

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF: *
T-MOBILE NORTHEAST, LLC *
AND KAY HARDING WHITE *

Petitioners *
 Mr. John Cunningham *
 Ms. Hillarie Morrison *
 Mr. Curtis Jews *
 Ms. Nancy White *
 For the Petitioner *

BOA Case No. S-2770
 (OZAH No. 10-21)

Ms. Terry LaMotte *
 Ms. Linda Rodgers *
 Mr. Robert Nelson *
 Mr. Leonard Wolin *

Opposing the Application *

Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

In Petition No. S-2770, T-Mobile Northeast, LLC and Kay Harding White, applicants, seek approval of a special exception for a telecommunications facility under Zoning Ordinance §59-G-2.58 on property located at 22525 Wildcat Road, Germantown, Maryland. The property is zoned RDT. The legal description of the property is Parcel N300, Outlot A, White’s Farm subdivision.

On March 8, 2010, the Board issued a notice of a public hearing before the Hearing Examiner scheduled for June 3, 2010 Exhibit 14(b). The hearing date was postponed twice at the request of the applicant. Exhibits 18, 28. On May 19, 2010, the Board issued notice of a rescheduled hearing for September 10, 2010. Exhibit 19. On September 2, 2010, the Board again notified the parties that the hearing would be postponed to November 19, 2010. Exhibit 33. The Board also issued two Notices of Amendment of the Petition, the first dated July 30, 2002 (Exhibit 22), and the second dated October 26, 2010 (Exhibit 35). The amendments were filed, in part, to modify the original monopole design to a “stealth” unipole design and to increase the height of the tower from 120 to 140 feet.

The Tower Facility Coordinating Group (TCFG) reviewed the proposed facility twice, once on September 9, 2009. Exhibits 8(a). The TCFG reviewed the revised application on September 21, 2010. Exhibit 41, Attachment 8. The more recent review included the amendments to the application (revising the original monopole design to the

stealth pole and increasing the height from 120 to 140 feet. Each time, the TCFG recommended the facility. Exhibits 8(a) and 41, Attachment 8.

The Rustic Roads Advisory Commission (RRAC) reviewed the original application on July 8, 2010, and strongly recommended the use of a unipole painted a neutral color to minimize the impact on Wildcat Road. Exhibit 20. The RRAC reviewed the revised application during their September 28, 2010, meeting and found that the revised design met their concerns. Exhibit 41, Attachment 9.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), in its report dated November 8, 2010 (Exhibit 41), recommended approval of the Petition, with three (3) conditions. Exhibit 41, p. 1.¹

The hearing went forward as rescheduled on November 19, 2010. Four individuals testified in opposition to the application. The Hearing Examiner held the record open until November 26, 2010 in order to permit the transcript to be incorporated into the record. The transcript was received and the record closed on November 26, 2010.

II. FACTUAL BACKGROUND

A. The Subject Property and its Current Use

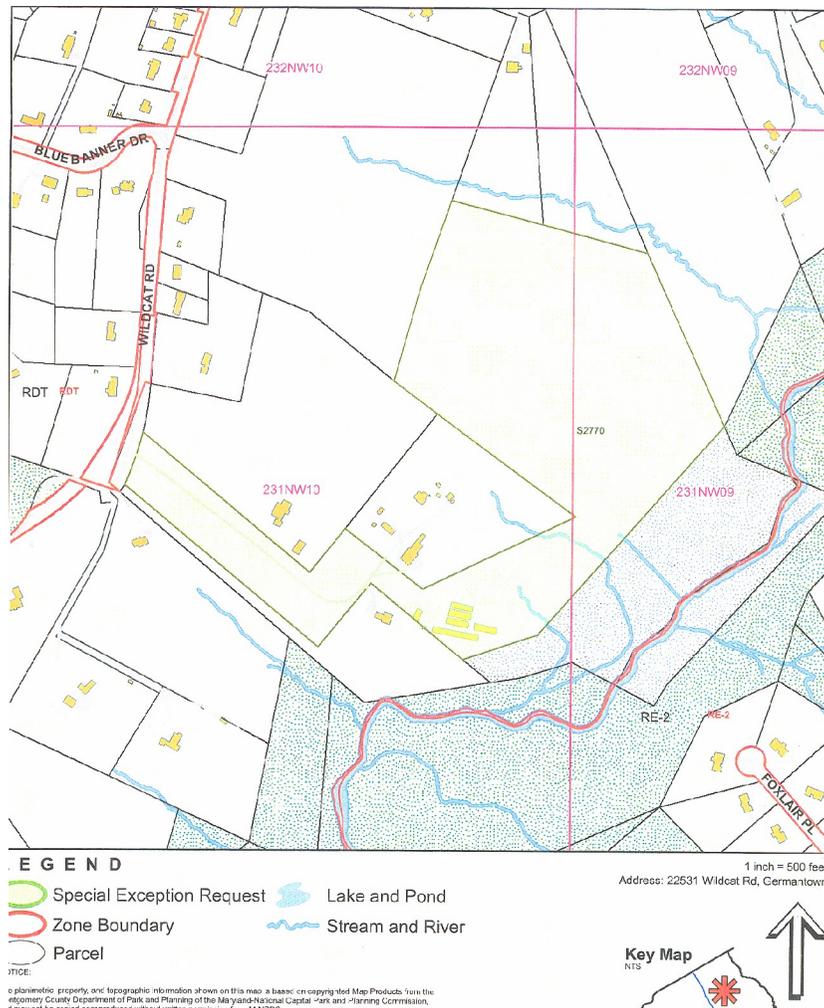
The subject property is an irregularly shaped outparcel of approximately 42.7 acres located east of Wildcat Road just south of its intersection with Blue Banner Drive. A locational map (Exhibit 41, Attachment 1) is shown on the next page.

Because the parcel is an outlot created to limit development within the subdivision, there are no existing buildings on the subject property. Exhibit 41. The property is entirely surrounded by land owned by the White family. Exhibit 41,

¹ The Technical Staff Report, Exhibit 41, is frequently quoted and paraphrased herein.

Attachment 2. The total area owned by the White family consists of approximately 80 acres. T. 138. The closest dwelling (owned by Mr. and Mrs. John White, also members of the White family) is approximately 260 feet from the special exception area. T. 43. The unipole is 30 feet from the closest property line (owned by the same family member). T. 32; Exhibit 41, p. 3. An aerial photograph depicting the subject site, the ownership of the adjacent parcels and the natural features surrounding the site (Exhibit 41, Attachment 2) is shown on page 5.

LOCATIONAL MAP, EXHIBIT 41, ATTACHMENT 1



An existing driveway leads to the proposed site and to dwellings on the neighboring property. T. 58. There are mature trees running from the northeast to the southwest on adjoining property owned by Mr. and Mrs. John M. White immediately to the west of the special exception area.



AERIAL, EXHIBIT 41, ATTACHMENT 2

Mature trees border Wildcat Road on property owned by Ms. Nancy White and Mr. and Mrs. John M. White. T. 142. Mature trees also border most of the property owned by members of the White family, and the Great Seneca Stream Valley Park lies immediately to the east of the White family property. Exhibit 41, Attachment 2. The closest structures (shown on Exhibit 41, Attachments 1 and 2) are residential dwellings and outbuildings belonging to the White family.

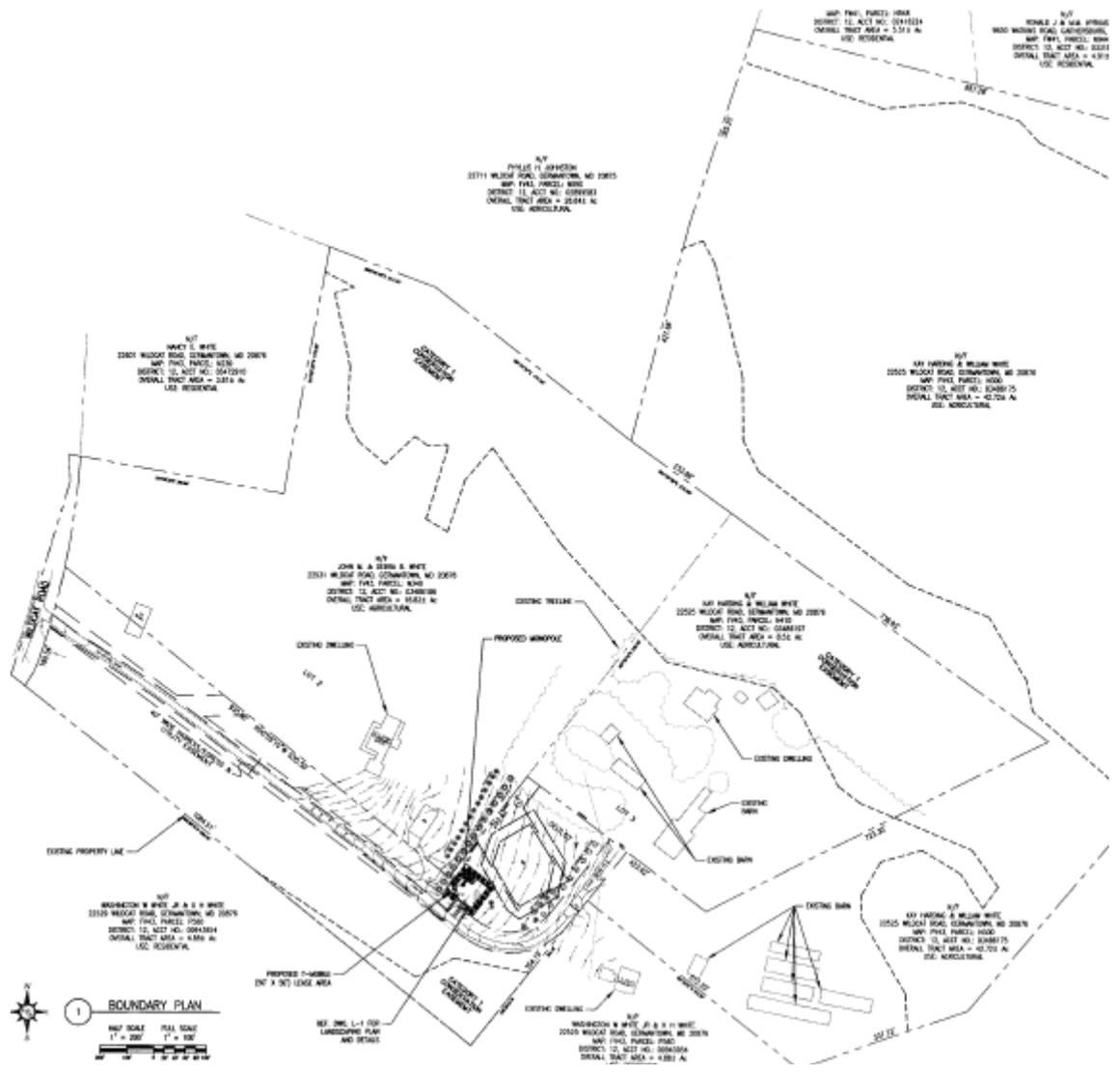
B. The Proposed Special Exception

The applicants propose to construct a 140-foot high “stealth” design unipole approximately 986 feet east of Wildcat Road. Exhibit 41, p. 3-4. Originally proposed as a 120-foot high monopole with external antennas, the applicants changed the design to a slim line pole (no external antennas) at the request of the RRAC. Exhibit 41, Attachment 10. The additional 20 feet of height was necessitated by the stealth design. T. 193-194. When the antennas are located within the pole, additional height is needed to position the antennas internally in order to receive the same coverage that external antennas would provide. T.192-194. In addition to the stealth design, the RRAC also requested the applicant to paint the tower a neutral color, to which the applicant has agreed. T. 104. While the Technical Staff advises that the pole will be brown, the evidence suggests that the applicants are still in discussions with the community regarding the exact color. T. 243-244. Excerpts from site plan showing the proposed location of the tower, the access drive, the unipole, and the compound, are set forth on pages 7-9.

Surrounding the base of the pole, the applicants propose to construct a 50-foot by 50-foot fenced “compound” to store the electrical equipment necessary for the telecommunications facility. An 8-foot high fence and landscaping will screen the

compound. Ex. 41, p. 3. There will be a small sign (approximately two square feet) on the fence of the compound providing emergency contact information. Batteries providing backup electrical power and other equipment will be housed in radio base station (RBS) cabinets. The RBS cabinets are weatherproof and climate-controlled with a small air conditioner, an electric-resistance heater, and onboard 12-volt DC batteries to provide electricity in the event of power failure. T. 93.

**BOUNDARY SURVEY AND SITE LAYOUT,
EX. 41, ATTACHMENT 4**



The RBS cabinets meet all national and international safety standards for fire safety, electrical, and mechanical product safety specifications. T. 93. Representatives of T-Mobile testified that it has not had an accident involving a chemical release in the Washington metropolitan area since 1999. T. 93. The applicants also testified batteries installed also will conform to specific safety standards (set forth on Exhibit 53) and will be registered with Montgomery County as required by Executive Regulation 1703. T. 92-95.

The applicants request a waiver of the setbacks required pursuant to Section 59-G-2.58 of the Montgomery County Zoning Ordinance. The Zoning Ordinance requires the base of the pole be a distance equal to a one to one ratio of height (in feet) to distance. For the subject property, the required setback from the closest property line is 140 feet; the actual setback is 30 feet. T. 31. The required setback from the closest dwelling is 300 feet; in this case, the actual setback from the closest dwelling is 260 feet. T. 45.

According to the applicants, the requested variance permits them to mitigate the visual impact on Wildcat Road because of the distance (almost 1,000 feet) from the road, the elevation (sloping downward from the road), and the existing vegetation on the site. T. 103-104. The existing mature trees on the John M. White property screen the pole from Wildcat Road. Technical Staff supports the setback, stating that the reduced setback makes the unipole less visible from Wildcat Road. Exhibit 41, pp. 10-11. The owner of the closest property, Mr. and Mrs. John White, submitted a letter into the record evidencing their agreement to the variance request. Exhibit 46.

C. The Surrounding Area

Technical Staff advises that the surrounding area is generally bounded by Watkins Road to the north, the Great Seneca Stream Valley Park to the southeast, and the Goshen Recreational Area to the west. Exhibit 41, p. 3. The surrounding area is characterized by single-family homes that front Wildcat Road and open agricultural land in the RDT and RE-2 Zones. Ex. 41, p. 3. Technical Staff reports that there are no special exceptions within the surrounding neighborhood. Those appearing in opposition to the application testified that the unipole was visible from single-family dwellings east of the Great Seneca Stream Valley Park, along Foxlair Road, Sweetleaf Lane and Creekview Drive and the photographs of the balloon tests taken from these locations support this testimony. T. 133-135; Exhibit 41, Attachment 7, Exhibit 55. Because the visual impact of the facility extends slightly beyond the stream valley park, the Hearing Examiner finds that the “surrounding area” for the purposes of this special exception should include properties along Foxlair Place, Creekview Drive, Sweetleaf Lane, and Foxlair Place and Foxlair Road adjoining the stream valley park.

D. The Master Plan

The subject property lies within the 1980 Functional Master Plan for the Preservation of Agricultural and Rural Open Space (AROS) and the 1996 Rustic Roads Functional Master Plan. Technical Staff advises that the proposed special exception is consistent with the AROS Master Plan because the plan’s primary focus is on the preservation of farmland. Exhibit 41, p. 4.

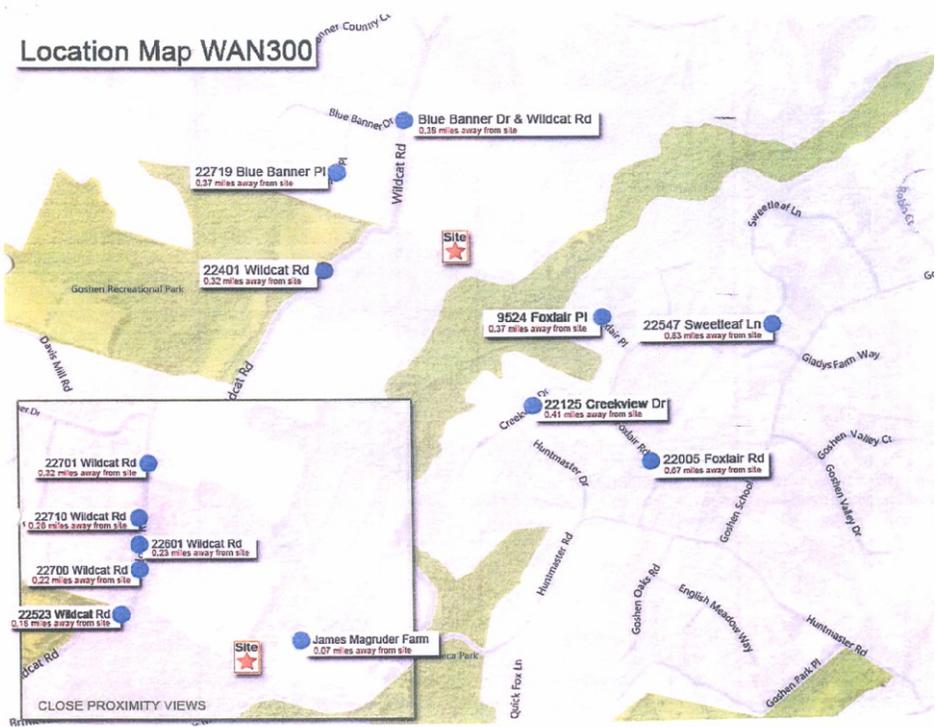
The Rustic Roads Advisory Commission also reviewed the plan and found that the slim pole design, painted in a neutral color, addressed their concerns. Exhibit 41, p. 4.

Those opposing the special exception believe that the telecommunications facility is inconsistent with the plan because it fails to preserve the rural landscape. T. 221, 254. This is a stated goal for the Agricultural Reserve in a pamphlet printed from a Montgomery County Government website. Exhibit 62, p. 2

E. Visual Impact

Technical Staff found, and the Hearing Examiner agrees, that the primary inherent impact of the proposed use is its height and resulting visual impact on surrounding properties. Exhibit 41, p. 6. In order to demonstrate the visual impact of the proposed pole on nearby dwellings, the applicants performed “balloon tests” at different locations in the surrounding area. Exhibit 41, Attachment 7. For each test, red helium weather balloons were launched from the subject property to the height of the proposed tower. T. 110 The tests for the subject property were performed on a clear day with good visibility and wind conditions. T. 110. Photographs of the balloon were then taken from several locations, including along Wildcat Road and from locations to the east across the Great Seneca Stream Valley Park. T. 110; Exhibit 41, Attachment 7. After taking pictures of the balloons, the design of the stealth pole was inserted into the photographs to simulate the view of the proposed structure. T. 110. There were several sites along both Wildcat Road and across the park from which the pole was not visible. Exhibit 55. The exhibit showing the locations of the test sites is set forth on the next page. The pictures of the balloon tests and photo simulations from locations where the proposed tower was visible are shown beginning on pages 13-18.

Locations of Balloon Tests, Exhibit 41, 55



VIEW OF EXISTING SITE FROM 2205 FOXLAIR ROAD, EXHIBITS 41, ATTACHMENT 7 AND 55



**VIEW OF PROPOSED FACILITY FROM 2205
FOXLAIR ROAD, EXHIBITS 41, ATTACHMENT
7 AND 55**



**VIEW OF PROPOSED SITE FROM THE EAST (JAMES
MCGRUDER FARM), EXHIBITS 41, ATTACHMENT 7
AND 55**



VIEW OF THE EXISTING SITE FROM 22125 CREEKVIEW DRIVE, EXHIBITS 41, ATTACHMENT 7 AND 55



VIEWS OF THE PROPOSED FACILITY FROM 22125 CREEKVIEW DRIVE, EXHIBIT 41, ATTACHMENT 7 AND 55



VIEW OF THE EXISTING SITE FROM 22547 SWEET LEAF LANE, EXHIBIT 44, ATTACHMENT 7



VIEWS OF PROPOSED FACILITY FROM 22547 SWEET LEAF LANE, EXHIBIT 44, ATTACHMENT 7



**VIEWS OF EXISTING SITE FROM 9524 FOXLAIR PLACE,
EXHIBIT 41, ATTACHMENT 7**

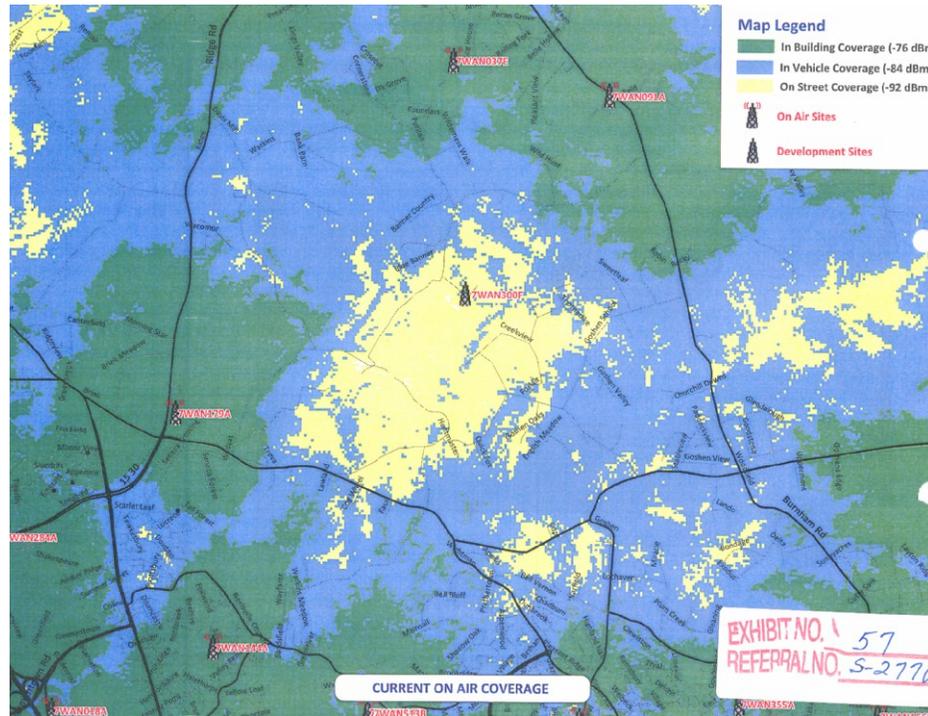


**VIEW OF THE PROPOSED FACILITY FROM 9524 FOXLAIR
PLACE, EXHIBIT 41, ATTACHMENT 7**



F. Need for the Facility

Technical Staff reports that there is a need for the facility, as does the TCFG. Exhibit 41. At the public hearing, the applicant’s expert, Mr. Curtis Jews, testified that need was determined in three ways: (1) from customer complaints, (2) from propagation maps and (3) from cell phone data. T. 175-176. Based on customer demand, Mr. Jews testified that T-Mobile attempts to reach 95% coverage to its customers. T. 185. He produced “propagation maps” showing both existing coverage and projected coverage if the proposed site is approved. “In-building coverage”, in which customers could receive service inside their homes, is shown in green; “in-car coverage”, in which customers could receive service in their cars, is shown in blue and “on-street coverage” is shown in yellow. T. 172-175; Exhibits 57, 58, 59, and 60. The maps depicting the existing service (Exhibit 57 shown below) show significant areas of yellow indicating marginal coverage.



Mr. Jews testified that agents for the applicant did search for collocation opportunities prior to applying for a special exception for this site, but none were found in the instant case. T. 208-209.

Opposition witnesses testified that that they believed there were other existing facilities on which T-Mobile could collocate and receive the desired coverage. Mr. Nelson and Mr. Wolin suggested the possibility of collocating on the Brink water tower. T. 136. On cross-examination, however, Mr. Nelson admitted that he was aware that T-Mobile already had antennas on that location. T. 242-245. Mr. Nelson then suggested the use of another location adjacent to the Brink water tower. T. 249. Ms. Linda Rodgers testified that she believed that coverage was sufficient as she could make calls from her carrier without difficulty near the stream in Great Seneca Park. T. 254-256; T. 208-209.

G. Traffic Impact

Technical Staff estimates that only one to two vehicle trips per month will be generated by the proposed facility and drive access will be via an existing driveway. Ex. 41, p. 9. As a result, Technical Staff found that “no significant traffic impact is anticipated from the proposed use.” Ex. 41, p. 9.

H. Environmental Impacts

Technical Staff found that the proposed use “has no impacts on forest, wetlands, streams, or environmental buffers” and that the applicants received approval of an amended final forest conservation plan. Exhibit 41, p. 5. Therefore, Technical Staff reports that the proposed use will have no adverse environmental impact. Exhibit 41, p. 5.

I. Community Response

The application was initially opposed by the Greater Goshen Civic Association and

several civic groups and individuals (Exhibit 41, 5-6, Attachment 14). However, many of the area civic associations withdrew their opposition in light of the amendment to the application incorporating a “stealth” slim pole design. Exhibit 41, Attachment 14. No persons representing civic associations appeared at the public hearing to oppose the application, although four individuals did so.

III. SUMMARY OF THE HEARING

A. Petitioner’s Case

Four witnesses testified in support of the application. Mr. John Cunningham, an expert in cell site design engineering. T. 24. His firm performed all of the design and construction drawings for the installation of the unipole and compound and testified as to the design and installation of the facility. T. 22-75. Ms. Hillarie Morrison qualified as an expert in land use planning and telecommunications zoning. T. 77. She testified as to compliance with the master plan, the RDT Zone standards, and the special exception standards. T. 75 – 159. Mr. Curtis Jews qualified as an expert in wireless communications and cell site design and testified as to the need for the facility. T.168-211. Ms. Nancy White, on behalf of the applicant, testified as to preservation of mature trees on the property. T. 262-265.

B. Opposition Case

Four witnesses appeared in opposition to the application, Ms. Terry LaMotte, Ms. Linda Rodgers, Mr. Robert Nelson, and Mr. Leonard Wolin. T. 212-275. In general, they raised concerns regarding the impact on the environment, the impact on their property values, inconsistency with the master plan, and questioned the need for the facility.

Relevant portions of the witnesses (both for and against the application) testimony have been included in the body of this Report. Their complete testimony is summarized in

Appendix A, attached hereto and incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A. General Conditions

The standard for evaluation prescribed in Code Section 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code, Section 59-G-1.21. 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.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff identified visual impacts of the tower as an inherent characteristic necessarily associated with a telecommunications facility. Technical Staff found that there are no non-inherent adverse effects associated with the proposed use. (Exhibit 15, p. 7).

The Hearing Examiner accepts that listing as a fair description of the inherent adverse impacts of a telecommunications facility, although the Hearing Examiner would add one non-inherent impact--the proximity of the proposed unipole to a rustic road. The Hearing Examiner finds that the special exception should *not* be denied due to this non-inherent impact because the location, almost 1,000 feet from the road, the topography (which slope's down from the road), and the mature trees along the road sufficiently mitigate this impact.

Under these circumstances, the Hearing Examiner concludes that there will be no adverse effects sufficient to warrant denial of the petition on this basis.

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General Conditions:

(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.*

Conclusion: A telecommunications facility is a permitted special exception in the RDT Zone, pursuant to Zoning Ordinance Section 59-C-9.3.

2. *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: As set forth below, the use complies with all the standards set forth in Section 59-G-2.58 of the Montgomery County Code.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: As noted in Part II.D of this report, the subject property lies within the 1980 AROS master plan. Technical Staff concluded that the proposed special exception, as

amended to include the slim pole design, is consistent with the AROS because the plan focuses on preservation of farmland. Exhibit 41. A close review of the AROS master plan itself supports Technical Staff's conclusion. The AROS plan's goal, set forth in Chapter II, is to prevent "*Impermanence Syndrome*", defined by the plan as a "feeling by farmers that farming is doomed in their area." *AROS*, p. 11. The cited causes of the syndrome include development pressure and other reasons directly stemming from development pressure, such as higher taxes, decreased support industries, etc, and not necessarily preservation of views. *AROS*, p. 11.

Even assuming, without deciding, that preservation of rural views is a major goal of the plan, the photo simulations and photographs of the balloon tests entered into the record demonstrate that any visual impact on the rural landscape is significantly mitigated by the stealth design, neutral coloring, existing vegetation and topography. Exhibit 41, Attachment 7, Exhibit 55. As a result, the Hearing Examiner agrees with Technical Staff that the proposed use is consistent with the AROS plan.

The evidence also supports Technical Staff's conclusion that the special exception is consistent with the 1996 Rural Rustic Road Functional Master Plan. That master plan designates Wildcat Road as a rural rustic road. Exhibit 41, Attachment 9. The RRAC reviewed the proposal as originally submitted and requested the stealth design and neutral coloring. Exhibit 41, Attachment 9. The applicant complied with this request and amended the plan to include a slim pole and neutral color. T.104. The applicant has also requested a variance of the setback requirements in Section 59-G-2.58 of the Zoning Ordinance, in part to minimize the impact on the rustic road. T. 104. Finally, photographs of balloon tests at

several locations along Wildcat Road demonstrate that the telecommunications facility is not visible, or marginally visible, from those locations.

(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 Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: Technical Staff concluded that the use will not be detrimental to the use, peaceful enjoyment, or economic value or development of surrounding properties. Exhibit 41, p. 8. Based on the evidence that the visual impact has been mitigated as described in Part II.E of this Report, the Hearing Examiner agrees with this conclusion and so finds.

The evidence also supports a finding that the proposed facility meets both Policy Area Mobility Review (PAMR) and Local Area Transportation Area Review (LATR). The facility will be unmanned and will be serviced twice monthly for maintenance. T. 103; Exhibit 41, p. Technical Staff found, as does the Hearing Examiner, that the facility will not generate any significant peak hour trips and that both PAMR and LATR requirements have been met.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: As a whole, the evidence supports the conclusion that the requested use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. There was no evidence, except for generalized statements, that property values would decrease as a result of the telecommunications facility. T. 20, 256. The Hearing Examiner agrees with

Technical Staff that the evidence in this case does not warrant a denial because of either the inherent or non-inherent impacts. While the unipole will be visible from some locations, the testimony and evidence demonstrate that the visual impact from those locations will be significantly mitigated. T. 135, Exhibit 55.

Because, however, the applicants rely on the mature trees along Wildcat Road as a means of screening the facility, it is appropriate that these trees be preserved. Ms. Nancy White appeared at the hearing and testified that the trees on her property which border Wildcat Road are subject to an existing forest conservation plan. The Hearing Examiner recommends that compliance with the forest conservation plan on both Ms. Nancy White's property and the subject property be a condition of the special exception approval. T. 261-263.

The evidence also demonstrates that the applicant has taken several measures, described in previous sections, to mitigate the visual impact both to the rustic road (Wildcat Road) and to the east across Great Seneca Stream Valley Park. Based on this evidence, and with the recommended conditions, the Hearing Examiner finds that this standard has been met.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The use will not cause objectionable noise, vibrations, fumes, odors, dust illumination, glare, or physical activity in the past. The facility will not be illuminated, will not have signs (except for a small sign on the compound fence), and will not have generators causing noise. The applicants presented evidence that the proposed unipole will not interfere with air traffic. T. 90. The evidence shows that the RBS cabinets are weatherproof, and meet

national and international safety standards for electrical, fire safety, mechanical and heat requirements and that T-Mobile has not had an accident involving a chemical release in the Washington metropolitan area since 1999. T. 93. In addition, any batteries installed also will meet specific safety standards and will be registered with Montgomery County. T. 92-95.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff advises that there are no other special exceptions within the surrounding area, nor does the record otherwise reflect this. In addition as noted above, the proposed use is consistent with the applicable master plans. Therefore, having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: Technical Staff concluded that the proposed use will not adversely affect the health, safety, security, morals or general welfare of the residents, visitors or workers in the area. Exhibit 41, p. 8. The evidence supports the conclusion and the Hearing Examiner so finds.

(9) 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.

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities, as does this Hearing Examiner. Exhibit 41, p.9. There are also

existing driveway and an existing utility easement available to provide access and electrical service to the property. T. 130.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.

(B) If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Because the station is unmanned and will generate only approximately two vehicle trips per month, the Hearing Examiner agrees with Technical Staff that both PAMR and LATR are met. Technical Staff advises that the Planning Board must grant a waiver of the subdivision regulations to permit construction of the facility on an outlot. Exhibit 41. There being no evidence to the contrary, the Hearing Examiner so finds.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: Because of low number of trips anticipated to be generated by the facility and that an existing access drive is being used, the Hearing Examiner agrees with Technical Staff's conclusion that the application meets this standard. Exhibit 41, p. 9.

B. General Development Standards

Section 59-G-1.23. General Development Standards:

(a) Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: The subject property is within the RDT Zone, the development standards of which are set forth in Section 59-C-9.4:

*Section 59-C-9.41. Density in the RDT Zone. Only one one-family dwelling unit per 25 acres is permitted. * * **

Conclusion: No dwelling units are proposed; therefore this requirement is inapplicable.

Section 59-C-9.42. Minimum net lot area: No main building, together with its accessory buildings, shall be located on a lot having a net area of less than 40,000 square feet.

Conclusion: The proposed facility is to be located on an outlot consisting of 42.7 acres. In addition, no buildings, as defined in Section 59-A-2.1 are proposed for the special exception area. Therefore, the Hearing Examiner finds that this standard, even assuming it is applicable, has been met.

Section 59-C-9.42. Minimum lot width (in feet):
(a) Measured along front building line: 125 feet
(b) Measured along front street line: 25 feet.

Conclusion: No buildings are proposed for the subject property. The Boundary Survey Plan submitted with the application (Exhibit 44(c)) indicates that all property boundaries, including the road frontage are well in excess of 125 feet. Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

Section 59-C-9.43. Yard requirements for a main building (in feet):
(a) Minimum setback from street. The front building line must be parallel to the front lot or proposed street line and set back from the lot or street line at least 50 feet.
(b) Minimum side yard, 2 required: 20 feet.

- (1) One side: 40 feet.*
- (2) Sum of both sides: 40 feet*
- (3) Abutting a public street: 50 feet.*
- (c) Minimum rear yard: 35 feet.*

Conclusion: As no buildings are proposed, this standard is not applicable.

*Section 59-C-9.45. Yard Requirements for an accessory building or structure (in feet). * * **

Conclusion: The only structures proposed on the outlot are those necessarily required by the primary proposed use, i.e., a telecommunications facility. Therefore, this standard is inapplicable.

Section 59-C-9.46. Maximum Lot Coverage. No more than this percentage of the net lot area may be covered by buildings, including accessory buildings: 10%.

Conclusion: As no buildings are proposed, this standard is inapplicable.

*Section 59-C-9.47. Maximum building height. * * **

Conclusion. This standard is inapplicable as there are no buildings proposed.

*Section 59-C-9.48. Additional Development Requirements. * * **

Conclusion. There are no additional development requirements in the RDT zone.

C. Special Standards

Compliance with Special Conditions: 59-G-2.58

(a) Any telecommunications facility must satisfy the following standards:

(1) A support structure must be set back from the property line as follows:

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

** * **

(C) The setback from a property line is measured from the base of the support structure to the perimeter property line.

(D) The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable

zone if:

- (i) the applicant requests a reduction; and*
- (ii) evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.*

The applicant requests a waiver of the setback from the property line. The required setback from the property line is 140 feet. T. 45. The tower is located only 30 feet from the closest property line, measured from the base of the support structure. T. 45. Technical Staff supports the waiver because the existing location decreases visibility of the unipole from Wildcat Road, a rural rustic road. Exhibit 41, p. 10. Evidence in this case supports this conclusion because not only is the proposed location distant from the road, it is also lower in elevation and screened by existing mature trees. T. 163. The stealth design, recommended by the RRAC, also mitigates the visual impact on the rustic road. T. 145-151. The neighboring property owner is a member of the White family and concurs with the proposed location of the unipole. Exhibit 46. As a result, the Hearing Examiner concludes that the proposed location and design does mitigate the visual impact of the facility both on the rustic road and the neighboring vicinity and recommends that the Board grant the variance request.

(2) A support structure must be setback from any off-site dwelling as follows:

(A) In agricultural and residential zones, a distance of 300 feet.

** * **

(C) The other setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

(D) The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one

foot from an off-site residential building for every foot of height of the structure if:

- (i) the applicant requests a reduction; and*
- (ii) evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.*

Conclusion: For the same reasons set forth in the preceding section, the Hearing Examiner concludes that a variance from the 300-foot setback from the closest dwelling will result in a less visually obtrusive location considering the height of the structure, topography, existing vegetation, adjoining and confronting landowners and visibility from the street. Therefore, the Hearing Examiner recommends that this requested setback variance be granted by the Board of Appeals.

(3) The support structure and antenna must not exceed 155 feet in height unless it can be demonstrated that additional height up to 199 feet is needed for service, collation, or public safety communications purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.

Conclusion: The proposed height is 140 feet, under the 155-foot limitation. Exhibit 41,

p. 2.

(4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

Conclusion: The evidence before the Hearing Examiner demonstrates that several measures were taken to minimize the visual impact of the structure, as described in the section above relating to the variance request. The visual impact of the structure is mitigated by its distance from Wildcat Road, the decreasing elevation from Wildcat Road, mature trees located near the proposed site and wrapping around the 80-acre White subdivision. An 8-foot high fence with additional landscaping screens the electrical cabinets inside the compound. While the structure is visible from areas across the Great Seneca Stream Valley Park, the testimony indicates that only approximately 30 feet of the pole is visible from that a location along Foxlair Place. T. 135. In addition, the stealth design also minimizes visual impact from that area, as shown on the photo simulations from locations east of Great Seneca Valley Park. Exhibit 55. For these reasons, the Hearing Examiner finds that the support structure is sited to minimize its visual impact on nearby properties and that the compound is adequately screened by fencing, existing mature trees, and landscaping.

(5) The property owner must be an applicant for each support structure. A modification of the special exception is not required for any change to a special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than three telecommunications carriers...

* * *

Conclusion: The property owner is a co-applicant with T-Mobile in this special exception application. The tower is constructed to hold three telecommunications carriers. T. 113, Exhibit 41, p. 12. Therefore, the Hearing Examiner finds that this standard has been met.

(6) No signs or illuminations are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

Conclusion: The antennas are inside the unipole and no signs are proposed on the pole. The only sign proposed is that required by Section 59-2.58(a)(8) (below). Therefore, the Hearing Examiner finds that this standard has been met.

(7) Every freestanding support structure must be removed at the cost of the telecommunications facility when the telecommunications facility is no longer in use by the telecommunications carrier for more than 12 months.

Conclusion: Both Technical Staff and T-Mobile report that T-Mobile agrees to remove the telecommunications facility if not in use for 12 months and the lease with the property owner so provides. T. 128. Based on this evidence, and having none to the contrary, the Hearing Examiner finds that the use as proposed meets this standard.

(8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change of ownership.

Conclusion: The applicant proposes a sign meeting the requirements of the above; therefore, the Hearing Examiner finds that the special exception use, as proposed, meets this standard.

(9) Outdoor storage of equipment or other items is prohibited.

Conclusion: The applicants do not propose any outside storage of equipment or other items on the site. Exhibit 41, p. 12. As a result, the use as proposed meets this requirement.

(10) Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility in a safe condition.

Conclusion: The applicant has agreed to maintain the facility in a safe condition; therefore, the use as proposed meets this requirement. Exhibit 41, p. 12; T. 105-106.

(11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the telecommunications facility. The recommendation must be no more than 90 days old, except that a recommendation issued within one year before June 22, 2010, must be accepted for one year from the date of issuance. The recommendation of the Transmission Facility Coordinating Group must be submitted to the Board at least 5 days before the date set for public hearing.

Conclusion: The TCFG recommended the facility two times, once in September, 2009 and again in September, 2010 based on the amended application. Exhibits 8(a) and 41, Attachment 8. Therefore, the Hearing Examiner finds that this requirement has been met.

(12) The Board must make separate, independent finding of need and location of the facility. The applicant must submit evidence sufficient to demonstrate the need for the proposed facility.

Conclusion: The propagation maps show that existing coverage of the surrounding area is marginal, as further evidenced by the number of dropped calls from the existing cell towers. Exhibit 41, Attachment 6, Exhibits 57-60. While there was testimony from the opposition that there was possibly another existing cell tower that could have been used to increase coverage, there was controverting testimony from the applicant's electrical engineer that all collocation possibilities in the area had been explored prior to applying for a new cell tower at this site. T. 254-256; T. 208-209. The TCFG also found that that the applicant was unable to collocate on any existing facility. Exhibit 41, Attachment 8. In addition, one of the existing facilities listed by the applicants as a possible collocation site was already in use by T-Mobile. Ms. Linda Rodgers testified that she received service from her carrier at very low points along a streambed and that her carrier covered

her “everywhere”. T. 217-218. Mr. Nelson questioned whether a need for the facility existed if other carriers were able to provide sufficient coverage. T. 253-254. Mr. Nelson did not, however, provide specific evidence that other carriers were able to provide adequate coverage in the area. Similarly, Mr. Nolin also testified that coverage of other carriers should be included in the analysis of need, but provided no specifics as to whether other carriers had adequate coverage in the area. T. 253-254. While those in opposition raise an issue as to whether coverage from other carriers may be included in determining the need for the facility, the Hearing Examiner finds it unnecessary to address this in the instant case. Because the evidence from the opposition regarding possible collocation facilities was speculative, and the only specific testimony regarding coverage from other carriers is anecdotal in nature, the weight of evidence in this case supports a finding that there is a need for the proposed facility at this location.²

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2770, which seeks a special exception for a telecommunications facility to be located at 22525 Wildcat Road, Germantown, Maryland, be *granted*, subject to the following conditions:

1. The Petitioner shall be bound by all of the testimony and exhibits of record, and by the testimony of its witnesses and its representations identified in this Report.
2. No signs or illuminations shall be placed on the unipole.
3. The applicants must obtain Planning Board approval of a Subdivision Regulation Waiver to permit issuance of a building permit for the proposed telecommunications facility on existing outlot A.
4. All RBS cabinets and batteries installed at the site must comply with all

² There are two remaining provisions in Section 59-G-2.58 of the Zoning Ordinance are applicable only to structures which were either constructed or which had been subject to a public hearing prior to November 18, 2002. As neither is applicable to this case, they are not repeated here.

national and international safety and code requirements for those items and meet the same standard specifications and features set forth in Exhibit 52 (FACT SHEET, Ericsson Radio Base Station Cabinet Chemical Safety Information) and Exhibit 53 (Material Safety Data Sheet, Lead Acid Batteries).

5. The unipole shall be painted a neutral color.
6. All batteries installed must be registered with Montgomery County pursuant to Executive Regulation 1703.
7. The owner of Lot 1, White's Farm Subdivision, 22601 Wildcat Road, and the applicant must comply with all provisions of the existing forest conservation plan on their respective properties.
8. The applicants must remove all existing structures from the special exception area if the structures are not used for a period of twelve (12) months.
9. The sign required by Section 59-G-2.58(a)(8) must be installed on the compound fence prior to operation of the facility.
10. T-Mobile or any successor or assigns shall maintain the facility in a safe condition.
11. Outdoor storage of equipment or other items within the special exception area is prohibited.
12. Petitioner additionally must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: January 7, 2011

Respectfully submitted

Lynn A. Robeson
Hearing Examiner

APPENDIX

APPENDIX A (S-2770)**Summary of Testimony**1. **Mr. John Cunningham:**

Mr. John Cunningham qualified as an expert in cell site design and engineering. T. 24-25. The compound containing the monopole was located with large setbacks from all property lines except from one property owned by a member of the White Family. Setback approximately 986 feet from Wildcat Road, the location is 228 from the southwest property line, 202 feet from the southeast property line and 238 feet from the northeast property line. The compound is 30 feet from the property to the west, owned by a member of the White family. T. 31. From Wildcat Road, the compound is hidden by existing mature trees. T. 30.

To clarify the 30-foot setback and to change the language in the “Project Description” to reflect the “flagless flagpole” or “unipole” design, Mr. Cunningham submitted a revised site plan dated November 4, 2010. T. 32-33.

The property boundaries shown in the site plan were determined by a registered and licensed land surveyor. After a field inspection of the site, the surveyor obtains legal descriptions of all adjacent parcels and well as the subject parcel from land records in the courthouse. T. 35. Using the legal descriptions, they project the boundaries of the subject property with the adjacent properties. T. 35. In this case, T-Mobile had a licensed professional engineer certify the property boundaries. Mr. Cunningham testified that the boundary survey performed showed that a property owned by Mr. Alonzo Smelson II and P.K. Smelson, while very close to the subject property, and did not actually adjoin the property because it was a flag lot. T. 36.

Depicted on an aerial photograph (Exhibit 45) with a small red symbol, Mr. Cunningham testified that the subject property was 1,000 feet east of Wildcat Road and surrounded by wooded and forested areas on all sides. T. 39-40. Heavy woods border the property on the south, the Wildcat Road frontage, and wrap around most of the White parcels. T. 40. The aerial photograph showing the location and surrounding woods is consistent with the photograph in the staff report. T. 42.

The applicants requested a waiver of two setbacks: (1) a one to one ratio of height to distance in feet from the property line and (2) a minimum of 300 feet from the nearest residence. T. 45. Because the monopole is 140 feet high, it must be set back 140 from the nearest property line. The special exception site is 30 feet from the closest property line and 260 feet from the closest dwelling. T. 45.

Based on his experience with other sites, the proposed site has several advantages. The biggest advantage is the almost 1,000 foot distance from the public right of way (Wildcat Road). In addition, the elevation slopes downward away from the road; therefore, the “net” structure height is significantly reduced. T. 47. The tower will be a unipole rather than a monopole. Antennas, mounts and lines are attached to the outside of standard monopoles; these are all on the interior of unipoles and therefore will not be visible. Tr. 47.

On cross-examination, Mr. Cunningham testified that all the equipment used was UL-rated and designed specifically to address environmental concerns. Other carriers could bring in different equipment. T. 63-64. When asked about wind loads, Mr. Cunningham replied that his firm did not design the poles (his firm designed the installation), although the poles would have to be designed to meet the building code

wind and ice loads. T. 64-65. Engineers will perform a full geotechnical study at a later time that will determine how deep the foundation must be, thus, it is difficult to determine any impact on the water table. Tr. 68-69.

With regard to the any discrepancy between the zoning map and actual property lines shown on the special exception plan, Mr. Cunningham stated that the boundaries on the zoning map are unrelated to property lines. T.70.

Originally, the site was located more toward the east-northeast, but was moved to the south and west because the original location was in an old septic easement. T. 72. The compound is large enough (50 feet by 50 feet) to accommodate additional users. Even if a person stands just outside the compound, they will not be able to see the equipment inside. T. 73. The applicant will install eighteen cedar trees along the outside to provide screening of the fence. T. 74.

Mr. Cunningham testified that elevations at Wildcat Road measured 576 above sea level. The site slopes gently downward and until it reaches approximately 514 feet above sea level, or about a 60-foot drop in elevation. T. 163. The property slopes quickly upward toward the open field to the northwest of the proposed location and if located there, would probably be 50 feet higher. T. 165. Mr. Cunningham did not have any topographical information for the area to the east on the other side of the park.

2. Hillorie Morrison:

Ms. Morrison qualified as an expert in land use and telecommunications zoning. T. 77.

The Montgomery County Telecommunications Facility Group (TCFG) initially reviewed the application in fall of 2009. The following summer, Montgomery County

shortened the time period for which the TCFG recommendation was valid from one year to ninety days. T. 84. While possibly not required, T-Mobile decided to submit the proposed location for TCFG review again on (within ninety days of the special exception application). T. 84-85. T-Mobile also chose to resubmit the application because the unipole was twenty feet higher than its original design. The TCFG advised that there was a need for the new tower site on October 8, 2010. T. 85-86.

When T-Mobile initially identified a need for service in the area, it searched for collation options. T. 87. T-Mobile found that there were no existing structures with which it could attach its antennas and meet their coverage objectives. T. 87. From that period (June, 2009), T-Mobile found no structures in lieu of the one proposed that could serve their coverage objectives. T. 87.

Ms. Morrison testified that the proposed cell tower would be in harmony with the character of the neighborhood because it is a “passive” use, i.e., a use that doesn’t generate a lot of impacts such as traffic or parking. T. 88. Under FCC and FAA regulations a facility must be evaluated to determine whether the pole will have an impact on air traffic. For this site, the evaluation concluded that there would be no interference with airspace and no lights were required. T. 89-90. Ms. Morrison produced an FAA notice (Exhibit 51) stating that FAA notice is not required and that the maximum recommended no notice height is 163 feet above ground level.

Ms. Morrison also opined that the unipole was compatible because of the large setback from Wildcat Road, the amount of vegetation in the area, and the stealth design of the pole. Positive impacts of the use include improved cell phone coverage for the area. T. 88-89.

Ms. Morrison testified that there were no other special exceptions in the area and the proposed use would not have an adverse impact on the health, safety, security, morals or workers in the area. T. 91. She produced a fact sheet (Exhibit 52) from T-Mobile describing safety information on any equipment in the radio bay station (RBS) cabinets. T. 92. T-Mobile uses Ericsson RBS cabinets each of which contains a computer-controlled equipment enclosed within a vandal-resistant, heavy duty steel cabinet. T. 93. The cabinets are weatherproof and climate-controlled with a small air conditioner, an electric resistance heater, and onboard 12-volt DC batteries for back-up emergency power. The T-Mobile cabinets meet applicable domestic and international standards for product safety, including electrical, mechanical, heat and fire safety requirements. T-Mobile operates approximately 1,500 bay stations in the Washington metro area. Since its initial launch in 1999, there have been no accidents resulting in a chemical release. T. 93-94.

Batteries used for the backup power are from North Star Battery Company, which T-Mobile uses nationally. T. 95. T-Mobile uses these batteries almost exclusively and has done so for multiple years. T. 96. T-Mobile will be required to register the batteries with Montgomery County Executive Regulation 1703. T. 96. Ms. Morrison produced an affidavit (Exhibit 54) from Jason Campbell, the head of development of the engineering department for the region stating that the batteries installed will be North Star batteries or batteries which are comparable to North Star batteries and that T-Mobile will submit an application for Montgomery County high use facility registration. T. 98-99.

The proposed use will not have an impact on public facilities since it is unmanned and does not affect roads, schools, water, sewer, and public roads. T. 101. T-Mobile will

request a waiver of the subdivision regulations prohibiting building permits to be issued for outlots. T. 101.

The proposed structure will need a variance from the setbacks required by the Zoning Ordinance. The required setbacks are (1) 140 feet from the nearest property line (one foot in distance per each foot in height), and (2) 300 feet from the nearest off-site dwelling. T. 103. Placing the pole further from the road within the trees reduced the views of the structure from Wildcat Road, which is designated a rustic road. The location also enhances screening from existing vegetation. T. 103. The setback variances needed are from the property line and dwelling of a member of the White family, who has agreed to the placement of the pole at this location. T. 103. The “stealth” design and the neutral color of the pole also mitigate the visual impact. T. 104.

She testified that the facility would be designed to permit two other users and that there will be no signs or illumination on the pole unless required by the FAA or FCC. T. 105. Presently, a small identification sign (located on the compound) required by the FCC is the only sign proposed. T. 105. No storage of unusable equipment will be permitted within the compound. T-Mobile is committed to maintaining the facility in a safe condition. T. 105-106.

Ms. Morrison described the “balloon tests” used to test visibility of the poles from surrounding locations. Her company, Network Building and Consulting, launches a balloon to the height of the proposed tower. A measured string verifies the height of the balloon, which are red and similar to weather balloons. T. 110. For the subject property, the balloons were launched on October 27, 2010, a day in which visibility and wind conditions were good. T. 110.

Photographs were taken of the balloon launches at different locations. These photographs were used to make “photo simulations” in which the pole is graphically inserted into the picture the same location and height as the balloon. T. 114-118. The balloon tests were done at the 140-foot height, after the decision to utilize a stealth design as recommended by the Rustic Roads Commission. T. 111-112. To the east across the park, T-Mobile took photographs from .37 miles away, the closest distance it was able to get to the subject property. T. 134. From that area (9524 Foxlair Place), the pole extended approximately 30 feet into view. T. 134.

T-Mobile notified several community groups of the balloon tests. These included the Goshen Civic Association and an alliance of 10 or 12 civic or homeowners associations. It also notified people that had visited the site over the summer that lived along Wildcat Road. T-Mobile did not notify individual homeowners in the area near Foxlair Place and Sweetleaf Lane, and Creekview Drive because of their distance, although it did have pictures taken from that area.

Technical Staff had reviewed and approved the impact on a variety of environment concerns. T. 126. Because T-Mobile is an FCC-licensed agency, it also had to do a Phase I Environmental Study that evaluates the impact of the site on environmental issues. T. 126. T-Mobile coordinated with Technical Staff when the original site was moved to its current location for review of the impact on environmental resources. Technical Staff reviewed and approved the proposed location.

Ms. Morrison testified that the equipment would be removed from the site if not used for a period of one year, which is provided for in the lease from the White family.

T. 129. The structure will require electricity which will be brought in to the site along the easement shown on the site plan.

While the FAA Report was done prior to the increased to 140 feet, it permitted a facility up to 163 feet. T. 131. The report specifically evaluated the impact of flights to and from Davis Airport. T. 132. A lightning rod is incorporated inside the pole to prevent fire strikes. T. 132.

On cross-examination, Ms. Morrison testified that an existing forest conservation plan prevented development in the area of mature trees along Wildcat Road. T. 136. The covenant, however, does not state that the trees would remain in place. In addition, the trees were just one element of the screening—the change in elevation also acted to screen the facility. T. 136-137. The forest conservation plan does prevent the trees from being removed. T. 138. The forest conservation plan covers the entire White parcel (the entire 80-acres) because it was done before the tract was subdivided. T. 138.

She also stated that an inherent impact of the proposed use was its visual impact. This particular location offered better screening from Wildcat Road than other potential locations, which included an open field on the subject property. T. 149. T-Mobile chose to locate the pole further from the road where there is a row of existing mature pine trees extending north and south for approximately 35-40 feet. The area behind the poles is open, allowing them to locate the facility there with some natural screening. More of the pole is visible in the area across the parkland shown on the aerial map. The slim line design of the pole acts to reduce the visual impact on that area. T. 151.

Finally, Ms. Morrison testified that T-Mobile would either use North Star batteries or equivalent batteries. “Equivalency” means in this instance batteries which meet the national safety standards. T. 154.

3. Mr. Curtis Jews: Mr. Jews qualified as an expert in wireless communications cell site design and testified as to the need for the facility. T. 171. He produced Exhibits 57, 58, 59 and 60 which are “propagation maps” demonstrated existing and projected cell phone coverage in the area.. This “propagation tool” uses topography and morphology to project area coverage at certain sites. T. 175.

The propagation maps for the area surrounding the subject property show in-building coverage in green, in-car coverage in blue and on-street coverage in yellow. T. 174. Exhibits 57 and 59 depict a large area in “yellow” thereby signaling a need for additional service in the area. In Exhibits 58 and 60, showing projected coverage, there is a large green area and, while yellow areas still exist, they are much smaller. T. 194-195.

In addition to propagation maps, T-Mobile also uses call data (i.e., dropped calls) and customer complaints to determine the need for a facility. T. 175, 179. There are seven existing sites which collected 41,000 911 calls over the 13 months ending in October, 2010. T. 176. Because the antennas are pointed to cover certain areas, the 41,000 calls include those from sectors pointing both toward and away from the proposed site. T. 177. Within the same 13-month period, the seven existing sites also experienced approximately 148,000 dropped calls. T. 178. The proposed facility would reduce the number of dropped calls and increase the number of 911 calls that may be collected in the area. T. 178. T-Mobile will also comply with all FCC regulations governing emission frequencies. T. 179.

Based on customer complaints, T-Mobile's goal is to provide 95% coverage to its customers. While the need shown is only for T-Mobile customers, the new facilities also offer the opportunity for other telecommunications companies to co-locate as well.

Based on the call data collected, customer complaints and propagation maps, Mr. Jews stated that, in his opinion, there was a need for the facility. If the proposed site is approved, T-Mobile would be able to provide more reliable coverage to the area. T. 178-179.

Before proposing a new tower, T-Mobile does search for collation options. The TCFG found in June, 2009, that there were no existing structures to which T-Mobile could attach their antennas and meet their coverage needs for the area. T. 208. Mr. Jews identifies a "search ring" in which T-Mobile looks for collation opportunities and sites for new towers. T. 209.

On cross-examination, Mr. Jews also testified that the additional height (from 120 feet to 140 feet) was needed due to the stealth design and the topography of the site. The height of the tower directly relates to the amount of coverage provided—as the height increases, the coverage increases as well. T. 192. The additional 20 feet requested here is needed because of the area topography and the stealth design. T. 193-194. Moving the tower further away from Wildcat Road actually enhanced coverage to lower surrounding elevations. Even with the added height, the propagation map still shows a lot of limited coverage areas in yellow. T. 194-195.

4. Ms. Terry LaMotte: Ms. LaMotte testified in opposition to the application. She believed that there were a number of questions that still needed to be answered relating to the environmental impact of the structure on the watershed, the

stream valley and the forest conservation easements. T. 214. She also wanted to know what protections were in place to protect residents against noise, light and environmental concerns. T. 213. Finally, she stated that she also wished to convey the concerns, set forth in a letter from Mr. Smelson (Exhibit 25) expressing opposition to the facilities.

5. Ms. Linda Rodgers: Ms. Rodgers testified that she lived near Foxlair and Creekview and could receive calls from her carrier even down in the stream bed. T. 219. She didn't feel that need for the facility had been demonstrated given that she received sufficient coverage. T. 218-220. Nor did she think that the proposed facility was in keeping with the goal of the Agricultural Preserve to preserve scenic vistas and open space. T. 221. She also stated that T-Mobile's photograph of the balloon test from 9524 Foxlair Road did not accurately represent the size of the balloon. She referred to a photograph taken by Mr. Robert Nelson in which, she believed, the balloon appeared larger. T.

6. Mr. Robert Nelson: He testified that the Greater Goshen Civic Association opposed the application because the site was in the agricultural preserve and the location contravenes the goal of preserving a rural landscape. T. 229. He testified that the visual impact would be highly intrusive for the residents along Wildcat Road and those who live at higher elevations. T. 229. He also stated that the hearing notice described the facility as a 120-foot tower. T. 229-230. With regard to the photograph of the balloon test, he did not think he used a zoom, but the picture was cropped. He stated that he "thought" it accurately depicted the balloon test on the date it was taken. T. 234.

He also testified that residents in the neighborhood of Foxlair did not receive notice of the balloon test and felt that the procedure was unfair. T. 235. He did not

believe that there was a need for the facility. He felt that T-Mobile should have looked at other sites, such as the Brinks Tower location. T. 236. There is also another tower which is much taller, at least 200-250 feet high in addition to terrestrial and satellite communications that provide television, telephone, and internet capabilities to the agricultural preserve. T. 237. Therefore, topography of the area creates long sight distances. From his house on Goshen School Road he can see the houses along Wildcat Road. While he couldn't see the facility, at least in the summer, the tests should be taken when leaves are on the trees. T. 240.

On cross-examination, Mr. Nelson testified that the Greater Goshen Civic Association did not take action on the letter he submitted opposing the proposed facility. T. 245. It did vote on the letter contained in the staff report. T. 245. He also stated that the most the notice from the Board of Appeals dated October 26, 2010 listed the height of the pole as 140 feet. T. 247. Mr. Nelson also stated that he knew that T-Mobile was already on the Brink water tank but was suggesting that T-Mobile go on the higher structure near the water tank. T. 249-250. He had not seen the Rustic Road Commission's letter stating that stealth design met their request for a pole with a slim design and limited antennas. T. 251.

7. Mr. Len Wolin: Mr. Wolin lives on Wildcat Road and testified in opposition to the application. He didn't believe that there was a need for the facility, especially as other carriers are able to provide service in the area. He believed that T-Mobile should use the tall tower near the Brinks water tower along Route 27. He also stated that he moved to the Agricultural Preserve area expecting that there wouldn't be things like cell phone towers, just as he didn't have water or sewer service. T. 254. He

also testified that if the tower was approved, it should be as short as possible because when the balloon tests were done, he could see the balloon from his house through the trees. T. 255. He also wanted a guarantee that the mature trees along Wildcat Road would remain because they are being used to screen the tower. T. 255-256. He thinks that, while the property owner is getting a benefit, it shouldn't negatively impact his property value. Finally, if the tower is approved, he thought that the stealth design used was the best of different options that he had seen.