

**DECEMBER 15, 2009 ZONING HEARING  
“OTHER BUSINESS”  
COMMISSION DISTRICT 3**

**ITEM #5**

**PURPOSE**

To consider adopting the written decision as required by the Federal Telecommunications Act regarding SLUP-14 (T-Mobile South, LLC) of November 17, 2009.

**BACKGROUND**

This case was considered on November 17, 2009 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

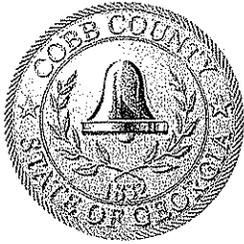
**RECOMMENDATION**

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

**ATTACHMENTS**

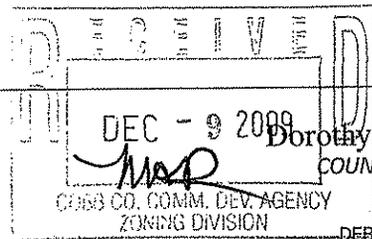
Written Decision





## COUNTY ATTORNEY'S OFFICE

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### MEMORANDUM

**TO:** Chairman Sam Olens  
Commissioner Helen Goreham  
Commissioner Bob Ott  
Commissioner Tim Lee  
Commissioner G. Woody Thompson, Jr.

**FROM:** Joseph B. Atkins, Senior Associate County Attorney *[Signature]*

**RE:** Other Business Items; Board of Commissioners Zoning Hearing  
for December 15, 2009 (SLUP 14)

**DATE:** December 9, 2009

As you recall, at last month's zoning hearing, you voted to deny the above-referenced cell tower application. As a part of that denial, you instructed our office to prepare a written decision memorializing these denials as required by the Federal Telecommunications Act. Therefore, I have attached a copy of the proposed written decision for your consideration during your December 15, 2009 hearing.

Please do not hesitate to contact me if you have any questions or concerns regarding this proposed decision.

cc: Dotty Bishop, County Attorney  
Mark Danneman, Zoning Manager

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

<b>In the Matter of</b>	:	<b>SLUP-14</b>
<b>APPLICATION FOR SPECIAL</b>	:	<b>(2009)</b>
<b>LAND USE PERMIT BY</b>	:	
<b>T-MOBILE SOUTH, LLC,</b>	:	
<b>Applicant,</b>	:	
	:	
<b>EPISCOPAL DIOCESE OF</b>	:	
<b>ATLANTA, INC.</b>	:	
<b>Titleholder.</b>	:	

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**DECISION**

This matter came before the Board of Commissioners on November 17, 2009, upon application by T-Mobile South, LLC (“T-Mobile”) for a special land use permit (“SLUP”) which would allow T-Mobile to construct a telecommunications tower on property owned by the Episcopal Diocese of Atlanta and located in Cobb County.

**FINDINGS OF FACT**

In the fall of 2009, T-Mobile filed an application with Cobb County seeking a SLUP (which county staff designated “SLUP-14”) for the purpose of constructing a 135 foot tall telecommunications tower to be located on the north side of Jamerson Road, west of Jett Road. This location is parcel seven of land lot 55 in the 16<sup>th</sup> district of Cobb County. In its application, T-Mobile referred to the proposed structure as a “bell tower” and proposed to locate it near the entrance to the property occupied by the Church of the Annunciation (Episcopal). The

church, and therefore the proposed tower, is located in an area which is zoned "R-30" which restricts development to single family homes on lots of at least 30,000 square feet and does not allow industrial or commercial uses. This zoning category also generally restricts structures to no more than thirty-five feet in height. T-Mobile plans to place the tower near the edge of the church's property away from the church building. Thus the tower would actually be much closer to the neighboring property and Jamerson Road than to the church building itself.

This is the second time T-Mobile has sought a SLUP for a tower on this property. In 2008, the Board of Commissioners denied T-Mobile's application for an almost identical tower. The main difference between the current application and the previous one is that the previous one always called for a simulated bell tower, where, as discussed below, the current one now seeks the construction of a monopine.

The Planning Commission heard the case at its meeting of November 3, 2009. Considerable information was presented by both sides at the Planning Commission hearing, and much of the same information was presented again at the subsequent hearing before the Board of Commissioners. Nevertheless all of the information presented before the Planning Commission is contained in the record and was considered by the Board of Commissioners. One topic presented by T-Mobile which it did not specifically address at the subsequent Board of Commissioners' hearing involved the effect the proposed cell tower would have upon property values. At the Planning Commission hearing, Mr. Moore stated

that the tower would not adversely affect property values and pointed to two subdivisions in other parts of Cobb County which were adjacent to cell towers and where the homes sold for up to \$500,000. However, he failed to present sufficient data to support this assertion, failed to explain how these values of homes miles away and in a different part of the county with different conditions are relevant, and noted that these subdivisions had been built *after* the towers were in place. After hearing evidence from both the applicant and those opposed, the Planning Commission voted to recommend rejection of the application.

Thereafter, on November 17, 2009, the Board of Commissioners conducted a public hearing on this matter. At that hearing, John Moore appeared on behalf of T-Mobile. Mr. Moore presented a rendering of the proposed tower which showed that T-Mobile had changed its mind and decided to construct a "monopine tower" instead of the previously requested "bell tower." Still, the monopine would be 135 feet tall, over thirteen stories high, or almost four times taller than what is normally allowed in this residential district. The tower compound would also include equipment which services the tower placed upon the ground at the base of the proposed tower.

Mr. Moore stated that it was T-Mobile's preference to collocate on an existing tower. However, he stated that there were no existing towers within this area upon which collocation was feasible. He presented pictures of balloon test photosimulations which he argued showed that the tower would either not be visible at all or minimally visible to most residents. These tests were conducted

when the trees in the area had full or nearly full leaf cover. Further, at least some of the tests were conducted in windy conditions. This caused the balloon to be blown "down horizon" which would make the photosimulations inaccurate. T-Mobile admitted that the photosimulations do not depict the view from the backyards of the closest homes, nor do they depict the view after the deciduous trees lose their leaves.

Mr. Moore stated that there was a need for this tower in order for T-Mobile customers to have wireless service inside buildings in the area. He also showed a "coverage" map which he contended demonstrated areas near the proposed tower which did not enjoy wireless service which was satisfactory to T-Mobile. One of T-Mobile's engineers, a Ms. Lewis, stated that although the coverage map was a computer estimate of coverage, it had been verified by an actual drive test wherein the actual coverage was tested by a T-Mobile employee. Although T-Mobile claimed the drive test confirmed the data depicted on the computer generated coverage map, even T-Mobile admitted that this "confirmation" only related to coverage from a vehicle and was not performed inside the neighbors' homes. This is particularly important in light of the testimony of neighbors as to the adequacy of their current T-Mobile service as described below. T-Mobile failed to present any testimony regarding the existence of dropped calls in the area of the proposed tower.

David Levetro lives in and spoke on behalf of the nearby Willow Creek subdivision against the proposed tower. He presented exhaustive data in support

of his opposition. He showed that T-Mobile's own web site shows that it has adequate wireless coverage in the area. He also testified that many of his subdivision's residents are T-Mobile customers and have adequate wireless service. He presented a survey conducted in the area which showed that ninety-two percent of the residents had adequate wireless service. Twenty-one percent of those surveyed are T-Mobile customers and indicated they have adequate wireless service with T-Mobile. He also conducted a drive test with a T-Mobile phone and never dropped a call or failed to receive service. Mr. Levetro noted that public records indicate that there are already over forty towers within a four mile radius of the proposed site and questioned why T-Mobile could not collocate on one or more of these. He also placed into the record letters from area realtors familiar with this specific area and its property values. These letters expressed the realtors' professional opinions that the tower would lower property values.

Linda Hoyle also spoke against the proposed tower. She lives near the tower and would be able to see it outside of her home. She felt that the tower was an incompatible land use for the area.

Janice Owens spoke against the tower. She lives in the nearby Falcon Woods subdivision. She discontinued her land line telephone service and now relies exclusively upon her T-Mobile wireless phone for all of her needs. She has had no coverage issues.

Allison Pisani also spoke against the tower, but her concerns primarily revolved around the perceived adverse health effects of wireless towers. The

Board of Commissioners did not take any such health concerns into account in reaching this decision.

As the representative of the East Cobb Civic Association, Jill Flamm spoke against the proposed tower. She contended that it should not be placed in this residential area.

Commissioner Lee, the District Commissioner, stated it was inappropriate to locate the tower in this heavily residential area and that it would be an incompatible land use. He noted that the applicant had not shown that it had adequately investigated using other potential sites, and that this tower would adversely impact the residential character of the area.

Commissioner Lee then moved to deny SLUP-14. 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-14 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 incompatible commercial use 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 comprised of residential uses and is designated for low density residential uses by the Future Land Use Map.
- 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 T-Mobile customers in the area enjoyed satisfactory wireless service. It is the opinion of the Board that the testimony from various residents combined with the evidence submitted and 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.

- Allowing this commercial use on this property would be inappropriate. Although the Board of Commissioners has sometimes permitted cell towers at churches in residential areas, this site is not similar to those. This is a very small church which has a structure similar to that of a small house. It is not located on a major road. The nearest commercial zoning is at least one mile away, and most are considerably further than that. Over the years the Board of Commissioners, county staff, and nearby residents have expended considerable effort and expense in trying to improve the Canton Road corridor and eliminate commercial intrusion into this residential area. Allowing a cell tower at this location would undermine those longstanding efforts.

Wherefore, the Board denies application SLUP- 14.

This written denial is entered upon the record of the County Clerk this \_\_\_\_\_ day of \_\_\_\_\_, 2009

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Samuel S. Olens, Chairman  
Cobb County Board of Commissioners