

MINUTES OF TFCG MEETING

To: Distribution

From: Bob Hunnicutt, Tower Coordinator, Columbia Telecommunications

A meeting of the Transmission Facility Coordinating Group (TFCG) was held on July 26, 2006. The following people were in attendance:

MEMBERS

Jane Lawton DTS (240) 777-3724
Mary Pat Wilson MCPS (240) 314-1071
Helen Xu DTS (240) 777-2804
Steve Batterden DPWT (240) 777-6063
Jennifer Bryant OMB (240) 777-2761
Carlton Gilbert M-NCPPC (301) 495-4576

STAFF

Bob Hunnicutt CTC
Lee Afflerbach CTC
Cliff Royalty County Attorney's Office

OTHER ATTENDEES

William A. Mitchell Jr. PRC (301) 461-4664
Virginia Mitchell PRC (301) 252-9722
Patricia A. Fenati Spring Garden Neighborhood Assoc (301) 253-5205
Megan E. Clem (301) 774-5389
Karen Boyland Clem DRRTS
Craig Brown
Chris Kiernan
Chuck Harris Resident (301) 253-0836
Jasmin Lizarazo Damascus Resident/DRRTS (301) 253-4769
Michael Miner Damascus Resident (301) 253-2065
Gail Ann Joyce Damascus Resident (301) 869-4824
Wayne Bussard Damascus Resident (301) 661-5427
Mary Jane Harvey Mother of a Damascus Resident
Anne Marie Vassallo SRGPE (301) 230-5200
Mary Reise (301) 831-6137
Paul J. Newman MHG (301) 670-0840
David Freistadt Shulman Rogers
Suasan Singer- Bart Gazette (301) 670-2069
David W. Brown Kropft & Brown
Pamela Bussard Damascus Resident (301) 651-1497
Barry Friedman Thompson Hine LLP (202) 973-2789
R. Morgan Burrow Jr. PE R. Morgan Burrow PE & Assoc. PC (301) 938-0985
Alex Baldriger Frederick NewsPost (301) 922-4658
Brendon Armbruster Rep. Van Hollen's Office (301) 424-3501
Sima Birach Jr. WDMV Radio (703) 272-7600
John Hopkins WDMV Radio/ CMG (301) 351-7936
Marcia and Klaus May Resident/ Damascus
Maria Gavel Damascus Resident
Anita Kramer Damascus Resident
Justin Roth Damascus Resident (301) 253-5059
Blair Conard Damascus Resident
Shirley Roth Damascus Resident (301)253-5059

John Kalas Cong. Bartlett's Office (301) 717-1954
Fred Harvey Damascus Resident (301) 253-5858
Michael Frost Damascus Resident (301) 351-5261
Virginia Clifford Damascus Resident (301) 253-4910
Robin Thomas Damascus Resident (301) 253-5858
Gayle Conard Damascus Resident (301) 482-1423
Gwen Brown Damascus Resident (301) 253-5632
Terry Brown Damascus Resident (301) 253-5632
Jan Rieke Damascus Resident (301) 368-3464
Jeff Harmon DRRTS (301) 482- 2391

Action Item - Meeting Minutes: Jane Lawton moved the minutes be approved as written. Mary Pat Wilson seconded the motion and it was unanimously approved.

Action Item: Birch Broadcasting application for four new radio towers - Bethesda Church Road & Johnson Drive, Damascus (Application #200506-02).

Motion: Jane Lawton moved that the first sentence in the "Implications to Surrounding Area" section of the Tower Coordinator's Recommendation Form be changed to read: "Residents near the site are aware of the plans to place the AM towers at this site and there is considerable community opposition and interest in the siting of these towers". Steve Batterden seconded the motion and it was unanimously approved.

Bob Hunnicutt summarized the Addendum to the Tower Coordinator's Recommendation noting that at the last meeting the Damascus Residents for Responsible Tower Siting (DRRTS) raised questions that the TFCG members wanted the County Attorney to review before they took action on this application. The first question was whether the sections of the Maryland code cited by the DRRTS applied to the TFCG application review. The second question was if the TFCG had the authority to require a different antenna array than that proposed by the applicant for this site.

Mr. Hunnicutt reported that he had spoken with Clifford Royalty and it was his understanding from Mr. Royalty that sections of the Maryland Code cited by the DRRTS at the last meeting may not apply to the TFCG, but if it did, Mr. Afflerbach is licensed by the State of Maryland as a Professional Engineer and meets the Maryland code requirements cited by DRRTS. Mr. Hunnicutt said he also understood from Mr. Royalty that it was beyond the authority of the TFCG to require the applicant to redesign the antenna array approved by the FCC. Consequently, the Tower Coordinator's Recommendation remains unchanged and still recommends that the application be conditioned on the Board of Appeals approving a Special Exception for the site and that the equipment shelter meet the zoning requirements.

Jane Lawton introduced County Councilmember Michael Knapp who wished to comment on the application.

Councilmember Knapp thanked the members of TFCG for their participation in the tower siting process and for affording him the opportunity to speak to the group. He stated that when the County Council recently passed Zoning Text Amendment 05-10, they tried to address the issues of tall towers in the county. The Zoning Text Amendment introduced language to limit the height of broadcast towers of 275 feet. He understands that the towers in this application would be taller than 275 feet – somewhere between 275 and 411 feet. He asked how does one determine what the minimum height of the antenna should be?

Lee Afflerbach replied that he understood the community's opposition to the tall towers and that, as the DRRTS had asserted, agreed that there could be other locations and different design options used for the antenna array and tower height. Consequently, he could not say exactly what the minimum height should be.

Ms. Lawton added that based on the engineering analysis it appears that the towers could be somewhat shorter but that they would still be above the 275 foot level.

Mr. Knapp noted that in the Zoning Text Amendment the Council tried to minimize the impact of a new facility. He asked the group what the Council could do to ensure that is accomplished.

Mr. Afflerbach replied that since there are many variables that determine the height of a tower, such as its location, coverage requirements, and interference pattern with other U.S. and Canadian stations, it would be

difficult to say how one could assure that the facility was at its minimum height.

Ms. Lawton said that the challenge in this case is that since this site was approved by the FCC, the TFCG has little option in determining the minimum height. She stated that to require a lower height with the current design, the station may not meet the FCC's minimum standards. Mr. Knapp suggested that the TFCG could ask the applicant to document the lowest height.

Cliff Royalty replied that would be up to the Board of Appeals, as stated in the Special Exception standards in the code.

Mr. Knapp said that if a 411 foot height was approved by the TFCG, the Board of Appeals, who look to the TFCG for a technical review of an application, may believe that the TFCG had done a thorough technical review that concluded that was the minimum height.

Mr. Afflerbach stated that based on the application that was filed for this site, the 411 foot height of the antenna array meets the FCC's minimum standards, which is the requirement of the County's zoning ordinance. In response to a question, Mr. Afflerbach said he agreed with the DRRTS' engineer that if the antenna array was designed differently it could be perhaps 10% lower than the 411 foot height.

Ms. Lawton noted that it was beyond the scope of the TFCG to tell the applicant what kind of technology to use. Mr. Royalty agreed.

Mr. Knapp suggested that the group could comment in their recommendation that although the applicant had submitted a height of 411 feet, it may be possible that a lower height would work.

Ms. Lawton asked if the Tower Coordinator's Recommendation would include such a reference. Mr. Hunnicutt replied that the amended Recommendation now incorporates a copy of the statement read by Ms. Bussard at the last meeting and the DRRTS engineer's statements regarding the tower height. He said this information would be sent to the Board of Appeals along with the minutes of the meeting from July 12th as well as the minutes from today's meeting.

Ms. Lawton stated that asking the applicant to redesign their facility would not necessarily achieve a lower set of towers because any design would be subject to the FCC's approval.

Mr. Knapp thanked the group for allowing him to speak and that his intent was to ensure that the facility to be constructed would be the minimum height necessary.

Ms. Lawton asked Pamela Bussard if she had any additional comments. Ms. Bussard read aloud a letter (copy attached) from Councilmember Steve Silverman regarding the application.

Dave Brown also summarized his letter to Ms. Lawton (copy attached) noting that he believed the intent of the Maryland Law was to keep unlicensed engineer documents out of the public arena. He added that if the TFCG were to give a report to the Board of Appeals, the Board would have the responsibility to reject the applicant's engineering report.

Ms. Lawton asked the DRRTS engineer, Mr. Burrows, if he had any comments.

Mr. Burrows noted there are approximately 8,000 AM stations in the country and that some at the lower end of the AM spectrum used the top loading design. He noted that it is expensive to build taller towers and that is why many station operators use the top loading design that permits a lower structure. He cited the CFR as the basis for the FCC's approval of a top loaded design.

Barry Friedman asked Mr. Burrows to explain why efficiency is not related to the FCC rules. Mr. Burrows stated that for a Class B station, such as this, at a certain antenna height the applicant is required to meet a minimum of 282 mV/m.

Ms. Lawton asked if that was the case, why is minimum efficiency not relevant to this application. Mr. Burrows stated that it is relevant.

Mr. Afflerbach asked Mr. Burrows if he had performed an allocation study to determine the minimum height of

this facility. Mr. Burrows stated he had not. Mr. Afflerbach asked how Mr. Burrows could identify the minimum height required if he had not performed a detailed study. Mr. Burrows said he based it on the fact that the FCC permits a top loaded design, and a top loaded design could result with a lower tower set of antennas.

Mr. Freistadt stated that the applicant's permit from the FCC had been highly contested over the course of the 12 year period it had been under review by the FCC. The result of all of that work on the part of the applicant is the FCC's approval of the construction permit with an antenna array including towers 411 feet high.

Jennifer Bryant asked were other options considered by Mr. Birach to attain lower antenna heights. Mr. Birach replied that after many years of trying to get a design that would be approved by the FCC, they were successful with the current design as approved by the FCC to meet their coverage requirements without interfering with other stations.

Pamela Bussard stated that, in her opinion, the difference between 411 feet and 360 feet would be significant and she believed the TFCG should make its best effort to reduce this facility to its lowest height. She said she would like to see the other options at lower heights that Mr. Birach considered. She urged the TFCG to require Mr. Birach to redesign his facility.

Ms. Lawton said she appreciated the public concern over this application but the TFCG must also consider that the Board of Appeals and the Planning Commission are the bodies responsible to address the concerns of the height of the antennas as approved by the FCC. Cliff Royalty added that the TFCG's responsibility was to review and comment on an application.

Virginia Clifford asked why the TFCG would consider the information provided by Birach's engineer, who is not licensed by the state of Maryland. Ms. Lawton replied that Mr. Afflerbach, who is licensed in Maryland, provided technical advice to the group for this application. Ms. Lawton said that the TFCG is not advocating for a non-resident, as Ms. Mitchell implied. She noted that the construction permit approved by the FCC set the height of the towers, and the TFCG has no role in the FCC's process. She added that in this case neither the DRRTS engineer nor Mr. Afflerbach can say exactly what different height will be approved by the FCC. She reiterated that the zoning and height issues for this facility are evaluated by the Board of Appeals and the Planning Board.

William Mitchell asked what is the role of the TFCG. Ms. Lawton replied that the TFCG reviews applications for cellular antennas and towers. She stated that this is only the second AM broadcast application they have reviewed during the ten years of the TFCG's existence and that AM Towers are different than cellular towers. She said that even in the case of cellular antenna sitings, the TFCG cannot dictate technology or facility design to the carrier. She added that this particular application had been approved by the FCC at a certain height and that the TFCG's recommendation will note that the applicant has FCC approval for the site.

Carlton Gilbert noted that his staff will be responsible for writing the report provided to the Planning Board. He said that a hearing for this Special Exception has been tentatively scheduled for September 28th and the public hearing at the Board of Appeals is scheduled for October 6th. He noted that public testimony will be permitted at both hearings.

Mr. Freistadt summarized the approval process for the Special Exception.

Ms. Bryant asked the applicant if the TFCG could see the different options that were submitted to the FCC for approval. Mr. Birach stated the construction application does not permit submission of several different options for FCC review and approval; therefore, the only application submitted to the FCC was the one that was approved.

An unidentified Damascus resident stated that she lives directly across the street from the proposed tower site and was concerned about the shadow that would be cast across her son's room. Ms. Lawton advised her that those are considerations that would be considered by the Planning Commission and the Board of Appeals.

Helen Xu stated that a technical resolution has been presented that claims could result in shorter towers. She asked if the applicant submitted another design for the site to the FCC would that jeopardize their existing construction permit of use of assigned frequency. Mr. Birach stated that was a possibility, as there was another station operator in Falls Church that wanted to acquire an AM license for the 540 frequency. He stated

that the FCC's rules do not permit simultaneous submission of different options for antenna arrays.

Ms. Lawton asked the TFCG members if they had a motion on the application.

Mary Pat Wilson asked Mr. Royalty what action the TFCG was required to take on an application. Mr. Royalty replied that the Executive Regulation stated that they must review and comment on an application and that the applicant is required to submit a TFCG Recommendation to the Board of Appeals. He added that the group had the option of recommending the application, not recommending the application, or recommending the application with conditions, which is what the Tower Coordinator has provided in their Recommendation to the group.

Ms. Lawton noted that the Recommendation before them was conditioned on the applicant obtaining approval for a Special Exception and that the equipment shelter meets all zoning ordinance requirements.

Ms. Bryant moved that the application be recommended and conditioned on the applicant exploring other options to the proposed height. Mr. Royalty said that the application is already conditioned on the applicant obtaining a Special Exception, and since the Board of Appeals would consider the height in its review, that issue is already covered under the Tower Coordinator's recommendation.

Mr. Gilbert asked if the applicant was asked if they considered other options for a lower tower height. Bob Hunnicutt stated that this application is not like an application for a new cellular monopole such as those the TFCG typically reviews, where the applicant may redesign a facility to a lower height on their own initiative. Based on reviews of those types of applications, the Tower Coordinator can give an opinion to the TFCG as to whether or not it appears as though a lower height may work to meet the carrier's stated coverage objective. He noted, however, that even in those cases, the TFCG does not have the authority to require the carrier to redesign their network. He said that they did ask the applicant to meet the requirements of the zoning ordinance by submitting documentation that a height above 275 feet was required to meet the FCC's minimum standards. The applicant did that and, based upon Mr. Afflerbach's independent review, it appears that the additional is needed to meet the minimum FCC requirements for operating efficiency.

Mr. Afflerbach added that we only have the application and information relative to the station's construction permit and do not have other documentation that the applicant may have considered in their preliminary design process. He noted that he knows that the applicant's engineer has those documents since a copy of at least one alternative design was sent to him in error in response to his request for documentation.

Ms. Lawton asked the applicant if they had planning and design documents that led up to the selection of the current design. Mr. Birach stated that it is likely that his engineer has documents of alternative designs considered early on in their project but he was not sure. He noted, however, that they would show why they needed this design to meet the FCC's minimum requirements at the upcoming Planning Commission and Board of Appeals hearings.

Ms. Lawton stated that she thought they all could agree that they would like to see the towers at a lower height.

Ms. Xu commented that any detailed study to say whether or not they could be lower and meet the FCC's requirements would have to be done by an engineer and approved by the FCC.

Ms. Bryant amended her motion that the application should be conditioned on the applicant showing evidence that they have explored other options to address the community concerns of lowering the tower height and the number of towers.

Ms. Xu said that she would like to add a condition that the operator submit evidence of the minimum height necessary for this antenna array.

Ms. Lawton added that it should be noted that any option to use a lower height would require FCC approval. She added that it was also important to note in their Recommendation that the applicant's engineer was not present at either this meeting or the one held on July 12th.

In response to a question, Ms. Lawton stated that the TFCG must look at both sides of the issues related to

the application. In this case, they have engineering documents submitted by the applicant and they have engineering documents submitted by the DRRTS as well as engineering information from their own engineering consultant and they must take all of that into account.

Mr. Afflerbach noted that the group also has information from the public file with the FCC regarding the construction permit.

Steve Batterden asked Mr. Royalty about the applicability of the Maryland State Law having a non-Maryland licensed engineer submit information to the TFCG.

Mr. Royalty replied whether it applies or not was irrelevant because the TFCG had the testimony of Mr. Afflerbach, who is a licensed Maryland engineer and serves as the TFCG's Tower Coordinator.

Motion: Jennifer Bryant recommended the application conditioned on: 1) the applicant submitting evidence that they have explored other options to address community concerns of lowering the tower height and the number of towers; 2) the applicant submitting evidence of the minimum height necessary for this antenna array; 3) that any changes to the antenna array must be reviewed and approved by the FCC; 4) that the applicant must obtain approval of a Special Exception form the Board of Appeals; and 5) that the equipment shelter must comply with zoning requirements. Helen Xu seconded the motion and it was approved with four voting to recommend with the stated conditions, Jane Lawton voting against the motion, and Carlton Gilbert abstaining.