

**NOVEMBER 17, 2009 ZONING HEARING  
"OTHER BUSINESS"  
COMMISSION DISTRICT 2**

**ITEM #1**

**PURPOSE**

To consider a Settlement of Litigation proposal regarding Special Land Use Permit (SLUP-15) T-Mobile of August 19, 2008, for property located on the southeasterly side of Roswell Road, south of Shady Hill Road in Land Lot 17 of the 1<sup>st</sup> District.

**BACKGROUND**

The applicant applied for a Special Land Use to allow the erection of a Telecommunications tower and related equipment. The application was denied and the Board of Commissioners decision is attached. Prior to this case going to court, the applicants submitted a Settlement of Litigation proposal that is attached. The Zoning Analysis from the original application is also attached.

**FUNDING**

N/A

**RECOMMENDATION**

The Board of Commissioners consider the Settlement of Litigation proposal.

**ATTACHMENTS**

Board of Commissioners Decision  
Settlement of Litigation Proposal  
Original Zoning Analysis

ORIGINAL DATE OF APPLICATION: 08-19-08

APPLICANTS NAME: T-MOBILE C/O COMPASS TECHNOLOGY SERVICES

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE  
COBB COUNTY BOARD OF COMMISSIONERS

**BOC DECISION OF 09-16-08 ZONING HEARING:**

**T-MOBILE** (East Cobb Presbyterian Church (PCA), Inc., owner) requesting a **Special Land Use Permit** for the purpose of a 120-Foot Telecommunications Tower in Land Lot 17 of the 1<sup>st</sup> District. Located on the southeasterly side of Roswell Road, south of Shady Hill Road.

The public hearing was opened and Mr. John Moore, Mr. Mark McClellan and Ms. Karen Hallacy addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Thompson, second by Olens, to **reject** Special Land Use Permit and to **direct** the County Attorney to prepare a written denial to be adopted by the Board of Commissioners at their October 21, 2008 Zoning Hearing.

VOTE: **ADOPTED** unanimously

ORIGINAL DATE OF APPLICATION: 08-19-08

APPLICANTS NAME: T-MOBILE

**THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE  
COBB COUNTY BOARD OF COMMISSIONERS**

**BOC DECISION OF 10-21-08 ZONING HEARING:**

**OTHER BUSINESS ITEM #3 – TO CONSIDER ADOPTING THE WRITTEN  
DECISION AS REQUIRED BY THE FEDERAL TELECOMMUNICATIONS ACT  
REGARDING SLUP-15 (T-MOBILE) OF AUGUST 19, 2008**

To consider adopting the written decision as required by the Federal Telecommunications Act regarding SLUP-15 (T-Mobile) of August 19, 2008.

Mr. Mark Danneman, Zoning Division Manager, provided information regarding request for adoption of written decision. Following presentation and discussion, the following motion was made:

MOTION: Motion by Thompson, second by Olens, to **adopt** written decision as required by the Federal Telecommunications Act regarding SLUP-15 (T-Mobile) of August 19, 2008 (copy of written decision is attached and made a part of these minutes).

VOTE: **ADOPTED** unanimously

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

<b>In the Matter of</b>	:	<b>SLUP-15</b>
<b>T-MOBILE</b>	:	<b>(2008)</b>
<b>Applicant,</b>	:	
	:	
<b>EAST COBB PRESBYTERIAN</b>	:	
<b>CHURCH (PCA), INC.</b>	:	
<b>Titleholder.</b>	:	

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**DECISION**

This matter came before the Board of Commissioners on September 16, 2008, upon application by T-Mobile ("T-Mobile") for a special land use permit ("SLUP") which would allow T-Mobile to construct a telecommunications tower on property owned by East Cobb Presbyterian Church and located in Cobb County.

**FINDINGS OF FACT**

In the summer of 2008, T-Mobile filed an application with Cobb County seeking a SLUP (which county staff designated "SLUP-15") for the purpose of constructing a 120 foot tall telecommunications tower to be located on the southeasterly side of Roswell Road, south of Shady Hill Road. This location is parcel three of land lot seventeen in the first district of Cobb County. In its application, T-Mobile referred to the proposed structure as a "stealth unipole tower" and proposed to locate it near the front of the property occupied by the East Cobb Presbyterian Church. The church, and therefore the proposed tower, is

1 Min. Bk. 57 Petition No. 083  
 Doc. Type written decision  
 Meeting Date 10/21/08

located in an area which is zoned "R-80" which restricts development to single-family homes on lots of at least 80,000 square feet and does not allow industrial or commercial uses. The site of the tower would be at a higher elevation than the nearby residential subdivision.

The Planning Commission heard the case at its meeting of September 3, 2008. After hearing evidence from both the applicant and those opposed, it voted to recommend approval of the application by a vote of four to one.

Thereafter, on September 16, 2008, the Board of Commissioners conducted a public hearing on this matter. At that hearing, attorney John Moore appeared on behalf of T-Mobile. He stated that T-Mobile had a coverage gap in the area where the proposed tower would be located. Mr. Moore presented a map which he contended depicted gaps in wireless service for T-Mobile customers in the area. He then presented a similar map which purported to show improved service if the tower were constructed and placed into operation. However, T-Mobile's own map showed that even after the proposed tower is placed into service, there would still be some areas which would not have T-mobile coverage.

Mr. Moore stated that the applicant had considered two other possible tower sites in the immediate area – a strip shopping center (The Avenues of East Cobb) and a horse riding stable. Although Mr. Moore indicated that the shopping center site would overlap with another of T-Mobile's existing towers, he presented no evidence as to why that would be a problem. Further, no evidence was presented that T-Mobile considered locating the proposed tower within any other

commercially zoned site, even though there are numerous commercially zoned properties within less than one-half mile of the proposed site. Mr. Moore then showed the board a picture of the proposed tower. The picture clearly demonstrated that the proposed tower would loom over nearby residential areas.

As the representative of the East Cobb Civic Association, Mark McClellan spoke against the proposed tower. He contended that it would be improper to place this proposed tower, which is a commercial use, in a residential area. He also noted that T-Mobile's own coverage maps show that the tower would only improve service in a limited area which would likely mean that additional towers would be needed in the nearby residential areas, thus resulting in even more commercial intrusion.

Karen Hallacy then spoke on behalf of the East Hampton Homeowners' Association. East Hampton is the subdivision directly across the street from the proposed tower. Ms. Hallacy stated that East Hampton is opposed to this application and that the residents of her subdivision already had adequate wireless service. Like Mr. McClellan, she was opposed to the placement of a commercial use, such as a tower, in this residential area.

Commissioner Thompson, the District Commissioner, stated it was inappropriate to locate the tower in this heavily residential area. He noted that the applicant had not shown that there was a lack of adequate wireless service in this area. He also observed that the proposed tower would loom over the adjacent subdivision.

Chairman Olens also commented upon the application. He stated that he lives in this area and is very familiar with it. He stated the he agreed with the points raised by Commissioner Thompson. He also stated that his family had T-Mobile service and had good coverage in this area.

Commissioner Thompson moved to deny SLUP-15. 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 SLUP-15 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 the Planning Commission, and Applicant's application and presentation, and applying general and non-discriminatory standards derived from Cobb County's Zoning Ordinance, it is the decision of this Board that:

- The proposed tower will have a significant adverse effect on the neighborhood and area surrounding it. Evidence showed the tower would be an eyesore and spoil the views in a residential area. The

County Zoning Ordinance specifically discourages towers being located in residential areas. It is important to protect the quality of life and aesthetics of residential neighborhoods. Any concerns related to health hazards from radio waves or electromagnetic fields cannot and were not considered by the Board, as mandated by federal law.

- The proposed tower is not compatible with the neighborhood, as the neighborhood is otherwise comprised of residential uses.
- There are no unique or special conditions that overcome the Board's general presumption that residential neighborhoods should not allow noncompatible business uses. Additionally, testimony revealed that those who were T-Mobile customers in the area enjoyed satisfactory wireless service. No evidence was presented that the area lacked adequate wireless service from at least some providers.
- It is the opinion of the Board that the testimony from various residents combined 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 the SLUP Application.

Wherefore, the Board denies application SLUP- 15.

This written denial is entered upon the record of the County Clerk this 21<sup>st</sup>  
day of Oct, 2008



Samuel S. Olens, Chairman  
Cobb County Board of Commissioners



# MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP  
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OF COUNSEL:  
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\* ALSO ADMITTED IN FL  
\*\* ALSO ADMITTED IN NM  
\*\*\* ALSO ADMITTED IN NC  
\*\*\*\* ALSO ADMITTED IN CA  
◆ ADMITTED ONLY IN TN

November 11, 2009

## Hand Delivered

Mr. Mark A. Danneman  
Zoning Administrator  
Zoning Division  
Cobb County Community Development Agency  
Suite 300  
191 Lawrence Street  
Marietta, Georgia 30060-1661

RE: Application for Special Land Use Permit - Application No. SLUP-15 (2008)  
Applicant: T-Mobile South, LLC  
Owner: East Cobb Presbyterian Church (PCA), Inc.  
Property: 0.09 acres (site area) of 8.15 acre tract  
Located at 4616 Roswell Road (State Route 120),  
Land Lot 17, 1<sup>st</sup> District, 2<sup>nd</sup> Section,  
Cobb County, Georgia

Dear Mark:

As you know, the undersigned and this firm represented T-Mobile South, LLC, the Applicant (hereinafter referred to as "Applicant"), and East Cobb Presbyterian Church (PCA), Inc., the Property Owner (hereinafter referred to as "Owner"), in the Application for Special Land Use Permit, being SLUP-15 (2008), as to a total site area of 0.09 acres, of an 8.15 acre tract, located at 4616 Roswell Road, Land Lot 17, 1<sup>st</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia (hereinafter "Subject Property"). A lawsuit was filed as a result of the denial of the requested Special Land Use Permit by the Board of Commissioners on September 16, 2008.

The settlement, as proposed in this letter and the stipulations contained herein result from meetings and discussions with county staff and representatives of Applicant and Owner to resolve the issues presented without the necessity of further litigation.

## MOORE INGRAM JOHNSON & STEELE

Mr. Mark A. Danneman  
Zoning Administrator  
Zoning Division  
Cobb County Community Development Agency  
Page 2 of 3  
November 11, 2009

Applicant agrees to the following, which, if approved, as submitted, shall be in complete settlement of the pending lawsuit and shall be binding upon the Subject Property. The referenced stipulations are as follows:

- (1) The proposed tower shall be one hundred twenty-six (126) feet in height and shall be the version of a "monopine" which is substantially similar to that depicted in the drawing attached hereto as Exhibit "A" and incorporated herein by reference.
- (2) The proposed tower and leased area shall be located on the site as shown on the plat dated November 5, 2007, prepared by Point to Point Land Surveyors and designated "Shady Hill."
- (3) A fence of at least six (6) feet in height shall be constructed and maintained around the perimeter of the leased site. The fence shall be constructed of wood in such a manner that it completely blocks the view from the exterior of the leased area of all structures associated with the tower up to the height of the fence.
- (4) In connection with the construction, maintenance, or continued use of the proposed tower, there shall be, as of November 17, 2009, no new access or curb cuts from Roswell Road (Georgia State Route 120).
- (5) Once construction of the facility is complete, entry to the facility shall be restricted to a four (4) foot wide man gate on the northwest corner of the wood fence.
- (6) Landscaping designed to screen the site shall be installed outside the fence surrounding the perimeter of the site. The plant material shall have a minimum height of six (6) feet. The density and species selection for the plants shall be approved by the County Arborist. The landscaping shall be maintained by the Applicant.
- (7) The stipulations and conditions set forth herein are intended to supplement and not conflict with applicable Cobb County ordinances. However, if any of the above provisions are determined by Cobb County to conflict with a Cobb County ordinance, then these stipulations control. Applicant and Owner are still bound

**MOORE INGRAM JOHNSON & STEELE**

Mr. Mark A. Danneman  
Zoning Administrator  
Zoning Division  
Cobb County Community Development Agency  
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November 11, 2009

by all remaining provisions of the applicable Cobb County Ordinances, including, but not limited to § 134-273.

The proposal contained herein is submitted in settlement and compromise of the pending lawsuit and shall not otherwise be used in any hearing, trial, arbitration, or mediation of said lawsuit. If the settlement, as proposed, is approved by the Board of Commissioners, Applicant and Owner agree to dismiss, with prejudice, the pending litigation case and to pay their own legal expenses and litigation costs.

We believe the requested use under the Special Land Use Permit, together with the proposed stipulations contained herein, is an appropriate use of the Subject Property. Thank you for your consideration in this request.

With kindest regards, I remain

Very truly yours,

MOORE INGRAM JOHNSON & STEELE, LLP



John H. Moore

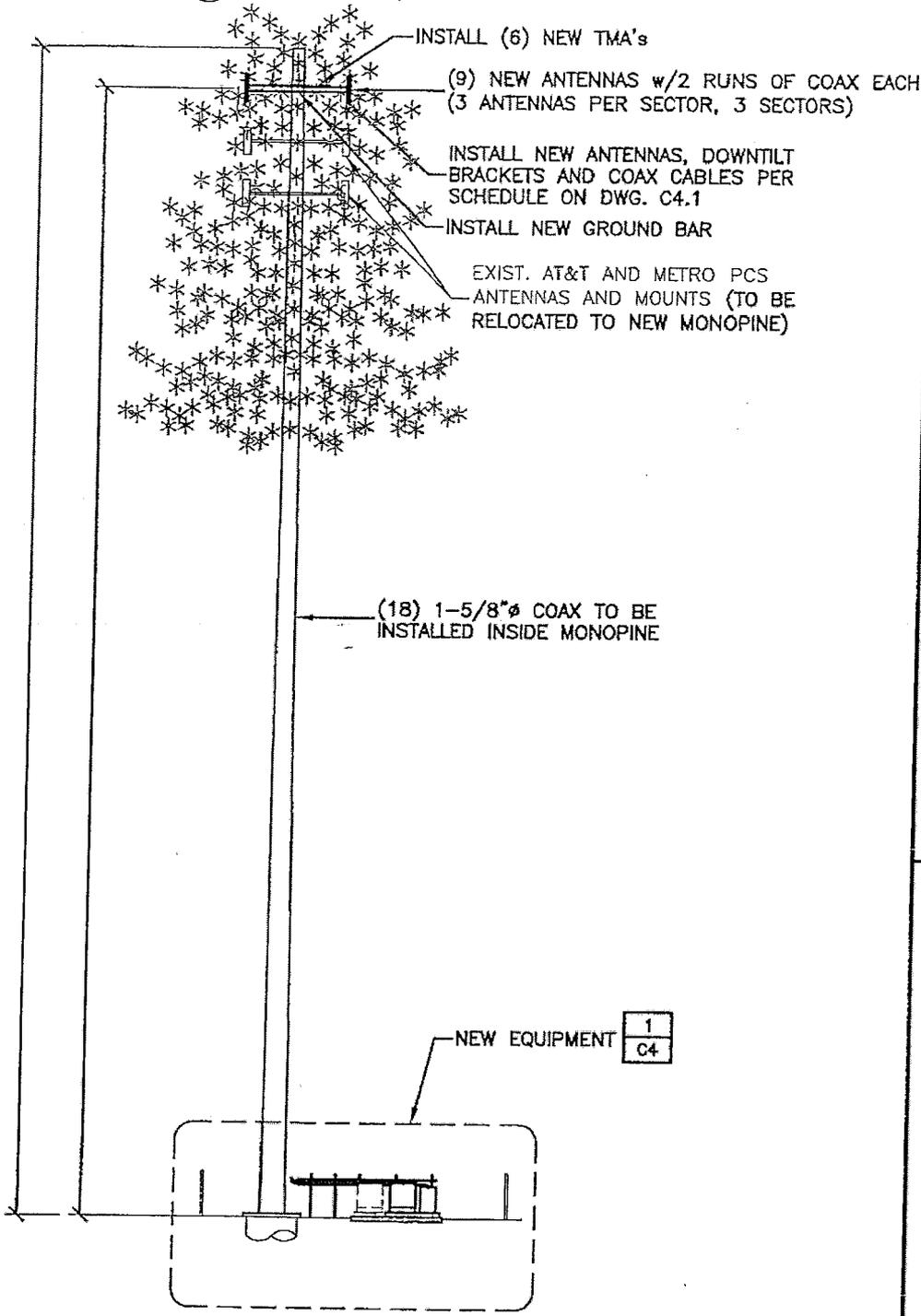
JHM:cc

Attachment

- c Cobb County Board of Commissioners:
  - Samuel S. Olens, Chairman
  - Helen C. Goreham
  - George W. ("Woody") Thompson
  - Tim Lee
  - Robert J. ("Bob") Ott
  - (With Copy of Attachment)

T-Mobile South, LLC  
(With Copy of Attachment)

A  
C4.1



**TOWER ELEVATION**  
NOT TO SCALE

FOR CLARITY, NOT ALL TOWER APPURTENANCES SHOWN

- NOTES:**
- A. CONTRACTOR TO PROVIDE SPECIFICATIONS FOR ANTENNA MOUNTS TO T-MOBILE FOR APPROVAL PRIOR TO INSTALLATION.
  - B. CONSTRUCTION MANAGER TO COORDINATE WITH RF ENGINEER ON ORIENTATION OF MOUNTS TO ATTAIN DESIRED AZIMUTHS.



**APPLICANT:** T-Mobile  
404-226-8915 Kimberly J. Adams  
**REPRESENTATIVE:** Moore Johnson Ingram & Steele, LLP  
John H. Moore 770-429-1499  
**TITLEHOLDER:** East Cobb Presbyterian Church (PCA), Inc.  
**PROPERTY LOCATION:** Located on the southeasterly side of  
Roswell Road, south of Shady Hill Road.  
**ACCESS TO PROPERTY:** Roswell Road  
**PHYSICAL CHARACTERISTICS TO SITE:** Existing church

**PETITION NO:** SLUP-15  
**HEARING DATE (PC):** 08-05-08  
**HEARING DATE (BOC):** 08-19-08  
**PRESENT ZONING:** R-80  
**PROPOSED ZONING:** Special Land Use  
Permit  
**PROPOSED USE:** 120-Foot  
Telecommunications Tower  
**SIZE OF TRACT:** 8.15 acres  
**DISTRICT:** 1  
**LAND LOT(S):** 17  
**PARCEL(S):** 3  
**TAXES: PAID** Exempt **DUE** \_\_\_\_\_  
**COMMISSION DISTRICT:** 2

**CONTIGUOUS ZONING/DEVELOPMENT**

- NORTH:** R-80/ Single-family house
- SOUTH:** R-20/ Oak Lane Stables
- EAST:** R-20/ Single-family houses
- WEST:** PRD/ East Hampton subdivision

**OPPOSITION:** NO. OPPOSED **PETITION NO:** \_\_\_\_\_ **SPOKESMAN** \_\_\_\_\_

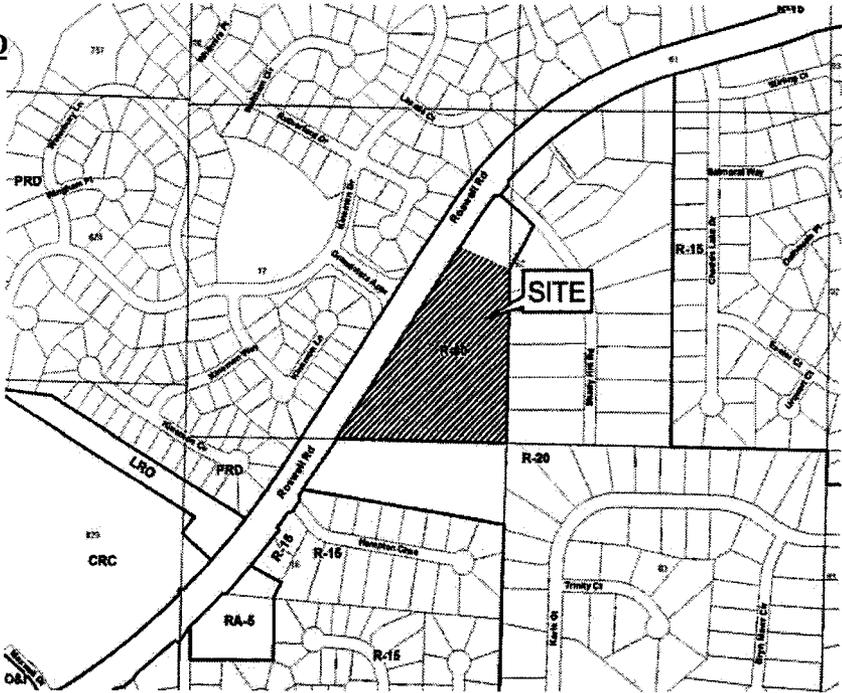
**PLANNING COMMISSION RECOMMENDATIO**

**APPROVED** \_\_\_\_\_ **MOTION BY** \_\_\_\_\_  
**REJECTED** \_\_\_\_\_ **SECONDED** \_\_\_\_\_  
**HELD** \_\_\_\_\_ **CARRIED** \_\_\_\_\_

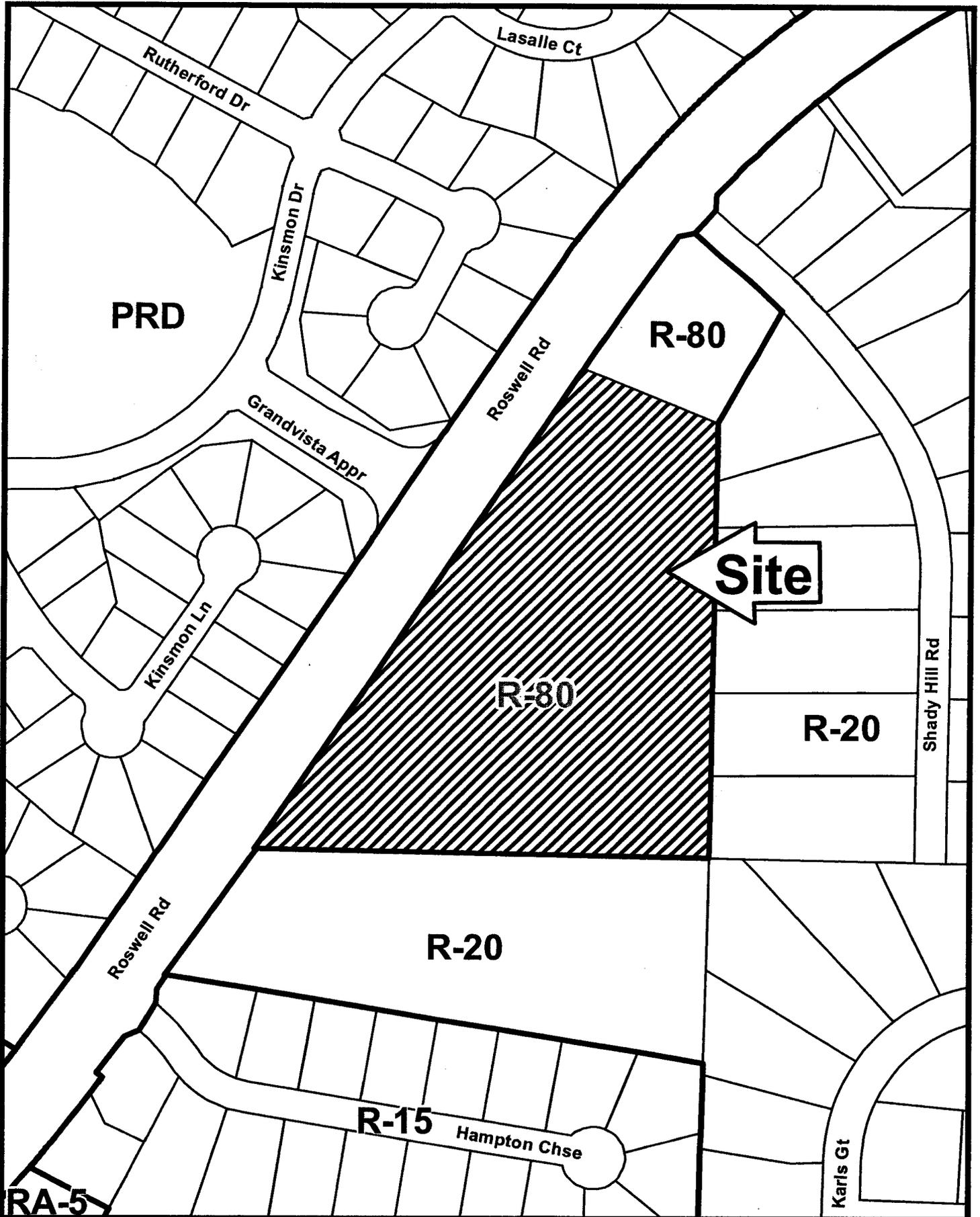
**BOARD OF COMMISSIONERS DECISION**

**APPROVED** \_\_\_\_\_ **MOTION BY** \_\_\_\_\_  
**REJECTED** \_\_\_\_\_ **SECONDED** \_\_\_\_\_  
**HELD** \_\_\_\_\_ **CARRIED** \_\_\_\_\_

**STIPULATIONS:**



# SLUP-15



This map is provided for display and planning purposes only. It is not meant to be a legal description.

100 0 100  
Feet

[  City Boundary  
 Zoning Boundary

APPLICANT: T-Mobile

PETITION NO.: SLUP-15

PRESENT ZONING: R-80

PETITION FOR: SLUP

\*\*\*\*\*

**PLANNING COMMENTS:** Staff Member Responsible: Mark A. Danneman

The applicant is requesting a Special Land Use Permit for the purpose of erecting a 120-foot telecommunications facility. The tower would be a stealth tower or "unipole" (see Exhibit "B"), with small equipment cabinets located at the base of the structure. Applicant will comply with ordinance requirements for a six-foot fence, and the tower will be designed to accommodate at least two other users. The facility will be maintained on a monthly basis or as needed for emergency service. The proposed tower will be set back a distance of over 138-feet from the closest adjacent residential structure. The applicant has submitted a letter explaining their position (See Exhibit "A").

**Historic Preservation:** No comment.

**Cemetery Preservation:** No comment.

\*\*\*\*\*

**WATER & SEWER COMMENTS:**

Water and sewer not necessary for tower.

\*\*\*\*\*

**DEPARTMENT OF TRANSPORTATION COMMENTS:**

Recommend an FAA study.

\*\*\*\*\*

**STORMWATER MANAGEMENT COMMENTS:**

If approved, runoff from the lease area must be directed to the existing onsite stormwater management facility.

\*\*\*\*\*

APPLICANT: T-Mobile

PETITION NO.: SLUP-15

PRESENT ZONING: R-80

PETITION FOR: SLUP

\*\*\*\*\*

**FIRE DEPARTMENT COMMENTS:**

Fire Apparatus Access Road

All access roads shall have an all weather driving surface capable of supporting 75,000 pounds with an unobstructed width of not less than 20 feet, 25 feet inside turning radius, 50 foot outside turning radius and unobstructed vertical clearance of not less than 13 feet 6 inches.

Access road shall extend to within 150-feet of all portions of the facility or any portion of the exterior wall of the first floor.

Dead-end access roads in excess of 150-feet shall be provided with a turn-around by one of the following methods:

Commercial: Cul-d-sac without an island to have a 60 foot paved radius or Hammerhead turn-around – total of 110 feet needed (45 feet + 20 foot wide roadway + 45 feet).

Fire Hydrant

Commercial: Fire hydrant within 500 feet of most remote part of structure.

All Fuel tanks must be submitted to Cobb County Fire Marshal’s Offices for approval.  
Call 770-528-8328.

Gates securing fire apparatus access shall be a minimum 14 feet in clear width for a single lane and 20 feet for a double lane. Gate shall be swing or slide type. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be approved by the Cobb County Fire Marshal’s office.

\*\*\*\*\*

## STAFF RECOMMENDATIONS

### SLUP-15 T-MOBILE

The applicant's proposal is located in an area designated as Public Institutional on the Future Land Use Map. The property is located in an area that contains single-family homes, a horse farm, and is fairly close to the Avenue at East Cobb. For cell towers, non-residential sites are encouraged, and the use of platted lots in residential subdivisions are discouraged, which this proposal complies. The tower is setback it's full height from all off-site residential structures, and is designed for additional co-locations, as required by code. The tower look, or profile has changed from a typical tower with exterior antennae, to a stealth unipole, which is much more aesthetically pleasing. Additionally, the property is on a four lane divided highway that already has very tall power lines along the road. Based on the above analysis, Staff recommends APPROVAL subject to the following conditions:

- Site plan received by the Zoning Division on July 2, 2008;
- Fire Department comments;
- Stormwater Management comments and recommendations; and
- DOT comments and recommendations.

**The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.**



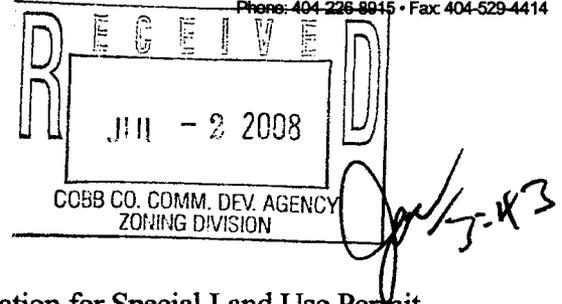
SLUP-15/2008  
Exhibit "A"  
Letter of Intent  
Page 1 of 4

COMPASS Technology Services, Inc • 5449 Bells Ferry Road • Acworth, GA 30102

Phone: 404-226-8015 • Fax: 404-529-4414

July 2, 2008

Mark Danneman  
Cobb County Zoning Administrator  
191 Lawrence Street  
Marietta, GA 30060



Re: T-Mobile's Telecommunications Application for Special Land Use Permit  
At East Cobb Presbyterian Church, 4616 Roswell Road, Marietta  
Cobb County Parcel Number 01-0017-0-003-0 - SLUP-15  
(T-Mobile Site "Shady Hill")

Dear Mr. Danneman:

This letter is written in support of T-Mobile's above-referenced special land use permit application for a proposed telecommunications stealth structure facility. T-Mobile proposes to construct a 120 foot stealth unipole facility to provide its FCC mandated wireless telecommunication service to the eastern portion of Cobb County along the Roswell Road corridor and surrounding neighborhoods.

Description of Proposed Stealth Unipole Facility

The subject property consists of an approximately 8.15 acre tract zoned R-80, and T-Mobile proposes to construct stealth unipole tower and wireless telecommunications facility.

The purpose of the proposed stealth unipole facility is to provide requisite wireless telecommunications service to the eastern portion of Cobb County. The existing network is not capable of providing the level of coverage required by the customer base in this portion of the County. Specifically, this proposed site will provide coverage along busy Roswell Road corridor near the Shady Hill Road intersection and the surrounding neighborhoods. In addition to meeting T-Mobile Communications' requisite service needs, the proposed stealth unipole facility will have the added benefit of accommodating one other carrier who could co-locate its antennas on the proposed unipole.

The proposed stealth unipole facility will be sited on the subject property in a manner designed to minimize its impact on any other properties. The proposed facility will be located in a portion of the property that is buffered by mature tree along the southern property line and mature trees and high tension power lines along the between the site and Roswell Road to the west. The setbacks and existing vegetative growth as well as a proposed landscape strip will provide a buffer to screen the view of the stealth unipole facility from adjacent roads and properties.

The proposed stealth unipole has been designed to be as aesthetically attractive and compatible with the surrounding area as possible. The stealth unipole is a single pole with all antennas and equipment enclosed inside the pole so that there is no exterior equipment visible. This alternative structure is selected and designed

to blend in with subject property and surrounding area as it will be located behind the high tension lines running down Roswell Road.

The proposed facility will be unmanned and will not require water or sewer service. This unmanned site is designed such that it requires minimal visits by a field engineer to maintain the facility of approximately two visits a month. The field engineer will utilize an existing access drive into the subject property. Therefore, the proposed site will not have any substantial negative effect to the traffic, noise, or safety of the surrounding area. The site will be secured with the requisite fencing to prevent unauthorized access. Finally, the proposed site will not cause detriment to the surrounding properties or property owners.

There are no existing towers or other tall structures located within or near T-Mobile's requisite service area on which to locate its antennas. Additional justification and documentation have been provided to by T-Mobile's Radio Frequency Engineer to further address this issue. The proposed property was selected because it is of a non-residentially used, large acreage tract that is well buffered with existing mature tree growth thus providing better buffering from the surrounding properties.

#### Compliance with the Zoning Ordinance

T-Mobile's proposed stealth unipole facility will comply with all of the standards of the Cobb County Zoning Ordinance. Pursuant to Section 134-273 (2)), T-Mobile proposed facility is allowed with a special land use permit, and such approval is therefore requested to construct this facility. The following information is provided in response to the requirements of Section 134-273:

1. *Setbacks:* The proposed stealth unipole facility meets the Cobb County requirement that the tower be set back a distance equal to the full height of the tower from any adjoining off-site residential structure or as safety dictates. The total tip height of the proposed stealth unipole with lightning rod will not exceed 122 feet, and the closest off-site residential structure is located 138.7 feet from the proposed stealth unipole.
2. *Accessory Structure:* There will be a small unmanned equipment cabinet at the base of the proposed stealth unipole that will house T-Mobile's switch equipment and is appropriate in scale and intensity with the proposed site.
3. *Fencing:* The proposed stealth unipole facility will be surrounded by security fencing to prevent unauthorized access to the site. T-Mobile proposes to utilize a eight foot tall wooden privacy fence to surround the proposed compound.
4. *Regulatory Compliance:* The proposed stealth unipole facility will meet or exceed all requirements and standards of the FAA, the FCC, and other governing agencies as may be established and amended.
5. *Structural Compliance:* As required by the Cobb County Zoning Ordinance, at the time of filing for building permit, tower drawings for the stealth unipole will be submitted that have been certified by an independent registered structural engineer as meeting all current safety and design standards of all applicable codes.
6. *Collocation:* T-Mobile has explored the usage of any existing towers and there are no such towers located in or near the area to meet T-Mobile's coverage objectives. Therefore, a new tower is required,

but the proposed stealth unipole will be constructed to accommodate an additional carrier so that it may collocate on the facility as well.

7. *Nonresidential Sites:* The proposed facility is in compliance with the Code requirement encouraging the usage of non-residential sites and discouraging the usage of platted residential subdivision lots. Although the subject property is residentially zoned, it is a multi-acreage lot that is the site of East Cobb Presbyterian Church which is not a residential use.
8. *Height:* The proposed stealth unipole height of 120 feet (122 feet with lightning rod) is the minimum height required to meet T-Mobile's coverage objectives for this area.
9. *Abandonment:* In the unlikely event that T-Mobile should cease operation at this site for a twenty-four month period, T-Mobile understands the special land use permit will be revoked.
10. *Landscaping:* The proposed stealth unipole facility is in compliance with the requirement that a 40 foot setback, 15 feet of which must be a landscape strip, be provided when adjoining residentially zoned property. The proposed facility is located at least 50 feet from all property lines and will be surrounded by a 15 landscape buffer that complies with Cobb County's tree and landscaping requirements. The minimum height of the proposed landscaping trees will be five feet tall at the time of planting, and it will be regularly maintained.

Finally, T-Mobile has submitted all of the requisite application materials including but not limited to the proposed site plan, T-Mobile's coverage plots and site objective report, and Section 106 Report.

#### Critical Need for This Cell Site

Additionally, T-Mobile submits the following information to help clarify its need for the proposed monopole.

T-Mobile offers two-way wireless telephone service through its use of a wireless radio system. To provide public radio service, a carrier must obtain from the Federal Communications Commission ("FCC") both a permit to construct the requisite facilities and a license to operate a system in defined service areas using designated radio frequencies. The FCC has approved T-Mobile for the subject service area, and T-Mobile is currently offering wireless telecommunications service pursuant to the rules and regulations of the FCC.

In a cellular radio system, low powered transmitters and stored program controllers are located at certain points ("cell-sites") throughout the cellular service area. The cell-sites are connected by telephone facilities to a central switching center. In conjunction with the equipment at the cell-sites, the central switching center provides two critical functions relating to the operation of each system. First, it supervises the setting up of each call and establishes the connection that routes the call over the trunk that leads to the low powered transmitter nearest the mobile unit. Second, the central switching center further reroutes the call to a second low powered transmitter that initially conducted the radio transmission. Regular cable telephone facilities interconnect the central switching center to public telephone networks. Thus, subscribers with mobile telephones are provided with regular telephone service quality.

Currently, in the subject service area approved by the FCC, a network of cell-sites and central switching centers has been installed. In order to provide quality service to all parts of the subject service area, T-Mobile must install additional cell-sites. The height and location of the antennas in the grid system of a cellular radio system (taking into account the contour of the land and the radius of the antennas' reliable transmission area) dictate that each cell-site be precisely located within the grid relative to other cell-sites and the central switching center. The grid for the subject service area establishes that the subject property be one of the cell-sites for the subject cellular radio system.

Statement of Constitutional Rights

Finally, for the purpose of preserving its legal rights, T-Mobile sets forth the following statement of its constitutional rights.

An unnecessary hardship would be created by the denial of the requested special land use permit. Any modification of the grid system and/or relocation of the cell-sites would cause the applicant irreparable damage in terms of time and expense.

The special land use permit requested, if granted, would not cause substantial detriment to the public good or impair the purposes or the intent of the Cobb County Code. The property is zoned such to allow the particular use intended. The stealth unipole and the equipment structures will not interfere with the current or future use of surrounding properties.

Failure to grant the requested special land use permit would be unconstitutional and would constitute a taking of property without just and adequate compensation and without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article 1, Section 1, Paragraph 1 and Article 1, Section III, Paragraph 1 of the Constitution of Georgia. A denial of the requested special land use permit would also be unconstitutional because it would discriminate in an arbitrary and capricious manner between T-Mobile and the owner of the subject property and owners of similarly situated property in violation of Article 1, Section III, Paragraph III of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Such denial would deprive T-Mobile and the property owner of their liberty and property rights. Such action would not substantially advance legitimate state interests but would cause T-Mobile and the property owner significant detriment.

For all the above reasons, T-Mobile respectfully requests that the necessary special land use permit requested be granted.

Very truly yours,

T-Mobile South LLC



Kimberly J. Adams  
Zoning and Permitting Manager  
COMPASS Technology Services  
Agent for T-Mobile South LLC

