

December 14, 1998

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

Monday, December 14, 1998

5:30 - 6:30 P.M.

Quasi-Judicial Public Hearing

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

Case M98-1 Gearon Communications: Major Special Use Permit for 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

Gearon Communications requested the granting of a Major Special Use Permit for 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. At the public hearing on November 17, 1998, the Board of County Commissioners directed staff to prepare an order for approval. 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.

Steve Medlin, Senior Planner, was present to answer any questions of staff.

County Manager's Recommendation: Adopt the Order.

Chairman Black asked County Attorney Chuck Kitchen to address the concerns surrounding this case.

Attorney Kitchen said the Commissioners were informed of an error regarding notification in this case. An adjoining property owner was not properly notified. This error occurred because the applicant did not submit the name for notification. All adjoining property owners must be notified before holding a valid hearing. The matter must be continued and a new public hearing date must be scheduled.

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Dr. Philip D. Buchanan, 7906 Kennebec Drive, Chapel Hill 27514, said the issue involves more than one notification error. Several residents did not receive notification. The Commissioners can be provided names of people who did not receive notification.

Chairman Black requested that a list of names be given to Planning Director Paul Norby.

Chairman Black said this case will not be heard tonight. The quasi-judicial hearing will be rescheduled.

Case M98-3 SpectraSite Communications Inc.: Major Special Use Permit for a 240' 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' 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. 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 the 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 make so these can be incorporated into the decision. Staff will prepare the decision for the 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."

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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 applicant and their witnesses, and then from opponents to the request. Parties may cross examine witnesses after the witness testifies when questions are called for.”

Chairman Black stated that Commissioner questions should be directed to the person presenting the item, not to staff.

If presenters “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 M98-3 and asked for testimony from County staff. After each staff person’s testimony, the Chairman asked if there were questions from the Board or other parties.

Steve Medlin, Durham City-County Planning Department, presented the staff report. Proper notification was sent out. This case was before the Board on November 17, 1998 and was deferred to allow for proper notification. Notices were sent out via certified mail as requested by the Board. All green cards have been returned. The Northeast Neighborhood Association was notified and sent an agenda package. Staff has received no additional comments from the neighborhood association regarding the information it received.

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

Chairman Black asked for questions from the Commissioners. There were none.

The Chairman asked if any of the parties had questions of staff. There were none.

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Chairman Black then called on the applicant and other proponents.

Gray Styers, Regional Zoning Counsel for SpectraSite Communications Inc., 4101 Lake Boone Trail, Suite 400, Raleigh 27612, began the presentation by giving a brief history of the company. A map was displayed of Nextel Communications' current coverage area. The map was entered into the record as evidence (Exhibit 2). A map (Exhibit 3) showing the proposed coverage area with the tower was entered into the record as evidence. Mr. Styers introduced the following members of his team who participated in the presentation:

Sausin Shah, Radio Frequency Engineer, 8000 Regency Parkway #600, Cary, NC 27511

Marlene Sanford, Site Development Director for Nextel Communications, 8000 Regency Parkway #600, Cary, NC 27511

John Weldon, Senior Zoning Coordinator, SpectraSite Communications Inc., 8000 Regency Parkway #600, Cary, NC 27511. Mr. Weldon's presentation dealt with specific site information including vicinity map, area photos, application, and site plans. The required additional plantings would be planted in a suitable month for the highest degree of survivability.

J. F. Smathers, J. F. Smathers Company, 6040 Six Forks Road, Raleigh, NC 27609. Mr. Smathers is the real estate valuation expert who analyzed this site and provided the study.

Chairman Black asked the Clerk to the Board if there were any opponents. The reply was in the negative.

Mr. Styers requested that Mr. Weldon's specific site information report (Exhibit 4) be entered into the record as evidence.

Mr. Styers also asked that Joseph F. Smathers' Impact Investigation Report (Exhibit 5) be entered into the record as evidence.

Commissioner Bowser asked the presenters several questions and made comments about the proposal.

Mr. Styers and his associates responded to the questions and comments.

Mr. Medlin said Planning staff recommended approval of this tower site subject to six conditions.

Chairman Black asked for any questions about the conditions.

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Vice-Chairman Reckhow moved, seconded by Commissioner Heron, for approval subject to the conditions outlined by staff.

The motion carried unanimously.

As no one else asked to speak, Chairman Black closed the quasi-judicial public hearing.

The order granting a major special use permit follows:

ORDER GRANTING, UPON CERTAIN CONDITIONS,
A MAJOR SPECIAL USE PERMIT FOR
CASE M98-3
SPECTRASITE COMMUNICATIONS

The Durham County Board of Commissioners, having conducted a hearing on Case M98-3, December 14, 1998 and having considered all evidence presented at such hearing, hereby determines that the Ordinance requirements for the granting of a Major Special Use Permit in this case have been met, and that the Use Permit should be granted upon certain conditions.

THE BOARD OF COMMISSIONERS, HEREBY FINDS that the use meets the requirements of 7.35 and 13.2.3 of the Durham Zoning Ordinance, and that it is

1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. In conformance with all special requirements applicable to the use and in conformance with the Supplementary Requirements Section of this Ordinance;
3. Will not adversely affect the health or safety of the public.

THE BOARD OF COMMISSIONERS ALSO FINDS that satisfactory consideration has been given to the considerations listed in 13.2.4 of the Ordinance.

THE BOARD OF COMMISSIONERS FURTHER DETERMINES THAT IT IS NECESSARY TO CONDITION THE GRANTING OF THE USE PERMIT UPON THE FOLLOWING:

1. That the applicant develop the approved use in conformity with a site plan, and any amendments to such plan, that must be submitted to and approved by the County within 12 months of the date of this decision, and that such site plan and amendments, if any, become a part of this special use permit.
2. That 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.

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3. Should the tower not be used or maintained for a period of 6 months or more it shall be removed by the owner within 90 days.
4. Proper legal provisions be made for the protection and maintenance of the Class 5 buffer area and 100-foot forested area for the life of the tower.
5. 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.
6. Prior to the issuance of any permits or the beginning of any site work that appropriate tree protection measures must be installed and inspected by the Durham City-County Planning Department.

THIS SPECIAL USE PERMIT SHALL BECOME NULL AND VOID UPON DETERMINATION BY THE APPROPRIATE OFFICIALS DESIGNATED BY ORDINANCE THAT THE ABOVE CONDITIONS HAVE NOT BEEN COMPLIED WITH.

This determination and Order is effective upon and after the date of its adoption as shown by the stamp of the County Clerk below.

NORTH CAROLINA
DURHAM COUNTY

I, /s/ Susan B. Page, Notary Public of the aforesaid County and State, certify that personally appeared before me this day /s/ Garry E. Umstead Clerk to the Board of County Commissioners, who duly certified and acknowledged that the foregoing constitutes a true and accurate copy of the Order adopted by the Board of County Commissioners at its meeting held March 23, 1998, as the same is taken from and compared with the recordation of said Order as Ordinance Number _____, on file in the Office of the Clerk to the Board of County Commissioners.

Witness my hand and notarial seal, this 4th day of February, 1999.

/s/ Susan B. Page
Notary Public

December 20, 2000
My Commission Expires

Case M98-2 Gearon Communications: Major Special Use Permit for 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

Gearon Communications requested the granting of a Major Special Use Permit for a 300' lattice telecommunications tower, equipment building, and five co-location sites within a

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100-foot by 100-foot (10,000-square-foot) lease parcel. At the public hearing on November 17, 1998, the Board of County Commissioners directed staff to prepare an Order of denial. 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.

Steve Medlin, Senior Planner, was present to answer any questions of staff.

County Manager's Recommendation: Adopt the Order of denial.

Helen Youngblood, Planner, City-County Planning Department, discussed the Order of Denial document. Several changes were recommended by the attorney for clarification.

The Commissioners asked questions about the Order of Denial.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve the Order of Denial for Case M98-2--Gearon Communications. (A vote was not taken on this motion.)

County Attorney Chuck Kitchen suggested the Order of Denial be sent back to the Planning Department for revisions and clarification since changes were recommended.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to table the motion relative to the Order of Denial for Case M98-2. The Order will be brought forward at the January 11, 1999 Regular Session.

The motion carried unanimously.

The public hearing would be continued until the Order of Denial is brought back to the Commissioners for final approval.

Closed Session

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to move into Closed Session to discuss the potential expansion of an existing industry in Durham County pursuant to North Carolina General Statute 143-318.11(a)(4) and to preserve the attorney-client privilege, and to discuss the case of Currin Bros. v. Durham County, 97CVS891, CNL v. Durham County, 98CVS800, Benbow v. Hill, 98CVS811, Boucvalt v. Board of Adjustment, 97CVS2239, and Martin v. Tolson, 98CVS3991 pursuant to G.S. 143-318.11(a)(3).

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The motion carried unanimously.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board

GEU:VCS