

## RESOLUTION

### CASE NO. SUP-37-97. PRIMECO PERSONAL COMMUNICATIONS SYSTEMS -

#### ROUTE 5 FACILITY

- WHEREAS, the Board of Supervisors of James City County has adopted by ordinance certain land uses requiring a special use permit; and
- WHEREAS, James City County has developed certain policies for the placement of personal wireless telecommunications facilities; and
- WHEREAS, PrimeCo Personal Communications, L.P. ("PrimeCo") is licensed by the Federal Communications Commission to provide digital wireless telecommunications service in James City County and is an established provider of such service in the County; and
- WHEREAS, in certain areas of the County and regardless of provider, the Board of Supervisors finds there must be a cohabitable relationship between the infrastructure of the telecommunications industry, the industry's desire to provide service in the most economically efficient ways possible, and the needs of the community as a whole; and
- WHEREAS, Mr. Vernon Geddy, III, on behalf of PrimeCo, has applied for a special use permit to construct a 185-foot tall wireless telecommunications facility at 4315 John Tyler Highway (Route 5) on property further identified as Parcel No. (1-21) on the James City County Real Estate Tax Map No. (46-2); and
- WHEREAS, the property is zoned R-8, Rural Residential, and is designated Low Density Residential on the 1997 Comprehensive Plan; and
- WHEREAS, the Planning Commission conducted a duly noticed public hearing on SUP-37-97 on January 5, 1998, whereafter a recommendation for approval failed by a vote of 2 to 5; and
- WHEREAS, the Board conducted a duly noticed public hearing on SUP-37-97 on February 10, 1998, whereafter, with the applicant's concurrence, the Board deferred consideration of the case and remanded the application back to the Planning Commission for further consideration. The case was deferred pending further development of a tower ordinance and update of the wireless telecommunications facility placement policy. The case was also deferred so the Board could gain a greater understanding of the long-term build-out needs of the wireless telecommunications industry and alternatives to a 185-foot tall tower in the Route 5/Jamestown Roads area. These issues were discussed at a March 25, 1998, work session and the April 14, 1998, regular Board meeting; and
- WHEREAS, The County's consultant has verified that adequate service can be provided through a series of much lower towers that will have little to no impact on surrounding areas.
- WHEREAS, the Planning Commission reconsidered this application on May 4, 1998, after a duly noticed public hearing, whereafter a motion for denial passed by a vote of 6 to 1; and

WHEREAS, the Board conducted a duly noticed public hearing on SUP-37-97 on May 12, 1998, at which time oral and written evidence was presented, both in support of and in opposition to SUP-37-97; and

WHEREAS, having considered the written and oral evidence presented at the May 12, 1998, public hearing and other evidence which is part of the written record for SUP-37-97, the Board has determined that it is unable to make all of the findings which must be made pursuant to Section 24-9 of the Zoning Ordinance in order to approve SUP-37-97, and that this decision complies with the applicable requirements of the Telecommunications Act of 1996.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, based upon the written record, hereby denies the PrimeCo application for SUP-37-97 for the reasons set forth below:

1. The structures' height of 185 feet above ground level is incompatible next to the existing residential subdivisions in the area; therefore, the Board of Supervisors of James City County finds the proposed use inconsistent with the surrounding land uses.
2. Surrounding areas are primarily residential and rural in character. The Board of Supervisors does not believe the commercial/industrial nature of a 185-foot tall monopole design tower such as the one proposed here is consistent with structures that are generally located in residential or rural areas in terms of scale, height, use, and character. No such similar structure is currently located in the area. Where such structures are necessary near residential and rural areas, the Board believes they should be sited and designed in a manner that increases their compatibility to the maximum extent possible.
3. The application, as proposed, conflicts with several significant comprehensive plan goals and objectives. An objective for retaining community character states that development should be "compatible in scale, size, and location to surrounding existing and planned development." A general land use standard and objective listed in the Plan states that the County should "permit new development only where such developments are compatible with the character of adjoining uses and where the impacts of such new developments can be adequately addressed. Particular attention should be given to addressing such impacts as incompatible development intensity and design, building height and scale, land uses, etc."

In addition, a goal for retaining community character states that projects should "enhance and preserve the integrity of the historic and unique areas of the County." An objective for retaining community character states the County should "ensure that development along Community Character Corridors and Areas (i.e., Ironbound Road and Route 5) protects the natural views of the area, promotes the historic or unique character of the area, maintains greenbelt networks, and establishes attractive County entrance corridors." Efforts to protect viewsheds from historic properties (i.e., Route 5 and Mainland Farm) are also prominently listed in the general land use standards. The county should "protect environmentally sensitive resources including historic and archaeological resources, designated Community Character Corridors and Areas, and other sensitive resource by locating conflicting uses away from such resources and utilize design features, including building and site design, buffers, and screening to adequately protect the resource." The comprehensive plan recognizes the need to protect the character of the Jamestown Road area in order to maintain an appropriate setting for the numerous historic resources in the area. One of these resources is the Mainland Farm, which is part of the Governor's Land

Archaeological District which is listed on the National Register. The County recently purchased the farm to protect its historic character and that of the surrounding area from incompatible development. The County has also designated Greensprings Road as a Community Character Corridor as it is considered one of the oldest surveyed roads in the United States. Greensprings road has also been designated a Virginia Byway. The proposed tower would be clearly visible from both Mainland Farm and Greensprings Road. The Board finds the scale, height, design and location of the 185-foot tall monopole design tower inconsistent with the stated goals, and existing and planned development.

4. Recent developments approved in the area are of a much lower height and scale, and the vegetative buffering required as a condition of approval of these developments does, or will, extend above the heights of the structures. With the acquisition of the farm, steps are now in place to protect Mainland Farm and Greensprings Road from further encroachment, and existing incompatible development can easily be mitigated with conventional buffering techniques and improvements. Given the proposed location of the wireless telecommunications facility, a 185-foot tall monopole tower cannot be adequately screened in a manner that protects the historic and scenic resources in the area.
5. The Board of Supervisors finds the application does not meet two of the components of the County's currently adopted wireless telecommunications facility siting policy:

**Policy 1.2** - Require verifiable evidence that the service coverage cannot be provided by an existing tower, or other tall structure within two miles of the proposed site, or through the use of an innovative antenna design.

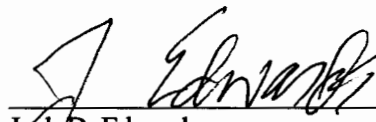
**Policy 2.2** - Allow new facilities within areas designated for residential development on the Comprehensive Plan and other sensitive areas only where innovative or "stealth" antenna designs can be employed. The policy states that tower-mounted antennas should be allowed in residential areas by SUP only where the elected body finds that such locations are not logical extensions of existing or future residential developments; in areas that are transitional or buffer zones between residential and other uses; and where impacts to adjacent residential areas can be demonstrated to be minimal.

The applicant is proposing to use a "standard" monopole tower design at 185 feet. The site is designated residential on the Comprehensive Plan and a 185-foot monopole tower on the site would impact residential areas as well as Ironbound Road, a community character corridor, and Mainland Farm, a National Register Historic property. The Board finds that given the proposed location of the facility, the results of the balloon test, and the fact that a "standard" monopole will be constructed, the impacts to surrounding residential subdivisions and historically sensitive areas have not been demonstrated to be minimal and have not been minimized to the greatest extent possible.

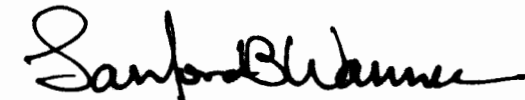
Since the policy states that innovative designs (such as "stealth" antenna) be used where possible, and innovative or stealth designs be used in residentially designated areas or areas of historic significance, the Board finds that the proposal does not adequately meet this policy. For the Jamestown Road/Route 5 area of the County, the Board finds additional towers with little to no impact more acceptable than fewer towers with large impacts on the community as a whole. The County's consultant has verified that adequate service can be provided through a series of much lower towers that will have little to no impact on surrounding areas.

6. The Board has considered the applicable provisions of the Telecommunications Act of 1996, and finds that the denial of SUP-37-97 is in compliance with the requirements of the Act, based upon the following findings:
- a. The Zoning Ordinance and currently adopted wireless telecommunications facilities placement policy does not unreasonably discriminate against wireless telecommunications providers of functionally equivalent services.
  - b. The Zoning Ordinance and currently adopted wireless telecommunications facilities placement policy does not prohibit or have the effect of prohibiting the provision of wireless telecommunications service. To date, the Board has previously approved other wireless telecommunication facility cases under the currently applicable ordinances and policies. In the instance of this particular application, a series of wireless telecommunication facilities with lower heights are acceptable from a land use perspective and the County's consultant has verified that adequate service coverage can still be achieved.
  - c. The Board acted on PrimeCo's application for SUP-37-97 within a reasonable period of time. The application for SUP-37-97 was submitted on December 1, 1997. The Planning Commission conducted its public hearing and made its recommendation to the Board of Supervisors on January 5, 1998, well within the 90 day period provided by the Zoning Ordinance. The Board's decision on SUP-37-97 is well within the 12 month period to act on the application, as provided in Section 15.1-491(g) of the Code of Virginia.
  - d. The Board does not base its decision to deny SUP-37-97 on health or environmental facts.

BE IT FURTHER RESOLVED that this decision is based on the written record of the proceedings of PrimeCo's application for SUP-37-97 which is on file in the Planning Department of James City County.

  
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Jack D. Edwards  
Chairman, Board of Supervisors

ATTEST:

  
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Sanford B. Wanner  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
SISK	ABSENT
MCGLENNON	AYE
BRADSHAW	NAY
NERVITT	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 26th day of May, 1998.