

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, December 10, 2009**

Members present were Howard Thompson, Chairman; Wayne Miedzinski, Randy Guy, Veronica Neale, and George T. Edmonds. Alternate Ronald Payne was also present. Department of Land Use & Growth Management (LUGM) staff present were Derick Berlage, Director; Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. Attorney George Sparling was also present.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARINGS

CUAP #09-135-003 – Verizon Wireless Tower Breton Bay

The Certification of Property Posting and Mailing Receipts were submitted for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. A second Certification of Property Posting was submitted for Hilltop Graphics for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*. The applicant is requesting conditional use approval to construct a commercial communication tower. The property contains 115.58 acres; is zoned Rural Preservation District (RPD); and is located at 21911 Rosebank Court, Leonardtown, Maryland; Tax Map 40, Grid 19, Parcel 15.

Owner: St. Mary's County Metropolitan Commission
Present: Barbara Pivec & Steve Resnic

The property and conditional use were advertised in The Enterprise on November 25, 2009 and December 2, 2009.

Ms. Chaillet read the staff report which recommended approval of the conditional use to construct a commercial communication tower. The staff report dated November 30, 2009 was submitted for the record, *hereby labeled as Exhibit 3 by the Recording Secretary and including Attachments 1-6*.

Attorney Steve Resnic representing Verizon Wireless for the proposed monopole explained this site is very unique considering it is 115 acres in size and has a considerable amount of buffering. Mr. Resnic stated the monopole will be under 200 feet therefore it will not be lighted however it will serve five (5) users as well as Metcom. Mr. Resnic submitted the following items for the record, *hereby labeled as follows by the Recording Secretary*.

- Exhibit 4 – Visual Impact Study
- Exhibit 5 – Letter from Millennium Engineering dated 12-8-09 Re: RF Safety FCC Compliance
- Exhibit 6 – Statement of Use dated 11-1-09
- Exhibit 7 – Explanation of Site Placement and Alternative Sites
- Exhibit 8 – Reduced version of the Site Plan
- Exhibit 9 – Email from Barb Pivec to Robert Fehn dated 10-02-09
- Exhibit 10 – National Environmental Policy Act (NEPA) Evaluation dated 3-24-08
- Exhibit 11 – Letter from Network Building & Consultation, LLC to Yvonne Chaillet dated 10-24-09
- Exhibit 12 – Letter from Verizon Wireless to Yvonne Chaillet dated 6-30-09 Re: Interference Issue
- Exhibit 13 – Design Criteria from Joseph Joyce dated 10-28-09
- Exhibit 14 – Report of Phase 1 Environmental Site Assessment dated 1-2-08
- Exhibit 15 – Wetland Delineation Report dated 6-10-08
- Exhibit 16 – Email from Barb Pivec to Steve Schmidt dated 12-9-09
- Exhibit 17 – Specifications for Equipment Shelter
- Exhibit 18 – Dimensional Layout for Generator

Exhibit 19 – Section 106 Submission Packet dated 1-30-08
Exhibit 20 – Metcom Wireless Tower Site Lease Agreement dated 6-12-08
Exhibit 21 – Deed for the Property to Metcom
Exhibit 22 – Special Power of Attorney dated 6-29-09
Exhibit 23 – Critical Area Maps
Exhibit 24 – Soils Map of Breton Bay Facility
Exhibit 25 – Letter from Network Building & Consulting to Yvonne Chaillet dated 6-24-09
Exhibit 26 – Map of Target Area of Service Needs
Exhibit 27 – Map
Exhibit 28 – Map of services after the monopole is constructed
Exhibit 29 – Site maps X2
Exhibit 30 – Aerial photo of the 115 acre site

Ms. Pivec gave testimony utilizing Exhibits 26, 27, 28, and 29. Ms. Pivec explained existing services and the need to expand coverage in certain areas.

Mr. Miedzinski asked where the monitoring station would be located. Mr. Jose Espenio stated the local switching station is in Woodlawn, Maryland. Mr. Espenio stated there are two national centers, one in Texas and one in New Jersey. Mr. Espenio gave testimony referencing Exhibits 26, 27 and 28. Mr. Edmonds asked why this proposed tower would not cover the white area to the north of the site. Mr. Espenio stated there are topographical issues in this area. Mr. Miedzinski asked why propane was chosen for this site. Ms. Pivec stated Verizon Wireless prefers to use propane within 300 feet of any environmentally sensitive area and there are wetland conservation easements on this property however the monopole will not be within 300 feet. Ms. Pivec testified the conditions recommended in the staff report have already been addressed by Verizon Wireless.

Mr. Paul Dugan testified referencing Exhibit 5 in regards to the RF Safety and FCC Compliance standards stating this monopole will be well within the limits.

Mr. William Turner, Real Estate Appraiser submitted the following photos for the record, hereby labeled as follows by the Recording Secretary.

Exhibit 31 – Photo with partial Breton Bay sign
Exhibit 32 – Photo of electrical poles
Exhibit 33 – Photo of monopole behind a white house with green shutters
Exhibit 34 – Photo of monopole behind four houses
Exhibit 35 – Photo of monopole and Pilkerton sign
Exhibit 36 – Photo of monopole next to unfinished house
Exhibit 37 – Photo with white picket fence
Exhibit 38 – Photo of monopole behind trees
Exhibit 39 – Map showing the Helen, Bushwood, and Avenue Tower Sites

Mr. Turner gave a brief overview of his appraisal utilizing the above stated Exhibits stating in his opinion surrounding properties would not be affected by the monopole being constructed. Mr. Turner submitted his report dated 12-10-09 for the record, *hereby labeled as Exhibit 40 by the Recording Secretary.*

Mr. Chet Frederick testified on behalf of Metcom stating they are in full support of the monopole being constructed on the Metcom Treatment Plant site in Breton Bay.

Mr. Thompson opened the hearing for public comment.

Mike Hawes

Mr. Hawes stated he owns property to the south of the proposed site. Mr. Hawes stated he is concerned with the safety aspect considering the elevations of some of the houses on the hill

which will receive the full effects of the RF radiation. Mr. Hawes stated he agrees we do need service in this area however he questions weather or not this is actually a good site for this monopole. Mr. Resnic rebutted stating the RF radiation standards have not only been met but also exceeded.

Katherine Powell representing the Breton Bay Civic Association

Ms. Powell stated the owners of the property at the top of the hill were among the 775 residents of Breton Bay who have requested this tower. Ms. Powell gave an overview of the process the Breton Bay community went through to get to this point. Ms. Powell submitted the following items during her testimony for the record, hereby labeled as follows by the Recording Secretary.

PT Exhibit 1 – Petition in favor of the tower with 750 signatures

PT Exhibit 2 – Summer 2007 Breton Bay “Spirit”

PT Exhibit 3 – Sample complaint letter

PT Exhibit 4 – 115 Signed Complaint Letters

PT Exhibit 5 – Fall 2007 Breton Bay “Spirit”

PT Exhibit 6 – County Times 12-20-07 Article on “Breton Bay Cell Site”

PT Exhibit 7 – Spring 2008 Breton Bay “Spirit”

PT Exhibit 8 – Breton Bay Public Hearing Notice of 12-10-09

PT Exhibit 9 - List of Katherine Powell Exhibits

Henry Camaoni

Mr. Camaoni asked what this tower will look like. Ms. Pivec stated this is a single pole to be constructed at 195 feet and will be a blue grey pole to help blend in with the background. Ms. Pivec stated the antennas are either white or grey. Mr. Camaoni stated he does not feel that if a better site existed it would not be evaluated due to the County working with Metcom and Verizon. Mr. Camaoni stated one of the properties closer to the road and further away from the water would have been a better choice. Mr. Camaoni asked that another portion of the Metcom property be evaluated for this monopole. Mr. Camaoni clarified the distance of the property line at 250 feet and the closest house at 2,000 feet. Mr. Camaoni submitted 8 photos of the second Metcom property at the Golf Course for the record, *hereby labeled as Exhibit 10 by the Recording Secretary*. Mr. Camaoni stated the proposed property has several easements which should warrant concerns. Mr. Camaoni asked if each user would have to come back for approval. Mr. Thompson stated they would be allowed up to five carries on this size monopole.

Mr. Camaoni stated he is concerned as to why EEE Consulting is still being used by the County. Mr. Thompson recommended Mr. Camaoni discuss this with the County Commissioners. Mr. Camaoni asked to submit for the record information on EEE Consulting. Mr. Resnic objected to the submittal of the information to the record. Mr. Thompson stated he does not feel the Board needs to review this information. Mr. Sparling asked that the Recording Secretary mark the information as an Exhibit to be included in the record but not received. *The Recording Secretary labeled the EEE Consulting letter dated 7-20-06 as a non-received Exhibit A.*

James Detrick

Mr. Detrick stated he would be more comfortable if the real estate appraiser actually lived in the neighborhood. Mr. Detrick stated he does not carry cell phone and he would like to keep the value of his home the way it is. Mr. Detrick stated he is bothered that he is getting nothing in return for an eyesore in his back yard.

Rick Quigg

Mr. Quigg stated he is in full support of the proposed tower. Mr. Quigg stated having kids with cell phones it will be nice to have the additional coverage.

Kerry Klear

Mr. Klear stated he is not here to testify whether or not this is the right site but to testify how badly the additional coverage is needed. Mr. Klear stated he is a volunteer fire fighter for many years and from a safety standpoint can honestly say the tower is needed for safety purposes.

Chairman Thompson closed the public hearing to public comment.

Mr. Resnic stated from listening to the testimony it is clear a tower is needed in this area of the County. Mr. Resnic stated the applicants have followed each of the Zoning Ordinance regulations.

Mr. Edmonds made a motion to accept the staff report and Ms. Neale seconded. The motion passed by a 5-0 vote.

The Board discussed the recommended conditions for approval within the accepted staff report. Mr. Frederick of Metcom and Mr. Resnic, Attorney for Verizon agreed to the conditions with amendments.

Ms. Neale made a motion in the matter of CUAP #09-135-003, Verizon Wireless Telecommunication Tower, having made a finding that the standards for granting a conditional use and the objectives of Section 51.3.89 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to construct a 195-foot monopole cellular tower, subject to the following conditions:

- 1. The Applicant shall secure an easement from the owner of the Property to preserve the existing forested buffer on the Property for the duration of the conditional use. This easement shall be submitted to the County Attorneys Office for review.***
- 2. The existing forested buffer is cleared, thus exposing the lease area; the Applicant shall plant two rows of fast-growing evergreen species around the perimeter of the lease area.***
- 3. Current contact information shall be prominently displayed on the fence enclosing the tower site.***
- 4. No signals, lights, or illumination shall be permitted on the tower unless required by the Federal Communications Commissions, the Federal Aviation Administration, or the County.***
- 5. No commercial advertising or other signage shall be permitted on the tower.***
- 6. All obsolete or unused facilities, including buildings, towers, and all other improvements associated with the tower, shall automatically be deemed abandoned upon 24 months of continuous cessation of operations and shall be removed at such time at no cost to the County. The Applicant shall provide a bond, letter of credit, or other appropriate surety at time of approval as approved by the County to cover the cost for demolition of the facility and site restoration.***
- 7. A structural analysis of the tower and building specifications for the tower shall be provided to the County at the time of building permit application.***
- 8. The Applicant shall provide a statement signed by a licensed RF Engineer certifying that site-specific electromagnetic radiation emissions levels for the proposed equipment do not exceed the radio frequency limits specified by the FCC.***
- 9. All conditions approved by the Board of Appeals shall be noted on the final site plan.***

Mr. Miedzinski seconded the motion and passed by a 5-0 vote.

Mr. Edmonds made a motion to accept the staff report and Ms. Neale seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of November 19, 2009 were approved as recorded.

The Board authorized the Chair to review and sign the following orders:

None

ADJOURNMENT

The meeting was adjourned at 9:15 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: February 1, 2010

Howard Thompson
Chairman