

APPLICANT: Municipal Communications, LLC
(404) 995-1890

REPRESENTATIVE: James M. Ney (770) 661-1202
Holt Ney Zatcoff & Wasserman

TITLEHOLDER: Victoria A. Milam

PROPERTY LOCATION: South side of Chastain Road, east of I-575
(287 Chastain Road).

ACCESS TO PROPERTY: Chastain Road

PHYSICAL CHARACTERISTICS TO SITE: Existing business
on a wooded lot

PETITION NO: Z-28

HEARING DATE (PC): 05-06-14

HEARING DATE (BOC): 05-20-14

PRESENT ZONING: O&I
with Stipulations

PROPOSED ZONING: O&I
with Stipulations

PROPOSED USE: Telecommunications
Tower and Related Equipment

SIZE OF TRACT: 0.96 acre

DISTRICT: 16

LAND LOT(S): 365, 428

PARCEL(S): 48

TAXES: PAID X **DUE** _____

COMMISSION DISTRICT: 3

CONTIGUOUS ZONING/DEVELOPMENT

NORTH: GC, LRO, NS/ wooded, Resurgens office park, Church

SOUTH: R-20/ wooded

EAST: NS/ wooded

WEST: R-20/ wooded

OPPOSITION: NO. OPPOSED **PETITION NO:** _____ **SPOKESMAN** _____

PLANNING COMMISSION RECOMMENDATION

APPROVED _____ **MOTION BY** _____

REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

BOARD OF COMMISSIONERS DECISION

APPROVED _____ **MOTION BY** _____

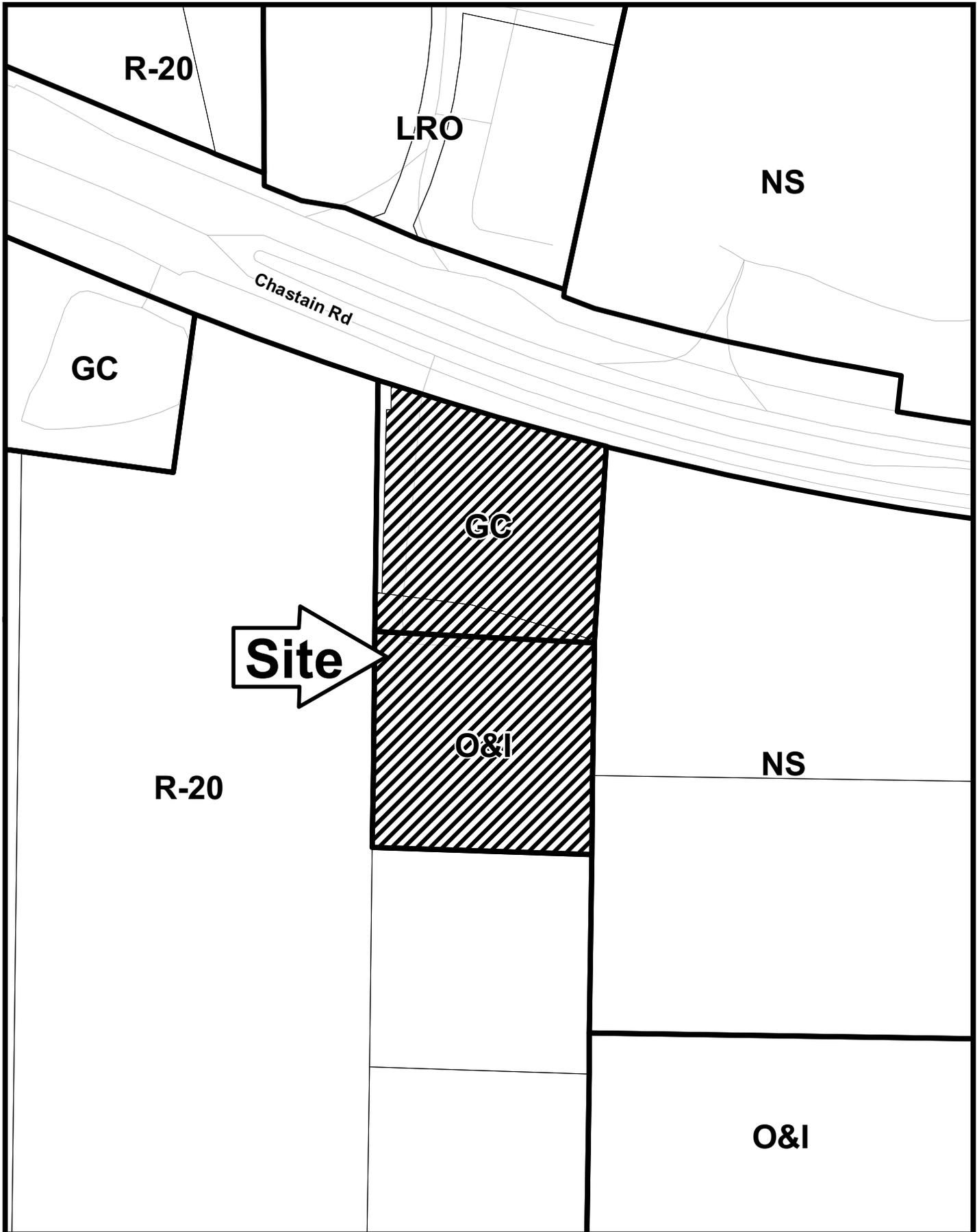
REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

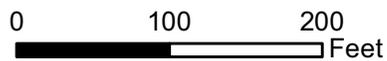
STIPULATIONS:



Z-28



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



City Boundary
Zoning Boundary

APPLICANT: Municipal Communications, LLC

PETITION NO.: Z-28

PRESENT ZONING: O&I w/Stipulations

PETITION FOR: O&I w/ Stips

ZONING COMMENTS:

Staff Member Responsible: John P. Pederson

Land Use Plan Recommendation: Community Activity Center (CAC)

Proposed Number of Buildings: None **Total Square Footage of Development:** None

F.A.R.: None

Parking Spaces Required: None **Parking Spaces Provided:** None

The applicant is requesting rezoning to amend the previous zoning stipulations on the property that specifically limit the use of the property for professional office use only (see Exhibit "A"). Many of the other stipulations control the look of the property. The applicant would like to place a cell tower in the rear of the property, which would need a SLUP if this application is approved. The proposed tower would be 130-feet in height, and would be disguised as a pine tree. The tower would be designed for a minimum of four users.

Cemetery Preservation: There is no significant impact on the cemetery site listed in the Cobb County Cemetery Preservation Commission's Inventory Listing which is located in this, or adjacent land lot.

FIRE COMMENTS:

After analyzing the information presented for a Preliminary Review, the Cobb County Fire Marshal's Office is confident that all other items can be addressed during the Plan Review Stage.

APPLICANT: Municipal Communications, LLC

PETITION NO.: Z-28

PRESENT ZONING: O&I w/Stipulations

PETITION FOR: O&I w/ Stips

PLANNING COMMENTS:

The applicant is requesting a rezoning from O & I with Stipulations to O & I with Stipulations for telecommunications tower and related equipment. The 0.96 acre site is located on the south side of Chastain Road, east of I-575.

Comprehensive Plan

The parcel is within a Community Activity Center (CAC) future land use category, with a O & I with Stipulations zoning designation. The purpose of the CAC category is for areas that can meet the immediate needs of several neighborhoods or communities. Typical land uses for these areas include low to mid-rise office buildings and department stores.

Master Plan/Corridor Study

Not applicable.

Historic Preservation

After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps, staff finds that no known significant historic resources appear to be affected by this application. No further comment. No action by applicant requested at this time.

Design Guidelines

Is the parcel in an area with Design Guidelines? Yes No

If yes, design guidelines area _____

Does the current site plan comply with the design requirements?

Incentive Zones

Is the property within an Opportunity Zone? Yes No

The Opportunity Zone is an incentive that provides \$3,500 tax credit per job in eligible areas if two or more jobs are being created. This incentive is available for new or existing businesses.

Is the property within an Enterprise Zone? Yes No

The Enterprise Zone is an incentive that provides tax abatements and other economic incentives for qualifying businesses locating or expanding within designated areas for new jobs and capital investments.

Is the property eligible for incentives through the Commercial and Industrial Property Rehabilitation Program? Yes No

The Commercial and Industrial Property Rehabilitation Program is an incentive that provides a reduction in ad valorem property taxes for qualifying redevelopment in eligible areas.

Special Districts

Is this property within the Cumberland Special District #1 (hotel/motel fee)?

Yes No

Is this property within the Cumberland Special District #2 (ad valorem tax)?

Yes No

APPLICANT Municipal Communications LLC

PETITION NO. Z-028

PRESENT ZONING O&I wih Stips

PETITION FOR O&I wih stips

WATER COMMENTS: NOTE: Comments reflect only what facilities were in existence at the time of this review.

Available at Development: Yes No

Fire Flow Test Required: Yes No

Size / Location of Existing Water Main(s): 16" DI / S side of Chastain Road

Additional Comments: Connection to water not required (cell tower)

Developer may be required to install/upgrade water mains, based on fire flow test results or Fire Department Code. This will be resolved in the Plan Review Process.

SEWER COMMENTS: NOTE: Comments reflect only what facilities were in existence at the time of this review.

In Drainage Basin: Yes No

At Development: Yes No

Approximate Distance to Nearest Sewer: +/- 1,800' SE in Chastain Meadows Pkwy

Estimated Waste Generation (in G.P.D.): A D F= +0 Peak= +0

Treatment Plant: Noontday

Plant Capacity: Available Not Available

Line Capacity: Available Not Available

Projected Plant Availability: 0 - 5 years 5 - 10 years over 10 years

Drv Sewers Required: Yes No

Off-site Easements Required: Yes* No *If off-site easements are required, Developer must submit easements to CCWS for review/approval as to form and stipulations prior to the execution of easements by the property owners. All easement acquisitions are the responsibility of the Developer

Flow Test Required: Yes No

Letter of Allocation issued: Yes No

Septic Tank Recommended by this Department: Yes No

Subject to Health Department Approval: Yes No

Additional Sewer connection not required (cell tower) Comments:

Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains, obtaining on and/or offsite easements, dedication of on and/or offsite water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.

APPLICANT: Municipal Communications, LLC

PETITION NO.: Z-28

PRESENT ZONING: O&I w/ stips

PETITION FOR: O&I w/ stips

STORMWATER MANAGEMENT COMMENTS

No comments.

TRANSPORTATION COMMENTS

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Chastain Road	25,000	Arterial	45 mph	Georgia DOT	100'

Based on 2011 traffic counting data taken by Cobb County DOT (Chastain Road)

COMMENTS AND OBSERVATIONS

Chastain Road is classified as an arterial and according to the available information the existing right-of-way does meet the minimum requirements for this classification.

RECOMMENDATIONS

Recommend applicant use the existing access.

Recommend a FAA Study.

Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

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STAFF RECOMMENDATIONS

Z-28 MUNICIPAL COMMUNICATIONS, LLC

- A. It is Staff's opinion that the applicant's rezoning proposal may permit a use that is suitable in view of the use and development of adjacent and nearby properties. The property to the east, west and south is anticipated to be some type of commercial or mixed use development in the future. The property to the north has a church and an office development. Additionally, the consultant's report supports the applicant's proposal.
- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse affect on the usability of adjacent or nearby property. The proposal would be consistent with other commercially zoned properties that have cell towers. Additionally, the tower will be lowered to 130 feet and will be a stealth design.
- C. It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.
- D. It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property to be within a Community Activity Center.
- E. It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for approving the applicant's rezoning proposal. The applicant's proposal is located in area that has commercial (existing and anticipated) and institutional uses. The county's consultant is supportive of the tower, which is lowered to 130 feet and will be a stealth design.

Based on the above analysis, Staff recommends **APPROVAL** subject to:

- Site plan received by the Zoning Division March 7, 2014, with the District Commissioner approving minor modifications;
- All previous zoning conditions from Z-34 of 1990 (not in conflict);
- Tower to be a maximum of 130 feet and be a stealth design approved by the District Commissioner;
- Water and Sewer comments; and
- Cobb D.O.T 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.

Application for Rezoning COBB COUNTY

Exhibit A
Previous zoning conditions
Page 1 of 6

(type or print clearly)

Application No. 2-34
Hearing Date 4-17-90

Applicant AIKEN & WARD Business Phone 395-1100 Home Phone _____
Address 1040 Crown Pointe Pkwy., Suite 1000, Atlanta, Ga. 30338
(representative's name, printed)
Guy S. Gebhardt Business Phone 926-4706 Home Phone 971-7482
(representative's signature)

Estate of
Titleholder Annie Lou Johnson Business Phone 494-2943 Home Phone 424-9037
Signature Reuben Johnson, Jr. Address 3692 Shiloh Road, Kennesaw, Georgia 30144
By: Reuben Johnson, Jr.
(attach additional signatures, if needed)

Zoning Request From R-20 To Office Institutional (OI)
(present zoning) (proposed zoning)

For the Purpose of Office Size of Tract One (1) acre(s)

(subdivision, restaurant, warehouse, apts., etc.)
Location 287 Chastain Rd., N.W., Kennesaw, Ga. 30144-3011; East of I-575 and Chastain Rd.

(street address, if applicable, nearest intersection, etc.)
Land Lot(s) 365, 428 (LN) District 16th

We have investigated the site as to the existence of archeological and/or architectural landmarks. I hereby certify that there are no there are such assets. If any, they are as follows:

AIKEN & WARD

Applicant's Signature

By: H. Dennis Parter, Partner

FOR OFFICIAL USE ONLY

Recommendation of Planning Commission _____

Please see attached....

Chairman

Board of Commissioners' Decision _____

Please see attached....

Chairman

COBB COUNTY BOARD OF COMMISSIONERS
COBB COUNTY PLANNING COMMISSION

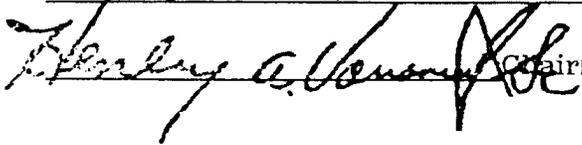
Date of Application: 4-17-90

Date of Hearing: 4-17-90

Applicant's Name: Aiken & Ward

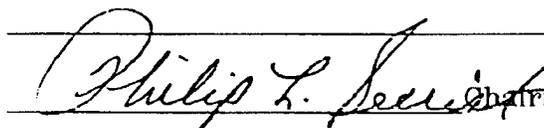
Recommendation of Planning Commission (Continued from Page 1)

Planning Commission recommended approval of application subject to: 1) professional office use only; 2) location of existing single family type structure subject to site plan as submitted; 3) existing single family type structure to be utilized; 4) proposed parking lot to be non-lighted; 5) landscape plan for proposed project to be approved by Staff; 6) revised Water and Sewer Department comments, (including letter to Mr. Guy G. Gebhardt from Mr. Thomas J. Campbell of the Cobb County Health Department, dated 4-11-90 and marked as Exhibit "A" on file in the Zoning Offices); 7) revised Department of Transportation recommendation (as worded in memorandum to Mr. Robert Hosack from William Peratta, dated 4-17-90 and marked as Exhibit "A" on file in the Zoning Offices); 8) further subject to letters submitted at April 17, 1990 Zoning Hearing, (marked as Exhibit "B", and on file in the Zoning Offices) which contains: letter to Guy Gebhardt from Jack Oudin, dated 4-6-90; and letter to Mr. Jack Oudin from Guy Gebhardt, dated 4-12-90. Motion by Jones, second by Wise, carried 5-0.

 Chairman.

Final Decision of Board of Commissioners (Continued from Page 1)

Board of Commissioners approved application as recommended by the Planning Commission.
VOTE: 3-2, Burton and Powell opposed.

 Chairman

COBB COUNTY HEALTH DEPARTMENT

277 FAIRGROUND ST., S. E.
MARIETTA, GEORGIA 30060
TELEPHONE 422-9440

April 11, 1990

Mr. Guy G. Gebhardt
3655 Canton Highway, Suite 101-F
Marietta, Georgia 30066

Re: Rezoning Petition No. Z-34
Chastain Road
Land Lots 369 & 428
16th District, Cobb County

Dear Mr. Gebhardt:

In March of 1990, representatives of this office evaluated the existing residential property of 1.012 acres referenced above for septic tank system suitability.

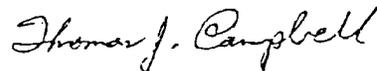
It was found that there were no signs of failure of the existing system and adequate space was available to repair the system if necessary in the future.

In your letter dated March 23, 1990, you indicated that the existing structure, if zoning is approved, would be used as a law office with three employees using the property. You stated that approximately six parking spaces would be added near the existing driveway but that there were no plans to add any other structures on the property.

Taking this information into account, it would be acceptable to utilize the existing septic tank system for sewage disposal for your proposed law office. Please be advised that this approval should not be construed as a guarantee that the existing system will function satisfactorily for a given period of time.

Please feel free to contact this office at 423-4803, should you have any further questions.

Sincerely,



Thomas J. Campbell
Env. Health Specialist IV

TJC/ss

cc: Muri McCall

MEMORANDUM

Exhibit A
Previous zoning conditions
Page 4 of 6



DEPARTMENT OF
TRANSPORTATION

TO: Mr. Robert Hosack
Senior Planner

FROM: William Peratta *WP*
Traffic Engineer II

DATE: April 17, 1990

SUBJECT: Zoning Case Number Z-34
Aiken & Ward
Addendum to Zoning Recommendations

EXHIBIT "A"
[Signature]

Applicant has informed Cobb Department of Transportation that three (3) employees will utilize this site, and that the proposed use will be very low intensity. Due to these facts, Department of Transportation is revising the recommendations as follows:

Recommend applicant provides a paved driveway, 24' wide, from existing edge of pavement to existing right-of-way of Chastain Road. Also, consideration should be given to future development of adjacent properties and the need for a paved driveway. Applicant should be required to a pro rata.

WP/lp

cc: Douglas E. Hefty, Traffic Engineer

**AIKEN & WARD
ATTORNEYS AT LAW**

Exhibit A
Previous zoning conditions
Page 5 of 6

PLEASE REPLY TO:

NORTH CORD OFFICE

3653 CANTON HIGHWAY
SUITE 102
MARIETTA, GEORGIA 30066
(404) 926-4708
TELECOPIER: (404) 928-8664

April 12, 1990

Mr. Jack Oudin, Zoning Chairman
Chastain Lakes Homeowners' Association
P. O. Box 440038
Kennesaw, Georgia 30144

Re: Rezoning Petition of Aiken & Ward (the "Petition");
Scheduled for Tuesday, April 17, 1990

Dear Mr. Oudin:

Thank you for your letter of April 6, 1990, with which you forwarded certain proposed zoning stipulations to be incorporated into our Petition.

We wish to preface our discussion of these suggestions by emphasizing that it is our current intention to use the existing structure as a law office, and we have no current plans to alter the external appearance of the structure, other than by painting, paving and landscaping.

The numerical order of our following comments corresponds to the suggestions set forth in the attachment to your letter:

1. We will have no objections to locating our trash receptacles in a screened area.
2. We have not completed the plans for our signage, but our signage will conform to all requirements of Cobb County. The signage that we select will be consistent with the professional nature of our law practice.
3. We have no objection to your proposed zoning stipulation regarding lighting for outside signs.
4. We have not completed the plans for our signage, but our signage will conform to all requirements of Cobb County. The signage that we select will be consistent with the professional nature of our law practice.
5. Our normal business hours would conform to the time periods set forth in this suggested stipulation; however, there are times when our work at this office may not conform to these hours.

EXHIBIT

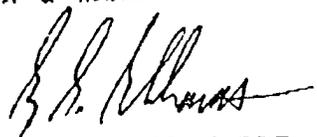
6.6.90 will not

6. We have no present plans to locate a public telephone on the property.
7. We have not formulated our plans for the driveway and parking areas as of this date.
8. We have not formulated our plans for landscaping as of this date. Our landscaping plan is to be approved by Cobb County.
9. We would not agree to placing signs of this nature on the property, since we believe that they would detract from the appearance of our office.
10. We have no present plans to change the exterior appearance of the existing structure on the property.
11. We have no present plans to change the exterior appearance of the existing structure on the property.
12. We have no present plans to change the exterior appearance of the existing structure on the property.
13. We have no present plans to change the exterior appearance of the existing structure on the property.
14. We have no present plans to change the exterior appearance of the existing structure on the property. We have not decided on the type of external lighting which will be used. The Planning and Zoning Staff has recommended approval of our application with the condition that the proposed parking lot be non-lighted, and we have agreed to this condition.

If, after your review of this letter, you believe that a meeting would be desirable, please contact the undersigned at your earliest convenience. Kind regards.

Very truly yours,

AIKEN & WARD

By: 
GUY G. GEBHARDT

ggg/sr

HOLT NEY ZATCOFF & WASSERMAN, LLP

ATTORNEYS AT LAW

100 GALLERIA PARKWAY, SUITE 1800

ATLANTA, GEORGIA 30339-5960

TELEPHONE 770-956-9600 FACSIMILE 770-956-1490

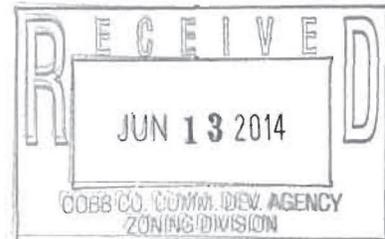
James M. Ney
e-mail jney@hnzw.com

Ellen W. Smith
e-mail esmith@hnzw.com

June 13, 2014

BY HAND DELIVERY

Mr. Jason Campbell
Cobb County Community Development
Zoning Division
Cobb County, Georgia
1150 Powder Springs Street, Suite 400
Marietta, Georgia 30064



Re: Application for Rezoning, Cobb County, Georgia No. Z-28 (“**Application**”) by Municipal Communications, LLC relating to 287 Chastain Road, Kennesaw, Georgia (the “**Property**”) coming on for hearing before the Planning Commission on July 1, 2014, and before the Board of Commissioners on July 15, 2014

SUPPLEMENT AND AMENDMENT TO APPLICATION

Dear Mr. Campbell:

As you know, this law firm represents Municipal Communications, LLC (“**Applicant**”)¹ with respect to the referenced Application. The purpose of this letter is to supplement and amend the Application to confirm the nature of the request and to file an updated site plan in connection with the Application.²

First, we write to confirm that this request of rezoning involves only a condition change and does not involve changing the zoning classification from O-I. In fact, after this rezoning is completed, the Property will still be zoned O-I. The change which is being sought is a change in one condition applicable to the Property which restricts the use of the Property to “professional office use only.” As indicated in the initial Application, Applicant seeks to amend this stipulation to read: “Office use with an auxiliary wireless communications facility upon issuance of a special use permit.” It is clearly contemplated that a special land use permit must still be obtained in a separate application in order to utilize this Property for a wireless

¹ In the March 6, 2014 “Summary of Intent” filed with the Application, please note that we inadvertently identified Applicant as “Municipal Communications, Inc.”

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

Mr. Jason Campbell
Cobb County Community Development
Zoning Division
June 13, 2014
Page 2

telecommunications facility (and the pending special land use application designated as SLUP-9 is that separate application).

Importantly, Applicant notes that the Property is largely without any practical use other than the existing "Any Pest" pest control company, which operates its office out of an old, existing home on a small portion of the Property. Applicant does not wish to change that use but is concerned that a zoning restriction that limits the use of the Property for a "professional office" use is far too limiting and arrives at a point of not allowing any reasonable use of the Property. This Property has been without any reasonable use (other than the limited reuse of a residential structure for a pest control office) for the past 24 years as this condition was initially imposed in 1990. It is unreasonable to impose such a requirement upon an isolated, small parcel located among a number of other parcels which are zoned for a variety of different uses.

Additionally, Applicant hereby supplements its response to Item 1 of its Documented Impact Analysis, as follows:

There are a number of small tracts of land located contiguous to this Property. The property immediately north of the Property, between Property and Chastain Road, is zoned GC. The larger tract along the eastern boundary of Property is zoned NS. The lands along the southern and western boundary lines of Property are zoned R-20. The small size of the Property, combined with the variety of zoning classifications surrounding it, make the "professional office" restriction unduly burdensome and unconstitutionally restrictive. There is no feasible, economic or practical way to develop this Property alone for a professional office building. The fact that this condition was imposed on the Property in 1990 and has been in place for 24 years, without any development surrounding it and without any redevelopment of the Property, shows that it is appropriate to remove this unduly restrictive condition.

Furthermore, it should be expressly noted that the Applicant is not seeking to omit the condition in its entirety, but is merely seeking to amend the condition to allow for an exception to the condition when it makes this request to change the condition to: "office use with an ancillary wireless communication facility upon issuance of a special use permit." The requirement for an office is still in place, but this merely allows an ancillary wireless communication facility to also be located upon this Property. In this way, the Applicant is not completely removing or deleting the condition, but it is merely modifying it to make one additional use appropriate if a SLUP is granted.

Finally, Applicant seeks to amend its Application by submittal of a revised site plan and an updated Property/Financial Disclosure Report. Specifically, the revised site plan shows that

HOLT NEY ZATCOFF & WASSERMAN, LLP

Mr. Jason Campbell
Cobb County Community Development
Zoning Division
June 13, 2014
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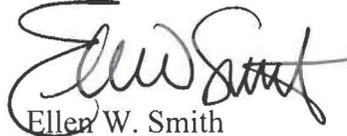
the proposed wireless communications facility has been reduced in height from 150 feet to 130 feet (again – the purpose of this site plan is to show the location; approval of this Application does not negate Applicant's obligation to obtain a SLUP for the Facility). Additionally, the enclosed Property/Financial Disclosure Report by Applicant signed by James M. Ney shall be substituted in lieu of the one filed on March 6, 2014.

Please accept this supplement and enclosed documents in connection with the Application, and thank you for your cooperation and assistance.

Sincerely,



James M. Ney



Ellen W. Smith

Counsel for Municipal Communications, LLC

JMN/sld

cc: Mr. Peter R. Corry
Mr. Murray Jones
Mr. Tom Holland