9/28/07

IN THE MATTER OF THE APPLICATION OF OMNIPOINT COMMUNICATIONS CAP OPERATIONS – PETITIONER; BOARD OF EDUCATION – LEGAL OWNER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED AT 4000 OFFUTT ROAD	* * * * *	BEFORE THE COUNTY BOARD OF OF BALTIMORE COUNTY
2ND ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	Case No. 06-421-X

* * * * * * * * *

OPINION

This case comes to us as an appeal of a Deputy Zoning Commissioner's Order in which the requested special exception was granted. The County Board of Education and Omnipoint Communications CAP Operations, Petitioners, were represented by Karl Nelson. People's Counsel Carole Demilio brought the appeal. Aaron Plymouth, President of the Randallstown High School PTSA also filed an appeal.

A public de novo hearing was held on May 16, 2007. Post-Hearing Memoranda were filed in lieu of closing arguments on July 17, 2007. A public deliberation was held on August 22, 2007.

Preliminary Matter

Karl Nelson filed a Motion to Dismiss on August 4, 2007, arguing that Mr. Plymouth had not appeared at the Deputy Zoning Commissioner's hearing, and therefore did not have standing to appeal the decision and order. People's Counsel, in response to the Motion to Dismiss, pointed out in a letter dated August 16, 2006, that Code Sec. 32-3-401(a) allowed "not only a 'person aggrieved' but also any 'person feeling aggrieved' to file an appeal." People's Counsel further pointed out that the Board of Appeals has always "construed this law liberally."

This Board considered both arguments and agreed with People's Counsel. The law does allow a much more liberal standard for appeals to this Board than, say to the Circuit Court. We therefore dismissed the Motion.

Testimony and Evidence

The general facts in this case are undisputed. This case involves a Petition for Special Exception, filed by the legal owners of the subject property, Board of Education for Baltimore County, and Omnipoint Communications CAP Operations, LLC, lessee. Petitioners are requesting a special exception under Section 426.5.D of the Baltimore County Zoning Regulations (BCZR) for property located at 4000 Offutt Road in the Randallstown area of Baltimore County. The request is to allow an unmanned wireless telecommunications facility in a D.R. 3.5 Zone, specifically on Randallstown High School property. The facility will consist of three antenna sectors with three antennas per sector attached to a 110-foot stealth light pole communications tower. This light pole/monopole will replace an existing 30-foot light pole located three feet away. The nine antennas will be located at an antenna centerline of 107 feet. Omnipoint will also install ancillary equipment cabinets on a 10-foot by 20-foot concrete pad. There will be a 20-foot by 40-foot chain-link fence around the entire area.

Jaichandran Rajan, an engineer with Telecon Technical Service, testified for Petitioners. Mr. Rajan is a Radio Frequency engineer, whose responsibility is to identify weak areas within the T-Mobile network. He described many aspects of his job, particularly how signal strength differed from being on the street, to being in a car, to being within a building. He testified that T-Mobile attempts to provide service in all three situations. He stated that currently, in the area around the subject site, there is barely any street coverage and people within cars and home cannot make cell phone calls.

Rajan described the area as being densely residential, and stated that it was therefore an important area for T-Mobile to cover. Mr. Rajan presented Petitioner's Exhibit 1, a printout of the asset system propagation map, which had color-coded overlays showing the current and projected mobile phone coverage in the area. The subject site is in the middle of the map, in the white area and marked with an "X".

Mr. Rajan described the Site Development Team's work, and how he evaluates sites they propose. He testified that in the search area, there were no co-locations—existing cell towers on which to place an antenna—which would serve T-Mobile's needs. Without a co-location available, he had to look for a location on which to place a new tower. The Randallstown High School site was the best site for covering the area T-Mobile required.

On cross examination, Mr. Rajan testified that the boxes at the base of the tower would require standard 110-120 voltage, and there would be danger signs posted. He also stated that if the boxes were touched there would be no danger. If broken into, a person could receive a shock, but he compared the danger to a broken home appliance. He also described the boxes as being about the size of refrigerators, about 5-1/2 feet tall and 3 feet wide. He said the equipment was sensitive and expensive and the fence would help protect it.

When asked if it would be possible to locate the tower anywhere else on Randallstown High School property, he stated it was possible, but depended on elevation. He also stated it was his responsibility only to evaluate sites for technical suitability, and not in terms of its affect on people in the area.

Mr. Rajan was asked about other locations in the area, such as the WBAL tower east of the subject site. He stated that other sites were too far away to be of use in the area T-Mobile

needed to cover. Randallstown High school was near the center of the area needed, and therefore was the best location for achieving signal strength.

Mike Budde, of Network Building and Consulting, who was contracted to T-Mobile for the site development team, testified about the subject site. He stated that the high school was on a parcel of about 25 acres, but the entire facility consisted of a total of about 40 acres. He presented Petitioner's Exhibit 2, the site plan for the cell tower facility. The tower would be located southwest of the school, adjacent to existing tennis courts. The stealth installation would replace an existing light pole for the tennis courts with the 110-foot cell tower pole. A replacement light would be affixed at 35 feet for the tennis courts. He presented Petitioner's Exhibit 3, the site plan for Fullerton Elementary School, on which a stealth cell tower had been built.

Mr. Budde testified that the cell tower proposed for Randallstown High School met all the required setbacks: North the setback was 275 feet; East, 808 feet; South, 364 feet; and West, 621 feet. He stated that the nearest residence was over 500 feet away from the proposed site.

Regarding safety issues of the site, Mr. Budde testified that to his knowledge no one had ever broken into a cabinet; that to get into a cabinet a specific key and unique tool were required that were not commercially available. He stated that the power in the cabinet was about the same as in a house or school.

Regarding the choosing of the site, Mr. Budde testified that he first looked for co-locations, because of Baltimore County regulations which require co-locating as the first option. He also testified that it was cheaper and faster for a cell phone company to co-locate rather than build new, so it was preferred. However, there were no co-location sites in the required area. He stated there were no existing tall structures in the area, except a church which at 30-40 feet was

too short for a cell tower. He stated the parcel size of the subject site was ideal for the tower, all the other parcels in the area being residential and only about a quarter acre in size. The opportunity to put up a stealth pole replacing a light pole also made the site a good one.

Budde testified to BCZR Section 502.1 requirements stating there would be no density, little maintenance (perhaps one technician per month), no vehicle traffic and no impact on public utilities if this cell tower were built. The existing tennis light would be replaced, but otherwise no light would be added to the site.

On cross examination, he testified that he had no idea how many towers Verizon had in the area, and that there was a monopole on Liberty Road in the area, but he did not know what carriers were on it. He also did not know if T-Mobile had been receiving complaints in the area for lack of service. He also testified that no other locations on the subject site were looked at besides the location near the tennis courts, because they thought the light pole replacement was the best idea.

A number of people testified for the Protestant's case. State Senator Robert Zirkin (11th District), testified in his capacity as a citizen regarding his concerns for the safety of the approximately 1,000 students at the school. He was also concerned that the School Board had not notified himself, the district's delegates, or the school's PTA regarding its plans for the cell tower. He stated he had also seen studies on both sides of the safety issues regarding cell tower and that he believed until conclusive data was available, it was not appropriate to place a cell tower on a school site.

Mr. Allan Gee, a resident in the area, also testified. He stated he was a retired building inspector for the county and had inspected many building sites including cell towers. His major concern was that the tower would be erected right near the front of the school, near the recreation

area where students played ball and milled around. He produced People's Counsel's Exhibit #1, a series of photos showing a number of other cell tower facilities and the types of equipment contained within the chain link fence.

Mr. Anthony Green testified regarding his concern for the safety of the students. In May of the previous year, his daughter was electrocuted at a recreation park in Baltimore City when she touched a metal fence while playing softball. She died instantly. He believed that children's safety should be considered in this case.

Ella White Campbell testified for the Liberty Road Community Council (People's Counsel 2, Rule 8 papers). The LRCC voted on May 8, 2007, to oppose the cell tower. Their reasons were that studies have shown that cell tower radiation promotes cancer; the property values of the surrounding community could be adversely impacted; and the aesthetic impact of the tower would destroy the beauty of the campus.

Linda Dorsey Walker, a former PTSA officer at Randallstown High School described the area in which the cell tower would be placed as being too close to the school and to where students tend to "hang out," as well as get on and off school buses. She produced photos showing the location of the proposed cell tower near the tennis courts (People's Counsel Exhibit #3) and of the light pole that would be replaced. She was also concerned that the School Board and T-Mobile did not consult with parents, the PTA, or the community even as a "common courtesy." She named other locations in the area that would be more suitable than the high school for the proposed tower. Tonya Williams concurred with much of Ms. Walker's testimony, also naming other locations she believed could be suitable. She also thought there might be better locations on the school property that would not be opposed; it was just the location in the front of school she opposed.

Mr. Roderik Hart, who also lives in the area, testified that he is retired from Verizon's 911 operations and he had never heard complaints regarding the use of 911 in the Randallstown area. He was also concerned about the safety of the students and the aesthetics of a cell tower on the school grounds.

Finally, Aaron Plymouth, the outgoing president of the PTSA testified regarding why he originally appealed the case (People's Counsel Exhibit #5, Rule 8 Papers). He stated that the process for this cell tower installation had begun in August 2004, but in the two years of planning, the school board had never notified the PTSA or the local community association for their input. He was primarily concerned for the students, who might assume the facility is safe and accessible simply because it is on the public school grounds. All the areas of the school are open to the public, he stated. The tennis court is fenced in, but the gate is open all week, night and day.

Applicable Law

Baltimore County Zoning Regulations Sections 426.2 (Legislative policy for siting of wireless communications antennas and towers), 426.6 (Setback requirements for wireless telecommunications towers), 426.9 (Addition conditions for towers permitted by special exception), and 502.1 (Special Exceptions) are all relevant to this case. The controlling case regarding the approval of Special Exceptions is *Schultz v. Pritts* 291 Md.1, 432 A.2d 1319 (1981), and it must also be considered here.

> When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. . . . Such uses cannot be developed if **at the particular location proposed** they have an adverse effect above and beyond that ordinarily associated with such uses. *Schultz v. Pritts,* 21-22. (Emphasis added.)

There was no dispute regarding certain basic facts of this case. There was no contradictory evidence to show the cell tower did not meet the setback requirements. In addition many of the requirements for building a new cell tower were also met (such as designing it to accommodate at least two other providers). The height of the tower was also unquestioned. The primary concerns raised by Protestants were regarding the choice of this exact location, near the tennis courts, on Randallstown High School and its effect of the general health and safety of people, particularly students, in the area.

The approval of a special exception is contingent on a finding that the conditions in Section 502.1 are met. Given the nature of a cell tower, most of the requirements of Section 502.1 are not hard to prove (cell towers do not create congestion on roads and alleys, do not overcrowd the land or cause concentration of population, do not interfere with adequate provisions for schools, parks, etc.). The two exceptions are 502.1A: Be detrimental to the health, safety, or general welfare of the locality involved; and 502.1G: 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. Protestants argue that the conditions for 502.1A are not met.

To meet 502.1G, Petitioner would also have to meet 426.2 and 426.9.

426.2. Legislative policy for siting of wireless telecommunications antennas

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 visibility from residential and transition zones.

426.9 Additional conditions for towers permitted by exception.

Towers permitted by special exception shall meet the requirements of this section.

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

1. The petitioner has made a diligent attempt to locate the antenna on an existing tower or nonresidential building or structure;

2. Due to the location, elevation, engineering, technical feasibility or inability to obtain a lease of 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 Commission 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.

Petitioner argues that "T-Mobile has an important coverage need in the heavily populated and highly traveled Randallstown area." The best location to place a tower to fill that need is Randallstown High School, because it contains the largest area, provides for all the necessary setbacks, has high ground elevation, and allows the use of a stealth

pole. Petitioner argues that the requirements of 426 and 502.1 were met, that T-Mobile conducted a "diligent search" for co-locations and other locations as required by 426.9. "Commercial parcels were equally non-viable. All were well outside the search area to the north and south. All would fail to cover the target area and interfere with existing T-Mobile installations." Regarding *Schultz,* Petitioner argues that it exceeded the *Schultz* threshold, since all other parcels in the DR zone are quarter-acre residences and the high school is the largest parcel in the area, therefore a tower place there would have the least impact of anywhere else in the zone.

People's Counsel, in its Post-Hearing memo, argues that the particular requirements for towers in residential zones, in 426.9, indicates that it was the County Council's intent to permit towers in residential zones "as a last resort." In addition, the special requirement in 426.8, that "the owner keep the facility, and specifically the 'tower and any structure housing equipment for the tower' free from 'unsafe or hazardous conditions' is an acknowledgment that the tower and equipment are potentially unsafe or hazardous." People's Counsel then argues that once adverse effects are established, the location *vis a vis* those conditions must be examined, per *Schultz.* "A special exception must be denied where the adverse effects are particular to the location, and above and beyond the normal adverse effects." Citing a number of cases in which special exceptions were denied, People's Counsel points out that "in each situation, there was something particular about the project or neighborhood, which justified denial." (Citing Schultz, County Comm'rs v. Holbrook; Mangione; and People's Counsel v. Country Ridge Shopping Center.)

Opinion and Order

As noted above, because of the inherent nature of a cell tower, most of the conditions set forth in Section 502.1 do not apply. The County Council, however, set forth additional conditions specifically for cell towers requiring a special exception. *Schultz v. Pritts* is instructive as to the difference between a permitted use and a special exception or conditional use:

> Because the legislative body, in reaching its determination [regarding permitted and special exception uses], is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed may have an adverse effect with respect to some of these purposes. . . .When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. *Schultz supra* at p. 21. (Emphasis added.)

In examining the proposed use as a special exception in a residential area, we need to look at whether its adverse effects outweigh its positive effects, and as *Schultz* instructs, whether those adverse effects "are particular to the location, and above and beyond the normal adverse effects." As the cases cited by People's Counsel point out, the question we must address is whether in *this* location, next to the tennis courts near the front of Randallstown High School, the adverse effects outweigh the potential benefits.

This Board finds that they do. The subject site is a location through which 1,000 students traverse almost daily, near which they "hang out," walk or jog on a paved path, play tennis, and discharge from and re-board school buses. Out of nearly a 40-acre site, *this* particular location has the greatest potential safety issues for a use of this nature. The

County Council itself recognized that such facilities have some potential hazard when they included 426.8 – Unsafe or hazardous conditions – in the zoning regulation.

There is also an aesthetic issue with the cell tower in *this* location, which is close enough to the front of the school to be clearly visible. The photos produced by Mr. Gee are clearly illustrative of just how unsightly cell tower facilities can become. Although T-Mobile plans only 2-3 refrigerator size boxes on the ground around the tower, at least two more cell providers may eventually add their equipment, and there is no guarantee what size their equipment would be. In the future there could be nine refrigerator-sized—or larger—boxes at the base of the tower. The Court of Appeals has upheld aesthetic concerns as a reason to deny a special exception (County Comm'rs v. Holbrook 314 Md.210 (1988).

Finally, we are not convinced that T-Mobile conducted a "diligent" search of the area for other sites, as Section 426 requires. At least one Board member had the impression throughout the testimony that once the radio frequency engineer had placed an "X" on this exact location on Randallstown High School as the perfect coverage spot, only scant attention was paid to surrounding areas. Protestants provided a number of examples of alternative sites within blocks of the school, yet Mr. Budde was unfamiliar with all of them. Perhaps if T-Mobile and the School Board had met with the neighborhood association and the PTSA, more accommodating sites could have been examined.

Based on these three concerns, this Board unanimously finds that this petition fails the test created by *Schultz v. Pritts* for approving a special exception. The adverse effects produced by a cell tower – both from a safety standpoint and aesthetically—are greater in *this* location on Randallstown High School—near the front of the school, in the middle of a well-trodden area by nearly 1,000 students--than they would be elsewhere in the zone.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 28th day of September, 2007, that the Petition for Special Exception filed in Case No. 06-421-X to allow an unmanned wireless telecommunications facility in a D.R. 3.5 Zone, specifically on Randallstown High School property, be and the same is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Margaret Brassil, Ph.D., Chairperson

Lawrence M. Stahl

Robert W. Witt

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
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TOWSON, MARYLAND 21204
410-887-3180
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September 28, 2007

Carole S. Demilio
Deputy People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Omnipoint Communications CAP Operations –Petitioner; Board of Education - LO*
Case No. 06-421-X

Dear Ms. Demilio:

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

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

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Aaron Plymouth, President
Randallstown High School PTSA
Karl Nelson, Esquire
Board of Education
Omnipoint Communications CAP Operations
Oakleigh Thorne
Rick Gay
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Cc to: Allen Gee
Linda Lanay Walker

Printed with Soybean Ink
on Recycled Paper

5/22/06

IN RE: PETITION FOR SPECIAL EXCEPTION Southwest Corner of Winands Road and Offutt Road 2nd Election District 4th Councilmanic District **(14000 Offutt Road)**	* * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
Board of Education for Baltimore County, *Legal Owners* **and** Omnipoint Communications CAP Operations, LLC, *Lessee* *Petitioners*	* * * *	CASE NO. 06-421-X

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception filed by the legal owners of the subject property, Board of Education for Baltimore County, Legal Owners and Omnipoint Communications CAP Operations, LLC, Lessee. The Petitioners are requesting a special exception for property located at 4000 Offutt Road in the Randallstown area of Baltimore County. The special exception requested from Section 426.5.D of the Baltimore County Zoning Regulations (B.C.Z.R.), is to allow the use herein described property for an unmanned wireless telecommunications facility in a D.R. 3.5 zone. The facility will primarily consist of three antenna sectors with three antennas per sector attached to a 110-foot stealth light pole telecommunications tower to be located at Randallstown High School. This light pole/monopole will replace an existing 30-foot light pole located 3 feet away. The nine antennas will be located at an antenna centerline of 107 feet. In addition to the three antenna sectors, Omnipoint will install three proposed ancillary equipment cabinets on a 10-foot by 20-foot concrete pad within a 20-foot by 40-foot chain-link fenced area at the base of the replacement light pole.

Sections 259.11.B.2.a, 405.2.B.1, 405.4.E.1 and 405.4.E.10 of the Baltimore County Zoning Regulations (B.C.Z.R.).

ORDER RECEIVED FOR FILING
Date 5-22-06
By

The property was posted with Notice of Hearing on April 6, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on April 6, 2006 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 502.1 of the B.C.Z.R. - *Special Exceptions*

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

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

426.2 Legislative policy for siting of wireless telecommunications antennas and towers. It is the intent of Baltimore County that: [Bill No. 121-2001}

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.

Location and height restrictions for wireless telecommunications towers and antennas. In this section, the following words have the meanings indicated:

A. "R" means right.
B. "SE" means by special exception.
C. The column for antennas refers to antennas located on a tower, building or structure legally existing prior to the installation of the antenna even if the tower, building or structure was approved by special exception.

5-26-06

D. The height of a tower is measured from the base of the tower to the tip of the tower or the tip of the highest antenna on the tower, whichever distance is greater.

		Antennas	Towers	Towers
	How Permitted	**Maximum Antenna Height and Antenna Diameter**	**<200 ft. High**	**>200 ft. High**
Residential Zones R.C., R.C.C., C.R. District, D..R., R-O-A	R	15 feet high, diameter 3 feet	SE R if in an R.C. Zone within the rights-of-way of public utility overhead electrical transmission lines carrying more than 69,000 volts, provided that the height of the tower does not exceed 250 feet.	SE R if in an R.C. Zone within the rights-of-way of public utility overhead electrical transmission lines carrying more than 69,000 volts, provided that the height of the tower does not exceed 250 feet.
Transitional Zones S-E, R-0, OR-1, B..M..M., B.M.Y.C., B.M.B., C.B.	R	15 feet high, diameter 3 feet	SE	SE
Medium Intensity Commercial O4-2, B.L.R., B.L., B.M., B.R., M.R., M.L., M.L.R.	R	Not regulated	R	SE
High Intensity Commercial 0-3, O.T., M.H.	R	Not regulated	R	SE

426.6 Setback requirements for wireless telecommunications towers.

A. Setbacks. [Bill No. 17-2002]

1. A tower shall be set back at least 200 feet from any other owner's residential property line.
2. A structure housing equipment for a tower shall meet the minimum setback requirements from any other owner's property or zone line.
3. Notwithstanding the provisions of Section 102.2 of these regulations, if multiple structures housing equipment for a tower are located on the same owner's property, a yard or setback is not required between the structures.

B. Except as required by the Federal Aviation Administration:

1. Stroboscopic lights are not permitted on a tower.
2. The tower, antenna and supporting lines shall be neutral in color.

RECEIVED FOR FILING
Date: 5-26-06
By:

If a tower is located in a residential or transitional zone, any structure housing equipment for the tower shall be:

1. Screened in accordance with the Landscape Manual, Class "A" screening requirements.
2. Faced with a material compatible with buildings or structures surrounding the tower.

C. Upon completion of a tower and every five years after the date of completion, the owner of the tower shall submit to the Code Official written certification from a professional engineer verifying that the tower and any structure housing equipment for the tower meets all applicable Building Code and safety requirements.

D. The owner of a tower shall submit annually to the Tower Coordinator written certification of the number of providers and antennas on the tower

426.7 Security bond.

A. An applicant for a building permit for a tower shall provide:

1. A security bond in an amount not to exceed $40,000 and a term not to exceed 25 years; or
2. A fee not to exceed $5,000.

B. The Administrative Officer shall determine the form and amount of the bond or fee in accordance with § 3-1-202 of the Baltimore County Code. [Bill No. 137-2004].

C. The Code Official may use the bond or fee to procure repair of unsafe or hazardous conditions under Section 426.8 or removal of a tower under Section 426.10 in accordance with § 3-6-402 of the Baltimore County Code. [Bill No. 137-2004]

426.8 Unsafe or hazardous conditions.

A. The owner of a tower and any structures housing equipment for the tower shall maintain the tower and any structure in good working condition and correct any unsafe or hazardous conditions, which may include.

1. Conditions caused by vandalism.
2. Flaking or worn exterior paint.

Illegal or improper occupancy of the tower or structure.

B. The provisions of this section shall be enforced in accordance with Article 3, Title 6 of the Baltimore County Code. [Bill No. 137-2004]

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

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

1. The petitioner has made a diligent attempt to locate the antenna on an existing tower or non residential 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 Commission 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.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: None.

Interested Persons

Appearing at the hearing in support of the request were Oakleigh Thorne, Meesarapu Praveen, Greg Soule, Katie Oppenheimer, and Steven Weber. Karl Nelson, Esquire represented the Petitioners. There were no Protestants or citizens at the hearing. Peter Max Zimmerman, entered the appearance of his office in this case.

5-22-06

Testimony and Evidence

Mr. Nelson proffered that the Petitioners are the Board of Education of Baltimore County and Omnipoint Communications. They proposed to erect a cell phone transmitting tower and associated equipment on the Randallstown High School property. The tower would replace one of the 35 foot poles now holding lights for the tennis courts. The antenna would be 110 feet high. Transmitter equipment would be located at the base of the tower in a protected fenced area. The tennis court lights would be remounted on the tower so that there would be no change in recreational uses. See exhibit 1A.

Mr. Nelson noted that Randallstown High School campus contains 25 acres, but combined with an adjacent County Park the overall public use area contains almost 40 acres zoned DR 3.5. He indicated that this kind of "stealth" design is exactly what the regulations require so that for all appearances the tennis courts and school property would be unaffected. He pointed out that there is a need for better coverage for cell phone communications in this highly populated area which other existing towers and transmitters do not cover. The Petitioner's engineer confirmed that his computer programs showed how the propagation void in the area would be filled in by a transmitter at this location. See exhibit 2

He opined that this location is ideal to solve this problem both technically and from a community standpoint. In regard to the latter, he noted there was 550 feet between the transmitter equipment and the nearest residential neighborhoods so that this location easily meet the 200 foot setback regulation. In addition there are stands of existing mature trees on the property which provide excellent natural screening. He opined that this location would have much less impact than others in the area. In support of this opinion he presented photographs of the school property in exhibit 6 with computer generated images of the tower superimposed on various locations. See exhibit 6.

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Date 5-22-06
By

Mr. Nelson noted that after extensive search the Petitioner's staff concluded that there were no tall structures in the area to which the antenna could be mounted. Nor was there any commercially zoned area in which the transmitter could be located and still fill in the coverage void as the nearest commercial area was south of the property along Liberty Road. The antenna needs to be in the center of the uncovered area to be effective.

Finally he noted that almost an identical request was approved in case no. 03-316-SPHX for the Fullerton Elementary school property. Apparently the Board of Education finds these transmitter locations do not adversely affect the school while providing a source of funding for the school system. He opined that these transmitter need service only once per month so there is no vehicle traffic generated by them. He presented a report by Thorne Consultants which concluded that locating a transmitter as proposed would not adversely affect property values in the area. See exhibit 7. In addition there is no health hazard to the children using the school facilities as the transmitter meets all Federal regulations in regard to signal strength and antenna height. In summary he opined that the proposed use met each criteria of Section 426 of the BCZR.

Findings of Fact and Conclusions of Law

Apparently the Board of Education has already signed a lease agreement with the Petitioner and so feels very confident there is no safety issue for the children using school facilities. This is the same 110 foot antenna that has been approved and erected at the Fullerton Elementary School.

In regard to the legislative policy of Section 426.2 I find that there are no existing structures in the area on which the antenna could be located. Nor are there commercially zoned properties on which an antenna could be located and still fill in the coverage void for this growing area of the County. The commercial corridor along Liberty Road is too far south to be effective to fill in the coverage void. I find this location will minimize the visibility of the antenna from nearby residential neighborhoods as this site is in the middle of the school property with very good

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By

screening provided by the mature trees and large separation distance. The tower is disguised as is possible replacing an existing light pole.

I find that the proposed use meets the requirements of Section 426.5 of the BCZR as to setbacks heights etc. I further find that the Petitioner has met its burden of proof that the proposed use meets the criteria of Section 426.9 of the BCZR in regard to lack of existing structure on which the antenna can be mounted, the technical feasibility of the proposed use, other providers will be able to use the pole, and the height is no higher than required. Finally I find that based on the Petitioner's study there is no evidence that the tower at this location will adversely affect property values of the area.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' request for special exception should be granted.

THEREFORE, IT IS ORDERED, this 22nd day of May 2006, by the Deputy Zoning Commissioner, that the Petitioners' request for special exception, filed pursuant to Section 426.5.D of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow the use of the Randallstown High School property for an unmanned wireless telecommunications facility in a D.R. 3.5 zone be and is hereby GRANTED, subject, however, to the following conditions:

1. The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

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Date 5-22-06
By PZ

BALTIMORE COUNTY

MARYLAND

May 22, 2006

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

KARL J NELSON, ESQUIRE
LOCKWOOD PLACE
500 EAST PRATT STREET
BALTIMORE MD 21202-3171

Re: Petition for Special Exception
Case No. 06-421-X
Property: 14000 Offutt Road

Dear Mr. Nelson:

Enclosed please find the decision rendered in the above-captioned case. The petition for special exception has been granted in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner

JVM:pz
Enclosure

c: Oakleih J Thorne, Thorne Consultants Inc, 10605 Concord Street, Suite 420, Kensington MD 20895
Saul Ewing, LLP, Lockwood Place, 500 East Pratt Street, Baltimore MD 21202-3171
Katie Oppenheimer, Meesarapu Praveen, Greg Soule and Steven Weber for Omnipoint Communications Cap Operations LLC, 12050 Baltimore Ave, Baltimore MD 20705
Board Of Education Baltimore County, Joe A. Hairston, 6901 North Charles Street, Towson MD 21204
Rick Gay, 19406 Greenspring Dr, Timonium, MD 21093
Louis Llovio, Owings Mills Times, 409 Washington Ave #400, Towson MD 21204

ORDER RECEIVED FOR FILING
Date 5-22-06
By

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 4000 Offutt Road, Randallstown

which is presently zoned DR 3.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, leg owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto a: made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use t herein described property for

(see attached)

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

Omnipoint Communications CAP Operations, LLC
Name - Type or Print

Signature

12050 Baltimore Avenue
Address — Telephone No.

Beltsville — MD — 20705
City — State — Zip Code

Legal Owner(s):

Board of Education Baltimore Count
Name - Type or Print

Signature

Joe A. Hairston
Name - Type or Print

Signature

6901 North Charles Street
Address — Telephone No.

Towson — MD — 21204
City — State — Zip Code

Approved Newell Steele, Jr. Asst. Co. Atty 1/9/06

Attorney For Petitioner:

Karl Nelson
Name - Type or Print

Signature

Saul Ewing, LLP
Company

Lockwood Place, 500 E Pratt St., Suite 900 — 410-332-8663
Address — Telephone No.

Baltimore — MD — 21202-3171
City — State — Zip Code

Representative to be Contacted:

Rick Gay
Name

1940G Greenspring Dr. — 410-887-7820
Address — Telephone No.

Timonium — MD — 21093
City — State — Zip Code

Case No. 06-421-X

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BK Date 3/1/06

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5-22-06

R&O 09/15/98

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY, MARYLAND

In the Matter of the Petition of Omnipoint	:	
Communications CAP Operations, LLC,	:	
a subsidiary of T-Mobile, USA for	:	
Special Exception Approval to Install a	:	Case No. _____
Wireless Telecommunications Facility at	:	
Randallstown High School	:	
4000 Offutt Road, Randallstown, MD 21133	:	

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 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 an unmanned wireless telecommunications facility in a DR 3.5 zone. The Facility will primarily consist of three (3) antenna sectors with three (3) antennas per sector attached to a 110-foot stealth light pole telecommunications tower be located at Randallstown High School (4000 Offutt Road, Randallstown, Maryland 21133). This light pole/monopole will replace an existing 30-foot light pole located 3-feet away. The nine (9) total antennas will be located at an antenna centerline ("RAD Center") of 107- feet. In addition to the three (3) antenna sectors, Omnipoint will install three (3) proposed ancillary equipment cabinets on a 10-foot by 20-foot concrete pad within a 20-foot by 40-foot chain-link fenced area at the base of the replacement light pole

Per Section 426.5.D., BCZR.

5-22-06

#421

Description

Accompany Special Exception

31.23 Acre Parcel

West Side of Offutt Road

South of Winands Road

Second Election District, Baltimore County, Maryland

DMW

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 point formed by the intersection of the centerline of Winands Road (70 feet wide) and the centerline of Offutt Road (70 feet wide), (1) Southwesterly binding on and running with the centerline of Offutt Road approximately 150 feet, thence leaving said centerline, (2) Southwesterly 35 feet to the western most right-of-way line of Offutt Road to the beginning of the North 60 degrees 08 minutes 40 seconds West 100 foot line of deed dated October 17, 1961, and recorded among the Land Records of Baltimore County, Maryland, in Liber R.R.G. 4217, Folio 378, thence leaving said point of beginning and running the eight following courses and distances, (1) South 21 degrees 04 minutes 24 seconds West 318.64 feet, thence (2) South 21 degrees 06 minutes 24 seconds West 327.54 feet, thence (3) North 61 degrees 05 minutes 05 seconds West 240.28 feet, thence (4) South 86 degrees 33 minutes 54 seconds West 1403.57 feet, thence (5) North 27 degrees 18 minutes 54 seconds East 1411.34 feet to the south side of said Winands Road, thence (6) Southeasterly running with the southern right-of-way line of said road by a line curving to the right, having a radius of 2970.00 feet, for a distance of 96.68 feet (the arc of said curve being subtended by a chord bearing South 70 degrees 00 minutes

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5-2006
By

#421

50 seconds East 96.68 feet), thence (7) South 68 degrees 58 minutes 18 seconds East 1191.57 feet, thence leaving said southern right-of-way line, (8) South 21 degrees 04 minutes 24 seconds West 100.00 feet, thence (9) South 67 degrees 36 minutes 35 seconds East 85.00 feet to the point of beginning; containing 31.23 acres of land, more or less.

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

January 5, 2006

Project No. 04007.BD (L04007.BD-2)

STATE OF MARYLAND
MICHAEL DAVID MARTIN
NO. 21234
PROFESSIONAL LAND SURVEYOR

1/5/06

RECEIVED FOR FILING
5-22-06

#421

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: # 06-421-X
4000 Offutt Road
Southwest corner of Winands Road and Offutt Road
2nd Election District —4th Councilmanic District
Legal Owner(s): Board of Education, Baltimore County
Contract Purchaser: Omnipoint Communications CAP Operations, LLC

Special Exception: to allow the use herein described property for an unmanned wireless telecommunications facility in a D.R. 3.5 zone. The Facility will primarily consist of three antenna sectors with three antennas per sector attached to a 110-foot stealth light pole telecommunications tower to be located at Randallstown High School. This light pole/monopole will replace an existing 30-foot light pole located 3 feet away. The nine total antennas will be located at an antenna centerline of 107 feet. In addition to the three antenna sectors, Omnipoint will install three proposed ancillary equipment cabinets on a 10-foot by 20-foot concrete pad within a 20-foot by 40-foot chain-link fenced area at the base of the replacement light pole.

Hearing: Friday, April 7, 2006 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
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.

3/341 Mar. 23 88682

CERTIFICATE OF PUBLICATION

3/23/, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 3/23/, 2006.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

NOTICE OF ZONING HEARING

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Hearing: Friday, April 21, 2006 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

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

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

4/035 Apr. 6 90405

CERTIFICATE OF PUBLICATION

4/6, 2006

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 ~~successive~~ weeks, the first publication appearing on 4/6, 2006.

- ☑ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 4908

DATE 3/1/04 ACCOUNT R001-006-6150

AMOUNT $ 380.00

RECEIVED FROM: Network Building & Consulting LLC SA

FOR: Special Exception

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Item # 421

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
3/02/2004 3/01/2004 14:54:46 4
RUS W006 WALKIN RECE 1006
>>RECEIPT # 449572 3/01/2004 OFLN
Dept 1 5 620 ZONING VERIFICATION
CR NO. 004908
Recpt Tot 380.00
380.00 CK 0.00 CA
0.00 CH
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No.: 06-421-X

Petitioner/Developer: _____

Omnipoint Communications

Date of Hearing/Closing: 4/21/06 - 11:00 AM

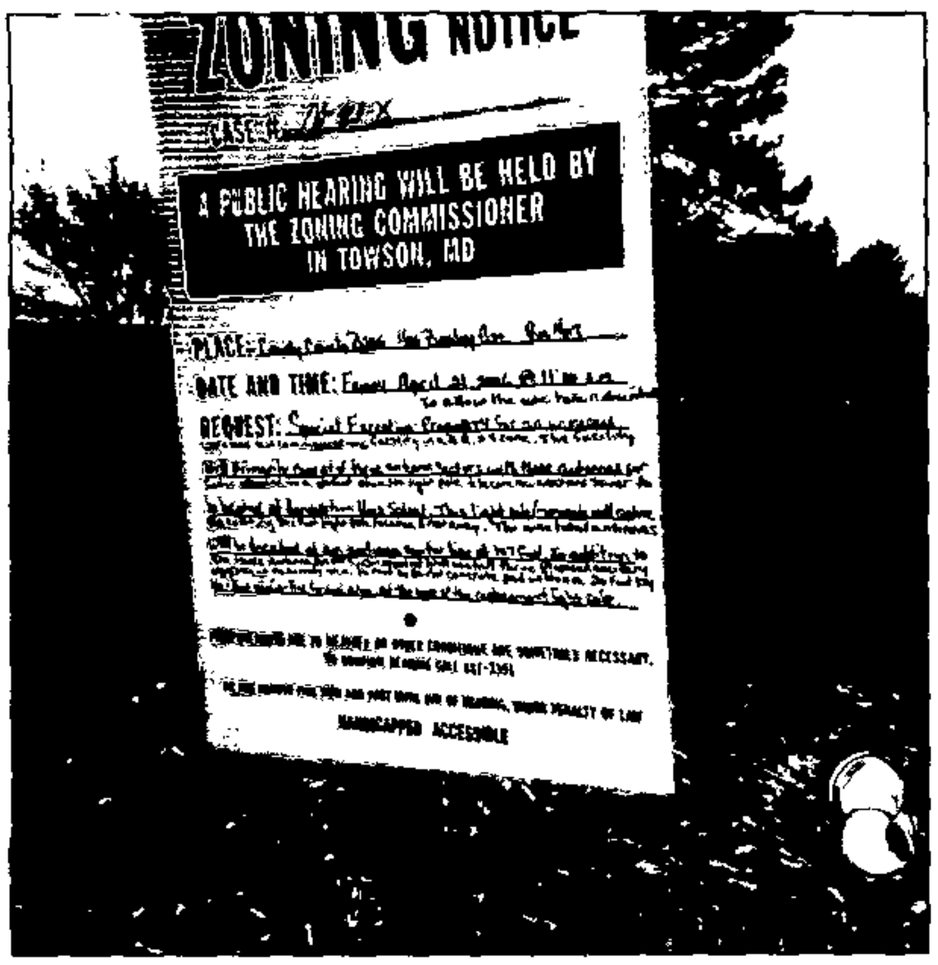
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 W. Chesapeake Avenue
Towson, MD 21204

Attention:

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 at
Randallstown High School

The sign(s) were posted on 4/6/06
(Month/Day/Year)



Sincerely,

Sandra L. Egolf
(Signature of Sign Poster/Date)

SANDRA L. EGOLF
(Printed Name)

SHANNON-BAUM SIGNS INC.
105 COMPETITIVE GOALS DR.
ELDERSBURG, MD. 21784
(Address)

4/6/06
(Date)

4/6/06

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 06-421-X

Petitioner: Omnipoint Communications CAP Operations, LLC

Address or Location: 4000 Offutt Road (Randallstown H.S.)
Randallstown, MD 21133

PLEASE FORWARD ADVERTISING BILL TO:

Name: Katie Oppenheimer

Address: 12050 Baltimore Avenue
Beltsville, MD 20705

Telephone Number: 240-264-8644

Revised 2/20/98 - SCJ

APPEAL SIGN POSTING REQUEST

CASE NO. 06-421-X

14000 OFFUTT ROAD

2ND ELECTION DISTRICT APPEALED: 6/19/2006

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION******

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 06-421-X

LEGAL OWNER:

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

14000 OFFUTT ROAD

The sign was posted on 8-23-06, 2006.

By: _____
(Signature of Sign Poster)

JASON SEIDELMAN
(Print Name)

TO: PATUXENT PUBLISHING COMPANY
Thursday, March 23, 2006 Issue - Jeffersonian

Please forward billing to:
Katie Oppenheimer
12050 Baltimore Avenue
Beltsville, MD 20705

240-264-8644

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: 06-421-X
4000 Offutt Road
Southwest corner of Winands Road and Offutt Road
2nd Election District – 4th Councilmanic District
Legal Owners: Board of Education, Baltimore County
Contract Purchaser: Omnipoint Communications CAP Operations, LLC

Special Exception to allow the use herein described property for an unmanned wireless telecommunications facility in a D.R. 3.5 zone. The Facility will primarily consist of three antenna sectors with three antennas per sector attached to a 110-foot stealth light pole telecommunications tower to be located at Randallstown High School. This light pole/monopole will replace an existing 30-foot light pole located 3 feet away. The nine total antennas will be located at an antenna centerline of 107 feet. In addition to the three antenna sectors, Omnipoint will install three proposed ancillary equipment cabinets on a 10-foot by 20-foot concrete pad within a 20-foot by 40-foot chain-link fenced area at the base of the replacement light pole.

Hearing: Friday, April 7, 2006 at 2:00 p.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, 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.

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

March 16, 2006

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: 06-421-X
4000 Offutt Road
Southwest corner of Winands Road and Offutt Road
2nd Election District – 4th Councilmanic District
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Hearing: Friday, April 7, 2006 at 2:00 p.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: Karl Nelson, Lockwood Place, 500 E. Pratt Street, Ste. 900, Baltimore 21202
Joe Hairston, Board of Education, 6901 N. Charles Street, Towson 21204
Omnipoint Communications, CAP Operations, 12050 Baltimore Ave., Beltsville 20705
Rick Gay, 1940G Greenspring Drive, Timonium 21093

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, MARCH 23, 2006.**
(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.

3/24/06

Per verbal agreement, case needs to be rescheduled date was worked out between myself + Karl Nelson. (4/2/06)

TO: PATUXENT PUBLISHING COMPANY
Thursday, April 6, 2006 Issue - Jeffersonian

Please forward billing to:
Katie Oppenheimer
12050 Baltimore Avenue
Beltsville, MD 20705

240-264-8644

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: 06-421-X
4000 Offutt Road
Southwest corner of Winands Road and Offutt Road
2nd Election District – 4th Councilmanic District
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Hearing: Friday, April 21, 2006 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, 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.

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

March 24, 2006

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: 06-421-X
4000 Offutt Road
Southwest corner of Winands Road and Offutt Road
2nd Election District – 4th Councilmanic District
Legal Owners: Board of Education, Baltimore County
Contract Purchaser: Omnipoint Communications CAP Operations, LLC

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Hearing: Friday, April 21, 2006 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Karl Nelson, Lockwood Place, 500 E. Pratt Street, Ste. 900, Baltimore 21202
Joe Hairston, Board of Education, 6901 N. Charles Street, Towson 21204
Omnipoint Communications, CAP Operations, 12050 Baltimore Ave., Beltsville 20705
Rick Gay, 1940G Greenspring Drive, Timonium 21093

April 16, 2006

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY ~~THURSDAY, MARCH 23, 2006~~.**
(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.

Printed on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 24, 2007

NOTICE OF REASSIGNMENT

CASE #: 06-421-X

IN THE MATTER OF: BOARD OF EDUCATION –Legal Owner;
Omnipoint Communications CAP Operations - Petitioner
4000 Offutt Road 2nd E; 4th C

5/22/06 – D.Z.C.'s Order in which requested special exception request was GRANTED.

which was scheduled to be heard on 5/15/07 has been REASSIGNED to 5/16/07 at the request of Counsel for Petitioner due to court schedule conflict (Circuit Court for Prince George's County); and has been

REASSIGNED FOR: **WEDNESDAY, MAY 16, 2007 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 B, 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

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c: Appellant /Petitioner : Aaron Plymouth, President
Randallstown High School PTSA

Counsel for Petitioners : Karl Nelson, Esquire
Petitioners : Board of Education
Omnipoint Communications CAP Operations

Oakleigh Thorne
Rick Gay

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
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June 21, 2007

NOTICE OF DELIBERATION – REASSIGNMENT OF DATE

IN THE MATTER OF:

OMNIPOINT COMMUNICATIOINS CAP OPERATIONS –
Petitioner; Board of Education – Legal Owner
Case No. 06-421-X

which was scheduled for deliberation on 7/18/07 has been POSTPONED AND REASSIGNED by the Board to allow review of memos, the filing date for which has been extended to 7/13/07; deliberation having been reassigned for the following date and time:

DATE AND TIME : WEDNESDAY, AUGUST 22, 2007 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: **REVISED FILING DATE - Closing briefs are due on FRIDAY, JULY 13, 2007 (Original and three [3] copies)**

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

---

c: Appellant /Petitioner : Aaron Plymouth, President
Randallstown High School PTSA

Counsel for Petitioners : Karl Nelson, Esquire
Petitioners : Board of Education
Omnipoint Communications CAP Operations

Oakleigh Thorne
Rick Gay
Linda Dorsey Walker
Allen Gee

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 5-2-6

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7/17/07

IN THE MATTER OF:	*	COUNTY BOARD OF APPEALS
PETITION OF OMNIPOINT	*	OF BALTIMORE COUNTY
COMMUNICATIONS	*	CASE NO. 06-421-X
CAP OPERATIONS, L.L.C.	*	

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

PETITIONER'S POST-HEARING MEMORANDUM

Omnipoint Communications Cap Operations, L.L.C., d/b/a T-Mobile ("T-Mobile"), by its undersigned counsel, submits this memorandum in support of its special exception request to construct a stealth wireless communications facility at 4000 Offutt Road, Randallstown, Maryland.

I. INTRODUCTION

This application presents a simple fact pattern. T-Mobile has an important coverage need in the heavily populated and highly traveled Randallstown area. In order to fill that need, T-Mobile must locate antennas somewhere in the area near Randallstown High School. As there are no tall existing structures in or near the area, T-Mobile must build a new structure to support its antennas. The logical place for such a structure is the Randallstown High School itself, because that property is far and away the largest in the area, affords the greatest setbacks, has high ground elevation, has natural screening, has existing vertical elements, and allows use of a stealth option in the form of a replacement light pole.

Notwithstanding the clarity of the need and the logic of the proposed solution, there was significant neighborhood opposition at the hearing. Although many individual comments were made, the most pervasive concerns centered on unsupported fears of electrocution and a general concern that a wireless placement is somehow inappropriate with a school facility. These concerns, while sincerely raised, were not supported by any specific evidence.

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BALTIMORE COUNTY
BOARD OF APPEALS

As explained in detail below, T-Mobile more than met its burdens under both County and State law to demonstrate its entitlement to a special exception. The opponents did not offer the type of substantial evidence required to rebut the presumption that T-Mobile's proposed use is appropriate. Accordingly, under well-established principles of Maryland law, T-Mobile's special exception application should be approved.

II. THE EVIDENCE

Through its testimony and exhibits, T-Mobile unequivocally established that the applicable special exception standards have been satisfied. Simply put, the proposed stealth structure is the least intrusive possible means for T-Mobile to provide coverage to the area. The opponents offered no contrary evidence on the key points of compliance with the applicable standards. Instead, they offered generalized safety and compatibility concerns, primarily concerning an unfounded perception of electric shock danger.

A. The Need

T-Mobile currently has substandard coverage along sections of Offutt and Winands Roads. These are heavily traveled commuter routes. It also has substandard coverage in the homes in the area surrounding Randallstown High School. This is an area of high density residential housing. As many wireless customers now use mobile phones as their sole phones, residential penetration is a critical coverage objective.

To the south of the poor coverage area, T-Mobile is co-located on several structures along the Liberty Road corridor. Due to a variety of limitations, these facilities cannot project signal into the relevant area near Randallstown High School. The existing installations cannot be tweaked or modified to meet this site's coverage objective. Instead, as T-Mobile's undisputed engineering evidence made clear, the coverage problem can be solved only by placing a new set of antennas somewhere in the immediate area of Randallstown High School.

B. The Diligent Search

T-Mobile is not a tower company. It has no interest in owning or constructing towers. To the contrary, the company prefers to co-locate its equipment on existing structures for the simple reason that co-location is faster and cheaper. In this case for example, no zoning approval would be required for a co-location. For these reasons, T-Mobile commenced its search by seeking a viable co-location opportunity.

As T-Mobile's engineer made clear, new antenna installations must be located with precision. In this case, for example, the antennas must be placed in the vicinity of Randallstown High School in order to function. There is no dispute that there are no tall existing structures in the vicinity of Randallstown High School. The closest tall structures are well outside the search area. Even so, they were identified and tested. Not surprisingly, the tall structures (BG& E transmission lines, the New Town High School tower and the WBAL towers) were all too far away and/or too close to existing T-Mobile installations to play any role in a solution to the existing coverage problem. This view was not T-Mobile's alone. Baltimore County's Tower Review Committee concurred that no viable co-location opportunities are available. Accordingly, co-location is plainly not an option.[1]

If antennas cannot be placed on an existing structure, then a new structure must be constructed to support the antennas. In the absence of co-location opportunities, T-Mobile was forced to consider a "new build" here. When confronted with such situations, T-Mobile attempts to locate logical siting options for new builds. The first search option -- reflecting also Baltimore County's preference -- is for commercially zoned property. In this case, the entire

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[1] The opponents mentioned several "opportunities" near Liberty Road. The undisputed engineering testimony made clear that any site near Liberty Road cannot meet the coverage objectives for this site. Some mention also was made of the a nearby church. That church is at most 50 feet tall and sits at a lower

search area (and beyond) is zoned residential. As Mike Budde testified and the zoning maps demonstrated, the only commercial properties anywhere near the area are either along Liberty Road to the south or near the Owings Mills corporate campus to the north. T-Mobile's undisputed engineering testimony demonstrated that both of these areas are too far away from the coverage gap and too close to existing T-Mobile installations to solve the coverage dilemma.

Accordingly, by process of elimination, T-Mobile was left to consider residentially zoned properties. In such situations, the company looks for certain attributes in a residential property to maximize its zoning potential. Typically, the best candidates have reasonably high ground elevation so that a short structure can be built. Large parcels are best because they afford the greatest setbacks to nearby residential uses. Large parcels also reduce visual impact. In a best case scenario, a stealth option may also present itself. The presence of other vertical elements, such as poles or light standards, also helps to reduce visual impact as the new vertical element is more likely to fit in.

In this case, the Randallstown High School site was selected because it more than satisfied all of the sought after criteria. It is high enough to allow a structure of only 110' to be used. At twenty-five acres (and part of forty total acres), it is -- far and away -- the largest parcel in the area. No other parcel could offer anywhere near the setbacks -- and related visual impact reduction -- as the High School site. Aside from these benefits, the site offers a stealth option. Specifically, the pole will replace (and function as) a light standard, further integrating it into its environment. The light standards are the only tall vertical elements in the immediate area. It is logical to place any new vertical elements in their immediate vicinity. Finally, as the

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ground elevation than the High School. Accordingly, it is too short to be a co-location opportunity, and any new structure there would need to be taller than the proposed structure.

photographs and testimony made clear, the site has natural screening in the form of tree lines along many key perimeter areas.

From a land use and zoning perspective, no parcel in the area even comes close to the High School. Virtually the entire area is high density residential with lot sizes in the 1/4-1/3 acre ranges. Clearly, placing a new structure on such a lot is not viable (nor would it satisfy the County's three acre lot requirement). The only other parcel near the search area even mentioned was the Safe Family Christian World Outreach Church to the north of the school. That parcel is not as large (only one quarter of the size) or as well-screened as the High School parcel. It offers no stealth option. It also sits on lower ground, thereby requiring construction of a taller pole. Any new pole there would be taller, less well-screened, closer to nearby homes and more visibly intrusive than the proposed High School placement.

When all facts are considered, the High School is not just the best option, it is the only logical option.

C. <u>Opponents' Testimony</u>

A number of opponents testified, and their testimony fell into several basic areas. Some opponents expressed concern over their perception of "health effects" associated with the facility's operation. As explained during the hearing, such concerns are literally inadmissible as the federal government has reserved to itself all determinations relating to commercial wireless safety. 47 U.S.C. § 332(7)(B)(iv).

Many opponents expressed anger over what they perceived to be insufficient public outreach by the School Board. This issue, regardless of its merit or lack of merit, is legally irrelevant. It is undisputed that all notice requirements relating to the zoning case were satisfied.

A number of opponents also raised concerns over what they perceived to be a risk of electric shock. This concern was clearly unfounded for a number of reasons. First, the

compound housing all equipment will be fenced and locked. The "boxes" which house all of the equipment (sitting inside the fenced and locked compound) are, themselves, locked. Aside from being locked, the boxes can be opened only by use of a special tool that is not available to the general public. The boxes also are alarmed and monitored. Any electrical connections inside the boxes are sealed and inaccessible. Finally, the only power at the site is residential-grade in terms of voltage. In sum, the danger of electrical shock can be described as follows: a person actually trying to be shocked would need to scale the fence, find a way to open the box without either a key or the required special tool, and break into componentry within the box to locate some wiring. These tasks would need to be accomplished before the police arrived. Even if an enterprising person somehow accomplished all of this, he/she would only be exposed to the same level of electric shock as he/she could receive at home or, indeed, elsewhere on the school premises.

There is no risk of electrical shock. This obvious fact was borne out by T-Mobile's evidence that no T-Mobile installation has been breached in the manner described above.

As an extension of the "electric shock" argument, several opponents testified that a school placement is somehow inherently unsafe. No specific evidence was presented to support this argument. To the contrary, the tenor of the testimony was, essentially, that "boys will be boys." The only concrete evidence on school safety was presented by T-Mobile. T-Mobile demonstrated that it has an existing identical installation (110' light standard replacement) at a Baltimore County elementary school. There, as here, the school is surrounded by residences. There, as here, the T-Mobile installation is immediately adjacent to a recreational facility (baseball field). There have been no security issues at the elementary school site. Aside from Baltimore County, numerous school systems in the region, including at least the District of

Columbia and Montgomery, Charles, Fairfax, Prince William and Spotsylvania counties, have allowed T-Mobile placements on school properties. Montgomery County alone has at least six, with four to six more in process. The security provided at all of these sites is identical to that proposed for Randallstown High School. There have been no security problems at these sites. Accordingly, there is no basis for an inference that safety/security issues will occur at Randallstown.

Some opponents also stated that other "options" may exist that were not explored by T-Mobile. All specific examples were addressed by T-Mobile and ruled out. The general concept of unexplored "options" was refuted by the clear absence of such options.

III. LEGAL STANDARDS

A. County-Specific Standards

T-Mobile must demonstrate compliance with all applicable BCZRs concerning new wireless facilities. These are found at BCZR § 426. T-Mobile must also meet the general special exception requirements set forth in § 502.

B. State Standard – Schultz v. Pritts

Aside from County-specific standards, T-Mobile must meet the State's test as set forth in numerous Maryland cases.

The rule that "[a] special exception is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone" is well settled and longstanding. *Creswell v. Baltimore Aviation Servs., Inc.*, 257 Md. 712, 719 (1970). A special exception is a "valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change this presumptive finding." *Rockville Fuel & Feed Co. v.*

Board of Appeals of Gaithersburg, 257 Md. 183, 188 (1970); *see also Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1952). The special exception use carries with it the presumption that "it is in the interest of the general welfare, and therefore, valid." *Schultz v. Pritts*, 291 Md. 1, 12 (1981).

The seminal case enunciating the standard by which special exception questions are resolved is *Schultz v. Pritts*. In *Schultz*, the Court held that

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

Id. at 22-23 (emphasis added).

Schultz does not apply in a vacuum. Thus, Baltimore County's special exception regulations must be read in the *Schultz* context. *See Days Cove Reclamation Co. v. Queen Anne's County*, 146 Md. App. 469, 475 (citing *Mossburg v. Montgomery County*, 107 Md. App. 1, 21 (1995), *cert. denied, Twin Lakes Citizens v. Mossburg*, 341 Md. 649 (1996)), *cert. denied*, 372 Md. 431 (2002); *see Harford County v. Preston*, 322 Md. 493, 500 (1991) (explaining that *Schultz* states that "absent some clear legislative direction to the contrary, if a particular kind of impact is required to be taken into account in considering a special exception, the impact is to be measured by the test enunciated in *Schultz*"). When, as here, a county develops specific special exception regulations applicable to a use, the *Schultz* standard "is engrafted upon them." *Days Cove Reclamation Co.*, 146 Md. App. at 475. Tower cases are no exception. *See, e.g., AT&T Wireless Servs. v. Mayor of Baltimore,* 123 Md. App. 672 (1998) (Court reversed zoning board's denial of a communications tower condition use on *Schultz* grounds.); *Evans v. Shore*

Communications, 112 Md. App. 284 (1996) (Court reversed zoning board's denial of a communications tower special exception on *Schultz* grounds.).

The applicant has the initial burden of producing evidence that the proposed use does not have disproportionate adverse impacts. *See Futoryan v. Mayor Baltimore*, 150 Md. App. 157, 172, 819 A.2d 1074, 1082 (2003) (relying upon *Anderson v. Sawyer*, 23 Md. App. 612, 617 (1974)); *see, e.g., Turner v. Hammond*, 270 Md. 41, 54-55 (1973); *Cason v. Board of County Comm'rs for Prince George's County*, 261 Md. 699, 706-07 (1971); *Eastern Outdoor Advertising Co.*, 146 Md. App. at 309; *B.P. Oil, Inc. v. County Board of Appeals for Montgomery County*, 42 Md. App. 576, 579-80 (1979). When that burden has been met, the applicant is entitled to a presumption that the use is appropriate. *See, e.g., Schultz*, 291 Md. at 11-13.

"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." *Mossburg*, 107 Md. App. at 9.

The presumption in favor of the special exception use 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." *Anderson*, 23 Md. App. at 625 (emphasis added); *see Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 263 (explaining that there must be evidence presented to rebut the presumption that a special exception use is in the interest of the general welfare (citing *Sharp v. Howard County Board of Appeals*, 98 Md. App. 57, 86 (1993)), *cert. denied*, 335 Md. 229 (1994). Lastly, the adverse impact caused by the proposed special

exception must be unique and atypical to justify denial. *See, e.g., Mayor of Rockville v. Rylyns Enters.*, 372 Md. 514, 541 (2002) (citations omitted).

In light of the strong presumption, even in tower cases, "a special exception is a valid zoning mechanism that *delegates only limited authority* to an administrative board to determine the use to be permissible in the absence of any fact or circumstances that negate the presumption." *Evans v. Shore Communications, Inc.*, 112 Md. App. 284, 303 (1996) (emphasis added)

This limited authority is not affected by the nature of the harm. Even safety and property value concerns will not support a denial unless they are somehow unique to the proposal. *See, e.g., Deen v. Baltimore Gas & Elec. Co.*, 240 Md. 317, 330-331 (1965); *Anderson*, 23 Md. App. at 624-625; *Schultz*, 291 Md. at 12-14 (relying upon *Anderson* and *Deen* for the same proposition).

IV. ARGUMENT

A. T-Mobile Met its Burden of Showing that all Applicable Requirements are Satisfied.

1. County-Specific Requirements

T-Mobile met its burden of establishing that each special exception requirement applicable to wireless communications towers has been satisfied. *See* BCZR § 426.1, *et seq.* As an initial matter, the general requirements applicable to all new wireless structures (§§ 426.2-8) are unequivocally met. The proposal meets all applicable height, setback and other similar requirements. It will not be lighted and will be neutral in color. It will be constructed to accommodate at least three providers. It is located and designed to reduce visual impact from nearby residences, and cannot be located on a commercial parcel. T-Mobile will comply with all applicable landscaping, bonding and safety/maintenance requirements.

The special exception-specific requirements (§ 426.9) also are clearly met. The "diligent search" concept contemplated by § 426.9 was more than satisfied. As explained above, T-Mobile sought out and considered all co-location possibilities. There were no realistic co-location opportunities anywhere near the necessary area. Even so, T-Mobile examined the closest tall structures outside of the search area (some more than two miles away). These structures were plainly non-viable. As the Tower Committee found, there are no co-location options here.

Commercial parcels were equally non-viable. All were well outside the search area, to the north and south. All would fail to cover the target area and interfere with existing T-Mobile installations. These points are apparent from even a quick comparison of the relevant zoning maps and T-Mobile's signal propagation exhibits.

Forced to consider "new build" options, T-Mobile found that the High School was the only and obvious choice. Its size, ground elevation, natural screening, stealth option and existing verticality render it far superior to any other property in the area.

Clearly, as the Deputy Zoning Commissioner already has found, T-Mobile met its burden of showing compliance with the applicable wireless-specific regulations.

Similarly, the County's general special exception requirements (§ 502) are satisfied. The site will create no traffic, noise, odors or any sorts of nuisance impacts. It has no negative safety characteristics. To the contrary, the evidence made clear that the facility will play a critical role in carrying E911 calls. The facility will also create no burdens upon County roads, schools, services etc. In sum, it will be a benign neighbor, performing an important public safety function.

2. *Schultz v. Pritts* is Satisfied

Under *Schultz*, T-Mobile was required to show that the impact of the proposed installation would not be greater than those typically associated with a new tower placement in a DR zone in Randallstown. It is plain that T-Mobile exceeded the *Schultz* threshold. Nearly all other DR parcels in the area are 1/4-1/3 acre residences. There are no parcels as large as the High School, with the High School's screening, with the stealth option, and with existing vertical elements. The High School is demonstrably superior to any other residentially zoned parcel in or near the search area. Thus, the proposal actually has far *less* impact than would a wireless placement on a typical DR parcel in the area.

Once T-Mobile cleared this hurdle, a presumption was created in favor of the application. *Schultz*, 291 Md. at 11-13. It was then incumbent on the opponents to provide "strong and substantial" facts or circumstances to rebut the presumption. *Anderson*, 23 Md. App. at 625. The opponent's evidence fell far below that required to rebut the presumption. The ideas that "boys will be boys" or that the proposal just "doesn't fit" are not legal justifications to deny a special exception application.

In many ways, the evidence in this case is remarkably similar to that considered by the Court of Special Appeals in the only two reported Maryland communications tower approval cases: *AT&T Wireless Services v. Mayor & City Council of Baltimore*, 123 Md. App. 681, 692 (1998) and *Evans,* 112 Md. App. at 305. In both of those cases, the applicant satisfied its initial burden. Opponents then offered concerns about incompatibility, other "options," property values, etc. Indeed, in the *AT&T* case, the City's planning staff testified against the proposed tower. While the sheer volume of opposition was high, the opponents in both cases failed to demonstrate how the drawbacks of the proposed tower at its proposed location would be greater

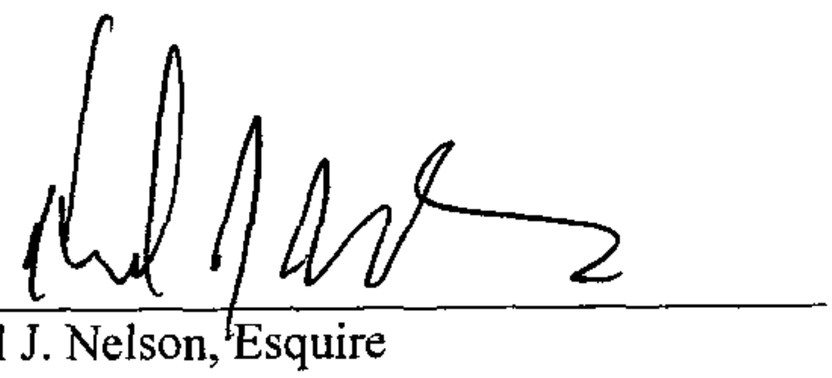
than typically associated with a tower placement in such a zone. Accordingly, in both cases, the Court reversed board decisions and ordered construction of the towers.

The same situation presents itself here. There is no doubt that many passionate points were made at the hearing. There is also no doubt that the proposed High School placement will have impacts far below those that would be felt were the facility to be placed on another residential parcel in the area. Even moving it on the High School parcel would only change the names of the individual neighbors in opposition. While the proposal is not popular among those who appeared at the hearing, it more than meets all applicable legal requirements and should be approved.

V. CONCLUSION

The testimony and other evidence presented by T-Mobile clearly established that each general and specific regulation applicable to its application is satisfied. Moreover, the *Schultz* standard was more than met. Accordingly, T-Mobile's application for special exception approval should be granted.

DATE: July 17, 2007



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July 17, 2007

VIA HAND DELIVERY

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

Re: *In the Matter of: Omnipoint Communications CAP Operations* – Petitioner
Case: 06-421-X, 14000 Offutt Road

Dear Ms. Bianco:

Enclosed please find an original and three copies of Petitioner's Post-Hearing Memorandum for filing in the above-referenced matter.

Thank you for your attention to this matter.

Very truly yours,

Karl J. Nelson

KJN/slm
Enclosures

cc: Carole S. DeMilio - People's Counsel of Baltimore County

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JUL 17 2007
BALTIMORE COUNTY
BOARD OF APPEALS

7/17/07

RE: PETITION FOR SPECIAL EXCEPTION 4000 Offutt Road; SW corner Winands Road & Offutt Road 2nd Election & 4th Councilmanic Districts Legal Owner(s): Board of Education Baltimore County by Joe Hairston Contract Purchaser(s): Omnipoint Communications CAP Operations, LLC Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 06-421-X

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BALTIMORE COUNTY
BOARD OF APPEALS

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

> *"When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. . . Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses."* Schultz v. Pritts 291 Md. 1, 21-22 (1981), (citations omitted)

"Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved; . .

B. Create a potential hazard from fire, panic or other danger. . .
G. Be inconsistent with the property's zoning classification . . . "
BCZR 502.1

A special exception, of course, is a conditional use. Schultz v. Pritts, *supra* at 11 (1981); County Comm'rs v. Holbrook 314 Md. 210 (1986). It is subject to compliance with basic special exception standards as well as other statutory prerequisites. Chester Haven L.P. v. Queen Anne's County Board of Appeals 103 Md. App. 324 (1995). In addition to the standards in BCZR 502.1, above, a wireless telecommunications tower is subject to the standards in the Special Regulations, BCZR 426. The latter includes general standards for

all towers in 426.9 A and particular requirements for towers in residential zones in 426.9 C. For various reasons, the underlying premise is to permit towers in residential zones only as a last resort. Certainly aesthetic considerations are a factor. The legislative policy in BCZR 426.2 B. 3 states that a new tower should be ***"Located and designed to minimize its visibility from residential and transitional zones."*** But safety is also a paramount concern. BCZR 426.8 specifically requires the owner to keep the facility, and specifically the ***"tower and any structure housing equipment for the tower"*** free from ***"unsafe or hazardous conditions"***. The zoning regulations list hundreds of special exception uses, but few, if any, include a specific admonition recognizing the inherent dangers of the use. Thus the County Board of Appeals ("Board" or "CBA") here must acknowledge that the tower and equipment are potentially unsafe or hazardous. This reinforces the need to measure the relief requested by the standards in BCZR 502.1, above, and particularly the "health, safety and welfare" test. Once it is established that there are adverse effects (i.e. unsafe or hazardous conditions associated with the equipment and tower), the focus then shifts to the <u>location</u> *vis a vis* these conditions:

> ***"[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 <u>at the particular location</u> 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, *supra* at 22 (emphasis added).

An appropriate question for the Board in this special exception request is does the placement of the tower and equipment on school property adjacent to recreation and

athletic fields present greater adverse effects than if such a facility was located on a site elsewhere in the zone that is not used for school or recreation?

The burden of proof for a special exception remains with the applicant. Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App. 157 (2003). Judge Davidson wrote in Schultz 291 Md. 1, 15:

> ***"These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone."***

This means that a special exception must be denied where the adverse effects are particular to the location, and above and beyond the normal adverse effects. It should be underlined, in this context, that in order for a special exception to be denied, it is not necessary that the CBA find that the proposal is in the worst possible location in the county or that it is the most extreme in size and scope. It just has to present some particular adverse effect at this location.

The Court of Special Appeals sustained a denial of a special exception for a rubble fill. Moseman v. Prince George's County, 99 Md.App. 258 (1994). The factors particular to the site included the presence of an existing rubble fill across the street, a narrow and winding access road, the proximity of single family homes, highly erodible

soils, risks to well water, and depreciation of property values. There was no evidence that the Moseman site was the worst site in Prince George's County. There may have been other sites as bad or worse. There could have been proposed a larger or more hazardous landfill. But the potential for worse locations or worst case scenarios did not require approval at this location.

Unlike the variance standard where the unique characteristics must be indigenous to the property itself, such as geographic features, the adverse effects to deny a special exception may result from existing uses on the site or from surrounding, off-site conditions, such as traffic or road configurations.

Schultz v. Pritts implements BCZR 502.1 and focuses on whether ***"neighboring properties in the general neighborhood would be adversely affected."*** It is elementary that ***"the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards . . ."*** The proposed use must not cause ***"harm or disturbance . . ."*** or ***"disruption of the harmony of the comprehensive plan."*** 291 Md. at 11.

Judge Rita Davidson explained the harm must be particular, ***"above and beyond the inherent ones ordinarily associated with such uses"*** [in the zone]. 291 Md. at 14. She gave examples of cases involving high-tension wires and funeral homes. The inherently offensive or depressing aspects of these uses do not warrant denial. Otherwise, a special exception could never be granted. On the other hand, she wrote:

> ***These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.*** 291 Md., at 12.

In Schultz, the court remanded the case to consider traffic access and safety. In County Comm'rs v. Holbrook 314 Md. 210 (1988), the Court applied Schultz to reinstate a zoning board denial of a special exception based on adverse visual impact of a motor home on a residence. In Mangione, the Court of Special Appeals affirmed denial of a nursing home in a residential zone and explicitly noted that ***"size and scope of the project are relevant considerations."*** 85 Md.App. at 747, n.6. In People's Counsel v. Country Ridge Shopping Center 144 Md.App. 580 (2002), the Court affirmed denial of a pawnshop in a shopping center zoned for business use. In each situation, there was something particular about the project or neighborhood, which justified denial.

In Futoryan v. Mayor & City Council 150 Md. App. 157 (2003), the Court affirmed denial of a conditional use (special exception) for an automobile repair garage in a business zone, Judge Charles Moylan discussed in depth the Schultz standard. He stressed that Schultz ***"... was particularly helpful in clarifying the distinction between a permitted and a merely conditional use (or special exception)."*** The thrust of Judge Davidson's opinion was that particular adverse neighborhood effects tolerated for uses permitted by right would not be acceptable for a special exception. It is thus false to say that a special exception should be approved where it would be no more harmful (or less harmful) than a potential permitted use. It has to be viewed on its merits. So, where evidence showed how the garage operation was ***" ... a detriment to the general welfare of the adjoining residential community,"*** it warranted denial of the special exception.

There followed a discussion of the Schultz "locational comparison" test. Futoryan's neighborhood involved an isolated business zone. Judge Moylan explained that Schultz does not dictate automatic approval of a special exception where locational comparison is difficult or impossible. Otherwise, ***"a mere conditional use would thereby become a permitted use."***

Several points of comparison may be relevant, such as zoning and character of the surrounding area. So, a special exception acceptable in a commercial or institutional setting may be unacceptable in a residential neighborhood. Another point of comparison involves intensity of use. Judge Moylan advised:

> ***Even within the same zoning geography, the intensity of the proposed conditional use could also be a factor. A large-scale operation of automobile storage, automobile repair, and body and fender work completely filling, and perhaps spilling over, the entire lot could well be deemed to constitute a degree of adverse influence not constituted by a much smaller automobile repair operation as an auxiliary of a service station.***

Here, the special exception use delineated on Petitioner's site plan (Pet. Exhibit # 2) is within the public high school's 25 acre campus. It does not encompass the entire 25 acres, thus the majority of the campus, including the school and recreational facilities, are part of the "surrounding community" "area" and "neighborhood" discussed in the special exception cases cited above. This immediate surrounding area consists of the school building itself, the school grounds, and recreation fields and courts, as well as the surrounding residential community. Do the tower and equipment boxes present a greater danger for the students and children here on the campus than on non-school property? The protestants uniformly answer in the affirmative. Their concerns for safety focus

primarily on the electrical equipment in boxes and the access to a 107 ft. pole. The Petitioner proposes these structures will be contained in an 8ft chain link fence, hardly an impediment to high school students and others. The tower and equipment are located on a heavily utilized part of the school campus. Moreover, the proposed tower and supporting equipment are located adjacent to ball fields and tennis courts. If in the course of play, the ball lands within the chain link fenced area it is natural for players to retrieve it. It is not unreasonable that children would investigate the equipment or be tempted to climb the pole. Such a scenario is less likely if the antennae and boxes were placed on top of a building with limited, if any, access by the public, or on a privately owned site. The protestants' objections demonstrate that a tower facility at a school presents safety concerns unlikely to exist at a non-school site, and particularly at its proposed location on the Randallstown High School campus.

The Protestants' Testimony; Adverse Conditions Particular To The Site

The sign-in sheet (PC Exh. #6) presented at the Board hearing contains the signature of 16 protestants, 8 of whom testified, including State Senator Bobby Zirkin, a resident of the area, Allen Gee, a retired building inspector for Baltimore County, and Anthony Green, whose young daughter was accidentally tragically electrocuted on a fence at another public recreational facility.

As a building inspector, **Mr. Gee** routinely inspected wireless tower facilities in Baltimore County. His photos in PC #1A-F show the types of facilities for the supporting electrical equipment. Some appeared to have some equipment on the outside of the box. Petitioner did not produce photos of the type of equipment boxes proposed other than

stating each would be the size of a refrigerator. The boxes would not be within a building but exposed inside a chain-link fence. Each wireless provider may use several boxes; at the zoning hearing, Petitioner proposed three for T-Mobile. The tower pole will accommodate three providers, which increases the equipment boxes exponentially. At a minimum there would be four and likely more. Petitioner's witness, Mr. Mike Budde, stated an alarm sounded if the boxes were penetrated, but admitted the receiving end of the alarm signal for T-Mobile is not even in Baltimore County. It is unknown if the other providers would even have an alarm or where the alarm signal would be received. Presumably, there is no alarm on the tower itself. The Petitioner's engineer testified that T-Mobile employees would have to climb the tower pole for repairs to the antennae etc. Mr. Gee testified that generally towers have permanent climbing pegs. In rebuttal, counsel for T-Mobile suggested that the pegs would be inserted as the technician ascended the tower and removed as he descended. The logistics of carrying enough pegs up and down a pole of this height makes it doubtful that technicians would even follow this procedure or if it could be enforced. Clearly, most towers have permanent pegs.

Senator Zirkin opposed the cell tower at the school. He also was concerned about the safety of the approximately 1000 students with such potential hazardous equipment in the midst of their campus, as well as adjacent to the public recreational facilities and walkways used unsupervised by the surrounding community, including children, on weekends, evenings and summer vacation.

Mr. Aaron Plymouth, a former teacher, and **Ms. Linda Dorsey-Walker**, a former parent association president, discussed the inclination of high school students or

other children to go into the chain-linked area. This behavior, while not condoned, must be recognized. The witnesses believe the consequences of a serious or fatal injury far exceeds simply calling the activity a prohibited transgression; it requires preventive measures, namely locating such a facility elsewhere. At Randallstown High School, children are lawfully on site even if unsupervised. They are not trespassers. On the other hand, the protestants assert it is more reasonable to assume that children would not be near the facility if it were located on private property. The neighbors and protestants are not unwelcoming to T-Mobile to the area. They believe strongly the proposed site is unacceptable, when compared to the risk to safety of the students and other users of the recreational facilities.

They suggest numerous alternate sites for the tower facility within the neighborhood. Ms. Tanya Williams, a neighbor, identified specific alternate locations, some of which she marked on Petitioner's Ex.# 7. Apparently, and inexplicably, none of these sites were even considered by T-Mobile although they are within the search ring area. Unfortunately, neither T-Mobile nor the Baltimore County School Board/ Superintendent's Office saw fit to contact the parents of Randallstown High students or the surrounding community before agreeing to locate the wireless facility at the front entrance area of the school.

Mr. Budde, the site locator for Petitioner T-Mobile presented conflicting testimony. He claimed the search area was limited to a .3 mile radius but admitted the New School facility 21/2 – 3 miles to the northwest of the high school was considered. Yet he could not adequately explain why the Owings Mills Corporate Center, with

numerous tall buildings and equidistance from the high school to the northeast, was excluded as a potential site. Although there are at least 9 T-Mobile antennae identified on Pet. Ex. #1, Budde was charged with locating still another site for a tower, claiming a need for coverage for the area. But two protestants disputed that coverage failed here. Ms. Dorsey-Walker subscribes to T-Mobile and stated she never experienced a dropped call or lack of coverage. **Mr. Roderick Hart,** a retired director of National 911 operations for a telephone company, and currently an official with a 911 Emergency oversite organization, testified he is unaware of any problems with T-Mobile customers having unfettered access to, and responses from, 911 service. On cross-examination, Mr. Rajan, Petitioner's engineer, admitted that T-Mobile may not have experienced lack of coverage in the Randallstown area but was being pro-active in coverage to secure a business advantage over competitors. In fact, the Asset System Propagation Map (Pet. Ex. 1) reflects comprehensive coverage if the color scheme is analyzed. The blue areas reflect maximum coverage in all locations, the green optimum coverage in 2/3rd locations, and the yellow, coverage in 1/3rd locations. No significant area lacks coverage altogether. And Mr. Rajan admitted optimum coverage is not common. T-Mobile appears to seek this tower to gain a competitive edge in the industry. Neither witness for the Petitioner was able to document a single complaint about T-Mobile coverage in the area. There was no evidence that T-Mobile chose to place a tower at the high school in response to complaints from existing T-Mobile customers.

Mr. Budde was not familiar with alternate sites in the immediate area pointed out by the protestants, such as the Wiley Funeral Home 5 blocks from the site, a closed swim

club site a few blocks away, the World Outreach Church, a 10 acre site with numerous light poles just a few blocks from the school. In fact, on cross-examination, Budde admitted the cost to lease property for the telecommunications facility is a factor used to rank potential sites. He attempted to use the cost factor to support the current site by stating that it was cheaper for T-Mobile to co-locate rather than construct a new tower, and they would have co-located if the opportunity was available. However, Budde's cost comparison proved faulty on cross-examination. He was unable to specifically itemize the relative cost figures for co-locating vs. initial cost outlay for the tower. Incredibly, he failed to consider the income generated for T-Mobile when it leased co-location on its own tower to other providers. How intensely T-Mobile searched for co-location rather than lease space from the Baltimore County School property is suspect if Budde himself was unable to testify about his consideration of specific alternate sites and the relative costs. While economic issues are not relevant to zoning standards for a special exception, even if they were probative, T-Mobile clearly presented no persuasive and uncontroverted evidence that co-location is not an option.

Moreover, although Mr. Budde claimed T-Mobile constructed towers at other schools in Maryland, he admitted he never testified at a hearing for a school site, and did not know if these sites permitted a tower by right or special exception. Significantly, Mr. Rajan was not aware of T-Mobile ever seeking to construct a tower on school property.

It is undisputed the tower proposed at Randallstown High School would provide no special services to the students or staff at the school. It was selected to support T-Mobile's business decision to add another wireless facility to attract potential customers

to a region described as "densely populated" by Mr. Budde. It appears this site was selected primarily because the Baltimore County School Board (without notifying or consulting with parents or students) agreed to the rental price proposed by T-Mobile. Once the property owner here agreed, there was no evidence T-Mobile considered other sites more suitable under BCZR 426, BCZR 502.1, or preferable to the community. Certainly, a favorable business arrangement was a driving factor in Mr. Budde's search. Mr. Rajan admitted he only selected the proposed site from the selection submitted to him by Mr. Budde's department. This is not to say T-Mobile was unaware of the restrictions in BCZR 426 or the zoning regulations in general. But it appears they settled on a site prematurely once the business aspects were satisfactory. Mr. Budde's familiarity with Baltimore County zoning, certainly a criteria for a site locator, is suspect - he did not even know the meaning of the term "D.R. 3.5".

It is axiomatic that a proposed use at a site does not satisfy the special exception standards, particularly when no meaningful comparison is evident, simply because the chosen site is more suitable for Petitioner to recruit new customers or maintain existing customers, or because it provides a satisfactory leasing arrangement for the cellular company.

Federal and Local Law; Delegation of Powers; Exposure of Myths

The electrical engineer, Mr. Rajan, focused on the technical reasons to locate a tower at this site. But there is no preference to grant a special exception for a wireless communications tower than for any other proposed use in the zone. Furthermore, federal cases routinely affirmed denial of towers based on zoning standards. The Court in

American Tower LP v. City of Huntsville. 295 F.3rd 1203, (11th Cir. 2002) affirmed the Board of Zoning Adjustment's denial of the special exception based on its "negative aesthetic impact" and its negative "effect on the health, safety and welfare of the public." *Id.* 1208.

The federal law gives discretion to local zoning boards to approve or deny proposed towers under local law. The federal government reserves authority over any environmental health standards, such as cancer prevention. Federal law does not give service providers a blank check to locate towers irrespective of zoning standards to satisfy the alleged coverage gap. Traditional zoning issues relating to public safety, health and welfare and consistency with spirit and intent of zoning law for special exceptions in BCZR 502.1, including aesthetics, visual intrusion or clutter, impact on nearby residences, and consistency with the character of the neighborhood are also considerations in a wireless telecommunication facility special exception case.

See in support a series of cases from the United States Court of Appeals for the Fourth Circuit, which includes Maryland, the Virginias, and the Carolinas: AT & T Wireless v. City Council of Virginia Beach, 155 F.3d 423 (4th Cir. 1998); AT & T Wireless v. Winston-Salem Zoning Board, 172 F.3d 308 (4th Cir. 1999), 360 Communications Co. v. Albemarle County, 211 F.3d 79 (4th Cir. 2000); see also SBA, Inc. v. City of Asheville, 539 S.E.2d 18 (N.C. 2000).

The industry has promoted the primary myth that federal law gives it a favored position. The appellate courts, however, have identified and rejected this and several secondary myths. One myth is that federal law requires 100% coverage of so-called

service gaps. The truth is that federal law allows for "dead spots." 360 Communications Co., 211 F.3d 79, 86-87; SBA, Inc., 539 S.E.2d, at 25. Another myth is that upon expert evidence of need for service in an area (i.e. "service ring" here), federal law requires or indicates approval of a chosen site regardless of adverse impact on the area. Rather, as Judge Luttig wrote in AT & T Wireless:

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

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

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

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

Although there is no allegation in the instant T-Mobile case that the zoning regulations prohibit towers in Baltimore County, the decisions reinforce that local zoning boards should not be intimidated into granting a tower use merely because the Petitioner alleges a coverage gap. The recent decision in USCOC of Virginia RSA#3 v. Montgomery County Board 343 F.3d 262 (4th Circuit 2003) is particularly instructive

because the Fourth Circuit includes the State of Maryland. The Court rejected the argument of U.S. Cellular that the local zoning board's rejection of a wireless communications tower "had the effect of prohibiting the provision of personal wireless services in violation of 47 U.S.C. 332" *et. seq* and "was not based upon substantial evidence." The Court concluded ***"that U.S. Cellular has not met the burden required in this circuit for prevailing on a prohibition of service claim."*** The Court continued:

> ***". . . to be entitled to relief under a . . . prohibition of service claim, the plaintiff's burden is substantial. In AT&T Wireless PCS, Inc. v. City Council of Virginia Beach, we held that a telecommunications provider could not prevail in a challenge to an individual zoning decision absent a general ban or policy to reject all applications. See also 360 Communications Co. v. Board of Supervisors of Albermarle County, 211 F.3d 79, 88 (4th Cir. 2000) ("The burden for the carrier invoking this provision is a heavy one: to show from language or circumstances not just that this application has been rejected, but that further reasonable efforts are so likely to be fruitless that it is a waste of time to try."). "***
> *Id. 268*

The Court pointed out, in footnote 6, that the Second and Third Circuits ***"have developed a less stringent test for prohibition of service claims."*** On the other hand, the Fourth Circuit [in Albermarle County, *supra*] ***has "specifically declined to adopt this approach, noting that it would unnecessarily interfere with the fact-specific nature of the inquiry and would effectively create a presumption, shifting the burden to the local government to explain its actions."*** *Id. 273*

The federal Court also rejected U.S. Cellular's "substantial evidence" claim. The agency in that case determined that violation of the spirit and intent of the law was not overcome by some citizen support or a favorable report from the professional consultants.

The Court held the agency's decision to deny the telecommunications tower was supported by substantial evidence:

> ***" The Supreme Court has defined "substantial evidence" to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." . .. It requires more than a mere scintilla but less than a preponderance." . . ." (citations omitted) .***
>
> ***"According to the Board, the proposed tower's failure to adhere to the applicable zoning requirements provides substantial evidence to justify the rejection of the tower. We agree. . . . We conclude that, under the facts of this case, the proposed tower's inconsistency with the local zoning requirements is sufficient to establish substantial evidence for the denial of the permit."*** *Id. at 271.*

One need only look at the chart in BCZR 426.5 to see that nearly every zone in Baltimore County permits some type of wireless communication tower, whether conditional or by right.

Aesthetics and Cellular Towers

It is difficult to imagine a zoning use whose appearance has more impact on the subject site, the neighborhood and passersby than a wireless communication pole and tower. Signs permitted under BCZR 450 are smaller in size and height, and are severely restricted in residential zones. The CBA cannot dismiss the concern of aesthetics in the instant special exception case. The leading case is Holbrook, *supra.* There, the Court of Appeals reversed the Court of Special Appeals and affirmed the Board of Appeals and Circuit Court, which denied a special exception for a residential trailer in a neighborhood. The Court of Appeals upheld the denial based on the proximity of the proposed trailer to an expensive home, finding the **"conspicuous trailer as an eyesore and a detriment to neighboring properties of higher value."** *Id at 219.* The Court further quoted

approvingly the Board's denial of the special exception that the **"trailer's continued presence would create 'significantly greater adverse effects in this location than were it located in other areas in the zone'"** thus satisfying the standard of Schultz v. Pritz, *supra.* In the instant case, all the protestants complained that the tower at the front entrance of the school is an eyesore in addition to a safety concern. The protestants described the negative visual impact of a 107 ft. tower and the tower equipment boxes next to a low-scale high school building and recreational fields. The photographs in P.C. Exhibits #1A-F, #3A-F, and #4 show that the T-Mobile pole and equipment boxes, a commercial use unrelated to education and recreation, will undoubtedly dominate the setting. As one of the protestants testified, the Board must envision the tower from the pedestrian level when one drives or walks onto the site and enters the school building. These are legitimate concerns in a special exception case under the "health, safety or general welfare of the locality involved" in BCZR 502.1 and Holbrook, *supra.*

In summary, this is a classic case where the requested relief at this site has "*adverse effects above and beyond those inherently associated with such a special exception use*" and must be denied. It epitomizes the language in the seminal zoning case, Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926) which stated ***"A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard."***

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of July, 2007, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Aaron Plymouth, Randallstown PTSA, 8546 Stevenswood Road, Windsor Mill, MD 21244 and to Karl Nelson, 500 E Pratt Street, Suite 900, Baltimore, MD 21202, Attorney for Petitioner(s).

CAROLE S DEMILIO
Deputy People's Counsel for Baltimore County

IN RE: PETITION FOR SPECIAL EXCEPTION Southwest Corner of Winands Road and Offutt Road 2nd Election District 4th Councilmanic District **(14000 Offutt Road)**	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Board of Education for Baltimore County, *Legal Owners* and Omnipoint Communications CAP Operations, LLC, Lessee *Petitioners*	* * * *	CASE NO. 06-421-X

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

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

MOTION TO STRIKE AND DISMISS
ADMINISTRATIVE APPEAL OF AARON PLYMOUTH

Petitioner, Omnipoint Communications CAP Operations, LLC (t/a "T-Mobile"), by its undersigned counsel, hereby moves to strike, and for dismissal of, Aaron Plymouth's appeal of the above-captioned matter, and for cause states as follows:

1. This case involves T-Mobile's efforts to obtain a special exception for construction of a stealth-type wireless facility at Randallstown High School.

2. T-Mobile's special exception application was heard by the Deputy Zoning Commissioner in due course.

3. On May 22, 2006, the Deputy Zoning Commissioner issued his written decision and order granting T-Mobile's special exception.

4. At no time during the special exception process did Mr. Plymouth make any appearance of any description. He did not appear at the hearing. He did not send a letter to the County for inclusion in the file. The County's file reveals no phone calls between Mr. Plymouth and any members of the planning staff or other relevant County personnel. In sum,

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BOARD OF APPEALS

Mr. Plymouth had no involvement whatsoever in the matter until after the Deputy Zoning Commissioner's final decision and order were issued.

5. On June 19, 2006, for the first time, Mr. Plymouth expressed interest in this matter by filing a notice of appeal.

6. Upon receiving notification from the County that Mr. Plymouth had filed an appeal, undersigned counsel had a paralegal review the entire file in the Board of Appeals' offices and confirmed, as explained above, that Mr. Plymouth had absolutely no involvement in this matter until after the Deputy Zoning Commissioner's final decision and order was filed.

7. It has always been the County's position that "standing" to participate in an appeal to the Board of Appeals requires at least some participation at the Zoning Commissioner stage. Traditionally, the amount of participation required has been quite low. For example, it is common for the Office of People's Counsel to simply submit a notice of entry of appearance at the Zoning Commissioner stage to preserve their ability to participate in subsequent Board of Appeals proceedings.

8. The County's position is consistent with state administrative law. As a general matter, standing in administrative appeals requires *some* participation by the potential appellant at the initial hearing stage. *See, e.g., Sugarloaf Citizens' Ass'n. v. Department of Environment*, 344 Md. 271, 286-7 (1996) (any person "clearly identifying himself as having an interest in the outcome of the matter being considered . . . becomes a party to the proceedings.") Such participation may come in the form of testimony, a letter, or almost any defined form of conduct. *Id.* The key, however, is that the potential appellant make clear *some* interest in the outcome of the matter in such a way that the record demonstrates such interest. *Id.*

9. Mr. Plymouth's notice of appeal violates both the County's historical position concerning standing and state administrative law. Simply put, Mr. Plymouth did *nothing* prior to receiving the Deputy Zoning Commissioner's final decision and order. Accordingly, under both established Baltimore County procedure and Maryland administrative law, Mr. Plymouth has no standing to file and pursue an appeal.

10. As Mr. Plymouth clearly has no standing to pursue this matter before the Board of Appeals, his notice of appeal should be stricken, and the appeal should be dismissed.

WHEREFORE, Omnipoint Communications CAP Operations, LLC, respectfully requests that the appeal filed by Aaron Plymouth be stricken, and further that the appeal be dismissed.

Respectfully submitted,

Karl J. Nelson
Saul Ewing LLP
500 East Pratt Street
Baltimore, Maryland 21202
Tel.: 410-332-4461

Counsel for Omnipoint
Communications CAP Operations,
LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2006 a copy of the foregoing Motion to Strike and Dismiss Administrative Appeal of Aaron Plymouth was mailed first class, postage prepaid to Aaron Plymouth, Randallstown PTSA, 8546 Stevenswood Road, Windsor Mill, Maryland 21244 and Office of People's Counsel, Carole S. Demilio, Deputy People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

Karl J. Nelson

SAUL EWING
Attorneys at Law
A Delaware LLP

Celebrating 85 years of service.

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

August 4, 2006

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

Re: Case: 06-421-X, 14000 Offutt Road

Dear Ms. Bianco:

Enclosed is a Motion to Strike and Dismiss Administrative Appeal of Aaron Plymouth for filing in the above-referenced case.

Thank you for your attention to this matter.

Very truly yours,

Karl J. Nelson

KJN/slm
Enclosure
cc: People's Counsel of Baltimore County
Aaron Plymouth

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BALTIMORE COUNTY
BOARD OF APPEALS

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

April 14, 2006

Karl Nelson
Saul Ewing, LLP
Lockwood Place
500 E Pratt St, Suite 900
Baltimore, MD 21202-3171

Dear Mr. Nelson:

RE: Case Number: 06-421-X, 4000 Offutt Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 1, 2006.

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.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Board of Education of Baltimore County Joe A. Hairston 6901 North Charles Street Towson 21204
Rick Gay 1940 G Greenspring Drive Timonium 21093
Omnipoint Communications CAP Operations, LLC 12050 Baltimore Avenue Beltsville 20705

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: March 16, 2006

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 6-421- Special Exception**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Dave Green in the Office of Planning at 410-887-3480.

Prepared By: _____

Division Chief: _____

CM/LL

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4/21

Baltimore County
Fire Department

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

March 7, 2006

ATTENTION: Zoning Review planners

Distribution Meeting of: March 6, 2006

Item No.: Item Numbers 409 through 417 and 425

421

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

6. The Fire Marshal's Office has no comments at this time.

LT. Roland P. Bosley Jr.
Fire Marshal's Office
PHONE 887-4881
MS-1102F

cc: File

Fire Department

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

Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

March 14,2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: March 13,2006

Item No.: 411, 418, 419, 420, 421, 423, 424, 426

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Marshal's Office has no comments at this time.

Acting Lieutenant Don W. Muddiman
Fire Marshal's Office
(O)410-887-4881
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: March 14, 2006

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For March 20, 2006
Item Nos. 411, 418, 419, 420, 421, 422, 423, 424, and 426

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-03142006.doc

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

SHA State Highway Administration Driven to Excel

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

Date: 3.14.06

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

RE: Baltimore County
Item No. 421 BPR

Dear. Ms. Matthews:

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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

RE:	PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
	4000 Offutt Road; SW corner Winands Road & Offutt Road	*	ZONING COMMISSIONER
	2nd Election & 4th Councilmanic Districts		
	Legal Owner(s): Board of Education Baltimore County by Joe Hairston	*	FOR
	Contract Purchaser(s): Omnpoint Communications CAP Operations, LLC	*	BALTIMORE COUNTY
	Petitioner(s)	*	06-421-X

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and 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 13th day of March, 2005, a copy of the foregoing Entry of Appearance was mailed Rick Gay, 1940G Greenspring Drive, Timonium, MD 21093 and Karl Nelson, 500 E Pratt Street, Suite 900, Baltimore, MD 21202, Attorney for Petitioner(s).

RECEIVED
MAR 13 2006
Per...

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

RE:	PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE COUNTY
	4000 Offutt Road; SW corner Winands Road & Offutt Road	*	BOARD OF APPEALS
	2nd Election & 4th Councilmanic Districts		
	Legal Owner(s): Board of Education	*	FOR
	Baltimore County by Joe Hairston		
	Contract Purchaser(s): Omnpoint	*	BALTIMORE COUNTY
	Communications CAP Operations, LLC		
	Petitioner(s)	*	06-421-X

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

ENTRY OF APPEARANCE

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

RECEIVED
JUL 27 2006
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2006, a copy of the foregoing Entry of Appearance was mailed Rick Gay, 1940G Greenspring Drive, Timonium, MD 21093 and Karl Nelson, 500 E Pratt Street, Suite 900, Baltimore, MD 21202, Attorney for Petitioner(s).

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

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

July 24, 2006

Karl J. Nelson
Saul Ewing, LLP
Lockwood Place
500 East Pratt Street
Baltimore, MD 21202-3171

Dear Mr. Nelson:

RE: Case: 06-421-X, 14000 Offutt Road

Please be advised that an appeal of the above-referenced case was filed in this office on June 19, 2006 by Aaron Plymouth on behalf of the Randallstown High School PTSA. 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,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Aaron Plymouth, Randallstown PTSA, 8546 Stevenswood Road, Windsor Mill 21244
Oakleigh Thorne, 10605 Concord Street, Ste. 420, Kensington 20895
Omnipoint Communications CAP Operations, 12050 Baltimore Avenue, Baltimore 20705
Rick Gay, 19406 Greenspring Drive, Timonium 21093
Louis Llovio, Owings Mills Times, 409 Washington Avenue, Ste. 400, Towson 21204

APPEAL

Petition for Special Exception
14000 Offutt Road
S/west corner of Winands Rd., and Offutt Road
2nd Election District – 4th Councilmanic District
Legal Owners: Board of Education
Petitioners: Omnipoint Communications CAP Operations

Case No.: 06-421-X

Petition for Special Hearing (March 1, 2006

Zoning Description of Property

Notice of Zoning Hearing (March 24, 2006)

Certification of Publication (The Jeffersonian – April 6, 2006

Certificate of Posting (April 6, 2006) by Sandra Egolf

Entry of Appearance by People's Counsel (March 13, 2006)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Site Plan
2. Maps
3. Aerial Photo Map
4. Baltimore County Zoning Map
5. Baltimore County Zoning Map
6. Photographs (A thru D)

Protestants' Exhibits – None in File

Miscellaneous (Not Marked as Exhibit)
1. Attachment A – Statement of Justification
2. Attachment D – Antenna and Equipment Specs
3. Attachment E – Photo Simulations
4. Attachment F – Radio Frequency Exposure Study
5. Homes & Residential Land (Offutt Road)

Deputy Zoning Commissioner's Order (GRANTED – May 22, 2006)

Notice of Appeal received on June 19, 2006 by Aaron Plymouth for Randallstown High PTSA

C: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Karl Nelson, Saul Ewing, Lockwood Place, 500 East Pratt Street, Baltimore, MD 21202-3171
Aaron Plymouth, Randallstown PTSA, 8546 Stevenswood Road, Windsor Mill 21244
Oakleigh Thorne, 10605 Concord Street, Ste. 420, Kensington 20895
Omnipoint Communications CAP Operations, 12050 Baltimore Avenue, Baltimore 20705
Rick Gay, 19406 Greenspring Drive, Timonium 21093
Louis Llovio, Owings Mills Times, 409 Washington Avenue, Ste. 400, Towson 21204

date sent July 24, 2006, klm

APPEAL

Petition for Special Exception
14000 Offutt Road
S/west corner of Winands Rd., and Offutt Road
2nd Election District – 4th Councilmanic District
Legal Owners: Board of Education
Petitioners: Omnipoint Communications CAP Operations

Case No.: 06-421-X

Petition for Special Hearing (March 1, 2006

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Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – One Sheet

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5. Baltimore County Zoning Map
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4. Attachment F – Radio Frequency Exposure Study
5. Homes & Residential Land (Offutt Road)

Deputy Zoning Commissioner's Order (GRANTED – May 22, 2006)

Notice of Appeal received on June 19, 2006 by Aaron Plymouth for Randallstown High PTSA

RECEIVED
JUL 21 2006
BALTIMORE COUNTY
BOARD OF APPEALS

C: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Karl Nelson, Saul Ewing, Lockwood Place, 500 East Pratt Street, Baltimore, MD 21202-3171
Aaron Plymouth, Randallstown PTSA, 8546 Stevenswood Road, Windsor Mill 21244
Oakleigh Thorne, 10605 Concord Street, Ste. 420, Kensington 20895
Omnipoint Communications CAP Operations, 12050 Baltimore Avenue, Baltimore 20705
Rick Gay, 19406 Greenspring Drive, Timonium 21093
~~Louis Llovio, Owings Mills Times, 409 Washington Avenue, Ste. 400, Towson 21204~~

date sent July 24, 2006, klm

CASE #: 06-421-X

IN THE MATTER OF: BOARD OF EDUCATION –Legal Owner;
Omnipoint Communications CAP Operations - Petitioner
4000 Offutt Road 2nd E; 4th C

SE – To allow the subject property for an unmanned wireless telecommunications facility in a D.R. 3.5 zone

5/22/06 – D.Z.C.'s Order in which requested special exception request was GRANTED.

4/16/07 --Notice of Assignment sent to following; assigned for hearing on Tuesday, May 15, 2007 at 10:30 a.m.:

Aaron Plymouth, President
Randallstown High School PTSA
Karl Nelson, Esquire
Board of Education
Omnipoint Communications CAP Operations
Oakleigh Thorne
Rick Gay
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

4/24/07 --T/C from Karl Nelson, Esquire – conflict with PG County Circuit Court scheduled appearance; advised Mr. Nelson that 5/16/07 had come open; will send letter requesting reassignment to that date.
- FAX request from Mr. Nelson for reassignment of this case as indicated above.
- Notice of Reassignment sent to parties this date; case reassigned to Wednesday, May 16, 2007 at 10a.m.

NOTE: Added to file:
Motion to Strike and Dismiss Administrative Appeal of Aaron Plymouth filed by Mr. Nelson on 8/07/06.
Letter dated 8/16/07 from Mr. Zimmerman – submitting information concerning law relating to parties entitled to appeal.

5/16/07 – Board convened for hearing (5-2-6); concluded this date; memos due 6/15/07; deliberation on 7/18/07. Notice to be sent upon confirmation of availability – 5. **NOTE: EXTENDED TO 6/22/07.**

5/21/07 – Notice of Deliberation sent to parties this date; assigned for Wednesday, July 18, 2007 at 9:00 a.m. FYI copy to 5-2-6.

6/21/07 – Letter from Karl Nelson, Esquire – requesting 3-week extension for filing of memos; indicates no objection by Office of People's Counsel; confirmed same via telephone this date. Request granted; memos due in this matter on Friday, July 13, 2007; public deliberation will therefore be extended and reassigned to Wednesday, August 22, 2007 at 9 a.m.

7/13/07 – Per t/c from Ms. Demilio and confirmation call with Mr. Nelson – memos are to be filed on Tuesday, July 17, 2007 – Ms. Demilio has no objection to the additional 4 days needed by Mr. Nelson. Deliberation will remain on 8/22/07. Letter to counsel this date confirming same (hand-delivered to Ms. Demilio; FAX and USPS to Mr. Nelson).

7/17/07 – People's Counsels for Baltimore County's Memorandum filed by Office of People's Counsel; Petitioner's Post-Hearing Memorandum filed by Mr. Nelson on behalf of Petitioner.

7/19/07 – Copies of above memos to Brassil, Stahl and Witt; revised notice of deliberation sent FYI to 5-2-6 on 6/21/07; deliberation assigned for Wednesday, August 22, 2007 at 9 a.m.

County Board of Appeals of Baltimore County

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

July 13, 2007

Karl J. Nelson, Esquire
SAUL EWING LLC
Lockwood Place
500 E. Pratt Street
Baltimore, MD 21202
VIA FACSIMILE 410-332-8184 AND US MAIL.

Carole S. Demilio, Deputy People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204
VIA HAND-DELIVERY.

RE: *In the Matter of: Omnipoint Communications CAP Operations* – Petitioner
Case No. 06-421-X / Additional Extension of Time for Filing Memos

Dear Counsel:

In response to the request received this date, **briefs are now due from all parties by close of business on Tuesday, July 17, 2007** (extending the filing time by four days).

The public deliberation will remain as assigned on Wednesday, August 22, 2007 at 9:00 a.m.

Should you have any questions, please call me.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

FILE

Printed with Soybean Ink
on Recycled Paper

COUNTY BOARD OF APPEALS

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

FACSIMILE TRANSMITTAL SHEET

TO AND FAX NUMBER:

KARL J NELSON ESQUIRE

FAX : 410-332-8184

FROM:

KATHLEEN BIANCO
FAX : 410-887-3182

TELEPHONE : 410-887-3180

DATE:
JULY 13, 2007

TOTAL NO. OF PAGES INCLUDING COVER:
TWO (2)

Re: Omnipoint /Case No. 06-421-X – ADDITIONAL EXTENSION FOR MEMOS.

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

PERSONAL AND CONFIDENTIAL

ATTACHED IS A COPY OF THE LETTER SENT VIA US MAIL THIS DATE REGARDING THE DUE DATE FOR MEMOS, EXTENDING SAME TO TUESDAY, JULY 17, 2007 (AN ADDITIONAL 4 DAYS).

PUBLIC DELIBERATION WILL REMAIN AS SCHEDULED ON AUGUST 22ND AT 9 A.M.

SHOULD YOU HAVE ANY QUESTIONS, PLEASE CALL ME.

COPY HAND-DELIVERED TO MS. DEMILIO.

County Board of Appeals of Baltimore County

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

June 21, 2007

VIA FACSIMILE 410-332-8184 AND US MAIL.

Karl J. Nelson, Esquire
SAUL EWING LLC
Lockwood Place
500 E. Pratt Street
Baltimore, MD 21202

RE: *In the Matter of: Omnipoint Communications CAP Operations* – Petitioner
Case No. 06-421-X /Extension of Time for Filing Memos

Dear Mr. Nelson:

In response to your letter received this date, and without opposition by Ms. Demilio, your request for an extension for filing of memoranda in the subject matter has been granted. **Briefs are now due from all parties by close of business on Friday, July 13, 2007** in lieu of the previously designated June date.

Accordingly, the public deliberation scheduled for mid-July will be reassigned to a date some time in mid-August, with appropriate notice to be sent once a new date has been confirmed with the Board.

Should you have any questions, please call me.

FILE

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Carole S. Demilio, Deputy People's Counsel
for Baltimore County

Printed with Soybean Ink
on Recycled Paper

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

August 16, 2006

RECEIVED
AUG 16 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Board of Education for Baltimore County and Omnipoint Communications CAP Operations, LLC, Petitioners
14000 Offutt Road
Case No.: 06-421-X

Dear Chairman Wescott,

We are in receipt of Omnipoint Communications' Motion to Strike and Dismiss Administrative Appeal of Aaron Plymouth.

Because we appear regularly before the Board, and are interested in correct procedure related to zoning cases and defense of the zoning maps, we submit this information concerning the law relating to parties entitled to appeal.

Code Sec. 32-3-401(a) allows not only a "person aggrieved" but also any "**person feeling aggrieved**" to file an appeal. This language is derived from former Code Sec. 26-127. In this context, the CBA has always construed this law liberally to allow an appeal even by a person who did not enter an appearance or participate at the Zoning Commissioner level. An example is the enclosed decision in the Steinbach case, 89-424-SPHX, August 8, 1989, in which such a person was considered "aggrieved." This was, in our view, also an implicit recognition of the liberal language of the Code.

We can understand Omnipoint's point of view. Nevertheless, under the prevailing law, we believe Mr. Plymouth is entitled to appeal. If Code Sec. 32-3-401 limited appeals to a "person aggrieved" only, we would agree with Omnipoint, as that concept has generally been understood to apply to persons who appeared as parties at the lower level.

Therefore, in the interest of correct and consistent application of the law, we feel it appropriate to express our views in this letter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw
Enclosures

cc: Karl Nelson, Esquire
Aaron Plymouth

IN THE MATTER OF THE APPLICATION OF KENNETH S. STEINBACH FOR A SPECIAL HEARING AND SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE: SOUTH SIDE OF BALTIMORE NATIONAL PIKE, 225' WEST OF THE WEST SIDE OF WINTERS LANE (6009 BALTIMORE NATIONAL PIKE) 1st ELECTION DISTRICT 1st COUNCILMANIC DISTRICT	: : : : : : : :	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 89-424-SPHX

: :

RULING ON MOTION TO DISMISS APPEAL
OF HARRY WALLER, APPELLANT

The Board has before it from the law offices of Turner, Mix & Farmer a Motion to Dismiss the Appeal of Harry Waller in Case No. 89-424-SPHX. Mr. Waller is the owner of the adjoining property to Kenneth S. Steinbach, Petitioner. Mr. Waller actively participated in Case No. CBA-88-137 regarding the closing of Melvin Avenue which affects both properties. Mr. Waller has appealed the Board's ruling in Case No. CBA-88-137 to the Circuit Court.

In any decision regarding the Steinbach property, Mr. Waller certainly meets the requirements of an aggrieved party. The cases heard by the Board are of a de novo nature, and anyone who is aggrieved by the decision of this Board or of the Zoning Commissioner is therefore due the right of appeal from that decision. Whether Mr. Waller attended the Deputy Zoning Commissioner's hearing or did not attend the Deputy Zoning Commissioner's hearing is, in the opinion of this Board, not relevant to his right to appeal that decision to this Board.

In consideration of these circumstances, the Board is of the opinion it must deny the Motion to Dismiss the Appeal of Harry Waller and will set the case for hearing in its normal sequence.

ORDER

It is therefore this 8th day of August, 1989 that the Motion to Dismiss the Appeal of Harry Waller in Case No. 89-424-SPHX be and the same is DENIED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett

William T. Hackett, Chairman

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

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

March 21, 2006

OK to postpone
TMK

Via Facsimile 410-887-3048
and Regular Mail

Timothy M. Kotroco, Director
Department of Permits and
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 06-421-X

Dear Mr. Kotroco:

On March 20, 2006, I received a Notice of Zoning Hearing for case 06-421-X. The Notice indicated that the case has been set in for hearing on Friday, April 7, 2006 at 2:00 p.m. I am counsel for the moving party in the matter, Omnipoint Communications CAP Operations, LLC.

On April 7, 2006, I will be returning from a business trip to Seattle, Washington. Accordingly, I respectfully request that the hearing be rescheduled to a date after April 7, 2006.

I thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions or require any additional information about the matters discussed above.

Very truly yours,

Karl J. Nelson

KJN/hev

cc: Steve Weber
Kristin Matthews

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

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

April 24, 2007

VIA FACSIMILE AND U.S. MAIL

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

Re: Request for Postponement
Case: 06-421-X, 14000 Offutt Road

Dear Ms. Bianco:

Per our conversation of earlier today, I am scheduled to appear in the Circuit Court for Prince George's County on May 15, 2007. Accordingly, by this letter I request postponement of the case 06-421-X hearing recently scheduled for May 15, 2007. I understand that May 16, 2007 may be available for a hearing and would welcome a rescheduling to that date if it is possible.

Thank you for your attention to this matter.

Very truly yours,

Karl J. Nelson

KJN/slm
Enclosure

SAUL EWING
Attorneys at Law
A Delaware LLP
Celebrating 85 years of service.

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

June 21, 2007

VIA FACSIMILE AND U.S. MAIL

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

Re: Request for Extension Concerning Closing Memorandum Deadline in Board of Appeals Case No.: 06-421-X, 14000 Offutt Road

Dear Ms. Bianco:

Closing Memoranda in the above-referenced case are currently due on Friday, June 22, 2007. I respectfully request a three week extension to that deadline so that I can properly complete the required briefing. I have contacted the Office of People's Counsel, and Ms. DeMilio does not object to the requested extension.

Thank you for your consideration to this matter.

Very truly yours,

Karl J. Nelson

KJN/slm
cc: Carole S. DeMilio

RECEIVED
JUN 22 2007
BALTIMORE COUNTY
BOARD OF APPEALS

8546 Stevenswood Road
Windsor Mill, MD 21244
April 5, 2007

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

Re: Case 06-421-X, 4000 Offutt Road

Dear Ms. Bianco,

Thank you for sharing with me today the plans for scheduling and informing interested parties about the date of the upcoming appeal hearings. I will be out of town from May 18th until May 25th. Thus, I am respectfully requesting you to schedule the hearing after Memorial Day.

Thank you for your cooperation and support.

Sincerely,

Aaron Plymouth

Aaron Plymouth
Petitioner

RECEIVED
APR 06 2007
BALTIMORE COUNTY
BOARD OF APPEALS

8546 Stevenswood Road
Windsor Mill, MD 21244
June 16, 2006

Mr. William J. Wiseman, III
Baltimore County Zoning Commissioner
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204 Case # 06-421-X

Dear Mr. Wiseman, III,

On behalf of the Randallstown High School PTSA, I am appealing the decision that granting The Board of Education of Baltimore County and Omni Point Communications to erect a communications tower on the grounds of Randallstown High School.

I am enclosing the filing fee of $400.

Thank you for your consideration.

Sincerely,

Aaron Plymouth
PTSA President

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

DATE: January 25, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

The following case(s) have been finalized and the Board of Appeals is closing the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

BOARD OF APPEALS CASE NUMBER	*PDM FILE NUMBER*	NAME	LOCATION
06-063-A	***Same***	Joseph F. Baird	1009 Bowleys Quarters Road
06-070-A	***Same***	Ann C. Shepter	611 Piccadilly Road
06-320-A	***Same***	Charisopher & Sally Pfaeffle	1217 Merediths Ford Road
06-421-X	***Same***	Omnipoint Communications CAP	4000 Offutt Road
06-315-SPH	***Same***	Mark D. Loy	4714 Mt. Carmel Road
06-108-SPH	***Same***	Benjamin A. & Kayren P. Governale	39 Glenbrook Road
CBA-06-050	***DRC #100306***	Hilgartner Property a/k/a Park Heights Avenue	11964 Park Heights Avenue

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
DAKLEIGH J. THORNE	10605 Concord St. Suite 420	Kensington MD 20895	THORNECONSULTANTS@EARTHLINK.NET
MEESARAPU, PRAVEEN	12050 BALTIMORE AVE	BELTSVILLE MD 20704	Praveen.Meesarapu@T-mobile.com
Greg Soulé	12050 Baltimore Ave.	Beltsville, MD 20704	Greg.soule@T-Mobile.com
Katie Oppenheimer	12050 Baltimore Ave.	Beltsville, MD 20705	Katie.oppenheimer@t-mobile.com
Steven Weber	12050 Baltimore Ave.	Beltsville, MD 20705	steven.weber@t-mobile.com
Karl Nelson	100 S. Charles St.	Balt. MD 21201	knelson@saul.com

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Louis Llovio Owings Mills Times	409 Washington Ave #400	Towson, MD 21204	llovio@baltsun.com

Attachment A

Statement of Justification

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY, MARYLAND

In the Matter of the Petition of Omnipoint Communications CAP Operations, LLC, a subsidiary of T-Mobile, USA for Special Exception & Special Hearing Approval to Install a Wireless Telecommunications Facility at Randallstown High School 4000 Offutt Road, Randallstown, MD 21133	:	Case No. _____

STATEMENT

In accordance with the requirements of the Baltimore County Zoning Regulations ("BCZR"), Omnipoint Communications CAP Operations, LLC, a subsidiary of T-Mobile, USA ("T-Mobile" or "Applicant") hereby furnishes the following Statement in support of the request that a special exception be granted permitting the installation of an unmanned wireless telecommunication facility (the "Facility") to be located at Randallstown High School, 4000 Offutt Road, Randallstown, Baltimore County, Maryland (the " Property").

APPLICANT

T-Mobile holds a license issued to it by the Federal Communications Commission ("FCC") to provide personal communication service ("PCS") throughout the greater Baltimore-Washington, DC metropolitan areas, including all portions and sections of Baltimore County. T-Mobile now seeks approval of this special exception application to construct and operate the proposed unmanned wireless telecommunications facility in accordance with the terms, obligations and responsibilities of said license.

NATURE OF THE REQUEST

The Applicant requests special exception approval to permit the establishment of an unmanned wireless telecommunications facility in a DR 3.5 zone. The Facility will primarily consist of three (3) antenna sectors with three (3) antennas per sector attached to a 110-foot stealth light pole telecommunications tower be located at Randallstown High School (4000 Offutt Road, Randallstown, Maryland 21133). This light pole/monopole will replace an existing 30-foot light pole located 3-feet away. The nine (9) total antennas will be located at an antenna centerline ("RAD Center") of 107- feet. In addition to the three (3) antenna sectors, Omnipoint will install three (3) proposed ancillary equipment cabinets on a 10-foot by 20-foot concrete pad within a 20-foot by 40-foot chain-link fenced area at the base of the replacement light pole, which are shown on the Omnipoint Communications CAP Operations LLC zoning drawings ("ZD's") prepared by Daft, McCune and Walker, Inc. ("DMW") and dated November 29, 2005. This facility is sought to address pressing capacity issues at two existing Omnipoint antenna sites in the area (BAN079 and BAN178) as well as address gaps in wireless coverage in the vicinity of the site.

The antennas will be attached to the replacement light pole and have a RAD Center of 107-feet. The 63 ½-inch by 51 1/5-inch by 37-inch (height by width by depth) ancillary equipment cabinets will be placed within the above-referenced fenced area.

The facility will operate automatically and will not require personnel or hours of attendance. It will operate twenty-four (24) hours a day, three hundred and sixty-five days a year. Maintenance personnel will visit the site periodically and occasionally for repairs or modifications to the facility.

Coaxial cables will connect the equipment cabinets to the antennas. Copies of specification sheets for the antennas have been offered into evidence as well as drawings depicting the equipment platform and proposed screening. The antennas will be mounted to the proposed 110' monopole (107' RAD center) and will not exceed a height of 110'.

The Facility was approved by Baltimore County's Tower Review Committee on Tuesday, October 25, 2005.

REASON FOR REQUEST

The proposed Facility is needed in order for T-Mobile to provide seamless coverage of its Personal Communication Services (PCS) network. T-Mobile currently experiences a gap in antenna coverage and a lack of capacity in the area surrounding 4000 Offutt Road. In order to fulfill its service requirements, T-Mobile needs to locate a new telecommunications facility in this area. Seamless coverage areas for wireless communication are necessary for public convenience and service. Additionally, availability of wireless communications benefits the public safety and welfare by facilitating an individual's communication with police, fire & rescue operations in times of emergency.

In its evaluation of the need for service in the area and in completing an examination of possible site locations, T-Mobile has selected the Property as an appropriate location for its Facility. By locating its Facility on the Property, the Applicant minimizes the structure's visibility by replacing an existing vertical structure and also locating The Facility in the center of the large school parcel to minimize visibility from surrounding areas.

The property located at 4000 Offutt Road is zoned DR 3.5 (Residential). Telecommunications facilities are permitted by special exception in DR zones under Section 426.5(D).

OPERATION OF THE FACILITY

The Facility will be in continuous operation 24 hours per day. It will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the Property. There will be no lighting of the Facility. The Facility will be unmanned and will not create any significant impact on traffic to the surrounding area. After the initial construction of the Facility, the only visits to the site will be for emergency repairs or regularly scheduled maintenance visits of 1-2 times per month. The Facility will not require any water or sewer service; electric and telephone service is already on site. There will be no special requirements for other public facilities or services.

#491

CONDITIONS FOR GRANTING SPECIAL EXCEPTION, SECTION 502.1 (BCZR)

It must appear that the use for which the special exception is requested will not:

1. Be detrimental to health, safety or general welfare of the locality involved;

   There will be no harmful emissions or any electrical or blanketing interference from the equipment, transmission lines or antennas. The FCC does not permit the use of such facilities where the result will adversely impact television or radio reception, or have adverse impacts on garage door openers or other such devices. The Telecommunications Act of 1996 dismissed the question of environmental effects of radio frequency emissions from local consideration. The Applicant has also submitted a report by an expert in the field verifying that the proposed Facility complies with the FCC emissions standard (See Attachment F).

   There will be no adverse impact on the health, safety, or general welfare of residents, visitors or workers in the area. Instead, the general welfare of the citizens and the surrounding properties will benefit from the improved mobile telephone (PCS) communications provided by T-Mobile. As discussed above, the proposed Facility is a low intensity use that does not impose adverse impacts upon surrounding properties.

   Public health and safety will benefit in that a number of county agencies, including police, fire and rescue, utilize PCS telephone communications in performing their important public service missions. Furthermore, vehicular accidents or crimes can be reported immediately after their occurrence when observed by a PCS user, which results in faster response time, by the police or rescue officials.

2. Tend to create congestion in roads, streets or alleys therein;

   The Facility will be unmanned and will not create any significant impact on traffic to the surrounding area.

3. Create a potential hazard from fire, panic or other danger;

   The Facility will not be a detriment to public safety (i.e. fire hazard, panic or other danger).

4. Tend to overcrowd land and cause undue concentration of population;

   The proposed installation will be in harmony with the character of the existing density and concentration of population. There will be no impact to existing parking, landscaping, or other features of the existing structure and property.

5. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

   The Facility will not interfere with the provisions necessary for the school located on this parcel as well as water, sewerage, transportation/other public requirements,

conveniences or improvements. There will be no need for water or sewer service and no special requirement for other public facilities or services.

6. Interfere with adequate light and air;

   The Facility will cause no objectionable fumes, odors, dust, illumination, glare or physical activity at the Property.

7. 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;

   The Special Exception is consistent with the general plan for the physical development of the surrounding area. The proposed Facility will only consist of an 837 square foot area and will not adversely alter the residential nature of the area. The Special Exception is in harmony with the general purpose and intent of the adopted and approved Master Plan for the area and the Zoning Ordinance, as outlined above, and by improving the quality of mobile communication systems in the County and surrounding jurisdictions.

8. Be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations;

   The proposed facility will not hinder the mission of the impermeable surface and vegetative retention provisions of these zoning regulations. In addition, the Telecommunications Act of 1996 dismissed the question of environmental effects of radio frequency emissions from local consideration.

Respectfully submitted,

By: Kathleen D. Oppenheimer

Kathleen D. Oppenheimer
Network Building and Consulting, LLC
Consultant for T-Mobile
12050 Baltimore Avenue
Beltsville, MD 20705

Attachment D

Antenna and Equipment Specs

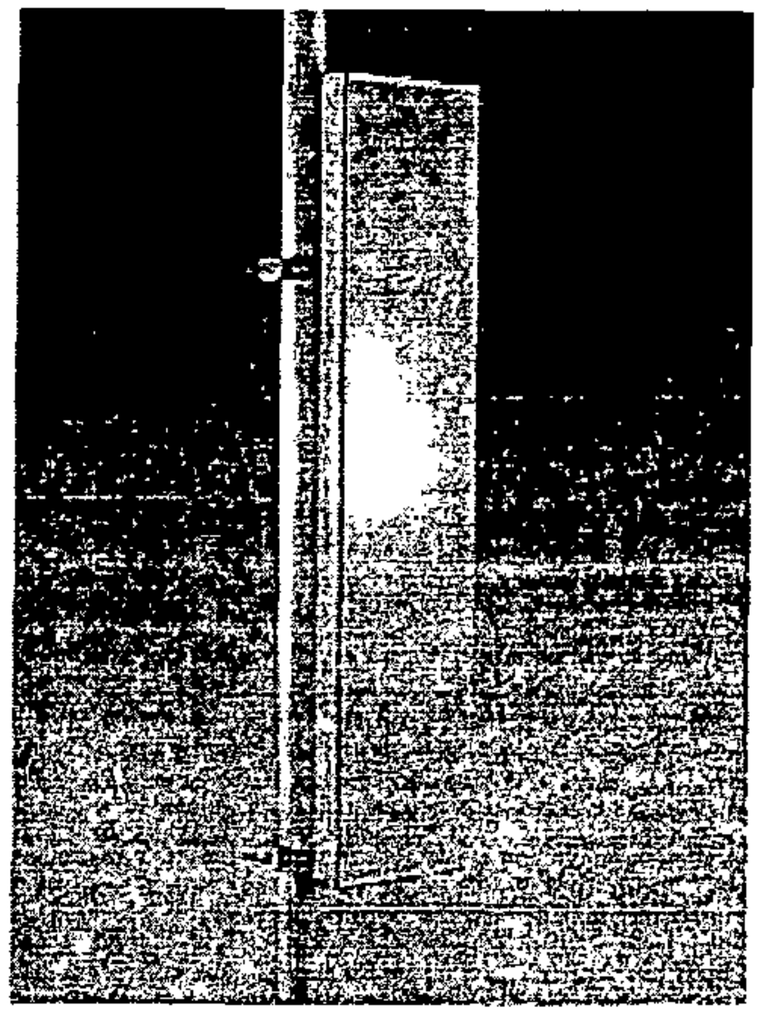
Technical Data Sheet APX16PV-16PVL-A

Optimizer® Panel Dual Polarized Antenna

RFS

Product Description

Gathering two X-Polarised antennas in a sigle radome this pair of variable tilt antenna provides exceptional suppression of all upper sidelobes at all downtilt angles. It also features a wide downtilt range with optional remote tilt.



Features/Benefits

- **Variable electrical downtilt - provides enhanced precision in controlling intercell interference. The tilt is infield adjustable 0-10 deg.**
- ***High Suppression of all Upper Sidelobes (Typically <-20dB).***
- **Optional remote tilt - can be retrofitted.**
- **Two X-Polarised panels in a single radome.**
- **Dual polarization.**
- **Low profile for low visual impact.**
- **Broadband design.**

Technical Features

Frequency Band	PCS 1900 (1850-1990 MHz)
Horizontal Pattern	Directional
Antenna Type	Panel Dual Polarized
Electrical Down Tilt Option	Variable
Gain, dBi (dBd)	17.8 (15.8) , 17.8 (15.8)
Frequency Range, MHz	1850-1990 , 1850-1990

All information contained in the present datasheet is subject to confirmation at time of ordering.

H441

Optimizer® Panel Dual Polarized Antenna

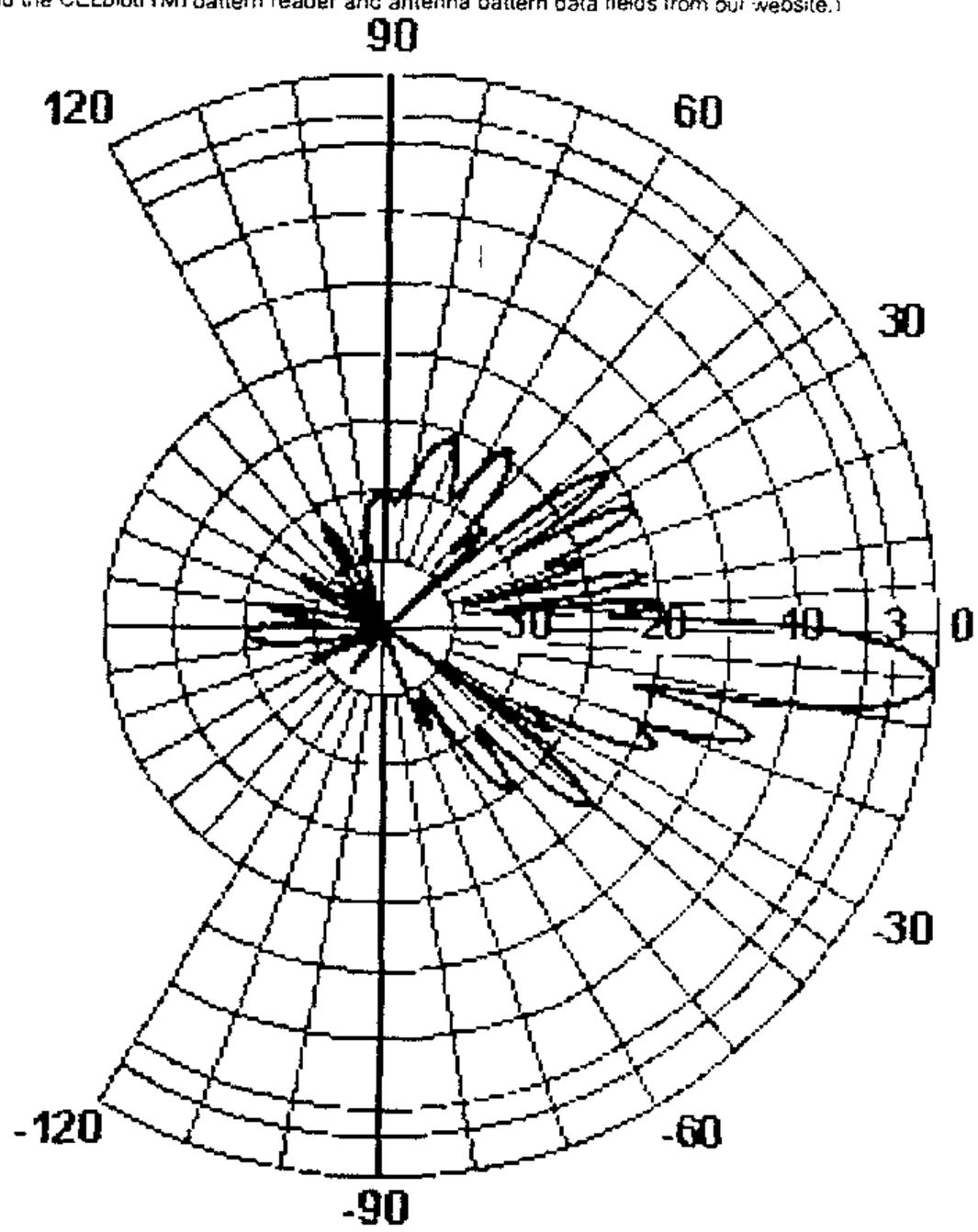
Connector Type	(4) 7-16 DIN Female
Connector Location	Bottom
Mount Type	Fixed
Electrical Downtilt, deg	0-10 , 0-10
Horizontal Beamwidth, deg	66 , 66
Mounting Hardware	APM40-1
Rated Wind Speed, km/h (mph)	160 (100)
VSWR	< 1.5:1
Vertical Beamwidth, deg	6.6
1st Upper Sidelobe Suppression, dB	> 17 (typically > 20)
Upper Sidelobe Suppression, dB	> 18 all (typically > 20)
Polarization	Dual pol +/-45°
Front-To-Back Ratio, dB	> 25
Maximum Power Input, W	300
Isolation between Ports, dB	> 30
Lightning protection	Direct Ground
3rd Order IMP @ 2 x 38 dBm, dBc	> 160
Overall Length, m (ft)	1.35 (4.42)
Dimensions - HxWxD, mm (in)	1349 x 330 x 80 (53 x 12.9 x 3.1)
Weight w/o Mtg. Hardware, kg (lb)	18.0 (39.6)
Radiating Element Material	Brass
Radome Material	Fiberglass
Reflector Material	Aluminum
Max Wind Loading Area, m² (ft²)	0.64 (6.6)
Maximum Thrust @ Rated Wind, N (lbf)	787 (177)
Shipping Weight, kg (lb)	22.8 (49.9)
Packing Dimensions, HxWxD, mm (in)	1550 x 420 x 210 (61 x 16.5 x 8.3)
Survival Wind Speed, km/h (mph)	200 (125)

All information contained in the present datasheet is subject to confirmation at time of ordering.

Optimizer® Panel Dual Polarized Antenna

Vertical Pattern

(This is a general representation of the antenna family pattern. For the latest detailed pattern contact Applications Engineering. You may also download the CELplot(TM) pattern reader and antenna pattern data fields from our website.)



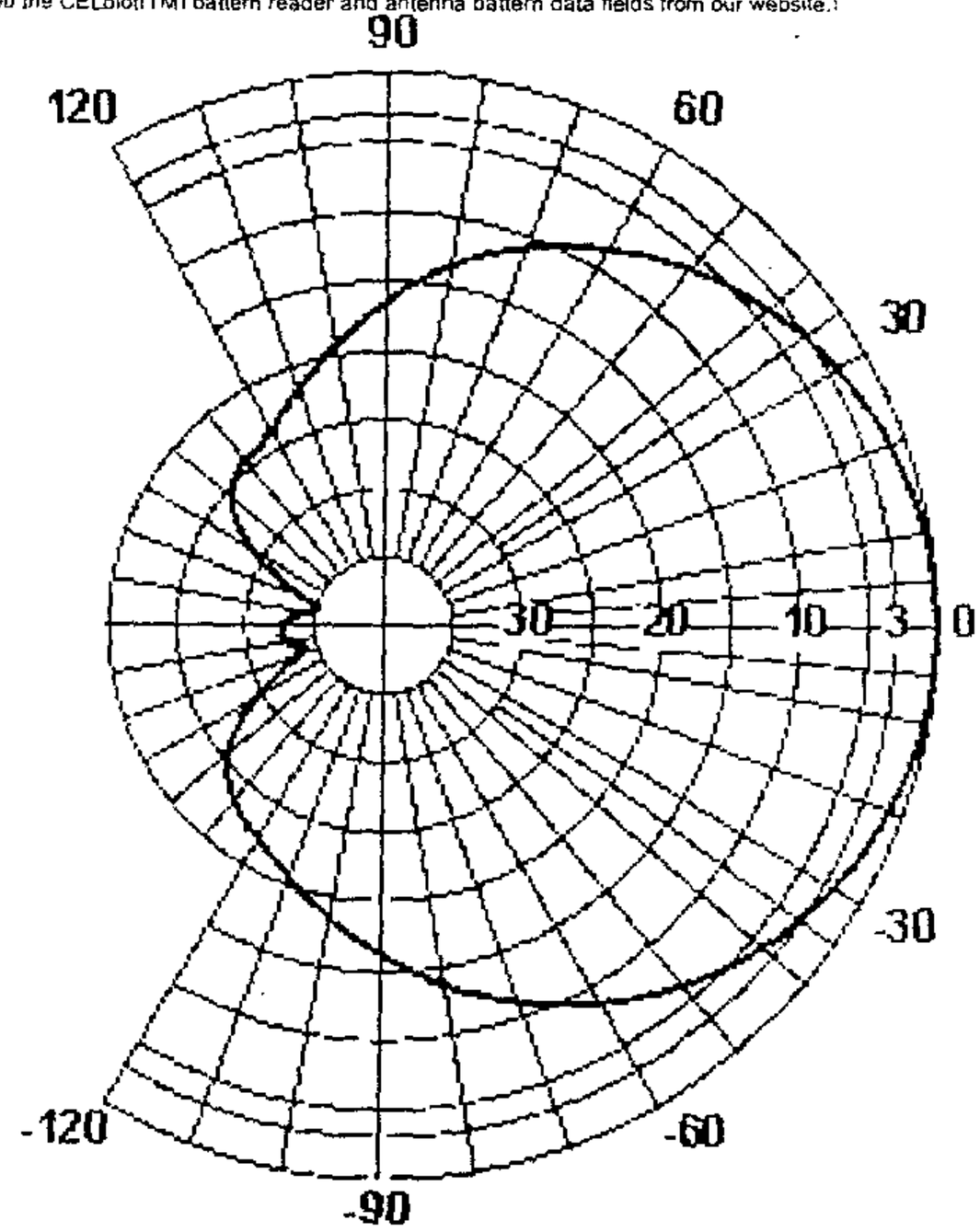
All information contained in the present datasheet is subject to confirmation at time of ordering

Optimizer® Panel Dual Polarized Antenna

RFS

Horizontal Pattern

(This is a general representation of the antenna family pattern. *For the latest detailed pattern contact Applications Engineering. You may also download the CELplot(TM) pattern reader and antenna pattern data fields from our website.*)



All information contained in the present datasheet is subject to confirmation at time of ordering.

The RBS 2106 cabinet

- Outdoor specified.
- Supports up to six double transceiver units (12 TRX's) per cabinet.
- One cabinet can be configured as a one, two or three sector cell configuration.
- The cabinet fulfils seismic requirements

Figure 7. RBS 2106 cabinet.

All units in the cabinet are easily accessible from the front of the cabinet. There are no requirements on access to the cabinet from the sides or the back, which implies that the cabinets can be mounted side by side with the back to a wall.

Cable entries for antenna feeders, transmission cables, and mains power are concentrated at the bottom of the cabinet.

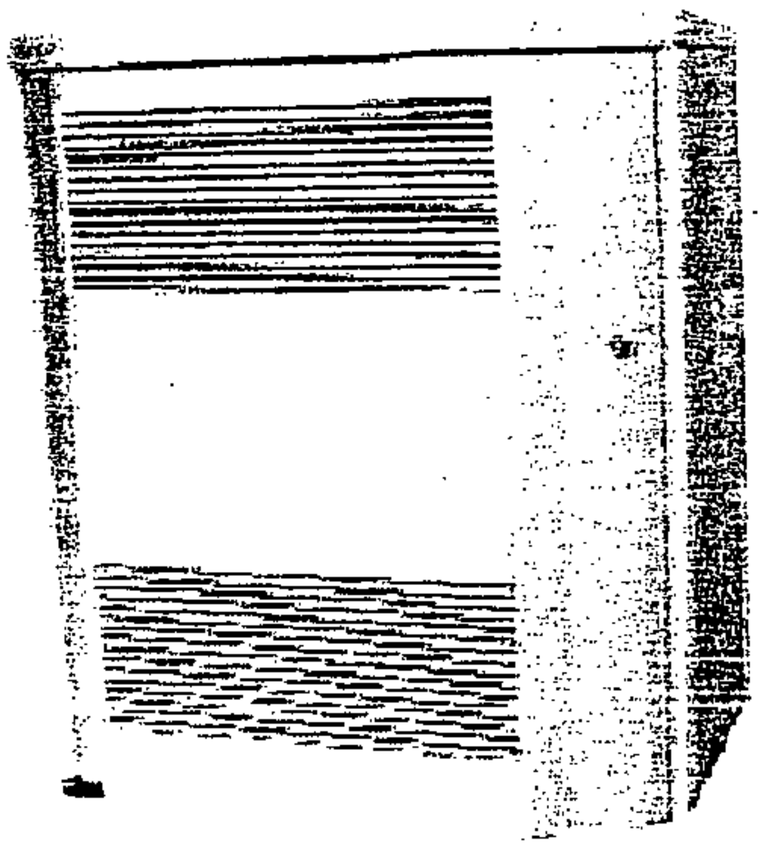


Figure 7. RBS 2106 cabinet.

© Ericsson. Commercial in confidence Rev A 2001-02-27 SRN/X-00:146

3 Technical Specification

3.1 Mechanical Dimensions

Table 1. Mechanical Dimensions.

Quantity	Value (mm)
Height	1614
Width	1300
Depth (inclusive door of 230 mm)	940
Footprint (Depth)	710

3.2 Weight

Table 2. Weight.

Unit	Weight (kg)
Fully equipped cabinet incl. batteries.	590

4 of 1

Fully equipped cabinet excl. batteries.
550

3.3 Power Requirements

Table 3. Power Requirements.

Quantity	Value
AC input voltage: 200–250 VAC	
Backup capacity at maximum load (depending on number of batteries)	15–30 min
External fuse:	
– AC input	1x50A or 3×32 A

3.4 Power Consumption

The maximum operating power consumption for RBS 2106 is 6.6 kW with air condition valid for 200-250 VAC.
These figures correspond to operation during peak load in extreme conditions. The power consumption during normal operation is however also configuration dependent.

CASE 06-421-X PETITIONER'S EXHIBITS 5/16/07

✓	1.	PRINT-OUT OF ASSET SYSTEM PROPAGATION MAP
✓	1A.	MYLAR PRINTOUT SHOWING COVERAGE IF TOWER IS INSTALLED
✓	2.	SITE PLAN OF PARKVILLE TOWN HIGH SCHOOL
✓	3.	SITE PLAN OF FULLERTON PARK.
✓	4.	1993 AERIAL PHOTO OF SCHOOL.
✓	5A	PHOTO N/W PORTION OF PROPERTY.
✓	B	PHOTO WINAN'S ROAD
✓	C	PHOTO OFFUTT & WINAN'S LOOKING AT BLDG
✓	D.	PHOTO " " " " FACILITY.
✓	6. A	No. 1, BALTO. COUNTY ZONING MAP. No. 5 DZC
	B	BALTO. COUNTY ZONING MAP. No. 4 "
✓	7.	ARC MAP

Attachment F

Radio Frequency Exposure Study

#421

ENGINEERING STATEMENT
RADIO-FREQUENCY EXPOSURE STUDY
RANDALLSTOWN HIGH SCHOOL
4000 OFFUTT ROAD
RANDALLSTOWN, MARYLAND

Pursuant to a request from T-Mobile Wireless ("T-Mobile"), also referred to as Omnipoint Communications CAP Operations, LLC, an analysis has been made of the radio-frequency ("RF") exposure in the vicinity of the proposed base station at Randallstown High School, 4000 Offutt Road, Randallstown, Maryland. This engineering statement describes the results of the analysis and the methodology employed.

Wireless Communications Service radio installations, such as that proposed by T-Mobile, are environmentally benign. They are compliant with the RF exposure standards adopted by the Federal Communications Commission ("FCC") and do not constitute a health hazard. They are not a potential source of interference to television or radio broadcast station reception or to electrical or electronic devices. They are neither a noise source nor a generator of traffic, nor do they emit noxious fumes.

T-Mobile proposes to replace an existing light standard with a 110-foot tall monopole which will support both light fixtures and the base station antennas. Antennas will be directed on three sector headings: 15, 135 and 255 degrees, respectively. The system will operate in the 1900 MHz (millions of cycles per second) band.

RFS Cablewave Model APX16PV-16PVL antennas are to be employed. Input power to each of three sectors will be approximately 42 watts. Each antenna concentrates

#471

the power in a single main beam. That concentration results in producing approximately 38 times (15.8 dBd) as much "effective radiated power"[1] as would be produced using a dipole antenna (a simple antenna consisting of a half-wavelength long single element). By concentrating power directed toward the service area intended to be served, each antenna substantially reduces power delivered to nearby areas in directions at large departures from the main beam angle. The shaping of the beam occurs in both vertical and horizontal planes. At any location, reception is principally from the antennas of one sector.

All calculations shown herein of RF exposure from the facility were made on the basis of maximum effective radiated power. At six feet above ground immediately below the antennas, the RF exposure will be less than 0.0017 percent of the maximum RF exposure permitted ("MPE") by FCC rules for the general population. A tabulation of maximum exposure versus distance at six feet above ground for horizontal distances from 10 to 4000 feet follows:

Distance[2] (feet)	**Pwr. Density ($\mu W/cm^2$)[3]**	**% of FCC MPE**	**Times Below MPE**
10	0.019	0.0019	52,000
20	0.018	0.0018	56,000
40	0.026	0.0026	39,000

[1] Effective radiated power is equal to the product of the input power to the antenna and the gain of the antenna. Gain is a measure of the effectiveness of the antenna to concentrate power into a single main beam.
[2] Distance from antenna support pole.
[3] Microwatts (millionths of a watt) per square centimeter.

60	0.050	0.0050	20,000
100	0.140	0.0140	7,300
200	0.180	0.0180	5,600
300	0.180	0.0180	5,600
400	0.270	0.0270	3,700
500	0.280	0.0270	3,600
600	0.310	0.0310	3,200
700	0.460	0.0460	2,200
800	0.630	0.0630	1,600
900	0.620	0.0620	1,600
1000	0.570	0.0570	1,800
1500	0.230	0.0230	4,400
2000	0.110	0.0110	8,800
3000	0.045	0.0045	22,000
4000	0.018	0.0018	56,000

Power density does not drop off uniformly as the distance increases because the antenna concentrates energy toward the horizon. At close distances, the amount of signal suppression counteracts the distance factor. At greater distances, the direct ray toward the location of interest more closely approaches the maximum of the antenna pattern. At some distances, the increased transmitted signal strength is a greater factor than the increased distance. Beyond about 1000 feet, power density drops off uniformly.

Exposure levels were calculated by methods prescribed by the FCC in a technical bulletin produced by the Office of Engineering and Technology. The rules specify different levels of exposure for two environments: (1) Occupational/Controlled and (2) General Population/Uncontrolled. The second category permits the exposure at most frequencies, including those used for the personal wireless services, to be only one-fifth of the levels permissible for the first category. All exposure environments considered herein are assumed to be in the second category. At 1900 MHz, the maximum exposure level permitted is 1000 $\mu W/cm^2$ averaged over a period of 30 minutes for the General Population/Uncontrolled environment. The maximum exposure from the T-Mobile system, calculated for any distance is more than 1,000 times lower than the maximum permitted exposure.

In making the foregoing calculations, the assumption was made that a reflecting surface was causing the exposure to be increased because the reflected signal was arriving in phase with the direct ray. The reflected signal could just as well arrive out of phase and act to reduce the exposure. Furthermore, the assumption was made that no intervening terrain obstructions, foliage or manmade structures reduced received signal strength.

The standard adopted by the FCC follows the maximum exposure limits set by the National Council on Radiation Protection and Measurements ("NCRP"), with some features taken from Standard C95.1/1992 of the American National Standards Institute/Institute of Electrical and Electronics Engineers. The NCRP is an expert group chartered by Congress.

#421

The permissible exposures set, even for the Occupational/Controlled environments are not at the threshold where biological harm may result. They are based on the scientific, peer-reviewed literature, including a data base of in excess of 10,000 papers, reporting experimental results. Studies show that the most sensitive indicator of a biological effect is behavioral. When animals are trained to do a particular task, their performance of that task is modified when exposure is equal to a level approximately ten times greater than the maximum exposure permitted for the Occupational/Controlled environment and fifty times greater than the exposure permitted for the General Population/Uncontrolled environment. Behavior modification is not necessarily harmful and disappears when the field is reduced, but the assumption is made that prolonged exposure in excess of the level causing behavioral modification might be harmful.

Continuous exposure at the level cited above is well within the maximum exposure level permitted by the standards. Those standards are premised on avoidance of RF exposure that may have an adverse biological effect.

Jules Cohen

Jules Cohen, P.E.

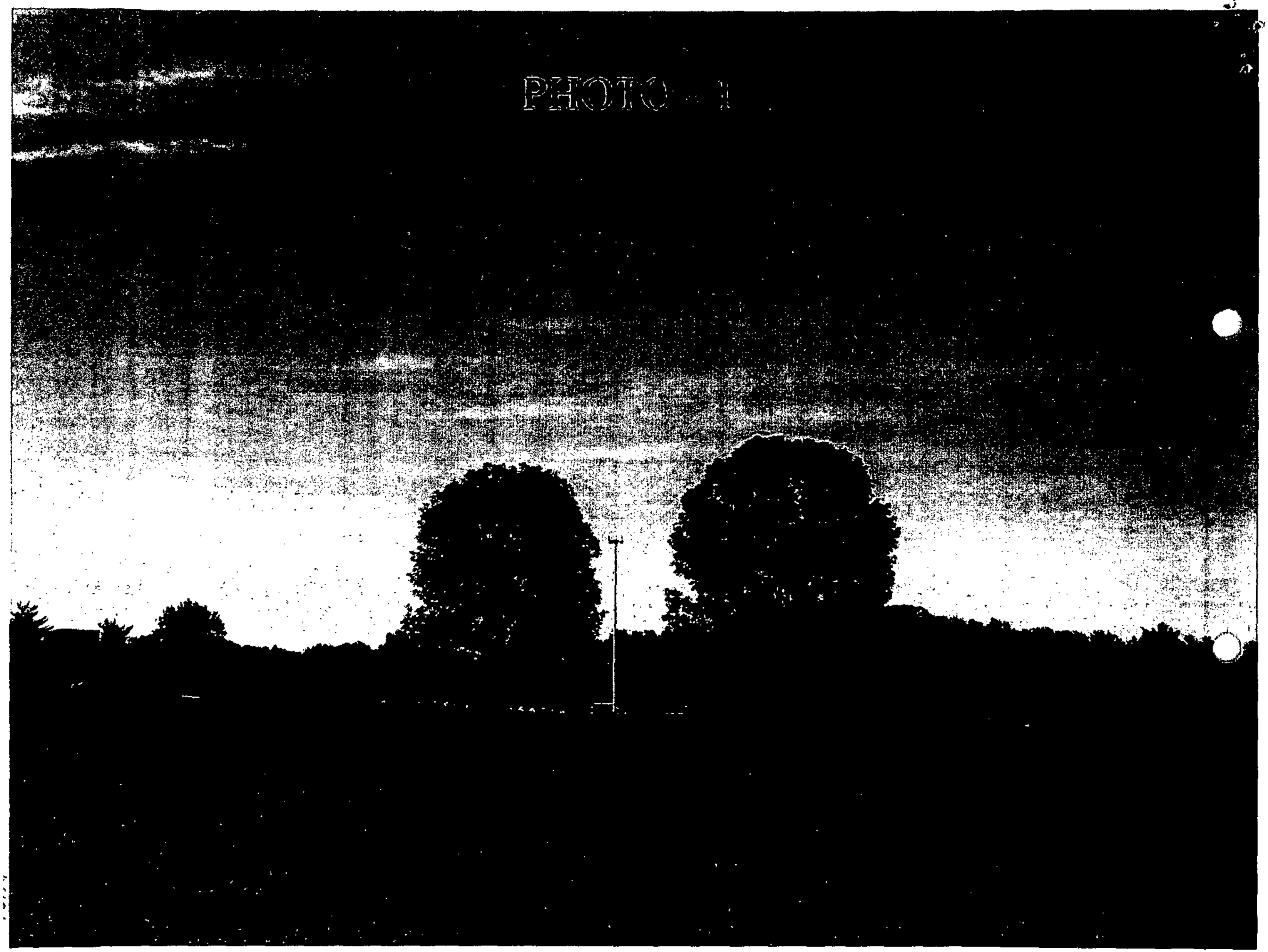
STATE OF MARYLAND
JULES COHEN
No. 31586
PROFESSIONAL ENGINEER

September 9, 2005

#421

Attachment E

Photo Simulations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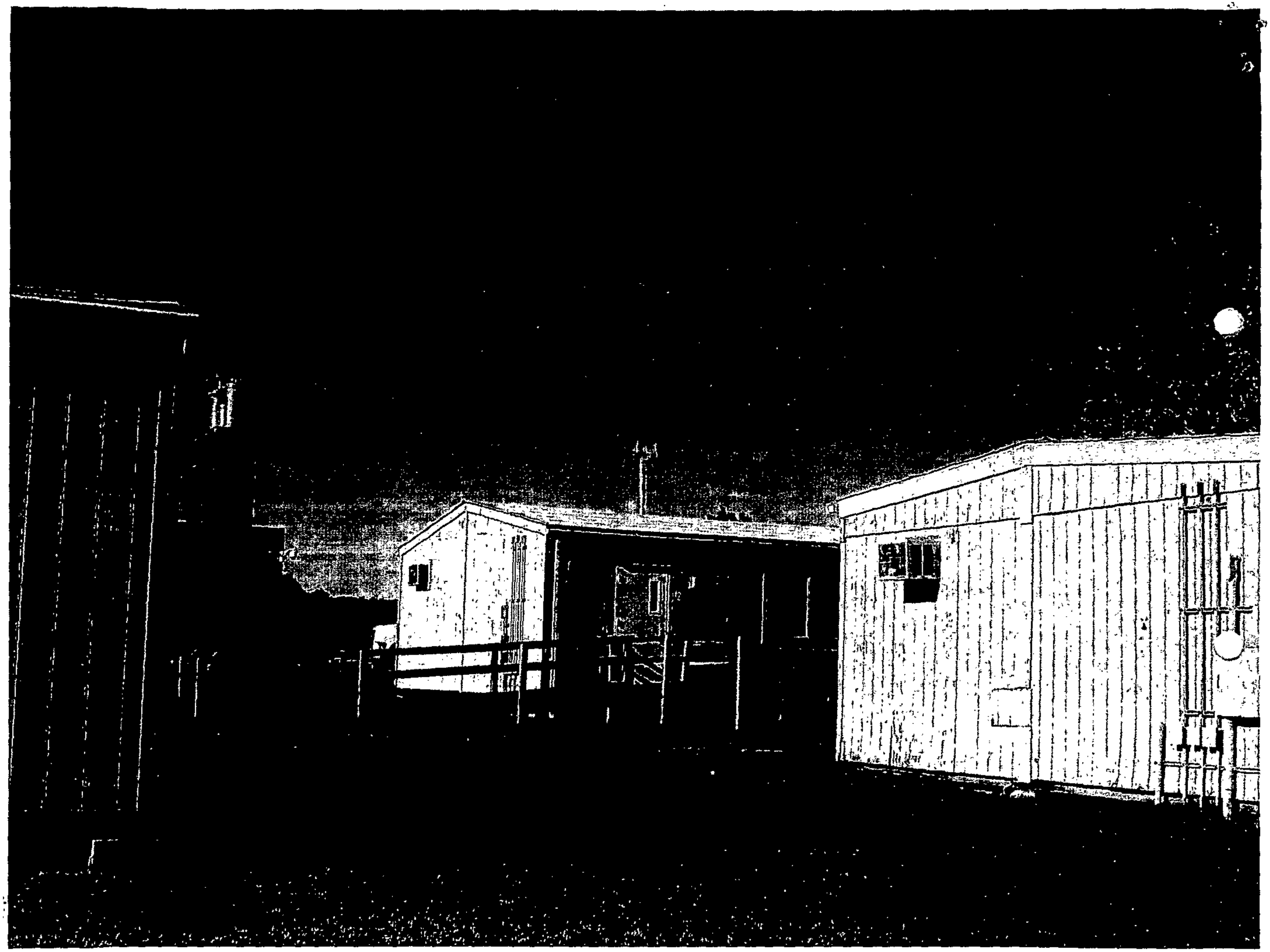
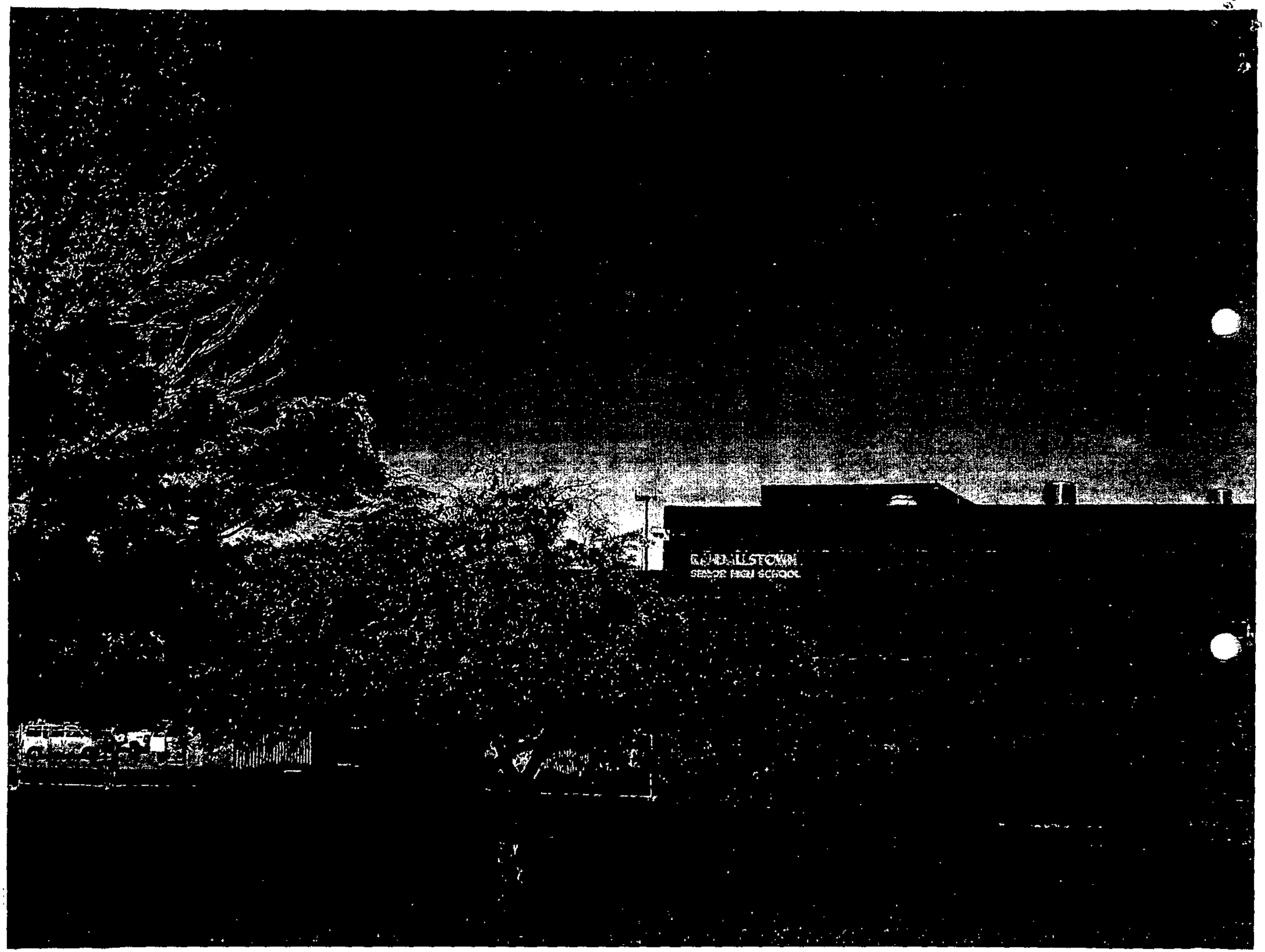
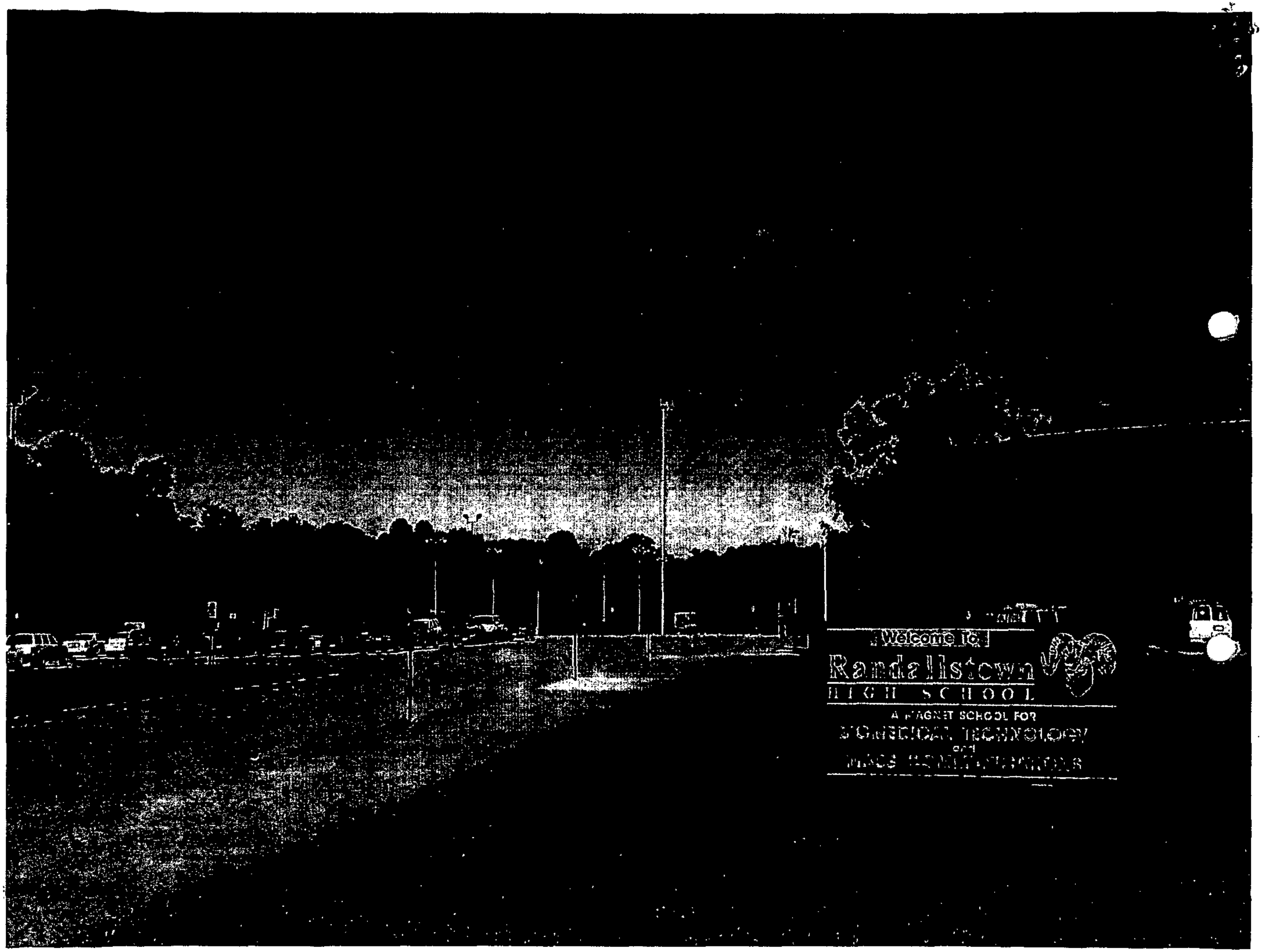
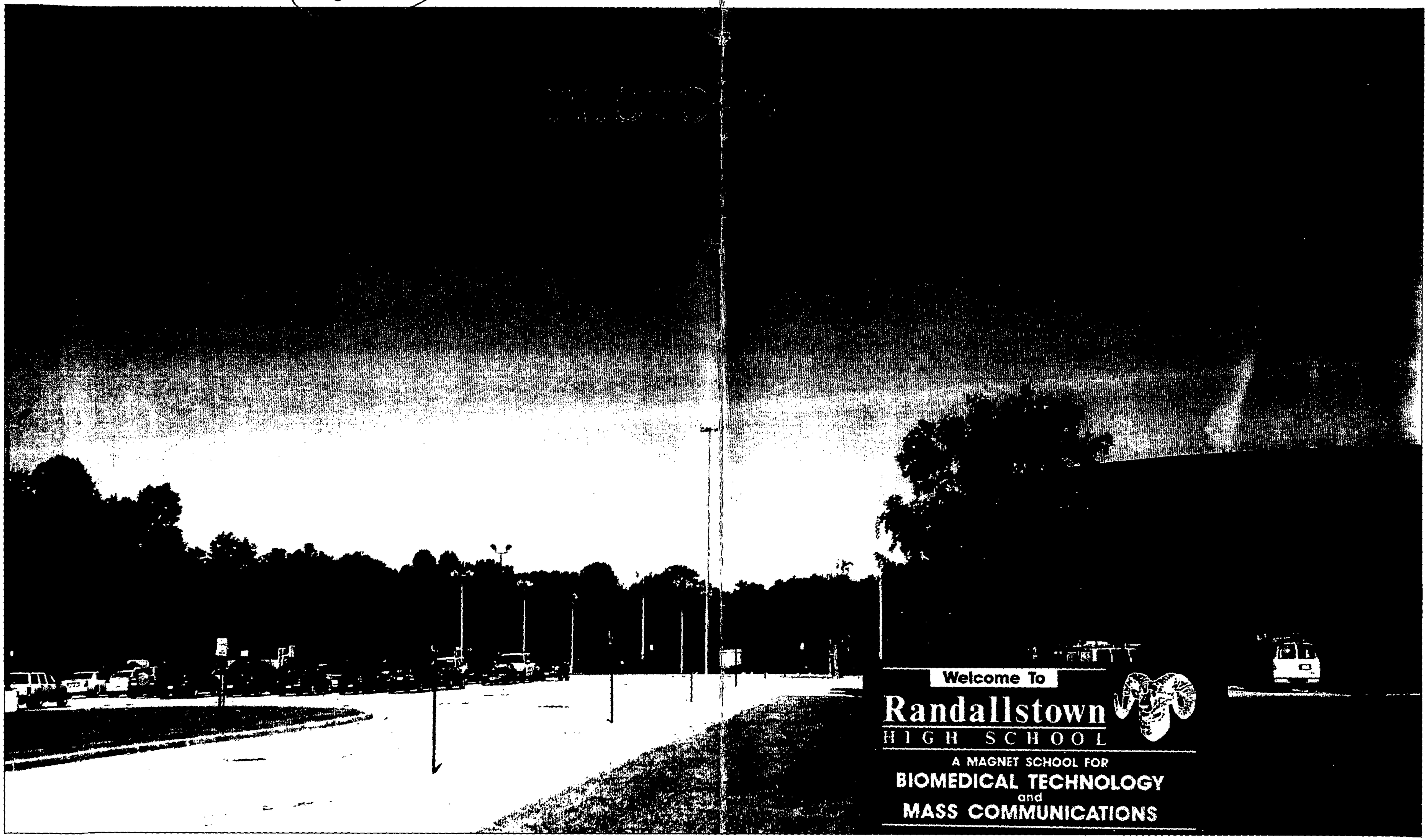



RANDALLSTOWN
SENIOR HIGH SCHOOL


Welcome to
Randallstown
HIGH SCHOOL
A MAGNET SCHOOL FOR
BIOMEDICAL TECHNOLOGY
and

PET. EXHIBIT
CBA 5D

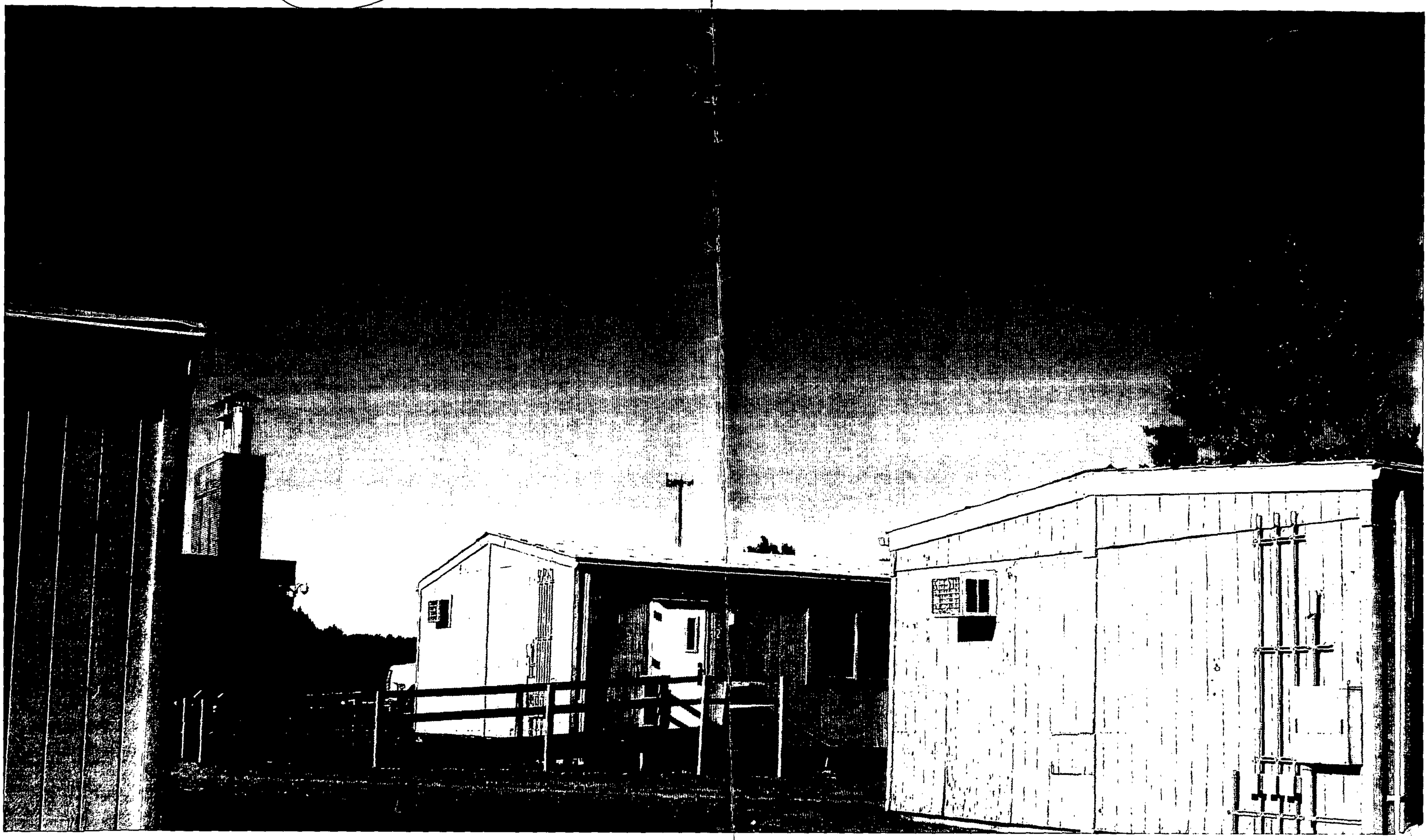


Pet Exhibit CBA 5A

6A

PET. EXHIBIT CBA 5B

6B



PET EXHIBIT CBA 5C

6C

PHOTO 3

Exit-4
Owings Mills
Owings Mills Mall
Owings Mills Corporate Campus
Owings Mills Industrial Park
WCBM Tower
New Town Shop Ctr
New Town ES
New Town HS
Cascades Overlook
Lyons Gate
Happy Acres
Deer Park ES
Deer Park Magnet MS
Kings Point Square Shop Ctr
Wildwood Park (Site)
Randallstown HS
Randall Ridge ES (Site)
Deer Park Ctr
Holy Family Cath & Sch
Colonial Bapt
Carriage Hills Park
Randallstown
Randallstown Plaza
Randallstown ES
Randallstown Synagogue Center
Liberty Plaza
Randallstown Co 18 & Rescue
Liberty Court Shop Ctr
Mt Olive
Randallstown Union Bethel
Brenbrook Plaza
Church Lane
Winands Road
WBAL Tower
McDonogh
Scotts Level
Scotts Park
Foxridge
Horsehead
Red Run
Mill Run
Branch
Dolfield Blvd
Owings Mills Blvd
Painters Mill Road
McDonogh Road
Liberty Road
Court Lane
Old Court Rd
Joins Map 32
76°47'30"
860,000 FT
4-20500
D 850,000 FT
RAFTING Co.
PET EXH
CBA
Pol-2

CASE OL-421-X Peoples Counsel 5/16/07

APPELLANT'S EXHIBITS

1 A. PICTURES - TOWER AND UNIT.
B PICTURE - POWER UNIT
C PICTURE - POWER UNIT
D. PICTURE - BEHIND GIANT SHOWING CELL TOWER
E. PICTURE - MILFOLD MILL AND LIBERTY AV
F. PICTURE - TOWER AND UNIT

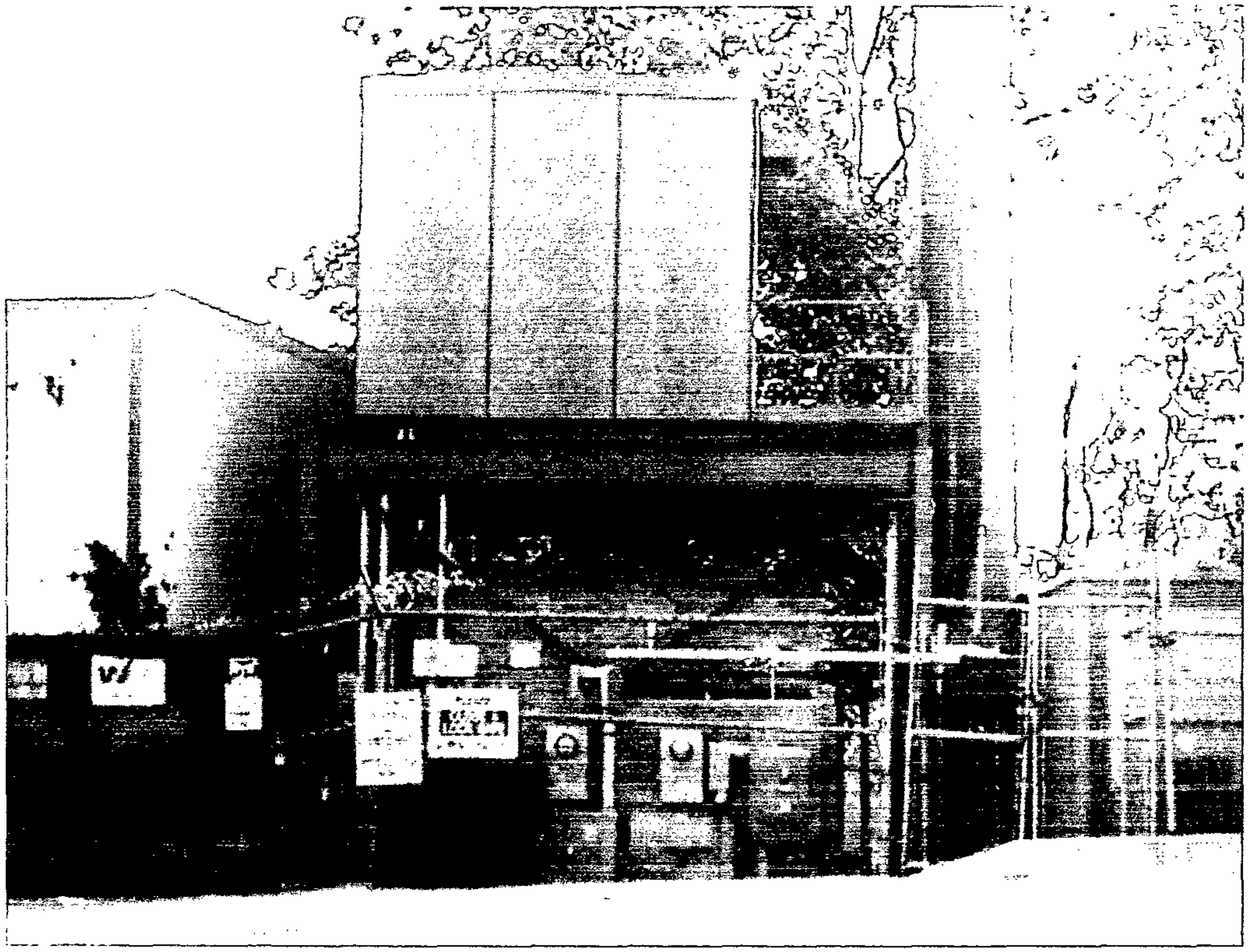
2. A RULE 8 PAPERS ELAINE WHITE PAPERS
B " " " " " "
C " " " " " "

3 A PICTURE OF TENNIS COURT TO EDGE OF ALLEY.
B PICTURE OF TENNIS COURT AND LIGHT POLE TO BE REPLACED
C. PICTURE OF LIGHT POLE TO BE REPLACED
D PICTURE
E. PICTURE OF ALTERNATE USE.
F. PICTURE OF GATHERING SPOT. (WALL)

4. PICTURE PANORAMIC VIEW OF TENNIS COURTS.

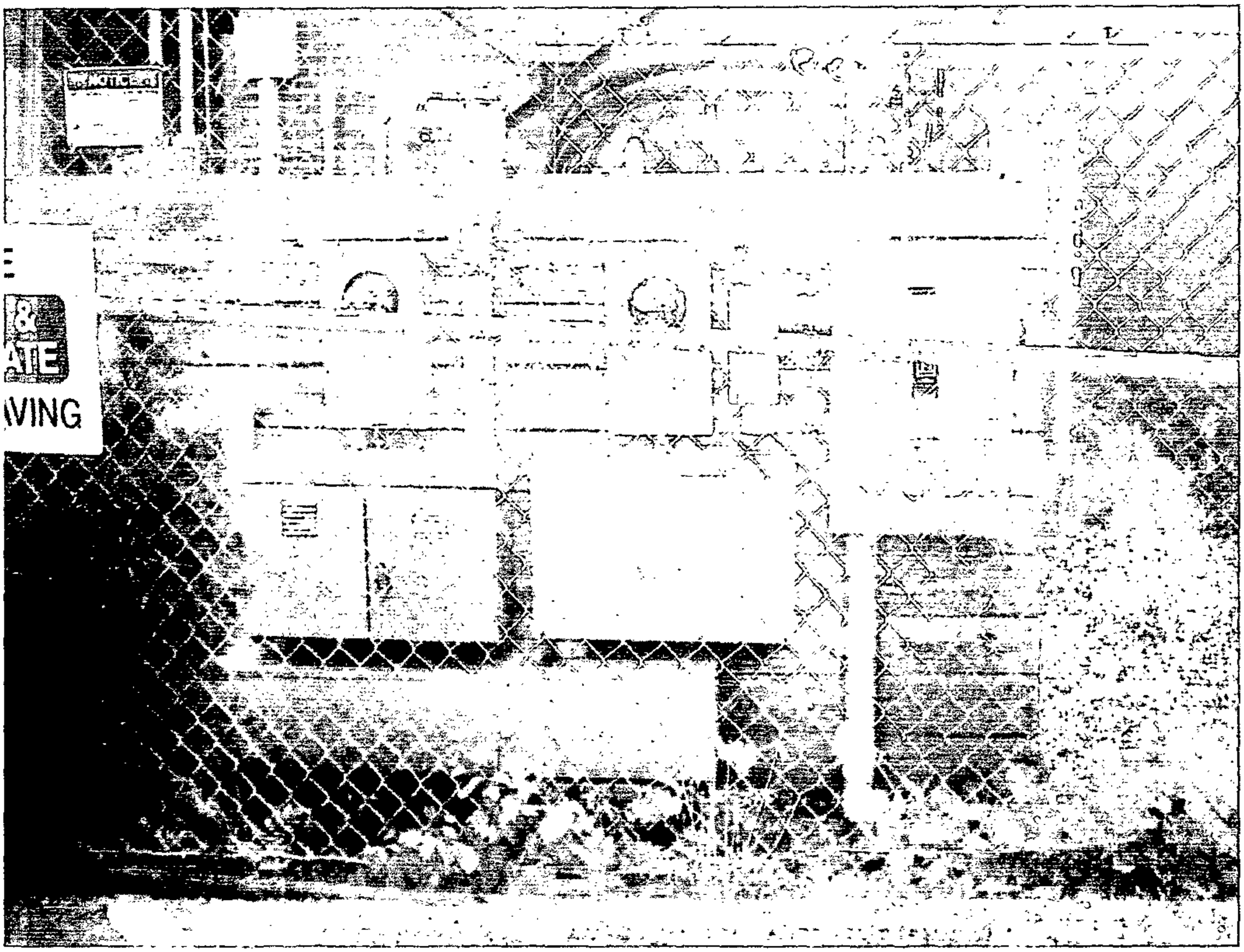
5 A RULE 8 PAPERS - AARON PLYMOUTH
B " " " - " "
C " " " - " "

6. SIGN-IN SHEETS

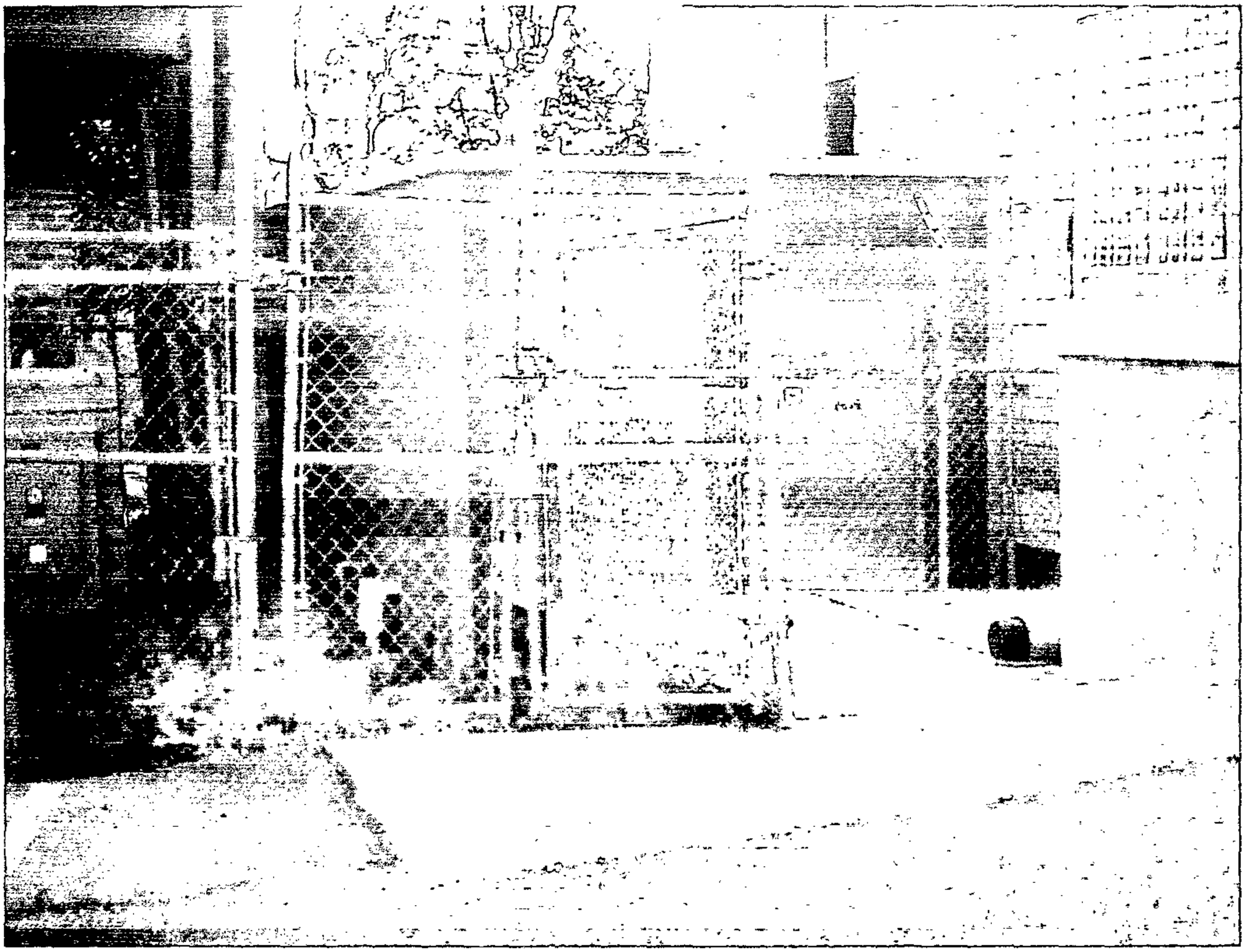


APP. EXHIBITS

No. 1 A



APP. EXHIBITS
NO. 1B



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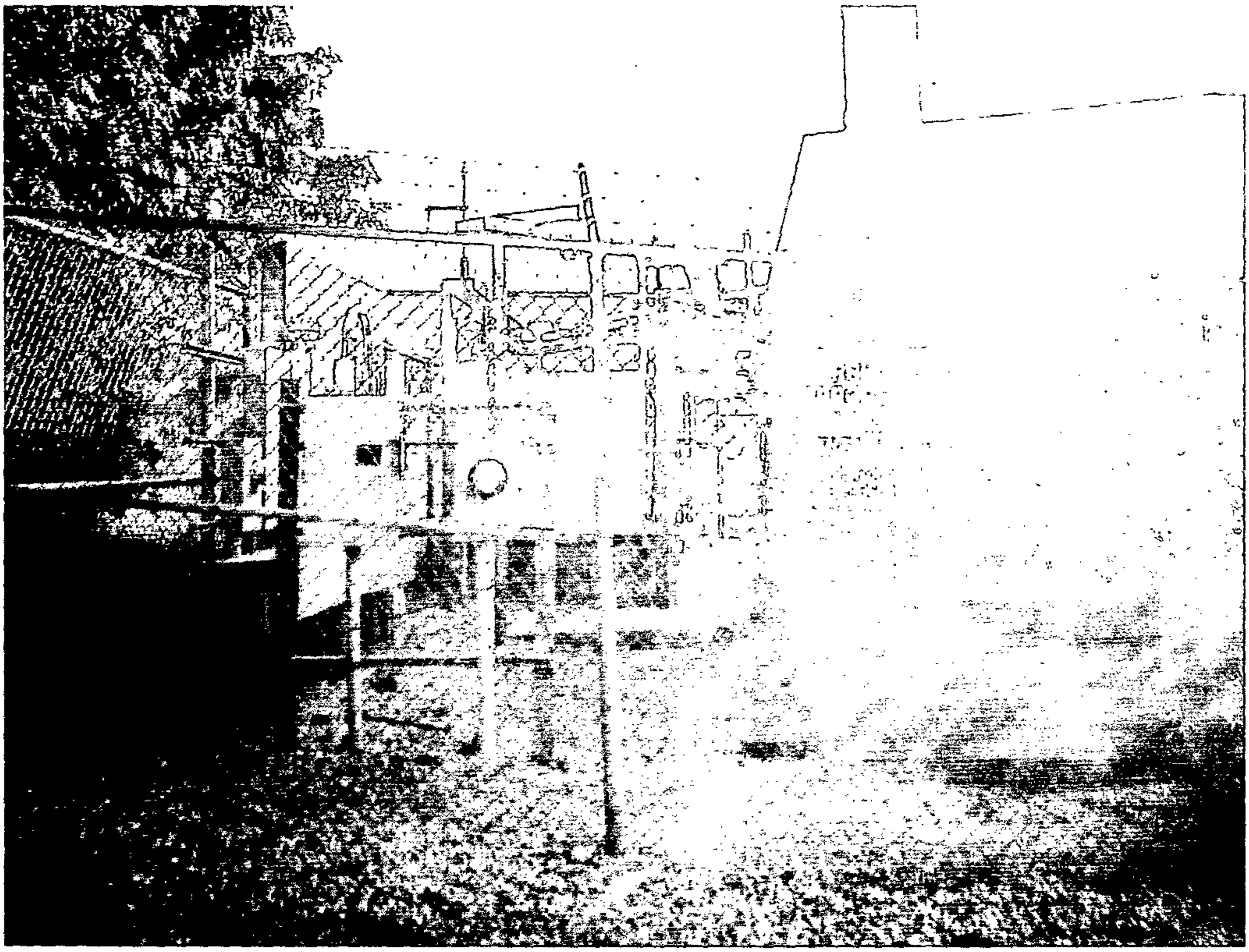

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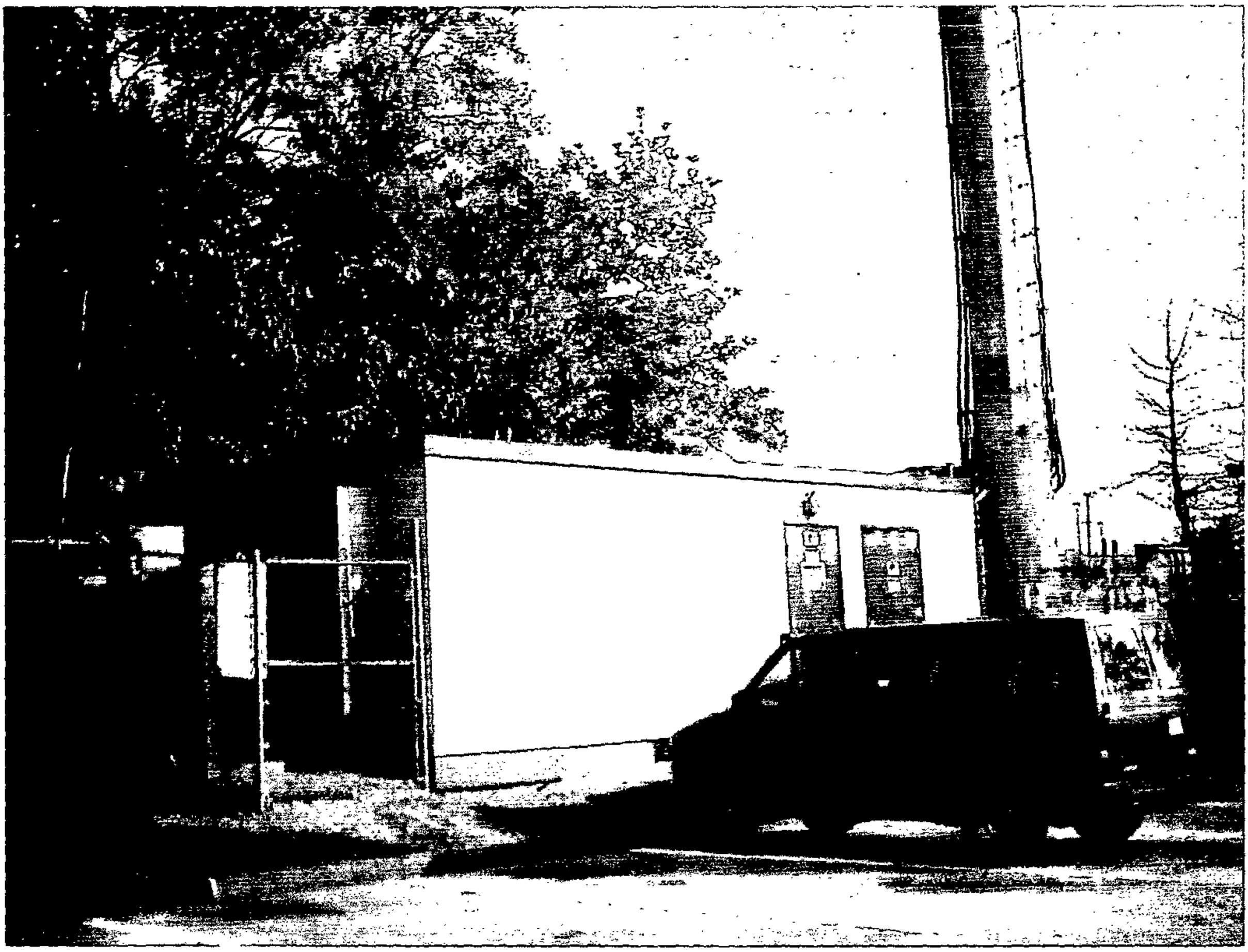


APP. EXHIBIT
NO. 16

APP. EXH.
No 1F

Ella White Campbell

From: "David Goldman" <dgoldman@firststepmd.com>
To: <ellagcam@bcpl.net>
Cc: <billkreuznach@yahoo.com>; <christinecypress@aol.com>; <Glorria6272@aol.com>; <j.b.bryan@comcast.net>; <jschultz2@bcps.org>; <m2490@prodigy.net>; <tamarabarron2@comcast.net>; "Amie Bland" <bland3417@verizon.net>; "'Karen Aiken'" <kaaalpha@juno.com>; "Wendall Sisler" <sisler@carr.org>
Sent: Friday, May 11, 2007 9:16 AM
Subject: Affidavit for LRCC Representation

This is to certify that at the May 8, 2007 meeting of the Liberty Road Community Council Ella White Campbell, Executive Director of the Council, was authorized to represent the Council at the May 16, 2007 Baltimore County Board of Appeals hearing. I certify that I am the President of the Liberty Road Community Council and approve the representation for the Council by Dr. Campbell. This email will serve as the electronic version of my approval. If there are any questions and/or concerns, I may be reached by cell phone at 410-916-5203.
Respectfully Submitted,

David J Goldman, President
Liberty Road Community Council

C/O
100 Owings Court, Suite 8
Reisterstown, MD 21136
410-526-1366
Fax 410-526-7138

Marcia M Klaff
Secretary

APP. EXH
2A-C

A

Ella White Campbell

From: "David Goldman" <dgoldman@firststepmd.com>
To: <ellagcam@bcpl.net>; <billkreuznach@yahoo.com>; <christinecypress@aol.com>; <Glorria6272@aol.com>; <j.b.bryan@comcast.net>; <jschultz2@bcps.org>; <m2490@prodigy.net>; <tamarabarron2@comcast.net>; "Amie Bland" <bland3417@verizon.net>; "'Karen Aiken'" <kaaalpha@juno.com>; "Wendall Sisler" <sisler@carr.org>
Sent: Friday, May 11, 2007 9:05 AM
Subject: FW: FW: Cell Phone Towers at Baltimore County Public SchoolGrounds

Good morning;
Please find attached the information concerning the hearing discussed at the Liberty Road Community Council on Tuesday May 8, 2007. The Council passed a motion to oppose the construction of a tower on the grounds of Randallstown High as it was proposed. Reasons include that it poses a safety threat to children and youth as sited, it poses an aesthetic issue since it is next to the parking lot where the public will see it and not the fields and school, it appears that the community was not adequately notified that an 11 story cell pole was proposed for the property, and finally that that the financial arrangements appear to be minimal and do not benefit the High School.
It was agreed that Ella White Campbell, Executive Director of the Liberty Road Community Council, would attend and testify on behalf of the Council since I will be out of town.
Also, please see the Friday Baltimore Examiner page 5 for an article on the issue.
Under a separate email to Ella I will provide an affidavit that she is the LRCC representative for the Wednesday May 16 hearing.
Dave

David J Goldman
Chief Executive Officer
First Step Inc
410-526-1366
Fax 410-526-7138

From: LRDWALK4@aol.com [mailto:LRDWALK4@aol.com]
Sent: Thursday, May 10, 2007 8:39 PM
To: dgoldman@firststepmd.com
Subject: Re: FW: Cell Phone Towers at Baltimore County Public SchoolGrounds

Dave:

The cell phone tower hearing, involving the Baltimore County Board of Education and Omnipoint Communications, will take place next Wednesday, May 16, 2007, in Hearing Room 48 of the Old Courthouse Building in Towson at 400 Washington Avenue in Towson, Maryland 21204. Room #48 is the Board of Appeals Hearing Room. I do not know the names of the three individuals who will comprise the panel of hearing examiners. The Board of Appeals will not release that information until about 4:00 p.m. on Tuesday, May 15, 2007.

Linda Dorsey Walker

Marcia M Kloff
Secretary

See what's free at AOL.com.

P

Ella White Campbell

From: <kaaalpha@juno.com>
To: <carlmalexander@cs.com>; <bland3417@verizon.net>; <christinecypress@aol.com>; <glorria6272@aol.com>; <ellagcam@bcpl.net>; <sisler@carr.org>; <dgoldman@firststepmd.com>; <billkreuznach@yahoo.com>; <bmezger@comcast.net>; <kaaAlpha@juno.com>; <tamarabarron2@comcast.net>; <joby3@verizon.net>; <jbbryan@comcast.net>; <hhart58@verizon.net>; <kemmartin@aol.com>; <john@seymoursedge.com>; <rubin731@aol.com>; <divafrnyc51@aol.com>; <m2490@prodigy.net>
Sent: Friday, May 11, 2007 2:12 AM
Attach: IS A SCHOOL BASED CELL TOWER SAFE.doc
Subject: FW: PROPOSED RANDALLSTOWN CELL PHONE TOWER

Please note: forwarded message attached

Please forward this to members.

The Liberty Road Community Council voted last night to oppose the construction of an 11-story cell phone tower on the grounds of Randallstown Senior High. The reasons are include safety issues, public hearing issues, aesthetic issues and financial issues. Please review the material attached and let your community association members know about this issue. The Hearing is scheduled for Wednesday May 16 10am at the Old Courthouse in Towson, Room 48. It is important that as many persons attend and/or submit testimony as possible.

The second related issue is more troublesome. Baltimore County Public Schools has entered into a contract to allow the cell company to place towers on school property for $1500 per month. This means that any BCPS property can have this same situation. I would encourage everyone to review the attachment because it raises issues about placement, public safety, public hearings and fiscal compensation.

Thanks for your time

Dave Goldman, President

Liberty Road Community Council

c/o First Step Inc

100 Owings Court, Suite 8

Reisterstown, MD 21136

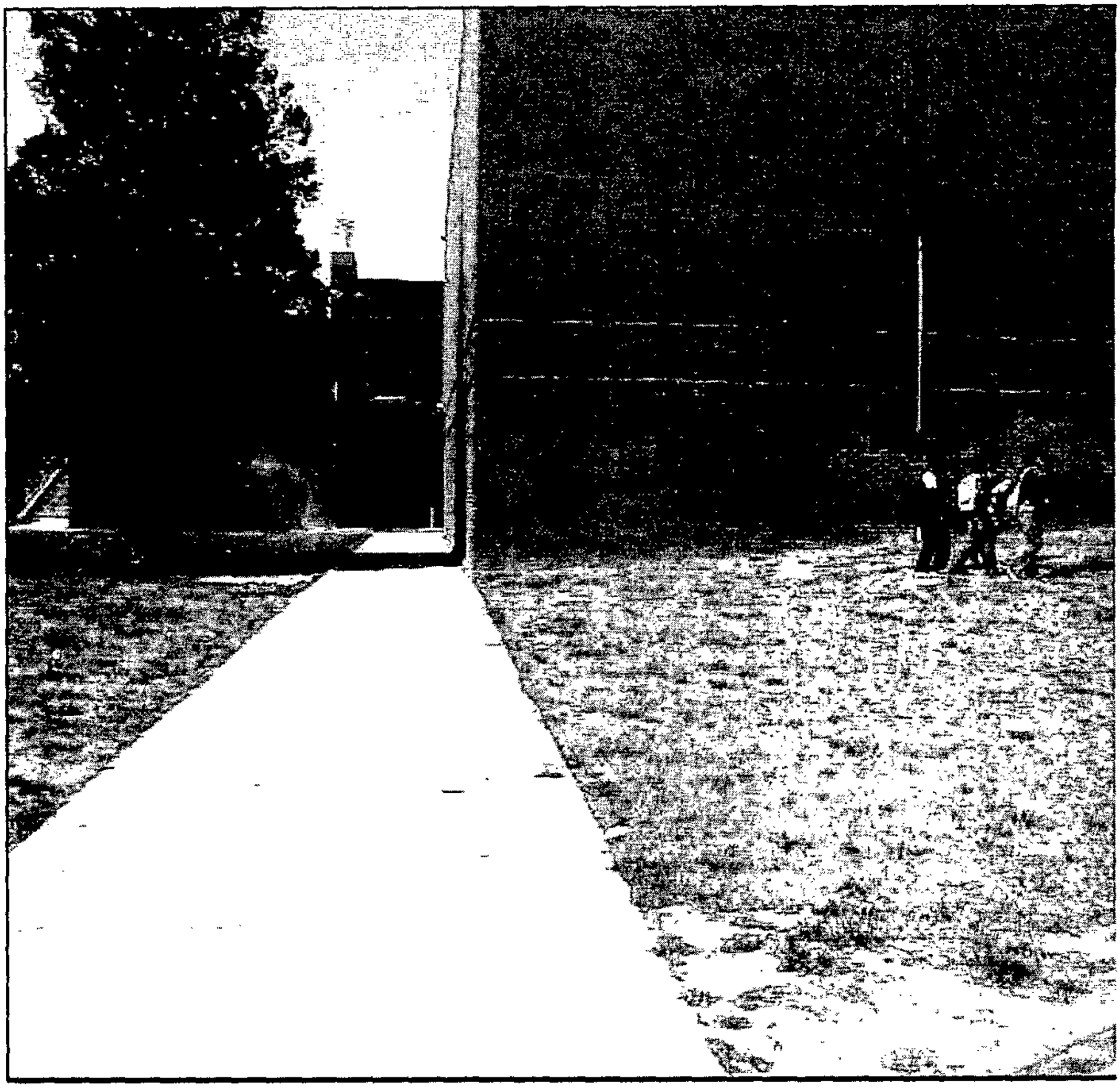
410-526-1366

Fax 410-526-7138

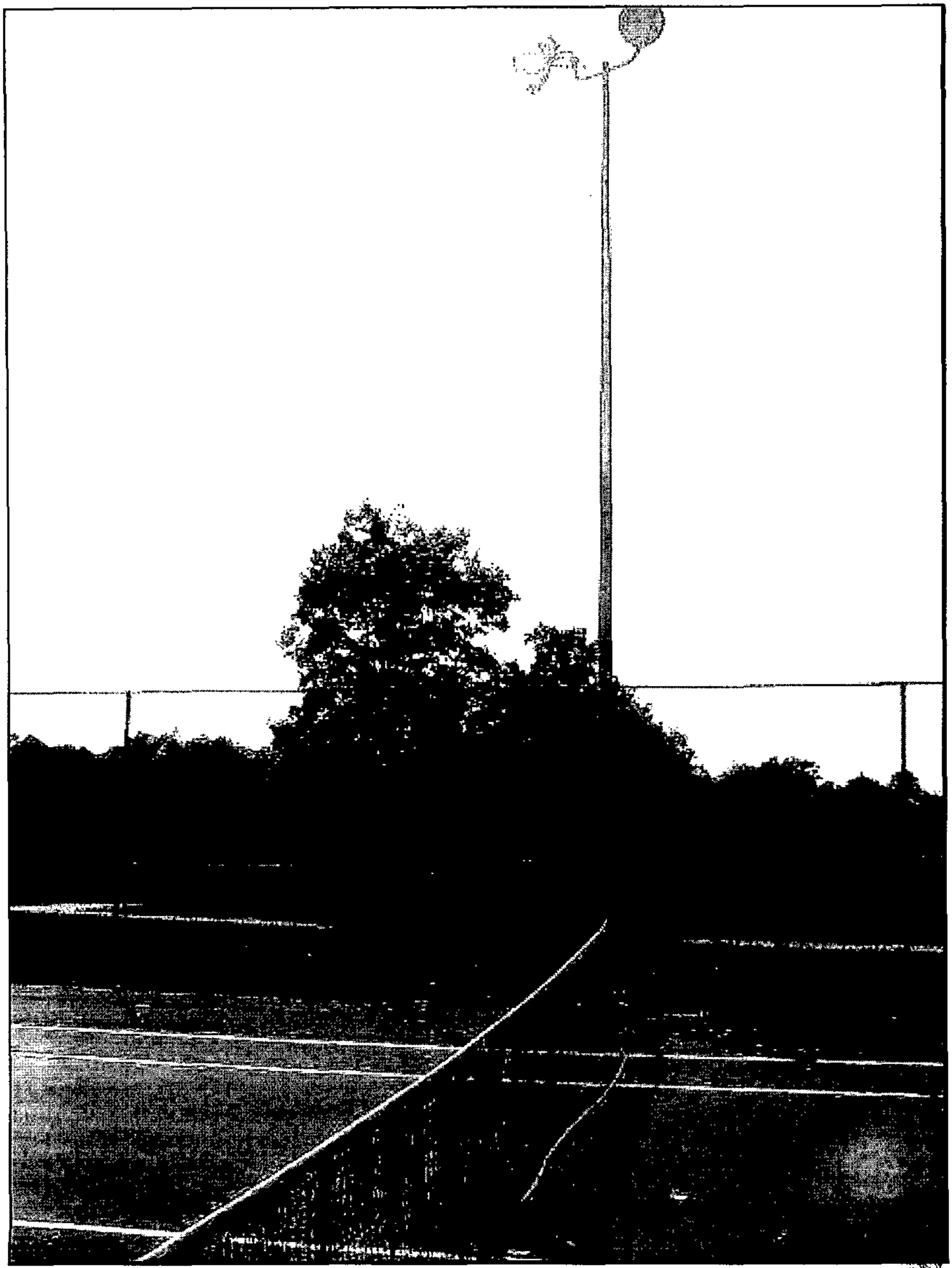
Marcia M Klaff, Secretary

From: LRDWALK4@aol.com [mailto:LRDWALK4@aol.com]

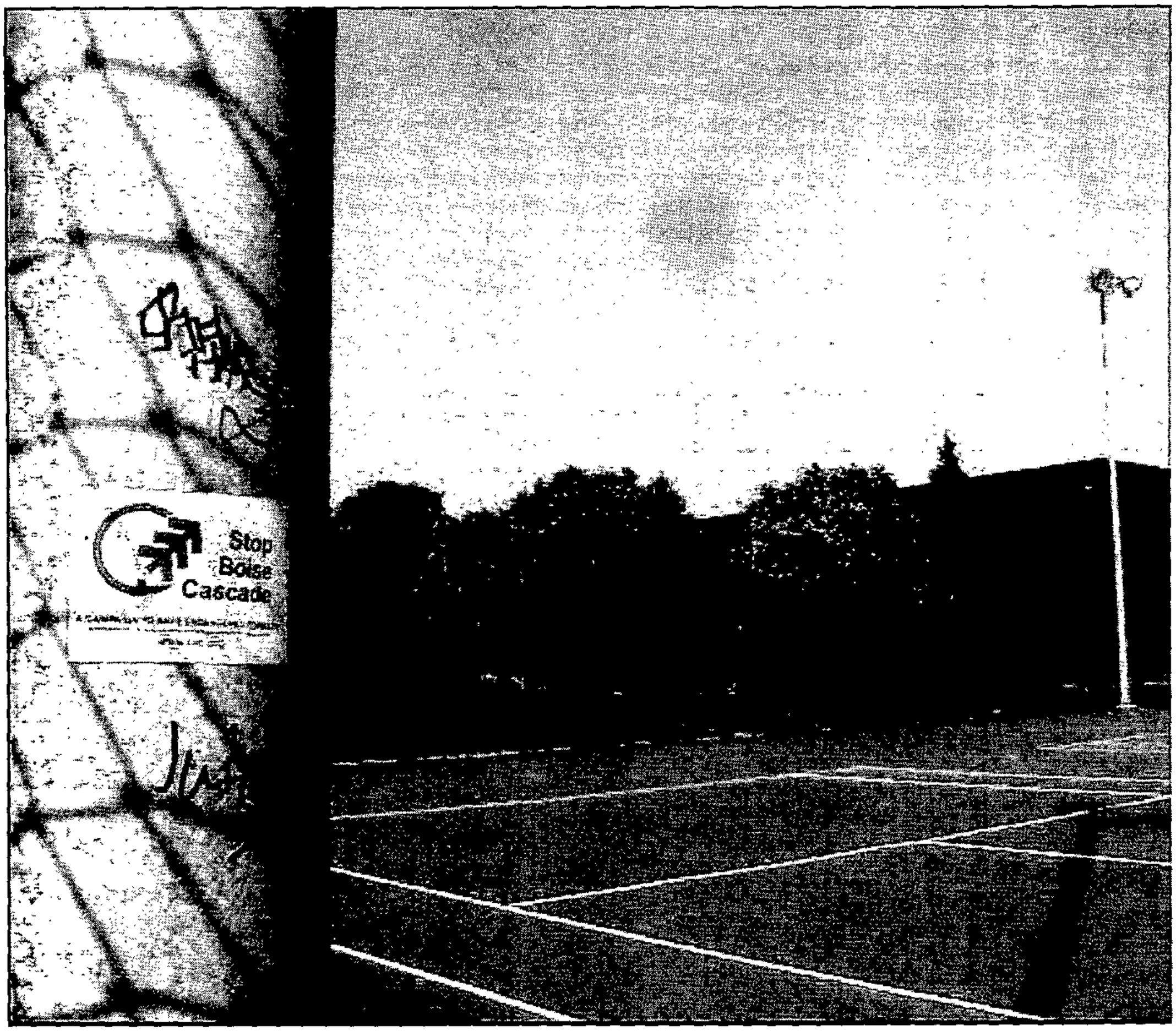
5/11/2007



APP. EXH
NO. 3A

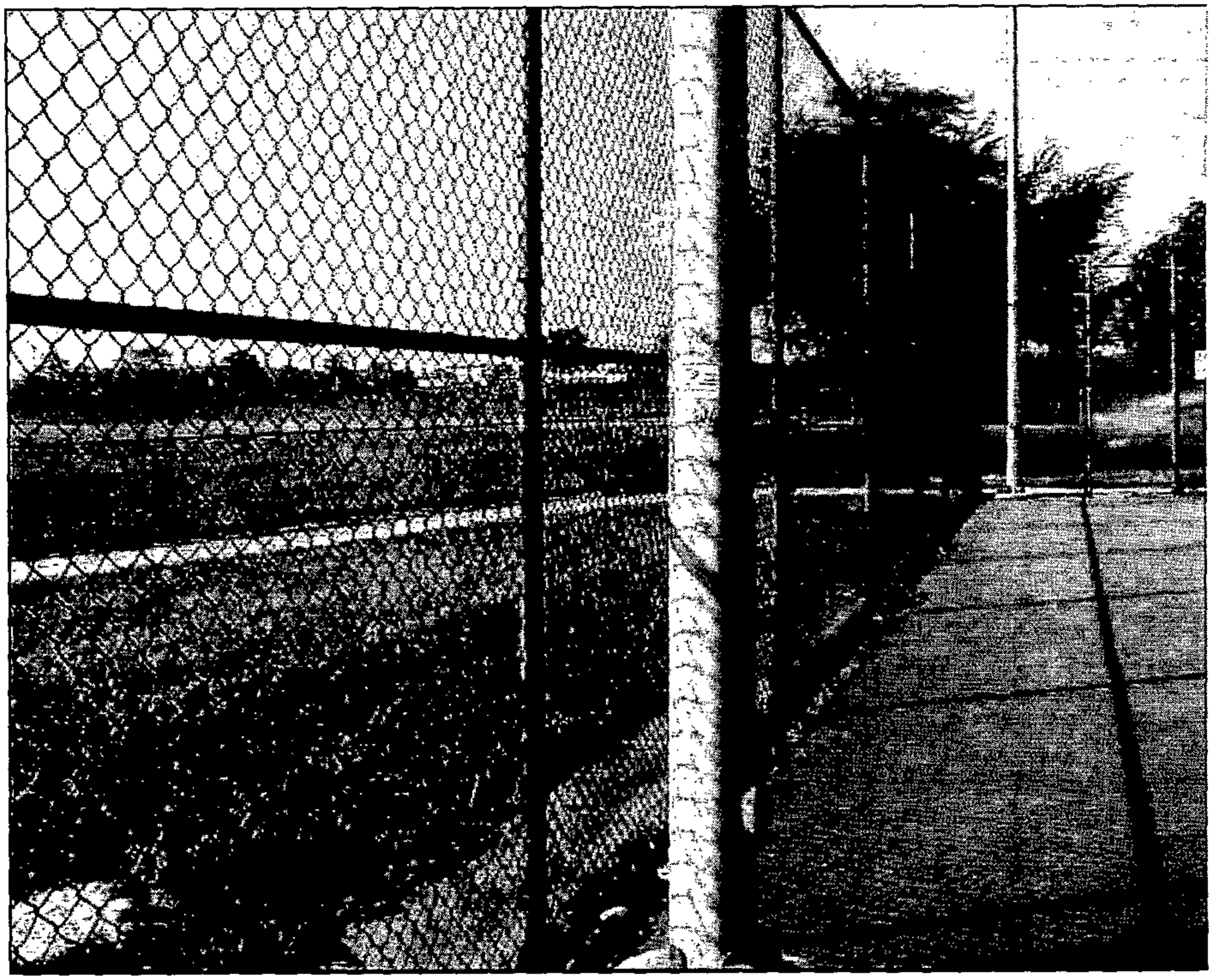


APP. EX H
NO 3B



APP. EXH
NO. 3C

APP. EXH
NO. 31



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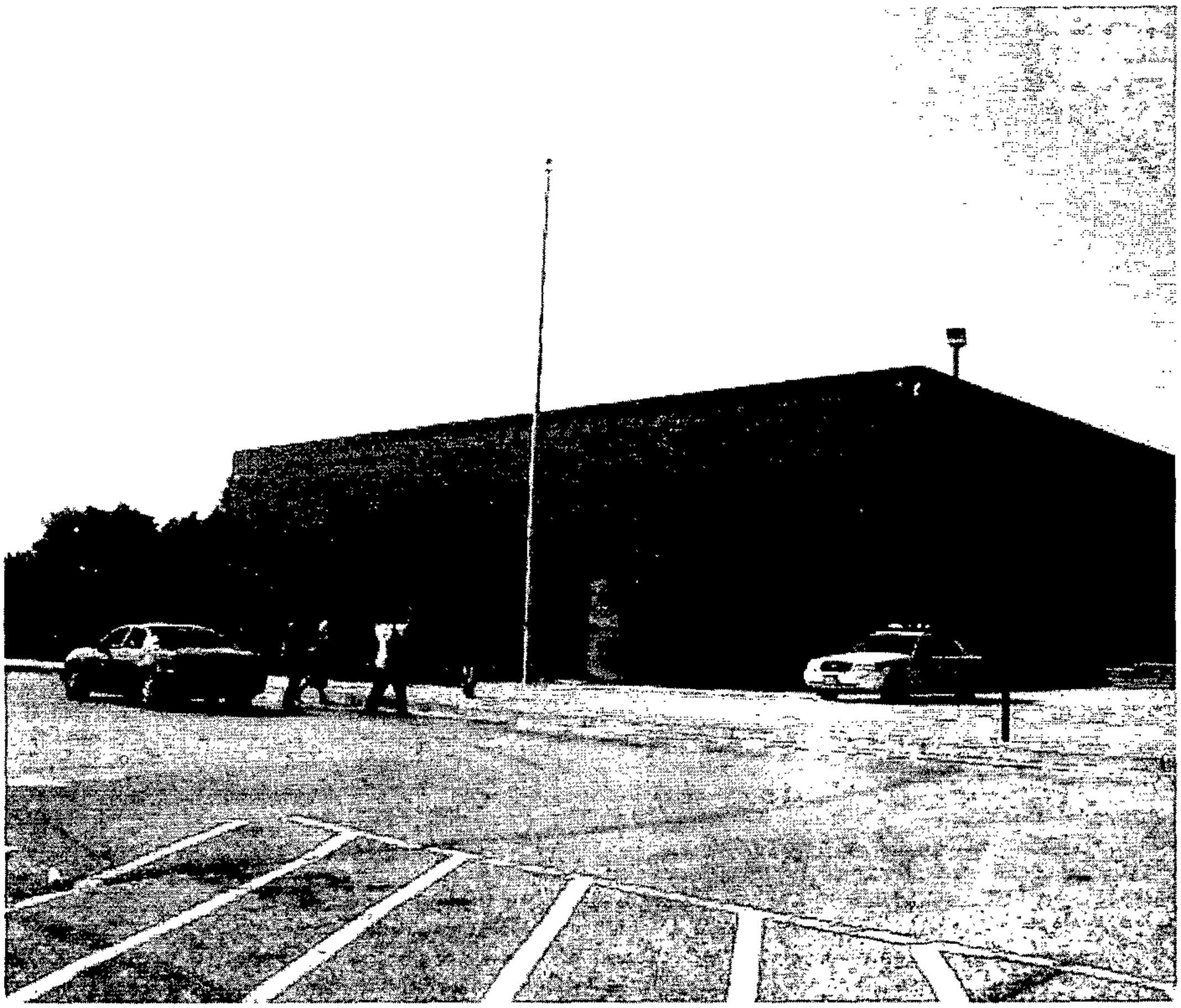
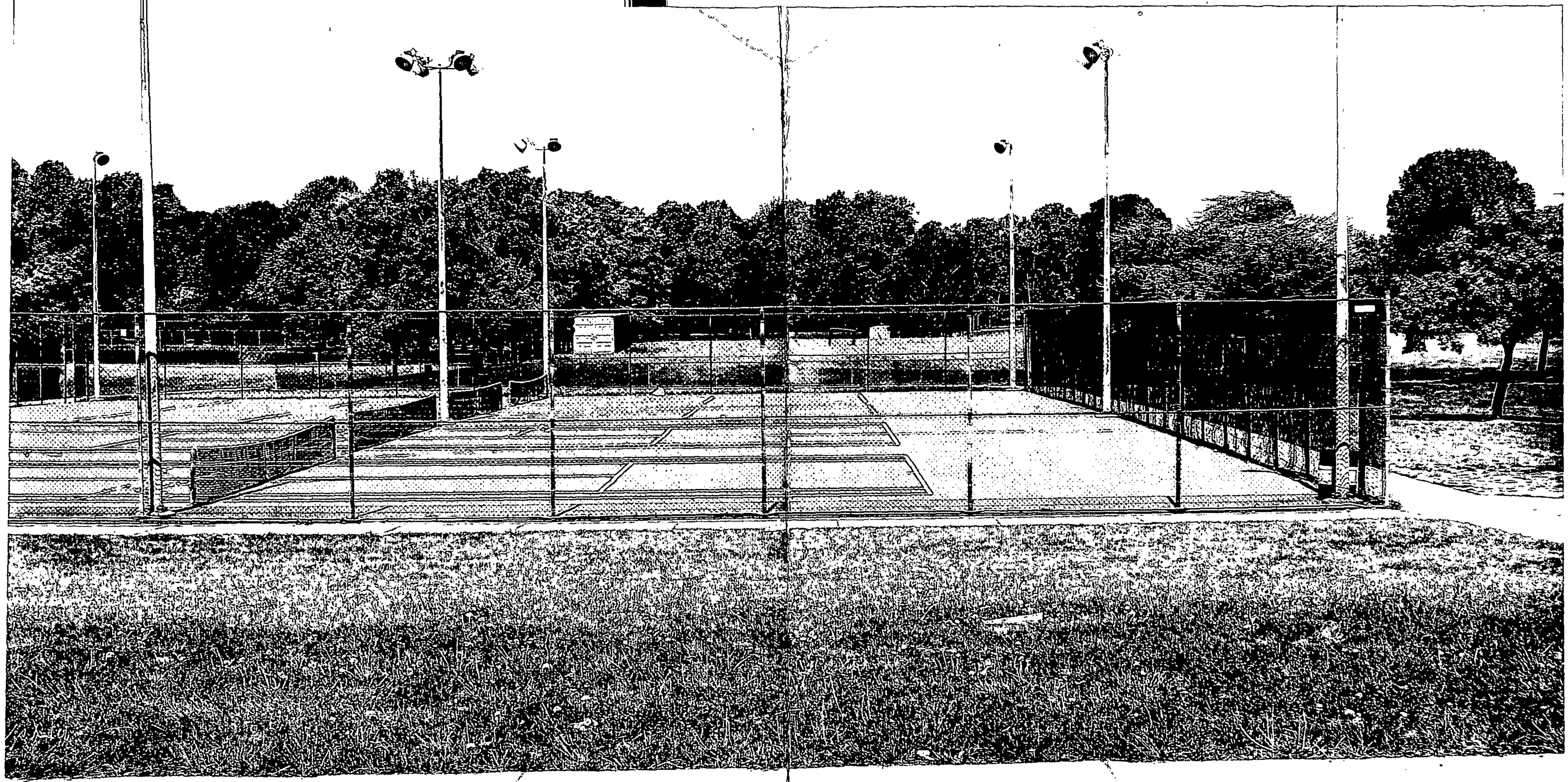
NO. 36



APA EXHIBIT
NO. 3F



APP. EXHIBIT
No. 4

STEVENSWOOD IMPROVEMENT ASSOCIATION, INC.

8544 Stevenswood Road
Baltimore, MD 21244-2217
Dr. Ella White Campbell, President
410-655-0653

RESOLVED: That the position of the Stevenswood Improvement Association as adopted by the officers on the zoning matter pertaining to the construction and operation of a cellphone tower on Baltimore County Public School Grounds (Randallstown High School) is that we oppose the construction and operation of the cell phone tower because it poses a health and safety risk to our children and adults who utilize the field for recreational purposes. Furthermore the financial compensation for the high school is a least minimal.

AS WITNESS OUR HANDS AND SEAL THIS 12TH DAY OF MAY, 2007

ATTEST: **Stevenswood Improvement Association**

Josette C. Powell
Secretary

Ella White Campbell
President

APP. EXH
NO 5A

STEVENSWOOD IMPROVEMENT ASSOCIATION, INC.

8544 Stevenswood Road
Baltimore, MD 21244-2217
Dr. Ella White Campbell, President
410-655-0653

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I, Aaron Plymouth, hereby swear upon penalty of perjury that I am currently a duly elected member of the Stevenswood Improvement Association's Zoning Committee.

ATTEST: **Stevenswood Improvement Association**

Joulette C. Powell
Secretary

Ella White Campbell
President

DATE: May 12, 2007

APP. EXH
No. 5B

STEVENSWOOD IMPROVEMENT ASSOCIATION, INC.

8544 Stevenswood Road
Baltimore, MD 21244-2217
Dr. Ella White Campbell, President
410-655-0653

RESOLVED: That at the April 11th meeting of the Stevenswood Improvement Association, it was decided by the Association that responsibility for review and action on all zoning matters for 2007 be placed in the hands of the Zoning Committee consisting of the following members, each of whom is hereby authorized to testify on behalf of the Stevenswood Improvement Association before the Baltimore County Board of Appeals or other duly constituted zoning agency, body or commission:

Aaron Plymouth
Theresa Carr
Christina Lewis
Prince Green
Ella White Campbell

AS WITNESS OUR HANDS AND SEAL THIS 12TH DAY OF MAY, 2007

ATTEST: **Stevenswood Improvement Association**

Josette C. Powell
Secretary

Ella White Campbell
President

APP. EXH
NO. 5C

People's Counsel Sign-In Sheet

APP. EXH NO. 6

Case Name: Baltimore County Board of Education, Legal Owners; Omnipoint Communications CAP Operations, LLC, Lessees
Case No.: 06-421-X
Date: May 16, 2007

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

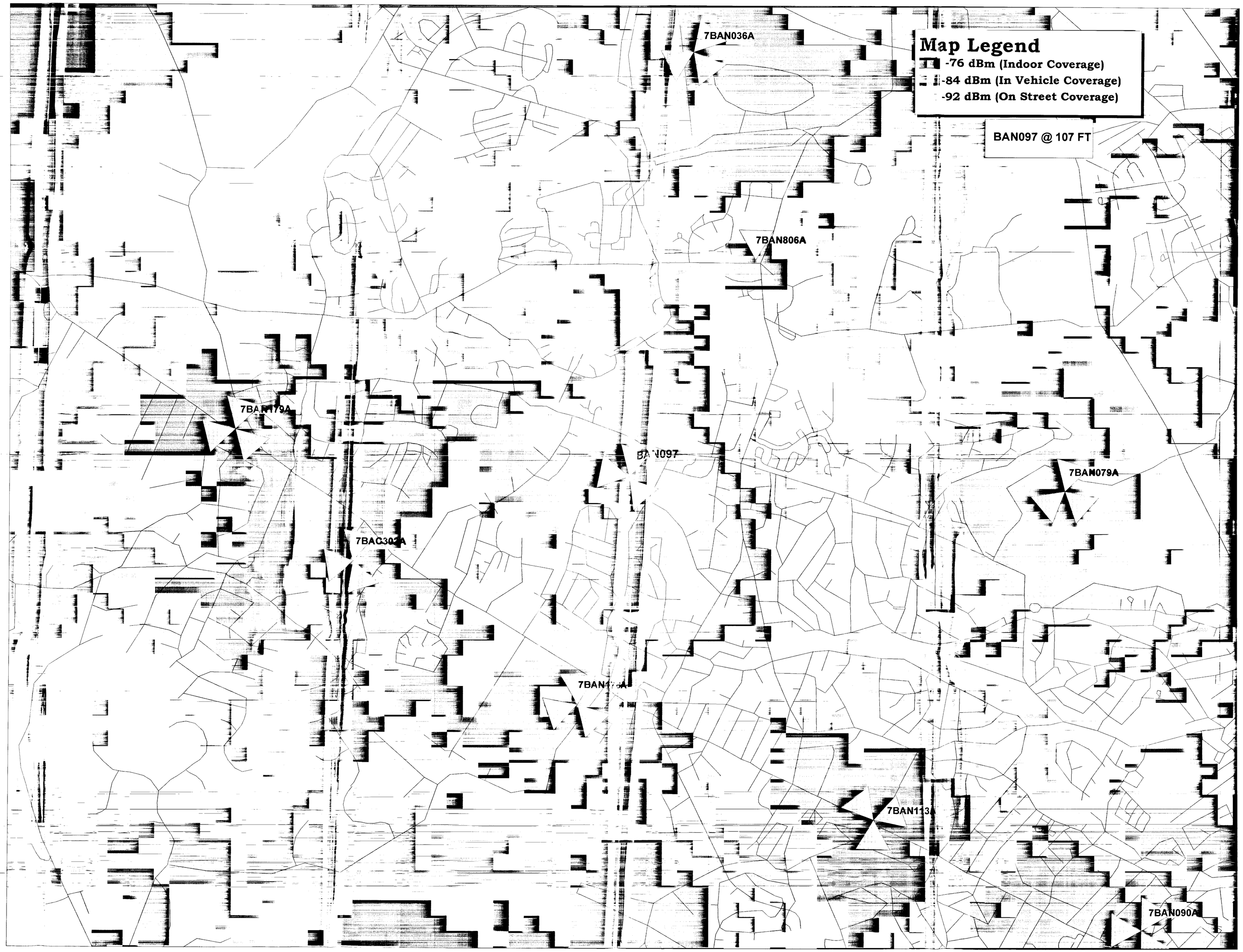
Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	Aaron Plymouth	8546 Stevenswold Rd	410 477 4100		Stevenswold	Safety
		Windsor Mill 21244				
✓	ALLEN GEE	9809 SLALOM RUN DR	410-521-8552			
		WOODSTOCK MD. 21163				SAFETY
✓	LINDA DORSEY WALKER	9456 COMMON BROOK RD.	443-927-0652			SAFETY
		#101 OWINGS MILLS, MD 21117				
	RODERICK W. HART	9841 BRANCHLEIGH RD	4106550393			
	~~ULYSSES ROSE~~	RANDALLSTOWN, MD.				
	ULYSSES ROSE	8122 SALT LAKE DR	410 922-0372		CEDAR TOWN HOMES	SAFETY
		WINDSOR MILLS 21244				
✓	Bobby Zirkin	8823 Hood Forest Ln	410 484 8983			Safety
—	Nancy L. Ostrow	9722 SLALOM RUN DR	410-521-0019		—	
	HAROLD HART	1303 Tidylwood 21163 21208	410 486-1299		Gwynnvale Comm. Assoc.	Safety
	Juanita Tillery	3937 Lumo Circle 21133	410922-8132		RARA, Inc.	Safety
	Vivian Noonan	3674 Chifpmuck Rd 21244	410 922-8122		Courtnor	Safety
	Tracey Klaff	711 Leafydale Terr 21208	410 486 2397		Silver Creek	Safety
	Deborah Domneys	3820 Twin Lakes Ct	410 521-0854		Cedar HOA	Safety
✓	Tanya Williams	8940 Harkate Way	521-8468		Oakwood Village + Randallstown PTSA	
	Adraine Newborn	9210 Turnbull Rd 21133	410-496-0395		RHS-PTSA Fredellwood	Safety

People's Counsel Sign-In Sheet

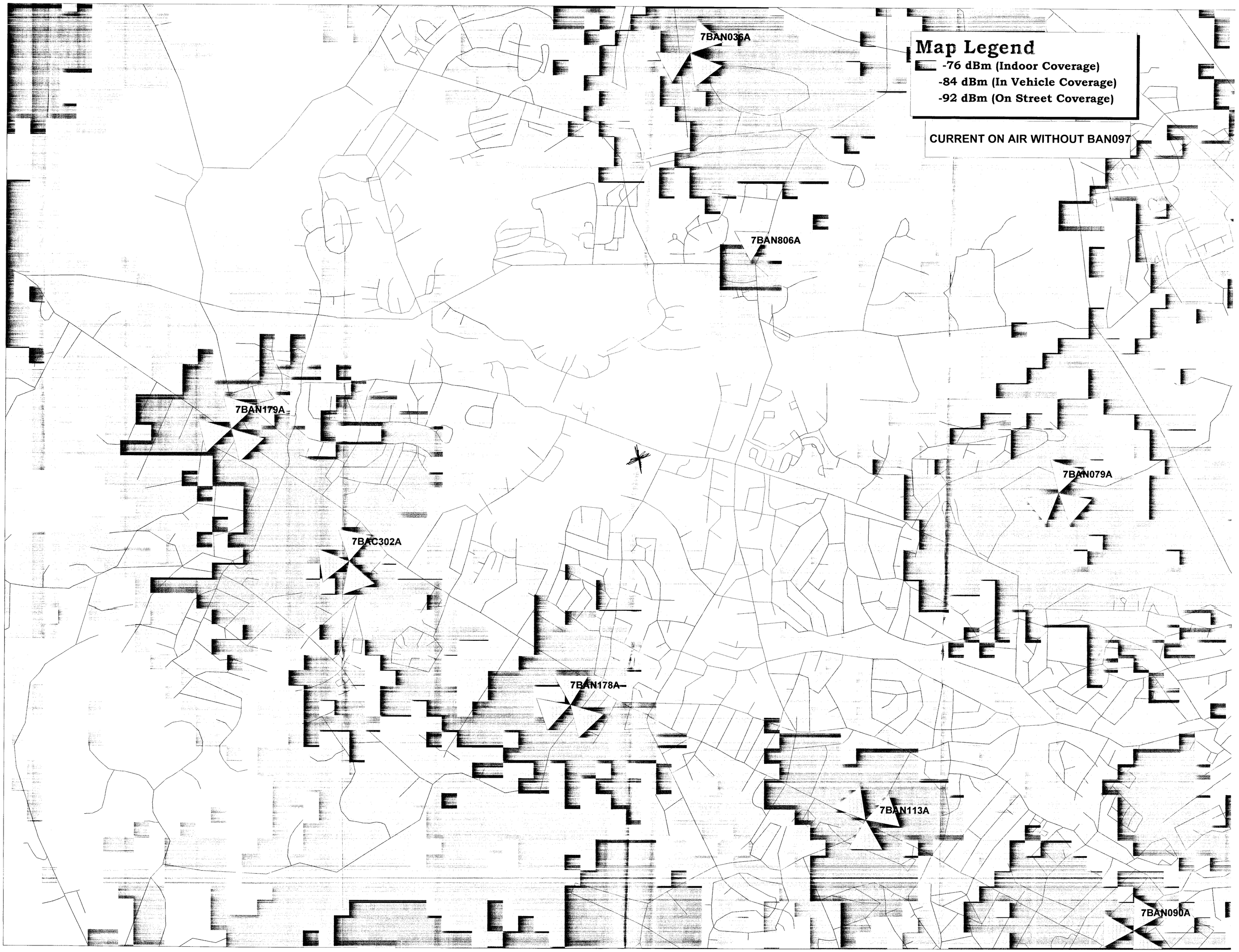
Case Name: Baltimore County Board of Education, Legal Owners; Omnipoint Communications CAP Operations, LLC, Lessees
Case No.: 06-421-X
Date: May 16, 2007

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	Anthony Green	9611 Idlesland Circle	410-571-0672			Safety
✓	Ella White Campbell	8544 Stevenswood Rd.	410-655-0653			safety, aesthetics


Map Legend
-76 dBm (Indoor Coverage)
-84 dBm (In Vehicle Coverage)
-92 dBm (On Street Coverage)
BAN097 @ 107 FT
7BAN036A
7BAN806A
7BAN179A
BAN097
7BAN079A
7BAC302A
7BAN113A
7BAN090A

CBA Det. 1A


Map Legend
-76 dBm (Indoor Coverage)
-84 dBm (In Vehicle Coverage)
-92 dBm (On Street Coverage)
CURRENT ON AIR WITHOUT BAN097
7BAN036A
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7BAN079A
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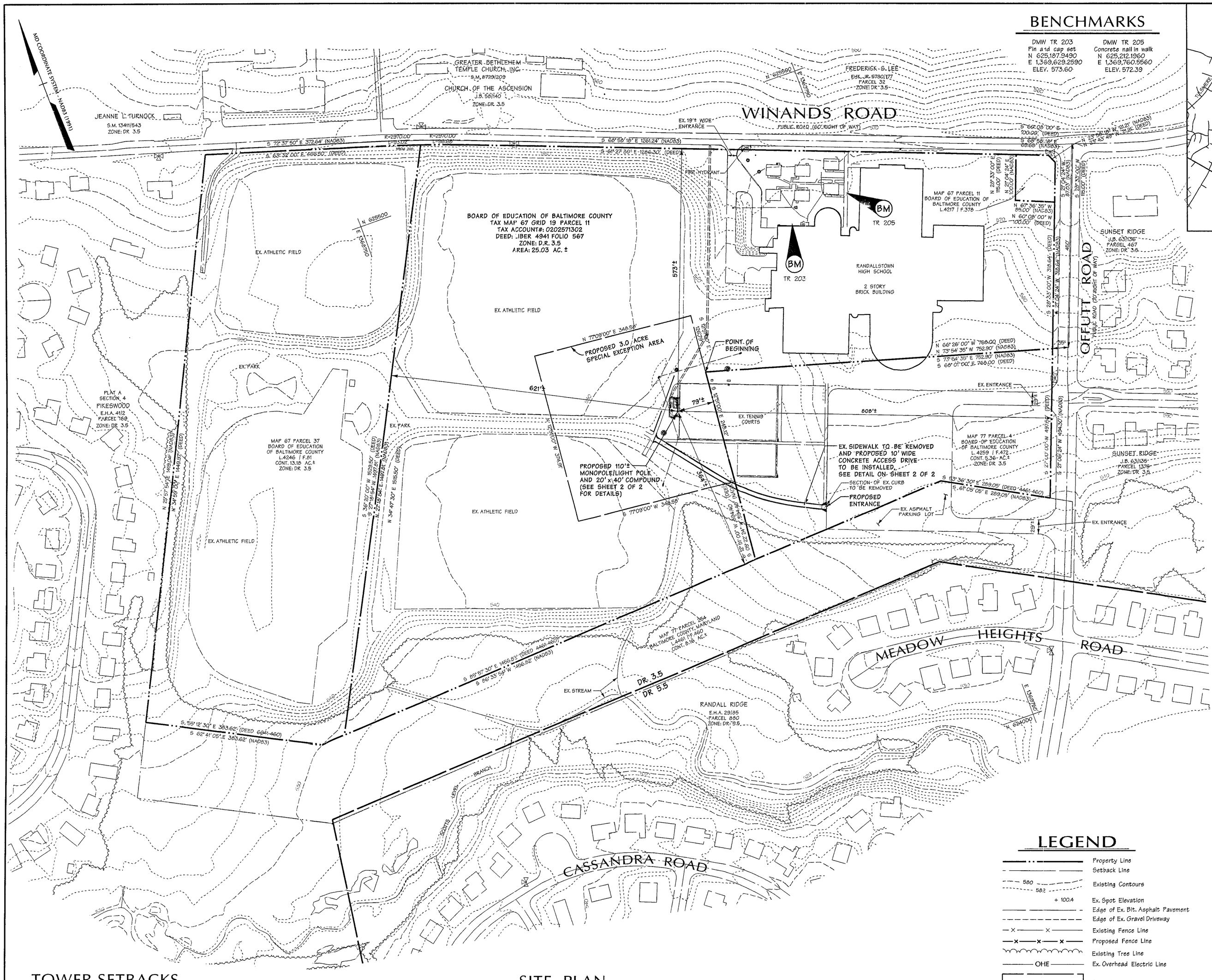
7BAN178A
7BAN113A
7BAN090A

B.1A
1



BENCHMARKS

DMW TR 203	DMW TR 205
Pin and cap set	Concrete nail in walk
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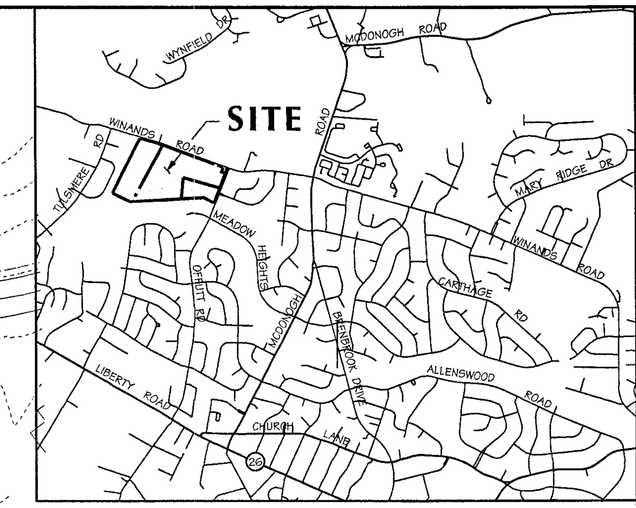
E 1,369,629.2590	E 1,369,760.5560
ELEV. 573.60	ELEV. 572.39



VICINITY MAP

SCALE: 1"=2000'

GENERAL NOTES

1. Current Owner and Street Address: Board of Education of Baltimore County, Pulaski Business Park, 9610 Pulaski Park Drive, Baltimore, MD 21220-1435
2. Contract Lessee/Applicant: Omnipoint Communications, CAP Operations, LLC., 12050 Baltimore Avenue, Beltsville, Maryland 20705
3. Site Area: 25.03 acre = 1,090,307 sq. ft.
4. Existing Use: High School
5. Site Address: 4000 Offutt Road, Randallstown, MD 21133
6. Site Data: Tax Map 67, Grid 19, Parcel 11; Deed Reference: O.T.G. 4941/567; Tax Account Number: 0202571302; Councilmanic District: 04; Election District: 02; Zoned: DR 3.5
7. Proposed Light pole/Monopole location:
   Latitude: N 39° 22' 55.89" (NAD 27) N 39° 22' 56.26" (NAD 83)
   Longitude: W 76° 47' 56.17" (NAD 27) W 76° 47' 55.08" (NAD 83)
   Ground Elevation: 546.0'± AMSL (NAVD 88)
   Proposed flagpole/monopole height: 110'± AGL
   Total elevation: 656.0'± AMSL (NAVD 88)
8. The information shown hereon, in the area of the proposed equipment addition, is the result of a DMW, Inc. survey performed on February 11, 2005. Topographic and planimetric information is taken from Baltimore County O.I.T. GIS captured March 1996. THIS IS NOT A BOUNDARY SURVEY. Boundary information shown hereon is based upon a deed, L4091 F.101, L4259 F.472, L.4246 L.81, AND L.4217 F.378, recorded among the Land Records of Baltimore County, overlaid on points found in the field and rotated to the Maryland Coordinate System NAD83 (1991) as shown. The property is subject to all deeds and easements of record.
9. No water or sanitary utilities are required for the proposed facility.
10. There are no existing well or septic systems located on this property.
11. Zoning information is taken from Baltimore County OIT/GIS; Zoning - Baltimore County Office of Planning - 1:2400, 2004 data files as shown on maps 67A3 and 77A1.
12. There are no new signs proposed for this facility.
13. No additional lights are proposed for this facility, unless required by the Federal Aviation Administration. Existing lights on "pole to be removed" shall be relocated on proposed monopole.
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 240010-0220-C revised September 3, 1992.
17. Proposed work includes installation of three equipment cabinets on a 10' x 20' concrete pad inside a 20' x 40' fenced compound area and the placement of a 110' tall Light pole/monopole with antenna platform mounted at the top of the pole. The existing Light pole is to be removed, existing lights to be relocated on the monopole.
18. Required number of employees: 0 (unmanned facility)
19. Parking spaces provided: 0 (unmanned facility)
20. Floor area ratio: N/A
21. Ground disturbance limited to 4870± sq. ft.
22. No CRG, DRC, or waivers on record for this site.
23. No zoning cases or building permits on record for this site.
24. Proposed project is not within the Chesapeake Bay Critical Area.
25. The proposed facility is not located in the National Historic Register District.
26. Applicant agrees to Section 426.6 D. & E. in the Baltimore County Zoning Regulations.

CBA Pet. 2

LEGEND

- Property Line
- Setback Line
- Existing Contours (580 / 582)
- Ex. Spot Elevation (+ 100.4)
- Edge of Ex. Bit. Asphalt Pavement
- Edge of Ex. Gravel Driveway
- Existing Fence Line
- Proposed Fence Line
- Existing Tree Line
- Ex. Overhead Electric Line (OHE)
- Special Exception Area
- Soils Line
- Zoning Line
- Existing Fire Hydrant

TOWER SETBACKS

	REQUIRED	PROVIDED
FRONT	200'	573'±
SIDE	200'	79'± (TO INTERIOR LOT LINE)
SIDE	200'	621'±
REAR	200'	364'±

SITE PLAN

Scale: 1"=100'

100 50 0 100 200

STATE OF MARYLAND — CHARLES VICTOR BAILEY — No. 20714 — REGISTERED PROFESSIONAL ENGINEER — 12-20-05

DRAWING TITLE: Plan to Accompany Zoning Petition for Special Exception and Special Hearing

DRAWN: MSS | CHECKED BY: MDM | DATE CHECKED: | PROJECT NO.: 04007.BD | DRAWING: 1 of 2 | SHEET SCALE: As Shown

BAN 097A
UNMANNED WIRELESS COMMUNICATION SITE

RANDALLSTOWN H.S.
4000 OFFUTT ROAD
RANDALLSTOWN, MD 21133

5th ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND

OMNIPOINT® COMMUNICATIONS CAP OPERATIONS, LLC.
12050 BALTIMORE AVENUE
BELTSVILLE, MD 20705
(240) 264-6600 FAX: (240) 264-6610

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

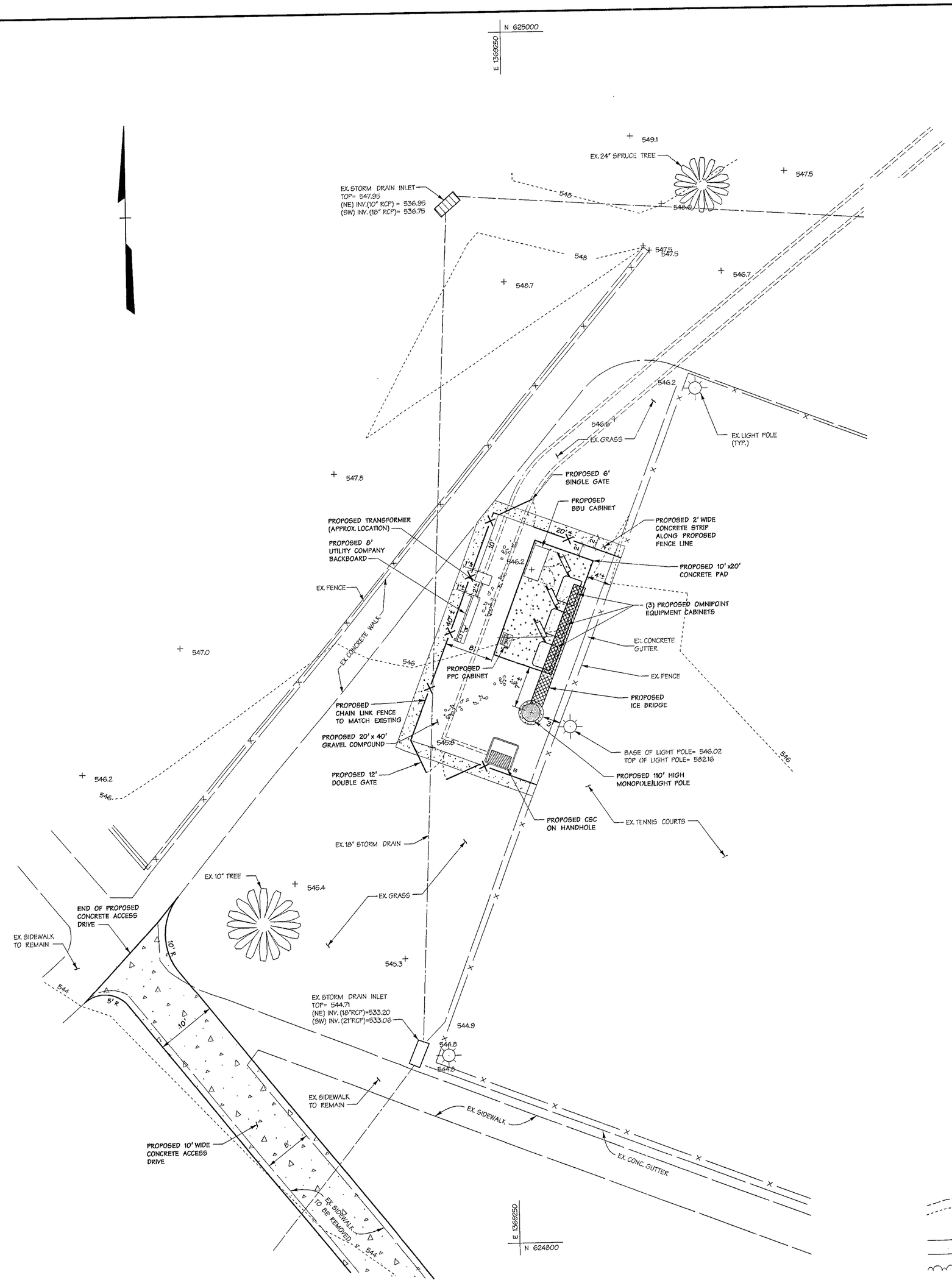
REV NO.	DRAWN BY	CHK'D BY	SCALE DATE
1	KO	MDM	09/29/05
2	KO	CVM	6-03-05
3	MSS	MDM	3-31-05

DESCRIPTION OF CHANGES
1 REVISED PER COUNTY SCHOOL COMMENTS
2 ISSUED FOR FINAL
3 PRELIMINARY REVIEW

OMNIPOINT COMMUNICATIONS CAP OPERATIONS, LLC.
SITE NO. BAN 097D
RANDALLSTOWN H.S.
4000 OFFUTT ROAD
RANDALLSTOWN, MD 21133

Tue Dec 20 10:56:44 2005

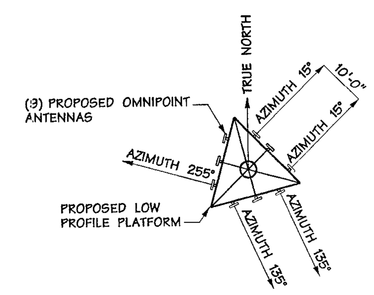
#421



COMPOUND DETAIL

Scale: 1"=10'

10 0 5 10 20



ANTENNA ORIENTATION

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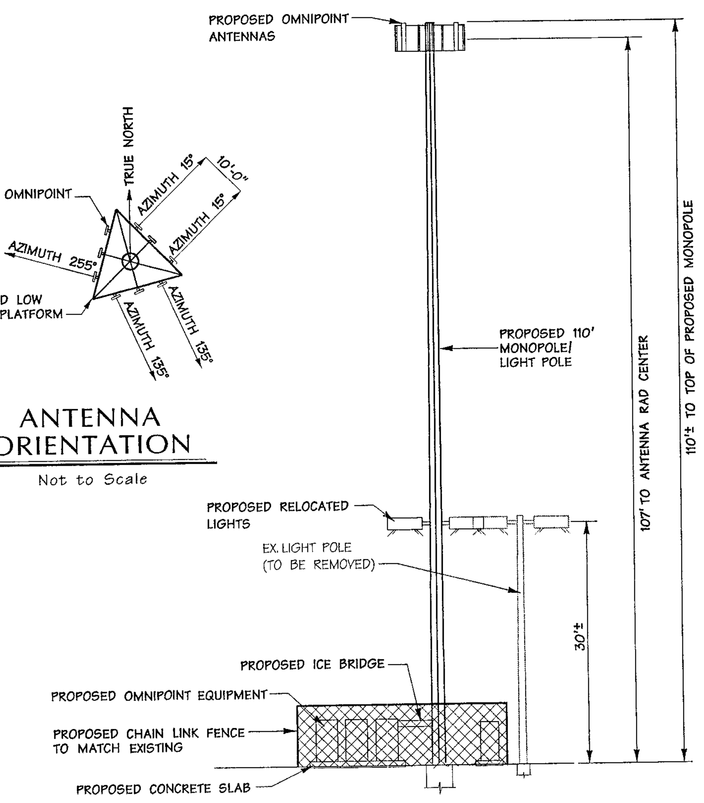
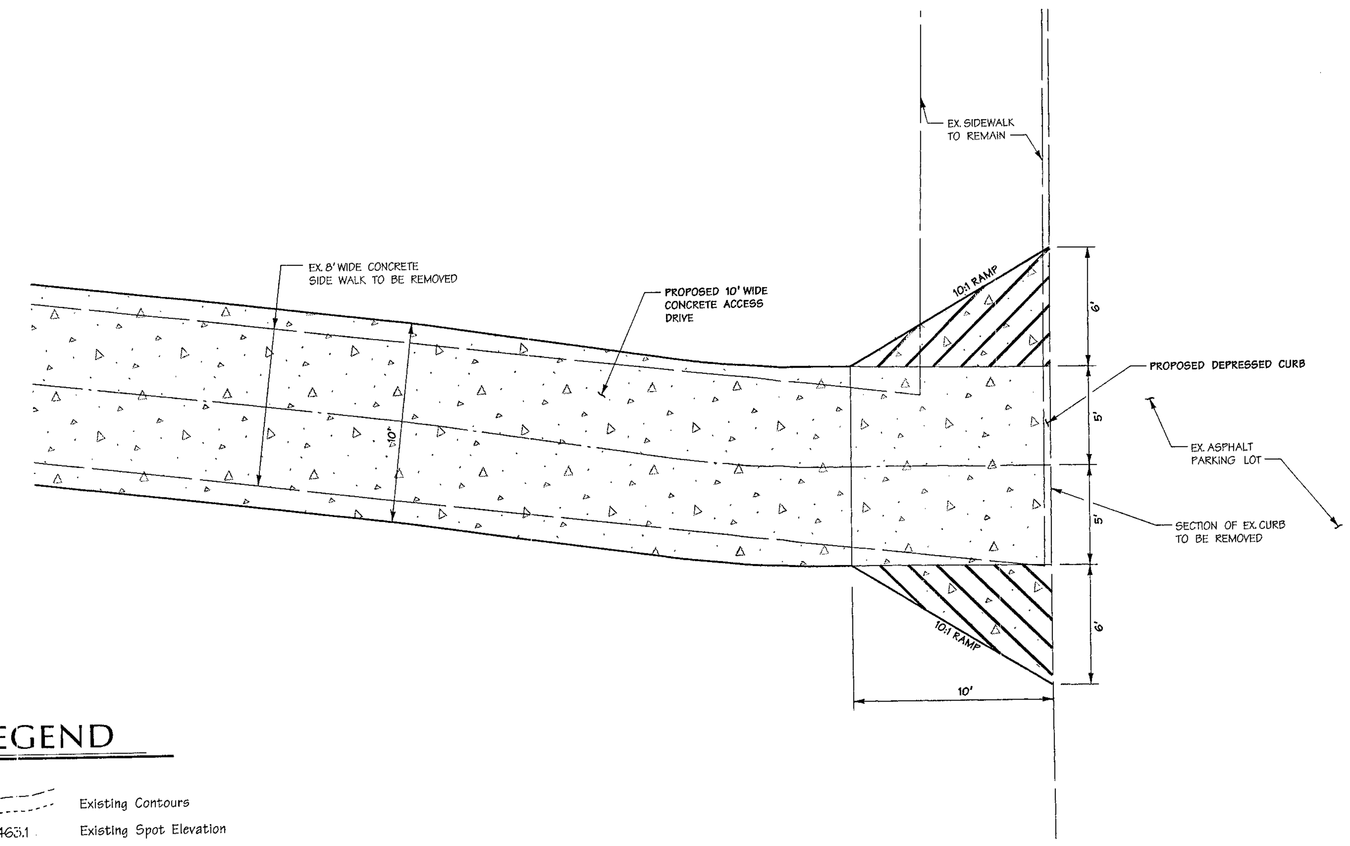


MONOPOLE ELEVATION

Not to Scale



LEGEND

580 / 582	Existing Contours
463.1	Existing Spot Elevation
	Existing Edge of Drive or Road
—x—x—	Existing Fence Line
	Existing Tree Line
	Existing Light Pole
	Existing Storm Drain
—x—x—x—	Proposed Fence Line
	Limit of Disturbance
580 / 582	Proposed Contours
463.1	Proposed Spot Elevation

DRAWING TITLE: Plan to Accompany Zoning Petition for Special Exception and Special Hearing

DRAWN: MSS | DRAWING: 2 of 2

CHECKED BY: MDM

DATE CHECKED: | PROJECT NO.: 04007.80 | SHEET SCALE: As Shown

BAN 097A
UNMANNED WIRELESS COMMUNICATION SITE

RANDALLSTOWN H.S.

4000 OFFUTT ROAD
RANDALLSTOWN, MD 21133

5th ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND

OMNIPOINT® COMMUNICATIONS CAP OPERATIONS, LLC.
12050 BALTIMORE AVENUE
BELTSVILLE, MD 20705
(240) 264-8600 FAX: (240) 264-8610

DMW
Daft·McCune·Walker, Inc.
A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

DESCRIPTION OF CHANGES

REV. NO.	DESCRIPTION	DRAWN BY	PLOTTED BY	ISSUE DATE
1				//
2				//
3				//
4				//
5	REVISED PER COUNTY SCHOOL COMMENTS	KO	MDM	09/28/05
6	ISSUED FOR FINAL	KO	CVM	6-03-05
7	PRELIMINARY REVIEW	MSS	MDM	3-31-05

STATE OF MARYLAND — CHARLES VICTOR BURTT — No. 29114 — REGISTERED PROFESSIONAL ENGINEER
11-29-05

OMNIPOINT COMMUNICATIONS CAP OPERATIONS, LLC.
SITE NO. BAN 097D
RANDALLSTOWN H.S.
4000 OFFUTT ROAD
RANDALLSTOWN, MD 21133

Ref. Exhibit CBA 4

BAN097
Randallstown High School
Maryland

April 10, 2006

mytopo.com

PO Box 2075 , Red Lodge, Montana , 59068
(877) 587-9004

About this Map

Each myTopo map consists of several detailed US Geologic Survey aerial photo maps uniquely centered to cover your backpacking trip, hunting camp, or favorite getaway spot. No more cutting and pasting maps together to get the map you need. MyTopo maps also feature navigation grid overlays for precise GPS positioning and land navigation.

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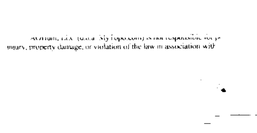
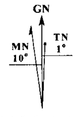
Vicinity Map
Maryland



Source image at center of map taken on 04/08/1993

3



Magnetic declination at center of map on April 10, 2006

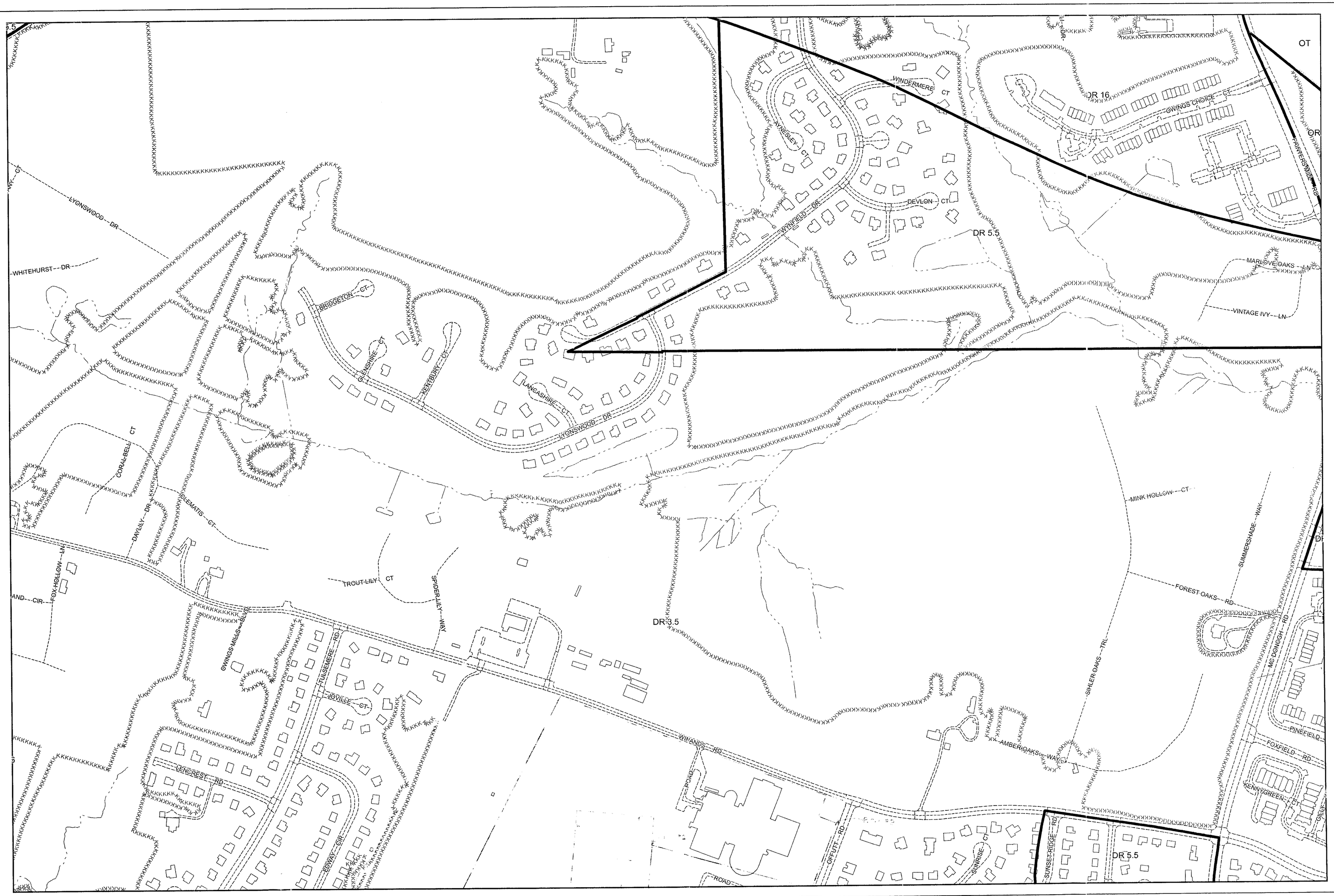
1:5000 Scale

0 100 200 300 400 500 Feet
0 50 100 150 Meters

Universal Transverse Mercator (UTM) Projection Zone18
North American Datum of 1983 (NAD83)

Warning: U.S. Geo.gov http://geo.usgs.gov/faq/disclaim.html
maps, products damage or violation of the law is prosecuted to

06-0410-1768-01R



Plan Sheet: *067A3*

Note:
Section 32-3-202 of the Baltimore County, 2003 Code establishes the zoning geodatabase. This map represents the actions of the Baltimore County Council on August 31, 2004 (Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04) effective September 3, 2004.

Legend

Zoning — Streams — Vegetation
Buildings — Roads

Baltimore County
Office of Planning and Zoning
Official Zoning Map

066B2	066C2	067A2	067B2	067C2
066B3	066C3	067A3	067B3	067C3
076B1	076C1	077A1	077B1	077C1

Scale
1" = 200'
0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

Pet Ex #6A

#421

Plan Sheet: *077A1*

Note:
Section 32-3-202 of the Baltimore County, 2003 Code establishes the zoning geodatabase. This map represents the actions of the Baltimore County Council on August 31, 2004 (Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04) effective September 3, 2004.

Legend

Zoning — Streams — Vegetation
Buildings — Roads

Baltimore County
Office of Planning and Zoning
Official Zoning Map

066B3	066C3	067A3	067B3	067C3
076B1	076C1	077A1	077B1	077C1
076B2	076C2	077A2	077B2	077C2

Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

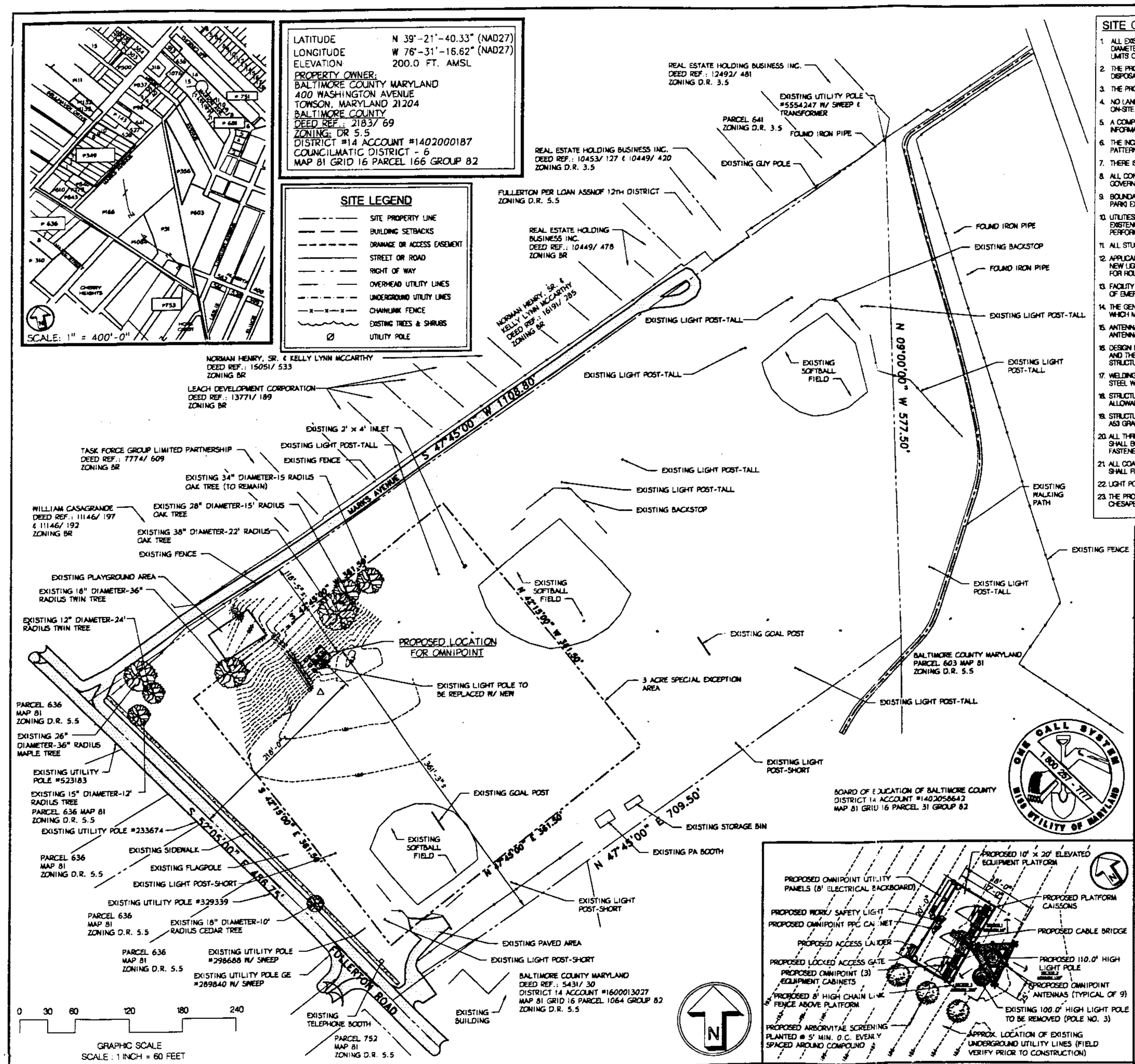
421

LATITUDE	N 39°-21'-40.33" (NAD27)
LONGITUDE	W 76°-31'-16.62" (NAD27)
ELEVATION	200.0 FT. AMSL

PROPERTY OWNER:
BALTIMORE COUNTY MARYLAND
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
BALTIMORE COUNTY
DEED REF.: 2183/ 69
ZONING: DR 5.5
DISTRICT #14 ACCOUNT #1402000187
COUNCILMATIC DISTRICT - 6
MAP 81 GRID 16 PARCEL 166 GROUP 82

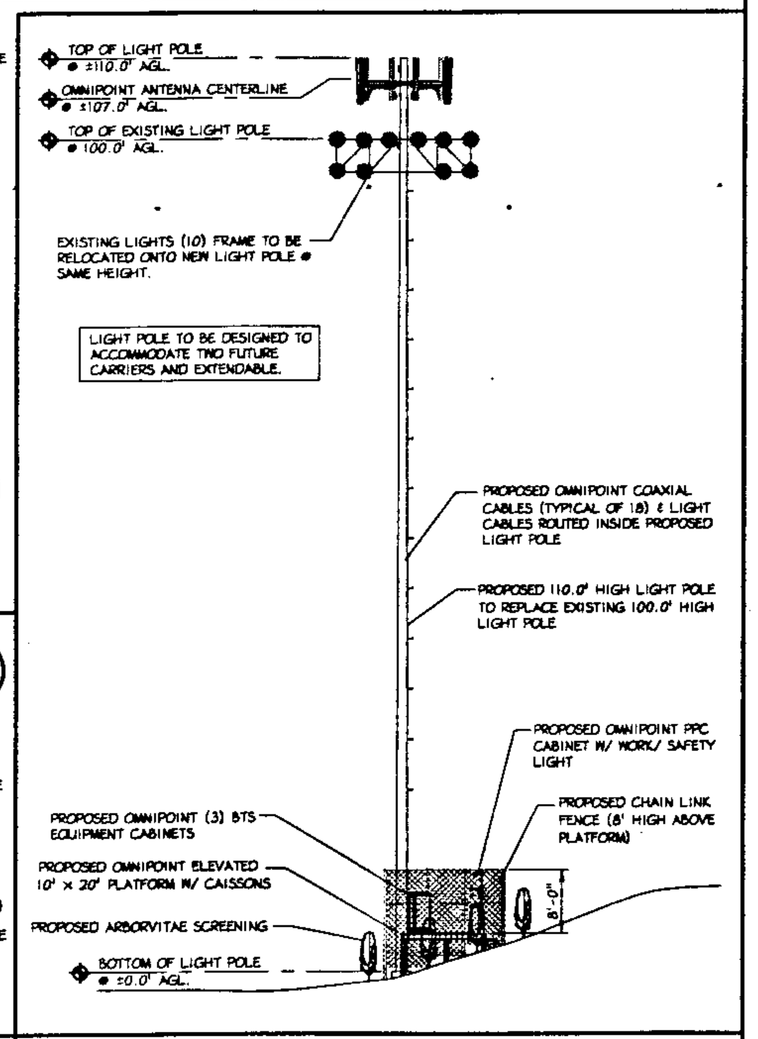
SITE LEGEND

- SITE PROPERTY LINE
- BUILDING SETBACKS
- DRAINAGE OR ACCESS EASEMENT
- STREET OR ROAD
- RIGHT OF WAY
- OVERHEAD UTILITY LINES
- UNDERGROUND UTILITY LINES
- CHAINLINK FENCE
- EXISTING TREES & SHRUBS
- UTILITY POLE



1 LS-1 SITE PLAN
SCALE: 1" = 60'-0"

2 LS-1 ENLARGED PLAN
SCALE: 1" = 10'-0"



3 LS-1 SITE ELEVATION
SCALE: 1" = 10'-0"

SITE GENERAL NOTES

1. ALL EXISTING BUILDINGS, WATERCOURSES, MARSHES, ROCK OUTCROPS, WOODED AREAS, SINGLE TREES LARGER THAN 8" IN DIAMETER AT THREE FEET ABOVE GROUND LEVEL AND ALL OTHER SIGNIFICANT FEATURES HAVE BEEN SHOWN WITHIN THE LIMITS OF DISTURBANCE UNDERGROUND IMPROVEMENTS, IF ANY, AND NOT VISIBLE OR MARKED BY "ONE CALL" ARE NOT SHOWN.
2. THE PROPOSED DEVELOPMENT IS UNMANNED AND THEREFORE DOES NOT REQUIRE A MEANS OF WATER SUPPLY OR SEWAGE DISPOSAL, OUTDOOR STORAGE OR ANY SOLID WASTE RECEPTACLES.
3. THE PROPOSED DEVELOPMENT DOES NOT INCLUDE SIGNS OF ADVERTISING.
4. NO LANDSCAPING WORK IS PROPOSED IN CONJUNCTION WITH THIS DEVELOPMENT OTHER THAN THAT SHOWN. EXISTING ON-SITE VEGETATION SHALL BE PRESERVED TO THE MAXIMUM EXTENT.
5. A COMPLETE BOUNDARY SURVEY OF THE HOST PARCEL HAS NOT BEEN PERFORMED BY BETZWOOD ASSOCIATES. ALL INFORMATION ON THIS PLAN IS NOT TO BE USED FOR BOUNDARY, TITLE, OR CONSTRUCTION PURPOSES.
6. THE INCREASE IN STORM WATER RUNOFF DUE TO THE INCREASE IN IMPERVIOUS AREA IS INSIGNIFICANT, EXISTING DRAINAGE PATTERNS WILL NOT BE ALTERED. THEREFORE, DRAINAGE STRUCTURES ARE NOT PROPOSED.
7. THERE IS NO OFF-STREET PARKING SPACE PROPOSED WITH THIS APPLICATION.
8. ALL CONSTRUCTION FOR SITE IMPROVEMENTS SHALL CONFORM TO APPLICABLE SPECIFICATIONS, STANDARDS, AND OF THE GOVERNMENTAL OR UTILITY AUTHORITY HAVING JURISDICTION.
9. BOUNDARY INFORMATION WAS OBTAINED FROM A PLAN PERPARED BY CMC ENGINEERING DATED 12/16/02 BAN-252E (FULLERTON PARK) EXISTING FEATURES PLAN
10. UTILITIES SHOWN ON PLAN ARE TAKEN FROM OWNERS RECORDS AND FIELD LOCATION OF VISIBLE SURFACE FEATURES. THE EXISTENCE, EXTENT & EXACT HORIZONTAL & VERTICAL LOCATIONS OF UTILITIES HAS NOT BEEN VERIFIED. ANY CONTRACTOR PERFORMING WORK ON THIS SITE MUST CONTACT MD ONE CALL UTILITY AT LEAST 48 HOURS PRIOR TO COMMENCING WORK.
11. ALL STUCTURAL STEEL SHALL BE HOT-DIPPED GALVANIZED AFTER FABRICATION.
12. APPLICANT PROPOSES AN UN-MANNED, MODULAR, RADIO EQUIPMENT CABINETS & ASSOCIATED ANTENNAS MOUNTED TO A NEW LIGHT POLE REPLACING THE EXISTING. THE PROPOSED FACILITY IS UNMANNED AND VISITED ONCE TO TWICE A MONTH FOR ROUTINE MAINTENANCE.
13. FACILITY WILL BE INDEPENDENTLY POWERED WITH SEPARATE SERVICE & METER. FACILITY WILL NOT BE LIGHTED WITH EXCEPTION OF EMERGENCY CONDITIONS. A SINGLE SWITCHED LIGHT LOCATED NEAR EQUIPMENT AND THE ATHLETIC FIELD LIGHTS.
14. THE GENERAL CONTRACTOR AND/ OR HIS SUB-CONSULTANT SHALL BE RESPONSIBLE FOR OBTAINING ALL PERMITS & INSPECTIONS WHICH MAY BE REQUIRED FOR THE WORK BY THE ARCHITECT/ ENGINEER, THE STATE, COUNTY OR LOCAL GOVERNMENT AUTHORITY.
15. ANTENNA INSTALLATION SHALL BE CONDUCTED BY FIELD CREWS EXPERIENCED IN THE ASSEMBLY & ERECTION OF RADIO ANTENNAS, TRANSMISSION LINES & SUPPORT STRUCTURES.
16. DESIGN REQUIREMENTS FOR THE ANTENNA SUPPORTING STRUCTURES ARE PER BOCA NATIONAL BUILDING CODE/ 1996, AND THE EIA/ TIA-222-F STRUCTURAL STANDARDS FOR STEEL ANTENNA SUPPORTING STRUCTURES & 2000 IBC - STRUCTURAL WIND LOAD STANDARDS & RELATONSHIP W/ TIA/ EIA 222.
17. WELDING SHALL BE IN ACCORDANCE WITH THE AMERICAN WELDING SOCIETY (AWS) D.1.1-92 STRUCTURAL WELDING CODE - STEEL. WELD ELECTRODES SHALL BE E7001.
18. STRUCTURAL STEEL SHALL CONFORM TO LATEST EDITION OF THE AISC SPECIFICATIONS FOR STRUCTURAL STEEL BUILDINGS - ALLOWABLE STRESS DESIGN & PLASTIC DESIGN INCLUDING THE COMMENTARY & THE CODE OF STANDARD PRACTICE.
19. STRUCTURAL STEEL PLATES & SHAPES SHALL CONFORM TO ASTM A36. ALL STRUCTURAL STEEL PIPES SHALL CONFORM TO ASTM A53 GRADE "B". ALL STRUCTURAL STEEL COMPONENTS & FABRICATED ASSEMBLIES SHALL BE HOT-DIPPED GALVANIZED AFTER
20. ALL THREADED STRUCTURAL FASTENERS FOR ANTENNA SUPPORT ASSEMBLIES SHALL CONFORM TO ASTM A325. FASTENERS SHALL BE 5/8"ø MINIMUM BEARING TYPE CONNECTIONS WITH THREADS INCLUDED IN THE SHEAR PLANE. ALL EXPOSED FASTENERS, NUTS & WASHERS SHALL BE GALVANIZED UNLESS OTHERWISE NOTED.
21. ALL COAXIAL CABLE CONNECTIONS & TRANSMITTER EQUIPMENT SHALL BE AS SPECIFIED BY THE OWNER. THE CONTRACTOR SHALL FURNISH ALL CONNECTION HARDWARE REQUIRED TO SECURE THE CABLES.
22. LIGHT POLE IS TO BE DESIGNED TO ACCOMMODATE TWO FUTURE CARRIERS AND EXTENDABLE.
23. THE PROPOSED DEVELOPMENT IS NOT LOCATED WITH A FLOODPLAIN AND NOT WITH THE CRITICAL AREA OF CHESAPEAKE BAY.

Betzwood Associates PC
Architects & Engineers
Robin J. Kohn, AIA — Eugie W. Kubik, PE
523 Kimberton Road, Suite 118 Phoenixville, PA 19460
tel. (610) 917-8831 fax (610) 917-8836
email mail@betzwood.com http://www.betzwood.com

SEAL BLOCK

OMNIPOINT COMMUNICATIONS
CAP OPERATIONS, LLC
a subsidiary of T-MOBILE USA, INCORPORATED
the VOICESTREAM WIRELESS CORPORATION
12050 BALTIMORE AVENUE BELTSVILLE, MD 20705
Tel. (240) 264-6000 FAX (240) 264-6010

APPROVALS
Omnipoint
LANDLORD
LEASING
R.F.
ZONING
CONSTRUCTION

NOTE

PROJECT NO.	DRAWN BY	CHECK BY
OP-417	DMT	RJK

SUBMITTALS

NO.	DATE	ISSUE
0	12/18/02	ISSUED FOR ZONING
1	12/30/02	RESSUED FOR ZONING
2		
3		
4		
5		
6		
7		
8		
9		

NOTE

PLAN TO ACCOMPANY
DRC REQUEST

PROJECT
FULLERTON PARK
SITE #BAN-252E
LIGHT POLE REPLACEMENT
FULLERTON ROAD
BALTIMORE, MARYLAND 21236
BALTIMORE COUNTY
ELECTION DISTRICT #14 ACCOUNT #1402000187
COUNCILMATIC DISTRICT - 6

SHEET TITLE
DRC PLAN

SHEET NUMBER
DRC-1

FULLERTON PARK SITE #BAN-252E

Rev. 3

C84

FULLERTON PARK SITE #BAN-252E

FULLERTON PARK SITE #BAN-252E

PET Exhibit 3