

**APRIL 15, 2008 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 3**

ITEM #4

PURPOSE

To consider adopting the written decision as required by the Federal Telecommunications Act regarding Z-9 (MITRIX, INC. FOR T-MOBILE SOUTH, LLC) for property located in Land Lot 677 of the 17th District, on the south side of Main Street, west of Lois Street.

BACKGROUND

This case was heard on March 18, 2008 and denied by the Board of Commissioners, with direction to the County Attorney to prepare in writing the denial of the application as required by the Federal Telecommunications Act. The written decision is attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider the written decision and if found to be adequate, adopt the written decision.

ATTACHMENTS

Written Decision

**BEFORE THE BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA**

In the Matter of	:	Z-9
MITTRIX, INC. FOR	:	
T-MOBILE SOUTH, LLC	:	(2008)
Applicant,	:	
	:	
DAVID and VICTORIA MILAM	:	
Titleholders.	:	

DECISION

This matter came before the Board of Commissioners on March 18, 2008, upon application by Mittrix, Inc. for T-Mobile South, LLC (“T-Mobile”) to amend the previous zoning stipulations on property owned by David and Victoria Milam (“Milams”) and located in Cobb County. The stipulations specifically limit the property to professional office use only. T-Mobile’s requested amendment to the stipulations would allow it to apply for a special land use permit to construct a telecommunications tower.

FINDINGS OF FACT

In early 1990, the Milams’ predecessor in title applied to the Board of Commissioners (“BOC”) for a rezoning of the subject property from R-20 to OI. On April 17, 1990, after reviewing its professional staff’s recommendations and conducting a public hearing on the matter, BOC rezoned the property as requested. However, as a stipulation of the rezoning, BOC limited the use of the property such that it could only be used for professional offices. This stipulation was imposed, at least in part, due to an agreement between the applicant and the

Chastain Lakes Homeowners Association regarding the use and aesthetics of the property. The Chastain Lakes subdivision, a residential area, is immediately adjacent to the property which is the subject of the current application.

Despite the earlier agreement between the predecessor in title and the Chastain Lakes Homeowner's Association, in 2008, T-Mobile filed an application with Cobb County seeking a rezoning (which county staff designated "Z-9") for the purpose of eliminating the professional office only stipulation. In essence, T-Mobile sought permission to apply for a special land use permit to construct a telecommunications tower on the site.

The Cobb County Zoning Division professional staff analyzed this application. It found that applicant's proposal would not permit a use that is suitable in view of the use and development of adjacent and nearby properties. Staff also noted that the proposed use would have an adverse impact upon nearby property and that the previous stipulations set low intensity limits in order to protect the Chastain Lakes subdivision. Thus, the professional zoning staff recommended denial of the application.

On March 18, 2008, the Board of Commissioners conducted a public hearing on this matter. Applicant was represented by Sarran Marshall. Applicant proposed to construct a 120 foot tall "monopine" tower. Several individuals opposed to the application appeared at the hearing and expressed their opposition to it. Bob McCamy testified that he owns property which surrounds the site, that placement of a telecommunications tower on the site would hinder future

development of his property, would create an eyesore, and would make it impossible to coordinate future development. He also noted that the "fall zone" of any tower on the site would impinge upon his property. Michael Stine of the Bells Ferry Civic Association, also testified in opposition to the application.

After reviewing the application and staff comments, as well as hearing the testimony presented, Commissioner Lee stated that he was opposed to the application and that the use simply did not fit the area and that the proposed change in stipulations of zoning would be detrimental to the adjacent residential community. Commissioner Lee then moved to deny Z-9. His motion carried by a vote of 5-0. After the vote, the County Attorney was directed to prepare a written decision memorializing the denial of Z-9 for adoption by the Board of Commissioners.

RATIONALE FOR DENIAL

The Board of Commissioners is aware of the sometimes competing interests of a national telecommunications policy and its own local land use laws and decisions. It is also aware of the ability it has to govern the siting of wireless facilities, understanding the method by which its decisions are made shall be subject to judicial oversight. Upon due and proper consideration having been given to the matter as presented by all interested parties, including recommendations of professional zoning staff, and applicant's application, and applying general and non-discriminatory standards derived from Cobb County's Zoning Ordinance, it is the opinion of this Board that:

- The proposed change in zoning stipulations allowing application for a special land use permit for a telecommunications tower will have a significant adverse effect on the neighborhood and area surrounding it. Individuals testified that a tower would be an eyesore, hinder development, make it impossible to coordinate future development, and create a safety hazard with respect to the fall zone around any proposed tower. Further, a change in stipulations would expressly violate the intent of the previous agreement between the previous owner of this property and the Chastain Lakes Homeowner's Association, upon which this property's zoning is based. Any concerns related to health hazards from radio waves or electromagnetic fields cannot be and were not considered by the Board, as mandated by federal law.
- Any proposed tower would not be compatible with the residential neighborhood adjoining the site, as the neighborhood is comprised of exclusively residential uses.
- There is no evidence in the record that there exists a lack of wireless communications coverage in the area in question. The applicant failed to present any studies, data, or other evidence to suggest that federal requirements are not being met by the current level of service.

It is the opinion of the Board that the testimony from various residents, combined with the recommendations of professional staff, and with the individual commissioners' experience and interpretation of the evidence and testimony, constitute substantial evidence that is competent, relevant, and adequate to support denial of this application. Wherefore, application Z-9 is hereby DENIED.

This written denial is entered upon the record of the County Clerk this ____ day of _____, 2008.

Samuel S. Olens, Chairman
Cobb County Board of Commissioners