

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, February 22, 2007**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; Wayne Miedzinski; and Gertrude Scriber. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; Susan Mahoney, Planning Technician; Leslie Goldsborough, Senior Office Specialist; and Cindy Koestner, Recording Secretary. George Edmonds, Board of Appeals First Alternate; Christy Holt Chesser, County Attorney 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

**VAAP #05-132-046 – POTOMAC LODGE AND RESTAURANT
(Continued from December 14, 2006)**

The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's Comprehensive Zoning Ordinance to add new impervious surface in the Critical Area Buffer and to clear in the Critical Area Buffer; a variance from Section 72.3 of the Ordinance to clear in excess of 30 percent of the existing vegetation; and a variance from Section 41.5.3.i(3)(b) of the Ordinance to exceed the amount of impervious surface traded in the Critical Area Buffer. The property contains 2.63 acres; is zoned Commercial Marine District (CM), Limited Development Area Overlay (LDA); and is located at 16680 Piney Point Road, Piney Point, Maryland; Tax Map 66, Block 19, Parcels 47 and 48.

Owner: Potomac Land LTD, c/o Chuck Kimball
Present: Chad Holdsworth and Dave Woodsbury of Loiederman Soltesz Associates, Inc.

This case was advertised in the *St. Mary's Today* on 11/26/06 and 12/3/06 and in the *Enterprise* on 11/29/06 and 12/5/06. The property was posted and certified mail receipts were submitted to staff for the files.

Mr. Holdsworth explained the applicant's first request is for a variance to add new areas of impervious surface within the 100 foot buffer. The property is on a piece of land surrounded by St. George's Creek and the Potomac River, the 100 foot buffer almost meets each tidal body at the middle of the property and there is a small area in the middle of the property that is not in the 100 foot buffer. While new areas of impervious surface are added to the site, the total amount of impervious surface on the site will be reduced by 1.7%.

Mr. Holdsworth explained the applicant's second request is to remove more than 30% of the trees on the site, all of which are in the buffer. The applicants have worked with the environmental planner, Sue Veith, to come up with a landscaping plan that would mitigate the removal of these trees and to increase the amount of vegetation coverage on the site. Through this proposal the runoff will get some treatment before entering to the tidal water through the landscaping, while providing some area of habitat for species of birds and other animals.

Mr. Holdsworth explained the applicant's third request is to take some of the existing surface area from the restaurant and eliminate it, bringing it where the proposed lodge building will be located. At the onset of the project, the survey crew along with Ms. Veith and Mary Owens of the Critical Area Commission visited the site to set the limits of existing impervious surface on the site. The calculations were based on of how much impervious surface is currently on the site, where it is, where we can remove it and introduce pervious conditions. All trading will be equal distance from the high water line.

Mr. Miedzinski questioned what the building will be used for. Mr. Holdsworth stated it would be a lodge for short term stays, and will also have a bath and shower facility for marina users. Mr. Miedzinski questioned if it is listed as a marina, will it have a dumping site for boats. Mr. Holdsworth stated there will be a portable pumping station that will roll out on the piers. Mr. Hayden questioned how the station would be monitored and how much will be disposed. Mr. Kimball stated it will be a portable 250 gallon unit that would be treated and metered. Ms. Scriber questioned if there would be jobs available for county residents. Mr. Kimball answered yes, there will be jobs for local people.

Ms. Chaillet explained the property is entirely constrained by the critical area buffer with the St. George's Creek on one side and the Potomac River on the other. There are no hydric soils on the property, the property was tested and found only matapeake soils, which are not hydric. A deep drilled well and central sewer system serves the property. The property is also in the 100 year flood plain. The Applicant must comply with the regulations regarding non-residential structures. The amount of existing non pervious surface as stated is 47,471 square feet. The Applicant will be reducing this by just over 800 square feet. The Ordinance states in the critical area buffer the amount of impervious surface that can be traded for new development in the buffer and is limited to 1000 square feet. The requirement from chapter 41 states if there is any place outside the buffer to place a new structure; it is to be placed outside the buffer. In this case, there is no place to put the structure outside the buffer.

One other requirement is the impervious that is traded cannot be any closer to the water than the previous impervious surface. The applicant meets this requirement and the applicant has to mitigate at a ratio of 2:1. In this instance because they are seeking variances, chapter 24 of the ordinance requires mitigation for variances at 3:1 per square foot of the variance granted. The existing woodland on the property is 5,200 square feet, which is 13 trees, or 4.5% of the property. The applicant will be removing 12 trees, which is 92% of the existing vegetation. Clearing is more than 30%, which staff supports, since none of the proposed development could occur without the removal of the trees. The applicant will be planting a significant amount of trees along with shrubs and any other landscaping that is not stated in the applicant's proposal.

Staff has analyzed the standards for granting variances in the critical area and finds the applicant has met the standards for clearing in excess of 30%, to trade more than 1,000 square feet of impervious surface in the buffer and to add new impervious surface in the buffer. The staff recommends approval subject to the applicant complying with the critical area planting agreement.

Mr. Miedzinski questioned why trading impervious surface from a 3:1 to a 2:1. Ms. Chaillet explained if he were just trading impervious surfaces in the buffer and no variances were involved, which when there is even trade it would just require a 2:1 mitigation, but because there is a variance involved section 24.4.2b of the Zoning Ordinance addresses variances in the critical area requires mitigation of 3:1 per square foot of the variance granted. The requirement for the variance supersedes the requirement in the zoning ordinance for the 2:1 mitigation. Mr. Miedzinski asked about the matapeake soils. Ms. Chaillet explained they were not hydric or highly-erodible so no special requirements are necessary for the Ordinance.

Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to public comment. The hearing closed with no public comment.

Mr. Hayden asked the applicant to explain what they are doing for runoff protection. Mr. Holdsworth explained they will have to meet all the Stormwater Management Ordinance for the

state of Maryland. They have already received approvals to carry forth with this project. Mr. Woodbury explained they are using a grass channel will treat the runoff before it reaches the creek. The extra parking runoff will be treated by a stormwater recharge gravel pit before it is discharged back into the soil. These are the two methods used to treat water quality. Mr. Hayden asked what they are doing about runoff from buildings. Mr. Woodbury explained the runoff from the buildings will come out to the surface and runoff into a drywell that holds about 1 inch of rainfall.

Mr. Hayden is concerned they are not increasing the property use. Mr. Canavan explained that the marina is first and the accessory use is the restaurant, you must look at the whole project. Lodging units are needed for the marina to work. Mr. Hayden questioned if the applicant has the option to only rebuild the restaurant and just run that. Mr. Canavan explained that a restaurant in the Commercial Marine Zone (CM) should be a secondary use to the marina; the applicant needs the lodge to make the marina attractive to customers. Ms. Chaillet pointed out that the applicant will be reducing the total impervious surface on the property. Mr. Hayden questioned where the marina is at. Mr. Holdsworth explained there is room for 16 boats to dock, the definition of marina per the zoning Ordinance for storing non-commercial vessels is ten or more.

Mr. Hayden asked if the Critical Area Commission (CAC) approved. Ms. Chaillet explained these comments are on the development itself and not the variance. The CAC does not need to comment on variances. Mr. Hayden questioned if there will be a dry hydrant system. Mr. Holdsworth explained there is no definite location yet. They need to determine the volume of water needed. Mr. Miedzinski questioned if adjoining property owners can still haul their boats through the parking lot of the marina. Mr. Holdsworth explained they could adjust the landscaping if needed. Mr. Hayden said it appears that in order to develop the property in a CM district, the restaurant and lodge are both needed in addition to the marina. Mr. Callaway stated this project will be an asset to St. George's Island.

Mr. Callaway moved that having accepted the staff report, dated January 30, 2007, and having made a finding that the standards for variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval of the variance to clear and to add new impervious surface in the Critical Area Buffer, with the condition that the Applicant shall adhere to the Critical Area Planting Agreement. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

Mr. Callaway moved that having made a finding that the standards for variance in the Critical Area and the objectives of Section 72.3 of the Zoning Ordinance have been met, the Board grant approval of the variance to clear in excess of 30 percent of the existing vegetation, with the condition that the Applicant shall adhere to the Critical Area Planting Agreement. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

Mr. Callaway moved that having made a finding that the standards for variance in the Critical Area and the objectives of Section 41.5.3.i of the Zoning Ordinance have been met, the Board grant approval of the variance to exceed the amount of impervious surface traded in the Critical Area Buffer, with the condition that the Applicant shall adhere to the Critical Area Planting Agreement. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

CUAP #06-132-032 – KRONLUND PIT #2

The Applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance for an extractive industry over five acres. The property contains 65.4 acres; is zoned Rural Preservation District (RPD); and is located at 28275 Briscoe Anderson Lane, Mechanicsville, Maryland ; Tax Map 8, Block 16, Parcel 74.

Owner: Stephen and Sadie Stoltzfus
Present: Jerry Soderberg of DH Steffens Co.; Gary Asher, Applicant

All remaining cases heard tonight were advertised in the *St. Mary's Today* on 2/4/07 and 2/11/07 and in the *Enterprise* on 2/7/07 and 2/14/07. The properties were posted and certified mail receipts were submitted to staff for the files.

Applicant's Exhibit 1: Gravel mine rules of the road for truck drivers.

Ms. Chaillet noted there is a \$15,000 bond posted with DPW by a Mr. Jimmy Richards, who operates Kronlund Pit #1. There is a \$15,000 maintenance bond that needs to be posted by Mr. Asher.

Mr. Soderberg passed out exhibit 1, Asher's rules of the road for all drivers that come into the pit. He explained Mr. Asher has two other mining pits already in vicinity, both under 5 acres. Mr. Soderberg explained the request is for approval to mine the remaining portion of the property except the existing house and farm building area. The adjoining property owners have submitted notarized statements wanting the buffer to be only ten feet for the horses. Access to the farmsteads in back will be kept open at all times. Otherwise appropriate buffers have been kept from streams, SMECO access, and Mr. Mattingly's farm. The proposal is to haul 100 loads a day total from both operations. All mining trucks will turn left on Lockes Crossing Road when exiting. Mr. Miedzinski questioned if the applicant is willing to accept maximum loads at 100 loads from both pits. Mr. Soderberg explained yes he was.

Ms. Chaillet explained the mining pit is on a 65 acre agricultural parcel and is surrounded by other agricultural parcels. There are other smaller mining operations on Briscoe Anderson Lane, a couple of them are not operated by the applicant, they are less than 5 acres and only needed the Soil Conservation District's approval. A member questioned if the other mining operations were less than five acres. Ms. Chaillet answered that the SCD approved them for less than 5 acres but could have inspectors inspect those operations. The member agreed this would help them with the concerns of the other residents on Lockes Crossing Road. All other mining operations have a maximum 75 to 100 truck loads per day, but most don't reach the maximum limit. All pits may not be operating all day long depending on market demand for the aggregate coming out of the pit. Ms. Chaillet suggests approval with the condition that a \$15,000 maintenance bond to be posted with DPWT for repairs to Locke's Crossing Road.

Mr. Callaway moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to public comment. The hearing closed with no comments.

Mr. Asher explained that Mr. Stoltzfus purchased the farm in 2000. He sells gravel to keep his farm and family in the county. He does not want to sell to developers who have approached him. Mr. Hayden questioned how many truck loads are hauled out. Mr. Asher explained only 75, but not daily. His business is dependant on the conditions there. Mr. Hayden expressed concern about too much hauling traffic in the vicinity (Route 236) already, there are a number of pedestrians and horse and buggies on the road. There are probably around 800 round trips per day on Route 236 already. Is there a way to reduce the trips for all? Mr. Canavan explained that they cannot go back and restrict mining operations already approved unless they come back and apply for a modification.

Mr. Hayden asked if there is a way to get a State highway report regarding the traffic on that road. Mr. Canavan explained that a SHA report wouldn't be enough, the law may need to

change. Mr. Soderberg explained that Mr. Asher ensures all truckers follow the rules and there are no safety issues, especially for the Amish on the road. Mr. Asher added that he does not haul on Saturdays due to traffic. Mr. Hayden explained he understands road safety concerns due to the number of trucks, but does not feel that Mr. Asher should bear the full responsibility for this issue. Mr. Delahey suggests the Board stop approving mining operations for this road due to safety and traffic issues. Mr. Hayden is looking for recommendations on what can be done, because the county needs sand and gravel for construction. Mr. Soderberg explained that the Applicant will cut the number of loads for all his pits to 100 trips total.

Ms. Scriber moved that having accepted the staff report, dated February 12, 2007, and having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval of the conditional use for an extractive industry over five (5) acres; subject to the approval of a variance from Section 51.3.80 of the Zoning Ordinance to reduce the required setback from external property lines; and subject to the following conditions:

- 1. All applicable Federal, State and local ordinances, regulations and laws shall be adhered to. A copy of the State Mining Permit shall be on file in the Department of Land Use and Growth Management (LUGM).**
- 2. The total acreage approved shall not exceed 47.40 acres and the reclamation pit shall include all bench marks, and no more than five (5) acres shall be mined at any one time. The mining schedule shall be as follows: five (5) acres being prepared for mining; five (5) acres being mined; five (5) acres being reclaimed. Reclamation grass and seeding shall be completed within six (6) months after the mining activities have ceased.**
- 3. All mining operations shall cease as of December 31, 2013.**
- 4. A bond in the amount of \$15,000 shall remain in effect with the Department of Public Works and Transportation to ensure future repairs to the west side of Lockes Crossing Road. In addition, the maximum speed limit for the gravel trucks shall be 35 miles per hour on Lockes Crossing Road.**
- 5. A maximum of 100 truckloads per day (which equals 200 roundtrips) shall be used to haul materials from the site. The travel route shall be west on Lockes Crossing road and north on Thompson Corner Road. No trucks traveling to or from the subject site shall utilize Lockes Crossing Road between the site and its intersection with Old Village Road. In addition, no trucks shall utilize Thompson Corner road south of Lockes Crossing Road at any time.**
- 6. Hours of operation for the mining operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday and from 8:00 a.m. to 2:00 p.m. Saturday. No operations shall be permitted on Sundays or holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).**
- 7. No other raw/mining materials shall be brought from off-site and placed on the subject Property.**
- 8. No topsoil shall be removed from the site. All topsoil shall be stockpiled for reclamation purposes.**
- 9. There shall be no burning on-site except for trees and other wood products derived from site clearing and grubbing operations.**
- 10. All access roads used for the conditional use shall be treated with water on a weekly basis to effectively minimize dust.**
- 11. The natural flow of water through surrounding properties shall not be altered or restricted by the Applicant as a result of this conditional use.**
- 12. The Property shall not be used as a fill or landfill operation cited in the St. Mary's County Solid Waste Ordinance.**
- 13. There shall be no buildings constructed on site for the purposes of the mining operation, and no on-site sales shall be authorized.**
- 14. A 200-foot undisturbed setback shall be required around the perimeter of the subject mining operation, subject to approval of a variance to reduce the setback.**

15. Prior to the extraction of any natural resources, the Applicant shall obtain all applicable approvals with copies submitted to LUGM. The conditions imposed by this approval and all other applicable Federal, State and local ordinances, regulations, and laws shall be binding on the owners of this property, their partners, lessees, heirs and assigns. All requirements of codes and laws relative to mining operations in St. Mary's County and the State of Maryland as they apply to St. Mary's County shall be adhered to.
16. LUGM, its employees and agents, are authorized to make official on-site inspections in accordance with the St. Mary's County Zoning Ordinance, and may not be refused entry to monitor and enforce the Board of Appeals' conditions of approval.
17. All of the conditions approved in this application shall be listed on final site plan.
18. Any changes or modifications of the conditional use approved for this site shall be approved by the Board of Appeals.
19. Any violations of the conditions of this approval or violation of any Federal or State laws, rules, regulations, codes, or ordinances may result in the suspension or revocation of the decision by the Board of Appeals.

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

VAAP #06-132-032 – KRONLUND PIT #2

The Applicant is requesting a variance from Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the required setback from property lines. The property contains 65.4 acres; is zoned Rural Preservation District (RPD); and is located at 28275 Briscoe Anderson Lane, Mechanicsville, Maryland; Tax Map 8, Block 16, Parcel 74.

Owner: Stephen and Sadie Stoltzfus
Present: Jerry Soderberg, DH Steffens Co.; Gary Asher, Applicant

Mr. Soderberg explained the variance is for gentler slopes so that when the land is reclaimed the horses can handle the slopes. The Adjoining property owners are okay with the variance to reduce the set back from 200 feet to 10 feet. Mr. Hayden asked if the slopes were to be a 3:1. Mr. Soderberg explained that they would a 5:1 or greater so that all the land can be reclaimed.

Ms. Chaillet explained the request is to reduce the 200 foot set along much of the property except long the east side where the SMCO right-of-way is and on those parts of the property where there are wetland or streams that require a minimum 50 foot set back. Adjoining property owners have agreed to the reduction of the set back.

Mr. Callaway moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Scriber and passed by a 5-0 vote.

The Chair opened the hearing to public comment. The hearing closed with no comments

Ms. Scriber moved that having accepted the staff report, dated February 13, 2007, and having made a finding that the standards for variance of Section 24.3 in the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval of the variance to reduce the required setback from all external property lines from 200 feet to 10 feet. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

Mr. Hayden questioned if the board can request a study of the mining traffic on Route 236. Ms. Chaillet explained that she will contact the SHA and ask what kind of information they have and if they can make a recommendation for future mining pits.

CUAP #06-135-001 – LONG-VALLEY LEE TOWER SITE

The Applicant is requesting a conditional use approval pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance to construct a commercial communication tower. The property contains 30.4 acres; is zoned Rural Preservation District (RPD); and is located at 45359 Drayden Road, Valley Lee, Maryland; Tax Map 61, Block 5, Parcel 376.

Owner: Michael Edward and Kathleen Ann Long
Applicant: Telecom Consulting Group
Present: Jackie Raley Meiser, P.C., Attorney for the Applicant

Ms. Meiser explained the applicant is proposing a 140 foot monopole tower for commercial communications in Valley Lee off Drayden Road. The first standard is that the conditional use complies with all the standards in the district and the standards specifically applicable to that use. To stay in compliance with the standards in the Rural Preservation District Zone (RPD), the proposed use is Low Density Development. It is not intrusive on the agricultural activities. All of the standards for commercial cell tower reports have been completed. The second standard is the establishment of maintenance and operation of the use not being detrimental to or endanger the public health, safety, moral, convenience, order, and general welfare. Electromagnetic emissions are lower than permitted by the FCC. The tower is designed to withstand extraordinary wind and weather conditions. It is designed to fall on itself if it does fall. The proposed site is buffered from any adjoining properties.

The next condition of use should not be injurious to the use and enjoyment of the property in the immediate vicinity and will not substantially diminish or impair property values. The mono pole design is more aesthetically pleasing and should not have an adverse effect on adjoining property owners. The emission effects are minimal and the fall design more than acceptable. The use is well cited so that the tower is far from existing development in the area. The tower will only use a minimal amount of electricity. Access to the site will be by a 12 foot wide gravel road. There is a question about whether or not the applicant will access the property through the Evans Property. The last requirement is that the proposed conditional use is not contrary to the general goals, objectives and policies of the comprehensive plan.

Mr. Delahay questioned if the Evans had given an access agreement to the Applicant. Ms. Meiser explained that the applicant had been in negotiations with the Evans about an easement to access the tower through their property. While they are not against the applicant, they have asked the applicant to access the tower via alternative means. Mr. Delahay questioned why the applicant proposed access to the site over the Evans property. Ms. Meiser explained the applicant had conducted a balloon test for photographs and those individuals did not know not to access the site through the Evans property. Mr. Hayden stated the property was posted at the road to the Evans property. Ms. Meiser agreed the property was posted wrong and that the sign was on the Evans property.

Mr. Callaway questioned how a site is selected. Ms. Meiser explained the applicant keeps data on all possible sites where service is not efficient. They note existing tower locations and if those towers can provide service. If those towers are unable, then new possible sites are reviewed. The signal was tested along Route 249 and was found deficient. Mr. Callaway questioned how many sites were considered. Ms. Meiser explained the applicant considered a couple of different sites.

Mr. Hayden asked that the board get back to determining if the property posting was correct and if it was not where they go from there. The Board members accessed the site through the Evans property. Was this correct? Should the sign have been posted prior to the Evans driveway. Ms. Meiser explained they had to post on Drayden Road or it would not have been

seen. Posting of the sign did not mean that people should have entered here to access the site. The applicant believed the posting was okay with the Evans. Ms. Chaillet explained the property must be posted within 25 feet of the property line or on the public road, it must be posted on the private road where it meets the public road with indication of distance and direction to the site as required by the Zoning Ordinance. Mr. Delahay expressed concern that the Evans' right had been infringed upon. Ms. Meiser requested that the case be withdrawn. The applicant is to repost the sign in the proper location and the case will be placed on a future agenda.

Ms. Scriber moved that the Board vote to continue this case until after the applicant has the opportunity to repost the property, re-advertise the case, and re-notify the property owners. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair called a recess at 8:35

The Chair called the Board to order at 8:40

CUAP #05-135-001 – DILLOW TOWER SITE

The Applicant is requesting a conditional use approval pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance to construct a commercial communication tower. The property contains 250 acres; is zoned Rural Preservation District (RPD); and is located at 43694 St. John's Road, Hollywood, Maryland; Tax Map 26, Block 24, Parcel 85.

Owner: Thomas and Patricia Dillow
Applicant: Telecom Consulting Group
Present: Jackie Raley Meiser, P.C., Attorney for the Applicant

Ms. Meiser explained that access to the site is on St. John's Road. There will be an easement agreement. The site plan includes tree buffering and a small access road to be completed by the applicant. The first standard is that the conditional use complies with all the standards to the district and the standards specifically applicable to that use. With respect to complying with the standards in the RPD, the proposed use is Low Density Development. It is not intrusive on the agricultural activities. All of the standards for commercial cell tower reports have been completed. The second standard is that the establishment of maintenance and operation of the use will not be detrimental to or endanger the public health, safety, moral, convenience, order, and general welfare. Electromagnetic emissions are lower than permitted by the FCC. The tower is designed to withstand extraordinary wind and weather conditions. It is designed to fall on itself if it does fall. The proposed site buffered from any adjoining properties.

The next condition is the conditional use should not be injurious to the use and enjoyment of the property in the immediate vicinity and will not substantially diminish or impair property values. Design is more aesthetically pleasing and should be not adversely affect the adjoining property owners. The emission effects are minimal and the fall design is more than acceptable. The use is well cited so that the tower is far from the existing development in the area. The tower will only use a minimal amount of electricity. The tower will only be visited once or twice a month. There is access on a 12 foot wide gravel road.

Ms. Chaillet explains that the proposed tower is 180 foot monopole tower with transmitting panel antennas and ground level equipment panels with room for expansion in the addition of equipment for other providers on this tower. Antenna location will be at 180 feet, 175 feet, 160 feet and 150 feet above ground level. The lease area is 75 feet by 75 feet and will include four 22 foot by 30 foot ground equipment shelters that will be leased to third party wireless service providers. The tower will be off set by the planting fast growing trees. Spectrum Sciences (Southern Maryland Wireless) plans to put an antenna on the tower. They are the only

internet provider to be located on this tower. The Ordinance states that telecom companies must also be located on the tower.

Mr. Miedzinski asked about the DPWT memo, item 2, AE overlay. Ms. Chaillet explained that level 4 of AE, compatible use, FCC allowed no more than 180 feet tower due to proximately of the airport.

Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

The Chair opened the hearing to public comment.

Mr. Eugene McGolrick, Jr. adjoining property owner, questioned how long until the trees grow? Ms. Meiser explained they are fast growth species of tree. Mr. McGolrick questioned if they die. Ms. Meiser explained the applicant must maintain the buffer. Mr. McGolrick questioned if there is damage to his property when the site accessed, who will fix it? The applicant explained the pole will be driven back to the site in sections; the truck will not take the full pole to the site. Ms. Meiser explained that the Applicant will repair any damage to the property. Mr. McGolrick questioned if there are problems in the future with the tower, what should he do? Ms. Chesser explained since this is a conditional use to be voted on, the property owners feel that if the conditions are not being met, property owners can call the Department of Land Use and Growth Management.

The Chair closed the hearing to public comment.

Ms. Meiser explained that Spectrum Sciences is a broadband telecommunications carrier. Mr. Mark Fisher, principal of TCG, explained that spectrum Sciences will use new technology to get fast broadband internet speed. It will allow real time TV through the Internet, and will compete with cable service. Mr. Hayden questioned which company will be the main carrier will be on the tower. Mr. Fisher explained that Spectrum is negotiating with Verizon and will be negotiating with other cell carriers. Ms. Chaillet explained that in compliance with the County Ordinance, cell phone service needs to be provided on the tower. Mr. Fisher explained that Spectrum Sciences Technology can be used for cell phones, lap tops, PC, etc. Mr. Hayden questioned if it will be used for cellular service. Mr. Fisher explained that it will be for customers who have this service. Ms. Meiser explained that the monopole is being designed to allow other cell phone companies to use the tower and the area targeted will be between Maryland Route 245 and Maryland Route 4.

Mr. Miedzinski questioned the AE area 4 in the March 9, 2005 memo from DPW&T about the FAA. Ms. Meiser explained the tower had to be lowered from the original height to meet FCC regulations due to the airport proximity. Mr. Miedzinski was concerned that the tower will interfere with the State Police rescue helicopters. Ms. Meiser explained that the tower will be registered with the FCC, but did not require it to be lit.

Mr. Miedzinski moved that having accepted the staff report, dated February 15, 2007, and having made a finding that the Standards for Conditional Use pursuant to Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval of the conditional use to construct a 180-foot commercial communication tower, subject to the following conditions:

- 1. The Applicant shall plant and maintain at least two rows of fast growing evergreens, such as Red Cedar or Leyland Cypress, around the tower enclosure to buffer it from adjoining properties.**
- 2. The Applicant shall provide to the County a bond, letter of credit, or other appropriate surety at the time the building permit is issued to cover the cost of**

demolition of the facility and restoration of the site in accordance with the Zoning Ordinance.

3. The conditions of this approval shall be listed on the final site plan

The motion was seconded by Ms. Scriber and was passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of February 8, 2007 were approved as recorded.

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

**VAAP #06-2250 – Kelsey
VAAP #06-0926 – Jubeck**

ADJOURNMENT

The meeting was adjourned at 9:25 p.m.

Amanda Sivak for Cindy R. Koestner,
Recording Secretary

Approved in open session: March 8, 2007

George Allan Hayden
Chairman