

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

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

www.adelbergprudow.com

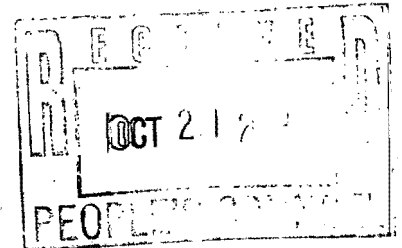
Paul A. Dorf

pdorf@adelbergprudow.com

10/16/02
g
PMZ
Telephone
410-539-5195
Facsimile
410-539-5834

October 14, 2002

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



RE: 801 Bacon Hall Road
S/S Bacon Hall Road, 2365' E of Cedar Grove Road
7th Election District - 3rd Councilmanic District
Legal Owners: Terry & Cheryl Dunkin
Contract Purchaser: AT&T Wireless Services
Case No.: 01-054-X

Dear Mr. Jablon:

I have just received notice that the referenced matter has been scheduled for Hearing on November 14, 2002.

I spoke to Commissioner Schmidt last Thursday, October 10, 2002, and requested this not be set in for a hearing.

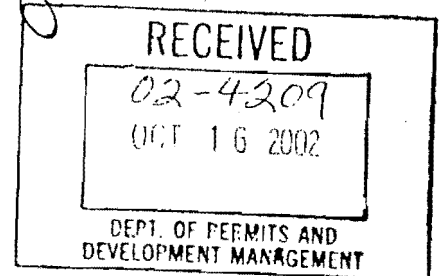
I am writing to request that the Hearing be removed from the November 14th docket and not be reset until requested by AT&T's counsel. I have spoken with all counsel and Commissioner Schmidt and they have no objection to this request.

Very truly yours,

Paul A. Dorf

PAD/mr

cc: Mr. and Mrs. Terry R. Dunkin
Mr. Bill Francis
Mr. Samuel Sacco



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OCT 16 2002

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

RE: 801 Bacon Hall Road
S/S Bacon Hall Road, 2365' E of Cedar Grove Road
7th Election District - 3rd Councilmanic District
Legal Owners: Terry & Cheryl Dunkin
Contract Purchaser: AT&T Wireless Services
Case No.: 01-054-X

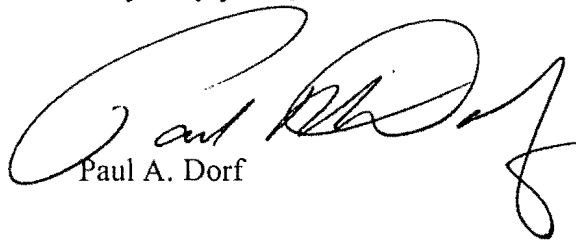
Dear Mr. Jablon:

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I spoke to Commissioner Schmidt last Thursday, October 10, 2002, and requested this not be set in for a hearing.

I am writing to request that the Hearing be removed from the November 14th docket and not be reset until requested by AT&T's counsel. I have spoken with all counsel and Commissioner Schmidt and they have no objection to this request.

Very truly yours,



Paul A. Dorf

PAD/mr

cc: Mr. and Mrs. Terry R. Dunkin

Mr. Bill Francis

Mr. Samuel Sacco

ADELBERG, RUDOW, DORF & HENDLER, LLC

Page 2

Mr. Arnold Jablon

October 14, 2002

Mr. Mitchell Kellerman

Mr. Michael McGarity

Richard C. Burch, Esq.

Mr. Jack Dillon

K. Donald Proctor, Esq.

Mr. Paul Hupfer

Mr. George B. McCeney

Mr. Kenneth T. Bosley

Office of Planning: DEPRM: People's Counsel Case File

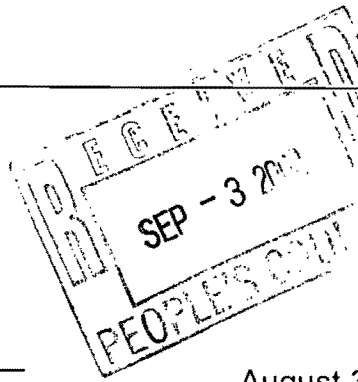
Karl J. Nelson, Esq.

Zoning Commissioner Lawrence E. Schmidt

Jeffrey J. Utermohle, Esq.



Baltimore County
Department of Permits and
Development Management



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

August 30, 2002

Adelberg Rudow Dorf & Hendler LLC
Paul A Dorf
600 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore MD 21201-2927

Dear Mr. Dorf:

RE: Case Number 01-054-X; 801 Bacon Hall Road

TERRY + CHERYL DUNKIN
AT&T WIRELESS

The above matter previously scheduled for Wednesday, September 11, 2002, at 9:00 a.m. in Room 407, County Courts Building, has been postponed at your request. Once the hearing has been rescheduled you will be notified by mail.

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with notice of the original hearing date, as quickly as possible a notice of the new hearing date should be affixed to the sign(s).

Very truly yours,

Arnold Jablon GDZ
Director

AJ: gdz

C: Zoning Commissioner Lawrence E Schmidt
Cheryl S & Terry R Durkin, 801 Bacon Hall Road, Sparks 21152
AT&T Wireless Services, Bill Francis, 11710 Beltsville Dr., Beltsville 20705
Mr & Mrs. Jim Werking, 806 Cold Bottom Road, Sparks 21152
Paul Hupfer, Greater Sparks Glencoe Community, 831 Walters Lane, Sparks 21152
K Donald Proctor, 102 W Pennsylvania Avenue, Towson 21204
Mitchel Kellman, DMW, 200 W Pennsylvania Avenue, Towson 21286
Richard C Burch Esquire, 105 W Chesapeake Ave, Ste 300, Towson 21204
Jack Dillon, valleys Planning Council, 207 Courtland Avenue, Towson 21204
George B McCeney, 1402 Glencoe Road, Glencoe 21152
Kenneth T Bosley, P O ox 585, York Road, Sparks 21152
Jeffrey J Utermohle Esquire, Law Offices Peter G Angelos, One Charles Center, 100 N Charles Street, Baltimore 21201-3812
People's Counsel



cod/pmr

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

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410-539-5834

July 26, 2002

Jeffrey J. Utermohle, Esquire
Law Offices of Peter G. Angelos
One Charles Center
100 North Charles Street
Baltimore, Maryland 21201

Richard C. Burch, Esquire
Mudd, Harrison & Burch
Suite 300
105 West Chesapeake Avenue
Towson, Maryland 21204

K. Donald Proctor, Esquire
102 West Pennsylvania Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
400 Washington Avenue
Towson, Maryland 21204

**RE: 801 Bacon Hall Road
Terry & Cheryl Dunkin
AT&T Wireless Services
Case No.: 01-054-X**

Gentlemen:

Please be advised that a balloon test has been re-scheduled for August 1, 2002 at 10:00 a.m. at the referenced site. The test will run until approximately 1:00 p.m. and will take place rain or shine.

Please advise any and all interested parties of the test.

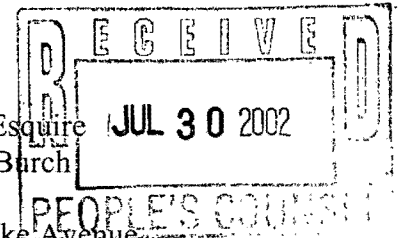
Very truly yours,


Paul A. Dorf

PAD/mr

dictated but not read

cc: Mr. Tom Gilligan
Mr. Mack McCullough
Mr. Richard Bass
Mr. Timothy Brenner
Mr. and Mrs. Terry R. Dunkin
Mr. Jack Dillon
Baltimore County Department of Permits and Development Management
Mr. Paul Hupfer
Mr. George McCeney
Mr. H. Barrett Peterson



ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

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

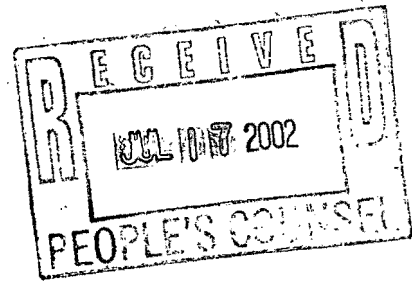
pdorf@adelbergprudow.com

www.adelbergprudow.com

Telephone
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Facsimile
410-539-5834

July 16, 2002



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

RE: 801 Bacon Hall Road
S/S Bacon Hall Road, 2365' E of Cedar Grove Road
7th Election District - 3rd Councilmanic District
Legal Owners: Terry & Cheryl Dunkin
Contract Purchaser: AT&T Wireless Services
Case No.: 01-054-X

Dear Mr. Jablon:

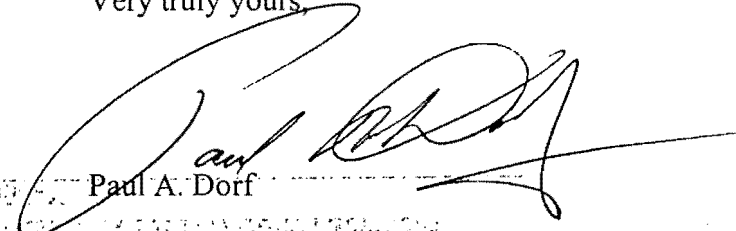
Please be advised that I represent AT&T Wireless Services.

I am sure you have received Mr. Utermohle's correspondence dated July 9, 2002, a copy of which is enclosed for your ready reference, requesting a postponement of the August 6, 2002 Remand Hearing. Please be advised that I am in agreement with Mr. Utermohle's request, and ask that the case not be put back on the docket until September.

I would also like to advise that a balloon test has been scheduled for August 1, 2002 starting at 10:00 a.m. and will run until 1:00 p.m.

Thank you for your consideration.

Very truly yours,



Paul A. Dorf

PAD/mr

ADELBERG, RUDOW, DORF & HENDLER, LLC

Page 2

Mr. Arnold Jablon

July 16, 2002

cc: Commissioner Lawrence E. Schmidt (courtesy copy)
Jeffrey J. Utermohle, Esquire
K. Donald Proctor, Esquire
Richard Burch, Esquire
Peter M. Zimmerman, Esquire
Mr. Timothy Brenner
Mr. Tom Gilligan
Mr. Jack Dillon
Mr. and Mrs. Terry Dunkin
Mr. Richard Bass

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ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

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

pdorf@adelbergprudow.com

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Telephone
410-539-5195

Facsimile
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July 12, 2002

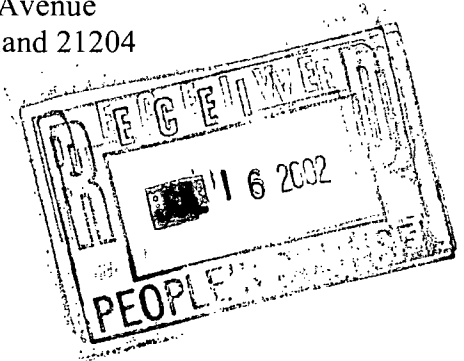
Jeffrey J. Utermohle, Esquire
Law Offices of Peter G. Angelos
One Charles Center
100 North Charles Street
Baltimore, Maryland 21201

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
400 Washington Avenue
Towson, Maryland 21204

Richard C. Burch, Esquire
Mudd, Harrison & Burch
Suite 300
105 West Chesapeake Avenue
Towson, Maryland 21204

Mr. Jack Dillon
Valleys Planning Council
207 Courtland Avenue
Towson, Maryland 21204

K. Donald Proctor, Esquire
102 West Pennsylvania Avenue
Towson, Maryland 21204



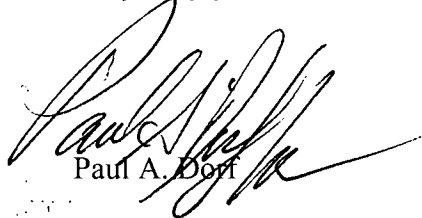
**RE: 801 Bacon Hall Road
Terry & Cheryl Dunkin
AT&T Wireless Services
Case No.: 01-054-X**

Dear Counsel:

Please be advised that a balloon test has been scheduled for July 18, 2002 at 10:00 a.m. at the referenced site. The test will last approximately three (3) hours, and will take place rain or shine.

Please advise any and all interested parties of the test.

Very truly yours,


Paul A. Dorf

PAD/mr

dictated but not read

cc: Mr. Tom Gilligan
Mr. Mack McCullough

Mr. Richard Bass

Mr. Timothy Brenner

Mr. and Mrs. Terry R. Dunkin

Baltimore County Department of Permits and Development Management

LAW OFFICES
PETER G. ANGELOS
A PROFESSIONAL CORPORATION
ONE CHARLES CENTER
100 N. CHARLES STREET
BALTIMORE, MARYLAND 21201-3812
410-649-2000 (800) 252-6622

cd
pm

JEFFREY J. UTERMÖHLE (MD, D.C.)
Law Offices of Peter G. Angelos
100 N. Charles Street, 20th Floor
Baltimore, MD 21201-3812
Direct Dial: (410) 649-2005
Fax: (410) 649-2150
E-mail Address: jutermohle@lawpga.com

OTHER OFFICES:
NEW YORK, NEW YORK
PHILADELPHIA, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA
PITTSBURGH, PENNSYLVANIA
BETHLEHEM, PENNSYLVANIA
WILMINGTON, DELAWARE
KNOXVILLE, TENNESSEE

July 9, 2002

Mr. Arnold Jablon, Director
Director's Office
Baltimore County Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

VIA FAX (410-887-5708) AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

UNRECORDED

Re: My client: Peter G. Angelos, owner of Marathon Farms
Case # 01-054-X
801 Bacon Hall Road
S/S Bacon Hall Road, 2365' E of Cedar Grove Road
7th Election District - 3rd Councilmanic District
Legal Owners: Terry & Cheryl Dunkin
Contract Purchaser: AT&T Wireless Services

Dear Mr. Jablon:

I represent an interested party (Peter G. Angelos, owner of Marathon Farms) in the above-referenced matter, which has been set for a Remand Hearing on Tuesday, August 6, 2002 at 9:00 a.m. in Room 407, County Courts Building. I first received notice of this Hearing Date only yesterday, July 8, 2002, when I read a fax transmittal of the "Notice of Remand Hearing" that was faxed to me by K. Donald Proctor, Esq., another attorney involved in this case. My appearance was previously entered in this matter when the case was at the Board of Appeals, and it was upon my Motion that the Board of Appeals issued its remand Order.

I respectfully request a postponement of the August 6, 2002 Remand Hearing because I am scheduled for a long-planned vacation on that date. Thank you for your kind consideration of my request.

Very truly yours,
Jeffrey J. Utermöhle

UNION PARK CENTER
5905 HARFORD ROAD
BALTIMORE, MD 21214-1846
410-426-3200
1800-492-3240
FAX 410-426-1269

COURT TOWERS, SUITE 300
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204
410-825-7300
FAX 410-296-2541

STEELWORKERS' HALL
540 DUNDALK AVENUE
BALTIMORE, MD 21224-2997
410-633-8100
FAX 410-633-0480

CENTERPARK II
SUITE 315
4061 POWDER MILL ROAD
BELTSVILLE, MD 20705-3149
(800) 537-8261
FAX 301-937-5738

63 HENDERSON AVENUE
CUMBERLAND, MD 21502-2452
301-759-2700
FAX 301-759-2703

201 S. CLEVELAND AVENUE
HAGERSTOWN, MD 21740-5745
301-739-4000
FAX 301-739-3848

PETER G. ANGELOS

Mr. Arnold Jablon, Director
July 9, 2002
Page 2

Sincerely,



Jeffrey J. Utermohle

JJU/rjs

cc: Paul A. Dorf, Esq.
Russell G. Alion Jr., Esq.
K. Donald Proctor, Esq.
Richard Burch, Esq.
Peter M. Zimmerman, Esq.

5/17/02

IN THE MATTER OF
THE APPLICATION OF
AT&T WIRELESS SERVICES; TERRY R.
AND CHERYL S. DUNKIN - LEGAL
OWNERS FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED ON THE S/S
BACON HALL ROAD, 2365' E OF CEDAR
GROVE ROAD (801 BACON HALL RD)
7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 01-054-X

* * * * *
**REMAND TO ZONING COMMISSIONER
UPON JOINT REQUEST OF PARTIES**

This matter comes before this Board on appeal filed by Paul A. Dorf, Esquire, on behalf of AT&T Wireless Services and Terry R. Dunkin, from a decision of the Zoning Commissioner dated November 28, 2000 in which the subject request for a special exception was denied. On December 26, 2000, a timely appeal of the Order of the Zoning Commissioner was noted to this Board.

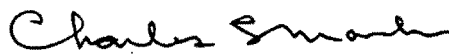
By correspondence dated May 9, 2002, and in response to a Motion for Remand filed by Jeffrey J. Utermohle, Esquire, Counsel for Ross Valley Farms, LLC, Protestant, a joint request for remand of this matter to the Zoning Commissioner was filed by Paul A. Dorf, Esquire, Counsel for Petitioner, in which it is stated that "all parties have given their consent" to "the remand of the above-referenced matter to the Zoning Commissioner of Baltimore County."

WHEREFORE, upon telephone confirmation with Counsel on May 9, 2002, and upon consideration of said request for remand, it is this 17th day of May, 2002, by the County Board of Appeals of Baltimore County

ORDERED that said request be and is hereby **GRANTED**; and it is further

ORDERED that the above captioned case is **REMANDED** to the Zoning Commissioner for Baltimore County as agreed by all parties thereto.

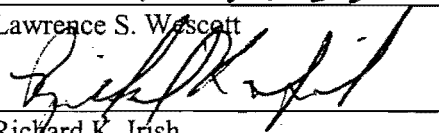
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Charles L. Marks, Chairman



Lawrence S. Wescott



Richard K. Irish



County Board of Appeals of Baltimore County

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

May 17, 2002

Peter Max Zimmerman
People's Counsel for Baltimore County
Carole S. Demilio
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204

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

K. Donald Proctor, Esquire
102 W. Pennsylvania Avenue
Towson, MD 21204

Richard C. Burch, Esquire
MUDD HARRISON & BURCH
105 W. Chesapeake Avenue
Suite 300
Towson, MD 21204

Jeffrey J. Utermohle, Esquire
Law Offices of Peter G. Angelos
One Charles Center
100 N. Charles Street
Baltimore, MD 21201-3812

RE: *In the Matter of: AT&T Wireless Services;
Terry R. and Cheryl S. Dunkin
Case No. 01-054-X*

Dear Counsel:

Enclosed please find a copy of the Board's Remand Order issued this date in the subject matter.

Very truly yours,

Kathleen C. Bianco /trs
Kathleen C. Bianco
Administrator

Enclosure

c: [see page 2]



5/3/02

**In the Matter of AT&T Wireless Services –
Contract Lessee**

**Terry R. and Cheryl S. Dunkin – Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilman District**

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**Before the
County Board of Appeals
of Baltimore County**

**Case # 01-054-X
Hearing date: May 21, 2002,
10:00 a.m.**

MOTION FOR REMAND

NOW COMES Ross Valley Farms, LLC, a Protestant in the above-referenced matter, by and through its counsel, Jeffrey J. Utermohle and the Law Offices of Peter G. Angelos, P.C., and files this Motion for Remand. This Motion respectfully requests the County Board of Appeals of Baltimore County to remand the above-referenced matter to the Zoning Commissioner for Baltimore County for further findings in light of the changes in the applicable law as a result of the recent passage and enactment into law of Baltimore County Council Bill No. 121-01, an Act Concerning Telecommunications Towers – Historic and Scenic Resources. In support of this Motion, Ross Valley Farms, LLC, states as follows.

1. Attached hereto is a copy of the recently enacted law, Baltimore County Council Bill No. 121-01, an Act Concerning Telecommunications Towers – Historic and Scenic Resources (hereinafter referred to as the "New Law"). The salutary purpose of the New Law is to provide for "even greater protection for historic and scenic elements" and to provide for "additional protections" for the "historic and scenic assets of the County."
2. In order to provide for greater and additional protections for Baltimore County's historic and scenic assets, the New Law amended key provisions of Sections 426.1, 426.2.B, 426.3, and 426.4

of the Baltimore County Zoning Regulations (hereinafter collectively referred to as the "Old Law"). In order to assure a complete factual and legal record, which may benefit the Board of Appeals in its review of this matter, and to afford the Zoning Commissioner an opportunity to further develop his Findings of Fact and Conclusions of Law in light of the New Law, this matter should be remanded.

3. The New Law includes the following *additional* legal mandates.

- "Scenic Viewshed" is defined as "a scenic route or view as designated in the Baltimore County Master Plan."
- "Scenic Viewshed Elements" are defined as "those visual elements of a scenic viewshed which are of a quality, character, rarity and nature to cause a viewshed to be designated in the Baltimore County Master Plan by the Baltimore County Planning Board; and which are catalogued by the Planning Board in accordance with Section 26-284 of the Baltimore County Code."
- "The Planning Board shall provide to the Zoning Commissioner a catalogue of the elements for each scenic viewshed in the Master Plan; identify the scenic route or view, as designated in the Baltimore County Master Plan as either enclosed, expansive, focused or a combination; and identify the aspects of the visual quality, unity of the elements, and integrity of the elements."
- "A Special Exception may not be granted for a wireless telecommunications tower located within an RC-2, RC-3, RC-4, RC-5,

RC-6 or RC-7 zone within a scenic viewshed unless the Zoning Commissioner finds that the proposed tower will not interfere with or be detrimental to the scenic viewshed elements."

- "The Zoning Commissioner shall determine interference or detriment based upon substantial evidence, comparing the scenic viewshed elements to the proposed tower location, in order to determine whether the proposed tower blocks any scenic viewshed elements or is not visually in harmony with any scenic viewshed elements when the elements and the tower can be seen simultaneously."
- "The Zoning Commissioner may also consider whether any public funds have been spent acquiring easements or entering into other agreements to minimize development or protect aesthetics in areas immediately adjacent to the proposed tower and whether other public or private agreements exist to minimize development or protect aesthetics in areas immediately adjacent to the proposed tower."
- "The absence of the easements and agreements may not be probative of the possible interference of the proposed tower with scenic viewshed elements."

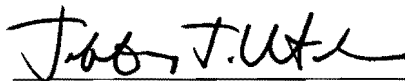
4. The foregoing *additional* legal mandates of the recently enacted Baltimore County Council Bill No. 121-01, which are designed to provide for "even greater protection for historic and scenic elements," were not in effect when the Zoning Commissioner issued his findings. Consequently, this matter should be remanded for further development of the Zoning

Commissioner's Findings of Fact and Conclusions of Law.

WHEREFORE, Ross Valley Farms, LLC, respectfully requests the following relief:

1. That this matter be remanded to the Zoning Commissioner for Baltimore County for further findings in light of the changes in the applicable law as a result of the recent passage and enactment of Baltimore County Council Bill No. 121-01;
2. And for such other and further relief as the nature of its cause may require.

Respectfully submitted,



Jeffrey J. Utermohle
Law Offices of Peter G. Angelos, P.C.
100 N. Charles Street, 20th Fl.
Baltimore, MD 21201
(410) 649-2005

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2002, I caused to be mailed by first-class mail, postage pre-paid, a copy of the foregoing Motion for Remand to the following individuals:

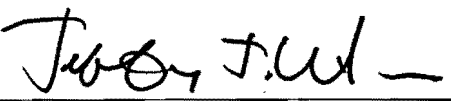
Paul A. Dorf, Esq.
Mercantile Bank Building
2 Hopkins Plaza, Ste. 600
Baltimore, MD 21201-2908

Russell G. Alion Jr., Esq.
Mercantile Bank Building
2 Hopkins Plaza, Ste. 600
Baltimore, MD 21201-2908

K. Donald Proctor, Esq.
102 W. Pennsylvania Avenue, Ste. 505
Towson, MD 21204-4542

Richard Burch, Esq.
Jefferson Bldg.
105 W. Chesapeake Ave., Ste. 300
Towson, MD 21204-4712

Peter M. Zimmerman, Esq.
606 Baltimore Avenue, Ste 204
Towson, MD 21204-4097



Jeffrey J. Utermohle

csl
/pm2

LAW OFFICES
PETER G. ANGELOS
A PROFESSIONAL CORPORATION
COURT TOWERS, SUITE 300
210 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
410-825-7300 FAX # 410-296-2541

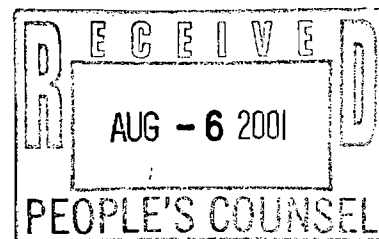
OTHER OFFICES:

NEW YORK, NEW YORK
PHILADELPHIA, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA
PITTSBURGH, PENNSYLVANIA
BETHLEHEM, PENNSYLVANIA
WILMINGTON, DELAWARE
KNOXVILLE, TENNESSEE

DINO C. LA FIANDRA

August 2, 2001

Peter M. Zimmerman, Esquire
400 Washington Avenue
Room 47
Towson, Maryland 21204



Re: 01-54-X
Enclosure

Dear Mr. Zimmerman:

Paul Hupfer, of the Greater Sparks-Glencoe Community Council, requested that I send to you a copy of the enclosed case, 211 F.3d 79 from the United States Court of Appeals for the Fourth Circuit.

In addition, I have entered my appearance as counsel for Ross Valley Farms, LLC in Case No. 01-054-X. A copy of my letter dated August 1, 2001 to Ms. Kathleen Bianco is also enclosed.

Should you have any questions, please contact me.

Sincerely,

Dino C. La Fiandra

DCL/cld
Enclosure

cc: Mr. Paul Hupfer (w/o enclosure)

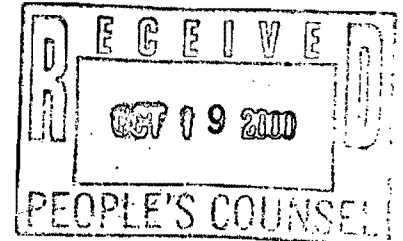


Baltimore County
Zoning Commissioner

October 18, 2000

ad pm
Suite 405, County Courts Bldg.
401 Bosley Avenue
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Messrs. Paul A. Dorf and S. Leonard Rottman, Esquire
Adelberg, Rudow, Dorf, Hendler & Sameth, LLC
2 Hopkins Plaza, Suite 600
Baltimore, Maryland 21201



RE: PETITION FOR SPECIAL EXCEPTION
S/S Bacon Hall Road, 2,365' E of Cedar Grove Road
(801 Bacon Hall Road)
7th Election District – 3rd Council District
Terry R. Dunkin, et ux, Owners – AT&T Wireless Services, Contract Lessees
Case No. 01-054-X

Dear Messrs. Dorf & Rottman:

This letter is to confirm that the above-captioned matter has again been continued from the last continued hearing date of October 17, 2000. By agreement of all parties, the hearing will reconvene on Tuesday, October 31, 2000 at 9:00 AM in Room 407 of the County Courts Building. Please notify your clients and their respective witnesses of the continued hearing date, time and location.

Thank you for your consideration in this matter.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Terry R. Dunkin, 801 Bacon Hall Road, Sparks, Md. 21152
Messrs. Bill Francis and Chris Scott, AT&T Wireless Services,
11710 Beltsville Drive, Beltsville, Md. 20705
Messrs. Mitchell Kellman and Michael McGarity, Daft-McCune-Walker, Inc.
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Deputy People's Counsel

FAX COVER LETTER

TO: PAUL HUPFER 410 472-4756

FROM: PETER ZIMMERMAN

DATE: 9/19/00

PAGES (INCLUDING THIS COVER PAGE): ~~10~~ ~~7~~ 2

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at (410) 887-2188.

RE: 01-054-X - DUNKIN/AT+T WIRELESS

COMMENTS: (PETITION, ENTRY APP, ZAC COMMENTS,
2 MAPS, BCZR SEC. 426)

Telecommunications

Applicant Did Not Show Necessity For Additional Monopole

A zoning board's decision to reject an application for a wireless telephone transmission tower was supported by substantial competent evidence that the applicant failed to meet the zoning code requirement of showing the tower was "necessary," the U.S. District Court for the Southern District of Florida has ruled (*BellSouth Mobility, Inc. v. Miami-Dade County*, 153 F.Supp.2d. 1345).

BellSouth applied for a permit to build a 90-foot monopole and service building in a small shopping center, in an unincorporated area of the county near Pro Player Stadium. Under the zoning code, the facility is considered an "unusual use," which must be reviewed by county officials and approved by a community zoning appeals board. County officials and departments that reviewed the application and site plan had no objection to it. However, after several hearings at which considerable community opposition developed, the community zoning appeals board denied the application. BellSouth filed suit under the Telecommunications Act (TCA), claiming the board's denial was not supported by substantial evidence.

Necessity Not Demonstrated

The court said the central question in this case was what types of evidence can constitute substantial competent evidence under the TCA. Florida courts recognize that under certain circumstances, lay opinion evidence can be substantial competent evidence. Citizen testimony is perfectly permissible in a zoning matter as long as it is fact-based. The county conceded BellSouth demonstrated the proposed application was consistent with the comprehensive plan, but argued it had failed to meet its burden of showing the necessity for the proposed facility.

The county zoning code provision covering zoning appeals boards' grant or denial of special exceptions, new uses and unusual uses requires the board to consider staff recommendations and to render its decision after considering the necessity for and reasonableness of the exception or use applied for in relation to the present and future development of the surrounding area and its compatibility with the surrounding area. In testimony before the board, representatives of BellSouth conceded the proposed monopole was necessary only to serve overflow cell phone

traffic from persons making calls in and around Pro Player Stadium when games were scheduled.

The county argued BellSouth failed to meet its burden of showing the proposed facility was necessary, or in the alternative, if it did meet that burden, the testimony of residents opposing the application and BellSouth's admissions constituted sufficient competent evidence for a reasonable mind to conclude the facility was not necessary in relation to the present and future development of the surrounding area. The court agreed. Viewing the record as a whole, BellSouth did not meet its burden of showing necessity.

Aesthetics Valid Reason for Denial

Continuing, the court observed the zoning code explicitly recognizes compatibility is one factor to consider in determining whether an "unusual use" variance should be granted. Florida law permits an incompatibility finding based on aesthetic considerations. The lay testimony before the board was sufficient to allow a reasonable mind to conclude the proposed tower would not be compatible with the surrounding residential area. Although BellSouth went to considerable lengths to camouflage the tower as a tree, such camouflage does nothing to decrease its mass, height or distance from the nearest residence. The tower would be significantly taller than nearby structures. The neighbors' opposition on aesthetic grounds had a sound basis in fact, permitting the board to conclude the proposed tower was aesthetically incompatible with the surrounding area.

END

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§ 1.06 NIMBY Syndrome

[1] Telecommunications Facilities (TCFs)

[a] *PETERSBURG CELLULAR PARTNERSHIP v. BOARD OF SUPERVISORS*¹

THE TELECOMMUNICATIONS ACT OF 1996 continued to have a significant impact on the land-use litigation scene. It is clear that the Act federalized the law of zoning and planning insofar as most TCFs are concerned.² Section 704 of the Act³ imposed several procedural and substantive standards that must be met by local governments who attempt to regulate TCFs. Local governments must create a written record that supports their TCF decision under the substantial evidence scope of judicial review. The key substantive standards are that a decision cannot prohibit or have the effect of prohibiting the provision of telecommunications services, the decision cannot be based on the environmental effects of radio frequency emissions, the decision cannot unduly discriminate against a service provider, and the decision must not be a wrongful entry barrier for potential service providers. Failure to comply with one or more of these statutory mandates can lead to a § 1983 cause of action. Almost all of the litigation to date has focused on the prohibition, nondiscrimination, and substantial evidence standards.

In this case the TCF provider sought a discretionary permit to construct a 199-foot tower on land zoned for commercial use. The planning commission recommended that the permit be issued, subject to several conditions. Some community opposition was heard at the board of supervisors meeting. Eventually, the board decided to deny the permit. The district court found that the board had not satisfied the substantial evidence test because the record was found to be both "modest" and

1. 205 F.3d 688 (4th Cir. 2000). The district court opinion, reported at 29 F. Supp. 2d 701 (E.D. Va. 1998), is analyzed at Bruce Kramer, *Current Decisions on State and Federal Laws in Planning and Zoning*, 1999 INST. ON PLAN. ZONING & EMINENT DOMAIN 1, § 1.06[1][i] [hereinafter Kramer I].

2. See Kenneth Baldwin, *The Telecommunications Act of 1996: Developing Caselaw of Towering Proportions*, 1998 INST. ON PLAN. ZONING & EMINENT DOMAIN 8, 1; Kramer I, *supra* note 1, at § 1.06[1], and Bruce Kramer, *Current Decisions on State and Federal Law in Planning and Zoning*, 1998 INST. ON PLAN. ZONING & EMINENT DOMAIN 1, § 1.06[1] [hereinafter Kramer II]. In 1998, I reviewed five cases; in 1999, I reviewed twenty-five cases; and this year, I am reviewing twenty-six cases.

3. 47 U.S.C. § 332 (c).

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"speculative." The board appealed. The Fourth Circuit's decision was fractured and precedent-setting at the same time. Judge Niemeyer and Judge King agreed that the board's decision was not supported by substantial evidence. Judge Widener dissented on that issue. But Judge Niemeyer found that the Act is unconstitutional under the Tenth Amendment. Neither of the other two judges agreed on that issue. Since Judge Niemeyer, on constitutional grounds, and Judge Widener, on statutory grounds, found that the district court decision was erroneous, the result of the opinion was to reverse the district court and reinstate the board's permit denial decision.

While the Fourth Circuit had previously defined the substantial evidence test to provide for a "soft glance" rather than a "hard look,"⁴ there is nonetheless a review role for the court. Substantial evidence falls between the mere scintilla and preponderance of the evidence standards. In this case, the lack of substantial community opposition and arguments made, on the record, to the board, does not support the board's decision to deny the permit. While several concerns were raised, they were all disposed of by the permit applicant at the hearing. One argument was that the tower would interfere with a nearby airport, but the applicant had received permission from the FAA to locate the TCF and place a light on top of it, eliminating any true concern about airplane safety.

The county urged, and Judge Niemeyer accepted, the claim that the Act's provision imposing the substantial evidence standard violates the Tenth Amendment by coercing local governments to employ "intrusive federal rules" in their zoning and land-use regulatory processes. According to Judge Niemeyer, the Act, while containing a nonpreemption clause, has the effect of requiring state and local governments to employ both the procedural and substantive standards of the Act. The county first argued that the Act's substantial evidence standard is different than that required under Virginia law for the review of local zoning decisions. Virginia courts employ a very deferential standard to review both legislative and administrative zoning decisions.⁵ The classic Euclidean fairly debatable standard is employed by the courts to review local decisions.

4. See, e.g., *AT&T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423 (4th Cir. 1998), and *AT&T Wireless PCS, Inc. v. Winston-Salem Zoning Bd. of Adjustment*, 172 F.3d 307 (4th Cir. 1999), discussed at *Kramer I*, *supra* note 1, at §1.06[1][d].

5. See, e.g., *City Council of Virginia Beach v. Harrell*, 372 S.E.2d 139 (Va. 1988). An exception appears to apply for "socio-economic" zoning, whatever that may be. *Bd. of Supervisors v. DeGroff Enters.*, 198 S.E.2d 600 (Va. 1973).

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Judge Niemeyer argued that by altering the state scope of judicial review, the Act has two substantial detrimental effects on federalism. First, the very act of imposition, without a meaningful opportunity for a state to opt out, compromises state and local sovereignty. And second, regardless of the relative effects of the federal and local standard, the imposition of a federal standard on a local board confuses the electorate as to which governmental unit, federal or local, is to be accountable for a legislative decision made by a local board.⁶

The revival of Tenth Amendment jurisprudence with *Printz v. United States*⁷ has led to a time of substantial uncertainty as to how far the courts will go to protect the dual sovereignty structure embodied by that amendment. The commandeering of local legislative processes is seen as a threat to the union. Judge Niemeyer somewhat bombastically observed:

Moreover, when the federal government commandeers state and local legislative processes to carry out its own goals, not only is the federal power aggrandized and the state power enslaved, but also the lines of separation are blurred, causing a loss of accountability to the people and confusion by them. When a local legislative body acts under a standard imposed by the federal government, even if the federal standard is comparable in effect to state standards, a significant risk arises that the citizens of the community will not know whether the legislative act is the product of Congress or of their local legislature. This confusion inevitably frustrates a normal democratic response.⁸

The federal government is free to preempt state and/or local police powers acting pursuant to the Commerce Clause. It is also empowered to employ incentives to encourage state and/or local action. But it cannot coerce or unilaterally erase the line between state and federal sovereigns. The Communications Act coerces the county to employ the federal standard if it is to engage in zoning and planning. While state courts can be required to apply federal law,⁹ state or sub-state legislative bodies may not be required to apply federally mandated standards. Thus Judge Niemeyer would invalidate the Act's provisions relating to the imposition of the substantial evidence standard but would retain the remaining provisions in the Act.

[b] 360⁰ COMMUNICATIONS CO. OF CHARLOTTESVILLE
v. BOARD OF SUPERVISORS¹⁰ ✓

In a case decided one week after *Petersburg*, the Fourth Circuit did not have to deal with the constitutional issues in again reviewing a local

6. *Petersburg Cellular*, 205 F.3d at 700.

7. *Printz v. U.S.*, 521 U.S. 898 (1997).

8. *Petersburg Cellular*, 205 F.3d at 701.

9. See, e.g., *Testa v. Katt*, 330 U.S. 386 (1947).

10. 211 F.3d 79 (4th Cir. 2000). ✓

decision not to issue a permit for a TCF. Plaintiff sought to build a single tower on a ridgeline in order to provide adequate wireless service to a portion of the county. The board held a hearing at which it heard some ten citizens complain about the tower. The board voted unanimously to deny the permit saying it would conflict with the county's comprehensive plan and open space plan. The district court found that there was no reasonable alternative location and that the board had exhibited hostility to the application that required the issuance of an injunction to order the board to issue the permit.

Under the Fourth Circuit's deferential view of the substantial evidence test, the court determined that the district court had abused its discretion in not finding substantial evidence in the record to support the permit denial decision. There was both near-unanimous citizen opposition and inconsistency with the comprehensive plan. While the applicant's evidence showed that its design and location would minimize the intrusive nature of a tower, it is up to the board to make the determination of compatibility. Thus there was substantial evidence in the record to support the decision.

As to the prohibition claim made by the plaintiff, the district court found that no reasonable alternative existed whereby wireless services could be provided. The court reviewed the evidence that showed that there were other alternatives, including having six towers at lower mountaintop or ridgeline elevation or even more towers at lower elevations. The court emphasized the Act's intention to leave as much local control as possible. Thus the definition of what are reasonable alternatives must be undertaken with that objective in mind. The PCS applicant has the heavy burden of proof to show that there are no reasonable alternatives to the provision of adequate service. The evidence in this case was disputed and therefore the applicant had not sustained its burden. The district court's decision was reversed and the board's decision to deny the permit was reinstated.

[c] *SOUTHWESTERN BELL WIRELESS INC. v. JOHNSON COUNTY BOARD OF COUNTY COMMISSIONERS*¹¹

The county had adopted an amendment to its zoning ordinance imposing a stipulation in all TCF permits preventing the TCF from interfering with county public safety communications. When SWB sought a permit for a tower, the permit included the stipulation along with various conditions regarding the need to respond to complaints about any alleged interference. The county had communicated with the FCC prior to the

adoption of the ordinance and prior to its review of SWB's permit application. The FCC responded that it considered the county regulation in the radio frequency interference (RFI) area preempted by the Act.

The court applied the traditional tripartite preemption analysis to determine if the RFI regulations are preempted. It first examined whether the Act expressly preempts local RFI regulations. It found no express statutory preemption language. It then determined whether the federal scheme of regulation occupies the field so as to leave no room for state regulation. The court reviewed not only the Act, but the various statutory enactments dealing with the FCC. In addition to the statutes, the court looked at the FCC regulations dealing with RFI. The extent of federal involvement in RFI issues was deemed to be so pervasive that there was an implied intent to occupy the field.

As in *Petersburg*, the county made a claim that the FCC statutes and regulations violate the federalism principles embodied in the Tenth Amendment. Without the hyperbole of Judge Niemeyer's concern over the commandeering of local legislative powers, the court simply concluded that even historic or classic police powers exercised by the state may be preempted by federal action taken pursuant to a constitutionally granted power. Here the Commerce Clause provided sufficient authority for the federal government to act. When it acts it can choose to remove state and local governments from areas of traditional powers. Thus the preemption of RFI issues does not violate the Tenth Amendment.

[d] *INDUSTRIAL COMMUNICATIONS & ELECTRONICS, INC. v. TOWN OF FALMOUTH*¹²

In 1990 the town enacted an amendment to the zoning ordinance dealing with TCFs that allows them to be located in two districts as a conditional use. In 1997, plaintiff purchased a parcel of land where there were some existing TCF towers. The parcel had been the situs of the towers prior to the enactment of the 1990 ordinance. In 1998, plaintiff sought a permit to replace the existing towers with a single tower. The permit was denied as well as a variance from the setback requirements. A second application was denied also.

The first argument made by the plaintiff was that there was not substantial evidence in the record to support the town's decisions. The First Circuit defines substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The approach is deferential, but possibly not as deferential as the Fourth

11. 199 F.3d 1185 (10th Cir. 1999).

12. Nos. 98-397-P-H, 99-96-P-H, 2000 U.S. Dist. LEXIS 8286 (D. Me. 2000).

Section 426
Wireless Telecommunications Facilities
[Bill No. 30-1998²⁶]

426.1 Definitions. In this section, the following words have the meanings indicated:

ANTENNA — A wireless telecommunications antenna.

CODE OFFICIAL — The Director of the Department of Permits and Development Management or the Director's designee.

COMMITTEE — The Tower Review Committee established under Section 426.4.

OWNER — The owner, agent, lessee or person in control of a wireless telecommunications tower.

PROVIDER — A wireless telecommunications service provider.

TOWER — A wireless telecommunications tower.

426.2 Legislative policy for siting or wireless telecommunications antennas and towers. It is the intent of Baltimore County that:

- A. Antennas should be placed on existing towers, buildings and structures, including those of public utilities, where feasible; and
- B. If a new tower must be built, the tower should be:
 - 1. Constructed to accommodate at least 3 providers.
 - 2. Erected in a medium or high intensity commercial zone when available; and
 - 3. Located and designed to minimize its visibility from residential and transitional zones.

426.3 Exceptions. The provisions of this section do not apply to:

- A. Antennas or towers serving gas and electric or land-based local telephone public utility locations needs at existing facilities, provided that a public utility that owns any antennas or towers shall establish that the antennas or towers and service meet critical communications needs for public safety; or
- B. Antennas used by cable systems operating in accordance with Title 8 of the Baltimore County Code, 1988, as amended, if located on property owned by the county, state or federal government.

²⁶ Editor's Note: This bill also repealed former Section 426, Wireless Transmitting or Receiving Structures, added by Bill No. 64-1986. In addition, Section 5 of Bill No. 30-1998 provided that "...this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any person who has had a hearing on a proposed tower before the Zoning Commissioner before the effective date of this Act" (March 30, 1998), and Section 6 of Bill No. 30-1998 provided that "...the provisions of this Act shall be interpreted consistent with the Telecommunications Act of 1996."

11/28/00

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
S/S Bacon Hall Road, 2,365' E of *
Cedar Grove Road * ZONING COMMISSIONER
(801 Bacon Hall Road) *
7th Election District * OF BALTIMORE COUNTY
3rd Council District *
* Case No. 01-054-X
Terry R. Dunkin, et ux, Owners;
AT&T Wireless Services, Contract Lessees *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Terry R. and Cheryl S. Dunkin, and the Contract Lessees, AT&T Wireless Services, through their attorneys, Paul A. Dorf, Esquire and S. Leonard Rottman, Esquire. The Petitioners request a special exception for a telecommunications monopole less than 200 feet in height to be located on the subject property, zoned R.C.2, pursuant to Section 426.5.D of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Terry R. Dunkin, co-owner of the subject property, and numerous witnesses produced by AT&T Wireless Services. These included Chris Scott, a RF Engineer, Mitch Kellman and Michael McGarity, representatives of Daft-McCune-Walker, Inc., who prepared the site plan for this property, Alan R. Rosner, a Professional Engineer, Oakleigh J. Thorne, a real estate appraiser, Chris Paradiso, a location survey analyst, Andrew Garte, an environmental consultant, and April Beisaw, a cultural resource expert. The Petitioners were represented by Paul A. Dorf, Esquire and Russell G. Alion, Jr., Esquire. Numerous individuals appeared as Protestants in the matter, including Jack Dillon on behalf of the Valleys Planning Council, which was represented by Richard Burch, Esquire. Also appearing as opponents were Charles E. Ensor, Jr., Mary N. Ensor and Cold Bottom Farms, Inc.,

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By [Signature]

through their attorney, K. Donald Proctor, Esquire. Others who appeared in opposition to the request included H. Barritt Peterson, Jr., Paul Hupfer, and George B. McCeney. Testifying on behalf of the opponents was Herbert Davis, a real estate appraiser, and James T. Wollon, Jr., a Professional Engineer.

The facts surrounding this case are not in dispute. The area of the special exception under consideration contains approximately 5.03 acres, more or less, zoned R.C.2, and is part of an overall tract of land owned by Terry and Cheryl Dunkin. The property is located on the south side of Bacon Hall Road, near I-83 and Cold Bottom Road in the community of Sparks in northern Baltimore County. Essentially, Mr. & Mrs. Dunkin have entered into a conditional agreement with AT&T Wireless Services to lease a portion of their property for the purpose of erecting a 150-foot tall monopole. The monopole will feature a 12' x 12' x 12' triangular platform near the top, on which nine (9) proposed panel antennae will be located. These antennae are approximately 4-foot tall by 1-foot wide. At the base of the monopole will be a fenced area featuring equipment buildings necessary for the operation of the tower. The monopole is being constructed by AT&T as part of its wireless communications network in Baltimore County.

The public hearing on this matter before the undersigned Zoning Commissioner consumed parts of three days. A substantial volume of testimony and evidence was presented and numerous witnesses were called by all parties, including experts. Lay testimony was also received, both in support of and in opposition to, the proposed monopole. In addition to the testimony, numerous exhibits were submitted, including plans and plats, photographs, and other incidental maps and studies.

This Zoning Commissioner is generally familiar with the operation of AT&T Wireless and other wireless communication providers by virtue of the many cases that have come before me under similar requests. Suffice it to say wireless communication technology has exploded on the public scene and consciousness. Nearly all of us now have a wireless phone/pager to provide communication, access to the Internet, etc. This communication system would not be possible without the installation of a series of towers throughout the geographic area to be served.

Generally, AT&T Wireless indicated the existence of a "hole" in their wireless communication network in northern Baltimore County. In order to fill this hole, studies and investigations were undertaken as to where to locate a tower on which the company's antennae could be located. Testimony offered by AT&T witnesses was that after a thorough search, the subject location was chosen. It was indicated that this location would fill the outstanding "hole" and would not detrimentally impact the surrounding locale. It is of particular note that AT&T acknowledged individuals presently using its system would not be dropped as they travel through this area. Apparently, AT&T and other wireless communication providers have a system which allows them to transfer calls through the equipment of other providers. Nonetheless, AT&T is required, by the Federal Communications Commission (FCC), to insure that its network is adequate to serve its customers and meet its licensing requirements. Thus, it was argued that the proposed tower is indeed necessary.

Suffice it to say many of the residents who appeared are opposed to the request. Primarily, they expressed concerns about the detrimental visual impact that would result if the tower were constructed on the subject site. Concerns were also expressed regarding what was alleged to be an inconsistent impact with the agricultural/rural character of the surrounding locale and potential detrimental impacts on property values.

The above represents but a brief summary of the facts presented and the positions taken by the various parties. The record of the case will reveal all of the testimony and evidence offered. Further evidence and testimony will be recounted hereinafter as the specific standards to be applied to the request are discussed. The summary and testimony highlighted above is not intended to be an exhaustive statement of the record presented. Additionally, all parties presented excellent briefs that highlight the respective evidence upon which they relied and set out well-reasoned legal argument.

As noted above, the Dunkin property is zoned R.C.2. This zoning classification is the least intense zone of any classification designated in the B.C.Z.R. The R.C.2 zone permits very limited density development and is designed to foster rural/agricultural pursuits. Nonetheless, the

R.C.2 zone regulations do permit the requested 150-foot monopole, by special exception. In order for any special exception relief to be granted in Baltimore County, the request must pass muster under the standards set out in Section 502.1 of the B.C.Z.R. The provisions of Section 426 of the B.C.Z.R. are also relevant and applicable. That Section generally sets forth the standards that must be followed in considering any application for the construction of a tower/monopole.

As expected, both sides briefed these Sections. The parties also presented the relevant case law that is applicable to this request. Interestingly, both parties cited two cases which I find particularly relevant here; namely, Hayfields, Inc. v. Valleys Planning Council, 122 Md. App. 616 (1998), and Mossberg v. Montgomery Co., 107 Md. App. 1 (1995).

The opinions in both of these cases cite the leading special exception case in Maryland, i.e., Schultz v. Pritts, 291 Md. (1981). Schultz was quoted for the premise of law that a special exception use is part of the comprehensive zoning plan and thus, shares the presumption that it is in the interest of the general welfare and therefore valid. The Schultz Court also set out the standard for adjudging the merits of a special exception use. In this regard, a comparison of uses permitted by right versus those permitted by special exception is not to be applied. Rather, the administrative body must determine whether a particular special exception use proposed at the particular location proposed would have adverse effects above and beyond those inherently associated with such a use, irrespective of its location within the zone.

In Mossberg, the Court considered an appeal out of Montgomery County regarding a proposed solid waste treatment plant. The Mossberg Court recognized that such a use would, by its very nature, have adverse impacts on the surrounding locale. Indeed, the Court recognized that any special exception use will have adverse effects. These adverse effects are anticipated in the first instance by making the use a special exception rather than a use permitted by right. The proper question, as framed by the Court, is whether the adverse effects are above and beyond (i.e., greater at the proposed location) than they would generally be elsewhere.

Hayfields is instructive in that it examined the standard for special exception relief in Baltimore County, i.e., Section 502.1 of the B.C.Z.R. This Zoning Commissioner is intimately

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Date

By

familiar with the Hayfields case in that I approved the original special exception request. Ultimately, on appeal to the Court of Special Appeals, the finding that a special exception for a country club should be granted was affirmed. The Hayfields court discussed the application of Section 502.1 on R.C.2 zoned land in Baltimore County. Also, Hayfields is valuable for its statement that a proposed use's impact on views is a factor that should be considered under the purview of a Section 502.1 review.

In considering the facts presented in this case and the legal standards to be applied, I am persuaded that the Petition for Special Exception should be denied. There are, at a minimum, at least two bases upon which this decision firmly rests.

The first relates to the adverse impacts that will be caused by this tower on the view shed in this locale. As set out in Protestants' brief, the proposed tower will be within and visible from parts of the Western Run/Belfast Historic District. Additionally, the Baltimore County Master Plan 2010 has designated nearby roads, (i.e., I-83 and York Road), as scenic routes with scenic vistas. Obviously, as the parties agree, the top portion of any 150-foot tall tower will be visible from surrounding lands. Admittedly, the inherent impact of this visibility would be present, irrespective of the precise location of the tower in the zone. Although appreciative of the Petitioners' allegation that the view here will be buffered by the mature woods that exist around this property, the top part of the tower will clearly extend above the tree-line. Additionally, most of the woods are deciduous species and the tower will be visible during the winter months. It need be emphasized that the top of this tower will be visible at all times of the year.

The adverse impact normally associated with the view of a 150-foot monopole is particularly egregious here because of the character of the surrounding locale. The existence of the historic district and the scenic vistas identified in the Master Plan are conditions that do not exist elsewhere in the R.C.2 zone. Thus, the adverse impact is particularly greater here than at other locations.

The logic employed by the Court of Special Appeals in Hayfields is applicable here. Assuming that one could reasonably argue that a golf course/country club presents an adverse

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visual appearance, the facts presented in Hayfields was that although located on R.C.2 zoned land, the subject parcel and lands adjacent thereto were visible to and from the highly commercial Hunt Valley Industrial Park development. Thus, in that case, the alleged adverse view generated by the country club presented a lesser impact than might normally be anticipated, in view of the commercial nature of nearby properties. The opposite is true in the instant case. Here, there are no commercial/industrial views in the vicinity. Indeed, the view could be described as bucolic and unspoiled. The construction of a monopole at the subject location would present a particularly egregious impact, in terms of its visual disruption.

The second basis upon which this application must be denied relates to property values. Testimony was offered in this regard by lay witnesses, as well as experts. Mr. Thorne, on behalf of the Developer, testified, as did Mr. Davis, on behalf of the community. With all due respect to Mr. Thorne's studies and testimony, I am persuaded by the testimony of Mr. Davis. He has lived in the area for many years and is familiar with the housing desires of the residents. The testimony offered by Mr. Davis was to the effect that property values in this area are driven in large part, due to the rural/agricultural nature of the locale. The absence of commercial buildings and visual intrusions that would detract from this character are a vital element in determining property values. This is particularly so with the existence of the historic district. Unlike other R.C.2 zoned properties, the impact of the tower on property values would be particularly egregious here.

Based upon the above analysis, I find that the proposed special exception must be denied. It fails to meet the requirements of Section 502.1 of the B.C.Z.R. in at least two respects; i.e., visual impact, and impacts on property values. I am appreciative of the challenges facing AT&T to answer the mandate of its license and provide an adequate communications system, particularly in the northern rural areas of Baltimore County. Nevertheless, this particular site is unacceptable and thus, the Petition for Special Exception must be denied.

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

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THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of November, 2000 that the Petition for Special Exception to approve a telecommunications monopole less than 200 feet in height to be located on the subject property, zoned R.C.2, pursuant to Section 426.5.D of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

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Date 11/28/00
By [Signature]

11/17/00

Nov 17, 2000

PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
S/S Bacon Hall Road		
2,365' E of Cedar Grove Road	*	ZONING COMMISSIONER
(801 Bacon Hall Road)		
7th Election District - 3rd Council District	*	FOR BALTIMORE COUNTY
Terry R. Dunkin, et ux, Owners		
AT&T Wireless Services, Contract Lessees	*	Case No. 01-054-X

* * * * *

**MEMORANDUM OF PROTESTANTS, CHARLES E. ENSOR, JR.,
MARY ANN ENSOR AND COLD BOTTOM FARMS, INC.**

Protestants, Charles E. Ensor, Jr., Mary Ann Ensor and Cold Bottom Farms, Inc., by their attorneys, K. Donald Proctor and K. Donald Proctor, P.A., submit this memorandum following the close of evidence in this case.

This is a petition for special exception to construct a 150 foot telecommunications monopole tower in an RC-2 zone under Sections 426 and 502 of the Zoning Regulations.

SUMMARY OF ARGUMENT

The placement of the proposed 150 foot telecommunications monopole tower topped with its obtrusive platforms and antennae within the one of the County's and the nation's most precious scenic, historic and agricultural resources clearly fails to qualify for a special exception since it would be "detrimental to the health, safety or general welfare of the locality" and would be "inconsistent with the purposes of the property's [RC-2] zoning classification [and otherwise] inconsistent with the spirit and intent of the Zoning Regulations" and thus fail to meet the criteria of the BCZR for special exceptions. The evidence demonstrates that the effects of the proposed tower would be more

detrimental at this location, with its unique scenic, historic and agricultural attributes, than they would be elsewhere in the zone.

Nor would the denial of this application be in any way inconsistent with the federal Telecommunications Act of 1996. The United States Court of Appeals for the Fourth Circuit in three recent cases which are both factually and legally in point with this proceeding has concluded that the applicants in those cases failed to meet their heavy burden of demonstrating that the denial of a permit for a particular site amounts to a general prohibition of service in violation of the federal Act. The Fourth Circuit has specifically recognized that the federal regulations contemplate the existence of dead spots, defined as "small areas within a service area where the field strength is lower than the minimum level for reliable service," and that for the purpose of calculating the cellular geographic service area, the regulations provide that "cellular service is considered to be provided in all areas, including 'dead spots.'" Thus, denials of applications to provide service to fill coverage gaps that are limited in number or size do not amount to a prohibition of service under the federal Act.

FACTS

The tower is proposed to be located near the top of a ridge which is one of the highest points in Baltimore County within one of the County's most historic, scenic and intensely agricultural areas. The base of the tower will be at an elevation of some 600 feet with the top of the tower at an elevation of some 750 feet. This is 330 feet above the elevation of the adjacent Scenic Route I-83 and surrounding Belfast Valley floor. The top of the tower will be some 5 feet in diameter. The tower will be capped by up to three

triangular "platforms," each 12 feet on a side and each mounted with up to nine antennae approximately four feet in height. Between 75 and 100 feet of the tower together with its platforms and antennae will project above the existing canopy of trees. During seasons when leaves are off the trees that portion of the tower which is below the canopy of trees also will be visible. Construction of the tower may damage the stony steep soils at the site leading to erosion and the loss of other trees at the crown of the ridge.

The proposed tower would be located in and clearly visible from the Western Run/Belfast National Historic District. There are presently no telecommunications towers or other industrial facilities within sight of the proposed tower. The proposed tower also would be within and clearly visible from the scenic viewshed of the York Road/I-83 Scenic Routes as designated in the Baltimore County Master Plan 2010, from which there are presently no telecommunications towers visible. The proposed tower also would be visible from within the Belfast Valley where a large number of substantial agricultural and environmental easements have been granted.

Protestants, Charles E. Ensor, Jr., Mary Ann Ensor and Cold Bottom Farms, Inc., own and occupy several hundred acres of farmland in the Belfast Valley, immediately south of and below the elevation of the proposed tower. In order to preserve the agricultural value of their land, the Ensors have placed it within the agricultural trust program and thereby limited its future use to agricultural pursuits. The proposed tower will be clearly visible from the Ensor residence as well as from various other locations on the Ensor farms. In short, the tower will substantially detract from the view from the Ensor's farm, a view which has been pristine for centuries. Mr. Ensor believes that the

proposed tower will diminish the value of his land because the proposed tower is inconsistent with the rural and agricultural amenities which attract potential purchasers to such land. The Ensor farms and the residences which occupy that land have been employed in agricultural use for many, many decades. The Ensors and Cold Bottom Farms strenuously oppose the proposed tower.

Other residents who testified to their opposition to the tower included Barritt Peterson, a Towson attorney who resides on Wheeler Lane in the Belfast Valley, James Werking, who resides at 806 Cold Bottom Road, Dr. Kristina Chambreau, who resides at 908 Cold Bottom Road, and Julius Lichter, a Towson attorney who appeared on behalf of Peter G. Angelos, the owner of Ross Valley Farms. In addition, representatives of the Sparks-Glencoe Community Association and the Valleys Planning Council, which represent a large number of residents of the locality of the proposed tower, testified in opposition to the proposed project. The only residents who testified in favor of the proposed tower were Terry Dunkin, the applicant, and his neighbor, Neil Ruether, a Baltimore attorney who was concerned about the quality of existing cellular service.

Herbert Davis, an expert realtor and appraiser who lived on Wheeler Lane for almost 50 years and who has sold and appraised property in the Belfast Valley for many years, testified that the proposed tower would depreciate the value of properties in the area since the proposed tower is inconsistent with the historical, rural and agricultural character of the locality. James T. Wollen, Jr., an architect who is an expert in historic districts, testified that the Western Run/Belfast National Historic District is unique in that it is a very large rural agricultural area whose uses have remained essentially the same for

some two hundred years, in spite of its very close proximity to a large urban area. He testified that the proposed tower should not be approved because it would be out of place in this unique historic district. In addition, Jack Dillon, a planning expert, testified that the proposed tower should not be approved because of its visual impact on the historic district and the scenic views in the locality.

The Baltimore County Master Plan 2010 discusses "Historic Resources" at pages 248-49. After specifically referencing the Western Run/Belfast National Register Historic District, the Master Plan states that its policy on Historic Resources is to:

Conserve visually-integrated rural historic landscapes so that viewers can appreciate the enticing qualities of continuing rural uses, or of a bygone agricultural era, while still allowing reasonable uses of privately-owned land.

After again referencing the County's valleys, the Master Plan continues on the subject of Historic Resources by noting the delicate balance that exists:

The visual appeal of their relatively undisturbed agricultural appearance is uniquely satisfying, but that visual character is also especially fragile. New construction can be visible for miles; even a single inappropriately designed or sited new dwelling can dramatically alter the perceived sense of rural character.

The recommended actions contained in the Master Plan for protecting the County's historic resources include to:

2. Protect off-site "viewsheds" in designated historic areas, including revisions in 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.

Similarly, the Master Plan states the following policy for its Scenic Resources:

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.

The recommended actions for the County's Scenic Resources contained in the Master

Plan include:

3. Promote the county's scenic resources and encourage county residents to value them.
 - Frequently, scenic resources are intrinsically linked to historic and cultural resources. Promote activities that preserve these historic and cultural resources to aid in protecting scenic quality.

Based on these policies, the Office of Planning has recommended the denial of the special exception in this case, stating that its recommended denial is based on the following:

1. The construction of the 150' monopole would be detrimental to the health, safety and general welfare of the citizens of Baltimore County.
2. The construction of the 150' monopole is inconsistent with the goals and policies of the Baltimore County Master Plan 2010 for the protection of scenic views and routes.
3. The construction of the 150' monopole would have a negative visual impact upon the Western Run-Belfast Historic District.

The construction of the 150' monopole would constitute an unwarranted visual intrusion into the scenic views along this section of I-83.

Similarly, the Department of Environmental Protection and Resource Management submitted comments on the proposed tower noting its proximity to Retreat Farm and concluded that, "If the visual impact cannot be reduced to a minimum, the request for a tower at the proposed location should be denied."

In addition, the State Division of Historical and Cultural Programs in its October 16, 2000 letter noted that "another tower is proposed for the eastern side of I-83 nearby which may have space to accommodate AWS's equipment."

In this regard, while the applicant's witnesses testified that they had approached the Catholic Retreat House on York Road as a possible site, a representative of the Retreat House testified that the Retreat House had never been approached but that it nevertheless was interested in exploring entering into a lease for a tower.

APPLICABLE PROVISIONS OF THE BALTIMORE COUNTY ZONING REGULATIONS

Section 426.2 of the Baltimore County Zoning Regulations sets forth the County's legislative policy for the siting of wireless telecommunications antennas and towers, stating that:

It is the intent of Baltimore County that:

- A. Antennas should be placed on existing towers, buildings and structures, including those of public utilities, where feasible; and
- B. If a new tower must be built, the tower should be:
 - 1. Constructed to accommodate at least 3 providers.
 - 2. Erected in a medium or high intensity commercial zone when available; and
 - 3. Located and designed to minimize its visibility from residential and transitional zones.

Section 426.5(D) requires that in the RC-2 Zone, a telecommunications tower is permitted only by special exception. Section 426.9 sets forth additional conditions for towers which are permitted only by special exception as follows:

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's 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.

Section 502 of the BCZR sets forth additional criteria for the granting of a special exception. Section 502.1 provides in that part which is relevant to this proceeding that:

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;

* * *

- 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;

Section 502.7 sets forth a special provision for wireless telecommunications towers in National Register Historic Districts as follows:

502.7 Wireless telecommunications towers. A special exception may not be granted for any wireless telecommunications tower over 200 feet in height which is within 1 1/2 miles (1) of an existing district on the Baltimore County Final Historic Landmarks list: or (2) any of the following historical districts on the National Register of Historic Places, namely, Oella, My Lady's Manor, Western Run, Worthington Valley, Greenspring Valley and Long Green Valley, unless the Zoning Commissioner or the Board of Appeals, upon appeal, finds that the proposed use will not be detrimental to or detract from the documented values of any such district due to the height of the proposed tower and its placement and visibility relative to such district.

Finally, Section 1A00.2 of the BCZR provides that the purposes of the Resource Conservation Zone include, "Protect[ing] both natural and man-made resources from compromising effects of specific forms and densities of development." Section 1A01 of the BCZR sets forth additional special provisions for special exceptions in the RC-2 Zone:

C. Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity . . . :

* * *

28. Wireless telecommunications towers, subject to Section 426.

ARGUMENT

The Baltimore County Zoning Regulations

The applicant in this case has failed to overcome the burden it has of showing that this tower should be erected. The placement of a 150 foot telecommunications monopole tower topped with its platforms and antennae within one of this County's and the nation's

most precious scenic, historic and agricultural resources clearly would be "detrimental to the health, safety or general welfare of the locality" and would be "inconsistent with the purposes of the property's [RC-2] zoning classification [and otherwise] inconsistent with the spirit and intent of the Zoning Regulations." BCZR Section 502.1. Similarly, under Section 1A01, "the use would . . . be detrimental to the primary agricultural uses in its vicinity . . . ," in that it would reduce real estate values and be otherwise deleterious. Clearly, approval of the proposed tower would be inconsistent with the purposes of the Resource Conservation Zone which include the "[p]rotect[ion] of both natural and man-made resources from compromising effects of . . . development." BCZR Section 1A00.2. The overlay of the National Historic District, the County's scenic viewsheds and the agricultural land trusts upon the locality of the proposed tower makes clear that an approval of the proposed tower at this location in the RC-2 Zone would have a greater effect than an approval elsewhere in the zone. See *Schultz v. Pritts*, 291 Md. 1 (1981).

In *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616 (1998), the Court of Special Appeals laid out the special exception conditions of the BCZR in light of *Schultz*, stating that the test is:

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

a. Be [more] detrimental to the health, safety, or general welfare of the locality involved [than the effects normally inherent with such a use would be generally elsewhere in the zone].

122 Md. App. at 641.

The facts in this case are an interesting contrast to those in *Hayfields* which also is zoned RC-2 and which also lies within the Western Run/Belfast National Historic District, but which lies in sight of large scale commercial development. The Court in *Hayfields* recognized that the Historic District is "known for its agricultural significance," 122 Md. App. at 655, and concluded that the Board of Appeals "adequately reviewed the impact of the proposed development on the relevant vicinity, which includes the National Register Historic District." 122 Md. App. 659. In so concluding, however, the Court of Special Appeals twice quoted with approval the following language from the Board's findings, language which confirms that the impact of the proposed tower at the location involved here clearly will have a greater impact than elsewhere in the RC-2 Zone (such as at Hayfields):

Whether there was significant loss of open vistas was "fairly debatable" because there was substantial evidence in the record to support the Board's finding that

[t]he instant site is at the edge of the urban/rural demarcation line, and is bounded by Interstate 83 to the east, which sees substantial large-scale commercial development at elevations much higher than the existing site. Were this project placed elsewhere in the R.C. zone, the effects of increased traffic, *impact on views*, other natural opportunities, and so forth, would be far greater as opposed to this location.

122 Md. App. 659 (Emphasis by the Court). Thus, the Board of Appeals expressly held in *Hayfields*, that the tower at its proposed site would have a greater impact than elsewhere in the RC-2 Zone, especially where, as here, there is no "substantial large-scale commercial development at elevations much higher than the existing site."

Nor has the applicant met the burden of demonstrating the additional conditions mandated by Section 426.9 of the Regulations. Thus, contrary to the applicant's suggestion, the evidence shows that the applicant failed to meet its burden of attempting to locate the tower on an existing non-residential building, i.e. the Catholic Retreat House on York Road. Nor has the applicant demonstrated that "[d]ue 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;" or that "[t]here is no available, suitable site for the tower in a medium or high intensity commercial zone, identifying with particularity any sites considered."

Further, while Section 502.7 of the Regulations, which prohibits wireless telecommunications towers of over 200 feet within one and a half miles of the Western Run/Belfast National Historic District, does not literally apply to this proposed tower, that Section clearly demonstrates an intent by the County Council that this tower should not be approved. Thus, if the County Council has prohibited towers of more than 200 feet within one and a half miles outside of this Historic District, then clearly the County Council would not want a 150 foot tower within this Historic District. The evidence is clear that "the proposed use will . . . be detrimental to or detract from the documented values of any such district due to the height of the proposed tower and its placement and visibility relative to such district," as that phrase is used in Section 502.7.

Accordingly, for these reasons the application for special exception should be denied.

The Federal Telecommunications Act of 1996

Section 6 of Bill 30-1998 which enacted Section 426 of the BCZR provides that ". . . the provisions of this Act shall be interpreted consistent with the Telecommunications Act of 1996." The applicant presumably will argue that the federal Act requires the granting of the special exception in this case. The applicable authorities are clear, however, that a denial of this proposal is entirely consistent with the federal Act.

The Telecommunications Act of 1996 enacted 47 U.S.C. § 332(7), entitled "Preservation of local zoning authority." That Section provides:

(A) General authority. Except as provided in this paragraph, nothing in this Act [47 USCS §§ 151 et seq.] 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.

* * *

(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.

* * *

Judge Niemeyer speaking for the United States Court of Appeals for the Fourth Circuit in *360 [Degrees] Communications Company v. Board of Supervisors of Albermarle County*, 211 F.3d 79 (4th Cir. 2000) recently explained the purpose of this provision:

While Congress sought to limit the ability of state and local governments to frustrate the Act's national purpose of facilitating the growth of wireless telecommunications, Congress also intended to preserve state and local control over the siting of towers and other facilities that provide wireless services. It struck a balance between the national interest in facilitating the growth of telecommunications and the local interest in making zoning decisions with its enactment of § 704(a) of the Telecommunications Act, 47 U.S.C. § 332(c). Under that section, authority to regulate siting and construction of telecommunications towers is preserved in state and local governments, *see* 47 U.S.C. § 332(c)(7)(A), but these decisions are subject to certain limitations, *see* 47 U.S.C. § 332(c)(7)(B). These limitations include prohibitions against discriminating among wireless service providers and against banning personal wireless services altogether. *See* 47 U.S.C. § 332(c)(7)(B)(i). Section 332(c)(7)(B) also requires local governments to act on permit applications "within a reasonable period of time" and not to deny applications except "in writing," and then only when "supported by substantial evidence contained in a written record." 47 U.S.C. § 332(c)(7)(B)(ii) & (iii).

211 F.3d at 86.

The facts in the *360 [Degrees]* decision are closely in point with those in this proceeding. *360 [Degrees]* sought approval to erect a tower near the top of Dudley Mountain south of Charlottesville which would project 40 to 50 feet above the tree canopy on the mountain. At the Albermarle County Planning Commission meeting which

considered the application, 13 citizens spoke in opposition to the tower and the planning staff recommended that the request be denied. At a public hearing before the County Board of Supervisors, 360 [Degrees] produced evidence that it received about 20 calls a week complaining about inadequate wireless service in the Dudley Mountain area and that the proposed site on Dudley Mountain was the best location from which to provide the service. It also contended that because of the density of the forest, the tower had to be 40 feet above the tree canopy to provide effective coverage. 360 [Degrees] claimed that the proposed tower would be as invisible as a tower could be, and provided photographs of the mountain that depicted a barely visible red balloon, five feet in diameter, to identify the proposed location of the tower. Ten citizens voiced concerns about the tower's visibility, its inconsistency with the community's environmental preservation goals, and its impact on the character of the area. The only citizen who supported the application was the owner of the land on which the tower would be erected. One citizen, whose property was contiguous to that on which the tower would be located, testified that he placed his land in a conservation easement "just so this sort of thing would not happen."

The Board of Supervisors denied the application determining that the proposed tower would conflict with the County's Comprehensive Plan and Open Space Plan, which encouraged the protection of mountains and rural areas and discouraged activities that would alter the continuity of the County's mountain ridgelines or disrupt the natural balance of the soils, slope, and vegetation of mountainous areas. The Board also determined that the proposed tower would conflict with the Albermarle County Zoning

Ordinance in that the tower was detrimental to the creation of a "convenient, attractive and harmonious community." The Board concluded that its decision would not prohibit wireless communication service in Albemarle County. It noted that since 1990, it had granted 18 permits for wireless communications towers and denied only four.

360 [Degrees] filed suit in the federal court under the federal Telecommunications Act, alleging that the Board of Supervisors' decision was not supported by substantial evidence and that the decision had the effect of prohibiting personal wireless services from being provided. The federal district court found that Board's denial of the application was supported by substantial evidence, but that the denial had the effect of prohibiting the provision of personal wireless services in violation of the Act. The Fourth Circuit reversed, concluding that 360 [Degrees] had "failed to meet its heavy burden in demonstrating that the Board of Supervisors' denial of a permit for a particular site amounts to a general prohibition of service" 211 F.3d at 88. Significantly, the Court recognized that "dead spots" or insignificant gaps in coverage do not amount to a prohibition of service under the Act. The Court said:

[B]ecause [the Act] is aimed at facilitating the development of wireless services, to evaluate whether that provision has been violated, we must determine what level of services is protected The Act obviously cannot require that wireless services provide 100% coverage. In recognition of this reality, federal regulations contemplate the existence of dead spots, defined as "small areas within a service area where the field strength is lower than the minimum level for reliable service." 47 C.F.R. § 22.99. And for the purpose of calculating the cellular geographic service area, the regulations provide that "cellular service is considered to be provided in all areas, including 'dead spots.'" 47 C.F.R. § 22.911(b); *see also Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630, 643-44 (2d Cir. 1999) (recognizing that denials of applications to provide service to fill coverage gaps that are

limited in number or size generally will not amount to a prohibition of service).

* * *

If we assume that significant gaps are determined to exist,¹ there remains the larger, statutory question of whether 360 [Degrees] Communications has met the "heavy burden" of demonstrating that denial of its application for the one particular site is tantamount to a prohibition of service. . . .

- - - - -Footnotes- - - - -

n1 . . .[A]s we have noted, "service" cannot be construed to require 100% coverage. But we need not reach the question of whether poor service or significant gaps in service in Albemarle County could amount to an absence of service because we have concluded that even if there is an absence of service, 360 [Degrees] Communications has not met its heavy burden under [the Act] to demonstrate that denial of the permit in this case amounts to a prohibition of the provision of service.

- - - - -End Footnotes- - - - -

Not only has 360 [Degrees] Communications failed to meet its heavy burden in demonstrating that the Board of Supervisors' denial of a permit *for a particular site* amounts to a general *prohibition of service*, but the Board of Supervisors has also provided affirmative evidence to the contrary. It demonstrated that it has approved 18 applications for wireless service facilities, including several from 360 [Degrees] Communications and a few for towers in mountain regions.

211 F.3d at 87-88.

Also notable is the Fourth Circuit's discussion in the 360 [Degrees] case of its other decisions dealing with the issue of "substantial evidence." The Court noted its prior decisions in cellular tower cases dealing with citizen concerns about character of the neighborhood and a historical structure, both of which are relevant here. The Court in 360 [Degrees] said:

In [*AT&T Wireless PCS, Inc. v. City Council of the City of Virginia Beach*, 155 F.3d 423 (4th Cir., 1998)] we concluded that the substantial opposition from local residents to an application for two cellular towers based on their rational fears that the towers would damage the character of their residentially zoned neighborhood, which contained no significant commercial development, no commercial antenna towers, and no above-ground power lines, amounted to "substantial evidence" and was therefore a

lawful basis for the city council's decision to deny a permit for the towers. *See* 155 F.3d at 431. Similarly, in *AT&T Wireless PCS, Inc. v. Winston-Salem Zoning Board of Adjustment*, 172 F.3d 307, 315 (4th Cir. 1999), we held that the Winston-Salem Zoning Board had "substantial evidence" to deny a special-use permit for the construction of a 148-foot antenna tower near a historical house that was surrounded by low-density, single-home, residential property with no commercial property nearby. In *Winston-Salem*, approximately 150 local residents objected to the tower, either in person or by petition, because it would change the character of the neighborhood. *See id.* at 315-16.

211 F.3d at 83-84.

In comparison to the facts in this case, there surely is "substantial evidence" which would permit denial of this request for special exception under the federal Telecommunications Act of 1996.

For all of the above reasons, the application for special exception should be denied.



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Attorney for Protestants, Charles E.
Ensor, Jr., Mary Ann Ensor and Cold
Bottom Farms, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of November, 2000, I mailed a copy of the foregoing Memorandum of Protestants, Charles E. Ensor, Jr., Mary Ann Ensor and Cold Bottom Farms, Inc., to:

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

and

Richard C. Burch, Esquire
Mudd, Harrison & Burch
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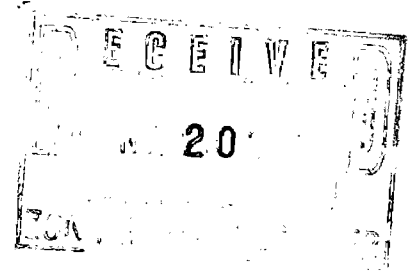
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November 17, 2000

VIA HAND DELIVERY

Mr. Lawrence R. Schmidt
Zoning Commissioner
Baltimore County
County Courts Building
401 Bosley Avenue
Suite 405
Towson, MD 21204



**Re: 801 Bacon Hall Road – Terry R. Dunkin, Owner
AT&T Wireless, Inc., Lessee
Case No.: 01-054-X**

Dear Commissioner Schmidt:

Please find enclosed Protestants' Charles E. Ensor, Jr. and Mary Ann Ensor and Cold Bottom Farm, Inc.'s Memorandum of Law in Support of their objections to the Petition for Special Exception filed on behalf of AT&T Wireless Services, Inc. in the above captioned matter.

Sincerely,

K. Donald Proctor

KDP:gbh
Enclosure

cc: Richard C. Burch, Esquire (w/enclosure)
Paul A. Dorf, Esquire (w/enclosure)
Mr. Charles E. Ensor, Jr. (w/enclosure)

11/16/00

In re:

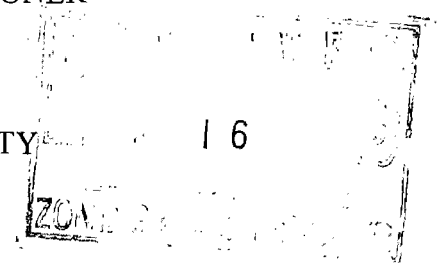
TERRY and CHERYL DUNKIN,
Legal Owners

and

AT&T WIRELESS SERVICES, INC.,
Lessee

Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
*
* Case No. 01-54-X
*



**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT
OF ITS PETITION FOR SPECIAL EXCEPTION**

AT&T Wireless Services, Inc. ("Petitioner"), by and through its attorneys, Paul A. Dorf, Russell G. Alion, Jr. and Adelberg, Rudow, Dorf & Hendler, LLC, submits the following Memorandum of Law in Support of its Petition for Special Exception. The Petition should be granted because (1) Petitioner presented evidence that the establishment, maintenance and operation of the proposed tower would satisfy all standards for special exception use provided in §502.1 of the Baltimore County Zoning Regulations, and (2) no evidence was presented to support the finding that the adverse effects of the proposed tower would be greater at the proposed site than elsewhere in the Resource Conservation Agricultural zone.

STATEMENT OF THE CASE

On August 4, 2000, Petitioner filed a Petition for Special Exception (the "Petition") with the Baltimore County Department of Permits and Development Management seeking special exception approval to construct a radio-link cellular telecommunications facility on property known as 801 Bacon Hall Road in Sparks, Maryland (the "Proposed Site"). The facility will consist of a 150-foot

tower with transmitting and receiving antennae and a small maintenance compound to hold equipment cabinets surrounded by an 8 foot-high chain link fence (the "Facility").

The Proposed Site is located in a Resource Conservation Agricultural zone. Under the Baltimore County Zoning Regulations (the "Regulations"), special exception approval is required to construct the Facility.

On September 20, October 17 and October 31, 2000, testimony was taken regarding the merits of the Petition before the Honorable Lawrence E. Schmidt, Zoning Commissioner for Baltimore County (the "Commissioner"). For the reasons set forth below, the Petition should be granted.

STATEMENT OF THE FACTS

Petitioner is a corporation engaged in the business of providing wireless and mobile communications. Petitioner has been granted a license by the Federal Communications Commission to provide wireless telecommunications services in the Baltimore-Washington Metropolitan area. In connection with the build-out of its wireless PCS (personal communications service) system, Petitioner requires multiple antenna sites for radio link in the system.

The Proposed Site is a critical component of Petitioner's nationwide wireless PCS system because it covers important segments of Interstate 83 and York Road in Baltimore County which are not currently covered by any existing AT&T Wireless facility.

Prior to selecting the Proposed Site, Petitioner used various engineering criteria to determine the most suitable site, negotiated a lease agreement with the property owners, studied the potential environmental impact of the Facility, and consulted with adjoining land owners to obtain their consent to build the Facility.

The Baltimore County Tower Review Committee (the "Committee") has recommended approval of the Petition. In a written opinion dated September 13, 2000, the Committee explained that after "completing our own site survey and evaluation, the Committee believes that AT&T's RF coverage in the designated areas needs to be enhanced," and we believe that construction of the proposed tower, if "properly painted to blend with the skyline, will have a minimal effect on the surrounding communities."

The Baltimore County Bureau of Development Plans Review, the Baltimore County Fire Department and the Maryland Department of Transportation have no objection to the Facility.

On October 12, 2000, the Office of Planning issued an inter-office correspondence advising that it opposed the Facility. The Office of Planning concluded, without explanation, that the proposed tower "would be detrimental to the health, safety and general welfare of the citizens of Baltimore County," "is inconsistent with the goals and policies of the Baltimore County Master Plan 2010," and "would have a negative visual impact upon the Western Run-Belfast Historic District."

In addition, residents in the surrounding area raised concerns that the Facility would be aesthetically displeasing, would have an adverse effect on property values and would undermine the rural and agricultural character of the area.

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):

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid.

* * *

[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 11, 15.

In Mossburg v. Montgomery County, 107 Md.App. 1, 666 A.2d 1253 (1995), the Court of Special Appeals, applying Schultz, simplified the standard of review for a special exception:

[I]t is not whether a special exception is compatible with permitted uses that is relevant in the administrative proceedings. The legislative body, by designating the special exception, has deemed it to be generally compatible with the other uses. * * * Moreover, it is not whether a use permitted by way of 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 the particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency.

* * *

The question in the case *sub judice*, therefore is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at 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.

Id. at 8-9 (emphasis in original); Evans v. Shore Communications, 112 Md.App. 284, 304, 685 A.2d 454 (1996) ("Assuming, *arguendo*, that appellant has produced evidence that the tower will result in an adverse impact on the surrounding properties, the Board was nevertheless obliged to make a finding that the adverse effects would be greater in the proposed location than they would generally be elsewhere within the areas of the county where they may be established.").

In the instant case, Baltimore County already has legislatively determined, by designating wireless communication towers as special exceptions in the Resource Conservation Agricultural zone, that the towers are appropriate, beneficial and generally compatible with other uses in the zone. Evans, 112 Md. at 303. Since the Facility is designated as a special exception, it is implied that the Facility will have adverse effects. Mossburg, 107 Md.App. at 8. The issue presented is whether the adverse effects of the Facility are greater at the Proposed Site than they generally would be elsewhere in the Resource Conservation Agricultural zone.

In applying the law to the facts presented, the factual findings must be supported by substantial evidence contained in the record. Evans v. Shore Communications, Inc., 112 Md.App. 284, 299, 685 A.2d 454 (1996); Dundalk Holding Co. v. Horn, 266 Md. 280, 283, 292 A.2d 77 (1972) ("[I]f the action of the County [Zoning] Board was not supported by any substantial evidence, then its action was arbitrary and capricious and a denial of due process of law . . . "); 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.").

ARGUMENT

I. NO EVIDENCE WAS PRESENTED THAT THE ADVERSE EFFECTS OF THE FACILITY WOULD BE GREATER AT THE PROPOSED SITE THAN THEY GENERALLY WOULD BE ELSEWHERE IN THE RESOURCE CONSERVATION AGRICULTURAL ZONE.

As explained above, under Schultz and its progeny, the issue presented is whether the adverse effects of the proposed tower are greater at the Proposed Site than they generally would be

elsewhere in the Resource Conservation Agricultural zone. No evidence was presented that the adverse effects of the Facility would be greater at the Proposed Site than they generally would be elsewhere in the zone. Accordingly, special exception relief should be granted. Several cases are instructive.

In AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md.App. 681, 720 A.2d 925 (1998), the Court of Special Appeals reversed the zoning board's denial of a conditional use/special exception permit to erect a 133-foot tower in an R-1 (residential) zoning district in Baltimore City because there was no evidence that the adverse aesthetic effects of the tower would be less if located elsewhere in the zoning district. The special exception request was opposed by neighborhood residents who contended that the tower would have an adverse effect on property values due to the negative aesthetic effects of the tower.

Evidence was presented, however, that the proposed site was surrounded by dense woodland which created a buffer between the site and the adjacent residences thereby minimizing the visual impact on the surrounding residential community. AT&T Wireless, 123 Md.App. at 685. AT&T Wireless also presented evidence from a real estate appraiser who testified that the tower would have no negative impact on residential property values in the adjacent community because of the buffer created by the dense woodland. Id. at 687.

The Court of Special Appeals held that the special exception should have been granted because "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." Id. at 696. The Court explained:

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 would make the tower facility less objectionable, or at least less visible, than it would if it were located in an area denuded of trees.

Id. at 698.

Similarly, in Anderson v. Sawyer, 23 Md.App. 612, 613, 329 A.2d 716 (1974), the Court of Special Appeals reversed the trial court's denial of a special exception to construct a funeral home in a residential zoning district because no evidence was presented to support the conclusion that the funeral home would adversely affect the surrounding area in any way different than in any other residential district. The Court explained:

The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. **Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all.**

Id. (emphasis added). See Mossburg, 107 Md.App. at 9 (“Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that

it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere.”); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 331, 214 A.2d 146 (1965) (overhead high tension electric wires were permitted in rural section of 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”).

As in each of the aforementioned cases, the respondents, here, presented no evidence that the adverse effects of the Facility would be greater at the Proposed Site than they generally would be elsewhere in the Resource Conservation Agricultural zone.

Instead, the Commissioner was presented evidence from Petitioner’s witnesses, including Chris Paradiso of TEA, Inc., a consulting firm retained by Petitioner to locate suitable tower sites within the required coverage area, Mitch Kellman, an expert in land planning and zoning, Oakleigh J. Thorne, a certified real estate appraiser and expert in land development and valuation of properties, and April M. Beisaw, an environmental scientist and expert in formal cultural resource investigations with Andrew Garte & Associates, Inc., that the adverse effects of the proposed tower would be less at the Proposed Site than they generally would be elsewhere in the Resource Conservation Agricultural zone because of the dense woodland surrounding the Proposed Site as well as the topography and location of the site.

Significantly, respondents own witness, Jack Dillon, who was qualified as an expert in zoning and land development, agreed that the adverse aesthetics effects of the proposed tower

would be less at the Proposed Site than they generally would be elsewhere in the zoning district because of the wooded buffer afforded by the Proposed Site.

**II. SPECIAL EXCEPTION RELIEF SHOULD BE GRANTED
BECAUSE THE RECORD FAILS TO CONTAIN
SUBSTANTIAL EVIDENCE TO SUPPORT THE DENIAL OF
THE PETITION.**

In applying the principles of law enunciated in Schultz to the facts presented, any 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. Substantial evidence to support any resolution “must be more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Western PCS II Corp. v. Extraterritorial Zoning Authority, 957 F.Supp. 1230, 1236 (D.N.M. 1997) (quoting Universal Camera Corp. v. NLRB, 340 U.S. 474, 477, 71 S.Ct. 456, 459 (1952)); Turner v. Hammond, 270 Md. 41, 60, 310 A.2d 543 (1973).

Here, the only evidence presented in opposition to the Petition included testimony from area residents that the Facility would have a negative impact aesthetically, would have a negative impact on property values and would undermine the rural and agricultural character of the area. As fully explained below, the record fails to contain any indicia of “substantial evidence” upon which the Petition for Special Exception could be denied.

A. Residents' generalized concerns that the proposed tower would be aesthetically displeasing do not constitute "substantial evidence" to support the denial of the Petition.

Area residents raised generalized concerns that the Facility would be aesthetically displeasing. These generalized concerns, however, do not constitute "substantial evidence" to support the denial of the Petition.

In BellSouth Mobility, Inc. v. Gwinnett County, 944 F.Supp. 923, 928 (N.D.Ga. 1996), a cellular communications company filed an application for a permit to install a 197-foot monopole in a residential zoning district. Residents opposed the application, in part, because the proposed tower would be "aesthetically displeasing," and at least 20 homeowners would see the proposed tower from their front windows. The county board of commissioners denied petitioner's application. The U.S. District Court for the Northern District of Georgia, however, reversed holding that residents' "generalized concerns [did] not constitute substantial evidence supporting the board's decision." BellSouth, 944 F.Supp. at 928.

Similarly, in New Brunswick Cellular Telephone Co. v. Township of Edison, 693 A.2d 180 (N.J.Super.Ct.Law Div. 1997), a cellular communications company sought to erect an 80-foot cellular communications tower approximately 100 feet from the nearest adjacent residential area. The local zoning board denied the company's request, in part, because the proposed tower would be aesthetically displeasing to nearby residents. The appellate court reversed, concluding that the board's findings that the proposed tower would be aesthetically displeasing lacked any credible evidence. New Brunswick Cellular, 693 A.2d at 187. The Court explained that:

While the tower will no doubt be aesthetically displeasing to some of the neighboring residents, had the Board performed its quasi-judicial obligation to balance the positive and negative criteria, it could not

reasonably have concluded on this record that these detriments substantially outweighed the regional benefits of an improved telecommunications service.

Id. at 188. See Evans, 112 Md.App. at 303-05 (objections by residents that a proposed 200-foot, three-legged, free-standing 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 to construct tower); Western PCS II Corp. v. Extraterritorial Zoning Authority, 957 F.Supp. 1230, 1236-37 (D.N.M. 1997) (zoning authority's denial of request for special exception to mount telecommunications antenna to water tank not supported by substantial evidence where zoning authority relied in part on residents “generalized concerns” that facility might be a visual blight to the neighborhood); L.I.M.A. Partners v. Borough of Northvale, 530 A.2d 839, 843 (N.J.Super.Ct.App.Div. 1987) (statements of residents that proposed communication facility is aesthetically displeasing are an “inadequate substitute” for appropriate findings based on credible evidence in the record); Westinghouse Electric Corp. v. Council of Township, 686 A.2d 905, 908 (Pa.Commw.Ct. 1996) (complaints by residents that proposed 150-foot tower in residential district would add to the existing poor aesthetics of the area held insufficient to defeat conditional use applied for by telecommunications company).

B. Generalized objections by residents that the proposed tower would adversely affect property values do not constitute "substantial evidence" to support the denial of the Petition.

Residents also objected to the proposed Facility on the basis that it would have an adverse affect on property values in the surrounding area. This evidence does not constitute “substantial evidence” to support the denial of the Petition.

In Illinois RSA No. 3, Inc. v. County of Peoria, 963 F.Supp. 732 (C.D.Ill. 1997), the United States District Court for the Central District of Illinois reversed the county's denial of a request to build a cellular communications tower finding that the county's decision was not supported by substantial evidence. The county denied the petition, in part, because residents "uniformly complained" that the proposed tower might diminish property values. The petitioner offered the testimony of a real estate appraiser who explained that cellular towers similar to the one proposed by the petitioner, had no significant effect on property values. Petitioner also presented testimony and demonstrative exhibits which demonstrated that the proposed tower would not be visible from many of the surrounding residential properties.

The District Court concluded that the resident's generalized, nonexpert objections to the proposed tower "certainly cannot constitute substantial evidence that the proposed tower would adversely affect property values." Illinois RSA, 963 F.Supp. at 745. See Evans v. Shore Communications, Inc., 112 Md.App. at 303-05 (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); 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).

Here, Petitioner offered the testimony of Oakleigh J. Thorne, a certified real estate appraiser and expert in land development and valuation of properties, who testified that the proposed tower would have no effect on land values in the surrounding area. Mr. Thorne testified that he has performed studies on the effect that communication towers, similar to the one proposed, has had on property values in residential communities in Baltimore County, Howard County, Montgomery

County and Fairfax County, Virginia. In those residential communities, Mr. Thorne found that the existing towers had no effect on property values in the surrounding area.

Significantly, Mr. Thorne distinguished the Proposed Site, which is surrounded by dense woodland, from the residential communities he studied which contained no wooded buffer. Mr. Thorne concluded that, here, the proposed tower would not impact property values in the surrounding area because the existing woodland will provide a natural buffer between the Proposed Site and the surrounding area thereby minimizing the visual impact of the tower on the area.

The respondents offered the testimony of Herbert Davis, a real estate appraiser, who testified that the proposed tower would impact property values in the surrounding area. Mr. Davis, however, acknowledged that he has performed no formal studies on the impact that communication towers may have on property values in residential communities. Accordingly, Mr. Davis' testimony was speculative at best.

C. The record fails to contain any evidence that the adverse effects of the Facility on the Western Run-Belfast Road Historic District would be greater at the Proposed Site than they generally would be elsewhere in the Resource Conservation Agricultural zone.

The Office of Planning has recommended that the Petition be denied, in part, because the proposed tower "would have a negative visual impact upon the Western Run-Belfast Historic District." Residents voiced the same objection. Respondents, however, failed to offer any evidence that the visual impact of the tower on the historical district would be less if the tower were located elsewhere in the zone.¹

¹ It should be noted that all pictures of Petitioner's balloon-test introduced by Respondents undisputedly were taken from locations outside the historical district.

Witnesses on behalf of the Petitioner testified that the Proposed Site was selected because the dense woodland which surrounds the Proposed Site provides a complete, natural buffer between the Facility and the surrounding area thereby minimizing the visual impact of the tower. Petitioner presented evidence through April Beisaw, an expert in formal cultural resource investigations, that the proposed tower will be visible from only one residence within the historical district – the home of Charles Ensor located on Buffalo Run Road.²

Ms. Beisaw testified that placing the Facility at the Proposed Site would have minimal visual impact on the historical district and cultural resources because a majority of the tower, including its base, would be shielded by the dense woodland. Ms. Beisaw opined that the adverse effects of the proposed tower on the surrounding area, including the Western Run-Belfast Road Historic District, would be greater at other locations within the zone because no other location could provide the topography and dense woodland afforded by the Proposed Site.

In Hayfields, Inc. v. Valleys Planning Council, Inc., 122 Md.App. 598, 716 A.2d 311 (1998), the petitioner, the owner of Hayfields Farm, planned to build an 18-hole golf course, driving range, clubhouse, restaurant, pro shop and banquet hall on approximately 228 acres of the Farm. Special exception relief was required to build the country club. The Farm was considered the “gateway” to the rural area of Baltimore County and to the Western Run-Belfast Road National Register Historic District, a rural historic district noted for its agricultural significance. The petition was opposed by Valleys Planning Council (“Valleys”) who contended, among other things, that the country club would have an adverse effect on the historic district and the views it offered.

² It should be noted that Mr. Ensor’s property is not recognized as a historical property on the National Registry.

On appeal, Valleys contended that the Board of Appeals failed to consider the adverse impact the country club would have on the historical district. The Court of Special Appeals rejected Valleys' contention. The Court explained that "to warrant denial of a petition for special exception, the detriment to adjoining or surrounding properties at the instant site must be different from the detriment that would occur elsewhere in the zone." Hayfields, 122 Md.App. at 656. The Court concluded that the Board, in reaching its decision to grant the special exception, considered the potential impact of the country club on the general welfare and the historical district. Id. at 659. The Court cited the Board's opinion which stated that if "this [country club was] placed elsewhere in the R.C. zone, the effects of increased traffic, *impact on views*, other natural opportunities, and so forth, would be far greater as opposed to this location." Id. (emphasis in original).

The Board's rational in Hayfields is instructive. Here, as explained above, Petitioner selected a location where the adverse aesthetic effects of the proposed tower upon the Western Run-Belfast Road Historic District would be less than if the tower were located elsewhere in the zone. It also should be noted that the Maryland State Historical Preservation Office, pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended, is studying the effect that the proposed tower may have on the Western Run-Belfast Road Historic District. Petitioner will be required to satisfy any conditions or restrictions imposed by that Office in the event that it is determined that the proposed tower will have an adverse effect upon historic properties.

D. There is no requirement that the Regulations, which permit wireless communication towers in a Resource Conservation Agricultural zone, conform to the recommendations of the Baltimore County Master Plan.

The Office of Planning has recommended that the Petition be denied, in part, because the proposed tower "is inconsistent with the goals and policies of the Baltimore County Master Plan

2010 for the protection of scenic views and routes.” Respondents also presented this argument at the hearing.

As explained above, Baltimore County already has legislatively determined, by designating wireless communication towers as special exceptions in the Resource Conservation Agricultural zone, that the towers are appropriate, beneficial and generally compatible with other uses in the zone. Evans, 112 Md. at 303.

The fact that the Office of Planning may believe that the proposed tower is “inconsistent” with the County’s Master Plan is inconsequential to these proceedings. Richmarr Holly Hills, Inc. v. American PCS, L.P., 117 Md.App. 607, 642, 701 A.2d 879 (1997) (“While it is true that other jurisdictions have by statute required zoning ordinances be in accordance with the master plan, Baltimore County has not.”) (quoting People’s Counsel v. Beachwood, 107 Md.App. 627, 657-58, 670 A.2d 484 (1996)); Eastern Outdoor Advertising Co. v. Mayor & City Council of Baltimore, 128 Md.App. 494, 518-19, 739 A.2d 854 (1999) (even if the legislative purpose of the City’s Urban Renewal Plan was to exclude general advertising signs in the business district, the Plan did not modify, negate or “trump” provisions of the zoning code which allowed advertising signs as conditional uses in the business district).

E. Respondents failed to present any evidence to show that the proposed tower would undermine the rural and agricultural character of the area.

Residents also raised general objections that the proposed tower would undermine the rural and agricultural character of the area. This evidence does constitute “substantial evidence” to support the denial of the Petition.

In Evans v. Shore Communications, Inc., 112 Md.App. 284, 685 A.2d 454 (1996), the Court of Special Appeals affirmed the decision of the Circuit Court for Talbot County which reversed the county zoning board's decision to deny a special exception permit to construct a 200-foot, three-legged, free-standing tower in a Rural/Agricultural Conservation zone.³ Opponents to the proposed tower contended that the "general purpose of the Zoning Ordinance is to preserve the existing rural character and quality of life of Talbot County and that the location of the proposed tower is squarely within one of the more rural and estate areas of the County, having been zoned RAC (Rural/Agricultural Conservation)." Id. at 304.

The Board of Appeals concluded that the proposed tower was not compatible with the pattern of existing developed land use in that "the proposed tower is unique to the pattern of existing developed land use in the vicinity." Id. at 305. The Board opined that the tower would be detrimental to the use of nearby residents in terms of the use and enjoyment of the rural character of their property. Id.

The Court of Special Appeals disagreed with the Board's conclusions. The Court explained:

Clearly, the section of the Comprehensive Plan titled, 'Rural and Agricultural Conservation Areas,' provides for conservation of the rural and agrarian character of the area in the face of expanding suburban and residential development. The Board fails to state how construction of the tower in question undermines the rural character of the neighborhood and somehow transforms the area into a neighborhood antithetical in character to that of a rural neighborhood.

Id. at 305. See AT&T Wireless Services, 123 Md.App. at 698 ("the Board failed to state how construction of the tower in question would undermine the rural or bucolic character of [the] Ten

³ Here, the Proposed Site is located in a Resource Conservation Agricultural zone.

Hills [community] or how it would transform the area into a neighborhood 'antithetical in character' to that of a rural or bucolic neighborhood. . . . [T]here was no showing that the community's uniqueness would make the presence of a tower more harmful than it would otherwise be if it were located elsewhere in the R-1 zone.").

Here, as in Evans and AT&T Wireless, there has been no showing that the proposed tower would undermine the rural and agricultural character of the area.⁴

Notwithstanding each of the arguments above, if there is any evidence in the record that the proposed tower will have an adverse impact on the surrounding area, the adverse effects must be greater at the Proposed Site than they would generally be elsewhere in the Resource Conservation Agricultural zone. In light of the evidence presented, it only could be concluded that the adverse aesthetic effects of the Facility would be less at the Proposed Site than they generally would be elsewhere in the zone. The case of Board of County Comm'rs v. Holbrook, 314 Md. 210, 550 A.2d 664 (1988) is instructive.

In Holbrook, the Board of Appeals denied a mobile home owner's request for special exception to permanently locate his mobile home in an area zoned for agricultural use on the basis that the mobile home would substantially diminish adjacent property values to a greater extent than it would in comparison to properties located elsewhere in the zone. The request for special exception

⁴ In Mossburg, *supra*, the Court of Special Appeals directed the community association to their legislative body to voice their displeasure with the local zoning code, rather than to the court. The Court explained that if community associations "are displeased with the County's decision to permit [certain] uses as special exceptions in [certain] zones in the first instance, an alternate, and perhaps better, recourse would be to petition the legislative body for amendments to the County zoning code prohibiting such uses generally, rather than attacking the applications for special exceptions on a piecemeal, 'not in my backyard,' basis. Zoning *policy* is generally better, and more appropriately addressed, in legislative forums, rather than quasi-judicial or judicial forums." Mossburg, 107 Md.App. at 29 (emphasis in original).

was opposed by a property owner located approximately 80 feet from the proposed site of the mobile home. In denying the special exception, the Board reasoned:

A Mrs. Peters, owner of the adjacent parcel, appeared in protest. She indicated that she presently owned 1.57 acres of land upon which she had constructed in October, a \$147,000 residence. She stated that the unit is from 80 feet to 150 feet away and is visible from her front yard.

* * *

Under the circumstances, and in accordance with the recommendation of the Planning Commission, the Board will deny the application on the grounds that it does otherwise substantially diminish adjacent property values and, under Schultz v. Pritts, create significantly greater adverse effects in this location than were it located in other areas in the zone.

Holbrook, 314 Md. at 213-14. (citations omitted). The Court of Appeals affirmed. Its comments are instructive:

We find no cause to question the Board's conclusion that the mobile home, in this particular location, would impair neighboring property values to a greater extent than it would elsewhere in the zone. Countless locations exist within the zone, and indeed, within Holbrook's own property, where the presence of a mobile home would have no effect whatsoever upon adjoining property values. **If, for example, trees or topography hid the mobile home from the view of the neighboring property owners, there would remain, as the Board's counsel conceded, absolutely no grounds for denying a special exception permit.**

Holbrook, 314 Md. at 220 (emphasis added).

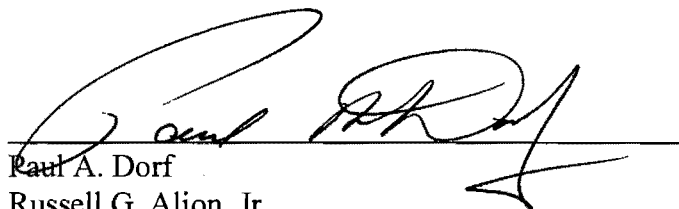
Thus, had the petitioner in Holbrook selected a location which would minimize the adverse effects of the mobile home, such as an area where trees or topography hid the mobile home from the view of neighboring property owners, a special exception would have been granted to him.

Here, AT&T Wireless selected the Proposed Site because the dense woodland which surrounds it provides a complete, natural buffer between the Facility and the surrounding area thereby minimizing the visual impact of the tower. In addition, residences are a considerable distance from the Proposed Site. Thus, AT&T selected a location where the adverse aesthetic effects of the tower would be less than elsewhere in the Resource Conservation Agricultural zone.⁵

Considered in its entirety, the record does not contain substantial evidence to support the denial of the Petition as required by Evans, supra, and §332(c)(7)(B)(iii) of the Telecommunications Act of 1996. Petitioner produced substantial evidence that the establishment, maintenance and operation of the proposed tower would satisfy all standards for special exception use provided in §502.1 of the Baltimore County Zoning Regulations.

CONCLUSION

For the reasons stated above, the Petition for Special Exception should be granted.



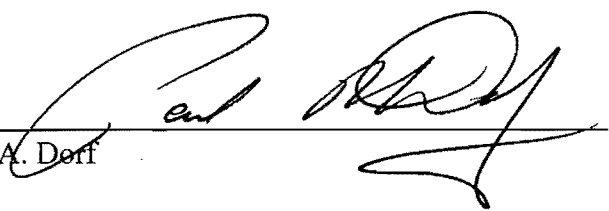
Paul A. Dorf
Russell G. Alion, Jr.
Adelberg, Rudow, Dorf & Hendler, LLC
600 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(410) 539-5195

Attorneys for Petitioner,
AT&T Wireless Services, Inc.

⁵ The fact that the density of the woodland would be "seasonal" does not alter the fact that the adverse aesthetic effects at the Proposed Site would be less than they would be elsewhere in the zoning district. AT&T Wireless, 123 Md.App. at 696.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2000, a copy of the foregoing Petitioner's Memorandum of Law in Support of its Application for Special Exception was mailed postage prepaid to Donald K. Proctor, Esquire, 102 W. Pennsylvania Avenue, Suite 505, Towson, Maryland 21204 and Richard C. Burch, Esquire, 300 Jefferson Building, 105 W. Chesapeake Avenue, Towson, Maryland 21204.



Paul A. Dorf

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

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

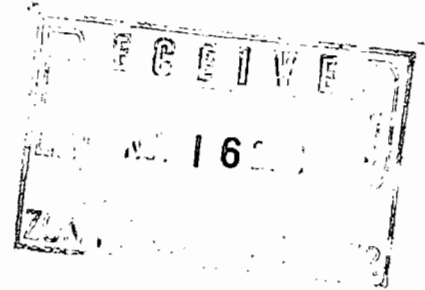
pdorf@adelbergprudow.com

www.adelbergprudow.com

Telephone
410-539-5195

Facsimile
410-539-5834

November 16, 2000



HAND DELIVERED

Lawrence R. Schmidt, Zoning Commissioner
County Courts Building
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

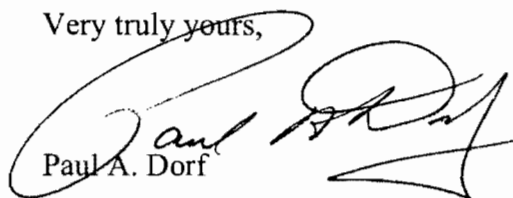
Re: 801 Bacon Hall Road - Terry R. Dunkin, Owner,
AT&T Wireless, Inc., Lessee
Before the Zoning Commissioner for Baltimore County
Case No.: 01-054-X
Our File No.: 9478-803

Dear Commissioner Schmidt:

Please find enclosed, for your consideration, Petitioner's Memorandum of Law in Support of its Petition for Special Exception filed on behalf of AT&T Wireless Services, Inc. in the above-referenced zoning matter.

Thank you for your consideration.

Very truly yours,


Paul A. Dorf

PAD/rga
Enclosure

cc: Donald K. Proctor, Esq.
Richard C. Burch, Esq.

075s/at&tschl.ltr



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 801 Bacon Hall Road

which is presently zoned R.C. 2

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 Bill Francis
Signature James King Site Acquisition Manager
11710 Beltsville Drive BILL FRANCIS
Address 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
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):

Terry R. Dunkin
Name - Type or Print
Signature Terry R. Dunkin
Cheryl S. Dunkin
Name - Type or Print
Signature Cheryl S. Dunkin
801 Bacon Hall Road
Address Telephone No.
Sparks, MD 21152
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 _____

Reviewed By CTM Date 8/3/00

ORDER RECEIVED FOR FILING

Date 11/28/00

Case No. 01-054-X
REV 09/15/98

By [Signature]

dunkexce.pdf

Description to Accompany

Petition for Special Exception

5.03 Acre Parcel

Southwest Side of Bacon Hall Road

East of Cedar Grove Road

Seventh Election District, Baltimore County, Maryland



Daft•McCune•Walker, Inc.

200 East Pennsylvania Avenue

Towson, Maryland 21286

<http://www.dmw.com>

410 296 3333

Fax 410 296 4705

A Team of Land Planners,

Landscape Architects,

Golf Course Architects,

Engineers, Surveyors &

Environmental Professionals

Beginning for the same at the end of the second of the two following courses and distances measured from the intersection of the centerline of Cedar Grove Road and the centerline of Bacon Hall Road (1) Southeasterly, along the center of Bacon Hall Road, 2365 feet, more or less, and thence (2) Southwesterly 30 feet, more or less, to the point of beginning, thence running for the eight following courses and distances, viz: (1) South 25 degrees 44 minutes 42 seconds West 356.89 feet, thence (2) South 34 degrees 49 minutes 40 seconds East 300.38 feet, thence (3) South 77 degrees 35 minutes 11 seconds East 723.00 feet, thence (4) South 12 degrees 24 minutes 49 seconds West 304.00 feet, thence (5) North 77 degrees 35 minutes 11 seconds West 337.00 feet, thence (6) North 44 degrees 06 minutes 50 seconds West 643.61 feet, thence (7) North 25 degrees 13 minutes 03 seconds West 274.31 feet, and thence (8) North 33 degrees 54 minutes 14 seconds East 325.58 feet to the southwest side of Bacon Hall Road, thence binding thereon (9) South 59 degrees 25 minutes 33 seconds East 64.02 feet to the point of beginning; containing 5.03 acres of land, more or less.

01-054-X

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES
ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

July 17, 2000

Project No. 96035.BF (L96035.BF)



**NOTICE OF ZONING
HEARING**

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

Case: #01-054-X
801 Bacon Hall Road
S/S Bacon Hall Road, 2365
feet E of Cedar Grove Road
7th Election District
3rd Councilmanic District
Legal Owner(s): Terry and
Cheryl Dunkin
Contract - Purchaser: AT&T
Wireless Services
Special Hearing: for a tele-
communications monopole
less than 200 feet in height
on a residential zone, as re-
quired.

Hearing: Wednesday,
September 20, 2000 at
2:00 p.m. in Room 407,
County Courts Building,
401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

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

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

JT/9/603 Sept. 5 C416611

CERTIFICATE OF PUBLICATION

TOWSON, MD, 9/7/, 2000

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper published in
Towson, Baltimore County, Md., once in each of 1 successive
weeks, the first publication appearing on 9/5/, 2000.

THE JEFFERSONIAN,
J. Wilkinson

LEGAL ADVERTISING

Ref No 2

CERTIFICATE OF POSTING

RE: Case No.: 01-054-X

Petitioner/Developer: _____
A.T. & T. WIRELESS SERVICES
90 S. LEONARD ROTHMAN, ESQ.

Date of Hearing/Closing: 9/20/00

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at _____

S/S BACON HALL RD., 2,365' E. OF CEDAR GROVE RD
(801 BACON HALL RD.)

The sign(s) were posted on 9/4/00
(Month, Day, Year)

Sincerely,

Richard E. Hoffman 9/4/00
(Signature of Sign Poster and Date)

RICHARD E. HOFFMAN
(Printed Name)

904 DELLWOOD DR.
(Address)

FALLSTON MD. 21047
(City, State, Zip Code)

(410) 879-3122
(Telephone Number)



RE: Case No.: 01-054-X

Petitioner/Developer: _____

8 TERRY R. DUNKIN

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at 801 BACON HALL RD
END OF ROAD ON RIGHT SIDE

The sign(s) were posted on 2/15/01
(Month, Day, Year)

Sincerely,

Gary C. Freund 2/15/01
(Signature of Sign Poster and Date)

GARY C. FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)



Baltimore County
Department of Permits and
Development Management

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

August 11, 2000

NOTICE OF ZONING HEARING

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

CASE NUMBER: 01-054-X

801 Bacon Hall Road

S/S Bacon Hall Road, 2365 feet E of Cedar Grove Road

7th Election District – 3rd Councilmanic District

Legal Owners: Terry and Cheryl Dunkin

Contract Purchaser: AT&T Wireless Services

Special Hearing for a telecommunications monopole less than 200 feet in height on a residential zone, as required.

HEARING: Wednesday, September 20, 2000 at 2:00 p.m., in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: Paul A. Dorf & S. Leonard Rottman, Esquires, Adelberg, Rudow, Dorf, Hendler & Sameth, LLC, 2 Hopkins Plaza, Suite 600, Baltimore 21201
Terry & Cheryl Dunkin, 801 Bacon Hall Road, Sparks 21152
AT&T Wireless Services, c/o Bill Francis, 11710 Beltsville Drive, Beltsville 20705

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SEPTEMBER 5, 2000.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

01-054-X





Baltimore County
Zoning Commissioner

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

September 21, 2000

Paul A. Dorf, Esquire
Adelberg, Rudow, Dorf,
Hendler & Sameth, LLC
Suite 600, 2 Hopkins Plaza
Baltimore, Maryland 21201

Mr. Jack Dillon, Executive Director
The Valleys Planning Council, Inc.
P.O. Box 5402
Towson, Maryland 21285-5402

RE: PETITION FOR SPECIAL EXCEPTION
Case No. 01-054-X
Property: 801 Bacon Hall Road
7th Election District, 3rd Councilmanic District
Petitioners: Terry and Cheryl Dunkin

Dear Messrs. Dorf & Dillon:

As per our telephone conversation on this date, this letter is to confirm that we have agreed to continue the above-captioned matter for hearing on Tuesday, October 17, 2000 at 1:00 p.m. in Room 106 of the County Office Building. This letter will also confirm that you have agreed to notify all interested parties of the new hearing date.

In the meantime, should you have any questions concerning this matter, please do not hesitate to call me.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:raj

c: Mr. George Zahner, DPDM; People's Counsel; Case File





**Baltimore County
Zoning Commissioner**

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

October 18, 2000

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

RE: PETITION FOR SPECIAL EXCEPTION

S/S Bacon Hall Road, 2,365' E of Cedar Grove Road
(801 Bacon Hall Road)
7th Election District – 3rd Council District
Terry R. Dunkin, et ux, Owners – AT&T Wireless Services, Contract Lessees
Case No. 01-054-X

Dear Messrs. Dorf & Rottman:

This letter is to confirm that the above-captioned matter has again been continued from the last continued hearing date of October 17, 2000. By agreement of all parties, the hearing will reconvene on Tuesday, October 31, 2000 at 9:00 AM in Room 407 of the County Courts Building. Please notify your clients and their respective witnesses of the continued hearing date, time and location.

Thank you for your consideration in this matter.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Terry R. Dunkin, 801 Bacon Hall Road, Sparks, Md. 21152
Messrs. Bill Francis and Chris Scott, AT&T Wireless Services,
11710 Beltsville Drive, Beltsville, Md. 20705
Messrs. Mitchell Kellman and Michael McGarity, Daft-McCune-Walker, Inc.
200 E. Pennsylvania Avenue, Towson, Md. 21286
Richard C. Burch, Esquire (Attorney for Valleys Planning Council)
105 W. Chesapeake Avenue, Suite 300, Towson, Md. 21204
K. Donald Proctor, Esquire (Attorney for E. Ensor, Cold Bottom Farms)
102 W. Pennsylvania Avenue, Towson, Md. 21204
Paul Hupfer, 821 Walters Lane, Sparks, Md. 21152
Jack Dillon, Valleys Planning Council, 207 Courtland Avenue, Towson, Md. 21204
George B. McCeney, 1402 Glencoe Road, Glencoe, Md. 21152
Kenneth T. Bosley, Box 585, York Road, Sparks, Md. 21152
Office of Planning; DEPRM; People's Counsel; Case File





County Board of Appeals of Baltimore County

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

2/17/02 - request of Baltimore Co

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 7, 2001

NOTICE OF ASSIGNMENT

CASE #: 01-054-X

IN THE MATTER OF: AT&T Wireless Services –Contract Lessee;
Terry R. and Cheryl S. Dunkin – Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilmanic District

11/28//2000 – Petition for Special Exception DENIED by Z.C.

ASSIGNED FOR:

TUESDAY, DECEMBER 18, 2001 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.
Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

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

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

Kathleen C. Bianco, Administrator

c: Counsel for Appellants /Petitioners

: Paul A. Dorf, Esquire
Russell G. Alion, Jr., Esquire
: AT&T Wireless Services, Inc. -CP
Cheryl and Terry Dunkin

Appellants /Petitioners

Mitchell Kellman and Michael McGarity /Daft McCune & Walker Inc.

Counsel for Protestant

: K. Donald Proctor, Esquire
: Charles & Mary Ensor /Cold Bottom Farms
: Richard Burch, Esquire
: Valleys Planning Council /Jack Dillon
: Dino C. LaFiandra, Esquire
: Ross Valley Farms, LLC

Protestant

Counsel for Protestant

Protestant

Counsel for Protestant

Protestant

Jeffrey Wernushe

Mr. & Mrs. Jim Werking
Paul Hupfer /Greater Sparks Glencoe Comm Assn
H. Barritt Peterson, Jr.
George B. McCeney
Herb Davis
James T. Wollon, Jr.

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



LAW OFFICES
PETER G. ANGELOS
A PROFESSIONAL CORPORATION
ONE CHARLES CENTER
100 N. CHARLES STREET
BALTIMORE, MARYLAND 21201-3812
410-649-2000 (800) 252-6622

JEFFREY J. UTERMÖHLE (MD, D.C.)
Law Offices of Peter G. Angelos
100 N. Charles Street, 20th Floor
Baltimore, MD 21201-3812
Direct Dial: (410) 649-2005
Fax: (410) 649-2150
E-mail Address: jutermohle@lawpga.com

OTHER OFFICES:
NEW YORK, NEW YORK
PHILADELPHIA, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA
BETHLEHEM, PENNSYLVANIA
WILMINGTON, DELAWARE
KNOXVILLE, TENNESSEE

November 19, 2001

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

Via certified mail and fax (410) 887-3182

Re: Case # 01-054-X
In the Matter of AT&T Wireless Services – Contact Lessee
Terry R. and Cheryl S. Dunkin – Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilmanic District
Current hearing date: December 18, 2001

RECEIVED
COUNTY BOARD OF APPEALS
01 NOV 20 PM 1:08

Dear Ms. Bianco:

As result of the recent substitution of counsel, my appearance has been entered as attorney for Ross Valley Farms, LLC, a Protestant in the above-referenced matter. In light of the imminence of the December 18, 2001 hearing date, I respectfully request a postponement for the following reasons:

- I the need time to familiarize myself with the intricate factual and legal issues that resulted in a transcript of 582 pages in the proceedings before the Zoning Commission.
- I need to consult with and prepare expert witnesses. The proper presentation of such expert witnesses will aid in the presentation of this case and assist the Board of Appeals in reaching an informed and equitable decision in this important and precedent-setting case.

UNION PARK CENTER
5905 HARFORD ROAD
BALTIMORE, MD 21214-1846
410-426-3200
(800) 492-3240
FAX 410-426-1269

COURT TOWERS, SUITE 300
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204
410-825-7300
FAX 410-296-2541

STEELWORKERS' HALL
540 DUNDALK AVENUE
BALTIMORE, MD 21224-2997
410-633-8100
FAX 410-633-0480

CENTERPARK II
SUITE 315
4061 POWDER MILL ROAD
BELTSVILLE, MD 20705-3149
(800) 537-8261
FAX 301-937-5738

63 HENDERSON AVENUE
CUMBERLAND, MD 21502-2452
301-759-2700
FAX 301-759-2703

201 S. CLEVELAND AVENUE
HAGERSTOWN, MD 21740-5745
301-739-4000
FAX 301-739-3848

LAW OFFICES

PETER G. ANGELOS

- The December 18 date would add to my already busy litigation-related calendar during this time period, and would hamper my ability to schedule some vacation days as desired.

In light of the foregoing, I respectfully request a postponement of forty-five (45) days. Mr. Dorf declined my invitation to join in this request. Thank you for your kind consideration of this matter.

Sincerely,



Jeffrey J. Utermohle

cc: Paul A. Dorf, Esq.
Russell G. Alion, Jr. Esq.
K. Donald Proctor, Esq.
Richard Burch, Esq.
Peter Zimmerman, Esq.
Peter G. Angelos, Esq.



County Board of Appeals of Baltimore County

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

*pp'd - day's
request
put to
5/02/02*

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

November 21, 2001

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-054-X

IN THE MATTER OF: AT&T Wireless Services - Contract Lessee;
Terry R. and Cheryl S. Dunkin - Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilmanic District

11/28/2000 - Petition for Special Exception DENIED by Z.C.

which was assigned to be heard on 12/18/01 has been **POSTPONED** at the request of Counsel for Protestant (Ross Valley Farms, LLC) due to substitution of counsel and schedule conflict; and has been

REASSIGNED FOR: TUESDAY, FEBRUARY 19, 2002 at 10:00 a.m.

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

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

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

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

Kathleen C. Bianco, Administrator

c: Counsel for Appellants /Petitioners

: Paul A. Dorf, Esquire
Russell G. Alion, Jr., Esquire
: AT&T Wireless Services, Inc. -CP
Cheryl and Terry Dunkin

Appellants /Petitioners

Mitchell Kellman and Michael McGarity /Daft McCune & Walker Inc.

Counsel for Protestant

: K. Donald Proctor, Esquire
: Charles & Mary Ensor /Cold Bottom Farms
: Richard Burch, Esquire
: Valleys Planning Council /Jack Dillon
: Jeffrey J. Utermohle, Esquire [changed 11/08/01]
: Ross Valley Farms, LLC

Protestant

Counsel for Protestant

Protestant

Counsel for Protestant

Protestant

Mr. & Mrs. Jim Werking

Paul Hupfer /Greater Sparks Glencoe Comm Assn

H. Barritt Peterson, Jr.

George B. McCeney

Herb Davis

James T. Wollon, Jr.

People's Counsel for Baltimore County

Pat Keller, Planning Director

Lawrence E. Schmidt, Zoning Commissioner

Arnold Jablon, Director /PDM



ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

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

pdorf@adelbergprudow.com

www.adelbergprudow.com

Telephone
410-539-5195

Facsimile
410-539-5834

December 4, 2001

**VIA FACSIMILE (410) 887-3182
& FIRST CLASS MAIL**

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

Re: In the Matter of AT&T Wireless Services, Inc.
In the County Board of Appeals for Baltimore County
Property: 801 Bacon Hall Road (Dunkin)
Case No.: 01-054-X

Dear Ms. Bianco:

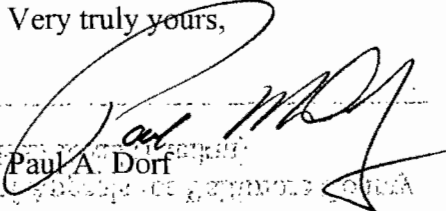
This office represents AT&T Wireless Services, Inc. in the above-referenced appeal.

I have received the notice rescheduling the appeal for February 19, 2002. The matter was originally scheduled for December 18, 2001, but was postponed at the request of Jeffrey Utermohle, attorney for Ross Valley Farms, LLC.

Unfortunately, I will be out of town attending a Maryland State Bar Association event the entire week of February 18th. Accordingly, I respectfully request that the matter be rescheduled for the earliest available date after March 4, 2002.

Thank you for your consideration.

Very truly yours,


Paul A. Dorf

PAD/agr

cc: Jeffrey J. Utermohle, Esquire
Peter Max Zimmerman, Esquire
K. Donald Proctor, Esquire
Richard Burch, Esquire

M:\WP\075\SEC\at&tbia3.ltr.wpd

RECEIVED
COUNTY BOARD OF APPEALS
01 DEC -5 AM 11:32

MUDD, HARRISON & BURCH
ATTORNEYS AT LAW
105 WEST CHESAPEAKE AVENUE
300 JEFFERSON BUILDING
TOWSON, MARYLAND 21204
(410) 828-1335
FAX (410) 828-1042

JOHN E. MUDD
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

T. ROGERS HARRISON
(1949-1995)

MATTHEW P. LALUMIA
ANNA L. DAVIS
MICHELLE J. MARZULLO
DENISE E. MOBLEY

OF COUNSEL
WILLIAM T. RUSSELL JR.

December 12, 2001

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

Re: In the Matter of AT&T Wireless Services, Inc.
In the County Board of Appeals for Baltimore County
Property: 801 Bacon Hall Road (Dunkin)
Case No. 01-054-X

Dear Ms. Bianco:

I am in receipt of a copy of Mr. Dorf's letter of December 4, 2001, whereby he requests a continuance of the captioned matter which is currently scheduled for February 19, 2002. I certainly have no objection to Mr. Dorf's request to reschedule the matter for some time after March 4, 2002. Because of the number of lawyers and parties involved in this matter, would it possible for us to meet with you either early one morning or in the latter part of the afternoon in order to select a mutually convenient and available date; otherwise, we will run the risk of additional requests for postponements due to conflicts with the various lawyers' trial calendars.

Many thanks for your attention to this matter.

Very truly yours,


Richard C. Burch

RCB:sw

cc: Paul A. Dorf, Esquire
K. Donald Proctor, Esquire
Jeffrey J. Utermohle, Esquire
Peter Max Zimmerman, Esquire

01 DEC 14 PM 12:18

RECEIVED
COUNTY BOARD OF APPEALS



County Board of Appeals of Baltimore County

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

*pld to
5/21/02
Reg. of Utermohle*

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

December 14, 2001

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-054-X

**IN THE MATTER OF: AT&T Wireless Services –Contract Lessee;
Terry R. and Cheryl S. Dunkin – Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilmanic District**

11/28//2000 – Petition for Special Exception DENIED by Z.C.

which was reassigned to be heard on 2/19/02 has been **POSTPONED** at the request of Counsel for Petitioner due to schedule conflict; and has been

REASSIGNED FOR: THURSDAY, MAY 2, 2002 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.
Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

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

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

Kathleen C. Bianco, Administrator

c: Counsel for Appellants /Petitioners	: Paul A. Dorf, Esquire
	Russell G. Alion, Jr., Esquire
Appellants /Petitioners	: AT&T Wireless Services, Inc. -CP
	Cheryl and Terry Dunkin
Mitchell Kellman and Michael McGarity /Daft McCune & Walker Inc.	
Counsel for Protestant	: K. Donald Proctor, Esquire
Protestant	: Charles & Mary Ensor /Cold Bottom Farms
Counsel for Protestant	: Richard Burch, Esquire
Protestant	: Valleys Planning Council /Jack Dillon
Counsel for Protestant	: Jeffrey J. Utermohle, Esquire [changed 11/08/01]
Protestant	: Ross Valley Farms, LLC
Mr. & Mrs. Jim Werking	
Paul Hupfer /Greater Sparks Glencoe Comm Assn	
H. Barritt Peterson, Jr.	
George B. McCeney	
Herb Davis	
James T. Wollon, Jr.	
People's Counsel for Baltimore County	
Pat Keller, Planning Director	
Lawrence E. Schmidt, Zoning Commissioner	
Arnold Jablon, Director /PDM	



LAW OFFICES
PETER G. ANGELOS
A PROFESSIONAL CORPORATION
ONE CHARLES CENTER
100 N. CHARLES STREET
BALTIMORE, MARYLAND 21201-3812
410-649-2000 (800) 252-6622

JEFFREY J. UTERMÖHLE (MD, D.C.)
Law Offices of Peter G. Angelos
100 N. Charles Street, 20th Floor
Baltimore, MD 21201-3812
Direct Dial: (410) 649-2005
Fax: (410) 649-2150
E-mail Address: jutermohle@lawpga.com

OTHER OFFICES:
NEW YORK, NEW YORK
PHILADELPHIA, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA
BETHLEHEM, PENNSYLVANIA
WILMINGTON, DELAWARE
KNOXVILLE, TENNESSEE

December 21, 2001

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

VIA CERTIFIED MAIL AND FAX (410) 887-3182

Re: Case # 01-054-X

In the Matter of AT&T Wireless Services - Contact Lessee
Terry R. and Cheryl S. Dunkin - Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilmanic District
Current hearing date: May 2, 2002

Dear Ms. Bianco:

I represent Ross Valley Farms, LLC, a Protestant in the above-referenced matter. I respectfully request a postponement of the May 2, 2002 hearing date because I have a previously scheduled vacation planned for May 2, 2002 through May 6, 2002.

Thank you for your kind consideration of this matter.

Sincerely,



Jeffrey J. Utermohle

cc: Paul A. Dorf, Esq.
Russell G. Alion, Jr. Esq.
K. Donald Proctor, Esq.
Richard Burch, Esq.
Peter Zimmerman, Esq.

\\Pga_charles\data\USERS\RJS\Jeff\Letters 2001\Misc\CellTower\Ltr\MiscCellTower12-20-01.wpd

UNION PARK CENTER
5905 HANFORD ROAD
BALTIMORE, MD 21214-1846
410-426-3200
(800) 492-3240
FAX 410-426-1269

COURT TOWERS, SUITE 300
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204
410-825-7300
FAX 410-296-2341

STEELWORKERS' HALL
540 DUNDALK AVENUE
BALTIMORE, MD 21224-2997
410-633-8100
FAX 410-633-0480

CENTERPARK II
SUITE 315
4061 POWDER MILL ROAD
BELTSVILLE, MD 20705-3149
(800) 537-8261
FAX 301-937-5738

63 HENDERSON AVENUE
CUMBERLAND, MD 21502-2452
301-759-2700
FAX 301-759-2703

201 S. CLEVELAND AVENUE
HAGERSTOWN, MD 21740-5745
301-739-4000
FAX 301-739-3848

RECEIVED
COUNTY BOARD OF APPEALS
01 DEC 26 AM 10:24



County Board of Appeals of Baltimore County

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

December 27, 2001

Jeffrey J. Utermohle, Esquire
LAW OFFICES OF PETER G. ANGELOS
100 N. Charles Street, 20th Floor
Towson, MD 21204
ATTN: Rhonda Seibert

RE: *In the Matter of: AT&T Wireless Services* –Contract Lessee
Terry R. and Cheryl S. Dunkin –Legal Owners
Case No. 01-054-X /Request for Postponement

Dear Mr. Utermohle:

This letter will confirm my telephone conversation this date with Rhonda Seibert of your office concerning your postponement request of December 21, 2001.

The dates of May 21, 2002 and June 5, 2002 are open and available on the Board's schedule. I have asked that you contact all counsel involved to confirm which of these dates would be agreeable to everyone, with a call back to this office on Monday, January 7, 2002 as to the agreed date.

The scheduled date of May 2, 2002 will be held until I hear from you as to the agreed-upon date, at which time a notice of postponement and reassignment will be sent.

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

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Paul A. Dorf, Esquire
Russell G. Alion, Jr., Esquire
K. Donald Proctor, Esquire
Richard Burch, Esquire
Peter M. Zimmerman, Esquire





County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

January 11, 2002

THIRD NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 01-054-X

**IN THE MATTER OF: AT&T Wireless Services –Contract Lessee;
Terry R. and Cheryl S. Dunkin – Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilmanic District**

11/28//2000 – Petition for Special Exception DENIED by Z.C.

which was reassigned to be heard on 5/02/02 has been **POSTPONED** at the request of Counsel for Protestant Ross Valley Farms due to schedule conflict and reassigned to a date verified with counsel; and has been

REASSIGNED FOR: TUESDAY, MAY 21, 2002 at 10:00 a.m.

**IMPORTANT: NO FURTHER POSTPONEMENTS WILL BE GRANTED EXCEPT IN
EXTRAORDINARY CIRCUMSTANCES.**

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

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

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

Kathleen C. Bianco, Administrator

c: Counsel for Appellants /Petitioners	: Paul A. Dorf, Esquire
	Russell G. Alion, Jr., Esquire
Appellants /Petitioners	: AT&T Wireless Services, Inc. -CP
	Cheryl and Terry Dunkin
Mitchell Kellman and Michael McGarity /Daft McCune & Walker Inc.	
Counsel for Protestant	: K. Donald Proctor, Esquire
Protestant	: Charles & Mary Ensor /Cold Bottom Farms
Counsel for Protestant	: Richard Burch, Esquire
Protestant	: Valleys Planning Council /Jack Dillon
Counsel for Protestant	: Jeffrey J. Utermohle, Esquire
Protestant	: Ross Valley Farms, LLC
Mr. & Mrs. Jim Werking	
Paul Hupfer /Greater Sparks Glencoe Comm Assn	
H. Barritt Peterson, Jr.	
George B. McCeney	
Herb Davis	
James T. Wollon, Jr.	
People's Counsel for Baltimore County	
Pat Keller, Planning Director	
Lawrence E. Schmidt, Zoning Commissioner	
Arnold Jablon, Director /PDM	





County Board of Appeals of Baltimore County

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

May 9, 2002

VIA FAX AND U.S. MAIL

Peter Max Zimmerman
People's Counsel for Baltimore County
Carole S. Demilio
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204

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

K. Donald Proctor, Esquire
102 W. Pennsylvania Avenue
Towson, MD 21204

Richard C. Burch, Esquire
MUDD HARRISON & BURCH
105 W. Chesapeake Avenue
Suite 300
Towson, MD 21204

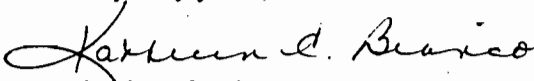
Jeffrey J. Utermohle, Esquire
Law Offices of Peter G. Angelos
One Charles Center
100 N. Charles Street
Baltimore, MD 21201-3812

RE: *In the Matter of: AT&T Wireless Services;
Terry R. and Cheryl S. Dunkin
Case No. 01-054-X*

Dear Counsel:

This letter will confirm my telephone conversation this date with Messrs. Utermohle and Dorf regarding the request by all parties that this matter be remanded to the Zoning Commissioner and pulled from the Board's hearing schedule. Should you have any questions regarding this remand, please call me at 410-887-3180 by no later than Thursday, May 16, 2002. Otherwise, this matter will be remanded to the Zoning Commissioner, as requested by the parties, on that date.

Very truly yours,


Kathleen C. Bianco
Administrator



ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

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

www.adelbergprudow.com

Paul A. Dorf

pdorf@adelbergprudow.com

Telephone
410-539-5195

Facsimile
410-539-5834

August 28, 2002

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

**RE: 801 Bacon Hall Road
S/S Bacon Hall Road, 2365' E of Cedar Grove Road
7th Election District - 3rd Councilmanic District
Legal Owners: Terry & Cheryl Dunkin
Contract Purchaser: AT&T Wireless Services
Case No.: 01-054-X**

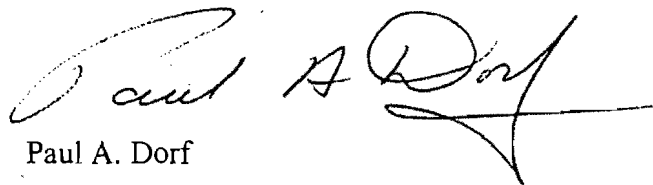
Dear Mr. Jablon:

The referenced matter is currently scheduled for Hearing on September 11, 2002.

I am writing to request a postponement of the September 11th hearing, and ask that the hearing be re-set in three months. Messrs. Utermohle, Proctor, Burch and Zimmerman have no objection to the postponement.

Thank you for your attention.

Very truly yours,



Paul A. Dorf

PAD/mr

cc: Commissioner Lawrence E. Schmidt (courtesy copy)
Jeffrey J. Utermohle, Esquire
K. Donald Proctor, Esquire
Richard C. Burch, Esquire
Peter M. Zimmerman, Esquire
Mr. Jack Dillon



Baltimore County
Department of Permits and
Development Management

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

October 21, 2002

Paul A. Dorf
Adelberg, Rudow, Dorf & Hendler, LLC
600 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, MD 21201-2927

Dear Mr. Dorf:

RE: Case Number 01-054-X

The above matter, previously scheduled for November 14, 2002, has been postponed at your request. Once the hearing has been rescheduled you will be notified by mail.

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with notice of the original hearing date, as quickly as possible a notice of the new hearing date should be affixed to the sign(s).

Very truly yours,

A handwritten signature in black ink, appearing to read "Arnold Jablon", is written over a horizontal line.

Arnold Jablon
Director

AJ:rlh

C: Terry Dunkin and Cheryl Dunkin, 801 Bacon Hall Road, Sparks 21152
S. Leonard Rotman, Suite 600, 2 Hopkins Plaza, Baltimore 21201
AT & T Wireless Services, Bill Francis, 11710 Beltsville Drive, Beltsville 20705

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



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ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

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

pdorf@adelbergdudow.com

www.adelbergdudow.com

Telephone
410-539-5195

Facsimile
410-539-5834

November 1, 2002

Mr. Timothy Brenner
AT&T Wireless Services
11710 Beltsville Drive
Beltsville, Maryland 20705

NOV - 4

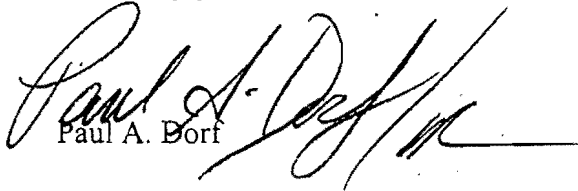
Mr. Samuel Sacco
AT&T Wireless Services
11710 Beltsville Drive
Beltsville, Maryland 20705

**RE: In the Matter of AT&T Wireless Services;
Terry R. and Cheryl S. Dunkin
803 Bacon Hall Road
Our File: 9478.803**

Gentlemen:

Enclosed please find correspondence received from Baltimore County Department of Permits and Development Management advising that the November 14, 2002 hearing has been postponed.

Very truly yours,


Paul A. Dorf

PAD/mr
enclosure

cc: Commissioner Lawrence E. Schmidt (courtesy copy)
Jeffrey J. Utermohle, Esquire
K. Donald Proctor, Esquire
Richard Burch, Esquire
Peter M. Zimmerman, Esquire
Mr. Timothy Brenner
Mr. Tom Gilligan
Mr. Jack Dillon
Mr. and Mrs. Terry Dunkin
Mr. Richard Bass



Baltimore County
Department of Permits and
Development Management

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

September 15, 2000

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

Dear Mr. Dorf & Mr. Rottman:

RE: Case Number: 01-054-X, 801 Bacon Hall Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 3, 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.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

C: Terry & Cheryl Dunkin, 801 Bacon Hall Road, Sparks 21152
AT&T Wireless Services, Bill Francis, 11710 Beltsville Drive, Beltsville 20705
People's Counsel



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: 801 Bacon Hall Road

INFORMATION:

Item Number: 01-054

Petitioner: Terry R. Dunkin

Zoning: RC 2

Requested Action: Special Exception

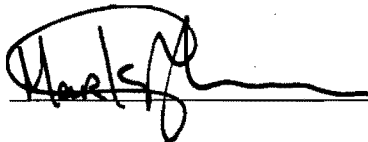
SUMMARY OF RECOMMENDATIONS:

The Office of Planning has determined that the proposed telecommunication tower will be visible from both I-83 Baltimore (Harrisburg Expressway) and MD. Rt. 45 (York Road) which are designated as scenic routes in the Baltimore County Master Plan 2010. At the August 24, 2000 Tower Review Committee meeting, Planning staff requested that the applicant submit to this office, documentation showing how the proposed tower will be viewed from the I-83 heading south and from York Road across the Ross Valley Farms view shed. This documentation should be received by Planning staff before the September 20, 2000 Special Exception Hearing.

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.

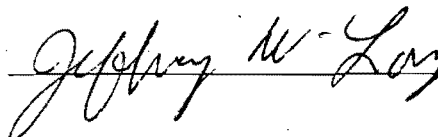
In addition, this office requests that no final decision be rendered in this matter until the requested information is provided to the Office of Planning for review and a subsequent recommendation to the Zoning Commissioner.

Prepared by:



Section Chief:

AFK:MAC:



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

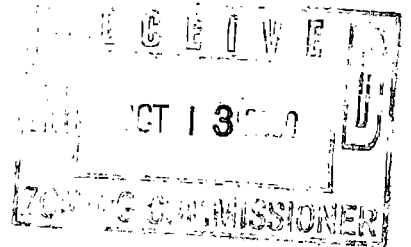
DATE: October 12, 2000

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

SUBJECT: 801 Bacon Hall Road

INFORMATION:

Item Number: 01-054
Petitioner: Terry R. Dunkin
Zoning: RC 2
Requested Action: Special Exception



SUMMARY OF RECOMMENDATIONS (REVISED COMMENTS):

On October 6, 2000, the Office of Planning received some of the information that was requested at the August 24, 2000 Tower Review Committee meeting. The information received included two photographs and a line of sight analysis depicting the location of the proposed telecommunication tower as viewed along I-83. Information on what mitigation measures would be used to reduce or negate the visual impact of the proposed 150' telecommunication monopole was not provided. After reviewing the information, the Office of Planning recommends **denial** of the special exception petition to construct a telecommunications monopole less than 200' in a residential zone.

The recommended **denial** of the special exception petition is based on the following:

1. The construction of the 150' monopole would be detrimental to the health, safety and general welfare of the citizens of Baltimore County.
2. The construction of the 150' monopole is inconsistent with the goals and policies of the Baltimore County Master Plan 2010 for the protection of scenic views and routes.
3. The construction of the 150' monopole would have a negative visual impact upon the Western Run-Belfast Historic District.

The construction of the 150' monopole would constitute an unwarranted visual intrusion into the scenic views along this section of I-83.

Prepared by:

Section Chief:
AFK:MAC:



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

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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.

054

LTM

Dear Ms. Jackson:

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

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

Very truly yours,

Kr

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

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

DATE: August 30, 2000

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

SUBJECT: Zoning Advisory Committee Meeting
For August 21, 2000
Item Nos. 046, 049, 052, 054, 055,
and 056

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

RE: PETITION FOR SPECIAL EXCEPTION
801 Bacon Hall Road, S/S Bacon Hall Rd,
2365' E of Cedar Grove Rd
7th Election District, 3rd Councilmanic

Legal Owner: Terry R. & Cheryl S. Dunkin
Contract Purchaser: AT&T Wireless Services
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 01-54-X

* * * * *

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

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 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

PETER MAX ZIMMERMAN

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon
FROM: R. Bruce Seeley /MS
DATE: September 8, 2000
SUBJECT: Zoning Item #054
801 Bacon Hall Road

Zoning Advisory Committee Meeting of August 14, 2000

- _____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.
- _____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.
- X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

X Agricultural Preservation:

The proposed tower location is in close proximity to a Scenic I-83 Viewshed project on Retreat Farm. The project calls for protecting the scenic views from I-83 of the farmland and protecting the historic and open space characteristics of the site. The location of the property is provided on the attachment.

The visibility of the proposed tower from Retreat Farm and from I-83 adjacent to Retreat Farm should be investigated. If visible, impact should be reduced to a minimum. If the visual impact cannot be reduced to a minimum, the request for a tower at the proposed location should be denied.

ATTACHMENT

Reviewer: Wally Lippincott

Date: August 31, 2000

P. 273



E. G. BOYCE
2655/443
195.00 A.
P. 4

ELEANOR R. SPARENBERG
6470/225
222.79 A.
P. 5

(100 AC)

P. 6

P. 18

P. 12

P. 31

P. 21

P. 23

P. 24

P. 244

P. 14

P. 277

ELSIE G. BOYCE PROP. 443-41
GILLET WOODS 244:68

P. 139

BC 86-08B

P. 269

P. 172

P. 242

P. 247

P. 235

P. 7

P. 227

ED. 7 PIPELINE
ED. 8

RETREAT FARM, INC.
2555-358
113.10 A.
P. 110

P. 51

P. 52

P. 53

P. 54

PAR. III

RAYMOND E. ENSOR
5322/314
112.81 A.
P. 34

BC 86-08A

COLONIAL

C.D. JULIO PROP.

P. 81

DRAINAGE EASEMENT

EXPRESSWAY

P. 111

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ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

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

www.adelbergprudow.com

Paul A. Dorf

pdorf@adelbergprudow.com

RECEIVED	
DEC 26 2000	
12/26/00	Telephone
10:00	410-539-5195
	Facsimile
	410-539-5834

December 26, 2000

HAND DELIVERED

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

Re: Petition for Special Exception
S/S Bacon Hall Road, 2,365' E of
Cedar Grove Road (801 Bacon Hall Road)
7th Election District, 3rd Council District
Terry R. Dunkin, et ux, and AT&T Wireless Services, Petitioners
Before the Zoning Commissioner for Baltimore County
Case No.: 01-054-X
Our File No.: 9478-803

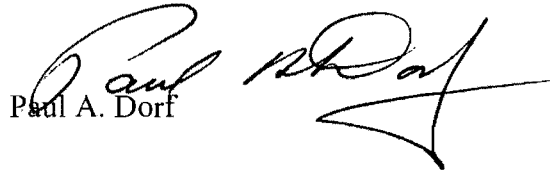
Dear Mr. Jablon:

Please enter an appeal on behalf of AT&T Wireless Services and Terry R. Dunkin to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated November 28, 2000 passed by the Zoning Commissioner for Baltimore County in the above-referenced case.

I have enclosed a check in the amount of \$285.00 representing the filing and posting fee. Please date-stamp the enclosed copy of this letter and return it to the courier for our records.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate. Thank you for your assistance.

Very truly yours,


Paul A. Dorf

PAD/rga

Enclosures

cc: Chris Monagle, Esq.
Donald K. Proctor, Esq.
Richard C. Burch, Esq.

075s/at&tjabl.ltr



Baltimore County
Department of Permits and
Development Management

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

February 2, 2001

Jack Dillon
Valleys Planning Council
207 Courtland Avenue
Towson, MD 21204

Dear Mr. Dillon:

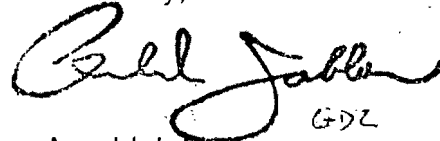
RE: Case No. 01-054-X, 801 Bacon Hall Road

Please be advised that an appeal of the above-referenced case was filed in this office on December 26, 2000 by Paul A. Dorf, Esquire on behalf of AT&T Wireless Services and Terry Dunkin. 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
Director

AJ: gdz

c: Paul A. Dorf, Adelberg, Rudow, Dorf & Hendler, LLC, 600 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore 21201-2927
Cheryl S. & Terry R. Dunkin, 801 Bacon Hall Road, Sparks 21152
AT&T Wireless Services, Bill Francis, 11710 Beltsville Drive, Beltsville 20705
Mr. & Mrs Jim Werking, 806 Cold Bottom Road, Sparks 21152
Paul Hupfer, Greater Sparks Glencoe Community, 831 Walters Lane, Sparks 21152
K. Donald Proctor, 102 W Pennsylvania Avenue, Towson 21204
People's Counsel

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COUNTY BOARD OF APPEALS
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APPEAL

Petition for Special Exception
801 Bacon Hall Road
S/S Bacon Hall Road, 2355' E of Cedar Grove Road
7th Election District – 3rd Councilmanic District
Terry R. and Cheryl S. Dunkin - Legal Owner
AT&T Wireless Services - Contract Lessees
Case Number: 01-054-X

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01 FEB - 2 PM 3: 08

- ✓ Petition for Special Exception (filed 8/3/00)
- ✓ Description of Property
- ✓ Notice of Zoning Hearing (dated 8/11/00)
- ✓ Certification of Publication (9/5/00 – The Jeffersonian)
- ✓ Certificate of Posting (9/4/00 – by Richard E. Hoffman)
- ✓ Entry of Appearance by People's Counsel (dated 8/28/00)
- ✓ Petitioner(s) Sign-In Sheet (1 Sheet)
- ✓ Protestant(s) Sign-In Sheet (1 Sheet)
- ✓ Citizen Sign-In Sheet (2 Sheets)
- ✓ Zoning Advisory Committee Comments

Petitioners' Exhibits: No. 1 – Plan to Accompany Petition for SE

- ✓ 1A- Certificate of Posting (posted 9/4/00 by Richard Hoffman)
- ✓ 2 Certificate of Publication (The Jeffersonian)
- ✓ 3 Interoffice Correspondence to Donald T. Rascoe, Development Manager, from Charles D. Dennis, Tower Coordinator (dated 9/13/00)
- ✓ 4 Letter to Paul A. Dorf & Leonard Rottman, Esquires from W. Carl Richards, Jr. (dated 9/15/00)
- ✓ 5 Resume of Oakleigh J. Thorne, MAI, CRE
- ✓ 6 Two Photos (1 page)
- ✓ 7 Resume of April M. Beisaw, RPA
- ✓ 8 Maryland Historical Trust's Guidelines for FCC's Licensees and Applicants – Section 106 Submittals, Effective September 2000
- ✓ 9 Dunkin Property with overlays (dated October 2000)
- ✓ 10 Dunkin Property Photograph Log Map – Historic District Views and 6 pages of photographs
- ✓ 11 Dunkin Property Photograph Log Map – Route 45 Views and 3 pages of photographs
- ✓ 12 Letter to Mr. George McCeney from Paul A. Dorf, Esquire (dated 7/19/00)
- ✓ 13 Letter to Councilman T. Bryan McIntire from Paul A. Dorf, Esquire (dated 7/19/00)
- ✓ 14 Letter to Mr. Jack Dillon, Executive Director of Valley Planning Council, Inc. from Paul A. Dorf, Esquire (dated 7/20/00)
- ✓ 15 Memo to Councilman T. Bryan McIntire, Mr. George McCeney, President-Greater Sparks/Glencoe Community Council, Mr. Jack Dillon, Executive Director of Valleys Planning Council, Inc., and Mr. & Mrs. Terry R. Dunkin from Paul A. Dorf, Esquire (dated 7/20/00)

Protestants' Exhibits:

- ✓ 1 Proposed AT&T Tower Site (dated 9/00)
- ✓ 2 Photograph (dated 7/27/00)
- ✓ 3 Photograph (dated 7/27/00)
- ✓ 4 Photograph (dated 7/27/00)
- ✓ 5 Photograph (dated 7/27/00)
- ✓ 6 Photograph (dated 7/27/00)
- ✓ 7 Two Photographs (1 page)
- ✓ 7A Photograph (dated 10/16/00)
- ✓ 8 Photograph (dated 10/16/00)
- ✓ 9 Photograph (dated 10/16/00)
- ✓ 10 Resume of Herbert A. Davis
- ✓ 11 Pages 248 – 253, Master Plan 2010
- ✓ 12 Memorandum to Ervin McDaniel, Jr. from Bill Francis (dated 10/5/00)
- ✓ 13 Resume of James Thomas Wollon, Jr., A.I.A.
- ✓ 14 National Register of Historic Places Inventory – Nomination Form for Western Run – Belfast Road Historic District
- ✓ 15 Resume of Jack Dillon
- ✓ 16 Letter to Rose Crellin, Esq. from Elizabeth J. Cole (dated 10/16/00)
- ✓ 17 Two Tax Maps
- ✓ 18 Map of AT&T Tower Site
- ✓ 19 2 Photographs (1 page)
- ✓ 20 2 Photographs (1 page)
- ✓ 20 2 Photographs (1 page)

01 FEB - 2 PM 3:08

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COUNTY BOARD OF APPEALS

Misc. (Not Marked as Exhibits):

- ✱ Letter to Mr. Paul A. Dorf from Jack Dillon (dated 8/1/00)
- ✱ Plan To Accompany Petition For Special Exception (Revised 8/2/00)
- ✱ Partial letter to Ava Berland, Esquire & Mr. Donald Klima (dated 9/8/00) (pg 2 MISSING)
- ✱ Fax to Paul Dorf From Andrew Garte (dated 9/13/00)
- ✱ Letter to Paul A. Dorf, Esquire & Mr. Jack Dillon from Lawrence E. Schmidt (dated 9/21/00)
- ✱ Letter to Messrs. Paul A. Dorf & S. Leonard Rottman, Esquires from Lawrence E. Schmidt (dated 10/18/00)
- ✱ Letter to Mr. Lawrence Schmidt from Judith S. Kremen (dated 10/30/00)
- ✱ Letter to Lawrence R. Schmidt, Zoning Commissioner from Paul A. Dorf, Esquire (dated 11/16/00) - filing memorandum
- ✱ Letter to Mr. Lawrence R. Schmidt, Zoning Commissioner from K. Donald Proctor, Esquire (dated 11/17/00) - filing memorandum
- ✱ Letter to Mr. Lawrence E. Schmidt, Zoning Commissioner from Richard C. Burch, Esquire (dated 11/17/00) -

✓ E

Zoning Commissioner's Order dated 11/28/00 (Denied)

Notice of Appeal received on 12/26/00 from Paul A. Dorf, Esquire on behalf of AT&T Wireless Services and Terry R. Dunkin

- ✱ Paul A. Dorf, Esquire, ADELBERG, RUDOW, DORF & HENDLER LLC,
600 MERCANTILE BANK & TRUST BUILDING
2 Hopkins Plaza, Baltimore, MD 21201-2927
- Cheryl & Terry Dunkin, 801 Bacon Hall Road, Sparks, MD 21152
- AT&T Wireless Services, c/o Bill Francis,
11710 Beltsville Drive, Beltsville, MD 20705
- Mitchell Kellman and Michael McGarity, Daft McCune & Walker,
200 E. Pennsylvania Avenue, Towson, MD 21204
- Mr. & Mrs. Jim Werking, 806 Cold Bottom Road, Sparks, MD 21152
- Paul Hupfer, Greater Sparks Glencoe C.A., 832 Walters Ln., Sparks, MD 21152
- K. Donald Proctor, Esquire, 102 W. Pennsylvania Ave., Towson, MD 21204
- Jack Dillon, Valleys Planning Council, 207 Courtland Ave., Towson, MD 21204
- Charles & Mary Ensor, Cold Bottom Farms,
15801 Buffalo Run Road, Sparks, MD 21152
- H. Barritt Peterson, Jr., 15315 Wheeler Lane, Sparks, MD 21152
- George B. McCeney, 1402 Glencoe Road, Glencoe, MD 21152
- Herb Davis, P.O. Box 108, Brooklandville, MD
- James T. Wollon, Jr., 600 Craigs Corner Road, Havre De Grace, MD 21078
- People's Counsel for Baltimore County
- Lawrence E. Schmidt, Zoning Commissioner
- Arnold Jablon, Director of PDM

COUNSEL FOR Ross Valley Farms LLC (Protestant):
Dino G. LaBlanc, Esquire
Law Offices of PETER G. ANGELOS
Court Towers, Suite 300
210 W. Pennsylvania Avenue
Towson, MD 21204

MUDD, HARRISON & BURCH

ATTORNEYS AT LAW

105 WEST CHESAPEAKE AVENUE

300 JEFFERSON BUILDING

TOWSON, MARYLAND 21204

(410) 828-1335

FAX (410) 828-1042

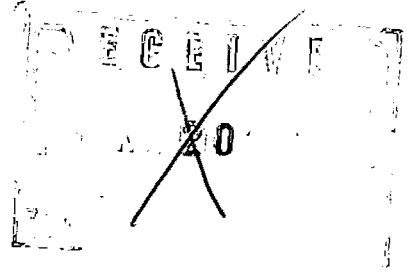
JOHN E. MUDD
RICHARD C. BURCH
DOUGLAS W. HISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO

T. ROGERS HARRISON
(1949-1995)

JAMES R. ANDERSEN
MATTHEW P. LALUMIA
ANNA L. DAVIS
MICHELLE J. MARZULLO
DENISE E. MOBLEY

OF COUNSEL
WILLIAM T. RUSSELL, JR.

November 17, 2000



HAND DELIVERY

Mr. Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
Suite 405 County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: PETITION FOR SPECIAL EXCEPTION
Case No. 01-054-X
Property: 801 Bacon Hall Road

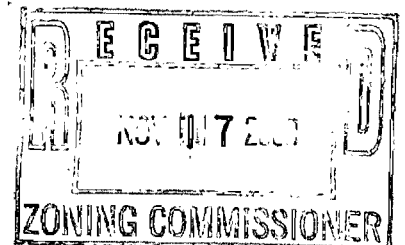
Dear Commissioner Schmidt:

This correspondence is intended to highlight the various reasons and bases which mandate a denial of the Petition for Special Exception in the captioned matter. So as to avoid the risk of belaboring the points, I will simply outline them briefly. They are as follows:

1. The Petitioners failed to establish that a suitable antenna could not be placed on an existing tower, building or structure, including those of public utilities, as required by §426.2 of the Baltimore County Zoning Regulations ("BCZR");

2. The Petitioners failed to establish in the first instance that a "new tower must be built" (see BCZR §426.2 B, emphasis added). Furthermore, they failed to establish any such tower could not be located and designed to minimize its visibility from residential and transitional zones (as required by §426.2 B of the BCZR);

3. The Petitioners failed to meet the burdens imposed upon them by §426.9 of the BCZR in that there was no evidence that the Petitioners made a diligent attempt to locate the antenna on an existing tower or non-residential building or structure; that due to the location, elevation, engineering, technical feasibility or inability to obtain a lease or



Mr. Lawrence E. Schmidt
November 17, 2000
Page 2

ownership of a location elsewhere, the construction of a tower at the proposed site is warranted; or that the height of the proposed tower is no higher than what is required to enable present and future co-location of other providers (see BCZR §426.9 A (1), (2) and (4));

4. The Petitioners have failed to meet their burden of demonstrating that there is no available, suitable site for the proposed tower in a medium or high intensity commercial zone, identifying with particularity any sites considered (emphasis added); or that the proposed site is more consistent with the legislative policy under §426.2 than a site in an available medium or high intensity commercial zone (see BCZR §426.9 C (1) (a) and (b));

5. The construction of a 150 foot monopole would be extremely detrimental to the health, safety and general welfare of the locality involved (a National Historic District which is dedicated to the preservation of the agricultural, architectural and scenic and historic resources within the District, as well as the adjacent areas and communities which enjoy undisturbed scenic views at and into the District) (Testimony of Messrs. McCeney, Woolon, Davis, Peterson, Ensor and Dillon);

6. The Petitioners failed to demonstrate that the subject pole would not be detrimental to the health, safety and general welfare of the locality involved or that the adverse impact of the subject pole would be no greater at this location than elsewhere within an RC zone as required by §502.1 (A) of the BCZR;

7. The construction of the subject monopole at the location proposed is inconsistent with the clear goals and policies of the Baltimore County Master Plan 2010 which strongly emphasizes the need to protect the County's scenic views and scenic routes (Prot. Exs. 11 and 12 and testimony of Messrs. Woolon, Dillon, and Ervin McDaniel);

8. The construction of the subject monopole at the location proposed is inconsistent with the goals and policies of the Baltimore County Master Plan 2010 which also places strong emphasis on the need to protect the County's historic resources (Prot. Exs. 11 and 12; testimony of Messrs. Woolon, Dillon and Ervin McDaniel);

Mr. Lawrence E. Schmidt

November 17, 2000

Page 3

9. The construction of the subject monopole at the location proposed would have a negative visual impact upon the Western Run-Belfast Historic District and the surrounding scenic viewsheds (testimony of Messrs. McCeney, Woolon, Dillon, Davis, Ensor, Peterson and Ervin McDaniel; Prot. Exs. 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 16, 17, 18, 19, 20);

10. The construction of the subject monopole would constitute an unwarranted visual intrusion of the long preserved scenic views along I-83 (Prot. Exs. 11 and 12; and testimony of Messrs. Woolon, Dillon and Ervin McDaniel);

11. The proposed monopole would be detrimental to the health, safety and general welfare of the locality involved (which includes the Western Run-Belfast Historic District, but also the surrounding areas which currently enjoy an unobstructed view of the natural landscape along the ridge upon which the proposed site sits;

12. The construction of the subject monopole would have an adverse impact upon the adjacent and nearby properties and property values (Testimony of Messrs. Ensor, Peterson and Davis);

13. The construction of the subject 150 foot monopole at this location, which is zoned RC-2 and which is surrounded by a significant number of lots and parcels which have been dedicated in perpetuity for agricultural and/or conservation purposes would be inconsistent with the spirit and intent of the Zoning Regulations and the Master Plan considerations. The subject site and the ridge line are free of any other visual clutter. A tower, which will extent 100 feet or so above the tree line along an extensive wooded ridge and hillside, and which is designed to accommodate three separate antennae nests will create a visual disturbance and interruption to the otherwise natural flow of the landscape and it will ruin an otherwise pristine scenic view which Baltimore County and the local residents and communities have worked diligently to protect (Testimony of Messrs Dillon and Woolon and Prot. Exs; 2, 3, 4, 5, 6, 7, 8, 9, 11, 12. 16, 17, 18, 19, 20);

14. The need and desire to preserve, protect and maintain the integrity of the National Historic District and the scenic views and vistas and agricultural properties therein far outweigh the desire of AT&T to locate a tower at what it describes as the "optimum" location to meet its commercial needs and objectives. There is nothing within the Zoning

Mr. Lawrence E. Schmidt
November 17, 2000
Page 4

Regulations which even remotely suggests that rural conservation areas and historic districts should be compromised, if not destroyed, to accommodate the construction of a cell tower which is grossly out of scale, design and aesthetic value from the surrounding environment;

15. The Petitioners have failed to demonstrate that they have made a diligent and exhaustive search, investigation and study of other locations and other technological options which may be available to it to service its users from a reasonable (although maybe not optimal) location. In fact, AT&T virtually ignored the opportunity to investigate and study the feasibility of the O'Dwyer Retreat House in Sparks (Testimony of Mr. Miller);

16. The Petitioners proof failed to demonstrate that the proposed use will not be inconsistent with the general purposes of the property's zoning classification (R.C. 2) nor in any way inconsistent with the spirit and intent of the Zoning Regulations and the Master Plan 2010. (See §502.1 G). Resource Conservation zones are intended to protect resources from the compromising effects of development and special exceptions in an R.C. 2 zone are not permitted if the proposed use would be detrimental to the primary agricultural uses in the vicinity. (BCZR §§1 A00.2 and 1 A01.);

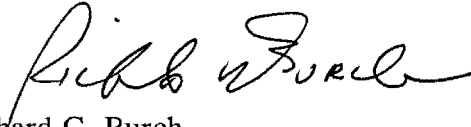
17. The recommendation of the Office of Planning dated October 12, 2000 to deny the special exception petition should be adopted. It should also be noted that every request by Mr. McDaniel and the Office of Planning for information on "mitigating measures" to reduce or negate the visual impact remains unanswered. Even if one assumes that mitigation may be difficult or problematic, AT&T had the affirmative duty to at least respond to the inquiries, a duty which it ignored. Furthermore, DEPRM also commented that the request should be denied "if the visual impact cannot be reduced to a minimum."

At the risk of belaboring what we regard as being obvious, the relief requested must be denied. The proof offered by the Petitioners falls woefully short of that which is required in order to obtain the relief, while the evidence presented by the Protestants overwhelmingly demonstrates that the special exception must be denied.

Mr. Lawrence E. Schmidt
November 17, 2000
Page 5

Thank you for your thoughtful and deliberate consideration of this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard C. Burch".

Richard C. Burch

RCB/lfc

cc: K. Donald Proctor, Esquire
Paul A. Dorf, Esquire
Mr. Jack Dillon

LAW OFFICES
PETER G. ANGELOS
A PROFESSIONAL CORPORATION
COURT TOWERS, SUITE 300
210 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
410-825-7300 FAX # 410-296-2541

DINO C. LA FIANDRA

November 7, 2001

Ms. Kathleen Bianco, Administrator
Board of Appeals
400 Washington Avenue
M.S. 2013
Towson, Maryland 21204

Re: Case No. 01-054-X
801 Bacon Hall Road - Terry R. Dunkin, Owner

Dear Ms. Bianco:

With regard to the above-referenced case, please withdraw the appearance of Dino C. La Fiandra, and enter the appearance of Jeffrey J. Utermohle, Esquire, as counsel for Ross Valley Farms, LLC, a Protestant.

Mr. Utermohle's address is:

Law Offices of Peter G. Angelos, P.C.
100 N. Charles Street
Baltimore, Maryland 21201
Tel: 410-649-2000

Should you have any questions, please contact Mr. Utermohle.

Sincerely,


Dino C. La Fiandra

DCL/cld

cc: Ross Valley Farms, LLC
Jeffrey Utermohle, Esquire.
K. Donald Proctor, Esquire
Richard Burch, Esquire
Paul A. Dorf, Esquire
Mr. Terry R. Dunkin

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01 NOV -8 PM 4:27

LAW OFFICES
PETER G. ANGELOS
A PROFESSIONAL CORPORATION
COURT TOWERS, SUITE 300
210 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
410-825-7300 FAX # 410-296-2541

DINO C. LA FIANDRA

August 1, 2001

OTHER OFFICES:

NEW YORK, NEW YORK
PHILADELPHIA, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA
PITTSBURGH, PENNSYLVANIA
BETHLEHEM, PENNSYLVANIA
WILMINGTON, DELAWARE
KNOXVILLE, TENNESSEE

Ms. Kathleen Bianco, Administrator
Board of Appeals
400 Washington Avenue
M.S. 2013
Towson, Maryland 21204

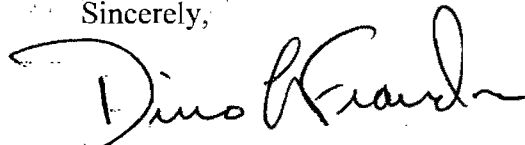
Re: Case No. 01-054-X
801 Bacon Hall Road - Terry R. Dunkin, Owner

Dear Ms. Bianco:

With regard to the above-referenced case, please enter the appearance of Dino C. La Fiandra and the Law Offices of Peter G. Angelos, P.C. as counsel for Ross Valley Farms, LLC, a Protestant.

Should you have any questions, please contact me.

Sincerely,



Dino C. La Fiandra

DCL/cld

cc: Ross Valley Farms, LLC
K. Donald Proctor, Esquire
Richard Burch, Esquire
Paul A. Dorf, Esquire
Mr. Terry R. Dunkin
Mr. William Francis
The Greater Sparks-Glencoe Community Council

*File note
8/09/01
K.*

ONE CHARLES CENTER
100 N. CHARLES STREET
BALTIMORE, MD 21201-3812
410-649-2000
(800) 252-6622
FAX 410-659-2101, 81, 82

UNION PARK CENTER
5905 HARFORD ROAD
BALTIMORE, MD 21214-1846
410-426-3200
(800) 492-3240
FAX 410-426-1269

STEELWORKERS' HALL
540 OUNDALK AVENUE
BALTIMORE, MD 21224-2997
410-633-8100
FAX 410-633-0480

CENTERPARK II
SUITE 315
4081 POWDER MILL ROAD
BELTSVILLE, MD 20705-3149
(800) 537-8261
FAX 301-937-5738

63 HENDERSON AVENUE
CUMBERLAND, MD 21502-2452
301-750-2700
FAX 301-759-2703

201 S. CLEVELAND AVENUE
HAGERSTOWN, MD 21740-5745
301-739-4000
FAX 301-739-3848

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PETER G. ANGELOS
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ONE CHARLES CENTER
100 N. CHARLES STREET
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JEFFREY J. UTERMÖHLE (MD, D.C.)
Law Offices of Peter G. Angelos
100 N. Charles Street, 20th Floor
Baltimore, MD 21201-3812
Direct Dial: (410) 649-2005
Fax: (410) 649-2150
E-mail Address: jutermohle@lawpga.com

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BETHLEHEM, PENNSYLVANIA
WILMINGTON, DELAWARE
KNOXVILLE, TENNESSEE

May 2, 2002

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

VIA CERTIFIED MAIL AND FACSIMILE (410) 887-3182

Re: Case # 01-054-X
In the Matter of AT&T Wireless Services - Contact Lessee
Terry R. and Cheryl S. Dunkin - Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilman District
Hearing date: May 21, 2002, 10:00 a.m.

Dear Ms. Bianco:

I represent Ross Valley Farms, LLC, a Protestant in the above-referenced matter. Enclosed for filing in this matter please find a Motion for Remand. My Motion respectfully requests the County Board of Appeals of Baltimore County to remand the above-referenced matter to the Zoning Commissioner for Baltimore County for further consideration in light of the changes in the applicable law as a result of the recent passage and enactment into law of Baltimore County Council Bill No. 121-01, an Act Concerning Telecommunications Towers - Historic and Scenic Resources.

Thank you for your kind consideration of this matter.

Sincerely,



Jeffrey J. Utermohle

RECEIVED
COUNTY BOARD OF APPEALS
02 MAY -3 PM 12:52

UNION PARK CENTER
5905 HARFORD ROAD
BALTIMORE, MD 21214-1846
410-426-3200
(800) 492-3240
FAX 410-426-1269

COURT TOWERS, SUITE 300
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410-825-7300
FAX 410-296-2541

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FAX 410-633-0480

CENTERPARK II
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4081 POWDER MILL ROAD
BELTSVILLE, MD 20705-3149
(800) 537-8261
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63 HENDERSON AVENUE
CUMBERLAND, MD 21602-2452
301-759-2700
FAX 301-759-2703

201 S. CLEVELAND AVENUE
HAGERSTOWN, MD 21740-5745
301-739-4000
FAX 301-739-3848

LAW OFFICES

PETER G. ANGELOS

Kathleen C. Bianco, Administrator

May 2, 2002

Page 2

JJU/rjs

Enclosure

cc: Paul A. Dorf, Esq.

Russell G. Alion, Jr. Esq.

K. Donald Proctor, Esq.

Richard Burch, Esq.

Peter Zimmerman, Esq.

Peter G. Angelos, Esq.

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

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

pdorf@adelbergprudow.com

www.adelbergprudow.com

Telephone
410-539-5195

Facsimile
410-539-5834

May 7, 2002

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

RE: Case # 01-054-X
In the matter of AT&T Wireless Services - Contract Lessee
Terry R. and Cheryl S. Dunkin - Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilman District
Hearing date: May 21, 2002, 10:00 a.m

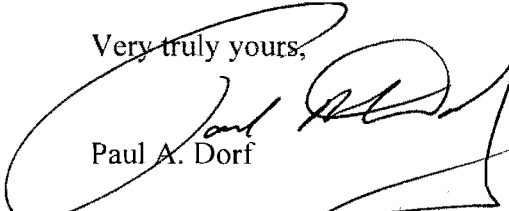
Dear Ms. Bianco:

I am writing in response to Mr. Utermohle's letter of May 2, 2002 concerning the above referenced matter.

The November 28, 2000, decision of Lawrence E. Schmidt, Zoning Commissioner for Baltimore County, clearly articulated, on page 5, his consideration of "scenic routes with scenic vistas" as well as the "existence of the historic district and scenic vistas identified in the Master Plan". In addition, Mr. Schmidt, during the hearing on the matter, specifically mentioned his consideration of historical and scenic elements in denying the Special Exception.

We contend that the Zoning Commissioner for Baltimore County has taken into account the elements outlined in Baltimore County Council Bill No. 121-01, an Act Concerning Telecommunications Towers - Historic and Scenic Resources. As such, the Motion to Remand should be denied.

Very truly yours,


Paul A. Dorf

cc: Jeffrey J. Utermohle, Esq.
K. Donald Proctor, Esq.
Richard Burch, Esq.
Peter Zimmerman, Esq.
Peter G. Angelos, Esq.

M:\WP\124\att\sec\bianco.ltr.wpd

RECEIVED
COUNTY BOARD OF APPEALS
02 MAY -9 AM 11:55

MUDD, HARRISON & BURCH

ATTORNEYS AT LAW

105 WEST CHESAPEAKE AVENUE

300 JEFFERSON BUILDING

TOWSON, MARYLAND 21204

(410) 828-1335

FAX (410) 828-1042

JOHN E. MUDD
RICHARD C. BURCH
DOUGLAS W. BISER
H. PATRICK STRINGER, JR.
ANDREW JANQUITTO
T. ROGERS HARRISON
(1949-1995)

MATTHEW P. LALUMIA
ANNA L. DAVIS
MICHELLE J. MARZULLO
DENISE E. MORLEY
OF COUNSEL
WILLIAM T. RUSSELL, JR.

May 9, 2002

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

Re: In the Matter of AT&T Wireless Services, Inc.
In the County Board of Appeals for Baltimore County
Property: 801 Bacon Hall Road (Dunkin)
Case No. 01-054-X

Dear Ms. Bianco:

I represent Valleys Planning Council in connection with the captioned matter. I write in response to Mr. Utermohle's letter of May 2, 2002, the Motion to Remand filed by Mr. Utermohle on behalf of his client and the response thereto by letter dated May 7, 2002 from Mr. Dorf, counsel for the applicants/appellants.

In an effort to conserve time and paper, my client joins and adopts the Motion filed by Mr. Utermohle on behalf of his client and we also maintain that the captioned appeal should be dismissed outright in light of the recently adopted Baltimore County Council Bill No. 121-01. Notwithstanding Mr. Dorf's assertions to the contrary, the Zoning Commissioner for Baltimore County obviously did not consider the full breadth, scope and impact of Bill No. 121-01 in connection with this matter since the Bill was not enacted until several months following the hearing before him and his decision and order dated November 28, 2000.

Accordingly, please accept and regard this correspondence as a Motion to Dismiss and/or Motion to Remand for the reasons and authorities set forth in the Motion to Remand

02 MAY 10 AM 11:19
COUNTY BOARD OF APPEALS
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Kathleen C. Bianco, Administrator
May 9, 2002
Page 2

filed by Mr. Utermohle. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. C. Burch", written in a cursive style.

Richard C. Burch

RCB/hyj

cc: Jeffrey Utermohle, Esquire
K. Donald Proctor, Esquire
Paul A. Dorf, Esquire
Peter Zimmerman, Esquire
Mr. Jack Dillion

ADELBERG, RUDOW, DORF & HENDLER, LLC

ATTORNEYS AT LAW

Paul A. Dorf

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

pdorf@adelbergdudow.com

www.adelbergdudow.com

Telephone
410-539-5195

Facsimile
410-539-5834

May 9, 2002

VIA FACSIMILE 410-887-3182
AND FIRST CLASS MAIL

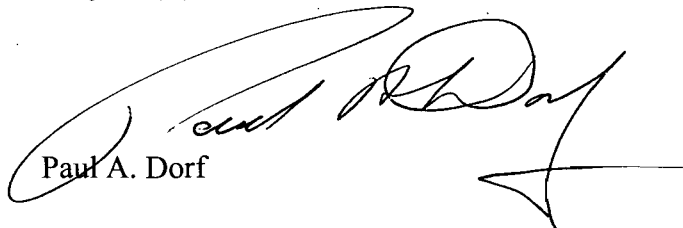
Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Roomm 49
400 Washington Avenue
Towson, Maryland 21204

RE: Case #: 01-054-X
In the Matter of AT&T Wireless Services-Contact Lessee
Terry R. and Cheryl S. Dunkin-Legal Owners
801 Bacon Hall Road
7th Election District; 3rd Councilman District
Hearing Date: May 21, 2002

Dear Ms. Bianco:

As per our conversation this morning, AT&T will consent to the remand of the above-referenced matter to the Zoning Commission of Baltimore County. This means all parties have given their consent.

Very truly yours,



Paul A. Dorf

PAD/mr

cc: Jeffrey J. Utermohle, Esquire
K. Donald Proctor, Esquire
Richard C. Burch, Esquire
Mr. Jack Dillon

M:\WP\020\AT&T\at&tbianco050902.wpd

RECEIVED
COUNTY BOARD OF APPEALS
02 MAY 10 AM 11:18

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
FAX COVER SHEET

DATE: May 9, 2002

TO: Paul A. Dorf, Esquire **FAX** : 410-539-5834
TELEPHONE : 410-539-5195

Jeffrey Utermohle, Esquire **FAX** : 410-649-2150
TELEPHONE : 410-649-2000

Richard C. Burch, Esquire **FAX** : 410-828-1042
TELEPHONE : 410-828-1335

Donald K. Proctor, Esquire **FAX** : 410-823-2268
TELEPHONE : 410-823-2258

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire **VIA Hand Delivery**

FROM: Kathleen Bianco **TELEPHONE:** 410-887-3180
FAX : 410-887-3182

RE: Case No. 01-054-X /In the Matter of: AT&T Wireless Services; Terry R. and
Cheryl S. Dunkin -Legal Owners

Please see attached letter regarding requested remand, and call me with any questions no later than 5/16/02.

Number of pages including this page: Two (2)

Original copy to follow : Yes X No

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

August 1,2000

Mr. Paul A. Dorf
Adelberg, Rudow, Dorf, Hendler & Sameth, LLC
600 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Re: AT&T Wireless Services
801 Bacon Hall Road
Site No. B883

Dear Mr. Dorf:

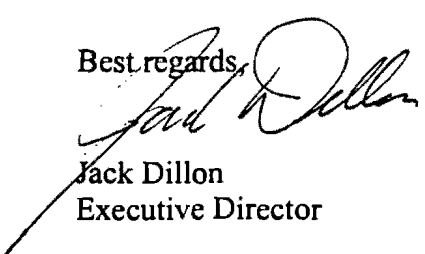
Thank you for advising me of the date and time of the balloon test for the above referenced Tower site. I was able to visit the site and observe the balloon from a variety of locations. As I indicated to you in our previous telephone conversation this property is within the National Register Historic District for the Western Run – Belfast Valleys. Because cell towers fall under the Federal Communications Act and are required to meet the requirements of the Federal Code Sec. 47 CFR 1.1307 and is subject to a 106 Review by the Maryland Historical Trust. I recommend that you contact Ms. Anne E. Bruder at The Maryland Historical Trust. Her phone number is 410-514-7636.

Because I have had so many calls from area residents who are concerned about this request I prepared a site map which I am enclosing for your records. My own assessment is that there will be a visual impact to the Historic District and I do not see a way that it can be mitigated. I suggest that another site be found.

Please keep me informed regarding the progress of this request and any others within the Valleys Planning Council area. Our boundaries are The Beltway (695) on the south, I-83 up to the Gunpowder River on the east, The Gunpowder River and Prettyboy Reservoir on the north and The Carroll County Line, Hanover Pike and Reisterstown Road on the west.

Thank you for your willingness to work with us on these difficult issues.

Best regards,



Jack Dillon
Executive Director

cc: Councilman T. Bryan McIntire
George McCeney
Judith Waldman
George Doub
Anne E. Bruder

Enclosure (1)

BALTIMORE
COUNTY
HISTORICAL
TRUST inc.

☐ Community Preservation at Work ☐
Post Office Box 10067
Towson, MD 21285-0067
410-832-1812
www.bcht.org

October 30, 2000

Mr. Lawrence Schmidt
Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: 00-054SPH

Dear Mr. Schmidt,

The Baltimore County Historical Trust, a nonprofit organization dedicated to preserving local historic properties, is opposed to the visible placement of a cell tower in the Western Run-Belfast Road National Register District. This area was nominated to the register on the basis of its agricultural history and contains many examples of domestic and agricultural architecture from the past three centuries.

We are requesting that the petitioner find an alternative method for providing wireless services and that you prohibit the issuance of any permits for this project until a workable solution is found.

We would suggest that future zoning hearings regarding communications towers be postponed until you are certain that all of the criteria in the Maryland Historical Trust's *Guidelines for FCC's Licensees and Applications – Section 106 Submittals*, effective September, 2000 have been met and the applicant has a letter to that affect. The Maryland Historical Trust, which serves as the state's Historic Preservation Office, plays a key role in the federal Section 106 process defined in 36CFR Part 800. In a situation such as this, it will issue what is known as an "adverse determination," meaning that the applicant is expected to try to find another solution. It would be a far better use of everyone's time if the applicant were to do the appropriate homework first and meet with the community groups to find a way to provide communications services and preserve the area's historic quality.

Sincerely,


Judith S. Kremen
Executive Director





**Maryland
Department of
Housing and
Community
Development**

*Division of Historical and
Cultural Programs*

100 Community Place
Crownsville, Maryland 21032

410-514-7600

1-800-756-0119

Fax: 410-987-4071

Maryland Relay for the Deaf:

1-800-735-2258

<http://www.dhcd.state.md.us>

Parris N. Glendering
Governor

Raymond A. Skinner
Secretary

Marge Wolf
Deputy Secretary

SEP 12 2000

September 8, 2000

Ava Berland, Esq.
Office of the General Counsel
Federal Communications Commission
445 12th Street, S.W., Room #8A-523
Washington, D.C. 20554

Mr. Donald Klima
Director, Office of Planning and Review
Advisory Council on Historic Preservation
Old Post Office Building
1100 Pennsylvania Avenue, N.W.
Suite 809
Washington, D.C. 20004

RE: Maryland Historical Trust's Guidelines for the
Federal Communications Commission's Licensees and Applicants

Dear Ms. Berland and Ms. Vaughn:

The Maryland Historical Trust has prepared the attached Guidelines for the FCC's Licensees and Applicants in order to facilitate the Section 106 consultation process with our office. We have written these Guidelines to include construction of wireless communications facilities, fiber optic cable installation, and radio and television tower construction. We hope that the FCC will find this a useful tool for all of its undertakings in our State.

During the last two years, we have experienced a dramatic rise in the number of FCC undertakings submitted for Trust review — resulting in considerable demands on available staff resources. These increasing demands place serious limits on our ability to adequately address these expanding reviews and provide quality services in a timely manner. Many of the FCC activities constitute actions that may have effects on historic properties and warrant careful review and consultation. However, other actions (such as co-locations of antenna on existing towers) have a very limited potential to adversely affect significant cultural resources. Our continued involvement in the review of such activities is not a productive use of our staff resources.

We understand that FCC and the Council are working with other involved parties to pursue the development of a nationwide Programmatic Agreement to streamline the Section 106 review process for FCC programs. We appreciated the opportunity to attend the meeting of this work group on 24 August 2000 and look



**MARYLAND HISTORICAL TRUST'S GUIDELINES FOR
FCC's LICENSEES AND APPLICANTS – SECTION 106 SUBMITTALS
EFFECTIVE SEPTEMBER 2000**

**Maryland
Department of
Housing and
Community
Development**

*Division of Historical and
Cultural Programs*

100 Community Place
Crownsville, Maryland 21032

410-514-7600

1-800-756-0119

Fax: 410-987-4071

Maryland Relay for the Deaf:

1-800-735-2258

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Parris N. Glendening
Governor

Raymond A. Skinner
Secretary

Marge Wolf
Deputy Secretary

I. Introduction

The Federal Communications Commission (FCC) must comply with Section 106 of the National Historic Preservation Act of 1966, as amended, for any activity requiring a permit, license, or approval from the FCC. The implementing regulations for Section 106, 36 CFR Part 800, establish a consultation and review process. The FCC must consider whether an activity under its jurisdiction, such as tower construction or fiber optic cable installation, will affect historic properties and take appropriate measures to avoid, minimize, or mitigate any adverse effects. Historic properties may include buildings, archeological sites, districts, and engineering structures that are listed in or eligible for the National Register of Historic Places, and may encompass resources that have not yet been identified. Section 106 entitles applicants for federal approval to participate in the review process. While the FCC may authorize its applicants to initiate consultation, compile information, and conduct necessary studies, the FCC remains legally responsible for complying with Section 106 for all activities under its jurisdiction.

The Maryland Historical Trust (Trust) serves as the Maryland State Historic Preservation Office (MD SHPO) and plays a key role in the Section 106 process defined in 36 CFR Part 800. In order to meet the requirements of the implementing regulations, FCC requests its licensees and applicants to contact the Trust for information and technical advice. The Trust maintains the inventory of cultural resources in the State of Maryland (the Maryland Inventory of Historic Properties – MIHP). Many of Maryland's resources are listed in the National Register of Historic Places, such as the City of Annapolis Historic District, the Antietam Battlefield, and the Skipjack Fleet. While the Inventory currently includes over 60,000 buildings and 8,000 archeological sites throughout Maryland, numerous other properties have not yet been identified or evaluated.

The Trust prepared these Guidelines to assist the FCC, its licensees, applicants and their consultants with the Section 106-consultation process. The information received from our office should be provided to the FCC to complete the record for the NEPA requirements under 47 CFR §1.1307 *et seq.* and document fulfillment of the Section 106-consultation. The Guidelines include helpful tips and sources of additional information to facilitate the preparation of submittals for Trust review.

II. Projects Requiring FCC-MD SHPO Consultation

Based on our examination of the types of undertakings received from the FCC, the Trust will participate in the Section 106 consultation and review of the following project types:

- New tower construction (including radio and television towers).
- Co-location of antennae on buildings, structures and objects eligible for or listed in the National Register of Historic Places or within National Register-listed or eligible Historic Districts.
- Co-location of antennae which substantially alter (e.g., increasing height or width) the base tower.
- Installation of fiber optic cable.
- Construction of associated equipment buildings for any of the above-listed undertakings.



FAX TRANSMITTAL COVER SHEET

To: Paul Dorf **Date:** September 13, 2000
Organization: Adelberg, Rudow, Dorf & Henler
Fax #: 410-539-5834 **Pages:** 10, including this cover sheet.
From: Andrew Garte *AG*
Subject: CV for Andrew I. Garte, CHMM

MESSAGE:

Mr. Dorf - following please find my resume. I'm sorry this did not get over to you yesterday. Please call if you have any questions.

As we discussed, I am not a Cultural resource professional qualified to make "determinations of effect" under 36 CFR; however, I do have on staff professional with these credentials. I am very well versed in the requirements of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), which are the federal regulations pertinent to telecommunications facilities and which regulate impacts to environmental, including cultural, resources. I will review the Site (Duncan) and discuss the issues with the CRM team and be prepared for the testimony on the 20th.

- Andrew

****NOTICE****

This facsimile transmission is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying of or taking any action in reliance of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately at (410) 867-4600.



ANDREW GARTE & ASSOCIATES, INC.

Andrew I. Garte, CHMM, REA

President

EDUCATION

B.S., Marine Biology, Southeastern Massachusetts University, 1982
40-Hour OSHA Hazardous Waste Site Worker Training, 1984, and annual refreshers
Member, Institute of Hazardous Materials Management, 1985
Member, Association of Hazardous Materials Managers, 1985
Certified Hazardous Materials Manager, #836: Senior Level, 1985
Certified Hazardous Materials Manager, #836: Masters Level, 1986
Member, Hazardous Materials Control Research Institute, 1986
Registered Environmental Assessor #00516, State of California, 1988
Member, Environmental Auditors Roundtable, 1990
Certified "Train the Trainer," 1991.

QUALIFICATIONS AND RELEVANT EXPERIENCE

Mr. Garte is the Founder and President of Andrew Garte & Associates, Inc. (AGA). He established the company to fill a void in environmental consulting on a senior level using his comprehensive environmental management approach for both program development and execution. Mr. Garte has drawn on his more than eighteen years of experience to develop an integrated environmental management corporation that fills this void, providing services both in the field and in the boardroom. Prior to his starting AGA, Mr. Garte was the co-founder and Annapolis Office Manager, Senior Project Manager, and Environmental Management Programs Manager for the east coast office of a mid-western environmental consulting firm. Prior to this time, Mr. Garte was a Senior Project Manager for Roy F. Weston, Inc. and was the leader of Weston's Environmental Assets Management practice in Washington, D.C.

Mr. Garte is experienced in the performance, preparation, and presentation of environmental impact statements, assessments, impairment liability audits, regulatory compliance audits, due diligence surveys, and property transfer audits. He has served as the Project Manager, Project Director, or Primary Investigator on over 1,000 environmental management, NEPA environmental assessment which include cultural resource evaluations, environmental due diligence, and Site investigations/remediation projects. Mr. Garte has also been active in the development and implementation of comprehensive environmental audit and assets management business programs and

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 22
Bill No. 121-01

Councilmembers McIntire and Bartenfelder

887
3196
By the County Council, December 17, 2001

A BILL
ENTITLED

AN ACT concerning

Wireless Telecommunications Towers - Historic and Scenic Resources.

FOR the purpose of revising the procedures for the review of wireless communication towers;
requiring the ~~Tower Review Committee~~ Zoning Commissioner to consider scenic viewshed
elements and historic areas; requiring a tower applicant to petition for a special hearing under
certain circumstances prohibiting towers from interfering with scenic viewshed elements;
requiring towers to be in harmony with certain historic areas; requiring the Zoning
Commissioner to areas; requiring the Zoning Commissioner to make certain determinations
concerning towers based on substantial evidence; authorizing the Commissioner to consider
certain factors when considering a tower providing for in certain zones; ~~procedures before~~
~~the Commissioner~~; prohibiting appeals from a decision of the ~~Tower Review Committee~~;
~~authorizing certain persons to petition for a special hearing~~; requiring requiring the Planning
Board to catalogue and identify scenic viewshed elements and areas; defining certain terms;
and generally relating to wireless communication towers.

EXPLANATION:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter stricken from existing law.

Strike-out indicates matter stricken from bill.

Underlining indicates amendments to bill.

9/20/00
#01-054-X

9/20/00
#01-054-X

ADDRESS

2 Hopkins Plaza, Suite 600

Baltimore, MD 21201

200 E Pennsylvania Ave 21286

11710 Beltsville Drive
Beltsville MD 2070

1901 Pennsylvania Ave, NW Suite 402
Washington, DC 20006

4061 DAWSON MNR RI
CALVERTON, MD 20708

DMW, INC.

200 E. PENNSYLVANIA AVE 21286

801 Bacon Hall Rd.

SPARKS MD 21152

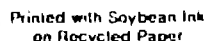
10605 Concord St. Kensington 20845

CROWN CASTLE TGA

4740 Corporate Place Beltsville MD

6285 SHady Side Rd.

Shady Side, MD, 20764



PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
RICHARD C. BURCH FOR VPC	SUITE 300 105 W. CHESAPEAKE AVE 21204
K. DONALD PROCTOR for C. ENSOR, Cold Bottom Farms	102 W Penna Ave 21204
GATHAM SPARKS GLENCOE COMMUNITY CENTER	
PAUL HUFFER	831 WALTERS LANE SPARKS, MD 21152
Jack Dillon VPC	207 Courtland Ave Towson MD 21204
George B. Mc Cency	1407 Glencoe Rd. Glencoe 21152
Chal E. Evans	15801 Buffalo Run Rd Sparks MD 21152
Norman A Davis	Box 108 Brooklandville, MD 21022
T. MULLAN	2620 Calhoun Rd.
James T. Wolton, Jr.	600 Craigs Corner Road Havre de Grace, Md. 21078
Walter W. Hawkins	804 Coldbottom Rd. Sparks MD 21152
Jennie T. Hawkins	804 Coldbottom Rd Sparks, MD 21152
Hanna W. Zook	P.O. Box 38 Chynoweth, Md. 21091
H. BARRITT PETERSON, JR	15315 WHEELER LANE, SPARKS MD 21152
KENNETH T. BOSLEY	BOX 585 YORK RD, SPARKS, MD. 21152
Sherlock Gillet Jr	17020 EYNA RD Parkton, MD 2120
PAT BAILEY	1000 COLD BOTTOM RD SPARKS 21152
BOB BAILEY	1000 COLD Bottom RD SPARKS 21152
Michael S. Aiello	906 Cold Bottom Rd Sparks 21152
JIM WERKING	806 COLD BOTTOM 21152
Diane Werking	806 Cold Bottom 21152

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

Paul A. Dorf, Esquire

Russell G. Alden, Jr. Esq.

Bill Francis

Mitchell Kellman

Chris Scott

DAKLEIGH THORNS

Andrew Gork

April M. Beisaw, RPA

JIM WERKING

Diane Werking

Michael Aiello

Terry R. Dunkin

RICHARD B. BUCK

Peyton S. COCHRAN JR

Lewis A. Walker

Mrs. Janet R. Walker

Sherlock Collet Jr

Pat Bailey

2 Hopkins Place, Suite 600

Baltimore, MD 21201

4061 Powdermill Rd Ste 430
Calverton, MD 20705

200 East Pennsylvania Ave
Towson, MD 21286

1710 Beltsville Drive
Beltsville, MD 20705

10605 Concorde St. Kensington, MD

6285 Shady Side Rd, Shady Side, MD 21286
6285 Shady Side Rd, Shady Side

800 Cold Bottom Rd

11 11 11

906 Cold Bottom Rd.

801 Bacon Hall Rd.

11219 GREENSPRING AVE L-21093

3542 Butler Rd. GLENDOVE 21071

706 Cold Bottom Rd. Sparks MD 21152

706 Cold Bottom Rd, Sparks MD 21152

17020 EDWARD, Parkton MD 21120

1000 Cold Bottom RD SPARKS 21152



CITIZENS/

PROTESTANT(S) SIGN-IN SHEET

PLEASE PRINT CLEARLY

NAME

ADDRESS

Jack Ditton VPC

207 Courtland Ave. 21204

George B. McLeary (GSBCC)

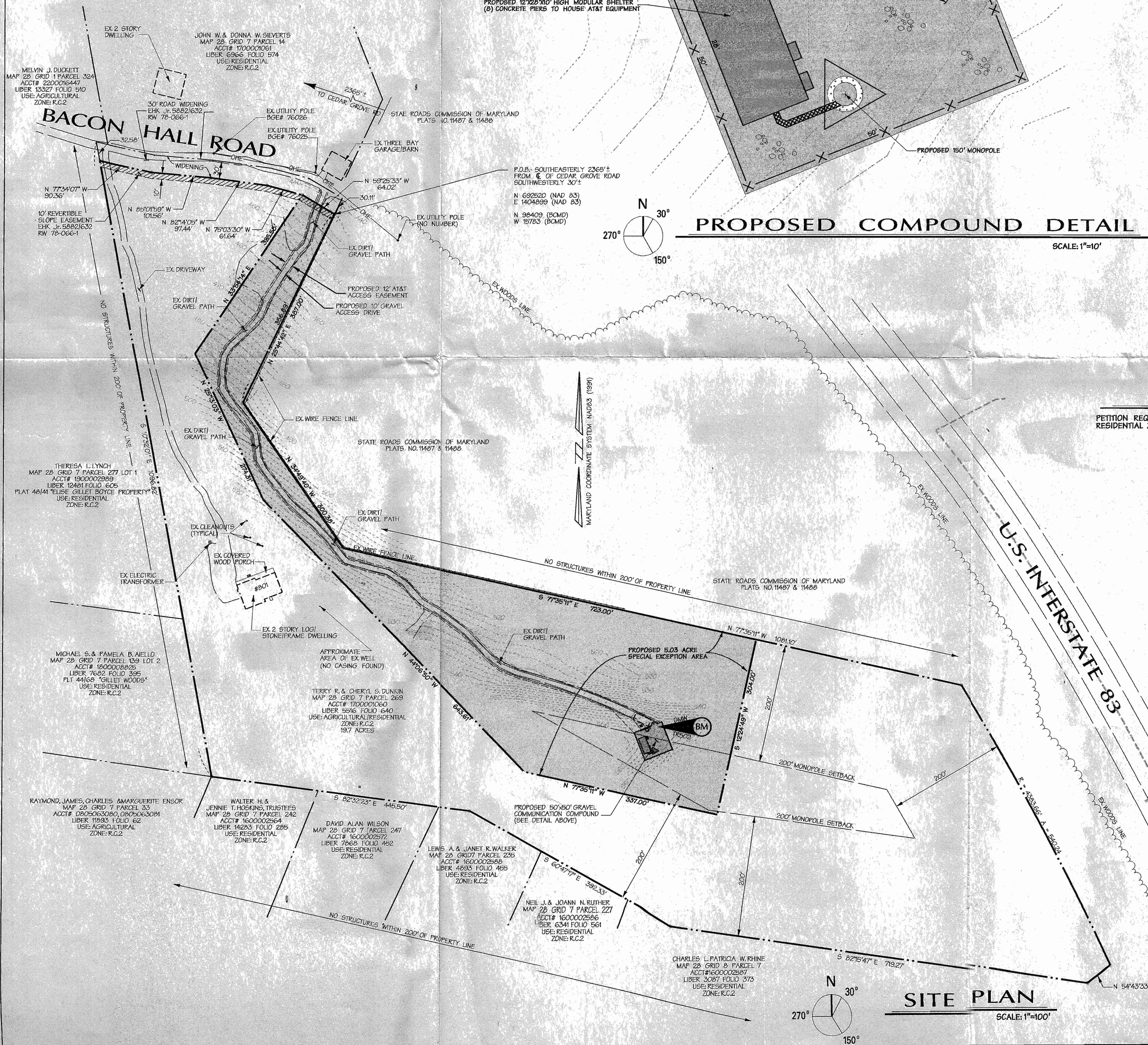
P.O. Box 396 Sparks 21152

PAUL HOFFEN (GSGL)

P.O. Box 396 Sparks MD 21152

PETITIONER'S EXHIBITS

	EXISTING CONTOURS
	PROPOSED CONTOURS
	EXISTING METAL FENCE
	PROPOSED METAL FENCE
	BENCH MARK
	EXISTING TREE LINE
	200' ZONING RESTRICTION LINE
	PROPERTY LINE
	PROPOSED SPECIAL EXCEPTION AREA
	EXISTING OVERHEAD ELECTRIC LINE
	ZONING LINE
	N.R.H.D. LINE



1. CURRENT OWNER AND STREET ADDRESS: TERRY & CHERYL DUNKIN
801 BACON HALL ROAD
SPARKS, MARYLAND 21152
410-236-7605

2. CONTRACT LESSEE/APPLICANT: AT&T WIRELESS SERVICES, INC.
1710 BELTSVILLE DRIVE
BELTSVILLE, MARYLAND 20705

3. SPECIAL EXCEPTION AREA: 5.03 ACRES

4. EXISTING USE: AGRICULTURAL, RESIDENTIAL

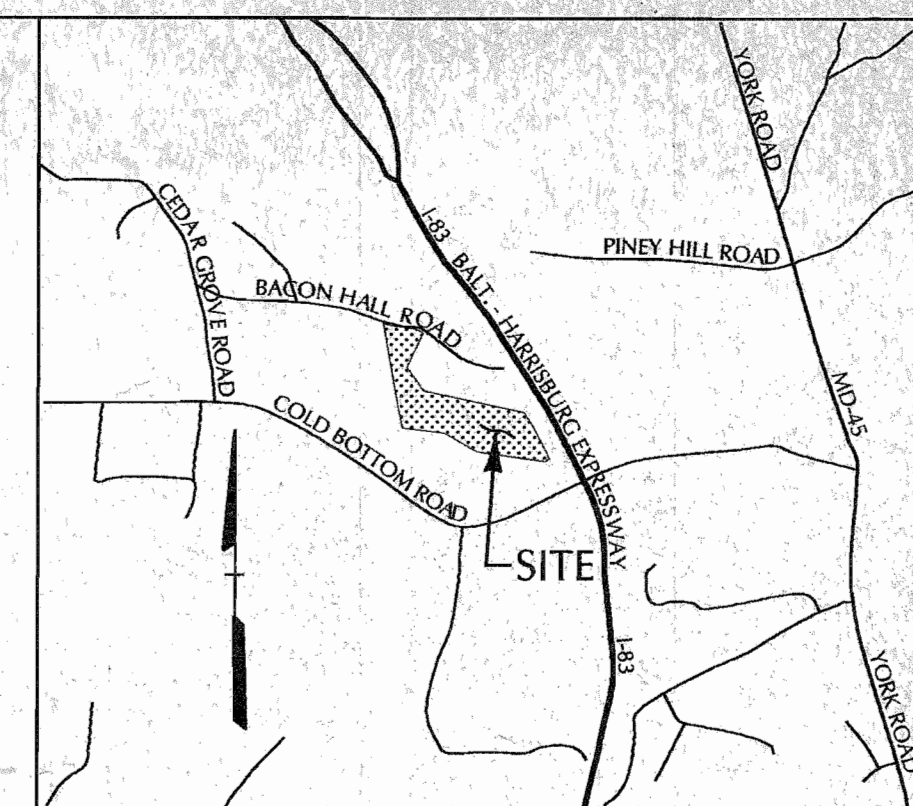
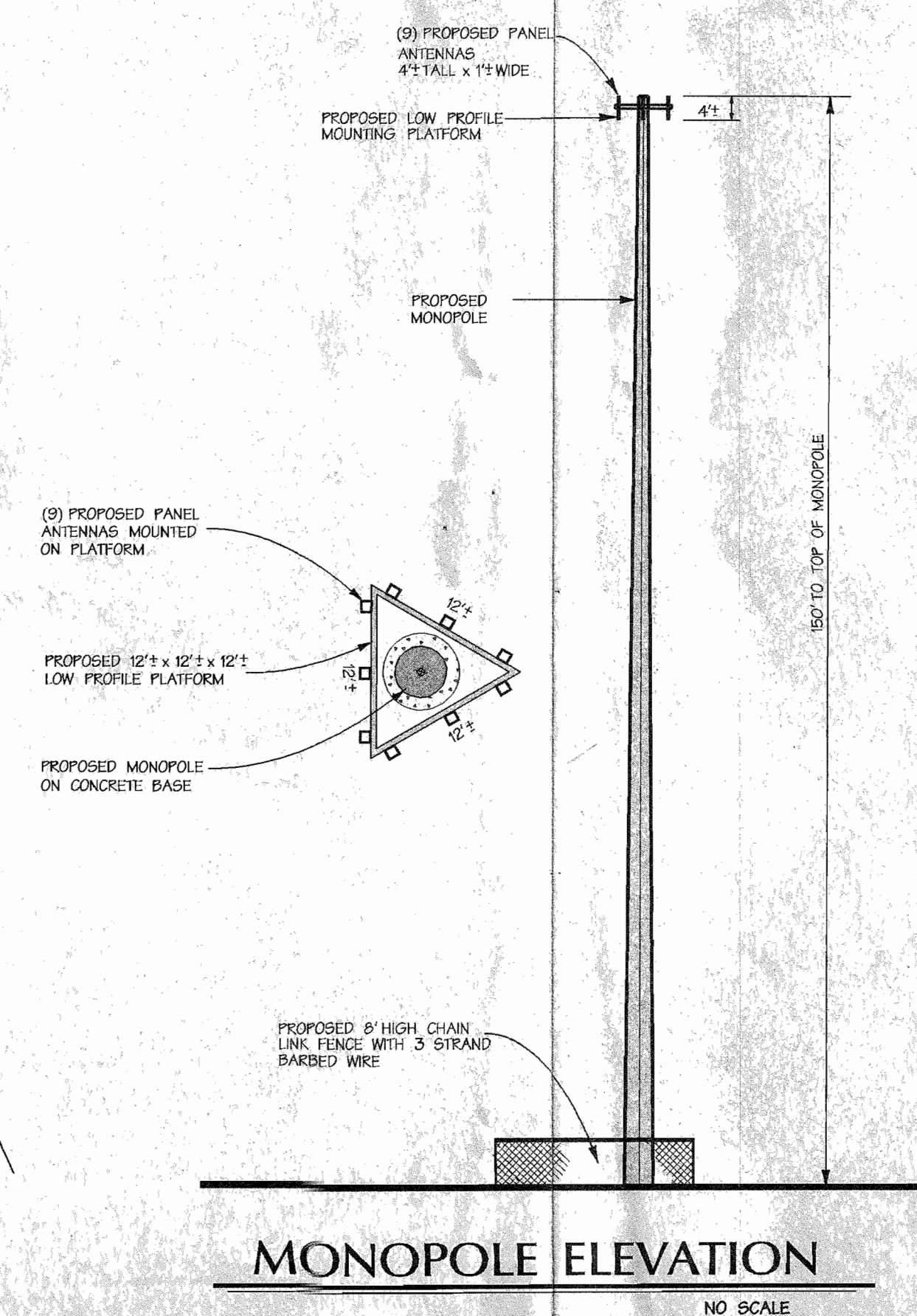
5. SITE ADDRESS: 801 BACON HALL ROAD
SPARKS, MARYLAND 21152

6. SITE DATA: TAX MAP 28 GRID 7 PERCEL 269
DEED REFERENCE: 6661640
TAX ACCOUNT NUMBER: 1700001060
DISTRICT: 07
ZONING: C-2 (MAP NW 25-C)

10. NO WATER OR SANITARY UTILITIES ARE REQUIRED FOR THE PROPOSED FACILITY.
11. THE TOPOGRAPHIC INFORMATION SHOWN HEREON IN THE AREA OF THE PROPOSED ACCESS ROAD AND COMPOUND, IS THE RESULT OF A DAWN FIELD SURVEY PERFORMED ON 2/10/2002. THE PROPERTY INFORMATION AND LOCATION HAVE BEEN COMPILED FROM DEEDS, PLATS AND OTHER SOURCES DEEMED RELIABLE. HOWEVER, IT IS PLAIN TO NOT THE RESULT OF A BOUNDARY SURVEY AND THEREFORE IS SUBJECT TO CHANGE.
12. THERE ARE NO NEW SIGNS PROPOSED FOR THIS FACILITY.
13. NO ADDITIONAL SITE, ANTENNA LIGHTS OR STROBOSCOPIC LIGHTS ARE PROPOSED FOR THIS FACILITY, UNLESS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION.
14. EXISTING UTILITY LOCATION INFORMATION SHOWN ON THESE PLANS IS FOR THE CONTRACTORS CONVENIENCE ONLY. WHILE THE INFORMATION SHOWN HAS BEEN GATHERED FROM SURVEYS AND SOURCES DEEMED TO BE RELIABLE, THE CORRECTNESS OR COMPLETENESS OF THE INFORMATION SHOWN IS NOT WARRANTED OR GUARANTEED. THE CONTRACTOR SHALL VERIFY ALL INFORMATION TO HIS OWN SATISFACTION.
15. THE CONTRACTOR IS TO NOTIFY MISS UTILITY (800) 257-7777 A MINIMUM OF 3 WORKING DAYS PRIOR TO ANY CONSTRUCTION OR EXCAVATION, THE CONTRACTOR IS TO ALSO NOTIFY A PRIVATE UTILITY CONTRACTOR FOR ALL ON-SITE UTILITY LOCATIONS.
16. THIS SITE IS NOT LOCATED WITHIN A 100 YEAR FLOOD PLAIN AS PER THE NATIONAL FLOOD INSURANCE PROGRAM, FLOOD INSURANCE RATE MAP COMMUNITY PANEL NUMBER 24000-028-B REVISED MARCH 2, 1981.
17. PROPOSED WORK INCLUDES INSTALLATION OF A 50'X65' GRAVEL COMPOUND, 150' MONOPOLE, 12000-200' HIGH MAST LIGHT EQUIPMENT SHELTER ON CONCRETE PIER, 9 PANEL ANTENNAS PLATFORM MOUNTED ATOP THE MONOPOLE, 8' HIGH CHAIN LINK FENCE WITH 5' STRAND BARRIER, 15' CONCRETE FOUNDATION FOR CELL PHONE, 10' HIGH HOLE 8" UTILITY COMPANY BACKROAD, BGE TRANSFORMER AND WIDENING OF EXISTING GRAVEL DRIVE.
18. REQUIRED NUMBER OF EMPLOYEES: 0 (UNMANNED FACILITY)
19. PARKING SPACES PROVIDED: 1 (FOR MAINTENANCE TRUCK)
20. FLOOR AREA RATIO N/A
21. COMPOUND IS TO BE SCREENED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL CLASS SCREENING REQUIREMENTS, AS PER SECTION 426.6C OF THE BALTIMORE COUNTY ZONING REGULATIONS.
22. THE MONOPOLE AND ANTENNAS SHALL BE NEUTRAL IN COLOR.
23. THE REQUIREMENTS OF SECTIONS 426.6.D.4E AND 502.7 OF THE BALTIMORE COUNTY ZONING REGULATIONS SHALL BE MET.
24. AN EROSION AND SEDIMENT CONTROL PLAN WILL BE PREPARED AND SUBMITTED FOR REVIEW AND A GRADING PERMIT WILL BE OBTAINED FOR THE PROPOSED ACCESS DRIVEWAY.

NONE ON RECORD

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.



SCALE: 1"=2000'

DESCRIPTION

DMW TR502
REBAR & CAP
N 691649.01
E 1405454.99
ELEV. 554.62'

DATA SOURCES:

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

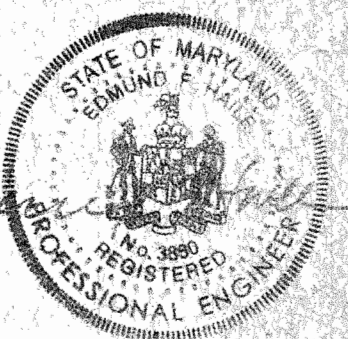
*A Team of Land Planners,
Landscape Architects,
Engineers, Surveyors &
Environmental Professionals*

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

DUNKIN PROPERTY

801 BACON HALL ROAD
SPARKS, MD 21152

7th ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND



DATE	BY	REVISIONS
8-2-00	MJM	As Per Bmt. Co. Comments
ISSUE DATES		BASE:
REVIEW:	_____	MDM
BID:	_____	MDM
PERMIT:	_____	MDM
CONSTRUCTION:	_____	CHECKED BY:
SCALE:	AS SHOWN	DATED CHECKED:
PROJECT NO.:	96035.BF	DRAWING:
1 OF 1		

CERTIFICATE OF POSTING

RE: Case No.: 01-054-X

Petitioner/Developer: _____

A.T. & T. WIRELESS SERVICES
90 S. LEONARD ROTHMAN, ESQ.

Date of Hearing/Closing: 9/20/00

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at _____

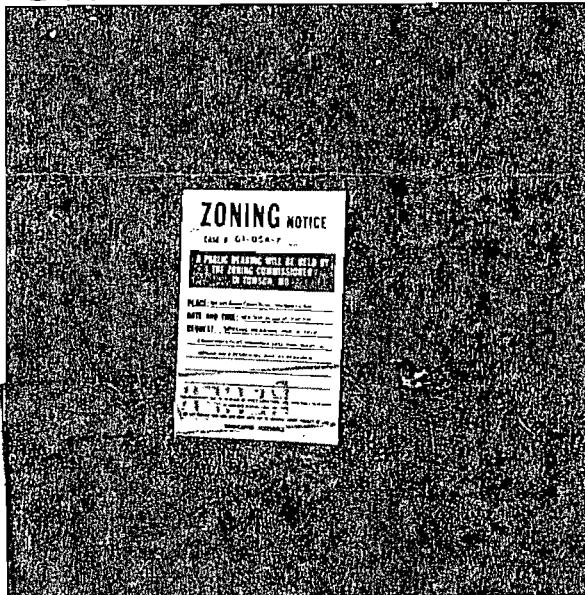
S/S BACON HALL RD., 2,365' E. OF CEDAR GROVE RD
(801 BACON HALL RD.)

The sign(s) were posted on _____

9/4/00

(Month, Day, Year)

CASE # 01-054-X



Sincerely,

Richard E. Hoffman 9/4/00
(Signature of Sign Poster and Date)

RICHARD E. HOFFMAN
(Printed Name)

904 DELLWOOD DR.
(Address)

FALLSTON, MD. 21047
(City, State, Zip Code)

(410) 879-3122
(Telephone Number)

S/S BACON HALL RD., 2,365'
E OF CEDAR GROVE RD
POSTED 9/4/00 (801 BACON
HALL RD.)
Richard E. Hoffman 9/4/00

RECEIVED

SEP 12 2000

DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

**NOTICE OF ZONING
HEARING**

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

Case: #01-054-X
801 Bacon Hall Road
S/S Bacon Hall Road, 2365
feet E of Cedar Grove Road
7th Election District
3rd Councilmanic District
Legal Owner(s): Terry and Cheryl Dunklin
Contract Purchaser: AT&T Wireless Services

Special Hearing: for a telecommunications monopole less than 200 feet in height on a residential zone, as required.

Hearing: Wednesday, September 20, 2000 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

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

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

JT/9/03 Sept. 5 C416611

CERTIFICATE OF PUBLICATION

TOWSON, MD, 9/7/, 2000

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/5/, 2000.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

Ref No 2

Ex 3

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

Pd
No 3

Ex 4



Baltimore County
Department of Permits and
Development Management

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

September 15, 2000

Ref No 4

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

Dear Mr. Dorf & Mr. Rottman:

RE: Case Number: 01-054-X, 801 Bacon Hall Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 3, 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.

W. Carl Richards, Jr.
Supervisor, Zoning Review

GDZ

WCR: gdz

Enclosures

C: Terry & Cheryl Dunkin, 801 Bacon Hall Road, Sparks 21152
AT&T Wireless Services, Bill Francis, 11710 Beltsville Drive, Beltsville 20705
People's Counsel



OAKLEIGH J. THORNE, MAI, CRE

EDUCATION

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

Ref No 5

1964

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, 2001.
- 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.

EXPERT TESTIMONY

Qualified as a real estate expert witness in regional, State, and Federal District courts concerning various litigation issues such as partnership disputes, pension fund asset values, land use special exceptions, condemnation, and bankruptcy.

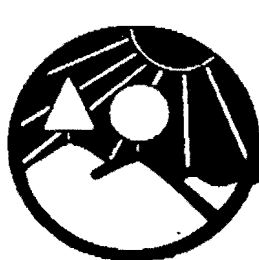


Photo 26. Residence located at Buffalo Run Road within the Western Run-Belfast Historic District.



Photo 27. Photo-simulation of the view from the residence, located on Buffalo Run Road, towards the facility.

Ref No 6 FD only



ANDREW GARTE & ASSOCIATES, INC.

April M. Beisaw, RPA Archaeologist

EDUCATION

1998 M.A. Anthropology, Binghamton University
1996 B.A. Anthropology, Rutgers, The State University of New Jersey
1996 B.A. Chemistry, Rutgers, The State University of New Jersey

CONTINUING EDUCATION

2000 Introduction to Section 106 Review Training Course, Advisory Council on Historic Preservation and University of Nevada Reno

PROFESSIONAL AFFILIATIONS

Member, Register of Professional Archaeologists (RPA), 2000
Member, Society for American Archaeologists, 1995
Member, International Council for Archaeozoology, 2000
Member, Society Historical Archaeology, 1998
Member, Society for Archaeological Sciences, 1996
Guest Member, Preservation Maryland, 2000

Ref No 7

QUALIFICATIONS AND RELEVANT EXPERIENCE

Ms. Beisaw is an Archaeologist and Environmental Scientist for Andrew Garte & Associates, Inc. (AGA). Ms. Beisaw joined AGA in February of 2000 to assist with both cultural and environmental resource projects. Ms. Beisaw possesses ten years of chemistry experience in addition to her six years of archaeology and history experience. Prior to starting at AGA, Ms. Beisaw was the Laboratory Director for The Lost Towns Project in Annapolis, Maryland, a county funded, archaeology recovery effort. While serving as Laboratory Director, Ms. Beisaw instructed and supervised volunteers and staff on archaeology methods and theories in addition to overseeing all artifact analysis and assisting in field excavation and establishing and implementing research designs. Prior to obtaining her Masters Degree in Anthropology, Ms. Beisaw was an Analytical Chemist with Union Carbide Corporation in Bound Brook New Jersey.

Ms. Beisaw's archaeological and historical expertise draws upon six years of archaeological field and laboratory experience with prehistoric and historic sites in Maryland, New York, New Jersey,



**Maryland
Department of
Housing and
Community
Development**

*Division of Historical and
Cultural Programs*

100 Community Place
Crownsville, Maryland 21032

410-514-7600

1-800-756-0119

Fax: 410-987-4071

Maryland Relay for the Deaf:

1-800-735-2258

<http://www.dhcd.state.md.us>

Parris N. Glendening
Governor

Raymond A. Skinner
Secretary

Marge Wolf
Deputy Secretary



**MARYLAND HISTORICAL TRUST'S GUIDELINES FOR
FCC's LICENSEES AND APPLICANTS - SECTION 106 SUBMITTALS
EFFECTIVE SEPTEMBER 2000**

I. Introduction

The Federal Communications Commission (FCC) must comply with Section 106 of the National Historic Preservation Act of 1966, as amended, for any activity requiring a permit, license, or approval from the FCC. The implementing regulations for Section 106, 36 CFR Part 800, establish a consultation and review process. The FCC must consider whether an activity under its jurisdiction, such as tower construction or fiber optic cable installation, will affect historic properties and take appropriate measures to avoid, minimize, or mitigate any adverse effects. Historic properties may include buildings, archeological sites, districts, and engineering structures that are listed in or eligible for the National Register of Historic Places, and may encompass resources that have not yet been identified. Section 106 entitles applicants for federal approval to participate in the review process. While the FCC may authorize its applicants to initiate consultation, compile information, and conduct necessary studies, the FCC remains legally responsible for complying with Section 106 for all activities under its jurisdiction.

The Maryland Historical Trust (Trust) serves as the Maryland State Historic Preservation Office (MD SHPO) and plays a key role in the Section 106 process defined in 36 CFR Part 800. In order to meet the requirements of the implementing regulations, FCC requests its licensees and applicants to contact the Trust for information and technical advice. The Trust maintains the inventory of cultural resources in the State of Maryland (the Maryland Inventory of Historic Properties - MIHP). Many of Maryland's resources are listed in the National Register of Historic Places, such as the City of Annapolis Historic District, the Antietam Battlefield, and the Skipjack Fleet. While the Inventory currently includes over 60,000 buildings and 8,000 archeological sites throughout Maryland, numerous other properties have not yet been identified or evaluated.

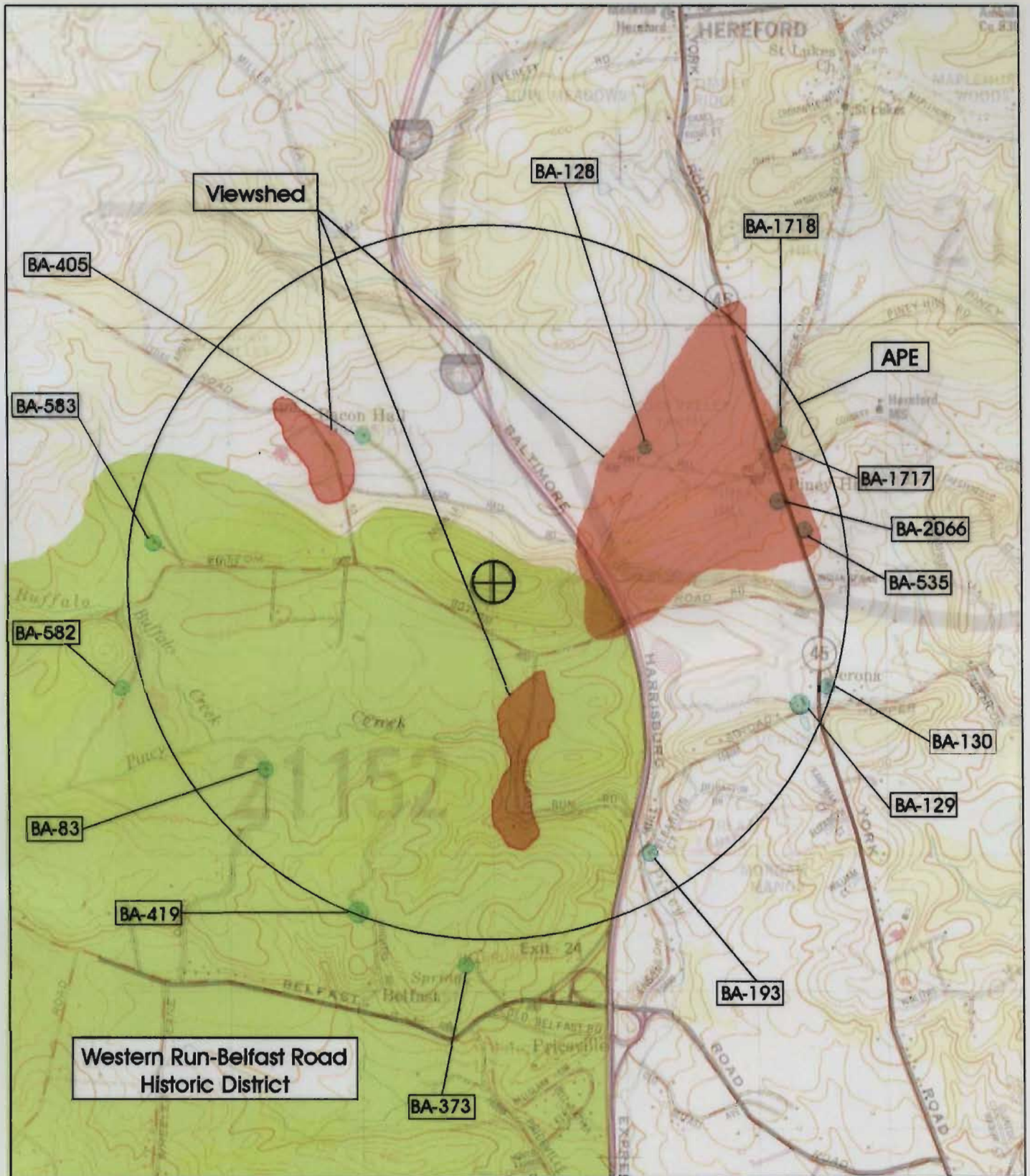
The Trust prepared these Guidelines to assist the FCC, its licensees, applicants and their consultants with the Section 106-consultation process. The information received from our office should be provided to the FCC to complete the record for the NEPA requirements under 47 CFR §1.1307 *et seq.* and document fulfillment of the Section 106-consultation. The Guidelines include helpful tips and sources of additional information to facilitate the preparation of submittals for Trust review.

II. Projects Requiring FCC-MD SHPO Consultation

Based on our examination of the types of undertakings received from the FCC, the Trust will participate in the Section 106 consultation and review of the following project types:

- New tower construction (including radio and television towers).
- Co-location of antennae on buildings, structures and objects eligible for or listed in the National Register of Historic Places or within National Register-listed or eligible Historic Districts.
- Co-location of antennae which substantially alter (e.g., increasing height or width) the base tower.
- Installation of fiber optic cable.
- Construction of associated equipment buildings for any of the above-listed undertakings.

Ref No 8



Site: Dunkin Property

Viewshed & APE

Historic District

Cultural Resources

Source: USGS Quadrangle-Hereford & Baltimore County ADC Maps 12& 7

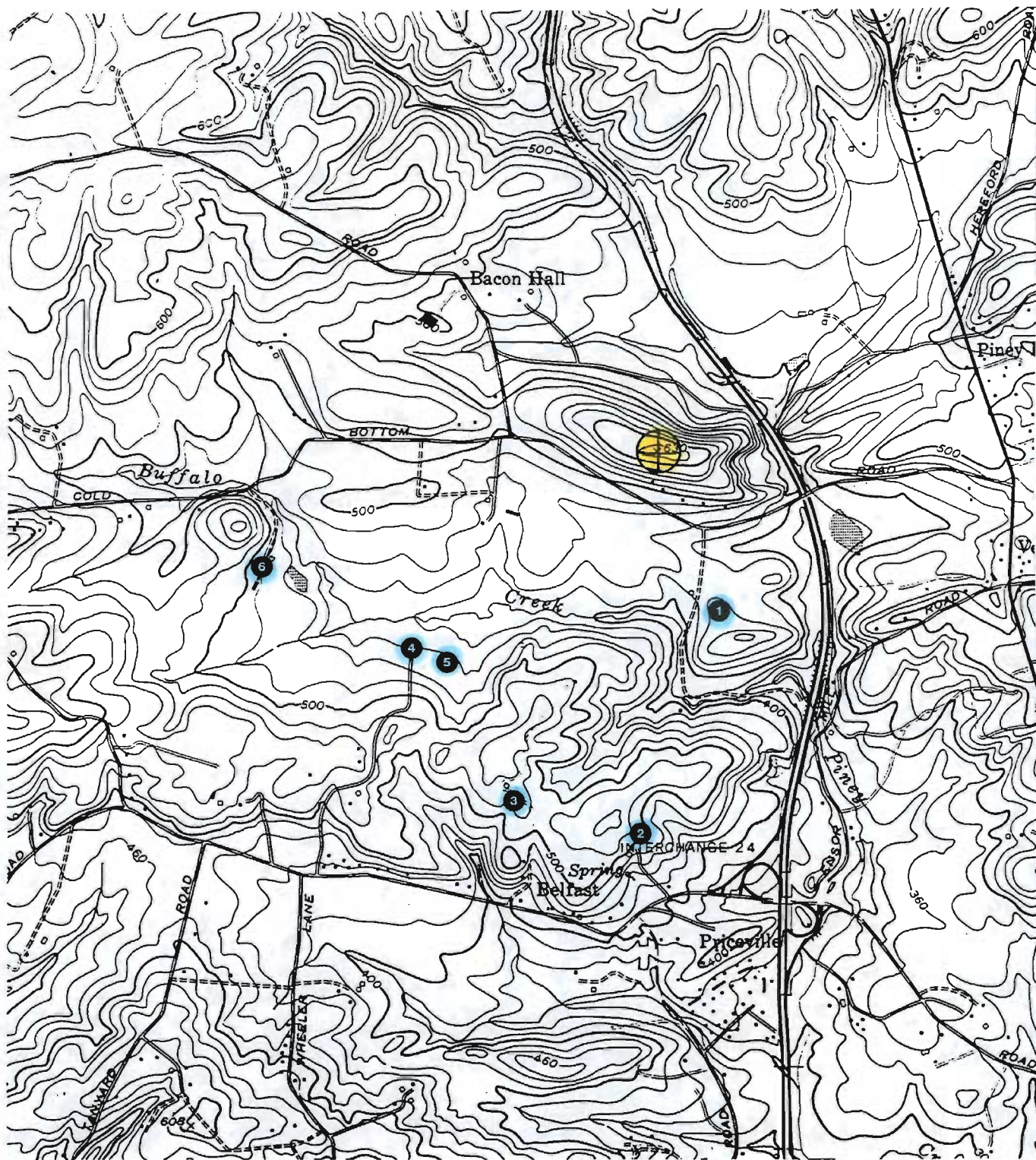
Not to Scale

Lat / Long: 39 33 57 / 76 40 21

October, 2000

Andrew Garte & Associates, Inc., 6285 Shady Side Road, Shady Side, MD 20764

Per No 9



Site: Dunkin Property (B833)

Photograph Log Map - Historic District Views

Source: USGS Quadrangle - Hereford, MD

Scale: 1" = 2000'

Lat / Long: 39 33 57 / 76 40 21

Andrew Garte & Associates, Inc., 6285 Shady Side Road, Shady Side, MD 20764



N

Feb No 10



Photo 1A. View from Mr. Ensor's residence on Buffalo Run Road facing north towards the proposed facility.



Photo 1B. Photo-simulation of the view from Mr. Ensor's residence on Buffalo Run Road facing north towards the proposed facility.



Photo 2A. View from 720 Belfast Road facing north towards proposed facility. The balloon is not visible.



Photo 2B. Post-construction view from 720 Belfast Road facing north towards proposed facility. The facility will not be visible.



Photo 3A. View from the north end of Wheelers Road facing northeast towards proposed facility. The balloon is not visible.



Photo 3B. Post-construction view from the north end of Wheelers Road facing northeast towards proposed facility. The facility will not be visible.



Photo 4A. View from 15735 Chilcoat Lane facing northeast towards proposed facility. The balloon is not visible.



Photo 4B. Post-construction view form 15735 Chilcoat Lane facing northeast towards proposed facility. The facility will not be visible.



Photo 5A. View from 15635 Chilcoat Lane facing northeast towards proposed facility. The balloon is not visible.



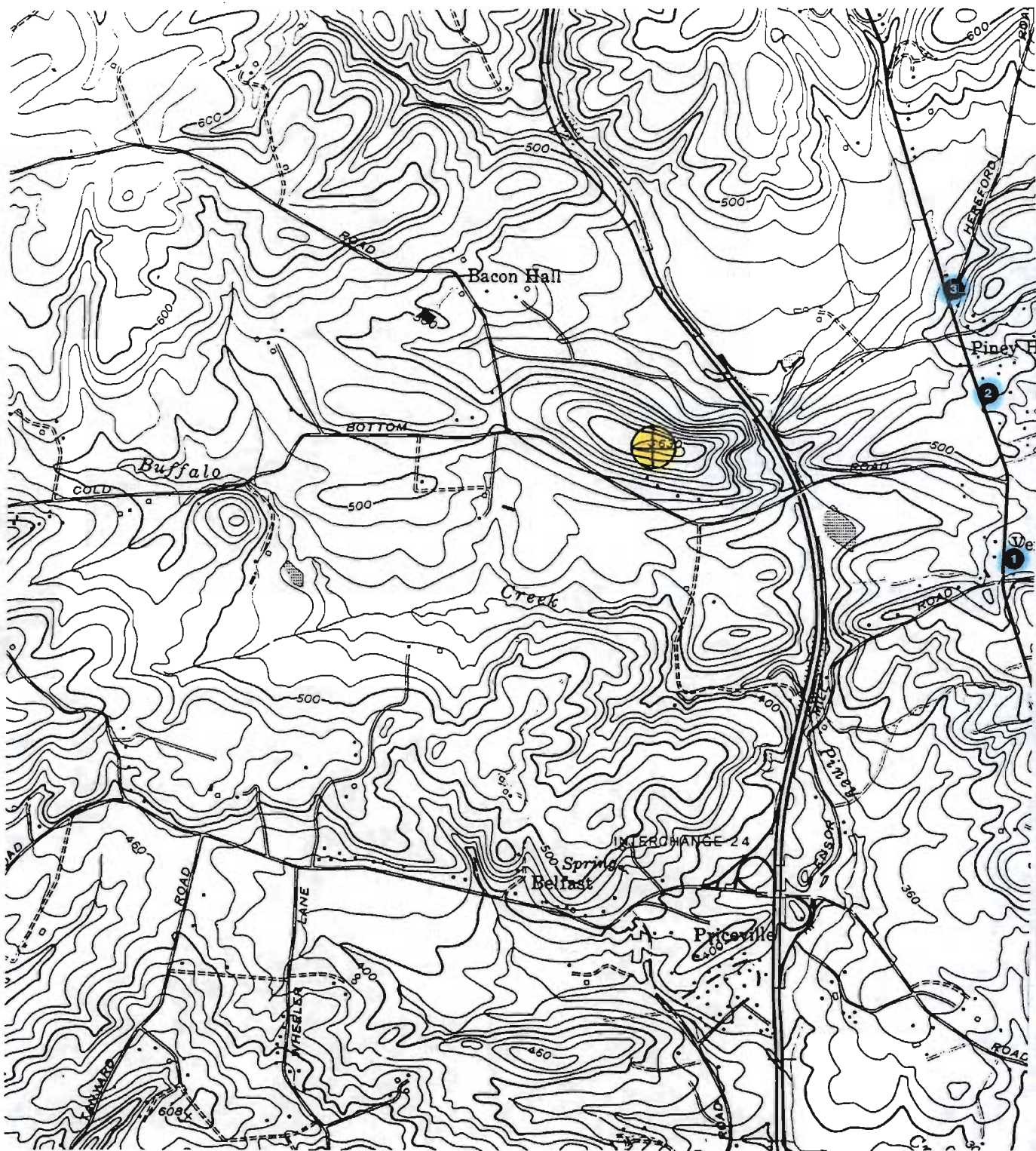
Photo 5B. Post-construction view from 15635 Chilcoat Lane facing northeast towards proposed facility. The facility will not be visible.



Photo 6A. View from 1296 Cold Bottom Road facing east towards proposed facility. The balloon is not visible.



Photo 6B. Post-construction view from 1296 Cold Bottom Road facing east towards proposed facility. The facility will not be visible.



Site: Dunkin Property (B833)

Photograph Log Map - Route 45 Views

Source: USGS Quadrangle - Hereford, MD

Scale: 1" = 2000'

Lat / Long: 39 33 57 / 76 40 21

Andrew Garte & Associates, Inc., 6285 Shady Side Road, Shady Side, MD 20764



Feb No 11



Photo 1A. View from 15910 York Road facing northeast towards proposed facility.



Photo 1B. Photo-simulation of the view from 15910 York Road towards proposed facility.



Photo 2A. View from 16129 York Road facing east towards proposed facility.



Photo 2B. Photo-simulation of the view from 16129 York Road towards facility.



Photo 3A. View from 16309 York Road facing southeast across Ross Farm towards proposed facility.



Photo 3B. Photo-simulation of the view from 16309 York Road facing southeast across Ross Farm towards proposed facility.

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

ATTORNEYS AT LAW

600 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

TELEPHONE
410-539-5195

TELECOPIER
410-539-5834

PAUL A. DORF

July 19, 2000

Mr. George McCeney
President
Greater Sparks/Glencoe Community Council
P.O. Box 396
Sparks, Maryland 21152

Ref No 12

Re: **AT&T Wireless Services**
801 Bacon Hall Road (Duncan Property)
Site No.: B883
Our File No.: 9478-803

Dear Mr. McCeney:

Thank you for speaking with me on Tuesday, July 18. As I told you, this office represents AT&T Wireless Services. Our client proposes to install a telecommunications monopole on the property at 801 Bacon Hall Road (Dunkin property).

Enclosed for your information is a copy of a plan showing the proposed location of the monopole on the subject property.

On Thursday, July 27th or Friday, July 28th, AT&T Wireless Services will raise a balloon at the site of the proposed monopole installation. This will allow you and other neighbors in the community around the property at 801 Bacon Hall Road to see how the monopole will look when it is installed. The exact time and date of the balloon test will be determined by weather and other conditions. As soon as I have a more exact time and date for the test, I will let you know.

AT&T Wireless Services has carefully searched the neighborhood where the monopole is to be installed, and determined that this is the best site to meet a need to provide telecommunications services in that area. We propose to file a Petition for a Special Exception to allow installation of the monopole at this site with the Baltimore County Department of Permits and Development Management in the very near future.

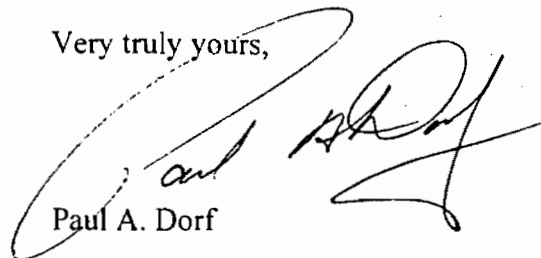
I would be happy to meet with you and other representatives of your community to discuss the AT&T proposal. I would be glad to bring with me to any such meeting representatives of AT&T

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

Mr. George McCeney
July 19, 2000
Page 2

Wireless Services who can explain the need for the pole at this location, and other matters which may be of interest to you. Please let me know if you would like to set up such a meeting.

Very truly yours,



Paul A. Dorf

PAD/tma
enc.

cc: Mr. William Francis (w/o enc.)
Mr. James King (w/o enc.)
Mr. Patrick Walsh (w/o enc.)
Mr. Chris Paradisio (w/o enc.)
Ms. Alexa Graf (w/o enc.)

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

ATTORNEYS AT LAW

600 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

TELEPHONE
410-539-5195

TELECOPIER
410-539-5834

PAUL A. DORF

July 19, 2000

Councilman T. Bryan McIntire
Baltimore County Council
Second Floor - Courthouse
400 Washington Avenue
Towson, Maryland 21204

Det No 13

Re: **AT&T Wireless Services**

19807 York Road (Bellman property)
Site No.: B876.1
Our File No.: 9478-792

801 Bacon Hall Road (Dunkin property)
Site No.: B883
Our File No.: 9478-803

Dear Councilman McIntire:

Thank you for taking the time to speak with me on the telephone this afternoon about the above two properties. As I told you in your telephone conversation, this office represents AT&T Wireless Services.

In order for AT&T to continue the build out its wireless communication system in Baltimore County, it is necessary for it to install telecommunication monopoles at 19807 York Road and 801 Bacon Hall Road. We will shortly be filing Petitions with the Baltimore County Department of Permits and Development Management for Special Exceptions to allow installation of the poles at these two sites.

AT&T Wireless Services has scheduled balloon tests for these two sites for Thursday, July 27th or Friday, July 28th. We have been in touch with representatives of the Maryland Line Area Association (Dr. Richard W. McQuaid), the Freeland Community Association (Mr. Michael Fabula) and the Greater Sparks/Glencoe Community Council (Mr. George McCeney) to advise them of the proposed installations, and of the pending balloon tests.

RECEIVED
JUL 20 2000

Copy of
PAD's note att.
Sent to Mr.
Dillon ONLY

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

ATTORNEYS AT LAW

600 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

TELEPHONE
410-539-5195

TELECOPIER
410-539-5834

PAUL A. DORF

July 20, 2000

Mr. Jack Dillon, Executive Director
Valley Planning Council, Inc.
P.O. Box 5402
Towson, Maryland 21285

Re: *AT&T Wireless Services*

*19807 York Road
Site No.: B876.1
Our File No.: 9478-792*

*801 Bacon Hall Road
Site No.: B883
Our File No.: 9478-803*

*12444 Belair Road
Site No.: B889.6
Our File No.: 9478-813*

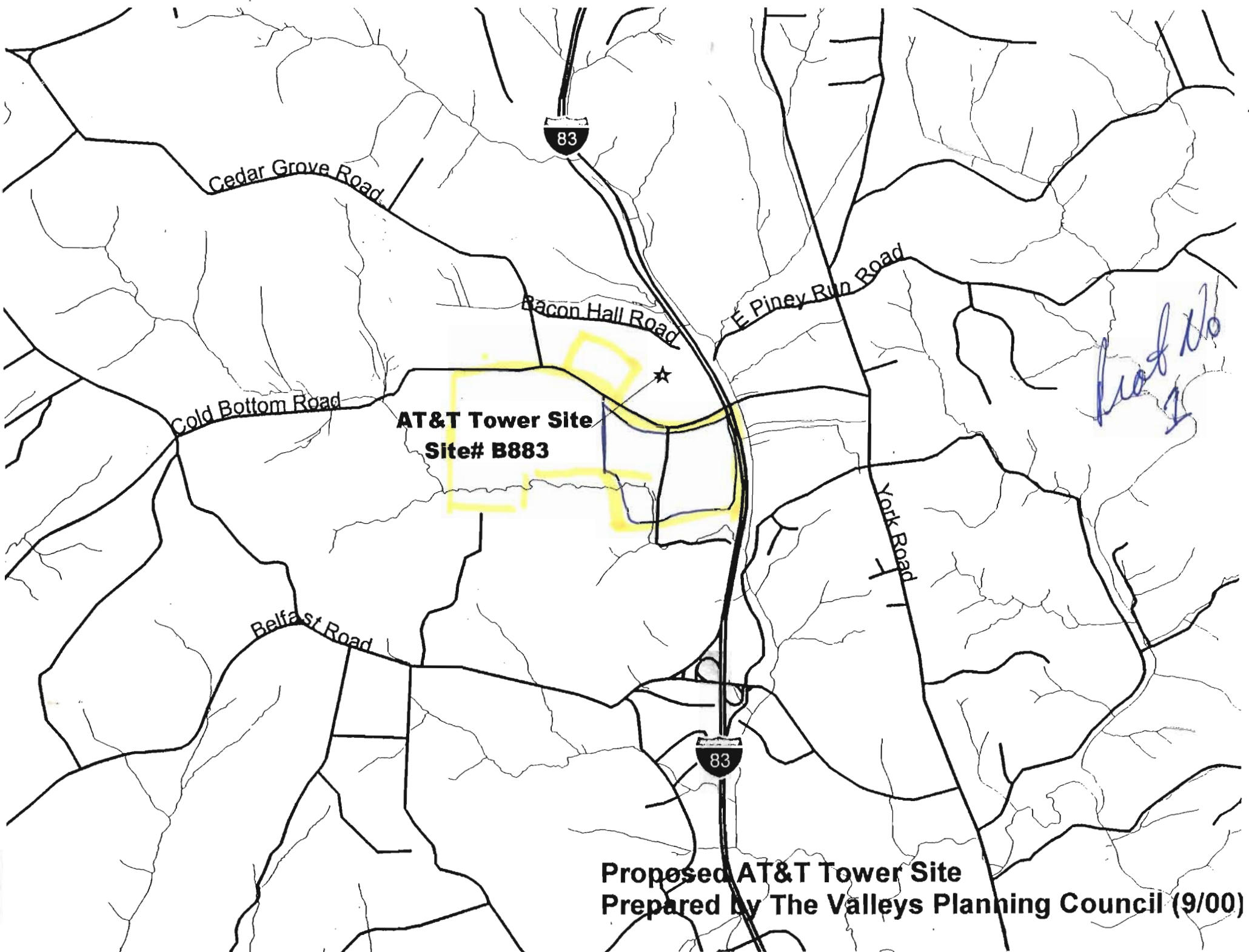
Dear Mr. Dillon:

Enclosed is a Memo we have sent out to all interested parties concerning balloon tests at three sites in Baltimore County where AT&T Wireless Services proposes to install telecommunication monopoles.

We have previously written letters to the presidents of the Maryland Line Area Association (Dr. Richard McQuaid), Freeland Community Association (Michael Fabula), Greater Sparks/Glencoe Community Council (George McCeney) and Greater Kingsville Civic Association (Dorothy Foos), telling them of the AT&T Wireless Services plan to install a telecommunications monopole at a site within their respective communities, and inviting a dialogue with them to discuss the plan. We have also written letters to Councilmen T. Bryan McIntire and Vincent J. Gardina and advised them of the proposed installation of a monopole in their districts.

PROTESTANT'S EXHIBITS

0151100



AT&T Tower Site
Site# B883

Proposed AT&T Tower Site
Prepared by The Valleys Planning Council (9/00)

had No 1



Looking West From Gorsuch Tavern/ Glencoe Gardens Just North of Ensor Mill Road
7/27/00

Prot No 2.



Looking Southwest Across Ross Valley Farm From Its North Entrance
7/27/00

Plot No 3



Looking West From I-83 South
North of Belfast Road Interchange
7/27/00

Plot No 4



Looking Southwest From York Road Across Ross Valley Farm
7/27/00

hot No
5



Looking West From I-83 North Across Southbound Lane
North of Belfast Road Interchange
7/27/00

Prot No 6



Photo 9. BA-130: Gorsuch Tavern located at 15910 York Road.



Photo 10. Photo-simulation of the view from the Hereford farm towards the proposed facility.

Ind No?

13c



Looking North Across Cold Bottom Rd.
From Buffalo Run Rd.
10/16/00

Plot No 7A



Looking North From Buffalo Run Rd. Across
Cold Bottom Rd. To Tower Ridge
10/16/00

Prot No
8



Looking North Across Cold Bottom Rd.
From Buffalo Run Rd.
10/16/00

Plot No 9

Herbert A. Davis

Office Address: Box 108, Brooklandville, MD 21022

410-296-5770

Home Address: 16429 Falls Road
Upperco, MD 21155

FAX 410-296-5778

410-239-0862

FAX 410-239-0863

Education:

Princeton University, Princeton, NJ, A.B. History, 1949

Johns Hopkins University, Real Estate Management Course

Graduate Realtors Institute of Maryland (GRI) - 1980

Courses I, II, III, IV, VI, and VII American Institute of Real Estate Appraisers 1969-1974

Continuing Education as required by the Maryland Real Estate Commission and the Maryland Real Estate Appraisers Commission and the Maryland Insurance Commission.

Professional, Business and Community

Board of Appeals for Baltimore County, 1976-1979

Board of Library Trustees for Baltimore County, 1965-1989; Honorary 1998

President, 1980-1984. Treasurer, 1970-1980

Board of Trustees, Goucher College, 1969-1978

Board of Directors, YMCA of Greater Baltimore, 1951-1974

President, 1970-1974

Board of Directors, Planned Parenthood of Maryland, 1960-1974

President, 1962

Board of Directors, American Library Trustee Association, 1970-1986

President, 1985

Board of Trustees, Roland Park Country School, 1966-1976

Vice Chairman, 1970-1975

Board of Trustees, Princeton Prospect Foundation, 1979-1983 and 1990 - chairman - 1999

Board of Trustees, Princeton Quadrangle Club, 1960-1993

Chairman, 1990-. Treasurer, 1965-1985

Schools Committee, Princeton Alumni Association of Maryland. 1950-1960

Chairman, 1958-1960

Supervisor, Soil Conservation District of Baltimore County, 1960-1966

National Association of Tobacco Distributors, Young Executives Division

President, 1956

Board of Directors, Transitional Living Council of Central Maryland,

1978-1992. Chairman, 1990-1992

Landmarks Preservation Commission of Baltimore County, 1982 - 1992

Third Gunpowder Agricultural Club, 1959-

Board of Advisors, The Mountain School, Vershire, Vermont. 1982-

Chairman, 1982-1992

Library Committee, National Association of Realtors, 1975-1980

Chairman, 1978-1979

Board of Directors, Greater Baltimore Board of Realtors, 1976-1979; 1983 - 88; 1992-1996.

Board of Directors, Maryland Association of Realtors, 1978-1979

Board of Directors, National Association of Realtors, 1978-1979

Board of Directors, Heritage Savings Bank, 1953-

Chairman, Compensation Committee, 1980-

Handwritten:
Put
No 10

Not No 11



HISTORIC RESOURCES

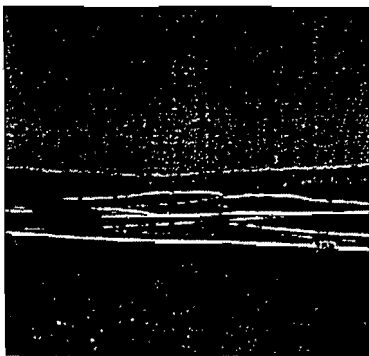
INTRODUCTION

Rural areas present special challenges for conserving historic resources. In urban locations, adequate protection for historic structures can usually be achieved by being attentive to the quality of design on the few acres of the structure's own site or perhaps on immediately adjoining property. Contiguous areas with a high concentration of significant structures (such as Lutherville, Glyndon, and Sudbrook Park) can be treated as a designated historic district, but even these have typically covered less than 300 acres.

In rural areas, structures usually derive their historic significance from their relation to the area's primary economic activity, agriculture, or to its ancillary elements such as mills, churches, or villages. There will typically be a cluster of functionally and visually related structures (dwelling, barn, springhouse, and other outbuildings) set in a bucolic landscape of fields, streams and woodlands. Thus, while the historic "setting" may be only a few acres for an individual structure in an urban area, or several hundred for an urban or suburban district, a rural historic district can encompass thousands of contiguous acres. Already in Baltimore County there are six separate National Register Historic Districts ranging from 1,500 acres (Caves Valley) to nearly 10,000 acres (Western Run-Belfast).

POLICY

- Conserve visually-integrated rural historic landscapes so that viewers can appreciate the enticing qualities of continuing rural uses, or of a bygone agricultural era, while still allowing reasonable use of privately-owned land. ✓



Some of the county's rural historic districts encompass thousands of acres.

Issue: Coordinating Historic Preservation Activities with the County's Rural Strategy

It is more than coincidence that the county's historic rural areas, including Worthington Valley, My Lady's Manor, Green Spring Valley, and Long Green Valley, continue to be among its most desired places to dwell. The visual appeal of their relatively undisturbed agricultural appearance is uniquely satisfying, but that visual character is also especially fragile. New construction can be visible for miles; even a single inappropriately designed or sited new dwelling can dramatically alter the perceived sense of rural

Memorandum

To: Ervin McDaniel, Jr.

From: Bill Francis

Date: 10/05/00

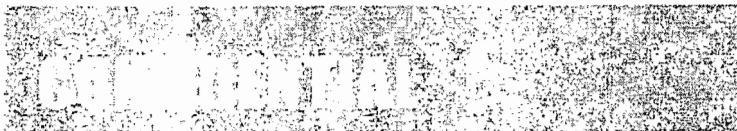
Re: B883 Dunkin

Per your request please find photo simulations of the proposed monopole tower on the Dunkin property along with a viewshed analysis. If you have any questions please feel free to call me at 443-794-0829.

Thank you,

*Donna,
Please reprint this
as a memo
Thanks
Bill*

Prod No 12



JAMES THOMAS WOLLON, JR., A.I.A.
Architect

600 Craigs Corner Road
Havre de Grace, Maryland 21078

Ref No 13

Baltimore area (410) 879-6748 Harford County (410) 734-7980 Fax (410) 879-0291

C U R R I C U L U M V I T A E

Birth: Havre de Grace, Maryland, 3 December 1938

Education: University of Virginia School of Architecture,
Bachelor of Architecture, 1962

Military Service: United States Army, 1962-1964, serving in Germany
as a Second and First Lieutenant

Professional Experience: 1964-1972, working for several architectural firms
in Baltimore, primarily in historic preservation

Own firm established May 1972, specializing in
preservation and restoration

Licenses: Maryland, October 1970, No. 2529-A
Virginia, May 1973, No. 3156
North Carolina, September 1973, No. 2432
Delaware, November 1974, No. 1053
Pennsylvania, March 1980, No. B8504

National Council of Architectural Registration
Boards Certificate, May 1972, No. 11821

Professional Memberships: American Institute of Architects
Baltimore Architecture Foundation
(member Board of Directors 1995-present)
(Vice President for research 1996-present)
Historic Architects' Roundtable
(Chairman 1994-present)
National Trust for Historic Preservation
Society of Architectural Historians
Association for Preservation Technology
Center for Palladian Studies in America
Victorian Society in America
Interfaith Forum on Religion, Art and Architecture
Maryland Historical Society
(past member, Board of Trustees)
Society for the Preservation of Maryland Antiquities
(past member, Board of Directors)
Historical Society of Harford County, Inc.
(past member of Board of Directors and past
President)
Baltimore Museum of Art, Friends of the American Wing
(member Board of Directors 1995-1998)

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

FOR NPS USE ONLY

RECEIVED

DATE ENTERED

NATIONAL REGISTER OF HISTORIC PLACES
INVENTORY -- NOMINATION FORMSEE INSTRUCTIONS IN HOW TO COMPLETE NATIONAL REGISTER FORMS
TYPE ALL ENTRIES -- COMPLETE APPLICABLE SECTIONS

1 NAME

HISTORIC

Western Run - Belfast Road Historic District
(~~exempting the Cuba Road Bridge~~)

AND/OR COMMON

2 LOCATION

STREET & NUMBER

See map and verbal boundary description

CITY, TOWN

NOT FOR PUBLICATION

CONGRESSIONAL DISTRICT

Fifth and

STATE

Maryland

VICINITY OF

CODE

24

COUNTY

Baltimore

CODE

005

3 CLASSIFICATION

CATEGORY

☒ DISTRICT
☐ BUILDING(S)
☐ STRUCTURE
☐ SITE
☐ OBJECT

OWNERSHIP

☐ PUBLIC
☐ PRIVATE
☒ BOTH
PUBLIC ACQUISITION
☐ IN PROCESS
☐ BEING CONSIDERED

STATUS

☒ OCCUPIED
☐ UNOCCUPIED
☐ WORK IN PROGRESS
ACCESSIBLE
☒ YES: RESTRICTED
☐ YES: UNRESTRICTED
☐ NO

PRESENT USE

☒ AGRICULTURE
☒ COMMERCIAL
☐ EDUCATIONAL
☐ ENTERTAINMENT
☐ GOVERNMENT
☐ INDUSTRIAL
☐ MILITARY
☐ MUSEUM
☐ PARK
☐ PRIVATE RESIDENCE
☐ RELIGIOUS
☐ SCIENTIFIC
☐ TRANSPORTATION
☐ OTHER

4 OWNER OF PROPERTY

NAME

Multiple public and private

STREET & NUMBER

CITY, TOWN

STATE

VICINITY OF

5 LOCATION OF LEGAL DESCRIPTION

COURTHOUSE,
REGISTRY OF DEEDS, ETC.

Baltimore County Courthouse

STREET & NUMBER

Washington Avenue

CITY, TOWN

Towson

STATE

Maryland

6 REPRESENTATION IN EXISTING SURVEYS

TITLE

Baltimore County Landmarks (partial)

DATE

1971

☐ FEDERAL ☐ STATE ☐ COUNTY ☒ LOCALDEPOSITORY FOR
SURVEY RECORDS

Baltimore County Historical Society

CITY, TOWN

York Road, Cockeysville

STATE

Maryland

JACK DILLON

543 Park Avenue Towson, Maryland 21204 (410) 321-0021

EMPLOYMENT

THE VALLEYS PLANNING COUNCIL
EXECUTIVE DIRECTOR
MAY 1997 - PRESENT

Prod No 15

PRIVATE CONSULTANT
MARCH 1996 - MAY 1997

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING, COMMUNITY PLANNING DIVISION,
SENIOR PLANNER AND DEPUTY DIVISION CHIEF
AUGUST 1987 - FEBRUARY 1996

OFFICE OF PLANNING, COMMUNITY PLANNING DIVISION,
PLANNER II
JUNE 1981 - AUGUST 1987

OFFICE OF PLANNING, COMPREHENSIVE PLANNING DIVISION, ENVIRONMENTAL
STUDIES SECTION
PLANNER II
OCTOBER 1974 - JUNE 1981

PRIOR TO OCTOBER 1974 I WAS WITH THE BALTIMORE COUNTY ZONING OFFICE
FROM JUNE 1967 - SEPTEMBER 1974 AND FROM FEBRUARY 1962 - MAY 1967 I WAS
WITH THE DEPARTMENT OF PUBLIC WORKS ASSIGNED TO SPECIAL PROJECTS AT THE
JOHNS HOPKINS UNIVERSITY AND THE BALTIMORE CITY ANALYZER OFFICE.

EDUCATION

MORGAN STATE UNIVERSITY
GRADUATE PROGRAM IN LANDSCAPE ARCHITECTURE
1992 -1994 (*not complete*)

UNIVERSITY OF MARYLAND
GRADUATED PARA LEGAL
1978

UNIVERSITY OF BALTIMORE
GRADUATED B.S. . DEGREE IN BUSINESS MANAGEMENT,
PLANNING COURSES AT JOHNS HOPKINS UNIVERSITY
1969



**Maryland
Department of
Housing and
Community
Development**

*Division of Historical and
Cultural Programs*

100 Community Place
Crownsville, Maryland 21032

410-514-7600

1-800-756-0119

Fax: 410-987-4071

Maryland Relay for the Deaf:

1-800-735-2258

<http://www.dhod.state.md.us>

Parris N. Glendening
Governor

Raymond A. Skinner
Secretary

Marge Wolf
Deputy Secretary

October 16, 2000

*Prof Notes
16*

Rose Crellin, Esq.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room #4A-106
Washington, D.C. 20554

RE: AT&T Wireless Services Dunkin Telecommunications Facility
801 Bacon Hall Road, Sparks, Baltimore County, Maryland
Section 106 Review - FCC

Dear Ms. Crellin:

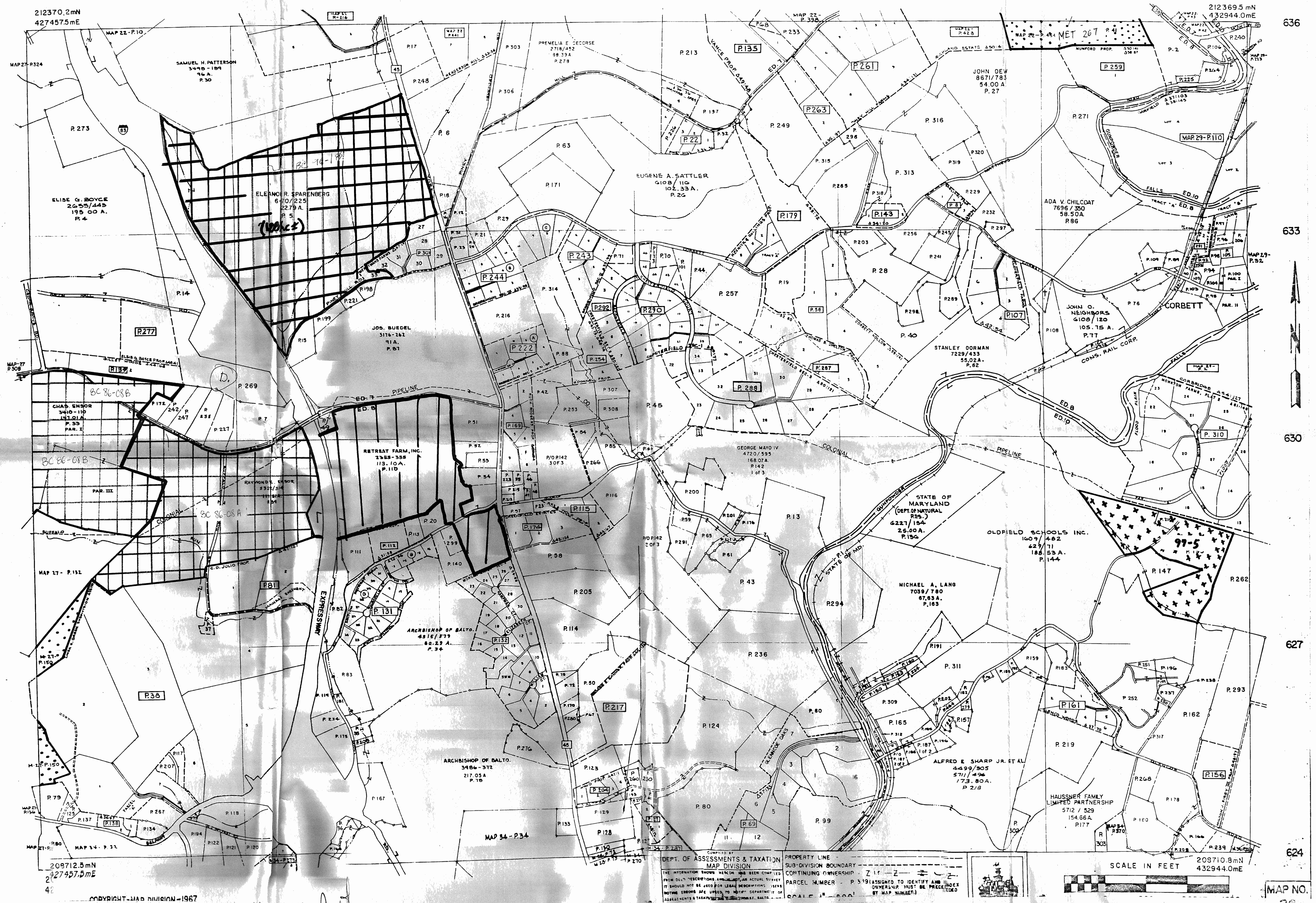
The Maryland Historical Trust has received the enclosed letter from AT&T Wireless' consultant, Andrew Garte & Associates, Inc. (AGA) regarding the above-referenced tower construction. As we understand, AWS proposes to construct a 150-foot tower within the Western Run-Belfast Road Historic District (BA-2214), which has been listed the National Register of Historic Places since January 1979. The Western Run-Belfast Road District is significant for its architecture and landscape, and is eligible under Criterion A as an example of Maryland's agricultural history as well as Criterion C with many examples of the domestic and agricultural architecture from the eighteenth, nineteenth and twentieth centuries.

Archeology: A review of AGA's map and our records indicate that the proposed undertaking is unlikely to affect archeological sites. Consequently, no archeological treatment is warranted at the present time.

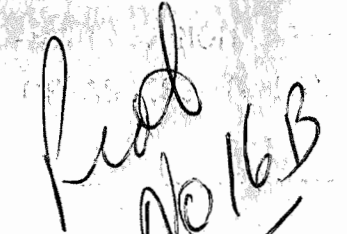
Architecture: As noted in AGA's letter and above, the District is listed in the National Register. Our inventory map in conjunction with the photographs provided by AGA indicates that this is a rural area. We therefore request that the FCC, AWS and AGA identify any other farm or building within the Area of Potential Effect which may be more than fifty years old. According to our mapping, there are several properties within the immediate vicinity of the proposed tower site and along Cold Bottom Road which may be contributing resources that have not yet been inventoried. A person who meets the Secretary of Interior's Professional Qualifications Standards as Architectural Historian, Historic Architect, or Historian (see, FR 44738-9 or 36 CFR Part 61), should prepare any necessary MHP or DOE forms.

Next Step: Because AWS proposes to locate within a listed Historic District, it is the Trust's opinion that the criteria of adverse effect should be applied. Although this is a monopole tower, which is relatively unobtrusive, the addition of such a large object

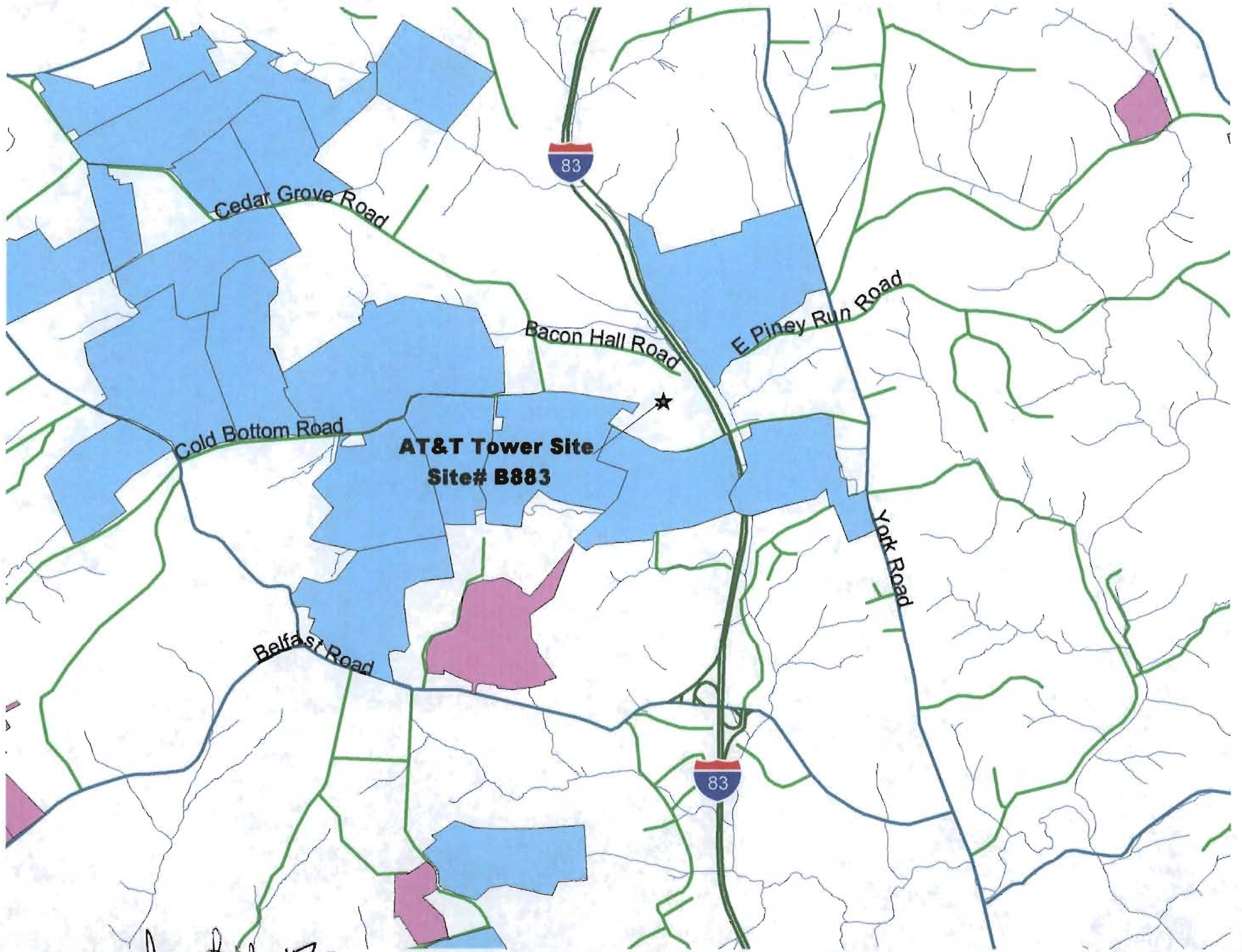




26



SCALE IN FEET 208712.5mN
427457.5mE



Map No 17
18



Photo 19. BA-535: Hunningdon located at 16129 York Road.



Photo 20. Photo-simulation of the view from the Hunningdon towards the proposed facility.

Pro No 18
19



Photo 24. BA-1717 and BA-1718: Sherwood and Pascal Houses located at 16305 and 16309 York Road.



Photo 25. Photo-simulation of the view from the Sherwood and Pascal Houses towards the proposed facility.

11/10/19
20



Photo 26. Residence located at Buffalo Run Road within the Western Run-Belfast Historic District.



Photo 27. Photo-simulation of the view from the residence, located on Buffalo Run Road, towards the facility.

Prod No 20