

**ST. MARY'S COUNTY BOARD OF APPEALS**

In the Matter of Telecom Capital Group, Outparcel  
A, "Fenhagen Property Farmstead 1 & Outparcel A",  
St. Inigoes, Maryland

Case No. CUAP #14-135-003

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

Telecom Capital Group (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 described as Outparcel A, "Fenhagen Property Farmstead 1 & Outparcel A", St. Inigoes, Maryland, per plat recorded among the Land Records of St. Mary's County, Maryland in Book No. 57, Page 3, (hereinafter the "Property"). The application seeks a permit to construct a commercial communications tower.

After due notice, a public hearing was held at 6:30 p.m. on March 12, 2015, 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**

The Property is an unimproved outparcel. The Applicant proposes to construct a monopole commercial communication tower at an elevation of 148 feet above ground level. The tower will be constructed outside the Critical Area within a gravel lease area measuring 100 feet by 100 feet or 10,000 square feet. The lease area will be

enclosed by a 10-foot high, chain link fence and will be surrounded by the existing woods except for that portion of the site which will be cleared for the lease area and for access. The tower's design and structural capacity will support five service providers. The Applicant plans to construct a 10-foot wide gravel drive over an existing farm road to provide access from Jutland Road to the tower site. An average of one visit every one to two month may occur after construction has been completed. The tower will be located approximately 250 feet from the property lines on the north and west sides of the Property and approximately 270 feet from the paved surface of Jutland Road. The closest structure is a barn located about 990 feet from the Tower and the nearest residence is more than 1,100 feet away.

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. 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.
11. Evidence that at least one telecommunications carrier has agreed to locate antennae on the tower was provided.
12. Co-location on existing commercial towers, public safety towers, or other appropriate structures is not feasible.
13. The proposed site results in fewer or less severe impacts than any feasible alternative site.
14. The tower is being constructed at the minimum height to obtain reasonable signal coverage.
15. The site is large enough to accommodate the tower and all related structures, equipment and appurtenances.
16. 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.

17. The required setbacks have been met.
18. 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 evidence 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 §51.3.91 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. 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.
6. Final site plan approval is required.

Date: April 9, 2015

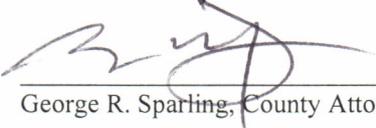
  
George A. Hayden, Chairman

Those voting to approve the conditional use:

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

Those voting to deny the conditional use:

Approved as to form and legal sufficiency:

  
George R. Sparling, County Attorney