

## ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Telecom Capital Group, Inc., 17750  
Piney Point Road, Piney Point, Maryland

Case No. CUAP #12-135-001

**DECISION AND ORDER****Introduction**

Telecom Capital Group, Inc. (hereinafter "Applicant") filed an application for a conditional use permit pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 17750 Piney Point Road, Piney Point, Maryland (hereinafter the "Property"). The application seeks a permit to construct a commercial communications tower.

After due notice, a public hearing was commenced at 6:30 p.m. on March 13, 2014, and continued on April 10, 2014, and May 8, 2014 at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

**Legal Standard**

The Board shall not approve a conditional use unless it finds, based on the evidence, that:

1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or general welfare;
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
6. Adequate measures have been or will be taken to provide ingress and egress following  
A design that minimizes traffic congestion in the public streets;
7. The proposed conditional use is not contrary to the goals, objectives, and policies of the Comprehensive Plan; and
8. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in Chapter 51.

**Findings of Fact**

1. There is a gap in the coverage provided by existing towers in the geographic area to be served by the proposed tower.
2. The proposed tower would provide coverage in the geographic area for which coverage is not provided by existing towers.
3. The RF Report containing the information required by Article 5, Section 91.b.(1) (a) through 91.b.(1)(d) of the St. Mary's Comprehensive Zoning Ordinance was submitted by the Applicant.
4. A detailed engineering analysis of the proposed new tower which included a summary of the proposed tower's capacity to provide space for future co-location by others was provided.
5. The specific type of tower to be constructed and the proposed materials to be used in the construction of the tower was identified.
6. The design of the proposed tower has been sealed by a licensed engineer licensed to practice in the State of Maryland.
7. All noise, odor and other potential nuisance producing facilities, appurtenances and/or outbuildings, or the like, that are associated with the proposed use were identified.
8. The maximum number of antennae and co-location spaces that can safely be placed on the tower were identified. An engineering statement was submitted that the proposed tower can accommodate a minimum of three (3) users.
9. An elevation drawing depicting the tower at its proposed height with all the planned antennae shown was submitted.
10. A visual impact study, which included photo-simulations, and the results of a balloon test were submitted. No sites of significant public interest were located within two miles of the proposed tower site.
11. An engineering statement prepared by a licensed professional engineer certifying the proposed facility will meet or exceed all regulatory emission standards established by the FCC and which identified the predicted exposure for the specific equipment proposed along with the allowable federal limit of exposure was provided.
12. An engineering statement prepared by a licensed professional engineer describing the contained fall design of the tower in the event of a structural failure was provided.
13. Evidence that at least one telecommunications carrier has agreed to locate antennae on the tower was provided.
14. A plan that described company plans for new towers or antenna placements within the County during the next two (2) years was submitted. The plan included propagation maps that depicted existing and proposed sites and described the anticipated timing for proposed sites.
15. Co-location on existing commercial towers, public safety towers, or other appropriate structures is not feasible.
16. No existing or proposed tower can be structurally modified to meet the applicant's needs.

17. The proposed site results in fewer or less severe impacts than any feasible alternative site.
18. Co-location is not possible as existing, approved towers or towers proposed to be constructed will not provide reasonable signal coverage that is appropriate for St. Mary's County.
19. The tower is being constructed at the minimum height to obtain reasonable signal coverage that is appropriate for St. Mary's County.
20. The site is large enough to accommodate the tower and all related structures, equipment and appurtenances.
21. The concept site plan depicts the tower site, the location of all structures, equipment and appurtenances to be installed with the tower, all existing tree buffers on the subject property, all adjoining properties, means of ingress/egress and all required setback lines.
22. The required setbacks have been met.
23. No construction is being done within the Critical Areas.

**Conclusions of Law**

The gap in coverage necessitates additional facilities. The proposed tower does not present issues of adequate public facilities, traffic or public safety. There was no expert testimony that the proposed tower would substantially diminish or impair property values within the neighborhood. There is no practical alternative site on which to locate facilities to remediate the gap in coverage. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location.

Based on the evidence set forth in the Findings of Fact, the proposed tower meets the general standards for a conditional use and the specific standards set forth in §51.3.90 and §51.3.91 of the Ordinance, subject to the conditions set forth below.

**ORDER**

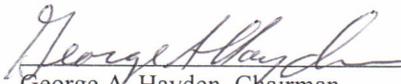
**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that the standards for a conditional use and the objectives of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, a conditional use to construct the proposed commercial communications tower on the Property is ***approved, subject to the following conditions:***

1. The tower shall be constructed so as to provide adequate capacity for future co-location of other commercial and/or government-operated antennae. The system design plan shall delineate areas near the base of the tower to be used for the placement of additional equipment buildings for other users.
2. No signals, lights or illumination shall be permitted on the tower unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.
3. No commercial advertising or other signage shall be permitted on the tower.

4. 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 without 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.
5. The tower enclosure shall be buffered from adjoining properties with at least two rows of fast growing evergreen species such as red cedar or Leyland cypress. Applicant will install an architectural fence, eight (8) feet in height, around the tower enclosure.
6. Applicant will require any end user who installs a backup generator on site to utilize an Enclosure Level 3 to mitigate impacts from the noise of the operation of the generator.
7. Contact information shall be prominently displayed on the fence enclosing each facility. This information shall be current and shall identify the company name, responsible individual, and phone number for the contact person.
8. The tower shall receive final approval from the Federal Communications Commission under the National Environmental Policy Act of 1969, and applicable Federal Communication Commission regulations and standards through the Office of Engineering and Technology as required by federal law prior to construction of the tower.
9. Final site plan approval is required.

Decision Date: August 14, 2014

Date Signed: August 27, 2014

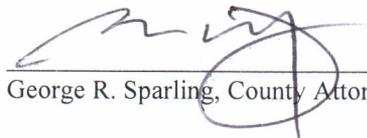
  
George A. Hayden, Chairman

Those voting to approve the conditional use:

Mr. Hayden, Mr. Guy, Mr. Greene, Mr. Payne and Mr. Brown

Those voting to deny the conditional use:

Approved as to form and legal sufficiency:

  
George R. Sparling, County Attorney