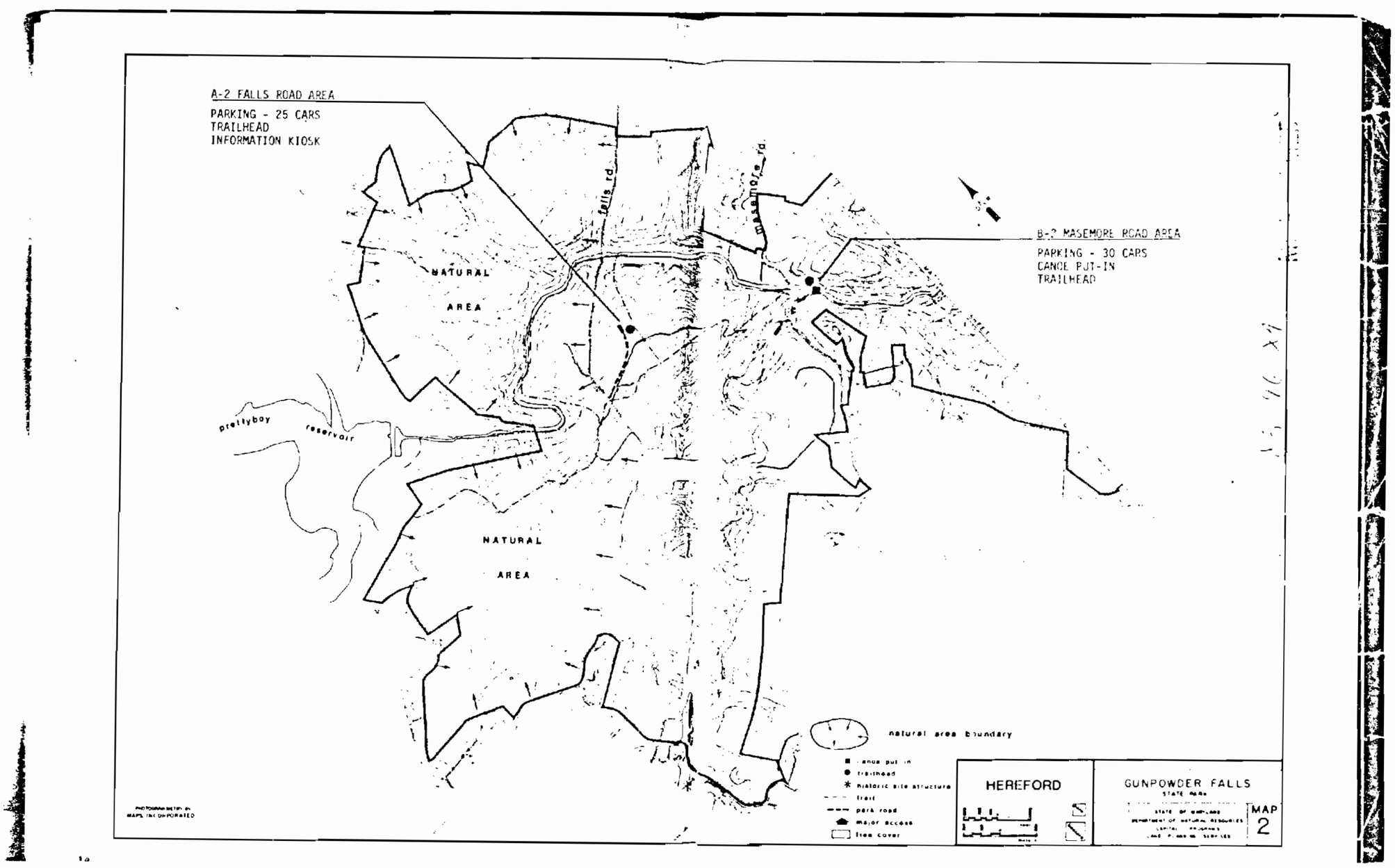
[13] R. Singh, "Analysis of the System Response Times in Multi-User Spread Spectrum Satellite Communication System," presented at MILCOM, Boston MA, October 1982.

[14] R. Singh, "Spectral Efficiency of Mobile Radio Communication Systems," submitted for publication in IEEE's Communication Magazine.

[15] "Spectrum Efficient Schemes for Mobile Radio Communications," Ph.D Dissertation, Department of Electrical Engineering, Southern Methodist University.

[16] "Growth and Electrical Properties of $CuInS_2$ Single Crystals for Photovoltaic Applications," Master's Thesis, Department of Electrical Engineering, University of Maine, Orono.

[17] More than a dozen Technical Reports for the Industry.



abilities to the requests of the Board. I have provided this report to counsel beforehand. I just received this report this morning.
... I would like to offer this into evidence through Dr. Guy's testimony and provide him as a witness today.

Excerpts from the colloquy that ensued between counsel and the Board Chairman are as follows:

MR. FRANZ: Has opposing counsel seen the report?

MR. TANCZYN: We got it about ten minutes before you got here.

MR. BARHIGHT: Which was about a half hour after I got it.

...

MR. BARHIGHT: I would like to call Dr. Guy to the stand.

MR. TANCZYN: We object... Based on the fact that Dr. Guy has never been disclosed either per the February directive of witnesses proposed to be called who were experts, we are going to object. We are certainly taken aback. I don't care if he got the report this morning... If we had been told last week or ten minutes before the hearing that Dr. Guy was going to be called as a witness, we would have had a chance to get somebody here to evaluate his testimony as we did with the other witnesses last week. I don't think it is fair to call him when the rules that were established in February have not been kept by these folks.

MR. FRANZ: I asked some specific questions at our hearing last Thursday, and I am presuming, I have not seen this report myself at all, that those questions have been answered. If that is the case, I am satisfied that Dr. Guy is capable of providing those answers... I recognize that this puts you on short notice, but the issue raised last week and a defense to that issue could have been known or planned for as of that time. If you feel there is any need to review this document in greater length and provide witnesses to rebut it, we will take that into consideration and possibly grant you that opportunity.

...



MR. TANCZYN: My only problem is in proceeding in that way, as you know, Dr. Frye was here last week and he was of great assistance, in my opinion, and I beleive Mr. Zimmerman's, in helping to formulate direct questions to Mr. Larson.

...

MR. FRANZ: ... I want you to understand that this Board does not follow the strict rules of evidence. It is our responsibility to create a record upon which we can make an informed decision. We permit hearsay testimony in certain circumstances. We permit people who might not have a full standing in a legal sense to provide their opinions. We permit individualr to expound on areas that involve expertise sometimes when they may not be otherwise qualified. We are here to gather information, and with that in mind, I am going to permit as much information as possible out on this issue. We are not experts in this field. The Board is not. We want to learn as much as we can to make an informed decision. So we are going to permit this testimony.

MR. TANCZYN: ... Really, all we are really talking about is having a fair and full hearing. Had we known that this fellow was going to be proposed and he was going to make up a report, Dr. Frye could have been made available and would have been made available.

MR. FRANZ: Let me say this. We are going to put the matter to rest. We are going to hear Dr. Guy on the witness stand... I am going to permit the testimony. I would like to get on with it. All of your objections are noted. I understand the basis of your objections. I think they are legitimate objections. The underlying response is we want to have as much information as possible. I am going to permit that. (Tr. Vol. I, p. 36-48).

Dr. Guy was then duly sworn and testified extensively concerning highly technical matters regarding the possibility of adverse health effects of radiation of power densities generated by cellular communications antennae on humans and animals. (Tr. Vol. II, p. 3-28).

At the conclusion of Dr. Guy's direct testimony, Appellants' counsel requested of the Board "that cross be held up until we get Dr. Frye



here". Dr. Frye had earlier been identified as an expert on whom the Appellants had relied for both expert opinion and for technical consultation to assist counsel in cross-examination in this difficult and specialized field of bioengineering.

The Chairman of the Board refused this request with the following comments:

> MR. FRANZ: -- Dr. Frye might be helpful to you. It was also my understand[ing] that he was going to be here today to testify. I know that circumstances arise which sometimes make it difficult for witnesses to be present or your planning may change. I also know that this witness was a surprise. [Referring to Dr. Guy - emphasis added]. But again, it is the basis of his testimony or the results, rather, of his testimony that is helpful to us. (Tr. Vol. II, p. 31).

Appellants were then left with no choice but to attempt to cross-examine Dr. Guy without first having the opportunity to review his report or consult with their expert (Dr. Frye) concerning either the report or Dr. Guy's direct testimony.

Subsequent Motions for Mistrial alleging prejudice as a result of not having had full opportunity to effectively cross-examine Dr. Guy were presented to the Board. At a later hearing (day 4, July 10, 1985) the Board denied the Motion with the followign comments:

> THE CHAIRMAN: ... Before we begin the testimony today, since our last hearing there was a motion by People's Counsel for a mistrial or, in the alternative, for a reconsideration. The Board has had the opportunity to review that motion. There is also a second motion for a mistrial and we have reviewed the answer of the Petitioner as well as the response by the attorneys for the Protestants. I'm going to respond to that at this time... The crux is that at our second hearing date there had been an agreement that in response to questions that the Board had, that they would be responded to by witnesses who had previously testified [emphasis added] on behalf of the Petitioners and that,



in fact, when the third hearing date came, a different witness, Dr. Guy, came and answered those questions as well as others that were posed by the Petitioner's counsel. The People's Counsel's expert, Dr. Alan Frey, was not available, apparently, on the day of the third hearing ... and, at that time, People's Counsel requested that either Dr. Guy be available for cross-examination at a time when their expert would be able to assist them in preparation for the cross-examination or that Dr. Guy's testimony be stricken because notice was not sufficiently provided to enable them to properly prepare for cross-examination. Our position at that time, and our position today, is the same. We believe that the presentation of any witness in this matter is beneficial to the Board and we are not persuaded that the absence of an expert to assist counsel in cross-examination is prejudicial to their presentation of their case, the strong points of their case, or the merits of the Petitioner's case in this instance. There's been a sufficient amount of time since the last hearing to obtain a copy of the transcript of Dr. Guy's testimony and have an expert review it for its sufficiency and to rebut that testimony. The only area that might be questionable is the opportunity that may have been lost to cross-examine Dr. Frey [Dr. Guy]. The Board recognizes the significance of such cross-examination and the expression that People's Counsel has made that it is critical to proper presentation, to give a full presentation of their case. Nevertheless, People's Counsel and counsel for Protestants did have an opportunity to cross-examine him at that time... the mere fact that Dr. Frey was not present does not persuade us that his testimony should be stricken or that a new hearing should be held. Any assistance that People's Counsel needed in preparation of their case was not denied to them other than possibly a conflict in scheduling that their expert may have had, and we are not satisfied that the prejudice, if there is any, is sufficient enough to warrant a mistrial or require Dr. guy to make himself available for further cross-examinations. So the motion will be denied in both respects. (Tr. 7/10/85, p. 2-5)

THE RIGHT TO CROSS-EXAMINE

A consideration of the impact of all of the aforegoing on the Appellants' right to procedural due process must begin with an examination of the Board's own Rule of Procedure under which this whole



matter was being considered. That rule provides:

> g. The direct testimony of all 'expert' witnesses shall be submitted in writing, accompanied by copies of all exhibits to which reference is therein made, unless such are of a voluminous nature or within the files of, or readily available to, the Board of Appeals, in which case adequate reference shall be made thereto. All of which shall be submitted to the Board at least fifteen (15) days prior to the first scheduled hearing date, and copies thereof shall be served upon all attorneys of record (or parties of record if not represented by counsel) at the same time. Said "expert" witness shall be personally present at the oral hearing for affirmation of the written statement and exhibits previously submitted and for cross-examination. This rule shall apply to all "expert " witnesses; i.e., whether witnesses for the Petitioners, the Protestants, the People's Counsel, or any other parties of record. No exception shall be granted except in extraordinary circumstances and for a reason satisfactory to the Board, given by the Party requesting such exception, indicating that the circumstances requiring the exception are of an unusual and extraordinary nature. BALTIMORE COUNTY CODE, 1978, Appendix C, Rule 7 g.

Couched in terms of the mandatory "shall", the rule was first violated by the allowance of Dr. Guy's testimony and the acceptance of his written report on the third day of the hearing, without the required 15 day notice and, contemporaneously with such notice, service on the adverse party of "copies of all exhibits to which reference therein is made". The rule was further violated when the Appellants were denied the right to an informed cross-examination of Dr. Guy. It should be noted that this Court adds the word "informed" in the preceding statement. That adjective is not part of the Board's rule, but case law makes it clear that the right to cross-examine witnesses has been interpreted to mean a right of reasonable cross-examination. For example, Tron v. Prince George's County, No. 317 Sept., 1986, filed November 10, 1986 held:



On one hand, we have the well-established rule of administrative law that:

> [H]earsay evidence is admissible before an administrative body in contested cases and, indeed, if credible and of sufficient probative force, may be the sole basis for the decision of the administrative body.

Redding v. Board of County Commissioners for Prince George's County 263 Md. 94, 110-11 (1971), cert. denied, 406 U.S. 923, 92 S.Ct. 1791, 32 L.Ed.2d 124 (1972). On the other hand, the Court of Appeals has firmly established that:

> [W]hen an administrative board or agency is required to hold a public hearing and to decide disputed adjudicative facts based upon evidence produced and a record made, that a reasonable right of cross-examination must be allowed the parties.

Hyson v. Montgomery County, 242 Md. 55, 67 (1966) (emphasis supplied). See also Rogers v. Radio Shack, 271 Md. 216, 219 (1974); Town of Somerset v. Board, 245 Md. 52, 65 (1966); Dembeck v. Shipbuilding Corp., 166 Md. 21, 27 (1934); American Radio-Tel. Serv. v. Pub. Serv. Comm'n, 33 Md.App. 423, 435 (1976).

The language quoted above from Hyson, supra, relied upon heavily by the Court in Tron, supra, goes on to say:

> Professor Davis, op. cit., §7.05, states the proposition in this manner: "When the adjudicative facts are in dispute, our legal tradition is that the party affected is entitled not only to rebut or explain the evidence against him but also to 'confront his accusers' and to cross-examine them". We have no intention of attempting to promulgate a comprehensive rule respecting the type or the amount of cross-examination that the Council must provide at hearings on applications for reclassification. The rationale of the cases and authorities is that reasonable cross-examination, which is required for a full and true disclosure of the facts, having due regard to the circumstances of each particular case, the nature of the proceedings, and the character of the rights which may be affected by it must be permitted; and that is as far as we are required to go at this time. (emphasis supplied).



Given the complexities of the issues under consideration by the Board, i.e., the potential for adverse health effects from radio-frequency transmissions on the surrounding population and the environmental impact of the transmission towers on the surrounding agricultural land, this Court equates the "reasonable right of cross-examination" commanded by the requirement of procedural due process in administrative hearings to include an opportunity to evaluate the expert testimony of Dr. Guy, before Appellants be required to cross-examine. Clearly, the Board's own Rule 7 g contemplates such an opportunity by its requirement of 15 days notice. Even if the Board chose to waive that notice, it could only do so in extraordinary circumstances and for a reason satisfactory to the Board, in accordance with the provisions of the rule itself.

As Judge Bishop pointed out in Tron, supra, as in the case sub judice, although Maryland's Administrative Procedure Act does not apply to this proceeding, its terms are persuasive in adjudicating this matter. In contested cases within the ambit of that Act, each party must be given the right to cross-examine the opposing party's witnesses. MARYLAND STATE GOVERNMENT CODE, §10-208(e)(3). This fact coup'ed with the mandate of Hyson, supra, clearly demonstrates that the right to cross-examine witnesses is a requirement of administrative adjudicatory hearings.

Unlike Tron, supra, and Hyson, supra, cross-examination was permitted herein, but counsel's request to delay cross-examination "until we get Dr. Frye here" was refused. Were this a case heard under the Maryland Rules of Procedure, where after discovery, an undisclosed expert witness is offered at trial, he should not be allowed to testify, Hadid v. Alexander, 55 Md. App. 344, at 351, 462 A.2d 1216 (1982).



An alternative sanction would be to allow a continuance to permit the opposing party to depose the expert or otherwise prepare for proper cross-examination. c.f. Montgomery Ward v. McFarland, 21 Md. App. 501 (1974). None of those procedures were offered by the Board. Recognizing the non-disclosure and resulting "surprise", the Board Chairman summarily dismissed the Appellants' objections and ordered them to proceed with cross-exmaination. (Tr., Vol. II, p. 31).

As was pointed out in argument before the Board on Appellants' Motions for Mistrial, rebuttal testimony could not have cured the defect complained of.

> MR. ZIMMERMAN: ... this question of radio frequency radiation health effects is the subject of considerble uncertainty and cross-examination is particularly important in demonstrating the lack of qualifications and basis for an expert witness. Upon reviewing the matter with our expert later after May 14, I became more convinced that we lost the opportunity to totally destroy the credibility of the main expert witness for the Petitioner who was brought in at the last minute ... we ... had lost our opportunity to demonstrate unequivocably to the Board that Dr. Guy had no basis to give any logical opinion which is something that we think could be inferred from his background... we could not demonstrate that without being able to ask the type questions where we needed some intense biological testimony and preparation for that. It's not the type of testimony or the type of questioning one can spin off off the top of one's head. (Tr. 7/10/85, p. 6 & 7).

Given the complexities of the issue before the Board, the particular and unique character of the subject matter of the expert testimony, and the character of the rights which may be affected by the proceeding, this Court holds that permitting the surprise witness to testify to facts which were ultimately dispositive of

the issue, in violation of its own rule, and without giving the opponents an opportunity to prepare for reasonable cross-examination, amounts to a denial of administrative due process.

Accordingly, this case is remanded to the Board for further proceedings consistent herewith, and it is so ORDERED, this 13th day of January, 1987.

Leonard D. Jackson

LEONARD S. JACOBSON, JUDGE

COPIES SENT TO:

Peter Max Zimmerman, Esquire
Michael P. Tanczyn, Esquire
Stephen J. Nolan, Esquire
County Board of Appeals

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Case # 85-96-XA

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| PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al | : | IN THE |
| | : | CIRCUIT COURT |
| Appellants | : | FOR BALTIMORE COUNTY |
| Vs. | : | CASE NO. 86 CG 1981 |
| GRACE L. STANDIFORD, et al | : | Docket 27 |
| Appellees | : | Page 121 |

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MEMORANDUM OPINION AND ORDER

This case presents an appeal by the Office of the People's Counsel for Baltimore County and four protesting property owners (Appellants) from an Opinion and Order of the Board of Appeals of Baltimore County (Board), dated April 22, 1986. By the terms of its Order, the Board granted the Appellees herein a Special Exception to permit a wireless transmitting and receiving facility in an RC-2 zone, subject to certain conditions which were enumerated by the Board. The Board's April 22, 1986 Opinion and Order was issued following five separate hearing days during the period May 2, 1985 through July 31, 1985.

The matter came before the Board as the result of the Appellants' initial appeal of an Order of the Deputy Zoning Commissioner of Baltimore County dated Janaury 4, 1985 in case number 85-96XA, which zoning order granted the requested Special Exception subject to certain restrictions.

The appeal of the Board's Order, essentially affirming the decision of the Deputy Zoning Commissioner, raises three separate issues, namely:

1. Is the decision of the Board clearly erroneous or is it supported by substantial evidence on the record taken as a whole?

2. Were the Board's administrative hearings conducted in accordance with constitutional, statutory and procedural requirements?

3. Was the Order of the Board rendered in such a manner as to fully comply with the applicable rules of practice and procedure which govern decisions of the Board?

Because this Court will reverse the decision of the Board and remand the case to the Board for further proceedings consistent herewith based upon the second of the three issues raised here, this Court sees no need to set forth in great detail the complex factual testimony before the Board. Nor is there a need to address issues number one and three. It shall be sufficient for the purposes of this opinion to state that the Board had before it a proposal for a special exception to the Baltimore County Zoning Regulations to permit the erection of microwave radio towers in an RC-2 zone. The Appellants, protestants below, raised questions before the Deputy Zoning Commissioner and the Board concerning the effect of microwave radio transmissions on the health of the residents of the area and other issues which are best characterized as environmental in nature.

Specifically, the second question presented by the Appellants' argument is whether their due process rights to a full and fair hearing were violated due to the Board's receipt of testimony and other evidence from Dr. Arthur W. Guy, who was produced by the Appellees on the third day, May 14, 1985, of five hearing days in direct response to the Board's directive on the second hearing day that "someone" testify on the characteristics of the power densities emitted at the base of the subject tower.



Appellants contend that the Board acted unlawfully in permitting Dr. Guy, an expert in electrical engineering, bioengineering and bioelectromagnetics, to testify over their objections in view of the fact that he was not listed and disclosed by Appellees as part of the pre-hearing directive passed by the Board on February 21, 1985, pursuant to the Board's procedural rule, Rule 7(g). That directive required the disclosure by both sides of the names of their experts with a text of their direct testimony to be supplied sufficiently before the hearing so that each side would have an opportunity to review and evaluate the complex scientific issues presented by the proposed project. The Appellees were required to submit their list of experts by March 22, 1985 and the Appellants by April 22, 1985.

On March 22, 1985, Appellees' counsel wrote to the Board listing their experts and summarizing those experts' testimony, attaching curricula vitae for each named individual. In addition, counsel requested "the opportunity to provide additional expert testimony as may become relevant".

Following an exchange of other correspondence concerning experts between counsel for the parties and the Board, the Board ordered compliance with its directive to identify experts. Dr. Arthur William Guy, the expert witness around whom this controversy swirls, was not named on the list of either side. It was only on the third day of the hearing that counsel for Appellees announced to the Board:

> MR. BARHIGHT: Mr. Chairman, last week on Thursday at the hearing, we requested certain additional information from Cellular One. ... Cellular One was able to engage the services of one Dr. Guy to respond to the best of his



abilities to the requests of the Board. I have provided this report to counsel beforehand. I just received this report this morning. ... I would like to offer this into evidence through Dr. Guy's testimony and provide him as a witness today.

Excerpts from the colloquy that ensued between counsel and the Board Chairman are as follows:

> MR. FRANZ: Has opposing counsel seen the report?
>
> MR. TANCZYN: We got it about ten minutes before you got here.
>
> MR. BARHIGHT: Which was about a half hour after I got it.
>
> ...
>
> MR. BARHIGHT: I would like to call Dr. Guy to the stand.
>
> MR. TANCZYN: We object... Based on the fact that Dr. Guy has never been disclosed either per the February directive of witnesses proposed to be called who were experts, we are going to object. We are certainly taken aback. I don't care if he got the report this morning... If we had been told last week or ten minutes before the hearing that Dr. Guy was going to be called as a witness, we would have had a chance to get somebody here to evaluate his testimony as we did with the other witnesses last week. I don't think it is fair to call him when the rules that were established in February have not been kept by these folks.
>
> MR. FRANZ: I asked some specific questions at our hearing last Thursday, and I am presuming, I have not seen this report myself at all, that those questions have been answered. If that is the case, I am satisfied that Dr. Guy is capable of providing those answers... I recognize that this puts you on short notice, but the issue raised last week and a defense to that issue could have been known or planned for as of that time. If you feel there is any need to review this document in greater length and provide witnesses to rebut it, we will take that into consideration and possibly grant you that opportunity.
>
> ...



> MR. TANCZYN: My only problem is in proceeding in that way, as you know, Dr. Frye was here last week and he was of great assistance, in my opinion, and I beleive Mr. Zimmerman's, in helping to formulate direct questions to Mr. Larson.
>
> ...
>
> MR. FRANZ: ... I want you to understand that this Board does not follow the strict rules of evidence. It is our responsibility to create a record upon which we can make an informed decision. We permit hearsay testimony in certain circumstances. We permit people who might not have a full standing in a legal sense to provide their opinions. We permit individuals to expound on areas that involve expertise sometimes when they may not be otherwise qualified. We are here to gather information, and with that in mind, I am going to permit as much information as possible out on this issue. We are not experts in this field. The Board is not. We want to learn as much as we can to make an informed decision. So we are going to permit this testimony.
>
> MR. TANCZYN: ... Really, all we are really talking about is having a fair and full hearing. Had we known that this fellow was going to be proposed and he was going to make up a report, Dr. Frye could have been made available and would have been made available.
>
> MR. FRANZ: Let me say this. We are going to put the matter to rest. We are going to hear Dr. Guy on the witness stand... I am going to permit the testimony. I would like to get on with it. All of your objections are noted. I understand the basis of your objections. I think they are legitimate objections. The underlying response is we want to have as much information as possible. I am going to permit that. (Tr. Vol. I, p. 36-48).

Dr. Guy was then duly sworn and testified extensively concerning highly technical matters regarding the possibility of adverse health effects of radiation of power densities generated by cellular communications antennae on humans and animals. (Tr. Vol. II, p. 3-28). At the conclusion of Dr. Guy's direct testimony, Appellants' counsel requested of the Board "that cross be held up until we get Dr. Frye



here". Dr. Frye had earlier been identified as an expert on whom the Appellants had relied for both expert opinion and for technical consultation to assist counsel in cross-examination in this difficult and specialized field of bioengineering.

The Chairman of the Board refused this request with the following comments:

> MR. FRANZ: -- Dr. Frye might be helpful to you. It was also my understand[ing] that he was going to be here today to testify. I know that circumstances arise which sometimes make it difficult for witnesses to be present or your planning may change. I also know that this witness was a surprise. [Referring to Dr. Guy - emphasis added]. But again, it is the basis of his testimony or the results, rather, of his testimony that is helpful to us. (Tr. Vol. II, p. 31).

Appellants were then left with no choice but to attempt to cross-examine Dr. Guy without first having the opportunity to review his report or consult with their expert (Dr. Frye) concerning either the report or Dr. Guy's direct testimony.

Subsequent Motions for Mistrial alleging prejudice as a result of not having had full opportunity to effectively cross-examine Dr. Guy were presented to the Board. At a later hearing (day 4, July 10, 1985) the Board denied the Motion with the followign comments:

> THE CHAIRMAN: ... Before we begin the testimony today, since our last hearing there was a motion by People's Counsel for a mistrial or, in the alternative, for a reconsideration. The Board has had the opportunity to review that motion. There is also a second motion for a mistrial and we have reviewed the answer of the Petitioner as well as the response by the attorneys for the Protestants. I'm going to respond to that at this time... The crux is that at our second hearing date there had been an agreement that in response to questions that the Board had, that they would be responded to by witnesses who had previously testified [emphasis added] on behalf of the Petitioners and that,



> in fact, when the third hearing date came, a different witness, Dr. Guy, came and answered those questions as well as others that were posed by the Petitioner's counsel. The People's Counsel's expert, Dr. Alan Frey, was not available, apparently, on the day of the third hearing ... and, at that time, People's Counsel requested that either Dr. Guy be available for cross-examination at a time when their expert would be able to assist them in preparation for the cross-examination or that Dr. Guy's testimony be stricken because notice was not sufficiently provided to enable them to properly prepare for cross-examination. Our position at that time, and our position today, is the same. We believe that the presentation of any witness in this matter is beneficial to the Board and we are not persuaded that the absence of an expert to assist counsel in cross-examination is prejudicial to their presentation of their case, the strong points of their case, or the merits of the Petitioner's case in this instance. There's been a sufficient amount of time since the last hearing to obtain a copy of the transcript of Dr. Guy's testimony and have an expert review it for its sufficiency and to rebut that testimony. The only area that might be questionable is the opportunity that may have been lost to cross-examine Dr. Frey [Dr. Guy]. The Board recognizes the significance of such cross-examination and the expression that People's Counsel has made that it is critical to proper presentation, to give a full presentation of their case. Nevertheless, People's Counsel and counsel for Protestants did have an opportunity to cross-examine him at that time... the mere fact that Dr. Frey was not present does not persuade us that his testimony should be stricken or that a new hearing should be held. Any assistance that People's Counsel needed in preparation of their case was not denied to them other than possibly a conflict in scheduling that their expert may have had, and we are not satisfied that the prejudice, if there is any, is sufficient enough to warrant a mistrial or require Dr. guy to make himself available for further cross-examinations. So the motion will be denied in both respects. (Tr. 7/10/85, p. 2-5)

THE RIGHT TO CROSS-EXAMINE

A consideration of the impact of all of the aforesaid on the Appellants' right to procedural due process must begin with an examination of the Board's own Rule of Procedure under which this whole

matter was being considered. That rule provides:

> g. The direct testimony of all 'expert' witnesses shall be submitted in writing, accompanied by copies of all exhibits to which reference is therein made, unless such are of a voluminous nature or within the files of, or readily available to, the Board of Appeals, in which case adequate reference shall be made thereto. All of which shall be submitted to the Board at least fifteen (15) days prior to the first scheduled hearing date, and copies thereof shall be served upon all attorneys of record (or parties of record if not represented by counsel) at the same time. Said "expert" witness shall be personally present at the oral hearing for affirmation of the written statement and exhibits previously submitted and for cross-examination. This rule shall apply to all "expert " witnesses; i.e., whether witnesses for the Petitioners, the Protestants, the People's Counsel, or any other parties of record. No exception shall be granted except in extraordinary circumstances and for a reason satisfactory to the Board, given by the Party requesting such exception, indicating that the circumstances requiring the exception are of an unusual and extraordinary nature. BALTIMORE COUNTY CODE, 1978, Appendix C, Rule 7 g.

Couched in terms of the mandatory "shall", the rule was first violated by the allowance of Dr. Guy's testimony and the acceptance of his written report on the third day of the hearing, without the required 15 day notice and, contemporaneously with such notice, service on the adverse party of "copies of all exhibits to which reference therein is made". The rule was further violated when the Appellants were denied the right to an informed cross-examination of Dr. Guy. It should be noted that this Court adds the word "informed" in the preceding statement. That adjective is not part of the Board's rule, but case law makes it clear that the right to cross-examine witnesses has been interpreted to mean a right of reasonable cross-examination. For example, Tron v. Prince George's County, No. 317 Sept., 1986, filed November 10, 1986 held:



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Given the complexities of the issues under consideration by the Board, i.e., the potential for adverse health effects from radio-frequency transmissions on the surrounding population and the environmental impact of the transmission towers on the surrounding agricultural land, this Court equates the "reasonable right of cross-examination" commanded by the requirement of procedural due process in administrative hearings to include an opportunity to evaluate the expert testimony of Dr. Guy, before Appellants be required to cross-examine. Clearly, the Board's own Rule 7 g contemplates such an opportunity by its requirement of 15 days notice. Even if the Board chose to waive that notice, it could only do so in extraordinary circumstances and for a reason satisfactory to the Board, in accordance with the provisions of the rule itself.

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Given the complexities of the issue before the Board, the particular and unique character of the subject matter of the expert testimony, and the character of the rights which may be affected by the proceeding, this Court holds that permitting the surprise witness to testify to facts which were ultimately dispositive of



the issue, in violation of its own rule, and without giving the opponents an opportunity to prepare for reasonable cross-examination, amounts to a denial of administrative due process.

Accordingly, this case is remanded to the Board for further proceedings consistent herewith, and it is so ORDERED, this 13th day of January, 1987.

Leonard S. Jaccbson
LEONARD S. JACCBSON, JUDGE

COPIES SENT TO:

Peter Max Zimmerman, Esquire
Michael P. Tanczyn, Esquire
Stephen J. Nolan, Esquire
County Board of Appeals



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| IN RE | * | IN THE |
| THE PETITION OF | * | CIRCUIT COURT |
| GRACE L. STANDIFORD | * | FOR |
| Case No.: 85-96-XA | * | BALTIMORE COUNTY |
| | * | Case No.: 27/121/86-CG-1981 |

* * * * * * * *** * * * * * *

APPELLEES' ANSWER TO PETITION
TO ACCOMPANY ORDER FOR APPEAL

GRACE L. STANDIFORD and AMERICAN TELESERVICES, INC., on behalf of the Washington/Baltimore Cellular Telephone Company (t/a Cellular One), Appellees herein, and Petitioners below, by Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered, their attorneys, file this answer, pursuant to Md. Rule B9, in reply to the Appellants' Petition to Accompany Order for Appeal filed hereinbefore and they respectfully represent as follows:

1. Appellees herein admit the allegations contained in Paragraph No. 1 of the Petition to Accompany Order for Appeal.

2. Appellees deny the allegations contained in Paragraphs 2(A) through 2(G) of the aforesaid Petition.

3. Further answering the Appellants' Petition on appeal, Appellees state that the Opinion and Order of the County Board of Appeals of Baltimore County (the "Board") dated April 22, 1986 are not arbitrary, capricious or unlawful but are supported by substantial evidence and in full accordance with law. Appellees further state that the Board committed no prejudicial errors whatsoever in its conduct of the hearings or in rendering its decision and order.

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

WHEREFORE, your Appellees pray that the Opinion and Order of the County Board of Appeals of Baltimore County dated April 22, 1986 and granting the underlying Special Exception be AFFIRMED, and that costs of these proceedings be assessed against the Appellants.

Stephen J. Nolan
STEPHEN J. NOLAN

Nolan, Plumhoff & Williams
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
204 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-7800

Attorneys for Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 1986, a copy of the foregoing Appellees' Answer to Petition to Accompany Order for Appeal was mailed, postage prepaid to: Phillis Cole Friedman, People's Counsel, Old Court House, 2nd Floor, Towson, Maryland 21204, Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204 and Edith Eisenhart, Administrative Secretary to the County Board of Appeals, Old Court House, 2nd Floor, Towson, Maryland 21204.

Stephen J. Nolan
STEPHEN J. NOLAN

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| IN THE MATTER OF<br>GRACE L. STANDIFORD<br>W/S MASEMORE ROAD, 2350'<br>NORTHWEST OF MT. CARMEL ROAD<br>7th DISTRICT | : | BEFORE<br>COUNTY BOARD OF APPEALS<br>OF |
| RE: SPECIAL EXCEPTION FOR A WIRELESS TRANSMITTING AND RECEIVING FACILITY IN AN RC-2 ZONE | : | BALTIMORE COUNTY<br>No. 85-96-XA |

: : : : : : : : : : : : :

OPINION

This matter comes before the Board on a request for a Special Exception to permit a wireless transmission and receiving tower in an RC-2 zoned property. The testimony before this Board was as comprehensive and detailed on the issues raised as we have ever seen. In all, we received testimony from nineteen (19) witnesses, many of whom were expert witnesses, and received into evidence scores of exhibits. This hearing took five days to complete. The Board was extremely impressed by the quality of content presented by all sides in this matter.

The decision in this case has been a most difficult one for the Board. We are presented with a proposal for a large, aesthetically unpleasant and potentially dangerous structure and use that is proposed to be placed in a most rural agricultural area of our county and in close proximity to one of its richest natural resources, the Gunpowder State Park. Present day technology has provided the ability to create a remote, wireless telephone network and the general population has welcomed this product in such great numbers that its place as a utility is firmly established and will become only more entrenched as this industry expands from its infancy. The juxtaposition of these compelling yet competing interests is at the heart of this controversy.

After very lengthy debate and reflection over the issues, this Board finds that the Special Exception requested should be granted. We are guided, of course, by Baltimore County Zoning Regulation Section 502.1 and

Section 1A01.2.C. We must further apply the often quoted standard of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), which has been cited by all parties as favoring their positions. The analysis of these requirements will be addressed in detail below. Initially though an understanding of the factual standing of this request is in order.

Petitioners propose to construct a 200 foot high wireless transmitting and receiving tower and adjacent accessory building approximately 12 feet by 26 feet to contain electronic and maintenance equipment. The tower as proposed is a three (3) sided structure of 24.57 feet per side at its base and approximately 4 feet per side at the top. The property on which the facility is to be located is zoned RC 2 and is situated within the confines of a working agricultural field that is presently planted in field corn. The primary use of the neighborhood surrounding this site is agricultural. There are, however, a number of residences in the general vicinity, some of which qualify as a residential subdivision but many of which are homes situated on farmland that is actually being use for farming purposes. The site is located within one-half mile of the Hereford Section of the Gunpowder State Park.

Petitioners' tenant has received a license from the Federal Communications Commission to provide cellular phone service in Maryland under the trade name of Cellular I, ("Cellular"). As part of the FCC mandate, Cellular must provide service to all Maryland highways. In order to accomplish this, it is necessary that Cellular maintain numerous transmission and receiving facilities across a geographical grid of Maryland and other States. The proposed tower is one cell of the entire grid, which when combined as a network will provide a blanket of reception and transmission for users of the telephone utility.



Testimony before the Board indicated that the subject facility was the last cell to be approved in the network that would service the entire Maryland region. As a result of this condition and the relative geographical coverage areas of the existing or approved Cells, the location of this last facility was extremely limited. When compounding this requirement with the topographical conditions necessary for location of such a facility, it was testified that the subject site is the only viable location for this tower.

Before the granting of a Special Exception, this Board must conclude that the conditions stated in Section 502.1 of the Baltimore County Zoning Regulations have been met. Section 502.1 states:

> 502.1 - Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> a. Be detrimental to the health, safety, or general welfare of the locality involved;
> b. Tend to create congestion in roads, streets or alleys therein;
> c. Create a potential hazard from fire, panic or other dangers;
> d. Tend to overcrowd land and cause undue concentration of population;
> e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
> f. Interfere with adequate light and air;
> g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
> h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The Protestants and People's Counsel contend that the use as proposed would create a potential hazard from fire, panic or other dangers (502.1.c), would interfere with adequate provision for parks or other public conveniences or improvements (502.1.e), be inconsistent with the purposes of the RC-2 zoning classification and be detrimental to the primary agricultural uses in the



vicinity (502.1.g)and 1AC1.2.c), and be detrimental to the health, safety or general welfare of the locality primarily as a result of potential adverse health effects from radio frequency transmissions (502.1.a). Each of these points will be addressed.

FIRE HAZARD

Testimony of the long time residents of the area demonstrated that this location is not served by public water and that fire protection service comes from the Hereford Volunteer Fire Department located several miles from the property. The fear is that there exists the possibility that lightning could reflect from one of the uprights of the tower onto adjacent land and cause a fire. The land adjacent to this property is farmed in field corn which is permitted to stand and becomes very dry. Testimony showed that a field fire occurred in a neighbor's property which caused considerable damage within the past few years. Further, it was argued that the stream from which water could be drawn was re-rooted following Tropical Storm David and may not be available for this site, should there be a fire at this location.

Upon the testimony presented, the Board is of the opinion that the potential hazard from fire is not inordinate. The possibilities alluded to were not sufficient for the Baltimore County Fire Department to provide an adverse or negative comment on this project. The testimony of Donald J. Neubauer, a Petitioner's Engineering expert, satisfied the Board as to the minimal risk from lightning causing fire around this tower.

AIRPLANE AND HELICOPTER DANGER

Protestants provided John Raffensberger, an experienced pilot, who described the potential dangers to pilots that would exist with a 200 foot tower on the site. The Board is nevertheless satisfied that AT&T pilots



serving the high tension electrical lines near the site, crop dusters and hot air ballonists should be capable of avoiding this tower. We are satisfied that very little or no such flights would take place on those occasions as there is heavy fog in the area as was described by the Protestants. The tower is an obvious structure that can be avoided by anyone flying in the area. Its existence will be a known commodity and we are satisfied that it will be avoided. It may be noted that the Federal Aviation Administration has approved the size and location of this tower as satisfying their requirements for air traffic safety. It should be further noted that in view of the height and other conditions of the tower, the FAA do not find it necessary to require the tower to be painted or lighted.

EFFECT ON PARKS

The proposed site is within one-half mile of the Hereford Section of the Gunpowder State Park. Testimony from Tolly Peuleché, a State Planner responsible for drafting the Gunpowder State Park plan, indicated that the tower would be visible and obtrusive from specific sites in the park. There is simply no escaping the fact that for a transmission tower to be effective, it must stand well above the topographical outline of an area. It was clear by the testimony that this obstruction would be one of a number of obstructions visible from the park in those few locations where it would be visible at all. The existence of the high tension electrical lines which cut a huge path in the natural terrain so as to permit large connecting structures along the breadth of the park at this location, and other visual attractions that flow from the existence of residential development in this area are additional significant obstructions.



The existence of this additional obstruction from the park perspective is not overwhelming. Once into the park, of course, a visitor loses sight of this tower. There is no dispute that this tower will be seen from numerous vantage points around the site location. Such a condition is inherent wherever a tower of this nature would be placed in a primarily agricultural region. The Board believes however that the location of this tower is not aesthetically any worse than if it were located elsewhere in an RC-2 zone.

EFFECT ON THE AGRICULTURAL USE OF LAND

It is without dispute that the purpose of the RC-2 zoning classification is to foster conditions favorable to a continued agricultural use of productive agricultural areas of Baltimore County by preventing incapatable forms and degrees of urban uses. The County Council has however, permitted the use as requested in this petition by special exception and therefore is presumed to appreciate the potential consequences of placing a transmission and receiving tower on agricultural property.

Section 1A01.2.C requires us to determine that the tower requested would not be detrimental to the primary agricultural uses in the vicinity. The site requires approximately one acre to support the use requested. The Board is satisfied that such an intrusion is diminimus in view of the vast acreage of productive farm land in this neighborhood. We are also satisfied that the use suggested here should not restrict the farming quality of lands in this vicinity in any significant way. Aside from its visual impact, we do not believe that construction of the requested tower would be detrimental to the primary agricultural uses in this area. With respect to the potential adverse effect on residential and migratory wildlife, the Board heard a great deal of speculation but no definitive expertise on the subject. The Board does not



have independent expertise on the subject, however we would note that this object should certainly be visible to wildlife and should pose no greater danger than other tall objects such as trees or buildings.

HEALTH EFFECTS FROM RADIO FREQUENCY TRANSMISSIONS

The issue of radiofrequency emissions was vigorously argued by all sides in this matter. It is in the Board's opinion a critical issue which if not overcome by the Petitioners would require us to deny this or any other petition for the use requested. The Board received a tremendous amount of highly expert evidence on the potential adverse effects that transmission and reception from this facility will have on the immediate and surrounding geography. In particular, the Board refers to the comprehensive testimony of Dr. Arthur W. Guy, who is noted internationally for his expertise on the biological effects of radiofrequency energy. Dr. Guy based his conclusions upon reasonable and appropriate variables that coincide with those conditions as they would exist with the proposed use. It is his conclusion that the highest power density emitted from this tower will be 68 times less than the most stringent standard recognized in the United States and more than three times less than the most conservative standard in the World, the U.S.S.R. standard. He further states that there is no literature showing adverse effects on humans at power levels indicated by this request. He states with "perfect confidence" that power levels at this tower are safe. Additional testimony from other witnesses supported the opinions of Dr. Guy that the emissions from this facility will be well below all advisory standards that exist in the World.

The Board was surprised with the relatively small amount of literature published internationally on this subject. In view of the pervasive use of such radiofrequency transmissions, we would have expected much greater



research. It was also obvious to the Board that the international community of experts in this field maintain vastly different opinions as to which levels of intensity of these emissions are safe. Though we believe that the amount of literature in this field is small, we are satisfied that the present knowledge is authoritative and dependable. We nevertheless believe that continuing measures to insure the relatively low emissions must be taken and we will so Order below.

EFFECTS OF PARTICULAR LOCATION PROPOSED

The Board greatly sympathizes with the plight of the Protestants in this case. The proposed tower will certainly be visibly obtrusive to the residents and visitors of this neighborhood. Upon agreement of all counsel, the Board had the opportunity to visit this site after the tower was erected pursuant to the contingency stated in the Deputy Zoning Commissioner's Order and it was clear to us that this tower presented a visual break against the natural terrain. The Protestants provided this Board with vigorous and diverse arguments as to the conditions of this locale which they claimed to be unique that caused detriment to the health, safety or general welfare of their neighborhood. Though this opinion has refuted that the impact of any of these concerns is substantial, we do recognize that the erection of this tower and the use of radiofrequency transmissions and receptions will certainly have some effect on the neighboring environment.

The Baltimore County Council has seen fit to permit the erection of wireless transmitting or receiving facilities as a principle use by special exception in an RC-2 zone. Though such a use may appear inconsistent with the primary purposes of the RC-2 classification, we are required, pursuant to Schultz v. Pritts, to accept adverse effects inherently associated with such a use thoughout this zone if we hold that the standard for approving a special exception under Section 502.1 has been met. We believe that standard has been met. We further believe that the facts and circumstances



of the particular location proposed would not have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. The concerns of radiofrequency emissions, aesthetic considerations, fire hazards, etc., are no greater here than on any proposed location for such a tower with an RC-2 zone. No one wants a project of this nature in this neighborhood, and the Board fully appreciates that fact. Ultimately, however, we cannot say that the location requested is any more detrimental to these neighbors than would be the effect on other neighbors if the proposed use would be placed in their RC-2 neighborhood.

O R D E R

For the reasons set forth in the aforegoing Opinion, it is this 22nd day of April, 1986, by the County Board of Appeals, ORDERED that the Special Exception requested to permit a wireless transmitting and receiving facility in an RC-2 zone be GRANTED, from and after the date of this Order, subject to the following:

1. The wireless transmitting and receiving facility shall have a maximum height of 200 feet, including all antennae, and a platform no more than 4 feet wide at the top.
2. The tower and the entire accessory building shall be enclosed within a locked, chain-link fence at least 8 feet high. The fence shall be no closer than 5 feet from the exterior boundary of the accessory building. No ladder attached to the tower shall be placed within 15 feet of the base of the tower or within 10 feet of the nearest part of the accessory building.
3. The tower shall be unpainted or painted gray and shall not be lighted nor have strobe lights unless specifically required by FCC or FAA rules or regulations.
4. At such time as the use herein permitted is terminated, or the useful life of the tower has expired, the tower shall be removed. Petitioner shall immediately provide Baltimore County with a performance bond that shall ensure the future appropriate removal of the tower and accessory building.

5. All plats required for permits shall be drawn by a Maryland registered professional engineer qualified in structural design. Said engineer shall supervise and certify the tower upon completion before an occupancy use permit can be issued. Every year, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure continues to meet all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.

6. All present and prospective EPA standards and regulations, State regulations or local regulations as are or may be promulgated relating to radiofrequency or radiation emissions shall be met at all times. In furtherance of this requirement Petitioner shall verify to the Baltimore County Department of Health semi-annually, the levels of all emissions at the base of the tower, and at points around the circumference of the tower at 500 feet from the base, 1,000 feet from the base and 2,000 feet from the base. Nothing in this Order shall restrict the Baltimore County Department of Health from establishing a more critical or comprehensive verification of emissions from this tower.

7. This tower shall be used solely for transmitting and receiving antennae as may be necessary for cellular phone service or as may be requested for use by Baltimore County. The right to permit the appropriate use of this tower by other utilities upon application to the Zoning Commissioner and appeal to this Board is reserved. Such use may be appropriate if it would not compromise any of the restrictions of this Order and would restrict the proliferation of towers in this area of the County.

8. No micro-wave frequency transmission or reception shall be permitted on this tower.

9. The tower shall be properly grounded to minimize the possibility of fire.

10. A landscape plan, designed to minimize the visual impact of the building and lower portion of the tower, shall be submitted to and approved by the Current Planning and Development Division.

11. This Opinion and Order shall be recorded amongst the Land Records of Baltimore County.



IT IS FURTHER ORDERED that the Petition for Variances to permit front, side and rear yard setbacks of 20 feet in lieu of the required 35 feet, be and the same are hereby DISMISSED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Keith S. Franz, Acting Chairman

Leroy B. Spurrier

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD OF APPEALS
PETITION FOR VARIANCE
W/S Masemore Rd., 2350' NW of : OF BALTIMORE COUNTY
Mt. Carmel Rd., 7th District
:
GRACE L. STANDIFORD, : Case No. 85-96-XA
Petitioner :

: : : : : : :

SECOND MOTION FOR MISTRIAL

People's Counsel for Baltimore County moves for mistrial on the following grounds:

1. In open hearing on May 9, 1985, following testimony concerning Petitioner's F.C.C. application and various references thereto, People's Counsel requested the production of the entire F.C.C. application. At that time, Petitioner stated that said application would be provided and/or copies by Monday, May 13, 1985.

2. Not only did Petitioner fail to produce the said documents and thereby prevent effective cross-examination (or recalling for same) of Petitioner's witnesses, but also Petitioner has now refused outright to provide the documents (letter dated May 31, 1985 from G. Scott Barhight, Esquire to Keith S. Franz, Acting Chairman, County Board of Appeals).

3. This amounts to a violation of the rules of fair play essential to a reasonable administrative hearing.

4. Therefore, separately and independently from the irregularity described in People's Counsel's first Motion for Mistrial or, in the Alternative, for Reconsideration, this is a ground for the declaration of an administrative mistrial.

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Phyllis Cole Friedman
People's Counsel for Baltimore County



Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 7th day of June, 1985, a copy of the foregoing Second Motion for Mistrial was mailed to G. Scott Barhight, Esquire, 204 W. Pennsylvania Ave., Towson, MD 21204; and Michael P. Tanczyn, Esquire, 118 W. Pennsylvania Ave., Towson, MD 21204.

Peter Max Zimmerman

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD OF APPEALS
PETITION FOR VARIANCE
W/S Masemore Rd. 2350' NW of : OF BALTIMORE COUNTY
Mt. Carmel Rd., 7th District
:
GRACE L. STANDIFORD, : Zoning Case No. 85-96-XA
Petitioner :

: : : : : : :

MOTION FOR MISTRIAL OR, IN THE ALTERNATIVE, FOR RECONSIDERATION

People's Counsel for Baltimore County files this Motion on the following grounds:

1. Pursuant to Rule 7G of the Board's Rules of Practice and Procedure, the County Board of Appeals, with the agreement of all parties, established ground rules for testimony of expert witnesses at a meeting February 21, 1985. The parties were required to name their experts in advance and provide a summary of direct testimony in writing. The Board's directions were summarized in a letter dated February 16 (actually February 26), 1985 of counsel for the Petitioner, attached as Exhibit 1.

2. Notwithstanding the above ground rules, the Petitioner on May 14, 1985 produced without warning a new expert witness, Arthur W. Guy. Despite objection from this office and Protestants, Dr. Guy was permitted to testify.

3. The purpose of the original ground rules was to give parties an opportunity to prepare in advance for cross-examination of expert witnesses and to enhance the likelihood of full review of scientific issues in the case. People's Counsel was deprived of an opportunity to prepare for Dr. Guy's testimony. Furthermore, as his appearance was unanticipated, People's Counsel did not have available Dr. Allan Frey, its own consultant, to assist in preparation for cross-examination.

4. The Board justified its decision on two grounds: that Dr. Guy appeared, in part, to answer questions posed by the Board Chairman on



May 9, 1985, and that any additional information would be useful to the Board's consideration. These reasons were insufficient because:

a. The Board on May 9, 1985 requested information on estimated levels of radio frequency wave emissions measured by power density, a matter of engineering calculation.

b. The Petitioner stated at that time that the question would be answered by its then present expert witnesses, John P. Larson and Rajendra Singh.

c. The Board did not request any further testimony concerning health effects.

d. Notwithstanding this background, and notwithstanding the ground rules established, Petitioner manipulated and exploited this situation to produce not only a new expert witness, but also additional testimony concerning public health or safety of the proposal.

5. Under these difficult circumstances, in an attempt to mitigate the prejudice, People's Counsel did cross-examine Dr. Guy after protest. Following the hearing, upon review with Dr. Allan Frey, People's Counsel reasonably and in good faith concurred that the prejudice remained, and that the allowance of Dr. Guy's testimony involved denial of due process of law.

6. Upon this finding, People's Counsel could simply have moved for dismissal of the petition or for a new trial on the ground that the Board's decision denied a fair hearing and opportunity for cross-examination.

7. In an effort, however, to be fair to all parties and to promote full disclosure, People's Counsel determined to give Petitioner an opportunity to bring Dr. Guy back for cross-examination at an additional hearing date to be scheduled by mutual consent. People's Counsel informed counsel for Petitioner on Wednesday, May 22, 1985 of its position.



8. Nevertheless, on May 28, 1985, People's Counsel received a letter from counsel for Petitioner requesting a new hearing date without mention of the question of Dr. Guy's return for cross-examination.

9. In the absence of agreement by Petitioner to the additional cross-examination, it is the position of People's Counsel not only that the original ground rules set for this case have been violated, but also, that there has been denial of a fundamental right of effective cross-examination under all of the circumstances, and that the opportunity for preparation and adequate cross-examination of Dr. Guy was and is crucial to a fair hearing pertaining to the issue of health effects.

10. Furthermore, upon consideration of this case and following review with Dr. Frey, People's Counsel reasonably believes that there is no other way to remedy the denial of the right of effective cross-examination.

WHEREFORE, People's Counsel prays:

a. That the Board declare a mistrial and reschedule the case;

b. In the alternative, that the Board strike the testimony of Arthur W. Guy; and

c. In the alternative, that the Board allow all parties an opportunity for additional cross-examination of Arthur W. Guy.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

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COUNTY BOARD OF APPEALS
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I HEREBY CERTIFY that on this 29th day of May, 1985, a copy of the foregoing Motion for Mistrial or, in the Alternative, for Reconsideration was mailed to G. Scott Barhight, Esquire, 204 W. Pennsylvania Ave., Towson, MD 21204; and Michael P. Tanczyn, Esquire, 118 W. Pennsylvania Ave., Towson, MD 21204.

Peter Max Zimmerman

served as a landing site for migratory waterfowl who travel from north to south and south to north in accordance with the seasons on an annual basis. It was Mrs. Patterson's and the other witnesses' testimony that they have done so regularly and have every year stopped at her pond and, when they take off, they are heading due south toward the proposed tower location.

Due to the proximity of this property to the Gunpowder River and the Prettyboy Dam area, it has been the source of above average incidence of heavy fog, which was documented by pictures submitted to the board through witnesses. The migratory ducks fly to Patterson's Pond and the migratory geese also fly in a flightway which extends to the east over Ms. Dorsey's house. Ms. Dorsey testified that in periods of heavy fog she had seen the geese no less than 20 feet above her rooftop in flight in periods of dense fog. The erection of a 200 foot tower which, by the Petitioner's testimony, was to be unlighted and unpainted, poses not only a danger to aircraft pilots of all types but also to these migratory waterfowl who, according to the testimony, come down and have historically utilized this flightway which is uniquely present in this particular neighborhood and which is not present in many other R.C.2 zones or other areas in Baltimore County.

The People Counsel's witness, Mr. Soloman, testified as to the establishment of a wildlands area in Baltimore County in the vicinity of this Stanford tract as part of the Gunpowder State Park system and his testimony paralleled Ms. Peuleche's of



the State Planning Department that the erection of a 200 foot tower in this area would be obtrusive and out of character with the parkland use, the farmland use and the residential use and character of the area. Aerial photographs taken by Mr. Raffensparger illustrate the position of the proposed tower and the number of residences proximate. A physical tour of the site and the environs will more eloquently inform the Board of the sight picture to be imposed on this bucolic terrain by the erection of a 200 foot tower than any of my words, so I will not comment on that aspect of the Protestants' objections.

4. Section 502.1.A. Be detrimental to the health, safety or general welfare of the locality involved. The Protestants, many of whom attended all of the hearings before the Zoning Commissioner as well as the hearings before this Board, have justifiable concerns about radio frequency emmissions relating to their health. We adopt the statements and argument contained in the People's Counsel's memorandum, including all footnotes, and would like to point out that Dr. Guy's study indicated a statistically significant increase in certain forms of cancer. His stated objection to his own results is that they have not been replicated nor did he know of any plans at present to replicate them. He did not disagree, and in fact agreed, with Mr. Zimmerman's questions establishing that the threshhold for incidence of harm from low level radio frequency emmissions has not yet been established. That is a far cry, in my clients' eyes, from establishing as required by the Zoning Regulations on



behalf of the Petitioner that the proposed use as a 200 foot radio frequency tower with paging service will not be detrimental to the health, safety or general welfare of the locality involved, namely their residential and farming community.

Further, the Petitioner, while it has provided environmental impact studies on other sites, chose not to do one on this site. The justifiable concern of the residents for their health were not assuaged by the conclusion of Dr. Guy, who lives on the west coast, that this area would not be in danger from this tower when his research, although not at the levels of power output proposed by the Petitioner, found statistically significant increased incidence of cancer in the laboratory animals.

II. Conclusion

The Protestants and the People's Counsel have pointed out in this Memorandum and in People's Counsel's Memorandum many unique aspects of this particular piece of property having to do with its proximity with the Gunpowder State Park, the flightways for migratory waterfowl, geese and ducks, its proximity to wildlands and the use of productive farmland rendered unproductive by the erection of a tower on farmland. It is clear that the objections of the Protestants are relevant and germane to the sections of regulation 502.1 cited herein and further that the Petitioner has adduced expert testimony to raise the question of detriment to health rather than meet its burden to prove that the proposed use would not be detrimental to the health, safety



or general welfare of the locality involved. The parade of Petitioner's expert witnesses who spent in the main very few hours at the site contradicts the life experiences of the Protestants who have lived in the neighborhood for, in the case of the majority, 20 years or more, and are further reason for this Board to deny the Petition in consideration of the testimony and evidence presented.

III. Summary

Following your visit to the site and the environs, the Protestant respectfully request that you deny the Petition for the reasons presented. Thank you for your attention during the hearing of this matter.

Michael P. Tanczyn

MICHAEL P. TANCZYN, ESQ.
Attorney for Protestants
118 West Pennsylvania Avenue
Towson, MD 21204
(301) 296-8823

I HEREBY CERTIFY that, on this 17th day of September, 1985, a copy of the foregoing was mailed, postage prepaid, to G. Scott Barhight, Esq., attorney for Petitioner, 204 West Pennsylvania Avenue, Towson, Maryland, 21204, and to Peter Max Zimmerman, Esq. and Phyllis Cole Friedman, Esq., People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland, 21204.

Michael P. Tanczyn

MICHAEL P. TANCZYN, ESQ.



RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD OF APPEALS
W/S Masemore Rd. 2350' NW of
Mt. Carmel Rd., 7th District : OF BALTIMORE COUNTY

GRACE L. STANDIFORD, : Case No. 85-96-XA
Petitioner

: : : : : : :

POST-HEARING MEMORANDUM

People's Counsel for Baltimore County, pursuant to the instructions of the County Board of Appeals of Baltimore County, files this Post-Hearing Memorandum:

I. Statement of the Case

The proposed special exception is for a wireless transmitting or receiving facility on a parcel of land zoned R.C. 2 (Resource Conservation) in northern Baltimore County near the Gunpowder State Park, Hereford Section. In addition to the usual requirements of BCZR 502.1, it is provided in Section 1A01.2C that the use must not be detrimental to primary agricultural uses.[1].

In this context, the law governing such exceptions further involves the judicial interpretation given in Schultz v. Pritts, 291 Md. 1 (1981). There, Judge Rita Davidson focused on the concern for proposals which cause problems which are unusual as a result of the particular location.

In the present case, we find three major concerns. First of all, there is the problem of potential adverse health effects from radiofrequency transmissions. Secondly, there is the question of detriment to the agricultural use on the subject property itself. Thirdly, there is the disturbance

[1]. The section provides, in its entirety,
"C. Uses permitted by Special Exception. The following uses, only, may be permitted by special exception in any R.C. 2 zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity; and, in the case of any use permitted under item 24, further provided that the hearing authority finds that the use would support the primary agricultural use in its vicinity and would not itself be situated on land more appropriately used for primary agricultural uses... ."



to the character of the neighborhood by violation of the natural environment of nearby Gunpowder State Park and its wildlands.

These problems, especially the last two, also give rise to a critique of the proposal for lack of consideration of superior alternative sites, which reasonably are believed to be available.

II. Radiofrequency Emissions

The Petitioner presented two witnesses, John Larson and Arthur W. Guy. Larson, by his own admission, merely assembled information. Guy was the only witness who was represented to have any independent ability and scientific credentials to render an opinion on the safety issue.[2].

Even assuming arguendo the accuracy of the factual information presented by Dr. Guy, the testimony in its entirety raises disturbing questions which are left unanswered. The anticipated emission levels are of an order of magnitude that is close to reaching the maximum permitted in the U.S.S.R. Since the Soviet Union is not noted for outstanding environmental sensitivity, a fair amount of respect is due to the level there established. Although the United States industry standard is far less strict, Dr. Guy admitted that it was due to be tightened up based on the study performed by his group at the University of Washington. It is true that he suggested the Russians would be relaxing their standard somewhat, but the information on this was vague and leaves an impression of great confusion of margins of safety.

[2]. In this memorandum, we will not reargue the due process of law issues surrounding the surprise appearance of Dr. Guy without advance notice. So as not to waive any rights, we incorporate by reference arguments previously made by written motion and oral argument July 10th.



The confusion is caused, at least in part, by the dearth of scientific study of the effects of low level radiofrequency emissions over long periods of time (one year or more). The only such study brought to our attention is the aforesaid University of Washington study, the concluding volume being People's Counsel's Exhibit No. 2. The plain language of the conclusion of this study indicated a statistically significant increase of certain forms of cancer. In addition, questions were raised about the sufficiency of study of potential behavioral effects. It is apparent that the science on this subject is at a relatively primitive stage. The point that far more needs to be done is not something which merely is to be paid lip service here.

At the conclusion of Dr. Guy's testimony, the Chairman asked if he was "perfectly confident" and had "no qualms" regarding the safety of the "power levels...to the people that live in this area." (page 86) The answer was, "I have no qualms." Unfortunately, the facts presented do not serve as a premise or predicate for this confident conclusion.

We are aware that the life safety problem is not limited to this proposal or this location. This office is now consistently taking the position in all such cases involving towers with radiofrequency emissions that they are not safe and should not be permitted. In this connection, we attach as Exhibit 1 our letter dated July 17, 1985 to Chairman William T. Hackett in the currently pending case of Bell Atlantic Mobile Systems, Zoning Case No. 85-244-XA.[3].

[3]. For the Board's information, we also enclose as Exhibit 2 Chairman Hackett's letter dated August 7, 1985 to the parties in Bell Atlantic regarding apparent newly discovered evidence of electronic interference. The tower in the Bell Atlantic case was constructed just prior to the Board hearing, and this may explain the newly discovered infomation. We note, of course, that the tower in the present case which is proposed has not yet been constructed.



III. Agriculture.

Environmental Planner, Paul Solomon, testified unequivocally that this property and this neighborhood are agriculturally productive areas. The placement of the tower not only will have a direct impact by reducing the potential agriculatural use of the subject property, but also it sets a tone as a potential precedent. It would signal a lack of commitment to agriculture and discourage farmers in the vicinity in committing their resources.

This testimony becomes compelling in light of the opinion given that there are other areas zoned R.C. 2 in northern Baltimore County where the proposed use would not substantially detract from the purposes of the zoning legislation. Sites east of Interstate 83, particularly in the corridor between the Interstate and York Road near the center of Hereford, could reasonably be expected to be good candidates.

Unfortunately, Petitioner gave no consideration to environmental impact in its site selection. Moreover, there can be no excuse that technical requirements remove flexibility. It is apparent from the Federal Communications Commission records introduced into evidence that various location changes have been made as necessary during the planning process. It also appears that where the FCC required brief statements concerning environmental effects in the case of towers 300' high, the statements provided were superficial and afterthoughts.

It is obvious that the Petitioner gave no serious thought to environmental impact and alternative sites in the planning of its system.

IV. Wildlands.

The lack of environmental planning is nowhere more evident than in the choice of a site in proximity to one of the most pristine sections of state parkland in the State of Maryland.

This section of the Gunpowder State Park is considered so important that a substantial section has been designated as state wildlands by the General Assembly. Maryland Annotated Code Natural Resources Article Section 5-1201, et seq. The"Gunpowder Falls Wildland" is specifically described in Section 5-1203(i).

In this context, it is no surprise that Tolly Peuleche', the official in the Resources Planning Capital Programs Administration, and author of the Gunpowder Park Master Plan,was interested in appearing at this hearing and testifying that the proposal is inconsistent with the stated objectives of the Plan.

V. To this, a number of other observations may be added: that this would be the first tower to mar the landscape of northern Baltimore County north of Cockeysville and west of Interstate 83, a relatively undisturbed area; that there are indeed migratory birds whose flight patterns cross the immediate neighborhood; that airplane flights are frequent in the area for cropdusting and other purposes; that dense fog and sudden storm conditions prevail from time to time; and that the tower will be visible and/or an obstruction from many points of view.

CONCLUSION

This office entered this "de novo" hearing with an open mind. But as the evidence developed, we had to confront realities which, in our view, require the denial of the petition.

We believe that the County Board of Appeals should not grant any of these petitions for radiofrequency emission towers until their safety is confirmed by valid and reliable scientific studies. We think the evidence is clear that they are a problem, and that the criticism is not sheer speculation. Such action by the County Board of Appeals not only would



be appropriate in the pending special exception cases, but also might spur a healthy review by the County Council of existing sites. This is a real and serious problem and deserves high priority at all official levels.

Even assuming that these safety problems were clarified and resolved, this petition should still be denied because the location is so incompatible and inconsistent with the agricultural character of the neighborhood and the pristine nature of the Gunpowder State Park. Simply put, the site may meet the technical requirements of Petitioner's cellular phone system or grid, but it gets a failing grade on environmental impact. Indeed, it is difficult to conceive of a less desirable site than the one chosen.

The Petitioner has demonstrated in the past an ability to find new sites relatively easily when earlier site selections proved unworkable or unsatisfactory. There is no reason to think that Petitioner would be unsuccessful in finding a more suitable location here. It certainly has not tried seriously.

In any event, there can be no doubt on this record that the present site is inappropriate. The denial of the special exception not only is warranted to do justice in this case, but also will serve as a signal to other petitioners that the County Board of Appeals will not tolerate intrusion and degradation of environmentally sensitive areas of northern Baltimore County.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188



I HEREBY CERTIFY that on this 15th day of August, 1985, a copy of the foregoing Post-Hearing Memorandum was mailed to G. Scott Barhight, Esquire, 204 W. Pennsylvania Ave., Towson, MD 21204; and Michael P. Tanczyn, Esquire, 118 W. Pennsylvania Ave., Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

| | | |
|---|---|---|
| RE: PETITION FOR SPECIAL EXCEPTION W/S of Masemore Road, 2,350 N.W. of Mt. Carmel Road 7th Election District | * | BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY |
| GRACE L. STANDIFORD, et. al Petitioners | * | Case No.: 85-96-XA |

* * * * * * * * * * * * * * *

PETITIONERS' MEMORANDUM
IN SUPPORT OF PETITION FOR SPECIAL EXCEPTION

Grace L. Standiford, and American TeleServices, Inc., on behalf of the Washington/Baltimore Cellular Telephone Company (t/a Cellular One), Petitioners, by G. Scott Barhight and Nolan, Plumhoff & Williams, Chartered, their attorneys, in support of their Petition for Special Exception states the following:

I. INTRODUCTION

The Petitioners herein seek a Special Exception for a Wireless Transmitting and Receiving Facility in a R.C. 2 Zone. The Petition for Variance previously filed was rendered unnecessary by a revised site plan and was withdrawn before the Deputy Zoning Commissioner of Baltimore County ("the Commissioner").

After three lengthy days of hearings, the Commissioner granted the Petition for Special Exception by Order dated January 4, 1985, ("the Order") subject to nine restrictions.

By letter dated February 1, 1985, to the Baltimore County Zoning Commissioner, counsel for several protestants requested an appeal from the Order. During five (5) days of hearings (May 2, 9 and 14, July 10 and 31) the Board heard testimony from nineteen witnesses and reviewed numerous exhibits, including the entire record below which was introduced into evidence.

In liew of oral arguments, memoranda are being submitted for the Board's review.

II. ISSUES

A. Whether the Petitioners have met the requirements of Baltimore County Zoning Regulations (BCZR) Section 502.1.

B. Whether the Petitioners have met the requirements of BCZR Section 1A01.2.C.

III. THE LAW

Wireless transmitting or receiving facilities as principal uses are permitted by special exception in R.C. 2 zones. BCZR Section 1A01.2.C 23. Before any special exception may be granted, BCZR Section 502.1 requires that it must appear that the use for which the special exception is requested with not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;



e. Interfere with adequate provisions for schools, parks, water sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classsification, nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

Additionally, BCZR Section 1A01.2.C requires the Board to find that the special exception use requested will not be detrimental to the primary agricultural uses in its vicinity.

Special exception uses are provided in the zoning regulations as part of the comprehensive zoning plan. As such, such uses share the presumption that they are in the interest of the general welfare, and therefore, valid. Turner v. Hammond, 270 Md. 41, 310 A.2d 543 (1973). Special Exception uses are presumptively permissible. Montgomery County v. Merlands Club, Inc., 202 Md. 279, 96 A.2d 261 (1953). The Baltimore County Council has legislatively predetermined that a special exception use is conditionally compatible with the uses as of right in a particular zone. The condition placed upon approval is that the Board must decide pursuant to BCZR Sections 502.1 and 1A01.2.C whether the presumptive compatibility exists in fact. Cresswell v. Baltimore Aviation Service, Inc., 257 Md. 712, 264 A.2d 838 (1970).

By permitting a tower (wireless transmitting and receiving facility) as a special exception, the Baltimore County Council has



determined that such a use is to be permitted as a general matter. Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974), Miller v. Kiwanis Club of Loch Raven, Inc., 29 Md. A. 285, 347 A.2d 572 (1975).

In Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), the Court of Appeals sets forth the policy of a special exception use as follows:

> The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid. The special exception use is a valid zoning mechanism that delegates...a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given...are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

291 Md. at 11.

The Court of Appeals further delineated the standard of review to be applied in a special exception case as follows:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

291 Md. at 22, 23. (Emphasis added).

The case law of Maryland regarding special exceptions acknowledges the legislative policy of the Baltimore County Council. Further, it puts BCZR 502.1 and 1A01.2. C into perspective. Special exceptions uses are presumed to be permitted as long as the specific statutory requirements can be met in light of the Schultz v. Pritts standard. If



there are no facts or circumstances that prove that the proposed tower would have any adverse effects above and beyond those inherently associated with the proposed tower use, then the special exception must be granted.

IV THE FACTS

Numerous witnesses and exhibits were presented before the Board. This section of the Memorandum will attempt to summarize the most important evidence.

Kathryn M. Condello. Mrs. Condello, project manager for Cellular One, testified regarding the general characteristics of a cellular radio telephone system and provided a brief history of the industry.

A cellular telephone system is based upon interlocking "cells" and the ability to "reuse" radio frequencies in many cells within the same system. Unlike television or radio broadcasting techniques, in which one transmitter location must cover an entire metropolitan area, cellular technology instead divides the area into small cells and uses multiple transmitters at multiple locations to achieve the same coverage. By doing this, each transmitter site can operate at substantially lower power and lower antenna height.

By utilizing smaller coverage areas, cellular technology is able to re-use the same radio frequencies within the same metropolitan area thus allowing each radio frequency to be used to it's fullest capacity. Exploiting each frequency to it's fullest, however, requires locating each cell site within one mile of a theoretical grid point predetermined by the particular terrain characteristics of a given region. Many times, the theoretical grid point is located in the

middle of a highway, a national park, a body of water or a historic landmark, thus making the job of locating cell sites exceptionally difficult.

The theoretical grid point for the Hereford site is located just near the intersection of I-83 and Mt. Carmel Road. Mrs. Condello asserted that the proposed site is not only suitable from a technological and operational point of view, but also, serves to minimize the impact on aesthetic and useage characteristics of the surrounding land.

The Federal Communications Commission ("FCC") has licensed Cellular One as one of two competing companies which will provide cellular phone service in the Baltimore/Washington area. The FCC license requires Cellular One to extend coverage into northern Baltimore County, hence, the necessity for the tower requested. The tower has been approved by the Federal Aviation Administration ("FAA").

In order to function at the proposed location, an open-grid steel tower approxinately 190 feet tall will be erected. Petitioner's Exhibit No. 8 is the site plan showing the details of the tower location.

Cellular One has offered the use of its tower to Baltimore County government. An interest in this possibility has been expressed by Baltimore County.

Mrs. Condello indicated that Cellular One has no obligation to any of the restrictions imposed by the Commissioner, with the exception of number 7. The Petitioners would like to be able to install three separate cellular transmitting and receiving antennas, two paging transmitter systems and a Public Safety 800 MHZ five channel trunked



system. No "microwave dish antennas" or "satellite antennas" will be placed on the tower. Restriction number 7 would prevent Cellular One from providing additional needed services and will act as an incentive for the erection of additional towers.

John F. Etzel. Mr. Etzel, a Registered Professional Land Surveyor, testified regarding the details of the site plan, and the location and topography of the property. The nearest property line, being at least 200 feet from the base of the tower, is outside the tower "fall area". No buildings are within 600 feet of the tower. The transmission lines to the north and west of the tower, which run through Gunpowder State Park, are approximately 3000 feet away to their nearest point.

Only a small portion of the property currently being used for farming will be used for the tower site and its access road. The site, the Standiford property and the area in general, are similar if not identical in character and use to the vast majority of R.C. 2 zoned property in northern Baltimore County.

Donald J. Neubauer. Mr. Neubauer, a Registered Civil Engineer, with a special expertise in structual engineering, testified regarding the safety of the proposed tower.

The tower design he reviewed is structually sound and will pose no danger to the health, safety, or general welfare of the community. Additionally, before the tower is erected, it must comply with the applicable Baltimore County building regulations. The tower will not pose any safety hazard from fire, wind or ice.

Edward A. Griffith. Mr. Griffith, a Realtor-Appraiser, testified regarding the impact the proposed tower may have on land values in the area.



The tower, which is partially screened by a semi-circle of wooded area, will not have any adverse impact upon land values in the area. If erected as planned, the tower will have no adverse impact upon the agricultural uses in the vicinity or on the Standiford tract.

There are no Historic Districts within the area. Because of the highly wooded nature of the Gunpowder State Park in the area and the distance between the tower and the park, there should be no adverse impact upon any use of the Park. The long series of large transmission towers with their interlocking power lines to the northwest have a significantly greater visual impact upon the area than the proposed tower.

Carey W. Burch. Mr. Burch offered testimony regarding visual impact from the viewpoint of an Environmental Planner and testimony regarding impact upon the ecosystem as a Terrestrial Ecologist.

A worst case visual study revealed a limited visual impact upon the surrounding areas. If the tower remains unlit and painted gray as proposed, it will not have a significant detrimental visual impact. As would be expected, aesthetics are in the eye of the beholder.

Mr. Burch specifically studied the visual impact upon the Gunpowder State Park through a "line of sight" study. The vast majority of the Park will be shielded from a view of the tower by trees and terrain. However, one will be able to see the tower from several locations to the northwest of the tower. But the viewer will need to look through the larger and more imposing transmission lines to see the tower.

Mr. Burch studied the ecology of the area, specifically relating to



wildlife, including migatory birds. No significant impact upon the ecology will occur. There will be no mass bird kills or danger to wildlife.

On cross-examination, Mr. Burch testified that the tower should have no adverse impact upon hot air balloons or other aircraft. The fog associated with all the regions surrounding the large Prettyboy Reservoir in northern Baltimore County will not cause the tower to impose any significantly detrimental impact upon the ecosystem.

Dr. Rajendra Singh. Dr. Singh, an Electrical Engineer, gave a detailed and explanation of the cellular grid design and impacts regarding frequency interference.

Due to the restrictions imposed by an almost completed system, topography, demographics and questions of coverage, capacity and cost, Cellular One needs to locate the proposed tower on the proposed site. The FCC licence and the restrictions of science require that a tower be placed in the general Hereford area.

There will be no interference with radio, television or any other transmission as a result of the operation of the proposed tower.

John P. Larson. Mr. Larson, an Environmental Planner, testified regarding the health effects of the electromagnetic energy associated with the tower.

After a review of the concepts associated with electromagnetic radiation, Mr. Larson explained that the energy emitted from the proposed tower will be below the most stringent exposure standards or guidelines used anywhere in the world. The extremely low power levels associated with cellular telephone systems account for the lack of any adverse health impact.



There is no verifiable evidence in the world's scientific literature that would suggest that long term exposure to the energy levels of cellular telephone will produce any harmful effects on life. Mr. Larson concluded that there is no adverse effect on health safety or general welfare caused by the proposed tower.

William F. Kirwin. Mr. Kirwin, a Land Planner and Registered Landscape Architect testified regarding the specific items of BCZR 502.1, BCZR Section 1A01.2.C and the standurd of review imposed by Schultz v. Pritts.

As to 502.1, Mr. Kirwin testified that there will be no adverse impact associated with any of the enumerated requirements. Specifically, he testafied as follows:

a. Based upon his experience and expertise as a land planner and on previous testimony, the proposed tower will not be detrimental to the health, safety or general welfare of the locality involved.

b. Since the site only generates a few "trips" per month, the proposed tower will not tend to create congestion in roads, streets or alleys.

c. Because the cell site building and tower will be contructed to meet or exceed Baltimore County building and fire regulations and is placed within a fenced area far from any other structures, the proposed use will not create a potential hazard from fire, panic or other dangers.

d. The use inherently does not tend to overcrowd land or cause an undue concentration of population.

e. The use has no impact upon any provisions for any public requirements, conveniences or improvements.



f. The tower, being an open grid structure in the middle of a small open field, will not interfer with adequate light and air.

g. The use is unobtrusive and consistent with the R.C. 2 zoning classification, as well as the spirit and intent of the zoning regulations. The tower is providing a communications service to the citizens of Baltimore County in an area in which the Baltimore County Council legislatively provided for special exception uses of this nature.

h. The use is not inconsistent with the impermeable surface and vegetative retention provisions of the zoning regulations.

Mr. Kirwin also discussed the agricultural uses in the area. The tower will have absolutely no detrimental effect upon the primary agricultural uses in the area. In fact, Mr. Kirwin indicated that the rents realized from the lease with Cellular One may even increase the likelihood that the Standiford tract will continue it present agricultural uses.

Finally, Mr. Kirwin addressed the standard of the Schultz v. Pritts case. Based upon his experience and expertise, his knowledge of the greater northern Baltimore County area and the R.C. 2 zoned areas of Baltimore County, Mr. Kirwin testified that the Schultz standard had been met. There are no facts or circumstances that show that the proposed tower at the proposed site will have any adverse effect above and beyond those inherently associated with the special exception use irrespective of its location within the zone.

To more fully explain the Schultz standard, Mr. Kirwin did indicate examples of possible locations where the proposed tower could have an



adverse effect above and beyond those inherently associated with a tower. The examples are as follows: too near to a Historic District, situated atop a known archeological site, atop an existing landfill, too near to the runways of an existing airport, or too near to controlled excavations (blasting). None of these examples are found in the present case.

Dr. Arthur W. Guy. Dr. Guy, an expert in electrical engineering, bioengineering and bioelectromagnetics testified regarding the health effects of the tower. Dr. Guy is one of teh premiere experts on the biological effects of radio frequency energy and microwaves.

Dr. Guy's written report and testimony, which has already been transcribed, address the power densities on the property surrounding the proposed tower. Six antennas were presumed and a study was performed to predict, with a large safety factor imposed, the maximum power densities around the tower.

As page 2 of Dr. Guy's report (Petitioner's Exhibit 23) indicates, the highest power density is 68 times less than the most stringent standard recognized in the United States and more than three times less than the most conservative general population standard in the world, the USSR standard.

Dr. Guy testified that there is no reputable literature in the world that shows adverse health effects on humans at power levels indicated by the proposed tower. He also testified that, in his opinion, these power levels are safe to the people that live in the area.



Zoning Plans Advisory Committee Comments. The comments provided by this Committee, which includes representatives of the Bureau of Fire Prevention, the Health Department and the Director of the Office of Planning and Zoning, does not include any negative or critical comment regarding the special exception requested. The Director of the Office of Planning and Zoning did note concern regarding the variance previously filed. However, the site was redesigned subsequent to this comment and the petition for variance was withdrawn.

Tolly Peuleche'. Ms. Peuleche', who is Chief of Resouce Planning, Land Planning Services, Maryland Department of Natural Resources, testified regarding the visual impact the proposed tower may have upon the Hereford area of the Gunpowder State Park.

Ms. Peuleche' testified that she believe the proposed tower would be visually inconsistent with the Park. She was able to locate a few places in the Park where a person could see the tower.

On cross-examination, she agreed that as to the locations to the northwest of the tower, the transmission lines would obscure the view of the tower. She also picked out the end (or beginning) of several trails into the Park at which a person looking away from the Park may see the tower. However, on cross-examination, she agreed that as soon as the hikers travelled a few feet into the Park, the view of the tower would disappear. She also agreed that a person, standing on one of the few high and open knolls in the Park would see the houses, outbuildings, roads, cars, etc. around the tower in addition to the proposed tower.

Ms. Peuleche' was not stating the position of the Secretary of the Department of Natural Resources. In any event, she offered no factual

testimony that the tower would have any more than a minimal visual impact in certain select areas of the Park. She offered no testimony to indicate that the requirements of BCZR Sections 502.1 and 1A01.2.C and Schultz v. Pritts had not been met.

Paul Soloman. Mr. Soloman, a planner with the Office of Planning and Zoning, testified relative to his personal concerns about the potential visual impact of the proposed tower.

Mr. Soloman was no stating a position of the Office of Planning and Zoning, and was not speaking for the Director of that Office.

He was concerned that "to a degree", the tower represented an "urban intrusion into a pastoralsetting." He agreed that the site was not significant in terms of removal of agricultural land from production. Mr. Soloman seemed more concerned about the perceptions of the neighborhood and agreed that the "intrusion" was more symbolic than actual. In short, Mr. Soloman offered no testimony to indicate that the requirements of BCZR Sections 502.1, and 1A01.2.C, and of Schultz v. Pritts had not been met by the Petitioners.

Protestant Witnesses Testimony was offered by several protestants, none of which was expert testimony, regarding numerous issues. They expressed opposition to the appearance of the tower, interference with the present unobstructed views, effect on property values, dangers from lighting, shadows that would be cast, interference with hot air balloons, aircraft and migratory bird patterns, dangers from fog, possibility of ice causing tower failure or harm to people, expansion of "commercial" development to the w.. side of I-83, and potential health effects to people and animals.



None of the generalized fears of the Protestants are supported by any factual evidence or expert opinion. No testimony was offered to indicate that the legal requirements of the Petitioners in this case have not been met.

V CONCLUSIONS

Petitioners have clearly met their burden of proof for a Special Exception for a wireless transmitting and receiving facility.

Petitioners have demonstrated through uncontradicted factual, and more importantly, uncontradicted expert testim that the proposed use will be conducted without any detriment to the primary agricultural uses in the area and without any adverse effect upon the public interest or the health, safety or general welfare of the locality involved. All of the requirements of BCZR Sections 502.1 and 1A01.2.C have been met.

Additionally, the Schultz v. Pritts test clearly shows that the Special Exception should be granted. All of the testimony offered proves that the proposed tower use at the proposed site will have no adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. There is no testimony on the record that even suggests that the effects of the tower will be any greater than those inherent in such a use in a R.C. 2 zone.

The law and the facts are clear and uncontradicted. Having met their burden of proof, Petitioners respectfully request that the Petition for Special Exception be granted.



Respectfully submitted,

G. SCOTT BARHIGHT

NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
204 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 823-7800

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of August, 1985, a copy of the foregoing Petitioner's Memorandum In Support of Petition For Special Exception was hand delivered, to Michael P. Tanczyn, Esquire, 118 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney For Protestants; Peter M. Zimmerman, Esquire, Room 223, Courthouse, Towson, Deputy People's Counsel.

G. SCOTT BARHIGHT

RECEIVED
COUNTY BOARD OF APPEALS
'85 AUG 15 P 3:38

GSB/jmg
8/14/85



1/4/85

RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCES
W/S of Masemore Rd., 2,350' NW of Mt. Carmel Rd. - 7th Election District
Grace L. Standiford - Petitioner
No. 85-96-XA (Item No. 36)

: BEFORE THE
: DEPUTY ZONING COMMISSIONER
: OF
: BALTIMORE COUNTY

::: ::: ::: ::: ::: ::: ::: ::: :::

The petitioner herein seeks a special exception for a wireless transmitting and receiving facility in an R.C.2 Zone and variances to permit front, side, and rear yard setbacks of 20 feet in lieu of the required 35 feet. At the onset of the continued hearing on November 9, 1984, a revised site plan, Petitioner's Exhibit 8, was submitted which was in compliance with the Baltimore County setback regulations thereby rendering the requested variances unnecessary and the Petition for Variances was withdrawn.

Testimony presented indicated that the petitioner proposes to construct an unlit, steel tower with antennae, no higher than 200 feet, tapering to no more than 4 foot per side at the top, on a triangular base no longer than 23 feet per side, and a 12'x26.22' accessory building, to house the necessary equipment to operate the tower, all enclosed within an eight foot, locked, chain-link fence as indicated on the aforementioned site plan.

The FCC has licensed Cellular I as one of the two companies which will provide cellular phone service in Maryland and requires each to extend service to all of Maryland's highways as part of a proposed national network. The tower is also approved by the FAA and the Public Utilities Commission. The proposed site provides suitable topography and is near the true grid spot. Gunpowder State Park and high tension electrical lines are located within one-half mile of the site.

An environmentalist testifed that the tower would be relatively unobtrusive and inoffensive in a farmed and wooded area with residences, and the effect on environment and fowl would be negligible. A structural engineer indicated that

the tower would be designed by and purchased from the Path Company and would be constructed according to EIA standards. An enviromental planner discussed national and international research and ANSI and EPA guidelines and standards and concluded that the proposed ranges of energy would not present health hazzards. Further testimony presented by a land planner/landscape architect indicated that the proposed tower would not be detrimental to the agriculture in the area.

Testimony by the protestants expressed opposition to the appearance of the tower; interference with the present unobstructed views; effect on property values; dangers from lightning; shadows that would be cast; interference with hot air ballons and with migratory bird patterns; possiblity of ice causing tower failure; the expansion of certain commercially related development from the east to west side of I-83; and, most importantly, potential harm to people and animals. The president of the Citizens Alliance of Northern Baltimore County reiterated these concerns and was of the opinion that the tower should be located in a commercial zone.

A self-designated "radio frequency emmissions and microwave planner", whose house in Westminster is near another proposed Cellular I tower, read the first twenty articles he located and testified that the energy emanating from the tower could be detrimental to humans. A pilot, residing in the neighborhood, was concerned over dangers to airplanes used by State police, crop and insect sprayers, and medivac personnel since the tower will not be identified on maps and charts. The fog in the area is more frequent and dense than in most Baltimore County areas.

After due consideration of the testimony and evidence presented as well as an on-site field inspection of the property and a review of "Regulating Radio and TV Towers" by Bookin and Epstein (APA 1984), in the opinion of the Deputy Zoning Commissioner, the conditions of Section 502.1 and 1A01.2C of the Baltimore County

MICROFILMED



Zoning Regulations have been met and the special exception should be granted.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 7th day of January, 1985, that to permit a wireless transmitting and receiving facility, in a R.C.2 Zone, is GRANTED, from and after the date of this Order, subject to the following:

1. The wireless transmitting and receiving facility shall have a maximum height of 200 feet, including all antennae, and a platform no more than 4 foot wide at the top.
2. The tower and accessary building shall be enclosed within a locked, chain-link fence at least 8 feet high.
3. The tower shall be unpainted or painted gray and shall not be lighted nor have strobe lights unless specifically required by FCC or FAA rules and regulations. The color of the fence shall be black or brown.
4. At such time as the use is terminated, the tower shall be removed.
5. All plats required for permits shall be drawn by a Maryland registered professional engineer qualified in structural design. Said engineer shall supervise and certify the tower upon completion before an occupancy use permit can be issued. Every five years, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure continues to meet all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.
6. EPA standards and guidelines relating to radiation emissions shall be met at all times.
7. Antennae, dishes or other wireless transmitting and receiving apparatus on the tower shall be limited to those providing cellular phone service or utilized by Baltimore County.
8. The tower shall be properly grounded to minimize the possibility of fire.
9. A landscape plan, designed to minimize the visual impact of the building and lower portion of the tower, shall be submitted to and approved by the Current Planning and Development Division.

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IT IS FURTHER ORDERED that the Petition for Variances to permit front, side, and rear yard setbacks of 20 feet in lieu of the required 35 feet be and the same are hereby DISMISSED.

Deputy Zoning Commissioner of
Baltimore County

MICROFILMED

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 499
September Term, 1987

GRACE L. STANDIFORD, ET AL.

v.

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, ET AL.

Wilner
Alpert
Bell, Rosalyn B.,
JJ.

PER CURIAM

Filed: December 2, 1987

Zoning Case No. 85-96-XA

RECEIVED
COUNTY BOARD OF APPEALS
'87 DEC -3 A 11:18

# PETITION FOR ZONING VARIANCE 85-96-XA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1 A 01.3B3 for front, side & rear yard setbacks of 20 feet in lieu of 35 feet in an RC 2 Zone

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

Practical difficulty - lease parcel measured 100' by 100'

MAP NW/ZF
E. D. 7
DATE 8/15/84
200 ✓
1000
DP

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
E.A. Geiffith - Agent
(Type or Print Name)
E. A. Geiffith
Signature
204 Investment Bld
Address
Towson MD 21204
City and State

Legal Owner(s):
Grace L. Standiford
(Type or Print Name)
Grace L. Standiford
Signature
(Type or Print Name)
Signature

Attorney for Petitioner:
E. Scott Barlight
(Type or Print Name)
Signature
204 W. Penn. Av.
Address
Towson
City and State

410 Scarsdale Rd. 2840753
Address Phone No.
Balto MD. 21224
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
E.A. Geiffith (Agent)
Name
204 Investment Bld - Towson MD 823 4575
Address Phone No.

Attorney's Telephone No.: 825-7200

ORDERED By The Zoning Commissioner of Baltimore County, this 27th day of August, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of October, 1984, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

MICROFILMED

(over)

# PETITION FOR SPECIAL EXCEPTION 85-96-XA

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for 1 A 01.2.C.23 to permit a wireless transmitting and recieving facility in an RC-2 Zone

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
E.A. Geiffith
(Type or Print Name)
E.A. Geiffith - agent
Signature
204 Investment Bld
Address
Towson MD 21204
City and State

Legal Owner(s):
Grace L. Standiford
(Type or Print Name)
Grace L. Standiford
Signature
(Type or Print Name)
Signature

Attorney for Petitioner:
(Type or Print Name)
Signature
Address
City and State

410 Scarsdale Rd
Address Phone No.
Balto MD 21224
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
E.A. Geiffith
Name
204 W. Penn. Av. Towson
Address 823-7200 Phone No.

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County, this 27th day of August, 1984, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of October, 1984, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

MICROFILMED

Case No. 85-96-XA
Item No. 36
Date: February 1, 1985

W/S Masemore Road, 2,350' NW of Mt. Carmel Road
7th Election District
Grace L. Standiford-Petitioner

SE/Wireless transmitting and receiving facility in an RC-2 zone.

| | | |
|---|---|---|
| X | 1. | Copy of Petition |
| X | 2. | Copy of Description of Property |
| X | 3. | Copy of Certificate of Posting (in file) |
| X | 4. | Copy of Certificates of Publication |
| X | 5. | Copy of Zoning Advisory Committee Comments |
| X | 6. | Copy of Comments from the Director of Planning |
| | 7. | Planning Board Comments and Accompanying Map |
| X | 8. | Copy of Order to Enter Appearance |
| X | 9. | Copy of Order - ~~Zoning~~/Deputy Zoning Commissioner-1/4/85, Special Exception GRANTED; Variances DISMISSED |
| X | 10. | Copy of Plat of Property |
| | 11. | 200' Scale Location Plan |
| | 12. | 1000' Scale Location Plan |
| | 13. | Memorandum in Support of Petition |
| X | 14. | Letter(s) from Protestant(s) (6 letters with attachments) |
| | 15. | Letter(s) from Petitioner(s) |
| X | 16. | Protestants' Exhibits 1 to 19 #9, 10, 11, 13, 14, 15 in Court |
| X | 17. | Petitioners' Exhibits 1 to 19 |
| X | 18. | Letter of Appeal, 2/1/85, by Michael Tanczyn, Esq., on behalf of protestants. |

E. Scott Barlight, Esquire — Counsel for the Petitioner
204 West Pennsylvania Avenue
Towson, Maryland 21204

Michael Tanczyn, Esquire — Counsel for the Protestants
~~204 West Pennsylvania Avenue~~ 606 Baltimore Ave. Suite 106
Towson, Maryland 21204

The Honorable Ellen R. Sauerbrey — Request Notification
4122 Sweet Air Road
Baldwin, Maryland 21013

Mr. Tolly Peuleche' — Request Notification
Chief, Resources Planning
Capital Programs Administration
Towes State Office Building
Annapolis, Maryland 21401

The Honorable Francis X. Kelly — Request Notification
One Shawan Road
Hunt Valley, Maryland 21030

The Honorable Thomas W. Chamberlain, Sr. — Request Notification
307 Galway Road
Lutherville, Maryland 21093

CARL L. GERHOLD
PHILIP K. CROSS
JOHN F. ETZEL
WILLIAM D. ULRICH
GORDON T. LANGDON

GERHOLD, CROSS & ETZEL
*Registered Professional Land Surveyors*
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
823-4470

EMERITUS
PAUL G. GOLLENBERG
FRED H. GOLLENBERG

August 17, 1984

Zoning Description

All that piece or parcel of land situate, lying and being in the Seventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same in the center of Masemore Road at the distance of 2785 feet measured northwesterly along the center of Masemore Road from the center of Mt. Carmel Road and running thence and binding on the south side of an existing private road through the property of Grace L. Hood and David Hood, the six following courses and distances viz: South 73 degrees 20 minutes West 399.73 feet, South 68 degrees 25 minutes West 108.61 feet, South 62 degrees 45 minutes West 199.80 feet, South 66 degrees 55 minutes West 224.15 feet, South 56 degrees 15 minutes West 107.10 feet and South 44 degrees 49 minutes West 110.45 feet, thence leaving said Private Road and running the five following courses and distances viz: due South 268.98 feet, due East 70.00 feet, due South 100.00 feet, due West 100.00 feet and due North 381.30 feet to the north side of said Private Road, thence binding on the north side of said road, the six following courses and distances viz: North 44 degrees 49 minutes East 125.82 feet, North 56 degrees 15 minutes East 112.90 feet, North 66 degrees 55 minutes East 225.86 feet, North 62 degrees 45 minutes East 200.20 feet, North 68 degrees 25 minutes East 111.39 feet and North 73 degrees 20 minutes East 400.27 feet to the center of Masemore Road and thence binding in the center of said road, South 18 degrees 05 minutes East 30.00 feet to the place of beginning.

Containing 1.22 Acres of land more or less.

STATE OF MARYLAND — LAND SURVEYOR

RECEIVED
AUG 21 1984

#36

85-96-XA

# CERTIFICATE OF PUBLICATION

PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES
7th Election District
LOCATION: West side of Masemore Road 2350 feet Northwest of Mt. Carmel Road
DATE & TIME: Tuesday, October 9, 1984 at 1:30 p.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:
Petition for Special Exception to permit a wireless transmitting and receiving facility in an R.C.2 Zone and Variances to permit front, side, and rear yard setbacks of 20 feet in lieu of the required 35 feet.
Being the property of Grace L. Standiford, as shown on the plat filed with the Zoning Office.
In the event that these Petitions are granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.
By Order Of
ARNOLD JABLON,
Zoning Commissioner
of Baltimore County
Sept. 20.

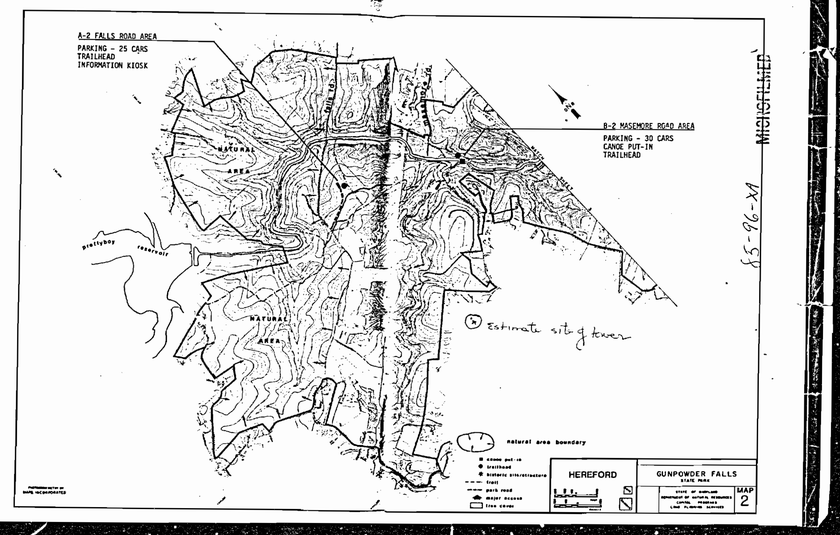
TOWSON, MD., Sept. 20, 19 84

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on Sept. 20, 19 84

THE JEFFERSONIAN,

Publisher

$20.00




85-96-XA

MICROFILMED

# CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

85-96-XA

District 7th — Date of Posting 9-28-84
Posted for: Special Exception and Variances
Petitioner: Grace Standiford
Location of property: W/S of Masemore Road, 2,350 NW/of Mt. Carmel Rd.
Location of Signs: West side of Masemore Road 2,350' NW of Mt. Carmel Road
Remarks:
Posted by A.J. Ritter — Date of return: 9-28-84
Signature
Number of Signs: 2

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BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY
56096-LB3913 9/15

# ...TE OF PUBLICATION

85-96-XA

...son, Md. 11/3 1984

...IS TO CERTIFY, that the annexed advertisement published in the TOWSON TIMES, a weekly newspaper distributed in Towson, Baltimore County, Md., ...a week for 1 consecutive weeks, the publication appearing on the 11th day of Sept 1984.

The TOWSON TIMES
M. Argelette

Cost of Advertisement: $ 27.03