

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Tuesday, November 17, 1998

7:00 P.M. Special Session

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman MaryAnn E. Black, Vice-Chairman Ellen W. Reckhow, and Commissioners William V. Bell, Joe W. Bowser, and Becky M. Heron

Absent: None

Presider: Chairman Black

Opening of Special Session

Chairman Black called the Special Session to order with the Pledge of Allegiance.

Case M98-1 Gearon Communications: Major Special Use Permit for a 280-Foot Lattice Telecommunications Tower, Equipment Building, and Five Co-Location Sites Within a 100-Foot by 100-Foot (10,000-Square-Foot) Lease Parcel

Gearon Communications requested the granting of a Major Special Use Permit for a 280-foot lattice telecommunications tower, equipment building, and five co-location sites within a 100-foot by 100-foot (10,000-square-foot) lease parcel.

The site is located on the north side of Old Hope Valley Road and the Durham/Chatham County line, east of Farrington Mill Road, and west of Kennebac Drive. Tax Map 496-5-15. Hold the public hearing and evaluate the evidence presented. Planning staff will make a recommendation after the hearing of this case.

After the hearing, one of these two motions is in order:

Motion A: (Approval with or Without Conditions) - To direct the Planning Director to prepare a decision granting with conditions the use permit in Case M98-1. (The Commissioners should identify any conditions they wish to incorporate into their approval. Staff will prepare the decision for Board's next meeting for action).

Motion B: (Disapproval) - To direct the Planning Director to prepare a decision denying the use permit in Case M98-1. (The Commissioners should identify the findings they are unable to make so these can be incorporated into the decision. Staff will prepare the decision for Board's next meeting for action).

County Manager's Recommendation: Hold the public hearing and evaluate the evidence presented.

Chairman Black said "the hearing on this matter is judicial in nature and will be conducted in accordance with special due process safeguards. All persons who wish to testify in this case should have signed up on the special sheet for this hearing at the Clerk's station. If you wish to speak, please go now to the Clerk's station to be sworn in or to give your affirmation. If you have not signed up and wish to speak, please sign up now and participate in the swearing in. After the swearing in, you may return to your seat. Swearing in occurs en masse."

The Clerk to the Board administered the oath to everyone who wished to speak.

Chairman Black asked Board members if they had conflicts regarding this item. No one had a conflict.

Chairman Black asked Board members “who have any information or special knowledge about the case that may not come out at the hearing tonight to please describe that information for the record so that interested parties will know and can respond.”

The Board members had received no information or special knowledge.

Chairman Black said, “In this hearing, we will first hear from Planning staff and other County witnesses, then from the applicants and their witnesses, and then from opponents to the request. Parties may cross-examine a witness after the witness testifies when questions are called for. If you want the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client’s case. Before you begin your testimony, please clearly identify yourself for the record.”

Chairman Black opened the hearing on Case M98-1 and asked for testimony from County staff.

The quasi-judicial public hearing was properly advertised.

Helen Youngblood, Senior Planner, City-County Planning Department, stated that Steve Medlin, Senior Planner, would present the case. She reiterated that a specific format must be followed in this quasi-judicial hearing.

Mr. Medlin presented the case. Specific information follows:

MAJOR SPECIAL USE PERMIT

1. Case Number: M98-1
2. Applicant: Gearon Communications
Carolyn Briggs
3016 Hillsborough Street, Suite 201
Raleigh, NC 27607
(919) 833-2301
3. Owner: Virginia Crane
3929 Bristol Road
Durham, NC 27707
(919) 489-3131
4. Location: A 35+/- acre tract located on the north side of Old Hope Valley Farm Road and the Durham/Chatham County line, east of Farrington Mill Road, and west of Kennebac Drive.
Tax Map 496-05-015
5. Zone: RD (Rural District) and F/J-A (Falls/Jordan Watershed Protection District)
6. Type of Request: A Major Special Use Permit for a tower for transmitting and receiving electronic signals.
7. Proposed Use: A 280’ lattice telecommunications tower, equipment building, and five co-location sites within a 100-foot by 100-foot (10,000-square-foot) lease parcel.
8. Present Use: Single-family residence located on northern end and manufactured home located on southern end of tract with the residual portion of the tract having been timbered recently.
9. Surrounding Zones: North RD, F/J-A, F/J-B
East RD, F/J-A, F/J-B
South R-1 (Chatham County Zoning)
West RD, F/J-A, F/J-B
10. Surrounding Uses: North Single-Family Residential, Vacant

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East Single-Family Residential, Vacant
South Single-Family Residential, Vacant
West Single-Family Residential, Vacant

11. Governing Ordinance Sections:	<u>Section:</u>	<u>Pages:</u>
	4A.1.4.9	4A.1-2
	7.39	7-22 through 26
	13.2	13-2 through 3

12. Access: Access to the proposed tower site is from Farrington Mill Road and Old Hope Valley Farm Road by an approximate 900-foot-long, 20-foot-wide driveway easement.

The tower must have safety lighting (flashing strobe lights at the top).

A Class 5, 85-foot-wide buffer is required. The site is located in the center of the recently timbered area. All setback requirements have been met. Downs Subdivision is 280+ feet from the site.

Mr. Medlin requested that the staff report (Exhibit 1) be entered into the record as evidence.

Vice-Chairman Reckhow asked about a mobile home situated (possibly) in the fall zone.

Chairman Black asked if the proponents had any questions of staff. There were none.

Chairman Black asked if there were questions from the opponents. There were none.

The Chairman asked for a presentation from the applicant and proponents. "An attorney or others who wish to give a general summary should go first. Please give your name and whom you are representing. Other witnesses will be permitted to speak."

Attorney Travis Porter was representing the American Tower Corporation, Gearon Communications, and BellSouth Corporation. His presentation comprised information about the project, including the tower and site location. Several of his remarks reiterated staff comments.

Carolyn Briggs, representing Gearon Communications, a division of American Tower System, LP, presented a visual exhibits presentation that included a visual study: balloon test with corresponding street maps, propagation maps, a coverage area analysis, and a zoning map.

Vice-Chairman Reckhow asked Ms. Briggs several questions. Ms. Briggs responded.

Attorney Porter asked that the document entitled "Visual Exhibits" (Exhibit 2) be entered into the record as evidence.

Graham B. Herring, Real Estate Broker, was present to testify regarding property values and other real property issues. He requested his report entitled "Impact Investigation" (Exhibit 3) be entered into the record as evidence. He gave a brief summary of the report.

The Commissioners had no questions about property values.

Chairman Black asked if opponents had questions. The questions follow:

Elizabeth K. Moore, 109 Lariat Lane--Lot 5a, Chapel Hill, asked if any efforts had been made for co-locators on the tower.

Daniel Tilley, Zoning Representative for BellSouth, said this tower is equipped for co-locators.

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Ms. Moore asked several questions about the proposed tower project. The proponents' expert staff responded.

Richard A. Mansmann, 8809 Farrington Mill Road, Chapel Hill, asked a question about the balloon experiment.

Ms. Briggs responded to the question.

Chuck Dorsie, 111 Lariat Lane, Chapel Hill, stated he objects to the tower location.

The Commissioners asked questions of Mr. Dorsie.

Proponents were given an opportunity to ask questions of Mr. Dorsie.

Ms. Moore presented pictures taken around her home. She requested the photograph book (Exhibit 4) be placed in the record as evidence. Ms. Moore is a co-organizer of Neighbors Against the Tower. She presented a document requesting denial or delay of major special use permits for towers transmitting and receiving signals with a height greater than 200 feet. She requested the document (Exhibit 5) be entered into the record as evidence.

Ms. Moore and members of her group gave reasons for the denial or delay request.

The Commissioners were given an opportunity to ask Ms. Moore questions.

Attorney Porter stated that the strobe lights would not interfere with star gazing. He asked Ms. Moore several questions regarding Exhibit 5.

Linda Bailey Mansmann, 8809 Farrington Mill Road, Chapel Hill, referred to the inaccuracy of the area map and the improper notification process. Of the 11 citizens who received notices, only six are area residents. She requested that the decision be postponed until more information could be obtained.

Richard A. Kunst, 109 Lariat Lane, Chapel Hill, spoke of his concerns regarding an alternative power source, such as a generator using diesel fuel. No large buffer of pine trees surrounds his home. The view is directed to the tower site.

Mr. Mansmann spoke about the lake and dam and the 4 or 5 acres of timber that was cut over the past two months.

Attorney Porter asked Mr. Mansmann questions about toxic materials on the site and the requirements to report it to proper authorities.

Mr. Porter was given permission for rebuttal. He asked Mr. Tilley to speak about environmental issues.

Mr. Tilley stated that, according to the Fish and Wildlife Administration, requirements for nesting have been met. This site has been cleared; nothing within the immediate area will be affected. Soil tests have been completed; the soil is suitable for construction. The company always strives to co-locate on towers whenever objectives established by the company can be met. This tower does not meet the requirements.

Mr. Porter said the applicant has carried the burden under the ordinance. The opponents have not proven that the applicant failed to meet the conditions. For denial, opponents must offer admissible, material, relevant, or substantial evidence.

Mr. Herring answered Commissioner Bowser's questions about the trees.

Mr. Tilley answered questions from Vice-Chairman Reckhow about the plantings relative to height.

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Commissioner Bell asked questions about the strobe lighting.

Mr. Porter and Mr. Tilley responded to the questions.

Commissioner Bell asked Ken Carter, Site Acquisition Manager, about the lease term.

Mr. Carter stated the 50-year lease can be terminated and the tower removed when Gearon Communications or the tenants have no need for the tower.

In response to Commissioner Bell's question about generators, Mr. Carter said generators would be placed on the site during an emergency.

The Commissioners asked proponents several questions. Proponents' staff responded.

Chairman Black asked staff to make comments and address questions.

Ms. Youngblood explained notification procedures to the Commissioners. She also discussed the timbering activities. Planning staff's legal requirements have been met concerning the major use permit.

Vice-Chairman Reckhow asked questions about the landscape plan.

Mr. Medlin responded to the question about the use of diesel-operated emergency generators.

Commissioner Bell asked questions about the lease agreement relative to the property owner's rights. Could the tower be sold to another party without implications on the lease?

Mr. Carter responded to questions about the lease agreement.

Commissioner Bell requested a copy of the lease.

Mr. Medlin answered Commissioner Bell's question about item No. 8, Exhibit 5.

Chairman Black asked Planning staff to make its recommendation.

Mr. Medlin responded that staff is recommending approval of this tower based on the information presented by the applicant.

Staff requested the following conditions be attached to the permit:

1. Buffer be increased in terms of type and size of materials, and an eight-foot berm be established around three sides (north, east, south) of the site;
2. No strobe lighting be permitted on the site. Lighting has to be as indicated by the applicant as part of the record;
3. All existing vegetation be protected. No additional trees can be cut;
4. The applicant develop the approved use in conformity with a site plan, and any amendment to such plan must be submitted to and approved by the County within 12 months of the date of this decision, and such site plan and amendment, if any, must become a part of this special use permit.
5. The Special Use Permit for the tower shall expire unless documentation, including but not limited to an FCC license, is submitted each January to the Development Review Board (DRB) demonstrating that the tower is being utilized.
6. Should the tower not be used or maintained for a period of six months or more, the owner shall remove it within 90 days.
7. Proper legal provisions be made for the protection and maintenance of the Class 5 buffer area for the life of the tower.

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8. Prior to issuance of a building permit, the applicant shall be required to submit documentation from the FAA that any lighting is the minimum lighting required by the FAA.
9. Prior to the issuance of any permits or the beginning of any site work, appropriate tree protection measures be installed and inspected by the Durham City-County Planning Department.
10. The applicant be required to provide the Planning Department documentation of all complaints.

Vice-Chairman Reckhow requested detailed information concerning the landscape plan.

Mr. Porter said Gearon Communications would comply with staff recommendations.

Attorney Chuck Kitchen said the following actions may be taken:

1. Deny the major special use permit (state reasons for denial);
2. Grant with or without conditions recommended by the Planning staff or with the other modified conditions;
3. Indicate approval of the major special use permit, list relevant conditions, and continue the public hearing until a future Commissioner meeting. Bring back specific conditions for the Board's review before a vote is taken.

Commissioner Bell moved, seconded by Vice-Chairman Reckhow, to approve the proposal based on the third action recommended by the County Attorney.

The Commissioners discussed the motion in detail.

Chairman Black said the motion is on the floor and has been seconded. An addendum was to be prepared regarding strobe lights, diesel generators, the lease, the landscape plan, and Exhibit 5, Item 8.

The motion carried unanimously.

Chairman Black stated this item would come back to the Board on December 14, 1998. The lease must be made available to the Board. Residents can contact Planning staff regarding other information.

Case M98-2 Gearon Communications: Major Special Use Permit for a 300-Foot Lattice Telecommunications Tower, Equipment Building, and Five Co-Location Sites Within a 100-Foot by 100-Foot (10,000-Square-Foot) Lease Parcel

Gearon Communications requested the granting of a Major Special Use Permit for a 300-foot lattice telecommunications tower, equipment building, and five co-location sites within a 100-foot by 100-foot (10,000-square-foot) lease parcel.

The site is located on the east side of Moores Mill Road and US 501, south of Hill Forest Road (State Forest Road), and north of Quail Roost Road. Tax Map 913-1-2. Hold the public hearing and evaluate the evidence presented. Planning staff will make a recommendation after the hearing of this case.

After the hearing, one of these two motions is in order:

Motion A: (Approval with or Without Conditions) - To direct the Planning Director to prepare a decision granting with conditions the use permit in Case M98-2. (The Commissioners should identify any conditions they wish to incorporate into their approval. Staff will prepare the decision for Board's next meeting for action).

Motion B: (Disapproval) - To direct the Planning Director to prepare a decision denying the use permit in Case M98-2. (The Commissioners should identify the findings they are unable to

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make so these can be incorporated into the decision. Staff will prepare the decision for Board's next meeting for action).

County Manager's Recommendation: Hold the public hearing and evaluate the evidence presented.

Chairman Black said "the hearing on this matter is judicial in nature and will be conducted in accordance with special due process safeguards. All persons who wish to testify in this case should have signed up on the special sheet for this hearing at the Clerk's station. If you wish to speak, please go now to the Clerk's station to be sworn in or to give your affirmation. If you have not signed up and wish to speak, please sign up now and participate in the swearing in. After the swearing in, you may return to your seat. Swearing in occurs en masse."

The Clerk to the Board administered the oath to everyone who wished to speak.

Chairman Black asked Board members if they had conflicts regarding this item. No one had a conflict.

Chairman Black asked Board members "who have any information or special knowledge about the case that may not come out at the hearing tonight to please describe that information for the record so that interested parties will know and can respond."

The Board members had received no information or special knowledge.

Chairman Black said, "In this hearing, we will first hear from the Planning staff and other County witnesses, then from the applicants and their witnesses, and then from opponents to the request. Parties may cross-examine a witness after the witness testifies when questions are called for. If you want the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record."

Chairman Black opened the hearing on Case M98-2 and asked for testimony from County staff.

The quasi-judicial public hearing was properly advertised.

Steve Medlin, Senior Planner, City-County Planning Department, presented the case. Specific information follows:

MAJOR SPECIAL USE PERMIT

1. Case Number: M98-2
2. Applicant: Gearon Communications
Carolyn Briggs
3016 Hillsborough Street, Suite 201
Raleigh, NC 27607
(919) 833-2301
3. Owner: William and Blanche McFarland
1403 Moores Mill Road
Rougemont, NC 27572
(919) 489-3131
4. Location: A 780+/- acre tract located on the east side of Moores Mill Road and US 501, south of Hill Forest Road (State Forest Road), and north of Quail Roost Road. Tax Map 913-01-002
5. Zone: RD (Rural District) and M/LR-A (Lake Michie/Little River Reservoir Watershed Protection District)

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6. Type of request: A Major Special Use Permit for a tower for transmitting and receiving electronic signals.
7. Proposed Use: A 300' lattice telecommunications tower, equipment building, and five co-location sites within a 100-foot by 100-foot (10,000-square-foot) lease parcel.
8. Present Use: Single-family residence and farm
9. Surrounding Zones: North RD, M/LR-B
East RD, M/LR-A
South RD, R-20, M/LR-A
West RD, R-20, M/LR-B
10. Surrounding Uses: North Single-Family Residential, Vacant, Farm
East Single-Family Residential, Vacant, Farm
South Single-Family Residential, Vacant, Farm
West Single-Family Residential, Vacant
11. Governing Ordinance Sections:

<u>Section:</u>	<u>Pages:</u>
4A.1.4.9	4A.1-2
7.39	7-22 through 26
13.2	13-2 through 3
12. Access: Access to the proposed tower site is from Moores Mill by an approximate 2,160-foot-long, 20-foot-wide driveway easement.

Lighting shall not exceed the Federal Aviation Administration (FAA) minimum, if the FAA requires lighting. The lights shall be oriented so as not to project directly onto surrounding residential property, consistent with FAA requirements. Prior to issuance of a building permit, the applicant shall be required to submit documentation from the FAA that the lighting is the minimum lighting required by the FAA.

Safety lighting must be installed on the top of the tower because of its 300' height. The lighting will consist of medium intensity, dual mode, flashing strobe lights. A white light will flash during the day and a red light at night.

The proposed tower meets or exceeds the required setback of 300' from all property lines. To meet buffering requirements, the applicant proposes utilizing a combination of a Class 5, 80-foot wide buffer and retention of the existing forested area.

Buffers: the base of the tower, any guy wires, and any associated structures, walls, or fences shall be surrounded by a landscape buffer equivalent to Buffer Intensity Class 3 (except for towers in the RD and R-20 district which are required to provide a forested area with a depth of 100 feet or a Class 5 buffer). The site developer has the options of:

- a) providing the landscape buffer around the tower base and associated items individually; or
- b) providing a buffer around the perimeter of the entire site.

This site is located along one of the 44 designated NCDOT Scenic Byways within the state. This byway is called the "North Carolina Country Byway" and was officially designated by the NCDOT Board of Transportation in June of 1997. The Scenic Byways are selected based on natural, cultural, and historic features along the route. Most have little or no development along the routes, which detracts from the natural character and quality of the byway. The Scenic Byways program allows visitors and residents a chance to experience a bit of North Carolina history, geography, and culture while raising awareness for the protection and preservation of these natural resources.

Service Entrances and Areas: Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.

No service areas are proposed. Refuse generation and collection, while anticipated to be limited, will be the responsibility of the service personnel.

Utilities: Location and availability of utilities.

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The site will have neither well nor septic system since it is an unstaffed facility. Electrical and telephone services will be extended to the site and located within the proposed access easement.

The tower site is to be accessed by a single 20-foot-wide driveway easement from Moores Mill Road. The driveway has been designed to allow for emergency service vehicle access and will include the required turn-around areas.

The applicant proposes to meet buffering requirements with a combination of Class 5 buffer and retention of a 100-foot forested area to be protected by fencing during the construction of the tower and compound. The tree protection fencing must be in place prior to the beginning of any site work.

Mr. Medlin requested that the staff report (Exhibit 1) be entered into the record as evidence.

Chairman Black asked for questions from the Commissioners.

The Commissioners asked several questions to which Mr. Medlin responded.

County Attorney Kitchen also responded to the questions.

Travis Porter, the proponent's attorney, stated he was representing American Tower Corporation, Gearon Communications, and their client BellSouth concerning case M98-2. He did not wish to cross-examination staff.

Mr. Porter said that American Telephone and Telegraph (AT&T), as well as BellSouth, has expressed a need in this area.

Mr. Porter commented that his client has the initial burden of showing compliance with the Commissioners' ordinance and the conditions. The majority of that burden has been accomplished through exhibits filed with the application. Remaining issues will be addressed by testimony tonight. When this is accomplished, we will have a case for entitlement to a permit because under case law, the tower is in accord with the purpose and intent of the ordinance and is in harmony with all the uses permitted in the district. Any citizen seeking denial has the legal right to show, by competent material or substantial evidence, that we have not met the conditions. As required by law, citizens of the area have been notified. Everyone was invited to community meetings. Emergency providers have stated that cell coverage is presently inadequate in this rural area. This is a multiple use tower and will serve five carriers. Large, tall, mature trees surround the site.

Ken Carter, Site Acquisition Manager, American Tower Association, talked about property ownership and the acreage needed for the tower. He showed the Commissioners visual area exhibits. The site meets all the requirements of the ordinance. It is removed from adjacent properties. This tower will enhance the health and safety of the public by providing better communications for caregivers. The Durham County Office of the Sheriff and the Bahama Volunteer Fire Department support the tower location. The use is in harmony with the area. It is not injurious to property values. Mr. Porter requested that visual exhibits (Exhibit 2) be placed in the record as evidence.

Graham B. Herring, Real Estate Broker, testified regarding property values and real property issues. Mr. Herring said the tower would cause no significant negative impact on residential property. He requested that his report entitled "Impact Investigation" be put in the record as evidence.

Attorney Porter said he had completed his presentation.

Wayne Cash, 3706 Snow Hill Road, opponent, cross-examined the proponents by asking about the color of the tower.

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Mr. Porter said the tower would be galvanized.

Judy A. Camin, 212 Lakewinds Trail, Rougemont, opponent, was not present for cross-examination.

Mr. Cash reiterated his opposition because the scenic byway is in close proximity to the tower. He requested that the following exhibits be placed in the record as evidence:

- An Ordinance to Regulate Wireless Telecommunications Facilities in Haywood County, North Carolina (Exhibit 4)
- Custom Concealment Sites (Exhibit 5)
- A Towering Alternative (Exhibit 6)
- “Wireless Towers,” Planning Commissioners Journal (Exhibit 7)
- “Protecting Our Region Sense of Place in the Age of Wireless Communication” (Exhibit 8)

Attorney Porter objected to the exhibits being placed in the record. The exhibits are “not relative to this area, are hearsay, not certified by anyone, and not original.”

Mr. Cash requested the exhibits be submitted because the information shows that telecommunication needs of the customers could be met by some reasonable combination of location, technique, and technology. Alternatives to be considered may include a combination of lower height towers, concealed transmission facilities, co-locators, or other transmission towers.

County Attorney Chuck Kitchen sustained that Exhibit 4 be placed as evidence in the record.

Attorney Kitchen agreed to allow Exhibits 5, 6, 7, and 8 into the record as evidence.

Attorney Porter said for the record, “we note an exception.”

Chairman Black said the Board can take judicial notice of the Mangum Township Plan; it is our plan.

The Commissioners had no questions at this time.

Mr. Porter had no questions for Mr. Cash.

In Mr. Porter’s rebuttal, he said for the record, that his client has carried the burden of proof. The opponents have not proven that the applicant has failed to meet the conditions by offering admissible, material, relevant, or substantial evidence that is required for denial. He submitted that no evidence meeting these requirements has been offered. He asked the Commissioners to allow the special use permit. The applicants have met all the requirements.

The Commissioners asked the applicant several questions about the proposal.

Mr. Porter and the applicant responded.

Mr. Dan Tilley, Zoning Manager, Gearon Communications, responded to the majority of the questions from the Commissioners.

Planning staff asked Mr. Carter questions about alternate sites directly to the east of the proposed site near Hill Forest Road.

Chairman Black asked Mr. Medlin for the staff recommendation.

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Mr. Medlin commented that staff has concerns about the line of sight from US 501 coming from Durham, especially as it relates to the line of sight analysis. However, there are existing wooded areas. The trees help obscure the view of the tower coming from Durham. There is greater concern related to the line of sight and the visual impact coming from north of the site on US 501, moving to the south. That is not a very wooded area. The line of sight from Moores Mill Road is of some concern because of the significant impact. A shift in the location of the tower would be preferred. The tower should be moved farther to the east to lessen the impact, specifically on the scenic byway on Moores Mill Road and US 501. Staff recommended the tower be moved up to 1,000 feet to the east. The project should not be approved in its proposed location.

If the Board decides to approve the case, the following conditions should be added to the approval:

1. Applicant must use existing sight features to screen as much of the tower as possible.
2. The existing features be used as a background so that the tower blends into the background as much as possible.
3. Support structure, antenna, and associated hardware be painted a nonreflective color or color scheme appropriate to the background against which the tower would be viewed from the scenic byway.

Mr. Porter stated in light of the staff report, he wished to have this request deferred so he could come back within a certain time period without having to start over.

Vice-Chairman Reckhow agreed with staff findings. She had a problem with the proposed site. We have justification to deny given the impact on the scenic byway.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to deny the major special use permit consistent with staff recommendations, particularly height and lighting Sections 13.2.4, 3 and 9.

The motion carried unanimously.

Paul Norby, City-County Planning Director, said staff will bring back an order at the December 14, 1998 Regular Session.

Chairman Black said the public hearing will remain open until the December 14, 1998 Regular Session.

Case M98-3 SpectraSite Communications Inc.: Major Special Use Permit for a 240-Foot Lattice Telecommunications Tower, Equipment Building, and Four Co-Location Sites Within a 100-Foot by 100-Foot (10,000-Square-Foot) Lease Parcel

SpectraSite Communications Inc. requested the granting of a Major Special Use Permit for a 240-foot lattice telecommunications tower, equipment building, and four co-location sites within a 100-foot by 100-foot (10,000-square-foot) lease parcel.

The site is located on the west side of Glenn, north of Dodge Avenue, and south of Jeffries Road. Tax Map 685-9-13. Hold the public hearing and evaluate the evidence presented. The Planning staff will make a recommendation after the hearing of this case.

After the hearing, one of these two motions is in order:

Motion A: (Approval with or Without Conditions) - To direct the Planning Director to prepare a decision granting with conditions the use permit in Case M98-3. (The Commissioners should identify any conditions they wish to incorporate into their approval. Staff will prepare the decision for Board's next meeting for action).

Motion B: (Disapproval) - To direct the Planning Director to prepare a decision denying the use permit in Case M98-3. (The Commissioners should identify the findings they are unable to

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make so these can be incorporated into the decision. Staff will prepare the decision for Board's next meeting for action).

Steve Medlin, Senior Planner, presented the case and answered questions.

County Manager's Recommendation: Hold the public hearing and evaluate the evidence presented.

Chairman Black asked "all persons who wish to testify in this case should have signed up on the special sheet for this hearing at the Clerk's station. If you wish to speak, please go now to the Clerk's station to be sworn in or to give your affirmation. If you have not signed up and wish to speak, please sign up now and participate in the swearing in. After the swearing in, you may return to your seat."

Chairman Black reminded everyone that "this hearing is judicial in nature and will be conducted in accordance with special due process safeguards."

Before opening the hearing, Chairman Black gave the Board members a chance to reveal possible conflicts and to withdraw from the proceedings if necessary.

There were none.

Chairman Black asked Board members "who have any information or special knowledge about the case that may not come out at the hearing tonight to please describe that information for the record so that interested parties will know and can respond."

Commissioner Heron commented that she received a telephone call inferring that several citizens in the area had not been notified.

Chairman Black said, "In this hearing, we will first hear from the Planning staff and other County witnesses, then from the applicants and their witnesses, and then from opponents to the request. Parties may cross-examine a witness after the witness testifies when questions are called for. If you want the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record."

County Attorney Chuck Kitchen said an issue has been raised as to the notification of two property owners (Faye B. Riggsbee and Peggy L. Daniels). An affidavit has been submitted by the attorney for the applicant that states he personally contacted both property owners by telephone. They have no objections to the special use permit. The issue is whether the Board wishes to hear the case tonight with the deficit in service. I suggest the Board go forward with the hearing. The Planning Department should notify these two people to be sure there is no opposition. The other alternative is to reschedule the hearing.

Commissioners Bell, Reckhow, and Heron, wanted to defer the public hearing.

Commissioner Heron questioned Attorney Gray Styers Jr. about his conversation with Ms. Riggsbee and Ms. Daniels.

Gray Styers Jr., Regional Zoning Counsel of Eastern North Carolina for SpectraSite Communications Inc., spoke about the details involving Ms. Riggsbee and Ms. Daniels. They knew about the public hearing and were not opposed to the tower.

Commissioner Bowser wanted to hold the major special use public hearing; however, the Commissioners concurred to continue the public hearing until December 14, 1998 at 5:30 p.m. The Planning Department will notify Ms. Riggsbee and Ms. Daniels.

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Commissioner Bell moved, seconded by Commissioner Reckhow, to continue the public hearing to December 14, 1998 at 5:30 p.m. (Case M98-3).

The motion carried with the following vote:

Ayes: Bell, Black, Heron, and Reckhow

Noes: Bowser

Absent: None

Adjournment

Chairman Black adjourned the meeting at 11:03 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board