**MEMORANDUM**

DATE: January 4, 2002  
 TO: Montgomery County Planning Board  
 VIA: John Carter, Chief, Community-Based Planning, *JAC*  
 FROM: *JJD* Judy Daniel, Team Leader, Rural Area

REVIEW TYPE: **Special Exception**  
 APPLYING FOR: **Telecommunications Facility**  
 CASE NUMBER: **S-2477**

APPLICANT: AT&T Wireless Services  
 ZONE: RDT  
 LOCATION: Hawkins Creamery Road at Laytonsville Road,  
 Etchison Community  
 MASTER PLAN: Preservation of Agricultural and Rural Open Space  
 MCPB HEARING: January 10, 2002  
 PUBLIC HEARING: January 18 at Hearing Examiner

**STAFF RECOMMENDATION: APPROVAL with conditions:**

1. The applicant is bound by all submitted statements and plans.
2. Move the equipment area to the location within the tree grove as recommended by the Tower Committee.
3. Submit a tree protection plan to the Environmental Planning staff for approval prior to the release of sediment and erosion control or building permit, as appropriate.
4. Comply with Department of Permitting Services requirements for sediment and erosion control and stormwater management.
5. Replace all trees cleared at a rate of 1:1 dbh (diameter at breast height). Reforestation should occur on site or within the same watershed.
6. Submit a reforestation plan to the Environmental Planning staff.

7. Monopole must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.
8. Coordinate with the Access Permits Section of the Maryland State Highway Administration on the location and specifications for the gravel driveway access from MD 108.

## **Background**

In May of 2001 the Planning Board clarified its policy with respect to the "necessity" of telecommunications facilities, through the recommendation on the cellular monopole case on Brink Road (S-2447). These new interpretations of the standard for "necessity" required proof that alternate technology cannot work, fully substantiated by the Tower Committee; and proof that the level of service desired by the applicant is necessary. These standards were to be most firmly applied when there is citizen opposition to a monopole tower. This application did not meet the test of these standards and the staff recommended denial.

This petition was originally scheduled before the Board on October 11, but the applicant requested a deferral after the report was issued, and the hearings before the Planning Board and Hearing Examiner were rescheduled. No further materials were received from the applicant until November 8, when the applicant delivered a letter to the Planning Board in response to the May 2001 policy clarification and the October 5 staff report.

Essentially, this letter (attached) refuted the legal authority of the Planning Board's clarification of policy in their May 2001 letters to the Board of Appeals and the Tower Committee. However, the content of the letter did not impact or change the recommendations of the staff report for denial of the proposed use. At the November 15 Planning Board meeting the applicant, at the request of the Planning Board, requested a further postponement to allow time for the Planning Board to consider the applicant's November 8 letter.

On January 3, 2002, the Planning Board further clarified its position on monopoles and has now determined that proof that alternate technology cannot work, substantiated by the Tower Committee, is not required; and that standards are to be uniformly applied whether or not there is citizen opposition to a monopole tower. Further, the Board has determined that height is not to be considered an "inherent" characteristic of a cellular tower application, as height can vary considerably.

Since this report was modified on January 4, the applicant has not had time to revise his comments to the Board in the light of the change in application of standards.

### **PROJECT DESCRIPTION: Surrounding Neighborhood**

The subject site is located in the Agricultural Reserve, and surrounding properties are in open field or forest and single-family homes in the RDT and R-200 Zones. To the west along Hawkins Creamery Road, and to the south along Laytonsville Road are scattered homes on large lots interspersed with fields and forest in the RDT zone. To the north along Laytonsville Road in the Etchison community there are a number of homes on smaller lots in the R-200 Zone, and two new homes along Hipsley Mill Road between Laytonsville Road and MD 650 (Damascus Road) in the RDT Zone. The location is also just to the north of the Davis General Aviation Airport. The proposed monopole would be located approximately 312 feet from Laytonsville Road, and approximately 400 feet from the nearest residence. The monopole will be visible to the surrounding community although the equipment area would have limited visibility.

### **PROJECT DESCRIPTION: Site Description**

The subject property is known as the "Barnhart" property. It is identified as Parcel 666 on Tax Map GW42 and located in the RDT Zone. The property contains 175 acres, divided by Hawkins Creamery Road and Laytonsville Road. The portion of the property that contains the site is at the northwest quadrant of Hawkins Creamery and Laytonsville (MD 108) Road and contains approximately 23 acres. The facility is proposed to be located within a forested area in the northern portion of the property in a clearing. There is no setback less than 214 feet from any property line, and the proposed site is approximately 400 feet from the nearest dwelling. The closest dwellings are approximately 400 feet to the north, 500 feet to the east, 600 feet to the southeast, 800 feet to the west, and 800 feet to the northeast.

### **PROJECT DESCRIPTION: Proposal**

The applicant, AT&T Wireless Services, has requested a special exception to construct a telecommunications facility on this property within the RDT zone. The proposed facility consists of a 134-foot tall monopole with 12 panel antennas, and an equipment shelter measuring 12 by 28 feet. The monopole will taper from approximately 4 feet wide at its base to approximately 2 feet wide at the top. The antennas will be at the top of the pole. The panel type antennas measure 51 inches long, 6 inches wide, and 2 inches deep. There will be three groups of four antennas aligned in a triangular configuration. The monopole design will allow for co-location of two other carriers.

The equipment shed will be 11 feet tall and located near the base of the monopole. The monopole and equipment shed will be enclosed in a 60 by 60 foot compound area secured by an eight-foot high chain length fence. The base of the monopole and compound area will be screened from view by a surrounding grove of trees. Visual impact will be further mitigated by the setbacks and additional landscaping as indicated in the submitted site

plan. Proposed setbacks from the property line are 376 feet to the north, 312 feet to the east, 1151 feet to the south, and 214 feet to the west, all exceeding the 134-foot minimum setback requirement.

The site will be accessed from Laytonsville Road via a proposed 8-foot wide gravel drive. In the ordinary operation of the facility there will be visits one to two times per month to check or repair the equipment. The only utilities required will be electricity and land telephone lines.

The stated purpose of the facility is to enable AT&T to provide more complete coverage for the customers of its cellular telephone network, as it is obligated by its FCC license. This tower is to provide coverage along Laytonsville Road, Hawkins Creamery Road, Route 650, and the surrounding area. This site was also selected to provide handoff of signals to adjacent sites to provide coverage in the upper Montgomery County area, in order to preclude dropped calls for AT&T customers traveling in those areas.

## **ANALYSIS**

### **Tower Committee Recommendation**

The applicant, AT&T has been working with the Tower Committee on this application since April, and the Tower Committee reviewed their request on September 19. At that meeting AT&T was requested to consider relocating the tower to a less visible location on the property and to report back to the Committee at a special meeting on October 3. The Tower Committee's report from the October 3 meeting (attached) recommends approval of the application with an adjustment to the height, and a location adjustment so that the equipment area is in a more visually sheltered location. That report states that they found no possibility of co-location with any existing monopole facility.

Further, at the request of the Planning Board, the Tower Committee also evaluated the potential for the applicant to use alternate technology. The Tower Committee determined that the use of such technology did not provide adequate signal handoff or continuous coverage along the main roads.

In lieu of the use of alternate technology, the Tower Committee recommended that the applicant consider working with the residents of the surrounding community to develop a mutually agreeable disguised tower design as has been used elsewhere. A Tower Committee representative has been asked to attend the Planning Board meeting.

### **Community Concerns**

A number of area residents object to this application. Most of the objections relate to the visual nature of the proposed use – its height the utilitarian metal structure above the tree

line. The letters that have been received are attached. Those contacting the staff have stated numerous reasons for their objection to the tower including proximity to the airport, visual incompatibility, and health concerns.

Another issue with this site is its proximity to the Davis Airport to the south. As a part of this review, the Tower Coordinator visited the airport and interviewed a pilot who stated that the location was not on the direct approach to the runway, and there were no instrument or night landing at this airport, so the monopole should not be too much of a problem for pilots using the airport. However, in June the Tower Committee received letters from the Aircraft Owners and Pilot Association, an area pilot, and the Experimental Aircraft Association expressing objection to the monopole, claiming it poses an obstruction to accessing the airport at the originally proposed 150 feet. Also, the Maryland Aviation Administration (MDAA) in a May 24 letter to the applicant stated that the monopole at the originally proposed 150-foot height would create an unsafe situation.

In response, AT&T revised their application to reflect a 16-foot shorter monopole (134 feet), as requested by the MDAA on the advice of the Federal Aviation Administration (FAA). The July 3 letter from the MDAA to the applicant (attached) states: *"By reducing the height of the proposed tower from 150 feet to 134 feet mean sea level, and no longer infringing on the Horizontal Imaginary Surface of Davis Airport, American Tower Corporation would not be in violation of The Code of Maryland Aviation Regulations (COMAR) Chapter 5, Section 11.03.05.4(A)(2). Therefore, the Maryland Aviation Administration (MDAA) has no objection to the construction of the proposed tower at that reduced height."*

The Planning Board has stated previously that they do not allow consideration of health concerns, due to Federal Telecommunications Act statutes that preclude the consideration of health issues raised as a part of cellular monopole applications. In addition, the Planning Board has had a policy of deferring to the FAA on airport safety issues. Therefore, the staff did not consider these issues.

The staff has also received a letter in general support of cellular towers in the RDT Zone from the Chairman of the Montgomery County Agricultural Advisory Committee. That attached letter states that cell tower uses are often very helpful for farmers, giving them supplemental income and thus enabling them to remain in the business of agriculture. It further states that cell towers in no way hinder agricultural operations or impede the purpose of the RDT Zone to support agriculture.

## **Master Plan**

The Functional Master Plan for the Preservation of Agricultural and Rural Open Space is silent on special exceptions. The RDT Zone allows public utility structures by special exception.

As a general use category, monopoles do not cause negative impact on agricultural uses, which are the preferred use in the RDT zone; and in fact are generally supported by the agricultural community, which can derive important auxiliary income for farming operations.

## **Transportation**

There are no significant transportation issues related to this type of special exception since there are no on-site personnel and require only periodic visits to check or repair the equipment. Access to the site will be via a gravel driveway from Laytonsville Road.

Laytonsville Road is classified as a major highway in the Preservation of Agriculture and Rural Open Space Master Plan. Right-of-way width is not recommended in the Master Plan; therefore the recommended width is 120 feet per Section 50-26 of the Montgomery County Code. Because subdivision is not required, no right-of-way dedication is required.

The proposed facility is expected to generate approximately two trips per month for routine maintenance or emergency repair. Under the LATR Guidelines such as use is considered de-minimis and no traffic impacts are anticipated. Therefore no traffic study is required. Also, because the facility is located in the Rural Policy area, no staging ceiling is established for this area.

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## **Environmental**

The Environmental Planning staff does not support the revised location for this monopole tower and compound because it will result in the clearing of 3,600 square feet of high quality, maturing, upland forest. Staff recommends that the monopole compound be placed 100 feet to the south, as originally requested, into the already cleared area. If the tower is built, the following conditions are recommended:

- \_ Applicant to submit tree protection plan to the Environmental Planning staff for approval prior to the release of sediment and erosion control or building permit.
- \_ Applicant to comply with Department of Permitting Services requirements for sediment and erosion control and stormwater management.

Forest Conservation - The applicant proposes clearing of 3,600 square feet of high quality, maturing forest without the mitigation required under the forest conservation law. This application is exempt from the Forest Conservation Law (#4-01319E) under the Small Property exemption criteria.

The dominant species of trees within this high quality forest are oak and hickory. Invasive species are absent from the interior of the forest but are found along the edges of the forest. Clearing any portion of this forest will disturb a portion of the interior of the forest resulting in what is termed the "edge effect." This occurs when forest is removed, converting the previous interior forest to an edge forest. These trees are then subject to significant die back. In addition, existing invasive species thriving on the edge now move in to the newly created edges of the forest and could possibly invade the interior forest.

Specifically, clearing will result in the removal of a specimen tree (30" red oak) and four moderately size trees between 12" and 14" dbh in addition to many seedlings. If the compound is approved within the forested area the following condition is recommended:

- Replacement of all trees cleared at a rate of 1:1 dbh (diameter at breast height). Reforestation should occur on site or within the same watershed.
- Applicant to submit a reforestation plan to the Environmental Planning staff.

If the compound is approved in the already cleared area staff recommends that the applicant be required to provide adequate fencing and vegetative screening around the equipment compound to shield it from the view of those driving on Route 108.

Stormwater Management - The site is located in the headwaters of the Upper Hawlings tributary of the Hawlings River watershed, part of the Patuxent River Primary Management Area (PMA). The *Countywide Stream Protection Strategy* (CSPS) assesses Upper Hawlings tributary, Use IV-P, as having good stream conditions and good habitat conditions, labeling it as an Agricultural Watershed Management Area. Preservation of forests within the PMA is especially important as forests play an essential role in filtering drinking water sources.

In addition, the applicant must submit a stormwater management concept plan to the Department of Permitting Services, as land disturbance will exceed 5,000 square feet (compound and driveway). Since construction of the monopole occurs within a Use IV watershed and the PMA, both water quality and quantity control are expected.

### **Required Findings for Special Exception**

As outlined in the attached full review, the application meets all standards for a telecommunications public utility use in the zoning ordinance. Three standards are particularly difficult to evaluate, but the staff believes that in the absence of more substantive evidence from those objecting to the monopole tower, the proposed use is in compliance. These standards and the staff evaluation include:

General Condition 59-G-1.2.1(a)(4)

Will be in harmony with the general character of the neighborhood considering population

density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

*The cellular monopole use is never in harmony with the general character of a surrounding area because of its tall visual character, which is a required (although not inherent as determined by the Planning Board) element of the use necessary for it to perform its technical function. However, the Tower Committee has determined that the requested height is necessary for the monopole to function properly and thus the staff believes that it is no less harmonious at this location than at other locations in the vicinity that are available to the applicant.*

59-G-2.43(a)(5)

Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

*This use will have a visual impact on the surrounding neighborhood but will not cause objectionable noise, vibrations or other detrimental physical activity. It will not be detrimental to the use of surrounding properties, but it may disturb peaceful enjoyment and economic value of neighboring properties due to its intrinsic nature of being tall and visible. However, no substantive evidence of detriment to economic value has been submitted, and no quantifiable evidence of loss of peaceful enjoyment has been submitted.*

*The staff believes that these elements are an intrinsic impact of the use that would be present wherever a tower is placed in proximity to residences; and that the Planning Board has previously required substantive and quantifiable evidence of diminution of economic value and loss of peaceful enjoyment to meet a regulatory test of such loss. No such substantive and quantifiable evidence has been submitted.*

59-G-2.43(a)(2)

The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

*Because of its height, the use will have a visual impact, but it will not endanger the health and safety of area residents, although it may have the potential to impair or prove detrimental to neighboring properties in some aspects. However, the 134 foot height has been determined necessary for the use by the Tower Committee, and some detrimental impact is inevitable wherever a monopole is sited near residential uses (and often they must be sited near residential uses in order to provide the service they are required to provide to their customers). Therefore, the Planning Board has previously established that quantifiable evidence of substantial impairment and detrimental effect is necessary to meet a regulatory test of such loss. As no such evidence has been submitted, the staff does not believe that such detrimental impact has been proved.*



## Inherent and Non-Inherent Effects

Section 59-G-1.2.1 of the Zoning Ordinance (Standard for evaluation) provides that:

*"A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception."*

The staff standard for previous cellular monopole applications has been that their only significant inherent effect is that the support towers for the antenna are very tall (because they must be substantially above the treeline to be technically effective) and thus very visible. The mechanical equipment is located within small buildings in fenced compounds that can be easily screened by vegetation, they rarely require employee visits, and are accessed via a standard driveway. However, because of the necessity of the monopole, they have a negative visual impact – especially in areas of residential use. Given this unavoidably intrusive visual nature, the object in finding sites for these towers is to find a location which best balances the need to provide service with a location that offers the least visual intrusion upon the fewest area residents – and that the property owner is willing to lease.

However, the Planning Board has recently classified tower height as a non-inherent characteristic for purposes of 59-G-1.2.1. This means that the Board has determined that height is not a physical characteristic necessarily associated with the use. 59-G-1.2.1 states that non-inherent adverse effects, alone, are a sufficient basis to deny a special exception. Thus, if the tower height has a sufficiently adverse effect on the surrounding area, that characteristic alone is sufficient to deny the tower.

The staff does not believe there to be any significant non-inherent effects for this use other than height because the level of use anticipated will not impact the rural/residential character of this area other than the unavoidable visual impact. The size of the property and infrequency of maintenance access indicate a use with little potential for inherent or non-inherent effects or impacts – beyond height. Therefore, the only remaining issue is whether the tower height of 134 feet has a sufficiently adverse effect on the surrounding area to necessitate the denial of the tower.

## CONCLUSION

This application meets the requirements for the use. There is not a conflict with the Master Plan, the Zone, or transportation issues. The Historic Preservation staff has stated there are no designated historic sites in the vicinity. The environmental concerns are valid, but in the interest of better visual protection of the neighborhood, the staff concurs with the Tower Committee that allowing the relocated site located in a small grove of trees is more important than a strict interpretation of forest conservation concerns.

However, as previously stated, the Planning Board has clarified its policy with respect to cellular monopoles and the legal staff concurs with the legal validity of the Planning Board's policy. Thus, in evaluating this application the staff honors the Planning Board clarification, which substantially differs from previously accepted interpretations of the requirements for the use in the zoning ordinance and past standard practice.

The Planning Board stated in their May 21 letter to the Board of Appeals that because cellular towers are very visually intrusive in rural and residential communities, they pose substantial visual and economic burden and are detrimental to the visual environment - and therefore there must be a very compelling reason to allow them.

In their January 3, 2002 clarification of policy, the Planning Board determined that height is not to be considered an "inherent" characteristic of a cellular tower application, as height can vary considerably. As noted previously, if height is not to be considered an intrinsic (or inherent) characteristic of a monopole tower, then the negative or adverse impact of height becomes a far more important issue. The essence of all monopole objections is visual. They are tall, metal utilitarian structures, which is why people do not want to have to look at them. As a non-inherent characteristic, the level of proof of detrimental impact is lower, but no firm standard of evaluation exists as a guide. However, the Planning Board has made it clear to the staff that protection of the visual integrity of a surrounding community is to be considered more important than the ability of cellular phone customers to have full use of their phones for business, personal, or emergency uses.

In this instance the only remaining allowable issue is the area residents who object vigorously to the tower because of its visibility. There are those who use the Davis Airport who still object for safety reasons despite the MDAA and FAA approval, but FAA and MDAA approval are the standard that is used. There are area residents who fear the health impacts of the tower, but FCC statutes have precluded the evaluation of this element. There are those who object because of potential visual threat to potential historic sites, but there are no currently designated historic sites. There are those who object on the basis of conflict with the master plan, but the preferred use in Agricultural and Rural Open Space Master Plan and the RDT Zone is agriculture, and agriculture is at the least not harmed by monopoles; and in some instances is helped to continue through the supplemental income that monopoles provide to farmers.

Therefore, the staff is left with only the necessity of determining whether the "non-inherent" height of the tower is a sufficiently detrimental impact to necessitate a recommendation of denial. In reviewing the general and specific special exception standards, the staff concluded that while there is substantial objection to the monopole from area residents, there is no substantive and quantifiable evidence of specific harm to economic value or loss of peaceful enjoyment. There are the statements of area residents, but no expert reports or other evidence submitted, as was used as a basis for denying the Brink Road monopole case.

Therefore, because there is no evidence of detrimental effect other than statements of objecting area residents, and because some elements of their objections to the tower are not admissible due to FAA authority and FCC statutes - the staff, in accordance with the review standard set by the Planning Board - recommends **APPROVAL** of this application with the conditions stated at the beginning of this report.

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Attachments

## General Conditions

Sec. 59-G-1.21 of the Zoning Ordinance (General Conditions) provides:

- (a) A special exception may be granted when the board, the hearing examiner, or the district council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

*The use is so allowed in the RDT Zone.*

- (2) Complies with the standards and requirements set forth for the use in division 59-G-2.

*The use complies with these standards as noted below.*

- (3) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the Commission.

*The proposed use is not inconsistent with the Master Plan for the Preservation of Agricultural and Rural Open Space (AROS). Although visually intrusive (an intrinsic characteristic of the use) the proposed use is allowed by special exception in the zone, and the AROS Master Plan is silent in regard to special exceptions. In some ways this type of use furthers the purpose of the Rural Density Transfer Zone by providing auxiliary income for farmers, enabling them to remain in agricultural production. The towers do not in any way inhibit farming, which is the preferred and intended use for this zone.*

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

*The cellular monopole use is never in harmony with the general character of a surrounding area because of its tall visual character, which is a required, although not inherent (as determined by the Planning Board), element of the use necessary for it to perform its function. However, the Tower Committee has determined that the requested height is necessary for the monopole to function properly and thus the staff believes that it is no less harmonious at this location than at other locations in the vicinity that are available to the applicant.*

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

*This use will have a visual impact on the surrounding neighborhood but will not cause objectionable noise, vibrations or other detrimental physical activity. It will not be detrimental to the use of surrounding properties, but it may disturb peaceful*

*enjoyment and economic value of neighboring properties due to its intrinsic nature of being tall and visible. However, no substantive evidence of detriment to economic value has been submitted, and no quantifiable evidence of loss of peaceful enjoyment has been submitted.*

*The staff believes that these elements are an intrinsic impact of the use that would be present wherever a tower is placed in proximity to residences; and that the Planning Board has previously required substantive and quantifiable evidence of diminution of economic value and loss of peaceful enjoyment to meet a regulatory test of such loss. No such substantive and quantifiable evidence has been submitted.*

- (6) Will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature.

*The use will not create a surfeit of special exception uses in the area.*

- (7) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

*The use will not have such adverse affect on the area or its residents.*

- (8) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

*The existing public facilities are sufficient for the proposed use. Subdivision is not required.*

### **Special Findings for a Telecommunications Facility**

Section 59-G-2.43 of the Zoning Ordinance (Public utility buildings, public utility structures, and telecommunication facilities) provides:

- (a) A public utility building or public utility structure, not otherwise permitted may be allowed by special exception. The Board must make the following findings:

- (1) The proposed building or structure at the location selected is necessary for public convenience and service.

*The Tower Committee has determined that additional telecommunication service is necessary for public convenience and service as evidenced in their attached report.*

- (2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

*Because of its height, the use will have a visual impact, but it will not endanger the health and safety of area residents, although it may have the potential to impair or prove detrimental to neighboring properties in some aspects. However, the 134 foot height has been determined necessary for the use by the Tower Committee, and some detrimental impact is inevitable wherever a monopole is sited near residential uses (and often they must be sited near residential uses in order to provide the service they are required to provide to their customers). Therefore, the Planning Board has previously established that quantifiable evidence of substantial impairment and detrimental effect is necessary to meet a regulatory test of such loss. As no such evidence has been submitted, the staff does not believe that such detrimental impact has been proved.*

- (b) Public utility buildings in any permitted residential zone, shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.

*The proposed use is not in a residential zone. However, the base of the proposed facility will be adequately screened by distance from the property lines, existing and proposed vegetation.*

- (c) Any proposed broadcasting tower shall have a setback of one foot from all property lines for every foot of height of the tower.

*The proposed tower is 134 feet high and its setbacks are significantly greater than the required setback.*

- (d) Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment,...or television transmitter towers and stations; telecommunication facilities.

*The proposed use is a telecommunications facility.*

- (e) The provisions of section 59-G-1.21(a) shall not apply to this subsection. In any residential zone, overhead electrical power and energy transmission and distribution lines carrying in excess of 69,000 volts.

*Not applicable for this use.*

- (f) In addition to the authority granted by section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it deem necessary to protect the public health, safety or general welfare.

*Recommended conditions are given.*

- (g) Petitions for special exception may be filed on project basis.

*Not Applicable.*

- (h) A petitioner shall be considered an interested person for purposes of filing a request for a special exception if he states in writing under oath that he has made a bona fide effort to obtain a contractual interest in the subject property for a valid consideration without success, and that he intends to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.

*Not Applicable.*

- (i) Any telecommunication facility must satisfy the following standards

- (1) The minimum parcel or lot area must be sufficient to accommodate the location requirements for the support structure under paragraph (2), excluding the antenna(s), but not less than the lot area required in the zone. The location requirement is measured from the base of the support structure to the property line. The Board of Appeals may reduce the location requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates a support structure can be located on the property in a less visually unobtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.

*The proposed tower is located within the RDT zone, which requires a 1-acre minimum lot size, and the subject property is 175 acres overall, with approximately 23 contiguous acres at the site location.*

- (2) A support structure must be located as follows:

- a. In agricultural and residential zones, a distance of one foot from property line for every foot of height of the support structure.

*The proposed monopole is 134-feet high, and will be setback no less than 214 feet from all property lines. Thus the monopole will satisfy this requirement.*

- b. In commercial and industrial zones.

*Not applicable for this use.*

- (3) A freestanding support structure must be constructed to hold not less than 3 telecommunication carriers.

*The proposed tower is designed to hold three carriers.*

- (4) No signs or illumination are permitted in the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

*Generally, illumination is only required by the Federal Aviation Administration if the monopole tower is in close proximity to an airport which has night landings or is more than 200 feet in height. Neither is applicable here, as the proposed tower is 134 tall, and the Davis Airport does not have night landings.*

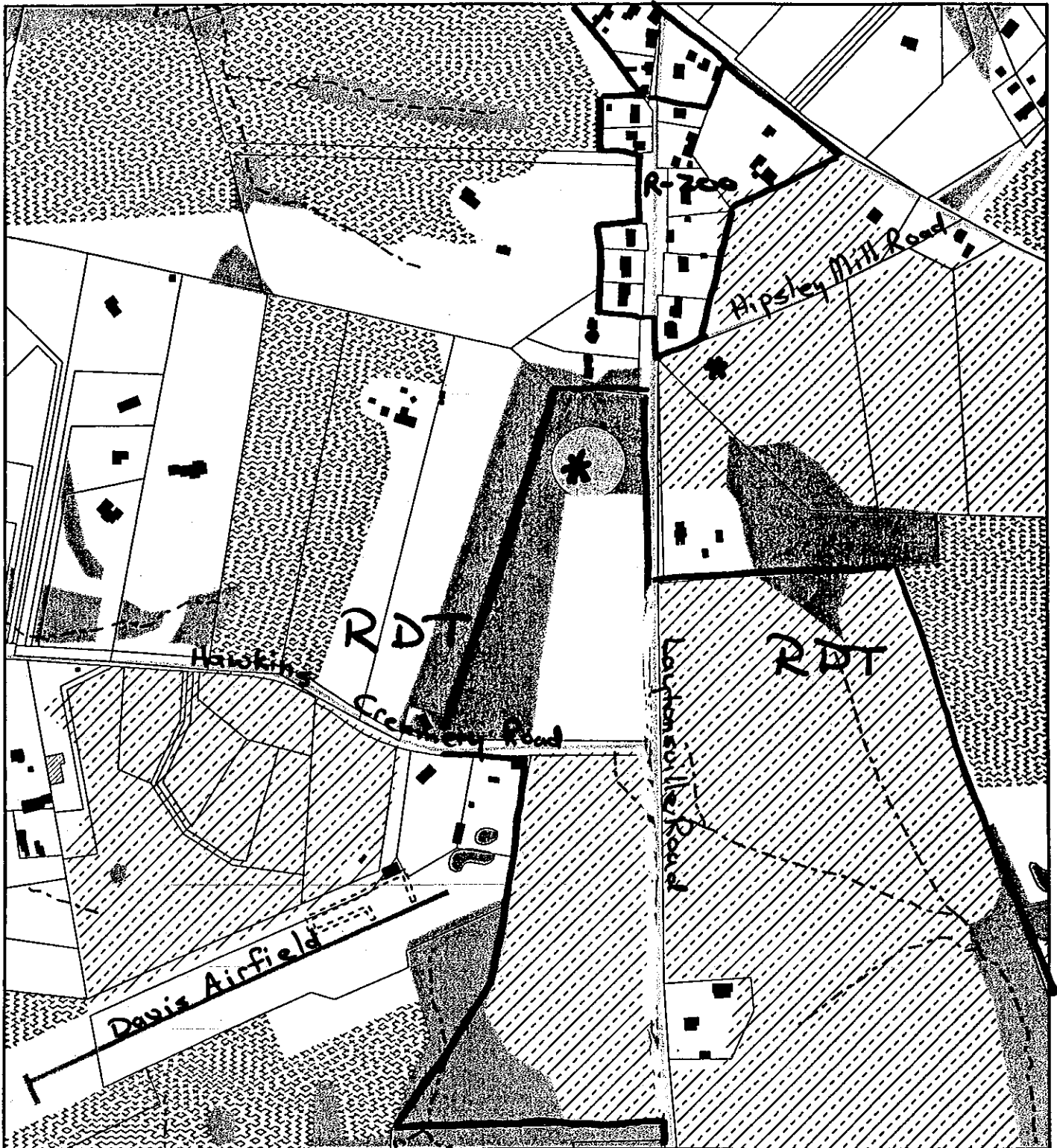
- (5) Every freestanding support structure must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.

*This is a condition of approval.*



VICINITY MAP FOR

# S-2477 AT&T WIRELESS



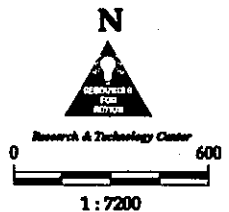
Map compiled on September 26, 2001 at 11:02 AM | Site located on base sheet no - 233NW07

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VICINITY MAP FOR

# S-2477 AT&T WIRELESS



Map compiled on September 26, 2001 at 11:08 AM | Site located on base sheet no - 232NPK07 | Date of Orthophotos - March 1988 | Orthophoto Images Licensed from VARIO LLC

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Key Map



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Graphic & Technology Center



1 : 7200

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

1707 Georgia Avenue - Silver Spring, Maryland 20910-3208

# S-2477 Site Plan



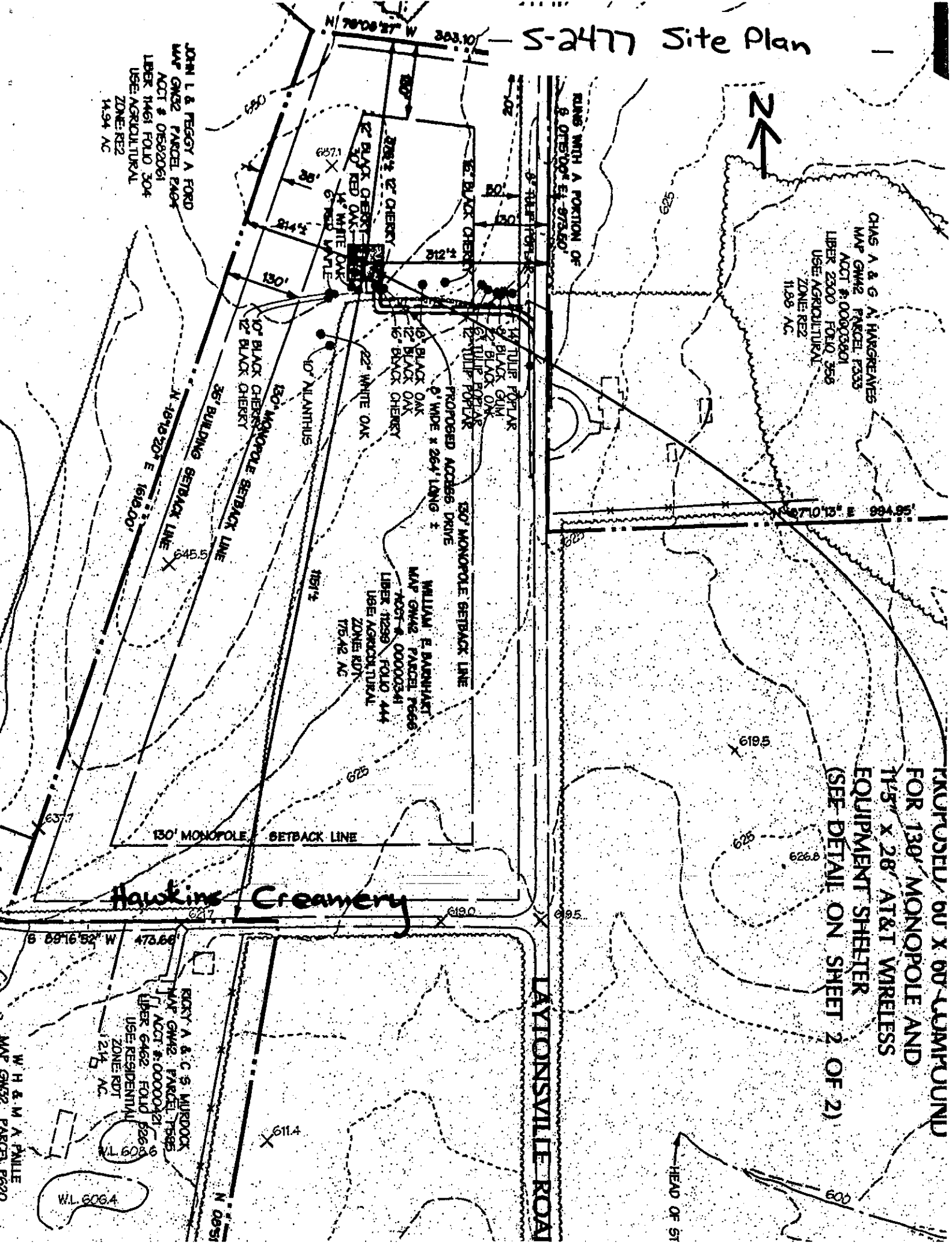
JOHN L & PEGGY A FORD  
 MAP GW42 PARCEL 19404  
 ACT # 05822061  
 LIBR 1461 FOLD 304  
 USE: AGRICULTURAL  
 ZONE: RE2  
 14.94 AC

CHAS A & G A HARGREAVES  
 MAP GW42 PARCEL 15333  
 ACT # 00903601  
 LIBR 2300 FOLD 359  
 USE: AGRICULTURAL  
 ZONE: RE2  
 11.99 AC

WILLIAM E BARNHART  
 MAP GW42 PARCEL 16666  
 ACT # 00000341  
 LIBR 1259 FOLD 444  
 USE: AGRICULTURAL  
 ZONE: RDT  
 75.42 AC

RORY A & C S WILCOCK  
 MAP GW42 PARCEL 17585  
 ACT # 00000421  
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 ZONE: RDT  
 12.14 AC

W H & M A PHILLIP  
 MAP GW32 PARCEL 16370



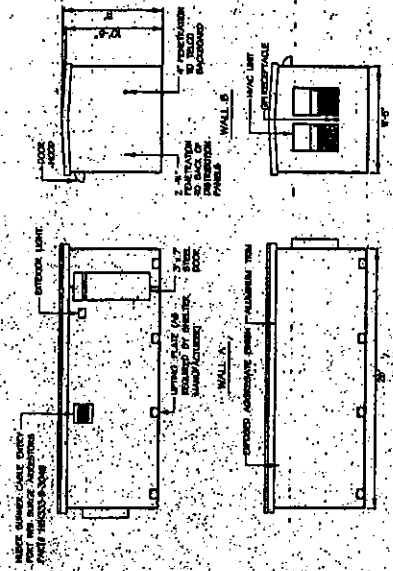
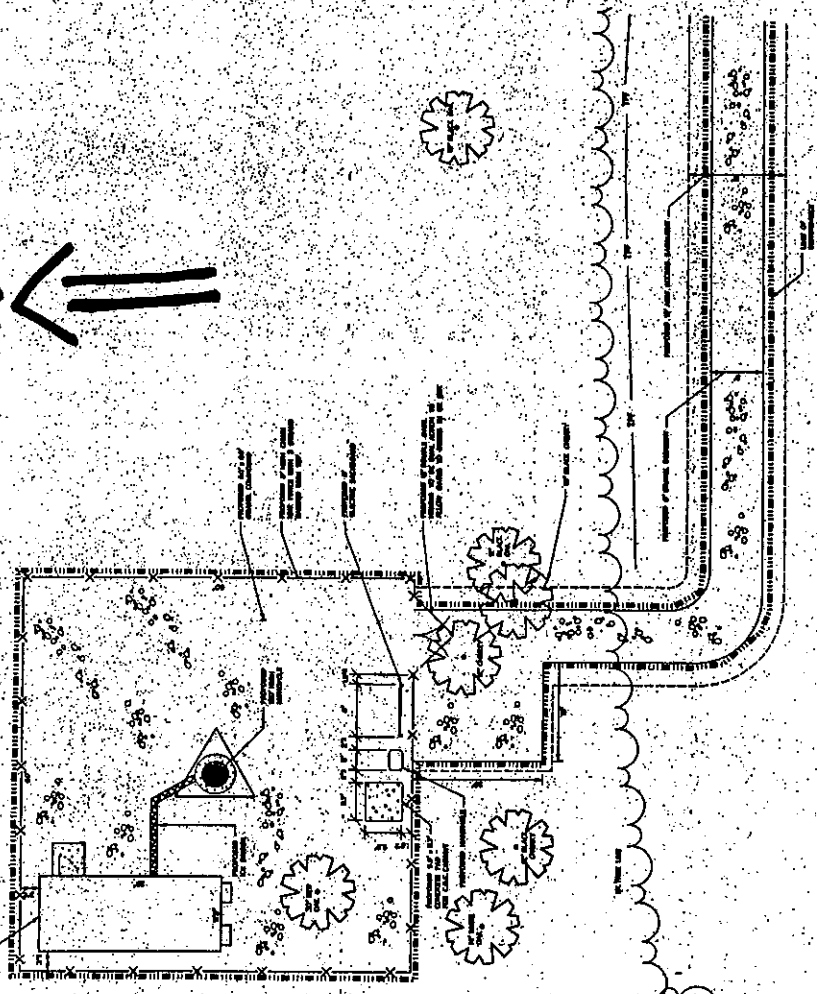
PROPOSED 60' X 60' SURROUND  
 FOR 130' MONOPOLE AND  
 11/8" X 28" AT&T WIRELESS  
 EQUIPMENT SHELTER  
 (SEE DETAIL ON SHEET 2 OF 2)

LAYONSVILLE ROAD

Hawkins Creamery

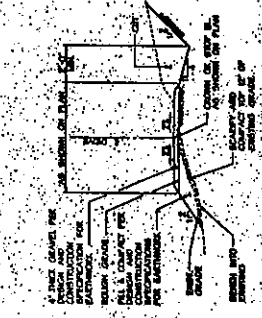
HEAD OF ST

1 - S-477 Site Plan

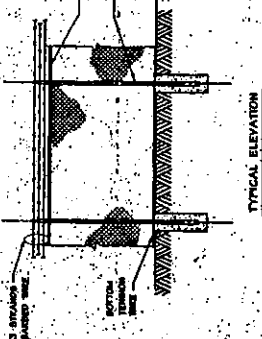


NOTE:  
 1. DETAILS SHOWN FOR ILLUSTRATIVE PURPOSES ONLY.  
 2. LOCATION OF SHIELDING PANELS AS SHOWN MAY VARY.  
 3. FOR FOUNDATION AND STRUCTURAL BUILDING PLANS SEE MANUFACTURER'S DRAWING.

**SHELTER ELEVATION**  
 NOT TO SCALE

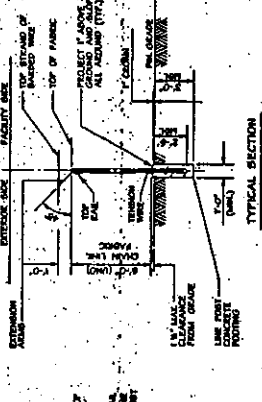


**GRAVEL DRIVE**  
 NOT TO SCALE

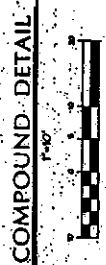


**TYPICAL ELEVATION**

**WOVEN WIRE FENCE**  
 NOT TO SCALE



**TYPICAL SECTION**



**COMPOUND DETAIL**  
 1"=4'

<p><b>DMW</b>          A Team of Land Engineers,          30 East Pennsylvania Avenue,          Fort Collins, Colorado 80501          (970) 226-3333          www.dmw.com</p>		<p><b>AT&amp;T</b>          WIRELESS NETWORKS, INC.          3500 W. 100th Avenue, Suite 100          Greenwood Village, CO 80111</p>		<p><b>AMERICAN TOWER</b>          10000 E. Harvard Avenue, Suite 100          Denver, CO 80231</p>		<p><b>BARNHART PROPERTY</b>          W237.3          14000 W. 100th Avenue, Suite 100          Greenwood Village, CO 80111</p>	
<p><b>SITE PLAN TO ACCOMPANY APPLICATION FOR SPECIAL EXCEPTION</b></p>		<p><b>WEST WIRELESS NETWORKS, INC.</b></p>		<p><b>AMERICAN TOWER</b></p>		<p><b>BARNHART PROPERTY</b></p>	
<p>DATE: 11/11/03</p>	<p>SCALE: AS SHOWN</p>	<p>DATE: 11/11/03</p>	<p>SCALE: AS SHOWN</p>	<p>DATE: 11/11/03</p>	<p>SCALE: AS SHOWN</p>	<p>DATE: 11/11/03</p>	<p>SCALE: AS SHOWN</p>
<p>1</p>	<p>2</p>	<p>3</p>	<p>4</p>	<p>5</p>	<p>6</p>	<p>7</p>	<p>8</p>



**MONTGOMERY COUNTY, MARYLAND**  
**TOWER COORDINATOR**  
**RECOMMENDATION**

NOV 20 2001  
 SILVER SPRING, MD

APPLICATION NUMBER: 200105-01

DATE: 26 April 2001

Revised October 1, 2001

<b>Application Information:</b>		
Applicant:	AT&T Wireless	
Description:	Construct a new 134' monopole.	
Site Location:	Barnhart Property Hawkins Creamery Road & Laytonsville Road, Gaithersburg	
Property Owner:	William E. Barnhart	
Classification in accordance with Zoning Ordinance: RDT		
Private Property:	<input checked="" type="checkbox"/>	By right: <input type="checkbox"/>
Public Property:	<input type="checkbox"/>	By right: <input type="checkbox"/>
		Special Exception: <input checked="" type="checkbox"/>
		Special Exception: <input type="checkbox"/>
		Mandatory Referral: <input type="checkbox"/>
Impact on land-owning agency: N/A		
Existing or future public safety telecommunications facilities and plans: None		
<p>Co-location options: We conducted a site visit of the Barnhart property and found that there were no existing structures in the immediate vicinity which could accommodate AT&amp;T's antenna array. A review of the TTFCG database revealed that the nearest PEPCO transmission facility was 1.3 miles away. On May 9, we requested that AT&amp;T provide RF propagation maps from that location (PEPCO Pole 57-R). In its reply of June 10, AT&amp;T submitted an RF map which showed that Pole 57-R was too far to the east to provide adequate handoff of calls to the existing AT&amp;T antennas to the south. We concur with that conclusion.</p> <p>Once constructed, this monopole would provide an opportunity for other carriers to co-locate antennas on this structure, although a review of the carriers' annual plans do not show other carriers currently planning to deploy antennas in this area.</p> <p>In reviewing this application in conjunction with the application for a monopole at the Stanley property to the north, we asked AT&amp;T to consider a combination of attaching antennas to two PEPCO poles (Pole #40 or #49 and Pole #57) and an existing church steeple to the northwest of the Stanley property as an alternative to erecting two new monopoles at the Stanley and Barnhart properties. AT&amp;T provided additional RF propagation information which demonstrated that the combination would not work to complete adequate signal handoff with the proposed site in Damascus, the existing site south of the Stanley property, and continuous coverage along the main roads not presently covered by AT&amp;T service. We concur with that conclusion.</p>		
Implications to surrounding area:		

Attachments: Application and request for information, AT&T replies, and Special Exception Request #SE-2477.

Comments: This application, submitted April 25, is to provide coverage along Laytonsville Road, Hawkins Creamery Road, Route 650, and the surrounding area. AT&T reports that this site was also selected to provide handoff of signals to adjacent sites to provide coverage in the upper Montgomery county area, in order to preclude dropped calls for AT&T customers traveling in those areas.

On May 4, AT&T provided RF propagation maps showing the gap in coverage, the expected coverage provided by the Barnhart site to fill in those gaps, and the expected links with existing sites to the south and west, and links to proposed sites to the north at the Stanley property, an additional application submitted by AT&T concurrently with the Barnhart site.

On May 9, we asked AT&T to provide the distance to the nearest residences at this location, and if FAA clearance was required at this site. AT&T responded that the nearest residence (Copeley) was over 500' from the proposed monopole location. AT&T also reported that an FAA clearance was being pursued for this location. On June 8, AT&T reported that American Tower Corporation had received a letter from the Maryland Aviation Administration declaring that the facility would violate the horizontal service of Davis Airport by 16'. AT&T provided a copy of that letter, which is attached to this recommendation.

At the time of the initial site visit, the Tower Coordinator also noted the proximity of the monopole to the Davis Airport. Upon visiting the airport, the tower coordinator interviewed a pilot who stated that since the monopole was not on the direct approach to the runway, and there were no instrument or nighttime landings, he did not believe the monopole would pose much of a problem for pilots using the Davis Airport. On July 9, we were also provided copies from the Aircraft Owners and Pilot Association, Bob Warner, Noel Mitchell, and Randy Hanson, all expressing objection to this monopole, claiming it poses an obstruction to accessing the airport.

On September 4, AT&T submitted a letter advising that the FAA determined that by reducing the monopole height to 134', the previous objections by Maryland Aviation would be mitigated. A copy of that letter is attached to this recommendation. AT&T requested that this application be amended to show a monopole height of 134'.

On July 12, we were also advised by Jane King, a resident of Etchison, that she and others in the community, were eager to know of activity on this application. Ms. King requested that we advise her of when the TTFCG would consider this application, which we have done.

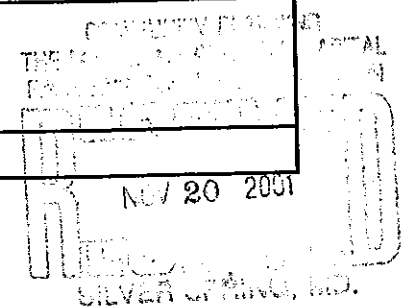
At the September 19th meeting of the TTFCG, the application was reviewed and in response to questions, the meeting was closed so that the AT&T representatives could review their confidential RF maps with the members and the resident who raised questions about the coverage. The TTFCG requested that AT&T reconsider the placement of the tower on the property and report back to the group at a special meeting on October 3, in time for action by the TTFCG on this application prior to the scheduled date for the Planning Commissions review of the Special Exception.

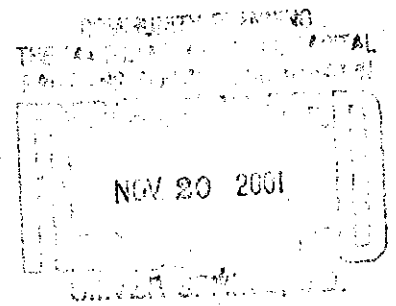
**Tower Coordinator Recommendation:** Recommended:   
Not recommended:

Signature

Date

*W. H. Hines* 10/2/01





**Excerpts from September 19, 2001 TTF CG meeting minutes**

**Action Item:** AT&T Wireless application to construct a new 134' monopole on the Barnhart property located at Hawkins Creamery Road and Laytonsville Road in Gaithersburg (Application #200105-01).

Bob Hunnicutt stated that the recommendation for this application was written to provide more information for the Park and Planning Commission, as requested. He asked the members to take a moment to review the extensive comments before Julie Modlin summarized the application.

Rey Junquera asked if the FAA issues had been resolved. Bob Hunnicutt explained that they had, despite the somewhat confusing way in which the recommendation text explained it. Mr. Hunnicutt apologized for the confusion, noting that the paragraph was out of order.

Ms. Modlin summarized the application, and noted that this site was linked to another AT&T site, the Stanley property, which will be coming before the TTF CG for review in the near future. She stated that in reviewing this application, the Tower Coordinator looked at a number of different RF propagation maps, including ones using existing PEPCO facilities, and RF analysis for the proposed monopole at the lower elevation. She noted that the alternatives did not provide the desired coverage in the service area and would complicate signal handoffs from the existing antennas to the south and to the proposed site at the Stanley property. Ed Donohue mentioned that the Stanley site application had been postponed for review by the Park and Planning Commission until November. He also noted that the Park and Planning Commission hearing on this application was scheduled for October 11, 2001.

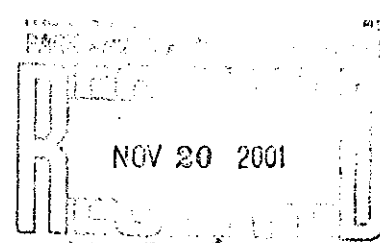
Jane Lawton asked if drive tests had been conducted. Bob Hunnicutt replied they had not been done for this site.

Dave Niblock asked for clarification that the FAA did approve the monopole at the 134' height. Julie Modlin stated that it had and that RF maps for that lower elevation had been submitted and reviewed. In response to questions, Ms. Modlin stated that the Tower Coordinator does not generate the RF maps but requests that the carriers generate the RF models and provide the results to the Tower Coordinator for review.

Mark Nelligan, an Etchison community resident, stated that he had spoken with a number of pilots from the nearby airport that expressed a desire to have a light placed on this monopole. He asked if a light was presently proposed for this structure. Willem Van Aller stated it probably was not proposed, because if a structure is under 200' it is not required to have a light. Ed Donohue stated that the carrier would light the monopole if the County wanted it, but neither the FAA nor the Maryland AA require one. Rey Junquera stated he did not think we should endorse the lights because they are objectionable to residents.

Jane Lawton asked why the monopole could not be located nearer to the wooded area of the property to better conceal the structure from the community. Ed Donohue stated in order to do that, they would have to cut down trees in the area. Ms. Lawton stated she thought it would be





appropriate for the monopole to be farther into the woods and that it should also utilize a tree monopole design.

Mr. Nelligan asked why AT&T could not use the PEPCO facilities approximately one mile away. Julie Modlin replied that the PEPCO facilities were one of the alternate sites investigated by the Tower Coordinator, and one for which they had requested additional RF propagation maps.

Mr. Nelligan stated that area residents presently have satisfactory service with Verizon Wireless and Cingular, and although he did not know where their antennas were, he was sure there were other existing structures which could be used in lieu of this new monopole. He added that he was not comfortable with the fact that the TTFCG relies on the carrier's RF propagation maps and does not conduct an independent RF analysis as part of our review. He commented that he was not convinced that this site was necessary.

Bob Hunnicutt explained that Ed Donohue had offered to meet separately with Mr. Nelligan and other area residents to privately review AT&T system design and the RF propagation maps they had submitted to the County as confidential information. In response to a question of whether the Tower Coordinator considered the coverage by other carriers in the area, Mr. Hunnicutt replied that coverage by other carriers is not part of the application review process for an application. He noted that only the coverage needs of the applicant are considered.

Jim Michal commented that the carriers do not construct new towers if there are other existing structures nearby to which they can attach their antennas because of the excessive cost and burden on the carrier to go through the process of siting a new facility in the community. He added that each carrier has a different business plan and different coverage requirements.

Julie Modlin stated that the Tower Coordinator could review other information we may have regarding other carriers' service in the area. Jane Lawton stated she was not satisfied with the engineering review on this application.

Tom King asked the Tower Coordinator if they conducted a site visit to look for alternative existing structures. Bob Hunnicutt explained that they conduct a site visit, they drive the surrounding area, and, in addition to a database search, perform a visual survey of the general vicinity to look for alternate existing structures. He added that the survey includes looking for existing structures like silos, power company utility poles or transmission lines, church steeples, and other tall buildings that may be present. Julie Modlin added that, in this case, there were no other tall structures nearby except the PEPCO transmission lines, which we investigated and found them not to meet coverage requirements.

Mr. Nelligan stated he was still skeptical because the industry provides the RF maps. Ms. Lawton stated that while his belief that the monopole is unnecessary may be genuine, County law does not prohibit the Special Exception process for siting facilities in this zone.

The Tower Coordinators were asked if they could generate independent RF propagation maps.



Ms. Modlin explained that they could if they had the software and had all of the detailed information regarding the carriers' networks, such as the engineering details of the transmitters, antennas, phones, etc. She said that there were a number of different RF software packages on the market ranging in price from \$3,000 to \$20,000 and she noted that the carriers use a variety of software to generate their RF propagation maps.

Bob Hunnicutt added that in analyzing a carrier's RF maps, if there are aspects that seem out of the ordinary to the Tower Coordinators, they question the RF results, and in some cases, ask for additional information or additional RF maps. He stated that they look for consistency in the maps, and in some cases, they even compare them for accuracy to maps that have been provided for related sites that have been previously reviewed for other applications. He noted that if there are questions about the powering, the elevation, or other such factors used in the modeling process, the Tower Coordinator asks the carrier for clarification. He noted that if the group wanted the Tower Coordinator to generate RF maps, the additional cost to the County was not just related to the cost of the software but to the additional time it takes to load the programs, run the models, and perform the analysis. Michael Ma stated it might not be necessary to do that for each application, but only for applications to construct a new facility.

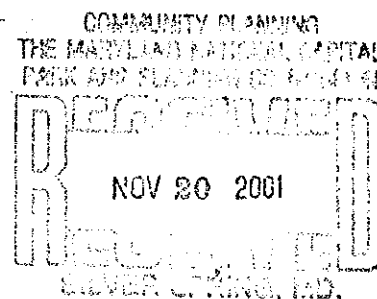
Mr. Nelligan asked if it mattered how high the structure was, because he knew there were some very tall structures in Damascus that could perhaps cover this area. Julie Modlin explained that height was an issue, and that generally, if antennas are at a higher elevation they can cover a larger area, but a limiting factor was the low power of the handset, which could not be too far away from the receiving antenna or the system would not work properly. The AT&T engineer agreed with Ms. Modlin.

In response to Mr. Nelligan's request, Jane Lawton suggested that the meeting be closed to the public, except for Mr. Nelligan, so that AT&T could provide a more detailed explanation of its network and service in this area.

*The meeting was closed to discuss AT&T's confidential design materials for the Barnhart property application.*

**A special TTFCG meeting to only discuss the AT&T/Barnhart property application is scheduled for October 3, 2001 at 2:00 p.m. in the Consumer Affairs Conference Room #225 of the COB.**

\\CTCSERVER\Data\clients\Mc-Tower\Documents\Special Exception Ltrs\Barnhart.Sept19.mins.excerpts.doc





**MONTGOMERY COUNTY, MARYLAND**  
**TELECOMMUNICATIONS TRANSMISSION**  
**FACILITY COORDINATING GROUP**  
**RECORD OF ACTION**

APPLICATION NUMBER: 200105-01

DATE: 19 September 2001

<b>Application Review:</b>	
Applicant:	AT&T Wireless
Description:	Construct a new 134' monopole.
Site Location:	Barnhart Property Hawkins Creamery Road & Laytonsville Road, Gaithersburg
Property Owner:	William E. Barnhart
Tower Coordinator Recommendation:	Recommended: <input checked="" type="checkbox"/> Not recommended: <input type="checkbox"/>
Land-owning Agency input:	Attached: Yes <input type="checkbox"/> No <input type="checkbox"/>
Group Comments: The TIFCG, at a special meeting held to conclude the review of this application voted to recommend the application as shown on the revised site plan placing the monopole 100 feet into a wooded area and with an understanding that AT&T would discuss with the interested residents, the opportunities for camouflaging the monopole.	

**Vote on recommendation of approval:** For: 4 Against: 0 Abstain: 0

**Results:** Recommended  Not recommended

<i>Jane E. Lawton/awa</i>	10/8/01
Chairman Signature	Date

<i>W. Barnhart</i>	10/8/01
Tower Coordinator Signature	Date

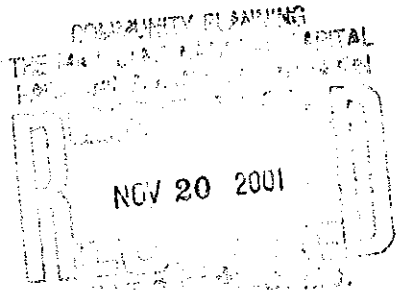


EXHIBIT NO. 5601

CASE NO. 524 MONTGOMERY COUNTY CONSUMER AFFAIRS



DEPARTMENT OF INFORMATION SYSTEMS AND TELECOMMUNICATIONS

Douglas M. Duncan
County Executive

MINUTES OF TTFCG MEETING

Donald V. Evans
Director

To: Distribution
From: Bob Hunnicutt, Tower Coordinator, Columbia Telecommunications

A meeting of the Telecommunications Transmission Facility Coordinating Group (TTFCG) was held on October 3, 2001. The following people were in attendance:

MEMBERS

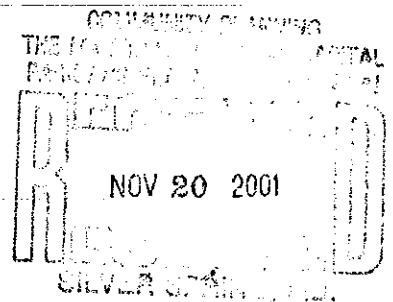
Jane Lawton OCA (240) 777-3724 (FAX) 777-3770
Michael Ma M-NCPPC (301) 495-4595 (FAX) 495-1306
Willem Van Aller DIST (240) 777-2994
Eric Carzon OMB (240) 777-2763

STAFF

Robert Hunnicutt CTC (410) 964-5700 (FAX) 964-6478
Amy Rowan OCA (240) 777-3684 (FAX) 777-3770

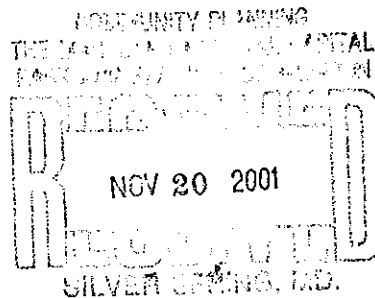
OTHER ATTENDEES

Lee Jarmon Nextel (410) 953-7440 (FAX) 953-7406
Tom King Etchison resident
Jane King Etchison resident
Mark Nelligan Etchison resident (301) 948-0020
Jaymie Hanna American Tower (410) 729-5821
Emily Nelms Bechtel (240) 447-9444
Ed Donohue Cole, Raywid/AT&T (202) 659-9750
Martin Klauber OPC
Patrick Welsh American Tower (410) 729-5821
John Wilkes Etchison resident
Jane Wilkes Etchison resident
John Copley Etchison resident
Diane Copley Etchison resident
Terry Geldermann Etchison resident
Jane Waldron Etchison resident
Thomas Waldron Etchison resident



Action Item: AT&T Wireless application to construct a new 134' monopole on the Barnhart property located at Hawkins Creamery Road and Laytonsville Road in Gaithersburg (Application #200105-01).

Bob Hunnicutt reviewed the status of this application and the purpose for today's meeting. He explained that at the last meeting, the application had been reviewed with the TTFCG members. During the meeting, the group and an Etchison resident wanted to review AT&T's confidential RF



propagation maps in order to see the alternatives which had been identified by the Tower Coordinator, researched by AT&T and discussed during the meeting. He explained the room was cleared to allow only parties relevant to the particular application to review these materials with the AT&T engineer.

Mr. Hunnicutt explained that today's meeting was to specifically discuss two alternatives that the TTFCG had asked about at the prior meeting. Those alternatives were to place the monopole in a different location on the property and determine if there were any adverse effects from the move that would impact the service coverage. He noted that the TTFCG had requested that AT&T consider moving the monopole further into the wooded area to better conceal the structure.

Ms. Lawton recognized Ed Donohue and asked him to provide the members with an update on AT&T's progress in considering the TTFCG's request.

Mr. Donohue displayed a revised site plan and stated that the site acquisition and construction staff at AT&T had advised him that the monopole could be moved to a natural clearing in the wooded area, approximately 50' from its present location. He stated that a move of that short distance did not effect the RF or coverage aspects of the monopole, and that AT&T had agreed to locate the monopole at that new location on the property, as the TTFCG had requested. Mr. Donohue noted that these new plans had not yet been filed with the Board of Appeals, but the new location would still meet the setback requirements. He stated that AT&T conducted a balloon test at the site.

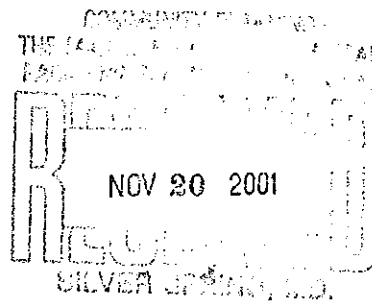
Mr. Nelligan asked if the monopole was still visible from any direction. Mr. Donohue stated that it was better concealed from some directions than others were, but the most improved view was the view of the site from Laytonsville Road driving north.

Jane Lawton asked if this relocation was still out of the airpark flight path. Mr. Donohue stated that it was, and noted that AT&T had reduced the monopole height to 134', the FAA approved limit. Ms. Lawton commented that she still believed this siting was a good candidate for a tree monopole.

John Copley, another Etchison resident, noted that the selection of photos did not best illustrate all of the views the community would have of the new monopole. He noted that there should be a photo of the balloon test from Hipsley Mill Road, which would have the most visible view of the structure.

Jane Lawton noted that she was pleased that so many residents of the community were in attendance at the meeting, but that the appropriate place for public comment would be at the Park and Planning Commission and Board of Appeals hearings. She explained that the TTFCG had completed its engineering review and that the remaining issues were related to the placement of the monopole on the property.

Mr. Copley asked what the Park and Planning Commission would review during its hearing. Ms. Lawton explained that under State law, the Park and Planning Commission reviews the land use



issues related to the monopole or tower siting. She stated they determine that the land use is compatible with the zoning and they look at the Special Exception requirements.

Michal Ma added that the difference between the Park and Planning Commission review and the Board of Appeals review is that the Planning Commission conducts its hearing and makes a recommendation to the Board of Appeals, and the Board of Appeals then has the final authority over granting a Special Exception.

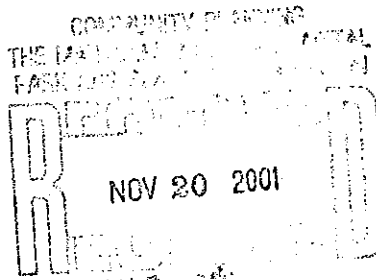
Martin Klauber added that the TTFCG review is not based on the zoning ordinance. He stated that at the Park and Planning Commission there is a timed public hearing where individuals and other interested parties are given a specific amount of time to make comment on the application. He added that the Board of Appeals conducts a full hearing, where speakers are not limited by time, and there is an opportunity for a thorough discussion of each application. He stated that after the hearing, the Board of Appeals writes a written opinion for the case. Ms. Lawton commented that the TTFCG reviews some zoning issues such as the setback requirements and whether telecommunications facilities are permitted and, if so, under what conditions.

Michael Ma stated that at the last meeting, Bob Hunnicutt had explained what the Tower Coordinator had reviewed as alternative sites, and asked Mr. Hunnicutt to explain the process conducted for this application.

Mr. Hunnicutt stated that when the Tower Coordinator conducts a review, they perform a physical site visit where they survey the area to determine if there are any existing tall structures, such as a building, water tank, or electric transmission line towers which could accommodate the antennas in lieu of constructing a new monopole or tower. He stated that the Tower Coordinator also surveys the database which lists the locations of existing carrier antenna facilities. He stated from these surveys, they can determine if there are any alternatives which may be used by the carrier. When alternative sites are located, such as in this case, the carrier is asked to provide additional RF propagation maps showing the expected coverage if those existing structures were used to attach antennas.

He noted that when this application was submitted by AT&T, they had also submitted an application for a taller monopole at the Stanley property located on Long Corner Road to the north of the Barnhart property. In the review, the Tower Coordinator looked at both of these sites together for alternative configurations of antennas which could be deployed to use existing structures and still provide adequate coverage without the need for construction of new monopoles. For the Barnhart property, however, use of the nearby PEPCO transmission lines towers would not provide the coverage desired by AT&T, as it would leave gaps in coverage in certain portions of the service area.

Ed Donohue added that the request for a monopole at the Stanley property had been put on hold pending discussions with PEPCO to potentially site antennas on PEPCO facilities in lieu of a new monopole. He added that when PEPCO determines the height it can provide for the antennas and



addresses the structural issues, AT&T could decide whether they needed to pursue the Stanley monopole. He noted that if PEPCO facilities could be used, they would be, and a request for a second monopole at the Stanley property would be withdrawn.

Many of the residents in attendance examined the photo simulations, the photos of the balloon test, and the site plan. Jane Lawton noted that AT&T had a map which indicated which photos were taken from which property location, and that there was a color-coded reference map to indicate where the photos were taken from to see whether the monopole would be visible or not. Mr. Nelligan noted that during the winter there would not be as many leaves on the trees so the monopole might be more visible from some of these areas. He added that since he was the only community representative at the last TTFCG meeting, AT&T may wish to review the RF propagation maps for the residents at today's meeting.

Mr. Donohue stated that he had no objection to this request, and that Mr. Hunnicutt had the RF maps, but noted that since neither he nor the Tower Coordinator expected RF issues to be revisited today, neither of them had engineers to discuss the RF issues at the meeting today.

Mr. Hunnicutt displayed RF propagation maps for the attendees to review.

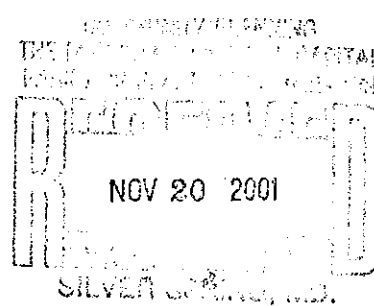
Ms. Lawton cautioned the group that they were viewing confidential information which could not be divulged to others.

Mr. Van Aller noted that the maps are a theoretical depiction of what the service coverage would be based on a computer generated model.

Mr. Copley noted that on Map #5, the Barnhart property is not depicted in the correct location, but is shown farther south on Laytonsville Road than where the actual site is.

Mr. Nelligan commented that it appeared from the RF maps that if the Stanley property and the Barnhart property sites were removed from the maps, the only place where there would be coverage would be near Damascus and Laytonsville. He added that at the last meeting, he was not aware that many of the Etchison residents have AT&T service, and that they report that the cellular service is fine and they do not experience dropped calls as they drive towards Damascus. Mr. Hunnicutt stated that he also has AT&T service, and when he was driving around the service area from a number of locations, he did experience difficulty and dropped calls when calling his office in Columbia. Mr. Van Aller commented that this anecdotal information is not especially valid, and that the carriers determine the level of coverage they need to adequately service their customers and that the RF maps are simply a statistical representation of what the expected coverage might attain.

Mr. Nelligan stated that from the RF maps, it appeared that use of a PEPCO transmission line tower and a shorter new monopole located between Etchison and Laytonsville, but farther to the south of the present location, would probably provide the coverage that AT&T needed. He added that he



believed the pilots at the Davis airport would be requesting that the monopole have lights, and if that was the case, the County would require AT&T to light the monopole. Mr. Van Aller explained the FAA requirements for lighting a structure. Mr. Donohue stated that neither the FAA nor the MAA required lights on this monopole. Jane Lawton noted that this is an issue to be resolved by the Park and Planning Commission and the Board of Appeals and should be addressed at that time.

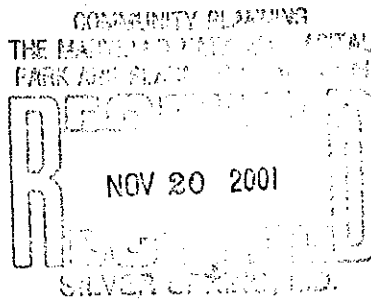
Mr. Nelligan stated he believed there was more work to be done in investigating his suggestion for alternative locations for a new monopole. Mr. Copley noted that his examination of the revised site plan appears to show the new location of the monopole 100' from the original location, and not 50' as stated earlier by AT&T. Mr. Donohue replied that it may be the case on the plan, but his construction and site acquisition staff had informed him that the new location was 50' from the original site selected. Mr. Nelligan asked if the new plan had been filed with the Board of Appeals. Mr. Donohue stated that it had not been filed. Mr. Ma asked if the original and revised sites were still technically viable for AT&T. Mr. Donohue replied that they were viable.

Mr. Ma asked Mr. Hunnicutt to address the new alternatives suggested today. Mr. Hunnicutt explained that even if the Tower Coordinator engineer had been at the meeting, without new RF maps from AT&T, they could not comment on what coverage might be obtained by Mr. Nelligan's suggested alternative. He added that based on his review of the RF maps showing PEPCO Pole R-57, that site was too far to the north and east to provide coverage much farther south than to Etchison. He concluded that although it was conjecture on his part, he supposed that if a shorter monopole was located closer to Laytonsville, there would still be a gap in coverage south of Etchison, which would otherwise be covered by the Barnhart monopole. He also noted that there are problems with locating one cell too close to another. He stated that could be a problem because AT&T already had antennas at the airpark water tank located just south of Laytonsville.

Mr. Nelligan stated that perhaps two shorter monopoles could be used to cover the area south of Etchison.

Mr. Donohue replied that AT&T had worked hard to resolve the TTFCG's questions, and that today's meeting was scheduled just to answer the questions regarding relocating the monopole on the Barnhart property to better conceal the structure. He stated he had mentioned the Stanley property because it is AT&T's policy that if there are existing structures such as silos, water tanks, or transmission line facilities in a proposed area, they will use them. He stated that for the TTFCG to suggest that AT&T add more new monopoles goes beyond the TTFCG's authority. Mr. Nelligan stated he believed those additional options should be considered.

Ms. Lawton stated that the TTFCG's primary objective was to identify that there was a need for a new facility, and then they examine if there are co-location options available to the carriers. Jane King noted that the PEPCO transmission lines were fairly close to the Barnhart property, and asked what the minimum distance requirements were for finding an existing structure. Mr. Hunnicutt noted that one needed to look at where the transmission line towers were located, not the transmission lines. Ms. Lawton added that the TTFCG had met with the Tower Coordinator



engineer and AT&T's engineers in closed session at the last meeting and had reviewed all the RF issues and the TTFCG had resolved all of their questions; consequently, this meeting was only to review relocating the monopole on the property. She stated that the TTFCG now had to act on those remaining issues since the Park and Planning Commission hearing was scheduled for October 11, and the Commission required a recommendation from the TTFCG before proceeding with the hearing.

Eric Carzon stated he was in favor of recommending the application because, from a governmental perspective, there is a public interest in placing cellular service in the community, and if there are community objections to the aesthetics of the facility, those were issues that were more appropriately considered by the Park and Planning Commission and the Board of Appeals. He added that although one could consider other options for new monopoles or additional sites for antennas, there must be a limit to how many different options a carrier must consider. He noted that the role of the TTFCG was to review the carrier's application and the Tower Coordinator's evaluation and act on the information they have been provided to meet the role established for the TTFCG. He stated he did not believe it was appropriate to look at an endless array of options. He stated that the TTFCG encourages co-location and when it is demonstrated that there is a hole in service coverage, the TTFCG must act on the application, and the other issues must be taken up at the Park and Planning Commission. He stated that he believed that AT&T had fulfilled the requirement of looking at appropriate co-location options and he believed it was time for the group to take action on the application.

Mr. Van Aller agreed, stating that the County has also recently gone through an extensive review for siting new public safety radio system towers, and that all of the various design considerations have a cost implication; however, in the end the carrier must determine the option that best suits their needs. He agreed that he believed that the TTFCG had performed a complete review of this application, ~~the carrier had done its part in responding to TTFCG questions.~~ He stated that the residents certainly have the right to oppose this siting but that the Park and Planning Commission and the Board of Appeals are the appropriate place for their input.

Michael Ma stated that the Park and Planning Commission has been trying to establish a balance between meeting community interests as well as meeting the public need in reviewing telecommunications applications. He stated that the Park and Planning Commission wants to communicate to the carriers that they should try harder to come up with alternatives which minimize the adverse effect in the community but still enable them to deploy their facilities.

Ms. Lawton stated she would have liked to have had all of the residents at today's meeting in attendance at the last meeting when the RF issues were discussed in more detail. She stated that the TTFCG was satisfied with the RF issues and she believed it was appropriate for the group to take action on the application. She stated that any time there are existing structures in the vicinity of new siting requests, the TTFCG should investigate them, and, in this case, it had done so. She stated that this application clearly shows a hole in coverage and the determination of whether that constitutes



a need for a new monopole is an issue for the Park and Planning Commission to address. She stated that she believed the TTFCG had done its job in its review of this application, and that the remaining issues were a matter for the Park and Planning Commission.

Jane Lawton agreed that the TTFCG should challenge the industry to do a more creative job in siting their facilities. She noted that many times the TTFCG's review of applications for new facilities had resulted in the application either being withdrawn or the antennas being placed on existing structures in lieu of construction of a new facility.

Bob Hunnicutt noted that the TTFCG had even expanded the realm of alternatives by negotiating with PEPCO to establish a master lease which would permit the carriers to attach antennas on existing PEPCO transmission line facilities.

Ms. Lawton explained that the County Council was in the process of reviewing the ordinance with particular regard for placement of new facilities in the up-county areas.

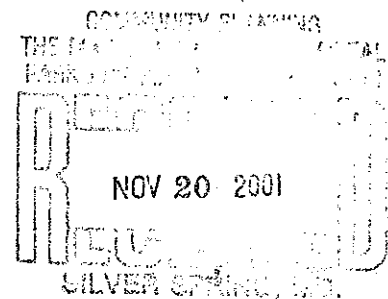
Michael Ma added that he believed that the suggestion of a tree monopole was a land use issue and more appropriate for the Park and Planning Commission. Ms. Lawton agreed that today that is true, but she noted that in the past, the Park and Planning Commission and the Board of Appeals were not as aware of the stealth siting options available.

Michael Ma stated that a community's perception of an acceptable siting differs from community to community. Mr. Nelligan stated that he believed that the citizens would feel more comfortable if the TTFCG recommended a camouflaged site in this case.

Mr. Van Aller asked if AT&T would discuss possible stealth applications for this monopole with the community. Mr. Donohue agreed to meet with them if they so desired.

**Motion:** Willem Van Aller moved that the revised plan for the siting of the monopole 100' from the original location be recommended, and that the carrier discuss possible opportunities for camouflage with the surrounding community representatives. Eric Carzon seconded the motion and it was unanimously approved.

**The next meeting of the TTFCG is scheduled for Wednesday, October 10, 2001 at 2:00 p.m. in the 6<sup>th</sup> floor conference room of the COB.**





November 5, 2001

Patrick Welsh  
American Tower  
8258 Veterans Highway, Suite 8A  
Millersville, MD 21108

Subject: Proposed "Barnhardt" Antenna Tower

Dear Mr. Welsh:

Aviation Systems Incorporated (ASI) has conducted a study of the operational impact of the subject American Tower antenna structure on Davis Airport in Laytonsville, MD.

It is proposed that this structure be erected to a height of 134 feet above ground level (AGL)/780 feet above mean sea level (AMSL) in Etchison, MD at latitude 39° 14' 57.05" and longitude 077° 08' 41.72" (NAD 83). The proposed structure would be 0.21 Nautical Miles (1321 feet) north of Davis Airports' Runway 26.

The structure was initially proposed to be 150 feet AGL/796 feet AMSL and notice was filed with the Federal Aviation Administration (FAA) Eastern Region. At that height it exceeded the FAA VFR Traffic Pattern criteria and was considered to be a "Hazard to Air Navigation." The structure was lowered to 134 feet AGL/780 feet AMSL and was subsequently issued a Determination of "No Hazard to Air Navigation" by FAA. (Study number 01-AEA-0354-OE). It is our opinion that this tower is now fully compliant with FAA criteria and should have no adverse impact on aircraft that are safely operated in accordance with the Federal Air Regulations.


Davis Airport Runway 8-26 is a Turf-Asphalt 2005 foot long general aviation facility. It has a standard left traffic pattern for both approaches. No night operations are allowed. The proposed antenna tower would be over 1000 feet north of the centerline approach to Runway 26. Aircraft in a standard left traffic pattern on final approach should be well to the south of the structure when they are that close in to the end of the runway.

Aircraft taking off from Runway 08 should be well above 134 feet AGL climbing to their pattern altitude of 1400 feet AMSL (754 feet AGL) when on the cross-wind/downwind leg for Runway 08. It should be noted that FAA considers these traffic pattern operations in issuing a Determination of "No Hazard" based on their criteria.

It is therefore our opinion, that the tower as proposed at 134 feet AGL should not pose a safety hazard to aircraft operating VFR in the Davis Field Traffic Pattern.

We would be pleased to discuss our opinions further if you have any questions.

Sincerely,

  
Jerry Chavkin  
Vice President Airspace Operations



## DEPARTMENT OF ECONOMIC DEVELOPMENT

Douglas M. Duncan  
County Executive

October 3, 2001

David W. Edgerley  
Director

Arthur Holmes, Chairman  
MNCPPC  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Support for Additional Communication-Phone Towers in  
the Agricultural zones

Dear Chairman Holmes:

The purpose of this letter is to submit the Agricultural Advisory Committee's support for additional communication-phone towers in the Agricultural zones of Montgomery County.

In the past few years, the use of mobile phones have revolutionized every segment of our society. All businesses including agriculture have benefited greatly by this technology as economic decisions are made instantly in the field. Furthermore, in light of the national tragedy from September 11, 2001, it is evident that mobile phone usage represents a critical means of communication for government, emergency personnel, and all citizens.

It is the AAC's firm belief that additional communication-phone towers are needed in the rural and agricultural areas of our County. The signal strength from the existing towers is not sufficient to meet current demand as the signal fades out often or will not work altogether. Given the increasing demand and importance for this communication technology, it should not be surprising that farmers of this County expect an effective communication network that will work in both urban and rural areas.

The AAC further acknowledges that communication-phone towers located on farm properties does not represent a negative impact to agricultural operations as the towers are erected on small parcels of land usually taking up less than one acre. The rental income to the property owner also represents an economic incentive and opportunity that can be used to further support the farming operation.

In conclusion, the AAC encourages the Montgomery County Planning Board to support the construction of additional communication-phone towers in the Agricultural zones for the reasons outlined in this letter.

Thank you for your time and support on this vitally important issue impacting all citizens of our country.

Sincerely,

*William Willard, JVC*

William Willard, Chairman  
Agricultural Advisory Committee

A:\bolmeswillard(ang2001)

Agricultural Services Division

18410 Muncaster Road • Derwood, Maryland 20855 • 301/590-2823, FAX 301/590-2839

**AIRCRAFT OWNERS AND PILOTS ASSOCIATION**

421 Aviation Way • Frederick, MD 21701-4798  
Telephone (301) 695-2000 • FAX (301) 695-2375  
www.aopa.org

June 7, 2001

Mr. William E. Merritt  
Specialist, Airspace Branch  
Federal Aviation Administration  
Eastern Region, AEA-520  
1 Aviation Plaza  
Jamaica, NY 11434-4809

RE: Aeronautical Study 01-AEA-0354-OE

Dear Mr. Merritt:

The Aircraft Owners and Pilots Association (AOPA), representing the interests of over 370,000 aviation enthusiasts and professionals nationwide, respectfully submits its objection to the proposed construction .33 nautical miles north of Davis Airport (W50), Etchison, Maryland. If constructed, the tower's height coupled with its proximity to the active runway, would create a significant reduction in the safe and efficient use of airspace for pilots utilizing this facility.

For example, aircraft departing Davis Airport would be exposed to a considerable hazard while conducting operations within the established left-hand traffic pattern. The increased pilot workload inherent to the departure phase of flight, combined with the reduced visibility while in a climb attitude, makes the proposed location of this tower objectionable to the users of Davis Airport. Given that W50 is home to 27 based aircraft and the host of over 15,000 operations per year, the danger this construction poses to pilots is worthy of consideration. It is also important to note that during periods of reduced visibility or when meteorological conditions reduce aircraft climb performance, the aforementioned dangers will be compounded.

In short, if the proposed tower becomes a reality, it would have a substantial adverse impact to aircraft operations into W50. Airspace is a finite and diminishing natural resource, and we appreciate the demands being placed on all airspace users. However, for these interests to exist in harmony, each must understand the impact of its activities on the entire airspace system. For these reasons, AOPA respectfully requests that the FAA find the captioned proposal a hazard to air navigation.

Respectfully,

A handwritten signature in cursive script, appearing to read "Michael W. Brown".

Michael W. Brown  
Associate Director, Air Traffic Services  
Aircraft Owners and Pilots Association

(9)

Robert T. Warner  
8619 Edgewater Ridge  
Omro, WI 54963  
June 19, 2001

Mr. William E. Merritt  
Specialist, Airspace Branch  
Federal Aviation Administration  
Eastern Region, AEA-520  
1 Aviation Plaza  
Jamaica, NY 11434-4809

RE: Aeronautical Study 01-AEA-0354-OE

Dear Mr. Merritt:

As an aircraft owner, pilot and frequent user of the Davis Airport (W50), I must register my aviation safety objection to the proposed construction .33 nautical miles north of Davis Airport (W50), Etchison, Maryland. If constructed, the proposed tower's height coupled with its proximity to an active runway would create a significant reduction in the safe and efficient use of airspace for pilots utilizing this public-use facility.

Davis Airport is critical to airport capacity in the Washington metropolitan area. While it is not listed as eligible for federal funding, it is an essential public-use airport included in the Maryland state system plan. The runway was recently resurfaced with matching public funds from the Maryland aviation grant program. While the airport currently has approximately 30 aircraft and about 15,000 operations per year, this number is projected to increase under new ownership (as the current owner suffers Alzheimer's disease and lives in a nursing home) and with facility and service investments by both the private and public sectors.

As to specific airspace issues affecting air operations in the immediate Davis vicinity that would be effected by this tower, there are numerous factors. The airspace in the vicinity of the airport is already highly congested as a result of an overlying Class B airspace floor of 2,870 feet AGL. Within this airspace is the Davis Airport traffic pattern and continuous overflights (below the Class B floor) enroute to Montgomery County Airport (GAI). It has been acknowledged that the proposed structure will exceed both federal and Maryland airport imaginary surfaces.

The above circumstances would create a highly unsafe condition and excessive pilot workload for those arriving and departing Davis Airport. In this case, the pilot is also required to avoid GAI overflights, Class B airspace restrictions, and comply with appropriate traffic pattern procedures. This is an unacceptable

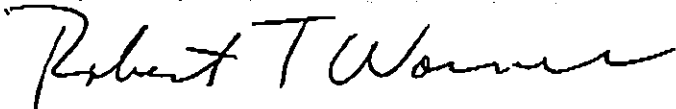
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degradation of safety during this critical phase of flight when cockpit workload is at its highest.

I have reviewed the letters filed in this case by AOPA, EAA and the Maryland Aviation Administration. I would like to go on record as reinforcing all aviation and safety issues brought forward in these letters.

For the above reasons, I request that the FAA find the above captioned proposal as a hazard to air navigation. Further, I request that you file an objection on the basis of aviation safety with Montgomery County, Maryland Board of Appeals Case No. S-2477 / OZAH Referral No. 01-14.

Respectfully,



Robert T. Warner  
Commercial Pilot #1898682  
Owner: N627WM, N1075H  
Member: AOPA, EAA

Cc: AOPA, EAA, MAA

Parris N. Glendening  
GovernorJohn D. Porcari  
Secretary

## Maryland Aviation Administration

David L. Blackshear Executive Director

July 3, 2001

Mr. Christopher W. Hembree  
Cole, Raywid and Braverman, L.L.P.  
1919 Pennsylvania Avenue, NW.  
Suite 200  
Washington DC 20006-3458

Dear Mr. Hembree:

Thank you for providing our office with the site plans for the "Barnhart property" and the opportunity to comment on the location and height of the planned monopole tower on that site, *FAA Aeronautical Study Number AEA 01-0354-OE*.

By reducing the height of the proposed tower from 150 feet to 134 feet mean sea level, and no longer infringing on the Horizontal Imaginary Surface of Davis Airport, American Tower Corporation would not be in violation of The Code of Maryland Aviation Regulations (COMAR) Chapter 5, Section 11.03.05.4 (A) (2). Therefore, the Maryland Aviation Administration (MAA), has no objection to the construction of the proposed tower at that reduced height.

It is imperative however, that any and all revisions or alterations to the original FAA Airspace Study be forwarded to the FAA Eastern Region, for approval. If I can be of any further assistance to you in this matter, please do not hesitate to contact me at (410) 859-7689.

Sincerely,

Jaime A. Giandomenico  
Aviation Systems Planning Officer

24111 Hipsley Mill Road  
Gaithersburg, MD 20882  
September 25, 2001

RECEIVED  
09/25  
SEP 27 2001

Montgomery County Dept. of Park and Planning  
Planning Board Chair  
8787 Georgia Ave.  
Silver Spring, MD 20910

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

RE: Case No. S-2477 – Petition of American Tower Corporation and AT&T Wireless Services  
for monopole tower in Etchison, MD (Hawkins Creamery Road and Route 108)

We strongly oppose the construction of this tower for several reasons:

- 1) The proximity to Davis Airport is of great concern for safety of flight operations.
- 2) Montgomery County purchased over 25 acres on the west side of Davis Airport presumably to protect and ensure the safety of local residents. It doesn't make sense to provide protection of the Airport on the west side and then build a tower to endanger it on the northeast side.
- 3) The Federal Aviation Administration (FAA) has conducted an aeronautical study concerning this tower. FAA indicates that the proponent has agreed to erect a shorter tower. However, we plead with you to consider the safety of the aircraft and the homes in the area. We know that when collision occurs with a structure, much damage occurs. We hadn't thought about the possibility of fire if an accident occurred, but it is utmost on our minds now. Please, please, deny this structure.
- 4) Several aviation associations and private pilots have written to the Hearing Examiner to oppose this structure: The Aircraft Owners and Pilots Association (AOPA), Experimental Aircraft Association (EAA), and the Maryland Aviation Administration. If these organizations are concerned, we believe that there is reasonable concern about the erection of this tower.
- 5) There are other sites that are more practical than this one. And there are sites for co-location.
- 6) The proposed site is zoned RDT and should remain "rural".
- 7) The petitioner states that the "proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding properties or the general neighborhood." We strongly disagree with this statement. As members of this community, we feel that the tall tower represents visual pollution and detracts from our enjoyment of our rural setting, and would devalue our property.
- 8) Several properties in Etchison (including Mt. Tabor United Methodist Church which is directly across the street from the proposed site) have been named (per Susan Soderburg, Historic Preservation Education & Outreach Planner of Montgomery County Department of Park & Planning) as being eligible for "historic designation" and the erection of this tall tower would not be compatible.
- 9) We are concerned also about the health aspects. Once the cell phone tower is operational, residents will be exposed to pulsating and continuous doses of radiated frequency. Studies are now showing its dangers. These frequencies can disrupt and decrease the body's production of melatonin, a controlling hormone that is released from the pineal gland in the center of the brain. The disruption of this gland impairs



normal hormone system release, suppresses the immune systems, influences cell behavior, and can produce serious systemic problems throughout the body, including cancer.

Please consider all these points carefully (especially the proximity to Davis Airport and the danger that poses) and we feel confident that you will agree with us in determining that this tower should not be erected on this site. We recommend that if more coverage is necessary for wireless service, that the petitioners look for co-location on existing towers or power lines.

Sincerely,

*Tom & Jane King*

Tom and Jane King

Montgomery County Dept. of Park and Planning  
Planning Board Chair  
8787 Georgia Ave.  
Silver Spring, MD 20910

RECEIVED  
011553  
OCT 09 2001

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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Jayne Miller  
Name

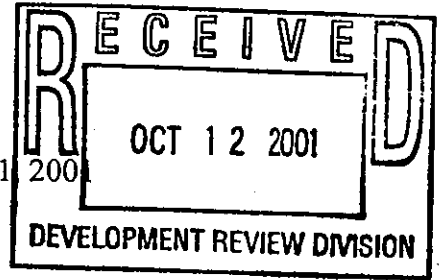
23534 Rockmount Dr  
Address

Laytonville, VA 22532  
City, State, Zip

9/30/01  
Date

P.S.  
Where does it end? Look around at the blight on the landscape all across this country as these towers pop up everywhere. I saw one tower near Columbus, Ohio, that had been "disguised" as a tree. It was laughable - it looked like what it was - a metal skeleton with greenery added to and then to please use the proper satellite towers which are just north of the Chesapeake / Laytonville area. Thank you.

Jayne Miller



October 11 2001

To: Park and Planning

From: Peter and Donna Currall  
7425 Hawkins Creamery Road  
Gaithersburg, MD 20882

Re: Barnhart Property

Although we are unable to attend the meeting, we want to express our objection to the request for a communication tower exception for the corner of Route 108 and Hawkins Creamery Road. We live approximately one-half mile from the site, and have done so for over twenty years. Our objections to erection of the tower follow:

1. At a height of 120-130 feet the tower will be visible from all points on our property. A recent suggestion to disguise the tower as a tree seems a less than an adequate solution. Few trees are that high, and the necessity of a light due to Davis Airport has yet to be determined.

2. Our area was zoned a twenty-five (25) acre agricultural buffer area years ago. However, it was never really enforced in our area. All the open land was sold off, deeded as children's and grandchildren's five (5) acre lots, and developed. The amount of open acreage has steadily decreased and the two lane country road is incapable of handling the new volume.

3. We have the oil pipeline running within 1/8<sup>th</sup> of a mile from our property.

4. The tower will be an eyesore and reduce our property values.

5. The tower may be a danger to planes taking off and landing at Davis Airport.

6. It has yet to be determined how much maintenance and traffic will result on that corner, due to servicing of the tower. It is already a dangerous corner, with restricted view when turning left onto 108.

I am aware of several communications providers who have added their towers to existing structures, e.g. farmer's silos, barns, water towers, etc. and wonder why that can't be a resolution for our area.

In short, it seems as if upper Montgomery County gets a raw deal because our numbers are too small to have any clout in protesting the erection of structures, buildings, pipelines, etc. Just this once, we ask you **not to grant the special exception**. We do not want this tower in our pastoral, rural neighborhood, which is fast becoming overdeveloped.

Peter and Donna Currall

A handwritten signature in cursive script, appearing to read "Donna Currall", written over the typed name.

November 12, 2001

Montgomery County Dept. of Park and Planning  
Planning Board Chair  
8787 Georgia Ave.  
Silver Spring, MD 20910

RE: Case No. S-2477 - Petition of American Tower Corporation and AT&T Wireless Services: for  
monopole tower in Etchison, MD (Hawkins Creamery Road and Route 108)

I am writing to let you know I am opposed to the construction of this tower for the  
following reasons:

- 1) I am concerned about the proximity to Davis Airport and for safety offlight operations.
- 2) The Federal Aviation Administration (FAA) has conducted an aeronautical study concerning this tower. Although the FAA indicates that the proponent has agreed to erect a shorter tower I believe you still **MUST** consider the safety of the aircraft and the homes in the area, especially in light of the September 11<sup>th</sup> tragedy. When collision occurs with a structure, much damage occurs. In this area with the proximity to homes and the airport, the potential damage from fire is much greater because there is no city water and, to my knowledge, there are no fire hydrants.
- 3) Montgomery County purchased over 25 acres to the west of Davis Airport presumably to protect and ensure the safety of local residents. It does not make sense to provide protection of the Airport to the west and then build a tower to endanger it on the northeast side.
- 4) Several aviation associations and private pilots have written to the Hearing Examiner to oppose this structure: The Aircraft Owners and Pilots Association (AOPA), Experimental Aircraft Association (EAA), and the Maryland Aviation Administration. If these organizations are concerned, I believe that there is reasonable concern about the erection of this tower.
- 5) Personnel from Davis Airport have already indicated that they will request a light for the tower if it is approved in this location. The proposed location for the tower is in the flight path of the state Medivac helicopter, and it is my understanding that a light would also be requested for that reason. Alternate locations away from the airport and out of the Medivac helicopter path would not require a light.
- 6) There are other sites that are more practical than this one that would not be in as close proximity to homes or the airport, and that would not require a light.
- 7) The proposed site is zoned RDT and should remain "rural".
- 8) The petitioner states that the "proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding properties or the general neighborhood." I utterly disagree with this statement. I believe that a tower standing approximately twice as high as the existing trees represents visual pollution, detracts from our enjoyment of a rural setting, and would devalue our property.
- 9) According to Susan Soderburg, Historic Preservation Education & Outreach Planner of Montgomery County Department of Park & Planning, several properties in Etchison, including Mt. Tabor United Methodist Church which is directly across the street from the proposed site, have been named as eligible for "historic designation" and the erection of this tall tower would be incompatible with such a designation.
- 10) I am also concerned about the health aspects. If the monopole tower is operational, residents will be exposed to pulsating and continuous doses of radiated frequency. Studies are now showing its dangers to the body, including cancer.

Please consider these points carefully (especially the proximity to Davis Airport and the danger that poses) and I am confident that you will decide that this tower should not be erected on this site. If more coverage is truly necessary for wireless service, alternative approaches should be considered, such as smaller towers located elsewhere, perhaps in conjunction with co-location on existing towers or power lines.

Sincerely,

Kathy B. Nelligan  
7505 Hawkins Creamery Road; Laytonsville, MD 20882-3209

November 13, 2001

Montgomery County Dept. of Park and Planning  
Planning Board Chair  
8787 Georgia Ave.  
Silver Spring, MD 20910

RE: Case No. S-2477 - Petition of American Tower Corporation and AT&T Wireless Services: for monopole tower in Etchison, MD (Hawkins Creamery Road and Route 108)

I am writing to voice my opposition to the 134 foot monopole tower proposed for Etchison, MD. It is critical that Montgomery County require AT&T to consider other options to improve wireless phone coverage in this area. Even though these other options may require additional engineering and may involve a higher construction cost, there are other methods that would minimize the impact on this rural area.

The following aspects of the proposed tower location could and should be avoided by selecting a different site nearby for a 134 foot pole, or a combination of co-locating on a nearby power transmission line, and one or more lower poles further south.

- 1) The proposed tower is adjacent to Davis airport, introducing an unnecessary safety hazard for small airplanes.
- 2) Airport personnel have indicated that they and the state Medivac helicopter, which flies directly over the proposed tower location, will request that the tower be lit at night if the tower is approved at that location. It seems certain that these requests would be approved for safety reasons. The introduction of a red flashing light to the night sky in a rural area has a tremendous impact and could be easily avoided by consideration of a different site.
- 3) The proposed location is quite close to many existing homes which will have a negative impact on all those homes.
- 4) Several homes and public buildings in the immediate vicinity of the proposed tower location are candidates for historic landmark classification.

The above issues could all be avoided by locating on a different piece of property or by choosing a combination of co-location and smaller poles. AT&T and the Tower committee refused to consider these options when asked.

It is difficult to accept that the proposed tower location and height, along with the unique problems associated with it, is the only location capable of providing cell phone service.

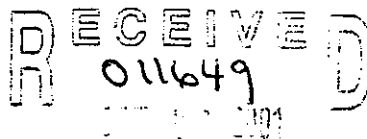
I am glad to see that your staff raised the question of required level of service. Most of the homeowners in the area adjacent to the tower have wireless telephone service, some with AT&T. We all get acceptable coverage at home and on the roads in this area. I often use my phone at home, on the roads between Laytonsville and Etchison, and Etchison and Damascus. I do not ever remember having a dropped call on those roads. The service level may not be perfect, but it is adequate, and certainly comparable to more populated areas of the county such as Gaithersburg, Rockville, Bethesda, etc. Please note in the Tower Committee meeting minutes, that no drive tests were performed to confirm AT&T's assertion that additional service is required.

For the reasons stated above, I ask that you recommend a denial of the application for this tower. The beauty of rural Montgomery County is too valuable to be destroyed when all other options have not been considered.

Sincerely,

Mark D. Nelligan  
7505 Hawkins Creamery Road  
Laytonsville, MD 20882-3209

Montgomery County Dept. of Park and Planning  
Planning Board Chair  
8787 Georgia Ave.  
Silver Spring, MD 20910



OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

RE: Case No. S-2477 – Petition of American Tower Corporation and AT&T Wireless Services for monopole tower in Etchison, MD (Hawkins Creamery Road and Route 108)

We strongly oppose the construction of this tower for several reasons:

- 1) The proximity to Davis Airport is of great concern for safety of flight operations.
- 2) Montgomery County purchased over 25 acres on the west side of Davis Airport presumably to protect and ensure the safety of local residents. It doesn't make sense to provide protection of the Airport on the west side and then build a tower to endanger it on the northeast side.
- 3) The Federal Aviation Administration (FAA) has conducted an aeronautical study concerning this tower. FAA indicates that the proponent has agreed to erect a shorter tower. However, we plead with you to consider the safety of the aircraft and the homes in the area. We know that when collision occurs with a structure, much damage occurs. We hadn't thought about the possibility of fire if an accident occurred, but it is utmost on our minds now. Please, please, deny this structure.
- 4) Several aviation associations and private pilots have written to the Hearing Examiner to oppose this structure: The Aircraft Owners and Pilots Association (AOPA), Experimental Aircraft Association (EAA), and the Maryland Aviation Administration. If these organizations are concerned, we believe that there is reasonable concern about the erection of this tower.
- 5) There are other sites that are more practical than this one. And there are sites for co-location.
- 6) The proposed site is zoned RDT and should remain "rural".
- 7) The petitioner states that the "proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding properties or the general neighborhood." We strongly disagree with this statement. As members of this community, we feel that the tall tower represents visual pollution and detracts from our enjoyment of our rural setting, and would devalue our property.
- 8) Several properties in Etchison (including Mt. Tabor United Methodist Church which is directly across the street from the proposed site) have been named (per Susan Soderburg, Historic Preservation Education & Outreach Planner of Montgomery County Department of Park & Planning) as being eligible for "historic designation" and the erection of this tall tower would not be compatible.
- 9) We are concerned also about the health aspects. Once the cell phone tower is operational, residents will be exposed to pulsating and continuous doses of radiated frequency. Studies are now showing its dangers. These frequencies can disrupt and decrease the body's production of melatonin, a controlling hormone that is released from the pineal gland in the center of the brain. The disruption of this gland impairs

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24020 Laytonsville Road  
Laytonsville, MD 20882

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

November 6, 2001

Mr. Art Holmes, Chairman,  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

Re: Board of Appeals Petition No. S-2477 (Special Exception)

Dear Mr. Chairman

My wife and I live at 24020 Laytonsville Road in Etchison. Our property lies immediately north of, and borders, the so-called "Barnhart" property (parcel 666 on Tax Map GW42, located in the RDT zone). AT&T Wireless Services originally proposed to locate a monopole tower in the NW corner of Mr. Barnhart's field to the north of Hawkins Creamery Road, west of Laytonsville Road. Our property line is 476 feet from that location. Following a meeting of the Tower Committee a second site was proposed, 100 feet north of the original site. The more northerly site, which is in some woods, is 376 feet from our property line, approximately 400 feet from our house.

The woods to the south of our house, on Mr. Barnhart's property, are sparsely populated with trees. Thus the proposed tower, whether erected in the field or in the woods, will be highly visible from our house at all times of the year. It will be particularly visible in wintertime, especially the upper parts of the structure. My wife and I will be daily confronted by the structure, every time we look out the windows of our living room, bedroom or bathroom, every time we walk the dog, shovel snow, rake leaves or mow the lawn. Depending how well they are camouflaged by a "grove of trees", the 8-foot high fence and the 11-foot tall equipment shed will also be visible.

Notwithstanding the July 3 letter from the Maryland Aviation Administration, the tower will be a hazard to low-flying aviation, not to mention Medevac helicopters and experimental aircraft such as ultralight vehicles, whether it is placed in the field or in the woods. As stated in Ms. Daniel's memorandum to the Planning Board, "area pilots ... may still object to the tower despite the MDAA and FAA approval". I believe that the more successfully the tower is disguised as a tree, in order to make it less unsightly from the ground, the more likely it is that it will be a hazard to flying. If the tower is located in the woods and is struck by a plane there will almost certainly be a fire, in which case it is very possible that our house, which is constructed of wood, and surrounded on more than two sides by the woods, will also burn.

The view from our house to the south, and the threat of a fire, are matters that we will have to live with daily if the tower is erected as proposed. We will have even more to



worry about when it comes time to sell the house. It is very difficult to gauge the effect of a tower, in either of the proposed locations, on the value of our property, but because the tower will be clearly visible from our house we anticipate that the value of our property will be considerably reduced.

My wife and I used to live in a planned community which we never particularly liked. We were delighted when we discovered a house for sale in an almost untouched section of Montgomery County. Before our decision to make an offer on the house I spent more than an hour at the Park and Planning Commission, receiving helpful advice about such mundane matters as wells and septic systems, as well as thoughts about possible future plans for the area. The general opinion was that this part of the county would probably be the last to be adversely affected by changes in zoning and the march of "progress". I was told about the great importance that MNCPPC attaches to protecting and promoting the integrity of Montgomery County's rural areas. Little did I suspect that a scant four years later we would be threatened with the very real possibility that a grotesque tower would be built within sight of our house.

It seems to me most unfair that, should a tower be built as proposed, our neighbor to the south (an absentee owner, who lives many miles from Etchison) will be compensated handsomely whereas my wife and I stand to suffer daily, all the more so when we attempt to sell our property.

I believe that a tower on the Barnhart property will create considerable visual intrusion for many area residents, whether it is placed in the woods or in the field. In fact area residents will not be the only ones to suffer. People driving north on route 108, west on route 650 or south on Hipsley Mill Road between 650 and 108, will also be negatively affected. Photographs taken during balloon tests conducted by the applicant appear to suggest little visual impact, but the overall conclusion from such tests critically depends on the choice of locations from which pictures are taken. I have taken some pictures from the east, looking toward the proposed tower location, and I have superimposed a standard tower or a "stealth" tower, such that the tower (at 134 feet tall) is roughly twice as high as the trees (whose average height is 60-70 feet). These pictures, attached, show very clearly that the visual impact looking from the east and from the south is considerable. Indeed the visual impact will if anything be worse than is suggested by these pictures because the triangular antenna structure at the top of the proposed tower is 20 feet on a side whereas the structure depicted in the picture, scaled to the height of the trees, is 12-15 feet in width.

My wife and I vehemently oppose the proposed construction of a monopole tower on the "Barnhart" property. We respectfully ask that you and your colleagues deny this proposal.

Yours sincerely

John R.D Copley

# COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW  
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20006-3458  
TELEPHONE (202) 659-9750  
FAX (202) 452-0067  
WWW.CRBLAW.COM

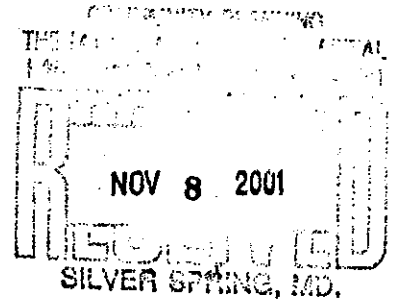
EDWARD L. DONOHUE  
ADMITTED IN DC AND MARYLAND  
202-828-9815  
EDONOHUE@CRBLAW.COM

LOS ANGELES OFFICE  
2381 ROSECRANS AVENUE, SUITE 110  
EL SEUNDO, CALIFORNIA 90245-4200  
TELEPHONE (310) 643-7999  
FAX (310) 643-7997

November 7, 2001

## BY FEDERAL EXPRESS

Arthur Holmes, Jr., USA (Ret.), Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760



**Re: Application for Special Exception Approval S-2477 ("Application")  
Proposed AT&T Wireless Facility at Hawkins Creamery Road, Laytonsville  
(Barnhart Property/AT&T Wireless Site No. W-237)**

Dear Chairman Holmes:

The Montgomery County Planning Board ("Planning Board" or "Board") is scheduled to hear the referenced matter on November 15, 2001. The purpose of this letter is to call to the Board's attention certain local, state and federal issues regarding the Planning Board Staff's recommendation to deny the Application. As explained below, the Board should reject the Staff Report and recommend approval of this Application.

After months of working with the Applicant in this case, the Tower Committee recommended approval of the Application with only minor adjustments to the height and location of the facilities. Notwithstanding the Tower Committee's Report, the Planning Board Staff Report dated October 5, 2001 recommends that the Application be denied. This recommendation is based on the Staff's application of an improper and illogical interpretation of the zoning requirements set forth by the Board in a separate proceeding involving a similar application for special exception approval. The Staff Report specifically acknowledges that the Application satisfies the requirements of the Zoning Ordinance in *all* other respects.

The Staff Report is based upon a flawed interpretation of the Zoning Ordinance contained in a letter from the Planning Board to the Board of Appeals dated May 21, 2001 in case S-2447 ("Hussman Letter"). Staff states that this correspondence "clarifies" the policies of the Board with respect to this type of facility. To the contrary, the policy stands the regulatory framework on its head, improperly sets up a tiered analysis of equivalent facilities and is otherwise contrary to state and federal law. Moreover, because the Application satisfies the requisite burden of proof under the applicable sections of the Zoning Ordinance, to recommend to the Board of Appeals that the Application be denied would be contrary to well-settled caselaw in Maryland

In support of our position, the Applicant submits the following:

Arthur Holmes, Jr., USA (Ret.), Chairman

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**I. There Is No Requirement That An Applicant Disprove The Existence Of Any And All Alternate Technologies, Nor Refute Assertions That It Has "Adequate Coverage"**

In 1996, the County Council adopted Executive Regulation #14-96, which established the Tower Coordinator, Tower Committee (also referred to as the "TTFCG") and its review process. The Hussman Letter requests that the TTFCG "require applicants . . . to fully prove or disprove the technical viability of methods for achieving their desired coverage other than the use of a tower when a proposal may have significant adverse impacts. Further, we want you to require the applicant to demonstrate precisely what level of coverage is necessary to meet their service requirements." There is no legal basis for this request.

**A. The Tower Committee's Authority Derives from a County Council Mandate.**

The mandate for the Tower Committee derives from the Executive Regulation, and until that Executive Regulation is revised or expanded pursuant to applicable procedure (County Council approval), the Planning Board has no authority to place additional review responsibilities upon the Tower Committee. The "alternative technologies" and "level of service" issues that the Planning Board requested the Tower Committee review may be ultimately within the scope and mission of the TTFCG but currently there is no legislative basis for the Tower Committee to comply with these requests or for an applicant to be held accountable to them. Therefore, the Planning Board's request is *ultra vires*. To require the Tower Committee to perform the analysis is also *ultra vires*. There is simply no authority by which the Planning Board can require or demand that the Tower Coordinator expand the technical review of applications for telecommunications facilities. It is up to the County Council-the creator of the TTFCG to consider and make legislative changes to the tower review process.

**B. The Planning Board's New Standard Is Flawed In Its Construction And Applied In A Discriminatory Manner.**

Even if the Planning Board had the legal authority to demand such analysis of the Tower Committee, which it does not, the Committee Chair has indicated in her letter dated October 2, 2001 ("Lawton Letter") that it would be "very difficult, if not impossible, for the [Committee] to prospectively identify and review the viability of all alternative technical methods to provide the desired services. We do not believe that there is a way to prove or disprove all technical alternatives." (Emphasis in original). Furthermore, the Chairperson indicates in the letter that requiring applicants to demonstrate the necessary level of coverage is equally challenging to identify and review. Therefore, even if the Committee were legally required to perform these two tasks, there is no indication from the Committee that it could (or would) successfully complete its analysis for the benefit of the Planning Board.

According to the Staff Report, the new standards regarding "level of service" and "alternative technologies" are to be "most firmly applied when there is citizen opposition to a monopole tower." This sliding standard based upon the level of citizen opposition may

Arthur Holmes, Jr., USA (Ret.), Chairman

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effectively preclude a favorable recommendation by staff (and ultimately special exception approval) even when exhaustive, time-consuming and costly "level of service" and "alternative technologies" evidence is provided to the Planning Board. As a result, the application of this varying review standard effectively denies applications for personal wireless facilities in any case where citizen opposition arises, in violation of section 332(c)(7)(B)(i)(II) of the Telecommunications Act. The Planning Board is encouraged to disregard this discriminatory review standard.

**C. The New Standard was Not Agreed to by the Board of Appeals As Required.**

Section 59-A-4.48 of the Zoning Ordinance states that the Planning Board must generate its report on an application "in accordance with the format and other requirements established by agreement of the planning board and the board of appeals." Other than the Hussman Letter outlining the desired "level of service" and "alternative technologies" analysis, there is no indication that the Board of Appeals agreed to or otherwise requires this additional analysis requested by the Planning Board. Therefore, in accordance with Section 59-A-4.48, the Planning Board cannot recommend denial of this Application to the Board of Appeals on the basis of the additional analysis requested because the Board of Appeals has not formally agreed to such analysis.

A report including such additional analysis and forming the basis for a recommended denial is *ultra vires* in the face of Section 59-A-4.48. Additionally, nothing in Section 59-A-4.48 is to affect "the applicant's burden of proof and persuasion as provided in section 59-G-1.21". But the Planning Board's additional analysis does just that by requiring an applicant to go beyond the burden of proof outlined in the Zoning Ordinance to prove two additional matters that the Planning Board and Board of Appeals never agreed upon.

Therefore, the Planning Board Staff was mistaken in recommending denial of the Application based only upon a "level of service" or "alternative technologies" analysis. The Staff's analysis exceeds the proper interpretation and Application of the Zoning Ordinance requirements. Furthermore, the Planning Board would violate its report-making authority by recommending denial to the Board of Appeals on the basis of this additional analysis.

**D. Maryland Caselaw Supports Approval of Special Exceptions with Only Inherent Adverse Effects.**

The Maryland Court of Appeals, in the seminal case of *Schultz v. Pritts*, 291 Md. 1 (1981), states that special exception uses are presumptively "in the interest of the general welfare" and "absent any fact or circumstance negating that presumption" may be approved. In a case with some similarities to the present one, the Court of Special Appeals refined the statements in *Shultz* as follows:

Adverse effects are implied in all special exceptions. The standard to be considered by the Board is whether the adverse effects of the use at the particular

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location proposed would be greater than the adverse effects ordinarily associated with that use elsewhere within the R-1 zone.<sup>1</sup>

In describing the standard for evaluation, Section 59-G-1.2.1 speaks of inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. For telecommunications facilities such as the one proposed, its height is an inherent effect. The mobility of a wireless PCS user is dependant upon a wireless network's coverage and the ability to have signal coverage is dependant upon the relative height of these facilities. The Staff recognizes on page 8 of its Report that the application cannot be denied solely on the basis of its inherent adverse effect. Therefore, the concerns of residents and the County regarding the visual incompatibility of the site are offset by Section 59-G-1.2.1. Non-inherent adverse affects could be the basis for denying a special exception application, but the Planning Board staff report found **no significant non-inherent effects for the proposed use.**

Even if the Planning Board's request for additional analysis from the Tower Committee is permitted, there is still action that may be taken at the hearing to remove Staff's sole concern in this case. The Planning Board Staff's recommendation of denial was based upon the opinion that Tower Committee's analysis of alternative technology was "not definitive" and that the Tower Committee "did not sufficiently demonstrate the necessity for the proposed tower." The Planning Board or its staff has the opportunity to request a more definitive statement from the Tower Committee representative and thus remove the one issue that prevents staff from recommending approval. We encourage the Planning Board to request that a representative of the TTFCG be present to address whatever deficiencies the Planning Board believes exist.

## **II. The Applicant Has Met the Requisite Burden of Proof Under the Special Exception Requirements and the Application Should Therefore be Approved**

As stated in the Application's Statement of Justification, the proposed facility is needed in order for AT&T Wireless to provide seamless coverage of its Personal Communications Services (PCS) network within upper Montgomery County. AT&T Wireless is under an obligation by the terms of its FCC license to build its regional networks within time frames specified by the FCC. The proposed Barnhart facility is necessary to AT&T Wireless in meeting the obligations of its FCC license and achieving its coverage objectives.

In March, 1996 the County Council adopted Zoning Text Amendment 95028 [effective April 1, 1996] to regulate the installation of telecommunications facilities. Sections 59-G-1.2.1 and 59-G-2.43 describe the general and specific requirements that an applicant must demonstrate in order to satisfy the burden of proof for special exception approval. If an application meets the requirements of the Zoning Ordinance the Board is obligated to recommend approval to the Board of Appeals. There is no requirement within the Zoning Ordinance that alternate technologies be disproved or that a level of service be articulated to obtain special exception

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<sup>1</sup> *AT&T Wireless Services v. Mayor and City of Baltimore*, 123 Md. App. 681 (1998), citing *Mossburg v. Montgomery County*, 107 Md. App. 1, 8-9 (1995), cert. denied, 341 Md. 649 (1996).

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approval. If the only fault that can be found in the Application is based upon a discretionary "alternate technology/level of coverage" criteria not found in the Zoning Ordinance, the Planning Board cannot deny that the Application on that new and unsubstantiated criteria.

**A. Tower Committee Meeting Minutes Reflect That a Level of Service Analysis was Performed and Defended**

The Tower Committee properly recommended approval of the Application. Specifically, the Tower Committee found as follows:

- **The TTFCG Chair stated that the Tower Committee was satisfied with the RF issues and the Application clearly showed "a hole in coverage".**
- **At the October 3, 2001 Tower Committee meeting, the Committee stated that it compared this Application to the application submitted for the Stanley Property (S-2478) to determine if alternative configurations could be used on existing structures to meet the desired coverage area. Again, the Committee found that even when comparing the Barnhart application in conjunction with the Stanley property or the existing AT&T Wireless network, no suitable alternative configuration could be utilized for Barnhart without leaving gaps in service in certain portions of the coverage area.**
- **In reviewing the Application, the radio frequency ("RF") engineer employed by the Tower Committee stated that a number of different RF propagation maps were required of the Applicant and reviewed, including ones for existing PEPCO facilities in the area. She specifically noted that the PEPCO facilities did not provide the desired coverage in the service area.**
- **The Tower Coordinator was asked what review was performed to ascertain viable alternative structures. Mr. Hunnicutt responded that a site visit was performed, as well as an area drive, a database search and a visual survey of the surrounding area in order to identify any existing structures (silos, power poles, church steeples, tall buildings, etc.). Mr. Hunnicutt concluded that with the exception of the PEPCO poles (that would not meet the coverage objective) no suitable alternative facilities were found.**
- **As for the level of analysis, at the same Tower Committee meeting, Mr. Hunnicutt went on to detail that if there are aspects of an applicant's RF propagation maps that seem out of the ordinary, additional data is requested. Thus, Mr. Hunnicutt, on behalf of the Committee, looks for consistency in each set of submitted maps and even compares them for accuracy to maps for related sites that have been previously reviewed. The Tower Committee, if it has questions about the power level, elevation or other factors used in the RF modeling process, requests clarification from the applicant.**

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Based upon the TTFCG meetings on both September 19, 2001 and October 3, 2001, we believe the statements at these meetings conclusively prove that the Tower Committee performed the appropriate "level of service" analysis and, therefore, the Staff should have recommended approval of the Application.

**B. The Applicant Modified the Proposed Facility and Others to Satisfy County.**

A viable alternative site on an existing facility is not possible for the Barnhart Application. The Tower Committee noted at its October 3, 2001 meeting that AT&T had fulfilled the requirement of looking at appropriate co-location options and it was time for the Committee to take positive action on the Application. The Tower Committee unanimously (4-0) recommended approval of the Barnhart Application.

Indeed, issues raised in the letters from the Aircraft Owners and Pilot Association and the Experimental Aircraft Association were met by concessions from the Applicant, such as reducing the height of the monopole from 150' to 132' as well as moving the facility further out of the takeoff/landing approach path for Davis Airport. Further, the Tower Committee asked for the proposed facility to be moved to a less visible site and the Applicant agreed.

With these concessions made, and the approval of the FAA and the Maryland Aviation Administration ("MDAA"), the Applicant has proven that they are in compliance with all applicable safety requirements for aerial navigation. Furthermore, as no instrument or night landings are conducted at Davis Airport, there is no need for lighting beyond that required by the FAA (which, incidentally, requires no lighting). All regulatory authorities over aerial navigation are in agreement that the facility as proposed is safe for the continued operation of Davis Airport.

**III. The Staff Recommendation is Contrary to Federal Law Embodied in the 1996 Telecommunications Act and the Equal Protection Clause of the U.S. Constitution**

In the face of rapidly developing wireless technology and the need to ensure its timely deployment, Congress amended the Communications Act of 1934 by enacting the Telecommunications Act of 1996, signed into law by the President on February 8, 1996. An important purpose of the of the Telecommunications Act, as described by the Conference Report to the Senate bill, is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . . ."<sup>2</sup>

In enacting the Telecommunications Act, Congress gave due consideration to the potential conflict between State and local government regulation of the placement and aesthetic impacts of wireless telecommunications facilities, and the national need for rapid deployment of economical and effective wireless services. Accordingly, Section 704 of the Act, codified at 47

<sup>2</sup> H.R. Conf. Rep. No. 458, 104<sup>th</sup> Cong., 2d Sess. 1 (1996).

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U.S.C. § 332(c)(7), preserves local authority “over decisions regarding the placement, construction and modification” of wireless facilities, but imposes significant restraints on such decisions. Local governments cannot “unreasonably discriminate among providers of functionally equivalent services”<sup>3</sup> or “prohibit or have the effect of prohibiting the provision of personal wireless services”.<sup>4</sup>

More generally, Section 253 of the Telecommunications Act prohibits the erection of state and local barriers to entry in the interstate or intrastate telecommunications services industry.<sup>5</sup>

**A. The Recommended Denial Violates Section 332 of the Telecommunications Act.**

The Planning Board’s new standard constitutes unreasonable discrimination in violation of Section 332(c)(7)(B)(i)(I) of the Telecommunications Act, in that other telecommunications facilities have been approved in the County that provide functionally equivalent wireless telecommunications services, under the same special exception requirements, but the Staff has effectively denied similar treatment to AT&T Wireless, based on the above referenced discretionary application of those standards.<sup>6</sup>

The facility proposed by the Applicant is essential to provide connectivity and coverage in certain identified areas of Montgomery County. As noted above, the Tower Committee specifically considered and rejected alternative sites as unsuitable or unavailable. Without this facility, AT&T Wireless is denied adequate service and coverage of this area. Thus, the Planning Board Staff’s recommended denial of AT&T Wireless’s Application also prohibits or has the effect of prohibiting the provision of personal wireless services in violation of section 332(c)(7)(B)(i)(II) of the Telecommunications Act in that AT&T Wireless is unable to provide adequate service and coverage for the provision of personal wireless services to its customers without the proposed wireless telecommunications facility.<sup>7</sup>

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<sup>3</sup> 47 U.S.C. § 332(c)(7)(B)(i)(I).

<sup>4</sup> 47 U.S.C. § 332(c)(7)(B)(i)(II).

<sup>5</sup> See 47 U.S.C. § 253.

<sup>6</sup> 47 U.S.C. § 332(c)(7)(B)(i)(I), provides that: “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof -- (I) shall not unreasonably discriminate among providers of functionally equivalent services.”

<sup>7</sup> 47 U.S.C. § 332(c)(7)(B)(i)(II) provides that: “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof -- (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”



Arthur Holmes, Jr., USA (Ret.), Chairman

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AT&T Wireless has fully addressed and resolved all reasonable concerns of the Tower Committee and community residents as to the environment, aesthetics, and land use compatibility, yet the Planning Board's Staff has been forced to recommend denial of the Application. The untenable policy upon which the recommendation is based and the resulting recommendation itself is tantamount to a general prohibition of telecommunications facilities in instances, such as this, where there is opposition to such a proposed facility. It effectively precludes a favorable recommendation and ultimately special exception approval. The lack of evidence supporting the recommended denial in this case shows that the Planning Board has adopted a general policy to deny applications for personal wireless facilities in any case where opposition is interposed in violation of section 332(c)(7)(B)(i)(II) of the Telecommunications Act.

**B. The Recommended Denial Violates Section 253 of the Telecommunications Act.**

The Planning Board Staff's recommended denial of the Application also violates 47 U.S.C. § 253(a), which provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Local regulations do not have to explicitly prohibit a particular entity from providing telecommunications services in order to violate Section 253(a). Indeed, the majority of challenged provisions have not been explicit prohibitions on local market entry. The FCC and the courts have held numerous provisions to be barriers to entry, even in the absence of explicit prohibitory language, where the provisions were found to have the *actual or potential* effect of prohibiting telecommunications entry.<sup>8</sup>

By requiring consideration of discretionary factors that have nothing to do with the preserved authority to manage or use of the right-of-way, in general, or the special exception requirements in particular, the Planning Board has created a barrier to entry that prohibits or has the effect of prohibiting the provision of interstate or intrastate telecommunications services in violation of section 253(a) of the Telecommunications Act in that AT&T Wireless is unable to provide adequate service and coverage for the provision of personal wireless services to its customers without the proposed wireless telecommunications facility.<sup>9</sup>

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<sup>8</sup> See, e.g., *RT Communications, Inc. v. FCC*, 201 F.3d 1264, 1268 (10<sup>th</sup> Cir. 2000); *Bell Atlantic—Maryland, Inc. v. Prince George's County*, 49 F. Supp. 2d 805 (D. MD. 1999), *vacated on other grounds*, 212 F.3d 863 (4<sup>th</sup> Cir. 2000). On remand, the district court struck down the County's ordinance based solely on Maryland state law. *Bell Atlantic—Maryland, Inc. v. Prince George's County*, 2001 U.S. Dist. LEXIS 10645 (D. Md. July 23, 2001). While the court's initial decision addressing Section 253 was vacated by the Fourth Circuit because the Circuit Court believed the District Court should have analyzed the case first under state law, subsequent cases have still cited the initial decision because of its thorough and thoughtful analysis of Section 253. See e.g. *Auburn*, 260 F.3d at 1175-76 (9<sup>th</sup> Cir. 2001); *New Jersey Payphone Ass'n, Inc. v. Town of West New York*, 2001 U.S. Dist. LEXIS 2478 at \*21 (D. N.J. Mar. 7, 2001).

<sup>9</sup> See, e.g., *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1178 (9<sup>th</sup> Cir. 2001); *TCG New York v. City of White Plains*, 125 F. Supp. 2d 81, 92-93 (striking down the City's discretion to approve the franchise only if the City found

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The County has effectively created other barriers to entry for telecommunications facilities and thus has the effect of prohibiting personal communications services. For example, there is the super-majority requirement for approval of a telecommunications facility under Subsection 59-A-4.123 of the Zoning Ordinance. Furthermore, Section 59-G-1.2.1 imposes an additional level of review to determine the inherent and non-inherent adverse effects of a proposed telecommunications facility. Additionally, with a special exception application having to proceed through a public hearing before the TTFCG, the Planning Board *and* the Board of Appeals,<sup>10</sup> the County burdens an applicant with unnecessary delays and transaction costs that effectively create a barrier to entry in violation of federal law. While Maryland courts have limited a zoning body's review authority to a degree through case law<sup>11</sup>, the pattern and effect of the above-mentioned special exception requirements, utilized in conjunction with the new "level of service" and "alternative technologies" review, create an impermissible barrier to entry for telecommunications facilities in Montgomery County.

### C. Planning Board's Review Standard is Violative of Equal Protection

A major concern of the Applicant is the violation of its equal protection under the U.S. and Maryland Constitution. The Staff Report unequivocally states that the Planning Board's "standards are to be most firmly applied when there is citizen opposition to a monopole tower." The Staff goes on to recognize that the Planning Board's additional analysis request "substantially exceeds previously accepted interpretations of the requirements for the [special exception] use in the zoning ordinance and past standard practice."

Finally, Staff acknowledges that "this standard is not to be applied uniformly, but primarily when there is opposition to a monopole tower." This standard as applied by the Planning Board and its Staff is patently discriminatory, creating a review standard that is higher for an application that has citizen opposition than one that does not. This sliding standard runs afoul of not only equal protection under the U.S. Constitution, but also discrimination under 47

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the franchise was in the public interest); *Qwest Communications Corp. v. City of Berkeley*, No. C 01-0663 SI (N.D. Cal. May 23, 2001)(prohibiting the consideration of "such other factors" and information as the City wished).

<sup>10</sup> A survey of the jurisdictions of the District of Columbia, Arlington, Fairfax, and Loudoun Counties in Virginia, the City of Alexandria, and Carroll County, Maryland reveals that special exceptions in those jurisdictions go through one, or at most two, public hearings.

<sup>11</sup> See *Schultz v. Pritts*, 291 Md. 1 (1981)("The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible . . .")(Bold added), *American Tower vs. Frederick County and AT&T Wireless Services vs. Mayor and City Council of Baltimore*, 123 Md. App. 681 (1998)(Board failed to show how adverse affects of the facility would be greater at one location than another in the same zoning district).

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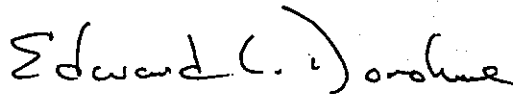
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U.S.C. Section 332(c)(7)(B)(i)(I)<sup>12</sup> and prohibition of service under 47 U.S.C. Section 253(a).<sup>13</sup> This discriminatory standard potentially allows another functionally equivalent wireless telecommunications service provider to gain special exception approval under one set of standards, while effectively denying the instant Application under a stricter standard, based upon the fact that there is opposition to the Application. Such an inequitable standard based on the amount or level of citizen opposition is not competitively neutral as required by the Telecommunications Act. Therefore, the Planning Board should disregard this subjective standard and review this application against the criteria presently existing in the Zoning Ordinance.

**CONCLUSION:**

The lack of evidence supporting the recommended denial in this case shows that the Planning Board Staff is forced to recommend denial by this new standard even when the Applicant has satisfied the requirements of the Zoning Ordinance. For the reasons stated above, the Board should reject Staff's recommended denial, and recommend that the Board of Appeals approve the Application.

Sincerely,



Edward L. Donohue

Copies to: All parties of record  
Mark Burrell, AT&T Wireless  
Tasha Pablo, American Tower

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<sup>12</sup> "The regulation of the placement . . . of personal wireless service facilities by any . . . local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services."

<sup>13</sup> "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

