

IN THE MATTER OF
THE APPLICATION OF
RICHARD A. MOORE – PETITIONER
FOR SPECIAL HEARING
(NO SPECIFIC LOCATION)

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 99-371-SPH

* * * * *

OPINION

This matter is before the Board on an appeal from a decision of the Zoning Commissioner dated November 18, 1999 that a special exception approval was required for the erection of a wireless telecommunications tower in a C.R. district. Appellants /Protestants Crown Castle Atlantic, LLC, and Bell Atlantic Mobile Systems, Inc., were represented by Robert A. Hoffman, Esquire and VENABLE, BAETJER & HOWARD; Appellants /Protestants Lewis Eichelberger III and H. Thorn Gould were represented by Michael P. Tanczyn, Esquire; and Appellants /Protestants SBC Communications, Inc. /Van Thompson (Cellular One, Inc.) were represented by Karl J. Nelson, Esquire, and SAUL EWING, LLP. Peter Max Zimmerman, People's Counsel for Baltimore County, appeared on behalf of the Office of People's Counsel. Richard A. Moore, the Petitioner /Appellee, and the Greater Jacksonville Community Association, an intervening Appellee, were represented by T. Wray McCurdy, Esquire, T. WRAY MCCURDY, P.A.

A hearing was held before the Board on January 24, 2001. The hearing consisted mainly of oral argument. The parties were requested to file briefs by close of business March 5, 2001. After the briefs were filed, a Motion to Amend the Petition from "no specific address" to "14242 Jarrettsville Pike, Phoenix, MD 21131," as the property in question was filed by the Greater Jacksonville Community Association and Richard A. Moore by their attorney. The Motion to

Amend the Petition was opposed by Lewis Eichelberger III and H. Thorne Gould, and Crown Castle Atlantic, LLC, and Bell Atlantic Mobile Systems, Inc., by their respective attorneys. A public deliberation by the Board was held on March 27, 2001.

Background

Richard A. Moore, legal owner of 3314 Paper Mill Road, filed a special hearing petition to amend the previously approved special exception in zoning Case No. 77-174-X for relief to permit a 163-foot wireless tower in lieu of the existing 105-foot tower and variance approval for various offset setback exceptions (Case No. 99-366-SPHA). At the same time, Mr. Moore filed a Petition for Special Hearing without naming a specific location, in Case No. 99-371-SPH. This petition in effect asked for the Zoning Commissioner to interpret the zoning regulations of Baltimore County and make a declaratory type ruling.

When Case No. 99-366-SPHA was heard by the Zoning Commissioner, the evidence produced by the Petitioner from the Tower Review Committee of Baltimore County recommended against building a new tower on the Moore site at 3314 Paper Mill Road. Mr. Moore petitioned the Tower Review Committee for a new 190-foot tower on the same property which led to the Tower Review Committee's May 14, 1999 recommendation, which was introduced below. The Tower Committee noted that it previously recommended approval for a 190-foot tower at the Glyndon Cleaners site at 14242 Jarrettsville Pike in Phoenix, Maryland. The Tower Review Committee's recommendation became a conditional recommendation in favor of Mr. Moore's second tower request only if the Glyndon Cleaners tower applicant and Mr. Moore reached agreement to construct one tower on Mr. Moore's site and withdrew the previous site from consideration. This never occurred.

The Zoning Commissioner rendered a decision in Case No. 99-366-SPHA in which he denied Mr. Moore's request for a replacement tower at the property on Paper Mill Road and simultaneously granted the relief requested in 99-371-SPH, stating that special exception approval for the erection of a wireless telecommunications tower in a C.R. district is required pursuant to the requirements of § 426.5(d) of the *Baltimore County Zoning Regulations*.

No appeal was filed by Mr. Moore in Case No. 99-366-SPHA from the Zoning Commissioner's final Order denying the replacement tower. At the hearing before the Board of Appeals in 99-371-SPH, neither Mr. Moore nor his original counsel appeared. T. Wray McCurdy, Esquire, entered his appearance for Richard A. Moore and for the Greater Jacksonville Community Association as an intervening Appellee. In his opening statement, Mr. McCurdy did identify the tower at the Glyndon Cleaners site on Jarrettsville Pike as the property in question, although the address did not appear in the Petition. Mr. McCurdy argued that, unless the Board entertained the Petition, the Jacksonville Community Association would never be able to have a hearing on the issue of a tower in a C.R. district since there had been no appeal of the permit issued for the Glyndon Cleaners site and the tower had been constructed pursuant to Permit #B-383994 issued by Baltimore County on August 2, 1999.

Issues

This matter presents several difficult issues to be determined by the Board:

1. Whether a Petitioner lacks standing to bring a Petition for Special Hearing in Case No. 99-371-SPH because no specific location was set forth in the Petition, and therefore the Petition should have been dismissed by the Zoning Commissioner.
2. Was Richard Moore an interested party, entitled to file a Petition for Special Hearing without naming a specific property?

3. Whether or not the Greater Jacksonville Community Association has any standing in this matter since it was not a Petitioner below.

4. Whether or not Richard Moore and the Greater Jacksonville Community Association can amend the Petition before the Board to specify a particular property for the purposes of a special hearing.

Discussion

Issue No. 1—Whether a Petitioner lacks the standing to file a Petition for Special Hearing because no specific property was named in the Petition and therefore the Petition should have been dismissed by the Zoning Commissioner.

Section 500.7 of the zoning regulations was amended by the County Council in April of 1996 to add a second paragraph which states:

With respect to any zoning petition other than a petition for special exception, variance, or reclassification, the zoning commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition. On establishing a hearing date for the petition, the zoning commissioner shall promptly forward a copy thereof to the director of planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors.

A fair reading of that paragraph indicates that the Council contemplated that there might be a situation where a petition did not relate to a specific property. Therefore, in the second sentence, the Council states "if the petition relates to a specific property...." It goes on further to say in the third sentence, "Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition." [Emphasis

added.] From this language, the Board has no problem in finding that a Petition for Special Hearing does not require the naming of a particular piece of property. There was no indication that the notice was not given for the 15-day period required in § 500.7 in at least two newspapers of general circulation in the county. Therefore, the Board finds that the Zoning Commissioner was not required to dismiss the Petition, if it was filed by an interested party, for failure to name a specific property in the petition, since in effect it was asking for a declaratory ruling.

Issue No. 2—Was Richard Moore an interested party, entitled to file a Petition for Special Hearing without naming a specific property?

Despite the fact that no specific property is named in a petition, a petitioner may be an interested party if the petitioner is a community association whose members seek a determination concerning certain pieces of property that may come within the jurisdiction of that association. In the present case, if Mr. Moore owned several pieces of property within the C.R. District, he could seek a declaratory determination as to whether the erection of a wireless telecommunication tower on any of the pieces of property would require a special exception. [§ 500.7, BCZR]

There was no showing that Mr. Moore, the Petitioner in Case No. 99-371-SPH, owned any property in the C.R. District in question. Therefore, he could not have standing as an interested party to file the Petition for Special Hearing in this matter.

Issue No. 3—Whether or not the Greater Jacksonville Community Association has any standing in this matter since it was not a Petitioner below.

Since the Greater Jacksonville Community Association was not a Petitioner below, it has no standing in this situation and in this particular matter.

Issue No. 4—Whether or not Richard Moore and the Greater Jacksonville Community Association may amend the Petition before the Board to specify a particular property for the purposes of a special hearing.

Section 500.7 of the zoning regulations is quite clear, as stated above, that, if the Petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. In addition, there must be notification in two newspapers of general circulation in the county. Therefore, the Board finds that the Motion to Amend the Petition must be denied because the Petitioners have not met the requirements of § 500.7 of the regulations requiring posting on the property. To find otherwise would violate the constitutional rights to notice and due process to any property owners who rights may be affected by a decision of the Zoning Commissioner

In addition, the Board finds that Richard Moore is not an interested party as set forth above, because he does not own any property in the C.R. District, or property adjacent to the property specified on Jarrettsville Pike. Furthermore, Mr. Moore is a competitor of the owners of the wireless tower on Jarrettsville Pike, which prevents him from having standing in this matter. [*Eastern Services Centers, Inc., v. Cloverland Farms Dairy, Inc.* , 130 Md.App. 1, 744 A.2d 63 (2000)]

The Greater Jacksonville Community Association will be able to file its own Petition for Special Hearing in this matter, should it desire to do so.

ORDER

THEREFORE, IT IS THIS 3rd day of May, 2001 by the
County Board of Appeals of Baltimore County

ORDERED that the Motion to Amend Petition in Case No. 99-371-SPH is hereby
DENIED; and it is further

ORDERED that the Petitioner in Case No. 99-371-SPH, Richard A. Moore, lacked standing to file the instant Petition for Special Hearing; and, therefore, the Petition for Special Hearing in this matter be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Donna M. Felling


Charles L. Marks

IN THE MATTER OF:

RICHARD MOORE

Petitioner,

Case No. 99-371-SPH
Each Specific Location

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO. 99-371-SPH
*

* * * * *
**OBJECTION TO MOTION TO AMEND THE
PETITION FILED BY T. WRAY MCCURDY ON BEHALF OF
RICHARD MOORE & GREATER JACKSONVILLE COMMUNITY ASSOCIATION**

NOW COMES Lewis Eichelberger, III and Thorne Gould, Protestants, who object to the Motion to Amend the Petition for No Specific Site Location and for reasons say:

1. If the original Petitioner, Richard Moore, had named a site when he filed his original Petition for Special Hearing, he would have been required under the Zoning Commissioner's rules governing such Petitions to file engineered plats describing the property and neighboring properties in the neighborhood, accompanied by an engineer's description for the property in question. That submission would have routinely been reviewed by the County departments who would have issued comments based on the Petition filed and the property named would have been posted prior to the Zoning Commissioner's hearing, as well as notice being given not only to any tenants on the site named, but the legal owner as well. None of that has been done or is proposed under the Motion for Amendment. Petitioners' post Memorandum request should be rejected by the Board and denied as unauthorized.

2. The Petitioners herein remain free to file a new Petition naming a specific property, and which complies with the Zoning Commissioner's rules for filing such Petitions, if they care to do so.

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3. To allow the requested Amendment would unconscionably violate the due process requirements of giving notice to the legal owner and to all other named parties who may have an interest in any specific property designated. When Mr. Moore originally filed this Petition, he was the sole Petitioner and had he then named a specific site, such as the Glyndon Cleaners site, would have been challenged on his ability to maintain that Petition where he was a business competitor on another tower located less than one-half a mile away. For whatever reason, he chose not to identify a property then and his Counsel, who also represents The Greater Jacksonville Community Association, Inc., now attempts to overcome challenges to Petitioners' standing caused by no specific property being designated when filed. Counsel even coins a new phrase to describe the Community Association as "intervening appellee" when they were not a party to the original Petition and have, to this time, been challenged in the attempt to be named additional Petitioner to this *de novo* proceeding.

4. Even the Board of Appeals Rules of Practice and Procedure cannot overcome the deficiencies in the original Petition by allowing such a draconian Amendment as is requested by this Petition. There is no legal basis for the Board to entertain yet one more collateral attack on the building permit issued August 2, 1999 to build the tower approved for the Glyndon Cleaners site. Again, for the record, that building permit was issued prior to the Zoning Commissioner's subsequent decision on no specific site in this Petition below, rendered October 19, 1999.

WHEREFORE, these Protestants request the Board to deny the requested Amendment.



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Protestants
Lewis H. Eichelberger, III and H. Thorne Gould

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 14~~th~~ day of March, 2001 a copy of the foregoing Objection to Motion to Amend the Petition Filed by T. Wray McCurdy on Behalf of Richard Moore and Greater Jacksonville Community Association was mailed by first class mail, postage prepaid to the following:

Rob Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204,
Attorney for Protestants
Crown Castle Atlantic, LLC and
Bell Atlantic Mobile Systems, Inc.

Karl J. Nelson, Esquire
Saul Ewing, LLP
100 South Charles Street
Baltimore, MD 21201-2773
Attorney for Protestant
SBC Communications, Inc./Van Thompson

Peter Max Zimmerman, Esquire,
People's Counsel for Baltimore County
Room 47 Old Courthouse
400 Washington Avenue
Towson, Maryland, 21204

T. Wray McCurdy, Esquire
Sutton, McCurdy and Stone
101 Eastern Boulevard
Baltimore, Maryland 21221
Attorney for the Petitioner



MICHAEL P. TANCZYN, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Protestants
Lewis H. Eichelberger, III and H. Thorne Gould

IN THE MATTER OF:

RICHARD MOORE

Petitioner,

Case No. 99-371-SPH
Each Specific Location

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO. 99-371-SPH
*

* * * * *

ORDER

UPON CONSIDERATION of the Petition to Amend and any response thereto, it is by the
Board of Appeals for Baltimore County this _____ day of March, 2001,

ORDERED, that the Petition to Amend be in the same, is hereby denied.

CHAIRMAN

BOARD MEMBER

BOARD MEMBER

Copies Mailed To:

Rob Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204,
Attorney for Protestants
Crown Castle Atlantic, LLC and
Bell Atlantic Mobile Systems, Inc.

Karl J. Nelson, Esquire
100 South Charles Street
Baltimore, MD 21201-2773
Attorney for Protestant
SBC Communications, Inc./Van Thompson

Peter Max Zimmerman, Esquire,
People's Counsel for Baltimore County
Room 47 Old Courthouse
400 Washington Avenue
Towson, Maryland, 21204

T. Wray McCurdy, Esquire
Sutton, McCurdy and Stone
101 Eastern Boulevard
Baltimore, Maryland 21221
Attorney for the Petitioner

IN THE MATTER OF
RICHARD A. MOORE FOR
INTERPRETATION OF
B.C.Z.R. SECTION 426.5(d)
(No Specific Location)

* BEFORE THE COUNTY
* BOARD OF APPEALS
* FOR BALTIMORE COUNTY
* Case No. 99-371-SPH
*

* * * * *

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APPELLANTS' RESPONSE TO MOTION TO AMEND PETITION

Appellants Crown Castle Atlantic, LLC and Bell Atlantic Mobile Systems, Inc., by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, their attorney, submit this Memorandum in response to the Motion to Amend Petition filed by Greater Jacksonville Association and Richard A. Moore, as follows:

1. As the Board of Appeals is aware, this case involves a Petition for Special Hearing originally filed by Richard A. Moore without reference to a specific property location. Now that memoranda have been filed by all the parties wherein Appellants pointed out the errors in the original petition, Mr. Moore has filed a Motion to Amend Petition, asking the Board to allow him to substitute for the original petition a Petition for Special Hearing referencing a specific property address -- 14242 Jarrettsville Pike -- which property is not owned by Mr. Moore, but by Mr. Eichelberger. Mr. Moore suggests that such a substitution would be appropriate at the Board level. If this substitution were permitted by the Board, Mr. Moore apparently would not have to refile his petition, post the property, or

attend a public hearing on his petition. Allowing Mr. Moore to make such a substitution would be inappropriate.

2. As discussed in detail in Appellants' Memorandum on Preliminary Issue, there is no authority which gives the Zoning Commissioner (or the Board of Appeals on appeal) the ability to hear a petition such as Mr. Moore suggests filing. Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") specifies the circumstances in which an individual can file for a special hearing. According to Section 500.7, the right of an "interested person" to petition the Zoning Commissioner for a public hearing, *i.e.*, file a petition for special hearing, is limited to the following two circumstances:

- (a) to determine the existence of any purported nonconforming use on any premises, or
- (b) to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by the regulations.

B.C.Z.R. Section 500.7. In only one instance are individuals permitted to ask for relief regarding property not owned by them or in which they do not have an interest, and that is with regard to nonconforming uses.

3. Apparently, though, Mr. Moore is confused as to what a "nonconforming use" is. According to the Zoning Regulations, a nonconforming use is defined as a "legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." B.C.Z.R. Section 101. "Nonconforming use" is a specific term used to describe a use of property that was legal before and at the time of the adoption of the original zoning ordinance (or any subsequent ordinance or regulation) which made that use unlawful. Board of Zoning Appeals of Howard County v. Meyer, 207

Md. 389, 114 A.2d 626 (1955). An example of a legal nonconforming use would be a business conducted on a property since 1930 that became nonconforming by virtue of the adoption of the Baltimore County Zoning Regulations in 1945. That use is subject to approval as a legal nonconforming use by the Zoning Commissioner following a public hearing. In fact, any individual may petition the Zoning Commissioner under Section 500.7 for a special hearing for a determination as to whether a nonconforming use may lawfully be continued, at which time the property owner would bear the burden of proving the use was “legally nonconforming,” *e.g.*, that the use was lawful during the necessary time frame, that the use had been continued uninterrupted, that the use had not been inappropriately expanded, etc.

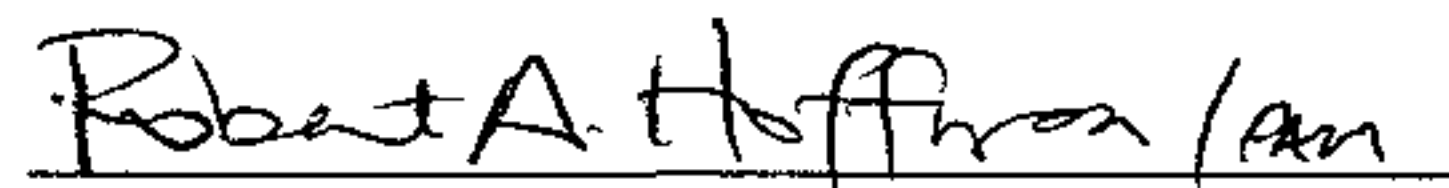
4. However, that is not the case here. The tower located at 14242 Jarrettsville Pike, which Mr. Moore seeks to defeat, has only been in existence for a short period of time. No allegation has been made that subsequent changes to the Zoning Regulations have made the tower “nonconforming.” Mr. Moore, therefore, would not be entitled to file a Petition for Special Hearing “to determine the existence of any purported nonconforming use” on Mr. Eichelberger’s property. Mr. Moore is simply trying to create an avenue for relief that does not exist in the Zoning Regulations.

5. Furthermore, even if Mr. Moore was entitled, under Section 500.7, to file a Petition for Special Hearing referencing Mr. Eichelberger’s property, it would be improper for the Board of Appeals to permit Mr. Moore to circumvent the requirements of proper filing, posting, and public hearing before the Zoning Commissioner.

CONCLUSION

For the above-stated reasons, Appellants Crown Castle Atlantic, LLC and Bell Atlantic Mobile Systems, Inc. respectfully request that the Board of Appeals deny the Motion to Amend Petition.

Respectfully submitted,



ROBERT A. HOFFMAN

Venable, Baetjer and Howard, LLP

210 Allegheny Avenue

P.O. Box 5517

Towson, Maryland 21285-5517

(410) 494-6200

Attorney for Appellants Crown Castle

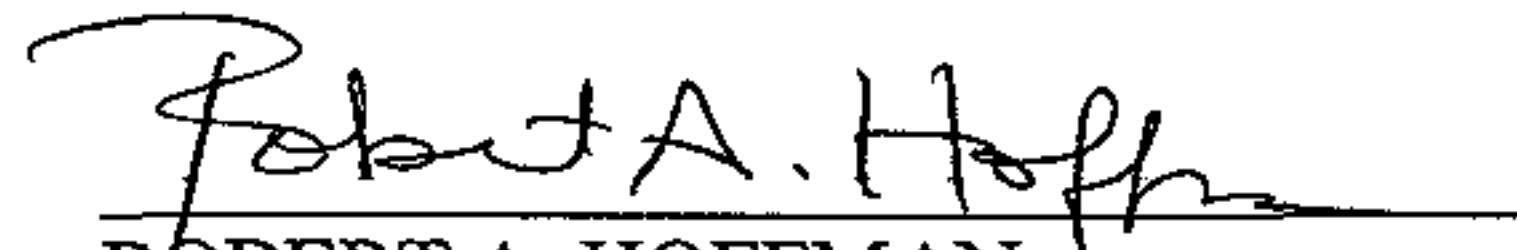
Atlantic International, LLC and Bell

Atlantic Mobile Systems, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 2001, a copy of the foregoing APPELLANTS' RESPONSE TO MOTION TO AMEND PETITION was mailed to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Attorney for Appellants Lewis Eichelberger, III and H. Thorne Gould; Karl J. Nelson, Esquire, One South Street – Suite 2600, Baltimore, Maryland 21202, Attorney for Appellants SBC Communications, Inc.; T. Wray McCurdy, Esquire, Sutton, McCurdy and

Stone, 101 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for Appellee Richard A. Moore and the Greater Jacksonville Association, Inc.; and to Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.


ROBERT A. HOFFMAN

TOIDOCs1/113716 v1

BELL ATLANTIC MOBILE
SYSTEMS, INC.

and

CELLULAR ONE, INC.

and

LEWIS EICHELBERGER, III
H. THORNE GOULD

Appellants

vs.

RICHARD A. MOORE

and

GREATER JACKSONVILLE ASSN., INC.

Appellees

Appeal from Zoning Commissioner
of Baltimore County
In Re: Petition for Special
Hearing
No Specific Location

BEFORE THE COUNTY
BOARD OF APPEALS OF
BALTIMORE COUNTY
CASE NO. 99-371-SPH

MOTION TO AMEND PETITION

Now comes T. Wray McCurdy, Attorney for Greater Jacksonville Association, intervening Appellee, and Richard A. Moore, Appellee, and requests this Honorable Board to amend the Petition for Special Hearing in the above-captioned case and states:

- 1) Appellee, Greater Jacksonville Association, has filed Memorandum of Law on the issue of the application of BCZR 500.7 as it applies to a ruling concerning non-specific property locations.
- 2) While Greater Jacksonville Association believes that the Zoning Commissioner's authorities extends to declaratory judgment type relief, it has become apparent upon review of Appellees'

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Memorandums, Appellants' Memoranda as well as the Office of People's Counsels' Memoranda that in the alternative a simple amendment to the Petition for Special Hearing substituting the address of 14242 Jarrettsville Pike, Phoenix, Maryland, 21131, where the reference of "no specific location" currently exists would cure the defect from which Appellants and the People's Counsel are aggrieved.

3) The Baltimore County Board of Appeals has authority to review all matters which were decided by the Zoning Commissioner. Mr. Eichelberger, owner of the tower at 14242 Jarrettsville Pike, Phoenix, Maryland, 21131, was a participant at the Zoning Hearing and is participating at the Board of Appeals Hearing. There would be absolutely no prejudice to Mr. Eichelberger to name his property on the petition.

4) Any interested person may petition the zoning commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person any property in Baltimore County insofar as they are affected by these regulations, Marzullo v. Kahl, 135 Md. App. 663(2000).

5) If this Board were to grant Appellants' request to deny relief Appellee for a failure to name a specific property, clearly Greater Jacksonville Association would qualify as an interested person and could the same day file a Petition for Special Hearing on this issue notwithstanding the fact that the tower is completed. It makes sense to the tower owners, antenna owners, and community members; as well as in the general interest of judicial economy to allow this case to proceed at the Board of Appeals level rather than simply delaying the resolution of the

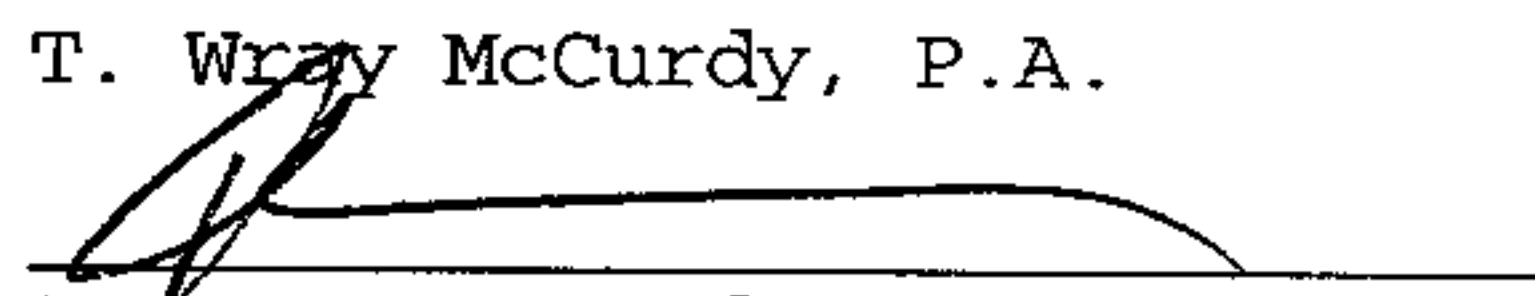
ultimate issue concerning the impact of the CR overlay district necessity of a special exception by sending the matter back to the Zoning Commissioner.

WHEREFORE, it is requested:

A) If the Board of Appeals would rule as a matter of law that the type of relief requested in the petition filed by Richard Moore listing no specific address is subject to dismissal for lack of a claim or controversy then as alternative relief, Appellee requests that the language in the original petition be amended from "no specific address" to "14242 Jarrettsville Pike, Phoenix, Maryland, 21131".

B) Such other and further relief as the nature of Appellees' Motion would require.

T. Wray McCurdy, P.A.



T. Wray McCurdy
101 Eastern Boulevard
Baltimore, MD 21221
Phone: 410-686-2200
Counsel for Appellees

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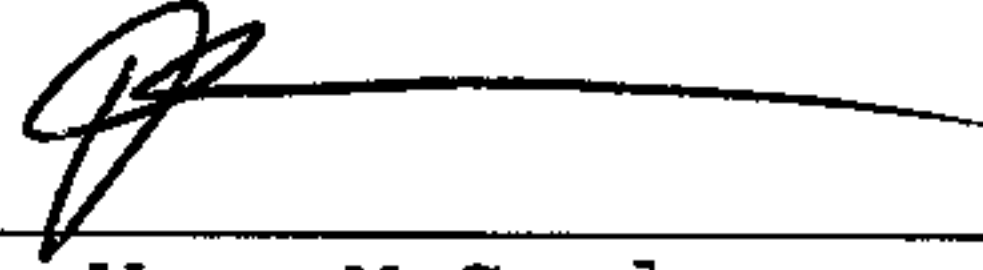
I HEREBY CERTIFY, that on this 8th day of March, 2001, a copy of the foregoing Motion to Amend Petition was served via U.S. Mail upon:

Robert A. Hoffman, Esquire
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21285-5517
Attorney for Bell Atlantic
Mobile

Karl J. Nelson, Esquire
Saul Ewing, LLP
100 S. Charles Street
Baltimore, MD 21201
Attorney for Cellular One

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204-4026
Attorney for Lewis
Eichelberg and H. Thorne
Gould

Peter Max Zimmerman, Esquire
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204
Attorney for People's Counsel
of Baltimore County



T. Wray McCurdy

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: March 6, 2001

TO: L. Wescott
D. Felling
C. Marks

FROM: Kathi

SUBJECT: Case No. 99-371-SPH /Richard A. Moore, Petitioner
Memos (Scheduled for Deliberation 3/27/01)

The subject case is scheduled for public deliberation on Tuesday, March 27, 2001 at 10:00 a.m.

The following documents have been filed as requested and are attached for your review prior to deliberation:

1. Appellants' Memorandum on Preliminary Issue filed by Robert A. Hoffman, Esquire, on behalf of Appellants, Crown Castle Atlantic, LLC and Bell Atlantic Mobile Systems, Inc.;
2. Appellees' Memorandum of Law in Support of the Findings of Fact and Conclusions of Law Rendered by the Baltimore County Zoning Commissioner filed by T. Wray McCurdy, Esquire, on behalf of Richard A. Moore and Greater Jacksonville Association, Inc.;
3. Brief of SBC Communications, Inc., Concerning Justiciability filed by Karl J. Nelson, Esquire, on behalf of SBC Communications, Inc.;
4. People's Counsel's Memorandum filed by the Office of People's Counsel; and
5. Memorandum of Lewis H. Eichelberger III and H. Thorne Gould filed by Michael P. Tanczyn, Esquire, on behalf of Messrs. Eichelberger and Gould.

A copy of the Deliberation notice was sent to you at time of scheduling. Should you have any questions, please call me.

Kathi

Attachments (5)

NOTE: As to schedule for 3/27/01 ---

Larry: 9 a.m. /settlement on record; 10a.m. /Moore Deliberation; 1 p.m. /Love Craft Deliberation; and 1:30 p.m. /Anthony deliberation

Donna: 9 a.m. /settlement; 10 a.m. Moore; and 11:30 a.m. Carroll Comm Church Delib.

Chuck: 9 a.m. /settlement; 10 a.m. Moore; and 11:30 a.m. Carroll Comm Church



Law Offices of
T. Wray McCurdy, P.A.
Attorney at Law
101 Eastern Boulevard
Baltimore, Maryland, 21221

Telephone: 410-686-2200
Facsimile: 410-686-5803
Toll-Free: 800-333-5943

T. Wray McCurdy, Esq.

March 8, 2001

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

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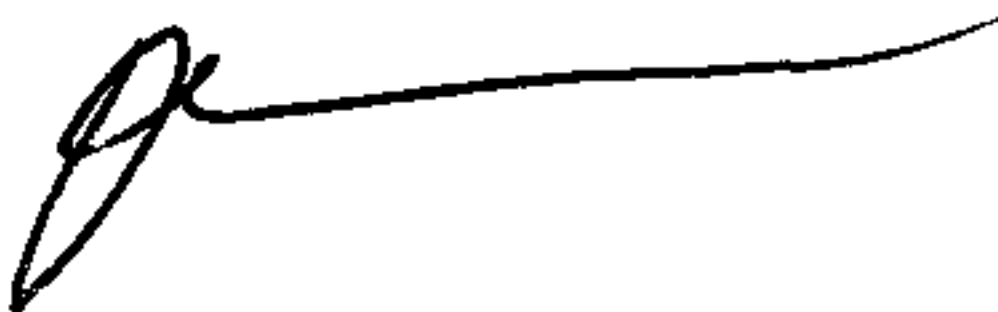
RE: In the Matter of Richard A. Moore, Petitioner
Case No. 99-371-SPH

Dear M. Clerk:

For filing in the above-captioned case, please find enclosed herewith a Motion to Amend Petition.

Thank you for your attention to this request.

Sincerely yours,



T. Wray McCurdy

TWM/bsb

Enclosure(s)

c.c.: Robert A. Hoffman, Esquire
Karl J. Nelson, Esquire
Michael P. Tanczyn, Esquire
Peter Max Zimmerman, Esquire

IN THE MATTER OF:

RICHARD MOORE

Petitioner,

Case No. 99-371-SPH
Each Specific Location

*

BEFORE THE

*

COUNTY BOARD OF APPEALS

*

FOR

*

BALTIMORE COUNTY

*

CASE NO. 99-371-SPH

*

* * * * *

MEMORANDUM OF LEWIS H. EICHELBERGER, III AND H. THORNE GOULD

The within Memorandum is submitted by the undersigned Counsel for the above named Protestants to assist the Board in deliberating the preliminary issue of standing of the Petitioner, Richard A. Moore, bring the Petition for Special Hearing Against No Specific Location.

ISSUES PRESENTED

1. WHETHER THE ORIGINAL PETITIONER IN CASES 99-366-SPHA AND 99-371-SPH, RICHARD A. MOORE, LACKED STANDING TO BRING A PETITION FOR A SPECIAL HEARING WITHOUT NAMING A SPECIFIC LOCATION FOR SPECIAL HEARING?

2. WHETHER THE GREATER JACKSONVILLE ASSOCIATION, INC. WHICH HAS ATTEMPTED TO BECOME PETITIONER ON APPEAL BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY IN CASE 99-371-SPH, LACKS STANDING AS A PETITIONER FOR NO SPECIFIC LOCATION IN THAT CASE?

3. WHETHER THE GREATER JACKSONVILLE ASSOCIATION, INC.'S ATTEMPT AT THE FIRST HEARING DATE BEFORE THE BOARD OF APPEALS TO ORALLY IDENTIFY A SPECIFIC PROPERTY AS THE SUBJECT OF THE PETITION WITHOUT HAVING AMENDED THE PETITION IN WRITING, IS LEGALLY PERMISSIBLE OR

VIOLATES CONSTITUTIONAL RIGHTS TO NOTICE AND DUE PROCESS TO ANY PROPERTY OWNERS WHOSE PROPERTIES MAY BE AFFECTED BY ANY DECISION RENDERED BY THE ADMINISTRATIVE HEARING TRIBUNAL?

STATEMENT OF THE CASE

Richard A. Moore, as legal owner of 3314 Paper Mill Road, filed a Special Hearing Petition to amend a previously approved Special Exception in Zoning Case 77-174-X, for relief to permit a one hundred sixty-three foot (163') wireless tower in lieu of the existing one hundred five foot (105') tower, and variance approval for various offset setback exceptions.

At the time of the filing of the Petition, an existing one hundred five foot (105') tower at 3314 Paper Mill Road was leased to Four Corners Communications, Inc. who provided space to its subtenants, which included wireless paging services and cellular communications companies. Simultaneously, Richard A. Moore filed a Petition for Special Hearing without naming a specific location, identified as Case 99-371-SPH, asking the Zoning Commissioner to interpret the *Zoning Regulations of Baltimore County*. With regard to that Petition, no property was identified, no plats were submitted, and no properties were posted with notice of the hearing. When 99-366-SPHA was heard by the Zoning Commissioner, evidence adduced by the Petitioner from the Tower Review Committee of Baltimore County, recommended against building a new tower on Mr. Moore's site by its recommendation dated February 21, 1999, Petitioner's Exhibit 2 below. Undaunted, Mr. Moore petitioned the Tower Review Committee for a new one hundred ninety foot (190') tower on his same property, which led to the Tower Review Committee's May 4, 1999 recommendation introduced below by the Petitioner as his Exhibit 3, wherein the Committee noted that it had previously recommended approval for a one hundred ninety foot (190') tower at the Glyndon Cleaners' site nearby. The Tower Review Committee's recommendation became a conditional

recommendation in favor of Mr. Moore's second tower request only if the Glyndon Cleaners' tower applicant and Mr. Moore reached agreement to construct one tower on Mr. Moore's site and withdrew the previous site from consideration, which never happened.

The Zoning Commissioner subsequently rendered decisions in Case 99-366-SPHA, by which he denied Mr. Moore's request for a replacement tower at his property off Paper Mill Road, and simultaneously granted the relief requested in 99-371-SPH by the Zoning Commissioner's Order October 19, 2000. A timely Appeal was filed by numerous Protestants in 99-371-SPH, while no Appeal was filed by Mr. Moore in Case 99-366-SPHA making the denial a final Order.

When the County Board of Appeals convened January 24, 2001 on 99-371-SPH, neither Mr. Moore nor his original Counsel appeared but rather, T. Wray McCurdy entered his appearance for Richard Moore and for the Greater Jacksonville Community Association. In his opening statement to the Board, Mr. McCurdy identified the tower at the Glyndon Cleaners' site as the subject of the Petition in 99-371-SPH for the first time and argued that unless the Board of Appeals entertained this Petition, the Community would never be able to have a hearing on the issue of a tower in a CR district since there had been no Appeal of the permit issuance for the Glyndon Cleaners' site, which tower had been constructed pursuant to Permit B-383994, issued by Baltimore County August 2, 1999.

Upon Motion to Dismiss the Petition for failure to name a specific location, to meet Constitutional requirements of due process and fair notice to affected property owners; or as unauthorized by County Law for unnamed properties when brought by someone other than the Zoning Commissioner himself, the Board directed the parties to submit a Memorandum of Law concerning the issue of standing and the provisions of Section 500.7 of the *Baltimore County Zoning Regulations*, as well as addressing the issue of a Petition brought solely on the basis of competition.

1. WHETHER THE ORIGINAL PETITIONER IN CASES 99-366-SPHA AND 99-371-SPH, RICHARD A. MOORE, LACKED STANDING TO BRING A PETITION FOR NO SPECIFIC LOCATION FOR SPECIAL HEARING?

The original Petitioner lacked standing pursuant to Section 500.7 in filing the Petition for Special Hearing, since he does not meet the test of being an interested person.

Baltimore County is a Charter County pursuant to Article XI-A of the Maryland Constitution. Article 25-A, Section 5 of the Annotated Code of Maryland enumerates the express powers which are granted to and conferred upon any County which adopts a Charter under Article XI-A of the Constitution. Section 5(U) of Article 25-A provides the authority for a Charter County.

“To enact local laws providing (1) for the establishment of a county board of appeals ... and (4) for the decision by the *582 board on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variation or exception...; *the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, ... or other form of permission or of any adjudicatory order...*” (Emphasis added). United Parcel Service, Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 650 A.2d 226 (1994)

In parsing, what occurred in the determination of Case 99-371-SPH before the Zoning Commissioner, all Protestants before this Board were Protestants below and argued that the Zoning Commissioner lacked authority to process or accept a Petition for no specific location or to rule on same, as being beyond the scope of the authority of State Law, County Charter, County Ordinance, or the *Baltimore County Zoning Regulations* and specifically, Section 500.7.

The powers and duties of the Zoning Commissioner under Section 500 of the *Baltimore County Zoning Regulations* were transferred to the Director of the Department of Permits and Development Management pursuant to Bill 69–1995, which amended Section 26–3 of the Baltimore County Code 1998 edition as revised to provide as follows:

“(d) The Zoning Commissioner shall administer the Office of Zoning Commissioner. Notwithstanding any provision in this Code or in the *County Zoning Regulations* to the contrary, the Director of the Department of Permits and development Management shall administer the Zoning Code and all other administrative matters otherwise assigned in this Article or by Zoning Regulations or elsewhere to the Zoning Commissioner, except for the conduct of hearings by this Code.” *Baltimore County Zoning Regulations*, Section 500, Footnote 1.

Within the powers granted to the Zoning Commissioner, not applicable in this Petition include the powers of review of applications for building permits under Section 500.1; powers to review petitions and site plans for Zones or District Reclassifications under 500.2; to reviewing petitions in cases where no building permit is required by persons desiring to use their land for new uses other than those in place at the time of the adoption of the Zoning Code in 1955 under 500.4; Special Exceptions under Section 500.5, and cases involving any violations or alleged violations or noncompliance with Zoning Regulations under Section 500.6 “upon notice to the parties in interest.”

Baltimore County Zoning Regulations Section 500.7 provides the Zoning Commissioner authority to conduct hearings he deems necessary for the proper enforcement of all Zoning Regulations. That section specifically describes the right of any “interested person” to petition the Zoning Commissioner for a public hearing, after advertisement and notice, to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations. *Baltimore County Zoning Regulations* Section 500.7 enacted by Bill 18–1976. As a threshold consideration, Mr. Moore’s standing to petition in Case 99-371-SPH, is to be determined by

examining whether he meets the test of an interested person and whether his Petition deals with enforcement action under the *Baltimore County Zoning Regulations*. Baltimore County, for a considerable period of time prior to the filing of Petition 99-371-SPH, removed the hearing of alleged zoning violations from the Zoning Commissioner and subjected the alleged violators to the Code Enforcement process which provides the due process notice to the property owner or lessee, opportunity for hearing, and right of appeal in an adverse decision to the Board of Appeals of Baltimore County. Baltimore County has also, prior to the filing of Case 99-371-SPH, repeatedly enforced its Zoning Code in the District Court of Maryland for Baltimore County rather than before the Zoning Commissioner.

In deciding not to name a specific location in his Petition for Special Hearing, Mr. Moore fails the test of proving he is an "interested person" with the right to petition the Zoning Commissioner. By failing to name a specific location, as the subject of the Petition, the Zoning Commissioner's ability to determine Mr. Moore's rights in the specific property as stated in Section 500.7, is thwarted or frustrated by Mr. Moore's failure to identify a specific property or location as the subject of the Petition. Similarly, the absence of a specific location renders it impossible for the Zoning Commissioner to examine and determine the existence of any "purported nonconforming use on any premises," which is the only other standard under which a Petition for Special Hearing may be brought by a private party under Section 500.7.

Mr. Moore clearly met the classification of competitor to any other wireless tower applicant at the time he filed Petition 99-371-SPH. He declared that he was the owner of the property on which an existing tower existed very near the Four Corners intersection in case 99-366-SPH. The Appellate Courts of Maryland in a solid line of cases have held that party lacks standing where their only concern was preventing competition from the zoning context. In 1961, the Court of Appeals

decided the case of *Kreatchman v. Ramsburg*, 224 Md. 209, 167 A.2d 345. The Court dismissed the Appeal of a party whose only concern for use of an adjacent parcel is that it would compete with his projected liquor store and is primarily based on competition and properly dismissed. Holding the dismissal proper, the Court held

“It is firmly established, we think, that in order to maintain an Appeal, the Appellant must have an interest in the subject matter of the Appeal. If he does not, we think that Rule 835(b)(1) is applicable...that the appeal is not authorized by law and that this constitutes a ground for dismissal of the Appeal; and, as we have said, the question of the sufficiency of interest is one to be determined by this Court and could not be tried and decided by the lower Court. We conclude that this question is properly before us.

The insufficiency of Mr. Kreatchman’s interest as a taxpayer or as a resident to sustain his intervention in this equity suit, where his objective is to prevent what he claims amounts to a violation of the zoning regulations, seems to call for no extensive discussion. See *Bauernschmidt v. Standard Oil Co.*, 153 Md. 647, 139 A. 531, and cases there cited. There is no evidence of any threatened depreciation in the value of Kreatchman’s property which he owns and occupies as a home, located a mile and a quarter or more from the proposed Ramsburg shopping center. He thus fails to show any special damages which would entitle him to invoke the aid of equity, unless threatened competition with his proposed business is sufficient to show such special damages...”

Competition was certainly not an actual issue in the Loughborough case, and the decision did not turn on it. The passage quoted, however, hints at the rule recognized by a number of authorities in other jurisdictions that the prevention of competition is not a proper element of zoning (citations omitted). In appeals from Zoning Boards, a competitor is usually not regarded as an “aggrieved party” (citations omitted). *Kreatchman v. Ramsburg*, 224 Md. 209 at 219–220.

In deciding *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 230 A.2d 289 (1967), the Court of Appeals of Maryland dealt with the question of whether adjacent property owners to an identified property which was the subject of a zoning petition were aggrieved by the decision of the Board. In considering statutory requirement, the person must be “aggrieved” in order to have standing, the Court reviewed zoning context, the State Standard Zoning Enabling Statute, which appears in State Zoning Enabling Acts, and the Municipal and Zoning Ordinances

throughout the United States quoting at the time the Maryland Zoning Enabling Act Article 66(b), Sections 7(d) and 7(j). In determining whether a person is "aggrieved," the Court said:

"Generally speaking, the decisions indicate that a person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally. The circumstances under which this occurs have been determined by the courts on a case by case basis, and the decision in each case rests upon the facts and circumstances of the particular case under review. Certain principles, however, have evolved. They are as follows:

1. There is a distinction between the degree of certainty of allegations and proof of aggrievement in cases in equity and in cases involving a petition for a writ of mandamus on one hand, and in statutory appeals from the board to the original court of record on the other.

- (a) When the suit is in equity and a declaration nullifying a zoning ordinance for constitutional or other reasons is sought, the allegations by the plaintiff of how he is specially damaged by the zoning ordinance must be definite, and he must meet the burden of showing such special damage by competent evidence. (Citation omitted)

2. In cases involving appeals under the provisions of a zoning ordinance;

- (a) It is sufficient if the facts constituting aggrievement appear in the petition for appeal either by express allegation or by necessary implication.

- (b) An adjoining, confronting or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved...

- (c) A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved.

3. A person whose sole reason for objecting to the board's action is to prevent competition with his established business is not a person aggrieved.

4. If any appellant is a person aggrieved, the court will entertain the appeal even if other appellants are not persons aggrieved. Brynarski supra at 144-145

Again, no specific location was identified in the original Petition filed by Mr. Moore and if he had noted the Glyndon Cleaners' site, he would have been disqualified as a person "aggrieved" on the basis of being a competitor under these Court holdings. On Appeal, the Petition still recites

no specific location and therefore, Mr. Moore cannot show a special interest because no specific property is mentioned as to entitle himself to the requisite standard of standing under the circumstances. That same authority was affirmed by the Court of Special Appeals of Maryland in the case of Eastern Service Centers, Inc. v. Cloverland Farms Dairy, Inc., 130 Md. App. 1, 744 A.2d 63 (2000). In that case, which involved a specific property address, an applicant sought a zoning permit to construct a gas station with an accessory convenience store which was granted by the Zoning Board. The applicant's competitors sought judicial review and after the Circuit Court affirmed the decision, the competitor appealed to the Court of Special Appeals. The Appeal was dismissed by the Court of Special Appeals because the Court held that a person whose sole reason for appealing the decision from the Zoning Board is to prevent competition with his established business does not have standing to appeal. Eastern Service Center supra at 8

The facts before the Board of Appeals of Baltimore County in the instant case do not afford standing because the Petitioner has noted no specific property where interest of the Petitioner can be determined in a specific property and they lack standing as an interested person as defined in Section 500.7. Mr. Moore had a right to appeal any building permit issued for any specific property, but failed to do so in the case of the Glyndon Cleaners' site since the permit was issued August 2, 1999 and no appeal was taken from that grant of a building permit for a wireless tower as approved by anyone.

Fairly read, the provision in *Baltimore County Zoning Regulation* Section 500.7, to petition the Zoning Commissioner by Special Hearing calls for notice to be given for fifteen (15) days in two newspapers of general circulation, whether or not a specific property is involved, is not dispositive of whether or not the petitioners meet the test of standing if the petition is not brought by the Zoning Commissioner himself. They must still meet the established criteria set forth in the previous

paragraph of the same regulation approving, if challenged, that they meet the standard of being an interested person as defined in that section. Examples are limited to two circumstances; either to determine the existence of any purported nonconforming use on any premises, or to determine any rights of an interested person in any property in Baltimore County as effected by the regulations. By deliberately choosing not to identify a specific location, the Petitioner, Mr. Moore, in his attempt to insulate himself from the claim that he lacked standing as a competitor, cannot meet any test to prove that he had standing to bring or maintain the Petition.

2. WHETHER THE GREATER JACKSONVILLE ASSOCIATION, INC., WHICH HAS ATTEMPTED TO BECOME PETITIONER ON APPEAL BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY IN CASE 99-371-SPH, LACKS STANDING AS A PETITIONER FOR NO SPECIFIC LOCATION IN THAT CASE?

The Greater Jacksonville Association, Inc., is subject to the same rules to establish its standing as an interested person under the statute and empowered to act as Petitioner in the instant case. Because no specific location is mentioned in the Petition, no property was posted, no property was mentioned in any ad, nor can the Greater Jacksonville Association, Inc. show how it meets the test of having any interest in any particular premises or rights in any property in Baltimore County affected by the regulations. All of the argument from argument number one is incorporated herein with the exception of the argument dealing with a competitor as lacking standing to maintain a petition, which is applicable to Mr. Moore only. It should be noted that the Greater Jacksonville Association, Inc. admitted in its opening statement that it did not file any appeal to any wireless tower building permit for towers proposed to be built in its neighborhood and specifically, the Glyndon Cleaners' site. That is mentioned because that would have represented a live case or controversy which the Board of Appeals would have the power to entertain under the holding in

UPS v. People's Counsel for Baltimore County, 336 Md. 569, 650 A.2d 226 (1994). Due process considerations require the Board of Appeals to examine considering the eleventh hour attempt of the Community Association to join as a Petitioner in 99-371-SPH, whether they meet the test of interested person. The Board should conclude from review of the Petition that no specific property is listed or identified. Parenthetically and to be addressed in detail in the next question, if the Greater Jacksonville Association, Inc. wished to make a specific property the subject of a Petition for Special Hearing at all times pertinent, they could have identified such a site as the Glyndon Cleaners' site, as mentioned in their opening statement to the Board as the subject of this Petition. Had they done so, that new Petition would have been processed in accordance with the Zoning Commissioner's rule and regulations and would have required a detailed plat, sealed engineer's description, and notice to the affected property owners, including the legal owner of the Glyndon Cleaners' site, and any affected tenants. They would have had an opportunity to participate in the process had that elementary due process been followed in accordance with the established rules of the Zoning Commissioner which affect the filing of all Petitions. In a letter which accompanied the filing of this Petition by Mr. Moore on March 22, 1999, his Counsel writes that no specific property is the subject of this Petition and that there are no violations since no specific property is being addressed to deal with the County's normal filing disclosures where specific properties are named. To allow the original Petitioner, Richard Moore, to be effectively replaced by the Greater Jacksonville Community Association, Inc. is contrary to the rules of the Zoning Commissioner and the facts of this case. The Community Association did not properly join the suit as a successor in interest to Mr. Moore, for any specific property. In situations where they were merely carrying on with an original Petition such as Mr. Moore's Petition for a Special Exception for 3314 Paper Mill Road, the Association could have properly been substituted as a Petitioner if they bought the property from Mr. Moore or

leased it from him where the tower was proposed to be built and they would be advocating why their Petition for Relief should be granted as an interested party in that property.

In the instant case 99-371-SPH, if the Board allows parties to be interchanged as Petitioners where no specific property is located, Pandora's Box will never empty of potential Petitioners, and affected property owners will be blindsided if the Board fashions a decision which allows substitution of Petitioners without any provable interest in a specific property subject to the Petition where no property location is identified in the Petition. To do so would patently violate the Fifth Amendment rights of the legal owners of any properties affected by such a decision who are guaranteed by the Federal and State Constitution that their property will not be taken or affected without due process of law and, in the appropriate case, just compensation. The Community Association in this case retains the right to file its own new Petition identifying a specific site if it cares to do so. Because it has that right, its ability to jump in Case 99-371-SPH with no specific property location mentioned would ignore any standing requirement otherwise recognized in Maryland Law in the case authority previously mentioned.

3. WHETHER THE GREATER JACKSONVILLE ASSOCIATION, INC.'S ATTEMPT AT THE FIRST HEARING DATE TO ORALLY IDENTIFY A SPECIFIC PROPERTY WITHOUT HAVING AMENDED THE PETITION IN WRITING, IS LEGALLY PERMISSIBLE OR VIOLATES CONSTITUTIONAL RIGHTS TO NOTICE AND DUE PROCESS TO ANY PROPERTY OWNERS WHOSE PROPERTIES MAY BE AFFECTED BY ANY DECISION RENDERED BY THE ADMINISTRATIVE HEARING TRIBUNAL?

The Greater Jacksonville Community Association's candid statement through Counsel on January 24, 2001 that it was directing its attention to the Glyndon Cleaners' site located on

Jarrettsville Pike just south of Four Corners, is not authorized in County Law and constitutionally infirm. Presumably because the Community Association would not face the challenge to its claim of standing on the basis of being a competitor to the wireless tower operators on the Glyndon Cleaners' site, the Community Association, through its Counsel, at the convening of this hearing before the Board of Appeals stated that his Association was geographically located adjacent to the Glyndon Cleaners' site, and that that would afford them standing. Protestants believe that fundamental fairness, the United States Constitution, Maryland State Constitution, and the Zoning Regulations themselves, prohibit such a position being assumed, for the first time, before the Board of Appeals for the following reasons. At the time that claim was made by the Association's Counsel, the Petition before the Board remained as originally filed and named no specific property. What the Association attempted to do, was ignore the requirements of the Zoning Commissioner that when a specific property is identified in a Petition for Special Hearing that detailed plats which meet the requirements of the Zoning Commissioner, as well as sealed engineering drawings must be filed with the Office of the Zoning Commissioner. Those plats are then routinely reviewed by the various County agencies who render comments to the Hearing Officer prior to the hearing of the Petition. Constitutional considerations of due process by way of notice to the designated property owner, in this case, the legal owner of the Glyndon Cleaners' site and any tenants thereon, would be triggered by the filing of a Special Hearing Petition which named that specific site.

That has never occurred to this time. In fact, as was presented to the Board as an exhibit in consideration with the Motion to Dismiss this Petition, the building permit issued August 2, 1999 to the legal owner of that Glyndon Cleaners' site and her tenant, authorized the construction of a one hundred ninety foot (190') wireless communications tower. That building permit was never appealed. Therefore, the attempt by the Greater Jacksonville Association specifically does that

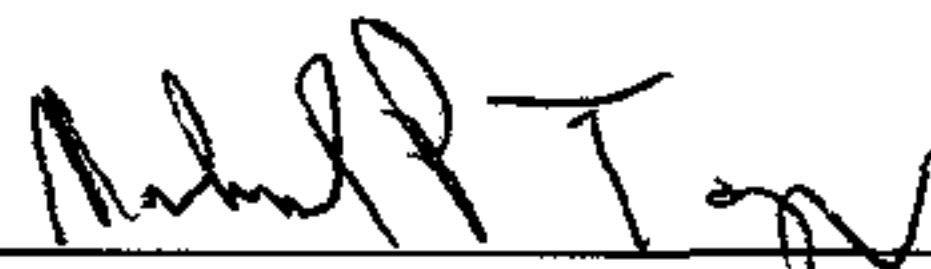
which was deemed improper and prohibited in the case of UPS v. People's Counsel for Baltimore County, 336, Md. 569, 650 A.2d 226 (1994). The Community Association should not be allowed to make an endrun and substitute on Appeal before the Board of Appeals for the first time a specific property, without having complied with the filing requirements for such a Petition with the Zoning Commissioner prior to that time.

CONCLUSION

The original Petitioner, Richard Moore, lacked standing as a competitor to bring a Special Hearing Petition as to this specific site and chose to avoid a dismissal by naming no specific location. By naming no specific location, both Richard Moore as original Petitioner, and the Greater Jacksonville Community Association, Inc. as successor intervenor petitioner, failed the test of showing that they are interested persons as defined in Section 500.7 where no specific property is addressed to determine what rights they may have in that property or to show a nonconforming use on a particular premises in Baltimore County. Further, the Greater Jacksonville Association, Inc. attempts to describe a particular property and location for the first time on Appeal, runs afoul of the due process requirements of the United States Constitution, the Maryland State Constitution, the Baltimore County Charter, and *Baltimore County Zoning Regulations* Section 500.7.

Finally, the Zoning Commissioner's discretionary powers under *Baltimore County Zoning Regulations* for Special Hearing Petitions are limited to enforcement actions which the County has delegated to Code Enforcement, Administrative Civil Hearings, and District Court enforcement actions since 1995.

Respectfully submitted,



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Attorney for the Protestants
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CERTIFICATE OF SERVICE

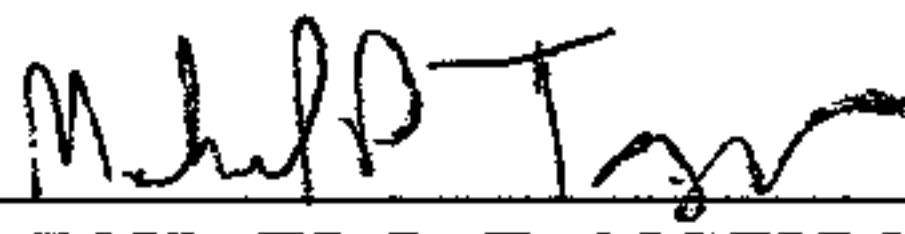
I HEREBY CERTIFY this 5th day of March, 2001 a copy of the foregoing Memorandum of Lewis H. Eichelberger, III and H. Thorne Gould was mailed by first class mail, postage prepaid to the following:

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BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF

RICHARD A. MOORE,

Petitioner

*

*

Case No. 99-371-SPH

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* * * * *

BRIEF OF SBC COMMUNICATIONS, INC. CONCERNING JUSTICIABILITY

Per the Board of Appeals' request, SBC Communications, Inc. ("SBC") hereby submits this Brief on the issue of justiciability, stating as follows:

I. **SECTION 500.7 REQUIRES A SPECIFIC INTEREST IN PROPERTY**

Section 500.7 of the Baltimore County Zoning Regulations defines the Zoning Commissioner's powers with respect to special hearings. Those powers are limited. Indeed, the first paragraph of § 500.7 specifically limits the Zoning Commissioner's decision-making powers to matters concerning specific properties. That section provides, in pertinent part, that the Zoning Commissioner may determine the rights of "any *interested* person" with respect to "any *property* in Baltimore County." Thus, in order for the Zoning Commissioner to have authority over a matter such as this, the matter must be brought by an *interested* person and concern a *property* in Baltimore County.

In the zoning context, the County always has interpreted "interested person" as meaning a person with a defined property interest. To that end, all of the County's zoning intake forms require that an applicant have either a legal right in property or the specific permission of a property's owner in order to have standing to seek zoning action.

Nowhere in § 500.7 is the authority to issue advisory opinions conferred. Rather, it appears that Respondents infer such authority from language set forth in the second paragraph of

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§ 500.7. At one point in that paragraph, it states: “if the petition relates to a specific property” Later in the paragraph it states: “[w]hether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers in general circulation in the county.” Presumably, Respondents infer from this language that the Zoning Commissioner can conduct hearings that do not relate to specific properties. This inference is directly contrary to the Zoning Commissioner’s limited power to hear only those cases brought by interested persons concerning property situated in Baltimore County.

Even if the Board accepted Respondents’ inference, however, the analysis would not end there. Rather, because § 500.7 contains a specific limitation concerning particular properties, any discrepancy between that limitation and the non-specific language relied upon by Respondents would merely create an ambiguity within § 500.7. The Board would then be required to resolve this ambiguity. A consideration of the basic principles of statutory construction leads to the conclusion that the Zoning Commissioner *cannot* issue advisory opinions.

It is well established that specific statutory language controls general language. Government Employees Ins. Co. v. Ins. Comm’r. of Maryland, 332 Md. 124, 132-133 (1993) (where two statutory provisions conflict, specific language governs general language). Hence, the specific limitation of the Zoning Commissioner’s power to hearings involving a petitioner’s interest in a specific property effectively “trumps” any inference that may be drawn from vague *subsequent references to non-specific applications*.

Moreover, wherever possible, statutory language should be interpreted as constitutional. Tidewater/Havre de Grace, Inc. v. Mayor and City Council of Havre de Grace, 337 Md. 338, 352 (1995) (court should choose an interpretation “which would render the ordinance constitutional

over one which would render it unconstitutional”). As explained below, Respondents’ proffered interpretation would deprive parties who are aggrieved by advisory opinions of their appellate rights as guaranteed by Baltimore County’s Charter. Such a deprivation would constitute a clear due process violation.

II. ADVISORY OPINIONS ARE INCONSISTENT WITH THE BALTIMORE COUNTY CHARTER

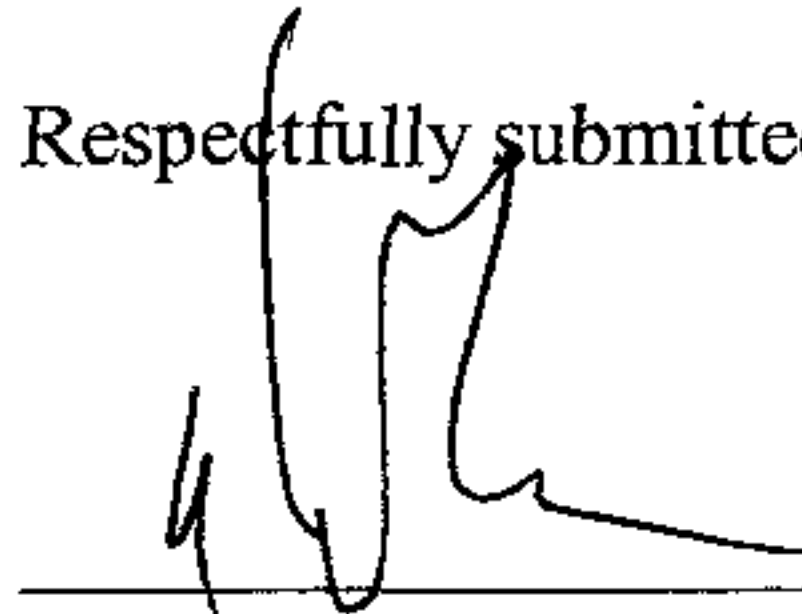
Section 604 of the Baltimore County Charter provides that any person aggrieved by a Board of Appeals decision may appeal that decision to the Circuit Court for Baltimore County. Accordingly, each party to this action has a right to appeal the Board’s decision to the Circuit Court. If this Board elects to issue an advisory opinion, however, the aggrieved party’s appeal right will be abrogated because, like the federal courts, Maryland’s courts hear only cases arising from actual “cases or controversies.” Thus, like the federal courts, Maryland’s courts have steadfastly refused to issue advisory opinions. *See, e.g., Mastandrea v. North*, 361 Md. 107, 128 (2000) (courts do not exist to resolve academic disputes between parties where no actual case or controversy exists); and *County Comm’rs. v. Sec’y. of Health and Mental Hygiene*, 302 Md. 566, 568 (1985) (courts do not render advisory opinions on academic or abstract propositions). It is beyond legitimate dispute, therefore, that no circuit court judge will hear a case wherein the only relief sought is a generic interpretation of Baltimore County’s Zoning Regulations.

Given that no appeal from this case can lie with the Baltimore County Circuit Court, the case itself violates both Baltimore County’s Charter and its zoning regulations, which provide specific appeal appellate rights. Moreover, it is difficult to imagine a clearer due process violation than the denial of a Charter-guaranteed appeal.

III. CONCLUSION

Simply put, there is no good reason for this Board to issue an advisory opinion in this case. Respondents have had, and probably still have, the opportunity to challenge the appropriateness of this tower at this location. For whatever reason, Respondents have elected not to do so. Rather, they have elected to pursue generic relief in the form of an advisory opinion. The Board should not mire itself in the quagmire caused by Respondents' failure to protect their own rights. Rather than deprive SBC and others of their guaranteed appellate rights, this Board should overturn the Zoning Commissioner's advisory opinion concerning CR overlay zones because that decision, in the absence of a specific site, violated the Zoning Commissioner's limited powers set forth in § 500.7.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2001, a copy of the foregoing Brief was mailed first-class, postage prepaid, to:

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A handwritten signature in black ink, appearing to be 'Karl J. Nelson', written over a horizontal line.

Karl J. Nelson

BELL ATLANTIC MOBILE SYSTEMS, INC.

*

and

*

CELLULAR ONE, INC.

*

and

*

LEWIS EICHELBERGER III
H. THORNE GOULD

*

BEFORE THE COUNTY

*

BOARD OF APPEALS OF

Appellants

*

BALTIMORE COUNTY

vs.

RICHARD A. MOORE

*

CASE NO. 99-371-SPH

and

*

GREATER JACKSONVILLE ASSN., INC.

*

Appellees

*

Appeal from Zoning Commissioner
of Baltimore County
In Re: Petition for Special Hearing
No Specific Location

*

*

*

* * * * *

APPELLEES' MEMORANDUM OF LAW
IN SUPPORT OF THE FINDINGS OF FACT AND CONCLUSIONS OF
LAW RENDERED BY THE BALTIMORE COUNTY ZONING COMMISSIONER

Now come Appellees, Richard A. Moore and Greater Jacksonville Association, Inc. (hereinafter "Moore" and "Greater Jacksonville," respectively, and "Appellees," collectively), by and through their attorney, T. Wray McCurdy, and the Law Offices of T. Wray McCurdy, P.A., and move the County Board of Appeals of Baltimore County adopt the Findings of Fact and Conclusions of Law rendered by the Zoning Commissioner of Baltimore County in reference to the above captioned matter, and as grounds therefore, state:

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Statement of the Case

This matter is an appeal from the Zoning Commissioner of Baltimore County concerning a Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (hereinafter "B.C.Z.R."). At issue is the interpretation of § 426.5(D) of the B.C.Z.R., which addresses the height and location restrictions on the erection of cellular communications towers. Fundamentally, Moore sought quasi declaratory relief from the Commissioner as to whether special exception approval is required for the erection of such a tower in a Commercial, Rural District (hereinafter "C.R. District"), or whether the erection of a tower is permitted as of right under the underlying zoning designations of B.L., B.M., B.R., or R-O.

As the Commissioner properly determined, a preliminary conflict arises when one examines the directives of the chart contained in § 426.5(D) and § 259, *et seq.*, of the B.C.Z.R. Under § 426.5(D) of the B.C.Z.R., a cellular tower of less than 200 feet in height is permitted as of right under the Medium Intensity Commercial zoning designations of OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., and M.L.R. Conversely, a Residential Zone or overlay district designation of C.R. clearly indicates that a cellular tower is permitted only by special exception pursuant to § 426.5(D). Section 259.1, which sets forth the establishment and regulations of overlay districts such as the C.R. District, states that the uses applicable in the underlying zone or district upon which a district designation is superimposed shall govern in the event of a conflict, arguably conferring the erection of a cellular tower as a matter of right pursuant to underlying zoning designations of B.L., B.M., B.R., or R-O. Additionally, § 259.3(A) indicates that any use permitted by right in the underlying zone upon which a C.R. District is applied is permitted by right in the C.R. District (the statute imposes additional bulk regulations to buildings, which is inapplicable to cellular towers). Notably,

however, and critical to this inquiry, § 259.1 states that in the event of a conflict between the provisions of an underlying zone and overlaying district, the most recently enacted provision shall prevail.

The critical threshold issue in the resolution of this matter is one of jurisdiction. The Appellants complain that the Zoning Commissioner lacks jurisdiction in this matter due to the fact that there is no named property or specific location at issue in conjunction with the relief sought. In effect, the Findings of Fact and Conclusions of Law of the Zoning Commissioner amount to an advisory opinion. As set forth below, the Appellees maintain that the law is clear as to both issues presented and that said issues were properly addressed by the Zoning Commissioner.

Questions Presented for Review

- I. Does the Zoning Commissioner of Baltimore County Possess the Discretion and/or Jurisdiction to Entertain a Petition for Special Hearing Concerning a Determination of Rights and the Interpretation of a Statute When No Specific Property Location Is Involved?**
- II. Do Sections 426.5(D) and 259 of the Baltimore County Zoning Regulations Mandate a Special Exception Hearing and Approval for the Erection of a Cellular Communications Tower in a Commercial, Rural District?**

Argument

- I. The Zoning Commissioner Possesses the Discretion and Jurisdiction to Entertain a Petition for Special Hearing Concerning a Determination of Rights and the Interpretation of a Zoning Statute When No Specific Property Location Is Involved.**

Section 500, *et seq.*, of the B.C.Z.R. addresses the powers and duties of the Zoning Commissioner concerning the administration and enforcement of the zoning regulations. Specifically, §§ 500.6 and 500.7 state, in pertinent part:

In addition to his aforesaid powers, the Zoning Commissioner shall have the power, upon notice to the parties in interest, to conduct

hearings involving any violation or alleged violation or noncompliance with any zoning regulations, *or the interpretation thereof*, and to pass his order thereon, subject to the right of appeal to the County Board of Appeals as hereinafter provided.

B.C.Z.R. § 500.6 (emphasis added).

The said Zoning Commissioner *shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations*, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises *or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations*.

With respect to any zoning petition other than a petition for special exception, variance or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. *If the petition relates to a specific property*, notice of time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. *Whether or not a specific property is involved*, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition.

B.C.Z.R. § 500.7 (emphasis added).

A cursory reading of these sections indicates that the Baltimore County Council has empowered the Zoning Commissioner with quite broad discretion in his duties of enforcing and interpreting the Zoning Regulations of Baltimore County. While it is certainly true that the law of this (or any other) land generally frowns upon advisory opinions of any type, subject matter notwithstanding, the Baltimore County Council has, in its wisdom, carved a niche of exception to

this general rule of law specifically enabling the Zoning Commission to render the equivalent of an advisory opinion or, more appropriately, quasi declaratory judgment relief.

While one may venture to surmise the logic behind granting the Commissioner such broad and discretionary powers, a review of the Laws of Baltimore County and the Legislative Minutes of the Baltimore County Council seeking legislative intent unfortunately provides little guidance. By way of background, §§ 500.6 and 500.7 of the B.C.Z.R. were enacted in 1955. Section 500.7, however, did not contain the second paragraph of the law currently in place, which is set forth above. Bill No. 18-1976 of the Laws of Baltimore County added this second paragraph which details the notice procedures for both named and unnamed properties. A search of the County Council Minutes of March 15, 1976, Legislative Day No. 7 (attached hereto as Appellees Exhibit 1), reveals that Bill No. 18-1976 was introduced on that day in the Council. The Bill chiefly deals with an amendment to the B.C.Z.R. to regulate truck-oriented uses of property in Baltimore County. As to the addition of the second paragraph of § 500.7, the Minutes merely state that § 500.7 was repealed and reenacted with amendments.

Appellants argued before the Zoning Commissioner and will likely argue to the Board of Appeals that the “unnamed” or “nonspecific” property provisions of § 500.7 do not empower the Commissioner to render declaratory judgment opinions pursuant to his powers to interpret the zoning regulations and make determinations of rights of persons affected by the regulations as set forth in §§ 500.6 and 500.7. They argue that the powers enumerated in the statute are “leftover” from the period when the Zoning Commissioner retained enforcement power over violations of the B.C.Z.R. The logic of this argument, a clever attempt to distort the statute, must fail.

If the County Council specifically included language to indicate that the Zoning Commissioner had zoning enforcement powers over specific and nonspecific properties, how does one violate zoning on a nonspecific or unnamed parcel of property? Stated another way, how could the Zoning Commissioner enforce alleged zoning violations on unnamed or nonspecific properties? In what situation would this dizzying hypothetical argument of the Appellants arise? The simple answer to this question is that the Commissioner cannot abstractly enforce the zoning regulations on an undetermined parcel of property. It is not logically possible. Why, then, did the County Council vest the Zoning Commissioner with the discretion to address questions of law pertaining to the zoning regulations when no specific property is involved?

The inadequacy of legislative history notwithstanding, the Appellees aver that the granting of the power to the Zoning Commissioner to render declaratory relief on zoning matters, frankly, makes common sense. It would be a great understatement to aver that zoning is an area of law under constant metamorphosis, litigation, and debate. Sections 500.6 and 500.7 of the B.C.Z.R. confer upon the Commissioner the ability to determine the rights, *and the potential rights*, of parties concerning various zoning issues, especially when those rights and issues may be of some legitimate debate, such as in the instant case. This discretionary ability provides an invaluable service to numerous groups, including individual landowners, community associations, and corporations, alike, as it clearly establishes the rights and duties of the parties involved prior to the institution of contract negotiations, permit applications, construction groundbreaking, or the numerous other procedures involved the acquisition of land and erection of structures or buildings.

This opinion of the Appellees as to the legislative intent and common sense of the statute notwithstanding, a plain reading of the statute makes clear that the Zoning Commissioner indeed

has the discretion to render an opinion based upon the interpretation of the zoning regulations, to make a determination of rights of persons affected by the regulations, and order appropriate conclusions of law based thereon. The fact that the second paragraph of § 500.7 of the statute specifically refers to unnamed or nonspecific properties indicates that the legislature was aware that, from time to time, the unique and dynamic arena of zoning law may require the Zoning Commissioner to render, in his discretion, advisory-type, declaratory relief opinions in the interpretation of the zoning laws and the determination of rights of property owners and other interested persons. As the Zoning Commissioner's Findings of Fact and Conclusions of Law aptly states, the Baltimore County legislature has specifically created an umbrella of discretion and power for the Commissioner in order to entertain a case where no specific property is involved. Such is the situation in the instant case. The statute is unambiguous and clear on its face, and hence, as more fully set forth in the discussion of law below, must not be dissected in order to discover or formulate an alternative meaning. Accordingly, the Appellees respectfully suggest that the Board must find, as a matter of law, that the Zoning Commissioner possessed jurisdiction to entertain this case.

II. Sections 426.5(d) and 259 of the Baltimore County Zoning Regulations Mandate a Special Exception Hearing and Approval for the Erection of a Cellular Communications Tower in a Commercial, Rural District

As set forth above, the merits of this case are confined to a very specific issue of law: Whether §§ 426.5(D) and 259 of the B.C.Z.R. confer the ability to construct a cellular communications tower as a matter of right on a property with an underlying zoning designation of B.L., B.M., B.R., or R-O, or whether the C.R. district overlay requires special hearing and exception approval. The statute sets forth:

426.5 Location and height restrictions for wireless telecommunications towers and antennas.

In this sections, the following words have the meanings indicated:

- A. "R" means by right.
- B. "SE" means by special exception.
- C. The column for antennas refers to antennas located on a tower, building or structure legally existing prior to the installation of the antenna even if the tower, building or structure was approved by special exception.
- D. The height of a tower is measured from the base of the tower to the tip of the tower or the tip of the highest antenna of the tower, whichever distance is greater.

		Antennas	Towers	
		Maximum Antenna Height and Antenna Diameter	< 200 ft. High	≥ 200 ft. High
Residential Zones R.C., R.C.C., C.R. District, D.R., R-O-A	R	15 feet high, diameter 3 feet	SE	SE R if in an R.C. Zone within the rights-of-way of public utility overhead electrical transmission lines carrying more than 69,000 volts, provided that the height of the tower does not exceed 250 feet
Transitional Zones S-E, R-O, OR-1, B.M.M., B.M.Y.C., B.M.B., C.B.	R	15 feet high, diameter 3 feet	SE	SE
Medium Intensity Commercial OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., M.L.R.	R	Not Regulated	R	SE
High Intensity Commercial O-3, O.T., M.H.	R	Not Regulated	R	SE

B.C.Z.R. § 426.

While it is clear that the above statute and chart mandates a special exception hearing and approval for the erection of a cellular tower in a C.R. District, § 259.3(A) of the B.C.Z.R., conversely indicates that a use permitted by right in an underlying zone (in this case B.L., B.M., B.R., or R-O), is permitted by right in the C.R. District. Furthermore, § 259.1 mandates that: "In any district, the use, height, area and other regulations applicable in the underlying zone(s) or district(s) upon which the district is superimposed shall govern except as may be specifically enlarged, modified or limited by the district regulations in this section." The law, then, seems clear that the underlying zoning designation controls. This, however, is not necessarily the end of the analysis.

Section 259.1 goes on to state that: "In the case of a conflict between the provisions of an underlying zone and overlaying district(s), the most recently enacted provision shall prevail." The Appellees aver that this provision, in conjunction with the stated legislative intent and philosophy supporting the creation of the C.R. District designations, controls this case.

The Commercial Rural District

The legislative history supporting Bill No. 103-1988 of the Laws of Baltimore County is codified under § 259.2 of the B.C.Z.R., which states:

A. C.R. (Commercial, Rural) District.

I. The C.R. District is established to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists. It is intended that the C.R. District be applied only to areas where such facilities are not available within a reasonable distance, where sewerage treatment and a potable water supply can be provided without an adverse effect on the environment and neighboring uses, and where public roads are capable of handling the anticipated increase in traffic without adverse impacts on

surrounding areas. The commercial centers within C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

As the Zoning Commissioner opines, the C.R. District designation is typically superimposed upon “small villages and hamlets” throughout the rural areas of Baltimore County. The C.R. District may be imposed, pursuant to § 259.2(A)(2), over B.L., B.M., B.R., or O-R zoned property. The purpose of the C.R. District designation, clearly, is to provide the rural population with necessary goods and personal services where such facilities would be otherwise unavailable. These districts are imposed chiefly in agricultural or Resource Conservation (R.C.) areas to preserve the beneficial characteristics and charm of the rural county, while providing convenience for the population which chooses to reside therein. While § 259.3(A) technically provides that a use permitted by right in the underlying zones of B.L., B.M., B.R., or O-R, such as the erection of a cellular communications tower, is permitted by right in the C.R. District, it is unlikely that the legislature of Baltimore County intended such a result.

Superiority of Conflicting Provisions

An analysis of the conflict provision § 259.1 as applicable to the instant case is straightforward. The Districts designation statute was first drafted as Bill No. 40 in 1967. The creation of the Commercial Rural District by Bill No. 103 was codified under § 259.2 in 1988. The directive regarding conflicting provisions between an underlying zone and an overlaying district, mandating that the most recently enacted provision shall prevail, § 259.1, was most recently amended and codified by Bill No. 127 in 1994.

However, the Wireless Telecommunications Facilities statute, § 426, was enacted by Bill No. 30 in 1998. This act of the Baltimore County Council clearly post-dates the legislatively

them to the extent possible, and held that such statutes are to be read to avoid rendering either of them, or "any portion, meaningless, surplusage, superfluous or nugatory." *Id.* at 132, 630 A.2d at 717. Furthermore:

While we acknowledged the role that legislative history plays in the interpretation of statutes, even when the words the Legislature used are clear and unambiguous, see Harris v. State, 331 Md. 137, 146, 626 A.2d 946, 950 (1993), indicating that, in the interest of completeness, we may, and sometimes will, review the legislative history of a clear statute, we explained, quoting Coleman v. State, 281 Md. 538, 546, 380 A.2d 49, 54 (1977) ("a court may not as a general rule surmise a legislative intention contrary to the plain language of a statute or insert exceptions not made by the legislature"), that "the resort to legislative history is a confirmatory process; it is not undertaken to contradict the plain meaning of the statute." Chase, 360 Md. at 131, 756 A.2d at 993.

Mid-Atlantic Power Supply Association v. Public Service Commission of Maryland et al., 361 Md. 196, 206; 760 A.2d 1087 (1999).

If, however, two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute. State v. Ghajari, 346 Md. 101, 115, 695 A.2d 143, 150 (1997). Likewise, the statute whose relevant substantive provisions were enacted most recently must be held to have repealed by implication any conflicting provisions of the earlier statute. Farmers & Merchants Bank of Hagerstown v. Schlossberg, 306 Md. 48, 61, 507 A.2d 172, 178-179 (1986). See also Carroll County Educ. Ass'n, Inc. v. Board of Educ. of Carroll County, 294 Md. 144, 152, 448 A.2d 345, 349 (1982); Automobile Acceptance Corp. v. Universal C.I.T. Credit Corp., 216 Md. 344, 353, 139 A.2d 683, 687 (1958); and Leitch v. Gaither, 151 Md. 167, 175, 134 A. 317, 319 (1926).

In this case, it is beyond argument that the Baltimore County Council intended the Wireless Telecommunications statute contained in § 426 of the B.C.Z.R. to supercede the permitted-by-right

uses contained in § 259.3(A), and set forth language in § 259.1 to ensure this end result by plainly stating that the most recently enacted provision shall prevail in the event of a conflict between the provisions of an underlying zone and overlaying district. Accordingly, the Appellees respectfully aver that the County Board of Appeals must concur with the Zoning Commissioner and find that cellular communications towers are permitted only by special exception hearing and approval in C.R. Districts.

Conclusion

Accordingly, for the above stated reasons, Appellees respectfully pray the County Board of Appeals of Baltimore County:

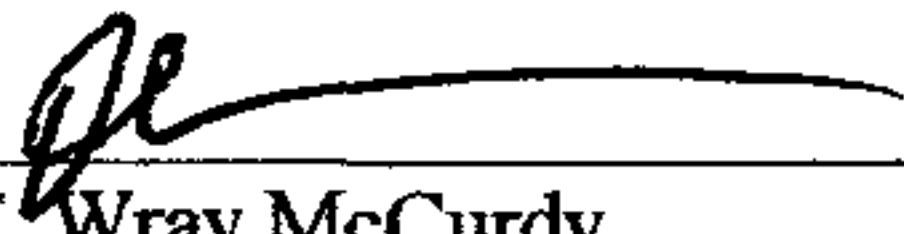
A) Adopt the Findings of Fact and Conclusions of Law of the Zoning Commissioner of Baltimore County;

B) Find as a Matter of Law That the Zoning Commissioner Possesses the Discretion and Jurisdiction to Entertain a Petition for Special Hearing Concerning a Determination of Rights and the Interpretation of a Zoning Statute When No Specific Property Location Is Involved;

C) Find as a Matter of Law that Sections 426.5(d) and 259 of the Baltimore County Zoning Regulations Mandate a Special Exception Hearing and Approval for the Erection of a Cellular Communications Tower in a Commercial, Rural District; and

D) For Such Further Relief as the Nature of Appellees' Cause and Justice May Require.

Respectfully Submitted,


T. Wray McCurdy
Law Offices of T. Wray McCurdy, P.A.
101 Eastern Boulevard
Baltimore, Maryland 21221
410-686-2200

Counsel for Appellees

Certificate of Service

I HEREBY CERTIFY that on this 5th day of March, 2001, a copy of the foregoing Appellees Memorandum of Law was served via U.S. Mail upon:

Robert A. Hoffman, Esquire
210 Allegheny Avenue
PO Box 5517
Towson, Maryland 21285-5517
Attorney for Bell Atlantic Mobile

Karl J. Nelson, Esquire
262 Oak Court
Severna Park, Maryland 21146
Attorney for Cellular One

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, Maryland 21204-4026
*Attorney for Lewis Eichelberger and
H. Thorne Gould*

Peter Max Zimmerman, Esquire
Room 47, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204
*Attorney for People's Counsel of
Baltimore County*


T. Wray McCurdy

BALTIMORE COUNTY COUNCIL MINUTES

Legislative Day No. 7

March 15, 1976 - 7:30 P.M.

A. The meeting was called to order by the Chairman at 7:30 P.M. The Chairman then asked the audience to rise for a moment of silent prayer and the Pledge of Allegiance to the Flag led by Cub Scout Pack No. 463 of Lutherville. There were approximately 80 persons in attendance and the following Councilmen were present:

John V. Murphy	First District
Gary Huddles	Second District
Clarence E. Ritter	Third District
Eugene L. Kibbe	Fourth District
Norman W. Lauenstein	Fifth District
Eugene W. Gallagher	Sixth District
John W. O'Rourke	Seventh District

B. Approval of Journal

Upon motion by Councilman Huddles, seconded by Councilman Ritter, the reading of the Journal Entries for the meeting of March 1, 1976 was waived and accepted unanimously.

C. Enrollment of Bills

The Chairman advised that the following bills had been passed by the Council and signed by the County Executive. He certified and delivered to the Secretary, Bills Nos. 9-76, 11-76 and 17-76.

D. Introduction of Bills

Bill No. 18-76, entitled An Act to amend the Baltimore County Zoning Regulations to regulate truck-oriented uses of property in Baltimore County, to designate the zoning classifications under which such uses shall be permitted as of right, allowed by special exception or prohibited both in terms of control over the development of new facilities as well as remedial measures applicable to existing ones, by adding certain definitions to Section 101 of said zoning regulations and revising certain existing ones, by repealing and re-enacting with amendments Section 104 thereof, by redesignating the subtitle "Statement of Purpose" under Article 4 thereof, by repealing and re-enacting with amendments subsections 233.2, 236.4, 241.1, 253.2A, 256.2, 256.4, 409.2b and 500.7 thereof and by adding new sections B400, 410 and 410A to said zoning regulations.

E. Council Approval of Fiscal Matters

1. Budget Appropriation Transfer No. 76-10 - Board of Education

At the direction of the Chairman, the Secretary read the cover letter pertaining to this transfer of additional funds required in two Board of Education budget categories, 35-09 Food Services and 35-11 Community Services. Ted Smith of the Board of Education appeared to explain and was questioned by Councilmen Murphy, Gallagher and Kibbe

RE: PETITION FOR SPECIAL HEARING
NO SPECIFIC LOCATION

RICHARD A. MOORE
Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR BALTIMORE COUNTY
* **CASE NUMBER: 99-371-SPH**

* * * * *

PEOPLE'S COUNSEL'S MEMORANDUM

PEOPLE'S COUNSEL states the following:

1. BCZR Section 500.7 has its source in the 1955 Baltimore County Zoning Regulations. In its original form, it included what is the first of the two paragraphs of the current section. See attached 1955 BCZR and 1969 republication.

In 1976, the County Council added the second paragraph in Bill 18-76, Section 21, attached. See Planning Board Report dated February 19, 1976, page 16. That appears to be the last time this section was amended.

2. The plain language of BCZR 500.7 does give authority for the Zoning Commissioner, and on appeal, the County Board of Appeals to entertain petitions which do not involve a specific property.

3. The Constitution of the United States, Article III, and the "case or controversy" doctrine do not preclude such authority because they apply to courts and not to administrative agencies. Agencies are not strictly subject to the separation of powers doctrine. They may combine functions comparable, but not identical, to legislative,

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executive, and judicial functions. See Dep't. of Natural Resources v. Linchester Sand & Gravel Corp., 274 Md. 211, 218-21 (1975); County Council v. Investors Funding, 270 Md. 403, 426-441 (1973). These functions may include “quasi-legislative” and “quasi-judicial” powers, or some blend.

4. On the other hand, as a matter of administrative law, where agencies are asked in contested cases to go beyond interpretations necessary to a concrete and particular controversy and to engage in what amounts to pure rulemaking, or a change to established rules, the agency should exercise some discretion as to whether it will decide the matter. CBS, Inc. v. Comptroller, 319 Md. 687 (1990).

5. In the present case, it is apparent that the Petitioner is, in reality, interested in a particular location and that there is, in the background, a more classic controversy. However, Petitioner has chosen not to identify that controversy.

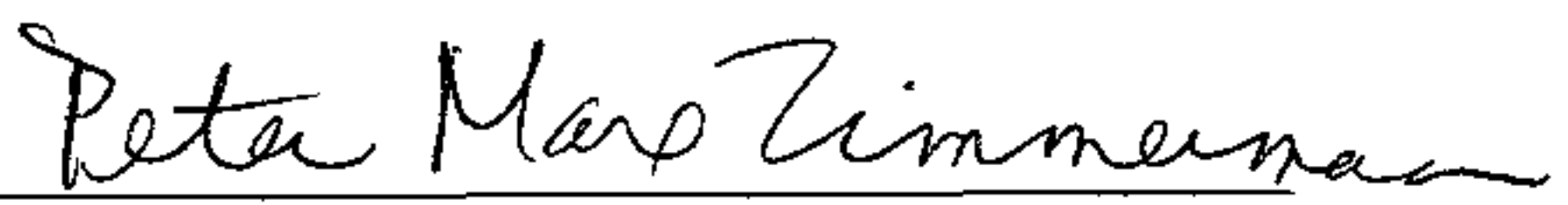
6. Under these circumstances, it would be the proper exercise of discretion under administrative law to require the petitioner to amend his petition to identify the property.

7. In this connection, the issue of the interest of a competitor was broached at the hearing. Maryland law allows any interested person to be a party before an agency unless precluded by statute or rule. Sugarloaf Citizens v. MDE, 344 Md. 271, 285-88 (1996). We know of no rule preventing this Petitioner from amending or refiling. The doctrine which denies standing to a competitor whose interest is purely anti-competitive applies at the court level, not the agency level. Eastern Service Centers v. Cloverland Farms Dairy,

130 Md.App. 1, 8-9 (2000). In any event, there also appear to be neighboring citizens who have an interest in this matter.

8. With respect to timing, and the fact that the tower may be built with the benefit of a permit, that would not insulate it from review to determine its legality. This situation would bring into play the doctrine that “equitable estoppel” does not protect a property owner whose use is impermissible or requires additional zoning approval. Lipsitz v. Parr, 164 Md. 222, 227-28 (1933); City of Hagerstown v. Long Meadow Shopping Center, 264 Md. 481, 494-96 (1972); Inlet Associates v. Assateague House, 313 Md. 413, 437 (1988); Cromwell v. Ward, 102 Md.App. 691, 722-25 (1995).

WHEREFORE, PEOPLE’S COUNSEL requests that the Board DECLINE to hear the petition as presently filed, without prejudice to amendment of the petition, in accordance with such procedures as the Board deems necessary and appropriate.


PETER MAX ZIMMERMAN
People’s Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People’s Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2001, a copy of the foregoing People's Counsel's Memorandum mailed to John P. Evans, Esq., Whiteford, Taylor & Preston, 210 E. Pennsylvania Avenue, Towson, MD 21204, attorney for Petitioner, to Robert A. Hoffman, Esq., Venable, Baetjer and Howard, 210 Allegheny Avenue, Towson, MD 21204, to T. Wray McCurdy, Esq., 3607 Jackson Cabin Road, Jacksonville, MD 21131, to Karl J. Nelson, Esq., Kramon & Graham, 1 South Street, Suite 2600, Baltimore, MD 21202, to Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Suite 106, Towson, MD 21204.


PETER MAX ZIMMERMAN

**BALTIMORE COUNTY
ZONING REGULATIONS**

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham
President

Robert B. Hamill
Augustine J. Muller
County Commissioners of Baltimore County

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

Administration and Enforcement

Sec. 500—Zoning Commissioner and/or
Deputy Zoning Commissioner

Sec. 501—Board of Zoning Appeals

of Planning or any member of his staff be permitted to testify at any such hearing or subsequent proceeding unless summoned by one of the parties to the case with at least five days' notice to all other counsel of record therein.
Bill No. 80, 1960

500.3 a.—Any such reclassification when granted by the Zoning Commissioner shall in the absence of an appeal, have the force and effect of law.

b. No reclassification of the use to which a particular piece of property is subject, according to the appropriate zoning map in effect at the time, shall, for a period of two years after such map may by an ordinance of the County Council have been adopted, be granted by the Zoning Commissioner on the ground that the character of the neighborhood has changed. Bill No. 80, 1960.

500.4.—In cases in which no building permit is required, any person desiring to use any land for any purpose other than that for which said land is being used at the time of adoption of this Order and Resolution, shall make application to the Zoning Commissioner for a use permit, upon such form as the Zoning Commissioner may prescribe. If such use is permissible the Zoning Commissioner may issue a use permit conditioned by other provisions contained in the regulations which shall indicate that it authorizes particular use applied for.

500.5—AUTHORITY OF ZONING COMMISSIONER TO PROVIDE FOR SPECIAL EXCEPTIONS AND VARIANCES.

Subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, the Zoning Commissioner may grant variances from area and height regulations and may make Special Exceptions to the zoning regulations in harmony with their general purposes and intent; provided that the issuance of all such Special Exceptions and Variations shall be subject to appropriate principles, standards, rules, conditions and safeguards set forth in the zoning regulations, and that all decisions of the Zoning Commissioner with respect to such matters shall be subject to appeal to the County Board of Appeals as provided in this article, Section 23-23 of the Baltimore County Code Supplement, 1961. Bill No. 80, 1960.

500.6.—In addition to his aforesaid powers, the Zoning Commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or non-compliance with any zoning regulations, or the proper interpretation thereof, and to pass his Order thereon, subject to the right of appeals to the County Board of Appeals as hereinafter provided.

500.7.—The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported non-conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

500.8.—He shall have the power to prescribe rules and regulations for the conduct of hearings before him, to issue summons for and compel the appearance of witnesses, to administer oaths and to preserve order.

500.9.—The Zoning Commissioner shall have the power to require the production of plats of developments or subdivisions of land, or of any land in connection with which application for building or use permits or petitions for a Special Exception, a Reclassification, or a temporary use shall be made, such plats to show the location of streets or roads and of buildings or other structures proposed to be erected, repaired, altered, or added to. All such plats shall be drawn to scale and shall clearly indicate the proposed location, size, front, side and rear setbacks from property lines and elevation plans of proposed buildings or other structures. Such details shall conform in all respects with Zoning Regulations. No such plats or plans, showing the opening or laying out of roads or streets, shall be approved by the Zoning Commissioner unless such plats or plans shall have been previously approved by the Office of Planning and the Department of Public Works of Baltimore County.

BALTIMORE COUNTY
ZONING REGULATIONS
1969

0331

This is the property of:

Name _____

Address _____

Phone _____

ARTICLE 5—ADMINISTRATION AND ENFORCEMENT

Section 500—ZONING COMMISSIONER AND/OR DEPUTY ZONING COMMISSIONER

500.1—All Applications to the Building Engineer for building permits shall be submitted to the Zoning Commissioner for approval by him as to Zoning before any permit shall be issued. Before approving any such application, the Zoning Commissioner shall satisfy himself that the application is in proper form and contains all necessary information, and that the proposed building or use of land, building, or structure, complies in all respects with the regulations then in effect with respect to zoning.

500.2 a.—Whenever a petition is presented to the Office of Planning and Zoning for a zone or district classification or reclassification of a piece of property, or for a Special Exception, such petition may be filed with the Zoning Commissioner only if it meets the Zoning Commissioner's rules of practice and procedure. Whenever the Office of Planning and Zoning shall have acknowledged the adequacy of the petition in respect to such rules, including whatever site plan or other supporting material may be necessary, the petition may be filed with the Zoning Commissioner by the legal owner of the property or by his legally authorized representative.

b.—A date for a public hearing before the Zoning Commissioner on the petition for the proposed zone or district classification or reclassification may then be scheduled and such hearing shall be held not less than 30 nor more than 90 days after the date set on the Zoning Commissioner's acknowledgment of such filing.

c.—Notice of such petition and of the time and place of the hearing thereon before the Zoning Commissioner shall be conspicuously posted upon the property, and notice thereof shall also be given in two newspapers of general circulation in the County for a period of at least fifteen days prior to the time of such hearing. In each case, such notice shall describe the property involved in the petition and the relief prayed for therein.

d.—Upon receipt of such petition by the Zoning Commissioner, he shall promptly forward a copy of the same to the Director of Planning (or his Deputy) for his consideration and written report thereon containing his findings regarding pertinent planning factors. Not later than ten days before the hearing before the Zoning Commissioner, the Director of Planning or his Deputy, may file such written report with the Zoning Commissioner as part of the file in the case, and a copy thereof shall be mailed to any counsel of record in the case. Unless such report shall be filed as aforesaid within such period, it shall not be accepted in the case and shall not be used in evidence for any purpose either before the Zoning Commissioner or in any

ADMINISTRATION AND ENFORCEMENT

500.7—The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported non-conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

500.8—He shall have the power to prescribe rules and regulations for the conduct of hearings before him, to issue summons for and compel the appearance of witnesses, to administer oaths and to preserve order.

500.9—The Zoning Commissioner shall have the power to require the production of plats of developments or subdivisions of land, or of any land in connection with which application for building or use permits or petitions for a Special Exception, a Reclassification, or a temporary use shall be made, such plats to show the location of streets or roads and of buildings or other structures proposed to be erected, repaired, altered, or added to. All such plats shall be drawn to scale and shall clearly indicate the proposed location, size, front, side and rear setbacks from property lines and elevation plans of proposed buildings or other structures. Such details shall conform in all respects with Zoning Regulations. No such plats or plans, showing the opening or laying out of roads or streets, shall be approved by the Zoning Commissioner unless such plats or plans shall have been previously approved by the Office of Planning and the Department of Public Works of Baltimore County.

500.10—Any person or persons, jointly or severally, or any taxpayer, or any official, office, department, board or bureau of Baltimore County, feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals. Notice of such appeal shall be filed in writing, with the Zoning Commissioner within thirty days from the date of any final order appealed from, together with the required fee as provided in the zoning regulations. Such appeals shall be heard and disposed of by the County Board of Appeals as may be provided in the Charter and the Board's own rules of procedure. Any reclassification when granted by the County Board of Appeals shall, in the absence of an appeal therefrom, have the force and effect of law.

500.11—Upon such appeal, the Zoning Commissioner shall present to the County Board of Appeals all pertinent papers in connection therewith. Notice of such appeal, and the date of hearing or continuance thereof, shall be given to the attorneys for the respective parties, if any, or to such person, or persons, as may be designated at the original hearing to receive such notice.

500.12—No new petition for Reclassification or Special Exception shall be entertained by the Zoning Commissioner in any case which has been denied either by the Zoning Commissioner or the County Board of Appeals until the expiration of eighteen (18) months from the date of the final Order thereon.

Final Report of the
Baltimore County Planning Board
Adopted February 19, 1976

PROPOSED ZONING AMENDMENTS:
TRUCKING FACILITIES

Baltimore County Office of Planning and Zoning
Towson, Maryland 21204

Published by the Baltimore County Office of Planning and Zoning
Towson, Maryland 21204

Printed by Central Reproduction Services Division,
Baltimore County Office of Central Services

February, 1976

2. Automotive parts must be concealed from off-site view. Junk vehicles may not be stored or otherwise situated on the site.
3. In the granting of a special exception authorizing the establishment of a Class II trucking facility, the Zoning Commissioner may impose (in addition to any other reasonable restriction) reasonable limitations on hours of operation.

✓ 18. In Subsection 500.7, add the following paragraph immediately after the second sentence:

With respect to any zoning petition other than a petition for a special exception, variance, or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the County. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors.

* * *

NOTE: The Planning Board agrees with the Citizens Task Force on Truck Terminals that a zoning code is not an appropriate context for provisions such as the following, which, nevertheless, have been suggested by the Task Force.² The Board neither recommends nor opposes the enactment of these provisions. The Board does recommend, however, that the County Council consult with the Department of Traffic Engineering, the Industrial Development Commission, the Office of Law, and the Office of Planning and Zoning to determine how the objectives of the provisions can best be met—whether through law, administrative regulation, or a combination of the two.

Use of Streets and Property by Large Trucks

- A. Truck parking. No truck tractor, truck trailer, or tractor-trailer may be parked off-site within 1,000 feet of a trucking facility, as defined in the Baltimore County Zoning Regulations, 1955, as amended, except that a tractor-trailer may be parked off-site within that distance for the sole principal purpose of loading or unloading goods at other premises and only for the time necessary for that purpose.
- B. Truck operation limited to certain streets. Except as provided below or for the purposes described in Paragraph A, no truck tractor or tractor-trailer may be driven on any street other than an arterial street or a major collector street, as those terms are defined in the Baltimore County Zoning Regulations, 1955, as amended, or a public industrial service road. However, such a vehicle may be driven on a street other than one of those if it must do so, and only to the extent that it must do so, to gain access to a trucking facility or other establishment at which such vehicles are normally and legally stationed and which does not abut one of those streets.

² They have been somewhat modified by the Board.

County Council of Baltimore County Maryland

Legislative Session 1976, Legislative Day No. 7

BILL NO. 18-76

Introduced by Mr. O'Rourke, Councilman

(By request of County Executive)

By the County Council, March 15, 1976

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to regulate truck oriented uses of property in Baltimore County, to designate the zoning classifications under which such uses shall be permitted as of right, allowed by special exception or prohibited both in terms of control over the development of new facilities as well as remedial measures applicable to existing ones, by adding certain definitions to Section 101 of said zoning regulations and revising certain existing ones, by repealing and re-enacting with amendments Section 104 thereof, by redesignating the subtitle "Statement of Purpose" under Article 4 thereof, by repealing and re-enacting with amendments subsections 233.2, 236.4, 241.1, 253.2A, 256.2, 256.4, 409.2b and 500.7 thereof and by adding new sections B400, 410 and 410A to said zoning regulations:

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland*, that the following definitions be and they are hereby added, in alphabetical order, to Section 101 of the Baltimore County zoning regulations.

Section 101 Definitions

Collector street, major: A street, or part of one, that: is intended for travel between neighborhoods or between neighborhoods and other places, but not for travel within neighborhoods; it is not an arterial street; and has been designated as a major collector street by the Plann-

3. TO MINIMIZE HEAVY-TRUCK TRAFFIC ON MOTORWAYS OTHER THAN FREEWAYS, EXPRESSWAYS, OR ARTERIAL STREETS.

4. TO MINIMIZE THE OFF-PREMISES PARKING OR STORAGE OF VEHICLES ASSOCIATED WITH EXISTING AND FUTURE CLASS II TRUCKING FACILITIES.

5. TO PROMOTE THE ON-SITE PROVISION OF IMPORTANT CONVENIENCES SO THAT EMPLOYEES OR OTHER ASSOCIATED WITH EXISTING AND FUTURE CLASS II TRUCKING-FACILITIES NEED NOT SEEK SUCH CONVENIENCES IN OR ABOUT THE HOMES OR BUSINESS ESTABLISHMENTS OF OTHERS OR IN OTHER INAPPROPRIATE PLACES.

6. TO PROVIDE THE COUNTY GOVERNMENT WITH PLANS AND OTHER RECORDS THAT ARE SUFFICIENTLY DETAILED TO AFFORD PROPER ADMINISTRATION OF THIS SECTION AND RELATED PROVISIONS.

7. IN GENERAL, TO ACCOMMODATE TRUCKING ACTIVITIES, IN RECOGNITION OF THEIR IMPORTANCE TO THE ECONOMY OF THE COUNTY AND THE NATION, WHILE MINIMIZING THE IMPACT OF EXISTING AND FUTURE CLASS II TRUCKING FACILITIES ON THE ENVIRONMENT AND ACHIEVING AN OPTIMUM LEVEL OF COMPATIBILITY BETWEEN SUCH FACILITIES AND NEARBY USES, ESPECIALLY DWELLINGS AND INSTITUTIONAL USES.

✓ SECTION 21. *Be it further enacted*, that Subsection 500.7 of said regulations, be and it is hereby repealed and re-enacted with amendments, to read as follows:

500.7 The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the COUNTY Board of Zoning Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these Regulations.

With respect to any zoning petition other than a petition for a special exception, variance, or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific

property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the County. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors.

~~SECTION 22. And be it further enacted, that this Act shall take effect forty-five days after its enactment.~~

SECTION 22. AND BE IT FURTHER ENACTED, THAT THIS ACT IS HEREBY DECLARED TO BE AN EMERGENCY MEASURE AFFECTING THE PUBLIC HEALTH, SAFETY OR WELFARE, AND, HAVING BEEN PASSED BY THE AFFIRMATIVE VOTE OF FIVE MEMBERS OF THE COUNTY COUNCIL, THE SAME SHALL TAKE EFFECT FROM THE DATE OF ITS ENACTMENT.

READ AND PASSED this 13th day of April, 1976

By Order:

Thomas Toporovich, Secretary

PRESENTED to the County Executive, for his approval this 14th day of April, 1976.

Thomas Toporovich, Secretary

APPROVED AND ENACTED: April 19, 1976.

Theodore G. Venetoulis,
County Executive

I HEREBY CERTIFY THAT BILL NO. 18 IS TRUE AND CORRECT AND TOOK EFFECT ON APRIL 19, 1976.

John W. O'Rourke,
Chairman, County Council

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
~~Strike-out~~ indicates matter stricken out of bill.

IN THE MATTER OF
RICHARD A. MOORE FOR
INTERPRETATION OF
B.C.Z.R. SECTION 426.5(d)
(No Specific Location)

* BEFORE THE COUNTY
* BOARD OF APPEALS
* FOR BALTIMORE COUNTY
* Case No. 99-371-SPH
*

* * * * *

APPELLANTS' MEMORANDUM ON PRELIMINARY ISSUE

Appellants Crown Castle Atlantic, LLC and Bell Atlantic Mobile Systems, Inc., by Robert A. Hoffman with Venable, Baetjer and Howard, LLP, their attorney, respectfully submit this Memorandum on the issue of whether the Zoning Commissioner had the authority to hear a Petition for Special Hearing filed by an individual requesting an interpretation of the Baltimore County Zoning Regulations not related to any specific property, as follows:

INTRODUCTION

This case involves a Petition for Special Hearing filed by Richard A. Moore wherein Mr. Moore requested an interpretation of Section 426.5(d) of the Baltimore County Zoning Regulations ("B.C.Z.R."). Specifically, Mr. Moore requested the Zoning Commissioner to declare whether B.C.Z.R. Section 426.5(d) required special exception approval for the erection of a wireless telecommunications tower on a property zoned with a C.R. district overlay or whether such tower was permitted by right. Of critical importance, Mr. Moore filed this petition without reference to a specific property location. Therefore, no signs were

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posted on any property.

ARGUMENT

The Zoning Regulations do not Permit Individuals such as Mr. Moore to File Petitions for Special Hearing not Related to a Particular Site.

A question was raised by the Zoning Commissioner and at the hearing before the Board as to whether the Zoning Commissioner had the authority to hear the Petition for Special Hearing at issue in this case, which was filed by an individual, Richard Moore, who requested an interpretation of the Baltimore County Zoning Regulations. This request was not related to any particular property. To answer this question, the inquiry must begin with Section 500 of the Zoning Regulations.

In reviewing this regulation, one must keep in mind the well-established rules of statutory construction. As has been frequently stated by the Maryland Courts, the cardinal rule of statutory construction is to ascertain the intent of the legislature – here, the Baltimore County Council. Condon v. State of Maryland-University of Maryland, 332 Md. 481, 491-492, 632 A.2d 753 (1993). To ascertain legislative intent, one must first look to the plain language of the statute. Id. Where the statute is clearly worded, the statute must be construed without forced interpretations that limit or extend its application. Id. In doing so, all parts of the statute must be read together to determine intent and must be reconciled to the extent possible. Id.

Section 500, as contained in the current version of the Zoning Regulations, lists various powers and duties of the Zoning Commissioner. As written, his powers appear to include the authority to interpret and enforce the Baltimore County Zoning Regulations:

...the Zoning Commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, subject to the right of appeal to the County Board of Appeals as hereinafter provided.

B.C.Z.R. Section 500.6. Section 500.7 continues:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided.

...If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved...

According to these sections, the Zoning Commissioner appears to have the power, in his own right, to call and hold hearings regarding the proper interpretation of the Zoning Regulations, whether or not related to a specific property. This power presumably would enable him to fulfill his role as the enforcer of the regulations. This power is evident from the plain language of Section 500, and such a reading gives effect to the entire statute without the necessity of resorting to a strained interpretation.

Many of the powers and duties articulated in Section 500 have been removed from the purview of the Zoning Commissioner and have either been transferred to the Director of the Department of Permits and Development Management or to the Board of Appeals, including the authority to approve building permits, to hear and rule on reclassification requests, and to hear and rule on zoning violations. See Baltimore County Code ("B.C.C."), Sections 26-3 and 267-121, which give the Director of the Department of Permits and Development Management the authority to "interpret," "administer," and "enforce" the

permitted zoning uses, with respect to cellular towers, contained in § 259.3(A) of the Commercial Rural District statute. As the Zoning Commissioner properly notes, the legislature was clearly aware of the permitted uses of property within the C.R. District with underlying zoning designations of B.L., B.M., B.R., or O-R, one of those being the erection of wireless communication towers. Nonetheless, the County Council enacted the 1998 Wireless Telecommunications Facilities statute *in order to specifically exclude the erection of cellular towers as of right from the C.R. District*, requiring special exception approval regardless of the underlying zone pursuant to § 426.5(D). Pursuant to the superiority clause contained in § 259.1 of the Districts statute, this most recent restrictive statute must prevail over the elder statute which permits cellular towers as of right.

When undertaking the often arduous task of statutory construction and reconciliation, “[T]he cardinal rule of statutory construction is to ascertain and effectuate legislative intention.” Mayor and City Council of Baltimore v. Chase, 360 Md. 121, 128, 756 A.2d 987, 991 (2000); State of Maryland v. Crescent Jaycees Foundation, Inc., 330 Md. 460, 468, 624 A.2d 955, 959 (1993) (citing State v. Bricker, 321 Md. 86, 92, 581 A.2d 9 (1990)); Privette v. State, 320 Md. 738, 744, 580 A.2d 188, 191 (1990); Jones v. State, 311 Md. 398, 405, 535 A.2d 471, 474 (1988). “To this end, we begin our inquiry with the words of the statute and, ordinarily, when the words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also.” Oaks v. Connors, 339 Md. 24, 35, 660 A.2d 423, 429 (1995); Montgomery County v. Buckman, 333 Md. 516, 523, 636 A.2d 448, 451 (1994); Condon v. State, 332 Md. 481, 491, 632 A.2d 753, 755 (1993); Harris v. State, 331 Md. 137, 145-46, 626 A.2d 946, 950 (1993).

In GEICO v. Insurance Comm’r, 332 Md. 124, 131-32, 630 A.2d 713, 717-18 (1993), the Court of Appeals noted the necessity of reading statutes on the same subject together, harmonizing

Zoning Regulations. Despite subsequent enactments of the Zoning Regulations, Section 500 has not been changed to reflect the Zoning Commissioner's more limited authority.

Regardless of the changes to the Zoning Commissioner's authority and what impact such changes have on Section 500, Section 500.7, at no time, gave an individual the right to seek an interpretation of the Zoning Regulations unrelated to a particular site. This power was solely that of the Zoning Commissioner until removed by the Baltimore County Council by subsequent enactments of the Baltimore County Code. To give credence to any other interpretation of Section 500.7 would be to ignore the plain language of the statute and to extend the powers beyond that which was granted by the Baltimore County Council.

Section 500.7 specifies the circumstances in which an individual can file for a special hearing. According to Section 500.7, the right of an "interested person" to petition the Zoning Commissioner for a public hearing, *i.e.*, file a petition for special hearing, is limited to the following two circumstances, both of which must relate to a specific property:

- (a) to determine the existence of any purported nonconforming use on any premises, or
- (b) to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by the regulations.

B.C.Z.R. Section 500.7. The plain language of the statute cannot be ignored. Condon, 332 Md. at 491-492. Any subsequent changes to the powers and duties of the Zoning Commissioner cannot be read to give ordinary citizens a right they never were intended to have.

In only one instance are individuals permitted to ask for relief regarding property not owned by them or in which they do not have an interest, and that is with regard to

nonconforming uses. For instance, an individual can challenge his neighbor's right to continue a nonconforming use on his property. Otherwise, in order to file a petition for special hearing, an individual must own or have an interest in a particular property, such as a contract to purchase, to seek an interpretation from the Zoning Commissioner. For example, an individual would be permitted to ask for a determination of whether a specific use is permitted on his own property. An individual, however, could not, as Mr. Moore has attempted to do, ask for a determination that a use is not permitted in a zone without regard to a particular property location. (And there is no evidence that Mr. Moore owns a property with the CR district overlay.) Giving individuals such power would open the door to abuse and could amount to determinations being made affecting property rights without due process. In the instant case, although some interested persons learned of Mr. Moore's attempt to limit uses in the CR district, certainly not all property owners with CR district land were represented at the hearing.

CONCLUSION

For the above-stated reasons, Appellants Crown Castle Atlantic, LLC and Bell Atlantic Mobile Systems, Inc. respectfully request that the Board of Appeals rule that this Petition for Special Hearing was not properly brought by Mr. Moore and vacate the decision of the Zoning Commissioner.

Respectfully submitted,



ROBERT A. HOFFMAN
Venable, Baetjer and Howard, LLP
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
(410) 494-6200
Attorney for Appellants Crown Castle
Atlantic International, LLC and Bell
Atlantic Mobile Systems, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2001, a copy of the foregoing APPELLANTS' MEMORANDUM ON PRELIMINARY ISSUE was mailed to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Attorney for Appellants Lewis Eichelberger, III and H. Thorne Gould; Karl J. Nelson, Esquire, One South Street – Suite 2600, Baltimore, Maryland 21202, Attorney for Appellants SBC Communications, Inc.; T. Wray McCurdy, Esquire, Sutton, McCurdy and Stone, 101 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for Appellee Richard A. Moore and the Greater Jacksonville Association, Inc.; and to Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.



ROBERT A. HOFFMAN



KARL J. NELSON
Phone: (410) 332-8663
Fax: (410) 332-8184
knelson@saul.com
www saul com

March 5, 2001

VIA HAND-DELIVERY

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

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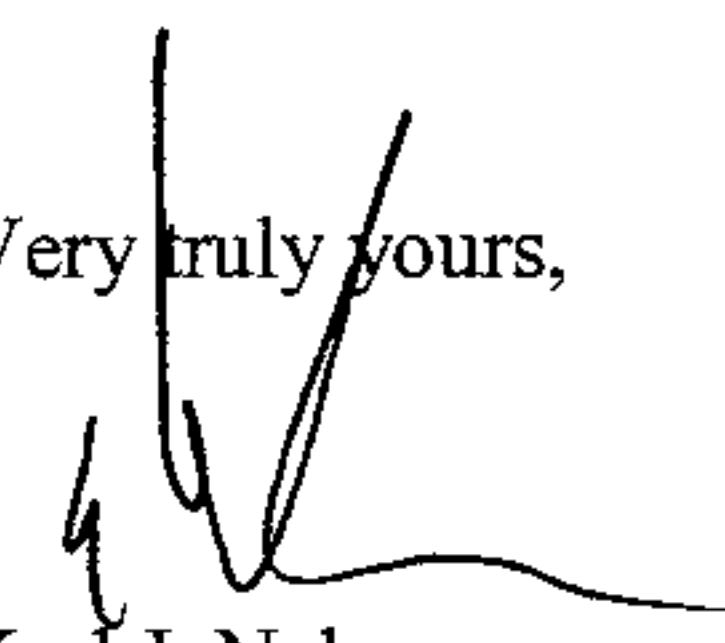
Re: In the Matter of Richard A. Moore, Petitioner
Case No. 99-371-SPH

Dear Ms. Bianco:

Enclosed please find an original and four (4) copies of a Brief on behalf of Appellant/Protestant SBC Communications, Inc. for filing in the above-referenced matter. Please date-stamp the extra copy and return it to me via the enclosed self-addressed stamped envelope.

Thank you for your kind assistance in this regard. Please do not hesitate to contact me should you have any questions regarding this matter.

Very truly yours,


Karl J. Nelson

KJN:pad
Enclosures

cc: Robert A. Hoffman, Esquire
Michael P. Tanczyn, Esquire
T. Wray McCurdy, Esquire
Virginia W. Barnhart, County Attorney
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** June 14, 2001
Permits & Development Management
Attn: Dave Duvall

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File:
99-371-SPH /Richard A. Moore

Since no further action was taken in the above captioned case,
we are hereby closing the file and returning same to you herewith.

Attachment - (Case File 99-371-SPH)

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

March 6, 2001

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County Board of Appeals of Baltimore County
Attn: Chairman
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of Richard A. Moore, Petitioner: Case No. 99-371-SPH

Dear Mr. Chairman and Members of the Board of Appeals:

Enclosed herewith please find the Eichelberger/Gould Memorandum which does not contain the typos and errors in our original submission. I apologize for any difficulty you had with the first submission. We all have bad days, and yesterday was mine.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/gr
Enclosure

cc: Lewis H. Eichelberger, III
H. Thorne Gould
Robert A. Hoffman, Esquire
Karl J. Nelson, Esquire
T. Wray McCurdy, Esquire
People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

May 3, 2001

Robert A. Hoffman Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towso, MD 21204

Michael P. Tanczyn, Esquire
606 Baltimore Avenue
Suite 106
Towson, MD 21204

Karl J. Nelson, Esquire
One South Street
Suite 2600
Baltimore, MD 21202

T. Wray McCurdy, Esquire
SUTTON, MCCURDY AND STONE
101 Eastern Boulevard
Baltimore, MD 21221

RE: *In the Matter of: Richard A. Moore* - Petitioner
Case No. 99-371-SPH

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Crown Castle Atlantic, LLC and
Bell Atlantic Mobile Systems, Inc.
Lewis Eichelberger III and H. Thorne Gould
SBC Communications, Inc. /Van Thompson (Cellular One, Inc.)
Greater Jacksonville Assn., Inc.
Richard A. Moore
Steve Tizard
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



- 3/27/01 – Deliberated this matter on issues specified; ZC may issue advisory opinions; in this instance; however Petitioner Moore did not have standing to file below per regs; Moore was not interested party; did not specify property before ZC; ZC did not determine whether or not he was interested party;
- As to amendment -- cannot substitute “specified property” at this time; not properly posted; had this been filed and heard by ZC as “specified property” – hearing before ZC may be been different.
 - Comm Assn cannot substitute or add itself to Petition at this juncture; may file its own Petition at ZC level.
 - Board only has jurisdiction in this type of Petition if case comes up on appeal; only minor amendments can be made in Petition; substituting parties and/or address /location is not what was before the ZC.
 - Board will not make determination as to issue of Petition; not properly here at this time.

8/31/00 –Letter from R. Hoffman, Esquire, requesting postponement of 9/19/00 hearing; schedule conflict with HOH (continuation of Bethel AME Church) and also opportunity to review and respond to Mr. Zimmerman's letter as to jurisdictional issue raised.

9/01/00 –Verbal response from Mr. Zimmerman /no objection to postponement.

9/06/00 – Letter from Mr. Tanczyn, Esquire – no objection to postponement request.
-- T/C from Wray McCurdy's office (Pat) – no objection to postponement.

9/07/00 –Second Notice of PP and Reassignment sent to parties; request granted; case reassigned for hearing on Wednesday, January 24, 2001 at 10:00 a.m.

1/23/01 – Letter from John Evans, Esquire /WHITEFORD TAYLOR PRESTON (WTP) – Petitioner (Richard Moore) Has retained T. Wray McCurdy, Esquire as his counsel; Mr. McCurdy to represent both Petitioner and Greater Jacksonville Assn; WTP withdraws as Counsel for Petitioner. File noted this date.

1/24/01 – Board convened for hearing (Wescott, Felling, Marks); memos due from Counsel on Monday, 3/05/01; upon deliberation, Board will determine whether or not it has authority to hear this case (no specific property location); if decided yes, then a date will be assigned at that time for hearing on the merits of Petition; if no, then decision will be rendered by Board and the matter terminated at this level. Notice of Deliberation sent to parties – assigned for Tuesday, March 27, 2001 at 10:00 a.m.

3/02/01 – Appellants' Memorandum on Preliminary Issue filed by Robert A. Hoffman, Esquire, on behalf of Crown Castle Atlantic LLC and Bell Atlantic Mobile Systems, Inc.

3/05/01 – Appellees' Memorandum of Law in Support of the Findings of Fact and Conclusions of Law Rendered by the Baltimore County Zoning Commissioner filed by T. Wray McCurdy, Esquire, on behalf of Richard A. Moore and Greater Jacksonville Assn., Inc.
-- Brief of SBC Communications, Inc., Concerning Justiciability filed by Karl J. Nelson, Esquire, on behalf of SBC Communications, Inc.
-- People's Counsel's Memorandum filed by Office of People's Counsel.
-- Memorandum of Lewis H. Eichelberger III and H. Thorne Gould filed by Michael P. Tanczyn, Esquire.

3/06/01 – Copies of above memos to be forwarded to panel members (SFC) for review prior to 3/27/01 deliberation.

3/07/01 – Replacement Memo hand-delivered by Mr. Tanczyn – to correct "typos and errors" contained in original submission; copies hand-delivered where possible to all parties by Mr. Tanczyn. (NOTE: The corrected copy of Mr. Tanczyn's memo is the copy provided to panel members.)

3/09/01 – Motion to Amend Petition filed by T. Wray McCurdy, Esquire, on behalf of Greater Jacksonville Association, intervening Appellee, and Richard A. Moore, Appellee. Awaiting response from Messrs. Hoffman, Nelson, Tanczyn, and/or Zimmerman. Copies to be forwarded to CBA early next week. (Delib scheduled for 10 a.m. on 3/27/01.)

3/13/01 –Appellants' Response to Motion to Amend Petition filed by Robert A. Hoffman, Esquire, on behalf of Appellants, Crown Castle Atlantic LLC and Bell Atlantic Mobile Systems, Inc.

3/14/01 – Objection to Motion to Amend the Petition Filed by T. Wray McCurdy on Behalf of Richard Moore & Greater Jacksonville Community Association filed by Michael P. Tanczyn, Esquire, on behalf of Lewis Eichelberger III and Thorne Gould, Protestants.

3/20/01 – Copies of Motion to Amend, Response filed by Mr. Hoffman, and Objection to Motion filed by Mr. Tanczyn to S.F.C. (S on 3/20/01; C on 3/21/01; and F on 3/22/01).

**BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION**

IN THE MATTER OF: Richard A. Moore –Petitioner
Case No. 99-371-SPH

DATE : Tuesday, March 27, 2001

BOARD /PANEL : Charles L. Marks (CLM)
Donna M. Felling (DMF)
Lawrence S. Wescott (LSW)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 99-371-SPH /Petition for Special Hearing – that special exception approval is required for erection of wireless telecommunication tower in CR district /on issues as stated at hearing and on the record 1/24/01.

Panel members discussed:

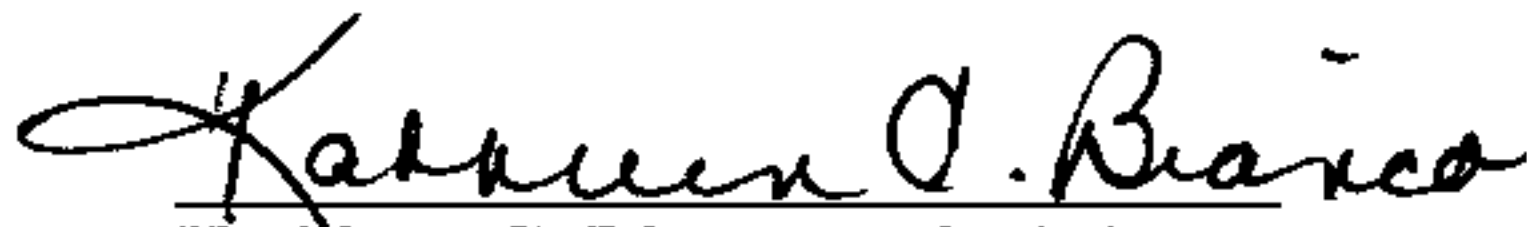
- ◆ First Issue: Motion to Amend Petition – Petitioner moved to amend; to include 14242 Jarrettsville Pike as specific property (where there formerly had been none); opposed by other parties
 - Reviewed § 500.7 – BCZR – requires notice if related to specific property; posted 15 days before hearing. If amended, this then would not have been done.
- ✓ DMF – Opposed to amendment; cannot be done in this way
- ✓ LSW – Opposed – does not meet regs; cannot be amended
- ✓ CLM – Cannot amend in this way; go back to proceeding as before ZC
- ◆ Second Issue: Can Zoning Commissioner issue advisory opinions?
 - Cited regulations which state, essentially, whether or not specific property is involved.
 - Still required advertisement without posting
 - Regs appear to allow or provide for a petition where no specific property is involved
- ✓ CLM – Yes – he has right to issue such opinions
- ✓ LSW – Yes – Zoning can issue such opinions; does not have to be site specific
- ✓ DMF – Agrees as to advisory opinions; but what constitutes “interested party”?
- ◆ Third Issue – “Interested party” as specified in regulations
 - Can competitor is not interested party?
 - Richard Moore is competitor
 - Reasons Petition was filed in the first place
 - Also reviewed *In the Matter of: Metro Read Mix* – environmental issue – not just one of competition; also – not before Zoning Commissioner
 - Only person at early state was Moore
 - Petitioner did not give site although interested in specific location

- ✓ Difficulty with Moore being interested party – doesn't own property; doesn't live next to it or near it
- ✓ Community group – had been primary Petitioner – would have been different
- ✓ While no posting (they didn't know), advertising was done; provided public notice
- ✓ Did not specify why he was interested party at ZC level
 - Question – was he interested party at ZC level, pursuant to regulations?
 - Did ZC take this into consideration?
 - Understanding at this level of concerns of community association re tower – but they were not Petitioners below; no one objected until tower was completed
- ✓ Moore did not have standing at ZC level to file Petition in the first place (strictly competitor issue)
- ✓ Community Association did not get involved below; cannot be substituted as Petitioners at this level (can be parties to any hearing before the Board; but Petitioner is individual who filed Petition for Special Hearing below; only one person – Moore)
- ✓ Board, while holding a *de novo* hearing, is an appellate body – as to this type of Petition, the Board only has jurisdiction on appeal; can only hear Petition as filed before the ZC; had a different Petition been filed, he conceivably could have ruled differently; we would have a different case.
- ✓ Community Association can file its own Petition below to determine whether or not what's being done on this property is legal
- ✓ ZC should have looked at whether or not Moore was interested party
- ✓ DMF, CLM and LSW – is not and was not interested party before ZC to permit filing of Petition
- ❖ Will not permit amendment as to Jacksonville Community Association substituting or being added as Petitioners
- ❖ Will not permit amendment as to specific lot; must hear case that was heard before the ZC
- ❖ Does not find Moore to be interested as required in regulations
- ❖ Community Association can file a Petition for Special Hearing before the ZC

Special Hearing is not approved; the Board has no jurisdiction in this matter inasmuch as Petitioner (Moore) did not have standing below as interested party; Community Assn cannot assume role of Petitioner at this point in time; while the ZC may issue advisory opinions, this Petition fails because the Petitioner below (sole Petitioner – Moore) did not have standing to file at ZC level.

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted


Kathleen C. Bianco, Administrator
County Board of Appeals



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

January 24, 2001

NOTICE OF DELIBERATION

IN THE MATTER OF:

RICHARD A. MOORE -Petitioner
Case No. 99-371-SPH

Pursuant to hearing convened on 1/24/01, (memos to be filed by Counsel on 3/05/01), public deliberation on the issues as stated has been assigned as follows:

DATE AND TIME : **TUESDAY, MARCH 27, 2001 at 10:00 a.m. ****

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

**** This date and time is set aside for deliberation only; memos to be filed 3/05/01 (original and 3 copies). After conclusion of deliberation on 3/27/01, and if necessary, a hearing on the merits of the Petition will be scheduled and a date assigned.**

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants	: Robert A. Hoffman, Esquire ✓
Appellants /Protestants	: Crown Castle Atlantic, LLC and
	Bell Atlantic Mobile Systems, Inc.
 Counsel for Appellants /Protestants	 : Michael P. Tanczyn, Esquire ✓
Appellants /Protestants	: Lewis Eichelberger III and H. Thorne Gould
 Counsel for Appellant /Protestant	 : Karl J. Nelson, Esquire ✓
Appellant /Protestant	: SBC Communications, Inc. /Van Thompson
	(Cellular One, Inc.)
 Counsel for Petitioner (Richard Moore)	 : T. Wray McCurdy, Esquire ✓
and Greater Jacksonville Assn., Inc.	
 Steve Tizard	
 People's Counsel for Baltimore County ✓	
Pat Keller, Planning Director	
Lawrence E. Schmidt, Zoning Commissioner	
Arnold Jablon, Director /PDM	
Virginia W. Barnhart, County Attorney	

c: C.F.S.



LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

March 14, 2001

County Board of Appeals of Baltimore County
Attn: Mrs. Kathy Bianco
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
01 MAR 14 PM 12:38

Re: In the Matter of Richard A. Moore, Petitioner: Case No. 99-371-SPH

Dear Kathy:

Enclosed herewith for filing in this matter please find the response of Lewis Eichelberger, III and H. Thorne Gould, Protestants, objecting to the Petition to Amend filed by Mr. McCurdy on behalf of Richard Moore and Greater Jacksonville Community Association, Inc., along with proposed Order.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr
Enclosure

cc: Lewis H. Eichelberger, III
H. Thorne Gould
Robert A. Hoffman, Esquire
Karl J. Nelson, Esquire
T. Wray McCurdy, Esquire
People's Counsel for Baltimore County

Law Offices of
T. Wray McCurdy, P.A.
Attorney at Law
101 Eastern Boulevard
Baltimore, Maryland, 21221

Telephone: 410-686-2200
Facsimile: 410-686-5803
Toll-Free: 800-333-5943

T. Wray McCurdy, Esq.

January 30, 2001

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

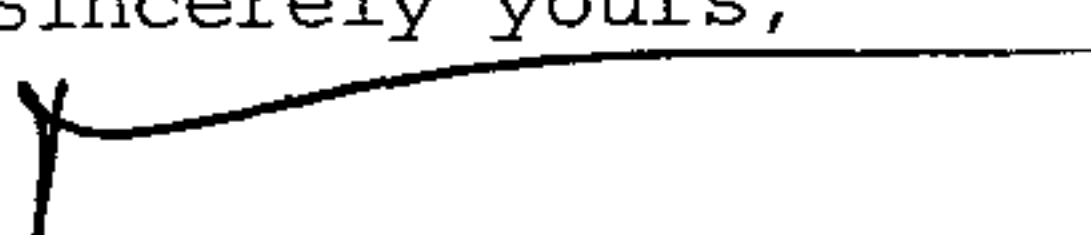
Re: In the Matter of Richard A. Moore, Petitioner
Greater Jacksonville Association, Inc.
Case No. 99-371-SPH Appeal

Dear Ms. Bianco:

Please enter my appearance on behalf of Richard A. Moore, Petitioner in the above captioned matter.

Thank you for your kind cooperation.

Sincerely yours,


T. Wray McCurdy

*✓ already noted
(as counsel for Gr. Jacksonville Ct.)
since 6/00)*

RECEIVED
COUNTY BOARD OF APPEALS
01 JAN 31 AM 11:59

TWM/paa
cc:

Mr. Richard Moore
The Honorable Lawrence E. Schmidt
Virginia Barnhart, Esquire
Arnold Jablon, Director
Arnold F. Keller, III, Director
People's Counsel for Baltimore County
Robert A. Hoffman, Esquire
Michael P. Tanczyn, Esquire
Karl J. Nelson, Esquire
Mr. Steve Tizard
John P. Evans, Esquire

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

March 5, 2001

County Board of Appeals of Baltimore County
Attn: Chairman
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

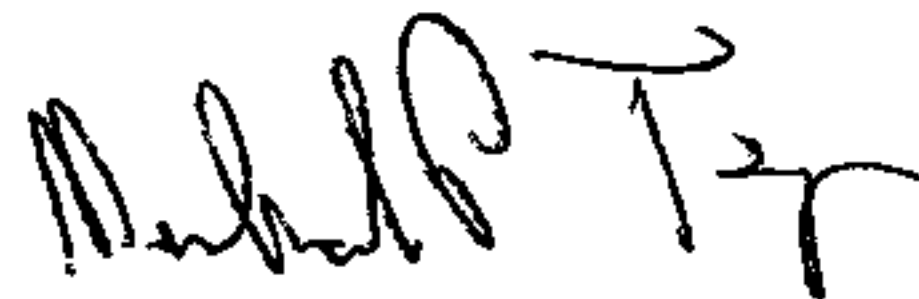
RECEIVED
COUNTY BOARD OF APPEALS
01 MAR - 6 AM 9:00
March 5 @ 4:48 PM
(- See attached
stamped envelope)

Re: In the Matter of Richard A. Moore, Petitioner: Case No. 99-371-SPH

Dear Mr. Chairman and Members of the Board of Appeals:

Enclosed herewith, pursuant to the direction of the Board, is the Memorandum of Law of Lewis H. Eichelberger, III and H. Thorne Gould, Protestants, for the Board's consideration in this matter.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/gr

cc: Lewis H. Eichelberger, III
H. Thorne Gould
Robert A. Hoffman, Esquire
Karl J. Nelson, Esquire
T. Wray McCurdy, Esquire
People's Counsel for Baltimore County

10/19/99 – Decision of ZC – special exception approval for erection of a wireless telecommunications tower in C.R. district IS required.

4/18/2000 – Notice of Assignment sent to following; assigned for hearing on Tuesday, July 18, 2000 at 10:00 a.m.:

Robert A. Hoffman, Esquire
Crown Castle Atlantic, LLC and
Bell Atlantic Mobile Systems, Inc.
Michael P. Tanczyn, Esquire
Lewis Eichelberger III and
H. Thorne Gould
Karl J. Nelson, Esquire
SBC Communications, Inc. /Van Thompson
(Cellular One, Inc.)
John P. Evans, Esquire
Richard A. Moore
Steve Tizard
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

4/27/00 – Request for postponement filed by Mr. Tanczyn; court matter conflicts with CBA scheduled hearing date.

4/28/00 – Case postponed and reassigned for hearing to Tuesday, September 19, 2000 at 10:00 a.m.; Notice of Assignment sent to all parties listed.

6/05/00 – Rule 8 Papers and Entry of Appearance filed by T. Wray McCurdy, Esquire, on behalf of Greater Jacksonville Association, Inc.

7/18/00 – Letter of withdrawal of appeal filed by Michael P. Tanczyn, Esquire, on behalf of Lewis Eichelberger and H.T Gould, Appellants /Protestants.

7/20/00 – Letter to Appellants' counsel (Hoffman and Nelson) with FYI copy of Mr. Tanczyn's letter; copy of letter also sent by cc to Messrs. McCurdy, Evans, and Zimmerman.

7/24/00 – T/C from R. Hoffman; cannot respond to above letter until he has spoken with Mr. Evans who is out of town until 7/31/00.

- T/C from M. Tanczyn – indicating that his letter of 7/18/00 was intended to withdraw the appeal filed in Case No. CBA-99-163 and NOT this case. He will address a letter to the Board indicating the error and his intent to withdraw only the appeal filed in CBA-99-163, in which Mr. Tanczyn's client was the sole appellant, inasmuch as the permit has been issued in that case.

- Letter from Mr. Tanczyn as stated and withdrawing the appeal in CBA-99-163 and NOT this case. Mr. Tanczyn copied Messrs. Eichelberger, Gould, Hoffman, Nelson, and Evans this date. This appeal has NOT been withdrawn.

7/27/00 – Letter from T. Wray McCurdy, Esquire – objecting to any dismissal of 99-371-SPH. Response to Mr. McCurdy this date indicating that the appeal dismissed by the Board was CBA-99-163 /Jacksonville Comm Tower, not the instant case No. 99-371-SPH. This request for dismissal was clarified by Mr. Tanczyn in a subsequent letter to this office and the appropriate case dismissed. (There was only one appeal taken in CBA-99-163 and therefore the case was dismissed upon withdrawal of that sole appeal.)

8/21/00 – Letter from People's Counsel P. Zimmerman with copies to all counsel of record; opposing this "no specific location" petition /hearing; ZC decision "amounts to advisory opinion."

APPEAL

Petition for Special Hearing
No Specific Location
Richard A. Moore - Petitioner
Case Number: 99-371-SPH

✓ Petition for Special Hearing

✓ Notice of Zoning Hearing (4/8/99)

✓ Certification of Publication (The Jeffersonian - 4/29/99)

✓ Entry of Appearance by People's Counsel (4/15/99)

✓ Protestant(s) Sign-In Sheet (1)

✓ Zoning Advisory Committee Comments

Misc. (Not Marked as Exhibits):

- ✓ 1. Entry of Appearance by Michael P. Tanczyn, Esquire (dated 5/3/99)
- ✓ 2. Letter to John P. Evans, Esquire, from Lawrence Schmidt, Zoning Commissioner (dated 5/13/99)
- ✓ 3. Letter from John P. Evans, Esquire, to The Honorable Lawrence E. Schmidt, Zoning Commissioner for Baltimore County (dated 5/13/99)

✓ Zoning Commissioner's Order dated 10/19/99 (Granted)

✓ Notice of Appeal received on 11/16/99 from Robert A. Hoffman, Esquire, on behalf of Crown Castle Atlantic, LLC and Bell Atlantic Mobile, Inc.

✓ Notice of Appeal received on 11/17/99 from Michael P. Tanczyn, Esquire, on behalf of Lewis Eichelberger, III and H. Thorne Gould

✓ Notice of Appeal received on 11/18/99 from Karl J. Nelson, Esquire (SBC COMMUNICATIONS INC. DVA-CELLULAR INC.)

C: Richard A. Moore, PO Box 400, Phoenix 21131

11/16/123101 John P. Evans, Esquire, 210 W. Pennsylvania Avenue, 4th Floor, Towson 21204

* Robert A. Hoffman, Esquire, 210 Allegheny Avenue, Towson 21285

* Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 606, Towson 21204

* Karl J. Nelson, Esquire, One South Street, Suite 2600, Baltimore 21202

LH Eichelberger, III, PO Box 157, White Hall 21161

Steve Tizard, 14221 Robcastle Road, Phoenix 21131

People's Counsel of Baltimore County, MS #2010

Lawrence Schmidt, Zoning Commissioner

Arnold Jablon, Director of PDM

Crown Castle Atlantic, LLC, 4700 Corridor Place, Suite D, Beltsville, MD 20705

Bell Atlantic Mobile, Inc., 9000 Junction Drive, Annapolis Junction, MD 20701

H. Thorne Gould, 3722 Hess Road, Monkton, MD 21111

Lewis H. Eichelberger, III, P.O. Box 157, White Hall, MD 21161-0157

Van Thompson c/o Karl J. Nelson, Esquire, One South Street, Suite 2600, Balto., MD 21202

SBC COMMUNICATIONS INC.

T WRAY MCCURDY PA
101 EASTERN BOULEVARD
BALTIMORE MD 21221

(6-05-00 - ENTERED APPEARANCE)

and Counsel
for Petitioner
Counsel for

GREATER JACKSONVILLE ASSOC INC
C/O T WRAY MCCURDY PA
101 EASTERN BOULEVARD
BALTIMORE MD 21221

IN RE: PETITION FOR SPECIAL HEARING
(No Specific Location)

Richard A. Moore
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 99-371-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed, pursuant to Section 500.7 of the B.C.Z.R., by Richard A. Moore, through his attorney, John P. Evans, Esquire. The Petitioner seeks an interpretation of the requirements of Section 426.5(d) of the Baltimore County Zoning Regulations (B.C.Z.R.). There is no specific property at issue, only an interpretation of the B.C.Z.R. is requested. Essentially, the Petitioner seeks a determination as to whether special exception approval for the erection of a wireless telecommunications tower in a C.R. district is required, or, in the alternative, whether such a tower is permitted by right.

This case was heard simultaneously and in conjunction with Case No. 99-366-SPHA, in which the Petitioner in the instant case, Richard A. Moore, filed Petitions for Special Hearing and Variance relief for property located at 3314 Paper Mill Road. The decision in that case is being rendered simultaneously with this opinion and order.

The instant Petition is filed pursuant to Section 500.7 of the B.C.Z.R. In essence, the Petitioner requests "declaratory judgment"-type relief. Section 500.7 empowers the Zoning Commissioner with wide discretion and latitude in the performance of his duties. Therein, the Zoning Commissioner is authorized to conduct such hearings and pass such orders as, in his discretion, are necessary for the proper enforcement of the zoning regulations. This power includes, but is not limited to, conducting hearings on nonconforming uses, or, to determine any rights whatsoever of any interested person of any property in Baltimore County, as it may be affected by the B.C.Z.R. Under the umbrella of this regulation, I will address the issue raised in

the Petition for Special Hearing. In my judgment, a resolution of the issue presented herein is necessary for the proper enforcement of the zoning regulations.

Appearing at the requisite public hearing held for this case was Richard A. Moore, Petitioner, and his attorney, John P. Evans, Esquire. Appearing in opposition to the request was Michael Tanczyn, Esquire, on behalf of Louis Eichelberger; Karl Nelson, Esquire on behalf of Cellular One, Inc.; and, Robert A. Hoffman, Esquire on behalf of Bell Atlantic, Inc.

As noted above, the issue presented herein is easily identified; to wit, need the owner of a property overlaid with a C.R. district obtain special exception approval to erect a wireless communications tower?

The answer to this question is difficult, in that the relevant sections of the B.C.Z.R. are clearly in conflict. Section 259 of the B.C.Z.R. regulates the C.R. districts. The initials "C.R." are designated to mean Commercial/Rural district and the legislative purpose and intent in creating this district is found in Section 259.2 of the B.C.Z.R. Therein, it is provided that the Commercial/Rural district was established to provide opportunities for convenience shopping and personal services that are frequently needed by the rural, residential and agricultural population and tourists. Thus, the C.R. district is often applied to country villages such as Jacksonville. The C.R. district is frequently an enclave in a sea of R.C. (resource conservation) zoning. The C.R. district dominates the small villages and hamlets throughout the rural areas of Baltimore County which are predominantly zoned to promote agriculture and preserve natural resources (R.C.). The C.R. district designation can be placed over underlying commercial districts. Section 259.2.A.2 provides that those underlying zones may be B.L., B.M., B.R., or R.O. Those zones all support office/ business uses.

Section 259.3 sets out special regulations for C.R. districts. Subsection 259.3.A.1 provides that any use permitted by right in the underlying zone in which the C.R. district is applied, and which meets the bulk regulations of Section 259.3.C.1, is permitted by right. Those bulk regulations include limitations on the size and height of a building, which, as defined in Section 101 of the B.C.Z.R., is a structure enclosed within exterior walls or firewalls for the

shelter, support or enclosure of persons, animals, or property of any kind. Clearly, a wireless communications tower is not a building but a structure. Thus, the bulk regulations are not applicable to towers.

Moreover, it is clear that a wireless communications tower less than 200 feet in height is permitted by right in the B.L., B.M., .R. and R.O. zones. (See Section 426.5). A reading of Section 259 alone would be persuasive to a finding that wireless communications towers are permitted by right in the C.R. districts, assuming that the C.R. district overlays the B.L., B.M., B.R. or R.O. zone. That is, the opponents of Mr. Moore's Petition argue that it is the zone designation that controls the use, not the district.

A conflict arises however, when one examines the language of Section 426.5 of the B.C.Z.R. Therein, a chart is presented which regulates the construction of wireless communications towers. The chart states that in the C.R. district, wireless communications towers are permitted only by special exception, regardless of the underlying zone. Thus, the issue turns on whether one adopts the superiority of the underlying zone (pursuant to Section 259), or, the superiority of Section 426 (the wireless communications tower statute).

The wireless communications statute was enacted under Bill 30-98. This is relatively new legislation, enacted well after the adoption and most recent amendment of Section 259. It is assumed that the County Council was aware of the language of Section 259 when it enacted this legislation. Nonetheless, the legislature adopted the chart and language in Section 426.5, including the requirement that special exception approval need be obtained before towers were constructed in the C.R. district, no matter what the underlying zone.

It is the cardinal rule of statutory construction to ascertain and effectuate the legislative intent. In the event of an ambiguity within a statute, such intent should be gleaned from the ordinary and properly understood meaning of the words used therein, absent manifest contrary legislative intent. See State v. Bricker, 321 Md. 86 (1990). All parts of the statute are to be reconciled and harmonized, if possible, including those which appear to be in conflict. See Cloverfields Improvement Assn., Inc., v. Seabreeze Properties, Inc., 280 Md. 382 (1977). Where

two provisions of a statute appear to be inconsistent or contradictory, it is the duty of the reviewing body (Zoning Commissioner) to reconcile them so as to effectuate the legislative purpose. See Maryland Industrial Development Financing Authority v. Meadow-Croft, 243 Md. 515 (1966).

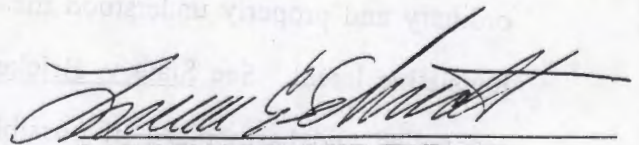
It has also been held that a Court or reviewing body should not presume that in enacting a statute, the legislature intended to create an ineffective or invalid law. See First National Bank of Maryland v. Shpritz, 63 Md. App. 623 (1985). Last, when two statutes relate to the same general subject matter, and in the event of any conflict between them, the later statute governs. See Criminal Injuries Compensation Board v. Gould, 273 Md. 486 (1974).

The character of the C.R. district is of particular note. Although indeed the C.R. district is commercial in nature, it is recognized that C.R. districts are placed adjacent to rural and/or residential lands. In my judgment, this is significant. That is, the drafters of the B.C.Z.R. no doubt intended, by the adoption of the C.R. district, to provide opportunities for limited commercial development adjacent to rural residential and agricultural lands, while recognizing the rural and non-commercial character of the area at large.

Based upon the facts presented and the law as set out above, it is my judgment that the language in Section 426.5 of the B.C.Z.R. controls. That is, in order for a wireless communications tower to be constructed in the C.R. district, special exception approval must be granted.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of October, 1999 that special exception approval for the erection of a wireless telecommunications tower in the C.R. district is required, pursuant to the requirements of Section 426.5(d) of the Baltimore County Zoning Regulations, and as such, the Petition for Special Hearing be and is hereby GRANTED.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 7, 2000

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 99-371-SPH

IN THE MATTER OF: RICHARD A. MOORE -Petitioner

No Specific Location /Interpretation of 426.5(d), BCZR
11/18/99 –Decision of Zoning Commissioner (that special exception approval is
required for erection of wireless telecomm tower in CR district)

which was reassigned to be heard on 9/19/00 has been **POSTPONED** at the request of Counsel for Appellants
(Crown Castle Atlantic /Bell Atlantic Mobile Systems) for reasons as stated in said request of 8/31/00; and has been

REASSIGNED FOR:

WEDNESDAY, JANUARY 24, 2001 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests
must be in writing and in compliance with Rule 2(b) of the Board's Rules. No
postponements will be granted within 15 days of scheduled hearing date unless in full
compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to
hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants
Appellants /Protestants

: Robert A. Hoffman, Esquire
: Crown Castle Atlantic, LLC and
Bell Atlantic Mobile Systems, Inc.

Counsel for Appellants /Protestants
Appellants /Protestants

: Michael P. Tanczyn, Esquire
: Lewis Eichelberger III and
H. Thorne Gould

Counsel for Appellant /Protestant
Appellant /Protestant

: Karl J. Nelson, Esquire
: SBC Communications, Inc. /Van Thompson
(Cellular One, Inc.)

Counsel for Petitioner
Petitioner

: ~~John P. Evans, Esquire~~ 6/10 1/23/01
: Richard A. Moore

Steve Tizard

Added 6/05/00:

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

T. Wray McCurdy, Esquire
/Counsel for Greater Jacksonville Assn. Inc. and
for Petitioner Moore



SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

JOHN P. EVANS
DIRECT NUMBER
410 832-2027
jpevans@wtplaw.com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

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FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

January 23, 2001

Via Hand Delivery

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Richard A. Moore - Petitioner
Case No. 99-371-SPH

RECEIVED
COUNTY BOARD OF APPEALS
01 JAN 23 AM 11:33

Dear Kathy:

This letter will confirm that the Petitioner in the above-referenced case has retained T. Wray McCurdy, Esquire as his counsel in that matter. Thus, Mr. McCurdy will be counsel for both the Petitioner and for the Greater Jacksonville Association, Inc.

In accordance with Mr. Moore's wishes, Whiteford, Taylor & Preston L.L.P. hereby withdraws as counsel for the Petitioner. Please modify the records accordingly.

If you have any questions concerning this request, please contact me at your convenience. Thank you very much for your cooperation in this matter.

Very truly yours,



John P. Evans

JPE:sl

Ms. Kathleen C. Bianco, Administrator

January 23, 2001

Page 2

cc: Mr. Richard A. Moore
T. Wray McCurdy, Esquire
The Honorable Lawrence E. Schmidt
Virginia W. Barnhart, Esquire
Arnold Jablon, Director
Arnold F. Keller, III, Director
People's Counsel for Baltimore County
Robert A. Hoffman, Esquire
Michael P. Tanczyn, Esquire
Karl J. Nelson, Esquire
Mr. Steve Tizard

218130

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

September 5, 2000

County Board of Appeals of Baltimore County
Attn: Kathleen C. Bianco, Administrator
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of Richard A. Moore, Petitioner: Case No. 99-371-SPH

Dear Kathy:

We have received Rob Hoffman's letter of August 31, 2000 and on behalf of my clients, have no objection to the postponement request under the circumstances described. Could you kindly advise the Board of that?

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr

cc: Lewis H. Eichelberger, III
H. Thorne Gould
Robert A. Hoffman, Esquire
Karl J. Nelson, Esquire
John P. Evans, Esquire
T. Wray McCurdy
Virginia Wood Barnhart, Esquire
People's Counsel for Baltimore County

ALSO
RAH McCurdy
does not oppose
PP request
for part of his
office
2-0-00

RECEIVED
COUNTY BOARD OF APPEALS
00 SEP -6 PM 2:08



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

August 18, 2000

CAROLE S. DEMILIO
Deputy People's Counsel

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petition for Special Hearing
No Specific Location
Richard A. Moore, Petitioner(s)
Case No.: 99-371-SPH

RECEIVED
COUNTY BOARD OF APPEALS
00 AUG 21 PM 1:58

Dear Chairman Stahl:

This Petition requests a legal interpretation of zoning law concerning wireless telecommunication facilities. It is unusual because it does not identify a specific location. Therefore, no sign was posted on any particular property.

The Zoning Commissioner, Lawrence Schmidt, decided to address the merits of the Petition within the scope of his Special Hearing authority under BCZR Section 500.7. He then concluded that a special exception is required for the erection of a wireless telecommunication tower in the C.R. District.

Although in this case there were parties arguing the merits of the issue on both sides, we believe it is either inappropriate or imprudent for the Zoning Commissioner (or the County Board of Appeals) to make a decision in a case which lacks a specific location. The decision amounts to an advisory opinion. It may be used in the future as precedent for any property in the County because it was not limited to a specific location and particular parties. Yet there was no particular notice to any neighborhood or group of nearby owners.

Thus, if the Zoning Commissioner had ruled that towers are permitted in C.R. districts without a special exception, then any person wishing to construct a tower anywhere in the C.R. District would be able to go ahead without notice to the neighborhood of any zoning issues.

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
August 18, 2000
Page Two

In that event the applicant would say that all citizens are bound by the decision because it does not involve any particular location. There is not the safeguard inherent in a case involving a specific location, which normally binds only the parties involved.

Therefore, the CBA should give serious consideration to whether it has the authority to issue a decision without regard to location, and if it is within its discretion, whether it should issue such a decision. In this connection, we note that the Rhode Island Supreme court has expressed serious concerns about the use of advisory opinions. Franco v. Wheelock, 750 A.2d 957 (R.I.2000). It is also basic constitutional law that Courts do not give advisory opinions.

Moreover, it appears Petitioner had a specific site in mind since this case was heard in conjunction with Case No. 99-366-SPHA at 3314 Paper Mill Road.

In the event, however, that the Board does reach the merits of the case, the Board should rule that a special exception is required in the C.R. District. It should therefore grant the Special Hearing, and in effect, agree with the decision of Zoning Commissioner Schmidt for the reasons stated in his opinion.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/caf

cc: John P. Evans, Esq., Attorney for Petitioner

Robert A. Hoffman, Esq.

T. Wray McCurdy, Esq.

Karl J. Nelson, Esq.

Michael P. Tanczyn, Esq.



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

*pp'd to 1/24/01
@ neg. of Hoffman*

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 28, 2000

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 99-371-SPH

IN THE MATTER OF: RICHARD A. MOORE -Petitioner

No Specific Location /Interpretation of 426.5(d), BCZR
11/18/99 –Decision of Zoning Commissioner (that special exception approval is
required for erection of wireless telecomm tower in CR district)

which was assigned for hearing on 7/18/00 has been **POSTPONED** at the request of Counsel for Appellants
(Messrs. Eichelberger and Gould) due to court schedule conflict; and has been

REASSIGNED FOR:

TUESDAY, SEPTEMBER 19, 2000 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests
must be in writing and in compliance with Rule 2(b) of the Board's Rules. No
postponements will be granted within 15 days of scheduled hearing date unless in full
compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to
hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants
Appellants /Protestants

: Robert A. Hoffman, Esquire
: Crown Castle Atlantic, LLC and
Bell Atlantic Mobile Systems, Inc.

Counsel for Appellants /Protestants
Appellants /Protestants

: Michael P. Tanczyn, Esquire
: Lewis Eichelberger III and
H. Thorne Gould

Counsel for Appellant /Protestant
Appellant /Protestant

: Karl J. Nelson, Esquire
: SBC Communications, Inc. /Van Thompson
(Cellular One, Inc.)

Counsel for Petitioner
Petitioner

: John P. Evans, Esquire
: Richard A. Moore

Steve Tizard

Added 6/05/00:

T. Wray McCurdy, Esquire
/Counsel for Greater Jacksonville Assn, Inc.

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



PP request

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147
www.venable.com

VENABLE
ATTORNEYS AT LAW

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

Robert A. Hoffman
(410) 494-6262

rahofman@venable.com

August 31, 2000

Ms. Kathleen C. Bianco
Legal Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

RECEIVED
COUNTY BOARD OF APPEALS
00 AUG 31 PM 4:17

Re: In the Matter of Richard A. Moore, Petitioner
No Specific Location
Case No. 99-371-SPH

Dear Kathy:

I am in receipt of Pete Zimmerman's letter dated August 18th, 2000 and would request that the Hearing currently scheduled for September 19th, 2000 be postponed in order to give me an opportunity to consider and respond to the jurisdictional issue raised on Page 2 in the first full paragraph. Additionally, I am currently scheduled to be before the Hearing Office on September 19th on a continuation of the Bethel AME Church Hearing Officer's hearing.

Accordingly, I am requesting a postponement of this case. If you have any questions, please let me know.

Yours truly,



Robert A. Hoffman

RAH/sm

cc: John P. Evans, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue - 4th Floor
Towson, Maryland 21204

PP 90 11/24/00

Ms. Kathleen C. Bianco

August 31, 2000

Page 2

Michael P. Tanczyn, Esquire
606 Baltimore Avenue – Suite 106
Towson, Maryland 21204

T. Wray McCurdy, Esquire
Sutton, McCurdy and Stone
101 Eastern Boulevard
Baltimore, Maryland 21221

Karl J. Nelson, Esquire
One South Street – Suite 2600
Baltimore, Maryland 21202

Virginia Wood Barnhart, Esquire
County Attorney
Baltimore County, Maryland
Office of Law
Court House, 2nd Floor
Baltimore, Maryland 21203

People's Counsel for Baltimore County
Room 47 Old Courthouse
400 Washington Avenue
Towson, Maryland 21204



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

July 27, 2000

T. Wray McCurdy, Esquire
SUTTON, MCCURDY AND STONE
101 Eastern Boulevard
Baltimore, MD 21221

RE: In the Matter of Richard A. Moore -Petitioner
Case No. 99-371-SPH

Dear Mr. McCurdy:

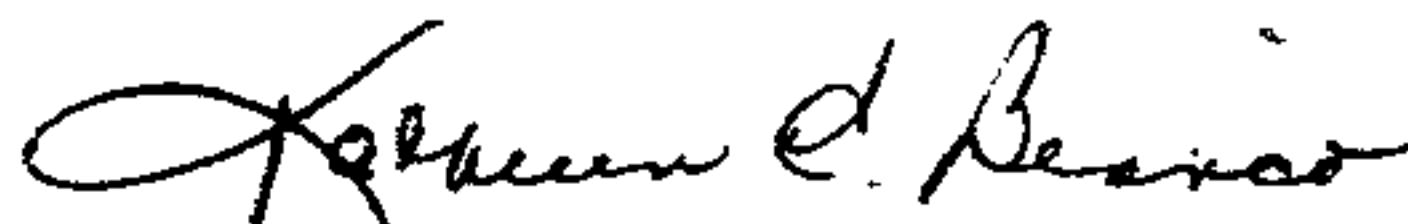
In response to your letter of July 26th regarding the subject matter, please be advised that Case No. 99-371-SPH remains assigned for hearing on September 19, 2000 at 10:00 a.m. as previously scheduled.

Case No. CBA-99-163, In the Matter of Jacksonville Communications Tower, has been dismissed by the Board in response to a letter of withdrawal of appeal filed by Mr. Tanczyn (dismissing the only appeal taken in Case No. CBA-99-163). This dismissal request was clarified by subsequent letter from Mr. Tanczyn, and the Order of Dismissal has been issued.

Again, Case No. 99-371-SPH, In the Matter of Richard A. Moore, Petitioner, remains scheduled for hearing before the Board of Appeals on September 19th.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,


Kathleen C. Bianco
Administrator

c: Michael P. Tanczyn, Esquire
John P. Evans, Esquire
Karl J. Nelson, Esquire
Robert A. Hoffman, Esquire
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney



Law Offices of
T. Wray McCurdy, P.A.
Attorney at Law
101 Eastern Boulevard
Baltimore, Maryland, 21221

Telephone: 410-686-2200
Facsimile: 410-686-5803
Toll-Free: 800-333-5943

T. Wray McCurdy, Esq.

July 26, 2000

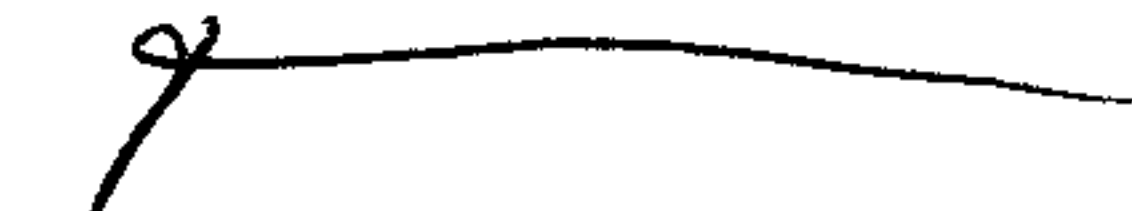
Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of Richard A. Moore, Petitioner
Greater Jacksonville Association, Inc.
Case No. 99-371-SPH Appeal

Dear Ms. Bianco:

On behalf of my client, Greater Jacksonville Association, Inc. we would object to any dismissal of the Appeal in this matter. It is the position of the Association that the Building Permit should not have been granted in a CR District without a public hearing. If the Board rules in our favor, Mr. Eichelberger's tower may be in jeopardy.

Sincerely yours,



T. Wray McCurdy

TWM/paa

cc: Michael P. Tanczyn, Esquire
cc: John P. Evans, Esquire
cc: Karl J. Nelson, Esquire
cc: Robert A. Hoffman, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
00 JUL 27 PM 12:13

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

July 24, 2000

County Board of Appeals of Baltimore County
Attn: Kathleen C. Bianco, Administrator
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

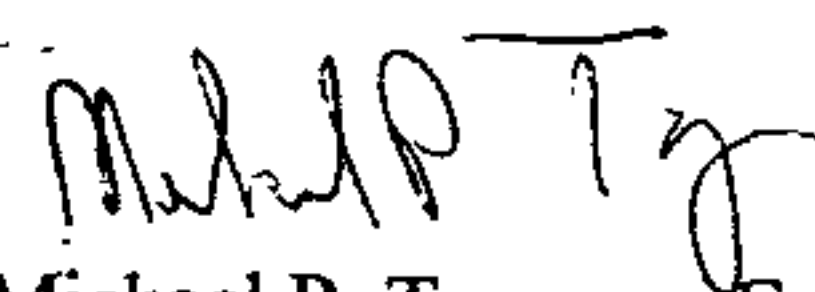
Re: Case No. CBA-99-163

Dear Kathy:

Per our conversation, I wish to retract the dismissal request for Case 99-371-SPH. As is contained in our letter, we only intended to dismiss the appeal of the building permit suspension, which is Board of Appeals Case CBA-99-163. Per your suggestion, I am writing to withdraw our dismissal request for Case 99-371-SPH and to request Case CBA-99-163 be dismissed.

Thank you for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr

cc: Lewis H. Eichelberger, III
H. Thorne Gould
Robert Hoffman, Esquire
Karl Nelson, Esquire
John P. Evans, Esquire

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue

Towson, Maryland 21204

(410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

July 17, 2000

County Board of Appeals of Baltimore County
Attn: Kathleen C. Bianco, Administrator
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

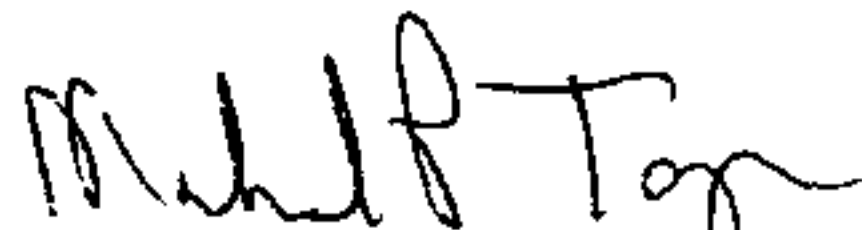
Re: Case No. 99-371-SPH, Richard A. Moore - Petitioner

Dear Kathy:

The purpose of this letter is to request that the appeal in this matter be dismissed. We have received the enclosed Tower Completion Approval from Baltimore County Building Inspection and this matter has now been resolved.

Thank you very much for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr

cc: Lewis H. Eichelberger, III
H. Thorne Gould

RECEIVED
COUNTY BOARD OF APPEALS
00 JUL 18 PM 3:30

FAX

Date: 7-12-00

Number of pages including cover sheet:

To:

MICHAEL P. TANCZYK, PA

Phone:

Fax phone: 410-296-8827

CC:

From:

L. H. EICHELBARGER IIIPhone: 410-329-6525Fax phone: 410-329-2185

REMARKS:



Urgent



For your review



Reply ASAP



Please comment

TOWER
COMPLETION
APPROVAL

Packley



#14242
BALTIMORE COUNTY
BUILDING INSPECTION
410-887-3953

Part of Building Inspected:

D-383894COMPUTER
TOWERApproved (☒) Disapproved ()

REMARKS:

7/14/00
DATEG. K. D.
BUILDING INSPECTOR



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

July 20, 2000

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
210 Allegheny Avenue
Towson, MD 21204

Karl J. Nelson, Esquire
One South Street
Suite 2600
Baltimore, MD 21202

RE: In the Matter of Richard A. Moore –Petitioner
Case No. 99-371-SPH

Dear Counsel:

The Board is in receipt of the attached letter from Mr. Tanczyn requesting a dismissal of appeal in the subject matter.

A review of our file indicates that three separate appeals were filed from the Zoning Commissioner's Order of October 19, 1999. Please get back to me as soon as possible regarding the status of the separate appeals filed in this case.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Michael P. Tanczyn, Esquire
T. Wray McCurdy, Esquire
John P. Evans, Esquire
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney



Law Offices of
T. Wray McCurdy, P.A.
Attorney at Law
101 Eastern Boulevard
Baltimore, Maryland, 21221

Telephone: 410-686-2200
Facsimile: 410-686-5803
Toll-Free: 800-333-5943

T. Wray McCurdy, Esq.

June 2, 2000

Board of Appeals
Baltimore County, Maryland
400 Washington Avenue, Room 49
Towson, MD 21204

Re: Richard A. Moore, Petitioner
Greater Jacksonville Association, Inc.
Case No. 99-371-SPH Appeal

Dear Sir or Madam:

Please enter my appearance on behalf of Greater Jacksonville Association, Inc. for the above captioned Board of Appeals matter currently scheduled for a hearing on September 19, 2000. Enclosed please find the originals of the Resolution of the Greater Jacksonville Association, Inc. to be included in the file.

Also, please find enclosed my check in the amount of \$29.00 for copies of the above file.

Thank you for your kind cooperation.

Sincerely yours,


T. Wray McCurdy



TWM/paa
Enclosures
cc: John P. Evans, Esquire

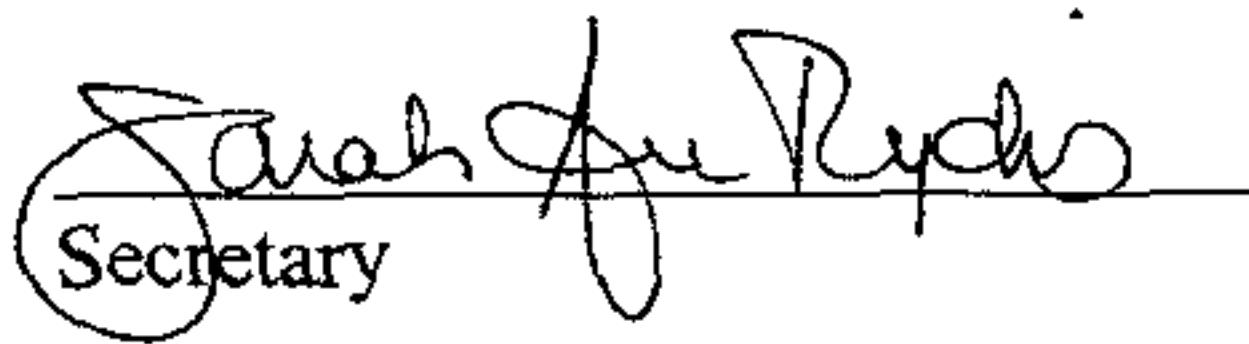
RECEIVED
COUNTY BOARD OF APPEALS
00 JUN -5 PM 12:30

GREATER JACKSONVILLE ASSOCIATION, INC.

RESOLVED: That the position of the Greater Jacksonville Association, Inc. as adopted by the Board of Directors on the zoning matter known as Case No. 99-371-SPH, IN RE: PETITION FOR A SPECIAL HEARING, (No specific location), RICHARD A. MOORE, PETITIONER, is that the Greater Jacksonville Association, Inc. seeks to file a Motion to Intervene in the Appeal of the above captioned matter, oppose the Appellants position, and support the findings of the Zoning Commissioner for Baltimore County, Lawrence E. Schmidt, who held that "the language of Section 426.5 of the B.C.Z.R. controls" in the above-captioned matter, and that a special exception approval for the erection of a wireless communications tower in a C.R. district is required.

AS WITNESS OUR HANDS AND SEAL THIS 30th day of April, 2000.

ATTEST:


Secretary

GREATER JACKSONVILLE ASSOCIATION,
INC.


President

GREATER JACKSONVILLE ASSOCIATION, INC.

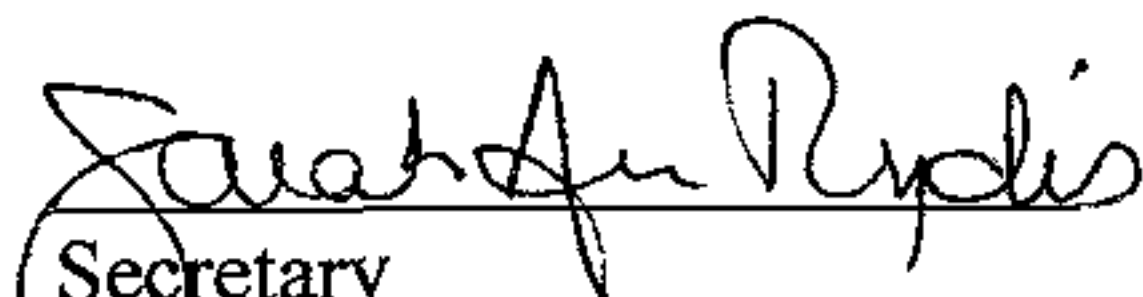
RESOLVED: That at the Board of Directors meeting of the Greater Jacksonville Association, Inc. held on January 20, 2000, it was decided that that on behalf of the Greater Jacksonville Association, Inc., responsibility for review and action on the zoning matters related to the construction of communication towers in the Jacksonville, Maryland area, particularly relating to Case No. 99-371-SPH, PETITION FOR A SPECIAL HEARING, (No specific location), RICHARD A. MOORE, PETITIONER, for the period of the year 2000, and following until completed, was placed in the Board of Directors consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency body or commission:

David L. Palmer, President
Mitch Daly, Vice-President
Sara Ryckis, Secretary
Gary Hermann, Treasurer
James McCoy, Member
Thomas Shaw, Member
Stephen Kirsch, Member
Randy Javins, Member
Betsy Lehmann, Member
William Malstrom, Member.

AS WITNESS OUR HANDS AND SEAL THIS 30th DAY OF APRIL, 2000.

ATTEST:

GREATER JACKSONVILLE ASSOCIATION,
INC.


Secretary


President

AFFIDAVIT

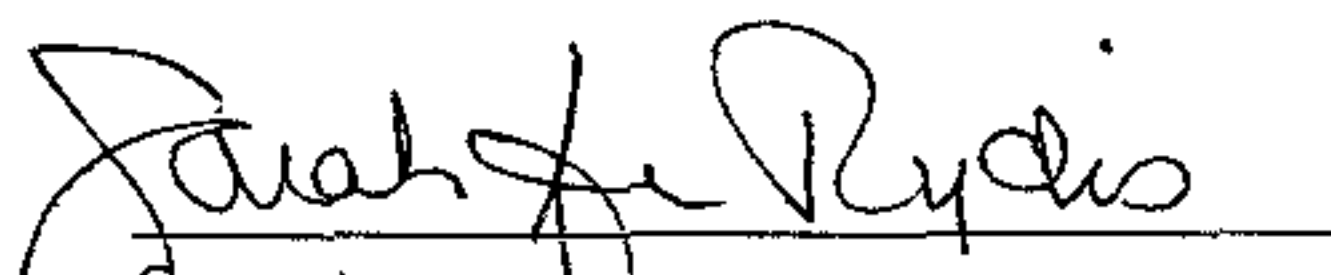
STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Greater Jacksonville Association, Inc.

ATTEST:

Greater Jacksonville Association, Inc.


Secretary


President

Date: April 30, 2000



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 18, 2000

NOTICE OF ASSIGNMENT

CASE #: 99-371-SPH

IN THE MATTER OF: **RICHARD A. MOORE** -Petitioner
No Specific Location /Interpretation of 426.5(d), BCZR

11/18/99 –Decision of Zoning Commissioner (that special exception approval is required for erection of wireless telecomm tower in CR district)

ASSIGNED FOR:

TUESDAY, JULY 18, 2000 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants
Appellants /Protestants

: Robert A. Hoffman, Esquire
: Crown Castle Atlantic, LLC and
Bell Atlantic Mobile Systems, Inc.

Counsel for Appellants /Protestants
Appellants /Protestants

: Michael P. Tanczyn, Esquire
: Lewis Eichelberger III and
H. Thorne Gould

Counsel for Appellant /Protestant
Appellant /Protestant

: Karl J. Nelson, Esquire
: SBC Communications, Inc. /Van Thompson
(Cellular One, Inc.)

Counsel for Petitioner
Petitioner

: John P. Evans, Esquire
: Richard A. Moore

Steve Tizard

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

*Reassigned to
9/19/00 -
Request of
Counsel for
Appellant.*



LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824
Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

April 26, 2000

County Board of Appeals of Baltimore County
Attn: Kathleen C. Bianco, Administrator
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
00 APR 27 PM 3:10

Re: Case No. 99-371-SPH, Richard A. Moore - Petitioner

Dear Kathy:

I am writing with regard to the above referenced case scheduled for trial on Tuesday, July 18, 2000 at 10:00 a.m. I am previously scheduled to appear in the matter of State of Maryland v. Bryan Rakestraw on that same date. Due to this conflict, we ask that the hearing be rescheduled and that you notify us of the new date.

Thank you very much for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn, Esquire

MPT/gr

cc: Lewis H. Eichelberger, III
H. Thorne Gould



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

November 23, 1999

John P. Evans, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue
4th Floor
Towson, MD 21204

Dear Mr. Evans:

RE: Petition for Special Hearing, Case Number 99-371-SPH, No Specific Location

Please be advised that an appeal of the above referenced case was filed in this office on November 16, 1999 by Robert A. Hoffman, Esquire, on behalf of Crown Castle Atlantic, LLC and Bell Atlantic Mobile, Inc. A second appeal was filed on November 17, 1999 by Michael P. Tanczyn, Esquire, on behalf of Lewis Eichelberger, III and H. Thorne Gould. A third appeal was filed on November 18, 1999 by Karl J. Nelson, Esquire.

All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,


Arnold Jablon
Director

AJ:scj

C: Richard A. Moore
Robert A. Hoffman, Esquire
Michael P. Tanczyn, Esquire
Karl J. Nelson, Esquire
People's Counsel



Census 2000



For You, For Baltimore County



Census 2000



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on Recycled Paper

Come visit the County's Website at www.co.ba.md.us

LAW OFFICES
KRAMON & GRAHAM, P. A.
ONE SOUTH STREET
SUITE 2600
BALTIMORE, MARYLAND 21202-3201

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FACSIMILE: (410) 539-1269

KARL J. NELSON
DIRECT DIAL
(410) 347-7434

E-MAIL
knelson@kg-law.com

November 18, 1999

VIA HAND-DELIVERY

Mr. Arnold Jablon
Director
Permits and Development Management
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

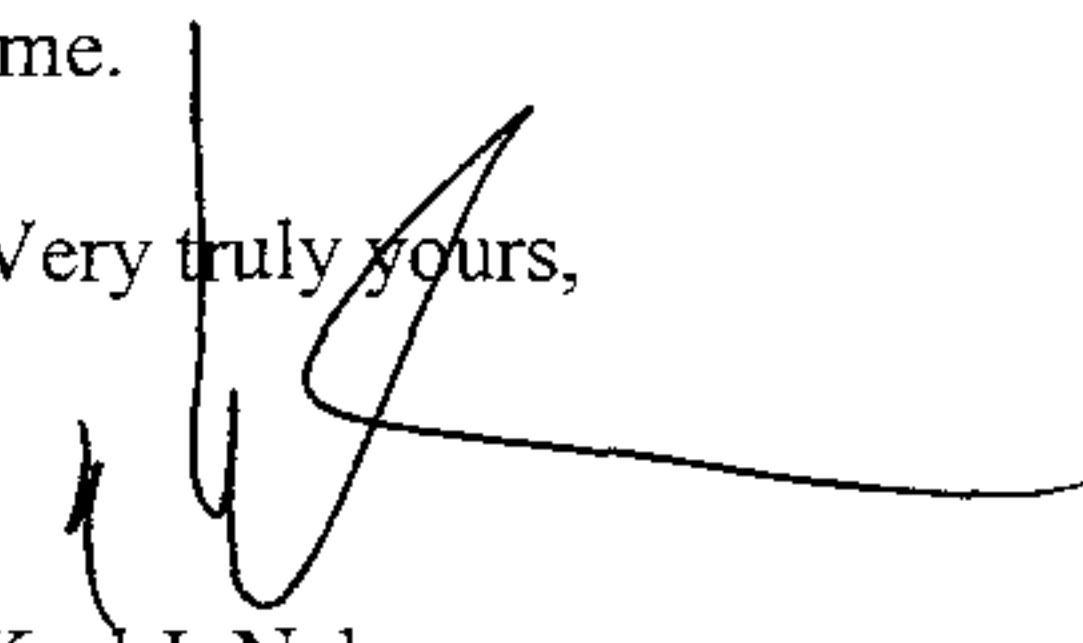
Re: Petitions for Special Hearing & Variance (Case No. 99-366-SPHA)
NE/S Paper Mill Road, 590' W of the c/1 Jarrettsville Pike
(3314 Paper Mill Road)
10th Election District – 6th Councilmanic District
Richard A. Moore – Petitioner/Property Owner; and
Petition for Special Hearing (Case No. 99-371-SPH)
(No Specific Location)
Richard A. Moore – Petitioner

Dear Mr. Jablon:

This letter shall serve as a notice of appeal from the Zoning Commissioner's decision in the above-referenced case. Particularly, this appeal concerns Zoning Commissioner's decision dated October 19, 1999, concerning the special hearing request in Case No. 99-371-SPH. Enclosed please find the Appellant's check, made payable to Baltimore County, Maryland, in the amount of \$175.00 to cover the appeals costs for the special hearing matter.

Thank you for your attention to this matter. Should you require any additional information, please do not hesitate to contact me.

Very truly yours,


Karl J. Nelson

KJN:pad
Enclosure

cc: Mr. Van Thompson (w/o encl.)

1:1 NKS\KJN\cellular One\CR Overlaid (B Co.)\Jablon 11-18 (appeal) wpd

S.B.C. COMMUNICATIONS
DVA CELLULAR ONE

*Talked to Mr. Nelson.
Appealing 99-371
only
Sophia*

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 • (410) 296-8824
Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

November 17, 1999

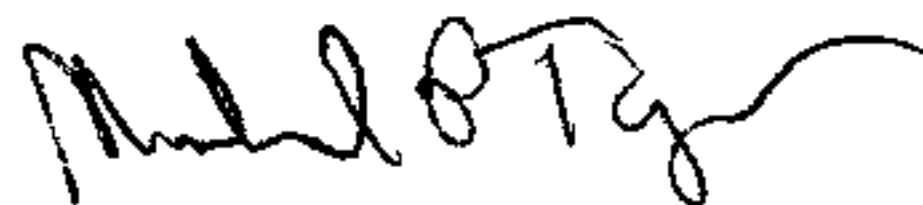
The Honorable Lawrence E. Schmidt
Zoning Commissioner
Room 407, County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Case No. 99-371-SPH

Dear Mr. Schmidt:

On behalf of our clients Lewis Eichelberger, III and H. Thorne Gould, we appeal the decision of the Zoning Commissioner in the above case dated October 19, 1999 to the Board of Appeals for Baltimore County.

Very truly yours,



Michael P. Tanczyn, Esquire

MPT/gr

cc: Mr. Lewis Eichelberger, III
H. Thorne Gould
Robert Hoffman, Esq.
John P. Evans, Esq.
Karl Nelson, Esq.

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147
www.venable.com

VENABLE
ATTORNEYS AT LAW

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

Robert A. Hoffman
(410) 494-6262

November 16, 1999

HAND-DELIVERED

Mr. Arnold Jablon, Director
Department of Permits and Development
Management
County Office Building – Room 111
111 W. Chesapeake Avenue
Towson, Maryland 21204

Charles L. Marks, Chairman
County Board of Appeals for
Baltimore County
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Case No. 99-371-SPH

Dear Mr. Jablon and Mr. Marks:

On behalf of our clients, Crown Castle Atlantic, LLC, and Bell Atlantic Mobile Systems, Inc., we note an appeal from the decision of the Zoning Commissioner of Baltimore County, dated October 19, 1999, in the above-referenced matter in which the Commissioner granted a Petition for Special Hearing filed by Richard A. Moore, and determined that special exception approval would be required for the erection of a wireless telecommunications tower in the C.R. District.

The names and addresses of the appealing parties are:

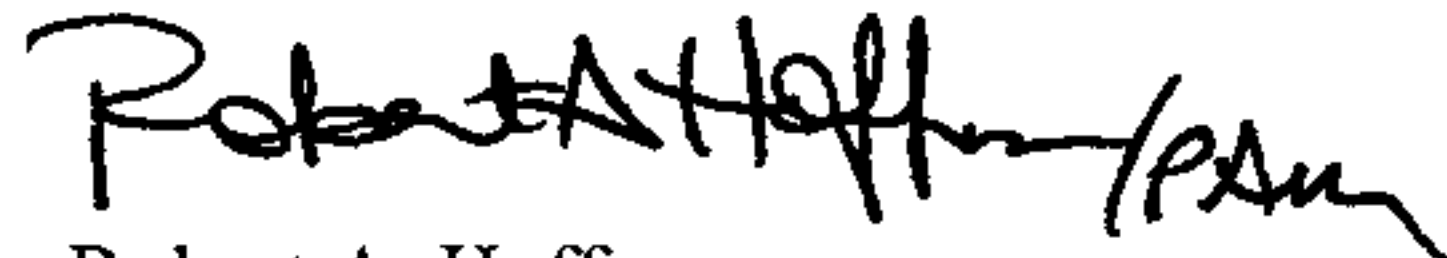
Crown Castle Atlantic, LLC
4700 Corridor Place, Suite D
Beltsville, Maryland 20705

Mr. Arnold Jablon, et al.
November 16, 1999
Page 2

Bell Atlantic Mobile, Inc.
9000 Junction Drive
Annapolis Junction, Maryland 20701

We enclose a check in the amount of \$175.00 to cover the filing fee for the appeal. If you have any questions regarding this appeal, please feel free to give me a call.

Very truly yours,


Robert A. Hoffman

RAH/pam

TO1DOCS1/erl01/#91282 v1



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at N/A

which is presently zoned _____

This Petition shall be filed with the Department of Permits and Development Management. 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 Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve.

See attached

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded 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/Lessee:

Name - Type or Print _____

Signature _____

Address _____ Telephone No. _____

City _____ State _____ Zip Code _____

Attorney For Petitioner:

John P. Evans

Name - Type or Print _____

Signature _____

Whiteford, Taylor & Preston L.L.P.

Company 4th Floor
210 W. Pennsylvania Avenue (W) 410-832-2027
Address (H) 410-683-1432
Towson, MD 21204 Telephone No. _____

City _____ State _____ Zip Code _____

Legal Owner(s):

Richard A. Moore

Name - Type or Print _____

Signature _____

Name - Type or Print _____

Signature _____

P.O. Box 400 410-667-0800

Address _____ Telephone No. _____

Phoenix, MD 21131

City _____ State _____ Zip Code _____

Representative to be Contacted:

John P. Evans

Name 4th Floor 410-683-1432 (H)

210 W. Pennsylvania Avenue 410-832-2027 (W)

Address _____ Telephone No. _____

Towson, MD 21204

City _____ State _____ Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By WCR Date 3/23/99

Drop-Off

No Review

ORDER RECEIVED FOR FILING

Case No. 99-371-SPH

Date 3/15/98

Attachment to Petition for Special Hearing
Petitioner: Richard A. Moore

- (1) Determine whether Section 426.5.D. of the Baltimore County Zoning Regulations requires special exception approval for the erection of a wireless telecommunications tower in a C.R. District;
- (2) Determine whether a C.R. District is to be considered a "residential zone" for the purposes of Section 426 as set forth in Section 426.5.D; and
- (3) Notify the Department of Permits and Development Management to withhold the issuance of building permits for any wireless telecommunications towers proposed within a C.R. District until the special exception approval is obtained.

162990

RECEIVED FOR FILING
Date 10/19/99
By [Signature]



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

May 14, 1999

John P. Evans, Esq.
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue, 4th Floor
Towson, MD 21204

RE: Case No.: 99-371-SPH
Petitioner: Richard A. Moore
Location: N/A

Dear Mr. Evans:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on March 23, 1999.

The Zoning Advisory Committee (ZAC), which consists of representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Carl Richards, Jr." with a stylized flourish at the end.

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:ggs

Enclosures

Come visit the County's Website at www.co.ba.md.us



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

Date: April 13, 1999

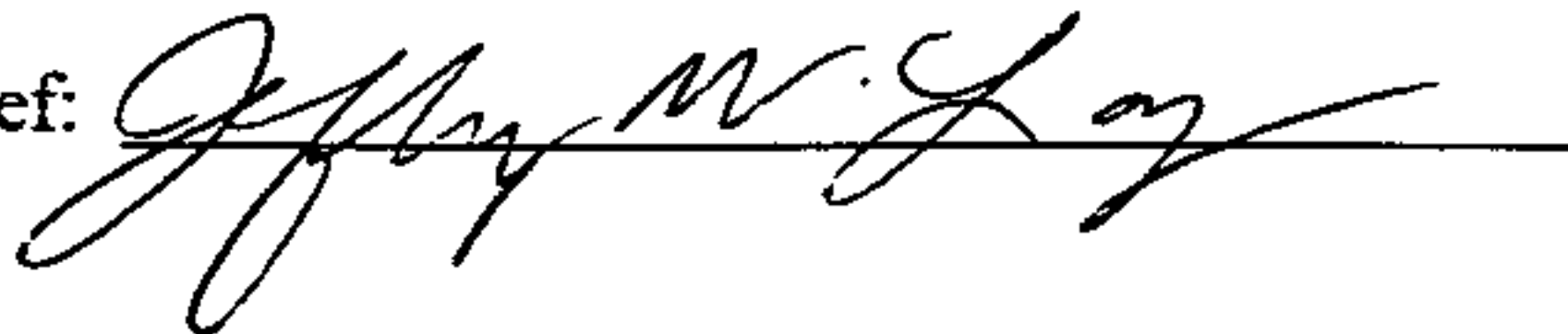
FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: Zoning Advisory Petitions

The Office of Planning has no comment on the following petition (s):
Item No (s) 371, 384, and 388

If there should be any questions or this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 410-887-3480.

Section Chief:

A handwritten signature in cursive script, appearing to read "Jeffrey M. Long", is written over a horizontal line.

AFK/JL



**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 4.2.99 WCR

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 371

Dear Ms Stephens:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

B A L T I M O R E C O U N T Y, M A R Y L A N D

I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director
 Department of Permits & Development
 Management

Date: April 12, 1999

FROM:  Robert W. Bowling, Supervisor
 Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
 for April 12, 1999
 Item Nos. 367 and 371

 The Bureau of Development Plans Review did not receive plans for
these items.

RWB:HJO:jrb

cc: File



**Baltimore County
Fire Department**

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

April 15, 1999

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF APRIL 5, 1999

Item No.: See Below

Zoning Agenda:

Gentlemen:

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

3. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

267, 368, 369, 371, 372, 373, 374, 376, 377, 378, AND 379.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Come visit the County's Website at www.co.ba.md.us

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits and Development Management

DATE: April/13/99

FROM: R. Bruce Seeley, Project Manager *RBS/JS*
Development Coordination
DEPRM

SUBJECT: Zoning Advisory Committee

Distribution Meeting Date: 4/5/99

The Department of Environmental Protection and Resource Management has
no comments for the following Zoning Advisory Committee Items:

Item #'s: 368

370

371

373

374

375

378

99-342-A

99-345-A

RE: PETITION FOR SPECIAL HEARING
No Specific Location

Legal Owners: Richard A. Moore

Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case Number: 99-371-SPH

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 1999, a copy of the foregoing Entry of Appearance was mailed to John P. Evans, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN

RE: PETITION FOR SPECIAL HEARING
PETITION FOR VARIANCE

Legal Owners: Richard A. Moore

Petitioner(s)

LES
5/18/99

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* CASE NO. 99-371-SPH
*

* * * * *

ENTRY OF APPEARANCE

Dear Mr. Commissioner:

Please enter the appearance of Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204 as attorney for H. Thorne Gould, 3722 Hess Road, Monkton, Maryland 21111, and Lewis H. Eichelberger, III, P. O. Box 157, White Hall, Maryland 21161-0157, Protestants in the above case. Notice should be sent of any hearing dates and of other proceedings in this matter, as well as the passage of any preliminary or final Order.



Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823
Attorney for the Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 31 day of May, 1999, a copy of the foregoing Entry of Appearance was hand delivered to John Evans, Esquire, Whiteford, Taylor & Preston, 21 W. Pennsylvania Avenue, Suite 400, Towson, Maryland 21204, Attorney for the Petitioner(s), and to Carole S. Demilio and Peter Max Zimmerman, Esquires, Deputy Peoples' Counsel and Peoples' Counsel, Room 47 Court House, 400 Washington Avenue, Towson, Maryland 21204.



Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Attorney for the Protestants



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

April 8, 1999

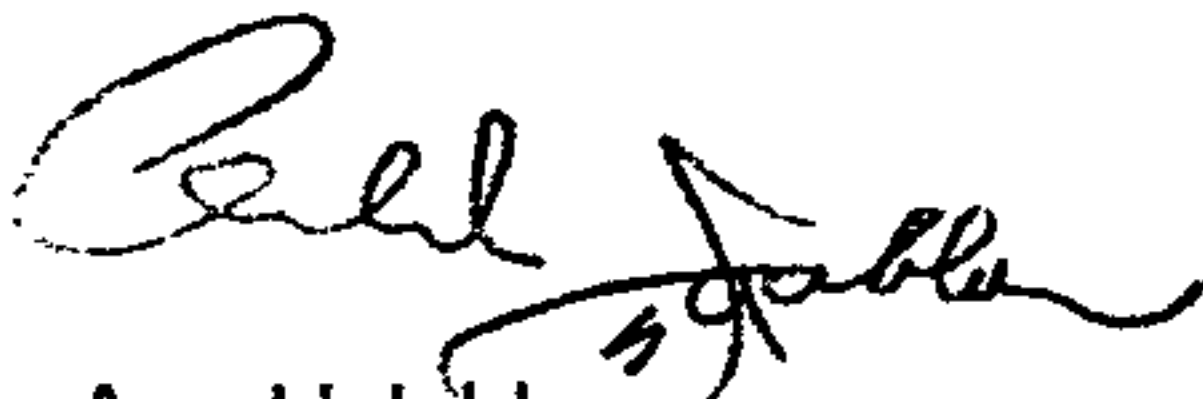
NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 99-371-SPH
No Specific Location
Petitioner: Richard A. Moore

Special Hearing to determine whether Section 426.5.D. of the Baltimore County Zoning Regulations requires a special exception approval for the erection of a wireless telecommunications tower in a C.R. District; to determine whether a C.R. District is to be considered a "residential zone" for the purposes of Section 426 as set forth in Section 426.5.D.; and notify the Department of Permits and Development Management to withhold the issuance of building permits for any wireless telecommunications towers proposed within a C.R. district until the special exception approval is obtained.

HEARING: Tuesday, May 18, 1999 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue



Arnold Jablon
Director

c: John P. Evans, Esquire
Richard A. Moore

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Come visit the County's Website at www.co.ba.md.us



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BALTIMORE, MARYLAND 21202-1626
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FAX 410 752-7092

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JOHN P. EVANS
DIRECT NUMBER
410 832-2027
jpevans@wtplaw.com

MAY 13

May 13, 1999

DELIVERY BY HAND

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Re: Case No. 99-371-SPH, No Specific Location

Dear Mr. Schmidt:

On behalf of our client, the Petitioner Richard A. Moore, we concur with your decision to consolidate the hearing of this case with the completion of Case No. 99-366-SPHA. However, since the consolidated hearing will not be held until the week of June 21, 1999, we respectfully request that you take the action requested as matter 3 in the petition, which is to notify the Department of Permits and Development Management to withhold the issuance of building permits for any wireless telecommunications towers proposed within a CR District until the determination is made as to whether a Special Exception is required. Further, if the building permit for the Glyndon Cleaners site has already been issued, we respectfully request that you prohibit the commencement of construction at that site until you issue your ruling in the Special Hearing.

I look forward to receiving confirmation of the new hearing date. Thank you for your prompt action with regard to these requests.

Very truly yours,



John P. Evans

JPE:sll

cc: Mr. Richard A. Moore (via fax - 410-667-0078)
Michael P. Tanczyn, Esquire (via fax - 410-821-0147)
Robert A. Hoffman, Esquire (via fax - 410-296-8827)



Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

May 13, 1999

John P. Evans, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING & VARIANCE
(3314 Paper Mill Road)
10th Election District – 6th Councilmanic District, and
Richard A. Moore – Petitioner
Case No. 99-366-SPHA

Dear Mr. Evans:

This letter is to follow-up the recessed hearing in the above-captioned matter over which I presided on May 11, 1999. The Petitions before me relate to the proposed construction of a replacement tower on the property known as 3314 Paper Mill Road. Presently, the property is improved with a 105-foot tower and related equipment for a number of wireless communication industry providers. The Petitioner proposes razing that tower and constructing a 190-foot tower as a replacement.

Although the above case relates only to the subject property, testimony, argument, and evidence offered during the hearing in this case disclosed the possibility of a second tower on a nearby property, generally referred to as the "Glyndon Cleaners" site. Mr. Lewis Eichelberger, III, who is represented by Michael P. Tanczyn, Esquire, is the moving party behind that project. Moreover, there is another Petition for Special Hearing at issue, the resolution of which might impact Mr. Eichelberger's proposed construction. That case (Case No. 99-371-SPH), also filed by Richard A. Moore, seeks an interpretation of the B.C.Z.R. as it relates to tower construction in a C.R. district.

Due to the similarity of the issues presented in both Petitions filed by Mr. Moore, the parties thereto, as well as the inability to conclude Case No. 99-366-SPHA on May 11, 1999, I have decided to consolidate these matters for a single hearing date. It is also to be noted that Case No. 99-371-SPH was originally scheduled for a hearing before me on May 18, 1999; however, that case was set for but a single hour and it is doubtful whether it would be concluded within that time frame. Under these circumstances, the hearing in Case No. 99-366-SPHA will reconvene at 9:00 AM on June 21, 1999 in Room 407 of the County Courts Building. I anticipate that we can complete this case within two hours. Therefore, beginning at 11:00 AM, testimony and evidence will be taken on Case No. 99-371-SPH.

Come visit the County's Website at www.co.ba.md.us



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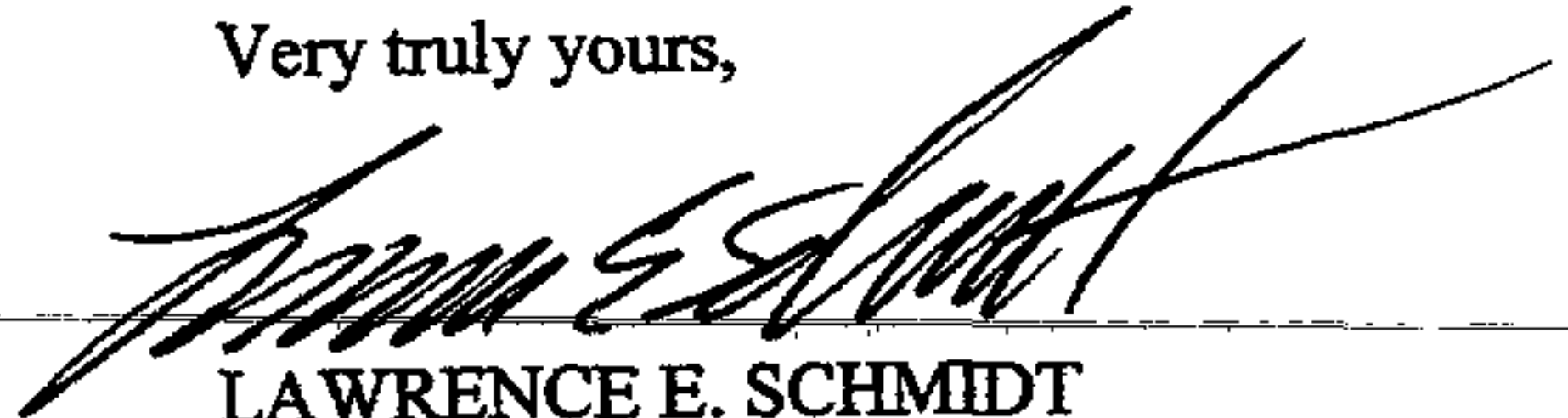
John P. Evans, Esquire

May 13, 1999

Page 2 (Consolidation of Case Nos. 99-366-SPHA and 99-371-SPH)

Finally, by copy of this letter, I am advising Robert A. Hoffman, Esquire, and Carl J. Nelson, Esquire of this proposed schedule. It is my understanding that Messrs. Hoffman and/or Nelson may have an interest in one or both of these matters.

Very truly yours,



LAWRENCE E. SCHMIDT

Zoning Commissioner

for Baltimore County

LES:bjs

cc: Mr. Richard A. Moore, P.O. Box 400, Phoenix, Md. 21131
Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Md. 21204
Mr. Lewis H. Eichelberger, III, P.O. Box 157, White Hall, Md. 21161-0157
Robert A. Hoffman, Esquire, VBH, 210 Allegheny Avenue, Towson, Md. 21204
Karl J. Nelson, Esquire, 14 The Strand, Sparks, Md. 21152-8845
People's Counsel; Case File

CERTIFICATE OF PUBLICATION

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #99-371-SPH

No Specific Location

Petitioner: Richard A. Moore

Special Hearing: to determine whether Section 426.5.D. of the Baltimore County Zoning Regulations requires a special exception approval for the erection of a wireless telecommunications tower in a C.R. District; to determine whether a C.R. District is to be considered a "residential zone" for the purposes of Section 426 as set forth in Section 426.5.D.; and notify the Department of Permits and Development Management to withhold the issuance of building permits for any wireless telecommunications towers proposed within a C.R. district until the special exception approval is obtained.

Hearing: Tuesday, May 18, 1999 at 9:00 a.m. in Room 407, County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

4/5/06 April 29

C307909

TOWSON, MD., 4/29/, 1999

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 4/29/, 1999.

THE JEFFERSONIAN,

J. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: March 20, 2001

TO: L. Wescott
D. Felling
C. Marks

FROM: Kathi

SUBJECT: Case No. 99-371-SPH /Richard A. Moore, Petitioner
Motion to Amend Petition and Responses thereto
(Scheduled for Deliberation 3/27/01)

A Motion to Amend Petition was filed by Mr. McCurdy on behalf of Jacksonville and Mr. Moore on March 9, 2001. Responses there to were filed by Messrs. Hoffman and Tanczyn on March 13th and March 14th, respectively.

So that you are able to address this issue at the start of the scheduled deliberation on 3/27/01, attached for your review are the following documents:

1. Motion to Amend Petition filed by T. Wray McCurdy, Esquire, on behalf of Greater Jacksonville Association, intervening Appellee, and Richard A. Moore, Appellee;
2. Appellant's Response to Motion to Amend Petition filed by Robert A. Hoffman, Esquire, on behalf of Appellants, Crown Castle Atlantic LLC and Bell Atlantic Mobile Systems, Inc.; and
3. Objection to Motion to Amend Petition filed by Michael P. Tanczyn, Esquire, on behalf of Lewis Eichelberger III and Thorne Gould, Protestants, with attached proposed Order denying same.

Should you have any questions, please call me.

Kathi

Attachments (3)

