

1/12/11

**RE: IN THE MATTER OF
C. Richard Lehnert, Legal Owner
Cellco Partnership
D/b/a/ Verizon Wireless Petitioners
700 Belfast Road
304' NE of C/L**

**In the Matter of
Verizon Wireless Belfast Road
DRC No. 102207C**

*** BEFORE THE COUNTY
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CBA 10-035 and 09-322 X**

* * * * *

OPINION

BACKGROUND

These matters come before the Board as a result of appeals taken from a decision and order of the Zoning Commissioner of Baltimore County in Case No. 09-322 X, dated January 12th 2010, in which he commissioner granted a special exception for a wireless telecommunications tower and related facility, and from a decision of the Development Review Committee (DRC), dated March 31st, 2010, in which Verizon Wireless request for a limited exemption to construct the cell tower and replaced facility was approved.

The appeals were consolidated for hearing and scheduled for September 28th 2010. Appearing on behalf of the Petitioner Cellco Partnership d/b/a/ Verizon Wireless ("Verizon Wireless") were Arnold Jablon, Esquire and Patsy Malone, Esquire of Venable, LLP. Appearing on behalf of Appellants Valleys Planning Council ("VPC") and Thomas Mullan, III was Richard C. Burch Esquire. Appearing on behalf of Appellant ATT was Gregory E. Rapisarda, Esquire, of Saul Ewing LLP. Also appearing was J. Neil Lanzi, Esquire on behalf of Holly Cumberland, an interested party, and Carole S. Demilio, Esquire, Deputy People's Counsel.

Counsel for Verizon Wireless raised preliminary motions to dismiss the appeal filed by AT&T and to deny Holly Cumberland standing to take part in these appeals. In addition, counsel for Verizon Wireless and for VPC proffered to the Board that they had negotiated a Stipulation and Settlement Agreement that compromises and resolves the differences between them as to the issue in this matter. Prior to the public deliberation on Verizon's motion to dismiss, AT&T withdrew their appeal, leaving the matter of Cumberland's standing to continue as the only pending matter as to the Motion to Dismiss.

DECISION

Subsequent to the decision and order rendered by the Zoning Commissioner, appeals were filed by VPC and AT&T only. No appeals were taken by Cumberland or Lehnert, the property owner. Due to the lack of an appeal on the part of Cumberland, Verizon Wireless has moved to dismiss their participation in this matter before the Board now that the balance of the parties have reached a settlement agreement.

Cumberland argues that she has a right to participate as a party, interested person, and protestant. In support she cites *Dorsey v. Bethel AME Church*, 375 Md. 59 (2002) that holds that interested parties may join in a proceeding where another party has filed a valid appeal. The facts in the case at bar are, however, distinguishable. Although Cumberland was an interested party before the Zoning Commissioner, it is undisputed that she didn't join the other parties in filing an appeal. It wasn't until almost eight months after the Zoning Commissioners opinion was rendered and a few days prior to the scheduled hearing before this board that counsel for Cumberland filed notice that she intended to take part in the proceedings. The case at bar differs from the case considered in *Dorsey* in that the parties who appropriately noted appeals in this matter have now withdrawn via settlement. While the court in *Dorsey* allowed a non-appellant

interested party to "tag" along on another's appeal, there no longer exists any valid appellants on which Cumberland can "tag" along. Consequently, this Board finds that Holly Cumberland does not have standing to prosecute an appeal now that the valid appellants have withdrawn.

CONCLUSION

This BOARD finds that Holly Cumberland lacks standing to prosecute the appeal in the above-captioned matter. Consequently, Petitioner Verizon Wireless' Motion to Deny Standing to Holly Cumberland is GRANTED.

ORDER

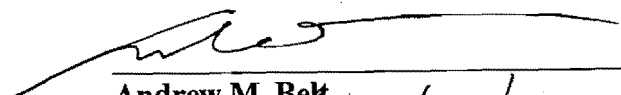
THEREFORE, IT IS THIS 12th day of January, 2011 by the County
Board of Appeals of Baltimore County

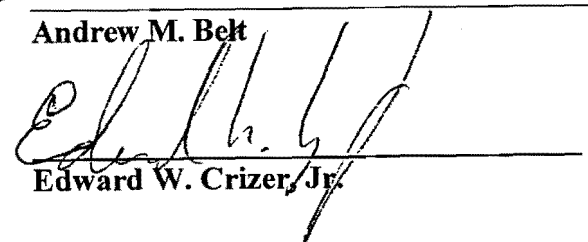
ORDERED that the Petitioner's request to DENY STANDING TO HOLLY
CUMBERLAND is hereby GRANTED.

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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Wendell H. Grier, Panel Chair


Andrew M. Belt


Edward W. Crizer, Jr.

In the Matter of:

C. Richard Lehnert, Legal Owner
Cellco Partnership
d/b/a Verizon Wireless Petitioners
700 Belfast Road
340' NE of C/L

* BEFORE THE COUNTY

* BOARD OF APPEALS

* OF BALTIMORE COUNTY

* Case No. 09-322-X

In the Matter of:

Verizon Wireless Belfast Road
DRC No. 102207C

* Case No. CBA 10--035

8th ED
3rd CD

• * * * *
OPINION

These matters are before this Board as a result of appeals taken from a decision and order of the Zoning Commissioner of Baltimore in Case No. 09-322 X, dated January 12th, 2010, in which he granted a special exception for a wireless telecommunications tower and related facility, and from a decision of the Development Review Committee (DRC), dated March 31st, 2010, in which Verizon Wireless' request for a limited exemption to construct the tower and related facility was approved.

These appeals were consolidated for hearing and scheduled for September 28th, 2010. Appearing on behalf the Petitioner Cellco Partnership d/b/a Verizon Wireless (hereinafter referred to as Verizon Wireless) were Arnold Jablon, Esq., and Patsy Malone, Esq., of Venable, LLP. Appearing on behalf of Appellants Valleys Planning Council and Thomas Mullan, III (hereinafter referred to collectively as VPC), was Richard C. Burch, Esq. Appearing on behalf of Appellant New Cingular Wireless PCS, LLC t/b/a AT & T Mobility, LLC (hereinafter referred to as "AT & T") was Gregory E. Rapisarda, Esq., of Saul Ewing LLP. Also appearing was J. Neil Lanzi, Esq., on behalf of Holly Cumberland, an interested party, and Carole S. Demilio, Esq., Deputy People's Counsel.

Counsel for Verizon Wireless raised preliminarily motions to dismiss the appeal filed by AT & T and to deny Cumberland standing to take part in these appeals. In addition, counsel for Verizon

Wireless and for VPC proffered to the Board they have negotiated a Stipulation and Settlement Agreement (hereinafter referred to as the "Agreement") that compromises and resolves the differences between them as to the issues in this matter, without prejudice to other or future matters. Verizon and VPC request this Board of approve and adopt the terms, provisions, conditions and restrictions set forth in the Stipulation and Settlement Agreement:

Pursuant to Verizon Wireless' motions to dismiss AT & T's appeal and to deny Cumberland standing to take part in the appeal, the Board heard oral arguments from all counsel. Subsequently, the Board requested memoranda limited to the issues raised by the motions. Memoranda were due from AT & T and Cumberland by October 6th, 2010 and reply memoranda due from Verizon Wireless and VPC by October 18th. Public deliberation on the motions was scheduled for October 21st, 2010 with the public hearing on the merits, if necessary, scheduled immediately thereafter.

BACKGROUND

Subsequent to the decision and order rendered by the Zoning Commissioner, appeals were filed by VPC and by AT & T only. No appeals were taken by Cumberland or Lehnert, the property owner. An timely appeal was taken by VPC from the DRC's written approval of the limited exemption, but no appeal was filed by AT & T, Cumberland or Lehnert. On or about September 31st, 2010, People's Counsel filed a pre-hearing memorandum, in which People's Counsel argued that AT & T's appeal should be dismissed.

Prior to the public deliberation on the motions, counsel informed the Board that AT & T would dismiss its appeal. Counsel explained AT & T had reached an agreement with Verizon Wireless and VPC. Present were counsel for Verizon Wireless, VPC, AT & T, Cumberland and J. Carroll Holzer, Esq., representing Lehnert, the property owner. The Board was informed that the dismissal by AT & T of its appeal of the Zoning Commissioner's decision was contingent on the Board agreeing to a maximum height of 89' in lieu of the 87', as ordered by the Zoning Commissioner. The slight increase in the height

of the tower would allow a co-location for AT & T at approximately 65' on the proposed tower that would satisfy its requirements and eliminate any need for AT & T to seek a special exception for the erection of another telecommunications tower on the subject site. VPC and Verizon Wireless agreed to amend its Agreement to reflect the additional height. AT & T further stated that it would be bound by all the terms and conditions contained in the Zoning Commissioner's decision and in the Agreement between VPC and Verizon Wireless. AT & T explained its appeal from the Zoning Commissioner's decision and order was not from the granting of the special exception, but from specific conditions the Zoning Commissioner had imposed therein. Pursuant to its agreement with VPC and Verizon Wireless, its appeal is now moot. AT & T understood and acknowledged that it would be bound by the decision of the Zoning Commissioner and by the terms of the Agreement between VPC and Verizon Wireless as incorporated by the Board in its Order.

Counsel for VPC and Verizon Wireless proffered the terms of the Agreement, which had been approved by both parties and was awaiting final signatures. Counsel for Verizon Wireless presented the following summary, which is not intended to reflect in specificity all of its terms and conditions:

- (1) The decision by the DRC is to be upheld by the Board;
- (2) VPC and Verizon Wireless stipulate to the Findings of Fact and Conclusions of Law issued by the Zoning Commissioner, including all restrictions and conditions contained therein except as otherwise amended in the Agreement;
- (3) VPC and Verizon Wireless stipulate to a maximum height of the silo telecommunication structure of 89' instead of 87';
- (4) Only one wireless communications tower shall be permitted on the Lehnert property;
- (5) VPC agrees to allow the development to proceed in accordance with approvals granted by the Zoning Commissioner and the DRC, as otherwise amended by the forestated Agreement;

- (6) The proposed tower is to be constructed within and disguised as a silo, with a brick/dark red terracotta color scheme with gray cap and constructed with a brick like façade in appearance and with a color scheme, subject to VPC's final approval, which shall not be unreasonably withheld;
- (7) A single equipment shelter shall be constructed for the storage and maintenance of equipment by all locators, which shelter is to be constructed as a barn style building, with a barn style gabled roof as generally depicted on Exhibit C to the Agreement;
- (8) VPC and Verizon Wireless stipulate that the Board should adopt the Zoning Commissioner's decision and the Agreement in its entirety as its findings of fact and conclusions of law and to grant the special exception for a wireless telecommunications tower with related facility and affirm the DRC's decision to approve a limited exemption to construct a tower on the subject property.

DECISION ON MOTION

As a result of the Agreement entered into by VPC and Verizon Wireless, as long as all parties abide by its terms and agreements, all issues between them are settled and resolved. Thus, pursuant to the stipulation, the appeals taken by VPC are moot. With the dismissal of its appeal, for the reasons explained by counsel, AT & T's appeal is also moot. Verizon Wireless' motion to dismiss AT & T's appeal is therefore denied as moot.

This leaves but one outstanding issue, Verizon Wireless' motion to deny Cumberland standing. After considering the cogent arguments of counsel and the well-written memoranda submitted, it is this Board's decision that Cumberland does not have standing to prosecute an appeal.

Cumberland argues that she has a "right to participate as a party, interested person and protestant". In support, she cites Dorsey v. Bethel AME Church, 375 Md. 59 (2002). We believe the holding in this case is inapposite to her argument. Cumberland indeed was an interested party below,

but there is no disagreement she failed to take an appeal. She knew, or should have known, of the Zoning Commissioner's decision and, yet, did not for whatever reason note an appeal within the requisite time period. Indeed, not until a few days prior to the scheduled hearing before this Board did Cumberland file by counsel a notice that she intended to take part, eight months after the Zoning Commissioner issued his written decision, and seven months after a notice of appeal was required to be noted. While VPC, Mullan and AT & T did file appeals, she did not. With the Stipulation and Settlement Agreement entered into and executed by and between Verizon Wireless and VPC and with the subsequent withdrawal of AT & T's appeal, there are no appellants left. Dorsey holds that if there is a valid appellant, others who did not file appeals can basically "tag" along and take part as parties to the appeal. In the instant case, there are no appellants left. Dorsey concluded there would be no purpose served in dismissing those who did not take appeals as long as there were appellants who did and were prosecuting their appeals. By failing to take an appeal, Cumberland in the instant situation does not have standing to prosecute an appeal and, as a result of her failure to appeal, cannot now stand alone and prosecute an appeal to the Zoning Commissioner's decision.

DECISION

Pursuant to the Stipulation and Settlement Agreement by and between VPC and Verizon Wireless, this Board adopts the findings of fact and conclusions of law issued by the Zoning Commissioner in his decision of January 12th, 2010. Specifically, based on the stipulations presented, we find that the property on which the proposed tower is to be constructed is zoned RC 2, where by section 1A01.2.C, Baltimore County Zoning Regulations (BCZR), a wireless communications tower is permitted by special exception. The subject property is approximately 50.873 acres and is owned by Richard Lehnert, and located on the west side of I-83 and north of Belfast Road in northern Baltimore County. The special exception area is approximately 5.002 acres, in which the tower and related facility will be constructed. In order for a special exception for the tower to be approved, there must be compliance

with certain sections of the BCZR, specifically sections 502.1, 502.7 and 426. Verizon Wireless presented testimony and evidence to the Zoning Commissioner in support of its position that the special exception should be granted. Protestants presented to the Zoning Commissioner testimony and evidence in opposition. The Zoning Commissioner, including a detailed and thorough analysis of the testimony and evidence presented, issued his decision dated January 12th, 2010, in which he concluded that Verizon Wireless had met its burden and granted the special exception, with conditions.

The Board has reviewed the Zoning Commissioner's Findings of Fact and Conclusions of Law and the testimony and evidence then presented. The Zoning Commissioner concluded that all aspects of sections 502.1, 502.7 and 426 have been met. He further concluded that the facts and circumstances as presented before him show that the proposed cellular telecommunications tower at this particular location would not have any adverse effects above and beyond those inherently associated with such use irrespective of its location within the zone. Citing People's Counsel for Baltimore County v. Loyola College of Maryland, 406 Md. 54 (2008); Schultz v. Pritts, 291 Md. 1 (1981). He concluded that the proposed tower, based on all of the testimony and evidence presented he should grant the special exception. However, he conditioned his approval with certain restrictions, as delineated in his order of January 12th.

The Board finds that the appropriate standards were applied by the Zoning Commissioner in this matter and finds that the special exception should be granted.

ORDER

IT IS THEREFORE, this day of 12th January, 2011, by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception to permit a wireless telecommunications tower with related facility pursuant to Baltimore County Zoning Regulations sections 1A01.2C.28, 502.1, 502.7 and 426 and s hereby Granted, subject to the following restrictions and conditions:

1. The Stipulation and Settlement Agreement, dated 29 October 2010, by and between VPC and Verizon Wireless, and its terms and conditions, is hereby approved, adopted and incorporated in its entirety into this Order and the parties shall be bound thereby; and the tower facility and equipment shelter shall be constructed as described and provided in paragraphs 2i, ii, and iii of the Stipulation and Settlement Agreement.
2. The Zoning Commissioner's decision of January 12th 2010 is adopted and incorporated in its entirety, including the restrictions contained therein except as otherwise amended by the Stipulation and Settlement Agreement, which shall control.

IT IS FURTHER ORDERED that the decision of the DRC in Case No. 10-035 to approve a limited exemption is affirmed.

IT IS FURTHER ORDERED that the appeal filed by AT & T is dismissed as moot pursuant to AT & T's voluntary dismissal of its appeal.

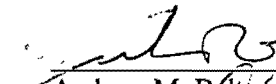
IT IS FURTHER ORDERED that the Petitioner's Motion to Deny Standing to AT & T is denied as moot.

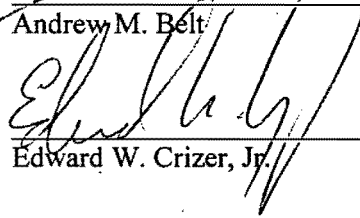
AND, IT IS FURTHER ORDERED that the Petitioner's Motion to Deny Standing to Holly Cumberland is granted.

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**


Wendell H. Grier, Panel Chairman


Andrew M. Belt


Edward W. Crizer, Jr.

STIPULATION and SETTLEMENT AGREEMENT

THIS STIPULATION and SETTLEMENT AGREEMENT (hereinafter referred to as "Agreement"), made this 29 day of October, 2010, by Cellco Partnership d/b/a Verizon Wireless, hereinafter referred to as "Verizon", and accepted by Thomas F. Mullan, III, and The Valleys Planning Council, Inc., a Maryland not-for-profit corporation, hereinafter referred to collectively as "VPC." Verizon and VPC are hereinafter sometimes collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Verizon has entered into an agreement to lease a certain area of property, approximately 1062 square feet, owned by C. Richard Lehnert, the owner of approximately 50.873 acres +/-, located in Baltimore County, Maryland, hereinafter sometimes referred to as the "subject property", as is more particularly described in Petitioner's Exhibit 1A, said exhibit introduced and accepted into evidence before the Zoning Commissioner of Baltimore County, Maryland (hereinafter referred to as "Zoning Commissioner") in Case No. 2009-0322-X, in which area the Verizon proposes to construct a wireless telecommunications tower and related facility.

WHEREAS, the leased area is located within a defined area of 5.002 acres +/-, identified on Petitioner's Exhibit 1A, referred to above, and further identified for the purposes of this Agreement, as the "Special Exception Area," and,

WHEREAS, The Valleys Planning Council, Inc. is an association composed of citizens who have an interest in the use and development of the subject property; and

WHEREAS, Mullan is an owner of property near the subject property and joins in this Agreement to accommodate the compromise and settlement reached by Verizon and The Valleys Planning Council, Inc.; and

WHEREAS, at the request of Verizon, the Zoning Commissioner granted a Petition for Special Exception in Case No. 2009-0322-X to permit a wireless telecommunications stealth tower with a height

of the entire structure being no taller than 87 feet; and

WHEREAS, VPC noted an appeal to the County Board of Appeals of Baltimore County from the decision in Case No. 2009-0322-X and that appeal is pending before the Board; and

WHEREAS, Verizon, pursuant to the approval granted in the Zoning Commissioner's decision in Case No. 2009-0322-X, sought and received approval from the Development Review Committee ("DRC") and the Director of the Department of Permits and Development Management ("PDM") for a limited exemption pursuant to Section 32-4-106(a)(1)(vi) of the Baltimore County Code ("BCC") to construct the tower and related facilities (collectively referred to as "DRC approval"), which approval was granted in a letter dated March 31, 2010; and

WHEREAS, VPC noted an appeal to the Board of Appeals from this "DRC" decision, which is also pending before the Board in Case No. CBA-10-035; and

WHEREAS, the Parties agree that they have reached a compromise in an effort to resolve their differences with respect to the development of this telecommunications facility only and, accordingly, the parties stipulate as set forth below and VPC agrees not to continue opposition of the Zoning Commissioner's and DRC's approvals for the proposed wireless telecommunications tower and related facilities on the subject property, provided that Verizon enters into this Agreement and performs in accordance with this Agreement; and

WHEREAS, VPC has determined that, with the specific conditions and restrictions described herein, the proposed wireless telecommunications tower and related facilities will not be opposed further by it; and

WHEREAS, Verizon, by this Agreement, is willing to enter into and execute this Agreement, subject to the Stipulations contained herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the mutual receipt of which is hereby acknowledged, Verizon hereby declares and agrees that the wireless telecommunications tower and related facilities shall be constructed and maintained

subject to and in accordance with the stipulations, conditions, and restrictions hereinafter set forth below.

1. In the spirit of compromise and without prejudice, the parties hereby stipulate to the following:

- i. The Parties agree to allow the development to proceed in accordance with the approvals granted by the Zoning Commissioner and the DRC in Case No. 2009-0322-X and Case No. CBA-10-035, as otherwise amended pursuant to this Agreement;
- ii. The Findings of Fact and Conclusions of Law, including all restrictions and conditions contained therein, as set out in the Zoning Commissioner's decision rendered in Case No. 2009-0322-X, in their entirety (and specifically including, without limitation, the restriction that only one wireless communications tower shall be permitted on the Lehnert Property), should be incorporated by the Board of Appeals in its order, except as otherwise amended by this Agreement.
- iii. The approval of the DRC in DRC No. 102207C set out in the approval letter, dated March 31, 2010, will be upheld.
- iv. The proposed project consists of a request to construct a wireless telecommunications tower no taller than 89 feet in total height with related facilities.
- v. The tower installation is proposed for construction on a 50 acre +/- parcel, located north of Belfast Road and west of Baltimore-Harrisburg Expressway Interstate (1-83) in Baltimore County, and located on the eastern edge of the Western Run-Belfast Valley National Register Historic District and is bordered by two designated scenic routes, namely Belfast Road and 1-83.
- vi. Verizon has entered into a ground lease with the property owner for a portion of the property, as shown on Petitioner's Amended Exhibit 1A, attached hereto and submitted by stipulation to the Board of Appeals by the Parties. The tower and related facilities will be located within the leased portion of the property, which shall be further located within the special exception area.

2. The Parties further stipulate and agree to the following conditions and restrictions as set forth herein:

- i. The wireless telecommunications tower must be constructed and disguised as a silo with a brick/dark red terracotta color scheme with gray cap, and the entire structure shall not be taller than 89 feet in total height. The silo shall be constructed with brick like facade in appearance (consistent with the sample materials presented to VPC) and with a color scheme, subject to VPC's final approval, which approval shall not be unreasonably withheld. Attached to this

A thin lightning rod of no more than two feet (2') in height, if required, shall not be considered as part of the structure.

Agreement as Exhibits A and B are two silos with brick facades which generally depict the brick like appearance which is acceptable to VPC. The cap of the silo shall be light gray in color and the entire structure, including the cap, shall not be taller than 89 feet in total height, with a diameter of no greater than 20 feet.

- ii. Verizon agrees to exhaust its best effort to construct a single equipment shelter (a barn style building, barn red in color with a barn style gabled roof) for use by it and all co-locaters for the storage and maintenance of equipment. The single equipment shelter (barn style building) shall be constructed so as to have an appearance consistent with the barn structure depicted on Exhibit C. The design and color scheme for the structure shall be subject to the approval of VPC, which approval shall not be unreasonably withheld. The approximate general dimensions of the barn structure shall be 30' (width) x 50' (length) x 12' (side walls and pilings) with barn style gabled roof.
- iii. If a single barn-style building can be used by all co-locaters for their equipment shelter, no fencing would be required; however, appropriate tree plantings and landscaping will be done in accordance with a plan approved by Avery Harden, Baltimore County's landscape architect.
- iv. If a single barn-style equipment shelter can not be approved (notwithstanding Verizon's best efforts), then all equipment shelters, typically 12' x 20' or 12' x 30', and/or equipment cabinets to be utilized by Verizon or by any other wireless telecommunications provider co-locating on the subject tower must be designed, if exposed over the fence line, to look like a barn with a "barn style" roof composed of materials compatible with the silo and surroundings, no matter where such service buildings for any of the co-locaters are placed on the subject property. The construction materials and the color scheme of any such equipment shelters shall be subject to approval by VPC, which approval shall not be unreasonably withheld. A landscape plan is to be submitted to and approved by Avery Harden, Baltimore County's landscape architect.
- v. If a single barn-style building can not be approved for use by all co-locaters, the entire area surrounding the silo and all equipment shelters and/or equipment cabinets, shall be contained within a black vinyl coated chain link fence (with a height of no greater than 7 feet). The outside perimeter of the fencing must be screened with year-round evergreens and deciduous trees will also be planted with sufficient depth and stagger to provide a "woody" appearance. The deciduous trees will be planted outside of the compound and the access road to the compound as recommended and approved by Avery Harden, Baltimore County's landscape architect. All plantings and landscaping shall be done in accordance with a landscape plan for the entire project approved by Avery Harden so as to ensure that it is screened adequately and appropriately.
- vi. Verizon hereby agrees to contribute a sum certain to offset legal fees and expenses, said sum to be agreed to by and between Verizon and the attorneys for VPC. Said sum is payable within thirty (30) days after building permits are issued or the orders in Case Nos. 2009-0322-X and CBA 10-035 become final,

whichever is the later to occur.

vii. Verizon will offer to provide additional reasonable plantings and screening on the adjacent Cumberland and Harmon properties if the respective owners request and allow for such plantings. Nothing herein, however, shall be construed to limit or impair the adjacent property owners' needs or requests with respect to additional plantings, screening or other measures to mitigate the impact of the development of this telecommunications facility. Plantings are not required to be done until after the structures are in place and any need evaluated.

3. VPC will not oppose further the development of the wireless telecommunication tower and related facilities as described herein on the subject property, so long as it is constructed and developed in accordance with the terms and conditions set forth herein.

4. The Parties agree that the proposed wireless telecommunication tower and related facilities be subject to and as shown and limited on Petitioner's Amended Exhibit 1A-1B, attached hereto.

5. The Parties agree and understand that the Zoning Commissioner's and the DRC's approvals in Case No. 2009-0322-X and Case No. CBA-10-035 are subject to change and modification as may be required and approved by the Board of Appeals.

6. The Parties understand that, by this Agreement, they are asking the Board of Appeals to adopt this Stipulation and Settlement Agreement in its entirety as its findings of fact and conclusions of law and to grant the special exception for a wireless telecommunication tower and related facilities and confirm the decision of the "DRC" to grant the limited exemption.

7. This Stipulation and Settlement Agreement shall become effective with the issuance of an order by the Board of Appeals, granting the special exception for a wireless telecommunications tower and upholding the Zoning Commissioner's Order in Case No. 2009-0322-X, and approving the limited exemption and affirming the DRC's decision in Case No. CBA-10-035, and on such relief becoming final. If such relief does not become final, this Agreement shall automatically terminate and be of no further force or effect, and all rights and remedies of the Parties will be restored.

8. This Agreement is reached by the Parties in order to compromise and settle disputed claims. Nothing herein shall be construed or applied so as to prejudice VPC in any other project, development or proceeding as the purpose of this Agreement is to affect a compromise. Nothing herein shall be construed or applied as a bar or estoppel against VPC from opposing any other project or development.

9. Verizon shall be responsible to construct, install, maintain, repair and replace all structures, including the silo and equipment shelter(s), all fencing (if any), all equipment and all trees, plantings and landscaping in good condition and Verizon shall also require any and all tenants, subtenants and/or co-locaters to construct, install, maintain, repair and replace their structures, equipment shelter(s), if any, fencing (if any), and all trees, plantings and landscaping in good condition.

10. Verizon shall require all tenants, subtenants or co-locaters to comply with the terms, conditions and restrictions set forth in this Agreement.

11. Any and all approvals or permits required for this project shall be secure in compliance

with all applicable statutes, ordinances, laws, rules, regulations and policies and nothing herein shall be construed to prevent or prohibit VPC from opposing any application or request for approvals or permits which do not comply with all applicable statutes, ordinances, laws, rules, regulations and policies.

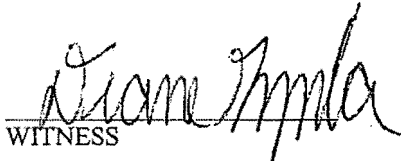
12. This Agreement and all covenants, restrictions, conditions and promises set forth herein shall be binding upon the parties and their respective successors, assigns, tenants, subtenants, co-locaters, affiliated companies and entities.

[signatures on the following pages]

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered these presents as their own free act and deed as of the day and year first hereinabove written.

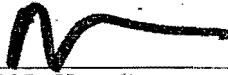
Verizon Wireless:

WITNESS



CELLCO PARTNERSHIP d/b/a
Verizon Wireless

By:

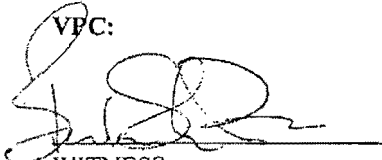

David R. Heverling
Area Vice President Network

Date:

10 29 10

[signatures continue on the following page]

VPC:


WITNESS

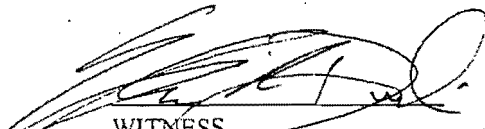
THE VALLEYS PLANNING COUNCIL, INC.

By: 

Name: Peter R. Fennick

Title: President

Date: 10/21/10


WITNESS

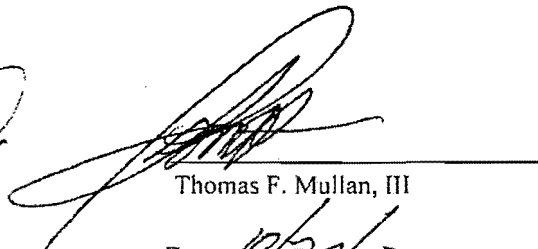
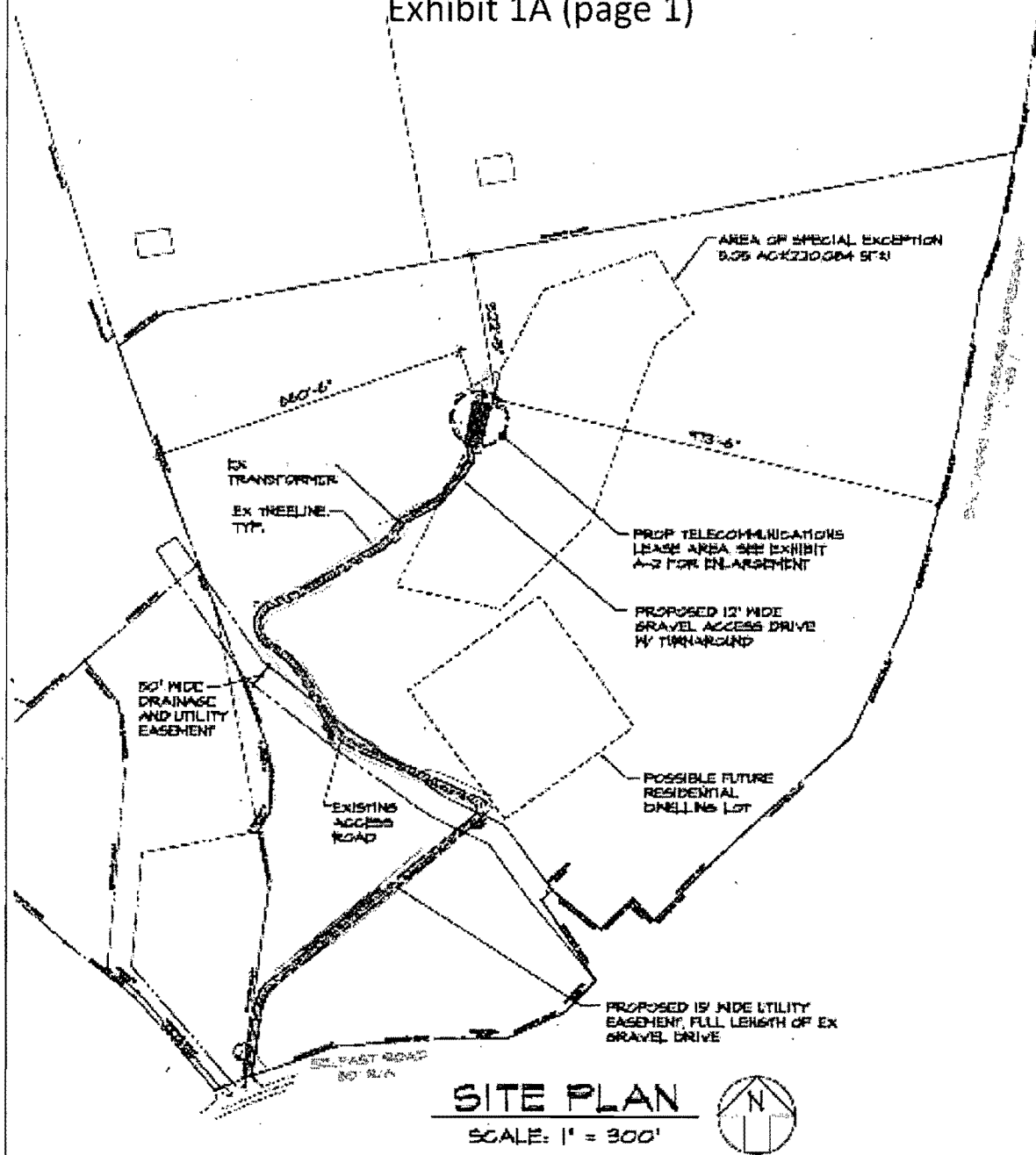

Thomas F. Mullan, III
Date: 10/20/10

Exhibit 1A (page 1)

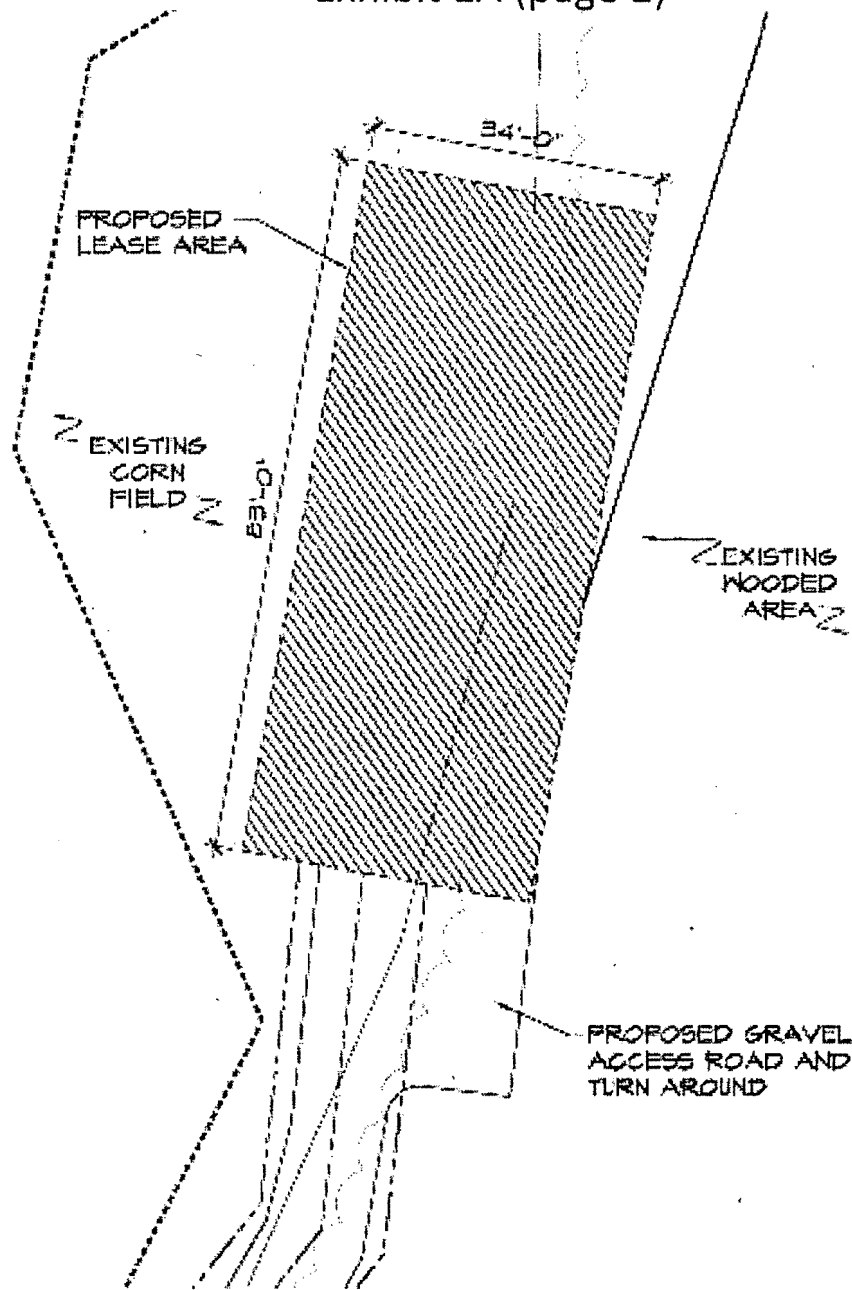


MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
(410) 821-1880
Fax (410) 821-1748

BELFAST ROAD
BELFAST ROAD
SPARKS, MARYLAND 21152
BALTIMORE COUNTY

SCALE: AS NOTED	DATE: 10/15/10	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 10421.360
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Exhibit 1A (page 2)



COMPOUND LAYOUT

SCALE: 1" = 10'



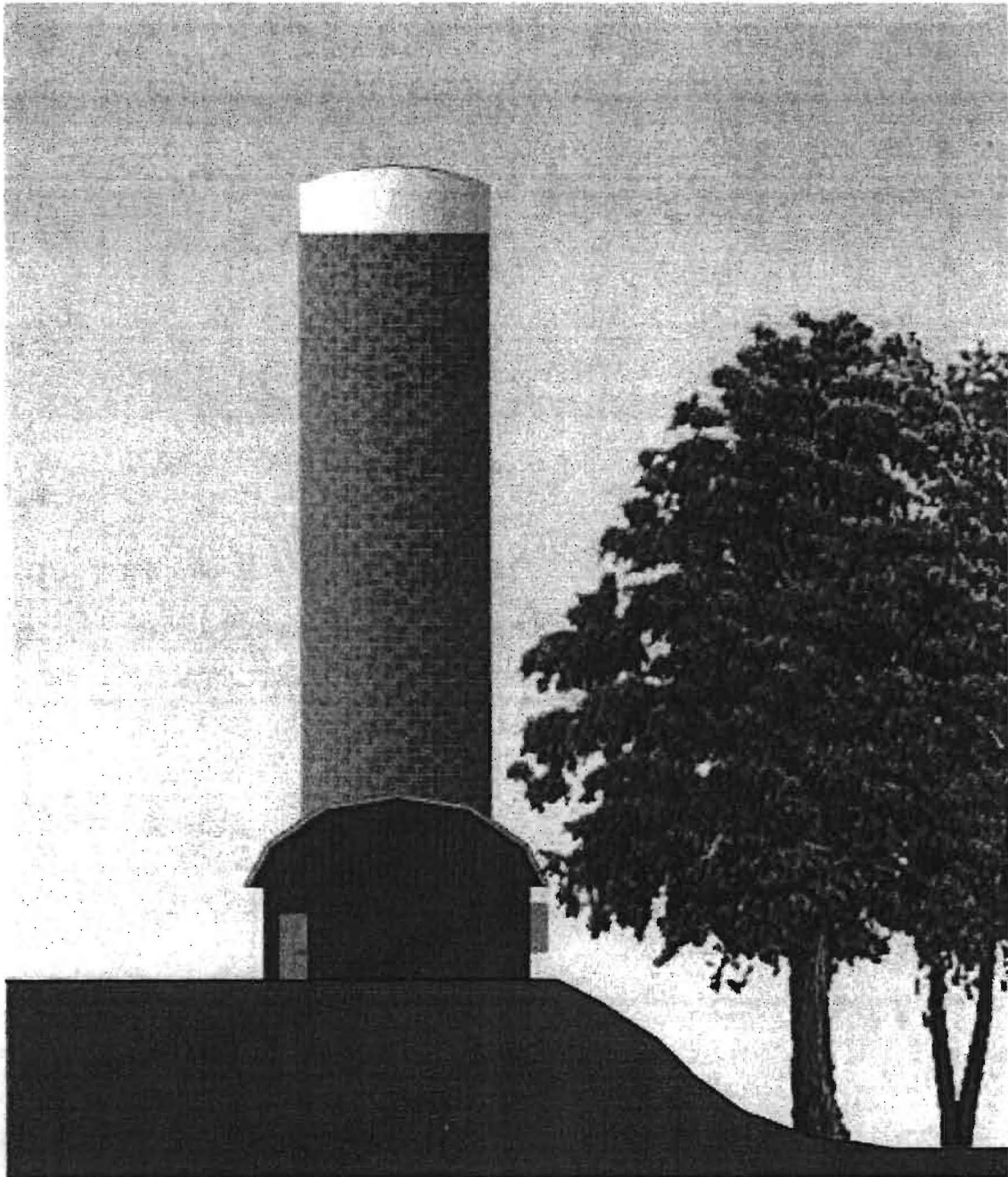
MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

1220-C East Joppa Road, Suite 505
Towson, Maryland 21286
(410) 821-1680
Fax (410) 821-1748

BELFAST ROAD
BELFAST ROAD
SPARKS, MARYLAND 21152
BALTIMORE COUNTY

SCALE: AS NOTED	DATE: 10/15/10	DRAWN BY: BES	DESIGN BY: BES	REVIEW BY: BES	JOB NO.: 10421.960
--------------------	-------------------	------------------	-------------------	-------------------	-----------------------

Exhibit 1B (page 1)



SILO ELEVATION



MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

1220-C East Joppa Road, Suite 305
Towson, Maryland 21206
(410) 821-1693
Fax (410) 821-1748

BELFAST ROAD
707 OLD BELFAST ROAD
SPARKS, MARYLAND 21152
BALTIMORE COUNTY

SCALE AS NOTED	DATE 10/15/10	DRAWN BY BES	DESIGN BY BES	REVIEW BY BES	JOB NO. 10427.380
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Exhibit 1B (page 2)

Agreed Terra Cotta Finish

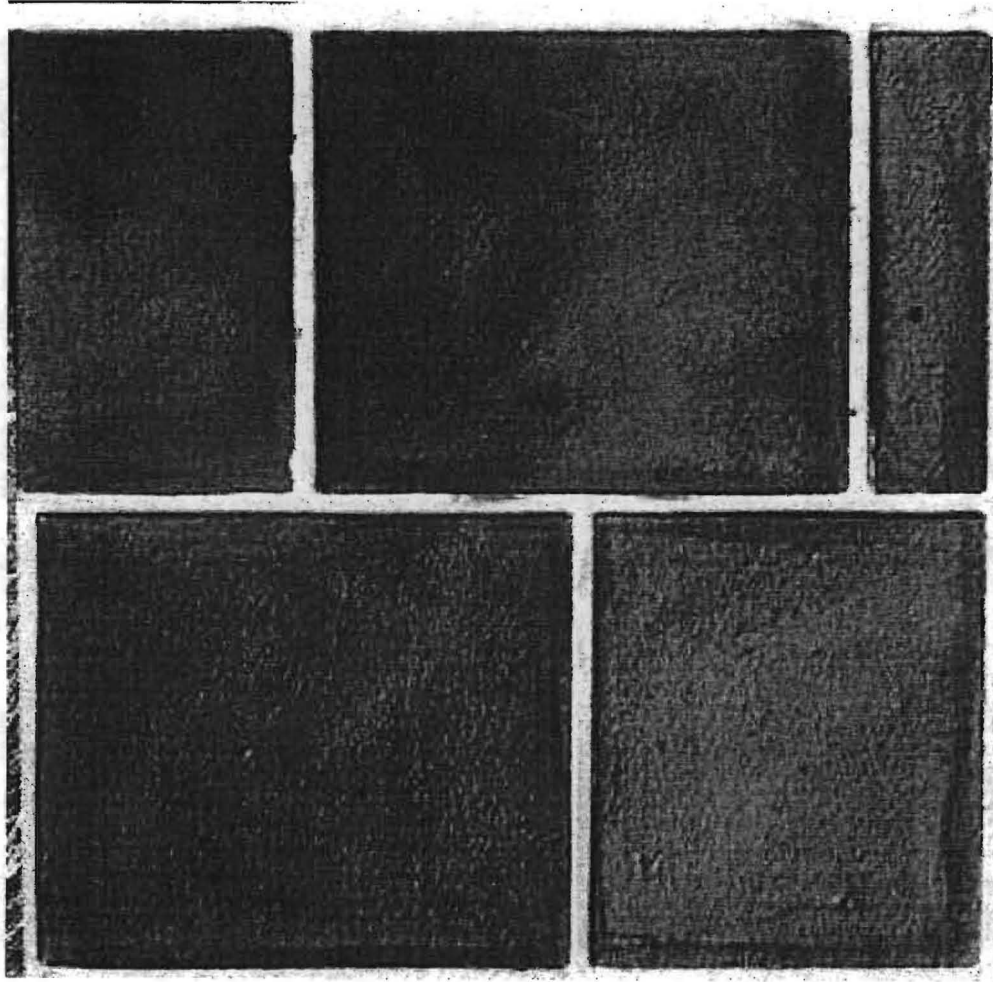


Photo of Stealth[®] sample and finish

Exhibit A

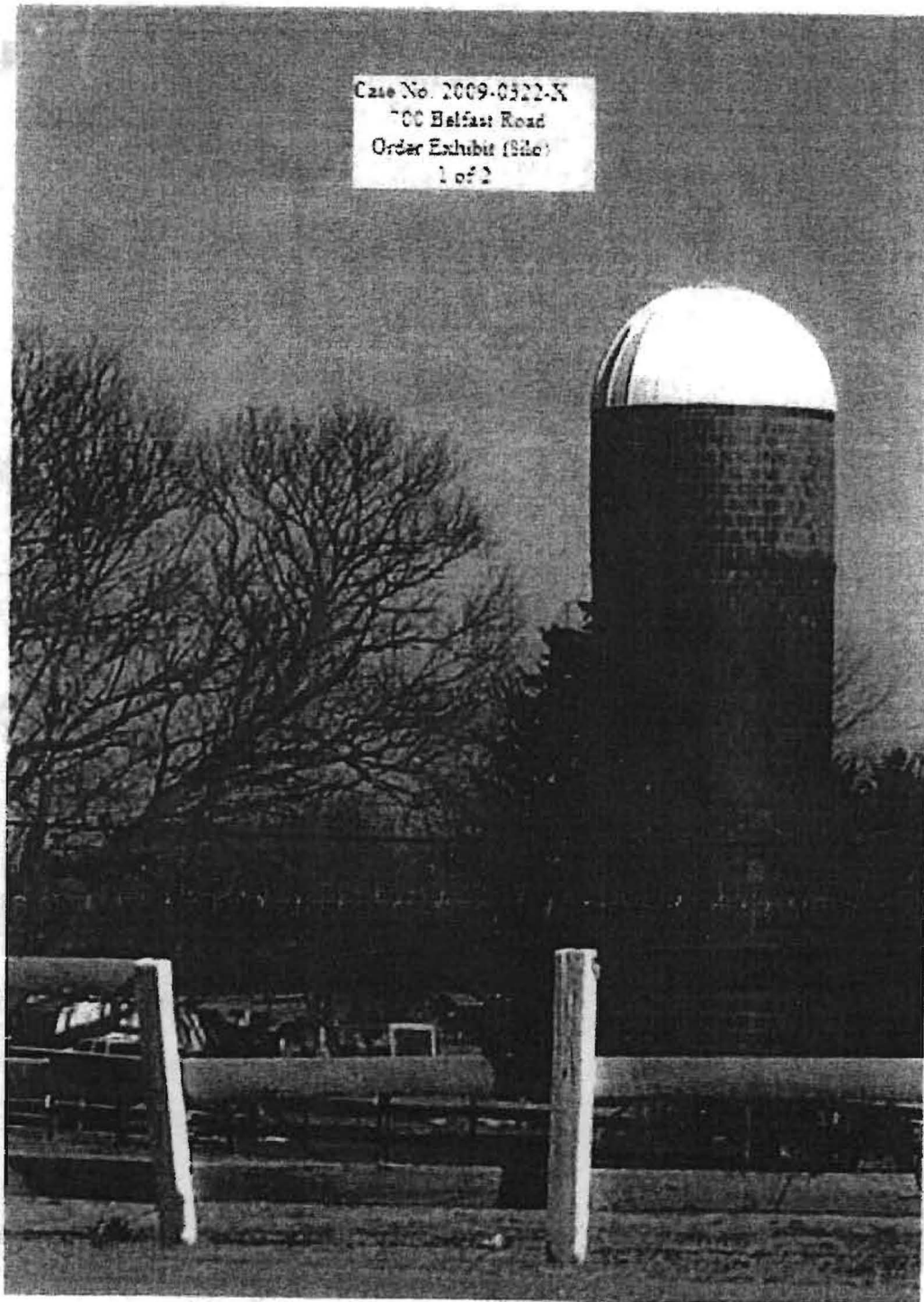


Exhibit B

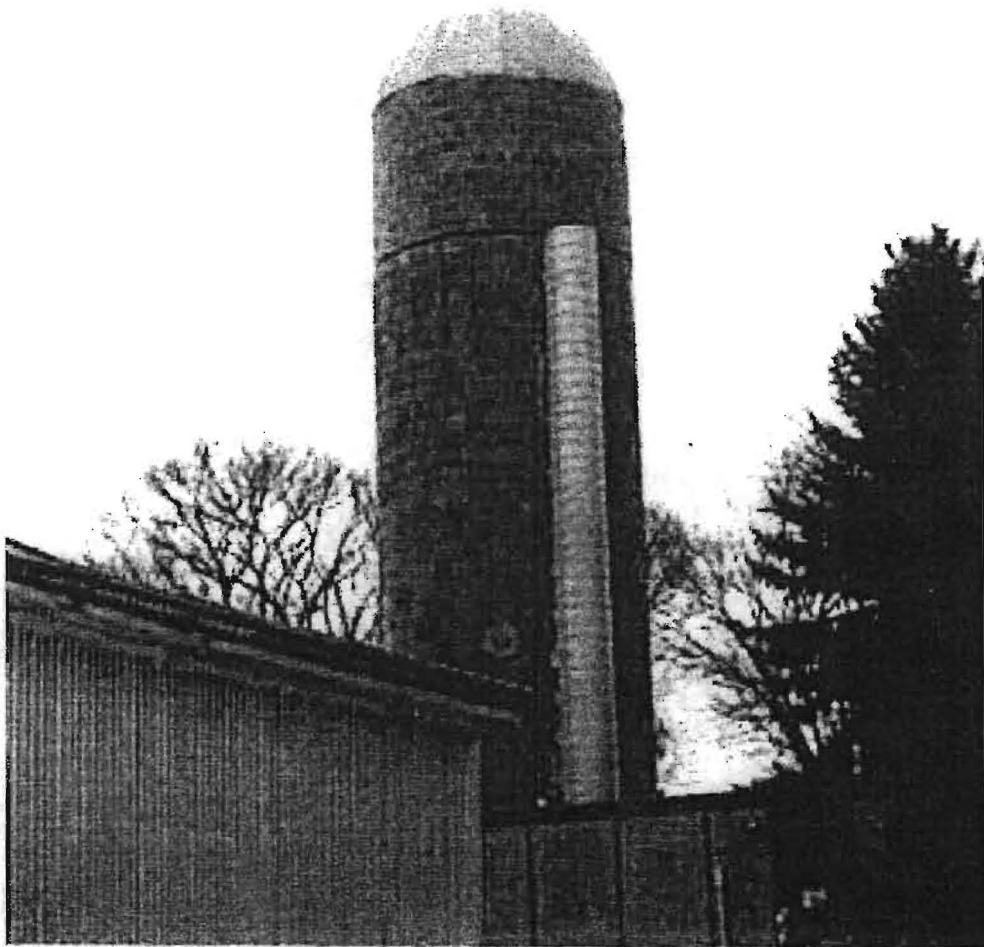
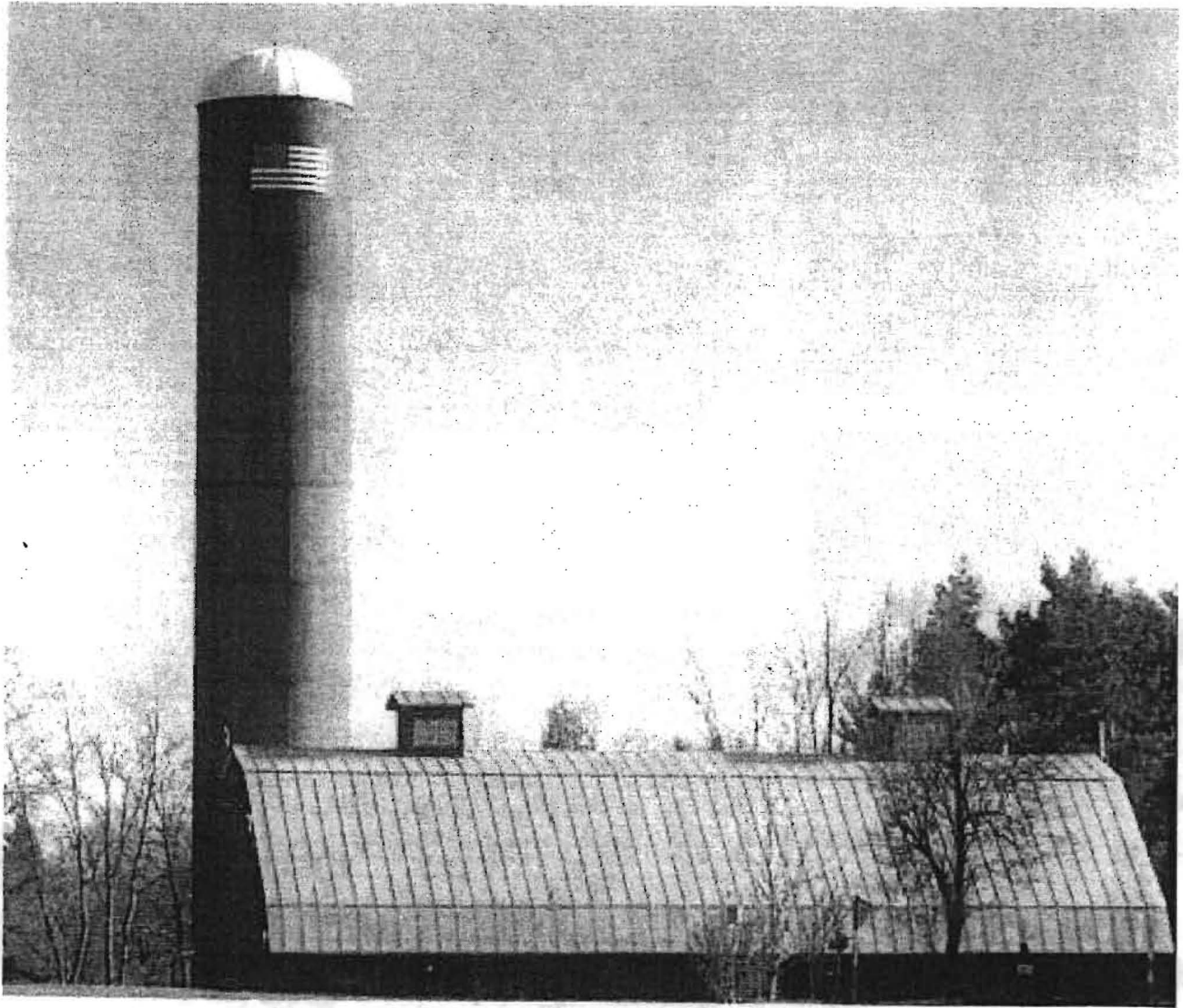


Exhibit C





County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 12, 2011

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Greg Rapisarda, Esquire
Saul Ewing, LLP
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Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building
Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

J. Neil Lanzi, Esquire
409 Washington Avenue
Suite 617
Towson, MD 21204

RE: *In the Matter of: C. Richard Lehnert – Legal Owner*
Cellco Partnership dba Verizon Wireless - Petitioners
Case No.: 09-322-X and CBA-10-035

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order regarding the standing of Holly Cumberland as Protestant, issued this date by the Board of Appeals of Baltimore County in the above 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 Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original cover letter
c: See attached Distribution List

Richard Lehnert
Brian Stover, Real Estate & Zoning Manager/Cellco Partnership d/b/a Verizon Wireless
Teresa Moore/Valleys Planning Council
Thomas Mullan, III
New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, LLC
J. Neil Lanzi, Esquire
Holly Cumberland
Brian Siverling/Morris & Ritchie Assoc., Inc.
Sherri Linton/Cellco Partnership d/b/a Verizon Wireless
Thomas Wolfe, RLA/Morris & Ritchie Assoc, Inc.
Rachel B. Westerlund, V.M.D./Maryland Equine Center, Inc.
Kristen Burger, President/Sparks-Glencoe Community Planning Council
Barbara Pivec/Atlantic Site Acquisition
Lori Roberts/Cellco Partnership d/b/a Verizon Wireless
Dr. and Mrs Aristides Alevizatos
Spaulding Goetze and Todd Goetze
Amy Bird/T-Mobile
H. Barritt Peterson, Jr.
Valerie Williams
Mary Beth Haas
Chris Steuart
George R. Rew
Laura Wilke
Joseph Sterne
Elizabeth Wilmerding
Emily Levenson
Gary Peterson
Kathy Lauten
Mary P. Shaffer
Jennifer Horton
Peter G. Angelos, Esquire

Bruce Doak/Gerhold, Cross & Etzel
Eugene and Elizabeth Schweitzer
Kate Mahood
Kelley Harmon
Renae Olver
Charles Ensor, Jr.
Jack Dillon
Lucy Goelet
Craig Lewis
Marian Randall
Kathleen Pontone
Charles and Anne Blair
Daniel Timmel

Thomas Elder
Victoria Collins
Heidi Krauss

William J. Wiseman, III, Zoning Commissioner
Director/PDM
Director/Planning
Nancy C. West, Assistant County Attorney
Michael Field, County Attorney

10/15/10

RECEIVED

OCT 18 2010

BALTIMORE COUNTY
BOARD OF APPEALS

IN MATTER OF:
Cellco Partnership
d/b/a Verizon Wireless
700 Belfast Road

3rd Councilmanic District
8th Election District

Legal Owner: C. Richard Lehnert

Petitioners

* * * * *

* BEFORE THE COUNTY
* BOARD OF APPEALS
*
* OF BALTIMORE COUNTY
*
*
* Case No.: 09-0322 X
*
*

PETITIONERS' REPLY MEMORANDUM

Petitioner Cellco Partnership d/b/a Verizon Wireless, by Arnold Jablon with Venable, LLP, its attorney, hereby submit this Reply Memorandum for consideration by the County Board of Appeals.

INTRODUCTION

After an extensive public hearing, the Zoning Commissioner of Baltimore County granted petitioner's request for a special exception for a wireless telecommunication tower and related facility, issuing a written decision on January 12th, 2010. Within the requisite appeal period, The Valleys Planning Council ("VPC") and Thomas Mullan, III, by and through their attorney, Richard Burch, filed appeals to this Board from the Zoning Commissioner's decision. Also filing an appeal was New Cingular Wireless PCS, LLC, d/b/a AT & T Mobility LLC (hereinafter referred to as "AT & T"). No other appeals were taken. C. Richard Lehnert, the property owner, did *not* take an appeal.

VPC and Mullan also filed appeals from the decision of Timothy Kotroco, Director of the Department of Permits and Development Management, who granted a request by Verizon for a limited exemption from the County's development process. This

latter appeal is not the subject of the memos to which this reply memorandum is filed and will not be addressed herein.

People's Counsel, on or about 21 September 2010, filed a letter and accompanying pre-hearing memo, in which they argue the Board does not have jurisdiction to hear AT & T's appeal. The Deputy People's Counsel then reiterated the reasons expressed in their memo as a preliminary matter to the Board on the first day of the scheduled appeal hearing, on 28 September 2010.

A few days prior to the scheduled hearing before the Board, on or about 24 September 2010, J. Neil Lanzi, Esq., on behalf of his client, Holly Cumberland, filed his entrance of appearance with the Board.

On the scheduled hearing date, in addition to the Deputy People's Counsel, counsel for Ms. Cumberland and AT & T appeared before the Board as did counsel for VPC, Mullan and Verizon. Verizon moved as a preliminary matter to dismiss the appeal filed by AT & T and, further, moved to bar Holly Cumberland from being considered an appellant in the instant matter. As indicated above, People's Counsel had filed a memo with the Board arguing that AT & T did not have standing before the Board and, at the hearing, the Deputy People's Counsel argued in support of their memo. After hearing argument from counsel, the Board gave counsel for AT & T and Cumberland the opportunity to file Memos and counsel for Verizon, VPC and Mullan, and People's Counsel the opportunity to file reply Memos.

FACTUAL BACKGROUND

Petitioner, pursuant to §§1A01.2.C.28, 502.1, 426, and 502.7, Baltimore County Zoning Regulations (BCZR), filed with the Zoning Commissioner of Baltimore County a petition for special exception to permit a wireless telecommunications tower and related facilities to be erected on property owned by Mr. Lehnert. On or about 12 January 2010, the Zoning Commissioner issued his decision, from which appeals were taken within the requisite time period, by VPC, Mullan and AT & T.

At the hearing before the Board, counsel for Verizon informed the Board that an agreement had been reached by and between Verizon and VPC and Mullan. While the

agreement had not as yet been executed by the parties, in principle the parties had settled their differences. The agreement, "Stipulation and Settlement Agreement", would request the Board to adopt the Zoning Commissioner's decision and his findings of fact and conclusions of law as delineated therein as well as other conditions to which the parties had agreed. Simply, these parties agreed that the special exception granted by the Zoning Commissioner should be affirmed subject to the terms and conditions of the Agreement. The appeals taken by VPC and Mullan thereby would be resolved and no hearing would be required.

QUESTIONS PRESENTED

- 1. Does AT & T have standing to be heard by the Board of Appeals in the instant matter?**
- 2. Does Cumberland have standing to be heard by the Board of Appeals in the instant matter?**

ARGUMENT

I

AT & T explains its appeal by complaining about two specific restrictions contained in the Zoning Commissioner's order of 12 January and to which it takes exception. Not to the special exception Verizon was granted; just to the restrictions limiting the tower and related equipment to the same area shown as shown on Verizon's site plan, Petitioner's Exhibit 1A-1C, and to that which prohibits more than one tower on the Lehnert property. Either, it argues, would render its lease with the property owner "void", thus constituting it "aggrieved", which permits it to take the appeal in the instant matter.

AT & T argues the "lease agreement" it has with the property owner, attached as

an exhibit to its memo, is sufficient to give it standing as an aggrieved party and, therefore, the right to take an appeal from the 12 January decision. And to object to the two restrictions in the 12 January order referred to in its memo. This "lease" affords sufficient interest giving AT & T the right to be "aggrieved", sufficient for standing to take the appeal herein.

However, by attaching the "lease", AT & T presents the ultimate conundrum—when is a "lease" not a "lease". After reading the arguments raised by AT & T in its memo, and the "Option and Lease Agreement" it attaches thereto, it would not be inappropriate to conclude that AT & T has proverbially hung itself by its own petard. It has presented to the Board the ultimate contradiction, of its own making.

There's letters seal'd, and my two schoolfellows,
Whom I will trust as I will adders fang'd-
They bear the mandate, they must sweep my way
And marshal me to knavery. Let it work;
For 'tis the sport to have the engineer
Hoist with his own petard, an't shall go hard
But I will delve one yard below their mines
And blow them at the moon.

Shakespeare, Hamlet (Act 3, scene 4)

The "Option and Lease Agreement" it presents is not a "lease". It is an "option *to enter into a lease*". The Agreement presents a time line within which AT & T is to exercise the lease, but no evidence has been presented that it has done so. The option is for an initial term of one year, within which it must be exercised, from the date of the execution of the Agreement, 20 November 2009. By the terms of the Agreement, no rent is paid. The syllogism created, in contradiction to its own argument, is that (a) there is an

agreement; (b) it is an option to enter into a lease; (c) it is not a lease. There is no tenancy.

AT & T is not a tenant. The answer to AT & T's conundrum?: A lease is not a lease when it's an option to lease.

Verizon presented to the Board sufficient case law to support its contention that AT & T does not have standing. While it may have an economic interest, whatever it may be, it is as a competitor to Verizon in the cellular telephone marketplace. The appellate courts in Maryland have stated, whatever its economic interest may be, a competitor does not have standing to take an appeal. See Kreatchman v. Ramsburg, et al, 24 Md 209 (1961); Eastern Service Centers, Inc. v. Cloverland Farms Dairy, Inc., et al, 130 Md App 1 (2000); Superior Outdoor Signs, Inc. et al v. Eller Media Co, et al, 150 Md App 479 (2003) (copies of which have been previously submitted to the Board). AT & T is not an "aggrieved person" as that term has been defined by the appellate courts. It does not have a property right that elevates AT & T to the level of an "aggrieved person".

AT & T acknowledges that there "does not appear to be a Maryland case that stands for the proposition that a leasehold tenant automatically qualifies as a 'person aggrieved' within the meaning of §320-3-401 (a), [Baltimore County Code]." It sites cases from other jurisdictions, all of which are inapplicable. Under the very terms of the Agreement, AT & T is not a "tenant", as is defined by the very cases it sites.

However, AT & T responds only to one of the arguments against its standing to appeal. It does not address the issue raised by People's Counsel and by Verizon that the Board does not have jurisdiction to entertain the relief it requests. The appropriate

remedy available to AT & T, as has been argued, is to file its own special exception, which it has not, and a special hearing to address the conditions to which it objects, both of which must begin with a site plan, filed with the zoning office and proceed to a new hearing before the Zoning Commissioner, which, of course, would provide the appropriate appeal route if necessary. But this Board does not have the jurisdiction to change conditions imposed below without the express consent of the parties to the original petition, to which AT & T is not.

In this regard, Verizon adopts as its own the arguments raised by People's Counsel in its letter and Pre-Hearing Memorandum , dated 21 September 2010, and filed with the Board. There is no need here to replay the oral arguments made by Deputy People's Counsel (a copy of Deputy People's Counsel's argument is attached hereto) and by counsel for Verizon and for VPC and Mullan on this point. They were clearly enunciated and uncontradicted by AT & T.

II

Holly Cumberland argues "in support of her right to participate as a party, interested person and protestant" in the instant matter.

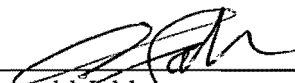
Ms. Cumberland to sets out in considerable detail the relevant zoning laws, points out all of the burdens required to prove a special exception for a cell tower, emphasizes where she disagrees with the Zoning Commissioner, and then pleads why she should be permitted to participate in the appeal "as a party, protestant and/or interested person". All of which, of course, only underscores the fact she did not take an appeal!

In Dorsey v. Bethel, AME Church, 375 Md. 59 (2002), which is cited by Ms. Cumberland, the Court found that, while certain protestants did not file timely appeals, there was an appellant who did and which had appropriate standing. Therefore, it concluded there would be no purpose served in dismissing those that did not take appeals inasmuch as there was already a valid appellant who was prosecuting its appeal. Here, however, the appellants who did take appeals timely, have entered into an agreement with the Petitioner to resolve all issues. There is now no appellant. There will be no appeal hearing as a result. There will no hearing to participate in. Ms. Cumberland has no standing by herself to prosecute an appeal. Dorsey holds nothing to the contrary.

CONCLUSION

For the above stated reasons, the Petitioners respectfully request that the Board of Appeals of Baltimore County dismiss the appeal filed by AT & T and find that Ms. Cumberland has no standing to be a party in this matter.

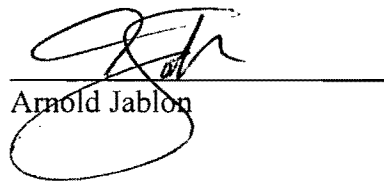
Respectfully submitted,



Arnold Jablon
Venable, LLP
210 West Pennsylvania Ave.
Towson, Maryland 21204
(410) 494-6298

Certification of Service

IT IS HEREBY CERTIFIED that a copies of the foregoing Petitioner's Reply Memorandum was mailed by first class delivery, postage prepaid, on this 15th day of October 2010 to J. Neill Lanzi, Esq., 409 Washington Ave., Suite 617, Towson, Maryland 21204; Jason M. St. John, Esq., and Gregory E. Rapisarda, Esq., SAUL EWING LLP, Lockwood Place, 500 East Pratt St., 8th Floor, Baltimore, Maryland 21202; Richard C. Burch, Esq., Mudd, Harrison & Burch, LLP, 401 Washington Ave., Suite 900, Towson, Maryland 21204; and to Carole S. Demilio and Peter M. Zimmerman, Esq., Jefferson Bldg, Room 204, 105 West Chesapeake Ave., Towson, Maryland 21204 .



Arnold Jablon



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 14, 2010

Wendell H. Grier, Chairman
Andrew M. Belt, Panel Member
Edward W. Crizer, Jr., Panel Member
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
OCT 14 2010
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of Richard Lehnert
Case No. 09-322-X

Dear Messrs. Grier, Belt and Crizer:

This letter is in response to the Memorandum In Support of New Cingular Wireless PCS, LLC's Standing To Proceed On Appeal (d/b/a AT&T) filed by the attorney for AT&T with this Board on October 6, 2010. Our Response is filed pursuant to the County Board of Appeal's Notice dated September 30, 2010 in which Reply Briefs are due on or before October 18, 2010.

AT&T attached to its Memorandum as Exhibit 1 an "Option And Lease Agreement" dated November 20, 2009 ("Option Agreement") between AT&T and C. Richard Lehnert, who, in June, 2009, filed a Petition for Special Exception along with Cellco Partnership d/b/a Verizon Wireless "for a wireless telecommunications tower, 80 feet in height, and related facilities." AT&T never filed a Petition for Special Exception for its own tower, even after entering into the Option and Lease Agreement.

Despite AT&T's referral in its Memorandum and during the argument before the CBA to the "Lease" between AT&T and Lehnert, it is clear that the document is only an "option", in which AT&T has a specified time to decide if it chooses to construct a telecommunications tower on the premises. It must be pointed out that AT&T has never exercised its option, thus it is under no obligation to pay rent to Mr. Lehnert under a Lease. An Option is no more than a

continuing offer, which only becomes a binding contract or lease if it is accepted. See Black's Law Dictionary. Under Section 6 of the Option Agreement here, AT&T may terminate the agreement if it "... is unable to obtain ... any required approval ... for the construction of the Communication Facility ... or if Tenant [AT&T] determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;" (emphasis added).

Moreover, under Section 1 of the Option Agreement, the term of the Option "... will be for an initial term of one (1) year commencing on the Effective Date (the "Initial Option Term") [November 20, 2009] ... and may be renewed by Tenant for an additional one (1) year upon written notification to Landlord [Lehnert] ... no later than sixty (60) days prior to the expiration of the Initial Option Term." (emphasis added). There is no evidence of the renewal by AT&T by September 22, 2010 as required. This means the Option expires on November 20, 2010.

There is no "lease" between AT&T and the property owner. AT&T merely has a period of time from November 20, 2009 to November 20, 2010 to conduct feasibility studies before it decides if it elects to lease the site for a wireless communications tower. There is no obligation by Mr. Lehnert to seek zoning approval. Section 1 of the Option Agreement states:

"(b) During the Option period and any extension thereof, ... Tenant [AT&T] ... will have the right ... to apply for and obtain ... approvals, or any other relief required of or deemed necessary ... at Tenant's sole discretion for its use of the premises and include ... applications for zoning variances, zoning ordinances, amendments, special use permits ... all at Tenant's sole cost, expense and risk. ..."

It should be noted that AT&T attended the Zoning Commissioner hearing in which Mr. Wiseman stated from the bench that he was not inclined to permit more than one tower on the site. He reiterates this on page 15 of his Opinion:

"At this point, I note that there was discussion during the hearing that approvals may be sought for additional wireless telecommunications towers on the Lehnert property. I indicated during the hearing that, if I granted Verizon's petition, I was inclined to restrict the Lehnert property to this one tower only. My position in this regard has not changed."

Despite this admonition, which we understand was delivered at the zoning commissioner hearing on September 22, 2009 and October 14, 2009, AT&T entered into the Option Agreement on November 20, 2009. Thus it did so at its own risk. AT&T cannot now ask the CBA to exceed its Charter authority and proceed with an appeal for a second tower based, not on a zoning Petition for Special Exception filed by AT&T, but on an agreement between private parties. Moreover, if AT&T relied on Verizon's and Lehnert's Petition for Special Exception, it did so at its own risk. AT&T admits in footnote 1 of its Memorandum that it has been involved in this project "Since as early as Spring 2008. ..." Verizon's and Lehnert's Petition for Special

Wendell H. Grier, Chairman
Andrew M. Belt, Panel Member
Edward W. Crizer, Jr., Panel Member
October 14, 2010
Page 3

Exception was filed on June 11, 2009. If AT&T came late to the table in reaching an agreement with the property owner, it is not up to a zoning agency to establish a *de facto* retroactive contract between AT&T and Mr. Lehnert as a basis for AT&T's specific special exception relief. And certainly, the Option Agreement alone is not sufficient basis for the Board to proceed with the appeal.

Finally, it appears Mr. Wiseman granted the special exception on the condition that only one cell tower would ever be constructed on the site. Without this restriction, he may have denied Verizon's and Lenhert's Petition. In light of this and other conditions, including especially the condition that the tower be disguised as a silo, it appears the Zoning Commissioner took a comprehensive and thorough approach to the special exception before him. We believe this is fair and reasonable. To chip away piecemeal at his Order undermines the effectiveness of his decision. The citizens and Petitioners Verizon and Lehnert have agreed to accept the decision of the Zoning Commissioner, including the conditions and restrictions. It would be unusual to permit a competitor to interject at this point in the process.

Thank you for your consideration.

Sincerely,



Carole S. Demilio
Deputy People's Counsel

CSD/rmw

cc: Richard Burch, Esquire
Arnold Jablon, Esquire
Greg Rapisarda, Esquire
Jason St. John, Esquire
J. Neil Lanzi, Esquire

10/6/10

IN THE MATTER OF

700 Belfast Road, 340' NE of c/line
Sparks, Maryland 21152
8th Election District
3rd Council District

New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility LLC,
Appellant

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 09-0322-X
*

* * * * *

**MEMORANDUM IN SUPPORT OF
NEW CINGULAR WIRELESS PCS, LLC'S
STANDING TO PROCEED ON APPEAL**

New Cingular Wireless PCS, LLC d/b/a AT&T Mobility LLC ("AT&T"), by its undersigned counsel, and in accordance with the County Board of Appeals' instruction on September 28, 2010 and order issued on September 30, 2010, hereby states that AT&T has standing to maintain its appeal, and in support thereof submits this brief Memorandum.

RELEVANT FACTUAL BACKGROUND

On November 20, 2009, AT&T and C. Richard Lehnert ("Mr. Lehnert") entered into a lease agreement which is attached hereto as Exhibit 1 and incorporated herein. Mr. Lehnert agreed to lease a portion of his property located at 707 Old Belfast Road, Sparks, Maryland 21152 (the "Property") to AT&T for the purposes of AT&T constructing a wireless telecommunications facility on the Property.¹

¹ Since as early as Spring 2008, AT&T had been working collaboratively with Mr. Lehnert, Verizon, T-Mobile, The Valleys Planning Council, Inc. and Sparks Community Planning Council in an effort to build consensus on the best approach to accommodate AT&T, Verizon and T-Mobile as the three (3) wireless carriers interested in providing coverage/capacity in and around the Sparks community. Towards the end of the Summer 2009, the effort to build consensus failed when The Valleys Planning Council, Inc. and Sparks Community Planning Council decided that they would not support the construction of any sort of wireless communications facility on the Property. Also, Verizon decided it would seek zoning approval for a 80' tower to accommodate its own needs without regard to the height requirement necessary to satisfy AT&T's technical needs.

RECEIVED

OCT - 6 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

On January 12, 2010, the Zoning Commissioner issued a decision approving Verizon's application to construct a wireless communications facility on the Property, subject to certain conditions. A copy of the Zoning Commissioner's Decision is attached hereto as Exhibit 2 and incorporated herein (the "Decision"). AT&T, Thomas Mullan and The Valleys Planning Council, Inc. appealed the Decision in February 2010. Since that time, AT&T had virtually no communications with Verizon, The Valleys Planning Council, Inc. and Sparks Community Planning Council.

In March 2010, this Board scheduled a three (3)-day evidentiary hearing for September 28-30, 2010. On September 28, 2010, AT&T proceeded to the hearing before this Board prepared to proceed with the evidentiary hearing, and was ambushed by Verizon's oral motion that AT&T did not have standing to proceed with the appeal simply because it was a competitor.² Nothing could be further from the truth - AT&T is not attempting to do anything that should hinder Verizon from proceeding with construction of its own wireless communications facility on the Property.³

The Decision contains two specific restrictions that, if adopted by the Board, would render AT&T's lease with Mr. Lehnert void because it literally cuts off AT&T's ability to proceed with building a wireless communications facility on the Property. Those restrictions include:

- (a) The tower and related equipment must be in the same area as shown on Petitioner's Exhibit 1A-1C [Verizon's site plans]. See Exhibit 2, (the Decision) at p. 16, restriction number 4.

² Remarkably, since there has not been any briefing on the parties' positions on appeal and Verizon has rebuffed efforts to engage in a dialogue with AT&T concerning this matter, it is impossible for Verizon to know all of AT&T's bases for appeal.

³ It is patently obvious that Verizon's real complaint is that AT&T's appeal jeopardizes Verizon's settlement with Thomas Mullan and The Valleys Planning Council, Inc.

(b) Only one wireless telecommunications tower is permitted to be constructed on the Lehnert Property. *See* Exhibit 2, (the Decision) at p. 16, restriction number 7.⁴

ARGUMENT

Section 32-3-401(a) of the Baltimore County Code (the "Code") provides that "[a] person aggrieved by a decision of the Zoning Commissioner or the Director of Permits and Development Management may appeal the decision or order to the Board of Appeals." A "person aggrieved" is a person or entity whose personal or property interest will be adversely affected by the zoning decision and that the harm to that interest is distinct from the harm to the general public from the zoning decision. *See Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137, 144 (1967).

The Maryland Court of Appeals has made it crystal clear that a party is aggrieved (and thus has standing to appeal an administrative decision) where its business is directly affected by the administrative decision. *See Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 442 (2002). In that case, the Baltimore County Department of Permits and Development Management ("DPM") granted a towing license to appellant, Jordan Towing. *See id.* at 440. In response to the issuance of that license, the appellees, other towing companies in the area, appealed the approval of the license application. *See id.* The Board of Appeals reversed the decision of the DPM. *See id.* Thereafter, the appellant sought judicial review of the Board of Appeals' decision arguing, *inter alia*, that the appellees lacked standing to appeal to the Board of Appeals. *See id.* at 441. Citing a provision of the Baltimore County Code relating to

⁴ The Board only asked for briefing on the standing issue. Thus, AT&T will refrain from going beyond the Board's order but states that among other things, AT&T intends to demonstrate on appeal that restriction number 4 in the Decision granting Verizon's request for a special exception cover a five-acre portion of the Property is excessive and unnecessary as a matter of law, and that restriction number 7 is unnecessary and is counter to the Baltimore County Comprehensive Plan and Zoning Code as well as federal law.

the appeals process for DPM decisions, the Court of Appeals concluded that the appellees were aggrieved persons within the definition of the Code, because their businesses were directly affected by the issuance of an additional towing license in the geographical area where appellees alone hold licenses. *See id.* at 442. The Court held that appellees' harm was the type of "special damage...differing in character and kind from that suffered by the general public." *Id.*⁵

Here, AT&T clearly has a property right that would be aggrieved in a manner that is different from any harm suffered by the general public – AT&T has a leasehold interest on the Property that cannot be fulfilled if the Decision stands. Although there does not appear to be a Maryland case that stands for the proposition that a leasehold tenant automatically qualifies as a "person aggrieved" within the meaning of § 32-3-401(a), those jurisdictions that have addressed the issue under similar zoning laws have expressly found that a lessee has a property right sufficient to qualify as a person aggrieved by a zoning decision. *See e.g., Lavere v. Bd. of Zoning Appeals of City of Syracuse*, 39 A.D. 2d 639, 639 (N.Y. App. Div. 1972), *aff'd*, 33 N.Y.2d 873 (1973) (holding tenant has right to appeal zoning decision impacting adjacent property); *see also Nicholson v. Zoning Bd. of Adjustment of the City of Allentown*, 392 Pa. 278, 282 (Pa. 1958) (citing *Richman v. Philadelphia Zoning Bd. of Adjustment*, 391 Pa. 254, 258-59 (Pa. 1958)) (finding that tenant is party aggrieved and may apply for variance); *see also Frank Hardie Advertising, Inc. v. City of Dubuque Zoning Bd. of Adjustment*, 501 N.W.2d 521, 524-25 (Iowa 1993) (discussing various state authority relating to standing of lessees in zoning matters).

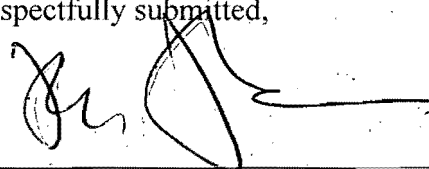
⁵ *See also, Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479. In this case, the Court of Special Appeals held that a person is not aggrieved by a zoning decision when his *sole* interest in challenging the decision is to stave off competition with his established business. *See id.* at 500. The Court rejected appellant's argument, holding that, absent the existence of a property right, appellant's personal interest in appealing the decision to reduce competition was not, by itself, sufficient to establish aggrieved party status. *See id.* at 502. *Eller Media* is distinguishable from our case on the grounds that (1) we are not seeking to limit competition and (2) the harm to our property interest is the primary reason for appealing the Zoning Commissioner's.

CONCLUSION

For the foregoing reasons, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility LLC respectfully requests that the Board of Appeals find that AT&T has standing to proceed on appeal in the above-referenced matter.

Dated: October 6, 2010

Respectfully submitted,



Jason M. St. John, Esquire
Gregory E. Rapisarda, Esquire
SAUL EWING LLP
Lockwood Place
500 East Pratt Street, 8th Floor
Baltimore, Maryland 21202
(410) 332-8898 (telephone)
(410) 332-8288 (fax)
jstjohn@saul.com

Counsel for New Cingular Wireless PCS, LLC
d/b/a/ AT&T Mobility, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum in Support of New Cingular Wireless PCS, LLC's Standing to Proceed on Appeal was sent by first-class mail, postage prepaid on the 6th of October, 2010 to:

Arnold E. Jablon, Esquire
Venable LLP
210 W. Pennsylvania Avenue
Suite 500
Towson, Maryland 21204
Counsel for Cellco Partnership d/b/a Verizon Wireless;

Mr. C. Richard Lehnert
707 Belfast Road
Sparks, Maryland 21152;

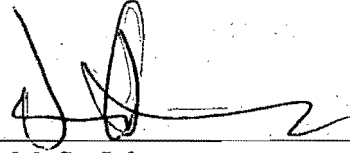
The Valleys Planning Council, Inc.
c/o Ms. Teresa Moore
P.O. Box 5402
Towson, Maryland 21285-5402;

Sparks-Glencoe Community Planning Council
c/o Ms. Kirsten A. Burger
P.O. Box 937
Sparks, Maryland 21152;

Richard C. Burch, Esquire
Mudd, Harrison & Burch, LLP
401 Washington Avenue
Suite 900
Towson, Maryland 21204-4835
Counsel for Thomas "Tim" F. Mullen;

J. Neil Lanzi, Esquire
409 Washington Avenue
Suite 617
Towson, Maryland 21204
Counsel for Ms. Holly Cumberland; and to

Carole S. Demilio
Deputy People's Counsel
Office of the People's Counsel
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

A handwritten signature in black ink, appearing to read 'Jason M. St. John', written over a horizontal line.

Jason M. St. John

Market: Washington DC / MD
Cell Site Number: MD0132
Cell Site Name: Verona
Fixed Asset Number: 10033338

OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("Agreement"), dated as of the latter of the signature dates below (the "Effective Date"), is entered into by C. Richard Lehnert, an individual, having a mailing address of 707 Old Belfast Road, Sparks, MD 21152 (hereinafter referred to as "Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (hereinafter referred to as "Tenant").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 700 Belfast Road, Sparks, MD 21152, in the County of Baltimore, State of Maryland (collectively, the "Property"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. OPTION TO LEASE.

(a) Landlord grants to Tenant an option (the "Option") to lease a certain portion of the Property containing approximately six hundred thirty (630) square feet including the air space above such room/cabinet/ground space as described on attached Exhibit 1, together with unrestricted access for Tenant's uses from the nearest public right-of-way along the Property to the Premises as described on the attached Exhibit 1 (collectively, the "Premises").

(b) During the Option period and any extension thereof, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right, upon prior notice to and without disturbing the business operations of Landlord or any other tenant on the Property, to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "Tests"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property (see also Paragraph 1(g) below regarding Tenant's right to obtain a leasehold title policy) and the feasibility or suitability of the Property for Tenant's Permitted Use (as such term is defined below in Paragraph 2), all at Tenant's sole cost, expense and risk, except as set forth herein. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of _____ and No/100 Dollars _____ within twenty (20) business days of the Effective Date.

1008709.3 8-10-07
Option and Lease

EXHIBIT

tabbles



RECEIVED

OCT - 6 2010

BALTIMORE COUNTY
BOARD OF APPEALS

Jason M. St. John

Phone: (410) 332-8898

Fax: (410) 332-8288

jstjohn@saul.com

www.saul.com

10/6/10

October 6, 2010

VIA FEDERAL EXPRESS

Theresa R. Shelton, Administrator
County Board of Appeals of Baltimore County
Jefferson Building - Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: C. Richard Lehnert, Legal Owner*
Cellco Partnership/Verizon Wireless, Petitioners
Case No. 09-322-X/700 Belfast Road

Dear Ms. Shelton:

Enclosed please find an original and three (3) copies of the Memorandum in Support of New Cingular Wireless PCS, LLC's Standing to Proceed on Appeal.

Please date stamp the extra copy and return it in the self-addressed stamped envelope provided for your convenience. Should you have any questions, please contact me.

Very truly yours,

Jason M. St. John

JMS:lh

Enclosures

cc: Arnold E. Jablon, Esquire
Mr. C. Richard Lehnert
Ms. Teresa Moore
Ms. Kirsten A. Burger
Richard C. Burch, Esquire
J. Neil Lanzi, Esquire
Carole S. Demilio, Esquire

Saul Ewing LLP

500 East Pratt Street • Baltimore, MD 21202-3133 • Phone: (410) 332-8600 • Fax: (410) 332-8862

DELAWARE

MARYLAND

NEW JERSEY

NEW YORK

PENNSYLVANIA

WASHINGTON, DC

A DELAWARE LIMITED LIABILITY PARTNERSHIP

9/21/10

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
700 Belfast Road; N/S Belfast Road, 340' NE
of c/line Old Belfast Road * BOARD OF APPEALS
8th Election & 3rd Councilmanic Districts
Legal Owner(s): Richard Lehnert * FOR
Contract Purchaser(s): Brian Stover
Petitioner(s) * BALTIMORE COUNTY
* 09-322-X

RECEIVED
SEP 21 2010

BALTIMORE COUNTY * * * * *
BOARD OF APPEALS PEOPLE'S COUNSEL PRE-HEARING MEMORANDUM

In a zoning case, the public notice must be accurate and provide a sufficient description. The notice requirement in zoning cases is statutory and the Maryland appellate courts have addressed this issue. A defective public notice deprives the administrative agency of jurisdiction. Cassidy v. County Board of Appeals 218 Md. 418 (1958). In Baltimore County, public notice enables a citizen to review the file, decide whether to participate, and to prepare. Accordingly, the applicant must submit an accurate Petition and site plan. Notice is an element of procedural due process of law. It is incorporated in the Express Powers Act, Article 25A, Sec. 5(U), Maryland Code, in County Charter Sec. 603 for the Board of Appeals, and County Code Sec. 26-127 pertaining to zoning commissioner hearings.

The Zoning Office has issued hearing checklists for property owners and petitioners. (See PC#1 attached). They require accurate description of all dimensions, including proposed height. This is especially significant in cell tower cases where the public is usually concerned about visibility of the tower.

The zoning commissioner [and CBA in a *de novo* hearing] cannot render a decision until the Petition and site plan is reviewed by various county and state agencies. It is stated in the aforesaid hearing checklist manual that:

“Prior to preparing the required plan, the petitioner or his engineer should contact the following agencies for pertinent data that may be required by that particular agency.”

In addition, a petition may not be amended at the CBA if it increases a plan's impact or adds an element that a citizen reasonably would find material in deciding whether to participate.

Cassidy, supra. Such an amendment is also objectionable because it escapes review by the Zoning Advisory Committee agencies. At times, petitioners have argued that the *de novo* scope of review at the CBA allows any amendment. This is not true. While the CBA conducts a *de novo* hearing, it nevertheless exercises appellate jurisdiction. UPS v. People's Counsel 336 Md. 569, 587-91 (1994). It would make a mockery of the process if applicants had a free hand on appeal to change site plans on file at the time of public notice.

In People's Counsel v. Mangione, 85 Md. App. 738 (1991), the Court of Special Appeals (CSA) reversed the Circuit Court's granting a Motion to Alter or Amend, thus prohibiting Petitioner from amending his special exception for a 240-bed nursing facility to a 120-bed nursing facility, even though a less intense use. (The Petitioner originally sought a special exception for a 240-bed facility.) The Zoning Commissioner and Board of Appeals both denied the special hearing request. Upon judicial review, and after the Circuit Court affirmed the CBA's denial, Petitioner filed a Motion to Amend in the Circuit Court to reduce the size to a 120-bed facility. The Circuit Court granted the Motion and remanded the case to the CBA. The CSA reversed the Circuit Court. The CSA rejected Petitioner's argument that the petition before the Zoning Commissioner sought only to obtain zoning approval for a convalescent home and that the number of beds was not relevant to the relief sought. Judge Dale Cathell stated,

"Our review of the record does not reflect that a petition for a 120-bed facility was ever filed with the administrative zoning agency. . . We first note that the site plans that are included in the extract as being filed with the application (that is missing) refer to a 240-bed facility." Id. at 744.

"The record reflects that at no time was an application for a 120- bed facility ever filed with the administrative agency. Nor is there any record that the original 240-bed application was downsized by proper amendment. . . . Furthermore, the Board made no ruling on the feasibility of a 120-bed facility." Id. at 747.

Although the amendment in Mangione occurred upon judicial review, after the CBA hearing and decision, the same principle applies here in light of UPS, supra at 581-584. The Court there held the CBA exercises appellate jurisdiction in a *de novo* appeal:

"The Baltimore County Charter, in § 602 (e), grants to the Board of Appeals "original and exclusive jurisdiction over all petitions for reclassification." This is the only original jurisdiction granted to the Board of Appeals by the

Charter or laws of Baltimore County. Except for reclassifications, the Board's jurisdiction is exclusively appellate. . . . Baltimore County has decided to give its Board of Appeals original jurisdiction in only one category of cases, namely reclassifications. In all other matters, Baltimore County has decided to vest only appellate jurisdiction in the Board of Appeals."

The Mangione case is also significant to the special exception here because it found the size and scale of a proposal relevant to special exception review. Mangione, *supra* at 746-47, n.6. Here AT&T seeks to increase the height of the tower; Mangione sought to alter the number of beds in a nursing home facility. Both are within the scope of the special exception but the CSA found the mathematical change to be significantly relative to the nature of the relief requested.

In a case reminiscent of the present situation, the Circuit Court again addressed the issue of amendment of a site plan In The Matter Of John Mangione, et al, 03-C-03-009661. (See PC#2 attached). (Coincidentally, this case involved a different location for an assisted living facility proposed by another member of the Mangione family. But it is otherwise unrelated to the CSA case cited above).

In this 2003 Mangione case, Circuit Judge John O. Hennegan reversed and remanded the CBA's approval of a special exception and variances for a proposed continuing care facility building near Padonia Road. The CBA had permitted amendments that increased the height variance from 50 ft to 60 ft and the length of the building from 250 ft to 260 ft. Again we have a change in size within the parameters of the relief requested that was deemed to be material by Judge Hennegan. In addition to referring to the Express Powers Act, Judge Hennegan pointed out that the amendment at the CBA level violated the notice provision in the Baltimore County Code [currently BCC 32-3-302] and Rule 2a of the CBA, which requires a ten-day notice for hearings to all parties.

The CBA held it was within their sole discretion to allow the amendment. The Circuit Court disagreed. In remanding the case to the CBA for a new hearing, Judge Hennegan stated:

"The Board, however, incorrectly assessed its amount of discretion. The Board has de novo review, yet it still exercises appellate jurisdiction. UPS

v. People's Counsel, 336 Md. 569 (1994). Although the Board has the right to hear additional evidence, ¹ if the additional evidence is material, then the other party must have proper notice of that evidence. Cassidy v. County Board of Appeal, 218 Md. 418 (1958)."

AT&T here may claim that there is no change to the underlying special exception, just changes to the site plan. But in the 2003 Mangione case, Petitioners also argued that no additional notice is required because the changes in the site plan were minor, and not an "amendment;" that only the site plan, not the zoning petition, was changed; and that there is no requirement that the zoning petition contain the dimensions of the proposal.

Judge Hennegan rejected Petitioners' position and pointed out that the Zoning Commissioner "needed the dimensions of the facility at his disposal" to review the special exception request under the BCZR § 502.1 criteria. Judge Hennegan pointed out:

"By changing the facility's dimensions, a new determination is required as to whether or not section 502.1's criteria were met. The increased height and width of the facility could possibly not satisfy the criteria of 502.1 which would prevent granting the special exception. ²

This Court finds that Petitioners' claim is without merit. A decision on whether the facility meet the criteria of section 502.1 cannot be made without looking at the site plan. Therefore, this Court finds that the site plan is an integral part of the petition."

Even if the amendment proposed by a Petitioner was in response to opponents' concerns, amendments to the site plan on the hearing date were not permitted by the Court of Special Appeals in Great Falls v. Constellation, 122 Md. App. 700 (1998). There, the petitioner Constellation requested a special exception for a nursing home. On the last day of the hearing and with only a few days notice to the opponents, Constellation offered a revised site plan that reduced the square footage of the building in response to objections by the neighbors, showed additional landscaping to provide more buffer between the proposal and the residences, reduced the length of one wing of the structure in response to an adjoining neighbor's opposition, and showed a revised planting and forest conservation plan showing additional landscaping to more effectively screen and buffer the proposal from an opponent's residence. None of the amendments produced a concomitant negative effect. The special exception was approved by the

Board and affirmed by the Circuit Court. The CSA reversed and remanded, citing Constellation's failure to comply with the Board's 10-day notice requirement for introduction of evidence. The CSA said the notice provision was a rolling requirement enforceable throughout the many days of hearing, the Board had no discretionary power to waive the notice, and dismissed Constellation's argument that the Board could "waive minor procedural defects or errors that do not affect substantive rights of the parties in order to proceed on the merits." Id. at 743. Instead the CSA found that the inability of the opponents to respond to the amended plan because the record was closed constituted a prejudicial, rather than a minor error. Id. at 744.

Although there were specific statutory notice requirements in Great Falls, it is relevant here because the Court recognized that opposing parties must be given the opportunity to review with Counsel and experts, if any, and prepare a response to an amended plan, even if the plan attempts to address concerns of the opposition in their favor or to resolve disputed issues.

The respected zoning treatise, *Anderson's American Law of Zoning*, (Young, Kenneth H. Anderson Law of Zoning 4th Edition) discusses this issue in the following sections, which are summarized or quoted here:

"§ 22.21 Ruling on the adequacy of notices which contained varied deficiencies, the courts have been guided by the main objective of notices of hearing, to inform persons entitled to notice of the purpose and subject of the hearing. . . . where notice of hearing is required the notice must inform the party entitled to it of the nature of the application and of the land which is involved. (citations omitted).

A notice of hearing must describe with reasonable accuracy the relief which is sought by the applicant or appellant. (citation omitted).

§ 22.17 Traditionally, all of the principal steps in the zoning process, from enactment through enforcement, are taken after notice and public hearing. . . . the public interest in the outcome of zoning disputes is protected by procedural requirements. Given the quasi-judicial character of the board of adjustment function, it is predictable that the board can decide a matter which falls within its original or appellate jurisdiction, only after notice and hearing . . . The tolerance of informality which is reflected in the judicial decisions which relate to pleadings,

rules of evidence, and other aspects of board procedure, are less evident where notice and hearing are involved. These are regarded as essential ingredients of administrative justice, and substantial or even literal compliance with requirements is required. Statutory notice and hearing requirements are regarded as mandatory. Failure substantially to comply will result in reversal of the board's decision unless the court concludes that the person not notified had actual notice and appeared at the hearing, that the litigant had adequate time to prepare, and that no public harm was done. (citations omitted).

The requirement that board action be preceded by notice and hearing is jurisdictional. Action by a board of adjustment which is taken without notice and hearing may be nullified. (citations omitted).

The requirement of notice is satisfied only if the notice affords to parties and other interested persons an adequate opportunity to prepare as well as to attend. (citations omitted).

§ 22.18. A simple requirement that notice of hearing be given is considered to mean that "reasonable" notice must be given. . . . Where an undated letter notified a party on Friday, that a hearing would be held on the following Tuesday, a Massachusetts court held that the requirement of reasonable notice was not satisfied because the litigant was not given adequate time in which to prepare. (citations omitted).

§22.24 The power of a board of adjustment to grant administrative relief, in the exercise of its original or appellate jurisdiction, may be employed only after such notice and hearing as is required by the applicable enabling acts, charters, or ordinances. (citations omitted). The hearing requirement is regarded as mandatory; action by a board of adjustment without compliance is a nullity. (citations omitted). A board decision reached through informal procedures which do not include an official hearing is void. (citations omitted). . . . Reviewing administrative conduct in the hearing room, the courts have fixed their attention upon the basic purpose of a public hearing to afford to all interested parties a full and fair opportunity to be heard, and they have placed little emphasis upon rules of evidence, or other niceties of court procedure. (citations omitted).

§ 22.24 In general, judicial attention is focused upon the question whether the hearing was basically fair. . . . Defects which might otherwise constitute reversible error will be overlooked if they apparently did not prejudice any litigant, or if they were knowingly waived in the course of the hearing. Where, for example, plans and specifications relevant to a hearing on an application for a special permit were unavailable on the hearing day, but the party who later complained declined the chairman's offer of a postponement, the lack of such relevant evidence did not render the hearing unfair. This result was reached

although the plans were held by a public official on the hearing day. (citations omitted).

§22.24 A litigant must not be denied a fair opportunity to introduce relevant evidence. (Citations omitted)."

Summary

For these reasons, we believe an Appeal of AT&T based on an increase in the height of the wireless telecommunications tower to more than 80 feet. should be dismissed.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2010, a copy of the foregoing Pre-Hearing Memorandum was mailed to Richard Burch, Esquire, 401 Washington Avenue, Suite 900, Towson, Maryland 21204, Attorney for Valleys Planning Council, Greg Rapisarda, Esquire and Jason St. John, Esquire, Saul Ewings, LLP, 500 East Pratt Street, 8th Floor, Baltimore, MD 21202, Attorney for New Cingular Wireless d/b/a AT&T Mobility and Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

CAROLE S. DEMILIO
Deputy People's Counsel
for Baltimore County

ON FOR SPECIAL EXCEPTION

Belfast Road, 340' NE of c/line
d Belfast Road
(700 Belfast Road)
8th Election District
3rd Council District

C. Richard Lehnert, *Legal Owner*
Cellco Partnership d/b/a Verizon Wireless,
Lessee
Petitioner

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2009-0322-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Petitioner, Cellco Partnership d/b/a Verizon Wireless (Verizon), through its real estate manager, Brian Stover, and its attorney Arnold Jablon, Esquire with Venable LLP. The Petition was also signed by C. Richard Lehnert, property owner. Petitioner, pursuant to Sections 1A01.2.C.28, 426 and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), requests a special exception to permit a wireless telecommunications tower with a height of 80 feet and related facilities to be erected on a portion of the subject property, zoned R.C.2. The subject special exception area and requested relief are more particularly described on the three page site plan and elevation drawings submitted which were accepted into evidence and marked as Petitioner's Exhibit 1A through 1C.

Appearing at the requisite public hearing in support of the request conducted over three (3) days, namely September 22, October 14, and November 30, 2009, were C. Richard Lehnert, property owner; Brian Stover, Verizon Wireless's Real Estate and Zoning Manager; Sherri L. Linton, a Verizon Wireless Radio Frequency Engineer for the northeast region; Barbara S. Pivec of Atlantic Site Acquisition, tower development consultants for Verizon Wireless; Brian



ZONING REVIEW

HEARING CHECKLIST

REVISED 08/30/01

This checklist is provided to you, for your information only, and **is not to be considered legal advice.**

First, and most importantly: You must understand that the relief you have requested is a quasi-judicial decision and you are responsible for meeting the burden of law required by the Baltimore County Zoning Regulations (BCZR). A judicial hearing is an adversary process and, therefore, there may be opposition to your request. During a judicial hearing, the parties will be permitted to testify, present evidence, and cross-examine witnesses. Either the zoning commissioner or the deputy zoning commissioner will rule on the evidence and testimony to determine whether or not the petition will be granted.

Second: You must understand that if a hearing is required, you are permitted to have representation by an attorney of your choice. You are not required to have an attorney, but it is recommended that you consider obtaining legal representation. But, if you are incorporated, it is considered a requirement that you be represented by an attorney.

Third: It is strongly recommended that you read and understand the requirements of the BCZR.

Fourth: No employee of the Department of Permits and Development Management (PDM) may provide legal advice to anyone. The representations and opinions of any employee are not to be construed as definitive in any case. Only the decision of the zoning commissioner/deputy zoning commissioner rendered after the statutory required public hearing is considered dispositive in matters relating to the interpretation of the BCZR.

Even though there may not be opposition in a given case, your request may be denied.

For further information or to make an appointment, please contact:



Zoning Review
Department of Permits and Development Management
111 West Chesapeake Avenue
Room 111
Towson, MD 21204
Telephone: 410-887-3391

INDIVIDUAL RESIDENTIAL LOTS

PC# 1
Variances
Administrative Variances
Special Hearings
Posting & Waivers

9/21/10

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 21, 2010

Lawrence M. Stahl, Chairman
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
SEP 21 2010
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of Richard Lehnert
Case No. 09-322-X

Dear Chairman Stahl:

This special exception case for an 80 feet high wireless telecommunications tower is scheduled for a hearing on September 28-30, 2010. The Petition was filed by C. Richard Lehnert, property owner and Cellco Partnership d/b/a Verizon Wireless. An attorney for New Cingular Wireless PCS, LLC d/b/a AT&T Mobility LLC (AT&T) also appeared at the hearing before the Zoning Commissioner (ZC), William Wiseman. The ZC granted the special exception for the tower but required it to be enclosed in a 87 feet high barn silo to be constructed on the site. The Protestants, Valleys Planning Council and Thomas F. Mullan, III, represented by Mudd, Harrison & Burch, L.L.P., and AT&T, represented by Saul Ewing LLP, filed appeals.

Our office entered its appearance on June 29, 2009. Please continue our entry of appearance at the appeal before the CBA. We are concerned with an issue that AT&T may raise on appeal.

Upon review of the file, we noticed that prior to filing its appeal, AT&T filed a Motion for Reconsideration with ZC Wiseman. Because the Protestants had already filed an appeal, the ZC refused to act on the Motion. In its Motion, AT&T requested an "amended" Order to increase the height of the tower to 95 feet. in order to

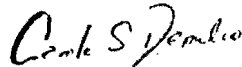
accommodate AT&T, a presumed co-locator on the proposed tower. If AT&T maintains this position in its appeal before the CBA, we would like to express our opposition. Our office maintains that the CBA has no jurisdiction to entertain such a significant amendment to and expansion of the Petition for Special Exception. Rather, a new Petition, or at the least an amended Petition if the proper parties agree, along with a revised site plan, must be filed with the zoning review office of Permits and Development, reviewed by the agencies, and proceed for hearing before the ZC.

Moreover, it appears that AT&T is not a signatory party to the Petition for Special Exception and has no authority to seek an amendment or modification to a zoning Petition filed by other parties. Neither Petitioner, Lehnert, the owner, nor Petitioner, Verizon, the lessee, have filed an appeal nor sought a change to the relief requested in their Petition. To be sure, an interested party at the ZC hearing may appeal. But the appeal is within the context of the Petition filed.

We believe our position comports with appellate decisions in this matter. We have taken this opportunity to summarize these cases, as well as statutes, policies and general zoning law in the attached Pre-Hearing Memorandum. If the sole basis for AT&T's appeal is to seek a tower height in excess of 80 feet., please consider this letter and Memorandum as a Motion to Dismiss AT&T's appeal.

Thank you for your consideration.

Sincerely,



Carole S. Demilio
Deputy People's Counsel

CSD/rmw

cc: Richard Burch, Esquire
Arnold Jablon, Esquire
Greg Rapisarda, Esquire
Jason St. John, Esquire

9/6/10
C. RICHARD LEHNERT
as Legal Owner
Cellco Partnership
dba Verizon Wireless
700 Belfast Road

Petitioners

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* 09-322-X, CBA 10-035

* * * * *

PROTESTANT'S MEMORANDUM

Holly Cumberland ("Holly Cumberland" and/or "Cumberland"), by her attorney, J. Neil Lanzi and J. Neil Lanzi, P.A., respectfully submits this Memorandum in support of her right to participate as a party, interested person and protestant in the above referenced appeal.

I. STATEMENT OF THE CASE

The Petitioners, C. Richard Lehnert, legal owner of the property known as 700 Belfast Road in Baltimore County, Maryland and Cellco Partnership d/b/a Verizon Wireless, Lessee, submitted a Petition pursuant to Sections 1A01.2.C.28, 426 and 502.1 of the Baltimore County Zoning Regulations (BCZR), requesting a Special Exception to permit a wireless telecommunications tower and related facilities to be erected on a portion of the Lehnert property, zoned RC2 ("Lehnert Property"). Petitioners' request included a proposal to construct an eighty (80) foot tall wireless telecommunications facility with a "stealth" monopole pine tree design, featuring branch extensions reaching a maximum height of approximately eighty-seven (87) feet, an equipment compound and fenced in facility.

By Order dated January 12, 2010 ("Order"), the Zoning Commissioner for Baltimore County granted the Petition for Special Exception permitting a wireless telecommunications tower and related facilities on the Lehnert Property subject to the seven conditions listed below:

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**BALTIMORE COUNTY
BOARD OF APPEALS**

1. The Petitioner may apply for any required permits and be granted same upon receipt of this Order; however, the Petitioner is made aware that proceeding at this time is at its own risk until the thirty-day appeal period from the date of this Order has expired. If, for whatever reason, this Order.

2. The wireless communications tower must be disguised as a silo.

3. The tower, with the silo structure and dome, may be no taller than eighty-seven (87) feet in total height.

4. The tower and related equipment must be in the same area as shown on Petitioners' Exhibit 1A-1C.

5. The landscape plan is to be submitted to and approved by Avery Harding, Baltimore County's Landscape Architect. Most notably, the final approved landscape plan must show year round evergreen screening between the northwest side of the fenced tower equipment compound and the property owned by William and Holly Cumberland.

6. The exterior of the silo structure shall be faced or painted in a brick or terra cotta color consisting with the silo, shown on the attached photograph and elevation detail.

7. Only one wireless telecommunications tower is permitted to be constructed on the Lehnert property.

On March 31, 2010, Timothy Kotroco, Director of the Baltimore County Department of Permits and Development Management ("PADM") issued an Administrative Order granting the request of Verizon Wireless to receive a limited exemption for the wireless communications tower and facility under Section 32-4-106(a)(1)(vi) of the Baltimore County Code ("Code"). Timely appeals to both the January 12, 2010 Order of the Zoning Commissioner and the March 31, 2010 Order of the Director of PADM were filed by Valleys Planning Council, Thomas Mullen, III and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, LLC. The appeal of the Zoning Commissioner's Order and Administrative Order of the Director of Permits and Development Management were consolidated with the hearing to commence on both appeals on September 28, 2010. At the hearing, the issue of standing was raised and a memorandum was requested by the Chairman of the County Board of Appeals.

II. ISSUE PRESENTED

Is Holly Cumberland a person aggrieved by the decision of the Baltimore County Zoning Commissioner dated January 12, 2010 and therefore entitled to participate as a party, protestant and interested party in this *de novo* appeal before the County Board of Appeals of Baltimore County?

III. STATEMENT OF FACTS. Since no testimony was taken during the first day of scheduled testimony, a limited summary of the facts will be provided in an attempt to provide some background as a basis for the request of Cumberland to participate as a party, protestant and interested person in this appeal.

1. The Lehnert Property consists of approximately fifty (50) acres located north of Belfast Road and west of Interstate I-83. The Lehnert Property is located on the eastern edge of the Western Run – Belfast National Register Historic District and is bordered by two designated scenic routes, Belfast Road and the Baltimore-Harrisburg Expressway (I-83).

2. Holly Cumberland, with her husband, William Cumberland, own three parcels immediately adjacent to the Lehnert Property, totaling in excess of 100 acres. The Cumberland property consists of densely wooded land and, where clear, approximately fifty acres are used primarily for farming.

3. Prior to Petitioners filing of a special exception petition for the wireless communications tower, the Cumberland's processed a five lot subdivision through the Baltimore County development process, receiving approval both at the Hearing Officer's Hearing and at the County Board of Appeals for Baltimore County.

4. On appeal by Richard Lehnert, Petitioner herein, the Circuit Court for Baltimore County affirmed the approvals provided by the Zoning Commissioner and County Board of

Appeals for Baltimore County for the Cumberland subdivision.

5. Richard Lehnert, Petitioner herein, appealed the decision of the Circuit Court for Baltimore County to the Court of Special Appeals where the Cumberland Subdivision case is now pending.

6. As required by the BCZR, Section 426, Verizon Wireless submitted an application to the Tower Review Committee for the proposed construction of a new eighty (80) foot disguised monopole to be located on the Lehnert property.

7. The Tower Review Committee recommended to the Baltimore County Zoning Advisory Committee approval of the Verizon Wireless proposal on June 23, 2009, subject to a height limit of eighty (80) feet above ground level. Part of the Tower Review Committee findings include the following:

“We feel that has Verizon has provided all requested information to the Tower Review Committee (TRC), to successfully demonstrate that no other co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. Verizon has proposed to install a new eighty (80) foot disguised monopole. The total height of the structure is eighty (80) feet including all appurtenances.

- if a tower must be built, the tower should be constructed to accommodate at least three providers.

8. The hearing for the Petitioners’ Special Exception Petition was conducted over three days in the fall of 2009 and in his Order, the Zoning Commissioner for Baltimore County noted those in opposition included, among others, the Valley’s Planning Council, Sparks-Glencoe Community Planning Council, Thomas “Tim” F. Mullen and Bruce E. Doak, property line surveyor with Gerhold, Cross & Etzel, Ltd, assisting adjacent property owners, Holly and William Cumberland. (ZC Order p.2)

9. The Zoning Commissioner’s Order acknowledged the close location of the Cumberland property as follows:

“As Wolfe explained (and as confirmed by the Protestants), the closest adjacent property to the north and west is the Cumberland’s 117 acres currently undergoing a subdivision process to yield six residential lots. See Case No. 08-211-SPHA on appeal to the Circuit Court for Baltimore County. Two of the new Cumberland lots will be as close as 316 feet from the cell tower and equipment compound location. The closest proposed home would be positioned 460 north of the tower at elevation 506 feet.” (ZC Order p.6)

10. The Zoning Commissioner’s Order further documented the testimony of Tom Wolfe, the consulting land planner for Verizon Wireless. The Order summarized Mr. Wolfe’s testimony at the hearing in part that Verizon Wireless had “made a diligent search to locate the tower in compliance with the requirements of Section 426 (on existing tower or structure or in commercial, if possible) and had adequately explained why a new tower was required to be constructed”. (ZC Order p. 7)

11. The Zoning Commissioner wrote in his Order that “with the efforts made by Verizon as to siting the tower and its use of stealth technology, Mr. Wolfe indicated his professional opinion that Verizon had complied with the spirit, intent and legislative purpose as set out in the relevant BCZR sections and that there would be no impact on the County scenic resources”. (ZC Order, p. 8)

12. Bruce Doak, licensed surveyor and expert in planning and land use testified and participated on Holly Cumberland’s behalf at the hearing before the Zoning Commissioner.

13. The Zoning Commissioner in his Order recognized the testimony of Bruce E. Doak on behalf of the Cumberland’s confirming their participation and in condition number five of the Order, required screening between the equipment compound on the Lehnert Property and the Cumberland Property.

14. In the application of Verizon Wireless for wireless communications site placement (Petitioners’ Exhibit 4), alternative sites were discussed as follows:

“Verizon considered and rejected multiple sites in the general search area before settling

on the proposed site. No site provided the necessary height to achieve the required RF coverage and no site presented an opportunity to collocate on an existing wireless telecommunication facility, as encouraged by the Baltimore County Comprehensive Plan and ordinances.”

15. Prior to the first day of the hearing before the County Board of Appeals, Cumberland submitted to counsel for Verizon Wireless and the Valley’s Planning Council alternative locations on the Cumberland property for the proposed wireless communications tower, which alternative locations were at a higher elevation, yet substantially less visible, than the location being proposed by Verizon Wireless in the subject appeal. A copy of the site plan demonstrating the proposed new locations is attached as Cumberland’s Exhibit 1.

16. The proposed new locations on the Cumberland property are sited closer to I-83, are within a wooded area and would be far removed from any existing and/or future home sites, in contrast to the current proposed location.

17. In the Zoning Commissioner’s file, transmitted to the County Board of Appeals as required by the Code, two letters were included, first, a letter from Petitioner Richard Lehnert to Holly Cumberland dated December 5, 2001 (marked as Protestant’s Exhibit 2) warning her of attempts by Sprint telephone to install a tower in the area and the resulting loss of their property values and second, a letter from Holly Cumberland to the Zoning Commissioner dated September 16, 2009, confirming her opposition to the Verizon Wireless proposal on the Lehnert Property. Copies of both letters are attached as Cumberland’s Exhibit 2 and Exhibit 3 respectively.

18. The property of Holly Cumberland is 316 feet from the proposed cell phone tower as confirmed by the Order and Petitioners’ Exhibit 1 filed in the Zoning Commissioner’s proceeding, a portion of which is copied hereto as Cumberland’s Exhibit 4.

19. Not only is the Cumberland property line just over 300 feet from the proposed tower, two of the proposed dwellings within the Cumberland subdivision are within a 100 feet of the property line. A copy of a portion of the plat for the Cumberland subdivision is attached as Cumberland's Exhibit 5.

20. Holly Cumberland is a long term financial supporter of the Valley's Planning Council.

IV. **LAW AND ARGUMENT**

The Baltimore County Code, Section 32-4-102, requires that the development of land must protect and promote the health, safety and welfare of the County. Section 32-4-103 states that development is to be compatible with the neighborhood and should minimize the adverse environmental, traffic and economic impact on the surrounding community.

Section 32-3-401 of the Code states in part:

(a) In general. A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits and Development Management may appeal the decision or order to the Board of Appeals.

(c) Notice and fee required for filing. The appealing party shall:

(1) File notice of the appeal in writing with the Department of Permits and Development Management within thirty (30) days after the final decision; and

(2) Pay the required fee.

(d) Procedure for hearings. The Board of Appeals shall hear and dispose of the appeal as provided in the charter and the rules of procedure established by the Board of Appeals.

Section 32-4-102(b) of the Code states:

(2) This title is intended to ensure that proposed development projects are safe, adequate, convenient and where applicable, provide for the following:

(i) Conservation of existing communities and the promotion of the quality of development, site and building design and compatibility.

(vi) Prevention of environmental degradation and promotion of environmental enhancement, including adequacy of landscaping and energy conservation measures and of protection of floodplains, steep slopes, water sheds, non-tidal wetlands, tidal wetlands, vegetation, other natural features and historical sites or areas; and

(vii) Preservation of agricultural lands, including adequacy of protection of prime and productive soils from inappropriate development.

The proposed wireless communications tower is located within the Western Run – Belfast National Register Historic District and is bordered by two designated scenic routes. Hundreds of acres of farm land surround the subject property, including the 100 plus acres of the Cumberland property.

Section 501.6 of the BCZR states as follows:

Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals *de novo*. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and to submit all proper, oral or written evidence.

An Entry of Appearance on behalf of Holly Cumberland was filed with the Board of Appeals on September 24, 2010. It is the intention of Holly Cumberland, through counsel, to produce witnesses and to file and submit all proper oral and written evidence.

The Zoning Commissioner for Baltimore County and now the County Board of Appeals for Baltimore County must follow Section 502.1 of the BCZR prior to granting any Petition for Special Exception. There are nine conditions under Section 502.1 which must be met, including the following:

Section 502.1. Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- (a) Be detrimental to the health, safety or general welfare of the locality involved;
- (g) Be inconsistent with the purposes of the property zoning classification nor in any other way inconsistent with the spirit and intent of the zoning regulations.
- (i) Be detrimental to the environmental and natural resources of the site and vicinity

including forest, streams, wetlands, aquifers and floodplains in an RC2, RC4, RC5 or RC7 zone.

The BCZR also provides specific regulations for wireless telecommunications towers, including proposed towers within the scenic viewshed as follows:

502.7(B) Towers Within Scenic Viewshed.

(1) A special exception may not be granted for a wireless telecommunications tower located in an RC-2, RC-3, RC-4, RC-5, RC-6 or RC-7 zone within a scenic viewshed unless the Zoning Commissioner finds that the proposed tower will not interfere with or be detrimental to the scenic viewshed elements.

(2) The Zoning Commissioner shall determine interference or detriment based on substantial evidence, comparing the scenic viewshed elements to the proposed tower location, in order to determine whether the proposed tower blocks any scenic viewshed elements or is not visually in harmony with any scenic viewshed elements when the elements and the tower can be seen simultaneously.

Clearly the proposed wireless communications tower is within a scenic viewshed as documented in the Order. Unless your Petitioner is allowed to intervene and participate in this appeal as a party, protestant and/or interested party, the County Board of Appeals, as the trier of fact, will not be able to make an informed determination as to whether the proposed wireless communications tower could be located in an alternative location on the Cumberland property, which alternative location would lessen any impact on the scenic viewshed elements due to its proposed location within a forested area. Under current regulations, in order to obtain special exception approval, Petitioner must establish there are no other viable options for the proposed wireless communications tower and, based upon Cumberland's Exhibit 1, viable options may be available and testimony is necessary for that determination to be made by the County Board of Appeals.

Section 426 of the BCZR provides for additional special regulations for wireless telecommunications facilities. Section 426.2 states in part:

"It is the intent of Baltimore County that:

- B. If a new tower must be built, the tower should be:
- (1) Constructed to accommodate at least three 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.

The Cumberland Property and alternatives A and B as shown on Cumberland's Exhibit 1 reflect two locations where a wireless communications tower's visibility will be minimized from any existing and future residences and the valley as a whole in the event a special exception for the wireless communications tower is approved.

Section 426.4 provides for the Tower Review Committee. An applicant must submit an application for a building permit for a tower prior to being eligible to submit a petition for special exception. Additional conditions for towers permitted by special exception are provided in Section 426.9 of the BCZR.

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

- A. A Petitioner shall have the burden of demonstrating that:
- (1) The Petitioner has made a diligent attempt to locate the antenna on an existing tower or nonresidential building or structure;
 - (2) Due to the location, elevation, engineering, technical feasibility or inability to obtain a lease or ownership of a location elsewhere, the construction of a tower at the proposed location is warranted.
 - (4) The height of the tower is no higher than what is required to enable present and future co-location of other providers;

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

- (1) Petitioner shall have the burden of demonstrating that:
 - (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.

(3) In granting a special exception, the Zoning Commissioner or Board or 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 flag pole, 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 property surrounding the tower.

In the event, Holly Cumberland is not allowed to participate in the appeal as a party, protestant and/or interested person, the finder of fact, the Board in this case, will not be able to determine whether there are alternative sites available that are more consistent with the legislative policy of Sections 426 and 502.7 of the BCZR.

1. Is Holly Cumberland a person aggrieved by the decision of the Baltimore County Zoning Commissioner dated January 12, 2010 and therefore entitled to participate as a party, protestant and interested party in this *de novo* appeal before the County Board of Appeals of Baltimore County?

The proceeding before the Board is a *de novo* hearing pursuant to Section 501.6 of BCZR. Holly Cumberland clearly participated at the Zoning Commissioner hearing through her representative, property line surveyor and land use expert, Bruce Doak. The Order of the Zoning Commissioner recognizes Holly Cumberland on a number of occasions, including in the seven conditions. Letters are in the Zoning Commissioner's file as exhibits from Richard Lehnert to Holly Cumberland and from Holly Cumberland to the Zoning Commissioner.

The Court of Appeals in the case captioned Dorsey v. Bethel, A.M.E. Church, 375 Md. 59 (2002), discusses the issue of standing in the context of the approval process necessary for the administrative approval of a development plan in Baltimore County. In that case, the Greater Patapsco Community Association, Inc. noted an appeal from the hearing officer's interlocutory decision to the Baltimore County Board of Appeals. In addition to the community association, a

number of individuals who were residents in the area of the proposed church were determined to be parties to the County Board of Appeals. The Court found the individuals enjoyed standing to bring the judicial review action in the Circuit Court, had standing to maintain the appeal and were proper parties before the Court of Appeals. In that case, the Petition for Judicial Review and Notice of Appeal were signed by the community association's president.

Cumberland concedes that she did not sign a timely notice of appeal. However, the Valley's Planning Council did timely file a Notice of Appeal to the Zoning Commissioner's Order and Cumberland has been a long term financial supporter of the Valley's Planning Council and is an adjacent property owner.

The Court in Dorsey quoted an earlier case captioned Sugarloaf v. Department of Environment, supra 344 Md. 286, 287, 686 A2d 613, explaining,

"The requirements for administrative standing under Maryland law are not very strict. Absent a statute or a reasonable regulation specifying criteria for administrative standing, one may become a party to an administrative proceeding rather easily."

In holding that a particular individual was properly a party at an administrative hearing, Judge J. Dudley Digges for the Court in Morris v. Howard Res. & Dev. Corp., 278 Md. 417, 423, 365 A2d. 34, 37, 1976 explains as follows:

"He was present at the hearing before the Board, testified as a witness and made statements or arguments as to why the zoning regulations should not be approved. This is far greater participation than that previously determined sufficient to establish one as a party before an administrative agency."

The Court in Dorsey discussed Maryland-Nat'l v. Smith, 333 Md. at 10, stating:

"Morris and other cases of this Court indicate that the threshold for establishing oneself as a party before an administrative agency is indeed low. Although we have said that one's presence at the hearing and testimony in favor of an asserted position is sufficient, id. we have also said that personal appearance and testimony at the hearing are not required."

It is well recognized that administrative proceedings are designed to be informal so as to encourage citizen participation. The record, exhibits and Order demonstrate the participation of

Holly Cumberland in this appeal.

As provided by the Baltimore County Code, an individual must be “a person aggrieved” by a decision of the Zoning Commissioner before participating in an appeal to the County Board of Appeals. Despite a distinction in land use cases between “interested party” and an “aggrieved party” the Court of Special Appeals in the case captioned Chesapeake Bay Foundation, Inc. v. Clickner, 192 Md. App. 172 (2010) discussed the issue of standing in land use appeals. The Court discussed the requirement of establishing oneself as a party before an administrative agency as the mere presence at the hearing and testimony in favor of a position. Holly Cumberland was recognized by the Zoning Commissioner, having identified herself for the record by her representative as having an interest in the outcome of the special exception petition. The Court in Clickner discussed the basis for a person being aggrieved noting the landmark case on aggrievement, Bryniarski v. Montgomery Co., 247 Md. 137 (1967) stating:

“Generally speaking, the decisions indicate that a person aggrieved by the decision of a Board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the Board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally.”

The Court continued stating that an adjoining or nearby property owner is deemed “prima facie” to be specially damaged and therefore a person aggrieved. Holly Cumberland’s property is adjoining to the Lehnert Property and is 316 feet from the proposed wireless communications tower. Two of the proposed residences within the Cumberland subdivision are within one hundred feet of the property line and obviously will be affected substantially by the proposed wireless communications tower. What had been a scenic and uninterrupted view of farmland, trees and endless skyline will now be substantially altered by the proposed cell phone tower and silo with the resulting decrease in property value.

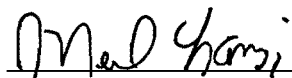
V. **CONCLUSION**

Petitioner is requesting the right to participate as a party, protestant and interested person in this *de novo* appeal pending before the County Board of Appeals of Baltimore County. Petitioner participated in the Zoning Commissioner hearing through her representative. The Valley's Planning Council timely noted an appeal. Holly Cumberland has confirmed her desire to participate by the filing of an Entry of Appearance by the undersigned. Maryland case law, the Baltimore County Code and the Baltimore County Zoning Regulations all encourage participation by citizens during the administrative process reviewing development in Baltimore County. Without Holly Cumberland's participation, substantial and probative evidence of alternative wireless communications tower locations will not be demonstrated for the County Board of Appeals consideration. The substantial adverse impact of the current proposed location upon the Cumberland property and surrounding neighborhood will not be able to be considered. Since this proceeding is a *de novo* hearing, the property owner and Verizon Wireless must demonstrate that all of the requirements for a special exception under Section 502.1 and 426 for a wireless communications tower are met.

A covenant was made between Baltimore County and property owners in this portion of northern Baltimore County when the RC zones were created several years ago. Since that time to the present, Ms. Cumberland has paid taxes diligently and farmed her property for the past thirty years (and prior owners for over a hundred years before that) as requested by Baltimore County for RC zoned properties. If the tower is allowed as requested, Holly Cumberland's position is that Baltimore County will not be keeping its end of the bargain by allowing the tower and its commercial use within 316 feet of her property, ruining the scenic views and substantially reducing the property value.

Holly Cumberland, Petitioner submits that under the applicable law and based on the prior history of this special exception proceeding, your Petitioner has met her burden to satisfy the standards necessary to sustain approval of her right to participate in the appeal as a party, protestant and/or interested person.

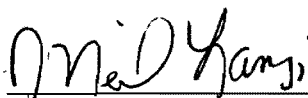
Respectfully submitted,



J. NEIL LANZI
Attorney for Holly Cumberland
409 Washington Avenue, Suite 617
Towson, Maryland 21204
(410) 296-0686

CERTIFICATE OF SERVICE

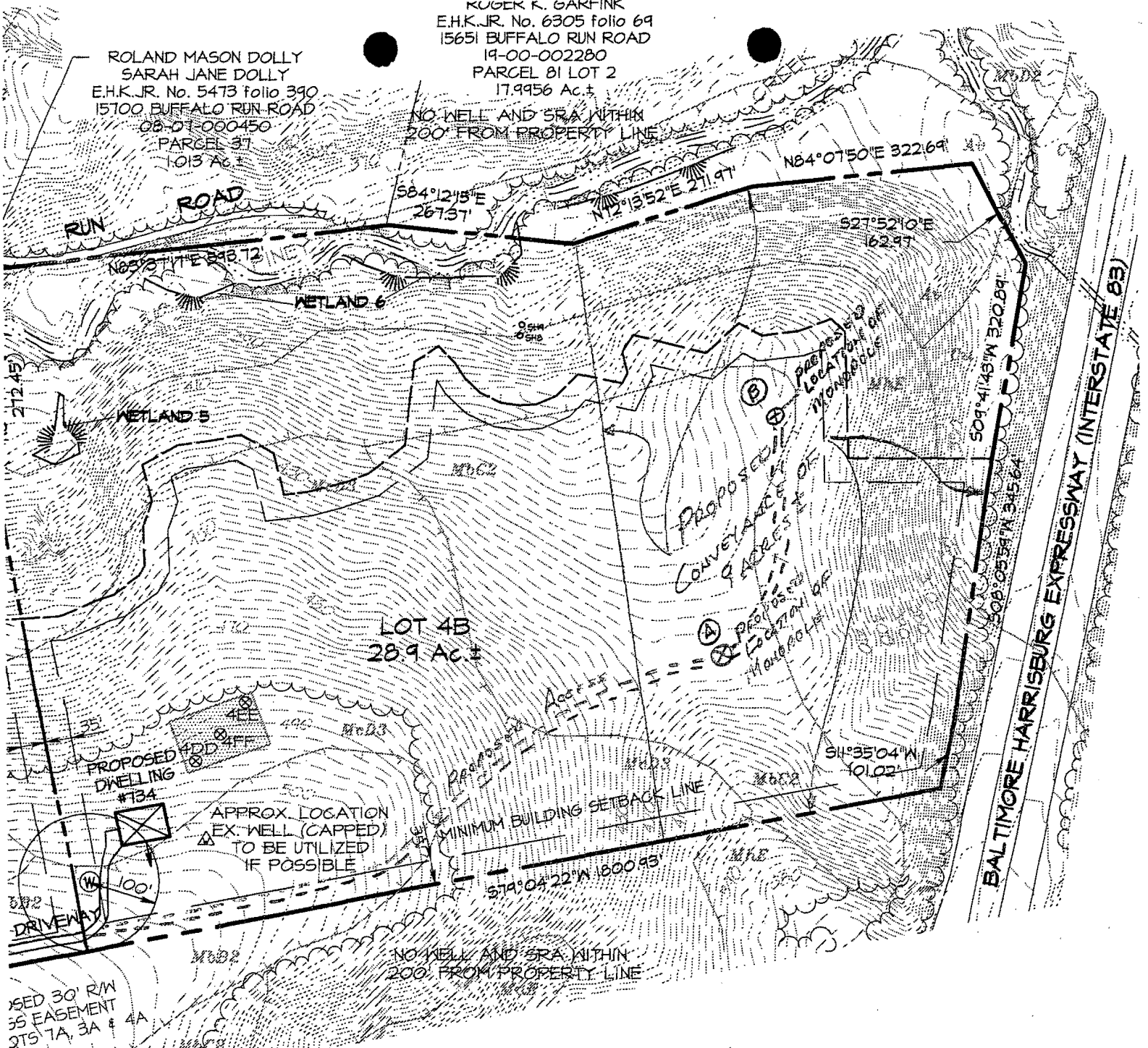
I HEREBY CERTIFY that on this 6th day of September, 2010, a copy of the foregoing was mailed to Arnold Jablon, Esquire, Venable LLP, Suite 500 210 W. Pennsylvania Avenue, Towson, MD 21204, Richard C. Burch, Esquire, Mudd, Harrison & Burch LLP, Suite 900, 401 Washington Avenue, Towson, MD 21204, Jason M. St. John, Esquire, Saul Ewing LLP, Lockwood Place, 500 E. Pratt Street, Eight Floor, Baltimore, MD 21202, Gregory E. Rapisarda, Esquire, Saul Ewing LLP, Lockwood Place, 500 E. Pratt Street, Eight Floor, Baltimore, MD 21202 and Carole S. DiMilio, Deputy People's Counsel for Baltimore County, 105 West Chesapeake Avenue, Second Floor, Towson, Maryland 21204.



J. NEIL LANZI

KUGER K. GARTINK
E.H.K.JR. No. 6305 folio 69
15651 BUFFALO RUN ROAD
19-00-002280
PARCEL 81 LOT 2
17.9956 Ac.±

ROLAND MASON DOLLY
SARAH JANE DOLLY
E.H.K.JR. No. 5473 folio 390
15100 BUFFALO RUN ROAD
08-01-000450
PARCEL 37
1013 Ac.±



ZONING ORDER CASE No. 08-211-SPHA

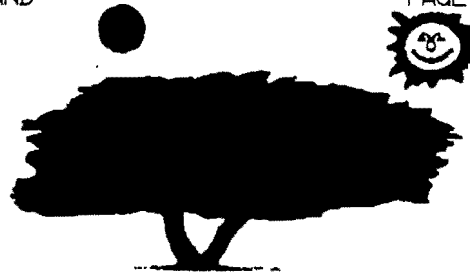
BOARD OF APPEALS

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this
25th day of March 2008 that the Petition for Special Hearing, pursuant to Section
 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a non-density transfer
 of 8.07 acres, more or less, of R.C.2 zoned land from Cumberland (Parcel 38, Lot 3) to
 Cumberland (Parcel 38, Lot 7), pursuant to Sections 1A00.4.B(2) and (3) of the Zoning
 Commissioner's Policy Manual (Z.C.P.M.), and to reconfigure Lots 3 and 7 in accordance with
 the transfer is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing, pursuant to B.C.Z.R.
 Section 500.7, to approve a non-density transfer of 0.45 acres, more or less, of R.C.2 zoned land
 from Cumberland (Parcel 38, Lot 7) to Cumberland (Parcel 38, Lot 3), pursuant to Sections

THEREFORE, I
 of Appeals of Baltimore C
ORDERED that,
 Special Hearing to appr
 Cumberland (Parcel 38,
 and (3) of the Zoning Cc

Dial Farms Nursery & Landscaping
Dick and Alice Lehnert
707 Old Bayview Road, Sparks, Maryland 21152
Phone No. 410 771 4500 Fax No. 410 472 3305



DECEMBER 5, 2001

MRS. HOLLY CUMBERLAND
3550 CROSS CREEK LANE
MALIBU, CA 90265

ATT: Dave Karcoke
Tougan Office

(310) 456 2017 (H)

(310) 456 2127 (H)

DEAR HOLLY,

JUST TO KEEP YOU AWARE OF WHAT IS GOING ON IN THE AREA.

THE SPRINT TELEPHONE CO. HAS SIGNED A CONTRACT WITH THE LAND OWNER ACROSS I 83 FOR A 198' TOWER TO BE USED FOR CELL PHONES. THIS IS THE FIRST STEP TO A TOWER BEING CONSTRUCTED. THEY SELECTED 198' AS 200' MUST HAVE A BLINKING LIGHT FOR AIRPLANES.

THE LAND ON THE WEST SIDE OF "83" IS AN HISTORICAL DISTRICT AND AS SUCH CAN NOT NORMALLY BE USED FOR TOWER CONSTRUCTION. THE BORDER OF THE HISTORICAL DISTRICT IS THE CENTER LINE OF "83".

AT&T HAD TRIED TO GET A TOWER ON THE WEST SIDE AND LOST THE COURT CASE. MOST OF THE LANDOWNERS ARE FIGHTING THE TOWERS SINCE THEY DEGRADE THE SURROUNDING LAND AND HOUSES TO THE POINT THAT THEY LOSE ABOUT 25-30 % OF THEIR VALUE.

I UNDERSTAND THAT YOU ARE IN CONTACT WITH SOME OF THE LOCAL RESIDENTS FROM TIME TO TIME AND YOU CAN PROBABLY BE FILLED IN FROM THEM.

I JUST WANTED TO LET YOU KNOW AS THE TWO OF US ARE THE ONES MOST LIKELY TO LOSE VALUE BECAUSE OF THE TOWER CONSTRUCTION. IT WILL BE WITHIN SUCH A SHORT DISTANCE AND WILL BE ABLE TO BE SEEN SO READILY. SHOULD YOU NOT WANT IT YOU CAN MAKE YOUR COMMENTS TO THE COUNCILMAN FOR THIS DISTRICT, BRYAN MCINTIRE, 410 887 3387.

SINCERELY,

C. RICHARD LEHNERT

CC: HERB DAVIS

Cumberland

3550 Cross Creek Lane
Malibu, California 90265
(310)456-2127

September 16, 2009

William Wiseman III, Zoning Commissioner
Baltimore County Zoning Office
105 W. Chesapeake Ave Room 103
Towson MD 21205
410-887-3391

Dear Mr. Wiseman,

I really enjoy my cellphone. It's a great asset as I white-knuckle it through L.A. traffic. However, placing cell towers – in this case ultimately three – would noticeably alter the appeal of my land in Sparks. The appeal of this land is its rural detached aspect. Sound from Route 83 might be a negative for many people but there are some truly amazing views from my land, going south towards the Chesapeake Bay. The land includes an impressive ridge and some of the highest points between the bay and the Pennsylvania Line. This ridge gives me unique views and Verizon unique problems. Where the towers are proposed is in the property's direct southern view. In one swipe, this land's primary asset will be altered. Additionally, this high ridge is the dominant western view as you drive north of Shawan Road. It is the high golden corn field you see if you drive there now.

Verizon is placing their equipment outside the tree line. In winter the towers will be eye catchers.

I considered Verizon's request to place a tower on my property several years ago, but declined as I couldn't see any way that it could work out well.

Verizon has said they will consider modifications – moving inside the tree line, planting mature trees, etc. but only if so directed.

Whoever buys my land will be committing to a considerable forward effort. We have rebuffed offers for non-residential use for this land, such as sport teams, churches, and retirement facilities. These towers will change the nature of my land. I enclose Dick Lehnert's letter of several years ago on the subject.

I'm asking that you be shown the book of older homes in Sparks that I compiled in 1975.

Thank you,

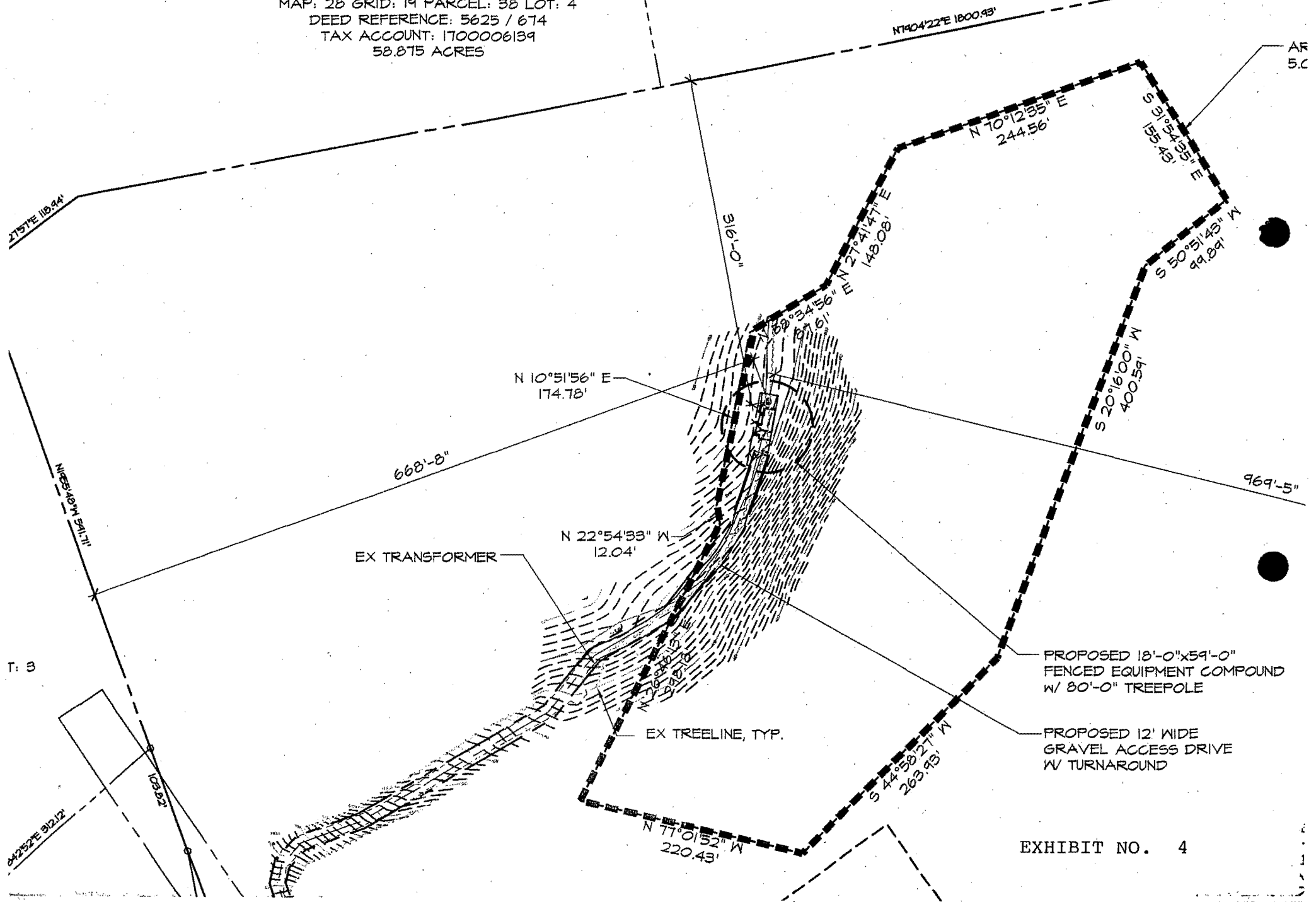
Holly Cumberland

Holly Cumberland

cc. R. Burch
T. Moore
B. Doak

EXHIBIT NO. 3

ADJOINING PROPERTY:
HOLLY CUMBERLAND
3550 CROSS CREEK ROAD
MALIBU, CA 90265
MAP: 28 GRID: 19 PARCEL: 38 LOT: 4
DEED REFERENCE: 5625 / 674
TAX ACCOUNT: 1700006139
58.875 ACRES



Westlaw.

993 A.2d 1163
 192 Md.App. 172, 993 A.2d 1163
 (Cite as: 192 Md.App. 172, 993 A.2d 1163)

Page 1

C

Court of Special Appeals of Maryland.
 CHESAPEAKE BAY FOUNDATION, INC., et al.

v.

David CLICKNER, et ux.
 No. 01525 Sept.Term, 2008.

April 30, 2010.

Background: Organizations engaged in oyster bed and aquatic grass planting activities on river appealed decision of county administrative hearing officer granting two zoning variance applications by owner of island located in river. The county board of appeals dismissed appeal for lack of standing. Organizations petitioned for judicial review. The Circuit Court, Anne Arundel County, Pamela L. North, J., affirmed. Organizations appealed.

Holdings: The Court of Special Appeals, Kehoe, J., held that:

- (1) in order to demonstrate standing to appeal county administrative hearing officer's decision, organizations had to demonstrate that they had a specific interest that would be affected personally and specially in a way different from the public generally by the proposed development;
- (2) property ownership is not a prerequisite to aggrievement, as a requirement for standing in land use appeals; and
- (3) board's application of wrong definition of aggrievement required remand to board.

Judgment of Circuit Court reversed and remanded with directions.

West Headnotes

[1] Administrative Law and Procedure 15A 683

15A Administrative Law and Procedure
 15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak681 Further Review

15Ak683 k. Scope. Most Cited Cases

When Court of Special Appeals reviews the decision of an administrative agency, it looks through the circuit court's decision and evaluates the decision of the agency.

[2] Administrative Law and Procedure 15A 760

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(D) Scope of Review in General

15Ak754 Discretion of Administrative Agency

15Ak760 k. Wisdom, judgment or opinion. Most Cited Cases

Administrative Law and Procedure 15A 791

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(E) Particular Questions, Review of

15Ak784 Fact Questions

15Ak791 k. Substantial evidence. Most Cited Cases

In reviewing the decision of an administrative agency, an appellate court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, so long as the agency's determination is based on substantial evidence.

[3] Administrative Law and Procedure 15A 784.1

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(E) Particular Questions, Review of

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Case 1:03-cv-00001 Document 1-1 Filed 06/06/03 Page 1 of 1

2/12/10

IN THE MATTER OF

700 Belfast Road, 340' NE of c/line
Sparks, Maryland 21152
8th Election District
3rd Council District

New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility LLC,
Appellant

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 2009-0322-X
*

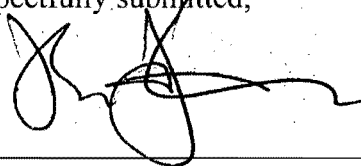
* * * * *

APPEAL BY NEW CINGULAR WIRELESS PCS, LLC
D/B/A AT&T MOBILITY, LLC

New Cingular Wireless PCS, LLC d/b/a AT&T Mobility LLC ("AT&T"), by its undersigned counsel, hereby appeals the decision of the Hearing Commissioner set forth in the Commissioner's Findings of Fact and Conclusions of Law dated January 12, 2010. AT&T's business address is 7150 Standard Drive, Hanover, Maryland 21076. AT&T maintains a leasehold on the property located at 700 Belfast Road, Sparks, Maryland 21152, which is the subject of the above-referenced matter.

Dated: February 12, 2010

Respectfully submitted,



Jason M. St. John, Esquire
Gregory E. Rapisarda, Esquire
SAUL EWING LLP
Lockwood Place
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jstjohn@saul.com

Counsel for New Cingular Wireless PCS, LLC
d/b/a/ AT&T Mobility, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appeal was sent by first-class, postage prepaid on the 12th of February, 2010 to:

Arnold E. Jablon, Esquire
210 W. Pennsylvania Ave.
Suite 500
Towson, MD 21204
Counsel for Cellco Partnership d/b/a Verizon Wireless;

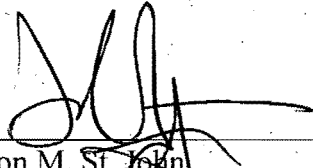
Mr. C. Richard Lehnert
707 Belfast Road
Sparks, Maryland 21152;

The Valleys Planning Council, Inc.
c/o Ms. Teresa Moore
P.O. Box 5402
Towson, Maryland 21285-5402;

Sparks-Glencoe Community Planning Council
c/o Ms. Kirsten A. Burger
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Mudd, Harrison & Burch, LLP
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Counsel for Thomas "Tim" F. Mullen; and to

William J. Wiseman, III
Zoning Commissioner for
Baltimore County, Maryland
105 West Chesapeake Avenue, Suite 103
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Jason M. St. John



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February 12, 2010

VIA HAND-DELIVERY

Timothy M. Kotroco, Director
Department of Permits & Development
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED

FEB 12 2010

Re: Case No. 2009-0322-X
700 Belfast Road, Sparks, Maryland 21152

Dear Mr. Kotroco:

Enclosed please find an original and six (6) copies of an Appeal for filing in the above-referenced matter. Please date-stamp the extra copy and return it to the messenger. You will also find enclosed checks in the amount of Three Hundred and Twenty Five Dollars (\$325.00) for the Appeal and Seventy Five Dollars (\$75.00) for a sign posting.

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

Very truly yours,

Jason M. St. John

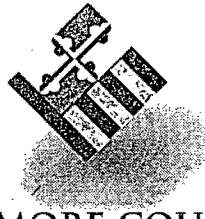
JMS;lmh
Enclosures

cc: Arnold E. Jablon, Esquire
Mr. C. Richard Lehnert
Ms. Teresa Moore, The Valleys Planning Council, Inc.
Ms. Kirsten A. Burger, Sparks-Glencoe Community Planning Council
Richard C. Burch, Esquire
William J. Wiseman, III, Zoning Commissioner

500 East Pratt Street • Baltimore, MD 21202-3133 • Phone: (410) 332-8600 • Fax: (410) 332-8862

DELAWARE MARYLAND NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, DC

A DELAWARE LIMITED LIABILITY PARTNERSHIP



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

February 17, 2010

WILLIAM J. WISEMAN III
Zoning Commissioner

Jason M. St. John, Esquire
Gregory E. Rapisarda, Esquire
Saul Ewing, LLP
Lockwood Place
500 East Pratt Street, 8th Floor
Baltimore, Maryland 21202

RE: **Motion for Reconsideration - Case No. 2009-0322-X**
(700 Belfast Road)

Dear Counsel:

Please be advised that your Request for Reconsideration, dated February 12, 2010, has been superseded by the timely filing of an Appeal by the Valleys Planning Council and Thomas F. Mullan, III to the County Board of Appeals on February 9, 2010.

Therefore, the Office of the Zoning Commissioner no longer has jurisdiction of the above-referenced matter.

The general rule is that an administrative agency is divested of jurisdiction when an appeal is noted with respect to the matter or issues under consideration. *Pressman v. State Acc. Fund*, 256 Md. 406 (1967). Indeed, the Court of Appeals expressly held that "an appeal from the Order of an administrative agency stays the power of the agency to proceed further until the issues or appeal have been resolved". *Id at 416*. See, also *Tiller v. Elfenbein*, 205 Md. 14 (1954) where the Court held "A motion for new trial filed after a notice of appeal was filed could be heard and decided by the trial court *after the appeal was dismissed*". *Id at 21*.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Wiseman", written over a large, stylized "X" mark.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: See Attached List
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Monkton, MD 21111

Laura Wilke
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Monkton, MD 21111

2/12/16

IN RE: PETITION FOR SPECIAL EXCEPTION

700 Belfast Road, 340' NE of c/line
Sparks, Maryland 21152

8th Election District
3rd Council District

C. Richard Lehnert, *Legal Owner* and
Cellco Partnership d/b/a Verizon Wireless,
Lessee
Petitioner

* * * * *

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* **Case No. 2009-0322-X**

MOTION FOR RECONSIDERATION BY
NEW CINGULAR WIRELESS PCS, LLC D/B/A AT&T MOBILITY, LLC

New Cingular Wireless PCS, LLC d/b/a AT&T Mobility LLC ("AT&T"), by its undersigned counsel, hereby moves the Commissioner to reconsider and amend one of the seven restrictions set forth in the Findings of Fact and Conclusions of Law dated January 12, 2010 (the "Order") approving a special exception to build a wireless telecommunications facility at 700 Belfast Road in Sparks (the "Property"). Specifically, AT&T respectfully requests that the Commissioner exercise his authority under the Baltimore County Zoning Regulations ("B.C.Z.R.") sections 426.9.C.3 and 502.2 and the Rules of Practice and Procedure promulgated under section 500.8 of the B.C.Z.R., and sections 26-135 and 26-206(e) of the Baltimore County Code to modify the third restriction set forth in the Order to reflect that "the tower, with the silo structure and dome, may be no taller than 95 feet in total height." Otherwise, the silo will not accommodate AT&T, which is one of the three carriers that has been approved by the Tower Review Committee ("TRC") to build a wireless communications facility on the Property.¹

¹ Verizon Wireless, T-Mobile and AT&T each have leases to build a wireless communications facility on the Property with its owner.

The TRC recommended one tower to accommodate Verizon, T-Mobile, and AT&T, and recognized that AT&T requires a minimum height of 65' to satisfy its coverage objective. *See* Exhibit A (the "AT&T TRC Approval"). Thus, to achieve its coverage objective and to satisfy the Commissioner's desire that only one wireless communications facility be built on the Property, AT&T asks the Commissioner to increase the approved height of the silo by 8 feet -- to 95 feet, which will allow Verizon Wireless, T-Mobile and AT&T to provide wireless services in the coverage area through the new silo on the Property. A drawing of the proposed 95' silo reflecting the placement of all three TRC-approved carriers on the silo is attached hereto as Exhibit B.

Alternatively, AT&T requests that the Order be modified to remove the restriction that only one wireless communications tower is to be constructed on the Property.² Otherwise, AT&T will be forced to abandon a landowner and a project that it has invested years of time and countless resources. AT&T, however, will not abandon its effort to improve its coverage in the greater Sparks community. Rather, AT&T will be forced to seek a new willing landlord in the area and build another tower in a Resource Conservation zone in Baltimore County, which is a waste of resources and runs counter to the policy intent behind the B.C.Z.R. -- particularly, when an 8-foot increase to the approved silo solves the problem.

BACKGROUND

The County's legislative policy found in § 426.2 of the B.C.Z.R requires that any new tower in the County be constructed to accommodate the antennas of at least three providers. BCZR § 426.2.B.1. Typically, this policy is strictly adhered to by TRC, the Office of the Zoning

² AT&T maintains that this restriction is not permitted by the Baltimore County Zoning Regulations, Maryland law and the Telecommunications Act of 1996. AT&T reserves the right to appeal the Commissioner's Order and specifically this restriction contained in the Order.

Commissioner, and the carriers and tower companies. This policy minimizes the number of towers, which in turn reduces their visual impact, and is a cost effective way for wireless carriers to fulfill their obligations to provide coverage under their FCC licenses.

This case is atypical because of the long history of deficient wireless coverage in Sparks and the surrounding areas and the community opposition to any tower proposal. Verizon, T-Mobile and AT&T had been working with The Valleys Planning Council, Inc. ("VPC") and Sparks-Glencoe Community Planning Council ("SGCPC") for several years to reach a consensus as to whether the community would support one wireless communications facility to accommodate all three carriers or multiple structures at lower heights designed for each individual carrier.³ Ultimately, VPC and SGCPC rejected any proposal for any sort of wireless communications structure(s) on this Property.

TRC, relying upon the guidance of Baltimore County's paid consultant, Columbia Telecommunications Corporation ("CTC"), concluded that Verizon, T-Mobile and AT&T each required a minimum RAD center of 65' in order to satisfy each carrier's coverage objective:

- In August 2007, the TRC approved Verizon to construct an 80' tree pole.
- On August 28, 2009, the TRC approved T-Mobile to either co-locate at 66' on Verizon's tower or construct its own 70' tree pole. See Exhibit C (the "T-Mobile TRC Approval").

³ One wireless telecommunications facility designed to accommodate Verizon, T-Mobile and AT&T would be dramatically less expensive for the carriers. Nevertheless, because the Property is in a RC Zone where the scenic viewshed is an important consideration, the carriers were willing to investigate whether the VPC and SGCPC would prefer that each interested carrier build its own 70 foot tower to minimize the visual height impact. Accordingly, Verizon, T-Mobile, and AT&T completed their own tower designs, balloon tests, visual impact, environmental and historical surveys and each applied and were approved to construct a tower on the Property by TRC and separately submitted applications to TRC – all of which were approved.

- On September 15, 2009, the TRC approved AT&T to construct a 90' tree pole⁴ to accommodate Verizon, T-Mobile, and AT&T with RAD centers of 86', 76', and 66', or co-locate at 66' in the event Verizon constructed an 80' tree pole and T-Mobile was not co-locating antennas at that height. See Exhibit A (the AT&T TRC Approval).

The AT&T TRC Approval is crystal clear – the TRC prefers one taller wireless communications facility to accommodate Verizon, T-Mobile, and AT&T over multiple shorter towers. See Exhibit A at pp. 2-3. Furthermore, the Commissioner clearly concurs with TRC as demonstrated through the Order and restrictions approving the Special Exception on the Property. The flaw in the Order, however, and specifically recognized by TRC in the AT&T TRC Approval, is that AT&T cannot satisfy its coverage objective at a RAD center less than 65 feet – and an 87' silo does not provide AT&T that height as the third carrier. See Exhibit D (Affidavit of Bruce Weston).

**§ A 95' SILO ALLOWS FOR ALL THREE CARRIERS TO
PROVIDE COVERAGE AND ACCOMPLISHES THE GOALS
AND INTENT OF TRC, THE COMMISSIONER AND BALTIMORE COUNTY**

The 87' silo approved by the Order, and as shown in the example attached to the Order, includes a 7' cap and provides RAD centers at 75', 65', and 55'. The undisputed testimony at the hearing demonstrates that if a tower was built tall enough to accommodate all three carriers, Verizon would place antennas on the top RAD Center and T-Mobile and AT&T would respectively follow. A 55 foot RAD center, however, is not feasible for AT&T to provide its services. Because of its cylindrical design, antennas cannot be located inside the silo's 7' cap and RAD centers cannot be adjusted upward to increase the height to accommodate AT&T at the third RAD center. See Exhibit D at ¶ 7 (Affidavit of Bruce Weston).

⁴ AT&T sought approval at 90 feet because its undisputed evidence, supported by CTC and TRC, demonstrates that AT&T could not meet its coverage objective by locating antennas on the third RAD center at 56 feet on Verizon's 80 foot tree pole.

An increase of eight (8) feet to the approved silo (from 87 to 95 feet) would satisfy the coverage objectives of Verizon, T-Mobile and AT&T and avoid the need for AT&T to build a new tower in this same geographic area. A 95' tall silo can be designed and engineered with a 6' cap and RAD centers of 85' for Verizon, 75' for T-Mobile, and 65' for AT&T as reflected on Exhibit B hereto. See Exhibit D at ¶ 8 (Affidavit of Bruce Weston).

One tower, a 95' silo, satisfies the objectives of Verizon, T-Mobile and AT&T and is consistent with the wishes of TRC and the Commissioner to see one tower accommodate the minimum needs of all three carriers.. See Exhibit A at pp. 2-3 (AT&T TRC Approval) and the Order at p. 15. The Commissioner concluded in the Order that an 87' silo would neither have a negative aesthetic effect on the neighborhood nor diminish property values. See Order at p. 11-12. The Commissioner also concluded in the Order that the silo would not interfere with or be a detriment to the scenic viewshed. See Order at p. 14. For all of the same reasons presented at the hearing and adopted by the Commissioner in his Order, a 95' silo accommodating all three carriers would also not have a negative effect on the neighborhood, diminish property values or be a detriment to the viewshed. Assuming *arguendo* that an eight (8) foot increase to a 95' silo would cause an adverse aesthetic result, such effect is not enough to justify the denial of a special exception permit. See *AT&T Wireless Services, Inc. v. Mayor and City Council of Baltimore*, 123 Md. App. 681 (1998).

CONCLUSION

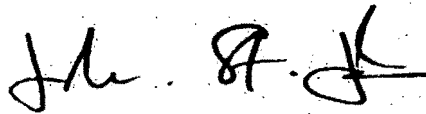
WHEREFORE, for all of the above reasons, AT&T asks the Commissioner to exercise his authority under the B.C.Z.R. sections 426.9.C.3 and 502.2 and the Rules of Practice and Procedure promulgated under section 500.8 of the B.C.Z.R., and sections 26-135 and 26-206(e) of the Baltimore County Code and modify the third restriction set forth on page 14 of the

Order to reflect that "the tower, with the silo structure and dome, may be no taller than 95 feet in total height" as set forth on the drawing attached as Exhibit B hereto.

Alternatively, if the Commissioner rejects an eight (8) foot increase to the approved silo, AT&T respectfully requests that the Commissioner strike the seventh restriction which only allows for one wireless telecommunications facility on the Property. Otherwise, AT&T will be forced to find a willing landlord to build another wireless communications facility in this same geographic area, which the Commissioner himself recognizes on page 12 of the Order may have a worse aesthetic impact than a tower on the Property.

Dated and Filed via Email on:
February 11, 2010⁵

Respectfully submitted,



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Counsel for New Cingular Wireless PCS, LLC
d/b/a/ AT&T Mobility, LLC

⁵ Due to the blizzard that resulted in the closing of the Baltimore County Government and Baltimore County Circuit Court on February 11, 2010, the undersigned counsel was unable to mail copies of this Motion on the date of its filing and will send copies to all interested parties via first-class mail on February 12, 2010.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Motion for Reconsideration by New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, LLC was sent by first-class, postage prepaid on the 12th of February, 2010 to:

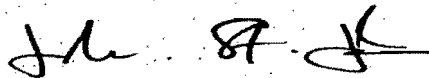
Arnold E. Jablon, Esquire
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Counsel for Cellco Partnership d/b/a Verizon Wireless;

Mr. C. Richard Lehnert
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The Valleys Planning Council, Inc.
c/o Ms. Teresa Moore
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Sparks-Glencoe Community Planning Council
c/o Ms. Kirsten A. Burger
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Counsel for Thomas "Tim" F. Mullen

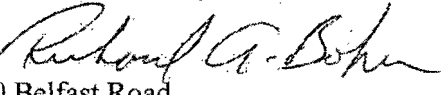


Jason M. St. John

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: September 15, 2009

TO: Colleen Kelley, Development Manager
Department of Permits and Development Management

FROM: Tower Review Committee 

SUBJECT: New Tower – AT&T – 700 Belfast Road
Updates to TRC Advisory Memo Dated 08/31/09

This memo is provided as an update to the Tower Review Committee's (TRC) advisory comments submitted on August 31, 2009, to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations; in reference to AT&T's July 28, 2009 proposal to build a new 70-foot monopole, to be located on the property owned by Richard Lehnert, located at 700 Belfast Road, Sparks, Maryland 21152. AT&T's application was reviewed by the TRC on July 28, 2009.

- *Antennas should be placed on existing towers, buildings, and structures, including those of public utilities, where feasible.*

Updated Findings: As was the case for two other applications, we have searched for co-location opportunities on this property, and feel that AT&T has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exists on which AT&T could attach antennas to meet its coverage objective, in lieu of a new structure. Please be advised, there are two other applications for this location that have received TRC approval, Verizon at 80' and T-Mobile at 70'.

Previously, the TRC reported that AT&T could likely attach antennas to either Verizon's or T-Mobile's monopole at approximately the 60' level and meet their coverage objective; however, upon further consideration we find that the only available position for AT&T on either of the other two monopoles would be 66' on Verizon's and 56' on T-Mobile's. Additionally, we find that T-Mobile's monopole at the 56' level would be below the minimum height required for AT&T to meet its coverage objective.

- *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*

Updated Findings: AT&T has shown, in the drawings accompanying the application to the TRC that the stated antenna structure will be constructed to support a minimum of 2 additional wireless service providers in addition to AT&T.

AT&T has requested in a letter, permission to amend its TRC application, with an alternate proposal to build up to a 90' tall, stealth treepole to accommodate all three carriers (AT&T, T-Mobile and Verizon), and sought conditional approval from the TRC Committee.

➤ *Erected in a medium or high intensity commercial zone when available.*

Findings (No Change): AT&T's proposed site is located in an RC2 (Agricultural) zoned area. The planned location for the monopole is in the center of a large tract of land which spans 58 acres, situated just west of I-83, just north of Belfast Road, and adjacent to the TRC recommended monopole sites proposed by Verizon Wireless (08/28/07) and T-Mobile (06/30/09). The monopole and equipment area is located alongside a cornfield on the side of a hill. The terrain falls sharply between the monopole and I-83, and is heavily wooded with trees in the range of 50' to 70' tall. The proposed tower structure meets the setback rule in that it is more than 200-ft from the nearest residential property, and the area surrounding it appears to be very rural, with large homes or estates on very large parcels of land used as pasture land and/or farmland. There are a few single family homes adjacent to the Lehnert property.

➤ *Located and designed to minimize its visibility from residential and transitional zone.*

Findings (No Change): Based on our site visit, a drive through the surrounding area, and the information presented, it appears that the top of the monopole may be viewable from some areas, by some residents and passersby; however, it is unlikely that the base of the monopole and equipment areas would be visible to anyone off of the property. AT&T's proposed tree design may minimize the visual impact of the facility in the community as it may be perceived to blend in with the surrounding wooded area.

AT&T provided documentation with their application that there is strong community opposition to the construction of this proposed monopole. The TRC has also received correspondence from the Sparks-Glencoe Community Planning Council, the Valley's Planning Council, and the Baltimore Historical Trust expressing their opposition to any monopole in this historic district.

Updated Conclusion

Inasmuch as there are TRC recommended monopoles pending further review by the County for Verizon Wireless and T-Mobile, we condition our recommendation for this proposal based on the final dispositions of those proposals. In the event that either of those monopoles receives zoning approval, we thereby recommend conditional approval of the AT&T proposal in either of the following possible build scenarios:

- 1) AT&T may co-locate their antennas onto the 80' Verizon monopole at the 66' level, based on the need to reach the intended coverage goal as stated in their application, in lieu of constructing a third monopole at this location.
- 2) If neither the Verizon nor T-Mobile applications receive zoning approval, we recommend that AT&T, as an alternative to constructing their proposed 70' tower, construct its treepole structure up to a height of 90' tall, which would accommodate

all three carriers, AT&T, T-Mobile and Verizon, all of which require RAD centers of at least 65'.

This site will likely require a special exception hearing.

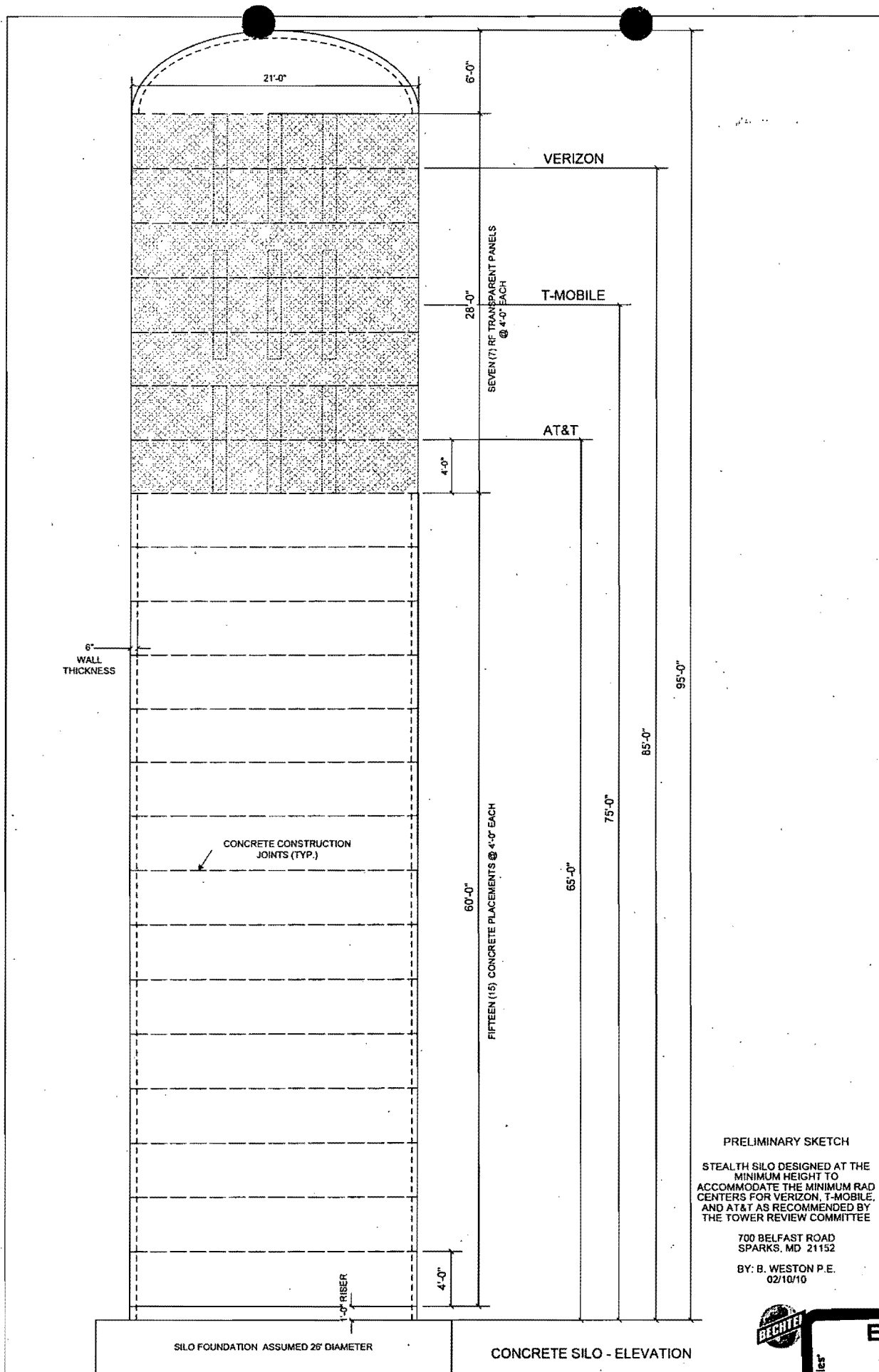
Additional Information (Attached)

- 1) Copy of AT&T request to amend its TRC application – dated 08-07-09
- 2) Copy of email to TRC from Greg Rapisarda - dated 09/13/09
- 3) An Application Evaluation, complete with recommendations, from Columbia Telecommunications Corporation is attached.

Tower Review Committee

Richard A. Bohn, Tower Coordinator
Curtis Murray, Office of Planning
Harry Wujek, Community Member TRC
Richard Sterba, OIT Representative

CC: Donald Rascoe, Deputy Director, Permits and Development Management
Hillorie S Morrison, AT&T
Sabrina Chase, Assistant County Attorney, Baltimore County Office of Law
Bob Hunnicutt, Columbia Telecommunications Corporation
Robert Stradling, Director, Baltimore County Office of Information Technology
celltower Administrator



PRELIMINARY SKETCH

STEALTH SILO DESIGNED AT THE MINIMUM HEIGHT TO ACCOMMODATE THE MINIMUM RAD CENTERS FOR VERIZON, T-MOBILE, AND AT&T AS RECOMMENDED BY THE TOWER REVIEW COMMITTEE

700 BELFAST ROAD
SPARKS, MD 21152

BY: B. WESTON P.E.
02/10/10



EXHIBIT

tabbles

B

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: August 28, 2009

TO: Colleen Kelley, Development Manager
Department of Permits and Development Management

FROM: Tower Review Committee 

SUBJECT: New Tower – T-Mobile – 700 Belfast Road

The Tower Review Committee met on June 30, 2009 to discuss the application made by T-Mobile on May 29, 2009. The committee is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 70-foot monopole. The structure is to be located on the property owned by Richard Lehnert, located at 700 Belfast Road, Sparks, Maryland 21152.

- *Antennas should be placed on existing towers, buildings, and structures, including those of public utilities, where feasible.*

Findings: We feel that T-Mobile has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exists to which T-Mobile could attach antennas to attain its coverage objective. Please be advised, however, that in August 2007 the TRC reviewed a Verizon application to construct an 80' monopole at the same general location that is proposed for T-Mobile's monopole. Since Verizon's monopole was designed to accommodate additional carriers, the 70' level presumably would be available for T-Mobile's antennas if and when that monopole is approved for construction and built. The total height of T-Mobile's proposed new monopole structure is 70-feet, including all appurtenances.

- *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*

Findings: T-Mobile has shown, in the drawings accompanying the application to the TRC that the stated antenna structure will be constructed to support a minimum of 2 additional wireless service providers in addition to T-Mobile; however, based upon RF maps reviewed for this application, the previous Verizon application, and our site visit, it appears that due to the ground elevation from the site to the West and the tall trees to the east of the proposed monopole location, antenna attachments at elevations lower than 50' high may not be of value to other carriers. This is speculated because the terrain characteristics would likely significantly diminish the transmission of signals from antennas at those elevations. (This is subject to the nature of any potential co-locator's services and antennae characteristics.)

- *Erected in a medium or high intensity commercial zone when available.*

Findings: This site is located in an all around RC2 (Agricultural) zoned area. The tower structure meets the 200' setback rule, as it is located in the center of a very large tract of land spanning approximately 58 acres, just west of I-83 and north of Belfast Road. The site is adjacent to the proposed Verizon site. The surrounding area in the vicinity of the proposed site appears to be very rural with large homes or estates on very large land parcels used as pasture land and/or farmland. There are a few single family homes adjacent to the property.

- *Located and designed to minimize its visibility from residential and transitional zone.*

Findings: Based on our site visit, a drive through the surrounding area, and information presented, we find that the top of the monopole may be viewable from some areas, by some residents and passersby; however, it does not appear that its base and equipment areas would be viewable. T-Mobile's proposed tree design may minimize the visual impact of the facility in the community as it may be perceived to blend in with the surrounding wooded area.

T-Mobile provided documentation with their application that there is strong community opposition to the construction of monopoles in the proposed location considered to be a historic district, and believes that it may be unlikely that the Verizon monopole as proposed would be constructed. According to the applicant, T-Mobile, Verizon and AT&T agreed to propose constructing three adjacent individual stealth monopoles designed as trees (monopines) in the location with the intent to address the community opposition by diminishing the visibility of the facilities in the community. The three planned structures would be proposed to be ten feet lower than the monopole proposed by Verizon in 2007.

The TRC has received correspondence from the Sparks-Glencoe Community Planning Council, the Valley's Planning Council, and the Baltimore Historical Trust expressing their opposition to any monopole in this historic district.

Conclusion

Based on our review of this application alone the Tower Review Committee would recommend this site as it is agreed that that the 70' monopole would meet all the requirements of Section 426, while allowing needed emergency and non-emergency communications for the citizens of the area; however, since the construction status of Verizon's monopole remains unknown, our recommendation is conditioned upon Verizon notifying the TRC that they do not wish to pursue their monopole at this site. Likewise, if Verizon does intend to construct a monopole, the TRC recommends that T-Mobile attach antennas to that monopole at 70' in lieu of constructing a second pole at this site. The reason for this is that the approach of three monopoles where one monopole may suffice conflicts with the County's intent that any newly constructed monopole should be capable of accommodating at least three carriers to reduce or eliminate the need for

multiple structures in this area. This site application will likely require a special exception hearing.

T-Mobile has presented an argument to the TRC that it has been two years since the TRC's review of Verizon's application, and that at the time of this review T-Mobile is of the understanding that Verizon has not pursued further processing of their application, and therefore T-Mobile should be considered on its own merits and issued a recommendation accordingly, as it would be unfair to ask T-Mobile to continue to wait while County action on the Verizon application is determined. That is an option available to T-Mobile once having received a record of action by the TRC on this application.

Additional Information

An Application Evaluation, complete with recommendations, from Columbia Telecommunications Corporation is attached.

Tower Review Committee

Richard A. Bohn, Tower Coordinator
Curtis Murray, Office of Planning
Harry Wujek, Community Member TRC
Richard Sterba, OIT Representative

CC: Donald Rascoe, Deputy Director, Permits and Development Management
Hillorie S Morrison, T-Mobile
Sabrina Chase, Assistant County Attorney, Baltimore County Office of Law
Bob Hunnicutt, Columbia Telecommunications Corporation
Robert Stradling, Director, Baltimore County Office of Information Technology
celltower Administrator

IN RE: PETITION FOR SPECIAL EXCEPTION

700 Belfast Road, 340' NE of c/line
Sparks, Maryland 21152

8th Election District
3rd Council District

C. Richard Lehnert, *Legal Owner* and
Celco Partnership d/b/a Verizon Wireless,
Lessee
Petitioner

* * * * *

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* Case No. 2009-0322-X
*

AFFIDAVIT OF BRUCE S. WESTON

I, Bruce S. Weston, am above the age of majority and am competent to testify as follows:

1. I am employed by Bechtel Communications Inc., which is the site development, engineering, and construction contractor for New Cingular Wireless PCS LLC d/b/a AT&T Mobility LLC ("AT&T").

2. I hold a Bachelor of Science degree in Civil Engineering from the University of Lowell, Lowell, Massachusetts (now known as the University of Massachusetts at Lowell).

3. I am a Registered Professional Engineer in Maryland, the District of Columbia, and 17 other states in the Union.

4. I have more than 30 years of engineering experience, including more than 12 years in telecommunications site design with Bechtel Communications Inc.

5. I have designed and engineered hundreds of new telecommunications facilities, including engineering and engineering oversight of monopole, stealth structure, including silos, and lattice tower designs.

6. I have been actively working with AT&T on siting a tower at 700 Belfast Road, Sparks, Maryland 21152 (the "Property"). AT&T needs a minimum 65' RAD center in order to



meet its coverage objectives at the Property.

7. I have analyzed potential designs for an 87' tall silo to determine whether it can be designed to accommodate a third RAD center at 65' above ground level. Part of my analysis included discussions with a stealth "silo" manufacturer and meetings with other engineers. I conclude that the design of the silo's cap, the carriers' antenna sizes, and the spacing that is required between each carriers' antennas, prohibit an 87' tall silo from being designed to accommodate a third RAD center at 65' above ground level.

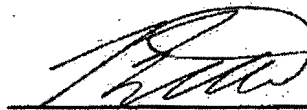
8. A 95' stealth "silo" will allow for Verizon to have a RAD center of 85', T-Mobile to have a RAD center of 75', and AT&T to have a RAD center of 65'.

9. I drafted the drawing that is attached as Exhibit B to AT&T's Motion for Reconsideration, and it highlights exactly how a 95' silo can accommodate the three carriers who have been approved by the TRC.

I SOLEMNLY AFFIRM under penalties of perjury and upon personal knowledge that the contents of the foregoing paper and attached Exhibit are true.

2/11/10

Date



Bruce S. Weston, P.E.



Jason M. St. John
Phone: (410) 332-8898
Fax: (410) 332-8288
jstjohn@saull.com
www.saul.com

February 12, 2010

William J. Wiseman, III
Zoning Commissioner for
Baltimore County, Maryland
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

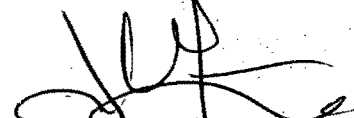
Re: Case No. 2009-0322-X
700 Belfast Road, Sparks, Maryland 21152

Dear Commissioner Wiseman:

Enclosed please find an original and five (5) copies of a Motion for Reconsideration for filing in the above-referenced matter by New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, LLC. You should have received a copy of this Motion via electronic mail yesterday. I just learned this morning that an appeal of your January 12, 2010 decision had been filed prior to the submission of the enclosed Motion. Accordingly, AT&T has also filed an appeal of the January 12, 2010 decision, which you will receive under separate cover.

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

Very truly yours,



Jason M. St. John

JMS:lmh
Enclosure

cc: Arnold E. Jablon, Esquire
Mr. C. Richard Lehnert
Ms. Teresa Moore, The Valleys Planning Council, Inc.
Ms. Kirsten A. Burger, Sparks-Glencoe Community Planning Council
Richard C. Burch, Esquire

2/9/10

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO **
MATTHEW P. LALUMIA *

JONATHAN E. C. MAY *

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

February 9, 2010

* MEMBER OF MARYLAND BAR
* MEMBER OF DISTRICT OF COLUMBIA BAR

HAND DELIVERY

Timothy M. Kotroco, Director
Department of Permits & Development Management
County Office Building
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

**Re: Petition for Special Exception
700 Belfast Road N/side of Belfast Road,
340± Feet N/East of Centerline of Old Belfast Road
8th Election District – Third Councilman District
Case No. 2009-0322-X**

NOTICE OF APPEAL

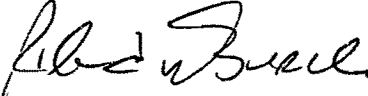
Dear Mr. Kotroco:

Please accept this correspondence as a Notice of Appeal of the Findings of Fact and Conclusions of Law and Order of the Zoning Commissioner for Baltimore County dated January 12, 2010 in the above-captioned matter. This Appeal is being noted by me on behalf of Thomas F. Mullan, III, 1620 Cold Bottom Road, Sparks, Maryland 21152 and The Valleys Planning Council, P.O. Box 5402, Towson, Maryland 21285-5402, who are persons aggrieved or feeling aggrieved by the decision and order of the Zoning Commissioner in the captioned case.

I enclose my firm's check in the amount of \$400 which satisfies the filing fee for this appeal. If you require any additional information or documentation from me, please do not hesitate to contact me and we will comply promptly.

Thank you for your kind attention to this matter.

Very truly yours,


Richard C. Burch

RCB/tvj

Timothy M. Kotroco, Director
February 9, 2010
Page Two

cc: William Wiseman, Zoning Commissioner (w/o enc.)
Arnold Jablon, Esquire (w/o enc.)
Thomas F. Mullan, III (w/o enc.)
The Valleys Planning Council (w/o enc.)
Board of Appeals (w/o enc.)

Enclosure

1/12/10
IN RE: PETITION FOR SPECIAL EXCEPTION *

N/S Belfast Road, 340' NE of c/line

Old Belfast Road *

(700 Belfast Road)

8th Election District *

3rd Council District *

C. Richard Lehnert, *Legal Owner*.

Cellco Partnership d/b/a Verizon Wireless, *

Lessee

Petitioner *

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2009-0322-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Petitioner, Cellco Partnership d/b/a Verizon Wireless (Verizon), through its real estate manager, Brian Stover, and its attorney Arnold Jablon, Esquire with Venable LLP. The Petition was also signed by C. Richard Lehnert, property owner. Petitioner, pursuant to Sections 1A01.2.C.28, 426 and 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), requests a special exception to permit a wireless telecommunications tower with a height of 80 feet and related facilities to be erected on a portion of the subject property, zoned R.C.2. The subject special exception area and requested relief are more particularly described on the three page site plan and elevation drawings submitted which were accepted into evidence and marked as Petitioner's Exhibit 1A through 1C.

Appearing at the requisite public hearing in support of the request conducted over three

(3) days, namely September 22, October 14, and November 30, 2009, were C. Richard Lehnert, property owner; Brian Stover, Verizon Wireless's Real Estate and Zoning Manager; Sherri L. Linton, a Verizon Wireless Radio Frequency Engineer for the northeast region; Barbara S. Pivec of Atlantic Site Acquisition, tower development consultants for Verizon Wireless; Brian

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By [Signature]

Siverling, P.E., and Thomas Wolfe, RLA, with Morris & Ritchie Associates, Inc., who prepared the site plan for this property.

The requested approval for the wireless cell tower was contested. Those opposed to the request were adjacent property owners, residents of the area, and community association leaders, namely Teresa Moore, on behalf of The Valleys Planning Council and Kirsten A. Burger, on behalf of Sparks-Glencoe Community Planning Council.¹ Also appearing in opposition were Thomas "Tim" F. Mullen, represented by Richard C. Burch, Esquire; Bruce E. Doak, a property line surveyor with Gerhold, Cross & Etzel, Ltd., assisting adjacent property owners, Holly and William Cumberland; H. Barritt Peterson, Jr., Esquire; Kelley E. Harmon; Spaulding A. and Todd Goetze; Valerie Williams; Renea A. Olver; Charles Ensor, Jr.; Christopher K. Steuart; George R. Rew; Lucy Goelet; and Laura Wilke. Mr. Burch also presented several expert witnesses, including Jack Dillon, land planner and zoning consultant; Mary Beth Haas, a real estate appraiser; and Heidi Schmitt Krauss, real estate agent in the Belfast and Western Run area. It is further noted that twenty-three (23) letters were received in opposition and one (1) letter in favor of the request. See Protestants Exhibit 10. Greg Rapisarda testified as counsel for wireless communication carriers AT&T and T-Mobile.

INTRODUCTION

The proposed project consists of a request to construct an 80-foot tall wireless telecommunications facility with a "stealth" monopole pine tree design, featuring branch extensions reaching to a maximum height of approximately 87 feet. The proposal also includes an equipment compound and the entire facility would be fenced. The facility is proposed to be

¹ It became obvious, during the course of the three-day hearing that both The Valleys Planning Council and Sparks-Glencoe Community Planning Council claim jurisdiction over this area of Baltimore County. Both organizations work to preserve the historic and scenic character of the Western Run-Belfast Road area and are united in their opposition to the proposed cell tower.

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BY [signature]

constructed on a 50+ acre parcel located north of Belfast Road and west of Interstate 1-83 in Baltimore County's Sparks area. The site is located on the eastern edge of the Western Run-Belfast National Register Historic District and is bordered by two (2) designated scenic routes, namely Belfast Road and Baltimore-Harrisburg Expressway (I-83).

The subject property, owned by Mr. Lehnert, consists of agricultural fields, separated by undeveloped woodlands. The property rises from Belfast Road and I-83 to a high ridge, which is where the proposed tower will be located next to an existing stand of trees. Verizon seeks to improve network coverage for its cellular services, due to customer complaints, dropped calls, and company studies suggesting that Verizon services are unreliable in this area. *See* Petitioner's Exhibits 4 through 6. Lay witnesses, who live in the area, dispute this contention and declare that their cellular service is more than adequate at all hours of the day.

A significant amount of testimony and evidence was submitted, including plans and plats, photographs, maps, studies, written memoranda and other exhibits. The record of the case will reveal all of the facts presented and the positions taken by the various parties. Due to limitations of time and space, it is impossible to repeat all of the testimony offered herein.

THE PROPERTY AND PROPOSAL

Testimony and evidence offered by Petitioner revealed that the area of the special exception under consideration contains approximately 5.002 acres, zoned R.C.2, and is part of an overall 50.873 acre tract of agricultural land owned by Richard Lehnert. The property, as illustrated on Petitioner's aerial site plan, Petitioner's Exhibit 3, is triangular in shape and located on the west side of I-83 and north of Belfast Road in northern Baltimore County. The base of the telecommunication tower and associated equipment compound will be positioned approximately 1,333 feet northwest of the Belfast and I-83 intersection at ground elevation 508 feet, which is

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about 135 feet above I-83. Mr. Lehnert indicates that he has entered into a contractual agreement with Verizon Wireless to lease a portion of his property (18' wide x 59' deep) for the purpose of erecting an 80-foot tall stealth pine tree monopole ("mono-pine") and equipment shelter. The mono-pine will feature a total of twelve (12) antenna panels placed in groups of four (4) at RAD (radiation absorbed dose) centers of 56 feet, 66 feet, and 76 feet high to accommodate the antennas of two (2) other cellular companies who may desire to locate on this property. These antenna panels consist of two (2) types, some will be approximately 8' tall x 6" wide and others 4' tall x 6" wide and are planned to be surrounded by pine fronds to disguise the antennas and top of the tower structure from view. See Petitioner's Exhibit 1B for tower elevation detail and Petitioner's Exhibits 8-10 for examples of other mono-pine towers located in Virginia, Mount Vernon, and at the Avenel Golf Course.

The undersigned is generally familiar with the operation of Verizon Wireless and other wireless communication providers by virtue of the many cases that have come before me under similar requests. Suffice it to say, wireless telecommunication technology has exploded on the public scene and consciousness. Nearly everyone has mobile phone services to provide communication and provide access to online data bases and Internet applications. Many phones are now equipped with complex broadband micro processors capable of all types of applications and functions, not just sending and receiving text messages, e-mails, etc. This communication system would not be possible without the installation of a series of towers throughout the geographic area to be served.

Generally, through the testimony of its radio frequency engineer, Sherry Linton, Verizon

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indicated that a "hole" exists in its communication network in northern Baltimore County.²

Studies and investigations were undertaken to determine where a tower could be located for the placement of the company's antennas to fill this "hole" and to provide seamless service in the area. As explained by Barbara Pivec, tower development consultant, Verizon Wireless conducted a thorough search within the area of need, according to the requirements of B.C.Z.R. Section 426, and chose the subject location. This location gives a "birds eye view into the valleys" and fills the outstanding "hole." From Verizon's perspective, this site was ideal, not only in terms of location within the area of need, but also because the natural elevation of the property meant that the tower could be constructed at a lower height and would not have the detrimental impact on the surrounding locale that might result from a much taller tower.

Ms. Pivec testified at length as to the efforts employed to use stealth technology to reduce or any visual impacts from the tower on adjoining properties and traffic using I-83 and Belfast Road (both of which are designated scenic routes). First, she explained, the tower and equipment compound were sited to take advantage of the natural screening by tucking them behind and next to a mature forest that runs along the ridge line at the northwest corner of the site. As indicated earlier, the tower itself has been kept to the minimum height necessary to provide seamless coverage and signal strength for both emergency and non-emergency communications as part of its wireless network in Baltimore County, and, as required, by Verizon's Federal Communication

² Several of the opponents dispute this contention, stating that their Verizon Wireless service is flawless. It is of particular note that Verizon acknowledges individuals presently using its system may not necessarily be dropped as they travel through this area. Apparently, Verizon Wireless and other wireless communication providers have a system which allows them to transfer calls through the equipment of other providers. Nonetheless, Verizon Wireless is required, by the Federal Communications Commission, to insure that its network is adequate to serve its customers and meet its licensing requirements. Thus, it was argued that the proposed tower is, indeed, necessary, and this contention is supported by the Baltimore County Tower Review Committee (TRC). See Petitioner's Exhibits 4, 5, and 6. The site has received a favorable recommendation from the TRC and is in compliance with the surveys conducted pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. Section 470f. See Petitioner's Exhibit 11.

Commission (FCC) license. The tower, itself, is proposed to be 80 feet tall in height with an additional 7 feet to include the height of the stealth breaches. See Petitioner's Exhibit 11, p. 4 and footnote 5.

To confirm the results of the efforts taken by Verizon to disguise the tower and reduce the visual impact, Ms. Pivec submitted into evidence as Petitioner's Exhibits 8A through 8K, photographic simulations of the tower taken from various points in the surrounding area. This survey indicated a minimal visual impact, and it was her opinion that the mono-pine was very well sited in the area — to match the existing tree line — and would not even have "one scintilla" of a detrimental effect on the scenic views prevalent in this area.

In further support of the proposal, Verizon next called Tom Wolfe, Petitioner's consulting land planner. Mr. Wolfe, like Barbara Pivec and Sherry Linton, submitted his resume (Petitioner's Exhibit 14) and discussed his familiarity with the project and personal knowledge of the site from prior visits and preparation of the site plan. Using Petitioner's Exhibit 15, which details the site and topography, he described the means of ingress and egress into the site from Belfast Road as an existing 1,500 foot farm road, winding up through the site to the wooded ridge line. Agricultural land uses, relevant distances to scenic routes, and elevations from the base of the tower site to adjacent properties were described and illustrated.

As Mr. Wolfe explained (and as confirmed by the Protestants), the closest adjacent property to the north and west is the Cumberland's 117 acres currently undergoing a subdivision process to yield six (6) residential lots. See Case No. 08-211-SPHA — on appeal to Circuit Court for Baltimore County. Two (2) of the new Cumberland lots will be as close as 316 feet from the cell tower and equipment compound location. The closest proposed home would be positioned 465 feet north of the tower at elevation 506'. Further to the north is the Ensor Farm

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By [Signature]

Complex and historic home (BA-2949). To the south and west is the home of Jason and Kelly Harmon (718 East Belfast Road), built at elevation 460'. The rear of the Harmon home contains massive windows, decks, and a swimming pool that are 1,000 feet from the tower site. See Protestants Exhibits 5A through 5D detailing the Harmon's view of the ridge line.

Having described the existing conditions, Mr. Wolfe examined the proposal in the context of B.C.Z.R. Sections 1A01.2.C, 426, 502.1 and 502.7, the various sections of the Zoning Regulations that govern the approval and constructions of wireless communication facilities. In summary, Mr. Wolfe testified that the tower and associated equipment compound will not have a negative impact on the primary agricultural uses in the vicinity, a required finding for this special exception use in the R.C.2 zone. He then testified that, with respect to each of the required findings under Section 502.1, that the proposed special exception use, at this particular location, will not result in any of the adverse impacts listed and that this location, particularly given its proximity to a major highway and associated interchange and its location on the eastern edge of the Western Run-Belfast National Register Historic District, would actually be less of an impact than other locations elsewhere in the zone and deeper in the valley.

Following up on Ms. Pivec's testimony, Mr. Wolfe indicated that Verizon had, indeed, made a diligent search to locate the tower in compliance with the requirements of Section 426 (on existing tower or structure or in commercial zone, if possible) and had adequately explained why a new tower was required to be constructed. Mr. Wolfe also confirmed his understanding that Verizon had designed the tower to accommodate at least three (3) providers' antennas and, in doing so, had kept the height of the tower to the minimum height required. He also confirmed that the tower would be located on a lot of at least five (5) acres.

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With regard to the requirement of B.C.Z.R. Section 502.7.B, that the proposed tower not interfere with or be detrimental to the scenic viewshed elements if located within a scenic viewshed, Mr. Wolfe confirmed that although I-83 and Belfast Road were both scenic routes, it was difficult to determine from Map 37 of the *Master Plan 2010* (Petitioner's Exhibit 18) and from the vague information contained in the Baltimore County Code and the Comprehensive Manual of Development Policies (C.M.D.P.) (Petitioner's Exhibits 16 and 17), that the tower would, in fact, be within a scenic viewshed or what, if any scenic "elements" would be impacted. With the efforts made by Verizon as to siting the tower and its use of stealth technology, Mr. Wolfe indicated his professional opinion that Verizon had complied with the spirit, intent, and legislative purpose as set out in the relevant B.C.Z.R. sections and that there would be no impact on the County's scenic resources. As further support, Verizon submitted the Zoning Advisory Committee (ZAC) comments prepared by the Office of Planning as Petitioner's Exhibit 7 to demonstrate that the mono-pine is indeed compatible with the scenic views in this R.C.2 zone.

Testifying in strong opposition to the requested relief were several neighbors or members of the community, including Tim Mullen; Kelley Harmon; Barritt Peterson; Renea Olver; Valerie Williams; Lucy Goelet; Todd Goetze; Spaulding Goetze; George Rew; Charles Ensor; and Bruce E. Doak on behalf of the Cumberlands. These witnesses each offered their own individual testimony, but the clear tenor and theme of their remarks was that the proposed cell tower was not needed and that a mono-pine tower of any height at this location would have a negative effect on their enjoyment of their properties, on their property values, and on the area as a whole, particularly in terms of scenic and historic resources. Some of the comments in this regard included the following:

- The proposed tower at the Belfast Road site is inconsistent with the goals and policies of the Baltimore County Master Plan 2010, which emphasize the need to protect the County's scenic views, scenic routes, and resources.
- County, State and Federal funding has been secured for viewshed projects along I-83 from Hunt Valley to the Maryland line, and efforts should be made to minimize any impact to this viewshed.
- Construction of a cell tower would constitute an unwanted visual intrusion of the long-preserved and bucolic scenic views along I-83 as the proposed cell tower would compromise the current unobstructed view of the natural landscape along the ridge upon which the tower would sit (particularly during those months when the natural trees are without foliage).
- A significant number of lots, parcels, and farms have been dedicated in perpetuity for agricultural and/or conservation purposes. The placement of a cell tower at the site proposed would compromise the effort to preserve and protect these properties for agricultural and conservation purposes.
- The construction of a tower at the proposed site would have an adverse impact upon their properties and their property values.

See generally Protestants' Exhibits 8, 10, and 12.

Mr. Burch next produced as expert witnesses Heidi Krauss, Mary Beth Haas, and Jack Dillon. Ms. Krauss and Ms. Haas have lived and worked in the area for many years and are familiar with the housing preferences of the potential buyers. Their testimony generally can be summarized that property values in this area of the County, in large part, are tied to the rural/agricultural and scenic nature of the locale, which is currently undisturbed by any visual

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By

intrusions. In their opinion, introducing an artificial mono-pine structure into this unspoiled environment would negatively affect values of neighboring properties by as much as 25%.

Expanding on this theme, Mr. Dillon, a consultant land planner, testified that the proposal under consideration is inconsistent with the goals of the Zoning Regulations, Comprehensive Manual of Development Policies, and the Master Plan in that it negatively impacts scenic views. As Mr. Dillon testified, he did not believe that the mono-pine tower was properly disguised in a way so as to be compatible with the surrounding area. The mono-pine would project above the wooded tree line and would not be in visual harmony with the area because there are no other pines on that ridge. In his opinion, the mono-pine would, indeed, compromise the scenic views and impact this location in a manner worse here than at other locations within the R.C.2 zone.

OPINION

After having heard three (3) days of testimony and having received numerous exhibits, the issues debated by the parties in this case can be reduced to a question of whether the proposed mono-pine cell tower will materially detract or be detrimental to the area's scenic viewshed. With regard to all other requirements of B.C.Z.R. Sections 1A01.2.C, 426, and 502.1, as addressed below, I find that Verizon has met its burden.

In order for me to approve the proposed wireless telecommunications tower, I must first find that Verizon has demonstrated compliance with B.C.Z.R. Section 1A01.2.C, which requires a finding that the proposed special exception use would not be detrimental to the primary agricultural uses in the vicinity. Given the limited footprint that the tower and its equipment cabinets will occupy, the placement of the facility in close proximity to an existing tree line, and the fact that the tower is unmanned and will not impede farming in the area, I easily find that the tower will have no negative impact on the primary agricultural uses in the vicinity.

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Date 1-12-10
By [Signature]

Moving to the specific required findings under B.C.Z.R. Section 426, for a new tower, Verizon is required to demonstrate that it has made a diligent attempt to locate antennas on an existing tower or structure or, if not possible, why the new tower is warranted. Verizon must also demonstrate that the tower will be constructed to accommodate at least three (3) providers and, in doing so, that it kept the height of the tower to the minimum height required. Based on the evidence and testimony presented before me, I find that Verizon has demonstrated that the new tower is warranted and that it will accommodate three (3) providers at the lowest height possible, findings which are supported by the concurrence of the Tower Review Committee. *See* Petitioner's Exhibits 5 and 6.

Because R.C. zones are considered "residential" zones, Verizon must also demonstrate that no medium or high intensity commercial zoned sites were available or that locating the tower at the proposed location is more consistent with legislative policy due to topographical or other unique features. Based on the testimony of Ms. Pivec and Mr. Wolfe, I find that an appropriate search was conducted and any commercial sites were eliminated as a possibility before this location was chosen. Verizon has also demonstrated compliance with the requirement that the tower be located on a lot of at least five (5) acres as confirmed by Mr. Wolfe and Petitioner's Exhibit 1A-1C.

Next, Verizon must demonstrate that the general requirements of B.C.Z.R. Section 502.1 for all special exceptions have been met by the proposal. Having considered the testimony of both Mr. Wolfe and Mr. Dillon on this issue, I find that the proposal does, in fact, meet the requirements of Section 502.1. The proposed cell tower and related equipment will have no material impact on any of the conditions outlined in Section 502.1. Protestants have opined that the tower will have negative aesthetic effects on the neighborhood and will diminish property

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values, resulting in a detrimental effect on the health, safety, and general welfare of the community. However, having heard all of the testimony, I do not agree that this is a basis on which I can or should deny the requested petition. See, *AT&T Wireless Services v. Mayor and City Council of Baltimore*, 123 Md. App 681 (1998) (holding that the alleged adverse aesthetic effects of an antenna did not justify denial of a permit).

It is to be expected that special exception uses may result in some impact on surrounding properties. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008); *Schultz v. Pritts*, 291 Md. 1 (1981). However, an administrative agency may only deny such a use:

“where there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

Loyola, 406 Md. at 102 (quoting *Schultz*, 291 Md. at 22-23). Further, the Court of Appeals in *Loyola* recently confirmed that the analysis of an individual case must be focused on the particular locality or “neighborhood” around the proposed site. *Id.* at 101-102. I find no credible evidence that any such adverse impacts would result from the proposed tower, other than the alleged aesthetic impacts, which I believe would be similar regardless of where the tower were located within the neighborhood or locality. In fact, if the tower were located further to the west, deeper in the valley, perhaps the impact would be worse aesthetically, than a location directly adjacent to a major interstate on the edge of a historic district.

Lastly, and this is the issue of greatest contention, Verizon must demonstrate that the “proposed tower will not interfere with or be detrimental to the scenic viewshed elements.” B.C.Z.R. Section 502.7.B.1. Section 502.7.B.2 requires that such determination be made by comparing the “elements” to the proposed tower location and, thus, determining whether “the

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Date 1-12-10
BY [Signature]

proposed tower blocks any scenic viewshed elements or is not visually in harmony with any scenic viewshed elements when the elements and the tower can be seen simultaneously."

Verizon argues that such a comparison cannot be made without the Baltimore County Planning Board having first identified the particular "visual elements of a scenic viewshed which are of a quality, character, rarity and nature to cause a viewshed to be designated in the Baltimore County Master Plan by the Baltimore County Planning Board." B.C.Z.R. Section 426.1, Scenic Viewshed, Subsection A. It would appear, based on the testimony and evidence presented before me, that the Planning Board did not, in fact, identify any such elements from which a comparison can now be made. As Verizon contends, without such identification, there is no evidence other than provided by lay witnesses, upon which I can determine that the proposed tower would interfere with or be detrimental to the scenic viewshed elements.

Even without such elements having been identified, testifying on behalf of Verizon Wireless, Mr. Wolfe expressed his opinion pertaining to the C.M.D.P. that the location next to I-83, the use of natural elevation, and the implementation of stealth technology minimized or eliminated any resulting impact on the scenic viewshed. In support of this opinion, Verizon submitted photo simulations, designed to give an indication of the ultimate appearance of the tower from surrounding roadways and properties. *See* Petitioner's Exhibits 8A-8K. While these photo simulations are not exact, they give a general idea of just how visible the tower will be when constructed. The witnesses, however, called in opposition, assert that a fake mono-pine at this location surrounded by deciduous trees would become a dominant structure during those months when the natural trees are without foliage. Mr. Burch argues that Verizon's position at best is nothing more than conjecture and speculation and accordingly must be excluded. *See, Davidson v. Miller*, 276 Md. 54 (1975).

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Date 1-10-03
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In contrast, Mr. Dillon testified that, in his opinion, the tower would be "highly visible" and would adversely impact the scenic character of the area. In particular, he stated his contention that Verizon Wireless's proposal for a mono-pine tower does not fit within the context of the existing vegetation and would not blend in with the area. He offered an example of how a cellular tower could be better "blended" in with the natural setting. See Protestants' Exhibit 13.

Without delving too deeply into the legitimacy of the scenic viewshed elements argument, it is my opinion, based on the totality of the evidence and testimony presented, that the proposed tower will not interfere with or be a detriment to the scenic viewshed as identified by the parties.

CONCLUSION

So often in considering requests such as this one, there is no decision I can make that will either please all parties or be deemed by them as the correct decision. Sometimes, as is the case here, the hearing officer must choose an alternative that seems, not right, but simply less wrong. That being said, based on the evidence presented, I am inclined to grant the special exception for a wireless communications tower on this property. However, in granting the Petition for Special Exception, I will exercise the authority granted to the Zoning Commissioner, both by B.C.Z.R. Section 426.9.C.3 and Section 502.2, and impose certain conditions or restrictions on the approval of the special exception. Specifically, Section 426.9.C.3 provides me the ability to 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."

Throughout the testimony offered by those opposed to Verizon's tower, it is clear that their primary concern was the aesthetics of the proposed tower as a structure disguised as a tree or mono-pine. Simply put, Protestants do not want a cellular tower disguised as a tree, whether it is a pine tree or another type of tree. To address Protestants' concerns regarding the mono-pine design being out of character with the area, I will exercise the authority granted to me by Section 426.9.C.3 and will require that the tower be designed as a "silo," an example of which I have attached to this order. Certainly, a silo structure is a structure commonly found in the area.

At this point, I note that there was discussion during the hearing that approvals may be sought for additional wireless telecommunications towers on the Lehnert property. I indicated during the hearing that, if I granted Verizon's petition, I was inclined to restrict the Lehnert property to this one tower only. My position in this regard has not changed. In granting the Petition for Special Exception for Verizon Wireless's proposed tower, I will specifically limit the property to the proposed tower only.

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

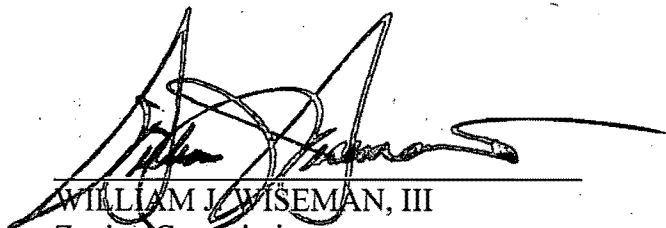
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 12th day of January 2010 that the Petition for Special Exception to approve a wireless telecommunications tower (and related facilities, on the subject property, zoned R.C.2, pursuant to Sections 1A01.2.C.28, 426, 502.1 and 502.7.B of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1A-1C, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner may apply for any required permits and be granted same upon receipt of this Order; however, the Petitioner is made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If, for whatever reason, this Order

is reversed, Petitioners would be required to return and be responsible for returning, said property to its original condition.

2. The wireless communications tower must be disguised as a silo.
3. The tower, with the silo structure and dome, may be no taller than 87 feet in total height.
4. The tower and related equipment must be in the same area as shown on Petitioner's Exhibit 1A-1C.
5. A landscape plan is to be submitted to and approved by Avery Harden, Baltimore County's Landscape Architect. Most notably, the final approved landscape plan must show year-round evergreen screening between the northwest side of the fenced tower equipment compound and the property owned by William and Holly Cumberland.
6. The exterior of the silo structure shall be faced or painted in a brick or terra cotta color, consistent with the silo, shown on the attached photograph and elevation detail.
7. Only one wireless telecommunications tower is permitted to be constructed on the Lehnert Property.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.


WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

ORDER RECEIVED FOR FILING

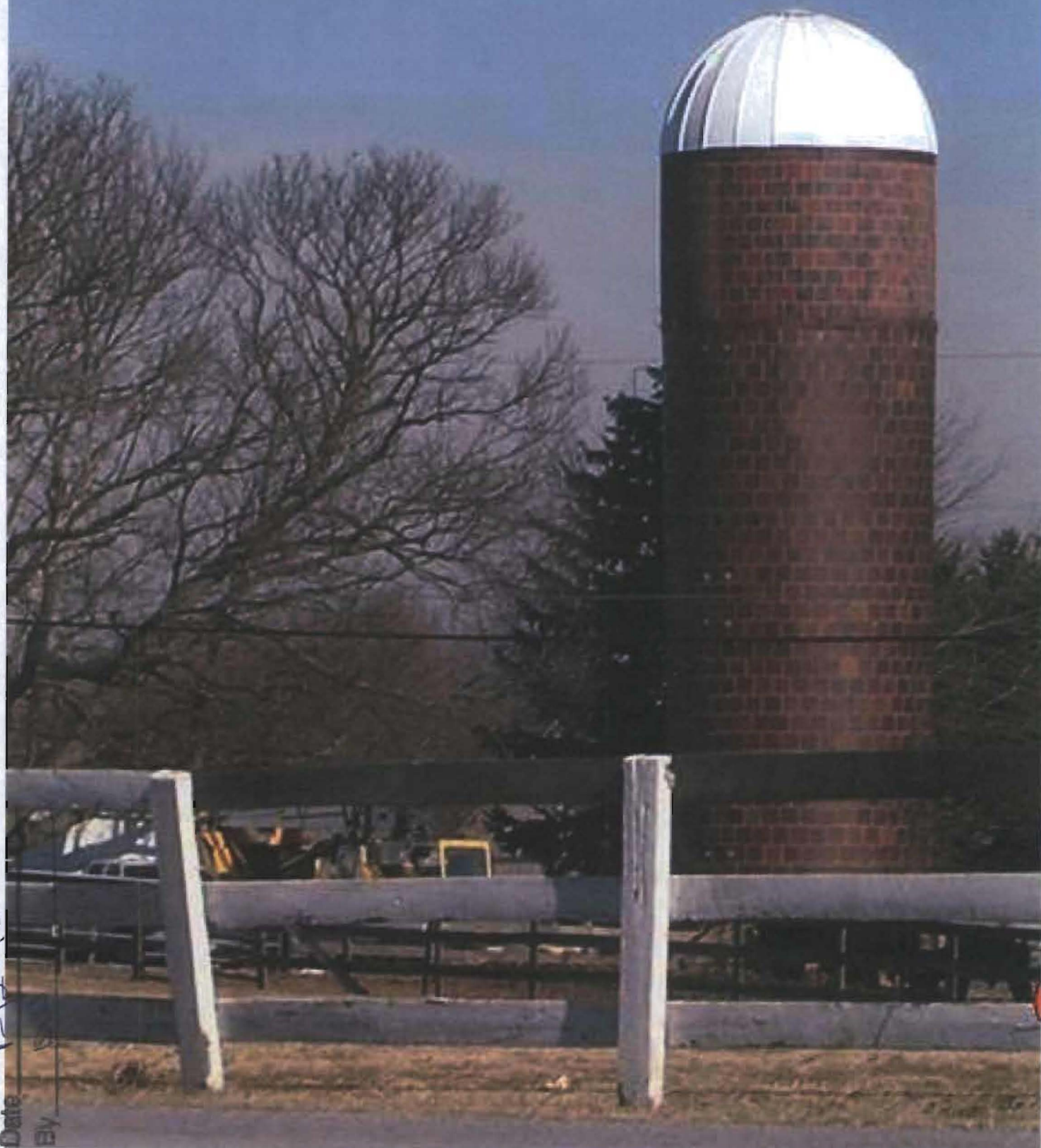
Date

1-12-10

By

103

Case No. 2009-0322-X
700 Belfast Road
Order Exhibit (Silo)
1 of 2

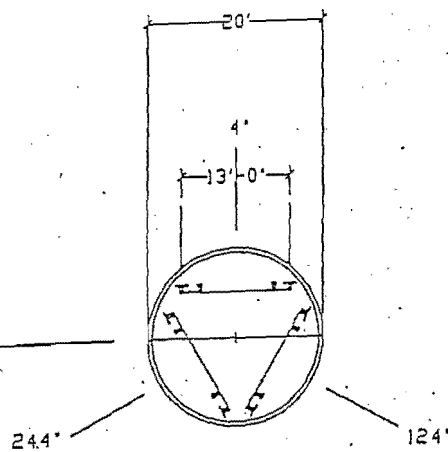


ORDER RECEIVED FOR FILING
1-12-10

Date

By

VZW Antenna Window #1
10' R-F Friendly Panel Area

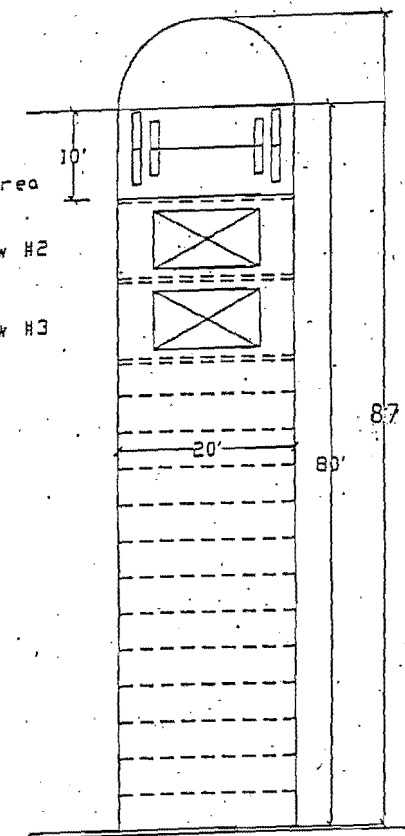


PLAN VIEW

VZW Antenna Window #1
10' R-F Friendly Panel Area

Future Antenna Window #2

Future Antenna Window #3



ELEVATION VIEW

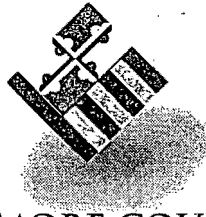
Case No. 2009-0322-X
700 Belfast Road
Order Exhibit (Elevation Drawings)
20' Diameter
2 of 2

ORDER RECEIVED FOR FILING

1-12-10

Date

By



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

January 12, 2010

WILLIAM J. WISEMAN III
Zoning Commissioner

Arnold E. Jablon, Esquire
Patricia Malone, Esquire
Venable, LLP
210 West Pennsylvania Avenue
Suite 500
Towson, MD 21204

RE: **PETITION FOR SPECIAL EXCEPTION**
N/S Belfast Road, 340' NE of c/line Old Belfast Road
(700 Belfast Road)
8th Election District - 3rd Council District
Richard C. Lehnert, *Legal Owner*; Cellco Partnership d/b/a
Verizon Wireless, *Lessee* – Petitioners
Case No. 2009-0322-X

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Exception has been granted with restrictions, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a large, stylized "X" mark.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: See Attached List
People's Counsel; Office of Planning; File

Barbara Pivec
Atlantic Site Acquisition
102 Rutledge RDG
Queenstown, MD 21658

Kate Mahood
510 Pafel Road
Annapolis, MD 21401

Lori Roberts
Cellco Partnership d/b/a Verizon Wireless
9000 Junction Drive
Annapolis Junction, MD 20701

Bruce E. Doak
Gerhold, Cross & Etzel, Ltd.
320 E. Towsontown Boulevard
Towson, MD 21286

H. Barritt Peterson, Jr.
15315 Wheeler Lane
Sparks, MD 21152

Kelley E. Harmon
718 Belfast Road
Sparks, MD 21152

Thomas F. Mullen
1620 Cold Bottom Road
Sparks, MD 21152

Spaulding A. & Todd Goetze
1522 Cold Bottom Road
Sparks, MD 21152

Valerie Williams
15216 Wheeler Lane
Sparks, MD 21152

Renea A. Olver
8 Hunt Farms Court
Sparks, MD 21152

Mary Beth Haas
3001 Caves Road
Owings Mills, MD 21117

Charles Ensor, Jr.
15801 Buffalo Run Road
Sparks, MD 21152

Christopher K. Steuart
2306 Western Run Road
Butler, MD 21023

Jack Dillon
543 Park Avenue
Towson, MD 21204

George R. Rew
17509 Prettyboy Dam Road
Parkton, MD 21120

Lucy Goelet
15115 Wheeler Lane
Sparks, MD 21152

Heidi Schmitt Krauss
1412 Gerber Lane
Sparks, MD 21152

Kirsten A. Burger, President
Sparks-Glencoe Community
Planning Council
1906 Corbridge Lane
Monkton, MD 21111

Laura Wilke
16411 Matthews Road
Monkton, MD 21111

Bills stuff/wjwOrders2009/
Labels-2009-0322-X

Rev: 1/12/2010 11:58 AM



Petition for Special Exception

to the Zoning Commissioner of Baltimore County for the property
located at 700 Belfast Road

which is presently zoned RC 2

Deed Reference: 11208 / 557 Tax Account # 1700004707

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

SEE ATTACHED SHEET

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Contract Purchaser/Lessee:

SEE ATTACHED SHEET

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Arnold Jablon

Name - Type or Print

Signature

Venable LLP

Company

210 W. Pennsylvania Avenue, Ste. 500

410-494-6200

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

Case No. 2009-0322-X

REV 07/27/2007

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.

Legal Owner(s):

SEE ATTACHED SHEET

Name - Type or Print

Signature

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Representative to be Contacted:

Arnold Jablon

Name

210 W. Pennsylvania Avenue, Ste. 500

410-494-6200

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING
UNAVAILABLE FOR HEARING

Reviewed By [Signature]

Date 6/11/09

ORDER RECEIVED FOR FILING

Date 1-12-10

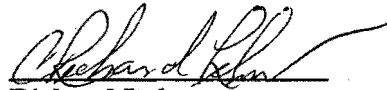
By [Signature]

**Petition for Special Exception
700 Belfast Road**

Petition for Special Exception, pursuant to Sections 1A01.2.C.28, 426, and 502.1 of the Baltimore County Zoning Regulations, for a wireless telecommunications tower, 80 feet in height, and related facilities.

**Petition for Special Exception
700 Belfast Road**

Legal Owner:

A handwritten signature in black ink, appearing to read 'Richard Lehnert', written over a horizontal line.

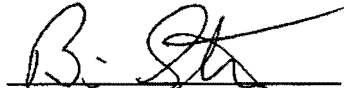
**Richard Lehnert
707 Old Belfast Road
Sparks, Maryland 21152**

**Petition for Special Exception
700 Belfast Road**

Lessee/Applicant:

**Cellco Partnership
d/b/a Verizon Wireless
9000 Junction Drive
Annapolis Junction, Maryland 20701
(301)312-2000**

By:



Name: Brian Stover

Title: REAL ESTATE & ZONING MANAGER

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS



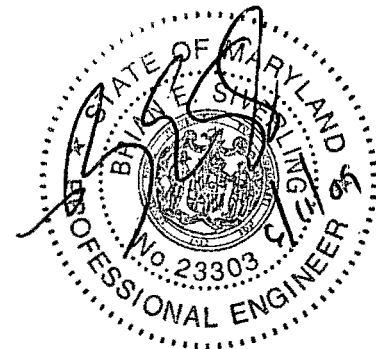
June 10, 2009

ZONING DESCRIPTION

BEGINNING at a point at the intersection of the centerline of Belfast Road and the centerline of the macadam drive at 700 Belfast Road point and continuing a distance North $15^{\circ} 47' 10''$ East 1099.55 Feet, running thence the following courses and distances; viz:

North $26^{\circ} 46' 13''$ East 298.18 feet; North $22^{\circ} 54' 33''$ West 12.04 Feet; North $10^{\circ} 51' 56''$ East 174.78 Feet; North $58^{\circ} 34' 56''$ East 86.61 Feet; North $27^{\circ} 41' 47''$ East 148.08 Feet; North $70^{\circ} 12' 35''$ East 244.56 Feet; South $31^{\circ} 54' 35''$ East 155.43 Feet; South $50^{\circ} 51' 43''$ West 99.89 Feet; South $20^{\circ} 16' 00''$ West 400.59 Feet; South $44^{\circ} 58' 27''$ West 263.93 Feet; North $77^{\circ} 01' 52''$ West 220.43 Feet to the point of beginning, having an address of 700 Belfast Road and lying on the northerly side of Belfast Road.

Containing an area of 217,913 square feet or 5.002 acres of land, more or less, and being located in the Eighth Election District, Third Councilmanic District, of Baltimore County, Maryland.



2009-0322-X

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **52039**

Date: **3/5/10**

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
 /09/2010 3/08/2010 11:43:13 2

Rev Sub
 Source/ Rev/

REG #502 MAIL JEVA JEE
 >>RECEIPT # 675702 3/08/2010 OFLN

Fund	Dept	Unit	Sub Unit	Obj	Sub Obj	Dept Obj	BS Acct	Amount	Dept
001	806	0000		6150				400.00	08

5 528 ZONING VERIFICATION
 052039

Recpt Tot \$400.00
 \$400.00 CK \$1.00 CA
 Baltimore County, Maryland

Total: **400.00**

Rec From: **Mudd Harrison + Birch**

For: **Appt**
09-0322-X

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

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: #2009-0322-X

700 Belfast Road

N/side Of Belfast Road, 340 +/- feet n/east of centerline of Old Belfast Road

8th Election District — 3rd Councilmanic District

Legal Owner(s): Richard Lehnert

Lessee: Cellco Partnership, d/b/a. Verison Wireless - Bran Stover

Special Exception: for a wireless telecommunications tower, 80 feet in height and related facilities.

Hearing: Tuesday, September 22, 2009 at 9:00 a.m. in Room 104, Jefferson Building, 105 West Chesapeake 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.

JT 9/7/04 Sept. 8

212798

CERTIFICATE OF PUBLICATION

9/10, 2009

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 9/8, 2009.

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

J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: 2009-0322-X

Petitioner/Developer: _____

Elco Partnership, d/b/a Veerizon Wireless- Bran Stover

Date of Hearing/closing: September 22, 2009

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

Attn; Kristin Matthews;

Ladies and Gentlemen:

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

The sign(s) were posted on Sept 5, 2009
(Month, Day, Year)

Sincerely,

Robert Bloch Sept. 9 2009

(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

ZONING NOTICE

CASE # 2010-0322-X

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD**

PLACE: Room 104, JEFFERSON BUILDING 21204
105 WEST CHESAPEAKE AVE. TOWSON

DATE AND TIME: TUESDAY SEPTEMBER 22, 2009 AT 9:00 ^{A.M.}

REQUEST: SPECIAL EXCEPTION FOR A WIRELESS
TELECOMMUNICATIONS TOWER, 80 FEET IN HEIGHT AND RELATED
FACILITIES

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 807-2291

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

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: 2009-0322-X
Petitioner: CELGO PARTNERSHIP d/b/s VERIZON WIRELESS
Address or Location: 700 BELFAST ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: KEDRICK WHITMORE
Address: 210 W. PENNSYLVANIA AVE.
SUITE 500
TOWSON, MD 21204
Telephone Number: 410-494-6200

Revised 7/11/05 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, August 11, 2009 Issue - Jeffersonian

Please forward billing to:

Kedrick Whitmore
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204

410-494-6200

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: 2009-0322-X

700 Belfast Road

N/side of Belfast Road, 340 +/- feet n/east of centerline of Old Belfast Road

8th Election District – 3rd Councilmanic District

Legal Owners: Richard Lehnert

Lessee: Cellco Partnership, d/b/a Verizon Wireless – Bran Stover

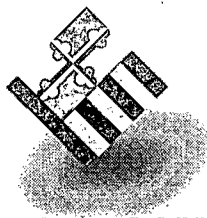
Special Exception for a wireless telecommunications tower, 80 feet in height and related facilities.

Hearing: Wednesday, August 26, 2009 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake 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.



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

July 15, 2009
TIMOTHY M. KOTROCO, *Director*
*Department of Permits and
Development Management*

NOTICE OF ZONING HEARING

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N/side of Belfast Road, 340 +/- feet n/east of centerline of Old Belfast Road

8th Election District – 3rd Councilmanic District

Legal Owners: Richard Lehnert

Lessee: Cellco Partnership, d/b/a Verizon Wireless – Bran Stover

Special Exception for a wireless telecommunications tower, 80 feet in height and related facilities.

Hearing: Wednesday, August 26, 2009 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

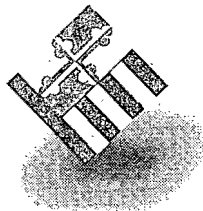
TK:klm

C: Arnold Jablon, Venable, 210 W. Pennsylvania Avenue, Ste. 500, Towson 21204

Richard Lehnert, 707 Old Belfast Road, Sparks 21152

Brian Stover, Cellco Partnership, 9000 Junction Drive, Annapolis Junction 20701

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, AUGUST 11, 2009.**
- (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.



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, Director
Department of Permits and
Development Management

July 28, 2009

Richard Burch
Mudd, Harrison & Burch, LLP
401 Washington Avenue
Towson, MD 21204

David Karceski
Venable, LLP
200 West Pennsylvania Avenue
Towson, MD 21204

RECEIVED

JUL 29 2009

ZONING COMMISSIONER

Dear Messieurs Burch and Karceski,

This letter is to inform you that Mr. Burch's letter of July 27, 2009 requesting a postponement of Zoning Case 2009-0322-X scheduled for Wednesday, August 26, 2009 is being granted.

It is my understanding that both of you have agreed to this postponement.

Mr. Karceski tells me the property has not been posted, so there is no need to remove the sign from the property.

I suggest you contact one another to determine mutually agreeable dates in the future, and then contact Kristen Matthews or our office to confirm that a hearing officer is available as well.

Should you have additional questions concerning this matter, please contact me at 410-887-3353.

Sincerely,

A handwritten signature in cursive script that reads "Donald T. Rascoe".

Donald T. Rascoe
Deputy Director

cc: Timothy Kotroco, Director, PDM
William Wiseman, Zoning Commissioner
Kristen Matthews, Docket Clerk

TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 8, 2009 Issue - Jeffersonian

Please forward billing to:

Kedrick Whitmore
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204

410-494-6200

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: 2009-0322-X

700 Belfast Road

N/side of Belfast Road, 340 +/- feet n/east of centerline of Old Belfast Road

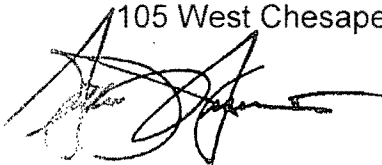
8th Election District – 3rd Councilmanic District

Legal Owners: Richard Lehnert

Lessee: Cellco Partnership, d/b/a Verizon Wireless – Bran Stover

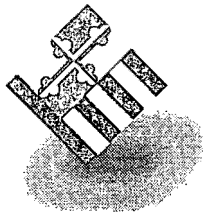
Special Exception for a wireless telecommunications tower, 80 feet in height and related facilities.

Hearing: Tuesday, September 22, 2009 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake 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.



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, 2009
August 12, 2009
Department of Permits and
Development Management

NOTICE OF ZONING HEARING

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

CASE NUMBER: 2009-0322-X

700 Belfast Road

N/side of Belfast Road, 340 +/- feet n/east of centerline of Old Belfast Road

8th Election District – 3rd Councilmanic District

Legal Owners: Richard Lehnert

Lessee: Cellco Partnership, d/b/a Verizon Wireless – Bran Stover

Special Exception for a wireless telecommunications tower, 80 feet in height and related facilities.

Hearing: Tuesday, September 22, 2009 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in cursive script that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Arnold Jablon, Venable, 210 W. Pennsylvania Avenue, Ste. 500, Towson 21204

Richard Lehnert, 707 Old Belfast Road, Sparks 21152

Brian Stover, Cellco Partnership, 9000 Junction Drive, Annapolis Junction 20701

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, SEPTEMBER 7, 2009.**
- (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.

BW 10/14
9am

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO **
MATTHEW P. LALUMIA *

JONATHAN E. C. MAY *

MUDD, HARRISON & BURCH, L.L.P.
ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900
TOWSON, MARYLAND 21204-4835
410 828 1335
FAX 410 828 1042

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

October 8, 2009

* MEMBER OF MARYLAND BAR
* MEMBER OF DISTRICT OF COLUMBIA BAR

C. Richard Lehnert
707 Old Belfast Road
Sparks, Maryland 21204

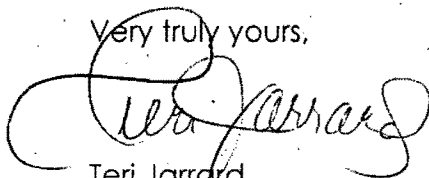
Re: Case No. 2009-0322-X
700 Belfast Road N/side of Belfast Road,
340± Feet N/East of Centerline of Old Belfast Road
8th Election District – Third Councilman District

Dear Mr. Lehnert:

This will confirm my telephone conversation of this morning with your Wife. The location of the zoning hearing in the above-captioned matter has been changed to 105 West Chesapeake Avenue, Room 104, Towson, Maryland 21204. The hearing is scheduled to begin at 9:00 a.m. on Wednesday, October 14, 2009.

Many thanks for your kind attention to this matter.

Very truly yours,



Teri Jarrard
Assistant to Richard C. Burch

RCB/tyj

cc: William J. Wiseman, III
Zoning Commissioner

RECEIVED

OCT 09 2009

ZONING COMMISSIONER



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204

410-887-3180
FAX: 410-887-3182

April 6, 2010

not in
Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Richard Burch, Esquire
Mudd, Harrison & Burch, L.L.P.
401 Washington Ave, Ste 900
Towson, MD 21204

410-494-6200
Patty Malone
Arnold Jablon, Esquire
~~David Karceski, Esquire~~
VENABLE, LLP

210 W. Pennsylvania Avenue, S. 500
Towson, MD 21204

Jason St. John, Esquire
Greg Rapisarda, Esquire
Saul Ewing, LLP
500 E. Pratt Street, 8th Floor
Baltimore, MD 21202

RE: *In the Matter of: C. Richard Lehnert, Legal Owner*
Cellco Partnership/Verizon Wireless, Petitioners
Case No. 09-322-X / 700 Belfast Road

Dear Counsel:

This office is requesting that Counsel agree on a date and time for a hearing on the above captioned matter in light of the lengthy notification list, in order to avoid multiple mailings, due to postponements, etc.

The Board sits on Tuesday, Wednesday and Thursday of each week. The docket is currently scheduled through the end of July 2010. If you have no objection, the following dates and time are open on the Board's docket. Please contact this office upon clarification of availability, and the above referenced matter will be assigned in accordance with the agreement of Counsel.

~~Tuesday, August 3, 2010 at 10:00 a.m.~~

~~Wednesday, August 4, 2010 at 10:00 a.m.~~

~~Thursday, August 5, 2010 at 10:00 a.m. and~~

~~Tuesday, August 10, 2010 @ 10:00 a.m.~~

9-28
9-29
9-30



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

April 6, 2010

Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold Jablon, Esquire
David Karceski, Esquire
VENABLE, LLP
210 W. Pennsylvania Avenue, S. 500
Towson, MD 21204

Richard Burch, Esquire
Mudd, Harrison & Burch, L.L.P.
401 Washington Ave, Ste 900
Towson, MD 21204

Jason St. John, Esquire
Greg Rapisarda, Esquire
Saul Ewing, LLP
500 E. Pratt Street, 8th Floor
Baltimore, MD 21202

RE: *In the Matter of: C. Richard Lehnert, Legal Owner*
Cellco Partnership/Verizon Wireless, Petitioners
Case No. 09-322-X / 700 Belfast Road

Dear Counsel:

This office is requesting that Counsel agree on a date and time for a hearing on the above captioned matter in light of the lengthy notification list, in order to avoid multiple mailings, due to postponements, etc.

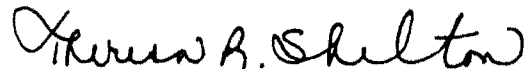
The Board sits on Tuesday, Wednesday and Thursday of each week. The docket is currently scheduled through the end of July 2010. If you have no objection, the following dates and time are open on the Board's docket. Please contact this office upon clarification of availability, and the above referenced matter will be assigned in accordance with the agreement of Counsel.

Tuesday, August 3, 2010 at 10:00 a.m.;
Wednesday, August 4, 2010 at 10:00 a.m.;
Thursday, August 5, 2010 at 10:00 a.m.; and
Tuesday, August 10, 2010 @ 10:00 a.m.

Richard Burch, Esquire
Arnold Jablon, Esquire
David Karceski, Esquire
Greg Rapisarda, Esquire
Jason St. John, Esquire
Peter Max Zimmerman, People's Counsel for Baltimore County
April 6, 2010
Page Two

Thanking you in advance for your time and cooperation in this matter. Should you have any questions, please call me at 410-887-3180.

Very truly yours,


Theresa R. Shelton
Administrator

Duplicate Originals

c: C. Richard Lehnert
Brian Stover
Verizon Wireless Real Estate and Zoning Manager
Thomas F. Mullan, III
Teresa Moore
The Valleys Planning Council, Inc.
Kirsten A. Burger
Sparks-Glencoe Community Planning Council



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

May 19, 2010

AMENDED NOTICE OF ASSIGNMENT

CASE 09-322-X IN THE MATTER OF: C. Richard Lehnert, Legal Owner
Cellco Partnership/Verizon Wireless, Petitioners
700 Belfast Road

8TH E; 3RD C

CONSOLIDATED WITH

CBA-10-035 IN THE MATTER OF: Verizon Wireless Belfast Road
DRC No.: 102207C

Re: Petition for Special Exception to approve a wireless telecommunications tower (and related facilities) pursuant to § 1A01.2.C.28, 426, 502.1 and 502.7.B of the BCZR.

1/12/2010 - Findings of fact and conclusion of law issued by Zoning Commissioner
GRANTING the requested relief, subject to restrictions.

and consolidated with CBA-10-035

Re: Appeal of the DRC decision of March 31, 2010 of the Director, PDM, which adopted the determination that the project met the requirements of a limited exemption under Section 32-4-106(a)(1)(vi)

These matters have been assigned by agreement of the parties for the following dates:

ASSIGNED FOR: TUESDAY, SEPTEMBER 28, 2010 AT 10:00 A.M./ DAY #1
WEDNESDAY, SEPTEMBER 29, 2010 AT 10:00 A.M./ DAY #2
THURSDAY, SEPTEMBER 30, 2010 AT 10:00 A.M./ DAY #3

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.

(continued to page 2)

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.

Theresa R. Shelton
Administrator

c:

Legal Owner:	Richard Lehnert
Counsel for Petitioner/Legal Owner :	Arnold Jablon, Esquire / Venable, LLP Patricia Malone, Esquire / Venable, LLP
Petitioner:	Brian Stover, Real Estate & Zoning Manager Cellco Partnership d/b/a Verizon Wireless
Applicant:	Verizon Wireless Belfast Road
Engineer:	Morris & Ritchie Associates

Attorney for Protestant/Appellant:	Richard Burch, Esquire
Appellant:	Teresa Moore/Valleys Planning Council
Appellant:	Thomas Mullan, III

Attorney for Protestant/Appellant:	Jason St. John, Esquire / Saul Ewing LLP Greg Rapisarda, Esquire / Saul Ewing LLP
Appellant:	New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, LLC

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Colleen M. Kelly, Development Manager/PDM
Carl Richards, Zoning Department Chief
Arnold F. "Pat" Keller, III, Director/Planning
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

December 3, 2010

NOTICE OF DELIBERATION

CASE 09-322-X IN THE MATTER OF: C. Richard Lehnert, Legal Owner
Cellco Partnership/Verizon Wireless, Petitioners
700 Belfast Road

8TH E; 3RD C

CONSOLIDATED WITH

CBA-10-035 IN THE MATTER OF: Verizon Wireless Belfast Road
DRC No.: 102207C

Re: Petition for Special Exception to approve a wireless telecommunications tower (and related facilities) pursuant to § 1A01.2.C.28, 426, 502.1 and 502.7.B of the BCZR.

1/12/2010 - Findings of fact and conclusion of law issued by Zoning Commissioner
GRANTING the requested relief, subject to restrictions.

and consolidated with CBA-10-035

Re: Appeal of the DRC decision of March 31, 2010 of the Director, PDM, which adopted the determination that the project met the requirements of a limited exemption under Section 32-4-106(a)(1)(vi)

On October 21, 2010 a hearing was held before the Board in which Counsel reached a Settlement in this matter. The Board is in receipt of the Settlement Agreement and the prepared Order. A public deliberation has been scheduled prior to the execution of the proffered Order as set forth below:

DATE AND TIME : THURSDAY, AUGUST 5, 2010 at 9:00 a.m.

**LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue**

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

Theresa R. Shelton
Administrator

Continued for Distribution List

Distribution

c: Legal Owner: Richard Lehnert
Counsel for Petitioner/Legal Owner : Arnold Jablon, Esquire / Venable, LLP
Patricia Malone, Esquire / Venable, LLP
Petitioner: Brian Stover, Real Estate & Zoning Manager
Cellco Partnership d/b/a Verizon Wireless
Applicant: Verizon Wireless Belfast Road
Engineer: Morris & Ritchie Associates

Attorney for Protestant/Appellant: Richard Burch, Esquire
Appellant: Teresa Moore/Valleys Planning Council
Appellant: Thomas Mullan, III

Attorney for Protestant/Appellant: Jason St. John, Esquire / Saul Ewing LLP
Greg Rapisarda, Esquire / Saul Ewing LLP
Appellant: New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, LLC

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Colleen M. Kelly, Development Manager/PDM
Carl Richards, Zoning Department Chief
Arnold F. "Pat" Keller, III, Director/Planning
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

December 6, 2010

AMENDED NOTICE OF DELIBERATION – DATE ONLY

CASE 09-322-X IN THE MATTER OF: C. Richard Lehnert, Legal Owner
Cellco Partnership/Verizon Wireless, Petitioners
700 Belfast Road

8TH E; 3RD C

CONSOLIDATED WITH

CBA-10-035 IN THE MATTER OF: Verizon Wireless Belfast Road
DRC No.: 102207C

Re: Petition for Special Exception to approve a wireless telecommunications tower (and related facilities) pursuant to § 1A01.2.C.28, 426, 502.1 and 502.7.B of the BCZR.

1/12/2010 - Findings of fact and conclusion of law issued by Zoning Commissioner
GRANTING the requested relief, subject to restrictions.

and consolidated with CBA-10-035

Re: Appeal of the DRC decision of March 31, 2010 of the Director, PDM, which adopted the determination that the project met the requirements of a limited exemption under Section 32-4-106(a)(1)(vi)

On October 21, 2010 a hearing was held before the Board in which Counsel reached a Settlement in this matter. The Board is in receipt of the Settlement Agreement and the prepared Order. A public deliberation has been scheduled prior to the execution of the proffered Order as set forth below:

DATE AND TIME : TUESDAY, JANUARY 11, 2011 at 9:30 a.m.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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

Theresa R. Shelton
Administrator

Continued for Distribution List

Distribution

c: Legal Owner: Richard Lehnert

 Counsel for Petitioner/Legal Owner : Arnold Jablon, Esquire / Venable, LLP
 Patricia Malone, Esquire / Venable, LLP

 Petitioner: Brian Stover, Real Estate & Zoning Manager
 Cellco Partnership d/b/a Verizon Wireless

 Applicant: Verizon Wireless Belfast Road

 Engineer: Morris & Ritchie Associates

 Attorney for Protestant/Appellant: Richard Burch, Esquire

 Appellant: Teresa Moore/Valleys Planning Council
 Appellant: Thomas Mullan, III

Attorney for Protestant/Appellant: Jason St. John, Esquire / Saul Ewing LLP
 Greg Rapisarda, Esquire / Saul Ewing LLP

Appellant: New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, LLC

Office of People's Counsel
Zoning Commissioner
Director/PDM
Colleen M. Kelly, Development Manager/PDM
Carl Richards, Zoning Department Chief
Director/Planning
Nancy C. West, Assistant County Attorney
County Attorney



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

September 30, 2010

NOTICE OF DELIBERATION / MOTIONS FOR DISMISSAL/STANDING

AND

NOTICE OF ASSIGNMENT DAY #2

CASE 09-322-X

IN THE MATTER OF: C. Richard Lehnert, Legal Owner
Cellco Partnership/Verizon Wireless, Petitioners
700 Belfast Road

8TH E; 3RD C

Re: Petition for Special Exception to approve a wireless telecommunications tower (and related facilities) pursuant to § 1A01.2.C.28, 426, 502.1 and 502.7.B of the BCZR.

1/12/2010 - Findings of fact and conclusion of law issued by Zoning Commissioner
GRANTING the requested relief, subject to restrictions.

Having commenced for Day #1 on this matter on Tuesday, September 28, 2010, and motions filed the matter has been scheduled for a Deliberation on the following date /time:

DATE AND TIME : THURSDAY, OCTOBER 21, 2010 at 9:15 a.m.

**LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue**

**NOTE: Briefs are due on Wednesday, October 6, 2010 by 4:30 p.m.
(Original and three [3] copies)**

**Reply Briefs are due no later than Monday, October 18, 2010 by 4:30 p.m.
(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.

CONTINUED FOR ASSIGNMENT, DAY #2

NOTICE OF ASSIGNMENT DAY #2

CASE 09-322-X

IN THE MATTER OF: C. Richard Lehnert, Legal Owner
Cellco Partnership/Verizon Wireless, Petitioners
700 Belfast Road

8TH E; 3RD C

Re: Petition for Special Exception to approve a wireless telecommunications tower (and related facilities) pursuant to § 1A01.2.C.28, 426, 502.1 and 502.7.B of the BCZR.

1/12/2010 - Findings of fact and conclusion of law issued by Zoning Commissioner
GRANTING the requested relief, subject to restrictions.

Having commenced for Day #1 on this matter on Tuesday, September 28, 2010, this matter has been continued to Day #2 and scheduled as follows:

ASSIGNED FOR: THURSDAY, OCTOBER 21, 2010 AT 10:00 A.M./ DAY #2

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.

Theresa R. Shelton
Administrator

c: Distribution List

Distribution List

Legal Owner: Richard Lehnert

Counsel for Petitioner/Legal Owner : Arnold Jablon, Esquire / Venable, LLP
Patricia Malone, Esquire / Venable, LLP

Petitioner: Brian Stover, Real Estate & Zoning Manager
Cellco Partnership d/b/a Verizon Wireless

Attorney for Protestant/Appellant: Richard Burch, Esquire

Appellant: Teresa Moore/Valleys Planning Council
Appellant: Thomas Mullan, III

Attorney for Protestant/Appellant: Jason St. John, Esquire / Saul Ewing LLP
Greg Rapisarda, Esquire / Saul Ewing LLP

Protestant: New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, LLC

Attorney for Protestant/Appellant: J. Neil Lanzi, Esquire

Protestant: Holly Cumberland

Brian Siverling/Morris & Ritchie Assoc., Inc.
Sherri Linton/Cellco Partnership d/b/a Verizon Wireless
Thomas Wolfe, RLA/Morris & Ritchie Assoc, Inc.
Rachel B. Westerlund, V.M.D./Maryland Equine Center, Inc.
Kristen Burger, President/Sparks-Glencoe Community Planning Council
Barbara Pivec/Atlantic Site Acquisition
Lori Roberts/Cellco Partnership d/b/a Verizon Wireless

Dr. and Mrs Aristides Alevizatos	Bruce Doak/Gerhold, Cross & Etzel
Spaulding Goetze and Todd Goetze	Eugene and Elizabeth Schweitzer
Amy Bird/T-Mobile	Kate Mahood
H. Barritt Peterson, Jr.	Kelley Harmon
Valerie Williams	Renae Olver
Mary Beth Haas	Charles Ensor, Jr.
Chris Steuart	Jack Dillon
George R. Rew	Lucy Goelet
Laura Wilke	Craig Lewis
Joseph Sterne	Marian Randall
Elizabeth Wilmerding	Kathleen Pontone
Emily Levenson	Charles and Anne Blair
Gary Peterson	Daniel Timmel
Kathy Lauten	Mary P. Shaffer
Thomas Elder	Heidi Krauss
Jennifer Horton	Victoria Collins
Peter G. Angelos, Esquire	

William J. Wiseman, III, Zoning Commissioner	Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning	Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney	



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
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410-887-3180
FAX: 410-887-3182

September 30, 2010

Peter Max Zimmerman
People's Counsel for
Baltimore County
Suite 204, Jefferson Building
105 W. Chesapeake Avenue
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Jason St. John, Esquire
Greg Rapisarda, Esquire
Saul Ewing, LLP
500 E. Pratt Street, 8th Floor
Baltimore, MD 21202

J. Neil Lanzi, Esquire
PNC Bank Building, Suite 617
409 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: C. Richard Lehnert, Legal Owner*
Cellco Partnership/Verizon Wireless, Petitioners
Case No. 09-322-X / 700 Belfast Road

Dear Counsel:

Enclosed please find the combined Public Deliberation Notice and Notice of Assignment for Day #2 on the above captioned matter. Please note that the Deliberation is scheduled for 9:15 a.m. and the Hearing – Day #2 is scheduled for 10:00 a.m., respectively, on Thursday, October 21, 2010.

Memorandums with regard to the Motions filed on Day #1, September 28, 2010, are due in this office as stated at the hearing on October 6, 2010 and replies to the Memorandum are due no later than October 18, 2010. Please provide an original and three copies for the panel.

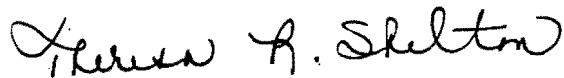
On October 21, 2010, immediately following the Public Deliberation, the hearing will commence for Day #2. It is my understanding that there may be a resolution between several of the parties and the agreement/settlement could be placed on the record at that time, if appropriate.

Richard Burch, Esquire
Arnold Jablon, Esquire
David Karceski, Esquire
Greg Rapisarda, Esquire
Jason St. John, Esquire
J. Neil Lanzi
Peter Max Zimmerman, People's Counsel for Baltimore County
September 30, 2010
Page Two

Please do not hesitate to contact me if you have any questions or concerns regarding the combined scheduling of the Deliberation and Hearing Day #2 on Thursday, October 21, 2010.

Thanking you in advance for your time and cooperation in this matter.

Very truly yours,

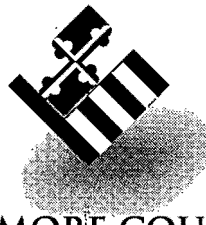


Theresa R. Shelton
Administrator

Duplicate Originals

Enclosure: Notice of Deliberation and Notice of Assignment Day #2

c(w/Encl.): C. Richard Lehnert
Brian Stover
Verizon Wireless Real Estate and Zoning Manager
Thomas F. Mullan, III
Teresa Moore
The Valleys Planning Council, Inc.
Kirsten A. Burger
Sparks-Glencoe Community Planning Council
Holly Cumberland



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

September 16, 2009

Arnold Jablon
Venable, LLC
210 W. Pennsylvania Ave.
Towson, MD 21204

Dear: Arnold Jablon

RE: Case Number 2009-0322-X, 700 Belfast Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on June 11, 2009. This letter is not an approval, but only a **NOTIFICATION**.

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:lnw

Enclosures

c: People's Counsel
Richard Lehnert; 707 Belfast Rd.; Sparks, MD 21152

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

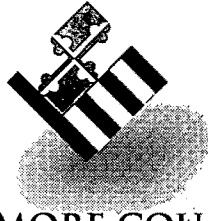
FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For June 29, 2009
Item Nos. 2009-202, 321, 322, 323,
324, 325 and 327

DATE: July 2, 2009

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

DAK:CEN:cab
cc: File
ZAC-060292009 -NO COMMENTS



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

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

June 22, 2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: June 22.2009

Item Numbers 0321,0322,0323,0324,0325,0327

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.

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

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: June 23, 2009

TO: Zoning Advisory Committee

FROM: Tower Review Committee Chairman

SUBJECT: New Tower – Verizon Wireless – 700 Belfast Road
Updated (06-23-2009) Reference Case Number 2009-0322-X

The Tower Review Committee met on August 28, 2007 to discuss the application made by Verizon Wireless on August 7, 2007. The committee is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 80-foot disguised monopole to be located on the property owned by Richard Lehnert, 707 Old Belfast Road, Sparks.

- *Antennas should be placed on existing towers, buildings, and structures, including those of public utilities, where feasible.*

Findings: We feel that has Verizon has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. Verizon has proposed to install a new 80-foot disguised monopole. The total height of the structure is 80-feet including all appurtenances.

- *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*

Findings: Verizon has stated, in the application documents, to the TRC, the structure will be constructed to support 2 additional wireless service providers in addition to Verizon Wireless.

- *Erected in a medium or high intensity commercial zone when available.*

Findings: This area is located in a Resource Conservation - agricultural area. This site will require a hearing for special exception. There were no identified sites in commercial zones in the vicinity.

- *Located and designed to minimize its visibility from residential and transitional zone.*

Findings: Based on the simulations presented by Verizon Wireless and provided as an attachment to this document, and an on-site visit, we find that the visual impact will be minimal at the height proposed. Verizon has specified a tower disguised as a pine tree in an attempt to camouflage the structure.

Conclusion

By a unanimous decision of the Tower Review Committee, it was agreed that the advisory comments provided above be forwarded to the Development Review Committee for further processing. It is the recommendation of the committee, that the 80-foot disguised monopole would meet all the requirements of Section 426, while allowing needed emergency and non-emergency communications for the citizens of the area.

Additional Information

An Application Evaluation, complete with recommendations, from Columbia Telecommunications Corporation is attached.

Updated Information

The Tower Review Committee has recently received an application, from T-Mobile, to construct a second, tower on this property. The drawings also indicate another company may wish to construct yet a third antenna. We have not formally received a third application at this time. The TRC will be meeting on June 30th to discuss this application. We feel coordination between all of the cellular companies desiring to construct on this property is necessary and has not been accomplished to date. The community groups in this area have been engaged in discussions with T-Mobile concerning construction of a single tower to accommodate several carriers or the construction of a "tower farm" using a multiple towers, one to support each carrier. We feel any decision by the Zoning Advisory Committee (ZAC) should be deferred until this coordination has taken place.

Tower Review Committee

Richard A. Bohn, Tower Coordinator
Curtis Murray , Office of Planning
Harry Wujek, Community Member TRC
Richard Sterba, OIT Representative

CC: Sabrina Chase, Baltimore County Office of Law
Robert Stradling, Director, Baltimore County Office of Information Technology

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: June 23, 2009

TO: Zoning Advisory Committee

FROM: Tower Review Committee Chairman

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Tower Review Committee

Richard A. Bohn, Tower Coordinator
Curtis Murray , Office of Planning
Harry Wujek, Community Member TRC
Richard Sterba, OIT Representative

CC: Sabrina Chase, Baltimore County Office of Law
Robert Stradling, Director, Baltimore County Office of Information Technology



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Beverley K. Swain-Staley, Acting Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: JUNE 25, 2009

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

RE: Baltimore County
Item No. 2009-0322-X
700 BELFAST ROAD
RICHARD LEHNERT PROPERTY
SPECIAL EXCEPTION -

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2009-0322-X.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

for Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BW
9-22-09

BALTIMORE COUNTY, MARYLAND

Correspondence

Post-it® Fax Note	7671	Date	# of pages ▶ 2
To <u>Terry</u>		From	
Co./Dept.		Co.	
Phone #		Phone #	
Fax # <u>410-828-1042</u>		Fax #	

RECEIVED

SEP 10 2009

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: September 10, 2009

SUBJECT: Zoning Item # 09-322-X
Address 700 Belfast Road
(Lehnert Property)

ZONING COMMISSIONER

Revised

Zoning Advisory Committee Meeting of June 22, 2009

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). – *Gris Batchelder; Environmental Impact Review*

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). – *Gris Batchelder; Environmental Impact Review*

Additional Comments:

1. The County has secured State and Federal funding for viewshed projects along I-83 from Hunt Valley to the Maryland line. Every effort should be made to minimize any impact to the viewshed from the proposed tower. – *W.S. Lippincott; Agricultural Preservation*

From: Jeffrey Livingston
To: Wiley, Debra; Zook, Patricia
Date: 9/10/2009 9:34 AM
Subject: ZONING PETITION revised 09-322-X

Attached is DEPRM's revised comment for zoning petition 09-322-X; 700 Belfast Road. The comment was revised by EIR.

Please let me know if you have any further questions concerning this revisions.

Thanks,
Jeff

BW 9/22
9AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 5, 2009

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

SUBJECT: 700 Belfast Road

Item Number: 09-322

Petitioner: Richard Lehnert

Zoning: RC 2

Requested Action: Special Exception

RECEIVED
AUG 06 2009
ZONING COMMISSIONER

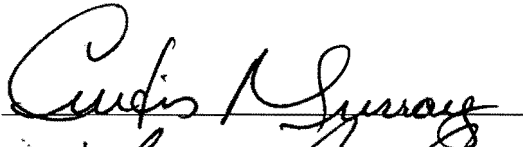
The petitioner requests a special exception, pursuant to Sections 1A01.2.C.28, 426, and 502.1 of the BCZR, to permit a wireless telecommunications tower, 80 feet in height and related facilities.

SUMMARY OF RECOMMENDATIONS:

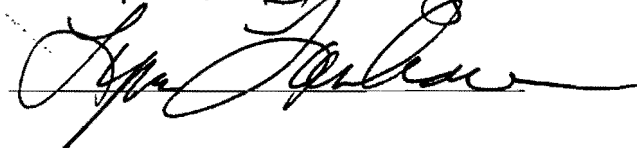
The Office of Planning does not oppose to the special exception to permit a wireless telecommunications tower, 80 feet in height and related facilities. However, it recently came to this Office's attention through the County's Tower Review Committee that there are pending requests to have two more cell towers placed on the same site, making a proposed total of three towers on the Petitioner's property. This Office asks that the Zoning Commissioner look into having all three wireless companies share the same proposed tower and related facilities. This Office will only recommend that one wireless telecommunications tower be allowed on the site.

A site visit was conducted June 29, 2009 and it was concluded that the proposed tower and related facilities will not be seen from either Interstate 83, nor Belfast Road, both which are scenic routes. This is due to the topography of the site and the fact that the proposed tower and related facilities will be tucked in the upper most northwestern corner of the property. Mature trees will surround the proposed tower and related facilities. The proposed tower will appear as a tree itself according to the submitted site plan and tower design. With a proposed height of 80 feet the proposed tower will not be too much taller than the trees that will surround it, which should diminish the impact it will have on the surrounding rural community. Therefore this Office believes that this special exception request for one wireless telecommunications tower and related facilities will not be detrimental to the health, safety, or general welfare of the surrounding community. It does however believe that more than one tower on the subject site would not be favorable, this office strongly suggests a collocation effort to be made by all vendors.

For further information concerning the matters stated here in, please contact Jessie Bialek at 410-887-3480.

Prepared by: 

Division Chief:
AFK/LL: CM



RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
700 Belfast Road; N/S Belfast Road, 340' NE *
of c/line Old Belfast Road * ZONING COMMISSIONER
8th Election & 3rd Councilmanic Districts *
Legal Owner(s): Richard Lehnert * FOR
Contract Purchaser(s): Brian Stover *
Petitioenr(s) * BALTIMORE COUNTY
* 09-322-X

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party 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 all 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
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

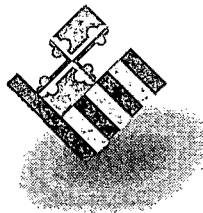
JUN 29 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 2009, a copy of the foregoing Entry of Appearance was mailed to Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

March 29, 2010

Arnold Jablon
Venable, LLP
210 West Pennsylvania Avenue, Ste. 500
Towson, MD 21204

Dear Counsel:

RE: Case: 2009-0322-X, 700 Belfast Road

Please be advised that an appeal of the above-referenced case was filed in this office on February 8, 2010 by Richard Burch and on February 12, 2010 by Jason St. John. 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,

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Richard Burch, 401 Washington Avenue, Ste. 900, Towson 21204
Jason St. John, 500 E. Pratt Street, 8th Floor, Baltimore 21202
See attached list

APPEAL

Petition for Special Exception
700 Belfast Road
340' NE of c/line Old Belfast Road
8th Election District – 3rd Councilmanic District
Legal Owners: C. Richard Lehnert
Cellco Partnership/Verizon Wireless - Petitioners

Case No.: 2009-0322-X

Petition for Special Exception (June 11, 2009)

Zoning Description of Property

Notice of Zoning Hearing (August 12, 2009)

Certification of Publication (The Jeffersonian – September 8, 2009)

Certificate of Posting (September 5, 2009) by Robert Black

Entry of Appearance by People's Counsel (June 29, 2009)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet – None

Citizen(s) Sign-In Sheet – 2 Sheets

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. As listed in the Exhibit Sheet attached (1 thru 20)

Protestants' Exhibits:

1. As listed in the Exhibit Sheet attached (1 thru 13)

Miscellaneous (Not Marked as Exhibit)

1. Newspaper Article dated September 28, 2009
2. Letter from Richard Burch dated July 27, 2009 to Commissioner
3. Letter from Peter Angelos dated October 12, 2009 to Commissioner
4. Newspaper article dated January 14, 2010

Zoning Commissioner's Order (GRANTED w/rest. – January 12, 2010)

1st Notice of Appeal received on February 9, 2010 from Richard Burch

2nd Notice of Appeal received on February 12, 2010 from Jason St. John

Motion for Reconsideration forwarded from Zoning Commissioner on February 17, 2010

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
See attached list

date sent March 29, 2010, klm

APPEAL

Petition for Special Exception
700 Belfast Road
340' NE of c/line Old Belfast Road
8th Election District – 3rd Councilmanic District
Legal Owners: C. Richard Lehnert
Cellco Partnership/Verizon Wireless - Petitioners

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- ✓ Entry of Appearance by People's Counsel (June 29, 2009)
- ✓ Petitioner(s) Sign-In Sheet – One Sheet
- Protestant(s) Sign-In Sheet – None
- ✓ Citizen(s) Sign-In Sheet – 2 Sheets
- ✓ Zoning Advisory Committee Comments

RECEIVED

MAR 31 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

Petitioners' Exhibit

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- ✓ Motion for Reconsideration forwarded from Zoning Commissioner on February 17, 2010

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
See attached list

date sent March 29, 2010, klm

Address List

Petitioners:

Richard Lehnert
Arnold Jablon, Esquire/Venable, LLP
Brian Stover, Real Estate & Zoning Manager/Cellco Partnership d/b/a Verizon Wireless

Protestant/Appellants

Richard Burch, Esquire
Teresa Moore/Valleys Planning Council
Thomas Mullan, III

Jason St. John, Esquire
Greg Rapisarda, Esquire
New Cingular Wireless PCS, LLC d/b/a AT & T Mobility, LLC

Interested Persons:

Brian Siverling/Morris & Ritchie Assoc., Inc.	
Sherri Linton/Cellco Partnership d/b/a Verizon Wireless	
Thomas Wolfe, RLA/Morris & Ritchie Assoc, Inc.	
Rachel B. Westerlund, V.M.D./Maryland Equine Center, Inc.	
Kristen Burger, President/Sparks-Glencoe Community Planning Council	
Barbara Pivec/Atlantic Site Acquisition	
Lori Roberts/Cellco Partnership d/b/a Verizon Wireless	
Dr. and Mrs Aristides Alevizatos	Bruce Doak/Gerhold, Cross & Etzel
Spaulding Goetze and Todd Goetze	Eugene and Elizabeth Schweitzer
Amy Bird/T-Mobile	Kate Mahood
H. Barritt Peterson, Jr.	Kelley Harmon
Valerie Williams	Renae Olver
Mary Beth Haas	Charles Ensor, Jr.
Chris Steuart	Jack Dillon
George R. Rew	Lucy Goelet
Laura Wilke	Craig Lewis
Joseph Sterne	Marian Randall
Elizabeth Wilmerding	Kathleen Pontone
Emily Levenson	Charles and Anne Blair
Gary Peterson	Daniel Timmel
Holly Cumberland	Kathy Lauten
Mary P. Shaffer	Thomas Elder
Jennifer Horton	Victoria Collins
Peter G. Angelos, Esquire	Heidi Krauss

Interoffice:

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney

8/26
9 am

MUDD, HARRISON & BURCH, L.L.P.

ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900

TOWSON, MARYLAND 21204-4835

410 828 1335

FAX 410 828 1042

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO *
MATTHEW P. LALUMIA *

JONATHAN E. C. MAY *

July 27, 2009

* MEMBER OF MARYLAND BAR

* MEMBER OF DISTRICT OF COLUMBIA BAR

HAND DELIVERY

Timothy M. Kotroco, Director
Department of Permits & Development Management
County Office Building
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

RECEIVED

JUL 27 2009

HAND DELIVERY

William J. Wiseman, III, Zoning Commissioner
Baltimore County Zoning Office
105 West Chesapeake Avenue, Room 103
Towson, Maryland 21204

ZONING COMMISSIONER

Re: Case No. 2009-0322-X
700 Belfast Road N/side of Belfast Road,
340± Feet N/East of Centerline of Old Belfast Road
8th Election District – Third Councilman District
Legal Owners: Richard Lehnert
Lessee: Cellco Partnership, d/b/a Verizon Wireless – Bren Stover

Dear Messrs. Kotroco and Wiseman:

I represent Valleys Planning Council and other interested parties in connection with the captioned matter. I understand that a hearing on the Petitioner's request for special exception (for the erection of a wireless telecommunications tower and related facilities) is currently scheduled for Wednesday, August 26, 2009 at 9:00 a.m. in Room 104, Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland 21204. Unfortunately, I have a conflict with that date in that I am scheduled to be in trial in the Circuit Court for Baltimore County on a matter which has been reset on a right-of-way (as the matter was postponed previously by the Court). Accordingly, I respectfully request a brief continuance of the captioned matter. I have spoken with David H. Karceski, Esquire, co-counsel for the Petitioners, and Mr. Karceski has kindly allowed me to advise you that he does not object to this request. Mr. Karceski and I are hopeful that we can coordinate the rescheduling of the matter with your offices. I will gladly assume responsibility for the coordination of the rescheduling of the matter if you are inclined to act favorably on this request.

Timothy M. Kotroco, Director
William J. Wiseman, III, Zoning Commissioner
July 27, 2009
Page Two

I thank you for your kind attention to this matter.

Very truly yours,


Richard C. Burch

RCB/tvj

cc: David A. Karceski, Esquire (Hand Delivery)
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

Teresa Moore, Executive Director ✓
Valleys Planning Council
PO Box 5402
Towson MD 21285-5402

Richard Lehnert
707 Old Belfast Road
Sparks, Maryland 21152

7-28 Bice spoke to
Tim's secretary (Tim on
vacation) & advised that
my. should be given.
She is very nice, to Don
Rosen. I called Richard
Burch & advised him
above. Also both
parties above were informed
that if my. was granted -
Bice advised with (sign)
should request postmortem
or otherwise.
Dario

MUDD, HARRISON & BURCH, L.L.P.

ATTORNEYS AT LAW
401 WASHINGTON AVENUE
SUITE 900

TOWSON, MARYLAND 21204-4835

410 828 1335

FAX 410 828 1042

JOHN E. MUDD
(1928-2003)

T. ROGERS HARRISON
(1949-1995)

RICHARD C. BURCH *
DOUGLAS W. BISER *
ANDREW JANQUITTO * *
MATTHEW P. LALUMIA *

JONATHAN E. C. MAY *

October 14, 2010

* MEMBER OF MARYLAND BAR

* MEMBER OF DISTRICT OF COLUMBIA BAR

HAND DELIVERY

Theresa R. Shelton, Administrator
County Board of Appeals of Baltimore County
Jefferson Building
105 West Chesapeake Avenue – Suite 203
Towson, Maryland 21204

RECEIVED

OCT 14 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

**Re: In the matter of: C. Richard Lehnert, Legal Owner
Cellco Partnership/Verizon Wireless, Petitioners
700 Belfast Road
Case No. 09-322-X**

Dear Ms. Shelton:

Please accept this correspondence as a brief response on behalf of my clients, The Valleys Planning Council, Inc., and Thomas F. Mullan, III, to the Memorandum in Support of New Cingular Wireless PCS, LLC's Standing to Proceed on Appeal and Protestant's Memorandum filed on behalf of Holly Cumberland.

Distilled to its simplest form, AT&T in its memorandum asserts that it has standing because it has a leasehold interest on the subject property that cannot be fulfilled if the Zoning Commissioner's decision stands. In support of its position, AT&T attaches what it characterizes as a "Lease Agreement" dated November 20, 2009, between it and C. Richard Lehnert, the owner of the subject property.¹

AT&T's position is fundamentally flawed for several reasons. The agreement between AT&T and C. Richard Lehnert dated November 20, 2009, is not currently an enforceable "lease agreement" under which AT&T has any obligation to fulfill. The agreement is an "Option and Lease Agreement" that is currently in the "option stage." As clearly reflected by paragraph 1 (c) of the Option and Lease Agreement, AT&T currently has an option to proceed with a lease, which extends for an initial term of one (1) year commencing on the Effective Date (November 20, 2009). The initial term of the option is due to expire on November 19, 2010. There is nothing in AT&T's filing which demonstrates or even suggests that the initial one year option period was renewed or extended in accordance with the terms of paragraph 1 (c) or that AT&T has exercised the option and thereby created a tenancy. AT&T has no obligation to exercise the option; AT&T has no obligation to extend the option; and Mr. Lehnert has no ability to force or cause AT&T to exercise the option or extend the option. As reflected by the terms of paragraph 3(a) of the Option and Lease Agreement, the initial lease term will not commence unless or until

¹ The document which was attached to AT&T's Memorandum as Exhibit 1 is incomplete in that it contains no financial terms. It appears that AT&T redacted the document in order to obscure the financial terms or that the document is not supported by consideration.

AT&T exercises the option in writing. In short, there is no "lease" until the option is exercised. At the moment, AT&T is not a tenant and has no rights or obligations as a tenant under its Option and Lease Agreement with Mr. Lehnert.

Additionally, AT&T is free to terminate the agreement pursuant to the terms of paragraph 6. Under paragraph 6(b) AT&T reserved the right to terminate the agreement if it was unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or any other governmental authority necessary for the construction or operation of its communication facility. Notwithstanding that the option period is soon to expire, AT&T has yet to seek the necessary approvals by filing a petition for special exceptions with the Zoning Commissioner (who, unlike the Board of Appeals, is vested with original jurisdiction to entertain any such petition). Furthermore, AT&T may terminate the Option and Lease Agreement if it determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable. In short, AT&T has no obligation to proceed with the Option and Lease Agreement and, to date, it has elected not to proceed.

The date of execution of the Option and Lease Agreement is also noteworthy. The document became effective on November 20, 2009, the date on which it was executed by Mr. Lehnert and a representative of AT&T. It was executed after Mr. Lehnert and AT&T had every reason to know that the Zoning Commissioner was disinclined to allow for more than one telecommunications facility on the Lehnert property. Mr. Lehnert appeared at the October 14, 2009, hearing before the Zoning Commissioner. At that time, Mr. Lehnert obviously had no agreement with AT&T. During his testimony, Mr. Lehnert indicated that he intended to execute leases for three (3) towers on his property. At the conclusion of Mr. Lehnert's testimony, the Zoning Commissioner told Mr. Lehnert in no uncertain terms that he was disinclined to allow for more than one (1) tower, if he allowed a tower at all. Restriction No. 7 in the Zoning Commissioner's Finding and Order of January 12, 2010, came as no surprise to anyone who was present at the hearing before the Zoning Commissioner during Mr. Lehnert's testimony, including counsel for AT&T. If AT&T and Mr. Lehnert elected to enter into any agreement regarding the placement and construction of a cell tower on Mr. Lehnert's property after Mr. Lehnert's appearance before the Zoning Commissioner, it did so despite the Zoning Commissioner's admonition. In any event, AT&T has yet to file a petition for special exception in an effort to secure the authority to construct a tower on the Lehnert property; it has never sought to convince the Zoning Commissioner that he should grant it the right to construct the facility on the Lehnert property. Contrary to AT&T's position, the fact that hearings before the Board of Appeals are "de novo" does not vest the Board with original jurisdiction to entertain AT&T's effort to seek affirmative relief.

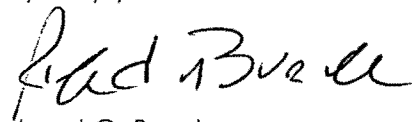
With respect to Ms. Cumberland, the analysis begins and ends with the simple fact that Ms. Cumberland did not file an appeal. While she would certainly be able to attend and even participate as a witness in any contested hearing before the Board of Appeals, she cannot effectively "force a hearing" when the proper parties before the Board of Appeals have elected to compromise in an attempt to resolve their differences and obviate the need for a contested hearing.

Theresa R. Shelton, Administrator
October 14, 2010
Page 3

Lastly, my clients, The Valleys Planning Council, Inc. and Thomas F. Mullan, III, adopt the arguments and authorities advanced by The Office of People's Council and Verizon. Please excuse the informality of this response, but time does not permit for a formal memorandum as I have to be on the West Coast for the next several days. I enclose three (3) additional copies of this correspondence for members of the panel, Messrs. Grier, Crizer and Belt.

Thank you for your kind attention to this matter.

Very truly yours,



Richard C. Burch

RCB/tvj

cc: Jason M. St. John, Esquire
Arnold E. Jablon, Esquire
Carole S Demilio, Esquire
J. Neil Lanzi, Esquire
Theresa Moore, Executive Director
Thomas F. Mullan, III

LAW OFFICES
PETER G. ANGELOS
A PROFESSIONAL CORPORATION
ONE CHARLES CENTER
100 N. CHARLES STREET
22ND FLOOR
BALTIMORE, MARYLAND 21201-3804
(410) 649-2000 (800) 252-6622

OTHER OFFICES:
CUMBERLAND, MARYLAND
TOWSON, MARYLAND
HARRISBURG, PENNSYLVANIA
BETHLEHEM, PENNSYLVANIA
PHILADELPHIA, PENNSYLVANIA
WILMINGTON, DELAWARE
KNOXVILLE, TENNESSEE

PETER G. ANGELOS (MD, DC, TN, NY)
DIRECT DIAL (410) 649-2121

October 12, 2009

RECEIVED

OCT 14 2009

William J. Wiseman, III, Zoning Commissioner
Baltimore County Zoning Office
105 West Chesapeake Avenue, Room 103
Towson, Maryland 21204

ZONING COMMISSIONER

**Re: Case No. 2009-0322-X
700 Belfast Road N/side of Belfast Road,
340± Feet N/East of Centerline of Old Belfast Road
8th Election District – Third Councilman District**

Dear Commissioner Wiseman:

This correspondence is intended to convey my strong opposition to the placement of a wireless telecommunication tower on the ridge of the property known as 700 Belfast Road. The bases for my objection to the placement of a cell tower at this site are summarized as follows:

(a) The construction of a tower at this site would be extremely detrimental to the general locality and surrounding area involved. As you know, the proposed site is within the Western Run-Belfast National Historic District which is dedicated to the preservation of the agricultural, architectural, scenic and historic resources within the District as well as those adjacent communities that enjoy undisturbed scenic views and scenic corridors. As you may know, I own and reside at Marathon Farms which is slightly north of the subject site. My property enjoys a beautiful and an undisturbed scenic view into the District;

(b) The proposed tower at the Belfast Road site is, in my view, inconsistent with the clear goals and policies of the Baltimore County Masterplan 2010, which strongly emphasizes the need to protect the County's scenic views, scenic routes and scenic resources. Marathon Farms is depicted in the Baltimore County Masterplan 2010 as one of the County's scenic resources. As I am sure you know, both I-83 and Belfast Road are designated as scenic routes. I also note that the placement of a tower at the Belfast Road location would be inconsistent with the Masterplan, whose goals and policies place strong emphasis on the need to protect the County's historic resources;

William J. Wiseman, III, Zoning Commissioner

October 12, 2009

Page 2 of 3

(c) The placement of a cell tower at the Belfast Road location would have a negative visual impact upon the Western Run-Belfast Historic District and the surrounding scenic view sheds;

(d) The construction of a cell tower at the Belfast Road location would constitute an unwarranted visual intrusion of the long-preserved and bucolic scenic views along I-83;

(e) The proposed tower would compromise substantially the current unobstructed view of the natural landscape along the ridge upon which the proposed tower would sit (particularly during those months when the natural trees are without foliage);

(f) The subject site and its ridgeline are currently free of any visual clutter. A stealth tower extending substantially above the tree line along a wooded ridge and hillside will create a visual disturbance and interruption to the otherwise natural flow of the landscape and will ruin an otherwise pristine scenic view that Baltimore County and the local residents and communities have worked diligently to protect. As you know, the 700 Belfast Road property is zoned RC-2. It is in close proximity to a significant number of lots, parcels and farms (including my farm) that have been dedicated in perpetuity for agricultural and/or conservation purposes. The placement of a cell tower at the proposed site would substantially compromise the effort to preserve and protect properties for agricultural and conservation purposes. Furthermore, as you know, resource conservation zones are intended to protect resources from the compromising effects of development, and the placement of a tower at the proposed site would be incompatible with the primary agricultural uses in the surrounding area;

(g) I share the concerns of members of the community (and particularly the concerns of adjacent and nearby property owners) that the construction of a tower at the proposed site would have a severe adverse impact upon their properties and their property values; and,

(h) Finally, the need to preserve, protect and maintain the integrity of the National Historic District, the scenic views and vistas, as well as the properties that have been placed in conservancy far outweighs the desire of Verizon to locate a cell tower on a site simply to meet its alleged commercial needs and objectives. There is nothing contained within the zoning regulations and/or the Masterplan 2010 that remotely suggests that rural conservation areas and historic districts should be compromised, if not destroyed, to accommodate the construction of a cell tower that

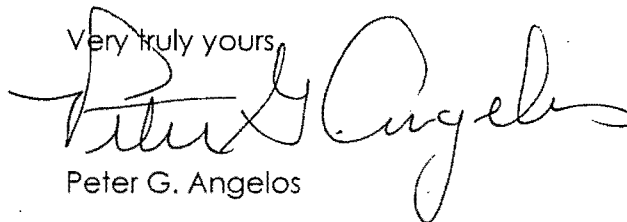
William J. Wiseman, III, Zoning Commissioner
October 12, 2009
Page 3 of 3

nothing contained within the zoning regulations and/or the Masterplan 2010 that remotely suggests that rural conservation areas and historic districts should be compromised, if not destroyed, to accommodate the construction of a cell tower that is grossly out of scale, design and aesthetic value from the surrounding environment. Furthermore, I question the real need for the tower at this location. My cell service is more than adequate at all hours of the day whether I am at my farm or on any road or highway in the area.

I respectfully suggest that Verizon's application for a special exception for the placement of a cell tower at the Belfast Road location be denied. I am forwarding this correspondence to Mr. Burch, counsel for Valleys Planning Council, with the request that he present it to you at the October 14, 2009 hearing as my schedule will not allow me to attend that hearing. I have also asked Mr. Burch to provide a copy of this correspondence to Mr. Jablon, counsel for Verizon.

Thank you for your consideration of my thoughts and position regarding this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Peter G. Angelos". The signature is fluid and stylized, with the first name "Peter" and last name "Angelos" clearly legible.

Peter G. Angelos

cc: Arnold C. Jablon, Esquire
Richard C. Burch, Esquire

AROUND THE REGION

87-foot silo design OK'd for phone tower

By Arthur Hirsch

ARTHUR.HIRSCH@BALTSUN.COM

1 Verizon Wireless has been given permission to put up a new cell phone tower up to 87 feet tall in rural northern Baltimore County, but only if it is disguised as a silo, not a pine tree as originally proposed. A lawyer for a group opposing the tower said he expects to appeal the ruling.

In a 16-page decision released Wednesday, County Zoning Commissioner William J. Wiseman III wrote that he was not persuaded by opponents' arguments that the proposed pine tree tower would hurt property values or scenic views in the Sparks-Glencoe area, but this was one of those occasions when he "must choose an alternative that seems, not right, but simply less wrong."

He granted the "special exception" for the tower on land owned by Richard Lehnert in a field near Belfast Road and Interstate 83 if it is built to look like a silo "painted in a brick or terra cotta color."

Lehnert said he was unhappy years ago with the proposal for a silo design, which he considers more conspicuous than the pine tree.

"It's going to stand out," said Lehnert. "What you've got is a sore thumb sticking

up. Look around here and try to find me an 80-foot silo."

The "pine tree" proposal was opposed by neighbors and by the Valleys Planning Council Inc., a preservation group. The organization's lawyer in the case, Richard C. Burch, said he was "disappointed that any cell tower in any form, disguised or otherwise" had been approved. He added that a silo "at first blush ... does look less hideous than the stealth monopine."

Asked about the next step, he said he considered it "more likely than not an appeal will be pursued."

The council's executive director, Teresa Moore, said she had not seen the ruling Wednesday, but she said her group originally opposed a 120-foot silo tower, and the 87-foot version also seemed beyond the bounds of what you would commonly see on local farms. She said there is one cell phone tower "silo" in the area the council represents, but that one is about 40-feet tall — closer to the height of real silos in the county.

As of the fall, there were 504 cell tower locations in the county, including one built into a chimney, another in a church steeple and one masquerading as a flagpole. The pine tree proposed by Verizon in this case would have been the county's first in that design.

MARYLAND

Neighbors oppose cell phone 'tree'

Faux fir off Belfast Road might stick out like a sore thumb

By Arthur Hirsch

ARTHUR.HIRSCH@BALTSUN.COM

This wouldn't be just any pine tree.

This pine tree would be the first of its kind in Baltimore County, poking its head a smidgen above other trees, its foliage and trunk immune to blight, rot and insect attack, its branches shedding no pine cones.

Some of the neighbors are not happy about the prospect of such a tree standing in a rural area off Belfast Road, because this tree is really what's known in industry parlance as a "monopine" or "stealth application" — an 80-foot-tall cell phone tower in arboreal disguise.

The quest to balance the demands of growing legions of cell phone, BlackBerry and iPhone customers with the concerns of those who live near signal towers continues apace, as wireless companies take creative steps to boost coverage. In Baltimore County — where the information technology chief says inquiries about cell towers are running hot — towers masquerade as flagpoles and a silo, they hide in a church steeple and soon will be built into a chimney.

So far, though, no "trees."

The Valleys Planning Council — an organization devoted to protecting a 130-square-mile rural expanse in northern Baltimore County — does not want to see an 80-foot faux conifer in Sparks-Glencoe become the first. The group isn't opposed to cell towers per se, even those in fake trees.

In this case, however, the tree/tower proposed by Verizon Wireless is considered too tall and out of place, enough of a problem that the group has hired a lawyer to challenge the proposal before the zoning commissioner, who must approve the project. A hearing on the case started this week and is expected to resume next month.

"This is a natural, historic district," said lawyer Richard C. Burch, representing the council. "That by definition is a historical resource as well as a scenic resource," and recognized in the county's master plan as worthy of protection, he said. The tower masquerading as a tree would not serve that goal, he said.

"Have you seen one of these things? They're ugly as sin," said Burch. "Once you see it, it takes over the landscape."

Burch also challenges the need for a tower at that spot, as some neighbors say their cell phone service is fine as it is.

Verizon arguing that the tower would fill a gap in signal coverage, insists the "monopine" would blend in with surroundings.

"Careful consideration was given to natural screening" in finding a place to put up the tower, Barbara Pivec, a real estate manager for Verizon Wireless, testified at the zoning hearing this week. She said the planned spot is "one of the best in terms of natural screening and visual impact."

The spot sits between a cornfield and a stand of 60- to 70-foot poplars, maples, pines and hollies atop a slope on land owned by Richard Lehnert, who can't see what the fuss is about.

"Those trees up there are 100 years old," said Lehnert, who has lived here for more than 30 years. "Sticking another tree in it is not going to do a doggone bit of harm."

He said he's been talking with wireless real estate scouts for years — first as a member of a Sparks-Glencoe area association, then as a landowner. He said Verizon liked his land in part because the elevation — about 135 feet above nearby Interstate 83 — means it can use a shorter tower.

The woods and hilly terrain in this part of the county present obstacles to cell phone signals. The matter is complicated further for wireless carriers as the county's preference is for several carriers to share the same pole whenever possible to curb the total number, which now stands at 504 tower locations in the county in all, but in a few northwest, southwest and eastern ZIP codes. The more carriers on the pole, the taller it has to stand, the taller the tower, the more likely it is to stir local protest.

In the Belfast Road case, Verizon is the applicant before the zoning commissioner, but AT&T and T-Mobile also have proposals before the county for that location.

Rob Stradling, director of the county's Office of Information Technology, said "we've seen a dramatic uptick" in the number of inquiries about tower locations, although he said only a fraction of these materialize as formal proposals. "People want their smart phones, BlackBerries. ... There's a lot of bandwidth that has to be put out," meaning not only demand for more towers, but more equipment on each tower.

His department's Tower Review Committee has given its blessing to the Verizon proposal, while stating a preference for all three carriers on one tower. At the 80-foot height, that would put two of the three below the tree line, as the separate antennas are spaced 10 feet apart.

As the land sits in the Western Run/Belfast Valley National Register Historic District, the proposal was reviewed for the Maryland Historical Trust by a consulting firm, which found the tower would have "no adverse effect in historic properties."

Thomas Mullan of Sparks-Glencoe was thinking in terms of the impact on the scenic terrain, ersatz foliage and all.

"It's going to stick above the tree line," said Mullan. "When the leaves are gone [on other trees] it's going to look like exactly what it is: a cell phone tower."

Arnold E. Jablon
Of Counsel

t 410.494.6298
f 410.821.0147
ajablon@venable.com

December 8, 2010

County Board of Appeals of Baltimore County
c/o Theresa R. Shelton, Administrator
Jefferson Building
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

Re: **Consolidated Cases before the Board of Appeals**
In the Matter of C. Richard Lehnert (Case No. 09-322-X)
In the Matter of Verizon Wireless – Belfast Road (Case No. CBA10-035)

Dear Mrs. Shelton:

I am writing to withdraw my appearance as counsel for Petitioner Cellco Partnership d/b/a Verizon Wireless in both of the above-referenced cases. Patricia Malone of this office will continue to represent Verizon Wireless.

Very truly yours,

Arnold Jablon / PM

Arnold Jablon
AJ/bl

cc: Richard Burch, Esquire
Jason St. John, Esquire
Greg Rapisarda, Esquire
Peter Max Zimmerman, Esquire

J. NEIL LANZI, P.A.
ATTORNEY AT LAW
PNC BANK BUILDING, SUITE 617
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(410) 296-0686

FAX: (410) 296-0689

E-Mail: nlanzi@lanzilaw.com

J. Neil Lanzi

OF COUNSEL
Fred L. Coover*

*Also Admitted in District of Columbia

COLUMBIA
Suite 420, Parkside Bldg
10500 Little Patuxent Parkway
Columbia, Maryland 21044-3563

Reply to Towson

September 24, 2010

Theresa R. Shelton, Administrator
County Board of Appeals of Baltimore County
Jefferson Building
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

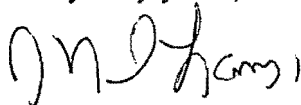
Re: Case No. 09-322-X and CBA 10-035

Dear Mrs. Shelton:

Enclosed is an Entry of Appearance on behalf of Holly Cumberland, Protestant/Interested Person in the above captioned case.

Thank you for your attention to this matter.

Very truly yours,



J. Neil Lanzi

JNL\mlr

cc: Mrs. Holly Cumberland
Arnold E. Jablon, Esquire
Richard C. Burch, Esquire
Jason St. John, Esquire
Carole S. DeMilio, Deputy People's Counsel

RECEIVED
SEP 24 2010

BALTIMORE COUNTY
BOARD OF APPEALS

C. RICHARD LEHNERT
as Legal Owner
Cellco Partnership
dba Verizon Wireless
700 Belfast Road

Petitioners

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* 09-322-X, CBA 10-035

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of J. Neil Lanzi for Holly Cumberland, Protestant/Interested Person in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter.



J. NEIL LANZI,
Counsel for the Protestant
409 Washington Avenue, Suite 617
Towson, Maryland 21204
(410) 296-0686

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September, 2010, a copy of the foregoing Entry of Appearance was mailed to Arnold Jablon, Esquire, Venable LLP, Suite 500 210 W. Pennsylvania Avenue, Towson, MD 21204, Richard C. Burch, Esquire, Mudd, Harrison & Burch LLP, Suite 900, 401 Washington Avenue, Towson, MD 21204, Jason M. St. John, Esquire, Saul Ewing LLP, Lockwood Place, 500 E. Pratt Street, Baltimore, MD 21202 and Carole S. DiMilio, Deputy People's Counsel for Baltimore County, 105 West Chesapeake Avenue, Second Floor, Towson, Maryland 21204.


J. NEIL LANZI

RECEIVED

SEP 24 2010

BALTIMORE COUNTY
BOARD OF APPEALS

Bee - 10/8

File

Copy to
Annel
this morning

del

MATTER OF:

1st Road

Belfast Road, 340± feet

centerline of Old Belfast Road

on District - 3rd Councilmanic District

* BALTIMORE COUNTY

* ZONING COMMISSION

* Case No. 2009-0322-X

* * * * *

SUMMONS/SUBPOENA DUCES TECUM

To: C. Richard Lehnert
707 Old Belfast Road
Sparks, Maryland 21152

You are commanded to attend and testify at the zoning hearing in the above-captioned matter on Wednesday, October 14, 2009 at 9:00 a.m. at the County Office Building, 111 W. Chesapeake Avenue, Room 106, Towson, Maryland 21204 and to produce the following documents:

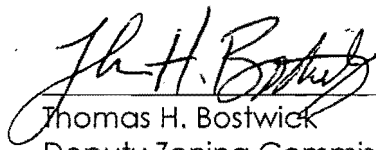
1. All leases between you (and/or your spouse) and Verizon (or any entity on behalf of Verizon), AT&T and/or T-Mobile relating to the property at 700 Belfast Road, Sparks, Maryland 21152.

2. All correspondence and communications between you and Verizon (or anyone on behalf of Verizon), regarding the proposed cell tower on the property at 700 Belfast Road from the earliest contact to date.

3. All permits issued by Baltimore County, the State of Maryland or the United States Government which in any way refer or relate to the construction or installation of the access road and culvert which traverse the property and stream at 700 Belfast Road, Sparks, Maryland 21152.

4. Any and all correspondence between you, Holly Cumberland and/or Herbert Davis relating to the impact the placement of a cell tower at or near the properties on Belfast Road have on the value of those properties.

5. All documents relating to any concerns or objections raised by you with respect to the proposed construction, installation and/or placement of sound barriers along I-83 at or near Belfast Road.

 10-5-09
Thomas H. Bostwick
Deputy Zoning Commissioner

This Summons/Subpoena Duces Tecum is requested by Richard C. Burch, Esquire, Mudd, Harrison & Burch, L.L.P., 401 Washington Avenue, Suite 900, Towson, Maryland 21204, (410) 828-1335.

Arnold

10/20 2 '5

before delib
will want to talk

At&+ is in on settlement
so they don't need to delib on
At&+ only on Cumberland.

Jason St. John

332-8898

10/20 1:30^W

~ on verge of resolution

~ At, Valley's Planning & Verizon

~ settle

~ Approve

briefing

~ 9:00?

~ ideal ~ to let standing go for at&+ - delib
Cumberland
Standing

10/21

Counsel to send executed Agreement

Valleys

AT&T

Lehnert

Verizon

Hearing
outcome

Proposed Order to be presented

will need delib once proposed Order -

Will issue an order w/ regard to Standing
from today's delib - Andy to write
Order on Standing

Delib outcome
AT&T moot
Cumberland - No

From: "Hirsch, Arthur" <arthur.hirsch@baltsun.com>
To: "Debra Wiley" <dwiley@baltimorecountymd.gov>
Date: 1/13/2010 12:59 PM
Subject: RE: Belfast Road Cell-Tower Case - 2009-0322-X

Great, thank you for keeping me in mind...

-Arthur

-----Original Message-----

From: Debra Wiley [mailto:dwiley@baltimorecountymd.gov]
Sent: Wednesday, January 13, 2010 12:40 PM
To: Hirsch, Arthur
Subject: Fwd: Belfast Road Cell-Tower Case - 2009-0322-X

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

From: Debra Wiley
To: arthur.hirsch@baltsun.com
Date: 1/13/2010 12:39 PM
Subject: Fwd: Belfast Road Cell-Tower Case - 2009-0322-X
Attachments: Belfast Road Cell-Tower Case - 2009-0322-X

*Resent
1/13
Jeb.*

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

incorrect
Deb to resend w/ "0"

From: Debra Wiley
To: arthur.hirsch@baltosun.com
Date: 1/12/2010 12:48 PM
Subject: Belfast Road Cell-Tower Case - 2009-0322-X
Attachments: 2009-0322-X.doc; 2009-0322-X-SiloExhibit.jpg

Per your agreement with Bill Wiseman, please find attached the Order and Exhibit that will be distributed today.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

Bill Wiseman - RE: Belfast Road Cell-Tower

From: "Hirsch, Arthur" <arthur.hirsch@baltsun.com>
To: "Bill Wiseman" <wwiseman@baltimorecountymd.gov>
Date: 1/11/2010 10:52 AM
Subject: RE: Belfast Road Cell-Tower

Mr. Wiseman,
Indeed, I would. And thank you for the head's up.

Arthur

From: Bill Wiseman [mailto:wwiseman@baltimorecountymd.gov]
Sent: Monday, January 11, 2010 10:50 AM
To: Hirsch, Arthur
Subject: Belfast Road Cell-Tower

Arthur-

I'm releasing my Order on this case you wrote about back on 9/28/09.

Any interest in receiving a copy?

William J. Wiseman, III
Zoning Commissioner
Jefferson Building, Suite 103
105 West Chesapeake Avenue
Towson MD 21204

Ph: 410-887-3868 Fax: 410-887-3468
wwiseman@baltimorecountymd.gov

700 Belfast Rd



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw1.1d)

Go Back
View Map
New Search

Account Identifier: District - 08 Account Number - 0808067680

Owner Information

Owner Name: PETERSON HENRY BARRITT, JR
PETERSON GARY B, ET AL
Use: AGRICULTURAL
Principal Residence: YES
Mailing Address: 15315 WHEELER LA
SPARKS MD 21152
Deed Reference: 1) / 8990/ 485
2)

Location & Structure Information

Premises Address: 15315 WHEELER LA
Legal Description: 74.935 AC
ES WHEELER LA
500FT S OF BELFAST RD

15216 WHEELER Lane

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
33	6	25						2	Plat Ref:

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1956	6,412 SF	74.93 AC	05

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	STUCCO

Value Information

	Base Value	Value As Of 01/01/2008	Phase-in Assessments As Of 07/01/2009	As Of 07/01/2010	PREFERENTIAL LAND VALUE INCLUDED IN LAND VALUE
Land	196,610	391,610			
Improvements:	905,300	908,440			
Total:	1,101,910	1,300,050	1,234,002	1,300,050	
Preferential Land:	9,110	9,110	9,110	9,110	

Transfer Information

Seller:	Date:	Price:
HOLLYDAY GUY T O	12/04/1991	\$875,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 8990/ 485	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

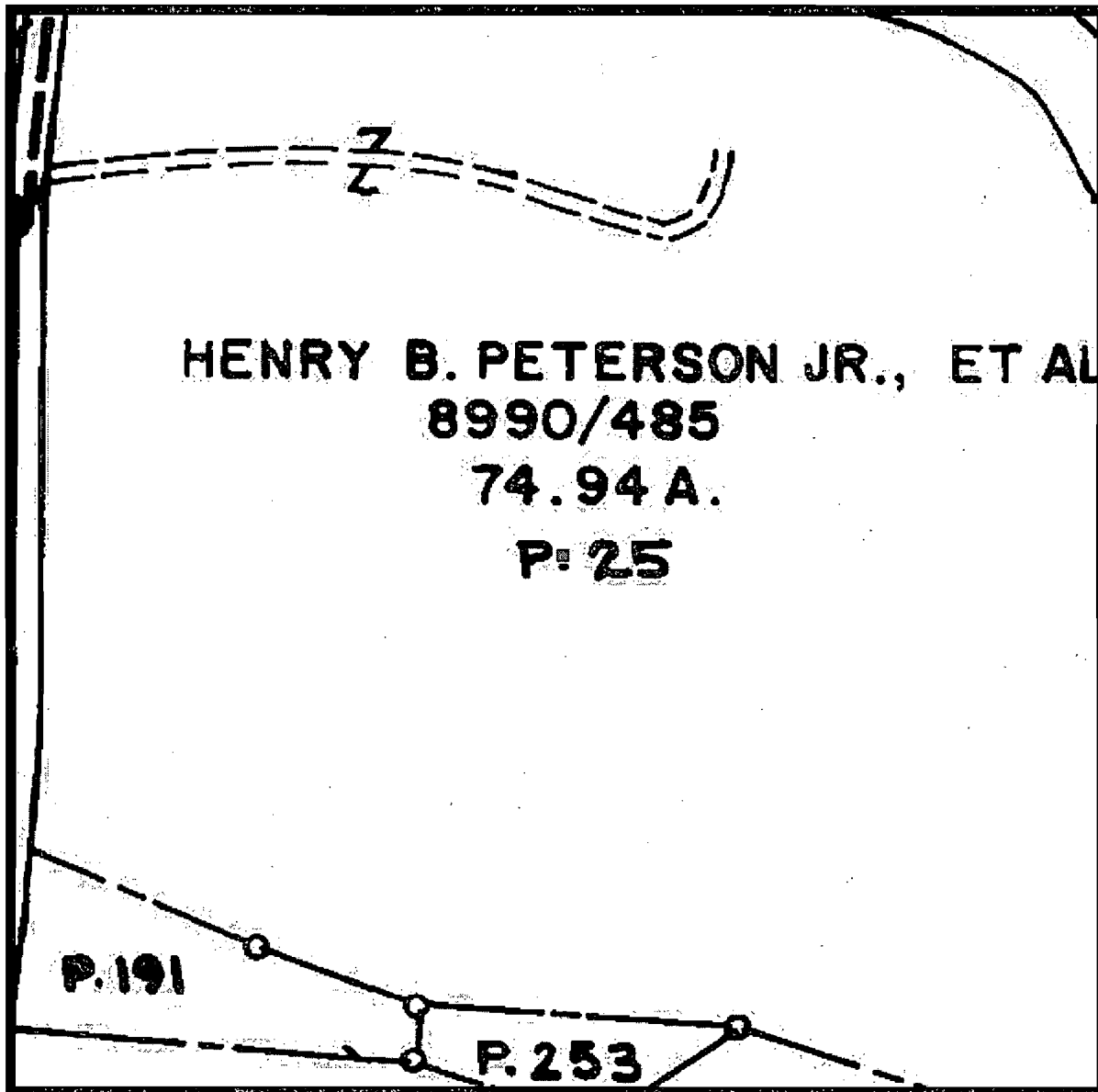
Special Tax Recapture:
AGRICULTURAL TRANSFER TAX



**Maryland Department of Assessments
and Taxation
BALTIMORE COUNTY
Real Property Data Search**

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District - 08 Account Number - 0808067680



Property maps provided courtesy of the Maryland Department of Planning ©2008.
For more information on electronic mapping applications, visit the Maryland Department
of Planning web site at www.mdp.state.md.us/webcom/index.html



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
 Real Property Data Search (2007 vw1.1d)

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Account Identifier: District - 08 Account Number - 1700004707

Owner Information

Owner Name: LEHNERT C RICHARD **Use:** AGRICULTURAL
Mailing Address: 707 OLD BELFAST RD **Principal Residence:** NO
 SPARKS MD 21152 **Deed Reference:** 1) /11208/ 557
 2)

Location & Structure Information

Premises Address **Legal Description**
 BELFAST RD 50.8733AC PRT LT 5
 AT BALTO-HARRISBU
 LINDA C GREEN

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
28	19	38					5	2	Plat Ref: 38/ 139

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		50.87 AC	05

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value	Phase-In Assessments			
		As Of	As Of	As Of		
		01/01/2008	07/01/2009	07/01/2010		PREFERENTIAL LAND VALUE INCLUDED IN LAND VALUE
Land	13,670	13,670				
Improvements:	0	0				
Total:	13,670	13,670	13,670	13,670		
Preferential Land:	13,670	13,670	13,670	13,670		

Transfer Information

Seller: LIKAKIS EFSTRATIOS K	Date: 09/08/1995	Price: \$292,000
Type: UNIMPROVED ARMS-LENGTH	Deed1: /11208/ 557	Deed2:
Seller: MEADOWCLIFF A NE W COVENANT CHURCH	Date: 03/17/1988	Price: \$335,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 7817/ 178	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 AGRICULTURAL TRANSFER TAX

Search Results

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Search

New

Search for Files and Folders

Search for files or folders named:
Type the file name here.

Containing text:
wireless telecommunications tower

Look in:
Shared on 'Jbnw\Vol1\Zoning' (S:)

Search Now Stop Search

Search Options <<

☐ Date
☐ Type
☐ Size
☒ Advanced Options

Indexing Service is currently disabled.

Search for other items:
Files or Folders
Computers
People
Internet

Name	In Folder	Size	Type	Date Modified
02-159A.doc	S:\Bette's Stuff\BJS Orders FY 2...	34 KB	Microsoft Word Doc...	01/04/02 10:20 AM
02-323SPH.doc	S:\Bette's Stuff\BJS Orders FY 2...	28 KB	Microsoft Word Doc...	04/08/02 4:05 PM
03-109SPH.doc	S:\Bette's Stuff\BJS ORDERS FY...	29 KB	Microsoft Word Doc...	11/08/02 2:34 PM
03-454SPHX.doc	S:\Bette's Stuff\BJS ORDERS FY...	30 KB	Microsoft Word Doc...	06/25/03 10:29 AM
04-017SPH.doc	S:\Bette's Stuff\BJS ORDERS FY...	30 KB	Microsoft Word Doc...	10/07/03 11:51 AM
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IX-760-PUD-StevensonTaylor...	S:\Bill's Stuff\PUDs	40 KB	Microsoft Word Doc...	10/15/08 10:23 AM
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07-400-SPHXA.DOC	S:\Bill's Stuff\wjwtOrders2007	29 KB	Microsoft Word Doc...	06/06/07 3:03 PM
07-506-X.DOC	S:\Bill's Stuff\wjwtOrders2007	29 KB	Microsoft Word Doc...	08/14/07 12:35 PM
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CASE 2009-0322-X LIST OF F...	S:\Bill's Stuff\wjwtOrders2009	26 KB	Microsoft Word Doc...	09/09/09 3:21 PM
ZC cases 2-20-09.doc	S:\PATTI\ZC hearing case descri...	45 KB	Microsoft Word Doc...	03/10/09 11:15 AM
ZC cases 7-29-09.doc	S:\PATTI\ZC hearing case descri...	35 KB	Microsoft Word Doc...	08/27/09 1:43 PM
ZC cases 8-13-09.doc	S:\PATTI\ZC hearing case descri...	42 KB	Microsoft Word Doc...	09/11/09 3:41 PM
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ZC hearings scheduled 6-13-0...	S:\PATTI\ZC hearing case descri...	69 KB	Microsoft Word Doc...	07/21/08 3:00 PM
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07-079-A.doc	S:\Shared\2007\Variances	32 KB	Microsoft Word Doc...	10/13/06 3:01 PM
08-084-A.doc	S:\Tom's Stuff\2008\Variances	54 KB	Microsoft Word Doc...	01/25/08 2:15 PM
09-182-SPHX Order on Recon...	S:\Tom's Stuff\2009\Special Hea...	34 KB	Microsoft Word Doc...	07/30/09 10:41 AM
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In Folder: S:\Shared\2006\Special Exceptions Type: Microsoft Word Document Size: 60.0 KB Date Modified: 06/16/06 4:07 PM

start Novell GroupWise - M... wjwtOrders2010 Search Results Microsoft Word

3:29 PM

Thursday, Sep 17, 2009 03:30 PM

§ 32-4-416. PRESERVATION OF NATURAL FEATURES.

(a) *Preservation of features.* Each Development Plan shall preserve natural features, including watercourses, waterfalls, beaches, and significant vegetation.

(b) *Duty to protect habitats.* The county shall require adequate protection of any known habitat of an endangered species.

(1988 Code, § 26-278) (Bill No. 29-95, § 1, 5-21-1995; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004; Bill No. 26-07, § 1, 4-29-2007)

§ 32-4-417. SCENIC VIEWSHEDS.

How area becomes designated

The Planning Board shall:

(1) Provide to the Zoning Commissioner a catalogue of the elements for each scenic viewshed in the Master Plan;

(2) Identify the scenic route or view, as designated in the Baltimore County Master Plan as either enclosed, expansive, focused or a combination; and

(3) Identify the aspects of the visual quality, unity of the elements, and integrity of the elements. (1988 Code, § 26-284) (Bill No. 121-01, § 3, 1-29-2002; Bill No. 75-03, § 28, 7-1-2004)

§ 32-4-418. STRUCTURES.

Structures, as defined in Title 7 of this article, identified on any of the lists referred to in § 32-4-223(8)(i), (ii) and (v) of this title are subject to the provisions of Title 7 of this article. (Bill No. 26-07, § 2, 4-29-2007)

SUBTITLE 5. RECLAMATION OF PROPERTY**§ 32-4-501. RECLAMATION PLAN.**

(a) *In general.* The owner of reclamation property may provide for the reclamation, use, and development of reclamation property by submitting a reclamation plan in accordance with this section.

(b) *Schematic plan required.* The reclamation plan shall set forth a conceptual schematic representation of the proposed use of reclamation property by means of maps, graphs, charts, or other written or drawn documents so as to enable the reviewing body to make a reasonably informed decision regarding the development.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: C. Richard Lehnert – Legal Owner 09-322-X and
Cellco Partnership/Verizon Wireless-Petitioners CBA-10-035

DATE: October 21, 2010

BOARD/PANEL: Wendell H. Grier
Andrew M. Belt
Edward W. Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. The issue of whether AT&T has standing as an Appellant for involvement in this matter; and
2. The issue of whether Holly Cumberland, individually, has standing as an Appellant for involvement in this matter.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board convened for a hearing on September 28, 2010 and was presented with the above issues of whether AT&T and Holly Cumberland had standing in this matter. The Board requested Memoranda outlining the arguments of the parties involved.
- Counsel for Verizon Wireless, Petitioners, C. Richard Lehnert, Legal Owner, Valleys Planning Council, Appellants, and AT&T, interested party, indicated to the Board prior to this deliberation that they have reached a proposed settlement in this matter and that the issue of standing with regard solely to AT&T is moot.
- The Board determined that Ms. Cumberland is a member of the Valleys Planning Council and participated in this matter before the Zoning Commissioner. Valleys Planning Council noted the appeal in this matter. Ms. Cumberland did not note an appeal as an individual. The question at issue then becomes whether participation in conjunction with a community association, and the association's appeal, determines that Ms. Cumberland had a *de facto* appeal.
- The Board reviewed Memoranda presented by Counsel in this matter. The Court of Special Appeals decision in *Dorsey vs. Bethel AME Church* has presented in Petitioner/Legal Owner's Memorandum. *Dorsey* indicates that an individual can tag along with an appeal by a community association but if/when the community association reaches an agreement with the property owner, the individual does not automatically have standing as an appellant. Individuals have the right to participate but they do not

necessarily have standing as an individual party to the matter unless they individually noted an appeal.

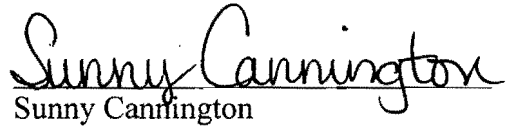
- Pursuant to discussions prior to this deliberation, the Board will not determine the issue of whether AT&T has standing in this matter.

DECISION BY BOARD MEMBERS: The issue of whether AT&T has standing is moot due to the proposed settlement. Holly Cumberland does not have standing as an individual party in this matter.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed that Holly Cumberland does not have standing as a party to this matter. The Board's decision with regard to AT&T's standing is Moot due to settlement negotiations.

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

Respectfully Submitted,


Sunny Cannington

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: C. Richard Lehnert – Legal Owner 09-322-X and
Cellco Partnership/Verizon Wireless-Petitioners CBA-10-035

DATE: January 11, 2011

BOARD/PANEL: Wendell H. Grier
Andrew M. Belt
Edward W. Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception to approve a wireless telecommunications tower and related facilities; and
2. Proposed Opinion and Order submitted by Counsel.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

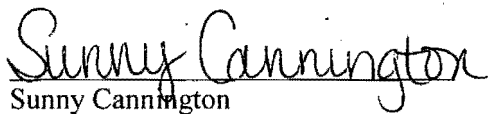
- The Board briefly discussed the history of this matter. The Board previously held a hearing and made a determination with regard to the standing of a neighbor in this matter. The remaining parties in this matter entered into a settlement agreement and submitted to the Board a proposed Opinion and Order.
- The Board discussed that the parties agreed to change the height from 87 feet to 89 feet and allow for piggybacking so that there is only one tower which can be used by two providers instead of two towers.

DECISION BY BOARD MEMBERS: The Board decided to accept the settlement agreement and the proposed Opinion as submitted.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to accept the settlement agreement and the proposed Opinion as submitted.

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

Respectfully Submitted,


Sunny Cannington

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Kristen Matthews, DPDM
File

DATE: February 17, 2010

FROM: William J. Wiseman, III
Zoning Commissioner

SUBJECT: Motion for Reconsideration - Case No. 2009-0322-X
(700 Belfast Road)

Please place this letter, the attached Motion and Exhibits in the case file and include copies to the Board of Appeals when you prepare the transmittal.

Thanks.

WJW:dlw

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE: April 18, 2011

TO: Arnold Jablon, Director
Permits, Approvals & Inspections

FROM: Sunny Cannington, Legal Secretary
Board of Appeals

SUBJECT: CLOSED APPEAL CASE FILES/CASES DISMISSED

The following cases have been closed as of the above date and are being returned to your office for storage.

<u>Case No:</u>	<u>Case Name:</u>
08-132-SPH	Christopher and Charlotte Oktavec
08-474-A	Joseph & Urszula Antonelli
09-234-SPHX	Restoring Life International Church
09-322-X	Cellco Partnership/Verizon Wireless-Petitioners; C. Richard Lehnert, LO
10-158-SPHA	Bear Creek Properties, LLC
10-217-A	Lubomir Todorov
11-002-X	Crossroads, LLC – LO; Bismarck Real Estate – Lessee

c: Michael Field, County Attorney

From: Debra Wiley
To: Duvall, David
Date: 10/15/2009 10:17 AM
Subject: Meeting Tapes

Hi Dave,

Per our telephone conversation, I have gathered Tapes 59, 61 and 62, Discs 1 through 3 and corresponding log sheets. As I understand, Richard Burch, Esq. will be requesting copies in reference to Case No. 2009-0322-X from the 9/22 and 10/14 hearings.

Also, I have gathered Tapes 58 and 60 and the corresponding log sheets from Hearing Room 104 located in the Jefferson Building.

These meeting materials are being placed today in our pick-up box for delivery to you.

Thanks for your usual cooperation.

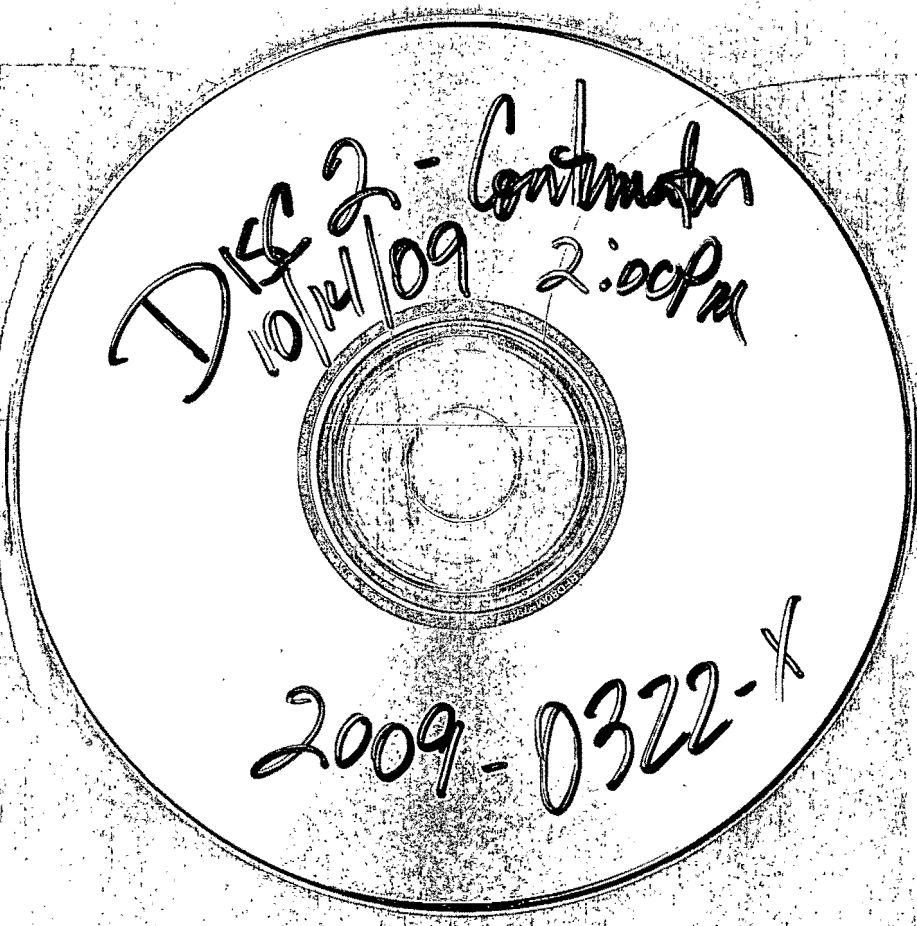
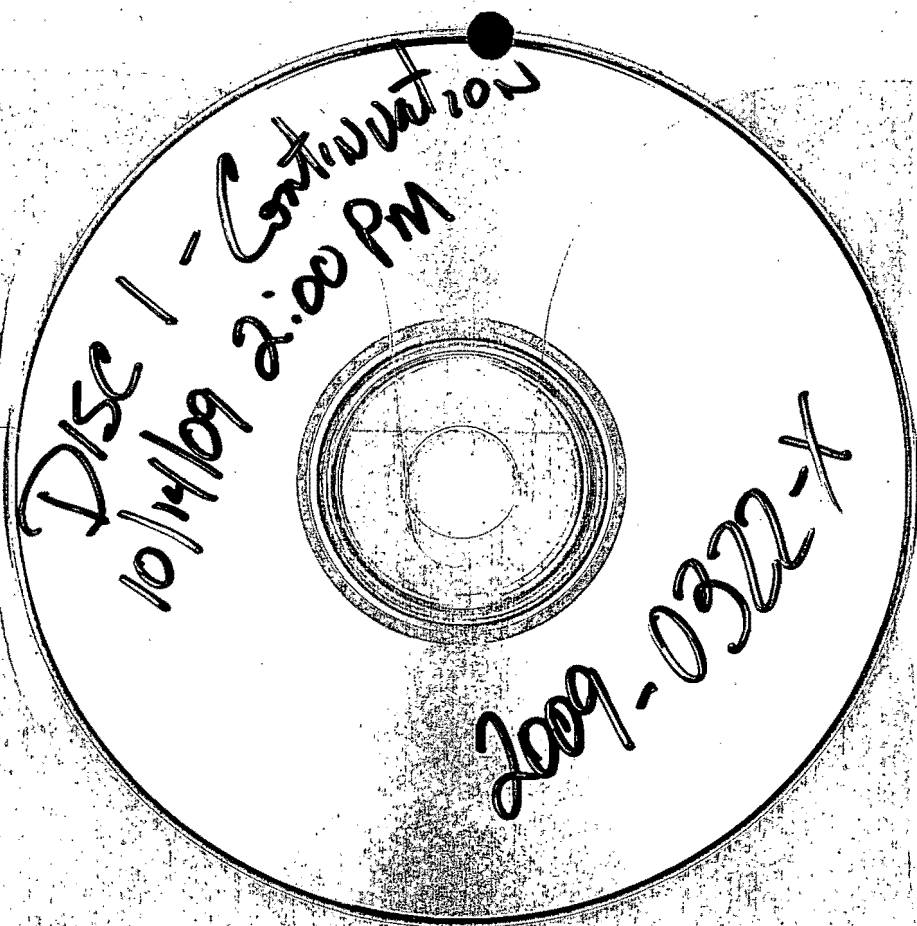
Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

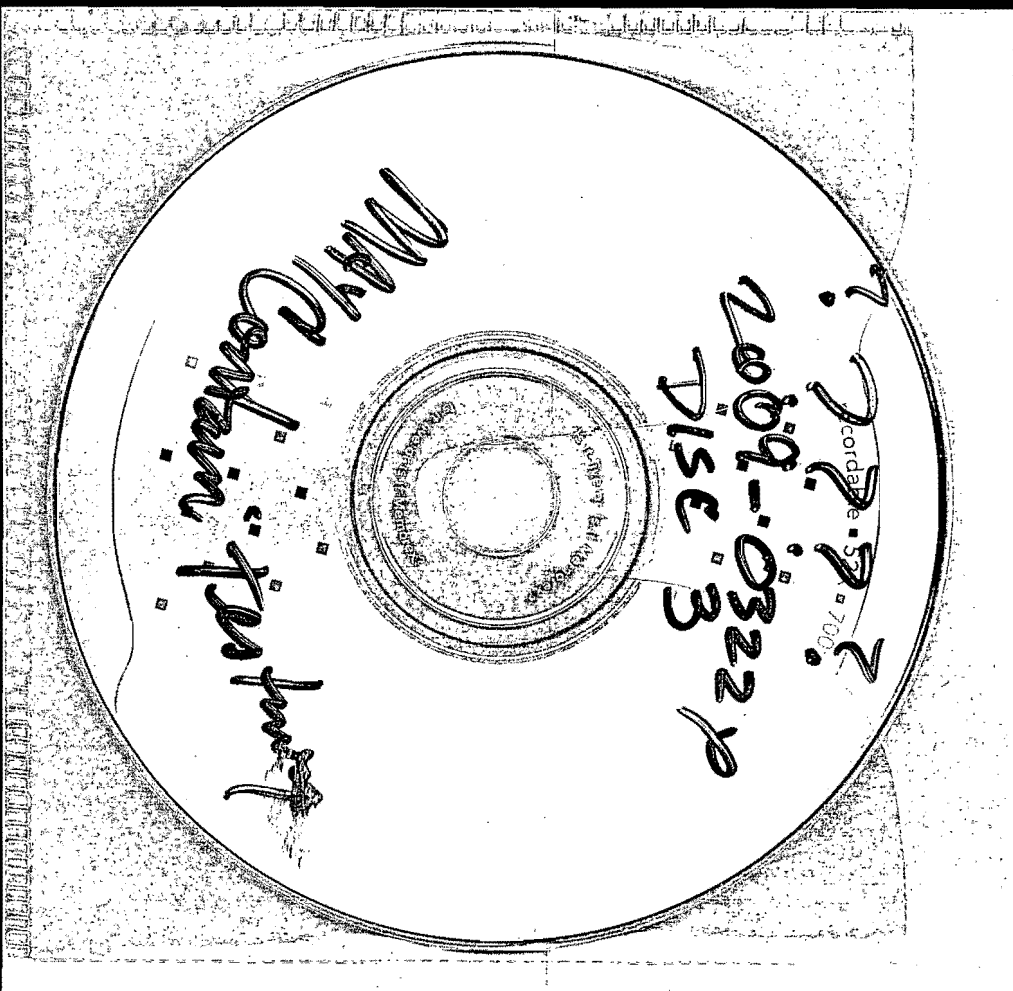
CC: Zook, Patricia

DATE	CASE NO.	START	END	SIDE	TAPE NO.
9-28-09	2010-0032-A 2009-0326-A	485	542	1	60
11	2010-0027 ^S H	000	027	2	60
9-29-09	2009-0264-SH	027	164	2	60
9-30-09	2010-0010-A	164	415	2	60
9-30-09	2010-0037-A	415	457	2	60
9-30-09	2010-0036-A	(Between 164 & 415)		2	60
9-30-09	2010-0038-A	457	530	2	60
10-2-09	2010-0043-SH	000	268	1	61
10-2-09	2010-0043-A	268	315	1	61
10-2-09	2009-0103-A	315	448	1	61
10-5-09	2010-0046-A	448	557	1	61
11	11	000	130	2	61
10-5-09	2010-0047-A	130	166	2	61
10-13-09	2010-0053-SH	166	313	2	61
10-14-09	2009-0322-X	313	END	2	61
(*) 11	11	000	490	1	62 (*)

(*) - Case resumed in Room 106 → 10/14/09 @ 2:00 PM

DATE	CASE NO.	START	END	SIDE	TAPE NO.
9-8-09	2009-0335 +0336-A	035	099	1	58
9-10-09	2009-0340-A	099	172	1	58
9-11-09	2009-0341-A 2009-0342-A	172	228	1	58
9-14-09	2010-0032-SPHA 2010-0033-SPHA	228	449	1	58
9-16-09	2010-0014 ^{SPH}	449	543	1	58
"	2010-0016 ^{SPHA}	000	134	2	58
"	2010-0039 ^{SPH}	134	390	2	58
9-18-09	2010-0018-SPHA	390	566	2	58
9-18-09	2010-0018-X	000	028	1	59
9-21-09	2009-0244 ^S _X	028	104	1	59
9-21-09	2010-0035-A	104	256	1	59
9-22-09	TAPE STARTS WITH 1ST WITNESS BARIS PIVEC 2009-0322-X	256	END	1	59
"	"	000	431 (TO BE CONTINUED)	2	59
9-23-09	2010-0015-SPHA	431	592	2	59
"	"	000	139	1	60
9-23-09	2010-0079-A	139	165	1	60
9-23-09	2010-0079-A	165	229	1	60
9-24-09	2010-0031-SPHA	229	413	1	60
9-28-09	2009-0326-A	413	485	1	60





CASE NAME 1100 Belfast Rd.
CASE NUMBER 2009-0322-X
DATE 9-22-09

[illegible]

PLEASE PRINT CLEARLY

CASE NAME 700 Belfast Rd.
CASE NUMBER 2009-0322-X
DATE 9/22/09

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
BRUCE DOAK	320 E. TOWSON TOWN BLVD	TOWSON MD 21286	
GERHOLD CROSS & ETZEL			
H. BARRITT PETERSON JR	15315 WHEELER LANE	SPARKS MD 21152	
K. Harmon	718 Belfast Rd.	21152	
TERESA MOORE	Valleys Planning PO Box 5402	TOWSON MD 21285	MOOREVPL @ comcast.
THOMAS WILLIAMS	1620 Cold Bottom Rd	Sparks 21152	
SPAWDING GOETZ	1522 COLD BOTTOM Rd	SPARKS MD 21152	
TODD Goetz	1522 Cold Bottom Rd	SPARKS MD 21152	
VALERIE WILLIAMS	15216 WHEELER LN.	SPARKS, MD 21152	
Renee Oliver	8 Hunt Farms Ct.	Sparks, MD 21152	rolver1 @ hotmail.com
MARY BETH HAAS	3001 CAVES RD	OWINGS MILLS MD 21117	
Charles ENSOR JR.	15801 Buffalo Run Rd.	Sparks, MD 21152	
Greg Rapisarda	500 E. Pratt St. Suite 500	Baltimore MD 21212	grapisarda@sbc.com
Richard C. Burch	Esq.		
CHRIS STEVART	2306 WESTERN RUN RD	BUTLER MD 21023	CSTEVARLT @ HARMONY BRANDS.VS.COM
Jack Dilla	543 PARK Ave	TOWSON MD 21204	
GEORGE R REW	17509 Prettyboy Dam Rd	PARKTON, MD 21120 9637	
Ken Goebel	15115 Wheeler Lane	SPARKS, MD 21152	
Debra Krans	1412 Gerber Lane	Sparks MD 21152	

CASE NAME 700 Belfast Rd.
CASE NUMBER 2009-0322-X
DATE 10/14/09

[illegible]

1700006142

NW 24-C

Pt. Bk. 38 Folio 139

1700004707

720

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718

2200027186

PDM # 080784

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8 ED

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BELFAST RD

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BELFAST RD

NW 23-C

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0808068541

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0813007020

0816015425

0804050680

0812022051

OLD BELFAST RD

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717

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12

14'

0813021977

2009-0132

IN THE MATTER OF: * BEFORE THE
C. RICHARD LEHNERT, Legal Owner * COUNTY BOARD OF APPEALS
Cellco Partnership/Verizon * OF
Wireless, Petitioners * BALTIMORE COUNTY
700 Belfast Road * Case No. 09-322-X
3rd Councilmanic District * September 28, 2010
CONSOLIDATED WITH *
IN THE MATTER OF: *
Verizon Wireless Belfast Road *
DRC No.: 102207C *

* * * * *

Excerpt argument of Carole S. Demilio, Esquire,
in the above-entitled matter which came on for hearing
before the County Board of Appeals of Baltimore County,
Hearing Room #2, Jefferson Building, 105 W. Chesapeake
Avenue, Towson, Maryland 21204, at 10 a.m., September 28,
2010.

* * * * *

Reported by: Carolyn E. Peatt

Page 2 1 BOARD MEMBERS: 2 3 WENDELL H. GRIER, Chairman 4 ANDREW M. BELT 5 EDWARD CRIZER, JR. 6 7 APPEARANCES: 8 ARNOLD E. JABLON, Esquire 9 PATRICIA A. MALONE, Esquire 10 On behalf of Petitioners 11 RICHARD C. BURCH, Esquire 12 On behalf of Valleys Planning Council 13 and Thomas Mullen 14 GREGORY E. RAPISARDA, Esquire 15 On behalf of AT&T 16 17 J. NEIL LANZI, Esquire 18 On behalf of Molly Cumberland 19 CAROLE S. DEMILIO, Esquire 20 Deputy People's Counsel 21 On behalf of Baltimore County	Page 4 1 And let me just say that I disagree with Mr. 2 Rapisarda, that the Mangione case, the one that's reported 3 in the Court of Special Appeals, is very, very clear, that 4 even when you're reducing the relief you've asked for, you 5 can't initiate that at an appellate level, and that 6 includes the Board of Appeals. 7 This issue has come before the Board a few times 8 with People's Counsel involved, and the latest -- perhaps 9 Mr. Bell and Mr. Crizer will remember -- in the day care 10 case, an issue was raised because the site plan was 11 attempting to be altered at the Board of Appeals' level, 12 and our office objected to that, as well as the 13 protestants in that case. 14 Now, it was resolved among the parties, but the 15 resolution resulted in the property owners going back to 16 the Zoning Commissioner and going back to all the agencies 17 to have that amendment approved. 18 So our position has always been consistent. You 19 can't make the change here at the Board level. 20 And so anything that Mr. Rapisarda is asking for 21 would be a change at the Board level, which is prohibited.
Page 3 1 (Excerpt argument of Carole S. Demilio) 2 * * * * * 3 THE CHAIRMAN: Ms. Demilio. 4 MS. DEMILIO: Well, I guess I'm batting clean-up 5 here, trying to straighten this out. 6 There's a lot of issues flying around, and as you 7 know, our office looks at things from a public interest 8 point of view. 9 Let me -- and I don't want to repeat everything 10 that's in my memo -- but let me say what strikes me 11 initially are two things. 12 One, why didn't AT&T file a petition for special 13 exception to start with? 14 They could have filed their own petition, 15 consolidated it with Verizon, and we wouldn't be having 16 this issue. 17 So their first mistake, I think, from a 18 procedural point of view, they never filed anything to 19 start with. Now, they want to tag along. 20 Clearly, they can't do that for all the reasons 21 stated in my memorandum.	Page 5 1 So even though the Board is de novo, it only acts 2 as appellate jurisdiction, so Mr. Jablon is correct when 3 he cited those cases or stated his position on that. 4 This Board still acts as an appellate level. In 5 other words, you're acting in reaction to a decision made 6 by the Zoning Commissioner, so you can't act on something 7 that was not decided by the Zoning Commissioner. 8 And it seems to me, now, AT&T is attempting to 9 correct what it should have done in the first place, and 10 that was to file a petition for special exception. 11 The condition that only one tower can go on the 12 site, it seems to me, that's an issue for Mr. Lehnert, and 13 if he's not going to appeal it as the property owner, then 14 that's the end of it. 15 I think that's who has the authority to appeal 16 it, and he clearly, based on what Mr. Jablon and Mr. Burch 17 are saying, he's prepared to make -- to resolve this issue 18 based on the Zoning Commissioner's decision, because as I 19 understand it, they're keeping those conditions there, so 20 that's his issue. 21 And if AT&T has an issue with Mr. Lehnert on

2 (Pages 2 to 5)

1 their lease, that's not a zoning decision for this Board
2 to decide, so I don't see why the Board really has to get
3 involved in that at all.

4 I think that's Mr. Lehnert's decision, whether he
5 accepted the Zoning Commissioner's decision.

6 Secondly, I think if -- let me just strike that.

7 Let me say, on the competitive issue, our office will
8 leave that to the parties to decide whether or not a
9 competitor has standing here, although let me just say
10 this.

11 There is case law on that, and I think Mr. Jablon
12 has cited the appropriate cases on it, but it is a
13 legitimate issue that competitors are not interested
14 parties for purposes of appearing in these zoning cases
15 because it's not the type of interest that is resolved by
16 a zoning board, or a zoning matter, so it has nothing to
17 do with zoning.

18 And that's why competitors are not interested
19 parties, because the impact is not a zoning impact. So if
20 Mr. Jablon is correct, then that also eliminates AT&T as a
21 party here.

1 I think my People's Counsel's memorandum should
2 speak for itself. I think it's clear that the cases, the
3 two Mangione cases, and prior decisions by this Board, I
4 might add, have said you cannot make a change here at this
5 level.

6 Even a party can't make a change, and there have
7 been times when petitioners have come in and requested to
8 add another variance to their relief, or even add a few
9 feet to the variance that they were requesting, and this
10 Board has consistently said you cannot do it at this
11 level.

12 They have to either remand it to the Zoning
13 Commissioner or they amend the petition, or they start all
14 over again in a new petition for variance.

15 So the Board has been consistent on that, and our
16 office has been consistent.

17 So we think there should be no question in the
18 Board's mind that there cannot be an amendment at this
19 level, even by a party, let alone by AT&T, who's not a
20 party.

21 They took their chance on relying on Verizon and

1 Mr. Lehnert and anyone else who is a party to this case,
2 and didn't file from the beginning as a party, and they
3 can't correct that at this point, so they do have to start
4 over.

5 Now, as far as Mr. Lanzl, I don't want to really
6 comment too much on what Mr. Lanzl is trying to do here,
7 other than to say that because his client did not file an
8 appeal, if all the appeals go away, his client has no
9 standing, and that's pretty clear, and I think even Mr.
10 Lanzl would agree to that.

11 Our office is not going to get into the argument
12 of whether or not she has standing or not.

13 I don't even think they call it standing. They
14 call it interested parties at this level, frankly.

15 But I don't see -- you have to in some fashion
16 enter your appearance. There have been times when
17 People's Counsel has come before this Board and has
18 entered our appearance, but we did not file an appeal.

19 We are well aware of the fact that if for some
20 reason the appeal is dismissed, People's Counsel can no
21 longer appear here in an appellate capacity on that issue

1 in that case.

2 So, clearly, Ms. Cumberland, by not following the
3 proper procedure below -- and once again, that could
4 easily have been corrected if she just would have entered
5 her appearance at the Zoning Commissioner's level -- but
6 by not doing that, she is at the mercy of whatever happens
7 at this level with the parties.

8 If it's resolved, and all the appeals are gone,
9 then she's out, so I don't think there should be any
10 dispute about that.

11 Let me just have a couple comments on Mr.
12 Rapisarda's argument about what the Zoning Commissioner
13 can and cannot do.

14 First of all, the Zoning Commissioner, under
15 426.9 pertaining to cell towers, and also under 502.2
16 pertaining to special exceptions, has the authority to
17 impose any conditions or restrictions that he may find
18 appropriate.

19 So all of the conditions in there are appropriate
20 for the Zoning Commissioner.

21 There's nothing illegal about them. He doesn't

1 step beyond the boundary.

2 In fact, the power of the legislation itself
3 actually talks about disguising some of the cell towers
4 itself, the antenna itself.

5 So, clearly, the Zoning Commissioner had the
6 authority to require that the cell tower, to be approved,
7 it had to be disguised in a certain manner.

8 And I think that what he suggested there, it
9 seems to me, to be certainly within the boundaries of
10 426.9 and 502.2.

11 It says, The Zoning Commissioner shall impose
12 conditions or restrictions as provided in 502.2, and that
13 goes back -- that says, Shall impose such conditions,
14 restrictions or regulations that may be deemed necessary
15 or advisable for the protection of the surrounding and
16 neighboring property.

17 So Mr. Wiseman, it seems to me, had the authority
18 to do what he did.

19 Now, if for some reason, the parties did not like
20 it, that's a different story. They can make their claim
21 at this level.

1 he's not an appearance for Ms. Cumberland, and she's out,
2 unfortunately, from Mr. Lanzl's point of view.

3 But, again, that could have been easily
4 corrected.

5 It's not up to this Board to correct all these
6 procedural -- I don't want to say failures -- but just
7 inattentiveness on the part of all these parties, and ask
8 this Board to make this case even more complicated than it
9 needs to be.

10 So, again, that's, you know, our position
11 primarily on the major issues here and our comments on
12 some of the other issues raised this morning. Thank you.

13 (End of argument of Carole S. Demilio)

14 * * * * *

1 But that doesn't seem to be what we have here.
2 We seem to have the parties in the vase, Verizon and the
3 Valleys Planning Council and Mr. Lehnert agreeing to the
4 conditions. They were certainly within the power of the
5 Zoning Commissioner.

6 So I don't think that this is really all that
7 complex. I think Mr. Rapisarda and his client AT&T is not
8 a party, so they're out.

9 And they could have resolved it by filing a
10 petition for special exception in the beginning to
11 consolidate the case, so they're out.

12 The settlement agreement has been reached. I
13 would agree with Mr. Jablon, we would prefer to have the
14 case continued for the purpose of setting forth the
15 stipulation, which I know the Board has done before,
16 incorporating the stipulation in its order and amending
17 the site plan, so that would be the proper procedure.

18 And I think, in that case, Ms. Cumberland is out,
19 because she did not file an appeal and was not a party
20 below.

21 Mr. Doak's appearance, he's not an attorney, so

A above-entitled 1:13 accepted 6:5 act 5:6 acting 5:5 acts 5:1,4 add 7:4,8,8 advisable 10:15 agencies 4:16 agree 8:10 11:13 agreeing 11:3 agreement 11:12 altered 4:11 amend 7:13 amending 11:16 amendment 4:17 7:18 ANDREW 2:4 antenna 10:4 appeal 5:13,15 8:8 8:18,20 11:19 appeals 1:2,14 4:3 4:6,11 8:8 9:8 appear 8:21 appearance 8:16,18 9:5 11:21 12:1 APPEARANCES 2:7 appearing 6:14 appellate 4:5 5:2,4 8:21 appropriate 6:12 9:18,19 approved 4:17 10:6 argument 1:12 3:1 8:11 9:12 12:13 ARNOLD 2:8 asked 4:4 asking 4:20 attempting 4:11 5:8 attorney 11:21 AT&T 2:12 3:12 5:8,21 6:20 7:19 11:7 authority 5:15 9:16 10:6,17 Avenue 1:16	aware 8:19 a.m 1:16 B back 4:15,16 10:13 Baltimore 1:4,14 2:16 based 5:16,18 batting 3:4 beginning 8:2 11:10 behalf 2:9,10,12,14 2:16 Belfast 1:5,9 Bell 4:9 BELT 2:4 beyond 10:1 board 1:2,14 2:1 4:6,7,11,19,21 5:1 5:4 6:1,2,16 7:3 7:10,15 8:17 11:15 12:5,8 Board's 7:18 boundaries 10:9 boundary 10:1 Building 1:15 Burch 2:10 5:16 C C 1:2 2:10 call 8:13,14 capacity 8:21 care 4:9 Carole 1:12 2:15 3:1 12:13 Carolyn 1:21 case 1:5 4:2,10,13 6:11 8:1 9:1 11:11 11:14,18 12:8 cases 5:3 6:12,14 7:2,3 cell 9:15 10:3,6 Celco 1:3 certain 10:7 certainly 10:9 11:4 Chairman 2:3 3:3 chance 7:21	change 4:19,21 7:4 7:6 Chesapeake 1:15 cited 5:3 6:12 claim 10:20 clean-up 3:4 clear 4:3 7:2 8:9 clearly 3:20 5:16 9:2 10:5 client 8:7,8 11:7 come 4:7 7:7 8:17 comment 8:6 comments 9:11 12:11 Commissioner 4:16 5:6,7 7:13 9:12,14 9:20 10:5,11 11:5 Commissioner's 5:18 6:5 9:5 competitive 6:7 competitor 6:9 competitors 6:13 6:18 complex 11:7 complicated 12:8 condition 5:11 conditions 5:19 9:17,19 10:12,13 11:4 consistent 4:18 7:15,16 consistently 7:10 consolidate 11:11 consolidated 1:7 3:15 continued 11:14 correct 5:2,9 6:20 8:3 12:5 corrected 9:4 12:4 Council 2:10 11:3 Councilmanic 1:6 Counsel 2:15 4:8 8:17,20 Counsel's 7:1 County 1:2,4,14,14 2:16 couple 9:11	Court 4:3 Crizer 2:5 4:9 Cumberland 2:14 9:2 11:18 12:1 D day 4:9 de 5:1 decide 6:2,8 decided 5:7 decision 5:5,18 6:1 6:4,5 decisions 7:3 deemed 10:14 Demilio 1:12 2:15 3:1,3,4 12:13 Deputy 2:15 different 10:20 disagree 4:1 disguised 10:7 disguising 10:3 dismissed 8:20 dispute 9:10 District 1:6 Doak's 11:21 doing 9:6 DRC 1:10 E E 1:21 2:8,12 easily 9:4 12:3 EDWARD 2:5 either 7:12 eliminates 6:20 enter 8:16 entered 8:18 9:4 Esquire 1:12 2:8,8 2:10,12,13,15 exception 3:13 5:10 11:10 exceptions 9:16 Excerpt 1:12 3:1 F fact 8:19 10:2 failures 12:6 far 8:5 fashion 8:15	feet 7:9 file 3:12 5:10 8:2,7 8:18 11:19 filed 3:14,18 filing 11:9 find 9:17 first 3:17 5:9 9:14 flying 3:6 following 9:2 forth 11:14 frankly 8:14 G go 5:11 8:8 goes 10:13 going 4:15,16 5:13 8:11 GREGORY 2:12 GRIER 2:3 guess 3:4 H H 2:3 happens 9:6 hearing 1:13,15 I illegal 9:21 impart 6:19,19 impose 9:17 10:11 10:13 inattentiveness 12:7 includes 4:6 incorporating 11:16 initially 3:11 initiate 4:5 interest 3:7 6:15 interested 6:13,18 8:14 involved 4:8 6:3 issue 3:16 4:7,10 5:12,17,20,21 6:7 6:13 8:21 issues 3:6 12:11,12 J
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K keeping 5:19 know 3:7 11:15 12:10	N necessary 10:14 needs 12:9 neighboring 10:16 NEIL 2:13 never 3:18 new 7:14 novo 5:1	O objected 4:12 office 3:7 4:12 6:7 7:16 8:11 once 9:3 order 11:16 owner 1:2 5:13 owners 4:15	S S 1:12 2:15 3:1 12:13 saying 5:17 says 10:11,13 Secondly 6:6 see 6:2 8:15 September 1:6,16 setting 11:14 settlement 11:12 site 4:10 5:12 11:17 speak 7:2 special 3:12 4:3 5:10 9:16 11:10 standing 6:9 8:9,12 8:13 start 3:13,19 7:13 8:3 stated 3:21 5:3 step 10:1 stipulation 11:15 11:16 story 10:20 straighten 3:5 strike 6:6 strikes 3:10 suggested 10:8 surrounding 10:15	U understand 5:19 unfortunately 12:2
L Lanzi 2:13 8:5,6,10 Lanzi's 12:2 latest 4:8 law 6:11 lease 6:1 leave 6:8 Legal 1:2 legislation 10:2 legitimate 6:13 Lehnert 1:2 5:12 5:21 8:1 11:3 Lehnert's 6:4 level 4:5,11,19,21 5:4 7:5,11,19 8:14 9:5,7 10:21 longer 8:21 looks 3:7 lot 3:6	O part 12:7 parties 4:14 6:8,14 6:19 8:14 9:7 10:19 11:2 12:7 Partnership/Veri... 1:3 party 6:21 7:6,19 7:20 8:1,2 11:8,19 PATRICIA 2:8 Peatt 1:21 People's 2:15 4:8 7:1 8:17,20 pertaining 9:15,16 petition 3:12,14 5:10 7:13,14 11:10 petitioners 1:4 2:9 7:7 place 5:9 plan 4:10 11:17 Planning 2:10 11:3 point 3:8,18 8:3 12:2 position 4:18 5:3 12:10	P part 12:7 parties 4:14 6:8,14 6:19 8:14 9:7 10:19 11:2 12:7 Partnership/Veri... 1:3 party 6:21 7:6,19 7:20 8:1,2 11:8,19 PATRICIA 2:8 Peatt 1:21 People's 2:15 4:8 7:1 8:17,20 pertaining 9:15,16 petition 3:12,14 5:10 7:13,14 11:10 petitioners 1:4 2:9 7:7 place 5:9 plan 4:10 11:17 Planning 2:10 11:3 point 3:8,18 8:3 12:2 position 4:18 5:3 12:10	Q question 7:17	V Valleys 2:10 11:3 variance 7:8,9,14 vase 11:2 Verizon 1:9 3:15 7:21 11:2 view 3:8,18 12:2
M M 2:4 major 12:11 MALONE 2:8 Mangione 4:2 7:3 manner 10:7 Maryland 1:16 matter 1:1,8,13 6:16 MEMBERS 2:1 memo 3:10 memorandum 3:21 7:1 mercy 9:6 mind 7:18 mistake 3:17	P part 12:7 parties 4:14 6:8,14 6:19 8:14 9:7 10:19 11:2 12:7 Partnership/Veri... 1:3 party 6:21 7:6,19 7:20 8:1,2 11:8,19 PATRICIA 2:8 Peatt 1:21 People's 2:15 4:8 7:1 8:17,20 pertaining 9:15,16 petition 3:12,14 5:10 7:13,14 11:10 petitioners 1:4 2:9 7:7 place 5:9 plan 4:10 11:17 Planning 2:10 11:3 point 3:8,18 8:3 12:2 position 4:18 5:3 12:10	R raised 4:10 12:12 Rapisarda 2:12 4:2 4:20 11:7 Rapisarda's 9:12 reached 11:12 reaction 5:5 really 6:2 8:5 11:6 reason 8:20 10:19 reasons 3:20 reducing 4:4 regulations 10:14 relief 4:4 7:8 relying 7:21 remand 7:12 remember 4:9 repeat 3:9 reported 1:21 4:2 requested 7:7 requesting 7:9 require 10:6 resolution 4:15 resolve 5:17	S S 1:12 2:15 3:1 12:13 saying 5:17 says 10:11,13 Secondly 6:6 see 6:2 8:15 September 1:6,16 setting 11:14 settlement 11:12 site 4:10 5:12 11:17 speak 7:2 special 3:12 4:3 5:10 9:16 11:10 standing 6:9 8:9,12 8:13 start 3:13,19 7:13 8:3 stated 3:21 5:3 step 10:1 stipulation 11:15 11:16 story 10:20 straighten 3:5 strike 6:6 strikes 3:10 suggested 10:8 surrounding 10:15	W W 1:15 want 3:9,19 8:5 12:6 WENDELL 2:3 Wireless 1:4,9 Wiseman 10:17 words 5:5 wouldn't 3:15
			T tag 3:19 talks 10:3 Thank 12:12 things 3:7,11 think 3:17 5:15 6:4 6:6,11 7:1,2,17 8:9,13 9:9 10:8	Z zoning 4:16 5:6,7 5:18 6:1,5,14,16 6:16,17,19 7:12 9:5,12,14,20 10:5 10:11 11:5
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105 1:15

2

2010 1:6,17

21204 1:16

28 1:6,16

3

3rd 1:6

4

426.9 9:15 10:10

5

502.2 9:15 10:10,12

7

700 1:5

Case No.: 2009-0322-X 700 BELFAST ROAD

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	A - Page 1 of 3 - SITE PLAN B - Detail Tower & Shutter Ant. C - Signage Detail	PHOTOGRAPHS - by AT+T 1A - I-83 1B - SPARKS SCHOOL
No. 2	RESUME - BARBARA PIVEC	12/5/01 LETTER FROM C. RICHARD LEHNERT
No. 3	AERIAL PHOTO OF SITE	1997 IMAGERY of LEHNERT PROPERTY
No. 4	Tower Review Committee (TRC) "Application"	2000 - IMAGERY of LEHNERT PROPERTY
No. 5	Tower Review Committee RECOMMENDATION - APPROVAL (9/21/07)	Collectively - PHOTO'S from Mr. Harmon's home at 718 E. Belfast Road.
No. 6	TRC - Supplemental Report (6/23/09) Co-Location CONCERNS	VERIZON COVERAGE LOCATOR 718 BELFAST RD -
No. 7	OP COMMENT 8/5/09 - COLLOCATION REQUIRED	LETTER OF OPPOSITION FROM SPARKS - GLENCOE COMMUNITY PLANNING COUNCIL
No. 8 A thru K	PHOTO'S SIMULATIONS	COVERAGE LOCATOR FOR 1620 OLD BOTTOM RD.
No. 9 A B & C	140' Mono-Pine Example taken in Virginia - PHOTO'S	RESUME - MARY BETH HAAS
No. 10 A thru D	PHOTO'S Near-Mount Vernon (MONO-PINE EXAMPLE) Great Falls Park AVENAL GOLF COURSE	LETTERS RECEIVED IN THIS CASE - 23 IN OPPOSITION
No. 11	Section "106" Submitted Package Prepared by GTA	RESUME - JACK DILLON Expert in Zoning Regulations
No. 12	Resume Sherri Linton Radio Frequency Engineer	Part 5 2010 Master Plan (Pages 248 to 252)

CONTINUED

Case No.: 2009-0322-X BELFAST RD

Exhibit Sheet - Continued

Petitioner/Developer

Protestant

No. 13	RF COVERAGE AREA CURRENT/ PROPOSED	SKYLINE DRIVE PHOTO'S TAKEN BY MR DILLON
No. 14	RESUME - THOMAS WOLFE Landscape Architect	
No. 15	GIS- TOPOGRAPHY OVERLAY - EXHIBIT	
No. 16	32-4-417 of BCC	
No. 17	CMD P → guidelines → SCENIC VIEWS @ page 173	Google → - search "stealth silo cell tower" - click "images" - stoehrcompanies. com
No. 18	MAP - SCENIC AREAS	
No. 19	CASE NO: 02-443-XA 110' Cell tower	
No. 20	MAP-37 SCENIC RESOURCES IDENTIFIED	
No. 21		
No. 22		
No. 23		
No. 24		

70ft. Balloon Test



Verona_AT&T
Belfast Road
10033338_0132

3 70ft. Monopines
Simulation

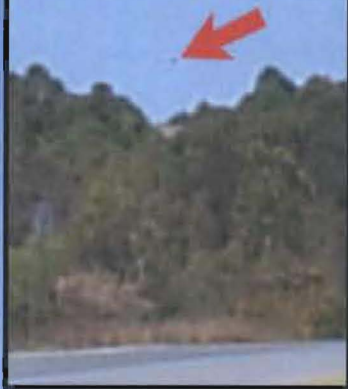
View #3 from Interstate 83 Northbound
approximately 1,500ft. southeast of site
Simulated monopines engineered by EEI

PROTESTANT' S

EXHIBIT NO. 1

GOULD DIGITAL IMAGING

70ft. Balloon Test



**Verona_AT&T
Belfast Road
10033338_0132
3 70ft. Monopines
Simulation**

View #4 from Belfast Road
approximately 4,135ft. southeast of site
Simulated monopines engineered by EEI

GOULD DIGITAL IMAGING



Dial Farms Nursery & Landscaping
Dick and Alice Lehnert
707 Old Belfast Road, Sparks, Maryland 21152
Phone No. 410 771 4600 Fax No. 410 472 3206



DECEMBER 5, 2001

MRS. HOLLY CUMBERLAND
3550 CROSS CREEK LANE
MALIBU, CA 90265

ATT: Dave Karcoke
Tougan Office

(310) 456 2017 (H)
(310) 456 2127 (H)

DEAR HOLLY,

JUST TO KEEP YOU AWARE OF WHAT IS GOING ON IN THE AREA.

THE SPRINT TELEPHONE CO. HAS SIGNED A CONTRACT WITH THE LAND OWNER ACROSS I 83 FOR A 100' TOWER TO BE USED FOR CELL PHONES. THIS IS THE FIRST STEP TO A TOWER BEING CONSTRUCTED. THEY SELECTED 100' AS 200' MUST HAVE A BLINKING LIGHT FOR AIRPLANES.

THE LAND ON THE WEST SIDE OF "83" IS AN HISTORICAL DISTRICT AND AS SUCH CAN NOT NORMALLY BE USED FOR TOWER CONSTRUCTION. THE BORDER OF THE HISTORICAL DISTRICT IS THE CENTER LINE OF "83".

AT&T HAD TRIED TO GET A TOWER ON THE WEST SIDE AND LOST THE COURT CASE. MOST OF THE LANDOWNERS ARE FIGHTING THE TOWERS SINCE THEY DEGRADE THE SURROUNDING LAND AND HOUSES TO THE POINT THAT THEY LOSE ABOUT 25-30 % OF THEIR VALUE.

I UNDERSTAND THAT YOU ARE IN CONTACT WITH SOME OF THE LOCAL RESIDENTS FROM TIME TO TIME AND YOU CAN PROBABLY BE FILLED IN FROM THEM.

I JUST WANTED TO LET YOU KNOW AS THE TWO OF US ARE THE ONES MOST LIKELY TO LOSE VALUE BECAUSE OF THE TOWER CONSTRUCTION. IT WILL BE WITHIN SUCH A SHORT DISTANCE AND WILL BE ABLE TO BE SEEN SO READILY. SHOULD YOU NOT WANT IT YOU CAN MAKE YOUR COMMENTS TO THE COUNCILMAN FOR THIS DISTRICT, BRYAN MCINTIRE, 410 887 3387.

SINCERELY,

C. RICHARD LEHNERT

CC: HERB DAVIS

PROTESTANT' S

EXHIBIT NO. 2



1 inch equals 100 feet

1997 Imagery

PROTESTANT'S

EXHIBIT NO. 3



1 inch equals 100 feet

2000 Imagery

PROTESTANT' S

EXHIBIT NO. 4



PROTESTANT'S

EXHIBIT NO. 5
5A thru 5D













Coverage Locator

[Back to My Business](#)

Welcome MULLAN EN

Lookup

Address

Street

718 Belfast Road

City

Sparks

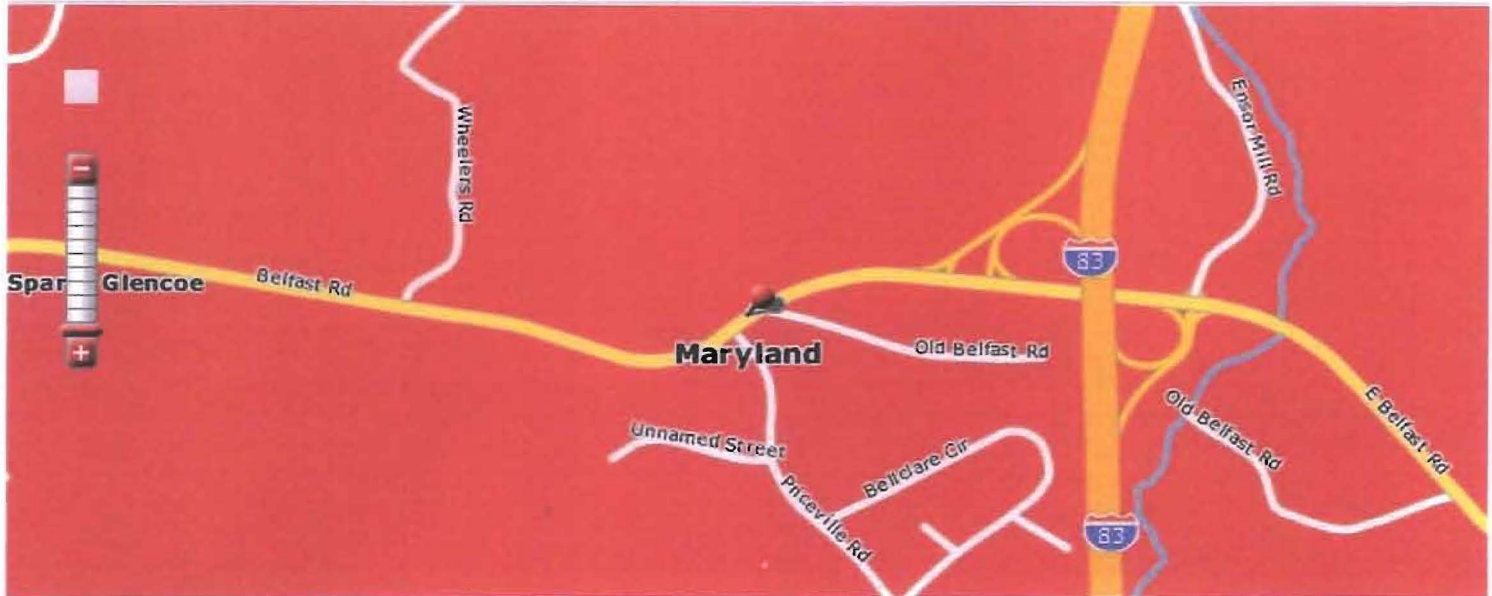
State

Maryland

Zip

21152

Search

**Current Mapped Point:** 718 Belfast Rd, Sparks Glencoe, MD 21152 (Address match)

Coverage As Of 06/1/2009

1.47 miles across

The map is not a guarantee of coverage and contains areas with no service. Service will not work, and calls cannot be placed or received outside the America's Choice Coverage Area.

This map shows approximately where rates and coverage apply based on our internal data. Wireless service is subject to network and transmission limitations, including cell site unavailability, particularly near boundaries and in remote areas. Customer equipment, weather, topography and other environmental considerations associated with radio technology also affect service and service may vary significantly within buildings. Some information on service outside the Verizon Wireless proprietary network, although depicted as America's Choice, is based on information from other carriers or publicly available information, and we cannot ensure its accuracy. With "all-digital" devices you can only make and receive calls when digital service is available. When digital service is not available your device will not operate or be able to make 911 calls.

- Digital Coverage
- Analog Coverage
- No Coverage

PROTESTANT' S

EXHIBIT NO.

6

Coverage Locator

[Back to My Business](#)


Welcome MULLAN ENTERPRISES INC !

Lookup

Address


Street

1620 Cold Bottom Road

City

Sparks

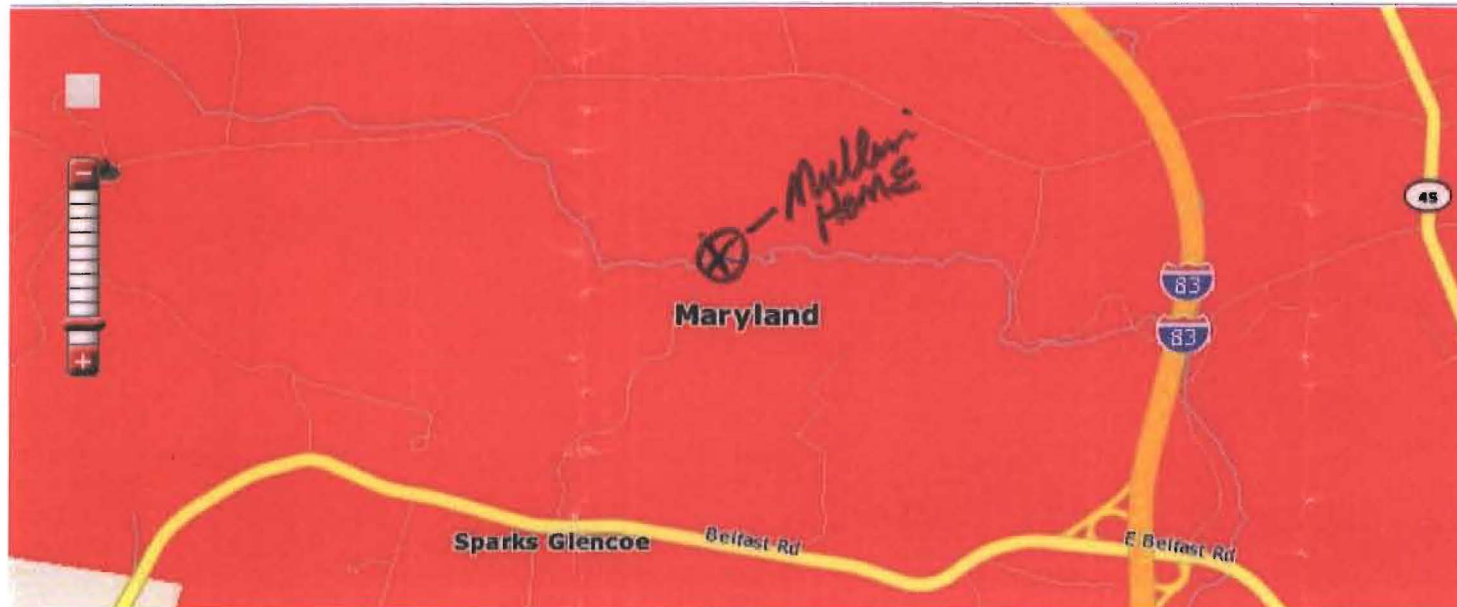
State

Maryland


Zip

21152

Search


Current Mapped Point: 1620 Cold Bottom Rd, Sparks Glencoe, MD 21152 (Address match)


Coverage As Of 06/1/2009

2.94 miles across

- ☒ Amer Choice No Roam
- ☐ Amer Choice with CAN
- ☐ America's Choicesm
- ☐ Broadband/V CAST
- ☐ N. Amer CH No Roam
- ☐ N. America's Choice
- ☐ Nat'l Enh.Svcs
- ☐ Nationwide
- ☐ Nationwide Plus CAN
- ☐ Prepaid
- ☐ SingleRatesm

NOTICE

America's Choice Coverage for plans initiated on or after 2/21/05

The map is not a guarantee of coverage and contains areas with no service. Service will not work, and calls cannot be placed or received outside the America's Choice Coverage Area.

This map shows approximately where rates and coverage apply based on our internal data. Wireless service is subject to network and transmission limitations, including cell site unavailability, particularly near boundaries and in remote areas. Customer equipment, weather, topography and other environmental considerations associated with radio technology also affect service and service may vary significantly within buildings. Some information on service outside the Verizon Wireless proprietary network, although depicted as America's Choice, is based on information from other carriers or publicly available information, and we cannot ensure its accuracy. With "all-digital" devices you can only make and receive calls when digital service is available. When digital service is not available your device will not operate or be able to make 911 calls.



Digital Coverage



Analog Coverage



No Coverage

PROTESTANT' S

EXHIBIT NO.

7



Sparks-Glencoe Community
Planning Council
P.O. Box 937, Sparks, MD 21152

June 29, 2009

Mr. Richard Bohn

Tower Review Commission

Office of Information Technology
400 Washington Avenue, MS 2007
Towson, Maryland, 21204

Dear Mr. Bohn:

The Board of the Sparks Glencoe Community Planning Council has reviewed the proposal for the imitative large tree cell towers at a property on Old Belfast Road near I-83 in Baltimore County and has voted to oppose this proposal. The imitative trees are significantly taller than the real trees in the area and protrude unnaturally from the landscape; as designed, they blight the harmonious rural vista.

Furthermore, the proposed location for placement of these cell towers is within a national register historic district, visible from at least two designated scenic roads (I-83 and Belfast Road), and encroaches upon an area which contains numerous historic properties and conservation easements. Structures within such areas should meet the highest standard and blend in seamlessly with the surroundings; otherwise, they undermine the investments that the state, county, and private property owners have made to preserve the historic, scenic, and natural qualities of the area.

Sincerely,

Kirsten A. Burger

President

PROTESTANT'S

EXHIBIT NO.

8

QUALIFICATIONS OF APPRAISER

MARY BETH HAAS

Licensing:

Certified Real Estate Appraiser – State of Maryland – License No.03-1492
Certified Appraiser #1492 – Department of Housing & Urban Development

Background & Experience:

Independent Fee Appraiser/Real Estate Consultant 1977 – Present
Associate Appraiser – The Preferred Appraisal Group 1998 – 2002
Associate Appraiser – Tilson & Becker, Chartered, 1996 – 1998
Associate Appraiser – Bay State Appraisal Corporation 1979 – 1996
Real Estate Salesperson – Byrnes, Barroll & Gaines 1977 – 1979
Real Estate Property Manager – Maryland Real Property 1977 – 1980

Real Estate Courses Completed:

Appraisal Institute:
Standards of Professional Practice
Real Estate Appraisal Principles
Basic Valuation Procedures
Case Studies in Real Estate Valuation
Report Writing and Valuation Analysis
Numerous seminars and classes concerning current issues, policies and standards for the Appraisal profession and the real estate industry

Appraisal Experience:

Assignments covering appraisal/valuation, ad valorem, marketability, economic feasibility and Investment analysis. Properties include residential and special purpose properties, as well as unimproved land and subdivision analysis.

Accepted as an Expert Witness for the U.S. Department of Justice, United States Attorney, District of Maryland.

Accepted as an Expert Witness for the United States Bankruptcy Court for the District of Maryland

Accepted as an Expert Witness for the Circuit Court of Baltimore City and Baltimore County Maryland

Deconstruction Appraisal Specialist 2002 – Present

PROTESTANT' S

EXHIBIT NO.

9

CASE NUMBER: 2009-0322-X

700 Belfast Road

Location: N side of Belfast Road; 340 feet NE of the c/l of Old Belfast Road.

8th Election District, 3rd Councilmanic District

Legal Owner: Richard Lehnert

Contract Purchaser: Brian Stover

SPECIAL EXCEPTION for a wireless telecommunications tower 80 feet in height and related facilities.

Hearing: ~~Tuesday, 9/22/2009~~ at 9:00:00 AM Jefferson Building, 105 West Chesapeake Avenue, Room 104, Towson, MD 21204

OPPOSE	FAVOR
Spaulding A. Goetze, Sr. Goose Hall Farm 1522 Cold Bottom Road Sparks, MD 21152	Anonymous Letter
Joseph R.L. Sterne Box 599 Sparks MD 21152	David Karceski, Esquire Venable LLP 200 West Pennsylvania Avenue Towson MD 21204
Marian P. Randall PO Box 599 2003 Belfast Road Sparks MD 21152	
Eugene W. and Elizabeth L. Schweitzer 16924 Yeoho Road Parkton MD 21120	
Craig Lewis 2017 Western Run Road Cockeysville MD 21030	
Richard C. Burch, Esquire Mudd Harrison & Burch LLP 401 Washington Avenue, Ste 900 Towson MD 21204-4835	
Teresa Moore, Exec. Director Valleys Planning Council PO Box 5402 Towson MD 21285-5402	
Elizabeth G. Wilmerding 2518 Caves Road Owings Mills, MD 21117	
Kathleen Pontone 2522 Caves Road Owings Mills, MD 21117	
Emily Levenson 425 Belfast Road Sparks, MD 21152	

PROTESTANT'S

EXHIBIT NO. 10

Jack Dillon & Associates, LLC

410-491-4875**Jackdillon1@verizon.com****Baltimore County
543 Park Avenue
Towson, Maryland 21204****Dorchester County
922 Parson Drive
Madison, Maryland 21648**

**Resume of Jack Dillon
Principal of Jack Dillon & Associates, LLC****EDUCATION****B.S. in Business Management**

University of Baltimore, Baltimore, MD (1969)

Graduate Summer Program in Urban Planning

Georgia Institute of Technology, Atlanta, GA (1969)

Para Legal Program University of Maryland

University of Maryland University College (1978)

Video & Television Production

Dundalk Community College (1984-1986)

Graduate Program in Landscape Architecture

Morgan State University, Baltimore, MD (1992-1994)

(Did not complete program)

PROFESSIONAL AFFILIATION

American Planning Association

EMPLOYMENT

Mr. Dillon was employed by Baltimore County from 1962 to 1996. He was assigned to a special research project at Johns Hopkins University from 1962 thru 1965 and then two years at the jointly staffed Baltimore City and Baltimore County Analyzer Office at the Ashburton Filtration Plant. He then worked in the Office of Planning and Zoning, eight years in the Zoning Office and the remaining twenty one years in the Planning Office until his retirement in 1996.

In 1997 he accepted the position of Executive Director of The Valleys Planning Council, a private non-profit planning and land preservation organization. He retired from that position in September 2004 when he formed his planning consulting firm, Jack Dillon & Associates, LLC

Skyline Blight



PROTESTANT'S

EXHIBIT NO. _____

13



2009-0322-X

Plan Sheet: 028A3

Note:
The zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

- | | | |
|-----------|---------|------------|
| Buildings | Streams | Vegetation |
| Zoning | Roads | Rail Lines |

Baltimore County Office of Planning and Zoning Official Zoning Map

027B2	027C2	028A2	028B2	028C2
027B3	027C3	028A3	028B3	028C3
033B1	033C1	034A1	034B1	034C1

Scale

1" = 200'

0 100 200 400
Feet



Data Sources:
Planimetric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2008

Case No.: 2009-0322-X 700 BELFAST ROAD

Exhibit Sheet

Petitioner/Developer

Protestant

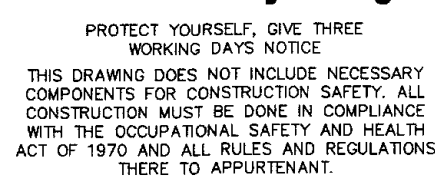
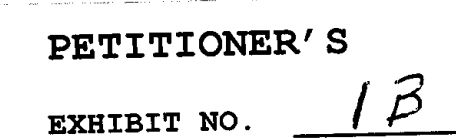
No. 1	A - Page 183 - SITE PLAN B - Detail Tower & Shutter Unit. C - Signage Detail	Photographs - by AT+T 1A - I-83 1B - SPARKS School
No. 2	RESUME - BARBARA PIVEC	12/5/01 Letter From C. RICHARD LEHNERT
No. 3	AERIAL PHOTO OF SITE	1997 IMAGERY of LEHNERT PROPERTY
No. 4	Tower Review Comm. Hse (TRC) "Application"	2000 - IMAGERY of LEHNERT PROPERTY
No. 5	Tower Review Committee Recommendation - APPROVAL (9/21/07)	Collectively - Photo's from Mr. Harmon's home at 718 E Belfast Road.
No. 6	TRC - Supplemental Report (6/23/09) Co-Location Concerns	VERIZON COVERAGE LOCATOR 718 BELFAST RD -
No. 7	OP COMMENT 8/5/09 - COLLOCATION REQUIRED	LETTER OF OPPOSITION FROM SPARKS-GLENCoe COMMUNITY PLANNING COUNCIL
No. 8 A thru K	Photo's SIMULATIONS	COVERAGE LOCATOR FOR 1620 Cold Bottom RD
No. 9 A B+C	140' Mono-Pine example taken in Virginia - Photo's	RESUME - MARY BETH HAAS
No. 10 A thru D	Photo's Near-Mount Vernon Great Falls Park (Mono-Pine Example) - AVAL GOLF Course	Letters in Opposition RECEIVED - 23
No. 11	Section "106" Submittal Package Prepared by GTA	Resume - Jack Dillon Zoning + Planning Expert
No. 12	Resume: Sherri Linton Radio Frequency Engineer	Part 5 - 2010 Master Plan (Pages 248 - 252)

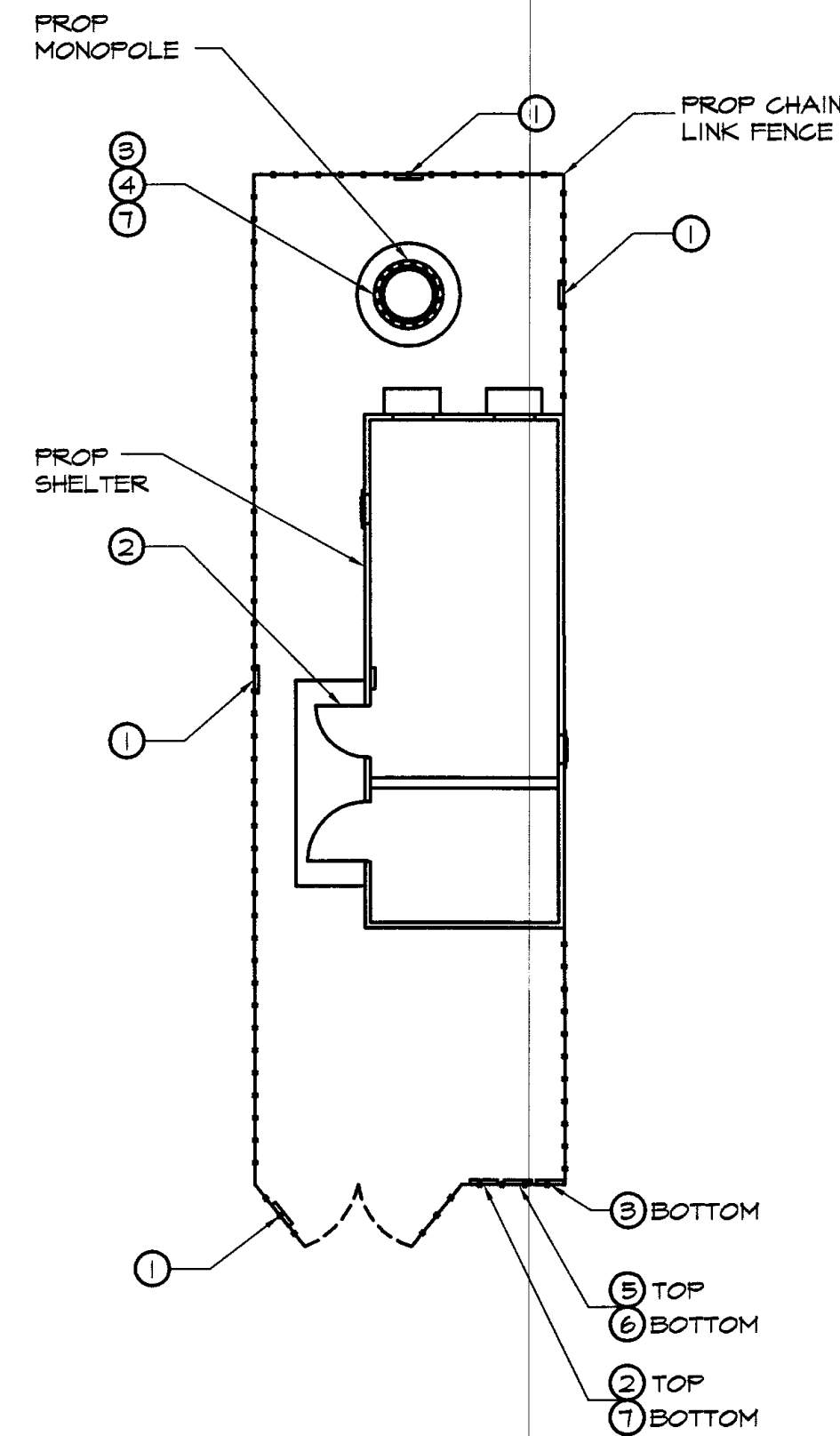
CONTINUED

Case No.: 2009-0322-X BELFAST RD

Exhibit Sheet - Continued

	Petitioner/Developer	Protestant
No. 13	RF COVERAGE AREA CURRENT/ PROPOSED	SKYLINE BLIGHT PHOTO - VIRGINIA
No. 14	RESUME - THOMAS E. WOLFE Landscape Architect	
No. 15	GIS- TOPOGRAPHY OVERLAY - EXHIBIT	
No. 16	32-4-417 of BCC	
No. 17	CMDP → guidelines → SCENIC VIEWS @ page 173	
No. 18	MAP - SCENIC AREAS	
No. 19	CASE NO. 02-443-XA ORDER INVOLVING Cell towers	
No. 20	MAP-37 SCENIC RESOURCES IDENTIFIED	
No. 21		
No. 22		
No. 23		
No. 24		





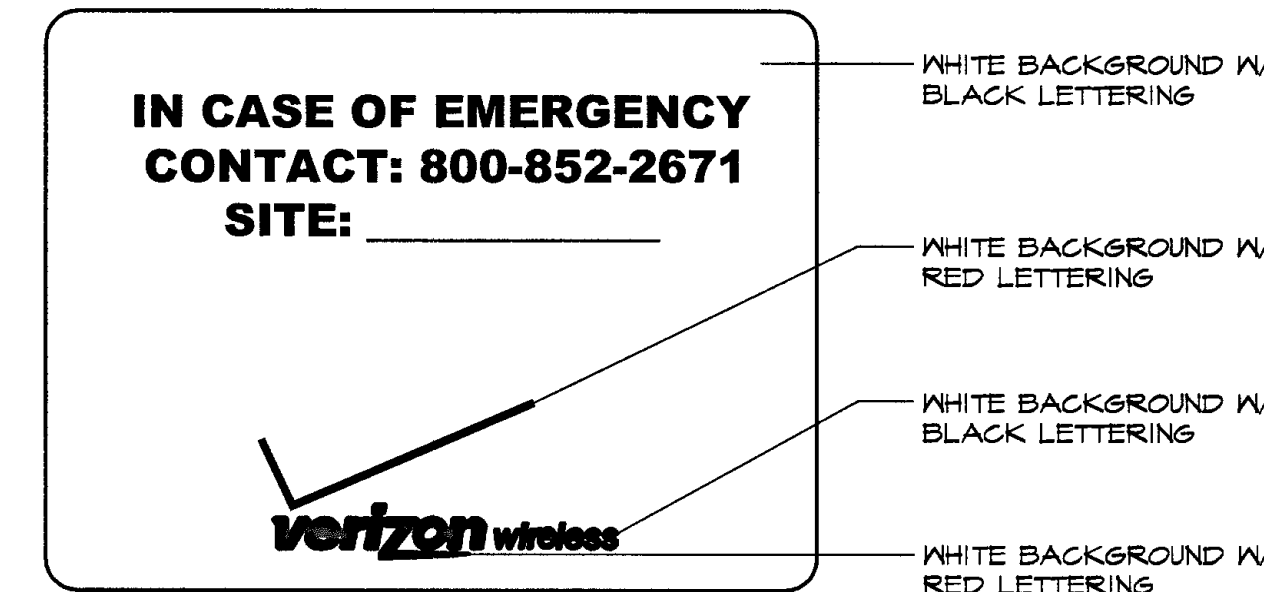
NOTE: SEE TYPICAL SIGNS AND SPECIFICATIONS DETAIL THIS SHEET FOR SIGN DESIGNATIONS

TOWER SITE COMPOUND SIGN PLACEMENT

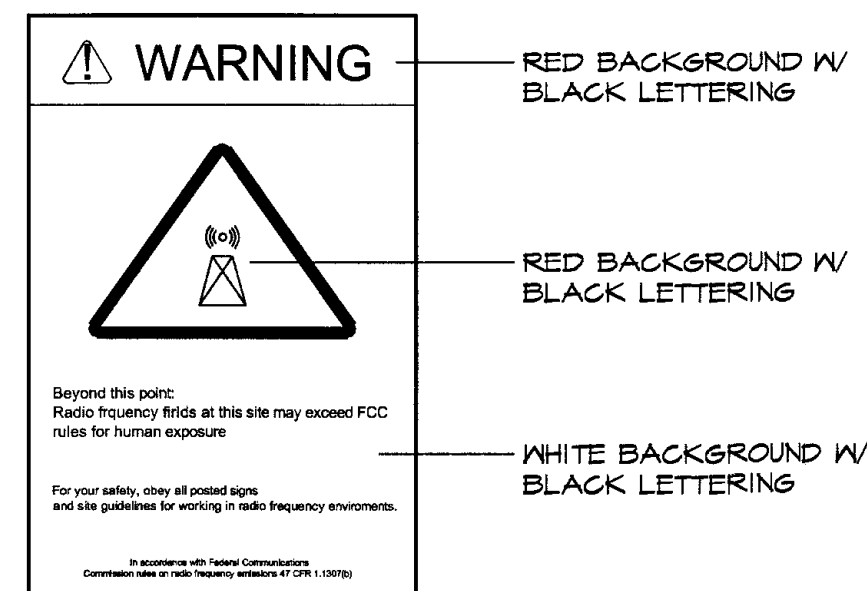
NOT TO SCALE



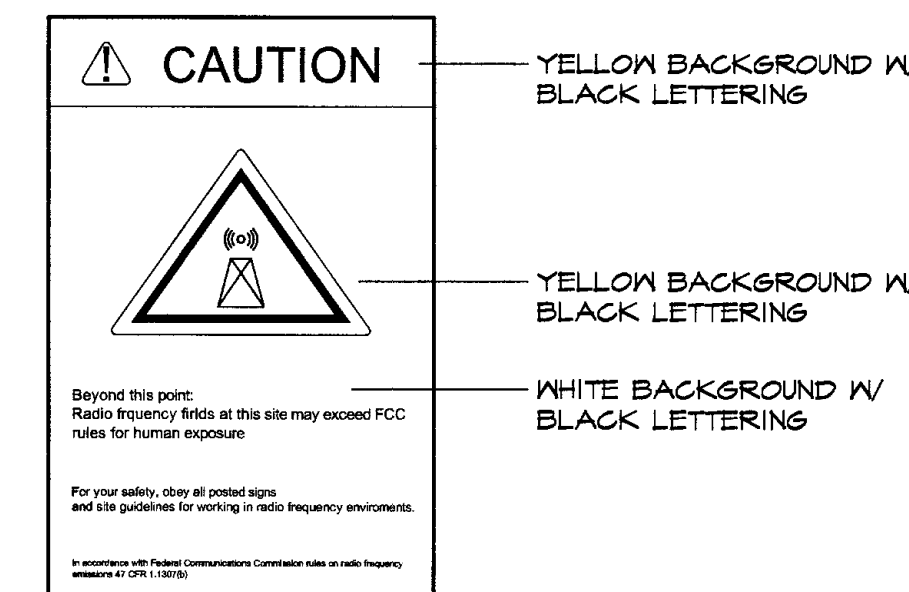
① **NO-TRESPASSING SIGN**
18" HIGH X 24" WIDE
(OPERATIONS PROVIDED)



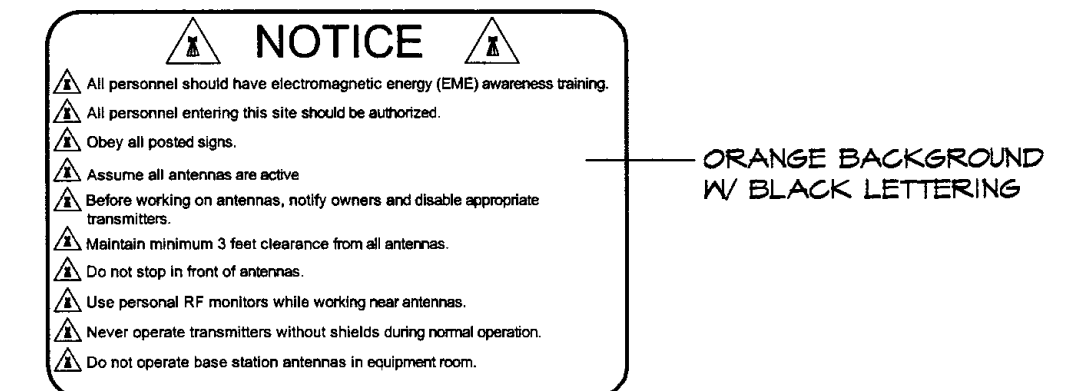
② **VERIZON WIRELESS-SITE ID SIGN**
18" HIGH X 24" WIDE
(OPERATIONS PROVIDED)



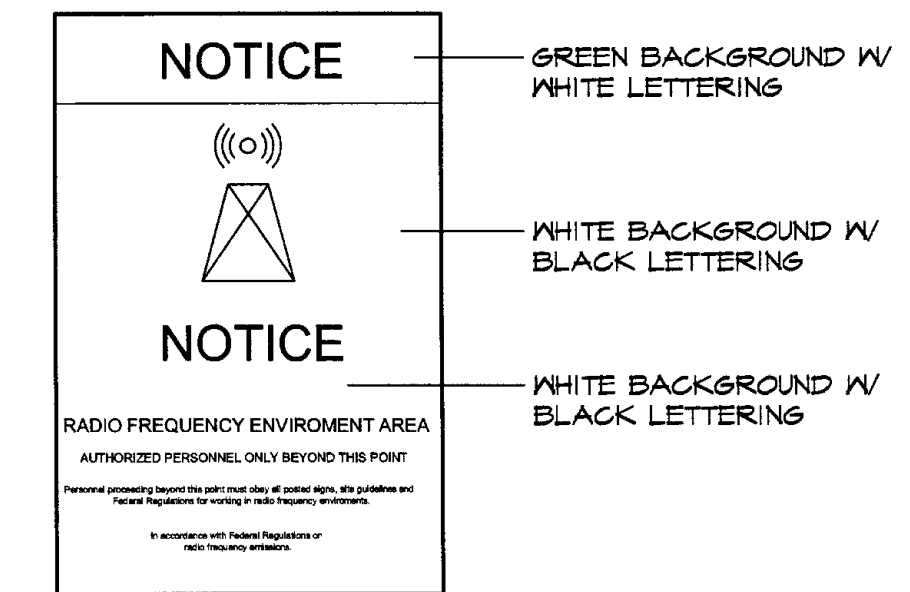
④ **WARNING-RF SIGN (RED)**
12" WIDE X 18" HIGH



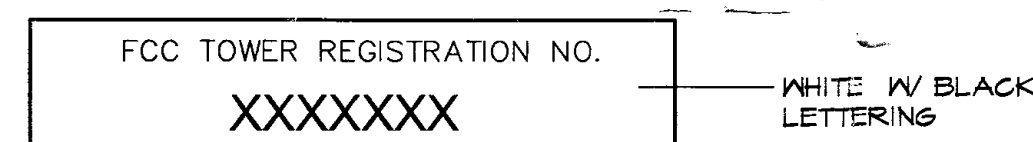
⑤ **CAUTION-RF SIGN (YELLOW)**
12" WIDE X 18" HIGH



③ **NOTICE-RFE SIGN**
12" WIDE X 18" HIGH
(OPERATIONS PROVIDED)



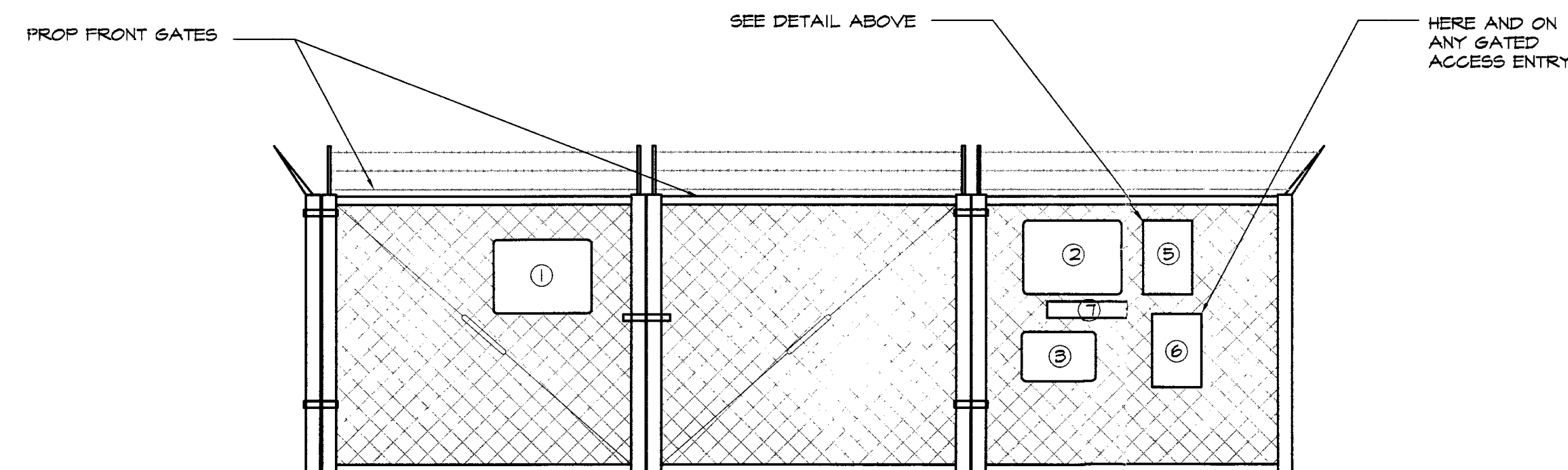
⑥ **NOTICE-RF SIGN (BLUE)**
12" WIDE X 18" HIGH



⑦ **FCC REGISTRATION SIGN**
20" WIDE X 4" HIGH

TYPICAL SIGNS AND SPECIFICATIONS

NOT TO SCALE



SITE SIGNAGE

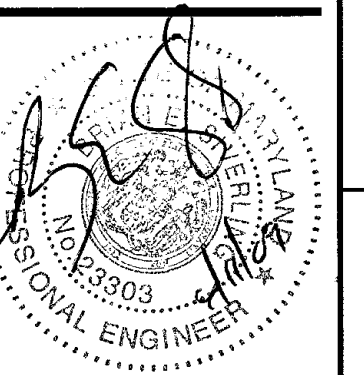
NOT TO SCALE

SIGNAGE NOTES:

- SIGNS SHALL BE FABRICATED FROM CORROSION RESISTANT PRESSED METAL, AND PAINTED WITH LONG LASTING UV RESISTANCE COATINGS.
- SIGNS (EXCEPT WHERE NOTED OTHERWISE) SHALL BE MOUNTED TO THE TOWER, GATE AND FENCE USING A MINIMUM OF 9 GAUGE ALUMINUM WIRE, HOG RINGS (AS UTILIZED IN FENCE INSTALLATIONS) OR BRACKETS WHERE NECESSARY. BRACKETS SHALL BE OF SIMILAR METAL AS THE STRUCTURE TO AVOID GALVANIC CORROSION.
- ONE VERIZON SITE ID SIGN SHALL BE MOUNTED ON RIGHT DOOR OF THE SHELTER. TWO-SIDED TAPE SHALL BE UTILIZED AT EACH CORNER ON THE BACKSIDE TO AID PLACEMENT UNTIL ADHESIVE SETS.



MORRIS & RITCHIE ASSOCIATES, INC.
Civil/Structural Engineers
1285-O West Jones Road, Suite 205
Towson, Maryland 21286
410-821-3800
410-821-3748 Fax



PROFESSIONAL CERTIFICATION
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 3303, EXPIRATION DATE: 01/01/2010.

verizon wireless
700 BELFAST ROAD
Belfast Road
Sparks, Maryland 21152 (Baltimore County)

REVISIONS:		
NO.	DESCRIPTION	DATE

SPECIAL EXCEPTION 6/5/09
FINAL DWGS 10/06/07

LAST REV.: PROJECT NO: 10421.360

DATE: August 3, 2007

SCALE: AS NOTED

TITLE:

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

SHEET:

3 of 3



Know what's below. Call before you dig.

PROTECT YOURSELF, GIVE THREE WORKING DAYS NOTICE
THIS DRAWING DOES NOT INCLUDE NECESSARY COMPONENTS FOR CONSTRUCTION SAFETY. ALL CONSTRUCTION MUST BE DONE IN COMPLIANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND ALL RULES AND REGULATIONS THERE TO APPURTENANT.

PETITIONER'S EXHIBIT NO. 1C

Barbara Shenton Pivec/Atlantic Site Acquisition
102 Rutledge Road Queenstown, Maryland 21658
410-827-4132 - Home Office 443-994-7505 - Wireless
Contractor for Network, Building & Consulting representing Verizon Wireless
bpivec@nbcllc.com

Biographic Information

Ms. Pivec is the owner of Atlantic Site Acquisition ("ASA"), a sole proprietorship. Since 1998 ASA has offered: Acquisition and Coordination Services for Communication Infrastructure to the wireless infrastructure industry. ASA provides solutions for all tasking in the tower development process. She has been actively employed in the wireless industry for over 11 years, working with both tower developers and wireless carriers. With experience in over 50 jurisdictions in Maryland, Virginia, West Virginia, and Delaware she has been recognized in her industry and called on by counties and municipalities for her expertise and ability to create winning outcomes in positioning towers by partnering the private and public sectors.

Atlantic Site Acquisition is a member of the Maryland Small Business Reserve Program and a Maryland Certified Minority Business.

Qualifications/Experience

- First licensed as a Realtor in the State of Maryland between 1965 and 1968
- Completed many continuing and real estate related seminars
- Performed as a NAIFA – Residential Real Estate Appraiser with 21 educational recertification hours – 1984
- Licensed again as a Realtor in the State of Maryland in 2003 – Shelved same 2004
- Trained in EME Evaluation and Management for Antenna Sites – 2008, 2007, 2006

1998 – Present Atlantic Site Acquisition, Queenstown, MD

Current and Former Clients: Network Building & Consulting for Verizon Wireless, Dobson Communications Systems, Summit Tower, Bay Broadband Communications, Entrex Communication Services, Alvarion, Neon Communications, Eastern Shore Broadband, Telecom Capital Group (TCG), Sting Communications, Mid-Atlantic Tower, Charles Street Partners, TRM for Nextel Communication,

Professional Relationships with: Sprint Communications, T-Mobile, AT & T Wireless Services, General Dynamics, CACI, Bechtel, Global Tower Partners, American Tower Corporation (ATC), EEE Consulting, RCC Consulting,

Areas of Performance

- Abstract jurisdictional zoning requirements for tower development
- Research and report on potential telecommunication sites (private and public)
- Establish contacts and create relationships with potential site owners and agencies
- Research and document search areas and sites
- Evaluate and recommend lease vs purchase options
- Develop market studies
- Negotiate and facilitate leases and purchases
- Strategic planning, time line and organization of tower development process



ADJOINING PROPERTY:
HOLLY CUMBERLAND
734 BELFAST ROAD
SPARKS, MD 21152
MAP: 28 GRID: 18 PARCEL: 38 LOT:
DEED REFERENCE: 5628 / 674
TAX ACCOUNT: 1700006139
58.875 ACRES
AGRICULTURAL

ADJOINING PROPERTY:
WILLIAM CUMBERLAND
3550 CROSS CREEK ROAD
MALIBU, CA 90265
MAP: 28 GRID: 19 PARCEL: 38 LOT:
DEED REFERENCE: 5625 / 676
TAX ACCOUNT: 1700006142
\$3.67 ACRES
AGRICULTURAL

ADJACENT PROPERTY:
JASON & KELLEY HARMON
718 EAST BELFAST ROAD
SPARKS, MD 21152
MAP: 28 GRD: 19 PARCEL: 38
LOT: 2
DEED REFERENCE: 17237 / 126
23281 / 504
TAX ACCOUNT: 2400013253
3.817 ACRES
RESIDENTIAL

ADJACENT PROPERTY:
JAMES & GARLAND SCHMIDT
716 EAST BELFAST ROAD
SPARKS, MD 21152
MAP: 28 GRID: 19 PARCEL: 38
LOT: 1
DEED REFERENCE: 198152 / 174
TAX ACCOUNT: 2400002282
2.347 ACRES
RESIDENTIAL

SUBJECT PROPERTY
RICHARD LENHART
BELFAST ROAD
SPARKS, MD 21152
MAP: 28 GRID: 19 PARCEL: 38 LOT:
DEED REFERENCE: 11208 / 557
TAX ACCOUNT: 1700004707
50.873 ACRES
AGRICULTURAL

**AREA OF SPECIAL EXCEPTION
5.002 AC± (2.17,913 SF±)
PROPOSED 18'-0"x59'-0"
FENCED EQUIPMENT
COMPOUND w/ 80'-0"
TREEPOLE**

BALTIMORE HARRISBURG EXPRESSWAY
(I-83)
(PUBLIC)

CSE

**GLOCK SMIDT
ENGINEERING, INC.**
1374 W. JARESPITE ROAD
ROBERT HILL, MARYLAND 21090
PHONE: 410 983 9295
FAX: 410 983 9296
WWW.CSE.COM

MIRA

**MORRIS & RITCHIE
ASSOCIATES, INC.**
Division of Rudolph
1200 O Street, Virginia Beach, VA 23062
Phone: 757/461-1388
410-831-1168 Fax

 **verizon** wireless

BELFAST ROAD
Belfast Road
Sparks, Maryland 21152 (Baltimore County)

[illegible]

**AERIAL
EXHIBIT**

SHEET:
1 OF 1



BALTIMORE COUNTY GOVERNMENT

TOWER REVIEW COMMITTEE

Application for Wireless Communications Site Placement

Date: August 7, 2007

Applicant Name: Cellco Partnership, D/B/A Verizon Wireless

Company: Verizon Wireless

Address: 9000 Junction Drive, Annapolis Junction, MD 20701

Telephone: Office: 301-512-2459 Fax: 301-512-2186 Cell: N/A e-mail: brian.stover@verizonwireless.net

Contact Name: Brian Stover Telephone #: 301-512-2100

Carrier Name: Verizon Wireless

Carrier Site name: Belfast Road

Carrier site engineer: (name) Matt Toback Telephone Number: 410-707-1708

Site address: 707 Old Belfast Road, Sparks, MD 21152

Zoning of property: RC2

Zoning of adjacent properties: RC2 and RC7

Is a hearing required before the Zoning Commissioner? Yes ☒ No ☐

If yes what is the reason? _____

Property owner: Richard Lehnert

Tower or structure owner (if different from property owner): Verizon Wireless

Tower latitude/longitude (NAD 83): 39°33'08.28" / 76°40'12.82"

Site ground elevation AMSL: 508'

PETITIONER'S EXHIBIT 4

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: September 21, 2007

TO: Walter Smith
Department of Permits and Development Management

FROM: Tower Review Committee

SUBJECT: New Tower – Verizon Wireless – 700 Belfast Road

The Tower Review Committee met on August 28, 2007 to discuss the application made by Verizon Wireless on August 7, 2007. The committee is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 80-foot disguised monopole to be located on the property owned by Richard Lehnert, 707 Old Belfast Road, Sparks.

- *Antennas should be placed on existing towers, buildings, and structures, including those of public utilities, where feasible.*

Findings: We feel that has Verizon has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. Verizon has proposed to install a new 80-foot disguised monopole. The total height of the structure is 80-feet including all appurtenances.

- *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*

Findings: Verizon has stated, in the application documents, to the TRC, the structure will be constructed to support 2 additional wireless service providers in addition to Verizon Wireless.

- *Erected in a medium or high intensity commercial zone when available.*

Findings: This area is located in a Resource Conservation - agricultural area. This site will require a hearing for special exception. There were no identified sites in commercial zones in the vicinity.

- *Located and designed to minimize its visibility from residential and transitional zone.*

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: June 23, 2009
TO: Zoning Advisory Committee
FROM: Tower Review Committee Chairman
SUBJECT: New Tower – Verizon Wireless – 700 Belfast Road
Updated (06-23-2009) Reference Case Number 2009-0322-X

The Tower Review Committee met on August 28, 2007 to discuss the application made by Verizon Wireless on August 7, 2007. The committee is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 80-foot disguised monopole to be located on the property owned by Richard Lehnert, 707 Old Belfast Road, Sparks.

- *Antennas should be placed on existing towers, buildings, and structures, including those of public utilities, where feasible.*

Findings: We feel that Verizon has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. Verizon has proposed to install a new 80-foot disguised monopole. The total height of the structure is 80-feet including all appurtenances.

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- *Erected in a medium or high intensity commercial zone when available.*

Findings: This area is located in a Resource Conservation - agricultural area. This site will require a hearing for special exception. There were no identified sites in commercial zones in the vicinity.

- *Located and designed to minimize its visibility from residential and transitional zone.*

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 5, 2009

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

SUBJECT: 700 Belfast Road

Item Number: 09-322

Petitioner: Richard Lehnert

Zoning: RC 2

Requested Action: Special Exception

The petitioner requests a special exception, pursuant to Sections 1A01.2.C.28, 426, and 502.1 of the BCZR, to permit a wireless telecommunications tower, 80 feet in height and related facilities.

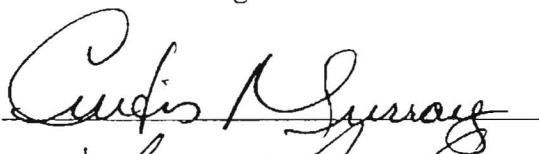
SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose to the special exception to permit a wireless telecommunications tower, 80 feet in height and related facilities. However, it recently came to this Office's attention through the County's Tower Review Committee that there are pending requests to have two more cell towers placed on the same site, making a proposed total of three towers on the Petitioner's property. This Office asks that the Zoning Commissioner look into having all three wireless companies share the same proposed tower and related facilities. This Office will only recommend that one wireless telecommunications tower be allowed on the site.

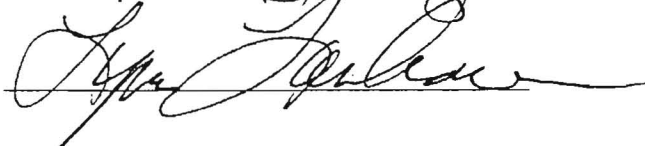
A site visit was conducted June 29, 2009 and it was concluded that the proposed tower and related facilities will not be seen from either Interstate 83, nor Belfast Road, both which are scenic routes. This is due to the topography of the site and the fact that the proposed tower and related facilities will be tucked in the upper most northwestern corner of the property. Mature trees will surround the proposed tower and related facilities. The proposed tower will appear as a tree itself according to the submitted site plan and tower design. With a proposed height of 80 feet the proposed tower will not be too much taller than the trees that will surround it, which should diminish the impact it will have on the surrounding rural community. Therefore this Office believes that this special exception request for one wireless telecommunications tower and related facilities will not be detrimental to the health, safety, or general welfare of the surrounding community. It does however believe that more than one tower on the subject site would not be favorable, this office strongly suggests a collocation effort to be made by all vendors.

For further information concerning the matters stated here in, please contact Jessie Bialek at 410-887-3480.

Prepared by:

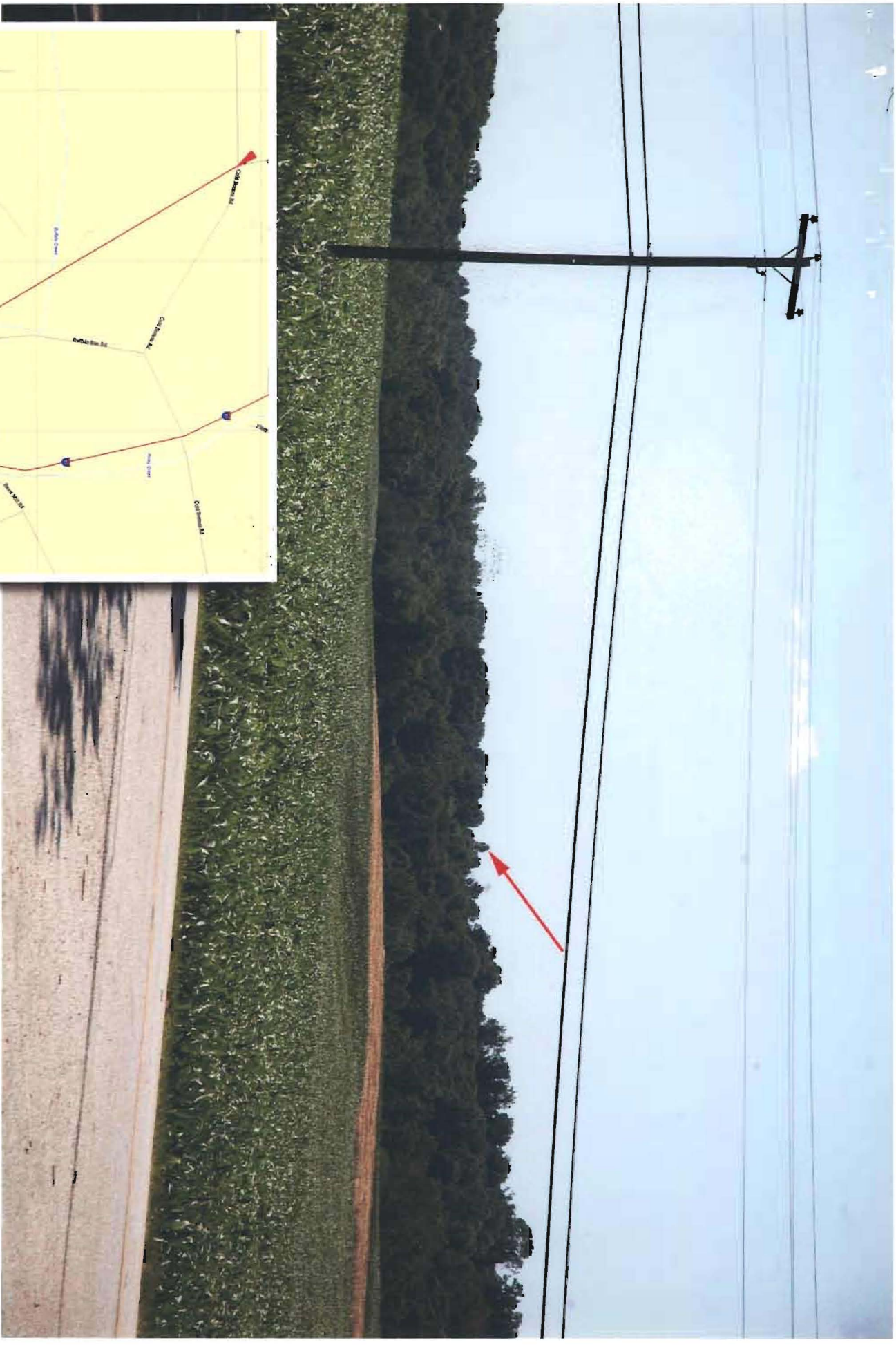


Division Chief:
AFK/LL: CM



PETITIONER'S EXHIBIT

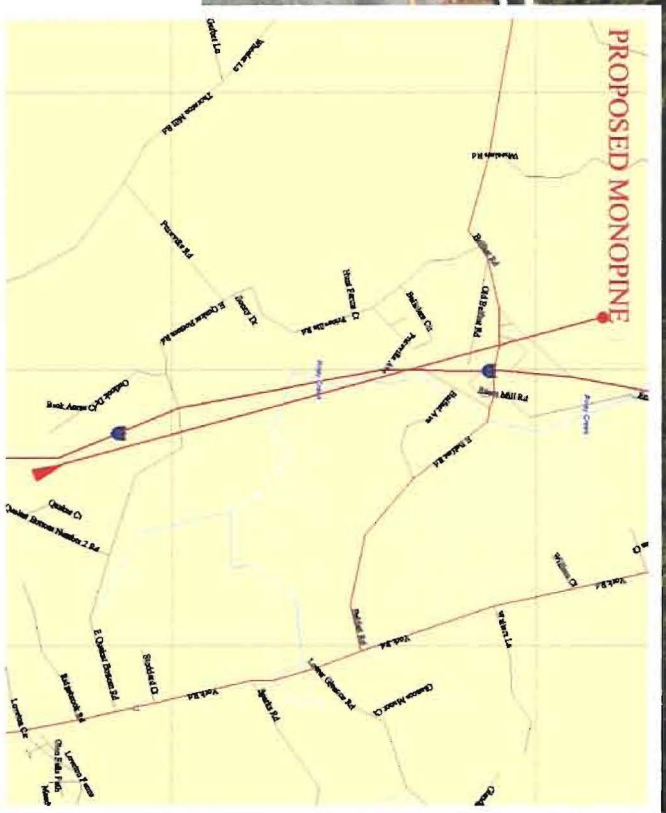
7



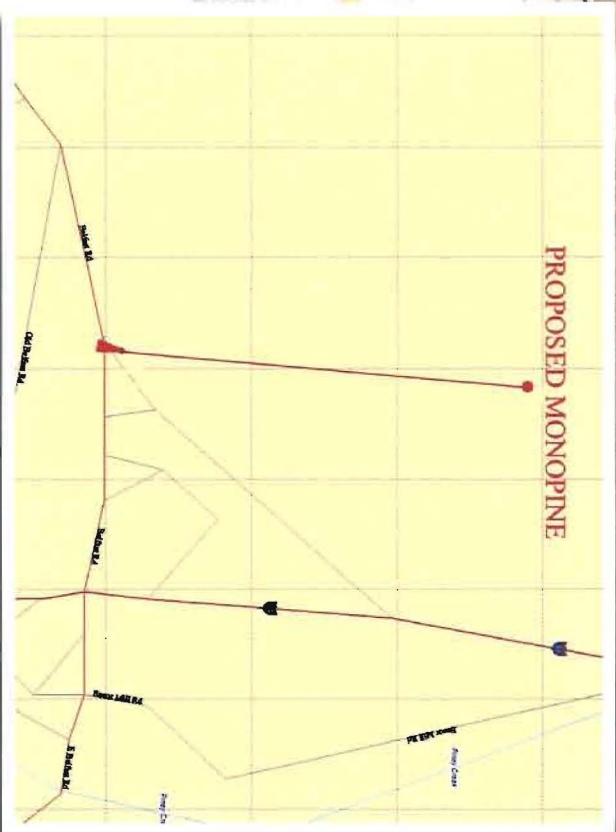
VERIZON WIRELESS SITE:
BELFAST ROAD
PETITIONER'S EXHIBIT 8a-8f
ONE MONOPINE



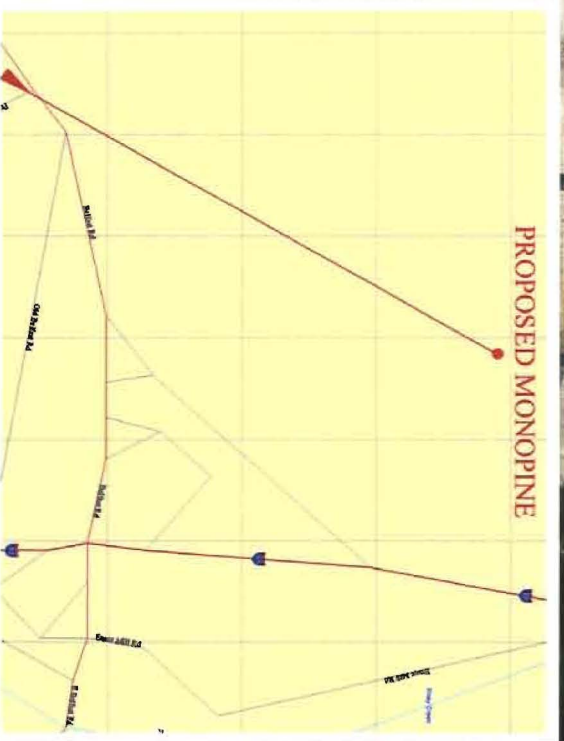
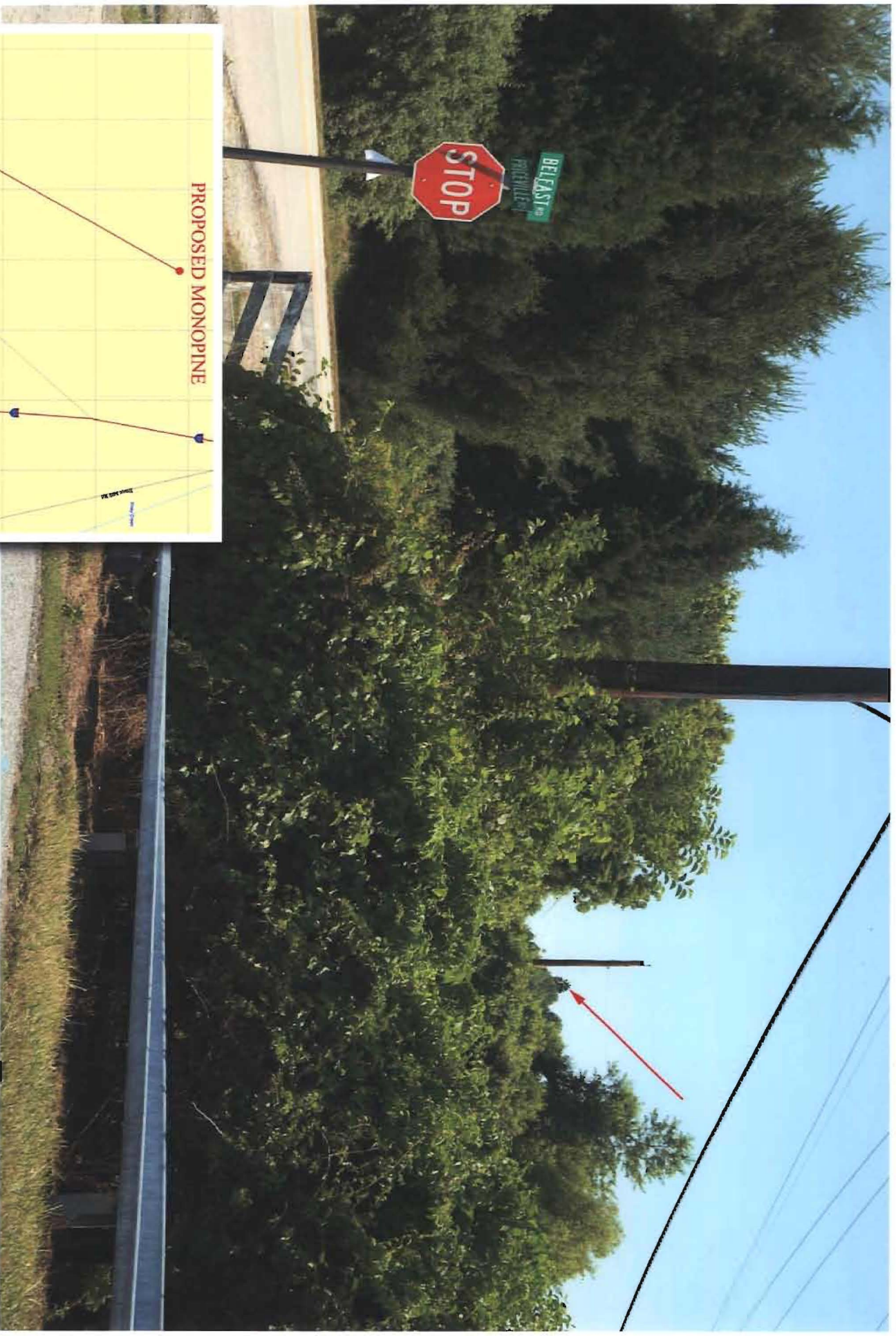
VERIZON WIRELESS SITE:
BELFAST ROAD
ONE MONOPINE § 6



VERIZON WIRELESS SITE:
BELFAST ROAD
ONE MONOPINE
82



VERIZON WIRELESS SITE:
BELFAST ROAD
ONE MONOPINE



VERIZON WIRELESS SITE:

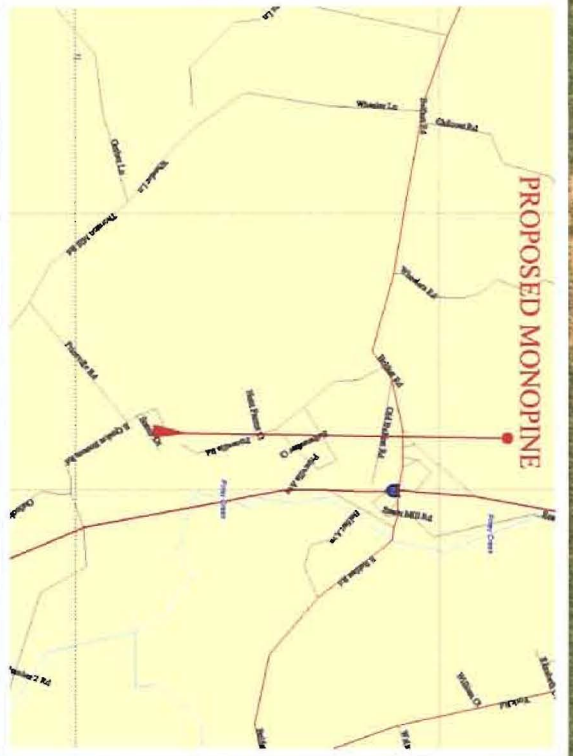
BELFAST ROAD

ONE MONOPINE

87



VERIZON WIRELESS SITE:
BELFAST ROAD 8J
ONE MONOPINE



VERIZON WIRELESS SITE:
BELFAST ROAD
ONE MONOPINE
87





90

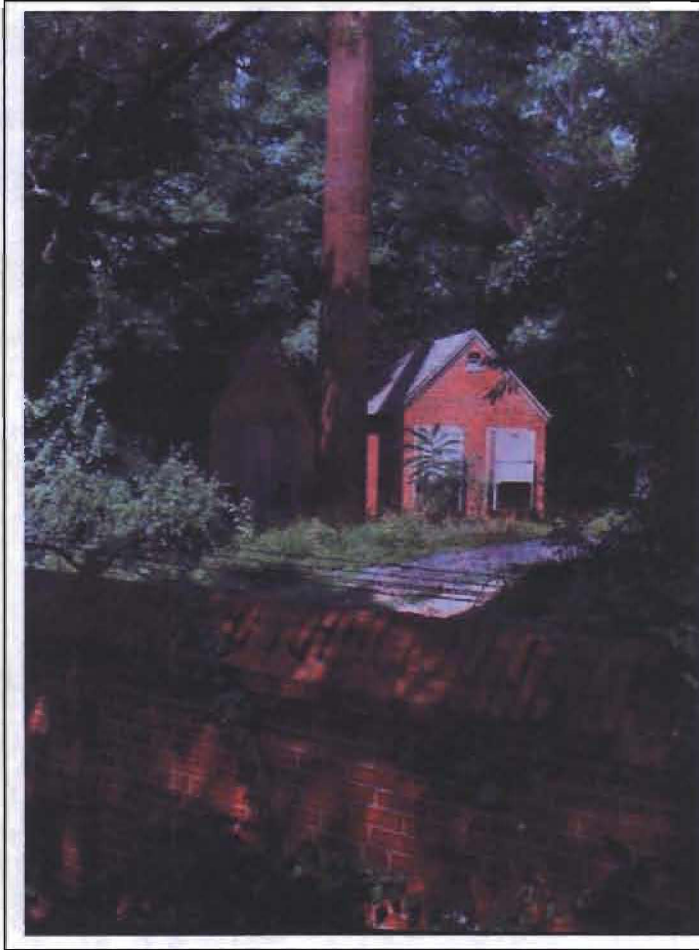


EXAMPLES OF EXISTING TREE POLES
© Digital Design and Imaging



Telecommunications Facility
At Historic
George Washington's Residence at Mount Vernon

Examples of Existing Tree Poles: Shelter Details



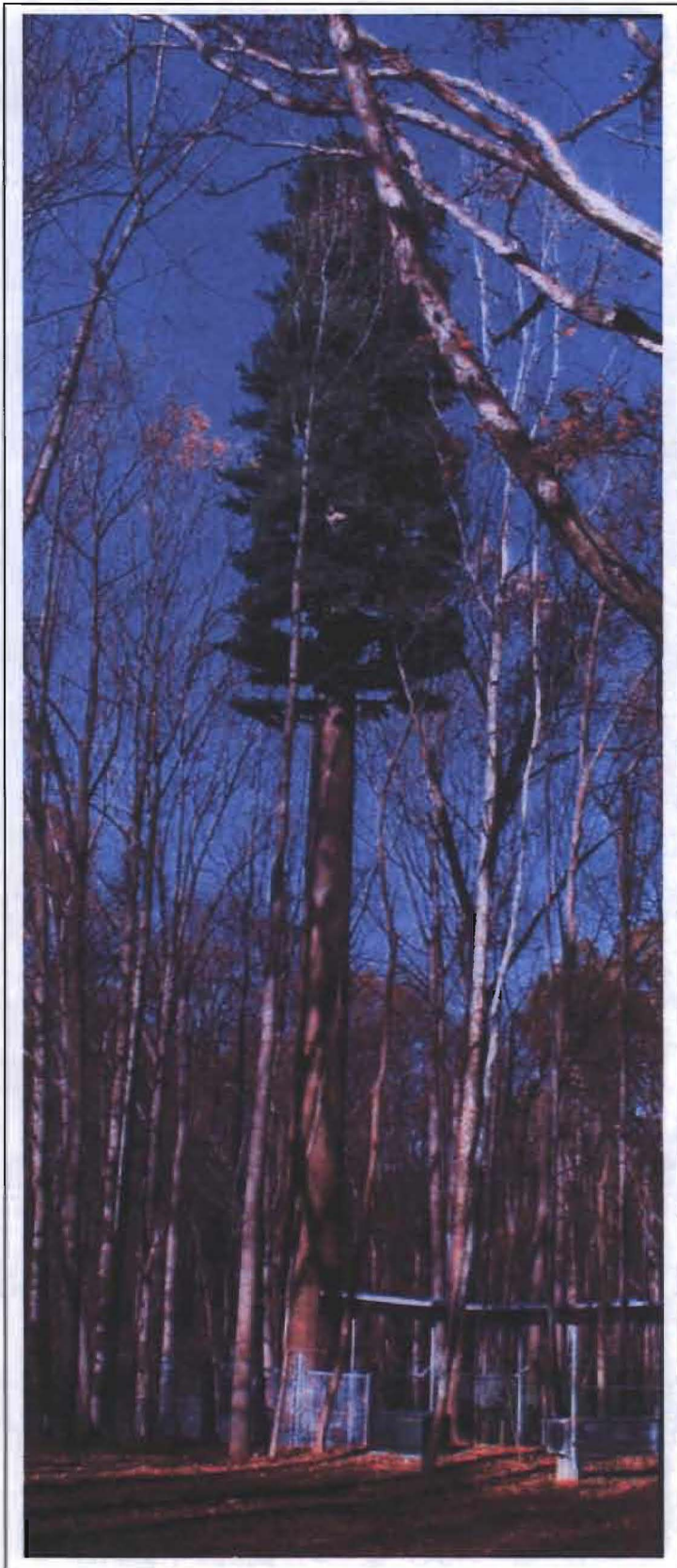
Left: Shelter detail of the telecommunications facility at George Washington's residence in historical Mount Vernon.

Below Left: Ice bridge of telecommunications facility at Veterans of Foreign War site.

Below: detail of stealth tree pole facility trunk and foliage.



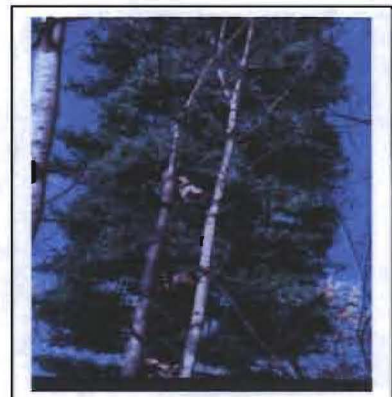
EXAMPLES OF EXISTING TREE POLES



Above right:
Telecommunications Facility at Great
Falls Park.

Left: Telecommunications Facility at
Great Falls

Below: detail of stealth tree pole facility
and foliage.



EXAMPLES OF EXISTING TREE POLES



Above: Enhanced aerial photo of communications facility at Avenel Golf Course.

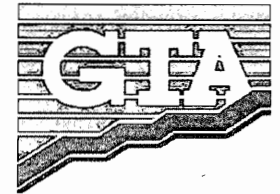
Right: Stealth communications facility at Avenel Golf Course.



GEO-TECHNOLOGY ASSOCIATES, INC.

GEOTECHNICAL AND
ENVIRONMENTAL CONSULTANTS

A Practicing ASFE Member Firm



September 28, 2007

Maryland Historical Trust
Office of Preservation Services
100 Community Place
Crownsville, Maryland 21032

Attn: Ms. Elizabeth Cole

Re: Section 106 Submission Packet
Belfast Road Cell Site
Belfast Road
Baltimore County, Maryland

Dear Ms. Cole:

Pursuant to the *Nationwide Programmatic Agreement For Review Of Effects On Historic Properties For Certain Undertakings Approved By The Federal Communications Commission*, please find the enclosed FCC Form 620 prepared by Geo-Technology Associates, Inc. (GTA) for the above-referenced site on behalf of Verizon Wireless (VZW). The enclosed information is pertinent to review under Section 106 of the National Historic Preservation Act, 47 U.S.C. § 151 *et seq.*

Site Description

The proposed development ("subject site") is located north of Belfast Road and west of Interstate I-83, in the Sparks area of Baltimore County, Maryland. The subject site consists of a portion of an agricultural field and an existing gravel driveway, located on a larger parcel of land ("overall property") containing agricultural fields and undeveloped woodlands. VZW proposes to construct a fenced telecommunications compound, which will include an approximate 87-foot tall "stealth" tree-type antenna support monopole (including the height of the stealth branches) and a prefabricated equipment shelter. The subject site will contain a new antenna support structure; therefore, the site is subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f ("Section 106").

COPY

14280 Park Center Drive, Suite A, Laurel, Maryland 20707 (410) 792-9446 (301) 470-4470 Fax: (410) 792-7395

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PETITIONER'S EXHIBIT 11

Sherri L. Linton

8821 Lottsford Road

Largo, MD 20774

301-717-6245

Sherri.linton@verizonwireless.com

(Verizon Wireless NE Region)

OVERVIEW & FOCUS

RF Design & Simulation / Enhanced 911 Design & Certification

Designed RF Networks for major carriers for GSM, TDMA, and CDMA networks. Engineered and project managed large-scale E911 wireless location network designs for RF certification and test reporting.

- *Offering 10 years of RF engineering and consulting experience spanning the full lifecycle of design, testing, troubleshooting, project management, and acceptance.
- *RF simulation, design, deployment, integration, and system testing.
- *Proven ability to translate business objectives into technical solutions, synthesizing complex information.
- *Proven ability to communicate ideas with clear direction through excellent verbal and written/media communications.

CORE COMPETENCIES

General Competencies:

- RF Network Design, Modeling, Test, Analysis
- Wireless Location Network Life Cycle
- Customer Relationship Support
- Process/ Quality Control Development
- Project Management
- Multimedia/ Corporate Communications Layout and Design

Technical Qualifications:

- BS Electrical Engineering
- RF Voice/Data/ E911 Modeling
- RF Design experience in TDMA/GSM/CDMA/E911
- Layout tools including MapInfo, ArcView/ESRI, Macromedia/Adobe
- Design tools including GeoPlan, CellPlan, RFPlan, Planet, Wizard, EDX
- MS Access, Excel, Office Suite

*Strong team leader with ability to thrive in fast-paced, high-technology, high production environments.

Highlights include:

*RF Design/ Certification Engineer and Project Manager for CDMA, GSM, TDMA and Enhanced 911 Phase II Wireless Location Networks

*Engineered wireless networks through full lifecycle of RF design projects including model simulation using GeoPlan/ RFPlan/ CellPlan/ Wizard/ EDX, System Testing, and Performance Acceptance Reporting

*Positioned and implemented network certification & optimization guidelines/Method of Procedure

* Delivered test analysis reports certifying network performance and criteria as defined by FCC wireless location system standards, enabling business-critical analysis of national network performance for large wireless telecommunications organizations

PROFESSIONAL EXPERIENCE

VERIZON WIRELESS, Annapolis Junction, MD

April 2007-Present

RF Engineer

RF Engineer specializing in design and optimization of Wireless Networks

- *Responsible for site planning, network performance, resolving network problems, and network optimization for Baltimore City, Baltimore County, and Hartford County, MD
- *Evaluates the need for additional coverage for an uninterrupted customer experience
- *Performs RF design and coverage predictions of site candidates
- *Conducts RF Simulation testing for coverage and performance optimization
- *Performs network drive testing and data collection
- *Post-process raw network and drive test data
- *Performs antenna configuration optimization as a part of network optimization
- *Provides support materials and participated in zoning hearings
- *Creates work orders for new cell site equipment, frame layout and configuration design
- *Provide site acquisition with area search rings and primary cell site candidate selection based on RF propagation studies and area coverage needs
- *Works with system performance team to troubleshoot problems in the network and customer complaints to resolution
- *Supports traffic engineers through network capacity building

US PATENTENT & TRADEMARK , Alexandria, VA

2006-2007

Electrical Engineering/ Multiplexing Patent Examiner

Investigate patent applications in the Electrical Engineering/ Multiplexing Art and report on whether they comply with the requirements of United States patent legislation before granting patent rights for new inventors. The work of patent examiners is technically complex and involves knowledge of technical processes used in industry and advances in technological research. It also involves making legalistic decisions based on knowledge of patent law.

ANDREW CORPORATION, Ashburn, VA

2001-2006

Principal RF Engineer and Project Manager

Member of a highly specialized wireless telecom organization for the Geometrix Locate products. Worked closely as a Geometrix RF Design/ Certification subject matter expert and engineer with Product Development, Engineering, and Professional Services Organization in regards to this technology. Engaged in network design, implementation, and performance testing. Team leader and mentor for technical teams and staff. Example assignments listed below:

RF Network Design

RF modeling for E-911 Phase II Network design. Modeled variances in system architecture to translate into a technical solution that would meet FCC specifications for E911 Phase II based on cell site parameters, configuration and coverage. Produced technical reports documenting system design components, features, and predicted performance.

Network Performance Testing/Certification and Project Management

Provided RF analysis and technical expertise during the testing phase of the project lifecycle. Analysis included design process re-engineering, various RF impact studies, Test Data Analysis, troubleshooting, and reporting automation. Program managed the RF Certification of network performance testing of the Geometrix solution. Certification included analysis of raw empirical data, troubleshooting performance failures, and analyzing measured network performance against established guidelines and mandates. Supported development of the Method of Procedures to be implemented nationally. Project management involved setting tasks for a small team of engineers, creating the overall vision and path to complete the project, setting technical guidelines, setting timelines and deadlines, communicating challenges, problem solving, and working extensively and personally with the 3rd party customer.

BOOZ, ALLEN & HAMILTON, McLean VA**1998-1999*****RF Engineer***

RF Engineer for this large, top-tier "Big 5" consulting firm; achieved success in Land Mobile Radio Interoperability study and analysis for government client. As an analyst, defined requirements, conducted technical interviews for knowledge-gathering component of troubleshooting process, wrote documentation, and synthesized probable solutions based on findings.

GALAXY ENGINEERING SERVICES, Atlanta, GA**1998-1999*****RF Engineer***

RF Engineer specializing in design and optimization of Wireless Networks.

- *Performed RF design and coverage predictions of site candidates
- *Conducted RF Simulation testing using Grayson Test Equipment
- *Performed site integration drive testing and data collection
- *Post-processed raw data
- *Performed interference analysis and frequency planning
- *Provided support materials and participated in zoning hearings
- *Responsible for developing frequency plan and providing neighbor list for new sites
- *Provide site acquisition with area search rings and primary cell site candidate selection based on RF propagation studies.

ERICSSON, Research Triangle Park NC**1996-1998*****RF Engineer Co-op***

RF Engineer co-op intern. Troubleshoot circuit board and component functionality in Ericsson Cell Phones

- *Digital signal Processing of circuit board functionality for troubleshooting and board improvements.
- *Replaced electric components for improved functionality

EDUCATION**North Carolina State University****B.S. Electrical Engineering (1999)****Additional Training:****ALCATEL-LUCENT:**

- *CDMA 3G 1X RF Design Engineering and Base Station Call Processing
- *1X EVDO RF Design Engineering and Call Processing
- *CDMA System Performance Engineering

LTE:

- *How LTE Really Works: Design, Implementation, and Operational Considerations for Enhanced 4G

PROJECT MANAGEMENT – George Washington University (in progress)

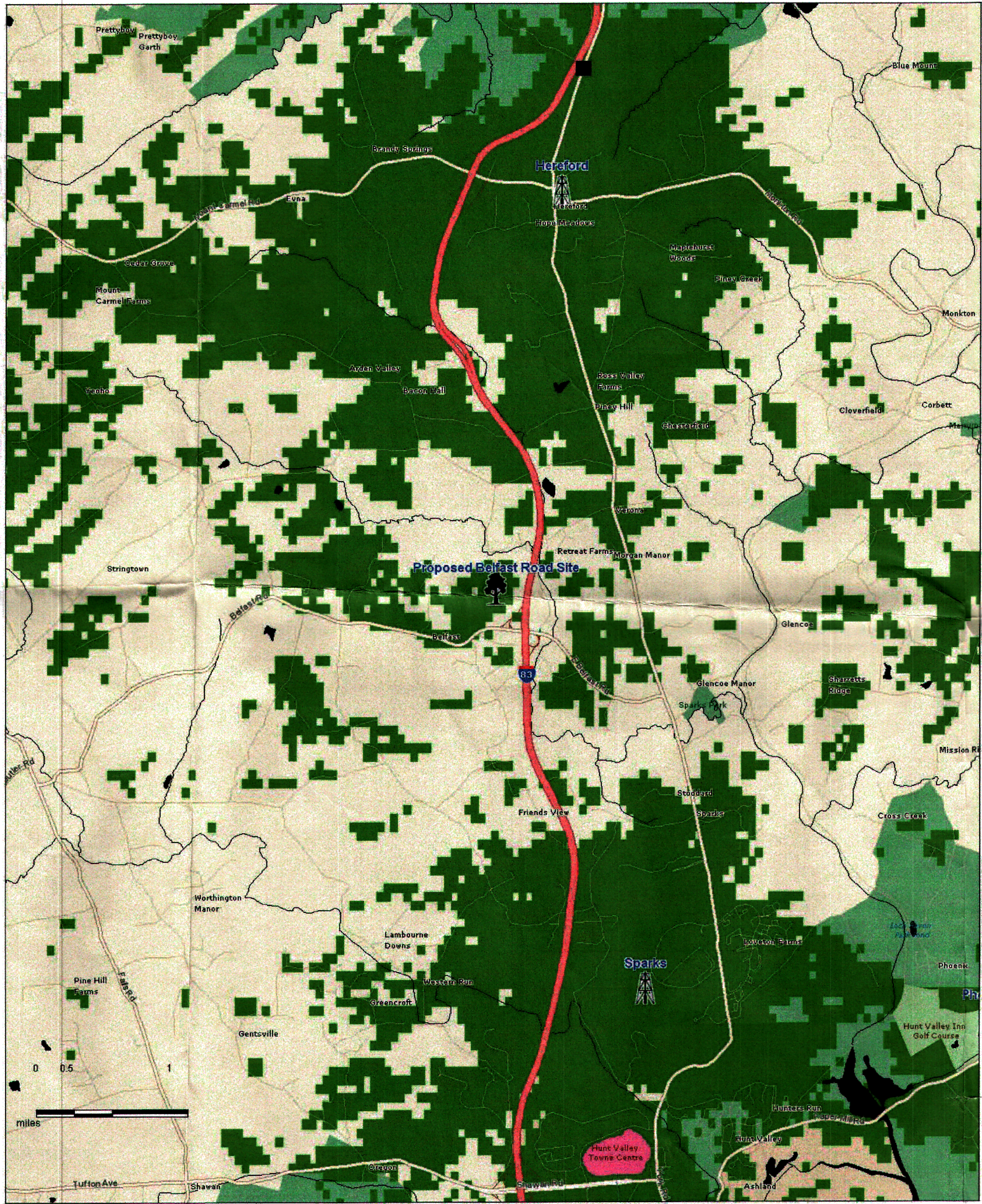
- *Introduction to Project Management (Vendor training)
- *Master's Certificate in Project Management – George Washington University (expected October 2009)

Additional Competencies/Hobbies:

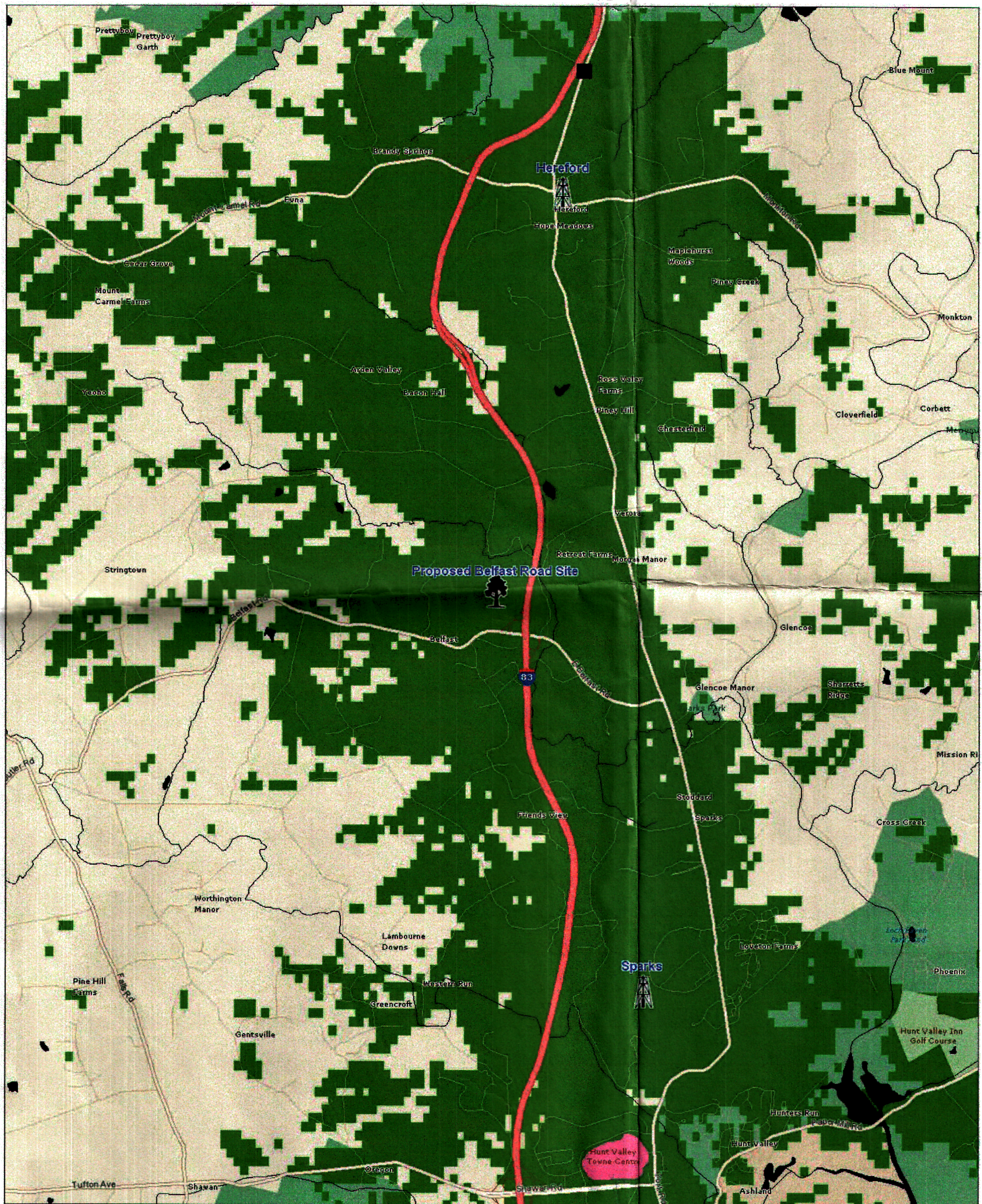
- *Web design, computer graphics and electronic media, printed media layout and design, book cover design
- *Public speaking – Placed 4th Place in the nation for oratorical competition
- *Acting & Directing – Has performed on stage with Arena Stage (Washington, DC) and the John F. Kennedy Center for the Performing Arts (Washington, DC)
- *Writing – Technical writing, creative and dramatic writing

Verizon Wireless Belfast Road Site

Current Coverage



Proposed Coverage



Reliable Coverage

Proprietary Information of Verizon Wireless
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September 2009



THOMAS E. WOLFE, RLA
Landscape Architect

Project Assignment:
Senior Landscape Architect

Years of Experience:

MRA: 6
Other Firms: 5

Education:

B.S.L.A., Landscape Architecture,
Ohio State University, 1999
FCA Program, Maryland
Department of Natural
Resources, Johns Hopkins
University

Active Registration:

Maryland, Landscape Architect,
2002, #3173

Professional Affiliations:
ASLA, Maryland Chapter



**MORRIS & RITCHIE
ASSOCIATES, INC.**

Qualifications:

Mr. Wolfe, a Maryland registered landscape architect, works out of Morris & Ritchie Associates' Towson, Maryland office. His responsibilities include landscape architectural design, landscape and planting design, Master Planning, construction document detailing, recreation and park design, and commercial and residential planning. He also participates in public and client presentations. Mr. Wolfe is recognized by the Maryland Department of Natural Resources as a Qualified Professional for the purpose of developing Forest Stand Delineation and Forest Conservation Plans.

Projects designed by Mr. Wolfe include:

Garrison Forest Middle School, Baltimore County, Maryland - Project Manager in charge of new middle school building. Coordinated with architect and general contractor from concept stage to final construction period services. Took project through Baltimore County development plan approval process. Sited building on campus to create a connection to existing school buildings. Created a connection into the overall pedestrian circulation network, created new drop-off and stacking areas, added additional parking lot and designed all landscape and hardscape amenities. Coordinated with riding program coordinator to realign the fencing and paddock layouts to accommodate temporary and permanent construction activity. Coordinated LEED certification points as pertaining to Landscape and Civil Engineering for Silver LEED certification. 2003/2006

Yorkway Redevelopment – Dundalk, MD – Prepared Planned Unit Development Concept Plan for 66 single family units. This in-fill project in Baltimore County was a much anticipated revitalization of a nuance property acquired by the County. Processed plans from pre-concept plan meeting to Planning Board Hearing, 2009 – present.

The Preserve at Windlass Run PUD, White Marsh, MD – Prepared Planned Unit Development Concept Plan for 424 single family detached and attached homes in the Middle River area of Baltimore County. Processed Plans from pre-concept plan meeting to Planning Board Hearing. Processed Development Plan for signatures through Baltimore County's review agencies, 2008 – present.

5737 Allender Road, White Marsh, MD – Prepared and processed Concept Plan and Development Plans through Baltimore County's development review process. Provided expert testimony at the Hearing Officer's Hearing on the project. 2008 – April, 2009.

2801 Bay Drive PUD, Millers Island, MD - Prepared Planned Unit Development Concept Plan for 14 single family townhouse units with an associated 16 slip marina development. Prepared Concept Plan, Pattern Book, and Planning Board report. Processed plans from pre-concept plan meeting to Planning Board Hearing, May, 2008 to January 2009.

CATEGORIES (not all inclusive)

UTILITY FACILITIES

Verizon Cell Tower Site, Phoenix, Maryland - Project Manager in charge of landscape architectural and zoning plan preparation for adding a sixty foot mono-pole cell tower on the existing Hunt Valley Country Club maintenance facility lot. Represented clients at the Baltimore County Zoning Hearing offering expert testimony in these areas of expertise. July 2007

COMMERCIAL/ RETAIL CENTERS

7-11 Corporation, Wisconsin Avenue, Bethesda, Maryland - Prepared landscape plans and site development details for a proposed 7-11 Convenience Store on Wisconsin Avenue in the City of Bethesda. Coordinated planting design to fit the parameters set by the Maryland – National Capital Parks and Planning Commission's approved Bethesda Streetscape Guidelines, April 1992. Prepared landscape and grading plans used in the applications for permits. 1999/2002

Hunt Valley Town Centre, Hunt Valley, Maryland – Landscape designer for amenity package for mall renovation. Detailed walls, paving, and landscape areas for Town Center layout. Processed zoning request on individual store building permits, and researched vendors for outdoor sound system, fireplace structure, and paving suppliers. 2002/2005

Mondawmin Mall, Baltimore City, Maryland - Prepared landscape plans and site development details for mall renovation. Coordinated grading and landscape design with architect for Phase I grocery store improvements. Processed landscape approvals through Baltimore City. Participated in public meetings and UDARP hearings with Baltimore City. 2005/2006

EDUCATIONAL FACILITIES

Oldfields School Master Plan, Glencoe, Maryland - Team member involved with creating a Master Plan for the Oldfields School to develop an academic village. Coordinated with team architects to evaluate historic growth patterns of the campus, identify historic structures and areas steeped in the school's 138 years of traditions. Prepared alternatives that removed vehicular traffic from internal portion of the village and provided safer pedestrian access while respecting areas with sentimental uses. Preparing Master Plan report and supporting exhibits focusing on consolidating the equestrian program and the creation of a new indoor riding facility. 2003/2004

Garrison Forest Middle School, Baltimore County, Maryland - Project Manager in charge of new middle school building. Coordinated with architect and general contractor from concept stage to final construction period services. Took project through Baltimore County development plan approval process. Sited building on campus to create a connection to existing school buildings. Created a connection into the overall pedestrian circulation network, created new drop-off and stacking areas, added additional parking lot and designed all landscape and hardscape amenities. Coordinated with riding program coordinator to realign the fencing and paddock layouts to accommodate temporary and permanent construction activity. Coordinated LEED certification points as pertaining to Landscape and Civil Engineering for Silver LEED certification. 2003/2006

Garrison Forest Math/Science Building, Baltimore County, Maryland - Project Manager in charge of renovation and conversion of existing middle school building to a Math/Science laboratory. Coordinated with architect and general contractor for site improvements, ADA accessibility, and fire emergency access. Took project through Baltimore County Redline Development Plan approval process. Created a connection into the overall pedestrian circulation network, created new maintenance and fire access drive. Designed all landscape and hardscape amenities. Coordinated LEED certification points for Landscape and Civil Engineering categories. 2004/2006

HEALTH CARE FACILITIES/HOSPITAL / NURSING HOME PROJECTS

St Joseph Hospital, Towson, MD - Team member designing landscape and hardscape amenities for new heart center and main entrance. Consulted with project manager to create a signature landscape design to compliment the new entrance and hospital expansion. Coordinated with irrigation contractor, detailed water features, and detailed planters and plant material for roof-top terraces. 2004/2005

Presbyterian Homes, Towson, MD - Project Manager in charge of new common area addition and room renovation for existing continuing care facility. Responsible for grading site and providing connection for stormwater management. Designed courtyard kitchen garden with emphasis on seasonal interest for resident's use. Design included detailing for water feature, overhead trellis, and path/walkway system. Design plantings for planters and coordinated with electrical engineers to provide opportunities for holiday decorating. 2005/2006

HOUSING FACILITIES

Residential

Jessop Property, Baltimore County, Maryland - Project Manager in charge of landscape architectural and civil engineering services for the layout and design of a 103 lot residential housing development with 39 single family and 64 semi-detached units. Represented clients at the Baltimore Hearing Officer's Hearing offering expert testimony in the related areas of expertise. June 2007

Apartment Buildings / Condo

Rodgers Forge Condominiums, Baltimore County, Maryland - Project Manager in charge of landscape architectural and civil engineering services for the conversion of an existing 508 unit apartment complex to condominiums. Services included coordination and siting of new clubhouse and pool addition; landscape amenities that included outdoor seating areas, grilling and picnicking areas, dog walk areas, and tot lot. Created new and expanded existing parking, generated grading and utility relocation plans; and site work for rear additions. 2003/2006

RELIGIOUS FACILITIES

Restoring Life International Church, Baltimore County, Maryland - Site feasibility study to determine opportunities for the construction of a new building complex in western Baltimore County. Assessed zoning, utility (both public and private), traffic, and environmental constraints to create a building envelop. Coordinated with Utah based architect findings and assisted in possible building locations and parking layouts. Included options for Green Building and alternative paving (porous paving) solutions to lessen impact on site. 2006/present.

§ 32-4-416. PRESERVATION OF NATURAL FEATURES.

(a) *Preservation of features.* Each Development Plan shall preserve natural features, including watercourses, waterfalls, beaches, and significant vegetation.

(b) *Duty to protect habitats.* The county shall require adequate protection of any known habitat of an endangered species.

(1988 Code, § 26-278) (Bill No. 29-95, § 1, 5-21-1995; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004; Bill No. 26-07, § 1, 4-29-2007)

§ 32-4-417. SCENIC VIEWSHEDS.

The Planning Board shall:

(1) Provide to the Zoning Commissioner a catalogue of the elements for each scenic viewshed in the Master Plan;

(2) Identify the scenic route or view, as designated in the Baltimore County Master Plan as either enclosed, expansive, focused or a combination; and

(3) Identify the aspects of the visual quality, unity of the elements, and integrity of the elements.
(1988 Code, § 26-284) (Bill No. 121-01, § 3, 1-29-2002; Bill No. 75-03, § 28, 7-1-2004)

§ 32-4-418. STRUCTURES.

Structures, as defined in Title 7 of this article, identified on any of the lists referred to in § 32-4-223(8)(i), (ii) and (v) of this title are subject to the provisions of Title 7 of this article.
(Bill No. 26-07, § 2, 4-29-2007)

SUBTITLE 5. RECLAMATION OF PROPERTY**§ 32-4-501. RECLAMATION PLAN.**

(a) *In general.* The owner of reclamation property may provide for the reclamation, use, and development of reclamation property by submitting a reclamation plan in accordance with this section.

(b) *Schematic plan required.* The reclamation plan shall set forth a conceptual schematic representation of the proposed use of reclamation property by means of maps, graphs, charts, or other written or drawn documents so as to enable the reviewing body to make a reasonably informed decision regarding the development.

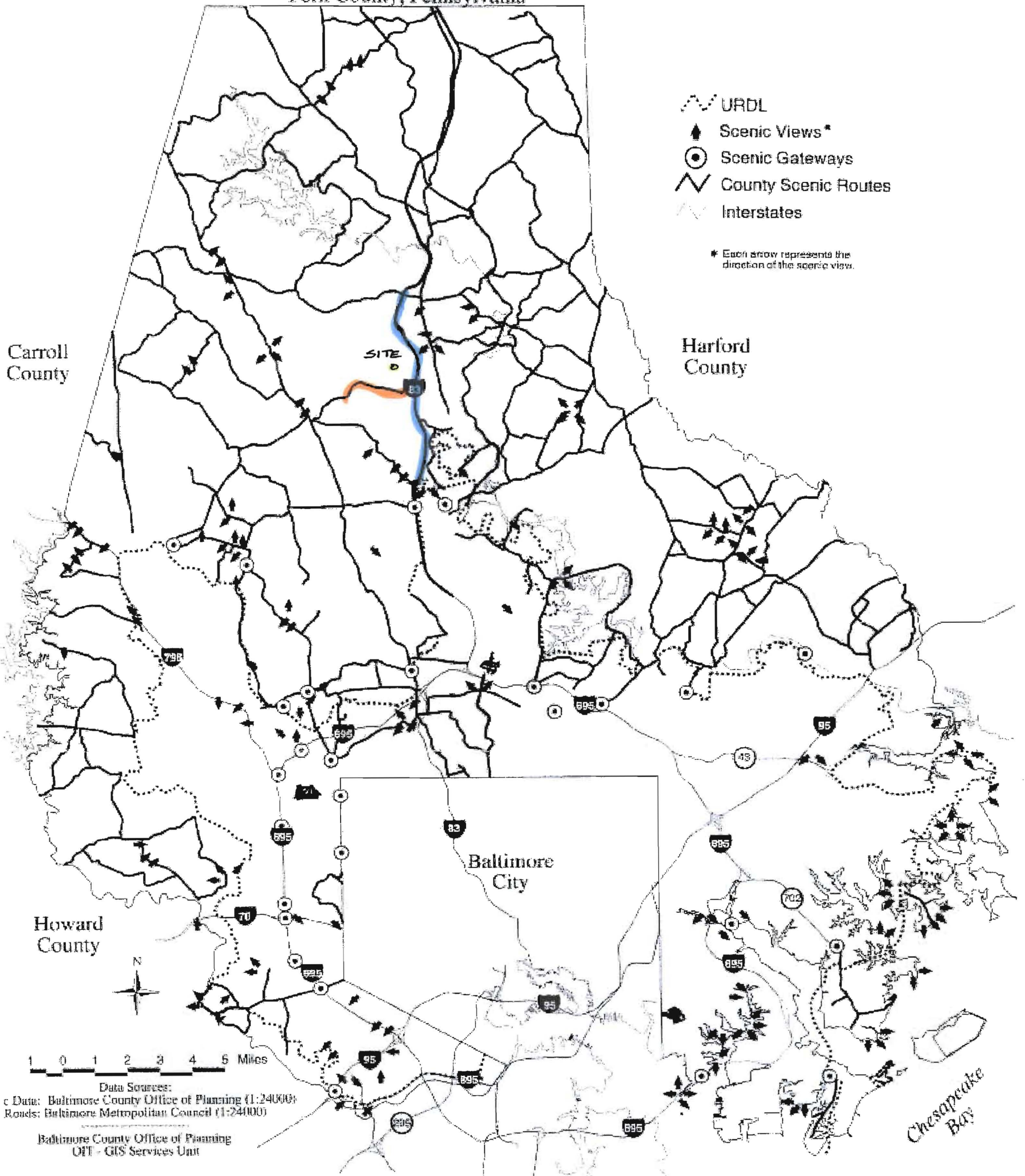
CMDP



Division VI
Section A

SCENIC VIEWS

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Map 37
Scenic Resources

BELFAST RD 
 I-83 
 SITE 

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
NE/end Carnival Ave., off Arcadia Ave.	*	DEPUTY ZONING COMMISSIONER
between Hanover Pike & Trenton Road		
5th Election District	*	OF BALTIMORE COUNTY
3rd Councilmanic District		
(16050 Carnival Avenue)	*	CASE NO. 02-443-XA
Arcadia Volunteer Fire Department, Inc.,	*	
Legal Owners <i>and</i>		
Verizon Wireless, Lessee	*	
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception and Variance filed by the legal owner of the subject property, the Arcadia Volunteer Fire Department, Inc. and Verizon Wireless as Lessee of the property located at 16050 Carnival Avenue. The special exception request is to approve a 199-ft. monopole antennae and related equipment for use as a telecommunications facility. In addition, a variance is requested from Section 426.9.C.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a telecommunications facility to be located on a 100 ft. x 100 ft. section of a larger 51.288 acre parcel of land in lieu of a lot of at least 5 acres.

Appearing at the hearing on behalf of this zoning request were Brian Stover, representing Verizon Wireless, David Martin, professional engineer, Kristina Capucilli and Zhongting Shen and Robert A. Hoffman, attorney at law, representing the Petitioner. Appearing in opposition to the Petitioner's request was Jack Dillon, Executive Director of the Valleys Planning Council.

Testimony and evidence indicated that the property, which is the subject of this zoning relief, consists of a gross acreage of 51.288 acres, of which a 100 ft. x 100 ft. section has been set aside for the proposed use of the construction of a monopole cellular communications tower. The subject property is located on the eastside of Hanover Pike in the Upperco area of northern

PETITIONER' S
EXHIBIT NO. 19

Baltimore County. The overall parcel of property is mostly in agriculture with a smaller portion being wooded. The Petitioner proposes to locate its equipment and tower in the wooded portion of the property on the north side of the parcel. In order to proceed with the construction of this monopole, the special exception request is necessary. Furthermore, the Petitioner has chosen to lease only the 100-ft. x 100-ft. area of this overall tract. The regulations require that a telecommunications facility be located on at least 5 acres of property. Therefore, the Petitioner has requested a variance.

As stated previously, Mr. Jack Dillon, Executive Director of the Valleys Planning Council, appeared in opposition to the Petitioner's request. Mr. Dillon is concerned over the visual impact that this 199-ft. monopole structure will have on the surrounding rural area. He testified and has requested that the Petitioner reduce the height of the tower so that it extends only a short distance from the top of the existing tree line on the property. This would effectively reduce the height of this tower from 199 ft. to 110 ft. This would cause the tower, along with the antenna to be located thereon, to be less noticeable to surrounding residents. Mr. Dillon further testified that this practice is employed in Albemarle County in Virginia. The City of Charlottesville and the surrounding county have chosen to approve shorter towers, which can be better hidden in existing forests. Mr. Dillon has requested that this similar method be employed in this particular application. Photographs were entered into evidence by Mr. Dillon, which illustrated his position.

It is clear that the Baltimore County Zoning Regulations permit the 199-ft. monopole cellular tower in the R.C.2 zone by special exception. As is usual and customary with these particular requests, the matter was reviewed by the Baltimore County Tower Review Committee. That committee met on July 11, 2001 to specifically review and discuss this proposal for a 199-ft. monopole to be located at this location. The findings of the Tower Review Committee, as

contained within their report, indicated that the Petitioner had no other suitable site or existing structure to mount this particular antenna, no apparent serious community opposition, and noted the existence of a 620 ft. Baltimore County tower in close proximity to this proposed monopole. Accordingly, the Tower Review Committee Community Representative stated in the report, that the tower proposed to be located on this site would have little, if any, impact on the community and recommends approval of same. Furthermore, the Tower Review Committee identified a deficiency in coverage for the Verizon network along the Route 30 corridor. This deficiency would be resolved by the placement of this tower at this location. It was noted at the hearing, as well as within the Tower Review Committee report, that Baltimore County absolutely prohibited this Petitioner from locating their antenna on Baltimore County's own 620-ft. tower. It specifically mandated that a separate tower be constructed which would accommodate the Petitioner's antenna, as well as other co-locators. The Tower Review Committee also recognized that this particular monopole would be constructed within the Piney Run Designated Rural Legacy Area., However, the Tower Review Committee believes that this location is the best location to construct this proposed tower in this area of Baltimore County. Accordingly, the Tower Review Committee recommends that the proposed monopole be built as proposed on the site plan submitted into evidence.

In addition to satisfying the requirements of Section 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the testimony and evidence offered at the hearing also satisfied the additional requirements imposed upon this Petitioner pursuant to Section 426.9 of the B.C.Z.R. Based on the testimony and evidence offered at the hearing, as well as the findings and conclusions made by the Tower Review Committee, I find that the special exception should be granted.

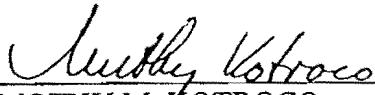
As stated previously, the Petitioner also requested a variance to allow this proposed monopole to be situated on a 10,000-sq. ft. parcel of property in lieu of the required 5 acres. There was no justification provided at the hearing to substantiate the granting of a variance in this regard. The testimony presented at the hearing demonstrated that this Petitioner has the ability to lease from the Arcadia Volunteer Fire Department a parcel of property constituting 5 acres. Since this can easily be done, the variance request shall be denied. The Petitioner shall be required to lease a total of 5 acres from the Arcadia Volunteer Fire Department, but may, however, utilize only a 10,000-sq. ft. area within that overall 5-acres for the purpose of locating their equipment. This, therefore, will satisfy this 5-acre minimum requirement.

THEREFORE, IT IS ORDERED this 10th day of June, 2002, by this Deputy Zoning Commissioner for Baltimore County, that the Petition for Special Exception to allow the development of a 199 ft. monopole antenna and related equipment on the subject property, be and is hereby APPROVED.

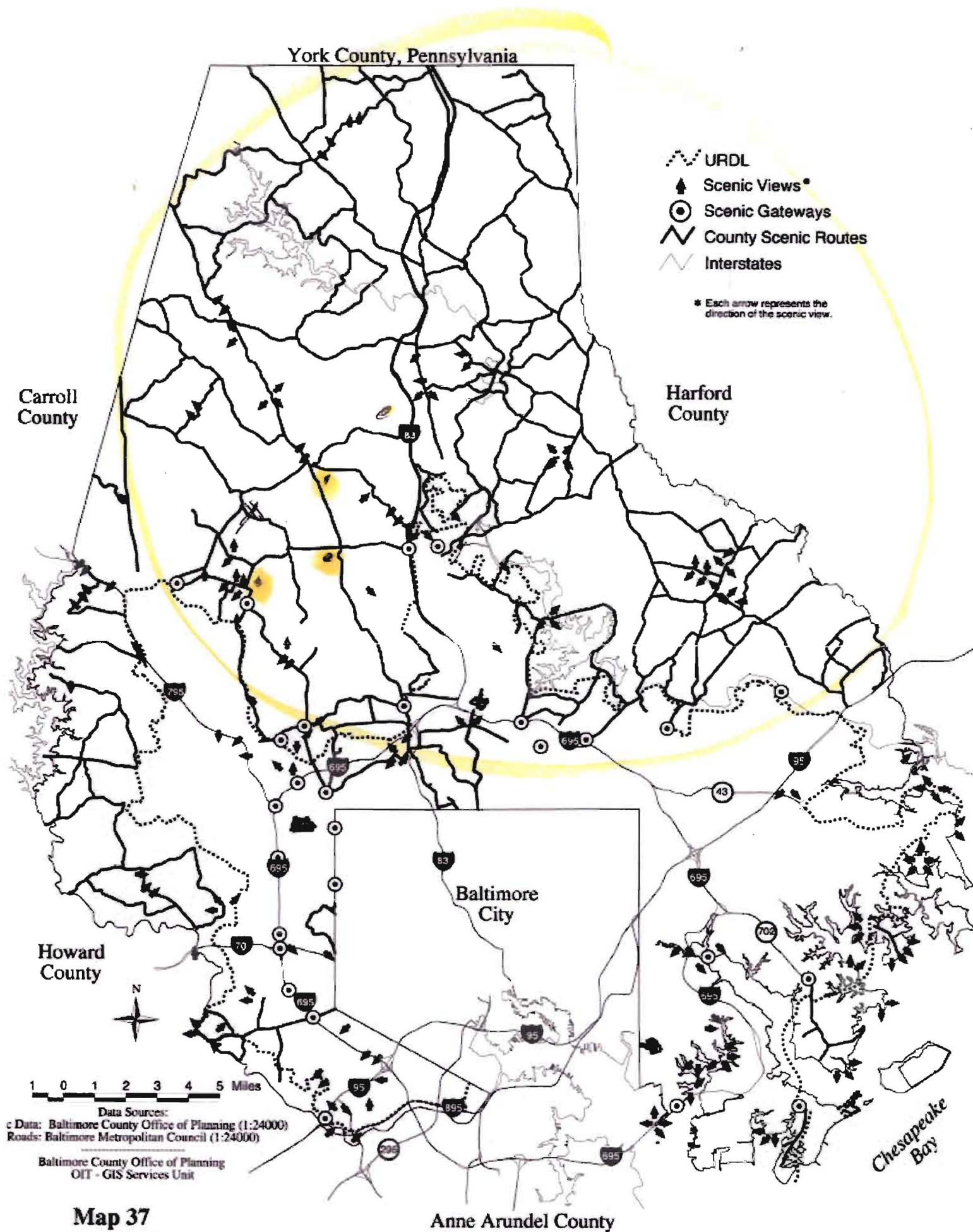
IT IS FURTHER ORDERED, that the Variance Request to allow the telecommunications facility to be located on a 10,000 sq. ft. area of property in lieu of a lot of at least 5 acres, be and is hereby DENIED.

IT IS FURTHER ORDERED, that the Petitioner shall be required to lease from the Arcadia Volunteer Fire Department a total area of property constituting at least 5 acres of land.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj



Map 37
Scenic Resources

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MARKINGS WERE BY MR DILLON
11/30/84
TESTIMONY

PETITIONER'S
EXHIBIT NO. 20