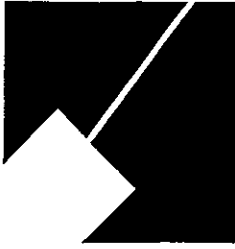


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

**MCPB  
Item# 11  
11/15/01**

**MEMORANDUM**

DATE: November 9, 2001  
TO: Montgomery County Planning Board  
VIA: John Carter, Chief, Community-Based Planning  
FROM: 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: November 15, 2001  
PUBLIC HEARING: November 26, 2001 at Hearing Examiner

**STAFF RECOMMENDATION: DENIAL**

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" require 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 are to be most firmly applied when there is citizen opposition to a monopole tower. This application does not meet the test of these standards and the staff recommends denial.

This petition was originally scheduled before the Board on October 11. The staff report was sent to the Board and the applicant, but the applicant requested a deferral after the report was issued, and the hearings before the Planning Board and Hearing Examiner were rescheduled for November 15 and November 26 respectively. 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) refutes 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.

**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. 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 facility, and insufficient coverage from the use of alternate technology. However, the language regarding the use of alternate technology is not definitive. It states:

*In reviewing this application in conjunction with the application for a monopole at the Stanley property to the north [on Long Corner Road, S-2478, a case now deferred], we asked AT&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&T provided additional RF (radio frequency) 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&T service. We concur with that conclusion."*

The Tower Committee also recommends that the applicant work with the residents of the surrounding community to develop a mutually agreeable disguised tower as has been used elsewhere. A representative from the Tower Committee has been asked to attend the Planning Board meeting.

Analysis of Tower Committee Recommendation - The Planning Board, in their denial recommendation on Special Exception S-2447, clarified its policy with respect to "necessity" for purposes of telecommunications facilities, and in particular stated that *"full coverage may not be necessary, and may be better for the common good to have more limited coverage in the interest of less visual intrusion in a community."* Further, in keeping with the Planning Board policy, the M-NCPPC legal staff has advised that there is no local obligation under the Federal Telecommunications Act to ensure 100% coverage at all locations.

In measuring necessity, balanced against the Board's need to find that the use will not be detrimental to surrounding properties, the Planning Board stated in its letters to the Tower Committee and the Board of Appeals that they, *"strongly believe that if alternate, less visually intrusive technology is feasible that it should be used, and the burden of proof is on the applicant to demonstrate to the Tower Committee and to the Planning Board why it cannot be used."*

In response to this clarification, the staff does not believe that the Tower Committee's recommendation sufficiently demonstrates the necessity for the proposed tower. The Tower Committee report states that the option of using Pepco poles and a church steeple would not provide *"adequate signal handoff"* or *"continuous coverage"*, but the necessity of continuous coverage is not supported, and the definition of adequate signal handoff is not provided. Without this information, there is no way to determine if the lack of continuous coverage at this low-density location creates a substantial burden for the applicant's customers or not. Thus the level of alternate technology review requested by the Planning Board is not provided. Unless this information is provided, the protection of the visual integrity of the community appears to be more important than the ability of cellular phone customers to have full use of their phones.

## **Community Concerns**

One 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."*

Several area residents have also written or called to express their opposition to the monopole. 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. However, the Planning Board has stated previously that they do not allow consideration of health concerns.

The staff has also received a letter in general support of cellular towers in the RDT Zone from the Division of Agricultural Services of the Montgomery County Department of Economic Development. 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.

### **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 shall 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 but one standard for a telecommunications public utility use in the zoning ordinance. In compliance with the May 22, 2001 request of the Planning Board to the Tower Committee, this application fails to meet standard 59-G-2.43(a)(1) as follows:

(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. However, the necessary level of service is not precisely defined or defended as requested by the Planning Board so it is not possible to determine the necessity of the application.*

### **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 believes that the only significant inherent effect for this type of use is that the support towers for the antennas are very tall 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 tower, they "inherently" have a negative visual impact – especially in areas of residential use. Given this inherently 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.

The staff does not believe there to be any significant non-inherent effects for this use 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 non-inherent effects or impacts.



## CONCLUSION

This application meets most requirements for the use. There is not a conflict with the Master Plan, the Zone, or transportation issues. 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 necessity for both cellular companies and the Tower Committee and the legal staff concurs with the legal validity of the authority to limit coverage. Thus in evaluating this application the staff honors the Planning Board clarification, which substantially exceeds previously accepted interpretations of the requirements for the use in the zoning ordinance and past standard practice.

The Planning Board believes that the special exception regulations authorize the power to determine what is a necessary level of service, not just the need for service - which has been the standard for review. Further, this standard is not to be applied uniformly, but primarily when there is opposition to a monopole tower. These are substantial changes that require far more conclusive findings from the Tower Committee.

The Planning Board stated in their May 21 letter to the Board of Appeals that 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. Similarly, the Planning Board's May 22 letter to the Tower Committee (attached) states the Board's belief that *"if alternate, less visually intrusive technology is feasible that it should be used"* and requests the Committee to *"require applicants for this use 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"*. The letter further requests that the Tower Committee *"require the applicant to demonstrate precisely what level of coverage is necessary to meet their service requirements" as "full coverage may not be necessary....in the interest of less visual intrusion in a residential community."*

In this instance there are area residents who object to the tower and there is also the element of objection from area pilots who use the Davis Airport, and who may still object to the tower for safety reasons despite the MDAA and FAA approval. Therefore, a very detailed and precise evaluation by the Tower Committee is vital to determine if the application meets the stated standard of review.

Because the Tower Committee found that the use of alternate technology would not provide "adequate" coverage and would not allow "continuous" coverage, but did not define what level of coverage is necessary to meet AT&T's service requirement, it is not possible to determine whether the alternate technology will be sufficient. Compliance with the new level of review means that the preservation of harmony with the surrounding area, and the right to peaceful enjoyment of surrounding residences may take precedence over the rights of cellular phone users to have full and complete use of their cellular phones for business, personal or emergency uses.

Because the Tower Committee has not fully addressed the technical feasibility of alternate means of achieving coverage, and because there are objections to the tower from nearby residents and airport users, the staff – in accordance with the review standard set by the Planning Board – recommends **DENIAL** of this application.

If the Planning Board does determine to recommend approval of this use, the staff recommends that it be located as recommended by the Tower Committee and the following conditions be placed on the use:

1. The applicant is bound by all submitted statements and plans.
2. 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.
3. Comply with Department of Permitting Services requirements for sediment and erosion control and stormwater management.
4. 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.
5. Submit a reforestation plan to the Environmental Planning staff.
6. Monopole must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.
7. 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.

8. Work with the surrounding community to determine an acceptable camouflage design for the tower.

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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 use is in harmony with the general character of the surrounding area in all ways with the exception of its tall visual character, which is an intrinsic element of the use necessary for it to perform its function.*

(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 these elements are an intrinsic impact of the use that would be present wherever a tower is placed in proximity to residences.*

- (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. However, the necessary level of service is not precisely defined or defended as requested by the Planning Board.*

- (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.

*The use will have a visual impact, but it will not endanger the health and safety of area residents, although it possibly will impair and prove detrimental to the enjoyment, and value of neighboring properties. However, these characteristics are inherent in this type of use wherever they are 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.*

- (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.

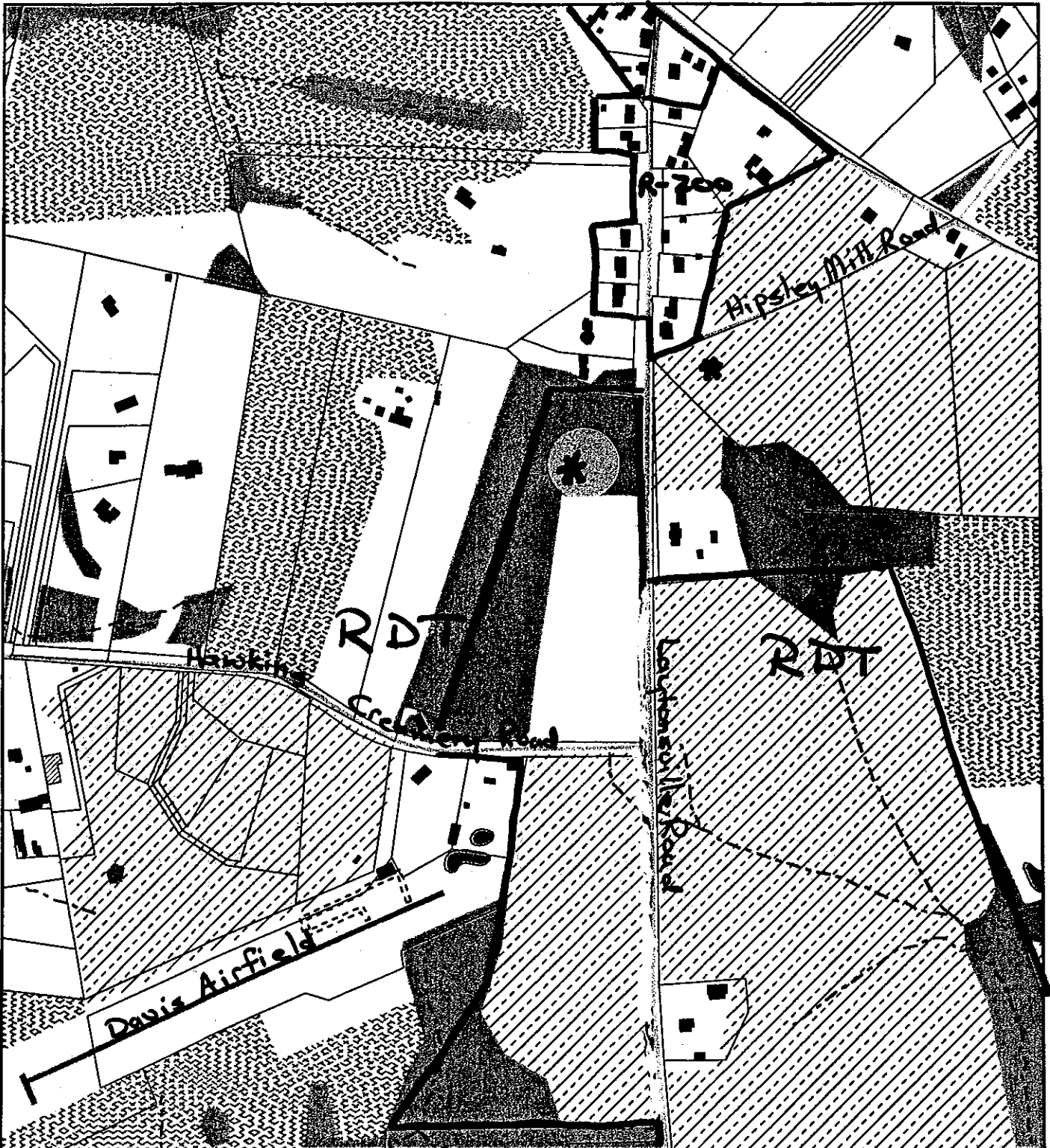
*Generally, illumination is only required by the Federal Aviation Administration if the monopole tower is in close proximity to an airport which has night landings or is more than 200 feet in height. Neither is applicable here, as the proposed tower is 134 tall, and the Davis Airport does not have night 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 28, 2001 at 11:02 AM | Site located on base sheet no - 233NW07

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# S-2477 AT&T WIRELESS



Map compiled on September 26, 2001 at 11:08 AM | Site located on base sheet no - 223NWC07 | Date of Orthophotoes - March 1998 | Orthophoto Images Licensed from WARDIS LLC

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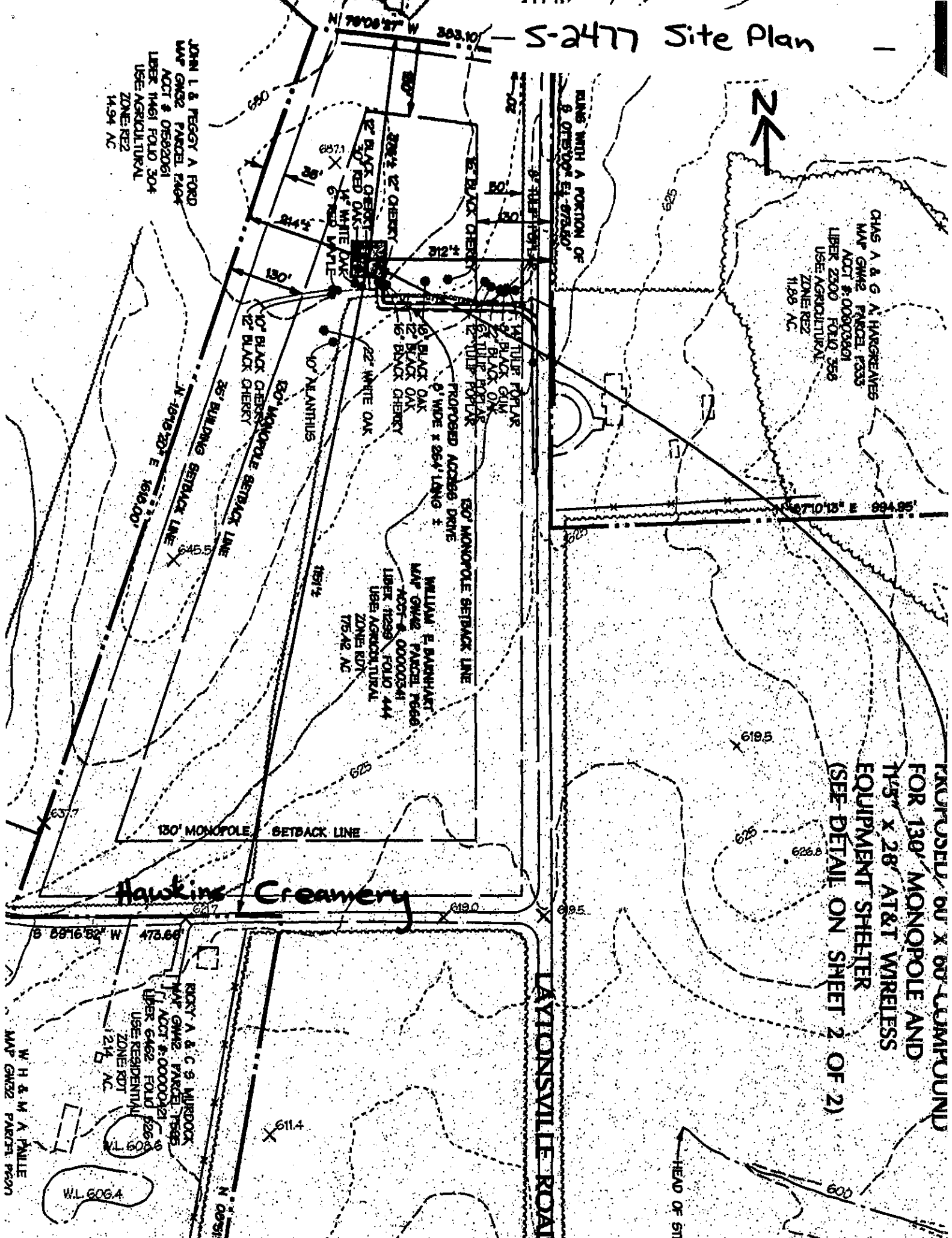


Revised & Published Color



1 : 7200

# S-2477 Site Plan



JOHN L. & PEGGY A. FORD  
 MAP GW42 PARCEL P404  
 ACT # 0552061  
 LIBR 1461 FOLIO 304  
 USE AGRICULTURAL  
 ZONE RE2  
 14.94 AC

CHAS A. & G. A. HARGREAVES  
 MAP GW42 PARCEL P333  
 ACT # 00803601  
 LIBR 2300 FOLIO 358  
 USE AGRICULTURAL  
 ZONE RE2  
 11.85 AC

WILLIAM E. BARNHART  
 MAP GW42 PARCEL P666  
 ACT # 00000341  
 LIBR 1239 FOLIO 441  
 USE AGRICULTURAL  
 ZONE RDT  
 75.42 AC

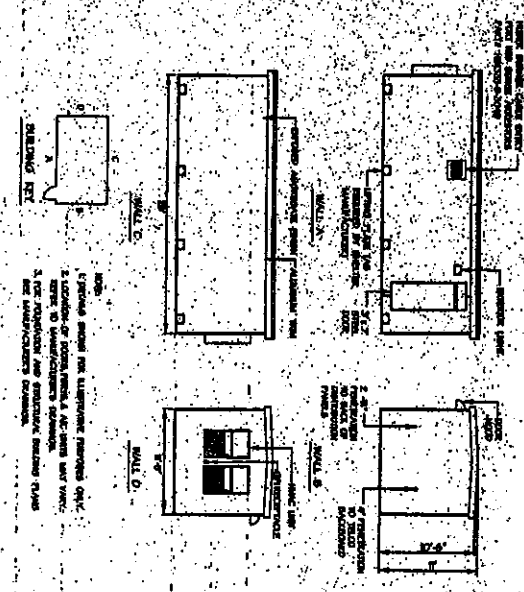
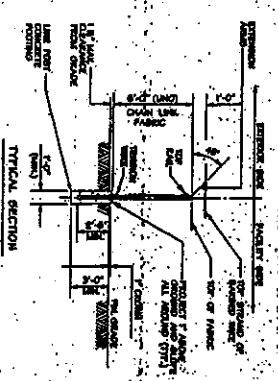
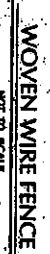
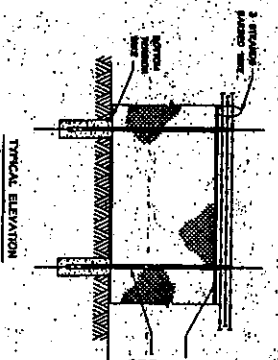
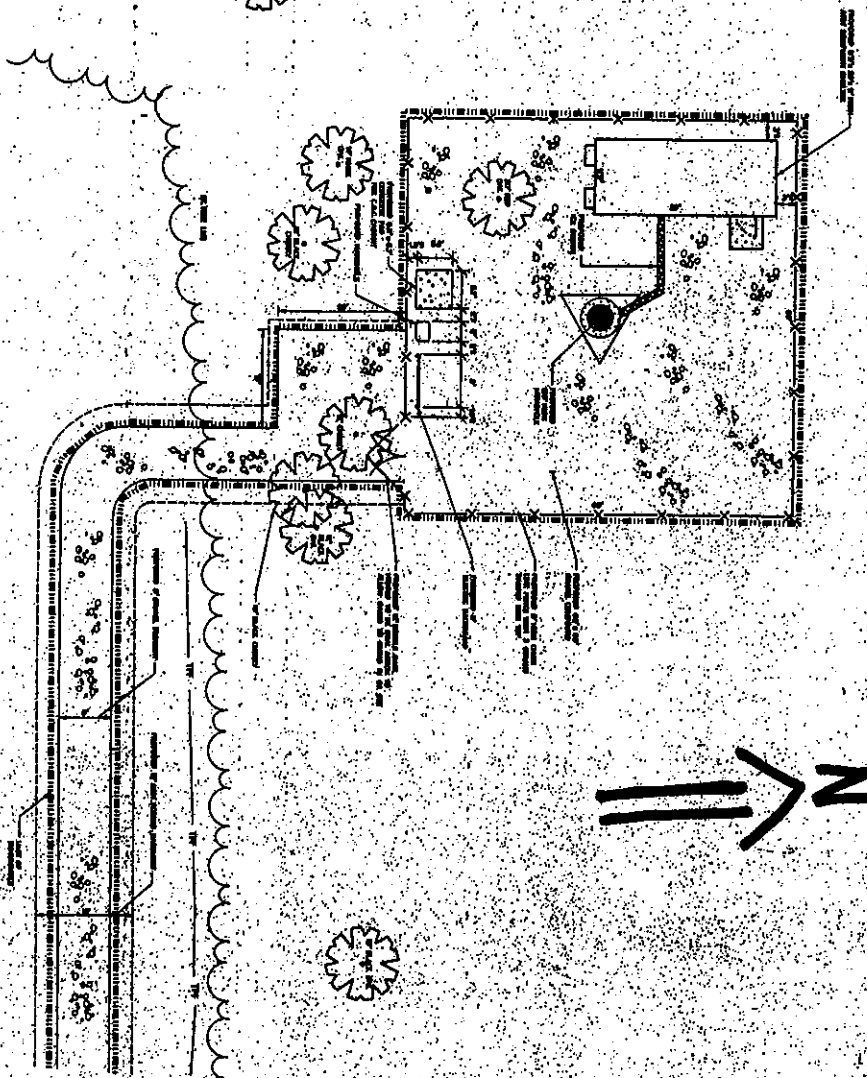
ROCKY A. & C. S. MURRELL  
 MAP GW42 PARCEL P383  
 ACT # 00000421  
 LIBR 6462 FOLIO 526  
 USE RESIDENTIAL  
 ZONE RDT  
 21.7 AC

PROPOSED 60' X 60' COMPOUND  
 FOR 130' MONOPOLE AND  
 115' X 28' AT&T WIRELESS  
 EQUIPMENT SHELTER  
 (SEE DETAIL ON SHEET 2 OF 2)

**Hawkins Creamery**

LAYONSVILLE ROAD

HEAD OF ST



DMW  
Division of Military and Veterans Affairs  
1000 North 17th Street  
Tucson, AZ 85724  
407-636-2000

SITE PLAN TO ACCOMPANY APPLICATION  
FOR SPECIAL EXCEPTION

AT&T  
NEXUS VIDEO LENS DEVELOPMENT, LLC  
1000 North 17th Street  
Tucson, AZ 85724  
407-636-2000

ARIZONA STATE UNIVERSITY  
1000 North 17th Street  
Tucson, AZ 85724  
407-636-2000

NO.	REVISION	DATE	BY	CHKD.
1	ISSUED FOR PERMITTING	05/20/11	JL	ML
2	REVISED PER COMMENTS	06/01/11	JL	ML
3	REVISED PER COMMENTS	06/01/11	JL	ML
4	REVISED PER COMMENTS	06/01/11	JL	ML
5	REVISED PER COMMENTS	06/01/11	JL	ML
6	REVISED PER COMMENTS	06/01/11	JL	ML

BARINHART PROPERTY  
WZ37.3  
ARIZONA STATE UNIVERSITY  
1000 North 17th Street  
Tucson, AZ 85724  
407-636-2000



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

APPLICATION NUMBER: 200105-01

DATE: 26 April 2001

Revised October 1, 20001

<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"/> Special Exception: <input checked="" type="checkbox"/>
Public Property: <input type="checkbox"/>	By right: <input 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.

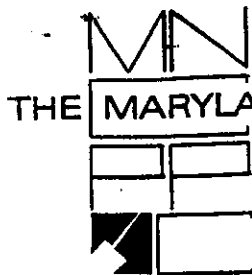
At the September 19th meeting of the TTFCG, the application was reviewed and in response to questions, the meeting was closed so that the AT&T representatives could review their confidential RF maps with the members and the resident who raised questions about the coverage. The TTFCG requested that AT&T 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

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



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3780

(301) 495-4605

Montgomery County Planning Board  
Office of the Chairman

May 22, 2001

Ms. Jane E. Lawton, Chairperson  
Telecommunications Transmission Facility  
Coordinating Group (TTFCG)  
C/o Department of Housing and Community Affairs  
Stella B. Werner Council Office Building, 4<sup>th</sup> Floor  
100 Maryland Avenue  
Rockville, Maryland 20850

SUBJECT: Special Exception Application S-2447  
AT&T Wireless Telecommunications Tower

Dear Ms. Lawton:

At their May 17, 2001 meeting the Planning Board reconsidered the special exception application #S-2447 of ATT Wireless for a telecommunications tower. After extensive testimony, the Board recommended that this application be denied. A major factor in this decision was the lack of sufficient evidence on the part of the applicant that they could not use alternate technology to provide cellular service. The report of the TTFCG to the Planning Board was a significant part of this decision. In that report, the TTFCG indicated that given the evidence presented by the applicant, it appeared that adequate, although not equivalent, service could be provided by the use of microcell technology using Pepco power poles.

The Planning Board strongly believes that if alternate, less visually intrusive technology is feasible that it should be used, and the burden of proof is on the applicant to demonstrate to the TTFCG and to the Planning Board why it cannot be used. Therefore we request that the TTFCG, in addition to determining whether there is indeed a need for additional service, also require applicants for this use 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. Full coverage may not be necessary, and in some instances it may be better for the common good to have more limited coverage in the interest of less visual intrusion in a residential community.

The Planning Board believes that these issues are within the scope and mission of the TTFCG and we hope you will in the future provide this information to the staff and Board so that we can better assess the necessity of these telecommunications tower requests. Your technical evaluations and recommendations are very important to us in reviewing these requests, and we need this additional level of information in order to make informed recommendations to the Board of Appeals. Please also be aware that we generally wish to review all information submitted to you at our meetings, including all coverage maps. Therefore, any statement from an applicant related to coverage potential or limitations must be backed up by sufficient visual proof or we will not accept an assessment of that coverage. Please contact me if you have any questions regarding these requests.

Sincerely,



William H. Hussmann  
Chairman

WHH:JD:ha: g:\judy\towercom.doc

cc: Montgomery County Planning Board





## 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:holmawillard(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

(6)

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,

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

10

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



# Maryland Aviation Administration

Paris N. Glendonig  
Governor

John D. Porcari  
Secretary

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)

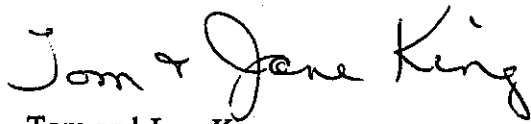
We strongly oppose the construction of this tower for several reasons:

- 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,

A handwritten signature in cursive script that reads "Tom & Jane King". The signature is written in black ink and is positioned above the printed name.

Tom and Jane King

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

RECEIVED  
011553  
OCT 03 2001

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:

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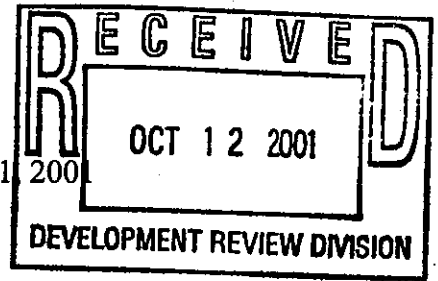
Wayne Miller  
Name

23534 Rockmontas Dr  
Address

Lanternville, VA 22832  
City, State, Zip

9/30/01  
Date

P.S.  
Where does it end? Look around at the blight on the landscape all across the 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 here and there to please use the proper stability towers which are just north of the Beckman/Lanternville area. Thank you.  
Wayne 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 black ink, appearing to read "Donna Currall", written over the typed name "Peter and Donna Currall".

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

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

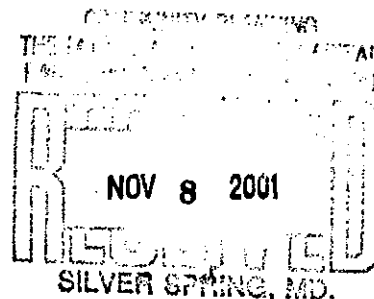
ATTORNEYS AT LAW  
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20006-3458  
TELEPHONE (202) 659-9750  
FAX (202) 452-0067  
WWW.CRBLAW.COM

LOS ANGELES OFFICE  
2381 ROSECRANS AVENUE, SUITE 110  
EL SEGUNDO, 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:

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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 "TTF CG") and its review process. The Hussman Letter requests that the TTF CG "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 TTF CG 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 TTF CG 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

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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 TTF CG 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 TTF CG 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

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<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.”

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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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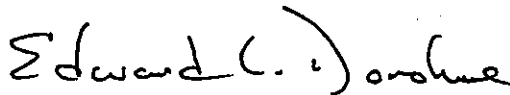
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U.S.C. Section 332(c)(7)(B)(i)(I)<sup>12</sup> and prohibition of service under 47 U.S.C. Section 253(a).<sup>13</sup> This discriminatory standard potentially allows another functionally equivalent wireless telecommunications service provider to gain 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."