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A Law Partnership Including Professional Corporations

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March 2, 2001

By Hand Delivery

D.C. Zoning Commission
441 4th Street, NW
Second Floor
Washington, DC 20002

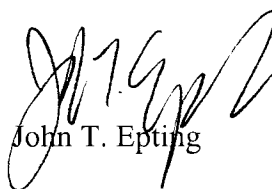
Re: Case No. 00-29TA (Antenna Towers) and Public Roundtable on Antennas

Dear Members of the Commission:

The attached statement was prepared for presentation at the February 5, 2001 public hearing on the antenna tower text amendment. That hearing was cancelled. We request that this statement be made a part of the record of that case and/or any future case which comes out of the March 5th Roundtable.

Thank you for your consideration.

Sincerely,


John T. Epting

cc: Jim Golden

Document #: 1084454 v.1

~~ZONING COMMISSION
District of Columbia
Case 00-29TA
Exhibit 48~~
EB

ZONING COMMISSION
01-02TA
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A Law Partnership Including Professional Corporations

February 5, 2001

By Hand Delivery

Mr. Anthony Hood, Chair
District of Columbia
Zoning Commission
441 4th Street, NW
Suite
Washington, DC 20001

Re: Zoning Commission Case No. 00-29TA
(Development Standards for Antenna Towers)

Dear Members of the Zoning Commission:

On behalf of Verizon Wireless we are presenting our comments on the proposed revisions to the Zoning Regulations regarding antenna towers. In the District of Columbia, in the large majority of cases, Verizon Wireless' antenna systems have been placed on the roof of existing buildings. These antennas are situated on gravity mounts located on the main roof of the building. The antennas are normally 24 – 52 inches tall (9 – 14 inches wide) with a total mounted height of approximately 6 - 8 feet. These antenna systems are important for ensuring effective wireless communication in the District of Columbia. These Verizon Wireless facilities are not antenna towers.

Verizon Wireless' antenna systems have been approved throughout the City through the building permit process, with referral to the Office of Planning for review. Where applicable, the antenna systems have also been approved by other appropriate review agencies, including the DC Historic Preservation Review Board, the Old Georgetown Board, the Commission of Fine Arts, and for sites subject to the Pennsylvania Avenue Development Plan, the National Capitol Planning Commission. While there are concerns about the time required to process such permits, the building permit process (including the zoning review) has worked.

We understand that these proposed regulations were conceptually designed to govern antenna towers for commercial broadcast facilities and similar structures, in response to the proposed antenna tower in Tenley Circle. Generally, the proposed regulations would limit the height of antenna towers to the height permitted in the applicable zone district. Thus, Board of Zoning Adjustment (BZA) approval would be

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required to place an antenna tower on the roof of a building built to its permitted zoning height, or to construct a ground mounted antenna tower above the matter-of-right zoning height. The definition of "antenna tower" in Section 199 of the proposed regulations, however, raises concerns in terms of possible unintended impacts on antennas, such as Verizon Wireless' antenna systems.

Section 199 of the proposed text revises the definition for an antenna and an antenna tower. "Antenna" is defined as "a device used to transmit or receive communication signals. This term encompasses transmitting and receiving elements, and immediate related support and stabilizing elements and rotating or other directional mechanism". That definition appears fine.

However, "antenna tower" is defined as "a tower structure and any immediately related support and stabilizing elements, used for elevating and supporting antennas or for broadcasting radio and television signals" (emphasis supplied). This definition is in the alternative:

1. A tower structure to elevate/support antennas; or
2. A tower structure for TV radio broadcasting.

If the definition of antenna tower was construed to include the structural supports for the small cellular antennas systems, such as those used by Verizon Wireless, the proposed regulations (§§ 212.1, 712.1, 735.1, 745.1 and 753.3) would appear to limit the height of those structures to the matter-of-right building height, unless approved by the BZA. That is, if the building was built to its matter-of-right zoning height, no cellular antenna systems would be allowed on the roof, absent BZA approval.

The Office of Planning in its final report (dated January 18, 200[1]; filed January 26, 2001) recommends a revised definition of antenna tower. The Office of Planning report recommends that "antenna tower" be defined as "a tower structure or monopole, and any immediately related support and stabilizing elements, the primary purpose of which is to elevate and support antennas. The term 'antenna towers' shall not refer to ancillary and stabilizing elements for individual antennas." (OP Report, p.1). This definition is greatly improved. We do note, however, that our systems always have multiple antennas, typically three - five per sector, with three sectors (for a total of nine-fifteen). Each set of three antennas is mounted on a gravity mount, with a single support for each antenna. Our suggested revision to the definition of antenna tower, as submitted to the Office of Planning, designed to distinguish between antennas (with ancillary

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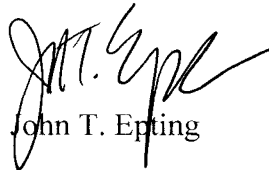
Mr. Anthony Hood, Chair
February 5, 2001
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Planning, designed to distinguish between antennas (with ancillary support structure) such as used by Verizon Wireless and true "antenna towers" is attached as Exhibit A.

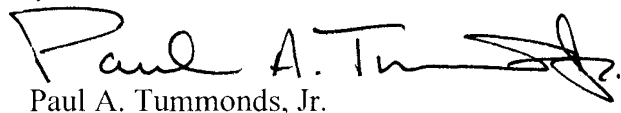
The other issue, which we want to briefly discuss, is the relationship between the Height Act of 1910 and the Zoning Regulations, particularly with regard to roof-mounted antenna systems. We note that the proposed regulations revise §§ 530.3, 630.3 and 770.3. The Office of Planning report has added § 930.20. Those sections provide that "spires, towers, domes, pinnacles ... roof-mounted antennas, chimneys ... may be erected to a height in excess of that which this section otherwise authorizes, but may not exceed the heights permitted by the Act of June 1, 1910 (36 Stat. 452). This section does not apply to antenna towers." (emphasis original). We believe that the underlined language, added by the proposed regulations "but may not exceed the heights permitted by the Act of June 1, 1910" is unnecessary and confusing. The 1910 Height Act, copy attached as Exhibit B, allows such unoccupied, fire proof structures above the roof to exceed both the permitted zoning height and the overall height limits imposed by the Act for buildings. The Mayor (or his designee) has the authority to allow these exceptions to the Height Act. The Zoning Commission cannot impose restrictions on the exceptions permitted by the Height Act.

In conclusion, we support the Office of Planning's revised definition of antenna tower. We are concerned, however, about the interpretation of the Height Act in the regulations. We appreciate the opportunity to comment and look forward to publication of the final regulations.

Sincerely,



John T. Epting



Paul A. Tummonds, Jr.

Enclosures

A

EXHIBIT A

Proposed text change:

“Antenna” is defined as “a device used to transmit or receive communication signals. This term encompasses transmitting and receiving elements, immediate related support and stabilizing elements, and rotating or other directional mechanism.”

“Antenna tower” is defined as “a tower structure and any immediately related support and stabilizing elements, **the sole function of which to elevate and support an antenna or multiple antennas. Antenna towers shall not include ancillary support and stabilizing elements for individual or multiple [non-commercial broadcast] antennas**

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B

Appendix E—Summary of Maximum Building Heights as Limited by the Act to Regulate the Height of Buildings, June 1, 1910

As required by the Act to Regulate the Height of Buildings, approved June 1, 1910 (36 Stat. 452), as amended (see Appendix F below), the height of a building or structure erected in the District of Columbia is limited as follows:

1. For residence districts:
 - (a) On streets over 65 feet wide—the width of the street less 10 feet, with a maximum of 90 feet.
 - (b) On streets 60 to 65 feet wide—60 feet.
 - (c) On streets less than 60 feet wide—the width of the street.
2. For all other districts—height equal to width of street increased by 20 feet.
3. Buildings fronting on Union Station Plaza—80 feet.

Appendix F

EXCERPTS FROM THE ACT TO REGULATE THE HEIGHT OF BUILDINGS

(Act of June 1, 1910, 36 Stat. 452)

"Sec. 5. That no building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by twenty feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of two or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade, the limits of height for fireproof or noncombustible buildings in residence section shall control, the measurements to be taken from the natural grades at the buildings as determined by the Commissioners.

"No building shall be erected, altered, or raised in any manner as to exceed the height of one hundred and thirty feet on a business street or avenue as the same is now or hereafter may be lawfully

designated, except on the north side of Pennsylvania Avenue between First and Fifteenth Streets northwest, where an extreme height of one hundred and sixty feet will be permitted.

"On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over ninety feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by ten feet, except on a street, avenue, or highway sixty to sixty-five feet wide, where a height of sixty feet may be allowed; and on a street, avenue, or highway sixty feet wide or less, where a height equal to the width of the street may be allowed: *Provided*, That any church, the construction of which had been undertaken but not completed prior to the passage of this act, shall be exempted from the limitations of this paragraph, and the Commissioners of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of ninety-five feet above the level of the adjacent curb." (Amended by acts of December 30, 1910, and February 21, 1925.)

"The height of a building on a corner lot will be determined by the width of the wider street.

"On streets less than eighty feet wide where building lines have been established and recorded in the Office of the Surveyor of the District, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, insofar as it controls the height of buildings under this law, shall be held to be the distance between said building lines.

"On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.

"Buildings hereafter erected to front or abut on the plaza in front of the new Union Station provided for by act of Congress approved February 28, 1903, shall be fireproof and shall not be of a greater height than eighty feet.

"Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this act when and as the same may be approved by the Commissioners of the District

of Columbia: *Provided, however,* That such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed: *And provided,* That penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective height above the adjacent roof.

"Sec. 6. That no wooden or frame building hereafter erected, altered, or converted for use as a human habitation shall exceed three stories or exceed forty feet in height to the roof.

"Sec. 7. That for the purposes of this act the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height, except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding four feet will be permitted above the limit of height of building permitted under this act." (As amended by act of May 20, 1912, and further amended September 22, 1961.)