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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

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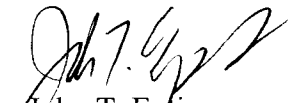
Re: Case No. 00-29TA (Antenna Towers) and Public Roundtable on Antennas

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: Robert Posilkin

Document #: 1084454 v.2

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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: Comments of Crown Castle Atlantic, LLC
Zoning Commission Case No. 00-29TA
(Development Standards for Antenna Towers)

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Dear Members of the Zoning Commission:

Introduction

On behalf of Crown Castle Atlantic, LLC¹ we appreciate the opportunity to comment on the proposed Zoning Regulations related to antenna towers. We recognize that the proposed regulations seek to provide additional controls over antenna towers, such as the antenna tower at Tenley Circle.

¹ Crown Castle Atlantic, LLC is a part of Crown Castle International Corp. Crown Castle International Corp. engineers, deploys, owns and operates technologically advanced shared wireless infrastructure, including extensive networks of towers and rooftops as well as analog and digital audio and television broadcast transmission systems. The Company offers significant wireless communications coverage to 68 of the top 100 United States markets. Crown Castle International owns communication towers internationally. For more information on Crown Castle International, visit: www.crowncastle.com.

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The proposed regulations (Section 199) define an “antenna tower” 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.” Basically, the proposed regulations require that any antenna tower (whether ground or roof mounted) which seeks to exceed the matter-of-right zoning heights for the applicable zone district obtain Board Zoning Adjustment (BZA) approval. Such BZA approval would be required in both the residential and commercial zones.

The Office of Planning’s (OP) Final Report (dated January 18, 200[1]; filed on January 26, 2001) revises the definition of antenna tower to include monopoles. OP’s report defines antenna towers 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 support and stabilizing elements for individual antennas”. Monopole is defined as “a single, self-supporting pole-type antenna tower, tapering from the base to the top and supporting a fixture designed to hold one or more telecommunications antennas.” (OP Report, p.1).

Antenna Towers in Residential Districts

The regulations have separate classifications for antenna towers, with one set of criteria for residential zones and a completely different set of criteria and classification of antenna towers in commercial zones.

The regulations continue the distinction in the residential zones between antenna towers/antennas for commercial broadcast (§ 211) and antenna towers/antennas other than commercial broadcasting (§ 212)². Section § 212 for non-commercial broadcast antennas/antenna towers is essentially unchanged and requires BZA approval for these antenna towers in residential zones, with very limited exceptions.

The commercial/non-commercial distinction is followed in Section 701.6(g) which permits an antenna tower for commercial broadcast as a matter of right, as long as

² We note that in the Chapter heading for Chapter 2 and the introduction to proposed Section 212 (p.2 of the Notice of Public Hearing) the term “other than” is left out before “Commercial Broadcast”. To be consistent, it should read in both cases “antenna tower, other than commercial broadcast”

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the mounted height of the antenna tower and any antennas does not exceed the matter of right zoning height. For whatever reason, non-commercial antenna towers are still not so permitted.

Antenna Towers in Commercial Districts

The proposed regulations appear to drop the commercial broadcast/non-commercial broadcast distinction beginning in the C-1 commercial zone district. Beginning at new Section 712 (antenna towers in C-1 zone district), the proposed regulations merge antenna towers (both commercial broadcast and non-commercial broadcast) into one regulatory scheme for any tower requiring a height greater than the matter of right height permitted in the applicable zone district.

In addition, the proposed regulations adopt new standards for antenna towers beginning in the C-1 district at proposed § 712. Under the proposed regulations, in order to seek review before the BZA, an applicant for a proposed tower must submit evidence of approval by the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) (See §§ 712.1, 735.1, and 745.1).

This standard raises several difficulties for applicants such as Crown Castle that are involved in constructing structures for cellular antennas. These structures rarely exceed 200 feet. Notification to the FAA is not required for structures that are less than 200 feet, unless the structure is within a specific distance of an airport.³ It is Crown Castle's practice to obtain a report from a certified FAA consultant as to whether a proposed structure requires FAA approval. Should the consultant determine that the proposed facility does not require notification to the FAA, no approval is needed from the FAA and thus there is no "evidence of approval" which can be submitted prior to the BZA's hearing. As an alternative to requiring evidence of FAA approval, the proposed regulations could be modified to allow a certified FAA consultant to submit the report regarding FAA compliance.

In instances where FAA approval is not required, it will be impossible for the FCC authorization required by the proposed regulations to be provided. The FCC does not require a structure to be registered prior to construction unless the structure requires

³ See 47 CFR 17.7.

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FAA approval. Accordingly, where a site does not require FAA approval, a FCC approval cannot be obtained. Moreover, the FCC does not issue any license or registration to a tower owner for the construction of a facility at a height that does not require FAA approval.

The proposed zoning regulations for antenna towers in commercial zones also seek to impose a standard as part of the BZA process related to the Act of June 1, 1910 (36 Stat. 452) (referred herein as the "Height Act"). Proposed section 712.1 states that "[w]here required by the Act of June 1, 1910 (36 Stat. 452), a height in excess of that permitted may be authorized by the Mayor, if determined to be in the best interest of the city." Proposed § 712.1 is confusing at best. The proposed regulations provide that any tower proposed to exceed the matter of right height requires special exception approval by the BZA. For example, an antenna tower proposed in the C-1 district above 40 feet in height would require BZA relief. The BZA has the authority to grant zoning approval for an antenna tower to exceed the matter of right zone height. But the final decision whether to approve a height above that allowed by the Height Act is solely vested in the Mayor (or his designee). A zoning regulation which requires BZA approval as a condition of the Mayor's approval under the Height Act or seeks to provide standards for the Mayor's review under the Height Act, exceeds the Zoning Commission's authority. The authority to zone under the Zoning Act, and the Mayor's authority under the Height Act, are completely separate. The Office of Planning's Report (pp. 5-6) appears to recognize this distinction, but the proposed regulations are unchanged.

Section 5 of the Height Act specifies the maximum general height restrictions for buildings in the District of Columbia. (A copy of the Height Act is attached as Exhibit A). The Height Act also provides specific exceptions: "spires, towers, domes, ... may be erected to a greater height than any limit prescribed in this act when and as 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." (Emphasis original).⁴ The

⁴ The Office of the Corporation Counsel argues in its Defendant's Opposition to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction at 15-18. American Towers, Inc. v. The Honorable Anthony Williams, Mayor of the District of Columbia, et al., (D.D.C. 2000) Civil Action No. 00-2436 (PLF), that only the Director,

Footnote continued on next page

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Zoning Commission has no authority to modify the Height Act or to provide standards for the Mayor's review under the Height Act. The Height Act allows such towers to be permitted above the height specified in the Act for buildings when approved by the Mayor. Thus, the framework is essentially two-tiered, as recognized by the OP Final Report, at pp. 5-6. Where an antenna tower seeks to exceed the matter of right zone height, BZA approval is required. Where an antenna tower seeks to exceed the matter of right height and the height permitted under the Height Act, which is the more likely scenario, BZA relief is required to exceed the zone height. A separate independent decision by the Mayor (or designee) is required to exceed the Height Act. If, however, the Zoning Commission so chooses, the Zoning Regulations may specify that the BZA provide its recommendation to approve a tower at a specified height (above the Height Act), for consideration by the Mayor in his determination. The Zoning Regulations cannot, however, impose conditions on the height or on the Mayor's authority under the Height Act

In addition, 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, is unnecessary and confusing. As noted above, the 1910 Height Act 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.

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and not DCRA in general, has this authority. We express no opinion at this time regarding the delegation of authority within DCRA; however, it is clear that the Zoning Commission and BZA do not have this authority.

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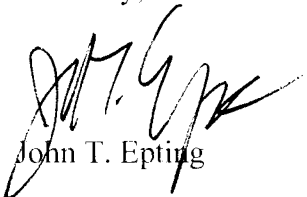
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Conclusion

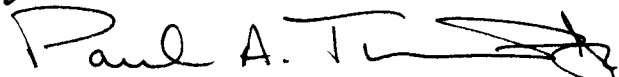
In summary, we believe that the proposed regulations are confusing and will be difficult to interpret/enforce if finalized as proposed. We have raised issues with respect to the FAA/FCC approval conditions specified in the regulations. We have also raised concerns, regarding the proposed regulations' conformance with the Height Act. Both of these issues need to be addressed before the proposed regulations are finalized. Therefore, we request that the record in this case be left open to address any issues that may arise at the February 5, 2001 public hearing.

We appreciate the opportunity to comment.

Sincerely,



John T. Epting



Paul A. Tummonds, Jr.

Enclosures

A

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 twenty 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.)

B

EXHIBIT B

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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