

1/16/01  
IN THE MATTER OF  
THE APPLICATION OF  
AT&T WIRELESS SERVICES -C.P.; HUBERT  
A. BELLMAN - LEGAL OWNER FOR A  
SPECIAL EXCEPTION AND SPECIAL  
HEARING ON PROPERTY LOCATED ON THE  
W/S YORK ROAD, 1900' N OF STABLERS  
CHURCH ROAD (19807 YORK ROAD)  
7<sup>th</sup> ELECTION DISTRICT  
3<sup>rd</sup> COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. 01-047-SPHX

\* \* \* \* \*

OPINION

This case comes to the Baltimore County Board of Appeals based on a decision under date of October 25, 2000 by the Deputy Zoning Commissioner for Baltimore County in which a Petition for Special Hearing and a Petition for Special Exception were granted. The case was timely appealed by People's Counsel for Baltimore County on November 8, 2000. The case was heard by the Board on September 12, 2001 and was deliberated in public on October 4, 2001. Paul A. Dorf, Esquire, represented the Petitioners, and Peter Max Zimmerman, People's Counsel for Baltimore County, appeared on behalf of that office.

The Petitioners, AT&T Wireless Services, filed for a special exception to construct a 199-foot monopole to establish a wireless telecommunication radio link at 19807 York Road in Parkton, Maryland. The subject property is located in a Resource Conservation zone. Included in the proceeding was a special hearing that would permit an amendment to the special exception granted to the property owner, Hubert A. Bellman, in 1973 by the Zoning Commissioner, which permitted the owner to operate a flea market on roughly 38 acres of the lot. While the instant special exception was granted by the Deputy Zoning Commissioner, this Board heard the case on a *de novo* basis.

The Petitioners produced a number of witnesses in support of their request. Mr. Randall Butts, an experienced radio-frequency engineer employed by AT&T, testified at length concerning the proposed tower, and the need in the immediate area of the subject site to fill a present communications coverage gap that he opined currently exists along Interstate 83 and York Road. He explained that, in the wireless system, telephone calls are transmitted from one antenna to another cell site. The best scenario exists where antennas are located in proximity to each other so that no coverage void exists, whereby calls are lost as one travels from one cell to another. He further stated that this was the reason Petitioner was requesting the special exception, since a void presently existed in the area of the proposed tower. Mr. Butts testified that he had created a map which reflected a general ring or search area that necessitated a tower, and, as is his usual custom, the map was forwarded to engineering and land use experts to ascertain where the most favorable site existed to construct the tower. Should the Board approve the petition, the witness stated that the tower would also accommodate other telecommunication companies, so additional towers would not be needed in the area.

Mr. Butts also testified that the Petitioner had negotiated successfully with other existing tower owners to co-locate on existing or proposed towers along the I-83 corridor. Specifically, these were identified as the AAT tower to the north, and the Crown, BGE, and Spectrum tower to the south of the Bellman property. Even with these arrangements, however, Mr. Butts opined that the proposed tower was essential to finalize its communication network along I-83. Mr. Butts demonstrated, in Petitioner's Exhibit No. 1 (Search Ring), that there were no other towers between the proposed Bellman tower and the AAT northern tower and the southern Crown tower. When questioned about the BGE right-of-way to the south and to the east of the subject site, Mr. Butts stated that this site would not satisfy AT&T's coverage needs along the stretch of

I-83. Similarly, the property located to the south, where an Exxon station is located, would not satisfy the Petitioner's requirements.

Mr. William Francis, a representative of Tower Resource Management, also testified. This firm is a site acquisition firm and had been engaged by the Petitioner to locate a favorable site in the "coverage void" area. Mr. Francis opined that an extensive search had been conducted, and that in his opinion, and it was his conclusion, that the Bellman property was the most suitable location within the search area. He stated his reasons as the density, mature woodland surrounding the area, and the fact that private residences are distant from the site. The wooded area and density caused by the trees would significantly shield the tower base, and a large majority of the tower itself would be shielded by the wooded environment, providing a visual buffer from the surrounding area. As a result, any adverse effects created by the tower would be far less at this locale than anywhere else in the R.C. zone.

Petitioner's third witness was Mitchell Kellman. Mr. Kellman has testified before this Board on prior occasions as a former employee of the Baltimore County Department of Permits and Development Management. He is presently employed by Daft, McCune, Walker, Inc., and was accepted as an expert in land planning and zoning. Mr. Kellman was questioned concerning the application of the requirements of *Baltimore County Code*, § 502.1, and opined that he saw no inconsistencies that would conflict with those regulations. Additionally, he spoke concerning the Baltimore County Master Plan and saw no conflicts indicating that, in his opinion, the proposed tower would be consistent with the goals, spirit and intent of the 10-year Master Plan.

Mr. Oakleigh Thorne was submitted as a certified expert real estate appraiser with Thorne Consultants, Inc., to determine if there would be any diminution in real estate land values if the proposed tower were erected. Based on its wooded density and relative distance of private

residences in proximity thereto, he opined that the proposed tower would not adversely affect land values in the area. He recited other studies that he had conducted in association with such towers, and that those studies reflected no adverse effect on residential property values.

To sooth any concerns relative to radio-frequency emissions and possible health safety concerns, the Petitioners offered the testimony of Robert W. Denny, Jr. Mr. Denny is a consulting engineer and expert in radio frequency emissions with Denny & Associates, P.C. He stated studies that he had conducted and his evaluation that the Petitioner's request to construct a tower on the Bellman property would satisfy all the Federal Communication Commission regulations that pertain to radio frequency emissions concerns.

The final witness for the Petitioner was Andrew Garte, an environmental scientist with Andrew Garte & Associates, Inc. His testimony revolved around the cultural effects that the tower would have in the area. He related that the Maryland Historical Trust had already assessed the effects of the proposed tower using a one-mile radius. These included floating a balloon at the proposed site and determining, at the proposed tower's height, its visual effect upon the surrounding area. The essence of his testimony was that the proposed tower would not have any adverse effect on the immediate cultural resources in the area.

The Appellant offered a number of individuals residing in the area. Both Michael Thomas and George Tyrie opined relative to their concerns about the visual impact of the tower if constructed. They are both adjoining property owners on York Road, immediately to the north of the site by a few hundred feet from the proposed tower's location. Their homes are two-story single-family dwellings and are surrounded by leaf-bearing trees 50 to 60 feet high, which are leaf bearing but barren in the winter. The tower would be visible from their homes. They both recited their reasons for initially purchasing property in this area of Baltimore County; and stated

that, had they known about the possible future tower erection, they would not have purchased their homes. It was their position that the tower's construction would lessen the view afforded them at the present time, in addition to adversely affecting any future resale of their homes.

Mr. Tyrie specifically pointed to the Exxon station just about one mile away as an alternate site, already commercially zoned, for possible location of the tower. Mr. Thomas was particularly concerned about the homes he and Mr. Tyrie purchased in the subdivision which included a covenant that did not permit any tower construction or similar structure without Mr. Bellman's consent, which they considered that Mr. Bellman had believed to be an implied adverse effect on the property.

Two witnesses, Christine Plettenburg and Lynne Jones, expressed concern over the offensiveness of such a tower in the Baltimore north county and cited York Road as a County scenic road:

Lynne Jones, a resident of many years at York and Stablers Church Roads, also described the scenic residential character of the area and opined that the commercial area of York Road and Stablers Church Road, past the Exxon station, is a more appropriate site for the tower.

Ms. Jan Staples, of the Parkton Area Preservation Association, also opined concerning the attractive, scenic aspect of the area and her belief that the proposed tower would constitute an eyesore. She also related the historic context of the property, and she expressed her thoughts concerning better locations for the tower. She also opined that a flea market had existed on the site 25 years ago.

Dr. Richard McQuaid testified at considerable length in opposition to the tower. Dr. McQuaid is a long-time resident of the North County area and is a strong advocate of maintaining the rural characteristics of the community. He produced a number of exhibits

relative to Rule 8 papers and involvement in a number of North County community associations. He opined that he had received a letter from Mr. Dorf last summer concerning the proposed tower, but could not attend the Zoning Commissioner's hearing due to illness. He introduced and discussed in detail People's Counsel's Exhibits No. 11, No. 12, and No. 13, with particular emphasis on Exhibit No. 13, a State Highway map with his markings and legends attached thereto. This exhibit was reviewed in considerable detail by Dr. McQuaid. The green dots on the exhibit reflected power lines and the blue dots reflected historical landmarks. His concerns reflected a mirror image of prior protestant testimony that the tower would be clearly visible on a site approximately 600 feet above elevation with a 200-foot tower on that site, together constituting a total of 800 feet of visibility. He reflected that 88 single-family residences would have a direct view on the west side of I-83. People's Counsel's Exhibit No. 14A-D (representing photographs taken by Dr. McQuaid in October 2000) depicted the open spaces and discussion to establish his point concerning the extreme height of the proposed tower and its effect upon the visual aspects of the area. Essentially it was his belief that there were other locations suitable in the area that could function as better locations.

Harold Lloyd also testified. He resides about 6 miles from the site. His concerns centered on (1) the uniqueness of the north county area; (2) possible interference with the current prosperity of the area; (3) intrusiveness into the area's integrity; and (4) future possible commercial intrusion.

Mr. Andrew Garte, President of Garte & Associates, testified as a rebuttal witness. His firm is involved an environmental and cultural assessments. He opined concerning the study conducted by the Maryland State Historic Institute. The preservation office studies and evaluates and considers the impact on historical preservation in various Maryland areas. The study

involved a balloon ascension to determine any visual effect. It was determined that six nearby historical properties would not be adversely affected. The proposed tower would not adversely affect the historical facilities.

On cross-examination by People's Counsel, Mr. Garte acknowledged that he had not visited the site, but was relying upon staff recommendations.

At the conclusion of the hearing, the Board requested that Counsel prepare briefs in lieu of oral argument to be filed simultaneously. This was done on September 21, 2001 with public deliberation taking place on October 4, 2001. The Board is appreciative of the fine briefs submitted by the Petitioner and People's Counsel, and an associated individual brief prepared by Dr. McQuaid as President of the Maryland Line Association, Inc.

Initially, there is no dispute that Federal legislation permits local boards to consider the erection of communication towers such as the one proposed in this case. Such towers cannot be prohibited unilaterally by the zoning authority. Issues that are germane to environmental health, however, are specifically reserved to the Federal Government. Therefore, the Board is entitled to exercise authority over erection of such towers provided they meet the standards established by local legislation. In this case, the Board is required to examine the testimony, exhibits and record as a whole to determine if the Petitioner has met its burden as required for a special exception under §§ 426 and 502.1 of the *Baltimore County Zoning Regulations*. Section 426 involves "wireless telecommunication facilities" (Bill No. 30-1998).

The Board has reviewed the requirements of § 426 which were also the subject of scrutiny by the Tower Review Committee established under § 426.4. Some of the more salient features taken into consideration by the Tower Review Committee and this Board were:

§ 426.9 Additional conditions for towers permitted by exception. Towers permitted by special exception shall meet the requirements of this section.

A. A petitioner shall have the burden of demonstrating that:

1. The petitioner has made a diligent attempt to locate the antenna on an existing tower or nonresidential building or structure.
2. Due to the location, elevation, engineering, technical feasibility or inability to obtain a lease or ownership of a location elsewhere, the construction of a tower at the proposed location is warranted.
3. To the extent technically feasible, the tower has been designed to accommodate antennas of at least two other providers; and
4. The height of the tower is no higher than what is required to enable present and future co-location of other providers.

B. The Zoning Commissioner shall review the petitioner' submittal with regard to the legislative policy under Section 426.2.

C. In a residential or transitional zone, a tower shall meet the following additional requirements:

1. A petitioner shall have the burden of demonstrating that:
  - a. There is no available, suitable site for the tower in a medium or high intensity commercial zone, identifying with particularity any sites considered; or
  - b. Due to topographical or other unique features, the proposed site is more consistent with the legislative policy under Section 426.2 than a site in an available medium or high intensity commercial zone.
2. A tower in an R.C. Zone shall be located on a lot of at least five acres. In all other residential or transitional zones, a tower shall be located on a lot of at least three acres.
3. In granting a special exception, the Zoning Commissioner, or Board of Appeals upon appeal, shall impose conditions or restrictions as provided in Section 502.2. In addition,



the Commissioner shall require that the tower be disguised as a structure or natural formation, such as a flagpole, steeple or tree, which is found or likely to be found, in the area of the tower unless the Commissioner finds that the requirement is not reasonable or advisable for the protection of properties surrounding the tower.

Petitioner's Exhibit No. 6 was the report of the Tower Committee under date of September 13, 2000 to Donald T. Rascoe, Development Manager, Department of Permits and Development Management, from Charles C. Dennis, Tower Coordinator, Tower Review Committee. That document speaks for itself. In summary, it states:

1. The tower was required to meet the radio frequency (RF) coverage objectives of the Petitioner based on a site visit by the Committee;
2. Numerous co-location sites were also examined by the Committee;
3. No available sites were identified to mitigate the requirement for construction of those structures;
4. Based on site visits, a review of the technical data presented by AT&T and investigation of the potential co-location sites, it was the Committee's opinion that the new structure was required to meet AT&T coverage requirements.

Because many of the requirements imposed by § 426 are similar in nature to the requirements of BCZR § 502.1, the Board considered them as being closely synonymous. The proposed tower would be located on a 5-acre (+/-) section of the Bellman Property on the west side of York Road. That site is presently split-zoned R.C. 4 and R.C. 5. Because the tower would be located in a residential zone, a special exception is required under the BCZR. The area adjacent to the monopole is also zoned R.C. 4 and R.C. 5 and would continue to be used as a flea market. In order to proceed with the proposed tower, a special hearing is also required to remove the 5-acre parcel from a previously approved special exception to use the property as a flea

market (Case No. 74-36-X), and under Case No. 79-80-SPH, as amended, a special exception was granted to allow expansion for an additional sales and display area.

The Board of Appeals is frequently called upon to consider Petitions for Special Exceptions. In prior written opinions in those cases, the Board has often discussed the "law of special exceptions" and the confusion often engendered on the public by this term. It bears repeating that the BCZR classifies the permissibility of land uses in a given zone in one of three categories. For each zone, uses are either permitted by right; prohibited; or permitted by special exception. Those uses permitted by right are automatically allowed without the necessity of the Petitioner undergoing zoning review through a public hearing. Prohibited uses are not allowed, no matter what the circumstance. The middle-ground uses are characterized in Baltimore County as "special exception uses." In other jurisdictions, they are known as "conditional uses." Special exception uses are permitted only after a public hearing during which the property owner must demonstrate that the proposed use satisfies the standards for special exceptions set forth in § 502.1 of the BCZR.

A special exception is actually neither "special" nor "exceptional." Special exception uses are not to be confused with zoning variances. (See *Cromwell v. Ward*, 102 Md.App. 691 [1995].) As stated in that case, "Thus, a special exception is not truly an exception to the zoning regulations at all." (*Cromwell*, p 702) As noted above, the phrase "conditional use" is far more accurate in terms of defining special exceptions.

The seminal case in Maryland for special exceptions is *Schultz v. Pritts*, 291 Md. 1 (1981). In *Schultz*, the Court repeated the often stated principle that "(a) special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare and therefore valid." p 11

In another case, the Court of Special Appeals stated that a special exception use, "...is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone, the condition being that a zoning body must, in each (case), decide under specified statutory standards whether the presumptive compatibility exists."

*People's Counsel v. Mangione*, 85 Md.App. 738 (1991) at 747-948.

The law of special exceptions was also recently delineated in a reported decision before the Court of Special Appeals in *Mossberg v. Montgomery Co., Md.*, 107 Md.App. 1 (1995). In that case, a property owner in Montgomery County sought special exception (conditional use) approval for a solid waste transfer station. In discussing the permissibility of such a use under the conditional use /special exception statute, the Court of Special Appeals noted that the mere existence of impacts from the proposed use cannot serve as a basis for denial of a Petition. Stated the Court, "Moreover, it is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency." pp 8-9. Further on, the Court noted that the question was "...not whether a solid waste transfer station issue here will have adverse effects at this proposed location. Certainly it will, and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, i.e., **greater here**, than they would generally be elsewhere within the areas of the County where they may be established..." p 9 [emphasis in original].

Applying the holdings of these cases to the case before this Board, the question is therefore not whether the proposed tower will have adverse impacts on the surrounding locale.

By virtue of the fact that a tower is permitted in an R.C. zone only by special exception (BCZR 426.D), it is clear that the County Council envisioned that towers would have such impacts. The question rather is whether those impacts are particularly egregious here. Simply stated, the Board of Appeals must apply the standards and criteria set out in Section 502.1 to the proposed use and surrounding locale, all in accordance with the holdings in *Schultz* and *Mossberg*, infra.

Section 502.1 of the BCZR reads as follows:

Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- A. Be detrimental to the health, safety, or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other dangers;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- F. Interfere with adequate light and air; [Bill No. 45-1982]
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5 or R.C. 7 Zone. [Bill No. 74-2000]

The Board, as a finder of fact, has analyzed the testimony of the witness on both sides of the issue. Clearly the experts and witnesses who testified as to the technical aspects and site location on behalf of the Petitioner have undoubtedly done so on many prior occasions,

presumably on behalf of other such tower location requests. In opposition, the witnesses for People's Counsel were local community activists, residents, and individuals genuinely concerned in the maintenance of the north County in a pristine state.

The Board does not disagree that the area citizens are "cogent, and offered specific testimony and knowledge on relevant issues." The Board also recognizes the extreme value of such individuals and their testimony as evidenced in *Eger v. Stone*, 253 Md. 533 (1969). However, the Board does find the testimony of Mr. Butts, the radio frequency engineer with AT&T, and also Mr. Francis (Tower Review Management) compelling. Clearly there is a "need" for the tower in the immediate site area as opposed to a "want or desire" on the part of AT&T. A current coverage gap does in fact exist on Petitioner's Exhibit No. 1 (Search Ring) that poses a welfare and safety factor to those traveling on an isolated stretch of I-83. The Board is mindful of breakdowns that may occur which involve the elderly or individuals with children, stranded during inclement weather or during the late hours which render them unable to walk to any nearby public assistance area. Testimony on the part of these gentlemen was clear and convincing that: (1) there was a need; and (2) no other towers exist between the proposed site and the AT&T tower to the north and the Crown tower to the south. Clearly the Board is of the conclusion that the BGE right-of-way to the south and to the east of the subject site would not satisfy the Petitioner's coverage needs along this stretch of I-83. While Protestants argue that the Exxon station to the north, zoned "manufacturing, light" where an Exxon station is located, the Board was not convinced that that would be a suitable site.

The conclusions reached by the witnesses for the Petitioner were in agreement with the conclusions reached by the Tower Review Committee. A site visit concluded that the AT&T cellular service did have a "gap" in the area and that, after consultation with Baltimore County

Tower Map and Database, no suitable sites existed within the immediate area of those sites. The Board has also considered § 426.2 that any new towers should be constructed to accommodate at least three providers, which testimony reflected AT&T would permit to enhance the area for other communication servers.

Contrasted with the testimony of Mr. Butts and Mr. Francis was the testimony of local residents and community activists. For the most part, their objections centered around: (1) the disturbing aesthetics of the proposed tower; (2) visual intrusion of the tower (clutter); (3) the effect on historical sites; and (4) the impact on nearby residences.

The Board concludes that, regardless of where the tower is placed in the area, it would be visible. The question is whether or not its presence at this site has a greater adverse effect here than anywhere else in the zone. The Board concludes that it will not. Objections raised by nearby residents concerning diminution of real estate values because of the proximity of the tower were countered by the testimony of Mr. Thorne, who acknowledged that his studies concluded that a telecommunication tower did not have any effect on property values in the residential communities where the studies were conducted. Indeed, if anything, the preferable location for such a tower is in an area that is surrounded by dense, mature woodland and, while visible during the winter months, makes the site more desirable because of the rural nature of the area and relatively sparse population. Petitioner has cited the case of *AT&T Wireless*, 122 Md. App. 698:

The evidence showed that the Ten Hills community was a well-established community with houses located on large, heavily forested lots. Because the area was not densely populated, that unique feature would, if anything, make the site more appropriate for a tower in an R-1 zone because fewer persons could see it. Additionally, the fact that the houses are on lots surrounded by numerous trees make the tower facility less objectionable, or at least less visible, than it would if it were located in an area denuded of trees.

Here, the residents who live closest to the Bellman property admitted in their testimony that their properties are separated from the Bellman property by trees. In *AT&T Wireless*, the Court noted that:

It is true, as Baltimore City points out, that the trees that surround the tower facility would not shield the tower facility from the view of nearby property owners for many months in the fall and winter. But...there was simply no evidence that there was any place within an R-1 zone that a 133-foot monopole could be located where it could not be seen by adjoining property owners. *AT&T Wireless*, 123 Md.App. 696.

It is quite evident to the Board that it was not established in the record that the proposed tower could be located anywhere else in the R.C. zone and not be seen by the adjoining property owners. Moreover, while the Board is sympathetic to the aesthetic concerns of the residents and community groups and individuals, there is sufficient case law to support the Petitioner's contention that the concerns of such individuals and groups simply do not constitute "substantial evidence" to support a denial of the Petitioner's request. There must be a credible testimonial foundation before the Board can legally deny the request.

Similarly, the Board can find no factual basis to support the Protestants' contention that the approval of this tower will simply create a proliferation of towers in the north area. The Board is aware of possible other requests in the north County area for such towers, and any other case or cases will be judged solely on the facts and merits of each individual case, and the applicable law applied to those facts.

The Board also concludes that the testimony of Andrew Garte was convincing relative to Protestants' concerns about the effect of the tower on cultural resources in the area. His testimony, along with the Maryland Historical Trust evaluation, carried more weight than the generalized concerns of the Protestants.

In addition to the "adverse factor" required to be examined by the Board, its members also must consider the requirements of § 502.1. It is a clear observation, based on the testimony of witnesses on both sides of the aisle, that the erection of the proposed tower would not pose any congestion in roads, streets or alleys; nor cause any potential hazard from fire, panic, or other dangers. Similarly, the remoteness of the tower and isolation will not overcrowd land or cause any undue concentration of population.

There is also no density factor that requires consideration for schools, parks, sewerage, transportation or other public requirements, conveniences, or improvements; and there was no testimony that, because of the site, factors involving the impermeable surface and vegetative retention or elements involving environmental or natural resources of the site would be compromised.

The Board concludes that the County Council has already seen fit to permit the creation of such towers in the affected zones, subject to the special exception requirements being satisfied. The Board finds no conflict with the Master Plan or that the erection of the tower would be inconsistent with the spirit and intent of the zoning regulations. Indeed, if anything, the tower will be an additional resource to enhance the safety and welfare of those traveling along this stretch of Interstate 83.

The Board also considered the question as to whether or not the special exception granted in Case No. 74-36-X, whereby the owner, Mr. Bellman, was granted an exception to operate a flea market on the 38 +/- acres had even be utilized by the owner.

The Board heard varying testimony from both the Petitioner and the Protestants. Significantly, one of the Protestants' witnesses, as noted earlier in this Opinion, who gained no



benefit from her testimony specifically stated that she had observed a flea market in operation on the site.

The Board also gave considerable weight to her testimony along with the proffer of Mr. Bellman. The Board also took recognition of the fact that the owner had requested expansion for an additional sales and display area in Case No. 79-80-SPH. As noted in Petitioner's Brief, "Why would the owner expand the sales and display area if the special exception was not being utilized?" (page 10) The question appears to answer itself based on the testimony and site facts. The Board has no difficulty in concluding that the special exception was continuing and in effect.

In summary, the Board, taking into consideration all the factors involved and identified at the hearing, is persuaded that the instant special exception should be granted. It is the conclusion of the Board that the Petitioner has met the standards established in § 502.1 of the *Baltimore County Zoning Regulations* and that the associated impacts with the tower at the proposed location are no greater here than if located elsewhere within the zone. The Board does not find that the impact is unique here and would justify a denial of the Petition. The Board, however, will subject the Petitioner to certain conditions outlined in the Order.

**ORDER**

THEREFORE, IT IS THIS 16<sup>th</sup> day of November, 2001 by the  
County Board of Appeals of Baltimore County

**ORDERED** that Petitioner's request for Special Hearing to amend a previous Zoning Order in Case No. 74-36-X, to extinguish as to the subject 5-acre parcel out of the entire 37.91 acre parcel the special exception granted to use the property for a flea market be and is hereby

**GRANTED;** and it is further

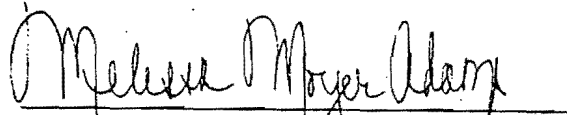
**ORDERED** that Petitioner's request for a Special Exception for a telecommunications monopole less than 200 feet in height in a residential zone as required by § 426.5D be and is hereby **GRANTED**, subject to the following conditions:


- 1) The Petitioner shall make every attempt to disguise the tower from the skyline (as recommended by the Tower Review Committee) by having the tower manufactured or painted a sky gray or a blue color to have a minimal effect on the surrounding communities (General Considerations and Final Conclusions of the TRC, report dated 9/13/2000).
- 2) The Petitioner shall make the tower available to accommodate the maximum number of providers that the tower's construction will permit.
- 3) Unless required by the Federal Aviation Administration (FAA), no stroboscopic lights shall be permitted; and
- 4) The tower shall be screened in accordance with the Baltimore County Landscaping Manual (Class A screenings).
- 5) The Petitioner shall meet the obligations imposed upon it as required under § 426.6(D) and (E), § 426.7 entitled "Security bond" and § 426.8 entitled "Unsafe or hazardous conditions."

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**

  
Charles L. Marks, Panel Chairman

  
Melissa Moyer Adams

  
C. Lynn Barranger



County Board of Appeals of Baltimore County

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November 16, 2001

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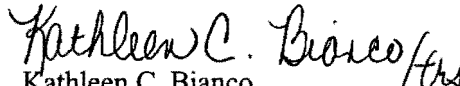
RE: *In the Matter of: AT&T Wireless Services – CP;*  
*Hubert A. Bellman - Legal Owner /Case No. 01-047-SPHX*

Dear Mr. Zimmerman:

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: Paul A. Dorf, Esquire  
S. Leonard Rottman, Esquire  
AT&T Wireless Services, Inc. –CP  
Hubert A. Bellman –Legal Owner  
Mitchell Kellman and Michael McGarity  
/Daft McCune & Walker Inc.  
Mr. & Mrs. Michael R. Thomas  
Mark Herwig  
George Tyrie  
Hillorie Morrison /Voice Stream Wireless  
Arlene Haddock  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director /PDM

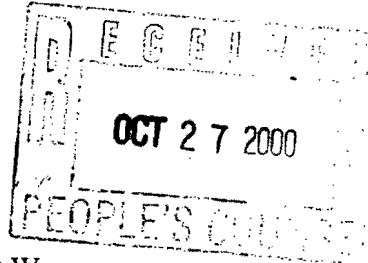


10/25/00

10/25/00

IN RE: PETITIONS FOR SPECIAL HEARING \* BEFORE THE  
 & SPECIAL EXCEPTION \*  
 W/S York Road, 1900' N of \* DEPUTY ZONING COMMISSIONER  
 Stablers Church Road \* OF BALTIMORE COUNTY  
 7th Election District \*  
 3rd Councilmanic District \*  
 (19807 York Road ) \* CASE NO. 01-047-SPHX

Hubert A. Bellman, Legal Owner \*  
 and \*  
 AT&T Wireless Services \*  
 Petitioners \*



\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Special Exception filed by the Legal Owner of the subject property, Hubert A. Bellman and the Contract Purchaser/Lessee, AT&T Wireless Services. The special exception request is for a telecommunications monopole less than 200 ft. in height in a residential zone as required by Section 426.5D. In addition, a special hearing request is being made to amend a previous Zoning Order in Case No. 74-36-X, to extinguish as a 5 acre parcel out of the entire 37.91 acre parcel the special exception granted to use the property for a flea market.

Appearing at the hearing on behalf of the Petitioners' request were many representatives of AT&T Wireless Services, Mitch Kellman and Michael McGarrity, from Daft, McCune & Walker, the engineering firm who prepared the site plan of the property and Paul Dorf, attorney at law, representing the Petitioners. There were others in attendance supporting the request. No one appeared in opposition to the hearing.

Testimony and evidence indicated that the property, which is the subject of this request, consists of 5 acres, more or less, split-zoned RC 4 & RC 5. The subject property is part and parcel of a larger overall tract of land containing 37.91 acres. The subject 5 acre parcel, as well

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 DATE 10/25/00  
 BY *[Signature]*

as the surrounding lands are all owned by Mr. Hubert A. Bellman. As the site plan indicates, Mr. Bellman owns property on both sides of York Road at this particular location.

The Petitioners are requesting approval to construct a telecommunications monopole on the 5 acre parcel in the area depicted on Petitioners' Exhibit No. 1; the site plan submitted into evidence. The subject request was submitted to the Tower Review Committee and received a favorable recommendation as to its construction and location. In order to proceed with the erection of this tower, the special exception is necessary, as well as the special hearing to remove the 5 acre parcel from the previously approved special exception approval to use the property as a flea market. After considering the testimony and evidence offered at the hearing, I find that both the special hearing, as well as the special exception should be granted.

It is clear that the Baltimore County Zoning Regulations (B.C.Z.R.) permits the use proposed in a RC 4 & RC 5 zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioners had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioners have shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioners' Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone.

Schultz v. Pritts, 432 A.2d 1319 (1981).

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R.P. Johnson

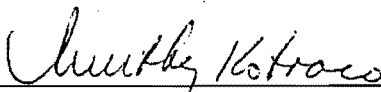
The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

In addition to satisfying the requirements of Section 502.1 of the B.C.Z.R., the testimony and evidence offered at the hearing also satisfied the regulations contained under Section 426 of the Baltimore County Zoning Regulations as they apply to this particular request. Therefore, having so found, the special hearing and special exception shall be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 25<sup>th</sup> day of October, 2000, that the Petitioners' Request for Special Exception, for a telecommunications monopole less than 200 ft. in height in a residential zone as required by Section 426.5D, be and is hereby GRANTED

IT IS FURTHER ORDERED, that Petitioners' Request for Special Hearing, to amend a previous Zoning Order in Case No. 74-36-X, to extinguish as a 5 acre parcel out of the entire 37.91 acre parcel the special exception granted to use the property for a flea market, be and is hereby GRANTED.

IT IS FURTHER ORDERED that any party has the right to file an appeal within thirty (30) days of the date of this Order.

  
TIMOTHY M. KOTROCO  
DEPUTY ZONING COMMISSIONER  
FOR BALTIMORE COUNTY

TMK:raj

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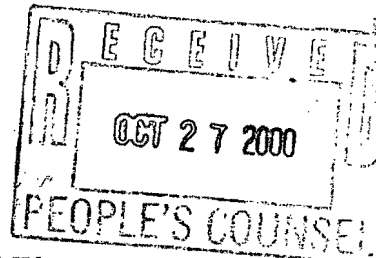
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IN RE: PETITIONS FOR SPECIAL HEARING  
& SPECIAL EXCEPTION  
W/S York Road, 1900' N of  
Stablers Church Road  
7th Election District  
3rd Councilmanic District  
(19807 York Road )

BEFORE THE  
DEPUTY ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
CASE NO. 01-047-SPHX

Hubert A. Bellman, Legal Owner  
and  
AT&T Wireless Services  
Petitioners

\* \* \* \* \*



FINDINGS OF FACT AND CONCLUSIONS OF LAW

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FILING

*GRANTED*

SHOULD P.C. APPEAL?

Protestants involved?

Yes  No

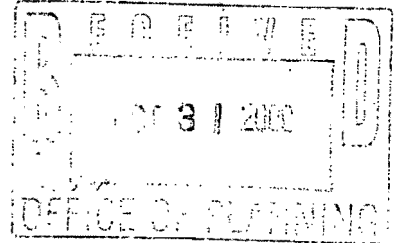
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CSD: \_\_\_\_\_

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*do appeal*

IN RE: PETITIONS FOR SPECIAL HEARING \* BEFORE THE  
 & SPECIAL EXCEPTION \* DEPUTY ZONING COMMISSIONER  
 W/S York Road, 1900' N of \*  
 Stablers Church Road \* OF BALTIMORE COUNTY  
 7th Election District \*  
 3rd Councilmanic District \*  
 (19807 York Road ) \* CASE NO. 01-047-SPHX  
 Hubert A. Bellman, Legal Owner \*  
 and \*  
 AT&T Wireless Services \*  
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\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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#01-047-SPHX

*Get copies for Peter Zimmerman*

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 Date 10/25/00  
 By P. Zimmerman



9/21/01

IN THE MATTER OF:

AT&T WIRELESS SERVICES

Petitioner

\*  
\*  
\*  
\*  
\*

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY, MARYLAND

Civil Action No. 03-C-98-2951

\*\*\*\*\*

**AT&T WIRELESS SERVICES' MEMORANDUM OF LAW**

AT&T Wireless Services, Inc. ("AT&T"), by its counsel, Paul A. Dorf and Russell G. Alion, Jr., submits the following Memorandum of Law in support of its request for special exception.

**I. SUMMARY OF ARGUMENT**

The decision of the Zoning Commissioner dated October 25, 2000, granting AT&T's request for special exception, should be affirmed. AT&T presented evidence that it meets all requirements for a special exception pursuant to §§426 and 502.1 of the Baltimore County Zoning Regulations (the "Regulations"). In addition, the Board was presented no evidence that the adverse effects of the tower would be greater at the proposed site than they generally would be elsewhere in the Resource Conservation zone.

**II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED**

AT&T has filed for a special exception to install a 199-foot monopole to establish a wireless telecommunications radio link at 19807 York Road in Parkton, Maryland. The property is owned by Hubert A. Bellman and is located in a Resource Conservation zone. The petition also includes a special hearing to amend and reduce, by 5 acres, the special exception granted to Mr. Bellman in 1973 to operate a flea market on approximately 38 acres of the lot.

The special exception request already has been approved by the Zoning Commissioner for Baltimore County. In addition, the proposed tower has been approved by the Baltimore County Tower Review Committee.

## The Evidence Presented By AT&T

Randell Butts, a radio frequency engineer with AT&T, testified that pursuant to its FCC license, AT&T must build-out its wireless personal communications system. In designing AT&T's wireless system in the Baltimore area, Mr. Butts determined that the Bellman property is a critical component of the system because it fills a current coverage gap along Interstate 83 and York Road.<sup>1</sup> Mr. Butts testified that he created a map illustrating the general ring or search area that required a tower and forwarded the map to engineering and land use experts to determine the most suitable site to construct the tower.<sup>2</sup>

Mr. Butts testified that AT&T has made arrangements to co-locate on other existing or proposed towers along I-83, including the AAT tower to the north, and the Crown, BGE and Spectrum towers to the south of the Bellman property. Mr. Butts testified that notwithstanding these other locations, the Bellman tower is necessary for AT&T to complete its network along I-83. Mr. Butts testified that there are no other towers between the proposed Bellman tower and the AAT tower to the north and the Crown tower to the south. (Exhibit 1, Search Ring.)

Mr. Butts also testified that the BGE right-of-way to the south and to the east of the Bellman property will not satisfy AT&T's coverage needs along this portion of I-83. Nor will the property to the south, zoned Manufacturing, Light, where an Exxon gas station is located.

Bill Francis of Tower Resource Management, a site acquisition company, testified next. Mr. Francis testified that the Bellman property was the most suitable location within the search ring area because the property is surrounded by dense, mature woodland and residences are a considerable

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<sup>1</sup> As a user of the wireless system drives along Interstate 83 and York Road, their phone call is transmitted from one antenna cell site to another. If a coverage gap exists in the system, a user can not place a phone call or will experience a black out and lose their call.

<sup>2</sup> Mr. Butts testified that the tower will accommodate other telecommunication providers, thereby eliminating the need for an additional tower in the surrounding area.

distance away. As a result of the dense woodland, the base of the tower and a majority of the tower will be shielded by trees which provide a visual buffer from the surrounding area. As a result of these factors, Mr. Francis opined that any adverse effects resulting from the tower would be less at this location than they generally would be elsewhere in the R.C. zone.

Mitch Kellman, an expert in land planning and zoning with Daft, McCune, Walker, Inc., was the third witness to testify. Mr. Kellman testified that the establishment, maintenance and operation of the tower would satisfy all standards for special exception use provided in §502.1 of the Regulations. Mr. Kellman further testified that he had reviewed the Baltimore County Master Plan and that the proposed tower would be consistent with the spirit and intent of the Master Plan.

Oakleigh Thorne, a certified real estate appraiser with Thorne Consultants, Inc., was the fourth witness to testify. Mr. Thorne testified as an expert in land development and valuation of properties. Mr. Thorne testified that construction of the tower would have no adverse effect on land values in the surrounding area. Mr. Thorne based his opinion, in part, on the fact that the Bellman property is surrounded by dense, mature woodland and residences are a considerable distance away. Mr. Thorne also based his opinion on studies he performed at the Bais Yaakov School for Girls in Owings Mills and other Maryland communities. Each study showed that the existence of a telecommunications tower had no effect on property values in the residential communities. Mr. Thorne's testimony was not rebutted.

Robert W. Denny, Jr., a consulting engineer and expert in radio frequency emissions with Denny & Associates, P.C., was the fifth witness to testify on behalf of AT&T. Mr. Denny testified that he evaluated AT&T's proposal at the Bellman property and determined that the tower will meet all FCC regulations for human exposure to radio frequency emissions. Mr. Denny's testimony was not rebutted.

Andrew Garte, an environmental scientist with Andrew Garte & Associates, Inc., testified in rebuttal to the effects the proposed tower will have on cultural resources in the area. Mr. Garte testified that the Maryland Historic Trust ("MHT") assessed the effects of the proposed tower on cultural resources within a one mile radius of the Bellman property, including the Hill House, the Bentley Springs Methodist Church, the Luke Ensor House, the Cameron Mill House, the Cameron Mill Ruin, the Saint James Chapel, and the Bentley School. Mr. Garte testified that the MHT determined that the Bellman tower will have no effect on the aforementioned cultural resources.

#### The Evidence Presented By People's Counsel

In opposing the proposed tower, People's Counsel offered no expert testimony or authoritative evidence on property values, aesthetics, or cultural resources. Instead, neighboring residents testified that they were opposed to the tower because (1) the tower would have a negative impact aesthetically, (2) the tower may have a negative impact on property values in the area, (3) the tower may affect the rural character of the area, (4) no additional towers are necessary in the area, and (5) the tower may affect the historical/cultural resources in the area.<sup>3</sup>

#### The Tower Review Committee Report Approving the Bellman Tower

The Tower Review Committee for Baltimore County has recommended approval of the Bellman tower. In its Report, the Committee made the following significant findings:

During a site visit . . . an AT&T cellular phone did not have AT&T service.

During a site visit and after consultation with Baltimore County's tower map and database, no co-location sites within the immediate vicinity of these sites were located.

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<sup>3</sup> Some residents testified that the deeds to their properties contain restrictive covenants which may preclude construction of a tower such as the one proposed by Mr. Bellman. On cross-examination, however, each resident admitted that the restrictive covenants pertain only to their respective properties, not Mr. Bellman's property. As such, the restrictive covenants are not relevant to AT&T's request for special exception which applies only to Mr. Bellman's property. Counsel for AT&T has yet to receive a copy of the deeds or restrictive covenants from People's Counsel.

\* \* \* [E]xisting sites did not, in the Committee's opinion, provide AT&T adequate RF coverage for the existing holes in their current coverage along Interstate 83. . . . The existing structures [or towers] evaluated added little additional coverage for AT&T and did not mitigate the requirement for construction of new structures in the general area requested . . . .

Based on site visits, a review of the technical data presented by AT&T, and investigation of the potential co-location sites, it is the Committee's technical opinion that [the Bellman tower is] required within this general area to meet AT&T's coverage objectives.

Baltimore County personnel have visited the areas associated with [the Bellman tower], and with the assistance of Electronic Services and Telecommunications have determined that AT&T Wireless has a need for increased RF signal along this section of I-83. After surveying the areas and evaluating computer imaged photographs supplied by AT&T, **the Committee feels that the placement of the towers at the [Bellman property] and at the height specified will have a negligible effect on the view of the surrounding countryside.**

(Exhibit 2, Tower Review Committee Report.)

The Zoning Commissioner's Decision Granting The Special Exception

On October 25, 2000, the Deputy Zoning Commissioner (Timothy M. Kotroco) granted AT&T's request for special exception. Specifically, Commissioner Kotroco concluded that:

It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity.

[AT&T] has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location . . . would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality . . . nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

(Exhibit 3, Zoning Commissioner's written decision dated October 25, 2000.)

For the reasons set forth below, the Zoning Commissioner's decision should be affirmed.

### III. STANDARD OF REVIEW

The applicable standard for judicial review of the grant or denial of a special exception use was established in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). In AT&T Wireless v. Mayor & City Council, 123 Md.App. 681, 692, 720 A.2d 925 (1998), the Court of Special Appeals, applying Schultz, simplified the standard of review of an application for special exception use:

In short, the test, as developed in Schultz, is not whether a special exception is compatible with permitted uses in a zone or whether a conditional use will have adverse effects. Adverse effects are implied in all special exceptions. The standard to be considered by the Board is whether the adverse effects of the [tower] at the particular location proposed would be greater than the adverse effects ordinarily associated with [the tower] elsewhere within the [applicable] zone.

In the instant case, Baltimore County already has legislatively determined, by designating wireless communication towers as special exceptions in the R.C. zone, that these structures are appropriate, beneficial and generally compatible with other uses in the zone. Evans v. Shore Communications, 112 Md.App. 284, 303, 685 A.2d 454 (1996). Since the tower is designated as a special exception, it is implied that the tower will have adverse effects. Mossburg v. Montgomery County, 107 Md.App. 1, 8, 666 A.2d 1253 (1995). The issue presented in the instant case is whether the adverse effects of the tower are greater at the Bellman property than they generally would be elsewhere in the surrounding Resource Conservation zone.

### IV. LEGAL ANALYSIS

In applying the principles of law enunciated in Schultz to the facts presented, the Board's factual findings must be supported by substantial evidence contained in the record. Evans, 112 Md.App. at 299; 47 U.S.C. §332(c)(7)(B)(iii) of the Telecommunications Act of 1996 ("Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by

substantial evidence contained in a written record." ). The following cases are instructive to show that there is insufficient evidence to support the denial of AT&T's special exception request.

In AT&T Wireless, supra, AT&T Wireless proposed a 133-foot tower in one of the most restrictive residential districts in Baltimore City. The area was surrounded by dense, mature trees standing approximately seventy-feet tall. Neighborhood residents opposed the tower on the basis that the area was "one of the most rural areas in the City," that the tower would decrease property values, and would have adverse aesthetic effects. The Court of Special Appeals reversed the zoning board's denial of the application.

The Court explained that there was no evidence to show how construction of the tower would undermine the rural or bucolic character of the neighborhood. AT&T Wireless, 123 Md.App. at 698.

The Court further explained that:

The evidence showed that the Ten Hills community was a well-established community with houses located on large, heavily forested lots. Because the area was not densely populated, that unique feature would, if anything, make the site more appropriate for a tower in an R-1 zone because fewer persons could see it. Additionally, the fact that the houses are on lots surrounded by numerous trees make the tower facility less objectionable, or at least less visible, than it would if it were located in an area denuded of trees.

AT&T Wireless, 123 Md.App. at 698.

Here, the residents who live closest to the Bellman property admitted in their testimony that their properties are separated from the Bellman property by trees. In AT&T Wireless, the Court noted that:

It is true, as Baltimore City points out, that the trees that surround the tower facility would not shield the tower facility from the view of nearby property owners for many months in the fall and winter. But . . . there was simply no evidence that there was any place within an R-1 zone that a 133 foot monopole could be located where it could not be seen by adjoining property owners.

AT&T Wireless, 123 Md.App. at 696. The same holds true here. There is no evidence in the record to show that the proposed tower could be located elsewhere in the Resource Conservation zone and not be seen by adjoining property owners. Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 331, 214 A.2d 146 (1965) (overhead electric wires permitted in rural Baltimore County “because there was no evidence produced at hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area”).

In addition, the residents’ general concerns that the tower would be aesthetically displeasing do not constitute “substantial evidence” to support the denial of the special exception. Evans, 112 Md.App. at 303-05 (objections by residents that communications tower “would be unsightly in the rural estate setting and would destroy the scenery and character of the area” did not constitute substantial evidence to support the denial of special exception).<sup>4</sup>

The residents also raised generalized, non-expert objections that the Bellman tower may adversely effect property values in the surrounding area. These objections also do not constitute “substantial evidence” to support the denial of the special exception. Evans, 112 Md.App. at 303-05

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<sup>4</sup> For additional cases, see BellSouth Mobility, Inc. v. Gwinnett County, 944 F.Supp. 923, 928 (N.D.Ga. 1996) (where residents contended proposed tower would be “aesthetically displeasing,” and at least 20 home owners would see tower from their front windows, the Court held that the resident’s “generalized concerns [did] not constitute substantial evidence supporting the board’s decision” to deny application); Kingwood Township Volunteer Fire Co. v. Bd. of Adjustment, 640 A.2d 356, 362 (N.J.Super.Ct.Law Div. 1993) (zoning board abused its discretion in denying petitioner’s request to expand tower to 197 feet because board’s finding that proposed tower “would constitute a significant visual intrusion which would significantly impair the rural character” lacked a credible testimonial foundation).



(objections by residents of a “perceived diminution of property values” did not constitute substantial evidence to support the denial of special exception to install communications tower).<sup>5</sup>

Here, AT&T introduced expert testimony from Mr. Thorne, a certified real estate appraiser, that construction of the tower would have no adverse effect on land values in the surrounding area. The only evidence offered by protestants consisted of general, non-expert objections, opinions, and speculation, that the tower might diminish property values. This does amount to “substantial evidence” to support the denial of the special exception. City of Baltimore v. Foster & Kleiser, 46 Md.App. 163, 171-72, 416 A.2d 762 (1980) (“The City Council, by permitting billboards as a conditional use, has legislatively determined that, as a general rule, they do not menace or endanger the public health, safety, general welfare, or morals within the area of the permitted use. The Board has a limited amount of discretion to deny the use . . . [and] may not thwart the legislative will based upon unspecific and unsupported protestants and concerns.”).

As to the remaining objections raised by the residents, the proliferation of towers in the area is not a proper basis upon which to deny the special exception. Evans, 112 Md. at 303 (holding that the board erred when it relied upon the proliferation of towers as its basis for denying special exception request). Moreover, the Tower Review Committee concluded that no co-location sites were available to satisfy AT&T’s coverage needs and that the Bellman tower is necessary to meet those needs. The Committee also concluded that the Bellman tower would have “a negligible effect on the view of the surrounding countryside.” (Exhibit 2.)

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<sup>5</sup> For additional cases, see Illinois RSA No. 3, Inc. v. County of Peoria, 963 F.Supp. 732, 745 (C.D.Ill. 1997) (resident’s generalized, non-expert objections to the proposed tower “certainly cannot constitute substantial evidence that the proposed tower would adversely affect property values”); BellSouth Mobility, 944 F.Supp. at 928 (holding that resident’s “generalized concerns,” that proposed 197-foot tower would affect property values, “[did] not constitute substantial evidence supporting board’s decision” denying application to install tower).

Also, the protestants' speculative testimony that the proposed tower may affect cultural resources in the area was rebutted by the Maryland Historic Trust's finding that the Bellman tower will have no effect on the surrounding cultural resources.<sup>6</sup>

Finally, with regard to the flea market issue, on September 13, 1973, Mr. Bellman was granted a special exception to operate a flea market on the subject property (Case #74-36-X). On October 18, 1978, the Zoning Commissioner amended special exception 74-36-X to allow an expansion for an additional sales and display area (Case#79-80-SPH).<sup>7</sup>

At the hearing, People's Counsel attempted to establish that the 1973 special exception is void because the special exception never was utilized. A simple review of the zoning history of the property indicates that the special exception was utilized. The 1978 amendment to the 1973 special exception establishes that the special exception was utilized. Why would the owner expand the sales and display area if the special exception was not being utilized?

Moreover, none of People's Counsel's witnesses testified that the flea market was not operating in the 1970's. Instead, they testified that while they resided in the area in recent years, they had not witnessed the flea market operating. Perhaps most damaging to People's Counsel was the testimony of their own witness who testified that she witnessed the flea market in operation. Finally, AT&T proffered the testimony of Mr. Bellman, who was present at the hearing, that the flea market operated on the property in the past.

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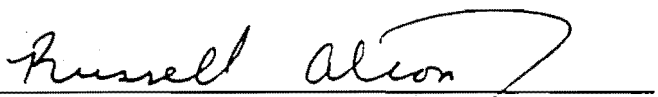
<sup>6</sup> People's Counsel conceded that the Board is precluded by the Telecommunications Act from considering potential health effects of the proposed tower. See Illinois RSA No. 3, Inc. v. County of Peoria, 963 F.Supp. 732, 744-45 (C.D.Ill. 1997) ("Under the Telecom Act, however, the County could not consider potential health effects of Plaintiff's proposed cell site.").

<sup>7</sup> The zoning history of the Bellman property is set forth on the site plan which is contained in the record.

It should be pointed out, however, that regardless of whether the flea market ever was in operation, it would not alter the fact that AT&T is required to obtain special exception approval to construct the tower on the Bellman property. It appears that People's Counsel is attempting to create a controversy where one simply does not exist, thus revealing the weakness of its appeal.

In sum, considered in its entirety, the record does not contain substantial evidence to support the denial of the special exception as required by Evans, supra, and the Telecommunications Act. The Board was not presented any evidence to support a finding that the adverse effects of the tower would be greater at the Bellman property than they generally would be elsewhere in the Resource Conservation zone as required under Schultz, supra. Under the facts and circumstances presented, it only can be concluded that any adverse effects caused by the tower would be less at the Bellman property than they generally would be elsewhere in the R.C. zone because the dense woodland which surrounds the property provides a buffer between the tower and adjacent residences, thereby eliminating or minimizing the view of the tower.

Respectfully submitted,

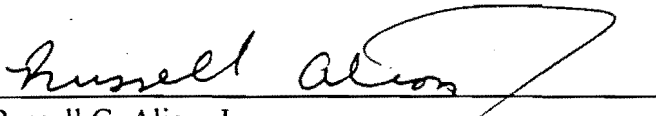


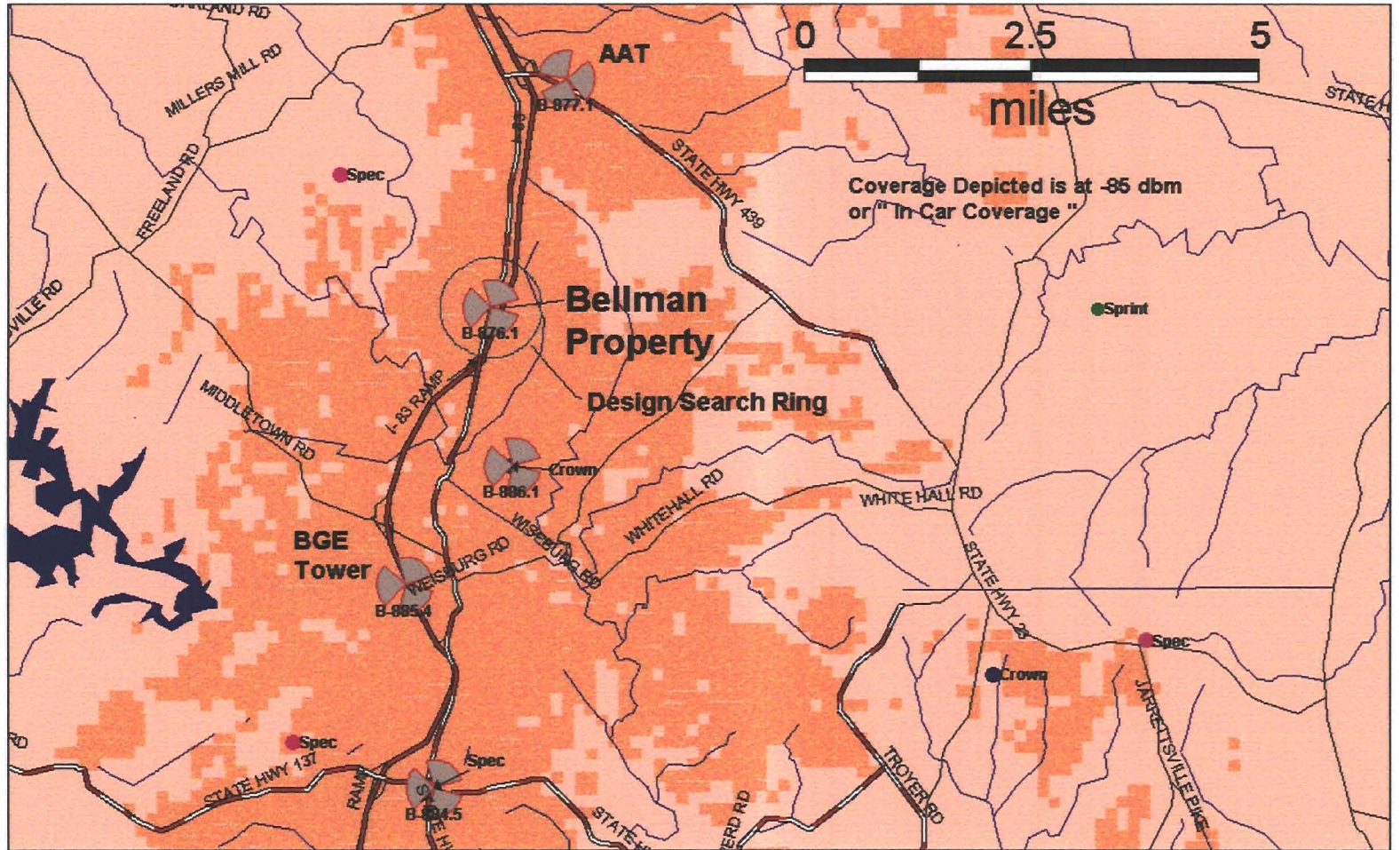
Paul A. Dorf  
Russell G. Alion, Jr.  
ADELBERG, RUDOW, DORF & HENDLER, LLC  
2 Hopkins Plaza, Suite 600  
Baltimore, Maryland 21201  
(410) 539-5195

Attorneys for AT&T Wireless Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of September, 2001, a copy of the foregoing Memorandum of Law was mailed, postage prepaid, to Peter Max Zimmerman, Esquire, 206 Washington Avenue, Towson, Maryland 21204, People's Counsel.

  
\_\_\_\_\_  
Russell G. Alion, Jr.



# BALTIMORE COUNTY, MARYLAND

## Interoffice Correspondence

**DATE:** September 13, 2000

**TO:** Donald T. Rascoe, Development Manager  
Department of Permits and Development Management

**FROM:** Charles C. Dennis, Tower Coordinator, TRC

**SUBJECT:** AT&T Wireless Services' Tower Requests

The Tower Review Committee (TRC) met on August 24, 2000 to review and finalize the request from AT&T Wireless Services for the construction of two steel monopole towers in the northern section of Baltimore County. The first proposed monopole, located at 801 Bacon Hall Road, Sparks, Maryland, 21152, will have a height of 150 feet, while the second proposed monopole, located at 19807 York Road, Parkton, Maryland, 21120, will have a height of 199 feet. AT&T was represented at the meeting by Paul A. Dorf, Esq. and S. Leonard Rottman, Esq., attorneys with the law firm of Adelberg, Rudow, Dorf, Hendler, and Sameth.

The following factors were taken into consideration in evaluating the two AT&T tower site requests.

### Telecommunications Review

The two proposed tower sites have been reviewed for technical merit, need, and the potential for co-location on existing structures. Because the two sites are in the same general geographical area, they were evaluated together. It is the Tower Review Committee's opinion that these communication structures are required in these areas to meet the Radio Frequency (RF) coverage objectives of AT&T along the Interstate 83 (I-83) corridor. Numerous potential co-location sites were examined. A summary of the evaluation of potential co-location sites is detailed below. In summary, no existing available sites were identified to mitigate the requirement for construction of these structures.

During a site visit to these proposed locations and to areas along I-83 anticipated to be covered by these new structures, it was noted that an AT&T cellular phone did not have AT&T service. In addition, RF propagation data provided by AT&T detailed that AT&T presently lacks service in this area.

During a site visit and after consultation with Baltimore County's tower map and database, no co-location sites within the immediate vicinity of these sites were located. Since no immediate co-location opportunities were found, the use of numerous existing sites to the south, between, and north of the proposed new construction was considered. The objective in evaluating existing sites was to consider the use of potentially three sites

on existing structures as an alternative to constructing two new sites. Also considered was the use of existing sites and potentially using repeaters and/or microcells to cover small gaps in coverage to mitigate the requirement for new construction.

To evaluate numerous potential co-locations sites south, between, and north of the proposed new construction sites, AT&T provided RF propagation data from locations representative of numerous existing sites as requested by the Tower Committee. These existing sites did not, in the Committee's opinion, provide AT&T adequate RF coverage for the existing holes in their current coverage along Interstate 83. In nearly all the potential co-location cases evaluated, AT&T has or anticipates (based on RF data provided) co-location on existing structures in the general vicinity along I-83. The existing structures evaluated added little additional coverage for AT&T and did not mitigate the requirement for construction of new structures in the general areas requested in these petitions.

Based on site visits, a review of the technical data presented by AT&T, and investigation of the potential co-location sites, it is the Committee's technical opinion that these new structures are required within this general area to meet AT&T's coverage objectives.

#### **Planning Considerations for the 19807 York Road Site**

AT&T Wireless Services, Inc., proposes to construct a new 199' telecommunication monopole within an area presently used as a flea market, The Mason Dixon Village, located at 19807 York Road. The tower will be located on a five-acre portion of the property on the west-side of York Road. The site is zoned RC-4 and RC-5. Since the tower is located within a residential area, a special exception will be required. The area adjacent to the monopole site is also zoned RC-4 and RC-5 and will continue to be used as a flea market.

#### **Planning Considerations for 801 Bacon Hall Road Site**

AT&T Wireless Services, Inc., proposes to construct a new 150' telecommunication monopole on a 5.03 acre site zoned RC-2. The proposed tower site is located west of U.S. Interstate 83 and north of Bacon Hall Road. Access into the site will be from Bacon Hall Road. Since the tower is located within a residential area, a special exception will be required. The area adjacent to the monopole site is also zoned RC-2. Section 426.2B3 of the Baltimore County Zoning Regulations states: "If a new tower must be built, the tower should be: 3. Located and designed to minimize its visibility from residential and transitional zones."

The proposed telecommunication tower will be visible from both I-83, Baltimore - Harrisburg Expressway, and MD-45, York Road. In this particular section of the County, these roadways are designated as scenic routes in the Baltimore County Master Plan 2010. At the August 24, 2000 Tower Review Committee meeting, the committee members requested that AT&T submit documentation to the Office of Planning, showing how the proposed tower will be viewed from I-83 heading south and from York Road across the Ross Valley Farms view shed. The documentation should show how the

placement of the communication tower would impact the views from both I-83 and York Road and what measures will be taken to mitigate the tower's impact on both views. This documentation should be received by Planning Staff before the September 20, 2000 Special Exception Hearing.

### **Community Considerations**

Mr. Page, the Community Member of the Tower Review Committee, telephoned all affected community groups in the area. As of this date, there has been no response by any of the groups. Although there may be further opposition when the tower petitions reach the DRC hearing stage, we can only assume at this point that there is no opinion from the community groups on the construction of these towers.

### **General Considerations**

Baltimore County personnel have visited the areas associated with these proposed towers, and with the assistance of Electronic Services and Telecommunications have determined that AT&T Wireless Services has a need for increased RF signal along this section of I-83. After surveying the areas and evaluating computer imaged photographs supplied by AT&T, the Committee feels that the placement of the towers at the proposed properties and at the heights specified will have a negligible effect on the view of the surrounding countryside. However, the Committee would make the request that, to further disguise the tower from the skyline, AT&T have the towers manufactured or painted a sky gray or blue color.

### **Final Conclusion**

After reviewing all of the material supplied to the Committee by AT&T Wireless Services and completing our own site survey and evaluation, the Committee believes that AT&T's RF coverage in the designated areas needs to be enhanced. We also believe that the construction of the towers, especially ones that are properly painted to blend with the skyline, will have a minimal effect on the surrounding communities. Based on the information that has been presented above, the Tower Review Committee recommends approval of AT&T Wireless Services' petitions for special exception for the construction of monopole towers at 801 Bacon Hall Road, Sparks, Maryland, 21152 and 19807 York Road, Parkton, Maryland, 21120.

### **Tower Review Committee**

Tim Krout, Columbia Telecommunications  
Charles C. Dennis, OBF, Electronic Services / Telecommunications  
Ervin McDaniel, Office of Planning  
A. Bob Page, Community Member TRC  
Richard Sterba, Office of Budget and Finance

Cc: Mr. S. Leonard Rottman, Attorney for AT&T Wireless Services



IN RE: PETITIONS FOR SPECIAL HEARING  
& SPECIAL EXCEPTION  
W/S York Road, 1900' N of  
Stablers Church Road  
7th Election District  
3rd Councilmanic District  
(19807 York Road )

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* CASE NO. 01-047-SPHX

Hubert A. Bellman, Legal Owner  
and  
AT&T Wireless Services  
Petitioners

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Special Exception filed by the Legal Owner of the subject property, Hubert A. Bellman and the Contract Purchaser/Lessee, AT&T Wireless Services. The special exception request is for a telecommunications monopole less than 200 ft. in height in a residential zone as required by Section 426.5D. In addition, a special hearing request is being made to amend a previous Zoning Order in Case No. 74-36-X, to extinguish as a 5 acre parcel out of the entire 37.91 acre parcel the special exception granted to use the property for a flea market.

Appearing at the hearing on behalf of the Petitioners' request were many representatives of AT&T Wireless Services, Mitch Kellman and Michael McGarrity, from Daft, McCune & Walker, the engineering firm who prepared the site plan of the property and Paul Dorf, attorney at law, representing the Petitioners. There were others in attendance supporting the request. No one appeared in opposition to the hearing.

Testimony and evidence indicated that the property, which is the subject of this request, consists of 5 acres, more or less, split-zoned RC 4 & RC 5. The subject property is part and parcel of a larger overall tract of land containing 37.91 acres. The subject 5 acre parcel, as well

ORDER RECEIVED FOR FILING

Date

10/25/00

By

H. A. Bellman

ADELBERG, RUDOW, DORF & HENDLER, LLC

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Russell G. Alion, Jr.

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September 21, 2001

**HAND DELIVERED**

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

Re: AT&T Wireless Services, Inc.  
In the County Board of Appeals for Baltimore County  
Case No.: 01-047-SPHX  
Our File No.: 9478-792

Dear Ms. Bianco:

Please find enclosed, on behalf of AT&T Wireless Services, Inc., the original and three (3) copies of its Memorandum of Law for filing and consideration in the above-referenced appeal.

Thank you for your assistance.

Very truly yours,



Russell G. Alion, Jr.

RGA/agr  
Enclosures

cc: Paul A. Dorf, Esquire  
Peter Max Zimmerman, Esquire

M:\WP\075\SEC\at&tbia1.ltr.wpd

9/21/01

RE: PETITION FOR SPECIAL HEARING  
PETITION FOR SPECIAL EXCEPTION  
19807 York Road, W/S York Rd,  
1900' N of Stablers Church Rd  
7th Election District, 3rd Councilmanic

HUBERT A. BELLMAN, Legal Owner  
AT & T WIRELESS SERVICES, Lessee  
Petitioners

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No. 01-47-SPHX

01 SEP 21 PM 12:01  
COUNTY BOARD OF APPEALS

\* \* \* \* \*

PEOPLE'S COUNSEL'S POST-HEARING MEMORANDUM

This special exception case is of paramount public importance. It is the first to address zoning of wireless telecommunications towers under Baltimore County Bill 30-98, amending BCZR 426 (attached), and the federal Telecommunications Act of 1996. It requires understanding and application of new legal standards. It will give direction for future cases.

**I. Federal and Local Law; Delegation of Powers; Exposure of Myths**

The federal law gives discretion to local zoning boards to approve or deny proposed towers under local law. The only limitations on this authority are that local government may not entirely prohibit wireless telecommunications service and that the federal government reserves authority over environmental health standards, such as for cancer prevention.

Federal law does not give service providers a blank check to deface the countryside.

There is no preferred position, presumption, or favored treatment for service providers as to such classic zoning issues as aesthetics, visual intrusion or clutter, effect on historic sites, impact on nearby residences, and consistency with the character of the neighborhood. These are traditional special exception issues relating to public safety, health and welfare and consistency with spirit and intent of zoning law under BCZR 502.1 and the zoning enabling law, Code Sec. 26-116.

To confirm these points, we have available the attached series of cases from the United States Court of Appeals for the Fourth Circuit, which includes Maryland, the Virginias, and the Carolinas: AT & T Wireless v. City Council of Virginia Beach, 155 F.3d 423 (4<sup>th</sup> Cir. 1998); AT & T Wireless v. Winston-Salem Zoning Board, 172 F.3d 308 (4<sup>th</sup> Cir. 1999), and 360 Communications Co. v. Albemarle County, 211 F.3d 79 (4<sup>th</sup> Cir. 2000); see also SBA, Inc. v. City of Asheville, 539 S.E.2d 18 (N.C. 2000). These appellate courts sustained denials of equivalent conditional or special uses for proposed towers found intrusive to residential areas and/or otherwise inconsistent with local law. The proposed tower here should similarly be denied. The claim of need is weaker than in the cases cited. Even if it were needed, the evidence against it of intrusion and particular adverse impact on the area is far stronger.

The industry has promoted the primary myth that federal law gives it a favored position. The appellate courts, however, have identified and rejected this and several secondary myths. One myth is that federal law requires 100% coverage of so-called service gaps. The truth is that federal law allows for "dead spots." 360 Communications Co., 211 F.3d at 86-87; SBA, Inc., 539 S.E.2d, at 25. Another myth is that upon expert evidence of need for service in an area (i.e. "service ring" here), federal law requires or indicates approval of a chosen site regardless of adverse impact on residential areas. Rather, as Judge Luttig wrote in AT & T Wireless:

"In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees (AT & T Wireless, *et al.*), by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act so as always to thwart average, nonexpert citizens; that is, to thwart democracy." 155 F.3d at 431

Another myth is that denial of a permit translates to prohibition of service in violation of federal law. Judge Luttig explained that the "prohibition of service" subsection applies only to "blanket prohibitions" or "general bans or policies." He gave four reasons, beginning at 155 F.3d 428:

“First, any reading of [the prohibition] subsection to apply to individual decisions would effectively nullify local authority by mandating approval of all (or nearly all) applications, a result contrary to the explicit language of section (B)(iii), which manifestly contemplates the ability of local authorities to ‘deny a request.’”

Among other reasons, he showed the Fourth Circuit follows prevailing case law.

## **II. Baltimore County Law; Special Exceptions; Additional Requirements**

BCZR 502.1 special exception standards require the CBA to decide if a proposal poses a particular adverse impact over and above that normally expected in the zone. Schultz v. Pritts, 291 Md. 1 (1981); County Comm’rs v. Holbrook, 314 Md. 210 (1988). In Holbrook, attached, the Court sustained a CBA denial based on visual impact of a proposed mobile home on a single adjoining single-family home. The so-called “presumption” accorded special exceptions by their listing in the zone is not a ticket to routine or semi-automatic approval. Rather, it is a rebuttable presumption which demands consideration of all the evidence and the totality of circumstances. It should be underlined that the affirmative burden of proof remains with the Petitioner. Turner v. Hammond, 270 Md. 41, 55 (1973).

BCZR 426 enumerates requirements specific to wireless telecommunication uses. BCZR 426.2 legislative policy demands placement of antennas “on existing towers, buildings, and structures, including those of public utilities, where feasible” and that new towers should be in commercial zones and minimize visibility from residential zones. BCZR 426.5D charts the zones and types of permitted uses consistent with this policy. It provides in R.C. zones that the use is ordinarily by special exception, but is by right in a public utility right of way. BCZR 426.9A requires, as to tower special exceptions, a diligent attempt to locate the antenna on existing towers or structures; a showing of an inability to obtain a location elsewhere; and consistency with legislative policy. BCZR 426.9B requires a showing in residential zones, that there is no

commercial zone available, “identifying with particularity any sites considered” or that due to unique features, “the proposed site is more consistent with the legislative policy.”

### III. Application of the Law to the Facts

#### A. Petitioner’s Case

Despite the predictable expert parade, the packaged testimony was cursory, sketchy, and lacked documentation. It is to be remembered that expert evidence is not entitled to any weight unless based on strong substantial supporting facts and sound reasoning. People’s Counsel v. Beachwood, 107 Md.App. 627, 649-51 (1995). Judge Moylan wrote at page 650:

“A self-evident reason for rejecting as an effective catalyst an expert opinion ... is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory.”

Here, AT & T’s proof consistently fell short::

1. Design Engineer Randell Butts began with the false premise that 100% “seamless” coverage is required. This undercut immediately the claim of need. Butts was also unable to account for the undisputed ability of other service providers (Cingular, Verizon) to deliver effective service in the area without a tower in or near this site. The proposed tower is thus a matter of business convenience or advantage.
2. Assuming need, Butts identified a “search ring” in a one and one-half mile radius around the site. His conclusory testimony had many errors. His area map omitted the Miller Road tower, in the “ring” just one mile away; he was unaware of the BGE right of way being about a mile away and there running southeast/northwest; he disregarded the commercially zoned (BL-CR) area around the Exxon site to the south; and he incorrectly stated the elevation above sea level at the base of the proposed tower to be 450 feet, rather than 650 feet shown on the site plan and stated by other witnesses. When asked about Miller Road and the BGE right of way (as

well as the Exxon Station site and the higher State tower in Hereford) as alternative sites, his conclusory dismissal lacked the particularity required under BCZR 426.9.

3. AT & T's site selection expert admitted the preference for nonresidential sites, but also claimed in conclusory fashion that there were none available in the "search ring." There was no particular consideration of the BGE right of way, the Exxon station, or the Miller Road tower.

4. Mitchell Kellman, the zoning "expert," treated special exception standards as a laundry list. Other than traffic congestion and "overcrowding," he failed to explain why the proposal meets BCZR and Schultz special exception standards. He was unfamiliar with and did not describe the neighborhood, the adjoining and nearby residential population, the dramatic difference between the 199 feet height of the tower and its surroundings, the historic sites, and the zoning. All of these relate to the public safety, health, and welfare under BCZR 502.1a. He also failed to address the BCZR 426.2 legislative policy and the 426.9 requirements, including the preference for existing sites and structures first, and nonresidential and utility right of way alternatives second – Miller Road, BGE, Exxon. In effect, his testimony was that the proposed site meets special exception standards because he says so.

5. Oakleigh Thorne, the appraiser, based his conclusions on studies of different types of areas in Montgomery County and in Owings Mills. Moreover, his thesis was that a similarity in real estate values between properties within sight of the tower and others within the area proved that the tower had no impact. But his studies did not show whether all of the properties in the area of a tower would have higher values if the tower were not there. An expert should not dismiss the concerns of nearby property owners with such data. Moreover, an appraiser is not in a position to evaluate the diminution in the enjoyment of nearby property. Thorne's speculation

that towers rising about 200 feet would gradually fade into the visual background is no consolation to citizens of this part of Parkton who sought a rural refuge.

6. AT & T produced a tower committee report which was vague and inconclusive because AT & T did not provide adequate information.

7. AT & T's later "rebuttal" witness on historic issues was not a historian. He had never visited the area, was reading from someone's else's report, and was barely familiar. Such testimony has been excluded in other cases, i.e. the Warrener case (99-73-SPHXA). He did not have any solid knowledge about area historic sites and landmarks. Indeed, he incorrectly stated that the Cameron Mill Miller's house was in disrepair, disregarding evidence of its restoration by Lynne Jones' brother. He also had the arrogance to say the tower would not be visible from this site, despite Dr. McQuaid's evidence based on personal observation. He quibbled about whether or not some of them should be called "landmarks" or some other historic designation. His chief claim seemed to be the State Historic Preservation Office had reviewed the matter and was satisfied. He did not produce any documentation on this and, in any event, conceded that SHPO had not held a public hearing or given citizens an opportunity to be heard.

In sum, Petitioner's case pales in comparison even with the unsuccessful service provider cases in the Fourth Circuit and North Carolina decisions cited above. On its own, it consists of false premises, promotion and conclusions. There is no proof with particularity. It is unsatisfactory as to need, unsatisfactory as to the absence of alternatives, and (even if the first two were satisfied), unsatisfactory as to qualification under BCZR 502.1 standards.

#### **B. People's Counsel's Case**

Area citizens presented cogent, specific testimony on relevant issues. They had more knowledge and were more accurate than the "experts." The Court of Appeals has recognized the



value of citizen testimony in Eger v. Stone, 253 Md. 533 (1969). Here is a summary:

1. Michael Thomas and George Tyrie gave specific information about the visual impact on them as adjoining landowners on York Road immediately to the north, a few hundred feet from the site. At 200 feet in height, the tower dwarfs surrounding two-story single family homes trees 50-60 feet in height which are deciduous and so transparent in winter. These witnesses showed their homes are in the line of sight. This would diminish enjoyment of their properties and, in their opinion, adversely affect property values. Mr. Tyrie also underlined the Exxon station area about a mile away as an available commercially zoned alternative location.

2. Mr. Thomas pointed to the unique circumstance that Mr. Bellman had developed the subdivision where he and Mr. Tyrie owned lots and had included a covenant which precluded construction of a tower and other enumerated structures without Bellman's consent, an implicit acknowledgement of the particular adverse impact.

3. Both Mr. Thomas and Mr. Tyrie testified without contradiction from personal experience that there was adequate cellular phone service in the area.

4. Christine Plettenburg lived several miles to the west and routinely traveled near the site. She expressed her concern about the visual intrusiveness of the proposed tower. She pointed out that York Road is a scenic road in this area.

5. Lynne Jones, a resident for many years at York and Stablers Church Roads, described the attractive residential character of the area and several subdivisions west and south of the site. She also said the commercial area at York Road and Stablers Church, with the Exxon station, the post office, and other property as more appropriate for a tower if there were to be one. She also noted the BGE right of way alternative.

6. Jan Staples of the Parkton Area Preservation Association added the tower would be an eyesore to the detriment of the uniquely residential character of the neighborhood.

7. Dr. Richard McQuaid, Maryland Line Area Association President, citizen land use activist and committee veteran, presented the best overview. He had official Maryland Department of Planning and State Highway Administration area maps. From personal knowledge and county records, he marked the existing towers within several miles; existing federal, state, and local historic structures or landmarks; and the existing BGE right of way and lines. Dr. McQuaid counted 88 single family homes within one mile of the subject location, an unusual concentration compared to other parts of the rural residential zone to the east and south along and around York Road. With the tower rising to 850 feet above sea level, the doctor noted that its visual impact would affect not only the adjoining Thomas/Tyrie subdivision but also the substantial subdivisions to the west, such as Cameron Mill at an elevation of 500 feet, including the historic county landmark Miller's House. Dr. McQuaid also produced photographs to show that existing towers in the area, such as the Miller Road tower, could be seen at distances greater than a mile. Dr. McQuaid pointed to the BGE right of way as a more appropriate location, about a mile away east/southeast, to handle any antenna if one were found necessary. He also noted the Exxon station commercial/industrial area a mile to the south. He also observed that the rural residential zone to the east and south had substantially less residential population. The zoning maps entered into evidence show the RC zones, including substantial RC 5 Rural Residential zoning running up and down the York Road corridor. In sum, AT & T Wireless made a particularly poor choice of location of this vulnerable residential area in comparison to alternatives in the utility right of way, commercial area, or even the less dense other rural-residential zones in the region.

8. Harold Lloyd, taking the ecological perspective, emphasized the cumulative adverse impact of towers in the north county. In view of the number of towers already approved in the region – two at Maryland Line, one at Millers Road, and at least one at Middletown Road – his testimony deserves attention. It is now recognized officially in Maryland that sprawl is a bad thing. Smart growth is a good thing. The proliferation of towers defaces the landscape and detracts from the quality of life. AT & T Wireless expert Butts admitted that this is the first of many towers the company plans for the North County area. Future towers would cover local roads as well. In other words, the ugly tower proposed here will be the pacesetter for a slew of ugly towers to scar the entire the north county regardless of impact. To AT & T Wireless, there is no limit to the number of towers deemed “necessary” for their system. Fortunately, the law provides a safeguard in this hearing process.

9. There were letters in opposition from Sparks-Glencoe Community Association, the Hanover Road Association, and citizen Paul Hupfer. These letters substantiate and, in some particulars, expand upon the concerns and problems raised in the testimony.

#### **Summary; Postscript on the Flea Market**

The proposed tower is unnecessary and unwarranted. There are reasonable alternatives. Even were the tower necessary, it does not satisfy the standards under BCZR 502.1 and 426. For each of the above reasons, and all of them, the CBA should deny this special exception.

Space does not allow for detailed discussion of precedents cited above. A comparison reveals, however, that the case for this tower here is weaker (indeed legally insufficient) and the case against it stronger than in all those cases rejecting AT & T Wireless and other providers’ proposed towers. The case here is also far stronger than the case against the mobile home in

Holbrook. Judge Widener's summary in affirming the denial in Winston-Salem Zoning Board,

172 F.3d at 316 is helpful:

"Here, the Zoning Board was clearly concerned with the effect that such a large transmission tower would have on the surrounding residential neighborhood in terms of its unsightly physical presence and its impact on the desirability of the neighborhood. Further, the Zoning Board considered the negative impact that the tower could have on the historical value of the Hanes House. In reviewing the application the Zoning Board evaluated the character of the neighborhood, the physical specifications and location of the tower, and concluded that the tower was not in harmony with the area."

P.S. As to the flea market, while the tower case does not turn on it, we note there was no evidence of utilization after its approval in the 1970s. BCZR 502.2 renders a special exception void if not utilized in two years. The subject site is vacant, and there is no evidence it was utilized in time to vest. It does not appear to be allowed under current zoning.



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 21<sup>st</sup> day of September, 2001, a copy of the foregoing People's Counsel's Post-Hearing Memorandum was mailed to Paul A. Dorf, Esq. and S. Leonard Rottman, Esq., Adelberg, Rudow, Dorf, 2 Hopkins Plaza, Suite 600, Baltimore, MD 21201, attorneys for Petitioners, and to Dr. Richard McQuaid, Maryland Line Area Association, 1501 Harris Mill Road, Parkton, MD 21120.

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN

1st Draft

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
PETITION FOR SPECIAL EXCEPTION		
19807 York Road, W/S York Rd,	*	COUNTY BOARD OF APPEALS
1900' N of Stablers Church Rd		
7th Election District, 3rd Councilmanic	*	FOR
<b>HUBERT A. BELLMAN, Legal Owner</b>	*	<b>BALTIMORE COUNTY</b>
<b>AT &amp; T WIRELESS SERVICES, Lessee</b>		
Petitioners	*	<b><u>Case No. 01-47-SPHX</u></b>

\* \* \* \* \*

**PEOPLE'S COUNSEL'S POST-HEARING MEMORANDUM**

This special exception case is of paramount public importance because it is the first to address the zoning of wireless telecommunications towers under Baltimore County Bill 30-98, amending BCZR 426 (attached), and the federal Telecommunications Act of 1996. While each case turns on its own facts, this one will require understanding, , articulation, and application of correct legal standards and will give direction for future cases.

**I. Federal and local law; delegation of powers; exposure of myths**

In general, federal law leaves it to local zoning boards to exercise discretion under local law to approve or deny towers proposed by wireless telephone service providers. The only limitations on this authority are that local government may not entirely prohibit such telecommunications service and that the federal government reserves authority over environmental health standards, such as for cancer prevention.

Federal law does not give service providers a blank check to deface the countryside. There is no preferred position, presumption, or favored treatment accorded to service providers with respect to classic zoning issues such as aesthetics, visual intrusion and clutter, effect on historic areas, impact on nearby residences, and consistency with the character of the

neighborhood. All of these are traditional special exception issues with respect to public safety, health and welfare and consistency with the spirit and intent of the zoning law under BCZR 502.1 and the county's zoning enabling law, Code Sec. 26-116.

To prove or confirm these points, we are fortunate to have available the attached series of cases from the United States Court of Appeals for the Fourth Circuit, which includes Maryland, the Virginias, and the Carolinas: AT & T Wireless v. City Council of Virginia Beach 155 F.3d 423 (4<sup>th</sup> Cir. 1998); AT & T Wireless v. Winston-Salem Zoning Board 172 F.3d 308 (4<sup>th</sup> Cir. 1999), and 360 Communications Co. v. Albemarle County 211 F.3d 79 (4<sup>th</sup> Cir. 2000); see also SBA, Inc. v. City of Asheville 539 S.E. 2d 18 (N.C. 2000). In these cases, the appellate courts sustained denials of proposed towers because intrusive to residential areas and/or otherwise inconsistent with local law. It is our position that the proposed tower here should similarly be denied. The case for its supposed need is weaker than in the cases cited. At the same time, the case against it for intrusion and particular adverse impact on the area is stronger.

In addition to the primary myth that federal law gives AT & T Wireless and other providers a favored position, there are several secondary myths which the appellate courts have exposed and rejected. The first myth is that federal law requires 100% coverage of so-called service gaps. Rather, federal law allows for "dead spots." 360 Communications, Co. 211 F. 3d at 86-87. The second myth is that upon expert evidence that a site is needed for service in an area (i.e. "service ring" here), federal law requires or indicates approval regardless of adverse impact on residential areas. Rather, as Judge Luttig wrote in AT & T Wireless, 155 F.3d at 431:

"In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees (AT & T Wireless, et al.), by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act so as always to thwart average, nonexpert citizens; that is, to thwart democracy."

The third myth is that denial of a permit translates to prohibition of service in violation of federal law. Judge Luttig explained that the “prohibition of service” subsection applied only to “blanket prohibitions” or “general bans or policies.” He gave four reasons, beginning at 155 F.3d 428:

“First, any reading of [the prohibition] subsection to apply to individual decisions would effectively nullify local authority by mandating approval of all (or nearly all) applications, a result contrary to the explicit language of section (B)(iii), which manifestly contemplates the ability of local authorities to ‘deny a request.’

Among other reasons, he showed the Fourth Circuit follows prevailing case law.

## **II. Baltimore County law; special exceptions; additional requirements**

Let us now examine Baltimore County law and its application.. BCZR 502.1 special exception standards afford the CBA discretion to decide if a proposal poses a particular adverse impact over and above that normally expected in the zone. Schultz v. Pritts 291 Md. 1 (1981); County Comm’rs v. Holbrook 314 Md. 210 (1988). In Holbrook, attached, the Court sustained a CBA denial based on the visual impact of a proposed mobile home on just one adjoining single-family home. The so-called “presumption” accorded special exceptions by their listing in the zone is not a ticket to routine or semi-automatic approval. Rather, it is a rebuttable presumption which demands consideration of all the evidence and the totality of circumstances.

On top of this, Bill 30-98 establishes other requirements specific to wireless telecommunication uses. BCZR 426.2 states the legislative policy to place antennas “on existing towers, buildings, and structures, including those of public utilities, where feasible” and that new towers should be in commercial zones and minimize visibility from residential zones. The BCZR 426.5D chart of zones and permitted uses is consistent with this policy and provides in R.C. zones that the use is ordinarily by special exception, but is by right in a public utility right of way. BCZR 426.9A requires, as to tower special exceptions, a diligent attempt to locate the antenna on existing towers or structures; a showing of an inability to obtain a location elsewhere;



and consistency with legislative policy. BCZR 426.9B requires a showing in residential zones, that there is no commercial zone available, “identifying with particularity any sites considered” or that due to unique features, “the proposed site is more consistent with the legislative policy.”

### **III. Application of the law to the facts**

#### **a. Petitioner’s Case**

Despite the predictable parade of experts, the virtual package of testimony was cursory, sketchy, and lacking in documentation. It is to be remembered that expert evidence is not entitled to any weight unless based on specific facts and sound reasoning. People’s Counsel v.

Beachwood 106 Md. App. 627 (1995). Here, AT & T’s proof consistently fell short, as follows:

1. Design Engineer Randell Butts began with the false premise that 100% “seamless” coverage is required. Therefore, the claim of need is, at best, weak. Rather, the proposed tower is a matter of business convenience or advantage.
2. Butts was unable to account for the undisputed ability of other service providers (Cingular, Verizon) to deliver effective service in the area without an additional tower in or near the proposed site
3. Upon the assumption or premise of need, Butts identified a “search ring” within a one and one-half mile radius around the subject property. His testimony was conclusory and marked by errors. His area map omitted the tower at Miller Road, one mile away and within the “ring”; he was unaware that the BGE right of way runs from southwest to northeast in this area and is about a mile away, within the “ring”; and he incorrectly stated the elevation above sea level at the base of the proposed tower to be 450 feet, rather than 650 as shown on the site plan and stated by Michael Thomas and Richard McQuaid. When asked about Miller Road and the BGE right of way (as well

as the Exxon Station site and the higher State tower in Hereford) as alternative sites, his conclusory dismissal lacked the particularity required under BCZR 426.9.

4. AT & T's site selection expert acknowledged the preference for nonresidential sites, but also claimed in conclusory fashion that there were none available in the "search ring." There was no indication of any particular consideration of the BGE right of way, the Exxon station, or the Miller Road tower.
5. Mitchell Kellman, the zoning expert, went through the special exception standards virtually as if it were a laundry list. Other than as to traffic congestion and perhaps overcrowding, he failed to explain why he believes the proposal meets BCZR special exception standards. He did not discuss the neighborhood, the adjoining and nearby residential population, the dramatic difference between the 199 feet height of the tower and its surroundings, and the historic sites. All of these relate to the public safety, health, and welfare under BCZR 502.1a. He also failed to address the BCZR 426.2 legislative policy and the 426.9 requirements, including the preference for existing sites and structures first, and nonresidential and utility right of way alternatives second --- Miller Road, BGE, Exxon. In effect, his testimony was that the proposed site meets special exception standards because he says so.
6. Oakleigh Thorne, the appraiser, based his conclusions on studies of different types of areas in Montgomery County and in Owings Mills. Moreover, his thesis was that a similarity in real estate values between properties within sight of the tower and others within the area proved that the tower had no impact. But his studies did not show whether all of the properties in the area of a tower would have higher values if the tower were not there. An expert should not dismiss the concerns of nearby property

owners with such data. Moreover, an appraiser is not in a position to evaluate the diminution in the enjoyment of nearby property. Thorne's speculation that towers rising about 200 feet would gradually fade into the visual background is no consolation to citizens of this part of Parkton who sought a rural refuge.

7. A T & T produced a tower committee report which, at best, was inconclusive.
8. A T & T's later "rebuttal" witness on historic preservation issues turned out not to be a historian. He had never visited the area and was reading from a report with which he was barely familiar. He did not have any solid knowledge about historic sites and landmarks in the area. Indeed, he incorrectly stated that the Cameron Mill Miller's house was in disrepair, disregarding evidence of its restoration by Lynne Jones' brother. He also had the arrogance to say the tower would not be visible from this site, despite Dr. McQuaid's evidence based on personal observation. He quibbled about whether or not some of them should be called "landmarks" or some other historic designation. His chief claim seemed to be that the State Historic Preservation Office had reviewed the matter and was satisfied. He did not enter into evidence any documentation on this and, in any event, conceded that SHPO had not held a public hearing or given citizens an opportunity to be heard.

In sum, Petitioner's case pales in comparison even with the unsuccessful service provider cases in the Fourth Circuit and North Carolina decisions cited above. On its own, it consists of false premises, promotion and conclusions. There is proof with particularity. It is unsatisfactory as to need, unsatisfactory as to the absence of alternatives, and (even if the first two were satisfied), unsatisfactory as to qualification under BCZR 502.1 standards.

### **b. People's Counsel's Case**

Remarkably, in this case it was the citizens who presented cogent and specific testimony on the relevant issues. At every turn, they had more knowledge, and more accurate knowledge, than the "experts." Here is a summary:

1. Michael Thomas and George Tyrie gave the only specific information about the visual impact on them as adjoining landowners on York Road immediately to the north. At 200 feet in height, the tower dwarfs the surrounding two-storey single family homes and looks down upon area trees of 50-60 feet in height (which are mainly deciduous and transparent in winter). These witnesses demonstrated how their homes are in the line of sight. This would diminish the enjoyment of their properties and, in their opinion, adversely affect their property values. Mr. Tyrie also noted the Exxon station about a mile away as a potential alternative site.
2. Mr. Thomas pointed to the unique circumstance that Mr. Bellman had developed the subdivision where he and Mr. Tyrie owned lots and had included a covenant which precluded construction of a tower and other enumerated structures without Bellman's consent, an implicit acknowledgement of the particular adverse impact.
3. Both Mr. Thomas and Mr. Tyrie testified without contradiction from personal experience that there was adequate cellular phone service in the area.
4. Christine Plattenburg, who lived several miles to the west but routinely traveled near the site, expressed her concern about the visual intrusiveness of the proposed tower. She pointed out that York Road is a scenic road in this area.

5. Lynne Jones, a resident for many years at York and Stablers Church Roads, testified to the attractive residential character of the area and identified several of the subdivisions to the west and south of the subject site. She also identified the commercial section at York Road and Stablers Church, including the Exxon station, the post office, and other property as a more appropriate candidate for a tower if there were to be one. She also noted the BGE right of way.
6. Jan Staples of the Parkton area preservation association added her concerns from the point of view of preventing the construction of a significant eyesore which would detract from rural residential character of the neighborhood.
7. Dr. Richard McQuaid, Maryland Line Area Association President and veteran citizen land use activist and member of government committees, presented the best overview of any of the witnesses. He had obtained official Maryland Department of Planning and Maryland State Highway Administration maps of the area. From his personal knowledge and from county records, he marked and identified the existing towers within several miles of the site; existing federal, state, and local historic structures or landmarks; and the existing BGE right of way and lines. Dr. McQuaid counted 88 single family homes within one mile of the subject location, an unusual concentration compared to other parts of the rural residential zone to the east and south along and around York Road. With the tower rising to 850 feet above sea level, the doctor noted that its visual impact would affect not only the adjoining Thomas/Tyrie subdivision but also the substantial subdivisions to the west, such as Cameron Mill at an elevation of 500 feet, including the historic county landmark Miller's House. Dr. McQuaid also produced photographs to show that existing towers in the area, such as the Miller

Road tower, could be seen at distances greater than a mile. Dr. McQuaid pointed to the BGE right of way as a more appropriate location, about a mile away east/southeast, to handle any antenna if one were found necessary. He also noted the Exxon station commercial/industrial area a mile to the south. He also observed that the rural residential zone to the east and south had substantially less residential population. The zoning maps entered into evidence show the RC zones, including substantial RC 5 Rural Residential zoning running up and down the York Road corridor. In sum, AT &T Wireless made a particularly poor choice of location of this vulnerable residential area in comparison to alternatives in the utility right of way, commercial area, or even the less dense other rural-residential zones in the region.

8. Harold Lloyd, taking the ecological perspective, emphasized the cumulative adverse impact of towers in the north county. In view of the number of towers already approved in the region – two at Maryland Line, one at Millers Road, and at least one at Middletown Road --- his testimony deserves attention. It is now recognized officially in Maryland that sprawl is a bad thing. Smart growth is a good thing. The proliferation of towers defaces the landscape and detracts from the quality of life. A T & T Wireless expert Butts admitted that this is the first of many towers planned by the company plans for the North County area. Future towers would cover local roads as well. In other words, the ugly tower proposed here will be the pacesetter for a slew of ugly towers to scar the entire the north county regardless of impact. To AT & T Wireless, there is no limit to the number of towers deemed “necessary” for their system. Fortunately, the law provides a safeguard in this hearing process.

9. There were letters in opposition from Sparks-Glencoe Community Association, the Hanover Road Association, and citizen Paul Hupfer. These letters substantiate and, in some particulars, expand upon the concerns and problems raised in the testimony.

**Summary; Postscript on the Flea Market**

The proposed tower is unnecessary and unwarranted. There are reasonable alternatives. Even were the tower necessary, it does not satisfy the standards under BCZR 502.1 and 426. For each of the above reasons, and all of them, the CBA should deny this special exception.

The agreed page limitation does not allow for detailed discussion of the facts in the decisions cited above. Suffice it to say that the case for the proposed tower here is weaker (indeed legally insufficient) and the case against it stronger than in all of those cases where towers were denied to AT & T Wireless and other providers. The case against this tower is also far stronger than the case against the mobile home in Holbrook. This is not a close case.

P.S. As to the flea market, while the tower case does not turn on it, we note there was no evidence of utilization after its approval in the 1970s. BCZR 502.2 renders a special exception void if not utilized in two years. The subject site is vacant, and there is no evidence it was utilized in time to vest. It does not appear to be allowed under current zoning.

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PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

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

reviewed  
PML



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 19807 York Road  
which is presently zoned R.C. 4/R.C. 5

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

An amendment to the Order passed in Case 74-36X to extinguish as to a 5 acre parcel out of the entire 37.91 acre parcel the Special Exception granted to use the property for a flea market.

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:**

AT&T Wireless Services  
Name - Type or Print  
By Mark W. Burrell  
Signature Mark Burrell, Site Acquisition Manager  
11710 Beltsville Drive  
Address Telephone No.  
Beltsville, MD 20705  
City State Zip Code

**Attorney For Petitioner:**

Paul A. Dorf/S. Leonard Rottman  
Name - Type or Print  
[Signature]  
Signature S. Leonard Rottman  
Adelberg, Rudow, Dorf, Hendler & Sameth, LLC  
Company  
Suite 600, 2 Hopkins Plaza 410-539-5195  
Address Telephone No.  
Baltimore, MD 21201  
City State Zip Code

**Legal Owner(s):**

Hubert A. Bellman  
Name - Type or Print  
[Signature]  
Signature  
Name - Type or Print  
Signature  
P.O. Box 247 410 679 2288  
Address Telephone No.  
Bradshaw, MD 21087  
City State Zip Code

**Representative to be Contacted:**

S. Leonard Rottman  
Name  
Suite 600, 2 Hopkins Plaza 410-539-5195  
Address Telephone No.  
Baltimore, MD 21201  
City State Zip Code

**OFFICE USE ONLY**

ESTIMATED LENGTH OF HEARING \_\_\_\_\_

UNAVAILABLE FOR HEARING \_\_\_\_\_

Case No. 01-047-SPHX

Reviewed By CTM Date 7/31/00





# Petition for Special Exception

## to the Zoning Commissioner of Baltimore County

for the property located at 19807 York Road

which is presently zoned R.C. 4/R.C. 5

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 Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

A telecommunications monopole less than 200' in height in a residential zone, as required by Section 426.5 D.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Exception, 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:**

AT&T Wireless Services

Name - Type or Print

By Mark W. Burnell  
Signature MARK BURNELL Site Acquisition Manager

Address 11710 Beltsville Drive

Telephone No.

Beltsville, MD 20705

City State Zip Code

**Attorney For Petitioner:**

Paul A. Dorf/S. Leonard Rottman

Name - Type or Print

Signature S. Leonard Rottman

Company Adelberg, Rudow, Dorf, Hendler & Sameth, LLC

Address Suite 600, 2 Hopkins Plaza 410-539-5195

Telephone No.

Baltimore, MD 21201

City State Zip Code

**Legal Owner(s):**

Hubert A. Bellman

Name - Type or Print

Signature Hubert A. Bellman

Name - Type or Print

Signature

P.O. Box 247

City State Zip Code

410 679 2288

Address Telephone No.

Bradshaw, MD 21087

City State Zip Code

**Representative to be Contacted:**

S. Leonard Rottman

Name

Address Suite 600, 2 Hopkins Plaza 410-539-5195

Telephone No.

Baltimore, MD 21201

City State Zip Code

**OFFICE USE ONLY**

ESTIMATED LENGTH OF HEARING \_\_\_\_\_

UNAVAILABLE FOR HEARING \_\_\_\_\_

Reviewed By CTM Date 7/31/00

Case No. 01-047-SPHX

PMZ



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

September 15, 2000

S. Leonard Rottman  
2 Hopkins Plaza, Suite 600  
Baltimore, MD 21201

Dear Mr. Rottman:

RE: Case Number: 01-047-XSPH, 19807 York Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 31, 2000.

The Zoning Advisory Committee (ZAC), which consists of representatives from several 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, please do not hesitate to contact the commenting agency.

Very truly yours,

*W. Carl Richards, Jr*  
GDZ

W. Carl Richards, Jr.  
Supervisor, Zoning Review

WCR: gdz

Enclosures

C: Hubert A. Bellman, PO Box 247, Bradshaw 21087  
AT&T Wireless Svcs, Mark Burrell Site Acquist. Mgr, 11710 Beltsville Dr.  
Beltsville 20705

People's Counsel



**BALTIMORE COUNTY, MARYLAND**  
**INTEROFFICE CORRESPONDENCE**

**TO:** Arnold Jablon, Director  
Department of Permits & Development Mgmt.

**DATE:** August 30, 2000

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

**SUBJECT:** Zoning Advisory Committee Meeting  
For August 21, 2000  
Item Nos. 047 and 050

The Bureau of Development Plans Review did not receive plans for the above-mentioned items.

RWB:HJO:jrb

cc: File

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon  
FROM: R. Bruce Seeley *m/RBS*  
DATE: September 11, 2000  
SUBJECT: Zoning Petitions  
Zoning Advisory Committee Meeting of August 14, 2000

DEPRM has no comments for the following zoning petitions:

Item #	Address
046	104 Glen Ridge Road
047	19807 York Road
050	34 Dovefield Road
051	200 Detroit Avenue
052	326 South Wind Road
053	4467 Spring Avenue
056	435 Main Street
550 Revised	Phillips Purchase



Baltimore County  
Fire Department

Office of the Fire Marshal  
700 East Joppa Road  
Towson, Maryland 21286-5500  
410-887-4880

August 22, 2000

Department of Permits and  
Development Management (PDM)  
County Office Building, Room 111  
Mail Stop #1105  
111 West Chesapeake Avenue  
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: HUBERT A. BELLMAN - 047  
BRYAN A. NELSON AND CHARLES M. BECKER - 051  
TERRY R. DUNKIN AND CHERYL S. DUNKIN - 054

Location: DISTRIBUTION MEETING OF AUGUST 14, 2000

Item No.: 047, 051, 054

Dear Ms. Stephens:

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.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1994 edition prior to occupancy.

REVIEWER: LIEUTENANT HERB TAYLOR, Fire Marshal's Office  
PHONE 887-4881, MS-1102F

cc: File

Come visit the County's Website at [www.co.ba.md.us](http://www.co.ba.md.us)



**Maryland Department of Transportation**  
**State Highway Administration**

Parris N. Glendening  
Governor  
John D. Porcari  
Secretary  
Parker F. Williams  
Administrator

Date: 8-16-00

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

RE: Baltimore County  
Item No. 047 LTM

Dear Ms. Jackson:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA 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,

A handwritten signature in black ink, appearing to read 'K. A. McDonald Jr.'.

for Kenneth A. McDonald Jr., 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

**BALTIMORE COUNTY, MARYLAND**  
**Interoffice Correspondence**

**DATE:** September 13, 2000

**TO:** Donald T. Rascoe, Development Manager  
Department of Permits and Development Management

**FROM:** Charles C. Dennis, Tower Coordinator, TRC

**SUBJECT:** AT&T Wireless Services' Tower Requests

The Tower Review Committee (TRC) met on August 24, 2000 to review and finalize the request from AT&T Wireless Services for the construction of two steel monopole towers in the northern section of Baltimore County. The first proposed monopole, located at 801 Bacon Hall Road, Sparks, Maryland, 21152, will have a height of 150 feet, while the second proposed monopole, located at 19807 York Road, Parkton, Maryland, 21120, will have a height of 199 feet. AT&T was represented at the meeting by Paul A. Dorf, Esq. and S. Leonard Rottman, Esq., attorneys with the law firm of Adelberg, Rudow, Dorf, Hendler, and Sameth.

The following factors were taken into consideration in evaluating the two AT&T tower site requests.

**Telecommunications Review**

The two proposed tower sites have been reviewed for technical merit, need, and the potential for co-location on existing structures. Because the two sites are in the same general geographical area, they were evaluated together. It is the Tower Review Committee's opinion that these communication structures are required in these areas to meet the Radio Frequency (RF) coverage objectives of AT&T along the Interstate 83 (I-83) corridor. Numerous potential co-location sites were examined. A summary of the evaluation of potential co-location sites is detailed below. In summary, no existing available sites were identified to mitigate the requirement for construction of these structures.

During a site visit to these proposed locations and to areas along I-83 anticipated to be covered by these new structures, it was noted that an AT&T cellular phone did not have AT&T service. In addition, RF propagation data provided by AT&T detailed that AT&T presently lacks service in this area.

During a site visit and after consultation with Baltimore County's tower map and database, no co-location sites within the immediate vicinity of these sites were located. Since no immediate co-location opportunities were found, the use of numerous existing sites to the south, between, and north of the proposed new construction was considered. The objective in evaluating existing sites was to consider the use of potentially three sites

on existing structures as an alternative to constructing two new sites. Also considered was the use of existing sites and potentially using repeaters and/or microcells to cover small gaps in coverage to mitigate the requirement for new construction.

To evaluate numerous potential co-locations sites south, between, and north of the proposed new construction sites, AT&T provided RF propagation data from locations representative of numerous existing sites as requested by the Tower Committee. These existing sites did not, in the Committee's opinion, provide AT&T adequate RF coverage for the existing holes in their current coverage along Interstate 83. In nearly all the potential co-location cases evaluated, AT&T has or anticipates (based on RF data provided) co-location on existing structures in the general vicinity along I-83. The existing structures evaluated added little additional coverage for AT&T and did not mitigate the requirement for construction of new structures in the general areas requested in these petitions.

Based on site visits, a review of the technical data presented by AT&T, and investigation of the potential co-location sites, it is the Committee's technical opinion that these new structures are required within this general area to meet AT&T's coverage objectives.

#### **Planning Considerations for the 19807 York Road Site**

AT&T Wireless Services, Inc., proposes to construct a new 199' telecommunication monopole within an area presently used as a flea market, The Mason Dixon Village, located at 19807 York Road. The tower will be located on a five-acre portion of the property on the west-side of York Road. The site is zoned RC-4 and RC-5. Since the tower is located within a residential area, a special exception will be required. The area adjacent to the monopole site is also zoned RC-4 and RC-5 and will continue to be used as a flea market.

#### **Planning Considerations for 801 Bacon Hall Road Site**

AT&T Wireless Services, Inc., proposes to construct a new 150' telecommunication monopole on a 5.03 acre site zoned RC-2. The proposed tower site is located west of U.S. Interstate 83 and north of Bacon Hall Road. Access into the site will be from Bacon Hall Road. Since the tower is located within a residential area, a special exception will be required. The area adjacent to the monopole site is also zoned RC-2. Section 426.2B3 of the Baltimore County Zoning Regulations states: "If a new tower must be built, the tower should be: 3. Located and designed to minimize its visibility from residential and transitional zones."

The proposed telecommunication tower will be visible from both I-83, Baltimore – Harrisburg Expressway, and MD-45, York Road. In this particular section of the County, these roadways are designated as scenic routes in the Baltimore County Master Plan 2010. At the August 24, 2000 Tower Review Committee meeting, the committee members requested that AT&T submit documentation to the Office of Planning, showing how the proposed tower will be viewed from I-83 heading south and from York Road across the Ross Valley Farms view shed. The documentation should show how the



placement of the communication tower would impact the views from both I-83 and York Road and what measures will be taken to mitigate the tower's impact on both views. This documentation should be received by Planning Staff before the September 20, 2000 Special Exception Hearing.

### **Community Considerations**

Mr. Page, the Community Member of the Tower Review Committee, telephoned all affected community groups in the area. As of this date, there has been no response by any of the groups. Although there may be further opposition when the tower petitions reach the DRC hearing stage, we can only assume at this point that there is no opinion from the community groups on the construction of these towers.

### **General Considerations**

Baltimore County personnel have visited the areas associated with these proposed towers, and with the assistance of Electronic Services and Telecommunications have determined that AT&T Wireless Services has a need for increased RF signal along this section of I-83. After surveying the areas and evaluating computer imaged photographs supplied by AT&T, the Committee feels that the placement of the towers at the proposed properties and at the heights specified will have a negligible effect on the view of the surrounding countryside. However, the Committee would make the request that, to further disguise the tower from the skyline, AT&T have the towers manufactured or painted a sky gray or blue color.

### **Final Conclusion**

After reviewing all of the material supplied to the Committee by AT&T Wireless Services and completing our own site survey and evaluation, the Committee believes that AT&T's RF coverage in the designated areas needs to be enhanced. We also believe that the construction of the towers, especially ones that are properly painted to blend with the skyline, will have a minimal effect on the surrounding communities. Based on the information that has been presented above, the Tower Review Committee recommends approval of AT&T Wireless Services' petitions for special exception for the construction of monopole towers at 801 Bacon Hall Road, Sparks, Maryland, 21152 and 19807 York Road, Parkton, Maryland, 21120.

### **Tower Review Committee**

Tim Krout, Columbia Telecommunications  
Charles C. Dennis, OBF, Electronic Services / Telecommunications  
Ervin McDaniel, Office of Planning  
A. Bob Page, Community Member TRC  
Richard Sterba, Office of Budget and Finance

Cc: Mr. S. Leonard Rottman, Attorney for AT&T Wireless Services

CO

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

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

**DATE:** September 13, 2000

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

**SUBJECT:** 19807 York Road

**INFORMATION:**

**Item Number:** 01-047

**Petitioner:** Hubert A. Bellman

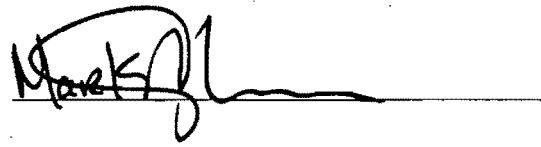
**Zoning:** RC 4/RC 5

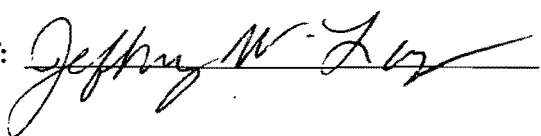
**Requested Action:** Special Exception

**SUMMARY OF RECOMMENDATIONS:**

At the August 24, 2000 Tower Review Committee meeting, the Office of Panning requested that the applicant submit documentation showing how the placement of the subject communication tower would impact the views from the surrounding areas into the site and what measures will be taken to mitigate any adverse impacts of said views.

As of this time staff has not received the requested information. As such, the Office of Planning recommends that the applicant's request be denied. In addition, this office requests that no final decision be rendered in this matter until the requested information is provided to the Office of Planning for review and a subsequent recommendation to the Zoning Commissioner.

Prepared by: 

Section Chief:   
AFK:MAC:

**BALTIMORE COUNTY, MARYLAND****INTER-OFFICE CORRESPONDENCE**

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

**DATE:** September 13, 2000

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

**SUBJECT:** 19807 York Road

**INFORMATION:**

**Item Number:** 01-047

**Petitioner:** Hubert A. Bellman

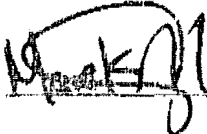
**Zoning:** RC 4/RC 5

**Requested Action:** Special Exception

**SUMMARY OF RECOMMENDATIONS:**

At the August 24, 2000 Tower Review Committee meeting, the Office of Planning requested that the applicant submit documentation showing how the placement of the subject communication tower would impact the views from the surrounding areas into the site and what measures will be taken to mitigate any adverse impacts of said views.

As of this time staff has not received the requested information. As such, the Office of Planning recommends that the applicant's request be denied. In addition, this office requests that no final decision be rendered in this matter until the requested information is provided to the Office of Planning for review and a subsequent recommendation to the Zoning Commissioner.

Prepared by: 

Section Chief: 

AFK:MAC

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

**TO:** Charles C. Dennis, Chief  
Electronic Services & Telecommunications

**DATE:** September 13, 2000

**FROM:** Ervin McDaniel  
Office of Planning


**SUBJECT:** Bellman Property (AT&T)  
**Case Number:** 01-047-XSPH

### Planning Considerations

AT&T Wireless Services, Inc., proposes to construct a new 199' telecommunication monopole within an flea market, The Mason Dixon Village located at 19807 York Road. The tower will be located on a five acre portion of the property located on the west side of York Road. The site is zoned RC-4 and RC-5. Since the tower is located within a residential area, a special exception will be required. The area adjacent to the monopole site is also zoned RC-4 and RC-5 and will continued to be used as a flea market.

At the August 24, 2000 Tower Review Committee meeting, Staff request that the Applicant submit documentation to the Office of Planning. The documentation should show how the placement of the communication tower would impact the views from the surrounding areas into the site and what measures will be taken to mitigate any impacts of the views.

As of September 13, 2000, Staff has not received the requested information. A positive recommendation cannot be made without a review of the requested information.



Ervin McDaniel

EM:jw

RE: PETITION FOR SPECIAL HEARING  
PETITION FOR SPECIAL EXCEPTION  
19807 York Road, W/S York Rd,  
1900' N of Stablers Church Rd  
7th Election District, 3rd Councilmanic

Legal Owner: Hubert A. Bellman  
Contract Purchaser: AT&T Wireless Services  
Petitioner(s)

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* FOR  
\* BALTIMORE COUNTY  
\* Case No. 01-47-SPHX


\* \* \* \* \*

**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 or other proceedings in this matter and of the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.



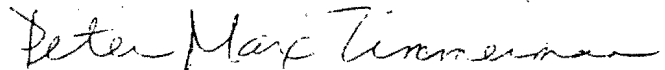
PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County



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 28th day of August, 2000 a copy of the foregoing Entry of Appearance was mailed to Paul A. Dorf, Esq., Adelberg, Rudow, Dorf, 2 Hopkins Plaza, Suite 600, Baltimore, MD 21201, attorney for Petitioner(s).



PETER MAX ZIMMERMAN



Baltimore County  
 Department of Permits and  
 Development Management

Director's Office *GDZ*  
 County Office Building  
 111 West Chesapeake Avenue  
 Towson, Maryland 21204  
 410-887-3353  
 Fax: 410-887-5708

November 15, 2000

Paul A. Dorf, Esquire  
 S. Leonard Rottman, Esquire  
 Adelberg, Rudow, Dorf, Hendler & Sameth, LLC  
 2 Hopkins Plaza, Suite 600  
 Baltimore, MD 21201

Dear Mr. Dorf and Mr. Rottman:

*HUBERT BELLMAN*

RE: Case No. 01-47-SPHX, 19807 York Road

Please be advised that People's Counsel for Baltimore County filed an appeal of the above-referenced case in this office on November 9, 2000. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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

Sincerely,

*Arnold Jablon*  
 GDZ

Arnold Jablon  
 Director

AJ: gdz

- C: Hubert A. Bellman, P. O. Box 247, Bradshaw 21087
- AT&T Wireless Svcs., Mark W. Burrell, Site Acquisition Mgr., 11710 Beltsville Dr., Beltsville 20705
- Daft, McCune & Walker Inc., Mitchell Kellman, and Michael McGarity, 200 E. Pennsylvania Ave., Towson 21286
- Voice Stream Wireless, Hillorie Morrison, 12050 Baltimore Ave., Beltsville 20705
- Bill Francis, 4061 Powder Mill Road, Suite 430, Calverton 20705
- Chris Scott, 11710 Beltsville Drive, Beltsville 20705
- Dennis & Associates, PC, Alan R. Rosner, P.E., 1901 Pennsylvania Ave., Suite 402, Washington, DC 20006
- Crown Casteltea, Chris Paradiso and Pat Walsh, 4740 Corridor Place, Suite D, Beltsville 20705
- Oakleigh J. Thorne, 10605 Concord St., Suite 302, Kensington 20895
- People's Counsel

## APPEAL

Petitions for Special Hearing and Special Exception  
19807 York Road  
W/S York Road, 1900' N of Stablers Church Road  
7th Election District – 3rd Councilmanic District  
Hubert A. Bellman - Legal Owner  
AT&T Wireless Services - Contract Purchaser  
Case Number: 01-47-SPHX

Petition for Special Hearing (filed 7/31/00)

Petition for Special Exception (filed 7/31/00)

Description of Property

Notice of Zoning Hearing (dated 8/11/00)

Certification of Publication (8/31/00 – The Jeffersonian)

Certificate of Posting (9/4/00 – Richard E. Hoffman)

Entry of Appearance by People's Counsel (dated 8/28/00)

Petitioner(s) Sign-In Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits:

- 1 Plat to accompany Petition for Special Hearing & Special Exception  
(revised 8/2/00)

Deputy Zoning Commissioner's Order dated 10/25/00 (Granted)

Notice of Appeal received on 11/9/00 from People's Counsel for Baltimore County

C: Paul A. Dorf, Esquire and S. Leonard Rottman, Esquire, Adelberg, Rudow, Dorf,  
Hendler & Sameth, LLC, 2 Hopkins Plaza, Ste. 600, Baltimore 21201  
Hubert A. Bellman, P. O. Box 247, Bradshaw 21087  
AT&T Wireless Svcs., Mark W. Burrell, Site Acquisition Mgr., 11710 Beltsville Dr.,  
Beltsville 20705  
People's Counsel of Baltimore County, MS #2010  
Timothy Kotroco, Deputy Zoning Commissioner  
Arnold Jablon, Director of PDM



*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

November 8, 2000

CAROLE S. DEMILIO  
Deputy People's Counsel

Arnold Jablon, Director  
Department of Permits and  
Development Management  
111 W. Chesapeake Avenue  
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING AND  
SPECIAL EXCEPTION  
19807 York Road, W/S York Rd,  
1900' N of Stablers Church Rd,  
7th Election Dist., 3rd Councilmanic  
**HUBERT A. BELLMAN and**  
**AT&T WIRELESS SERVICES, Petitioners**  
**Case No.: 01-47-SPHX**

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated October 25, 2000 of the Baltimore County Deputy Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman  
People's Counsel for Baltimore County

Carole S. Demilio  
Deputy People's Counsel

NOV 9 2000

PMZ/CSD/caf

cc: Paul A. Dorf, Esq., Adelberg, Rudow, Dorf, 2 Hopkins Plaza, Suite 600, Baltimore, MD 21201  
Attorney for Petitioners





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

OET TAX MAP/  
PRINTOUT

PETER MAX ZIMMERMAN  
People's Counsel

November 8, 2000

CAROLE S. DEMILIO  
Deputy People's Counsel

Arnold Jablon, Director  
Department of Permits and  
Development Management  
111 W. Chesapeake Avenue  
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING AND  
SPECIAL EXCEPTION  
19807 York Road, W/S York Rd,  
1900' N of Stablers Church Rd,  
7th Election Dist., 3rd Councilmanic  
**HUBERT A. BELLMAN and**  
**AT&T WIRELESS SERVICES, Petitioners**  
**Case No.: 01-47-SPHX**

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated October 25, 2000 of the Baltimore County Deputy Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman  
People's Counsel for Baltimore County

NOV 9 2000

Carole S. Demilio  
Deputy People's Counsel

PMZ/CSD/caf

cc: Paul A. Dorf, Esq., Adelberg, Rudow, Dorf, 2 Hopkins Plaza, Suite 600, Baltimore, MD 21201  
Attorney for Petitioners



*Baltimore County, Maryland*

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

June 21, 2001

PETER MAX ZIMMERMAN  
People's Counsel

CAROLE S. DEMILIO  
Deputy People's Counsel

Ms. Kathleen C. Bianco  
Legal Administrator  
County Board of Appeals  
of Baltimore County  
401 Washington Avenue, Room 49  
Towson, MD 21204

Hand-delivered

RECEIVED  
COUNTY BOARD OF APPEALS  
01 JUN 22 PM 2:26

Re: PETITIONS FOR SPECIAL HEARING  
AND SPECIAL EXCEPTION  
4001 Southwestern Boulevard  
13<sup>th</sup> Election District, 1<sup>st</sup> Councilmanic  
**Legal Owner: HUBERT A. BELLMAN**  
**Contract Purchaser: AT&T WIRELESS**  
**Case No. 01-47-SPHX**

Dear Ms. Bianco:

In reply to Mr. Dorf's letter of June 18, we disagree that the law stated therein applies to this Board proceeding, and also note that he waited until seven months (7) after the filing of the appeal to request an "expedited hearing."

In any event, we have no objection to the scheduling of a hearing in an efficient manner and will cooperate with the parties and the Board as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman  
People's Counsel for Baltimore County

PMZ/caf

cc: Paul A. Dorf, Esq.



## Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

(410) 887-2188

August 17, 2001

PETER MAX ZIMMERMAN  
People's Counsel

CAROLE S. DEMILIO  
Deputy People's Counsel

Arlene Haddock  
212 Bentley Road  
Parkton, MD 21120

Re: Hubert A. Bellman / AT&T Wireless Services  
19807 York Road, West side York Rd, 1900' N  
of Stablers Church Road, 7<sup>th</sup> Election District,  
3<sup>rd</sup> Councilmanic  
**Case No. 01-47-SPHX**  
CBA Hearing Date: 9/12/01, 10:00 a.m.

Dear Ms. Haddock:

Please be advised that our office is in the process of reviewing the above-captioned case for possible participation at the County Board of Appeals hearing scheduled for Wednesday, September 12, 2001 at 10:00 a.m.

If you would like to discuss this case, please give us a call at your earliest convenience.

Very truly yours,

A handwritten signature in cursive script that reads "Peter Max Zimmerman".

Peter Max Zimmerman  
People's Counsel for Baltimore County

A handwritten signature in cursive script that reads "Carole S. Demilio".

Carole S. Demilio  
Deputy People's Counsel

PMZ/CSD/cdf  
Enclosure (P.C. info sheet)



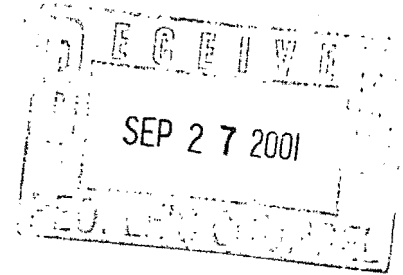
County Board of Appeals of Baltimore County

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

September 27, 2001

**SENT VIA FAX AND FIRST CLASS MAIL**

Paul A. Dorf, Esquire  
ADELBERG, RUDOW, DORF & HENDLER LLC  
600 Mercantile Bank & Trust Building  
2 Hopkins Plaza  
Baltimore, MD 21201-2927



Re: *In the Matter of: AT&T Wireless Services, Inc.*  
Case No. 01-047-SPHX

Dear Mr. Dorf:

Enclosed and herewith returned to you is your letter dated September 26, 2001 in the subject matter and received this date.

While an exception was made in accepting your correspondence received on September 25, 2001 and, further, allowing a response to be filed by Mr. Zimmerman and Dr. McQuaid, the record in this matter is now closed and no further correspondence or clarifications will be accepted.

Therefore, I am returning to you the enclosed letter dated September 26, 2001, which cannot be placed in the subject file nor become a part of the record in this matter.

Very truly yours,

Kathleen C. Bianco  
Administrator

Enclosure

cc: Peter Max Zimmerman  
People's Counsel for Baltimore County  
Dr. Richard McQuaid





## 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

September 25, 2001

CAROLE S. DEMILIO  
Deputy People's Counsel

Charles L. Marks, Panel Chairman  
County Board of Appeals  
of Baltimore County  
401 Washington Avenue, Room 49  
Towson, MD 21204

Hand-delivered

Re: Petitions for Special Hearing and Special Exception  
19807 York Road  
W/S York Rd, 1900' N of Stablers Church Rd,  
7th Election District, 3rd Councilmanic  
**Legal Owner: Hubert A. Bellman**  
**Contract Purchaser: AT&T Wireless Services**  
**Case No.: 00-47-SPHX**

01 SEP 25 AM 8 29

RECEIVED  
COUNTY BOARD OF APPEALS

Dear Mr. Marks:

This is in reply to Mr. Dorf's letter dated September 24, 2001. Our recollection is that Mr. Butts did not identify the Miller Road tower as such. If the tower called the "Crown" tower on the "search ring" exhibit is the Miller Road tower, then the exhibit is confusing because it is not to scale and it seems to place this tower at a significant distance from the proposed site.

In fact, the Miller Road/Crown tower is within a mile of the proposed site, as testified by Dr. McQuaid and shown on his MDP map to scale. Butts testified that his search ring had a mile and one-half radius. The Miller Road/Crown tower should, therefore, be within his search ring. If AT&T still contends that it needs both the Miller Road/Crown tower and the subject site, then its demand for tower locations is excessive and is a precedent for an absurd amount of clutter and defacement of the landscape.

I would also like to take this opportunity to clarify a factual matter with respect to the September 13, 2000 Tower Review Committee Report. When we wrote that it was vague and

Charles L. Marks, Panel Chairman  
County Board of Appeals  
of Baltimore County  
September 25, 2001  
Page Two

inconclusive, we inadvertently had in mind the Planning Office comment of the same date which is in the Board's file and attached hereto for convenience. In fact, we acknowledge the TRC Report recommends approval of the proposed tower. However, it is conclusory or quasi-conclusory and relies on the one-sided presentation by Petitioner's counsel and experts, without area citizen input.

Very truly yours,



Peter Max Zimmerman  
People's Counsel for Baltimore County



Carole S. Demilio  
Deputy People's Counsel

PMZ/CSD/caf  
Enclosure

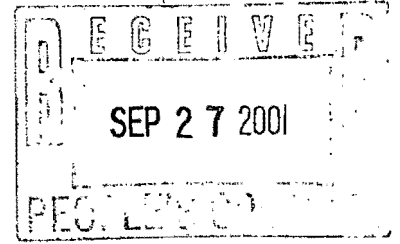
cc: Paul A. Dorf, Esq.

Dr. Richard McQuaid



County Board of Appeals of Baltimore County

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



September 27, 2001

Jack Dillon, Executive Director  
The Valleys Planning Council, Inc.  
207 Courtland Avenue  
Towson, MD 21204

RE: *In the Matter of: AT&T Wireless Services, Inc.*  
Case No. 01-047-SPHX

Dear Mr. Dillon:

The enclosed material which was received by this office on September 27, 2001 is herewith returned to you.

The Board concluded the hearing in the subject matter on September 12, 2001; closing memoranda were filed by the parties; and the record is now closed.

Therefore, I am returning to you the enclosed documents which cannot be placed in the subject file nor become a part of the record in this matter.

Very truly yours,

Kathleen C. Bianco  
Administrator

Enclosure

c: Paul A. Dorf, Esquire  
Peter M. Zimmerman  
People's Counsel for Baltimore County  
Dr. Richard McQuaid

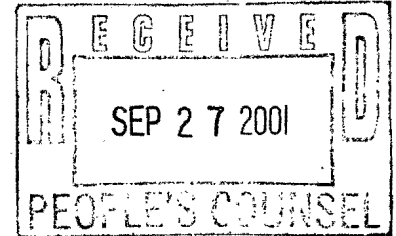


# *The Valleys Planning Council, Inc.*

207 Courtland Avenue, Towson, Maryland 21204  
Mailing Address: P.O. Box 5402, Towson, Maryland 21285-5402  
Phone: 410 337-6877, Fax: 410 296-5409

September 24, 2001

Mr. Charles Marks, Chairman  
Baltimore County Board of Appeals  
400 Washington Ave  
Towson, MD 21204



Re: Bellman Case No : 01-47 SPHXA

Dear Chairman Marks:

I was unable to attend the hearing on the above referenced case on Wednesday, September 12, 2001, however I would like to submit a few comments for the record or as a memorandum. Had I been available to testify I would have addressed the following issues:

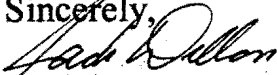
1. The Baltimore County Master Plan 2010 on p. 249 addresses the value of our scenic resources. The introduction discusses the county's scenic resources and states that these resources consist of scenic corridors, scenic views, and gateways. It also notes that the county's scenic views and corridors are located in rural areas.
2. The stated **POLICY** of Baltimore County is to " Preserve and enhance the county's significant scenic resources as designated on the scenic resources map, including scenic corridors, scenic views and gateways, as an essential component contributing to the county's quality of life.
3. York Road through Parkton is identified as a scenic route on the Scenic Resources Map (p. 250). The introduction of a telecommunications tower at the proposed location is in direct conflict with the county master plan. There are existing BG&E power lines which can accommodate these antennas in the vicinity.
4. In our opinion a tower at this particular location will have an adverse impact on the nearby residents of which there are many. I believe that



there are other RC5 areas which may be more appropriate as well as existing commercial areas in the vicinity.

I offer these comments realizing that I was not sworn in and not able to be cross-examined, but with the hope that they will be read and given whatever weight you desire. The Valleys Planning Council is interested in this case and would like to be included as an interested party. Thank you for your thoughtful consideration of this letter.

Sincerely,



Jack Dillon  
Executive Director

cc: Peter Max Zimmerman, Esq. ✓  
Paul Dorf, Esq.

Attachments 2

character. To the extent that other elements of this master plan's rural strategy succeed in preserving land for agriculture and other rural uses, these landscapes can also be protected, through proper coordination.



#### **Actions**

1. Complete the comprehensive countywide inventory of historic resources, giving particular attention to documenting historic resources that not only meet cultural-history qualifications but also retain sufficient visual integrity to qualify as potential historic districts.
2. Protect off-site "viewsheds" in designated historic areas, including revisions to the development process.
3. Coordinate scenic route designation and design standards with rural historic landscape protection.
4. Integrate rural landscape protection with the designation and implementation of heritage areas and rural legacy areas.

## **SCENIC RESOURCES**

### **INTRODUCTION**

The county's scenic resources consist of scenic corridors, scenic views, and gateways. Most of the county's scenic corridors and views are located in rural areas. Gateways can occur within either urban or rural areas, and in fact, frequently occur at the boundary between urban and rural areas (Map 37).

### **POLICY**

- Preserve and enhance the county's significant scenic resources as designated on the scenic resources map, including scenic corridors, scenic views and gateways, as an essential component contributing to the county's quality of life.

#### **Issue: Preserving Scenic Corridors and Views**

The *Baltimore County Master Plan 1989-2000* depicted scenic routes and views on the development policy maps, taking the first steps toward recognizing and identifying the distinctive visual elements that make Baltimore County so desirable to residents and attractive to visitors. The scenic views depicted do not represent a comprehensive county inventory,



*The majority of the county's scenic resources are located in the rural area.*

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

600 Mercantile Bank & Trust Building  
2 Hopkins Plaza  
Baltimore, Maryland 21201-2927

pdorf@adelbergurdow.com

www.adelbergurdow.com

Telephone  
410-539-5195

Facsimile  
410-539-5834

June 18, 2001

Kathleen Bianco, Legal Administrator  
400 Washington Avenue  
Room 49  
Towson, Maryland 21204

Re: Petition for Special Hearing and Special Exception  
Property: 19807 York Road  
Hubert A. Bellman: Legal Owner  
AT&T Wireless Services: Contract Purchaser  
Board of Appeals for Baltimore County  
Case No.: 01-47-SPHX  
Our File No.: 9478-803

01 JUN 19 AM 11:49  
COUNTY BOARD OF APPEALS

Dear Ms. Bianco:

This office represents AT&T Wireless Services who is the respondent in the above-referenced appeal. The appeal was noted on November 9, 2000 by People's Counsel for Baltimore County. As of the date of this letter, no hearing date has been scheduled.

The respondent respectfully requests that this matter be set in for a hearing on an expedited basis pursuant to the mandates of the Telecommunications Act of 1996 (the "Act"). The appeal concerns a special exception to construct a wireless communications facility. The Act, in pertinent part, provides that:

Any person adversely affected by any final action . . . by a State or local government or any instrumentality thereof . . . may . . . commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis.

47 U.S.C. § 332(c)(7)(B)(v) (emphasis added).

Courts construing §332(c)(7)(B)(v) of the Act are in accord that all actions for judicial review of a decision to place, construct or modify a wireless communications facility must be resolved expeditiously. BellSouth Mobility, Inc. v. Gwinnett County, 944 F.Supp. 923, 929 (N.D.Ga. 1996) ("[T]he legislative history of the Telecommunications Act makes it clear that its drafters intended that the court to which a party appeals a decision under section 332(c)(7)(B)(v) may be the Federal district court in which the facilities are located or a State court of competent jurisdiction, at the option of the party making the appeal, and that the courts act expeditiously in

ADELBERG, RUDOW, DORF & HENDLER, LLC

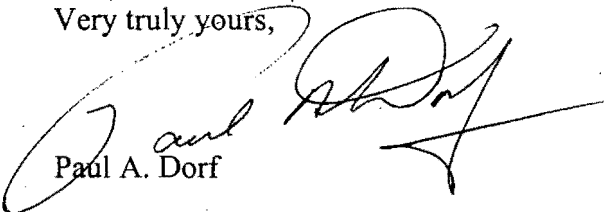
Kathleen Bianco  
June 18, 2001  
Page 2

deciding such cases."); Western PCS II Corp. v. Extraterritorial Zoning Authority, 957 F.Supp. 1230, 1239 (D.N.M. 1997) (resolution of case "needs to be resolved expeditiously as required by the Telecommunications Act"); Westel-Milwaukee Co. v. Walworth County, 556 N.W.2d 107, 109 (Wisc.Ct.App. 1996) ("[W]ith this Act, Congress has tried to stop local authorities from keeping wireless providers tied up in the hearing process.").

Consistent with the purposes of the Act and case law construing the Act, this appeal must be expedited. Accordingly, please have this appeal set in for a hearing on an expedited basis.

Thank you for your assistance.

Very truly yours,



Paul A. Dorf

PAD/rga

cc: Peter Max Zimmerman, Esquire  
S. Leonard Rottman, Esquire  
Mr. Timothy Brenner

075s/at&tbia1.ltr

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

600 Mercantile Bank & Trust Building  
2 Hopkins Plaza  
Baltimore, Maryland 21201-2927

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Telephone  
410-539-5195

Facsimile  
410-539-5834

Paul A. Dorf

pdorf@adelbergprudow.com

September 26, 2001

Charles L. Marks, Panel Chairman  
County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

Re: AT&T Wireless Services, Inc. / BELLMAN  
In the County Board of Appeals for Baltimore County  
Case No. 01-047-SPHX

Dear Mr. Marks:

I again find it necessary to clarify a factual inaccuracy asserted by People's Counsel in this appeal.

In its letter dated September 25, 2001 to the Board, People's Counsel states that the proposed Bellman tower will be less than one mile away from the Miller Road/Crown tower to the south and, therefore, the Bellman tower is not necessary. This is not the case.

I have confirmed with AT&T Wireless' engineers that the Bellman tower will be 1.81 miles away from the Miller Road/Crown tower. The Bellman tower is necessary for AT&T to complete its network and satisfy its coverage needs along Interstate 83. This was confirmed by the Baltimore County Tower Review Committee.

If the Bellman tower was not essential to the wireless network, AT&T would not go through the time and expense to obtain special exception approval.

Thank you for your consideration.

Respectfully submitted,

  
(Paul A. Dorf)

PAD/agr

cc: Peter Max Zimmerman, Esquire

M:\WP075\SEC at&tmar1.ltr.wpd

*sent to  
CSB's private  
office address*

*10/1/01 Spoke  
w/ Debbie Allis  
and gave her  
our correct  
mailing address.  
caf*

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

600 Mercantile Bank & Trust Building  
2 Hopkins Plaza  
Baltimore, Maryland 21201-2927

pdorf@adelbergurdow.com

www.adelbergurdow.com

Telephone  
410-539-5195

Facsimile  
410-539-5834

September 24, 2001

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

Re: AT&T Wireless Services, Inc.  
In the County Board of Appeals for Baltimore County  
Case No.: 01-047-SPHX

Dear Ms. Bianco:

Although the Board of Appeals has not authorized reply memorandums in the above-referenced appeal, there is a factual inaccuracy contained in the legal memorandum filed by People's Counsel which must be addressed. Accordingly, I respectfully request that the enclosed copies of this letter be submitted for consideration to each Board member participating in this appeal and that this original be placed in the record.

In People's Counsel's memorandum, it is alleged that AT&T Wireless was unaware of the "Miller Road tower" as an alternative site for the Bellman tower, and that the Miller Road tower was omitted from Randell Butts' search ring. This is not the case.

The "Miller Road tower" is the tower owned by Crown Communications to the south of the Bellman tower. The Miller Road tower or "Crown tower" is identified in AT&T's search ring exhibit. AT&T already has committed to co-locate on the Miller Road tower. Despite co-locating on that tower, AT&T still requires the Bellman tower to satisfy its coverage needs along Interstate 83. In addition, contrary to People's Counsel's contentions, the Miller Road tower is more than "just one mile away" from the Bellman property.

I ordinarily would not submit further argument without authority to do so, however, People's Counsel's memorandum was misleading and these important points required clarification.

Thank you for your consideration.

Very truly yours,

  
Paul A. Dorf

PAD/agr

cc: ~~Peter Max Zimmerman, Esquire~~

M:\WP\075\SEC\at&tbia2.ltr.wpd

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

600 Mercantile Bank & Trust Building  
2 Hopkins Plaza  
Baltimore, Maryland 21201-2927

Telephone  
410-539-5195

Facsimile  
410-539-5834

pdorf@adelbergprudow.com

www.adelbergprudow.com

September 24, 2001

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

*Patricia -  
Did you receive  
this today?  
K.*

Re: AT&T Wireless Services, Inc.  
In the County Board of Appeals for Baltimore County  
Case No.: 01-047-SPHX

Dear Ms. Bianco:

Although the Board of Appeals has not authorized reply memorandums in the above-referenced appeal, there is a factual inaccuracy contained in the legal memorandum filed by People's Counsel which must be addressed. Accordingly, I respectfully request that the enclosed copies of this letter be submitted for consideration to each Board member participating in this appeal and that this original be placed in the record.

In People's Counsel's memorandum, it is alleged that AT&T Wireless was unaware of the "Miller Road tower" as an alternative site for the Bellman tower, and that the Miller Road tower was omitted from Randell Butts' search ring. This is not the case.

The "Miller Road tower" is the tower owned by Crown Communications to the south of the Bellman tower. The Miller Road tower or "Crown tower" is identified in AT&T's search ring exhibit. AT&T already has committed to co-locate on the Miller Road tower. Despite co-locating on that tower, AT&T still requires the Bellman tower to satisfy its coverage needs along Interstate 83. In addition, contrary to People's Counsel's contentions, the Miller Road tower is more than "just one mile away" from the Bellman property.

I ordinarily would not submit further argument without authority to do so, however, People's Counsel's memorandum was misleading and these important points required clarification.

Thank you for your consideration.

Very truly yours,

  
Paul A. Dorf

PAD/agr

cc: Peter Max Zimmerman, Esquire

M:\WP\075\SEC\at&tbia2.ltr.wpd

**Paul A. Hupfer**  
**831 Walters Lane**  
**Baltimore, MD 21152**

September 12, 2001

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

Subject: Case 01-47-SPHX  
AT&T Wireless Service  
19807 York Road

Good Morning:

Tower land use cases are unique because the main premise is for a tower to provide additional area coverage for mobile phones by the applicant. This is only one aspect of a new tower request. The second is the creation of valuable real estate, which has a significant rental income much like strip shopping centers; tower antenna location rentals are like rental of multiple store sites at one location. If the tower locations have significant structure to support co-location of several cellular carriers plus other radio spectrum users (beepers, truck locator systems, etc.) then the income from these other users becomes significant. Towers should be considered like other valuable real estate where Location, Location, Location is paramount.

There is a thriving real estate business for ownership and management of tower real estate property once a tower is erected. Tower management companies like Spectra, Crown or American Tower are becoming common and known for purchasing already erected towers thus establishing a real estate asset available for sales and rental to multiple users. Tower management-ownership companies on their own would have difficulty obtaining approval for building new towers because they would not have the benefit of using the 1996 Telecommunication Act to support their request for a tower.

The down side of these valuable real-estate tower adventures is that they produce massive tower structures with high visual impact to very large areas. This is especially true in rural areas where similar types of non-natural structures of similar scale are not present.



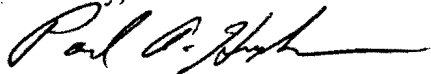
The proponents of co-location of mobile phone carriers on towers in rural areas think that a large monopole or a lattice tower is not highly visible or intrusive to the surrounding area. As the users add more antennas, platforms and antenna transmission lines (the black lines commonly seen running up the towers) these change the visual impact of the tower. A similar end visual impact would be like putting a ranch style house, on end, stuck on top of a big pole. See attached picture of the cell tower at Hereford Vol. Fire Company in Hereford.

I have been present for several balloon tests to evaluate the potential impact of proposed tower placements. The visual views and pictures presented to the hearing officer to represent the proposed visual environment are misleading. I believe some evidence introduced in tower hearings are false in nature or deliberately produced to mislead. I request that the board do a site visit and a re-enactment of any submitted visual evidence for the board to review.

There are viable alternates to the proposed AT&T towers that need to be evaluated. AT&T will say that they have evaluated alternate locations and coverage concepts. AT&T has met more restrictive requirements in other rural areas in their service area. The carriers want to use a cookie cutter design for all there tower locations, which establishes a cost effective way of providing coverage and would produce income from the other tower users. To my knowledge, the Baltimore County land use regulations do not guarantee that the applicant must make a profit from their endeavor.

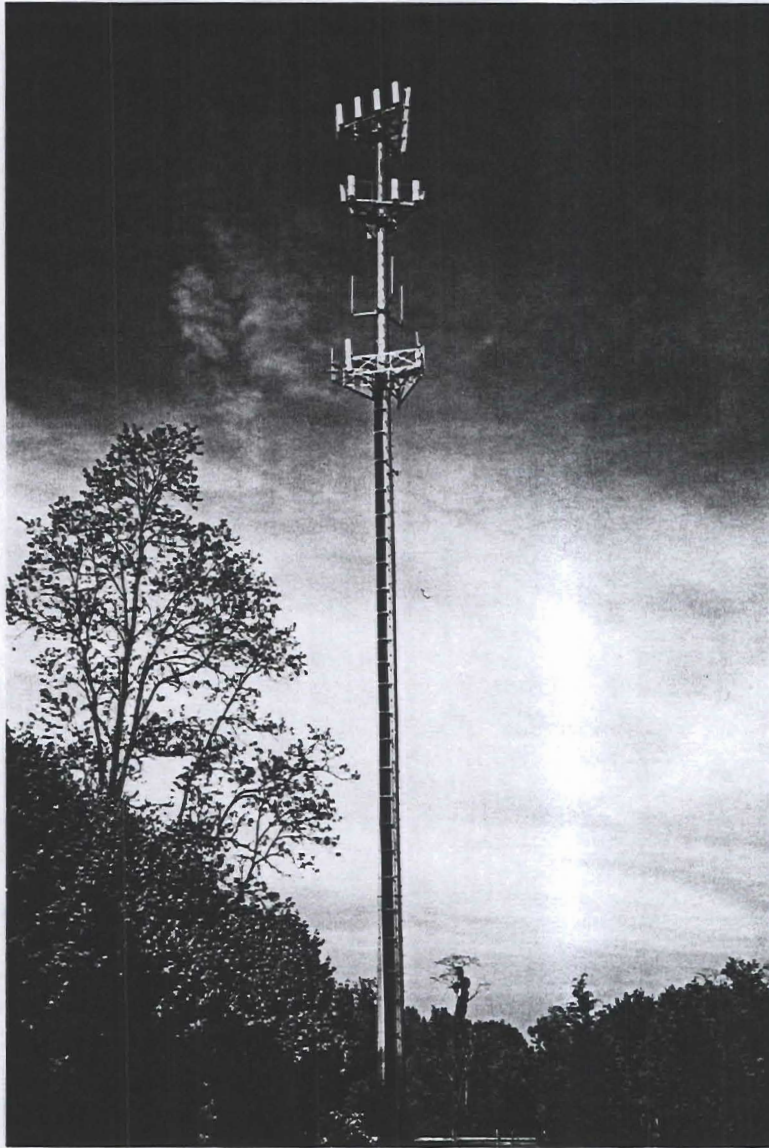
The Board should consider that AT&T in other counties in the mid-Atlantic area can overcome these visual impact problems and still have access for coverage throughout their the service areas. The board should consider rejecting the AT&T request and send the case back to the Hearing Officer for additional review.

Sincerely,



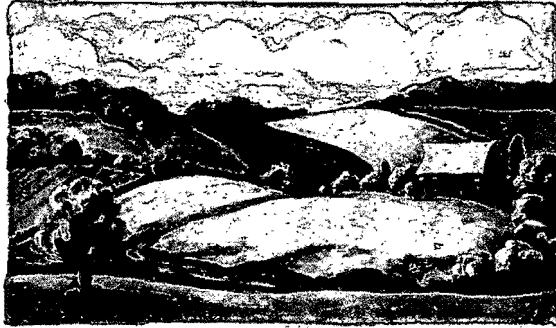
Paul A. Hupfer

Attached: Picture of Tower at Hereford Vol. Fire Company.



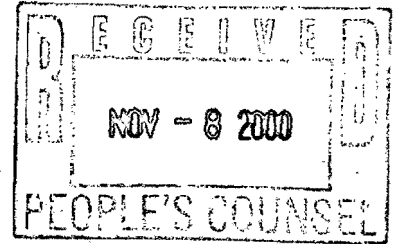
Tower at Hereford Vol. Fire Company

NORTH COUNTY COALITION



*Dedicated to the Land*

*M 95*



November 4, 2000

Mr. Peter Max Zimmerman Esq.  
People's Counsel of Baltimore County  
Old Court House, basement  
400 Washington Ave.  
Towson, Md. 21204

Re: Herbert A. Bellman and AT&T Wireless Services - Case #01-047-SPHX

Dear Mr. Zimmerman,

I am writing on behalf of the Maryland Line Area Association, Inc. and the North County Coalition, Inc. to call your attention to the above referenced case.

The Deputy Zoning Commissioner's Order and Opinion of October 25, 2000 in the subject case granted AT&T Wireless Services a Special Exception to construct a telecommunication monopole less than two hundred feet high on five acres of the property at 19807 York Rd.

We object to the granting of this Special Exception since it is a clear violation of Baltimore County Zoning Regulations which requires co-location of antennas on existing towers wherever possible. Our organizations had considerable input to the drafting and enacting of these regulations.

There was no testimony to show that there are already three telecommunication towers and two high tension power lines with high towers all within a two mile radius, and a fourth tower slightly over two miles of the said property. Any one of these locations could serve as a co-location site for the AT&T Wireless Services antenna.

*talk to OP2 for  
their support  
- citizen opposition*

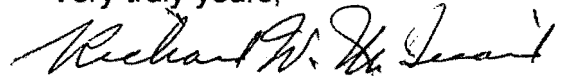
NORTH COUNTY COALITION, INC.

1501 Harris Mill Road  
Parkton, Maryland 21120  
410 343-1089

After you have reviewed the subject case, if you decide to appeal the decision of the Deputy Zoning Commissioner, the Maryland Line Area Association, Inc. and the North County Coalition, Inc. will support your action and provide testimony at the Appeal Hearing.

Please let us know of your decision as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard W. McQuaid". The signature is fluid and cursive, written over a horizontal line.

Dr. Richard W. McQuaid  
President

**MARYLAND LINE AREA ASSOCIATION, INC.  
1501 HARRIS MILL ROAD  
PARKTON, MARYLAND, 21120  
(410) 343-1089**

July 22, 2000

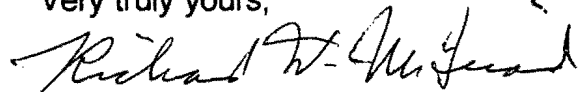
Mr. Paul Dorf  
Adelberg, Rudow, Dorf, Hendler & Sameth  
Attorneys at Law  
600 Mercantile Bank & Trust Building  
2 Hopkins Plaza  
Baltimore, Maryland 21201

Dear Mr. Dorf:

Thank you for your Memo of July 20, 2000 informing us of a balloon test on the proposed site for a monopole telecommunication tower on July 27, 2000 from 8:00 a.m. to 11 a.m. We consider the test useless and the short time period for observation makes it ludicrous. It will do nothing to alter our opposition to your proposal.

I shall be away most of the week of July 27, 2000 so that I will be unable to observe the so called "test".

Very truly yours,



Dr. Richard W. McQuaid  
President

**MARYLAND LINE AREA ASSOCIATION, INC  
1501 HARRIS MILL ROAD  
PARKTON, MARYLAND 21120  
(410-) 343-1089**

*Re: etc etc*

July 27, 2000

Mr. T. Bryan McIntire  
Councilman, 3rd. District  
Baltimore County  
Old Courthouse, 2nd. floor  
Towson, Md. 21204

Dear Mr. McIntire:

Enclosed please find a letter from Paul Adorf ESQ. in reference to a proposed monopole communication tower for AT&T telecommunications. I also was sent a site plan for the project.

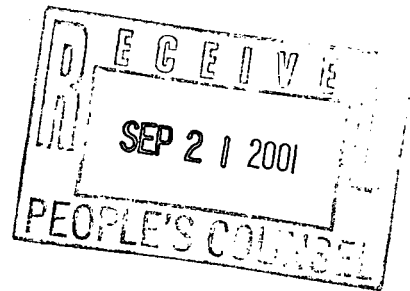
This entire project is in violation of the Telecommunication Act passed by Baltimore County Council. There are three (3) existing telecommunication towers with space available for co-locating their antenna within two miles of the proposed site. There are also B.G.E. high tension power poles less than a mile from the proposed site that can and should be utilized.

Of course, the Zoning Commissioner will allow the tower as he has allowed many other projects that violate Baltimore County regulations. Since the site is in your district and you urged passage of the law regulating towers, we are relying on you, as our elected representative, to protect the community from projects such as this.

Very truly yours,

Dr. Richard W. McQuaid  
President

**MARYLAND LINE AREA ASSOCIATION, INC.  
1501 HARRIS MILL ROAD  
PARKTON, MD 21120**



**COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY:**

**Re: Petition for Special Hearing-Petition for Special Exception, 19807 York Rd., Hubert A. Bellman, Legal Owner; AT&T Wireless Services, Lessee; Petitioners  
Case No. 01-47-SPHX**

**Citizen's Post Hearing g Summary Letter**

At the conclusion of the above referenced case hearing, the People's Counsel for Baltimore County and the attorney for the Petitioner were invited by Board of Appeals for Baltimore County (CBA) to summarize their cases in a memorandum not to exceed 10 pages. The limitation was extreme since there were sufficient issues raised in the case to fill 100 pages.

We the citizens of Baltimore County who participated in the hearing feel that we are entitled to a similar privilege since we had no legal representation at the hearing, and our perspective on the case is different from the People's Counsel or the Petitioner since we have a vested interest in the land of northern Baltimore County.

We will not attempt to quote the Federal Telecommunication Act of 1996, the provisions o BCZR or County Code Sec 26-116. We leave that to the legal experts except to say that we were appalled by the lack of knowledge of these laws exhibited by the Petitioner's attorney and witnesses at the hearing.

**Petitioner's Case**

1. No witness for the Petitioner provided a reason accompanied by data and sound engineering principles for failing to co-locate on an existing tower, utilize BL-CR property which is 2000 feet (2/5 of a mile) from the Bellman Property and at the same altitude, utilizing the BGE high tension poles or the right of way which is less than a mile from the Bellman Property or co-locate on the Miller Road tower which is about a mile from the Bellman Property. These alternative sites could be used be AT&T Wireless as a matter of right not requiring the hearings and appeals at taxpayer expense and legal and expert witness fees for the Petitioner. No evidence of the diligent search for alternative sites required by law was presented.
2. AT&T desires to make cellular phone service available along the entire length of a major high speed highway, I-83. The National Highway Transportation Safety Board has already defined use of cellular phones while driving at any speed dangerous and unsafe to the user and hazardous to all others on the road. There are numerous examples of death and serious injury due to cellular phone use while driving. Granting AT&T a special exception in this case is a violation of BCZR special exception requirements protecting public health and safety.
3. The testimony the property appraiser hired by AT&T should have been struck in its entirety since his conclusions were based on studies in Montgomery County and Owings Mills neither of which have any relevance to rural property northern Baltimore County. All evaluations and studies are supposed to be made in the area in question not one remote

and unrelated to it.

4. The Tower Committee report on this tower was vague and inconclusive since AT&T failed to provide adequate information to the committee. This failure alone is enough reason to deny the special exception.

5. The witness for AT&T for historic site issues was not a historian. He merely read a report prepared by someone else who could not be cross examined by The Peoples Counsel. He was obviously unfamiliar with the subject. The fact that he did not have any part in the preparation is adequate reason to strike his testimony. The CBA struck the testimony of a so called petroleum marketing expert in the special exception case to permit a gasoline filling station on the Warrener Property (West Liberty Garage) at West Liberty Rd. and Md. Route 439 (Old York Rd.) for this same reason. The sites that he cited such as Bentley School, Bentley Church and Bentley Springs Post Office are not even on the Baltimore County Landmarks List. Hew failed to mention Hill Crest Rd. District, St. James Church, the Marion Clarke House, the Fredrick House and the Weisburg Inn. The latter being on the National Register of Historic Places All of these would be in sight of proposed tower. AT&T chose not to notify the Baltimore County Landmark Commission of possible impact on county landmarks. These last reasons are just icing on the cake to require striking this testimony.

#### Protestants Case

1. The witnesses in protest of the S special exception were all familiar with the area and the existing subdivisions, historic landmarks and readily available cellular phone service throughout the area and along I-83 from the Pennsylvania line to the Baltimore Beltway (I-695). To the best of our knowledge no one in the area of the Maryland Line Area Association which extends from the Harford County line to the Carroll County Line.

2. The tower will be visible above the trees to 88 homes at all times, and will be visible in its entirety from the late fall to spring time since the trees are almost all deciduous. York Road and I-83 in this area are both designated as scenic routes by Baltimore County. The tower would add an eyesore to the aesthetic beauty of the area.

3. All of the witnesses are long time residents and property owners of northern Baltimore County. The newest resident had lived in the area for eight years.

4. Several attempts were made by the petitioner to intimidate the resident witnesses. AT&T told the witnesses that they plan to cover the entire northern Baltimore County including back roads and this was only the beginning. The engineer tried the scare tactic to the effect that if there were any dead spaces in the coverage, a person with auto breakdown, a medical emergency or a fire in a dead space would be unable to seek help. If AT&T would co-locate on existing towers, there would be no dead spaces since other providers already have complete coverage.

#### Conclusion

For the reasons stated above the Special Exception for a Telecommunication Tower on the Bellman property should be **Denied**. Furthermore, if the County grants the Special Exception, the County would be in violation of the Federal Telecommunication Act of 1996.



Respectfully Submitted,

Maryland Line Area Association, Inc.

A handwritten signature in black ink, appearing to read "Richard W. McQuaid". The signature is fluid and cursive, with a large initial "R" and "M".

Dr. Richard W. McQuaid  
President

cc People's Counsel of Baltimore County

Paul A. Dorf, Esquire

**MARYLAND LINE AREA ASSOCIATION, INC.  
1501 HARRIS MILL ROAD  
PARKTON, MD 21120**

**COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY:**

**Re: Petition for Special Hearing-Petition for Special Exception, 19807 York Rd., Hubert A. Bellman, Legal Owner; AT&T Wireless Services, Lessee; Petitioners  
Case No. 01-47-SPHX**

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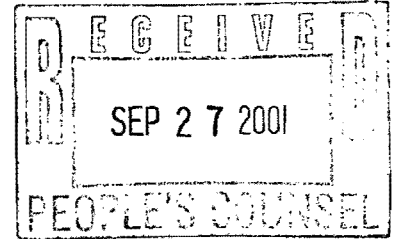
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**MARYLAND LINE AREA ASSOCIATION, INC.**  
**1501 HARRIS MILL ROAD**  
**PARKTON, MARYLAND 21120**  
**ph. (410) 343-1089**



September 25, 2001

Mr. Charles Marks,  
Panel Chairman  
County Board of Appeals of Baltimore County  
Old Courthouse, Rm. 49  
400 Washington Ave.  
Towson, Md. 21204

Re: AT & T Wireless Services, Inc.  
Case # 01-047-SPHX

Dear Mr. Marks,

We have received a copy of the letter from AT&T. Wireless Services Inc. submitted by their attorney, Paul A. Dorf, in which AT & T attempts to claim that the Memos submitted by People's Counsel and the citizen protestants were inaccurate and misleading.

Mr. Dorf evidently has chosen to ask you to ignore the People's Counsel's cross examination of AT & T's engineer, Mr. Butts, who does not even understand that electro-magnetic radiation from an antenna is emitted in all directions and uniformly covers a circular area 4-6 miles in diameter unless there is a physical barrier to such radiation within the circle.

Mr. Butts identified the "search ring" as 1.5 miles radius and testified that AT & T could not co-locate on the Miller Road Tower or Crown Tower ( as AT & T refers to it.) Neither Mr. Dorf nor Mr. Butts seem to comprehend the simple geometric principle that geographic distance is measured in straight lines and not highway distance, thus placing the Miller Road / Crown tower about 1.4 miles from the Bellman Property and well within their "search ring".

The Miller Road / Crown tower is 1.3 miles from I-83 with no physical barrier to the transmission of electro-magnetic radiation, according to the most recent U. S. Geological Survey topographic map of this area.

No other service provider has difficulty providing complete coverage in the I-83 York Road corridor in this area. No cellular phone system, whether digital or analog, requires 199 ft. monopole towers closer than 4 miles if there is a line of sight transmission distance. If AT & T Wireless Services uses the Miller Road/Crown Tower and is permitted the Bellman Property Tower, they will be utilizing two telecommunications towers less than 1.5

miles apart.

The Randall-Butts "search ring" was not reproduced to scale on the diagram exhibited at the hearing and was both misleading and inaccurate; it was designed to confuse the Appeal Board into believing that the Bellman Property Tower is necessary and not just a business convenience.

We regret the necessity to reply to a letter which contains so much specious information and factual inaccuracies, but we feel that such misuse of technical information and apparent attempts at deception must be answered with technical facts. We respectfully request that the Board of Appeals consider this letter and place it in the case file.

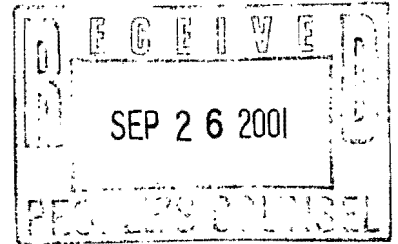
Respectfully submitted,



Dr. Richard W. McQuaid  
President

c.c. Peter Max Zimmerman, Esq.  
Paul A. Dorf, Esq.

MARYLAND LINE AREA ASSOCIATION, INC.  
1501 HARRIS MILL ROAD  
PARKTON, MARYLAND 21120  
ph. (410) 343-1089



September 25, 2001

Mr. Charles Marks,  
Panel Chairman  
County Board of Appeals of Baltimore County  
Old Courthouse, Rm. 49  
400 Washington Ave.  
Towson, Md. 21204

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Case # 01-047-SPHX

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Post-It® Fax Note	7671	Date	# of pages ▶
To	Peter Max Z. [unclear]	From	Doc
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	410-339-3477

9/14/01

Pete:

We hope that you will consider including the following points in your memo to the Appeal Board. All things considered we met our burden of proof if the board is willing to accept it. A strong memo may swing it.

1. AT&T's so called computer simulation missed the Miller Road tower which is the closest tower to the proposed site and within their search area.
2. AT&T's engineers attempted to claim that the BGE power transmission line that crosses I-83 just south of Middletown Road (the nearest power line to the proposed site) only runs east and west when it actually turns and runs southwest to northeast passing within one mile of the proposed site and at the same elevation which is also within the search area.
3. The so called historian incorrectly described the Cameron Mill Miller's House as being in disrepair when it has actually been restored. It is absolutely incorrect to state that the proposed tower would not be visible from the Cameron Mill Miller's House. There are no obstacles of visibility and it would be clearly visible. None of the other sites, with the exception of the Weisberg Inn, are on the Historic Landmarks List in Baltimore County at the present time. All of the Maryland Historic Trust Inventory sites have been removed from consideration in Baltimore County since the Maryland Historic Trust admitted that their inventory was inaccurate. The Weisberg inn is also on the National Register of Historic Sites, and at the present time 6 Telecommunication towers are visible from the Inn. The proposed tower would be clearly visible from the Inn due to the tower's higher elevation and height. The Maryland Historic Trust has failed to notify the Baltimore County Landmarks Commission of their action as required by law.
4. The proposed tower would be clearly visible to 88 SFD's (single family dwellings). 52 of the 88 SFD's are in the \$400,000-\$500,000 price range.
5. To the best of our knowledge, no one in the I-83-York Road corridor from Towson to the Pennsylvania Line has any difficulty using a cell phone indicating that there is adequate tower coverage. AT&T would have no difficulty providing service if they would utilize the existing facilities.
6. The so called balloon test does not, nor was it ever intended, to simulate the appearance of a tower. Its purpose is to provide the engineers with measurements of the signal strength at the site. This is especially true if there is any breeze since the balloon being lighter than air would not rise straight up to 199 feet.
7. If Baltimore County permits the construction of the proposed tower, it would be in violation Sec 704 (a) (7) (B) (i) (I) of the Telecommunications act of 1996. Baltimore County would be discriminating in favor of AT&T over the other wireless service providers.

Thanks for all of the work you have put into this case. Good Luck!!

"Doc"

Post-It® Fax Note	7671	Date	# of pages ▶ 2
To	Peter Max Z. [unclear]	From	Doc
Co./Dept.		Co.	
Phone #		Phone #	
Fax #	410 332 3477	Fax #	

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the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

"(i) An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way)."

**SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.**

(a) **NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY.**—Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(7) **PRESERVATION OF LOCAL ZONING AUTHORITY.**—

"(A) **GENERAL AUTHORITY.**—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

"(B) **LIMITATIONS.**—

"(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

"(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

"(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

"(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

"(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

"(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

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"(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'personal wireless services' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

"(ii) the term 'personal wireless service facilities' means facilities for the provision of personal wireless services; and

"(iii) the term 'unlicensed wireless service' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v))."

(b) RADIO FREQUENCY EMISSIONS.—Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) AVAILABILITY OF PROPERTY.—Within 180 days of the enactment of this Act, the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

**SEC. 706. MOBILE SERVICES DIRECT ACCESS TO LONG DISTANCE CARRIERS.**

Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(8) MOBILE SERVICES ACCESS.—A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If



Post-it® Fax Note		7671	Date	# of pages <b>107</b>
To: <i>Peter Has F...</i>		From: <i>Dac</i>		
Co./Dept.		Co.		
Phone #		Phone #		
Fax #		Fax #		

IN LESS THAN 20 YEARS, THE U.S. WIRELESS INDUSTRY HAS BLOSSOMED FROM VIRTUALLY NOTHING TO ONE WITH 100 MILLION SUBSCRIBERS, AND IT CONTINUES TO GROW AT A RATE OF 25 TO 30 PERCENT ANNUALLY. GLOBALLY, THERE ARE OVER 470 MILLION WIRELESS SUBSCRIBERS, A NUMBER EXPECTED TO GROW TO APPROXIMATELY 1.3 BILLION WITHIN THE NEXT FIVE YEARS. IT IS AN INDUSTRY IN WHICH U.S. COMPANIES HAVE DEVELOPED THE LEADING TECHNOLOGIES FOR CURRENT AND FUTURE SYSTEMS. IT IS AN INDUSTRY WHOSE PRODUCTS HELP PEOPLE THROUGHOUT THE WORLD COMMUNICATE BETTER AND IN MORE PLACES, SAVING TIME, MONEY, AND LIVES.

# TELECOMMUNICATIONS FACILITY SITING ISSUES

September/October 2001 ■ Volume XXXIV Number 5

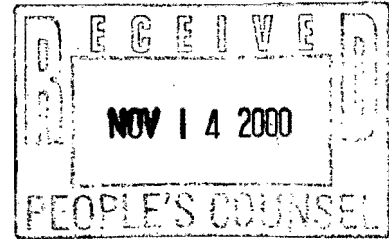
...at relatively high frequencies, requiring cell sites to be located fairly close together. As the number of users within a cell increases, the coverage area decreases due to the increase in spectrum usage. Telecommunications carriers constantly seek to upgrade and add new sites to their grids so that wireless networks can operate effectively.

When a carrier seeks to add an additional cell to its network, the new facility will be either a "co-location" or a new tower/pole. Generally, a "co-location" exists where a carrier seeks to install antennas on an existing structure, such as an existing tower or pole or a tall building, farm silo, or other structure of appropriate height. If a co-location site is not available, a carrier may look for a site to erect a new tower or pole. Co-location facilities are generally less expensive, entail fewer government approvals, and can be obtained more quickly than construction of new towers. Thus, carriers attempt to utilize co-location facilities whenever possible.

The Federal Communications Commission (FCC) is the federal agency that regu-

**ES**

Received: from aol  
(orion.co.ba.md.us [150.2.1.150])  
by inet\_gw.co.ba.md.us; Sun, 12 Nov 2000 20:12:00 -0500  
Received: from inet\_gw.co.ba.md.us ([150.2.1.123]) by hydra.co.ba.md.us  
(Netscape Messaging Server 3.01) with SMTP id AAA1AF2E  
for <peoplescounsel@co.ba.md.us>; Sun, 12 Nov 2000 20:15:10 -0500  
Received: from imo-r09.mail.aol.com  
(orion.co.ba.md.us [150.2.1.150])  
by inet\_gw.co.ba.md.us; Sun, 12 Nov 2000 20:11:34 -0500  
Received: from Ghharman@aol.com  
by imo-r09.mx.aol.com (mail\_out\_v28.32.) id v.52.33cc714 (3958);  
Sun, 12 Nov 2000 20:11:13 -0500 (EST)  
From: Ghharman@aol.com  
Message-ID: <52.33cc714.274099b0@aol.com>  
Date: Sun, 12 Nov 2000 20:11:12 EST  
Subject: AT&T  
To: peoplescounsel@co.ba.md.us  
Cc: Docmcq@aol.com  
MIME-Version: 1.0  
Content-Type: multipart/mixed; boundary="part1\_52.33cc714.274099b0\_boundary"  
X-Mailer: Windows AOL sub 110



--part1\_52.33cc714.274099b0\_boundary  
Content-Type: text/plain; charset="US-ASCII"  
Content-Transfer-Encoding: 7bit

The following letter is being mailed to you by US Postal Service as well as  
via email.

PLEASE advise if there are any problems with this transmission. The  
attachment is the same letter as below in Word format.

Hanover Road Association, Inc.  
P.O. Box 70  
Boring, MD 21020

November 12, 2000

Mr. Peter Max Zimmerman Esq.  
People's Counsel of Baltimore County  
Old Court House, basement  
400 Washington Ave.  
Towson, Md. 21204

Re: Herbert A. Bellman and AT&T Wireless Services - Case #01-047-SPHX

Dear Mr. Zimmerman,

I am writing on behalf of the Hanover Road Association, Inc. in regard to  
the above referenced case. The Hanover Road Association has goals for the  
maintenance of the rural character and associated aesthetic conditions that  
parallel those that are promoted in the County Master Plan. Since the advent  
of cellular phone communications and the transmission towers that can

distract from the rural aesthetic conditions of rural Baltimore County, a comprehensive review and siting process was established to restrict the number of new cell phone towers. The process requires that existing structures, such as silos, electric transmission lines, and other existing towers be used preferentially over new structures.

The situation outlined in the above referenced case would appear to violate the intent of the siting process in that there are alternative structures available within prescribed distances to serve the needs of the requesting company. The Hanover Road Association, with full support of its Board of Directors, is willing to join your office, and the North County Coalition, in an appeal of the Deputy Zoning Commissioner's Order and Opinion of October 25, 2000 in the subject case.

In this regard, we are willing to offer oral or written support of any appeal that you might consider in this matter. Please feel free to contact me during the day at 410-631-3856, or in the evening at 410-526-2494 if you need to discuss this matter further.

Sincerely,

George Harman, President

cc: Dr. Richard McQuaid

-part1\_52.33cc714.274099b0\_boundary  
Content-Type: application/octet-stream; name="HRASUP~1.DOC"  
Content-Transfer-Encoding: base64  
Content-Disposition: attachment; filename="HRASUP~1.DOC"  
**Click to view Base64 Encoded File HRASUP~1.DOC**

Board of Appeals  
Court House  
Rm. 49  
400 Washington Ave  
Towson, Md. 21204  
06/25/01

To Whom it May Concern:

As a concerned resident of the area to be impacted by the communications tower (case file 01-47 SPHX), I would like to be informed when the public hearing is to take place. Thank you for your assistance in this matter.

Yours Truly,



Arlene Haddock  
212 Bentley Rd  
Parkton, Md. 21120

ORA HRQ  
DATE  
9/12/01  
#Ballman  
AT-7  
01-47

RECEIVED  
COUNTY BOARD OF APPEALS  
01 JUL -6 AM 8:17

January 10, 2001

RECEIVED  
COURTY BOARD OF APPEALS  
01 JAN 11 PM 12:50

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

RE: Cell Tower Antenna  
Appeal No. 01-47-SPHX

Dear Sir or Madam:

Please notify us of the hearing date for the above-referenced appeal.

Mr. & Mrs. Michael R. Thomas  
19818 York Road  
Parkton, MD 21120 ✓

Sincerely,

*Robyn R. Thomas*  
Robyn R. Thomas

Thanks Charlotte!  
Hillorie S. Morrison  
Zoning Associate  
Independent Contractor  
TH, Inc.  
Office (240) 264-8616  
PCS (443) 570-0014  
Fax (240) 264-8610  
12050 Baltimore Avenue  
Beltsville, MD 20705  
hillorie.morrison@voicestream.com  
2nd Floor  
SUITE?  
Voicestream  
Added ✓

**George Tyrie  
19826 York Rd  
Parkton, Md 21220  
410-584-4744**

February 18, 2001

Board of Appeals  
400 Washington Ave  
Room 49  
Towson, Md 21204

Re: Board of Appeals Number 01-47 SPHX- Parkton MD- Bellman Property

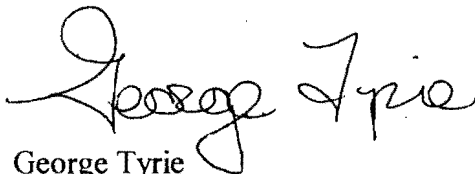
Dear Charlotte Ratcliff:

I called you on the phone requesting documentation to when the hearing is scheduled for the property located in the 19000 block of York Rd in Parkton Md which has been assigned a number of 01-47 SPHX which is printed on the sign located on the Bellman property. According to our conversation the owner of the property would like to erect a Wireless Cell Tower for AT&T.

I live at 19826 York Road in a small cul-de-sac just north of the property and I am against the erection of a proposed Cell Tower on the Bellman Property and would like to attend the hearing.

Can you please send me the documentation and schedule for this hearing.

Thank you for your assistance in this matter.



George Tyrie  
19826 York Rd  
Parkton, Md 21220 ✓

01 FEB 20 PM 12: 24

RECEIVED  
COUNTY BOARD OF APPEALS

Board of Appeals  
Court House  
Rm. 49  
400 Washington Ave  
Towson, Md. 21204  
06/25/01

To Whom it May Concern:

As a concerned resident of the area to be impacted by the communications tower (case file 01-47 SPHX), I would like to be informed when the public hearing is to take place. Thank you for your assistance in this matter.

Yours Truly,



Arlene Haddock  
212 Bentley Rd  
Parkton, Md. 21120

RECEIVED  
COUNTY BOARD OF APPEALS  
01 JUL -6 AM 8:17

Service: LEXSEE@  
Citation: 211 f3d 79

211 F.3d 79, \*; 2000 U.S. App. LEXIS 5071, \*\*

360 [Degrees] COMMUNICATIONS COMPANY OF CHARLOTTESVILLE, Plaintiff-Appellee, v. THE BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, Defendant-Appellant. KEVIN DUDLEY; BARBARA DUDLEY; CARR DORMAN; MARGARET DORMAN; JACOB LOESER; CONNIE LOESER; STEPHEN INNES; BILL O. MAHONE; IRMA MAHONE; MARYANNE RODEHEAVER; STEPHEN THORNTON; M. BIRD WOODS; T. K. WOODS, JR.; DAVID VANROIJEN; JAMES McILNAY; MOLLY McILNAY; JULIA SCHNEIDER; MITCH McCULLOUGH; EDWARD L. AYERS; ABBY AYERS; PIEDMONT ENVIRONMENTAL COUNCIL; CITIZENS FOR FAUQUIER COUNTY; SCENIC AMERICA; LOCAL GOVERNMENT ATTORNEYS ASSOCIATION OF VIRGINIA, INCORPORATED; VIRGINIA ASSOCIATION OF COUNTIES; VIRGINIA MUNICIPAL LEAGUE; APPALACHIAN TRAIL CONFERENCE, Amici Curiae. 360 [Degrees] COMMUNICATIONS COMPANY OF CHARLOTTESVILLE, Plaintiff-Appellant, v. THE BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, Defendant-Appellee. KEVIN DUDLEY; BARBARA DUDLEY; CARR DORMAN; MARGARET DORMAN; JACOB LOESER; CONNIE LOESER; STEPHEN INNES; BILL O. MAHONE; IRMA MAHONE; MARYANNE RODEHEAVER; STEPHEN THORNTON; M. BIRD WOODS; T. K. WOODS, JR.; DAVID VANROIJEN; JAMES McILNAY; MOLLY McILNAY; JULIA SCHNEIDER; MITCH McCULLOUGH; EDWARD L. AYERS; ABBY AYERS; PIEDMONT ENVIRONMENTAL COUNCIL; CITIZENS FOR FAUQUIER COUNTY; SCENIC AMERICA; LOCAL GOVERNMENT ATTORNEYS ASSOCIATION OF VIRGINIA, INCORPORATED; VIRGINIA ASSOCIATION OF COUNTIES; VIRGINIA MUNICIPAL LEAGUE; APPALACHIAN TRAIL CONFERENCE, Amici Curiae.

No. 99-1816, No. 99-1897

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

211 F.3d 79; 2000 U.S. App. LEXIS 5071

January 24, 2000, Argued  
March 15, 2000, Decided

**PRIOR HISTORY: [\*\*1]**

Appeals from the United States District Court for the Western District of Virginia, at Charlottesville. James H. Michael, Jr., Senior District Judge. (CA-98-99-C).

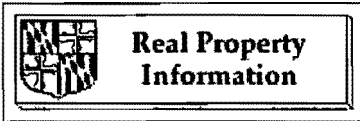
**DISPOSITION:** Judgment REVERSED.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Defendants appealed from summary judgment entered for plaintiff in the United States District Court for the Western District of Virginia, at Charlottesville, in an action challenging, under the Telecommunications Act of 1996, defendants' decision to deny plaintiff's application to build a communications tower.

**OVERVIEW:** Plaintiff telecommunications company challenged defendants' denial of plaintiff's application for a special use permit to build a telecommunications tower. Ruling on cross motions for summary judgment, the district court found that defendants' denial of the permit application was supported by substantial evidence, but the denial had the effect of prohibiting the provision of personal wireless services, a violation of § 704(a)(7)(B)(i)(II) of the Telecommunications Act, 47 U.S.C. § 332(c)(7)(B)(i)(II). The court agreed with the first conclusion, but not the second. Evidence in the record established that the proposed tower would violate several zoning requirements--it would alter the





**Maryland Department of Assessments and Taxation  
Real Property System**

[\[Go Back\]](#)

**BALTIMORE COUNTY**

[\[Start Over\]](#)

**DISTRICT: 07 ACCT NO: 1600011452**

**Owner Information**

**Owner Name:** BELLMAN HUBERT A **Use:** RESIDENTIAL  
**Mailing Address:** 11959 PHILADELPHIA RD **Principal Residence:** NO  
 BRADSHAW MD 21021

**Transferred**

**From:** ARENDT ARTHUR W **Date:** 10/18/1977 **Price:** \$0

**Deed Reference:** 1) / 5815/ 98 **Special Tax Recapture:**  
 2)

\* NONE \*

**Tax Exempt:** NO

**Location Information** [\[View Map\]](#)

**Premises Address:** YORK RD **Zoning:** **Legal Description:**  
 38.03 AC  
 WS YORK RD  
 1100 FT S KAUFFMAN RD

<b>Map</b>	<b>Grid</b>	<b>Parcel</b>	<b>Subdiv</b>	<b>Sect</b>	<b>Block</b>	<b>Lot</b>	<b>Group</b>	<b>Plat No:</b>
12	9	174					81	<b>Plat Ref:</b>

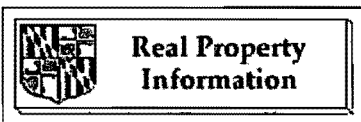
**Special Tax Areas** **Town:**  
**Ad Valorem:**  
**Tax Class:**

**Primary Structure Data**

<b>Year Built:</b>	<b>Enclosed Area:</b>	<b>Property Land Area:</b>	<b>County Use:</b>
0000		38.03 AC	04

**Value Information**

	<b>Base Value</b>	<b>Current Value</b>	<b>Phase-In Value</b>	<b>Phase-in Assessments</b>	
		As Of	As Of	As Of	As Of
		01/01/1999	07/01/2002	07/01/2001	07/01/2002
<b>Land:</b>	256,060	256,060			
<b>Impts:</b>	28,300	28,300			
<b>Total:</b>	284,360	284,360	NOT AVAIL	284,360	NOT AVAIL
<b>Pref Land:</b>	0	0	NOT AVAIL	0	NOT AVAIL



**Maryland Department of Assessments and Taxation  
Real Property System**

[\[Go Back\]](#)

**BALTIMORE COUNTY**

[\[Start Over\]](#)

**DISTRICT: 07 ACCT NO: 1900005066**

**Owner Information**

**Owner Name:** BELLMAN HUBERT A **Use:** RESIDENTIAL  
**Mailing Address:** ROUTE #7 **Principal Residence:** NO  
 BRADSHAW MD 21021

**Transferred**

<b>From:</b>		<b>Date:</b>		<b>Price:</b>	
<b>Deed Reference:</b>	1)			<b>Special Tax Recapture:</b>	
	2)				
				* NONE *	

**Tax Exempt:** NO

**Location Information** [\[View Map\]](#)

<b>Premises Address:</b>	<b>Zoning:</b>	<b>Legal Description:</b>
19810 YORK RD		2.519 AC
		MASON-DIXON VILLAGE

<b>Map Grid</b>	<b>Parcel</b>	<b>Subdiv</b>	<b>Sect</b>	<b>Block</b>	<b>Lot</b>	<b>Group</b>	<b>Plat No:</b>
12	9	131			4	81	Plat Ref: 46/ 41


<b>Special Tax Areas</b>	<b>Town:</b>
	<b>Ad Valorem:</b>
	<b>Tax Class:</b>

**Primary Structure Data**

<b>Year Built:</b>	<b>Enclosed Area:</b>	<b>Property Land Area:</b>	<b>County Use:</b>
0000		2.51 AC	04

**Value Information**

	<b>Base Value</b>	<b>Current Value</b>	<b>Phase-In Value</b>	<b>Phase-in Assessments</b>	
		As Of	As Of	As Of	As Of
		01/01/1999	07/01/2002	07/01/2001	07/01/2002
<b>Land:</b>	30,280	30,280			
<b>Impts:</b>	0	0			
<b>Total:</b>	30,280	30,280	NOT AVAIL	30,280	NOT AVAIL
<b>Pref Land:</b>	0	0	NOT AVAIL	0	NOT AVAIL

 <p><b>Real Property Information</b></p>	<p><b>Maryland Department of Assessments and Taxation Real Property System</b></p>
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[Go Back] BALTIMORE COUNTY [Start Over]

**DISTRICT: 07 ACCT NO: 1900005067**

**Owner Information**

**Owner Name:** BELLMAN HUBERT A **Use:** RESIDENTIAL  
**Mailing Address:** 11959 PHILADELPHIA RD **Principal Residence:** NO  
 BRADSHAW MD 21021

**Transferred**

<b>From:</b>	<b>Date:</b>	<b>Price:</b>
<b>Deed Reference:</b> 1)		<b>Special Tax Recapture:</b>
2)		* NONE *

**Tax Exempt:** NO

**Location Information [View Map]**

**Premises Address:** 19820 YORK RD **Zoning:** **Legal Description:**  
 6.099 AC  
 MASON-DIXON VILLAGE

<b>Map</b>	<b>Grid</b>	<b>Parcel</b>	<b>Subdiv</b>	<b>Sect</b>	<b>Block</b>	<b>Lot</b>	<b>Group</b>	<b>Plat No:</b>
12	9	131				5	81	<b>Plat Ref:</b> 46/ 41

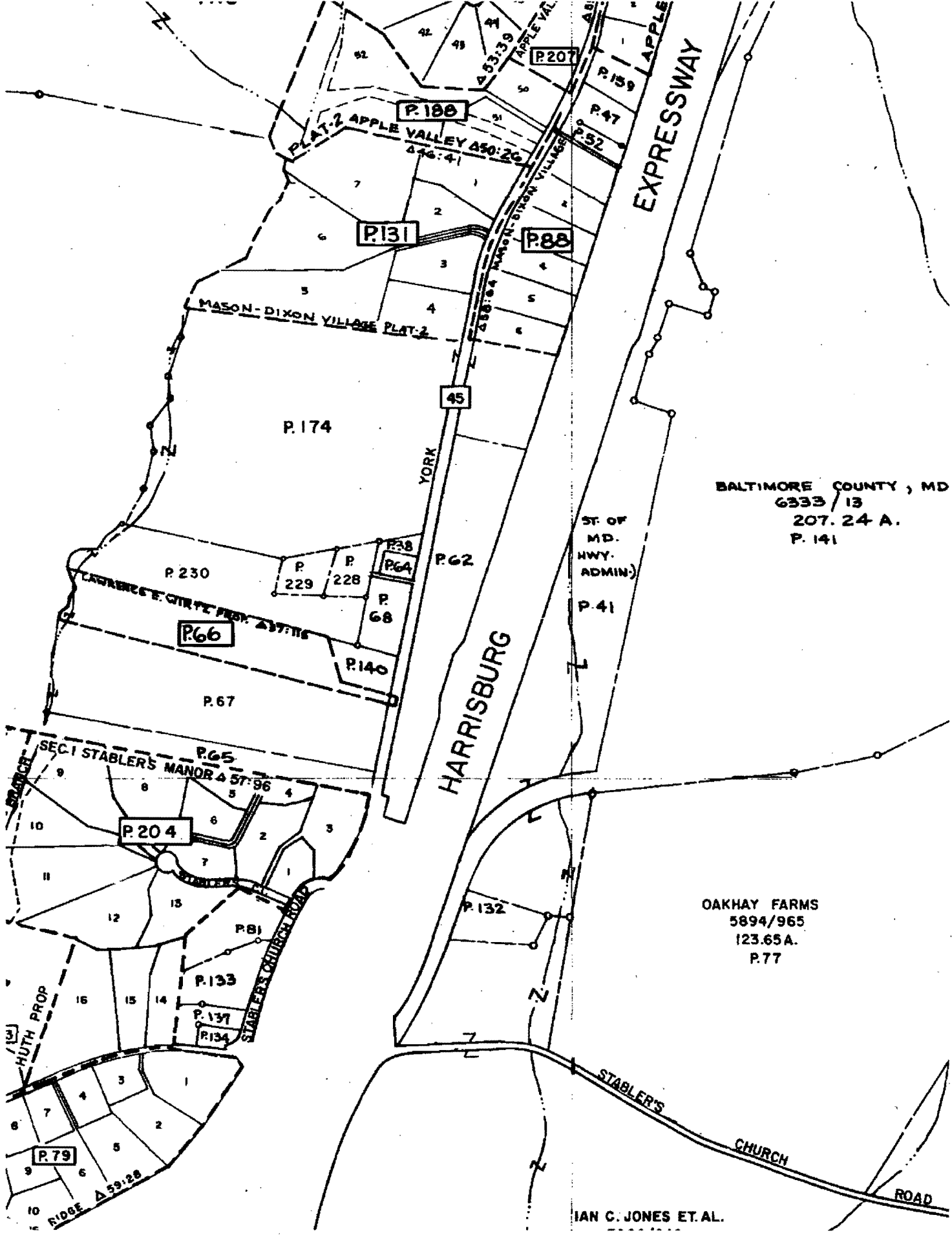
**Special Tax Areas** **Town:**  
**Ad Valorem:**  
**Tax Class:**

**Primary Structure Data**

<b>Year Built:</b>	<b>Enclosed Area:</b>	<b>Property Land Area:</b>	<b>County Use:</b>
0000		6.09 AC	04

**Value Information**

	Base Value	Current Value	Phase-In Value		Phase-in Assessments	
			As Of	As Of	As Of	As Of
			01/01/1999	07/01/2002	07/01/2001	07/01/2002
Land:	40,900	40,900				
Impts:	0	0				
Total:	40,900	40,900		NOT AVAIL	40,900	NOT AVAIL
Pref Land:	0	0		NOT AVAIL	0	NOT AVAIL



BALTIMORE COUNTY, MD  
 6333 / 13  
 207.24 A.  
 P. 141

OAKHAY FARMS  
 5894/965  
 123.65A.  
 P.77

IAN C. JONES ET.AL.

553(c). Portions of the Telecommunications Act other than section 704 contain similarly explicit language. See 47 U.S.C. 252(e)(1) (requiring "written findings as to any deficiencies" of certain agreements); *id.* § 271(d)(3) (requiring FCC to "state the basis for its approval or denial" of certain applications). Thus it is clear that Congress allows how to demand findings and explanations and that it refrained from doing so in section (B)(iii). See *Keene Co. v. United States*, 508 U.S. 200, 208, 113 S.Ct. 2035, 124 F.3d 118 (1998) ("Where Congress includes particular language in one section of a statute but omits it in another . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."). The simple requirement of a "decision . . . in writing" cannot reasonably be inflated into a requirement of a statement of . . . findings and conclusions, and the reasons or basis therefor."

The district court also derived its requirement of findings and an explanation from the alleged necessity for judicial review. To the extent that this rationale is separable from the court's reliance on federal administrative law, we reject it also. The separate substantial evidence requirement, discussed below, ensures more than sufficient information to enable judicial review of compliance with other parts of section 704(c)(7)(B). See *Orion & Co., Inc. v. Fulton County*, 5 F.3d 1351, 1354 (N.D.Ga.1998) (finding written notice of fact and date of denial of application to satisfy writing requirement, and proceeding to evaluate decision under substantial evidence requirement); *Bell-ath*, 944 F.Supp. at 926, 928 (implicitly same).

[5, 6] Turning to the second requirement of section (B)(iii), we hold that the City Council's decision was "supported by substantial evidence contained in a written record." The Supreme Court has explained that "[s]ubstantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as

We see no irregularity in the City Council issuing a verbatim transcript of its hearing after it made its decision and incorporating that transcript into the record. This is standard legislative practice, and the Act, unlike the APA, does not require a decision "on the record." 5 U.S.C.

adequate to support a conclusion." *Universal Camera v. NLRB*, 340 U.S. 474, 488, 71 S.Ct. 456, 95 L.Ed. 456 (1951) (internal quotations omitted). While "substantial evidence" is more than a scintilla, it is also less than a preponderance. *NLRB v. Grand Canyon Mining Co.*, 116 F.3d 1039, 1044 (4th Cir.1997). A court is not free to substitute its judgment for the agency's (or in this case the legislature's); it must uphold a decision that has "substantial support in the record as a whole" even if it might have decided differently as an original matter. *Id.* at 1044 (internal quotations omitted).

The Virginia Beach City Council is a state legislative body, not a federal administrative agency. The "reasonable mind" of a legislator is not necessarily the same as the "reasonable mind" of a bureaucrat, and one should keep the distinction in mind when attempting to impose the "substantial evidence" standard onto the world of legislative decisions. It is not only proper but even expected that a legislature and its members will consider the views of their constituents to be particularly compelling forms of evidence, in zoning as in all other legislative matters. These views, if widely shared, will often trump those of bureaucrats or experts in the minds of reasonable legislators.

In light of these principles, the City Council's decision clearly does not violate the "substantial evidence" requirement. The record here consists of appellees' application, the Planning Department's report, transcripts of hearings before the Planning Commission and the City Council,<sup>5</sup> numerous petitions opposing the application, a petition supporting the application, and letters to members of the Council both for and against. Appellees correctly point out that both the Planning Department and the Planning Commission recommended approval. In addition, appellees of course had numerous experts touting both the necessity and the minimal impact of towers at the Church. Such

§ 553(c). It is absurd to suggest that a hearing that the legislators themselves attended and participated in cannot be part of the record simply because they did not either produce a real-time transcript or postpone their vote until after the transcript was prepared.

evidence surely would have justified a reasonable legislator in voting to approve the application, and may even amount to a preponderance of the evidence in favor of the application, but the repeated and widespread opposition of a majority of the citizens of Virginia Beach who voiced their views—at the Planning Commission hearing, through petitions, through letters, and at the City Council meeting—amounts to far more than a "mere scintilla" of evidence to persuade a reasonable mind to oppose the application.<sup>6</sup> Indeed, we should wonder at a legislator who ignored such opposition. In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees, by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act so as always to thwart average, nonexpert citizens; that is, to thwart democracy. The district court dismissed citizen opposition as "generalized concerns." 979 F.Supp. at 430. Congress, in refusing to abolish local authority over zoning of personal wireless services, categorically rejected this scornful approach.

#### CONCLUSION

Accordingly, we reverse the district court and order summary judgment in favor of the City Council on the claims involving subsection (B)(i)(1) and section (B)(iii), and affirm the district court's grant of summary judgment in favor of the City Council on the claim involving subsection (B)(i)(1).<sup>7</sup>

IT IS SO ORDERED.



6. A few citizens did mention health concerns from radio emissions, a concern the Act precludes. 47 U.S.C. § 332(c)(7)(B)(iv), but these were a small fraction of the overall opposition, which focused on the appearance of the 135-foot towers and on the inappropriateness of commercial towers in a residential area. Cf. H.R. Conf. Rep. 104-458 at 208, reprinted in 1996 U.S. Code Cong. & Admin. News at 222 ("The conferees do not intend that if a State or local government grants a permit in a commercial district, it must also grant a permit for a competitor's 50-foot tower in a residential district.")

UNITED STATES of America,  
Plaintiff-Appellant,

v.

Iverson Troy BROWN, Defendant-  
Appellee.

No. 97-7181.

United States Court of Appeals,  
Fourth Circuit.

Argued June 4, 1998.

Decided Sept. 2, 1998.

Petitioner, who had entered successive guilty pleas to drug conspiracy charge and engaging in continuing criminal enterprise (CCE), moved to set aside CCE conviction on double jeopardy grounds. Following evidentiary hearing, the United States District Court for the Western District of North Carolina, Graham C. Mullen, J., granted petition. Government appealed. The Court of Appeals, Ervin, Circuit Judge, held that holding evidentiary hearing was error, and motion should have been decided on basis of record as it existed before evidentiary hearing.

Reversed and remanded.

#### 1. Double Jeopardy — 202

Defendant who entered successive guilty pleas to drug conspiracy charge and to engaging in continuing criminal enterprise (CCE) waived his right to collaterally challenge CCE conviction on double jeopardy

7. Because our statutory analysis resolves all issues in this case, we do not reach the City Council's arguments that section 704(c)(7) of the Act, at least as interpreted by the district court and appellees, is unconstitutional under cases such as *Printz v. United States*, \_\_\_ U.S. \_\_\_, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997), and *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). See *Hannan v. Brucker*, 355 U.S. 579, 581, 78 S.Ct. 433, 2 L.Ed.2d 503 (1958) (noting courts' "duty to avoid deciding constitutional questions presented unless essential to proper disposition of a case").

§ 541(c)(3) is likewise zero. The circuit court was thus correct in holding that Hartford has no obligation to Scott.

In this Court, General Accident argues that *the terms of the Hartford policy*, irrespective of § 541(c)(3), entitle Scott to coverage. General Accident did not present this argument to the circuit court. Therefore, we decline to consider it here. *See Md. Rule 8-131(a).*

**JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

670 A.2d 484

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

BEACHWOOD I LIMITED PARTNERSHIP.

No. 239, Sept. Term, 1995.

Court of Special Appeals of Maryland.

Dec. 1, 1995.

Reconsideration Denied Jan. 30, 1996.

People's counsel for county and neighbors of tract in question appealed decision of county board of appeals granting zoning reclassification which lowered permitted residential density as requested by developer. The Circuit Court, Baltimore County, John Grason Turnbull, J., affirmed. Counsel and neighbors appealed. The Court of Special Appeals, Moylan, J., held that: (1) evidence before board was not sufficient to generate fairly debatable issue that county council made mistake as to zoning of tract; (2) in granting reclassification, board failed to satisfy county code's requirements as to factors that must be considered in making reclassification, and as to written findings required for reclassifications involving land within certain critical area; and (3) reclassification would not be treated as instance of contract zoning.

Reversed.

Cathell, J., concurred and filed opinion.

### 1. Zoning and Planning ⇨672

As policy decision made by legislative branch of charter county, comprehensive zoning required no further justification to support it; it was presumptively correct.

### 2. Administrative Law and Procedure ⇨751

Ordinarily, when judicial branch of government is called on to review decision made by administrative agency, the watchword is deference.

At his hearing he testified to the events just described and offered two letters from his family. The letters stated that the guerrillas were still looking for him, continued to beat his family, and threatened to kill Velasquez for having escaped. The immigration judge rejected Velasquez' claim on the merits and on review in 1996 the Board of Immigration Appeals (the "Board") affirmed, noting also that the government and the guerrillas had just signed a peace agreement.

On this appeal the central issue (although not the only one) is whether the Board properly rejected Velasquez' claim of "persecution or a well founded fear [of] on account of . . . political opinion." 8 U.S.C. § 1101(a)(42)(A). The Board's findings must be accepted if based on substantial evidence, and we give some deference to the Board's application of legal standards to specific facts. *Favoglon v. INS*, 170 F.3d 68, 70 (1st Cir.), cert. denied, 528 U.S. 819, 120 S.Ct. 60, 145 L.Ed.2d 53 (1999). Abstract rulings of law (e.g., the formulation of the standards) would be reviewed *de novo, id.*, but are not primarily at issue on this appeal.

[1, 2] The Immigration and Nationality Act protects those who are threatened with persecution because they hold or are believed by their persecutors to hold political opinions. 8 U.S.C. § 1101(a)(42)(A); accord. *INS v. Elias-Zacarias*, 502 U.S. 478, 482, 112 S.Ct. 812, 117 L.Ed.2d 38 (1992). To win asylum, the applicant must persuade the Board that he has a subjective fear of such persecution and that the fear is reasonable, that is, that "a reasonable person" would fear danger and "would fear that the danger arises on account of his . . . political opinion." *In re S-P-*, 21 I. & N. Dec. 486 (BIA 1996) (en banc); accord. *Aguilar-Solis v. INS*, 168 F.3d 565, 572 (1st Cir.1999). In effect, the immigration judge and the Board concluded that it was objectively unreasonable to think that any threat posed to Velasquez

ing by the applicant. See 8 U.S.C. § 1253(b)(1) (1994) (amended by 8 U.S.C.

was based on the guerrillas' hostility to his political views.

[3] We think that the Board's judgment is based on substantial evidence and, if not inevitable, is at least reasonable. What the raw evidence shows is that the guerrillas sought to enlist Velasquez and other boys and later, perhaps, sought to punish him for evading their "draft"; but nothing indicates that this was because of any political belief of Velasquez, either express or imputed. There is no evidence that Velasquez ever expressed any political support for or opposition to either side (he said he was neutral) or that the guerrillas ever attributed to Velasquez any political views; and this is so even though "neutrality" could itself be a persecutable opinion. See *Novot-Umanica v. INS*, 896 F.2d 1, 3 (1st Cir.1990).

In insurgencies, both sides typically engage in forcible recruiting of boys or young men. Yes, in theory, the guerrillas could choose to target a young man who lived on a plantation, motivated by political views that they imputed to him; and the motivation for threatened persecution need not be shown to a certainty. *In re S-P-*, 21 I. & N. Dec. 486; see also *Aguilar-Solis*, 168 F.3d at 572. But there is nothing to show that such a motive was at work here. Absent such evidence, the classic pattern of forced recruitment is far and away the more plausible explanation. Nor does it help Velasquez if his escape or effort to avoid recruitment motivated the guerrillas' later visits. See *Elias-Zacarias*, 502 U.S. at 482-83, 112 S.Ct. 812.

The immigration judge and the Board credited Velasquez' first hand accounts but expressed some scepticism about the letters which were admittedly prompted by the deportation proceeding. The Board does not ban hearsay, *In re Grijalva*, 19 I. & N. Dec. 713, 721-22 (BIA 1988), and such reports are sometimes significant. But neither is the Board obliged to accept

§ 1231(b)(3) (Supp. II 1996); *Nelson v. INS*, 232 F.3d 258, 261 n. 2 (1st Cir.2000).

every such document at face value, without regard to motive or lack of corroboration. *Aguilar-Solis*, 168 F.3d at 570-71. We need not pursue the issue here because the letters—even if given full weight—do not show or suggest that any threat that existed was based on Velasquez' political views, real or imputed.

Certainly the risks that Velasquez faced in Guatemala were real ones and, from his standpoint, the threat posed to him by the guerrillas (and apparently the regular army as well) were no less real if motivated by recruiting goals rather than by any perception of his own politics. But Congress has chosen to define asylum as limited to certain categories; and with exceptions not here relevant, it has not generally opened the doors to those merely fleeing from civil war. See *Aguilar-Solis*, 168 F.3d at 572. Whether it should do so is for Congress and not the courts to determine.

Turning now to other alleged errors, we do not agree with Velasquez that the immigration judge ruled as a matter of law that a claimant had to show open political activity to establish a threat of political persecution. Nor is there any reason to think, as Velasquez claims, that the immigration judge or the Board misunderstood the law on mixed motive. See *In re S-P-*, 21 I. & N. Dec. 486. And, again contrary to Velasquez' position, the Board need not make detailed findings on every point. *Morales v. INS*, 208 F.3d 323, 328 (1st Cir.2000); *Chen v. INS*, 87 F.3d 5, 7 (1st Cir.1996). Those it made here are certainly adequate for effective review. Cf. *Gallins v. INS*, 147 F.3d 34, 43 (1st Cir.1998).

Finally, Velasquez says that the Board violated his due process rights by taking judicial notice of the 1996 Guatemala peace accords; he says that by relying on the accords for the first time only in its decision on review, the Board prevented him from countering the evidence or arguing about the inferences to be drawn. However, the Board manifestly rested its decision on the same ground adopted by the immigration judge. Whether the peace accord

reference is taken as an alternative ground or was intended as consolation, it does not affect the outcome.

The petition for review is denied.



**SOUTHWESTERN BELL MOBILE SYSTEMS, INC., d/b/a Cellular One, Plaintiff, Appellant,**

v.

**Laurence M. TODD, as he is a Member of and Constitute the Board of Appeals of the Town of Leicester, Worcester County, Massachusetts; Vaughn N. Hathaway, as he is a Member of and Constitute the Board of Appeals of the Town of Leicester, Worcester County, Massachusetts; James T. Buckley, as he is a Member of And Constitute the Board of Appeals of the Town of Leicester, Worcester County, Massachusetts; Linda G. Finan, as she is a Member of and Constitute the Board of Appeals of the Town of Leicester, Worcester County, Massachusetts; Dennis E. Hennessey, as he is a Member of and Constitute the Board of Appeals of the Town of Leicester, Worcester County, Massachusetts, Defendants, Appellees.**

No. 00-1164.

United States Court of Appeals,  
First Circuit.

Heard Oct. 5, 2000.

Decided March 30, 2001.

Wireless telecommunications service provider sued town zoning board of appeals, alleging that denial of permit to construct tower violated Telecommunica-

a fact that further supports combination of the prior art references.

The secondary factors do weigh in favor of VSC's position, as VSC has at least established a genuine issue of material fact regarding commercial success, long-felt need, and other considerations. However, taken as a whole, the primary factors are simply more weighty in this case. The plaintiff correctly stresses that the court may not ignore secondary considerations, see *Ryko Mfg. Co.*, 950 F.2d at 719, but it is equally true that a plaintiff that prevails on the secondary considerations factor does not necessarily prevail on the larger question of obviousness. "[A] court is entitled to weigh all the considerations, primary and secondary, and then render its decision." *Id.* In this case, the primary factors reveal that a clear television with UV stabilizers that is made of materials readily amenable to the addition of flame retardants was already offered for sale in a prison system. Accordingly, the motion must be granted.

An appropriate order follows.

#### ORDER

AND NOW, this 5th day of September, 2000, upon consideration of the Motion for Summary Judgment as to Patent Invalidity and Unenforceability submitted by defendant KTV, Inc., and joined by defendant American Institutional Supply, Inc., the response thereto, the parties' other submissions, and after a hearing, it is hereby ORDERED that the Motion is GRANTED. Claims 1-4, 7-11, and 15-17 of United States Patent Number 5,806,970 are INVALID. Claims 1-8 of United States Patent Number 6,030,097 are also INVALID.



#### APT PITTSBURGH LIMITED PARTNERSHIP Plaintiff,

v.

#### LOWER YODER TOWNSHIP, BERIA COUNTY, a political subdivision of the Commonwealth of Pennsylvania, and Zoning Hearing Board of Lower Yoder Township, Defendants.

No. CIV. A. 98-187J.

United States District Court,  
W.D. Pennsylvania.

July 26, 2000.

Wireless telecommunications proposed local zoning board, claiming denial of permit to construct tower under Telecommunications Act of 1996. On motions for summary judgment, the District Court, D. Brooks Smith, J., held: (1) zoning ordinance did not impermissibly prohibit provision of wireless services; (2) board's denial of permit was not unreasonably discriminatory; and (3) board's denial of variance was supported by substantial evidence.

Defendant's motion granted.

#### 1. Federal Civil Procedure 2470

Inference based upon speculation and conjecture does not create material dispute sufficient to defeat summary judgment. Fed.Rules Civ.Proc.Rule 56, U.S.C.A.

#### 2. Federal Civil Procedure 2539

Affidavit that is essentially conclusory and lacking in specific facts is inadequate to create material factual dispute sufficient to defeat summary judgment. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

#### 3. Federal Civil Procedure 2539

Statements made only on belief or information and belief may not be considered on motion for summary judgment. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

Cites 111 F.Supp.2d 664 (W.D.Pa. 2000).

#### Zoning and Planning 614

Telecommunications Act of 1996 seeks to balance two competing goals: (1) goal of promoting growth in personal communications services industry through expansion of communications towers, with (2) goal of preserving authority of state and local governments to regulate land use and zoning. Telecommunications Act of 1994, § 251 et seq., as amended, 47 U.S.C.A. § 251 et seq.

#### Zoning and Planning 676

Local zoning ordinance, which did not expressly permit erection of wireless communication towers, did not impermissibly prohibit provision of wireless services; variance allowed for construction of "communications" towers an "any other" use not specifically listed. Telecommunications Act of 1994, § 332(c)(7)(B)(i)(II), as amended, 47 U.S.C.A. § 332(c)(7)(B)(i)(II).

#### Zoning and Planning 676

Local zoning ordinance, which prohibited wireless communication towers in conservation zone but allowed them in industrial zone, did not have effect of impermissibly prohibiting provision of wireless services; substantial evidence that gap in applicant's service was not already being served by other provider or that placement of proposed tower in conservation zone was not an intrusive way to fill any gap that did exist. Telecommunications Act of 1994, § 332(c)(7)(B)(i)(II), as amended, 47 U.S.C.A. § 332(c)(7)(B)(i)(II).

#### Zoning and Planning 574

District court's review of claim that zoning decision violated Telecommunications Act of 1996 is not necessarily limited to record compiled by state or local authority. Telecommunications Act of 1994, § 251 et seq., as amended, 47 U.S.C.A. § 251 et seq.

#### Zoning and Planning 384.1

Local zoning board's denial of permit to construct wireless communication tower in conservation zone was not unreasonably discriminatory absent evidence that other,

functionally equivalent providers had been permitted to build in zone, or that structure, placement or cumulative impact of any existing facilities were equivalent to proposed tower. Telecommunications Act of 1994, § 332(c)(7)(B)(i)(I), as amended, 47 U.S.C.A. § 332(c)(7)(B)(i)(I).

#### 9. Zoning and Planning 539

Local zoning board's denial of variance to construct wireless communication tower in conservation zone was supported by substantial evidence, absent showing that land in question was uniquely required or that unusually tall tower being proposed was necessary. Telecommunications Act of 1994, § 332(c)(7)(B)(iii), as amended, 47 U.S.C.A. § 332(c)(7)(B)(iii).

#### 10. Zoning and Planning 672

Under Pennsylvania law, zoning ordinance is presumed to be valid and constitutional, and such presumption can be overcome only in those rare instances when ordinance excludes otherwise legitimate use.

#### 11. Zoning and Planning 676

Under Pennsylvania law, zoning ordinance was valid and constitutional absent showing it effectively excluded construction of all wireless telecommunications towers.

#### 12. Constitutional Law 278.2(1)

Decision of local zoning board does not violate substantive due process unless it is arbitrary or irrational. U.S.C.A. Const.Amend. 14.

#### 13. Constitutional Law 228.2

Decision of local zoning board does not violate equal protection unless plaintiff proves that it was treated differently from similarly situated landowners without any reasonable basis. U.S.C.A. Const.Amend. 14.

Clifford B. Levine, Alice B. Mittinger, Thorp, Reed & Armstrong, Pittsburgh.



with respondents twenty-four and thirty-five. Respondent twenty-four cited the name, color, logo, and "look" of the NutraSweet box as similar to the NutraTaste box but NutraTaste does not have a logo, only NutraSweet does. Yet, the response did mention that the "look" was confusingly similar and this response was included for that reason.

Dr. Rappeport testified at his deposition that he believes respondents "don't tend to think in terms of trade dress" and may not be capable of distinguishing the sources of their confusion. This is quite possible. The court did not discount the vague responses described above because there may be a similarity in "the general look and feel" of the packages that respondents find hard to pin down.

The court points out that this 7.81% (20 out of 255) confusion is strikingly close to the 7-8% confusion found by the court in the 1999 decision (nine confused responses out of a total one hundred and seventeen persons) surveyed. Neither result is sufficient to raise an issue of material fact as to the likelihood of consumer confusion.

[6] The weakness of the survey as evidence of actual confusion is highlighted by the fact that plaintiff has presented no evidence of actual confusion in the marketplace. Both products have been on the market since the fall of 1997. That is ample time for at least a single occurrence of consumer confusion to surface. While plaintiff's failure to document any instance of actual consumer confusion does not preclude a finding of actual confusion the court may infer from the absence of such evidence that there is minimal, if any, likelihood of confusion. See *Plus Products v. Plus Discount Foods, Inc.*, 722 F.2d 999, 1006 (2d Cir.1983).

(iii) *Defendant's Bad Faith*

Plaintiff argues that defendant designed its trade dress with the intention of capi-

talizing on plaintiff's reputation and goodwill. The record shows otherwise. Defendant adopted the NutraSweet trade dress for several legitimate reasons. Two of these reasons are particularly apparent to the court, (i) to take advantage of the wide recognition and popularity of the NutraSweet name and logo and (ii) to compete with its most likely competitor, NutraTaste, a product likely so-named to take advantage of defendant's established and widely recognized NutraSweet name.

In designing the NutraSweet package the defendant intended to capitalize on the goodwill built around its own powerful NutraSweet name and logo. Although plaintiff presents notes from the NutraSweet design team to show that defendant intended to copy the NutraTaste trade dress, these notes show that the "large swirl" and the use of the phrase "the original" figured prominently in design discussions. The dappling and shading of blue that plaintiff points to as infringement was a result of use of the industry standard blue coloring on the box and highlighting the name and logo with lighter shades. The object of the shading is to accentuate the NutraSweet name. These elements distinguish defendant's product from plaintiff's and build on defendant's strong reputation in the aspartame-based sweetener market.

[7] Defendant clearly designed its trade dress with the NutraTaste package in mind. Awareness of another's trade dress does not give rise to an inference of bad faith. See *Lang*, 949 F.2d at 583-84. Plaintiff relies on statements made by employees of Monsanto that the NutraSweet product was developed not only to capitalize on its long use of the NutraSweet name but also as a "gorilla warfare shelf-competitive brand to NutraTaste" aimed "to take share away from NutraTaste" as evidence of bad faith. But competition is not bad

faith. NutraTaste posed a competitive threat and was the leading product in the market defendant was entering. "[C]opying in order to market a functionally equivalent alternative product might well benefit consumers, which is one of the aims of the Lanham Act." *Fun-Damental Toy, Ltd. v. Gemmy Indus. Corp.*, 111 F.3d 993, 1005 (2d Cir.1997).

[8] Even if defendant did copy certain elements of plaintiff's trade dress, which is not at all evident, copying *per se* does not prove bad faith in determining confusion. For copying to be evidence of confusion the defendant must have copied for the purpose of causing confusion. See, e.g., *Edison Brothers Stores, Inc. v. Cosmair, Inc.*, 651 F.Supp. 1547, 1560 (S.D.N.Y. 1987). Placement of the NutraSweet name in bold black capital letters and the unique NutraSweet logo just above the center of the box contradict allegations that the defendant sought to confuse consumers about the source of their product. Plaintiff has not presented sufficient evidence to support a reasonable finding that the defendant intended its design to confuse purchasers as to the source of the products.

IV

After reviewing the new survey evidence submitted by plaintiff and considering the relevant *Polaroid* factors the court concludes that plaintiff has failed to raise a genuine issue of material fact as to the existence of a significant likelihood that reasonably prudent purchasers of NutraTaste would be confused into purchasing NutraSweet. Defendant's motion for summary judgment on all plaintiff's remaining claims is granted.

So ordered.



SITETECH GROUP LTD., Nextel  
of New York, Inc., and Sprint  
Spectrum, L.P., Plaintiffs,

v.

The BOARD OF ZONING APPEALS  
OF THE TOWN OF BROOKHAVEN,  
Defendant.

No. CV 00-1295.

United States District Court,  
E.D. New York.

March 30, 2001.

Wireless telecommunications service providers brought action against local zoning board, alleging that denial of special use permit to erect antenna tower violated Telecommunications Act of 1996. On cross-motions for summary judgment, the District Court, Wexler, J., held that board's finding that aesthetic concerns justified denial of permit was supported by substantial evidence.

Plaintiffs' motion denied; defendant's motion granted.

I. Zoning and Planning  $\S$  708

In determining whether town's denial of permit to construct personal wireless service facilities was supported by substantial evidence, court may neither engage in its own fact-finding nor supplant town authorities' reasonable determinations, record should be reviewed in its entirety, including evidence opposed to zoning decision, weight to be given the evidence is governed by local and state zoning laws. Communications Act of 1934,  $\S$  332(e)(7)(B)(iii), as amended, 47 U.S.C.A.  $\S$  332(e)(7)(B)(iii).

# ZONING HISTORY

74-36-X PETITION REQUEST FOR SPECIAL EXCEPTION TO OPERATE AN ANTIQUE SHOP WITH AN ASSOCIATED FLEA MARKET. THE ANTIQUE SHOP WOULD BE LOCATED ON THE 4.33 ACRE PARCEL BETWEEN YORK ROAD AND I-83. THE FLEA MARKET WOULD BE LOCATED ON THE 37.9 ACRE PARCEL ON THE NORTH SIDE OF YORK ROAD OPPOSITE THE PROPOSED ANTIQUE SHOP. THE SPECIAL EXCEPTION WAS GRANTED ON SEPTEMBER 13, 1973 BY THE DEPUTY COMMISSIONER OF BALTIMORE COUNTY SUBJECT TO THE FOLLOWING RESTRICTIONS: 1) STRICT COMPLIANCE WITH THE HEALTH DEPT. REQUIREMENTS SET FORTH IN A LETTER ADDRESSED TO MRS. A.W. ARENDT AND SIGNED BY WILLIAM M. GREENWALT, R.S., DIRECTOR, DIVISION OF SANITARY ENGINEERING, MARKED PETITIONER'S EXHIBIT 2. 2) A MINIMUM AMOUNT OF GRADING AS MAY BE NECESSARY FOR THE ENTRANCE AND PARKING AREA ON THE 37.91 ACRE FLEA MARKET SITE. 3) MAINTAINING A SUBSTANTIAL STAND OF GRASS ON THAT PORTION OF THE 37.91 ACRE SITE THAT IS UTILIZED FOR THE FLEA MARKET INCLUDING PARKING AREA. SAID PARKING AREA MUST BE DELINEATED BY WHEEL STOPS OR SOME FORM OF BARRIER CAPABLE OF CONTAINING THE CARS WITHIN THE PARKING AREA. 4) OPERATING THE FLEA MARKET NOT MORE THAN SIX (6) DAYS IN ANY ONE (1) CALENDAR YEAR. 5) APPROVAL OF CHANGE OF OCCUPANCY, REQUIRED BUILDING PERMITS, AND FUNCTIONAL SITE PLAN BY THE S.H.A., HEALTH DEPT., DEPT. OF PUBLIC WORKS AND THE OFFICE OF PLANNING AND ZONING.

75-79-A PETITION FOR A VARIANCE FROM SECTION 413.1e TO PERMIT (A) AND (B) TWO D/F SIGNS, TYPE 1, OF 32 SQ. FT. EACH AND (C) ONE S/F SIGN, TYPE #2, OF 50 SQ. FT. ON BARN AND (D) ONE D/F SIGN, TYPE #3, OF 21 S.Q. FT. AND (E) ONE S/F SIGN, TYPE #4, OF 32 SQ. FT. ON LOG HOUSE, IN LIEU OF THE PERMITTED 15 SQ. FT. THAT IN ACCORDANCE WITH THE FINDINGS, NO VARIANCE ARE NECESSARY, THAT PORTION OF THE OF THE ZONING COMMISSIONERS ORDER OF APRIL 23, 1975, GRANTING SUCH VARIANCES IS REVERSED, AND THE VARIANCES SOUGHT THEREIN BE AND THEY ARE HEREBY DENIED. THIS DECISION WAS ORDERED WAS GIVEN BY THE COUNTY BOARD OF APPEALS APRIL 29, 1977.

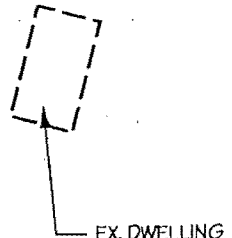
78-274-SPH PETITION FOR A SPECIAL HEARING UNDER SECTION 500.7 OF THE ZONING REGULATIONS OF BALTIMORE COUNTY, TO DETERMINE WHETHER OR NOT THE ZONING COMMISSIONER AND/OR DEPUTY ZONING COMMISSIONER SHOULD APPROVE AMENDMENTS TO THE SPECIAL EXCEPTION #74-36-X (ITEM NO. 246) DATED 9/13/73 THAT WOULD PERMIT A PERMANENT OPEN PAVILION TO BE CONSTRUCTED ON THAT AREA HENCEFORTH RESTRICTED TO TEMPORARY PAVILIONS. THE AMENDMENTS WERE GRANTED BY THE ZONING COMMISSIONER OF BALTIMORE COUNTY ON JUNE 27, 1977 SUBJECT TO THE APPROVAL OF A SITE PLAN BY THE S.H.A., DEPT. OF PUBLIC WORKS, THE DEPT. OF HEALTH, THE DEPT. OF TRAFFIC ENGINEERING AND THE OFFICE OF PLANNING AND ZONING, TO INCLUDE LANDSCAPING APPROVAL BY THE DIVISION OF CURRENT PLANNING AND DEVELOPMENT.

79-80-SPH PETITION FOR A SPECIAL HEARING UNDER SECTION 500.7 OF THE ZONING REGULATIONS OF BALTIMORE COUNTY, TO DETERMINE WHETHER OR NOT THE ZONING COMMISSIONER AND/OR DEPUTY ZONING COMMISSIONER SHOULD APPROVE AMENDMENTS TO THE SPECIAL EXCEPTION #74-36-X TO ALLOW EXPANSION OF THE BARN FOR ADDITIONAL SALES AND DISPLAY AREA. THE PETITION WAS GRANTED BY THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY ON OCTOBER 18, 1978 SUBJECT TO THE APPROVAL OF A SITE PLAN BY THE S.H.A., DEPT. OF PUBLIC WORKS AND THE OFFICE OF PLANNING AND ZONING, TO INCLUDE LANDSCAPING APPROVAL BY THE CURRENT PLANNING AND DEVELOPMENT DIVISION.

## REQUESTED ZONING ACTION

PETITION REQUEST FOR SPECIAL HEARING FOR AN AMENDMENT TO THE ORDER PASSED IN CASE 74-36-X TO EXTINGUISH AS TO A 5 ACRE PARCEL OUT OF THE ENTIRE 37.91 ACRE PARCEL THE SPECIAL EXCEPTION GRANTED TO USE THE PROPERTY FOR A FLEA MARKET.

PETITION REQUEST FOR SPECIAL EXCEPTION TO ALLOW A TELECOMMUNICATIONS MONOPOLE LESS THAN 200 FT. IN HEIGHT IN A RESIDENTIAL ZONE AS REQUIRED BY SECTION 426.5D OF THE BALTIMORE COUNTY ZONING REGULATIONS.



ELL

EXISTING METAL TRAILER  
TO BE REMOVED  
& GRAVEL  
REMAIN

## Telecommunications

### Evidence Supported Board's Refusal To Waive Siting Regulations

A town planning board's refusal to grant a waiver from regulations governing the siting of telecommunications facilities was supported by substantial evidence in the record as required by the Telecommunications Act (TCA), the U.S. District Court for New Hampshire has ruled (*USCOC of New Hampshire v. Town of Hopkinton*, 137 F.Supp.2d 9).

USCOC (U.S. Cellular) applied to the planning board for a waiver permitting construction of a communications tower outside the town's Wireless Telecommunications Facilities District, and a conditional use permit. U.S. Cellular had identified a coverage gap in its service in southeastern Hopkinton and the western part of the adjoining city of Concord. It proposed to close that gap by building a 150-foot monopole on Dimond Hill.

At the time the application was filed, the town's zoning ordinance provided for a "Wireless Telecommunications Facilities District," an overlay district consisting of all land higher than 750 feet above sea level and all town-owned lands, excluding historic sites. There are six hilltops in Hopkinton that are more than 750 feet above sea level. The ordinance also authorizes the planning board to grant waivers allowing construction of towers outside the overlay district.

#### Board Denies Waiver Request

After conducting five public hearings on the U.S. Cellular application, the planning board voted unanimously to deny the request for a waiver. In its notice of decision, the board said that though the proposed facility would not be detrimental to public safety, allowing construction outside the overlay district would be injurious to other properties and would not promote the public interest. The board also found U.S. Cellular had not demonstrated a particular and identifiable hardship or a specific circumstance warranting a waiver. It noted there were reasonable opportunities in other parts of the community to site wireless facilities that would cover the gap as well as providing coverage to western parts of Concord. Further, the board found that placing a tower at other locations within the overlay district would provide coverage to a greater geographic area of the town.

U.S. Cellular sued the town in federal court, seeking an order compelling the town to issue a permit for the tower at its preferred location. It

moved for summary judgment, arguing, inter alia, that the board's decision was not supported by substantial evidence.

Under the zoning ordinance's waiver provisions, the board may grant a waiver if it finds granting the waiver (1) will not be detrimental to the public safety, health or welfare, or injurious to other property and will promote the public interest; and (2) a particular and identifiable hardship exists or a specific circumstance warrants granting a waiver. The board found U.S. Cellular's application did not satisfy either prong of this test. Thus, the court said, the board's decision will stand if there was substantial evidence in the record to support either of its conclusions on the ordinance's two-part test.

#### Other Sites Offered Better Coverage

The transcript of the board's meeting indicated the members' concern that the proposed site would provide only limited coverage within the town's borders, the court said. Propagation studies U.S. Cellular submitted demonstrated that alternative sites within the overlay district would provide substantially more coverage within the town while closing most or all of the defined coverage gap. The Dimond Hill site would provide more coverage to the city of Concord than to Hopkinton. Construction of a tower on a hill within the overlay district would provide coverage to much of Hopkinton and would almost entirely close the coverage gap that existed within the town's borders. The board's conclusion that there were reasonable opportunities elsewhere in the community that would provide coverage to U.S. Cellular's target area was substantially supported by the record.

The court noted nothing in the Hopkinton zoning ordinance or the TCA requires a local zoning board to permit construction of a facility within its community to service neighboring jurisdictions. The board's refusal to accept U.S. Cellular's need to provide coverage to western Concord as a special circumstance warranting a waiver was reasonably based on substantial evidence in the record.

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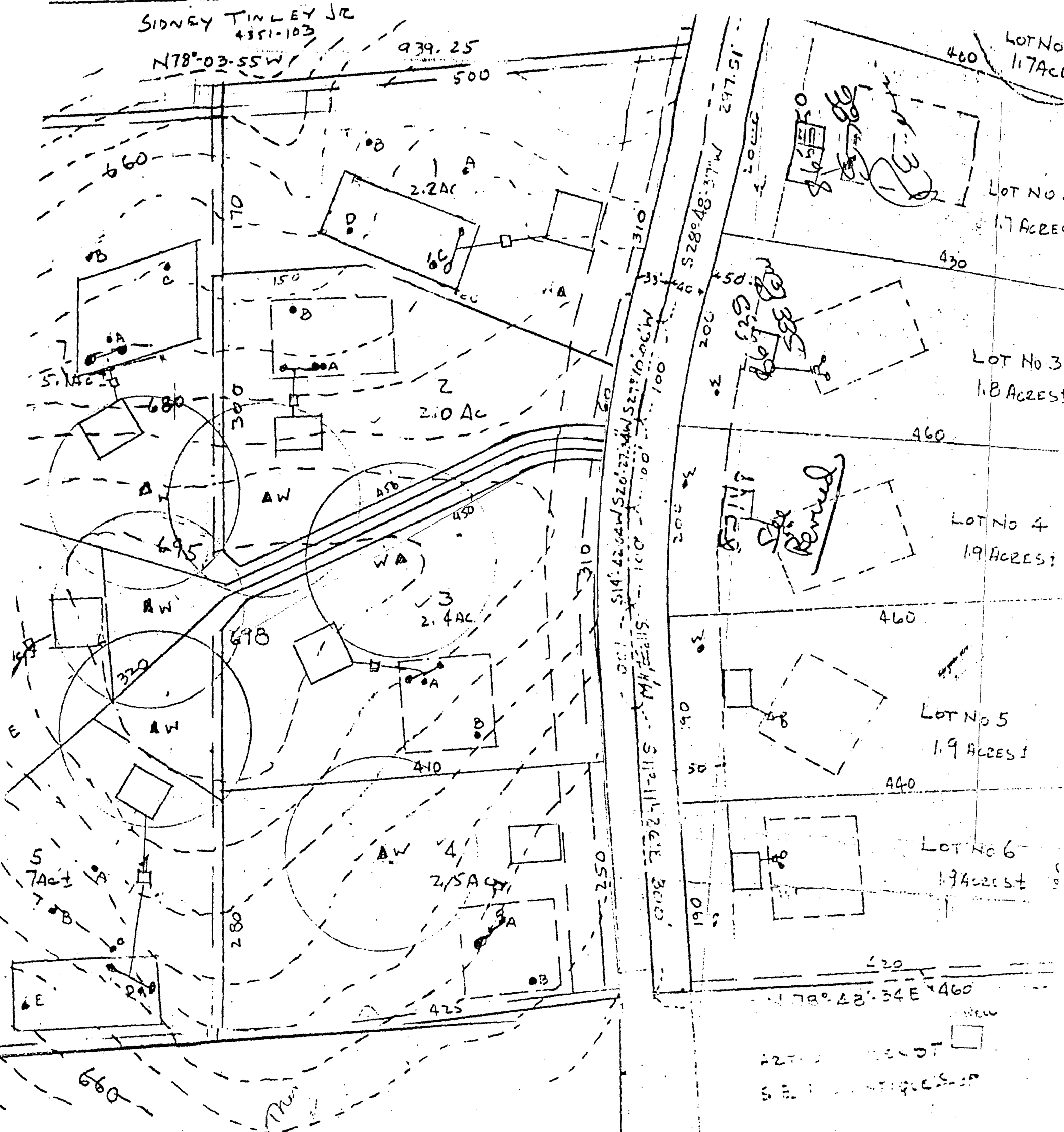
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1.7 ACRES

LOT NO 3  
1.8 ACRES

LOT NO 4  
1.9 ACRES

LOT NO 5  
1.9 ACRES

LOT NO 6  
1.9 ACRES



ZONE S.E. ANTIQUES  
(INTERMITTENT FLOW TRAFFIC)

ARTHUR ABENDT

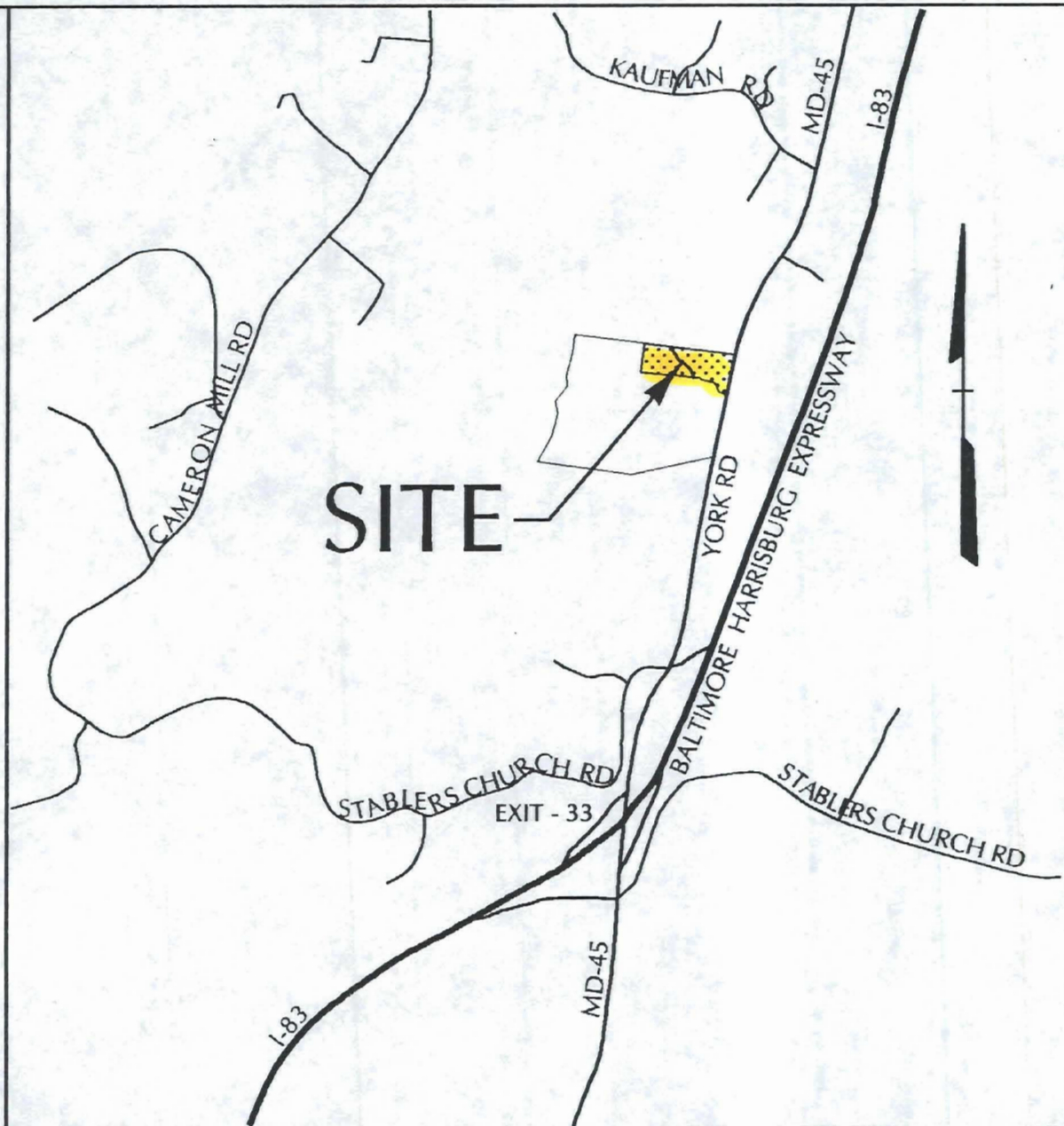
227.0	ACRES
5.0	ACRES
ZONED Z	
AREA 10.	
NO OF LOTS 6	
DENSITY 2	

PLAT NO 2  
MASON DIXON VILLAGE  
7TH DISTRICT - BALTO. CO. MD.

OWNER  
ARTHUR ABENDT  
MANOR ROAD  
GLENHARM MD

4 EC 5  
27 ACRES  
7  
.26

Master



## VICINITY MAP

SCALE: 1" = 2000'

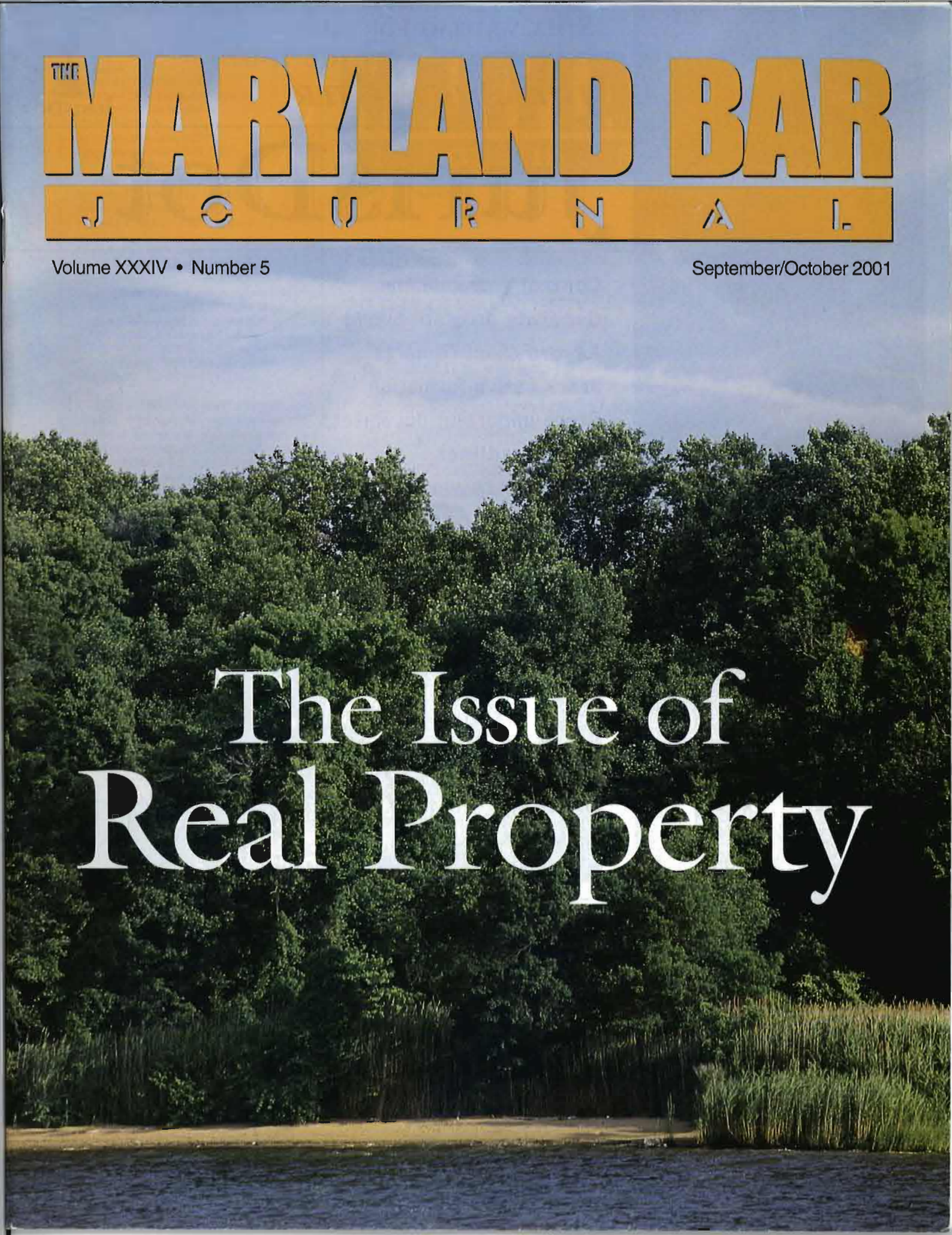
## LEGEND

# THE MARYLAND BAR

JOURNAL

Volume XXXIV • Number 5

September/October 2001



## The Issue of Real Property

199' Tower -

Report from Tower Review Committee - Dorf will provide

R #1 - Attendance list

Randolf Butz - ATT wireless - design engineer -

Exh 1 - Resume of Mr Butz

critical element - fills coverage gap

Computer model + topography of land "topology"  
plan view area of towers in the area

Co-locations available voice stream -

Exh 2 - Chart w/ map

Exh 4 - A B C D E

Spoke w/ neighbors →

5 years - AT + T

State of Md - 150-200

Balto Co. - 20

1/2 to 3/4 mile →

Design around existing towers -

Technology →

microcell design would not work  
B6E right of way

1 1/2 mile - mobile gets back to right of way  
20 miles is possible

Ⓢ B6E right of way = too far east - 2 1/2 miles  
he didn't talk to neighbors - another  
employee

elevation of site - 475' guessing  
is really 650 ft.

Bill Frances - TRM Tower Resource Management -  
Search firm given to him to  
do this 3 yrs. find sites

- dense trees -
- least impact
- existing towers or suitable structures
- settled farmland

- zoning preferences -  
heavy industrial  
residential  
nothing zoned Manf. Cons.

- topographical nature -  
400 ft across road  
dense vegetation  
70' trees

- majority tower shielded

- ~~Spring~~ Other companies don't have problems -  
why? he doesn't know
- ~~Heath~~ radius - 3/4 mile approx. - not sure -
- ~~Plot~~ right of way too far -
- # of residential properties -
- telephone poll is 50' -
- doesn't know if 4 times higher but it will be highest



doesn't know if other companies every mile of  
under test

Mitch Killman - DMW -  
zoning specialist

expert in zoning regulations

site plan

zoning planner -

a - no

b - no - no traffic

c - no

d - no - same

e - no - unmanned

f - no

g - no - SE use

met all setbacks / no variance

Master Plan - inconsistent w/

- never saw floor market

## Calley Thorne - Thorne Consultants Inc

- appraisal & consulting
- Resumé
- conducted 8 studies in Balto / DC area -

## Mr Denny - Engineer

- 400 times less than maximum
- any health hazards  $\rightarrow$  none -
- base six ft above ground level  $\rightarrow$  .0025 / ml  
per centimeter  
1. is permitted
- amount of power -  
height above ground level
- ATT identical with others -
- no controversy among experts
- public controversy
- evidence is not overwhelming -

Mike Thomas

80% field + scrub  
50-60 ft. -

- ✓ locator - how long 9 yrs. -  
- ✓ talked to you -

PC #4 - Chenault

- ✓ elevation - 50 ft -

50-60 ft on -  
rayland ~~was~~ residents  
homes. -

✓ flea market -

✓ value of house -

is there anything -

- ~~attracting business~~ -

- part of subdivision → who owned the developer of the  
subdivision - # of houses

- ~~numbers of surrounding structures~~, Section 1 p. 3

- garage opening auto frame - Section 4

- Section 3C - "no offensive activity" -

(F) no boat, trailers etc unless in garage -

(I) no signs

(K) no external antennae or disc w/o approval

can see from windows <sup>upstairs</sup> - very top

can see entire lot when leaves are off trees

lots 4+5 can be wooded when sold -

\* All phone coverage - Arizula

- health concerns →

280 ft.

✓ ① JETZON HAS COVERAGE  
WHY DOES AT&T NEED WELL SITE

② LOCATION ~~WORKS~~  
NOT SUITABLE

③ I LIVE 1 MILE NORTH OF  
THE EXXON STATION  
WHICH IS COMMERCIAL PROPERTY

④ ~~DO YOU KNOW HOW FAR EAST BGE~~  
~~RIGHT AWAY~~

④ FLEA MARKET

LOT 4 IS FOR BELLMAN

LOT 1

Testimony - Jan Staples  
\* Parkton Area Preservation Assoc.

Visual Impact

- ① I 83 + York Rd  
State scenic routes  
York Rd, also County scenic
- ② Towers interrupt scenic vista
- ③ Rural Area
- ④ Historic Area - including  
County Landmarks, State  
Historic Properties, National Register  
Properties (at least one in area)

Redundancy  
of tower

- ① No need - other towers  
(already testified)
- ② Never experienced gap in service  
- already have seamless coverage.

Precedent

for any Corp. entity to draw  
concentric circles of 1 1/2 mile  
diameter for future towers.

\* involved in protecting rural, historic, and  
scenic ~~and natural~~ nature of North  
County.

without a proper  
and all the other stuff

It was a very  
and the other stuff

and the other stuff  
and the other stuff

and the other stuff  
and the other stuff

and the other stuff  
and the other stuff

and the other stuff  
and the other stuff

and the other stuff  
and the other stuff

and the other stuff  
and the other stuff

and the other stuff  
and the other stuff

~~What should I speak about if I testify?~~

The guy - Hoffman is STUPID

# Points

Residences - height - zoning  
Historic landmark

Trees - deciduous - height - brush - 30-40

Closest other towers

Co-location -

recent cases

examples

multiple antennas  
(not exclusive leases)

Stealth technology

- hiding on buildings or transmission lines

\* \* Comparison with other tower locations

\* \* Efforts to secure reasonable alternatives

\* \* Favoring AT&T over other companies

FAA

Flea Market

# Exhibits

Rule 8

SHA Map,

MDP Map, letter from Lettre

Photos - aerial

Photos - individual

Zoning maps - 200 scale, 1000 scale

Pencil drawings - profile (not to scale)  
Horizontal 1" = 1000'  
Vertical 1" = 50'



**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) (~~Zoning Committee~~)  
of the Maryland Association.

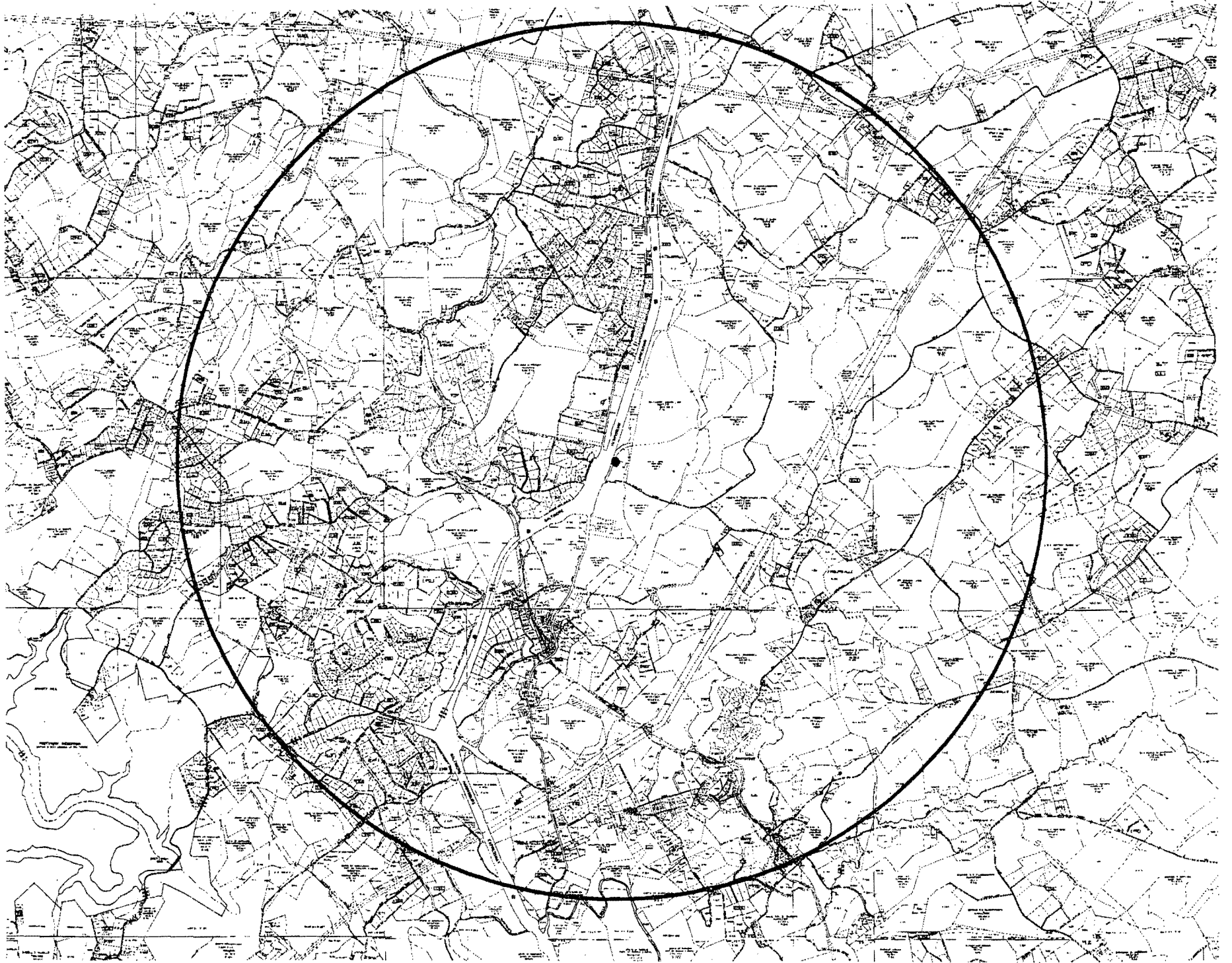
ATTEST:

Maryland Line Area Association

Lillian Enson  
Secretary

Richard G. McJannet  
President

DATE: Aug. 31, 2001



 3 mile radius

0



3 Miles

N

Verified  
9-12-01

# BELLMAN / AT+T WIRELESS EXHIBITS

CO-47 SPHX

EVIDENCE <sup>7 yrs later</sup>

502.1 Regs ~~proposed~~ <sup>to</sup> get SE  
As proposed months simply asking

Case # 01-47-SPHX Attn: William S. Van  
Nobert A. Bellman - Legal Director

Bellman - get  
EXH LIST  
WITNESS !!

✓ People's # 1 for 10 Attendance Sheet - 7 names  
<sub>Council</sub>

✓ "Township of New Line"

✓ Pet's #1 Mr. Butts' CV "Randell O. Butts curriculum vitae  
with Search Ring Area - Comp  
Current coverage piece Only TWK rather than  
Other TWK around Search Ring

✓ Pet's #2 Map of Coverage - Surrounds Bellman  
4 other TWK outside ring

✓ Pet's #3 Letter by VoiceStream 3/29/01 (tr to AT&T Wireless  
re BAN 157 Parcel)

✓ Pet's #4 8/9/01 Photos of site = 3  
A thru H

✓ Pet's #6 CHAS. C. DEARNT'S  
TWK Committee  
9/13/00 10M  
RASCOTE  
FAA Ruling - 5/29/00  
RE LIGHTING

✓ Pet's #5 OAKLEIGH J. THORNE'S CURRICULUM VITAE  
Thorne's CV Certified Real Estate Appraiser & Land  
Valuator

(LOOK FOR  
PLAN)

✓ #1 Site Plan PC = People Council &  
#2 Reduced site plan using smaller scale  
Subdivision

~~have copies of AT&T no longer~~

✓ #4 DECLARATION OF COVENANTS & RESTRICTIONS OF OWNERS OF LOTS W/ Developer Bellman 7/22/92  
FOR MASON-DIXON VILLAGE - SECTION TWO

✓ #5 ADC Exhibit 2 pgs - INDEX TO MAPS PAGE  
AND MAP 3  
a. Centre Pointers b. Specific Area near TWK

105 River Rd.  
York Haven, Pa. 17370  
Phone: 717-268-8442  
Mobile: 443-253-4437  
E-mail: Randy\_8525@msn.com

*Randy Butts*

# Randell O Butts

---

## Objective

Senior-Technical position in RF Engineering, Telecommunications, Electronics/ Computer field, with growth opportunity.

## Experience

2000 – Present                      **ATT Wireless, Baltimore / Washington DC**

### **RF Design / Performance Engineer**

- ◆ Responsible for complete design of new cell sites, including determining area and system needs for new sites, issuing search rings to Site Acquisition for candidate selection, testifying at zoning hearings, work with construction for most efficient ways of construction, approve final candidate and construction design, plan with network elements for implementation of new site into existing network.
- ◆ Maintain RF network performance, assuring cell sites perform to meet network standards of Accessibility and Retainability. Responsible for Baltimore City Core and Baltimore County.
- ◆ Re-design reuse scheme of existing Frequency plan to implement new sites in the system.
- ◆ Design in-building solutions for specific customers or buildings to provide a seamless network for our customers.

1999 – 2000                      **Nextel Partners Inc. Central Pa.**

### **RF / System Performance Engineer**

- ◆ Worked with Consultants on initial RF coverage design (using SAFCO Wizard propagation tool), initial frequency plan, and initial cell site construction design.
- ◆ Assumed responsibility of Sr. RF Engineer after final RF design was approved. Duties included but not limited to optimizing current coverage, identifying problem areas and implementing real working solutions to best benefit the customer in a timely and cost efficient manner. Maintained running inventory of equipment on hand forecasting needs of the market for future customer base growth.
- ◆ Oversaw all training of new cell-site technicians during initial launch of the market. Divided market into specific geographic regions assigning techs to those regions. Devised training schedule and system allowing all techs to share in training their peers with knowledge they had expertise in.
- ◆ Worked with Network Switch elements to ensure efficient usage of DS3's and T1 circuits. Engineered existing equipment to split T1 circuits for running more than 1 cell site on a single T1. Performed major market frequencies re-tune to tighten reuse due to frequency constraints and analog interference.

# Randell O Butts

---

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**Experience** 2000 – Present **ATT Wireless, Baltimore / Washington DC**

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Page 5

## OAKLEIGH J. THORNE, MAI, CRE

### EDUCATION

Bachelor of Arts, State University of New York 1964  
Graduate Courses, Urban Real Estate Development  
and Planning, American University, Washington, D.C. 1969 - 1972

### EXPERIENCE

Mr. Thorne has more than 35 years experience in real estate counseling, providing advice and information to clients on real estate market economics, participating debt structure alternatives, financial investment characteristics, and valuation of real property. Typical clients are corporations, commercial banks, pension funds, partnership entities, and individuals, both domestic and foreign.

Prior to forming THORNE CONSULTANTS, INC., Mr. Thorne was Director-Acquisitions for Huntmar Associates, Ltd. and actively sought the purchase of investment-grade real estate in the Mid-Atlantic region for European equity funds. Mr. Thorne was First Vice President and Regional Manager of Coldwell Banker's Consultation Division in Washington for eight years. His primary responsibilities included business development and P&L performance for Coldwell's East Coast Consultation and Appraisal offices. In this position, he designed Coldwell's Office Lease Analysis system for tenants seeking new or expansion space in major urban Northeast markets. While at the Richard Roberts Co. (1976-1978) in Hartford, Mr. Thorne (Vice President of Acquisitions) acquired about \$50 million in residential and office projects from the R.E.O. accounts of financial institutions.

### PROFESSIONAL AFFILIATIONS AND LICENSES

- The Counselors of Real Estate (CRE) - Member, 1985-Present
- Urban Land Institute (ULI) - Sustaining Member, 1970-Present
- Appraisal Institute (MAI) - Member, 1971-Present; Continuing Education Completed Through December 31, 2003
- State of Maryland, Certified General Appraiser # 04-1956; Valid Through January 17, 2004
- District of Columbia, Certified General Appraiser # GA10140; Valid Through February 28, 2002
- Commonwealth of Virginia, Certified General Real Estate Appraiser # 001708; Valid Through July 31, 2002

### PUBLICATIONS

- "Demand for Biomedical Facilities," Real Estate Issues, The Counselors of Real Estate, Spring 2000
- "The Changing Role of the Counselor," Real Estate Issues, The Counselors of Real Estate, Fall 1999
- "The Tenant Representation Process," Perspective, SIOR, March/April 1988
- "The Electronic Spreadsheet and Participating Lenders' Yields," Appraisal Journal, April 1988
- "Joint Ventures in the Eighties," Real Estate Review, Summer 1988
- "Comparative Lease Aging and Lotus 1-2-3," Real Estate Review, Spring 1985
- "Corporate Real Estate Management and Value," Tape Cassettes, Society of Real Estate Appraisers, 1979
- "Development Strategy," Industrial Development Handbook, Urban Land Institute, 1976
- "Marketability and Market Analysis," a two-day seminar program for the Society of Real Estate Appraisers, 1976
- "Financial Analysis - The State of the Art," Appraisal Journal, January 1974 - This article won the Institute's 1975 Charles B. Shattuck Award

### ACTIVITIES

- Panel Moderator, "Eminent Domain Issues in Metropolitan Washington, D.C.," September 1998
- Member of Advisory Services Panel for ULI Conference on "Adaptive Re-Use of World's Fair Site in Knoxville, Tennessee," July 1998
- Panel Speaker - "The Georgetown Park Story," Washington, D.C., Spring 1988, Convention of the American Society of Real Estate Counselors
- Discussion Group Leader - "Practice Development for Counselors," Honolulu, November 1987, Convention of the American Society of Real Estate Counselors
- Panel Moderator - "Canadian Real Estate Development Perspective," Toronto, Canada, May 1986, Convention of the American Society of Real Estate Counselors. Representative companies - Olympia and York, Cadillac Fairview, Trizec, and Bramalea
- Member of Advisory Services Panel for ULI Conference on "Downtown Housing and Retail Strategies Evaluation for the City of Columbus, Ohio," September 1985

### PROFESSIONAL LECTURER

Mr. Thorne taught "Capitalization Theory and Techniques-Part B" and "Case Studies" (now referred to as Course 550) from 1978-1992 at American University. Since 1992, he has been teaching Course 550 at various national locations for the Appraisal Institute.

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**Mitchell J. Kellman**  
**3907 Esgarth Way**  
**Owings Mills, Maryland 21117**  
**(H) 410/998-9118 (W) 410/887-3391 or 8122**

**Objective:** To establish myself in a progressive organization, using my strong organizational skills, experience and versatility to meet challenges and to grow.

**Education:** High School Diploma, 1978, Milford Mill Sr. High School, Baltimore, Maryland. Bachelors Degree, Geography and Environmental Planning, Concentration in Urban Planning, 1983, Towson State University, Towson, Maryland. Masters Degree, Geography and Environmental Planning, Concentration in Urban Planning, Proficiency Certificate in Urban Planning, 1987, Towson State University. Member of Gamma Theta Epsilon (International Geographic Honor Society), 1985-1987.

**Work Experience:**

January, 1988 Baltimore County Office of Permits and Development Management - Development Control (formerly Baltimore County Zoning Office), Towson, Maryland.  
to Planner II (January, 1989 to present)  
Planning and Zoning Associate III (January, 1988 to January, 1989)  
Present **Responsibilities:** Review, approve and sign on behalf of the Director final development plans and record plats, in accordance with Baltimore County Zoning and Subdivision Regulations and County Review Group standards and comments. Approve County Review Group plans per Zoning Office compliance. Act as Zoning Office representative for Development Review Committee (DRC). Supervise Planning Associate II's and III's on special projects. Review petitions and site plans filed for zoning hearing approvals. Develop guidelines and checklists for approval procedures within Zoning Office. Operate computer terminal for final permit processing and approval. Meet with professionals and public on development projects to be approved by the County. Meet with other Baltimore County agencies on various projects. Act as Office representative at Economic Development meetings for special projects. Negotiate timelines with developers and engineers for select projects and act as "team leader" and project manager by supervising review staff to assure compliance and deadlines are met. Act as office coordinator on building permit intake for all work within tidal and nontidal floodplains. Coordinate with the State on possible floodplain violations. Advise the public and other County agencies on State floodplain regulations and building codes.

January, 1987 Baltimore County Office of Planning and Zoning.  
to Planning and Zoning Associate II  
January, 1988 **Responsibilities:** Assisted the public with current zoning regulations and permit processing and approval. Reviewed miscellaneous commercial site plans and permits for approval. Researched previous zoning hearing cases for relating, pending permit applications. Approved new dwelling permits and minor residential permits for final approval.

January, 1984 State Highway Administration, Baltimore, Maryland.  
to Planning Technician  
May, 1986 **Responsibilities:** Data input and cost analysis for the Consolidated Transportation Program (CTP) and Interstate Cost Estimate (ICE). Reviewed computer printouts for construction, planning and engineering costs for the aforementioned projects. Light drafting and engineering. Attended meetings with supervisor and computer programmer on ways to improve existing programs and implement new ones.

**Additional Education and Training:**

Community Relations seminar - 10 hours, State Highway Administration, May, 1985. Project Management seminar - 7 hours, Baltimore County Permits and Licenses, April, 1994. Floodplain Management - 14 hours, FEMA, September, 1994.

**Personal:** Married; Two Children; Age 36; Excellent Health.

**References:** Available upon request.



**BALTIMORE COUNTY, MARYLAND**  
**Interoffice Correspondence**

**DATE:** September 13, 2000

**TO:** Donald T. Rascoe, Development Manager  
Department of Permits and Development Management

**FROM:** Charles C. Dennis, Tower Coordinator, TRC

**SUBJECT:** AT&T Wireless Services' Tower Requests

The Tower Review Committee (TRC) met on August 24, 2000 to review and finalize the request from AT&T Wireless Services for the construction of two steel monopole towers in the northern section of Baltimore County. The first proposed monopole, located at 801 Bacon Hall Road, Sparks, Maryland, 21152, will have a height of 150 feet, while the second proposed monopole, located at 19807 York Road, Parkton, Maryland, 21120, will have a height of 199 feet. AT&T was represented at the meeting by Paul A. Dorf, Esq. and S. Leonard Rottman, Esq., attorneys with the law firm of Adelberg, Rudow, Dorf, Hendler, and Sameth.

The following factors were taken into consideration in evaluating the two AT&T tower site requests.

**Telecommunications Review**

The two proposed tower sites have been reviewed for technical merit, need, and the potential for co-location on existing structures. Because the two sites are in the same general geographical area, they were evaluated together. It is the Tower Review Committee's opinion that these communication structures are required in these areas to meet the Radio Frequency (RF) coverage objectives of AT&T along the Interstate 83 (I-83) corridor. Numerous potential co-location sites were examined. A summary of the evaluation of potential co-location sites is detailed below. In summary, no existing available sites were identified to mitigate the requirement for construction of these structures.

During a site visit to these proposed locations and to areas along I-83 anticipated to be covered by these new structures, it was noted that an AT&T cellular phone did not have AT&T service. In addition, RF propagation data provided by AT&T detailed that AT&T presently lacks service in this area.

During a site visit and after consultation with Baltimore County's tower map and database, no co-location sites within the immediate vicinity of these sites were located. Since no immediate co-location opportunities were found, the use of numerous existing sites to the south, between, and north of the proposed new construction was considered. The objective in evaluating existing sites was to consider the use of potentially three sites

*Handwritten signature and initials*  
6