BOARD OF ADJUSTMENT

Attached for your review is the packet for the February 1, 2007 session of the City of Chesterfield Board of Adjustment. The agenda and meeting packet are now also available on the City of Chesterfield website in the “Agendas” section.

Please contact Annissa McCaskill-Clay at amccaskill@chesterfield.mo.us or 636-537-4737 if you cannot attend or have any questions.

City of Chesterfield

690 Chesterfield Pkwy W • Chesterfield MO 63017-0760
Phone: 636-537-4000 • Fax 636-537-4798 • www.chesterfield.mo.us

CHESTERFIELD BOARD OF ADJUSTMENT

2007 MEETING SCHEDULE

*Board of Adjustment Meetings begin at **7:00 p.m.***

January
Thursday, January 4

February
Thursday, February 1

March
Thursday, March 1

April
Thursday, April 5

May
Thursday, May 3

June
Thursday, June 7

July
Thursday, July 5

August
Thursday, August 2

September
Thursday, September 6

October
Thursday, October 4

November
Thursday, November 1

December
Thursday, December 6

Board of Adjustment Meeting Agenda
Thursday, January 4, 2007
7:00 p.m.
City Council Chambers, 690 Chesterfield Parkway West

I. Introduction of the Board and City Staff

II. Approval of January 4, 2007 Meeting Summary

III. Request for Affidavit of Publication

IV. Public Hearing Items:

A. **B.A. 1-2007 Kenneth & Lucy Kreh:** An amended request for a variance from Section 4(a)(ii) of City of Chesterfield Ordinance 242 to allow an existing residence located at 2215 Barons Way Court in Stonebriar Subdivision to maintain an eight (8) foot rear yard setback in lieu of the required fifteen (15)-foot rear yard setback. (2215 Barons Way Court/20T310351)

B. **B.A. 2-2007 1401 Wilson Road:** An appeal of an administrative determination to issue municipal zoning approval to construct a 100 ft. disguised antenna support structure on a 4.48-acre "NU" Non-Urban District-zoned parcel at 1401 Wilson Road, under the criteria set forth in City of Chesterfield Ordinance 1214 (Section 1003.167.19 of the City of Chesterfield Zoning Ordinance). (18T210027)

IV. Adjournment

CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT MEETING SUMMARY
Thursday, January 4, 2007

The Board of Adjustment meeting was called to order at 7:00 p.m. on Thursday, January 4, 2007 by Mr. Leon Kravetz, Acting Chair of the Board of Adjustment.

I. Introduction of Board and City Staff

The following individuals were in attendance:

Ms. Marilyn Ainsworth
Ms. Laura Lueking
Mr. Alan Baudler
Mr. Leon Kravetz
Mr. Richard Morris
Mr. Robert Tucker
Mr. Rob Heggie, City Attorney, City of Chesterfield
Ms. Annissa McCaskill-Clay, Assistant Director of Planning, City of Chesterfield Department of Planning
Ms. Joyce Collins-Catling, Executive Secretary, City of Chesterfield Department of Planning
Court Reporter, Midwest Litigation Services

II. Approval of November 29, 2006 Meeting Summary

Laura Lueking made a motion to approve the summary as written.
Alan Baudler seconded the motion.
The motion passed by voice vote 6-0

III. Request for Affidavit of Publication

IV. Public Hearing Items:

A. <u>B.A. 1-2007 Kenneth & Lucy Kreh:</u> A request for a variance from Section 4(a)(ii) of City of Chesterfield Ordinance 242 to allow an existing residence located at 2215 Barons Way Court in Stonebriar Subdivision to maintain a five-foot rear yard setback in lieu of the required fifteen (15)-foot rear yard setback. (2215 Barons Way Court/20T310351)

Assistant Director of Planning Annissa McCaskill-Clay presented exhibits supporting the Petitioner's request allowing an existing residence to maintain a 5' rear yard setback in lieu of the required 15' setback. She stated that the subdivision was zoned R2/R3 with a PEU by several ordinances. The City of Chesterfield passed an ordinance that consolidated all previous ordinances into one. The PEU allows different setbacks and lot sizes than what would typically be found in the governing district. The swimming pool that the Petitioners would like to have built does not meet the 15' setback requirement; therefore a 5' rear yard setback is being requested. The Petitioners have supporting letters from neighbors.

Petitioners Lucy & Kenneth Kreh stated that their request is due mostly to 1) concern of their four small children being out of their view at the current location (they want to be able to see the children from the first floor of the home); 2) safety reasons in keeping the children from jumping from existing deck into pool (corner of deck is close enough for someone to jump off into pool; and 3) keeping the pool behind the house following the property line. They further stated that there are no neighbors in back of the house, only common ground and that Subdivision Trustees gave their approval as this request would have no impact on rear neighbors. The possibility for shifting the pool to the left side is an option, with additional trees installed; there is a steep hill on the right side of property.

Acting Chair Kravetz suggested that the Petitioners reconsider a new layout possibly bringing it up to 10', and present at next month's Board of Adjustment meeting; same pool different layout. Attorney Heggie further concurred that the Petitioner requests a 10' setback instead of a 5' setback from their contractor. The Petitioner agreed to do so.

There were no additional speakers present in favor of the petition.
There were no speakers present in opposition.

Laura Lueking made a motion to delay petitioner's request until next month.
Richard Morris seconded the motion.

The voice vote was as follows: Marilyn Ainsworth, yes; Laura Lueking, yes; Alan Baudler, yes; Leon Kravetz, yes; Richard Morris, yes; Robert Tucker, yes.

The motion passed by voice vote 6-0

VI. Adjournment

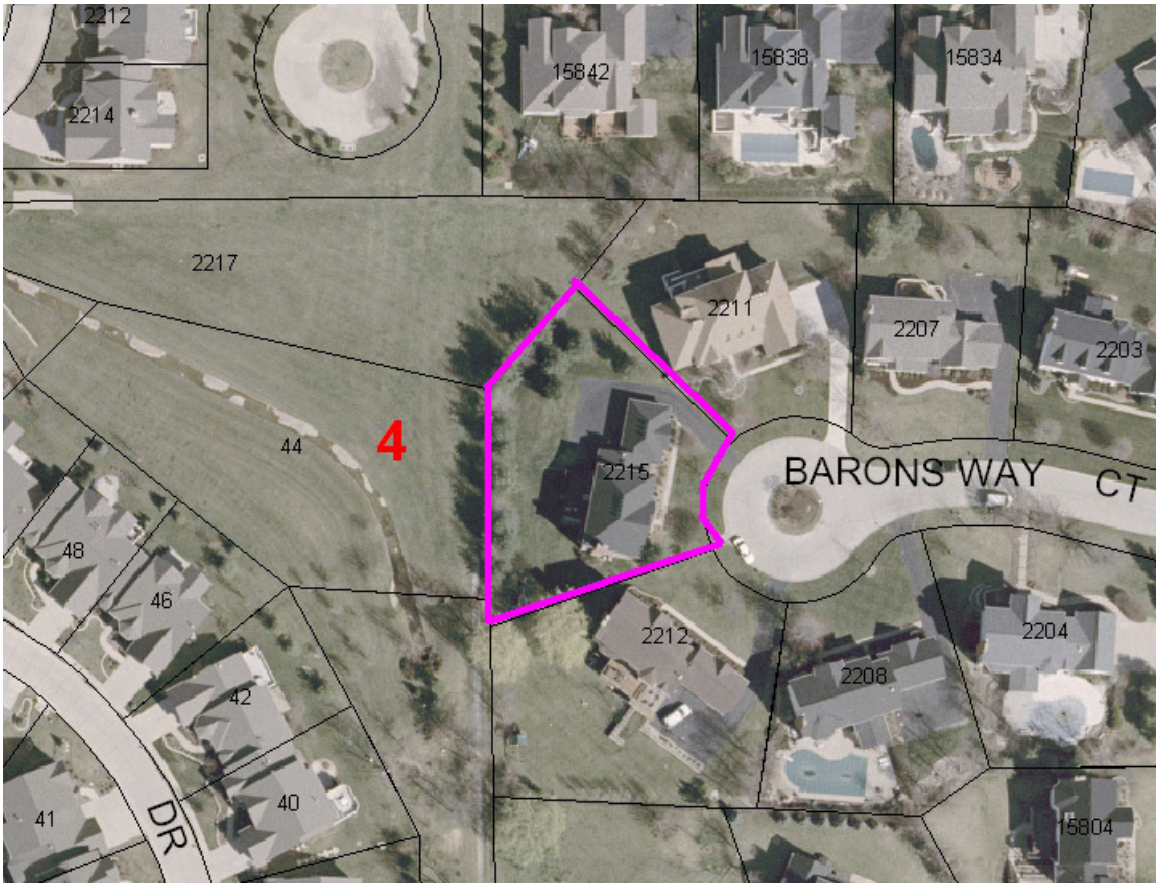
Meeting adjourned at 7:20 p.m.

NOTICE OF PUBLIC HEARING
CITY OF CHESTERFIELD
BOARD OF ADJUSTMENT

NOTICE IS HEREBY GIVEN that the Board of Adjustment of the City of Chesterfield will hold a Public Hearing on Thursday, February 1, 2007 at 7:00 p.m., in the City Council Chambers at the City of Chesterfield City Hall, 690 Chesterfield Parkway West, Chesterfield, Missouri, 63017

The Board will consider the following:

B.A. 1-2007 Kenneth & Lucy Kreh: An amended request for a variance from Section 4(a)(ii) of City of Chesterfield Ordinance 242 to allow an existing residence located at 2215 Barons Way Court in Stonebriar Subdivision to maintain an eight (8) foot rear yard setback in lieu of the required fifteen (15)-foot rear yard setback. (2215 Barons Way Court/20T310351)



All interested parties are invited to appear and be heard at the hearing. Copies of the request are available for review at the City Government Center Monday through Friday, from 8:30 a.m. to 4:30 p.m. If you should need additional information about this project, please contact Annissa G. McCaskill-Clay, Assistant Director of Planning by telephone at 636-537-4737 or by email at amccaskill@chesterfield.mo.us.

City of Chesterfield

Annissa G. McCaskill-Clay
Assistant Director of Planning

EXHIBIT

2

City of Chesterfield

690 Chesterfield Pkwy W • Chesterfield MO 63017-0760
Phone: 636-537-4000 • Fax 636-537-4798 • www.chesterfield.mo.us

IV.A.

January 24, 2007

Board of Adjustment
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017

Re: **B.A. 1-2007 Kenneth & Lucy Kreh:** An amended request for a variance from Section 4(a)(ii) of City of Chesterfield Ordinance 242 to allow an existing residence located at 2215 Barons Way Court in Stonebriar Subdivision to maintain an eight (8) foot rear yard setback in lieu of the required fifteen (15)-foot rear yard setback. (2215 Barons Way Court/20T310351)

Dear Board Members:

At its January 4, 2007 meeting, the Board of Adjustment voted to hold the above-referenced petition to allow Kenneth and Lucy Kreh, the owners of the above-referenced single family home, time to amend their request for a variance from their rear yard setback. In their original petition, the Krehs requested a five (5) foot setback in lieu of the required fifteen (15) foot setback. The amended request provided for your review is to maintain and eight (8) foot rear yard setback. Attached as Exhibit 5A is a memorandum from the Krehs explaining their amended request. Staff has also included their amended plot plan showing the new proposed location of the swimming pool.

Background of site

1. The Kreh's home is located at 2215 Baron's Way Court in the Stonebriar Subdivision.
2. Stonebriar Subdivision was zoned "R2/R3" Residence District with a Planned Environment Unit Procedure by the City of Chesterfield via Ordinances 234, 235, 236, 237, 241. Ordinance 242 consolidated previous established zonings and planned environment unit requirements under one ordinance.
3. A Planned Environmental Unit (PEU) is an alternate zoning procedure for residential districts. According to the City of Chesterfield Zoning Ordinance the intent of a PEU is, "to permit flexibility in building types, encourage economic and energy efficient subdivision design, and to encourage the provision of supporting community facilities in the development of diverse, sound, urban developments under conditions of approved site and development plans."

EXHIBIT 4

4. In the development of Stonebriar Subdivision, a fifteen (15) foot rear yard setback was established.
5. On October 19, 2006, the City of Chesterfield rejected a municipal zoning approval for an in-ground swimming pool because it extended beyond the established rear yard setback.

Statement of practical difficulties and unnecessary hardships warranting action by the Board:

From Petitioner's Application, pg. 4: *"This position is preferred to keep the pool a safe distance from the deck to prevent the possibility of jumping into the pool from the deck. In addition this will keep the pool in view from the 1st floor of the house for increased safety of the children in the family."*

Unique physical characteristics of the lot (e.g., size, slope, etc.):

From Petitioner's Application, pg. 2: *"Lot size is .43 acres. See plot plan for exact dimensions, slope toward back of lot behind garage and on right side of house. Home is not parallel to rear property line. "*

Description of the necessity of the proposed improvement

From Petitioner's Application, pg. 2: *"Pool is to be used for recreational and exercise purposes."*

Basis for appeal of the above action:

From Petitioner's Application, pg. 2: *"Goal is to align pool with orientation of home and keep pool directly behind house. Corner Lot with pie shape and house is off to one (1) side of lot."*

Approval Criteria

The Krey's amended request if for a variance to allow for an eight (8) foot rear yard setback in lieu of the fifteen (15) foot setback established by City of Chesterfield Ordinance 242:

1. In order to grant a variance, there must be proof that the applicant did not bring the burden upon himself through some action, but instead had the burden imposed on him.

2. An individual cannot create a situation and then claim he needs a variance. *Wolfner v. Board of Adjustment of City of Warson Woods*, 114 S.W.3d 298 (Mo.App.E.D.,2003).

3. The burden of proving the elements is on the applicant.

4. Missouri Revised Statute Chapter 89.090 requires that a Board of Adjustment may only grant variances when the applicant has established the necessary "practical

difficulties or unnecessary hardship" and when "the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done."

5. Section 2-216 of the City of Chesterfield Municipal Code states that the Board of Adjustment shall have the following powers:

   "To permit a variation in the yard requirements of any zoning district or the building or setback lines from major highways as provided by law where there are practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided that such variance will not seriously affect any adjoining property or the general welfare of the public;"

Action is requested on B.A. 1-2007 Kenneth and Lucy Kreh.

Respectfully Submitted,

Annissa McCaskill-Clay

Annissa G. McCaskill-Clay, AICP
Assistant Director of Planning

Exhibits:

1. City of Chesterfield Zoning Ordinance (not in packet)
2. Notice of Publication.
3. Affidavit of Publication (not in packet)
4. Staff Report
5. Petitioner's Applications
   A. Memorandum detailing Petitioner's amended request
   B. Application to Board of Adjustment
   C. Rejected Municipal Zoning Approval
6. Letter of support from Michael and Gail Schneider (2211 Barons Way Ct.)
7. Letter of support from Peggy Wachter (2212 Barons Way Ct.)
8. City of Chesterfield Ordinance 242

MODIFICATION TO APPLICATION FOR A VARIANCE

TO: CITY OF CHESTERFIELD DEPARTMENT OF PLANNING

FROM: KEN & LUCY KREH

SUBJECT: UPDATE TO VARIANCE APPLICATION (1.04.07)

DATE: 1/16/2007

CC: WILSON POOLS – BILL HENRICK

MODIFICATION TO ORGINAL APPLICATION

We would like to update our application to request an 8 foot rear setback instead of the 5 foot rear setback the board reviewed on 1.04.07. Our contractor feels that this proposal is the best option given the layout of the yard. See attached copies of new site plan.

OPTIONS EVALUATED BASED UPON BOARD RECOMMENDATIONS

1. Shift pool to the right: Due to the existing elevation of the yard, shifting the pool to the right would require installing a 6 foot retaining wall. As a result this would alter the contour of the land and impact the existing flow of water.

2. Shift the pool to the left: After reviewing this option with the subdivision board of trustees, it is the practice of the current board to require all structures to remain behind the house. In addition this would also alter the existing elevation of the yard and cause a problem with water flow to the existing county storm sewer line. The main problem with this option however is that it would cause us to move within the MSD easement.

3. Shift to pool toward the home: Our current site plan moves the pool within 8 feet of the existing deck structure. This enables us to remain in compliance with IRC codes 2005.

If you have any questions about these modifications please contact:

Wilson Pools: Bill Henrick, 618.910.1142

Thank you,

Lucy Kreh

Lucy Kreh
2215 Barons Way Court
Chesterfield, MO 63017
636.530.6088

RECEIVED
JAN 17 2007
PLANNING
DEPARTMENT

EXHIBIT 5A

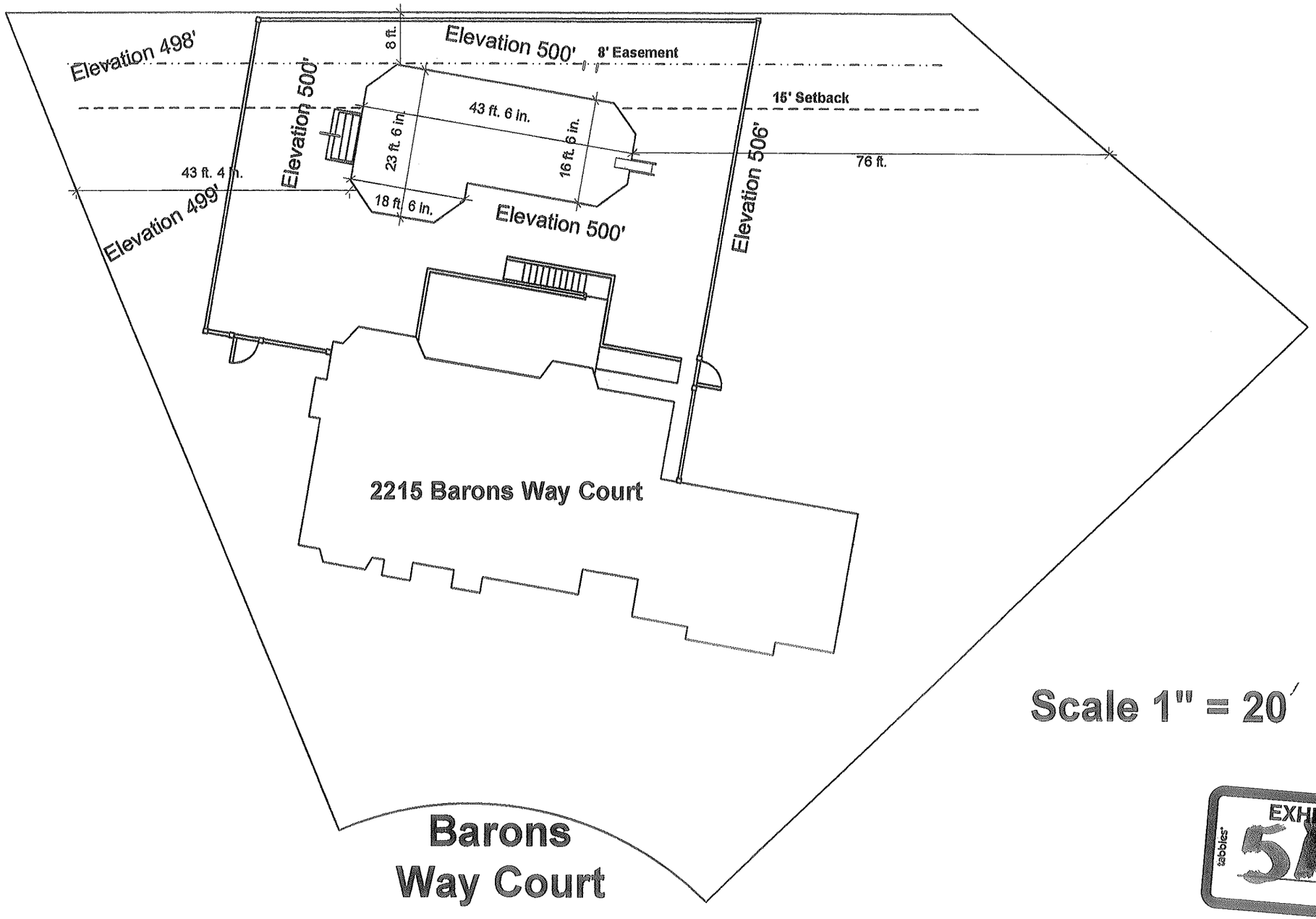

Elevation 498'
8 ft.
Elevation 500'
8' Easement
15' Setback
Elevation 500'
43 ft. 6 in.
23 ft. 6 in.
16 ft. 6 in.
Elevation 506'
76 ft.
43 ft. 4 in.
Elevation 499'
18 ft. 6 in.
Elevation 500'
2215 Barons Way Court
Scale 1" = 20'
Barons
Way Court

EXHIBIT
5A.

20T 31 0361

City of Chesterfield

DEPARTMENT OF PLANNING

RECEIVED DEC 4 2006 PLANNING DEPARTMENT

APPLICATION TO THE BOARD OF ADJUSTMENT FOR A VARIANCE

The Board of Adjustment is a local body consisting of volunteers appointed by the Mayor. Its responsibility is to hear appeals from decisions of the City of Chesterfield Department of Planning and to consider requests for variances and exceptions. A variance is an approved departure from the provisions of the zoning requirements for a specific parcel, without changing the zoning ordinance underlying zoning of the parcel. A variance usually is granted only upon demonstration of hardship based on the peculiarity of the property in relation to other properties in the same zone district. For questions about this application, please contact the "Planner of the Day" at 636-537-4733. For information about this and other projects under review by the Department of Planning, please visit "Planning Projects" at www.Chesterfield.mo.us.

Check (✓) the type of variance for which you are applying:

[✓] **Area (bulk) variance: A request to allow deviation from the dimensional (i.e. height, bulk yard) requirements of a zoning district.**

[ ] **Appeal of an Administrative determination**

Note: A $70 fee applies

Please note areas in gray will be completed by the Department of Planning.

STATE OF MISSOURI	)	**BOA NUMBER**	1-2007
	)	**HEARING DATE**	~~January 4, 2007~~ Feb. 1, 2007
CITY OF CHESTERFIELD	)		

Petition for Appeal from Zoning Regulations

I. APPLICANT INFORMATION

Owner(s) of record of the hereinafter described property according to St. Louis County Assessor's

Record: Kenneth + Lucy Koch

Address: 2215 Barrone Way Ct

City: Chesterfield **State:** MO **Zip:** 63017

Tel.: 636.530.6089 **Fax:** 314 256.5019

Petitioner, if other than owner(s):

Address:

City: **State:** **Zip:**

Tel.: **Fax:**

Legal Interest:

(Provide date of contract and date of expiration of contract)

***Attach additional sheets as necessary for other Parties of Interest (Architect, Engineer, etc.)**

EXHIBIT 5B

II. PROPERTY INFORMATION

Project Address: 2215 Barons Way Court, Chesterfield MO 63017

Locator Number(s):

(List additional locator numbers on separate sheet and attach to petition)

Acreage: _____ (To the nearest tenth of an acre)

Subdivision Name (If applicable): Stonebriar Plat One

Current Zoning District: St. Louis County Records.

Legal Description of Property: Lot / Parcel #: 119, Stonebriar Plat One, Plat Book: 291 page 2-3.

Single Family Home - 2 story

(Attach additional sheets as necessary)

III. NATURE OF REQUEST FOR VARIANCE

Unique physical characteristics of the lot (e.g., size, slope, etc.): Lot size .43 acres

See Plot Plan for exact dimensions, slopes toward back of lot behind garage and on right side of house. Home is not parallel to rear property lines.

(Attach additional sheets as necessary)

Description of the necessity of the proposed improvement: Pool is to be used for recreational and exercise purposes.

(Attach additional sheets as necessary)

Ordinance Number and section to which a variance is sought:

Rear Setback for inground pool

Master Plan # 805.95.01

(Attach additional sheets as necessary)

Basis for appeal of the above action: Goal is to align pool with orientation of home and to keep pool directly behind house.

(Attach additional sheets as necessary)

Do deed restrictions or subdivision trust indentures for the property prohibit the use or construction which is requested by this petition? Check (✓) one [ ] Yes [✓] No

Specify the action to which the appeal is sought: – NA.

(Attach additional sheets as necessary)

Description of the effect or impact on neighboring properties: No impact to neighbors on either side of property. Rear of lot is backed by Subdivision common ground. Plans reviewed by Trustee see original application, 10/13/06

(Attach additional sheets as necessary)

Statement of any other hardship or information for this appeal: – NA.

(Attach additional sheets as necessary)

Please complete the sections below as applicable:

A. Setbacks/Height:

The Petitioner(s) request the following setback(s):

Front yard: –
Side yard: –
Rear yard: 5 Feet
Height: –

The City of Chesterfield Zoning Ordinance Regulations require the following setback(s) for this site:

Front yard: –
Side yard: –
Rear yard: 15 feet
Height: –

The following information correctly presents the true conditions and also describes the practical difficulties and unnecessary hardships warranting action by the Board.

This position is preferred to keep the pool a safe distance from the decks to prevent the possibility of jumping into the pool from the decks. In addition this will keep the pool in view from the 1st floor of the house for increased safety of the children in the family.

Include two (2) completed copies of this application with original signatures and two (2) copies of the following:

1. A site development plan showing:
   - The dimensions and location (including distance from property lines) of all existing and proposed buildings and structures.
   - Letters from abutting property owners stating their position.
2. A $70.00 fee. (Checks/money orders to be made payable to the City of Chesterfield.)
3. A copy of the City of Chesterfield rejection or denial.

B. Signage:

Number and size of allowable attached business signs by ordinance: _____

Number and size of allowable freestanding business signs by ordinance: _____

The petitioner further represents that the increased sign size or height would not be injurious to the neighborhood, or otherwise be detrimental to the public welfare for the following reasons: _____

Include two (2) completed copies of this application with original signatures and two (2) copies of the following:

1. A site plan showing:
   - The subject property with adjoining streets, existing buildings, major parking lot, and distance to property lines.
   - The location of proposed signs.
   - If attached wall signs, the cross section of wall on which sign is to be placed with dimensions and total square feet (or portion of total wall that will contain petitioner's business)
2. A detail sign plan indicating:
   - Dimension of signs with detail sign lettering layout.
   - Total square feet of signs. If attached, what percent of wall.
   - Light detail, if any.
3. Letters from abutting property owners stating their position.
4. A $70.00 fee. (Checks/money orders to be made payable to the City of Chesterfield.)
5. A copy of the City of Chesterfield rejection or denial.

III. COMPLIANCE

Is property in compliance with all previous conditions of approval of all applicable Ordinance requirements?

[✓] Yes [ ] No. **If no, please explain:** _____

_____

_____

Is property in compliance with all Zoning, Subdivision, and Code requirements?

[✓] Yes [ ] No. **If no, please explain:** _____

_____

_____

[THIS SPACE INTENTIONALLY LEFT BLANK]

IX. LIENS AND FINES CERTIFICATION

Project Name: _____ **Ward:** _____

STATE OF MISSOURI, CITY OF CHESTERFIELD

[I] [we], _____ (a duly licensed attorney or title insurance company
(print, type or stamp name of attorney or title company)

in the State of Missouri), do hereby certify to the Council of the City of Chesterfield that [I] [we] have examined the title to the herein described property; that [I] [we] find the title to the property is vested to _____ ; that there are no fines and/or liens of record on the property
(name of owner(s))

by or owed to the City of Chesterfield [or] that the following fines and/or liens are owed to the City of Chesterfield:

1. _____
2. _____
3.
4. _____

_____ _____
(Attorney-at-law licensed in Missouri) Date

Missouri Bar # _____

-or-

_____ _____
(Officer of title insurance company) Date

_____
Print, type or stamp name and title

[THIS SPACE INTENTIONALLY LEFT BLANK]

XI. STATEMENT OF CONSENT

Consent is required from the property owner(s) and contract purchaser, if applicable, to their agent if the property owner(s) or contract purchaser do not intend to attend all meetings and public hearings and submit in person all material pertaining to the application. A separate form is required from each owner/contract purchaser. Consent to a firm shall be deemed consent for the entire firm, unless otherwise specified. Consent is valid for one year from date of notary, unless otherwise specified. Attach copy of last recorded warranty deed for subject property.

STATEMENT OF CONSENT

I hereby give CONSENT to _____ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge of the property I have an ownership interest in is the subject of this application. I further certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the City of Chesterfield, Missouri, and will not be returned. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the City of Chesterfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions which may be imposed as part of the approval of this application.

OWNER/CONTRACT PURCHASER INFORMATION:

I am the [ ] owner [ ] contract purchaser. (check (✓) one)

_____ _____

(Name- type, stamp or print clearly) (Signature)

_____ _____

(Name of Firm) (Address, City, State, Zip)

Note: Attach additional sheets as necessary.

NOTARY PUBLIC INFORMATION: STATE OF MISSOURI, CITY OF CHESTERFIELD

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 20 _____ .

Signed _____ Print Name: _____

Notary Public

Seal/Stamp:

My Commission Expires: _____

XII. AFFIDAVIT OF COMPLETENESS AND ACCURACY

INSTRUCTIONS: To be completed by individual submitting application (property owner, petitioner with consent, or authorized agent).

Project Name: Swimming Pool **Submittal Date:** _____

STATEMENT OF COMPLETENESS AND ACCURACY

I hereby certify all property owners have full knowledge the property they own is the subject of this application. I hereby certify that all owners and petitioners have been provided a complete copy of all material, attachments and documents submitted to the City of Chesterfield relating to this application. I further certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related application material and all attachments become official records of the City of Chesterfield, Missouri and will not be returned. I understand that any knowingly false, inaccurate or incomplete information provided by me will result in the denial, revocation or administrative withdrawal of this application, request, approval or permit. I further acknowledge that additional information may be required by the City of Chesterfield to process this application. I further represent and warrant that I have not made any arrangement to pay any commission, gratuity, or consideration, directly or indirectly, to any official, employee, or appointee of the City of Chesterfield with respect to this application. I further consent to the City of Chesterfield to publish, copy or reproduce any copyrighted documents submitted as a part of this application for any third party. I further agree to all terms and conditions which may be imposed as part of the approval of this application.

Check (✓) one: [✓] I am the property owner. [ ] I am the contract purchaser.

[ ] I am the duly appointed agent of the petitioner.

Lucy Karst Kreh
(Name- type, stamp or print clearly)

Lucy Karst Kreh
(Signature)

_____
(Name of Firm)

2215 Barons Way Ct., Chesterfield MO 63017
(Address, City, State, Zip)

Note: Attach additional sheets as necessary.

NOTARY PUBLIC INFORMATION: STATE OF MISSOURI, CITY OF CHESTERFIELD

The foregoing instrument was subscribed and sworn to before me this 4th day of Dec., 20 06.

Signed Judith A. Naggiar
Notary Public

Print Name: Judith A. Naggiar

Seal/Stamp: JUDITH A. NAGGIAR MY COMMISSION EXPIRES 01-03-2008 NOTARY SEAL NOTARY PUBLIC COUNTY OF ST. LOUIS STATE OF MISSOURI

My Commission Expires: 01/03/08

STAFF / BOA USE ONLY

Intake Date: _____

This petition is granted / denied (circle one) **on the** _____ **day of** _____ **20** ____

Signed: _____

Chairman

[THIS SPACE INTENTIONALLY LEFT BLANK]

20T310351

OK
M.H
10/16/06

City of Chesterfield

DEPARTMENT OF PLANNING

APPLICATION FOR MUNICIPAL ZONING APPROVAL

TO: Department of Public Works
Division of Code Enforcement
St. Louis County Government
41 South Central
Clayton, Missouri 63105

FROM: City of Chesterfield

The City of Chesterfield contracts with the St. Louis County Department of Public Works to provide permitting and inspection services. Review of plans, collection of fees, and issuance of permits are handled by the County. However, before obtaining any permit, or beginning any construction project, a zoning approval must be obtained from the City of Chesterfield.

Zoning approval signifies that the property can be used as requested and that the location of a proposed structure is within the legal limits of the property lines as delineated by regulations contained within the City of Chesterfield Zoning Ordinance. Please be advised that some sites have regulations that are more restrictive as part of conditions of the ordinance governing a particular Planned Commercial District, Planned Industrial District, Estate District, Mixed Use Development District, Conditional Use Permit, Commercial-Industrial Designed Development Procedure, Planned Environmental Development Procedure, or Landmark Preservation Area.

Petitioners are strongly urged to visit the County web site at http://www.stlouisco.com/pubworks/ or contact the St. Louis County Department of Public Works at (314) 615-7155 for submittal requirements, permitting information and a detailed list of work that does not require a building permit and/or zoning approval

For questions about this application, please contact the "Planner of the Day" at 636-537-4733.

I. APPLICANT INSTRUCTIONS

1. Obtain City of Chesterfield approval;
2. Obtain *Fire District approval; An additional separate permit is required from the fire district.
3. Obtain St. Louis County approval.

*NOTE: It is the responsibility of the applicant to determine which Fire District covers the project property.

- Monarch Fire Protection District: Tel. 314-514-0900, ext. 309
- Metro West Fire Protection District: Tel. 636-458-2100

II. PROJECT INFORMATION

Property Owner: Kenneth Kreh

Project Address: 2215 Barons Way Ct

City: Chesterfield State: MO Zip: 63017

Tenant Name (if different than above):

Owner/Tenant Authorization to Applicant: [signature]

(Signature of owner/tenant or duly authorized agent required)

690 Chesterfield Parkway West, Chesterfield, MO 63017-0760
Ph. (636)537-4746 Fax (636)537-4798 www.chesterfield.mo.us

MZA 09/03

EXHIBIT 5C

pplicant Name: Kenneth Kreh
pplicant Address: 2215 Barons Way Ct Chesterfield 63017
hone Number: 636-530-6088 Attn:

If the property is located within a subdivision, the applicant is to notify Subdivision Trustees of the proposed work.

Subdivision Name: Stonebriar Subdivision

Subdivision Trustee Acknowledgement: H L Williams, Trustee
(Signature of trustee or duly authorized agent)

Were the Subdivision Trustees Notified? Check (✓) one [✓] Yes [ ] No

Description of Work: IN-GROUND SWIMMING POOL
MASTER PLAN# 805-95-01

upon Rejection of Permit
Please Call 618-910-1142 Bill Hendricks

Advisory: Applications for Municipal Zoning Approval which are rejected may be resubmitted once changes have been made. Please note that relief from some requirements, in the form of a variance, may be requested via application to the Board of Adjustment. For information about the Board of Adjusment, please contact the Department of Planning at 636-537-4746.

NOTE: PAGES *1, 2, & 3* MUST BE RETURNED FOR APPROVAL

(FOR CITY OF CHESTERFIELD AND ST. LOUIS COUNTY STAFF USE ONLY)

Municipal Zoning Classification: R3

Is this project located within a Flood Plain: (Check one) Yes ____ No ✓

Status 1: APPROVED REJECTED (circle one)

Approved/Rejected by: Derrick Redhead Date: 10/19/06

Print Name and Title: Derrick Redhead - Planning Tech

Comments: Rear setback is encroached.

Status 2: APPROVED REJECTED (circle one)

Approved/Rejected by: _____ Date: _____

Print Name and Title: _____

Comments: _____

EXTERIOR FIRE PROTECTION

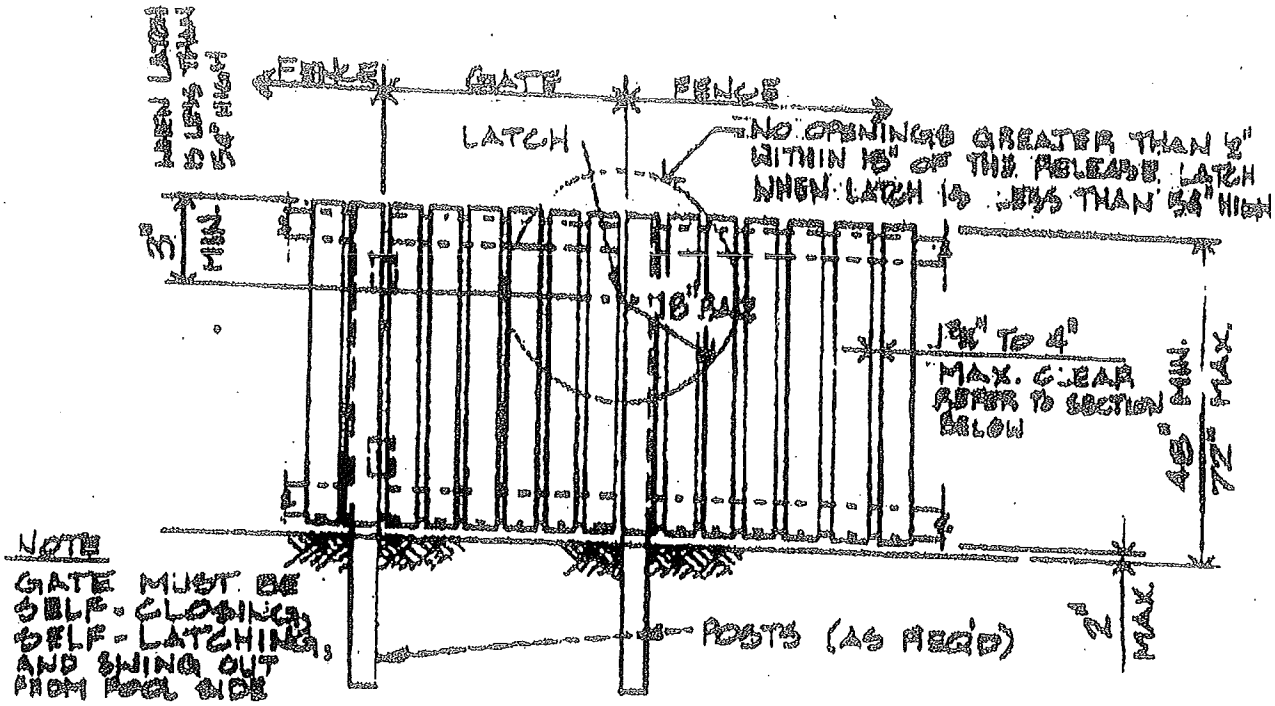
Approved by: _____ Date: _____

Print Name and Title: _____

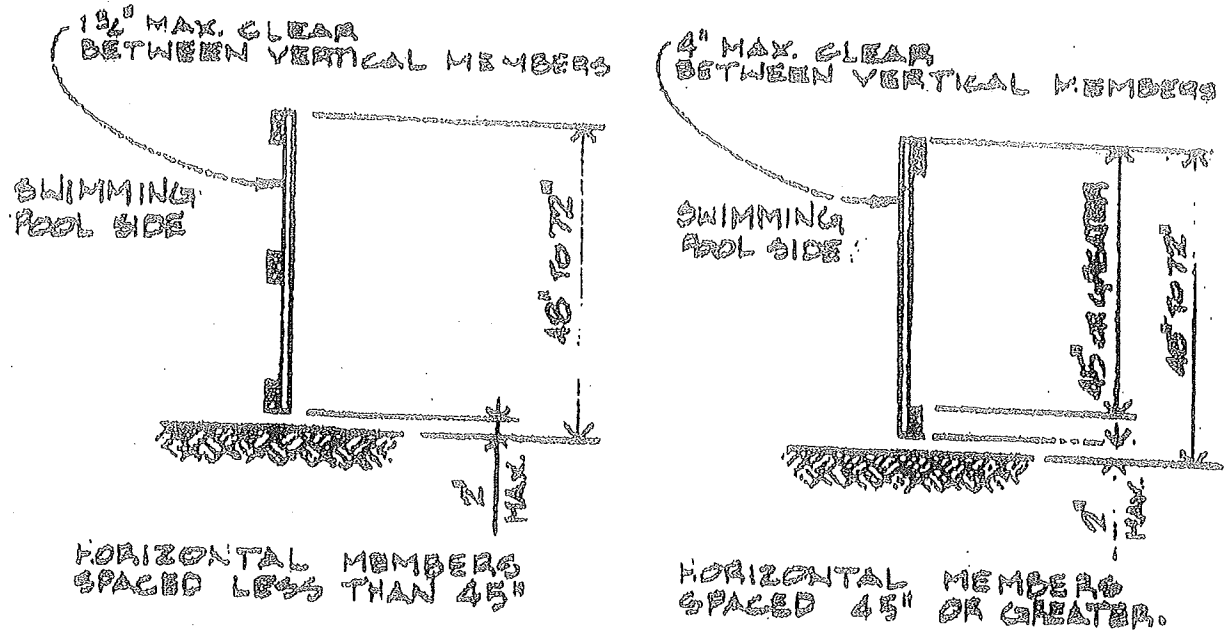
Fire Protection Provided By: _____

ST. LOUIS COUNTY PERMIT APPLICATION NUMBER: _____

Notes: _____



POOL GATE AND BARRIER ELEVATION



POOL BARRIER SECTIONS

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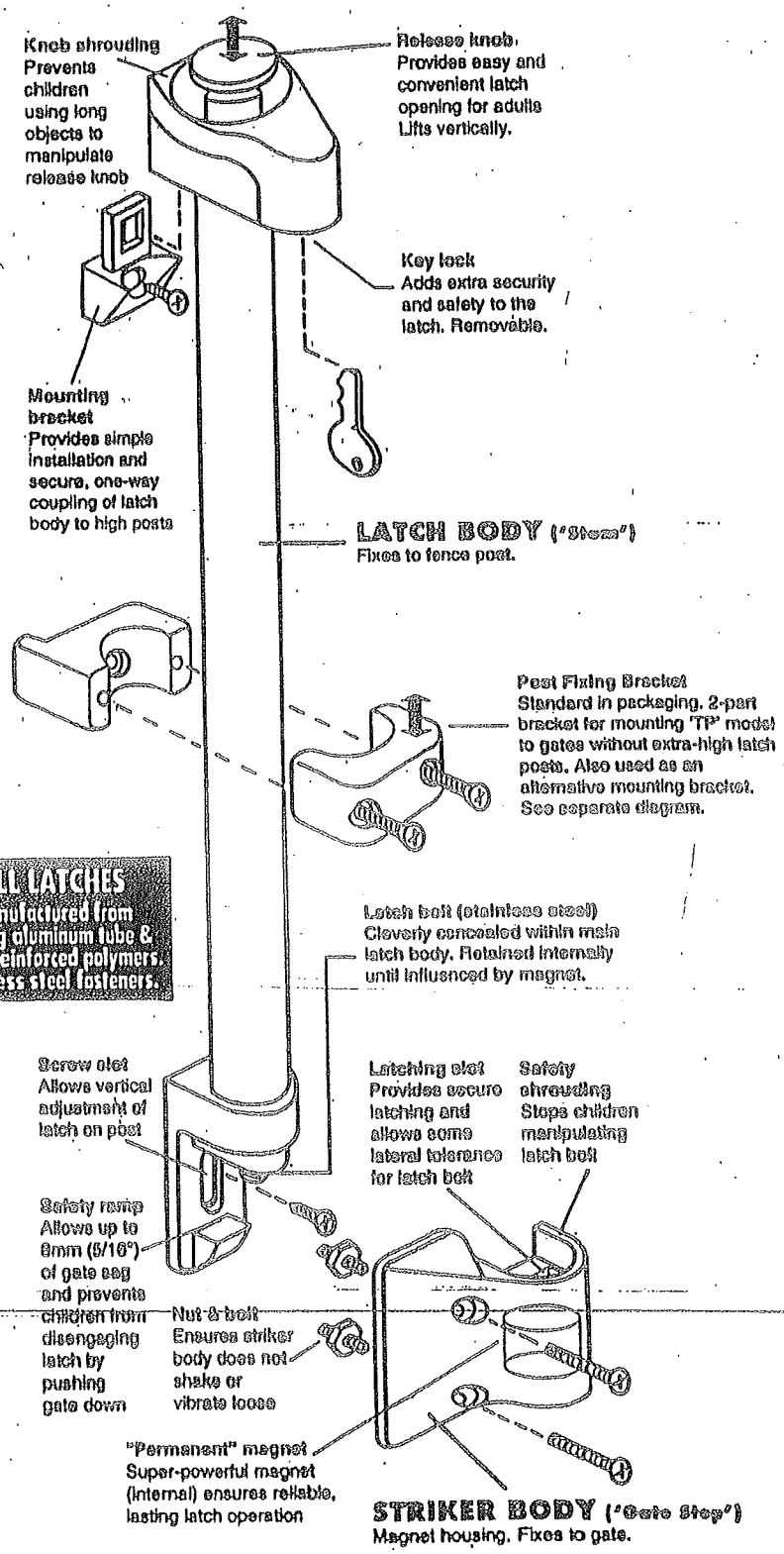
TOP PULL MODEL



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MEMBER NATIONAL SPA & POOL INSTITUTE

RE: POOLGUARD 'DAPT' DOOR ALARM

The POOLGUARD 'DAPT' DOOR ALARM meets the requirements of the language in the door alarm description in the BOCA, CABO, ICBO, SBCCI, and UBC CODES. The POOLGUARD 'DAPT' DOOR ALARM was designed specifically to meet the needs of the new barrier code requirements. The 'DAPT' DOOR ALARM features are listed below:

1. The POOLGUARD 'DAPT' DOOR ALARM is UL listed, UL#2017.
2. If a child opens the door the alarm sounds in 7 seconds and will continue to sound until someone comes to the door.
3. Alarm sounds if a child goes through the door even if he closes the door behind him.
4. There is no on/off switch.
5. Alarm is always on and always automatically resets under all conditions.
6. The horn is 98 dB at 10 feet.
7. Alarm has a delay switch for adults to exit and enter <u>without</u> the alarm sounding.
8. The horn sound is different than other in house alarms.
9. The DOOR ALARM is designed to fit any type door or window and comes with all the necessary hardware for easy installation.
10. The DOOR ALARM has a low battery indicator.
11. The DOOR ALARM can be adapted to alarm the door and the screen door if present.
12. The DOOR ALARM uses one 9-VOLT battery; battery life is approximately one year.
13. The color of the alarm is almond white to match any household decor.

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DOOR ALARM

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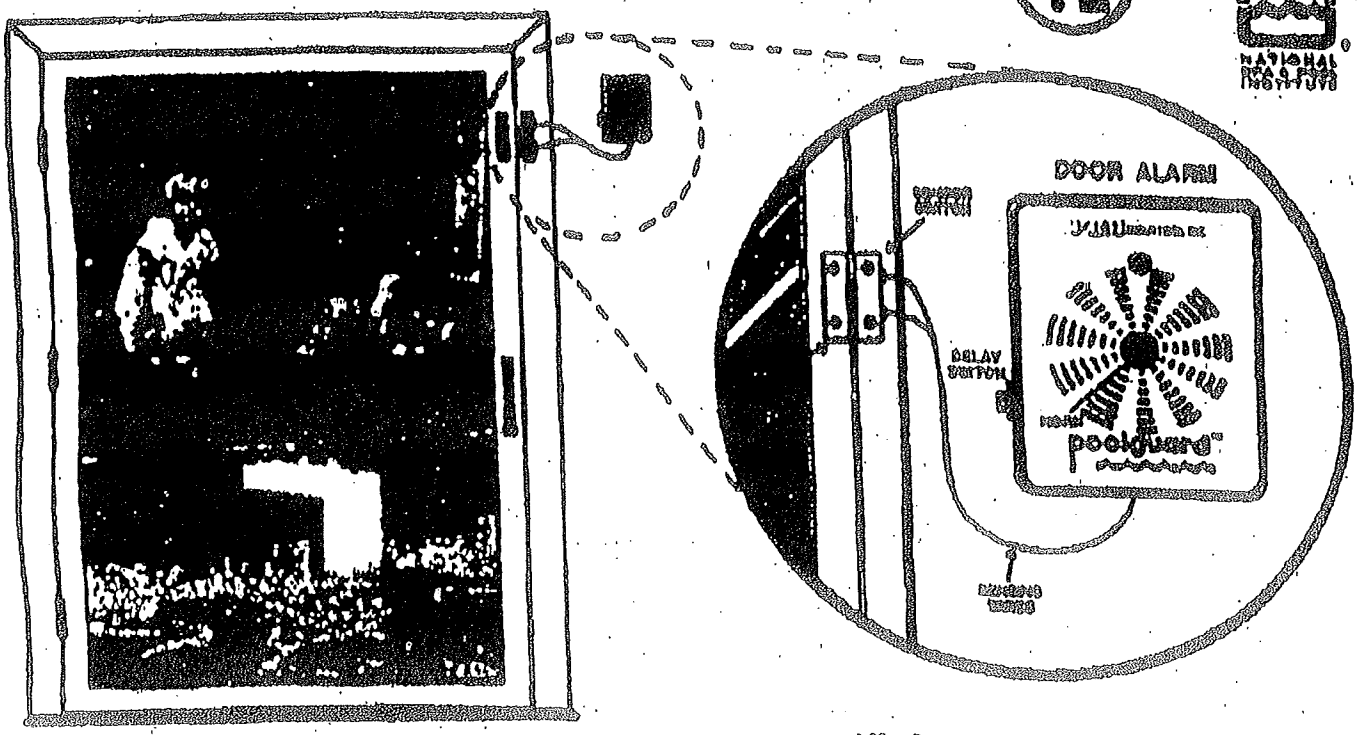
MODEL DAPT



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Poolguard Door Alarm mounts next to any door which gives easy access to your swimming pool. Any door which allows young children easy and quick access to a pool area is dangerous and should have a door alarm. The Poolguard Door Alarm comes with two magnetic switches, hookup wire, and operates on one 9-volt battery. The door alarm has a delay switch which allows an adult to pass through the door without the alarm sounding. When a child opens the door, the alarm will sound in seven seconds and continue to sound; the alarm will sound in seven seconds even if the child should go out the door and close the door. If for any reason the door is accidentally left open, the alarm will sound. For further information, contact your local Poolguard distributor or call PBM Industries toll free. When you think of pool safety/security, think of Poolguard.

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- Important Safety Feature
- Complies with Building Codes
- Simple to Operate
- Automatic Reset
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- Easy to Install
- Affordable Price
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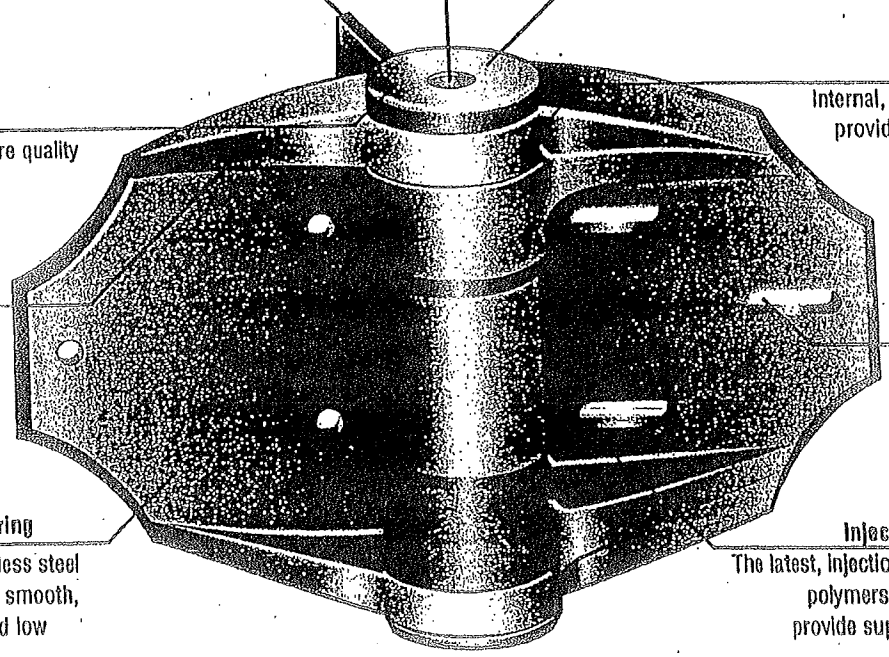
The stainless steel spring in each hinge is cleverly concealed and protected within the hinge barrel. The adjustor insert at the top of the spring is depressed (using screwdriver) and rotated to achieve the desired tension before the adjustor is then allowed to rise back into the hexagonal-shaped housing to hold the tension. Both hinges must be adjusted for self-closing tension quality.

Corner Mount Leg
Double face-fixing allows quick & easy alignment of hinges and adds extra strength. Eliminates through bolting.

Removable Cap
Cap can be removed quickly (one screw) to access internal adjustor mechanism.

Patented Adjustor
Internal, spring-loaded adjustor provides instant, incremental tension adjustment.

Stainless Steel
All fixings within hinge are quality stainless steel or brass.



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Powerful, internal stainless steel torsion spring provides smooth, reliable gate closure and low stress operation.

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DEPARTMENT

I support the request for variance submitted by the Kreh's.

2211 Barons Way ct

Michael H Schneider

Gail Schneider

EXHIBIT

6

RECEIVED
DEC 4 2006
PLANNING
DEPARTMENT

I support the request for variance submitted by the Kreh's.

Margaret R Wachter

Peggy Wachter
2212 Barons Way Ct
636-728-1010

EXHIBIT

7

BILL NO. 244 ORDINANCE NO. 242

AN ORDINANCE AMENDING ORDINANCE NUMBER 237 RELATING TO P.C. 17 & 19 MICELI DEVELOPMENT COMPANY BY INCLUDING WITHIN THE APPROVED R-2 AND R-3 RESIDENTIAL DISTRICT THAT REAL ESTATE INCLUDED IN P.C. 25-88 STONEBRIAR DEVELOPMENT CORPORATION CREATING ONE PLANNED ENVIRONMENTAL UNIT DEVELOPED ON SAID TRACT OF LAND SUBJECT TO CONDITIONS (P.C. 17 & 19 MICELI DEVELOPMENT COMPANY AND P.C. 25-88 STONEBRIAR DEVELOPMENT COMPANY).

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Preliminary approval of a Planned Environment Unit Development of a tract of land located in the R-2 and R-3 Residence Districts, in the City of Chesterfield, is granted, said tract being described as follows:

A tract of land in Section 21, Township 45 North - Range 4 East, St. Louis County, Missouri and being more particularly described as:

Beginning at the intersection of the South line of "Clarkson Woods South Plat 1", a subdivision according to the plat thereof recorded in Plat Book 166 page 94 and 95 in the St. Louis County records, with the East line of Clarkson Road, 60 feet wide; thence South 89 degrees 22 minutes 30 seconds East 1313.88 feet along said South line of "Clarkson Woods South Plat 1", to the southeast corner thereof, said point being on the West line of "Clarkson Woods Plat No. 2", a subdivision according to the plat thereof recorded in Plat Book 172 pages 70 and 71 in the St. Louis County records; thence South 1 degree 19 minutes 30 seconds West 212.00 feet along said West line of "Clarkson Woods Plat No. 2" to the Southwest corner thereof; thence North 84 degrees 14 minutes 00 seconds East 1331.19 feet along the South line of said "Clarkson Woods Plat No. 2" to the Southeast corner thereof, said point being on the West line of "Meadowbrook Farm Plat 11", a subdivision according to the plat thereof recorded in Plat Book 202 pages 72 through 74 in the St. Louis County records; thence South 1 degree 14 minutes 00 seconds West 1060.40 feet along said West line of "Meadowbrook Farm Plat 11" in a Southward prolongation thereof, to the Northeast corner of "Kehrs Mill Farm Plat Two", a subdivision according to the plat thereof recorded in Plat Book 152 pages 20 and 21 in the St. Louis County records; thence North 88 degrees 46 minutes 00 seconds West 1030.11 feet along the North line of said "Kehrs Mill Farm Plat Two" and the North line of "Kehrs Mil Farm Plat Four", a subdivision

according to the plat thereof recorded in Plat Book 162 pages 46 and 47 in the St. Louis County records, to the Northwest corner thereof; thence South 1 degree 14 minutes 00 seconds West 360.85 feet and South 12 degrees 23 minutes 00 seconds West 8.94 feet along the West line of "Kehrs Mill Farm Plat Four" to the Northeast corner of property conveyed to Rockwood R-6 School District as Daily No. 427 on May 11, 1988 in the St. Louis County records; thence North 77 degrees 37 minutes 00 seconds West 702.04 feet along the North line of said Rockwood R-6 School District property to the Northwest corner thereof; thence South 3 degrees 19 minutes 41 seconds East 745.45 feet along the West line of said Rockwood R-6 School District property to the southwest corner thereof, said point being also in the North line of Kehrs Mill Road, 40 feet wide; thence North 75 degrees 24 minutes 00 seconds West 321.08 feet along said North line of Kehrs Mill Road to a point; thence North 43 degrees 24 minutes 00 seconds West 811.44 feet and North 48 degrees 57 minutes 00 seconds West 55.75 feet along the Northeast line of Kehrs Mill Road to a point; thence leaving said Northeast line of Kehrs Mill Road North 58 degrees 46 minutes 04 seconds East 763.46 feet to a point; thence North 0 degrees 37 minutes 21 seconds West 543.42 feet to a point; thence North 77 degrees 15 minutes 38 seconds West 704.22 feet to a point; thence North 1 degree 17 minutes 00 seconds East 205.43 feet to said East line of Clarkson Road; thence along a curve to the left, whose radius point bears North 77 degrees 05 minutes 20 seconds West 1462.69 feet from the last mentioned point, a distance of 88.30 feet along said East line of Clarkson Road, to the point of beginning and containing 69.3 acres according to calculations by Volz Engineering & Surveying, Inc. dated January 12, 1989.

Section 2. This preliminary approval pursuant to the City of Chesterfield Zoning Ordinance 1003.187 is granted subject to all Ordinances, rules and regulations and to the conditions recommended by the Planning commission in its recommendation to the city Council, as follows:

1. PERMITTED USES

This Planned Environment Unit shall authorize the development of a maximum of one hundred seventy-seven (177) single family residences on individual lots.

2. LOT REQUIREMENTS

a. All lots within the "R-2" Residence District shall be a minimum of 10,000 square feet in area.

b. All lots within the "R-3" Residence District shall be a minimum of 8,000 square feet in area.

3. SITE DEVELOPMENT PLAN SUBMITTAL REQUIREMENTS

Within eighteen (18) months of the date of approval of the preliminary development plan by the City Council and prior to any site preparation or construction, the petitioner shall submit to the Planning Commission for its review and approval a Site Development Plan. Where due cause is shown by developer, this time interval may be extended through appeal to and approval by the Planning Commission. Said Site Development Plan shall include, but not be limited to, the following:

a. A general development plan, including basic arrangement of lot locations, common land areas, sidewalks, setback lines from all internal streets and along the perimeter of the subject tract, roadways on or adjacent to the property in question including roadway right of way dimensions, and a street lighting plan.
b. The location and size of all outdoor parking areas, if any.
c. Existing and proposed contours at two (2) foot intervals.
d. The design, location, and size of all proposed freestanding signs, fences, and other above ground structures, except retaining walls.
e. A landscape plan, including, but not limited to, the location, size, and general type of all plant and other materials to be used.
f. The location of any public utility facilities.
g. All other preliminary plat requirements of the City of Chesterfield Subdivision Ordinance.

4. SITE DEVELOPMENT PLAN DESIGN CRITERIA

The above Site Development Plan shall adhere to the following specific design criteria:

Structure Setbacks

a. Structure setbacks shall be as follows, except yards abutting the perimeter of the P.E.U. shall comply with setbacks of the underlying district.

i. Front: Twenty (20) feet from roadway right-of-way.
ii. Rear: Fifteen (15) feet
iii. Side: Six (6) foot minimum with a minimum of sixteen (16) feet between structures in the "R-2" and "R-3" Districts

Parking Requirements

b. Minimum parking requirements shall be as required by Section 1003.165 of the City of Chesterfield Zoning Ordinance.

Access

c. Access to the P.E.U. shall be limited to one (1) street intersecting Kehrs Mill Road across from Westpar Drive as approved by the St. Louis County Department of Highway Traffic. The median for the subdivision entrance shall be similar in width to the median on Westpar Drive. The pavement width shall be twenty-six (26) feet wide on each side of the median to provide for two (2) inbound and two (2) outbound lanes for a distance of 150 feet north of Kehrs Mill Road. A 20:1 taper should be provided to connect with the thirty-two (32) feet of pavement north of this wider section.

d. No private driveway access to Kehrs Mill Road shall be permitted.

e. Provide a reserve strip to abutting undeveloped property as directed by the Department of Planning and Public Works adjacent to the east. Provide a minimum of two (2) stub streets to the abutting property to the west as directed by the Department of Planning and Department of Public Works.

Road Improvements and Sidewalks

f. Provide temporary improvements at the <u>existing</u> intersection of Clarkson Road and Kehrs Mill Road as follows:

   i. Widen Kehrs Mill Road east of Clarkson to provide for a separate westbound right turn lane 150 feet in length with a 10:1 inbound taper.
   ii. Widen Kehrs Mill Road west of Clarkson Road to provide for a separate eastbound right turn lane 150 feet in length with a 10:1 inbound taper.
   iii. Widen Clarkson Road to lengthen the 125 foot long southbound left turn lane at Kehrs Mill Road with an additional 175 feet with a 40:1 taper
   iv. Modify the existing traffic signal at Clarkson Road and Kehrs Mill Road as required by the above noted improvements.

These improvements which are to be made at the existing intersection of Clarkson Road and Kehrs Mill Road will be

eliminated when the Missouri Highway and Transportation Department improves he intersection of these two roadways.

g. Improve Kehrs Mill Road to provide for the following:

i. Improve the vertical and horizontal alignment of Kehrs Mill Road adjacent to the subdivision frontage as directed by the St. Louis County Department of Highways and Traffic.

ii. Widen Kehrs Mill Road about the centerline to provide for a twelve foot wide two-way left turn lane between approximately 500 feet east of Clarkson Road and the east property line of the site. Taper of 35:1 shall be used on the east end of this widening.

iii. Widen the north side of Kehrs Mill Road to 1/2 of sixty-three (63) feet of pavement from the center of right-of-way to provide for a second westbound lane between approximately 500 feet east of Clarkson Road and the east property line of the site. Taper of 20:1 shall be used on the east end of this widening.

iv. Provide sidewalks and handicap ramps along Kehrs Mill Road as directed by the St. Louis Department of Highways and Traffic.

h. The main access street shall have a minimum pavement width of thirty-two (32) feet from Kehrs Mill Road to its terminus with the eastern most loop street, except as noted in Condition 4.b. Parking shall be restricted along the side of the access street adjacent to the water line easement.

i. Maintenance of subdivision streets, including but not limited to snow removal, shall be the responsibility of the developer until such time as the streets are accepted for maintenance by the City of Chesterfield.

j. In no event shall the cost of roadway improvements for Clarkson Road and Kehrs Mill Road exceed a total amount based upon $525.80 required parking space. This amount shall be increased after January 1, 1989 based in accord with construction cost index as calculated by the St. Louis County Department of Highways and Traffic if improvements are not approved and commenced prior to that date.

k. As portions of these roadway improvements may require the acquisition of additional right-of-way and easements from private property, the normal sequence of design, right-of-way acquisition and construction shall commence immediately upon approval of the requested rezoning. If

the developer is unable to acquire the necessary right-of-way and easements through negotiation with the particular property owners involved, St. Louis County will acquire same through eminent domain proceedings. The cost of appraisals, negotiations, administration, court proceedings, and all associated costs incurred by Court proceedings shall be paid by the developer.

Landscape Requirements

l. All new deciduous trees shall be a minimum of one and one-half (1-1/2) inches in caliper. All new evergreen trees shall be a minimum of four (4) feet in height and all shrubs shall have a minimum diameter of eighteen (18) inches.

m. All landscaping improvements shall be escrowed along with the other standard subdivision improvements.

Signs

n. Any signs shall be erected in accord with the "R-2" Residence District.

Lighting

o. Lighting shall be required in compliance with the City of Chesterfield Subdivision Ordinance.

Miscellaneous Design Criteria

p. Exterior trash areas in common ground (if any) shall be surrounded by six foot high sightproof fencing.

q. Except as herein noted, comply with all preliminary plat requirements of the City of Chesterfield Subdivision Ordinance.

5. VERIFICATIONS PRIOR TO APPROVAL

Prior to approval of the Site Development Plan, the petitioner shall:

Stormwater

a. Submit to the Department of Planning a preliminary engineering plan approved by the Department of Public Works showing that adequate handling of the stormwater drainage is provided.

(1) The developer is required to provide adequate stormwater systems in accordance with City of Chesterfield Standards.
(2) All stormwater shall be discharged at an adequate natural discharge point.
(3) Detention of differential runoff of stormwater is required by providing permanent detention facilities, such as: dry reservoirs, ponds or other acceptable alternatives. Detention shall be provided in each watershed. The detention facilities shall be completed and in operation prior to issuance of building permits exceeding sixty percent (60%) of the approved dwelling units.

Roadway Improvements and Access

b. Provide verification of approval by the St. Louis County Department of Highways and Traffic of the location of proposed curb cuts, areas of new dedication and roadway improvements.

Geotechnical Report

c. Submit, as deemed necessary by the City Engineer, a geotechnical report prepared by a professional engineer licensed in the State of Missouri for review and approval by the Department of Public Works. Said report shall verify the adaptability of grading and improvements with soil and geologic conditions. A statement of compliance with this study, signed by the Geotechnical Engineer preparing the report, shall be included on all Site Development Plans.

6. RECORDING

Within sixty (60) days of approval of the Site Development Plan by the Planning Commission, the approved plan shall be recorded with the St. Louis County Recorder of Deeds.

7. VERIFICATION PRIOR TO BUILDING PERMITS

Subsequent to approval of the Site Development Plan, and prior to issuance of any building permit the following requirements shall be met:

Notification to the Department of Public Works

a. Prior to the issuance of foundation or building permits, all approvals from the Department of Planning, the Department of Public Works, the Department of Highways and Traffic, the Metropolitan St. Louis Sewer District

and the Missouri Highway and Transportation Department must be received by the City of Chesterfield.

Road Improvements

b. Improvement to Kehrs Mill Road must be completed prior to the issuance of building permits in excess of fifty percent (50%) of the total. If development phasing is anticipated, the developer shall complete road improvements, right-of-way dedication, and access requirements for each phase of development prior to issuance of building permits in excess of fifty percent (50%) of the total in any one phase. As previously noted, the delays due to utility relocation and adjustments will not constitute a cause to allow occupancy prior to completion or road improvements.

Certification of Plans

c. Provide verification that construction plans are designed to conform to the requirements and conditions of the Geotechnical Report. The Geotechnical Engineer shall be required to sign and seal all plans with a certification that the proposed construction will be completed in accordance with the grading and soils requirements and conditions contained in the report.

8. GENERAL DEVELOPMENT CONDITIONS

a. A grading permit is required prior to any grading on the site. No change in watersheds shall be permitted. Interim stormwater drainage control in the form of siltation control measures is required.

b. Additional lanes and/or widening, pavement thickness, drainage facilities, granular base, traffic control devices and other improvements may be required to accommodate heavy traffic volumes, unsuitable soil conditions, steep grades, or other conditions not apparent at this time.

c. If cut and fill operations occur during a season not favorable for immediate establishment of a permanent ground cover, a fast germinating annual such as rye grasses or sudan grasses shall be utilized to retard erosion. Such areas shall be adequately maintained until construction occurs.

d. Provide adequate temporary off-street parking for construction employees. Parking on non-surfaced areas shall be prohibited in order to eliminate the condition whereby mud from construction and employee vehicles is

tracked onto the pavement causing hazardous roadway and driving conditions.

e. If roadways in this petition are to be private roadways, these roadways shall remain private forever. Maintenance of private roadways shall be responsibility of the property owner(s) or trustees forever.

The existence of private roadways within the development requires disclosure by the developer of responsibility for street maintenance in accordance with the provisions of Section 1005.265 of the city of Chesterfield Subdivision Ordinance.

f. A copy of the most recently approved Site Development Plan for this P.E.U. development shall at all times be prominently displayed in all display area sales offices within this development.

g. Failure to comply with any or all the conditions of this ordinance shall be adequate cause for revocation of permits by issuing City Departments or Commissions.

h. The Zoning Enforcement Officer of the City of Chesterfield, Missouri, shall enforce the conditions of this ordinance in accord with the Site Development Plan approved by the Planning Commission.

Section 3. The City Council, pursuant to the petition of Miceli Development Company, requesting the approval of a Planned Environmental Unit Development for the tract of land described in Section 1 of the Ordinance and pursuant to the recommendation of the Planning Commission that said petition be granted after public hearing held by the said Commission on September 26, 1988, adopts this Ordinance pursuant to the statutory authority authorizing the City Council to exercise legislative power pertaining to planning and zoning and returns the application and plan to the City of Chesterfield Planning Commission for consideration of the final development plans pursuant to City Ordinance.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 6th day of February, 1989.

MAYOR

ATTEST:

Michael B. Fleming

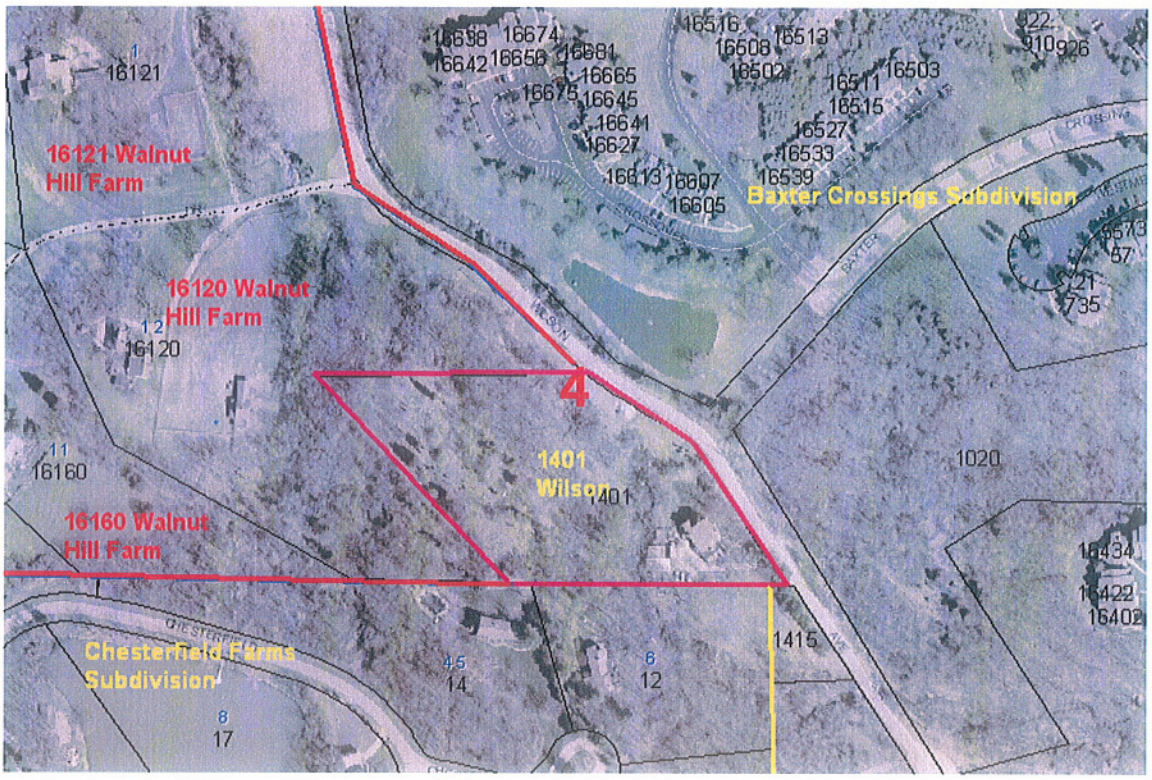
CITY CLERK

Notice of Public Hearing
City of Chesterfield
Board of Adjustment

NOTICE IS HEREBY GIVEN that the Board of Adjustment of the City of Chesterfield will hold a Public Hearing on Thursday, February 1, 2007 at 7:00 p.m. in the City Council Chambers at the City of Chesterfield City Hall, 690 Chesterfield Parkway West, Chesterfield, Missouri, 63017

The Board will consider the following:

B.A. 2-2007 1401 Wilson Road: An appeal of an administrative determination to issue municipal zoning approval to construct a 100 ft. tall disguised antenna structure on a 4.48-acre "NU" Non-Urban District-zoned parcel at 1401 Wilson Road, under the criteria set forth in City of Chesterfield Ordinance 1214 (Section 1003.167.19 of the City of Chesterfield Zoning Ordinance). (18T210027)



All interested parties are invited to appear and be heard at the hearing.

Copies of the request are available for review at the City Government Center Monday through Friday, from 8:30 a.m. to 4:30 p.m. If you should need additional information about this project, please contact Annissa McCaskill-Clay, Assistant Director of Planning by telephone at 636-537-4737 or by email at amccaskill@chesterfield.mo.us

City of Chesterfield
Annissa McCaskill-Clay, AICP
Assistant Director of Planning.

EXHIBIT 2

City of Chesterfield

690 Chesterfield Pkwy W • Chesterfield MO 63017-0760
Phone: 636-537-4000 • Fax 636-537-4798 • www.chesterfield.mo.us

IV.B.

January 16, 2007

Board of Adjustment
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017

Re: **B.A. 2-2007 1401 Wilson Road:** An appeal of an administrative determination to issue municipal zoning approval to construct a 100 ft. disguised antenna support structure on a 4.48-acre "NU" Non-Urban District-zoned parcel at 1401 Wilson Road, under the criteria set forth in City of Chesterfield Ordinance 1214 (Section 1003.167.19 of the City of Chesterfield Zoning Ordinance). (18T210027)

Dear Board Members:

Lauren Strutman, Yakov and Irina Svironskiy, and Douglas and Joann Miley are appealing an administrative determination to issue a municipal zoning approval for a 100 ft. disguised antenna support structure 1401 Wilson Road. In review of the petitioner's request, the Department of Planning submits the following report:

Background of site

1. The subject property is owned by David and Linda Dalton. It is a 4.48-acre parcel, which is zoned "NU" Non-Urban District.
2. On April 21, 2006, the City of Chesterfield granted and application for administrative approval for placement of a disguised antenna support structure in the form of a faux evergreen tree and supportive application for municipal zoning approval to obtain a building permit. The supportive plans for the antenna structure showed a height of 85ft.
3. Amended applications, allowing for collocation of additional users were approved on July 14, 2006. Said application was for a 100 ft. disguised antenna support structure.
4. City of Chesterfield Ordinance 1214 (Section 1003.167.19 of the City of Chesterfield Zoning Ordinance) permits administrative approval of disguised antenna support structures one hundred (100) feet in height or less in certain districts, including the "NU" Non-Urban District. Disguised antenna support structures over one hundred (100) feet require a Conditional Use Permit.

EXHIBIT 4

5. The administrative approval process does not require notification of adjacent properties/subdivisions or a public hearing.

6. The Petitioners are adjacent property owners and are appealing the City's issuance of approval of the disguised structure and application for municipal zoning approval to obtain a building permit.

Action is requested on B.A. 2-2007 1401 Wilson Road.

Respectfully Submitted,

Annissa McCaskill-Clay

Annissa G. McCaskill-Clay, AICP
Assistant Director of Planning

Exhibits:

1. City of Chesterfield Zoning Ordinance (not in packet)
2. Notice of Publication.
3. Affidavit of Publication (not in packet)
4. Staff Report
5. Petitioner's Application
   A. Application to Board of Adjustment
   B. Supplement to Application providing Petitioner's grounds for appeal.
   C. October 31, 2006 letter of protest from residents with attachments.

6. City of Chesterfield Ordinance 1214
7. Memorandum of Law from Lewis, Rice, Fingersch, L.C.
8. Letters Submitted by Lauren Strutman
   A. Esley Hamilton
   B. Susan and Charles Dean
   C. James T. O'Shea
   D. Lola Schiller
9. Letter Submitted by Peggy Liggett

City of Chesterfield

DEPARTMENT OF PLANNING

APPLICATION TO THE BOARD OF ADJUSTMENT FOR A VARIANCE

The Board of Adjustment is a local body consisting of volunteers appointed by the Mayor. Its responsibility is to hear appeals from decisions of the City of Chesterfield Department of Planning and to consider requests for variances and exceptions. A variance is an approved departure from the provisions of the zoning requirements for a specific parcel, without changing the zoning ordinance underlying zoning of the parcel. A variance usually is granted only upon demonstration of hardship based on the peculiarity of the property in relation to other properties in the same zone district. For questions about this application, please contact the "Planner of the Day" at 636-537-4733. For information about this and other projects under review by the Department of Planning, please visit "Planning Projects" at www.Chesterfield.mo.us.

Check (✓) the type of variance for which you are applying:

[ ] **Area (bulk) variance: A request to allow deviation from the dimensional (i.e. height, bulk yard) requirements of a zoning district.**

[✓] **Appeal of an Administrative determination**

RECEIVED NOV 28 2006 PLANNING DEPARTMENT

Note: A $70 fee applies

Please note areas in gray will be completed by the Department of Planning.

STATE OF MISSOURI)
)
CITY OF CHESTERFIELD)

BOA NUMBER _____
HEARING DATE _____

Petition for Appeal from Zoning Regulations

I. APPLICANT INFORMATION

Owner(s) of record of the hereinafter described property according to St. Louis County Assessor's Record: DAVID AND LINDA DALTON
Address: 1401 WILSON ROAD
City: CHESTERFIELD **State:** MO **Zip:** 63005
Tel.: 314-304-2233 **Fax:**

Petitioner, if other than owner(s): LAUREN STRUTMAN
Address: 16120 WALNUT HILL FARM DRIVE
City: CHESTERFIELD **State:** MO **Zip:** 63005
Tel.: 636-537-0880 x 200 **Fax:** 636-537-1027
Legal Interest: ADJOINING PROPERTY OWNER
(Provide date of contract and date of expiration of contract) (SEE ATTACHED SHEET FOR ADDITIONAL PARTIES.)

***Attach additional sheets as necessary for other Parties of Interest (Architect, Engineer, etc.)**

EXHIBIT 5A

II. PROPERTY INFORMATION

Project Address: 1401 WILSON ROAD

Locator Number(s): 18T 21 0027

(List additional locator numbers on separate sheet and attach to petition)

Acreage: 4.5 (To the nearest tenth of an acre)

Subdivision Name (If applicable): N/A

Current Zoning District: NON - URBAN

Legal Description of Property: LOC ON S LN SURV 2760 ± W LN WILSON RD

(Attach additional sheets as necessary)

III. NATURE OF REQUEST FOR VARIANCE

Unique physical characteristics of the lot (e.g., size, slope, etc.): N/A

(Attach additional sheets as necessary)

Description of the necessity of the proposed improvement: N/A

(Attach additional sheets as necessary)

Ordinance Number and section to which a variance is sought: N/A

(Attach additional sheets as necessary)

Basis for appeal of the above action: SEE ATTACHED.

(Attach additional sheets as necessary)

Do deed restrictions or subdivision trust indentures for the property prohibit the use or construction which is requested by this petition? Check (✓) one [ ] Yes [ ] No

N/A

Specify the action to which the appeal is sought: SEE ATTACHED.

(Attach additional sheets as necessary)

Description of the effect or impact on neighboring properties:

SEE ATTACHED.

(Attach additional sheets as necessary)

Statement of any other hardship or information for this appeal:

SEE ATTACHED.

(Attach additional sheets as necessary)

Please complete the sections below as applicable:

A. Setbacks/Height: N/A

The Petitioner(s) request the following setback(s):

Front yard:
Side yard:
Rear yard:
Height:

The City of Chesterfield Zoning Ordinance Regulations require the following setback(s) for this site:

Front yard:
Side yard:
Rear yard:
Height:

The following information correctly presents the true conditions and also describes the practical difficulties and unnecessary hardships warranting action by the Board.

_____

_____

_____

_____

_____

Include two (2) completed copies of this application with original signatures and two (2) copies of the following:

1. A site development plan showing:
   - The dimensions and location (including distance from property lines) of all existing and proposed buildings and structures.
   - Letters from abutting property owners stating their position.
2. A $70.00 fee. (Checks/money orders to be made payable to the City of Chesterfield.)
3. A copy of the City of Chesterfield rejection or denial.

B. Signage: N/A

Number and size of allowable attached business signs by ordinance: _____

_____

_____

Number and size of allowable freestanding business signs by ordinance: _____

_____

_____

The petitioner further represents that the increased sign size or height would not be injurious to the neighborhood, or otherwise be detrimental to the public welfare for the following reasons: _____

_____

_____

_____

_____

Include two (2) completed copies of this application with original signatures and two (2) copies of the following:

1. A site plan showing:

   N/A

   - The subject property with adjoining streets, existing buildings, major parking lot, and distance to property lines.
   - The location of proposed signs.
   - If attached wall signs, the cross section of wall on which sign is to be placed with dimensions and total square feet (or portion of total wall that will contain petitioner's business)

2. A detail sign plan indicating:

   N/A

   - Dimension of signs with detail sign lettering layout.
   - Total square feet of signs. If attached, what percent of wall.
   - Light detail, if any.

3. Letters from abutting property owners stating their position.

4. A $70.00 fee. (Checks/money orders to be made payable to the City of Chesterfield.)

5. A copy of the City of Chesterfield rejection or denial.

III. COMPLIANCE

Is property in compliance with all previous conditions of approval of all applicable Ordinance requirements?

[ ] Yes [ ] No. **If no, please explain:** _____

_____

_____

Is property in compliance with all Zoning, Subdivision, and Code requirements?

[ ] Yes [ ] No. **If no, please explain:** _____

_____

_____

[THIS SPACE INTENTIONALLY LEFT BLANK]

N/A

IX. LIENS AND FINES CERTIFICATION

Project Name: _____ **Ward:** _____

STATE OF MISSOURI, CITY OF CHESTERFIELD

[I] [we], _____ (a duly licensed attorney or title insurance company
(print, type or stamp name of attorney or title company)

in the State of Missouri), do hereby certify to the Council of the City of Chesterfield that [I] [we] have examined the title to the herein described property; that [I] [we] find the title to the property is vested to _____ ; that there are no fines and/or liens of record on the property
(name of owner(s))

by or owed to the City of Chesterfield [or] that the following fines and/or liens are owed to the City of Chesterfield:

1. _____
2. _____
3.
4. _____

_____ _____
(Attorney-at-law licensed in Missouri) Date

Missouri Bar # _____

-or-

_____ _____
(Officer of title insurance company) Date

_____
Print, type or stamp name and title

[THIS SPACE INTENTIONALLY LEFT BLANK]

N/A PER ROBERT HEGGIE

XI. STATEMENT OF CONSENT

Consent is required from the property owner(s) and contract purchaser, if applicable, to their agent if the property owner(s) or contract purchaser do not intend to attend all meetings and public hearings and submit in person all material pertaining to the application. A separate form is required from each owner/contract purchaser. Consent to a firm shall be deemed consent for the entire firm, unless otherwise specified. Consent is valid for one year from date of notary, unless otherwise specified. Attach copy of last recorded warranty deed for subject property.

STATEMENT OF CONSENT

I hereby give CONSENT to _____ (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify I have full knowledge of the property I have an ownership interest in is the subject of this application. I further certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the City of Chesterfield, Missouri, and will not be returned. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the City of Chesterfield to publish, copy or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions which may be imposed as part of the approval of this application.

OWNER/CONTRACT PURCHASER INFORMATION:

I am the [ ] owner [ ] contract purchaser. (check (✓) one)

_____ _____

(Name- type, stamp or print clearly) (Signature)

_____

(Name of Firm) (Address, City, State, Zip)

Note: Attach additional sheets as necessary.

NOTARY PUBLIC INFORMATION: STATE OF MISSOURI, CITY OF CHESTERFIELD

The foregoing instrument was subscribed and sworn to before me this _____ day of _____ , 20 _____ .

Signed _____ Print Name: _____

Notary Public

Seal/Stamp:

My Commission Expires: _____

N/A PER ROBERT HEGGIE

XII. AFFIDAVIT OF COMPLETENESS AND ACCURACY

INSTRUCTIONS: To be completed by individual submitting application (property owner, petitioner with consent, or authorized agent).

Project Name: _____ **Submittal Date:** _____

STATEMENT OF COMPLETENESS AND ACCURACY

I hereby certify all property owners have full knowledge the property they own is the subject of this application. I hereby certify that all owners and petitioners have been provided a complete copy of all material, attachments and documents submitted to the City of Chesterfield relating to this application. I further certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related application material and all attachments become official records of the City of Chesterfield, Missouri and will not be returned. I understand that any knowingly false, inaccurate or incomplete information provided by me will result in the denial, revocation or administrative withdrawal of this application, request, approval or permit. I further acknowledge that additional information may be required by the City of Chesterfield to process this application. I further represent and warrant that I have not made any arrangement to pay any commission, gratuity, or consideration, directly or indirectly, to any official, employee, or appointee of the City of Chesterfield with respect to this application. I further consent to the City of Chesterfield to publish, copy or reproduce any copyrighted documents submitted as a part of this application for any third party. I further agree to all terms and conditions which may be imposed as part of the approval of this application.

Check (✓) one: [ ] I am the property owner. [ ] I am the contract purchaser.

[ ] I am the duly appointed agent of the petitioner.

_____ _____

(Name- type, stamp or print clearly) (Signature)

_____ _____

(Name of Firm) (Address, City, State, Zip)

Note: Attach additional sheets as necessary.

NOTARY PUBLIC INFORMATION: STATE OF MISSOURI, CITY OF CHESTERFIELD

The foregoing instrument was subscribed and sworn to before me this _____ day of ____ , 20 _____ .

Signed _____ Print Name: _____

Notary Public

Seal/Stamp:

My Commission Expires: _____

STAFF / BOA USE ONLY

Intake Date: _____

This petition is granted / denied (circle one) **on the** _____ **day of** _____ **20** ___

Signed: _____

Chairman

[THIS SPACE INTENTIONALLY LEFT BLANK]

We, the undersigned, hereby request that the Board of Adjustment hear this appeal to the Administrative determination referenced herein.

By: _____
Irina Svirnovskiy
12 Chesterfield Lakes
Chesterfield, MO 63005

By: _____
Joann Miley
14 Chesterfield Lakes
Chesterfield, MO 63005

By: _____
Lauren Strutman
16120 Walnut Hill Farm Drive
Chesterfield, MO 63005

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 28th day of November 2006, before me personally appeared Irina Svirnovskiy, Joann Miley, and Lauren Strutman, and being duly sworn upon their oath, signed the Protest Letter set forth above.

IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my seal on the date and year first above written.

_____
Notary Public

My commission expires:
11-25-2010

STATE OF MISSOURI NOTARY SEAL
CAROL A. STOCKLIN
Notary Public, State of Missouri
St. Louis County
Commission # 06392611
My Commission Expires November 25, 2010

ATTACHMENT TO APPLICATION TO BOARD OF ADJUSTMENT
(SECTION 1- APPLICANT INFORMATION)

ADDITIONAL PETITIONERS FOR APPEAL OF ADMINISTRATIVE DETERMINATION:

Yakov and Irina Svironskiy
12 Chesterfield Lakes
Chesterfield, Missouri 63005
636-532-9860
Adjoining property owners

Douglas and Joann Miley
14 Chesterfield Lakes
Chesterfield, Missouri 63005
636-530-1371
Adjoining property owners

SUPPLEMENT TO APPLICATION TO BOARD OF ADJUSTMENT

(1) "Basis for appeal of the above action" (page 2 of 9)

The Director of Planning for the City of Chesterfield improperly approved a permit for the construction of a cellular phone tower on the property at 1401 Wilson Road (the "Property"). Construction of such a tower on the Property is inconsistent with the factors the Director was required to consider under Section 1003.167.19(5)(b)5 & 1003.167.19(10) of the Chesterfield Zoning Ordinance.

Additionally, the Director should have denied St. Charles Tower's application for a permit to construct the cell tower at issue because the application submitted was insufficient under Section 1003.167.19(5) and contained many material inaccuracies, misrepresentations, and omissions. Notably, the application misstates that there is an existing road and bridge to the tower site. In fact, there is only an ATV trail to the site and no bridge. To provide access to the site, the Daltons and/or St. Charles Tower recently dumped fill material in a stream that runs through the Property which fill material was then washed out during a heavy rain. Additionally, the application represents that a "dense tree line" surrounds the tower site, implying that the tower would be hidden. The application fails to disclose, however, that the tower is significantly higher than any of the trees in this tree line. The application also fails to disclose that the site is on a steep hill, making the tower more visible than it would have been if it was being built on flat land. Other omissions and misrepresentations are set forth in the adjacent property owners' letter to Mike Geisel dated October 31, 2006 (copy attached and incorporated herein by reference).

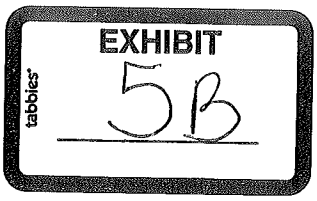
Finally, the tower in St. Charles Tower's permit application violates Section 1003.167.19 of Chesterfield's Zoning Ordinance. The application discloses that the tower's "disguised support structure" is greater than 100 feet. Under the Ordinance, such towers greater than 100 feet require a conditional use permit. *See* § 1003.167.19(3). Additionally, the application discloses the use of barb wire around the support structure, which is prohibited by the Ordinance. *See* § 1003.167.19(3)(d).

(2) "Specify the action to which the appeal is sought:" (page 3 of 9)

The decision of the City of Chesterfield's Director of Planning to give administrative approval to the construction of a cellular phone tower on the Property pursuant to Section 1003.167.19(3)(a) of the Chesterfield Zoning Ordinance (initial approval granted April 12, 2006; approval of revised plans granted July 14, 2006).

(3) "Description of the effect or impact on neighboring properties:" (page 3 of 9)

The construction of the cellular tower at issue has had (and will continue to have) a significant negative impact on the visual appearance of the neighborhood at issue and will have a significant adverse impact on property values. Additionally, construction to date has created additional negative impacts such as fill material being washed into a stream that passes through the Property and adjacent properties. The adjacent property owners' letter to Mike Geisel dated



October 31, 2006 (copy attached) elaborates on the impact on neighboring properties and is incorporated herein by reference.

(4) "Statement of any other hardship or information for this appeal:"

See the adjacent property owners' letter to Mike Geisel dated October 31, 2006 (copy attached).

October 31, 2006

Mr. Mike Geisel,
Director of Planning and Zoning
Director of Public Works/City Engineer
City of Chesterfield
600 Chesterfield Parkway West
Chesterfield, MO 63017

Dear Mr. Geisel:

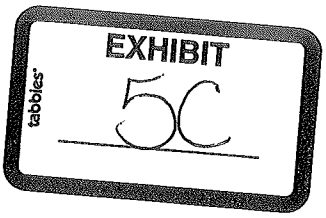
We are a group of residents surrounding the St. Charles Tower project at 1401 Wilson Ave. in Chesterfield. Construction began last week without our knowledge. We are shocked and angered that this project was approved without prior notification of the surrounding property owners.

We obtained from the Planning Department a copy of Ordinance Number 1214 that governs this project and a copy of the approved plans. We understand that Ordinance 1214 allows for a project of this type to be approved administratively, without a conditional use permit or public hearing, if rigorous standards for submittal, review, height, and approval are adhered to. Based on our reading of the ordinance, and based on our review of the approved plans, and based on our knowledge of the site's condition prior to the beginning of construction activity, it appears that the plan that submitted by the developer (and approved by the City) does not meet the City's submittal requirements. Information that is specifically required, by City law, to be shown the plan is missing entirely.

This raises questions and concerns including the following:

- Why did the City accept (much less approve) an incomplete submittal?
- Without critical information shown on the plan how is it possible for the City to determine that the project is in compliance with the governing ordinances?
- Has the City provided to its residents the proper due process of law in this matter?

The construction and operation of this tower has many potentially serious affects on the environment, on the surrounding properties, and on the health and welfare of its neighbors. Therefore, it is the purpose of this letter to outline our questions and concerns, to open a dialogue with the City to address those questions and concerns, and to respectfully request that the City issue a stop work order on the project until these matters are resolved.



Our specific comments on the many ways that this project appears to be in violation are outlined below. The format that is used involves a citation from the Ordinance (shown in italics) followed by our questions and comments relating to the citation. We will begin with the policy statement at the beginning of ordinances number 1214:

> *"**Policy Statement** City of Chesterfield recognizes that the legal implications of the Federal Telecommunications Act of 1996 and the power that has been retained by said Act for municipalities relating to land use issues and the telecommunications industry.*
>
> *Accordingly, the City has taken into consideration the unique and diverse landscapes found within this community and states that the landscape within the community is one of its most valuable assets. Protecting these valuable assets will require that the location and design of low power mobile radio service telecommunication facilities be sensitive to the setting in which they are placed.*
>
> *Community and neighborhood visual concerns should be considered paramount in the consideration of and selection of sites. Visual concerns should include both those found on and off site and these concerns should be evaluated by a consideration of all the policies as set forth in this Ordinance. These policies, therefore, are incorporated into the Ordinance relating to the visual impact and screening criteria applicable to low power mobile radio service telecommunications facilities."*

Our questions and concerns are as follows:

Is tearing up a steep wooded hillside in the middle of an area consisting of custom homes on acreage being sensitive to the setting in which they are placed? Are community and neighborhood visual concerns being considered paramount here? No surrounding homeowners or our two Ward 4 City Council members were told about this project in advance. In fact, the City has told us that the subject property owner was told to notify the surrounding property owners.

Ordinance 1214 states in Section 1, Purposes, in item C:

> C. *Minimize adverse visual impacts of communications antennae and support structures through careful design siting, landscape screening and innovative camouflaging techniques;*

We believe no consideration was given to this. Furthermore, item D, in this same section suggests that the city will allow and encourage expansion of this tower in the future.

> D. *Maximize the use of existing and new support structures so as to minimize the need to construct new or additional facilities;*

Under section II, Definitions, item H, Height of the tower is addressed:

H. <u>Height</u>: *The vertical distance measured from the average grade to its highest point and including the main structure and all attachments thereto.*

The "average grade" around the structure was not addressed on the submittal. In fact, no existing grades in the area of the tower were furnished to the Planning Department for review.

<u>Section III. General Requirements, Paragraph A. Permitted or Conditional Use</u>, states,

> *"……A disguised support structure greater than one hundred (100) feet in height shall require a Conditional Use Permit (CUP) if located in a "PS" Park and Scenic District, "NU" Non-Urban District……"*

The Compound Elevation shown on Sheet A-3 of the approved plan (last revision of date 6-19-06) clearly illustrates that the disguised tower assembly exceeds 100 feet in height. The subject property is zoned Non-Urban. Why did the City give an Administrative Approval for construction of a tower that apparently requires a Conditional Use Permit along with a public hearing?

<u>Section III. General Requirements, Paragraph D. Security</u>, states,

> *"No barbed wire will be used on security fences."*

The approved plans show a fence with three strands of barbed wire on top of an 8' high, chain-link fence.

Under section G, design requirements, the equipment shelter design is discussed in Item 2:

> *Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the site, and may also be brick or other masonry material as required by the Director or by the City Council in the case of a Conditional Use Permit.*

Are the two prefabricated portable structures to be placed on this hillside in compliance with this? No exterior finish materials are shown on the submittal.

Landscaping is the subject of item 4 of the design requirements.

> 4. *All towers shall be surrounded by a landscape strip of not less than ten (10) feet in width, and planted with materials which will provide a visual barrier of a minimum height of six (6) feet. Evergreen trees should be a least six (6) feet tall, and deciduous trees at least two and one-half (2-1/2) inch in caliper, at the time of planting. Said landscape strip shall be exterior to any security fencing. In lieu of the required landscape strip, a*

minimum six (6) foot high decorative fence or wall may be approved by the Director in the case of a Administrative/Zoning Approval or by the City Council in the case of a Conditional Use Permit upon demonstration by the applicant that an equivalent degree of visual screening is achieved.

No landscape plan or documentation of trees to be removed was submitted with the project, at all, yet it has been approved. A small "clouded" circle surrounds the cell tower on the submitted site plan; indicating "St. Charles Tower 30' x 50' fenced compound/lease area. Clear and grub as required to install compound".

Under Design, item 8, the parking and access road are addressed:

8. *On-site parking for periodic maintenance and service shall be provided at all antenna or antenna support structure locations. Access to and parking for antenna or antenna support structure locations shall be provided on a paved or an alternate dust proof surface.*

The city has approved access to this site on a non-existing road, an "ATV" type trail, through a flooding creek that has a low water crossing, (a bridge is labeled on the "site plan"). No parking was addressed on the applicants proposal.

Under this section B of the ordinance item 1 describes the detailed site plan requirements needed for Application Procedures for this type of administrative approval:

B. *Application Procedures: Applications for Administrative/Zoning Approval shall be made on the appropriate forms to the Director and accompanied by payment of the established fee and shall include:*

1. *A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating all existing and proposed improvements including buildings, drives, walkways, parking areas and other structures, public rights-of-way, the zoning districts of the subject and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height, above ground level of the existing or proposed antenna support structure, and antenna, together with latitude and longitude and shall include what other antenna support structure heights would or could accommodate the applicant's proposed needs along with documentation as to whether the height and location chosen will accommodate any other company's known network.*

Actually, not one of the site plan related items in item 1 were submitted; only the survey of the other cell towers in the area was submitted. The "site plan" has the following disclaimer printed at the top of the sheet:

" **Note:**

1. **Architectural site plan shown for reference information only and not intended as survey or civil design."**

There are significant grade changes on the site in the area of the 30' x 50' flat "compound" area indicated. It appears from a distance, that over 5000 square feet has been cleared and graded, thus exceeding Chesterfield's grading and tree removal ordinances. No retaining walls or means to accommodate these grade changes are indicated on the plans. Mud banks with no retaining walls or erosion control currently surround the tower site. Where will the "guy wires" to support the tower go?

Item 2 of this same Application Procedures section states:

2. *The application shall be reviewed by the Department of Planning to determine compliance with the above standards and transmit the application for review and comment to other departments and public agencies as may be affected by the proposed facility.*

Was this project forwarded to Chesterfield Department of Public Works, M.S.D., or the Ward 4 City Council members for review?

Last in ordinance 1214, under section X, General Policies for Site Selection recommendations are made for appropriate locations:

X. General Policies for Site Selection

Community and neighborhood visual concerns should be considered paramount in the consideration of and selection of sites. These concerns should be evaluated by a consideration of all the policies set forth in this Ordinance which shall include, but are not limited to, the following:

A. Within any zoning district, sites should be located in the following order of preference.

1. *On existing structures such as buildings, communication towers, water towers, smokestacks, etc.*
2. *In locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.*
3. *Sites should be located on bare ground without visual mitigation only in commercial and industrial zoned districts. The location and design of sites should consider the impact of the site on the surrounding neighborhood and particularly the visual impact on residential districts that are adjacent to the commercial or residential site.*

B. *Certain types of low power mobile radio service facilities are more appropriate in some zoning districts than others and certain facilities create a greater impact on the surrounding area than others. There is a need to balance low power mobile radio service industry and homeowner concerns and review the specific impacts of the different types of low power mobile radio service facilities in relation to the character of land uses found in the City's zoning districts. For example, the City recognizes the freestanding low power mobile radio service facilities generate the greatest impacts and, therefore, are most suitable in commercial and industrial zoned districts.*
C. *Facilities should be located to minimize any adverse effect they may have on residential property values.*
D. *Facilities should be located to avoid a dominant silhouette on ridge lines, and preservation of view corridors of surrounding residential developments should be considered in the location and design.*
E. *Location of sites in commercial or industrial zoning districts should consider the impact of the site on the surrounding neighborhood, particularly any adjacent residential neighborhood.*
F. *Facilities must be architecturally and visually (color, bulk, size) compatible with surrounding existing buildings, structures, vegetation, and/or uses in the area or those likely to exist. Micro-cell or repeater facilities may be considered architecturally or visually compatible if they are mounted on existing structures such as light standards, telephone poles, or otherwise camouflaged to disguise their low power mobile radio service use.*
G. *Less obtrusive facilities are preferred, and sites in industrial and commercial areas are preferred.*
H. *Co-location – where the result is less visual impact and the engineering of the low power mobile radio service network permits it, sites should be co-located with other low power mobile radio service facilities as well as other existing telecommunication sites and public structures. In co-location, anti-trust laws are a consideration.*
I. *Network compatibility – at the time of site selection, the applicant should demonstrate how the proposed site fits into the overall network of the low power mobile radio service system within the City and adjacent cities.*

We do not believe that community and neighborhood visual concerns have even been considered. We realize the tower itself is supposed to be disguised as a large, fake tree. Does a 100' long brown metal shaft or tube with fake branches on the upper half only of the shaft look like a tree in this area? How will this look when Spirit Airport decides it will be safer to light the tower, as most towers are? How will the "tree" look in the future, when more users are added and the tower is expanded? How can fake branches disguise the components that are affixed to the top of all cell towers?

We believe that, for all of the reasons listed above, that there have been many serious oversights in the submittal and review of this project. We believe that inaccurate

information was submitted regarding an existing road and bridge. We would like to set up an appointment to discuss with you the decision to approve this project which we believe was an unfortunate mistake. We would like your input and cooperation in preparing and setting into motion a plan of action to rectify this situation.

A cellular tower adjacent to a residential property **will** decrease its value. We believe that the city has decreased our property values with this approval in an arbitrary and capricious manner, without due process of law. There are many concerns, nationwide, about the health impacts of cellular phone towers. (We have attached material to this letter outlining these concerns.)Therefore, we respectfully request that the city impose an immediate stop work order on this inappropriate project.

Given the apparent incompleteness of the plan submittal, we believe that the "Statement of Completeness and Accuracy" signed by Chris Puricelli of St. Charles Tower (attached) gives the City the power to withdraw this approval.

Our representative, John Hammond (home: 636-532-9233, cell: 314-795-7575), will contact you shortly to schedule a meeting for this week.

Sincerely,

Date	Signature	Printed Name	Address
10/31/06	[illegible]	John W. Hammond Trustee	1203 Walnut Hill
10/31/06	[illegible]	Merrell Hansen Trustee	1234 Walnut Hill Farm
10-31-06	[illegible]	Lauren Strutman	16120 Walnut Hill Fa
10-31-06	[illegible]	Chris Papagianis	1234 Walnut Hill
10-31-06	Yakov & Irina Slirnovsky	[illegible]	12 Chesterfield Lakes
10-31-06	John R Miley [illegible]	14 Chesterfield Lakes	

Cc:
John Nations, Mayor
Mary Brown, Councilmember Ward IV
Mike Casey, Councilmember Ward III
Barry Flachsbart, Councilmember Ward I
Barry Streeter, Councilmember Ward II
Dan Hurt, Councilmember Ward III
Jane Durrell, Councilmember Ward I
Bruce Geiger, Councilmember Ward II
Connie Fults, Councilmember Ward IV
Michael Herring, City Administrator
Rob Heggie, City Attorney
Annissa McCaskill, Assistant Director of Planning

BILL NO. 1332 ORDINANCE NO. 1214

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE MUNICIPAL CODE OF CHESTERFIELD, MISSOURI SO AS TO REGULATE THE PLACEMENT OF COMMUNICATIONS ANTENNAE AND SUPPORT STRUCTURES WITHIN THE JURISDICTIONAL LIMITS OF THE CITY; TO ESTABLISH PROCEDURES AND CRITERIA FOR OBTAINING A PERMIT TO AFFIX AN ANTENNA OR BUILD A SUPPORT STRUCTURE WITHIN THE CITY; TO ESTABLISH PROCEDURES AND CRITERIA FOR OBTAINING A CONDITIONAL USE PERMIT TO AFFIX AN ANTENNA OR BUILD A SUPPORT STRUCTURE WITHIN THE CITY; TO ESTABLISH OTHER PROVISIONS REGARDING COMMUNICATIONS ANTENNAE AND SUPPORT STRUCTURES; TO PROVIDE AN EFFECTIVE DATE; TO PROVIDE FOR CONFLICT AND SEVERABILITY; AND FOR OTHER PURPOSES.

WHEREAS, use of low power mobile radio service has increased in recent years to take advantage of the advancement of telecommunication technology; and,

WHEREAS, the market for low power mobile radio service telecommunications has grown to be used by businesses, public safety departments, and numerous recreational users; and,

WHEREAS, recent regulatory changes by the Federal Communication Commission (FCC) has opened numerous new portions of the radio spectrum to allow new wireless competition into the market place to include Personal Communications Services (PCS) and specialized low power mobile radio (ESMR); and,

WHEREAS, the Zoning Ordinance of the City of Chesterfield is not written to address low power mobile radio service technology and the land use issues brought on by the rapid growth and demand for low powered mobile radio service which results in the demand for the current market mobile power radio service networks which are typically used at lower power to reach a limited number of users in smaller geographic areas more commonly referred to as "cell sites"; and,

WHEREAS, it is the intention of this Ordinance to establish policies that deal with the issues of demand, visual mitigation, noise, engineering, residual impacts, health, and facility siting; and,

WHEREAS, the ability to predict the growth of low power mobile radio service telecommunications and the number of new sites that will be required in any future time frame by providers is difficult at best; and,

EXHIBIT 6

WHEREAS, the City Council has found that despite the enthusiastic response by the citizens of the City to low power mobile radio service, there continues to be strong objections to the presence of low power mobile radio service facilities in the community and neighborhoods; and,

WHEREAS, the City Council recognizes that certain types of low power mobile service telecommunication facilities may be inappropriate in areas of single family residential developments. However, the City recognizes the need to attempt to preserve the pre-existing character of the community and to minimize the impact on residential areas surrounding commercial or industrial zone sites through the use of pre-existing buildings and facilities.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Policy Statement City of Chesterfield recognizes that the legal implications of the Federal Telecommunications Act of 1996 and the power that has been retained by said Act for municipalities relating to land use issues and the telecommunications industry.

Accordingly, the City has taken into consideration the unique and diverse landscapes found within this community and states that the landscape within the community is one of its most valuable assets. Protecting these valuable assets will require that the location and design of low power mobile radio service telecommunication facilities be sensitive to the setting in which they are placed.

Community and neighborhood visual concerns should be considered paramount in the consideration of and selection of sites. Visual concerns should include both those found on and off site and these concerns should be evaluated by a consideration of all the policies as set forth in this Ordinance. These policies, therefore, are incorporated into the Ordinance relating to the visual impact and screening criteria applicable to low power mobile radio service telecommunications facilities.

Section 1.

That the Zoning Ordinance of the City of Chesterfield Municipal Code be and is hereby amended by adding a new Section 1003.167.18 thereto as follows:

I. **Purposes.** The purposes of this Ordinance are to:

A. Provide for the appropriate location and development of communications facilities and systems to serve the citizens and businesses of the City of Chesterfield;

B. To encourage the location of antenna atop existing structures or buildings.

C. Minimize adverse visual impacts of communications antennae and support structures through careful design siting, landscape screening and innovative camouflaging techniques;

D. Maximize the use of existing and new support structures so as to minimize the need to construct new or additional facilities;

E. Maximize and encourage the use of disguised antenna support structures as to ensure the architectural integrity of designated areas within the City and the scenic quality of protected natural habitats.

II. Definitions.

As used in this Ordinance, the following terms shall have the meanings and usages indicated:

A. **Antenna:** Any device that transmits and/or receives electromagnetic signals for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, microwave, cellular telephone and similar forms of communications. The term shall exclude satellite earth station antennae less than two (2) meters in diameter used only for home television reception.

B. **Antenna support structure:** Any structure designed and constructed for the support of antennas, including any tower or disguised support structure, but excluding those support structures under sixty (60) feet in height owned and operated by an amateur radio operator licensed by the FCC. The term antenna support structure shall also include any related and necessary cabinet or shelter.

C. **Cabinet:** A structure for the protection and security of communications equipment associated with one or more antennae where direct access to equipment is provided from the exterior and the horizontal dimensions of which do not exceed four (4) feet by six (6) feet.

D. **Director:** The Director of Planning of the City of Chesterfield or his/her designee.

E. **Disguised Support Structure:** Any free standing man made structure designed solely for the support of communications antennas, the presence of which is camouflaged or concealed as an architectural or natural feature. Such structures may include, but are not limited to, clock towers, campaniles, observation towers, pylon signs, water towers, light standards, flag poles and artificial trees.

F. **FAA:** The Federal Aviation Administration.

G. **FCC:** The Federal Communication Commission.

H. **Height:** The vertical distance measured from the average grade to its highest point and including the main structure and all attachments thereto.

I. **Shelter:** A building for the protection and security of communications equipment associated with one or more antennae and where access to equipment is gained from the interior of the building. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected antennae is prohibited.

J. **Tower:** A structure designed for the support of one (1) or more antennae and including guyed towers, self-supporting (lattice) towers or monopoles but not disguised support structures or buildings. The term shall also not include any support structure under sixty (60) feet in height owned and operated by an amateur radio operator licensed by the Federal Communication Commission.

K. **Tower Multi-Use Interest Area:** Those areas as identified on the Telecommunications Master Plan Map which is made a part of this ordinance by reference as if fully set out herein, which contains locations where the City has determined the location of communication antenna support structures would be appropriate.

III. General Requirements.

The requirements set forth in this Section shall be applicable to all antennae support structures installed, built or modified after the effective date of this Ordinance and owned by a private entity or agency of local government.

A. Permitted or Conditional Use

Antenna shall be a permitted use in all zoning districts.

Any tower shall require a Conditional Use Permit (CUP) if it is located in a "PS" Park and Scenic District, "NU" Non-Urban District, "R-1" Residence District, "R-1A" Residence District, "R-2" Residence District, "R-3" Residence District, "R-4" Residence District, "R-5" Residence District, "R-6A" Residence District, "R-6AA" Residence District, "R-6" Residence District, "R-7" Residence District, or "R-8" Residence District. A disguised support structure greater than one hundred (100) feet in height shall require a Conditional Use Permit (CUP) if located in a "PS" Park and Scenic District, "NU" Non-Urban District, "R-1" Residence District, "R-1A" Residence District, "R-2" Residence District, "R-3" Residence District, "R-4" Residence District, "R-5" Residence District, "R-6A" Residence District, "R-6AA" Residence District, "R-6" Residence District, "R-7" Residence District, or "R-8" Residence District.

An antenna support structure less than one hundred and twenty (120) feet in height shall be a permitted use in "C-1" Neighborhood Business Districts, "C-2" Shopping Districts, "C-3" Shopping Districts, "C-4" Highway Service Commercial Districts, "C-6" Office Research Service Districts, "C-7" General Extensive Commercial Districts, "M-1" Industrial Districts, or "M-2" Industrial Districts. An antenna support structure more than one hundred (120) feet in height shall require a Conditional Use Permit (CUP) in a "C-1" Neighborhood Business District, "C-2" Shopping District, "C-3" Shopping District, "C-4" Highway Service Commercial District, "C-6" Office Research Service District, "C-7" General Extensive Commercial District, "M-1" Industrial District, or "M-2" Industrial District.

In a "C-8" Planned Commercial District, "M-3" Planned Industrial District, or "MXD" Mixed Use Development District any antennae support structure may be included as a permitted use in the conditions of the governing ordinance. Such governing ordinance must, at a minimum, comply with all of the conditions of this Ordinance.

B. Building Codes and Safety Standards

To ensure the structural integrity of antenna support structures, the owner shall ensure that it is constructed and maintained in compliance with all standards contained in applicable state and local building codes and the applicable standards published by the Electronics Industries Association, as amended from time to time.

C. Regulatory Compliance

All antennae and support structures shall meet or exceed current standards and regulations of the FAA, FCC and any other state or federal agency with the authority to regulate communications antennae and support structures. Should such standards or regulations be amended, then the owner shall bring such devices and structures into compliance with the revised standards or regulations within six (6) months of the effective date of the revision unless an earlier date is mandated by the controlling agency.

D. Security

All antennae and support structures shall be protected from unauthorized access by appropriate security devices. A description of proposed security measures shall be provided as part of any application to install, build or modify antennae or support structures. No barbed wire will be used on security fences. Additional measures may be required as a condition of the issuance of a Administrative/Zoning Approval as deemed necessary by the Director of Planning or by the City Council in the case of a Conditional Use Permit.

E. Lighting

Antennae and support structures shall not be lighted unless required by the FAA, a state or federal agency with authority to regulate, or the Chesterfield City Council, in which case a description of the required lighting scheme shall be made a part of the application to install, build or modify the antennae or support structure.

F. Advertising

Unless a disguised antenna support structure is in the form of an otherwise lawfully placed pylon sign, the placement of signs on structures regulated by this Section is prohibited.

G. Design

1. Towers shall maintain a galvanized steel finish or, subject to the requirements of the FAA or any applicable state or federal agency, be painted a neutral color consistent with the natural or built environment of the site.

2. Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the site, and may also be brick or other masonry material as required by the Director or by the City Council in the case of a Conditional Use Permit.

3. Antennae attached to a building or antenna support structure shall be painted a color identical to, or compatible with, the surface to which they are mounted.

4. All towers shall be surrounded by a landscape strip of not less than ten (10) feet in width, and planted with materials which will provide a visual barrier of a minimum height of six (6) feet. Evergreen trees should be at least six (6) feet tall, and deciduous trees at least two and one-half (2-1/2) inch in caliper, at the time of planting. Said landscape strip shall be exterior to any security fencing. In lieu of the required landscape strip, a minimum six (6) foot high decorative fence or wall may be approved by the Director in the case of a Administrative/Zoning Approval or by the City Council in the case of a Conditional Use Permit upon demonstration by the applicant that an equivalent degree of visual screening is achieved.

5. All antenna support structures shall be separated from any on-site residential structure a distance equal to the height of the antenna support structure. Antenna support structures on parcels adjacent to residentially zoned property shall meet the setbacks of the applicable zoning district as are required for a

principal structure along the adjoining property lines(s). Where adjacent to non-residentially zoned property, antenna support structures shall maintain setbacks as are required for structures.

6. Ground anchors of all guyed towers shall be located on the same parcel as the tower and meet the setbacks of the applicable zoning district.

7. Vehicle or outdoor storage on any antenna support structure site is prohibited.

8. On-site parking for periodic maintenance and service shall be provided at all antenna or antenna support structure locations. Access to and parking for antenna or antenna support structure locations shall be provided on a paved or an alternate dust proof surface.

9. The minimum lot size for any antenna support structure shall be twelve thousand (12,000) square feet when located in non-residential districts. In any "R" Residential District the minimum lot size for antenna support structures shall be the same as the minimum lot size of the residential district in which it is to be located.

H. Shared Use

1. Prior to the issuance of any Administrative/Zoning Approval or Conditional Use Permit to alter or modify any tower existing on the effective date of this Ordinance, the owner shall provide to the City a written and notarized statement agreeing to make said tower available for use by others subject to reasonable technical limitations and reasonable financial terms. The willful and knowing failure of a tower owner to agree to shared use or to negotiate in good faith with potential users shall be cause for the withholding of future permits to the same owner to install, build or modify antennae or antenna support structures within the City.

2. Prior to the issuance of any permit to install, build or modify any antenna support structure, the antenna support structure owner shall furnish the Director an inventory of all antenna support structures in or within one-half (1/2) mile of the city limits of Chesterfield, and agree to the shared use of the proposed facilities subject to such technical limitations and financial terms as are reasonable. The inventory shall include the antenna support structure's reference name or number, the street location, latitude and longitude, structure type, height, type and mounting height of existing antennas and an assessment of available ground space for the placement of additional equipment shelters.

3. Any new antenna support structure at a height of one hundred (100) feet above ground level or higher shall be designed and constructed to accommodate at least one (1) additional user unless a larger number is indicated by the Telecommunications Master Plan Map or based upon the response to the notification provisions herein. The willful and knowing failure of the owner of a antenna support structure built for shared use to negotiate in good faith with potential users shall be cause for the withholding of future permits to the same owner to install, build or modify antennae or antenna support structures within the City.

4. Any new antenna support structure approved within a Communication Tower Multi-Use Permit Area as designated by the Telecommunications Master Plan Map, shall be designed and constructed to accommodate the number of users indicated by the Plan. The willful and knowing failure of the owner of an antenna support structure built for shared use to negotiate in good faith with potential uses shall be cause for the withholding of future permits to the same owner to install, build or modify antennae or antenna support structures within the City.

5. All telecommunication antenna support structures must comply with all regulations contained under the Air Navigation Space Regulations as contained in the Zoning Ordinance of the City of Chesterfield and shall submit proof of FAA approval to the City with their application for permits for any antenna support structure located within 10,000 feet of Spirit Airport or any other airport located within the City.

IV. **Permitted Use.**

After any Administrative/Zoning Approval required by Section V herein, and upon receipt of the appropriate Building Permit, the following are allowed:

1. The attachment of additional or replacement antennae or shelters to any antenna support structure existing on the effective date of this Ordinance or subsequently approved in accordance with these regulations, provided that additional equipment shelters or cabinets are located within the existing antenna support structure compound area, and that said shelters or cabinets meet all other criteria as established by this Ordinance as required by the applicable zoning district regulations.

2. Antennae which are in accordance with an approved design contained on schedule prepared and maintained by the Director of Planning or of such other design as is otherwise maximally disguised or minimally obtrusive on

the antenna support structure, including minimal horizontal extension, as may be permitted by current available technology.

3. If the permit is to modify an existing permitted use antenna support structure, then the provisions of Section H herein requiring shared use of antenna support structures shall be complied with as to the subject antenna support structure before any modification shall be permitted.

4. The mounting of antennae in or on any existing building or structure (such as a water tower), or a tower used for high voltage electric lines provided that the presence of the antennae are concealed by architectural elements or camouflaged by painting.

5. The installation of antennae on buildings or the construction of an antenna support structure on land owned by the City of Chesterfield following the approval of a lease agreement by the City Council.

6. The installation of antennae on buildings or the construction of an antenna support structure of less than one hundred and twenty (120) feet in height on land owned by the State of Missouri or any agency of the federal government or any local governmental entity.

7. The maintenance without alteration of any antenna support structure existing on the date of the enactment of this Ordinance. Any modification to an existing antenna support structure, including but not limited to the replacement or addition of any antennae or equipment shelters, shall be subject to all the provisions of this Ordinance.

8. The mounting of antenna on or within ten (10) feet above any existing high voltage electric transmission lines.

V. Administrative Permit/Zoning Approval.

Prior to the issuance of a Building Permit, an Administrative Zoning Approval issued by the Director shall be obtained and shall allow the following:

A. Approvals.

1. The attachment of additional or replacement antennae or shelters to any antenna support structure existing on the effective date of this Ordinance or subsequently approved in accordance with these regulations and which requires the enlargement of the existing antenna support structure compound

area as long as all other requirements of this Section and the underlying zoning district are met.

2. The one-time replacement of any antenna support structure existing on the effective date of this Ordinance or subsequently approved in accordance with these regulations so long as the purpose of the replacement is to accommodate shared use of the site or to eliminate a safety hazard. The new antenna support structure shall be of the same type as the original, except that a guyed or self-supporting (lattice) tower shall be replaced by a monopole or disguised support structure if they can meet applicable building permits and the standards published by the Electronics Industry Association. The height of the new antenna support structure may exceed that of the original by not more than twenty (20) feet. Subsequent replacements or replacements that are more than twenty (20) feet shall require a Conditional Use Permit. All antennae shall be in accordance with an approved design contained on a schedule prepared and maintained by the Director of Planning or of such other design as is otherwise maximally disguised and shall have minimal horizontal extension. Subsequent replacement shall require the approval of a Conditional Use Permit.

3. The construction of a disguised antenna support structure in a "C-1" Neighborhood Business District, "C-2" Shopping District, "C-3" Shopping District, "C-4" Highway Service Commercial District, "C-6" Office Research Service District, "C-7" General Extensive Commercial District, "M-1" Industrial District, or "M-2" Industrial District provided that all related equipment shall be placed underground or concealed within the structure.

4. The installation of antennae on buildings or the construction of a tower or Disguised Support Structure on land owned by state or federal government or any local political subdivision. Such antenna support structures shall not exceed one hundred and twenty (120) feet in height.

5. The placement of dual polar panel antennas on wooden or steel utility poles not to exceed forty (40) feet in height provided that all related equipment is contained in a cabinet.

6. The construction of a new telecommunications antenna support structure if said antenna support structure complies with all the provisions set out in this ordinance, and is located within a Tower Multi-Use Interest Area as identified by the Telecommunications Master Plan.

B. **Application Procedures:** Applications for Administrative/Zoning Approval shall be made on the appropriate forms to the Director and accompanied by payment of the established fee and shall include:

1. A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating all existing and proposed improvements including buildings, drives, walkways, parking areas and other structures, public rights-of-way, the zoning districts of the subject and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height, above ground level of the existing or proposed antenna support structure, and antenna, together with latitude and longitude and shall include what other antenna support structure heights would or could accommodate the applicant's proposed needs along with documentation as to whether the height and location chosen will accommodate any other company's known network.

2. The application shall be reviewed by the Department of Planning to determine compliance with the above standards and transmit the application for review and comment to other departments and public agencies as may be affected by the proposed facility.

3. The application for a new antenna support structure, or a summary of such application, containing the height, design, location, and type of antenna and frequency of the proposed antenna support structure shall be delivered by certified mail to all potential antenna support structure users as identified by a schedule maintained by the Department of Planning. Proof of such delivery shall be submitted with the application to the City. The Director shall make available for any user of antenna support structures, or prospective users placed on the list, to receive notification of applications. The Director shall, before deciding on the application, allow all persons receiving notice of the application at least ten (10) business days to respond to the City and the applicant requesting that the party receiving notice be permitted to share the proposed antenna support structure. The failure of any notified party to respond to said notice shall be considered in reviewing any subsequent requests for new antenna support structures by said notified party.

4. Any party seeking shared use of an antenna support structure, subject to the shared use requirement, may negotiate with the applicant for such use. The applicant may on a non-discriminatory basis choose between incompatible requests for shared use on the same tower or structure, and may reject any request where legitimate technical obstacles cannot be reasonably overcome or where the party requesting shared use will not agree to reasonable financial

terms designed to equally share the costs of the acquisition, design, construction and maintenance of the tower or structure and wholly offset any additional costs incurred by accommodation of the additional use. Any party believing that the applicant has breached its duty to negotiate in good faith for shared use shall immediately notify the applicant and the Director in writing, who may deny the application upon a finding that shared use has been improperly denied by the applicant. The writing shall explain the precise basis for the claim that the applicant has breached its duty to regulate in good faith and shall be accompanied by payment of an administrative review fee of three hundred dollars ($300) to the City to offset the costs of this review. After the applicant's receipt of the letter, the applicant shall have ten (10) days to provide a written submission to the Director responding to the letter alleging a violation of the shared use requirement. If deemed necessary by the Director, the Director may engage, at the cost of the party alleging the violation, a neutral qualified technical consultant to provide an opinion on feasibility or costs of the Shared-Use request. If the Director receives such a letter alleging violation of the Shared-Use requirement, the time for a decision is automatically extended up to thirty (30) additional days until the Director has determined whether the applicant has complied with such requirement.

5. The Director shall issue a decision on the permit within thirty (30) days of the date of application or the application shall be deemed approved, except as provided in subsection 4. The Director may deny the application or approve the application as submitted or with such modifications as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens of Chesterfield. The Director may consider the factors established herein for granting a Conditional Use Permit as well as other considerations consistent with this Ordinance. A decision to deny an application shall be made in writing, and state the specific reasons for the denial.

C. **Appeals.** Appeals from the decision of the Director shall be made in the same manner as provided by the Zoning Ordinance for the appeal of administrative decisions.

VI. Conditional Use Permit Required.

All proposals to install, build or modify an antenna or a support structure not covered under Section IV or V above shall require the applicant to affirmatively show the reasons why the antenna support structure cannot be located in an area covered in these sections. The applicant shall be required to meet the requirements of Section 1003.181 (8) (3), and shall require a Conditional Use Permit, following a duly advertised public hearing by the Planning Commission.

A. Applications for Conditional Use Permits shall be filed and processed in the manner and time frame as established for all other Conditional Use Permits under the Zoning Ordinance.

B. Findings Required: In addition to any other determinations specified by the Zoning Ordinance for the consideration of Conditional Use Permits, the Planning Commission shall make findings as to the following based upon evidence submitted with the application, or presented during the public hearing by the applicant or others. A decision by the Commission to deny an application shall be based upon substantial evidence that the application does not meet the following criteria which shall be made a part of the written record of the meeting at which a final decision on the application is rendered. For approval, the written report shall include an affirmative finding for each of the following:

1. The proposed antenna support structure is located within a Communications Tower Multi-Use Interest Area as designated by the Telecommunications Master Plan Map.

2. There are other limiting conditions that render existing towers, structures or buildings within the applicant's required geographic area unsuitable.

3. The design of the tower or structure, including the antennae, shelter, and ground layout maximally reduce visual degradation and otherwise comply with the provisions and intent of this ordinance.

4. The proposal minimizes the number and size of the towers or structures that will be required in the geographic area surrounding the proposed site.

5. The applicant attempted to take advantage of available shared use options provided by this ordinance or otherwise.

6. No antenna support structure shall be approved in excess of one hundred fifty (150) feet in height unless a clear showing that such height is required to provide personal wireless services, or reasonably required for public safety communications of a governmental entity sharing the antenna support structure, and such showing is supported by the opinion of a telecommunications consultant hired by the City at the expense of the applicant. The opinion of the consultant shall include a statement that no available alternatives exist to exceeding the height limitation, or the reason why such alternatives are not viable. The City shall have an opportunity to hire their consultant if any questions arises as a result of the statement herein.

In addition, the written report for approval will include an affirmative finding for at least one (1) of the following:

1. There are no existing antenna support structures located within the geographic area that meet the applicant's engineering requirements.

2. There are no existing towers, structures or buildings within the applicant's required geographic area of sufficient height to meet system engineering requirements.

3. There are no existing towers or structures in the geographic area which have sufficient structural strength to support the applicant's proposed antennae.

4. The proposed antennae would not experience or cause signal interference with antennae on existing towers or structures.

5. The fees, costs, or other contractual terms required by the owner(s) of existing tower(s), structure(s), or building(s) within the required geographic area of the applicant or to retrofit the existing tower(s) or structure(s) are unreasonable. Costs exceeding that of a new tower are presumed to be unreasonable.

C. **Additional limitations.**

1. Unless expressly exempted by a Conditional Use Permit, no such permit shall be effective until the approved petition shall have satisfied the notification, review, and shared-use application procedures pursuant to Section V. 3 & 4.

2. If the City has agreed to participate in a multi-municipality commission to coordinate new tower or structure applications, an application herein for a Conditional Use Permit shall be submitted to such Commission simultaneous with the filing of the request with the City. The Planning Commission may consider any comments from such multi-municipality commission, but shall not allow delay in receiving such comments to significantly delay any decision on the application.

VII. Obsolete Antenna Support Structures

Any antenna support structure, or the upper portion of any antenna support structure, which is occupied by inactive antennae for a period of twelve (12) months shall be considered a nuisance and be removed at the owner's expense. Removal of upper portions of an antenna support structure manufactured as a single object shall not be required.

VIII. Commercial Operation of Unlawful Antenna Support Structure or Antennae.

Notwithstanding any right that may exist for a governmental entity to operate or construct a tower or structure, it shall be unlawful for any person to erect or operate for any private commercial purpose any new or existing antenna or structure in violation of any provision of this Ordinance, regardless of whether such structure or antenna is located on any governmental land.

IX. Penalties

Any person violating this provision shall be subject to a fine of not more than two hundred and fifty dollars ($250) or ninety (90) days in jail or both. Each day the violation continues shall constitute a separate offense.

X. General Policies for Site Selection

Community and neighborhood visual concerns should be considered paramount in the consideration of and selection of sites. These concerns should be evaluated by a consideration of all the policies set forth in this Ordinance which shall include, but are not limited to, the following:

A. Within any zoning district, sites should be located in the following order of preference:

1. On existing structures such as buildings, communication towers, water towers, smokestacks, etc.

2. In locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

3. Sites should be located on bare ground without visual mitigation only in commercial and industrial zoned districts. The location and design of sites should consider the impact of the site on the surrounding neighborhood and particularly the visual impact on residential districts that are adjacent to the commercial or residential site.

B. Certain types of low power mobile radio service facilities are more appropriate in some zoning districts than others and certain facilities create a greater impact on the surrounding area than others. There is a need to balance low power mobile radio service industry and homeowner concerns and review the specific impacts of the different types of low power mobile radio service facilities in relation to the character of land uses found in the City's zoning districts. For example, the City recognizes

the freestanding low power mobile radio service facilities generate the greatest impacts and, therefore, are most suitable in commercial and industrial zoned districts.

C. Facilities should be located to minimize any adverse effect they may have on residential property values.

D. Facilities should be located to avoid a dominant silhouette on ridge lines, and preservation of view corridors of surrounding residential developments should be considered in the location and design.

E. Location of sites in commercial or industrial zoning districts should consider the impact of the site on the surrounding neighborhood, particularly any adjacent residential neighborhood.

F. Facilities must be architecturally and visually (color, bulk, size) compatible with surrounding existing buildings, structures, vegetation, and/or uses in the area or those likely to exist. Micro-cell or repeater facilities may be considered architecturally or visually compatible if they are mounted on existing structures such as light standards, telephone poles, or otherwise camouflaged to disguise their low power mobile radio service use.

G. Less obtrusive facilities are preferred, and sites in industrial and commercial areas are preferred.

H. Co-location - where the result is less visual impact and the engineering of the low power mobile radio service network permits it, sites should be co-located with other low power mobile radio service facilities as well as other existing telecommunication sites and public structures. In co-location, anti-trust laws are a consideration.

I. Network compatibility - at the time of site selection, the applicant should demonstrate how the proposed site fits into the overall network of the low power mobile radio service system within the City and adjacent cities.

XI. Severability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not effect the validity of the remaining portions hereof.

XII. Repeal of Laws in Conflict

This Ordinance supersedes all ordinances or parts of ordinances adopted prior hereto which are in conflict herewith, to the extent of such conflict. This Ordinance will not effect any existing Conditional Use Permits issued prior to its enactment, provided amendments to such a Conditional Use Permit are not requested.

XIII. Effective Date

This Ordinance shall be in full force and effect from and after its passage and approval.

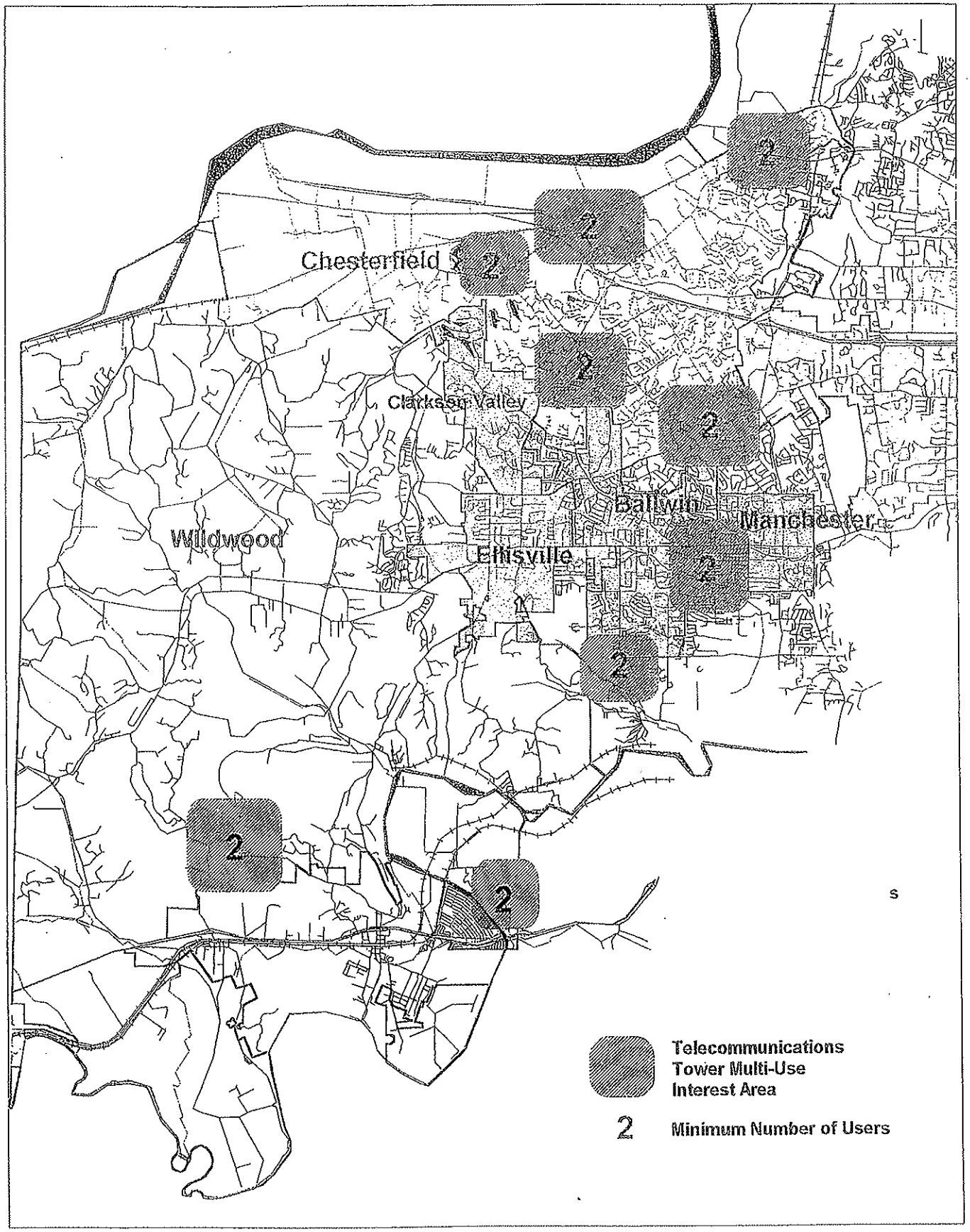
Passed and approved this 2ND day of December, 1996.

MAYOR

ATTEST:

CITY CLERK

West St. Louis County Tower Multi-Use Interest Areas



BEFORE THE BOARD OF ADJUSTMENT FOR THE
CITY OF CHESTERFIELD, MISSOURI

LAUREN STRUTMAN, YAKOV SVIRONSKIY, & IRINA SVIRONSKIY,	)
Appellants,	)
vs.	)
MIKE GEISEL, Acting Director of Planning for the City of Chesterfield	)
Respondent.	)

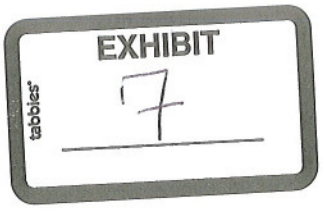
APPELLANTS' MEMORANDUM IN SUPPORT OF THEIR APPEAL OF THE DIRECTOR'S DECISION TO GRANT ADMINISTRATIVE ZONING APPROVAL FOR CONSTRUCTION OF A CELLULAR PHONE TOWER AT 1401 WILSON ROAD

I. INTRODUCTION

On July 14, 2006, the Director of Planning for the City of Chesterfield gave administrative approval to St. Charles Tower's amended application to construct a cellular phone tower on the real property at 1401 Wilson Road (the "Property"). The tower, as currently proposed, will support the cellular phone antenna of only one carrier, U.S. Cellular. Section 1003.167.19 of the Chesterfield Zoning Ordinance (the "Ordinance") sets standards for the placement of such towers. This appeal challenges the Director's decision and asks the Board to order that the permit to construct the tower be revoked and that any part of the structure built to date be torn down.

The Director wholly failed to consider the factors set forth in the Ordinance in issuing the permit.[1] Most notably, the Director failed to consider "neighborhood visual concerns" which

[1] Under 1003.167.19(5)(b)5, in deciding whether to issue a building permit for a "disguised support structure"/cell phone tower less than 100 feet in height, the Director is supposed to consider the factors established in 1003.167.19(10) as well as "other considerations" consistent with the Ordinance.



under the Ordinance are to be considered "paramount" in the selection of sites for cell phone towers. Further, the director failed to consider the effect that the cell phone tower will have on the market value of the properties located in the vicinity of the tower, one of which was constructed in 1836. Also, there is nothing in the Director's file to indicate that St. Charles Tower has considered alternative more appropriate locations for placement of the U.S. Cellular antenna at issue, including the possibility that the proposed antenna could be placed on an existing support structure as is recommended by the Ordinance. Related thereto, there is nothing in the file to indicate that St. Charles Tower made any showing that a tower was necessary on the Property to maintain proper cell phone coverage for the area.

In addition, the permit at issue should be revoked because St. Charles Tower made material misrepresentations and omissions in its application which, if corrected, may have caused the Director to deny the permit application. Most notably, the application misstates that there is an existing road and bridge to the tower site. In fact, there was only an ATV trail to the site and no bridge. To provide access to the site, St. Charles Tower or the property owners recently dumped fill material in a stream that runs through the Property; the fill material was then washed out during a heavy rain. (Pictures of the access trail after the fill had been washed out are attached hereto as Exhibits 1, 2 and 3.) A cell tower site needs proper access roads and bridges for construction access, maintenance, and to support the substantial weight of the trucks that deliver fuel to the backup generators located at the base of the tower. Here, there is no such access. Additionally, the application represents that a "dense tree line" surrounds the tower site, implying that the tower would be hidden. The application fails to disclose, however, that the tower as constructed thus far is significantly higher than any of the trees in this tree line. (*See* Exhibit 4, attached hereto.) The application also fails to disclose that the site is on a steep hill,

making the tower more visible than it would have been if it was being built on flat land.[2] Revocation of the building permit is warranted because of the substantial misrepresentations and material omissions in St. Charles Tower's permit application.

For the reasons herein, this Board should revoke the permit at issue and order that the tower (to the extent it is already constructed) be torn down.

II. ARGUMENT

A. THE DIRECTOR IGNORED THE PLAIN TEXT OF THE ORDINANCE IN ISSUING THE PERMIT

The Ordinance contains specific factors the Director is supposed to consider in deciding whether a cell tower is appropriate in any proposed location. It states:

> General Policies for Site Selection. Community and neighborhood visual concerns should be considered paramount in the consideration of and selection of sites. These concerns should be evaluated by a consideration of all the policies set forth in this Ordinance which shall include, but are not limited to, the following:
>
> A. Within any zoning district, sites should be located in the following order of preference.
>
> 1. On existing structures such as buildings, communication towers, water towers, smokestacks, etc.
>
> 2. In locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

---

[2] Part of the reason the tower as constructed thus far is so visible is because it is being constructed in the wrong place. A Registered Land Surveyor compared the application as approved by the Director to the actual location of the tower construction. The surveyor's findings show that the tower is being constructed 45.6 feet further south than the location approved by the Director, 115 feet further west than the approved location. This has moved the tower up the hill and has resulted in the base of the tower being approximately 30' higher than approved by the Director. (The surveyor's findings are attached hereto as Exhibit 5; also see city photograph attached hereto as Exhibit 6).

3. Sites should be located on bare ground without visual mitigation only in commercial and industrial zoned districts. The location and design of sites should consider the impact of the site on the surrounding neighborhood and particularly the visual impact on residential districts that are adjacent to the commercial or residential site.

B. Certain types of low power mobile radio service facilities are more appropriate in some zoning districts than others and certain facilities create a greater impact on the surrounding area than others. There is a need to balance low power mobile radio service industry and homeowner concerns and review the specific impacts of the different types of low power mobile radio service facilities in relation to the character of land uses found in the City's zoning districts. For example, the City recognizes the freestanding low power mobile radio service facilities generate the greatest impacts and, therefore, are most suitable in commercial and industrial zoned districts.

C. Facilities should be located to minimize any adverse effect they may have on residential property values.

D. Facilities should be located to avoid a dominant silhouette on ridge lines, and preservation of view corridors of surrounding residential developments should be considered in the location and design.

E. Location of sites in commercial or industrial zoning districts should consider the impact of the site on the surrounding neighborhood, particularly any adjacent residential neighborhood.

F. Facilities must be architecturally and visually (color, bulk, size) compatible with surrounding existing buildings, structures, vegetation, and/or uses in the area or those likely to exist. Micro-cell or repeater facilities may be considered architecturally or visually compatible if they are mounted on existing structures such as light standards, telephone poles, or otherwise camouflaged to disguise their low power mobile radio service use.

G. Less obtrusive facilities are preferred, and sites in industrial and commercial areas are preferred.

H. Co-location – where the result is less visual impact and the engineering of the low power mobile radio service network permits it, sites should be co-located with other low power mobile radio service facilities as well as other existing telecommunication sites and public structures. In co-location, anti-trust laws are a consideration.

I. Network compatibility – at the time of site selection, the applicant should demonstrate how the proposed site fits into the overall network of the low power mobile radio service system within the City and adjacent cities.

The Director disregarded the text of the Ordinance above, when it approved the construction of a tower on the Property. The Property is in a residential neighborhood (rather than a commercial or industrial zoning). Construction of a cellular phone tower on the Property will undoubtedly adversely affect residential property values. Moreover, it will create a dominate silhouette on a ridgeline, and it will disrupt view corridors of surrounding residential neighborhoods. The tower is not architecturally or visually compatible with existing buildings or vegetation. The Director's decision violates the Ordinance and should be reversed.

Additionally, the City's Ordinance at (3)(g)(8) states:

> 8. "On-site parking for periodic maintenance and service shall be provided at all antenna or antenna support structure locations. Access to and parking for antenna or antenna support structure locations shall be provided on a paved or an alternate dust proof surface."

The Director approved St. Charles Tower's submittal that states there is an existing road and bridge to the tower site, when, if fact, no road and no bridge existed in the locations so labeled on the application. There was only an "ATV" type trail and a low water crossing in the creek bed.[3] Parking was not addressed on the applicants' submittal.

Finally, Section 19(5)(B)1 of the Ordinance describes the detailed site plan requirements that are supposed to accompany an application like the application St. Charles Tower filed in this matter:

> B. "Application Procedures: Applications for Administrative/Zoning Approval shall be made on the appropriate forms to the Director and accompanied by payment of the established fee and shall include:
>
> > 1. A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating all existing and proposed improvements including buildings, drives, walkways, parking areas and other structures, public rights-of-way, the zoning districts of the subject

[3] Currently there is a gravel road to the site; however, there is still no bridge only a low water crossing.

> and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height, above ground level of the existing or proposed antenna support structure, and antenna, together with latitude and longitude and shall include what other antenna support structure heights would or could accommodate the applicant's proposed needs along with documentation as to whether the height and location chosen will accommodate any other company's known network."

Here, no boundary survey was submitted in the application. Further, the "site plan" submitted by St. Charles Tower has the following disclaimer printed at the top of the sheet:

> Architectural site plan shown for reference information only and not intended as survey or civil design.

Additionally, the application by St. Charles Tower does not show any off-site residential structures, locations or distances, does not show required setbacks, does not show any improvements in the form of retaining walls or means to accommodate grade changes.

It is not possible for the Director to have properly judged the tower project's compliance (or lack of compliance) with the Ordinance without these items shown on the applicants' submittal. The Director failed to require the applicant to make a complete submittal, and approved the application despite the blatant omissions of information that are clearly required by the text of the Ordinance.

Due to the misrepresentation and omissions in the applicants submittal, and due to the Director's failure to consider the factors in the Ordinance for placement of cellular phone towers, the Board of Adjustment should revoke the permit and further direct that portion of the tower already constructed be torn down.

B. UNDER THE FEDERAL TELECOMMUNICATIONS ACT, IT IS ENTIRELY LAWFUL FOR THE DIRECTOR TO CONSIDER VISUAL CONCERNS AND AFFECT ON MARKET VALUE OF NEIGHBORING PROPERTIES IN DENYING A CELL TOWER PERMIT APPLICATION

Under the Telecommunications Act of 1996, a City cannot discriminate against cell tower companies and cannot regulate cell towers such that their decisions have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. § 332(c)(7)(B)(i). Further, a City cannot deny a permit for a cell phone tower based on human health-related concerns. 47 U.S.C. § 332(c)(7)(B)(iv). However, the Act *does* allow a city to regulate the placement of cellular phone towers based on aesthetic concerns and concerns regarding loss in property value. In fact, many courts have affirmed decisions to deny permits to cell tower companies based on such concerns. *See, e.g.*, *Primeco Personal Comm., L.P. v. Fox Lake*, 35 F.Supp.2d 643, 649 (N.D. Ill. 1999) (testimony regarding negative economic impact and decreased enjoyment by current owners of their property due to visual impact of tower was sufficient evidence to support the city's decision to deny a permit for cell phone tower); *Minnesota Towers, Inc. v. Duluth*, No. 04-5068, 2005 U.S. Dist. LEXIS 13240, * (D. Minn. July 1, 2005) (lay testimony from citizens regarding decrease in property value and pictures showing tower significantly higher than treeline were substantial evidence to support city's decision to deny permit).

Last fall, the Eighth Circuit definitively spoke on this issue. *See USCOC of Greater Iowa, Inc. v. Des Moines Zoning Board of Adjustment*, 465 F.3d 817, 822-825 (8th Cir. 2006). In *USCOC*, the Eighth Circuit recognized that the Federal Telecommunications Act does nothing to "erode the power of local authorities to enforce traditional zoning concerns." Id. at 822. As stated by the Court:

> The Act specifically reserves to local zoning boards authority 'over decisions regarding the placement, construction, and modification' of cellular towers, so long as such decisions do not discriminate among providers and do not effectively prohibit 'the provision of personal wireless services'-- and so long as the decision is in writing and supported by substantial evidence. And Congress's omission from the [Act] of substantive standards for cellular-tower siting further demonstrates that Congress intended, notwithstanding the high degree of federal regulation in the area of wireless communication, to allow local zoning boards to continue to do what local zoning boards traditionally do best: make reasoned decisions regarding the appropriate use of privately-owned property for the public good.

Id. at 822. In *USCOC*, Des Moines' Board of Adjustment denied the cell tower's request for an exception and setback variance, in part, because the tower would not be "aesthetically pleasing" to the residents of nearby condominiums and because the cell tower would likely diminish local property values. *Id.* at 823. The Eighth Circuit affirmed this decision, finding that there was substantial evidence to support the Board's decision to deny the exception and variance. *Id.*

Most, if not all, other Circuits have held similar to the Eighth Circuit, finding that aesthetic concerns and concerns regarding the impact on market value can be relied on in denying a permit for the construction of a cell phone tower. *See, e.g.*, *Omnipoint Communications, Inc. v. White Plains*, 430 F.3d 529, 533-535 (2d Cir. 2005) (affirming planning board's decision denying an application for a cell tower permit based on adverse visual impact and diminution in property values; the proposed tower was to be disguised as an evergreen tree, but was significantly higher than the existing treeline); *Voicestream Minneapolis, Inc. v. St. Croix County*, 342 F.3d 818, 831-832 (7th Cir. 2003) (aesthetic concerns was sufficient evidence to deny cell tower application); *United States Cellular Telephone of Greater Tulsa, L.L.C. v. Broken Arrow*, 340 F.3d 1122, 1136 (10th Cir. 2003) (affirming decision to deny cell tower application when the City Council denied the application, in part, on issues regarding "the height and design of the proposed tower with particular reference to those design characteristics which

have the effect of reducing or eliminating visual obtrusiveness"); *Second Generation Properties, L.P. v. Pelham*, 313 F.3d 620, 628 (1st Cir. 2002) (affirming denial of application to construct a cell tower based on aesthetic concerns); *American Tower, L.P. v. Huntsville*, 295 F.3d 1203, 1208-1209 (11th Cir. 2002) (affirming denial of special exception for cell phone tower based on aesthetic concerns and concerns regarding decrease in property value).

Here, the Director gave virtually no consideration to the proposed cell tower's aesthetic impact and affect on property values. As shown by Exhibit 7, attached hereto, many Chesterfield residents oppose a tower on the Property because of such concerns. The tower, as constructed thus far, is an eyesore to the City. *See* Exhibit 4. It greatly exceeds the existing treeline and is anything but "disguised." Common sense dictates that such a tower will have a substantial affect on neighboring property values. Because the tower is an eyesore and because it will adversely affect property values, the Board should reverse the Director's decision and revoke the permit at issue.

C. ST. CHARLES TOWER COMPANY HAS NOT SHOWN A NEED FOR A TOWER ON THE PROPERTY

The Board should also reverse the Director's decision because St. Charles Tower has not shown a need for a cellular antenna/tower on the Property.

As set forth above, under the Telecommunications Act, a city cannot regulate the placement of cell phone towers such that it has the effect of "prohibiting the provision of personal wireless services." 47 U.S.C. § 332(c)(7)(B)(i). Hence, a city may have to grant a cell tower permit application if the applicant can show that the particular tower is absolutely necessary so that people in the area can use their cell phones. To show that a particular tower in necessary, however, a cell provider must show (1) a gap in call service and (2) that the proposed

tower site is more feasible than other options. *See Omnipoint*, 430 F.3d at 535-536. It has been held that to show a gap in call service it is not sufficient for a cell phone/tower company to show a gap in its service system; rather, a cell phone provider must show a gap "in the ability of remote users to access the national telephone network", i.e. that the tower is necessary for people to make cell phone calls in the area. *See APT Pttsburgh L. P. v. Penn Township*, 196 F.3d 469, 480 (3d Cir. 1999).

There is nothing in the public record to show that St. Charles Tower demonstrated such a need for a tower in this particular location. It is the Tower Company's burden to show this need. *See id.* at 535-536; *see also United States Cellular Telephone of Greater Tulsa*, 340 F.3d at 1137-1138 (rejecting argument that the city had to come forward with evidence that co-locating on other mentioned sites was possible--it was the tower company's burden to show that other sites were not feasible). Accordingly, the Board should revoke the permit.

D. ANY ARGUMENT THAT THE TOWER COMPANY HAS A VESTED INTEREST IN THE TOWER BECAUSE CONSTRUCTION HAS BEGAN IS WITHOUT MERIT

Here, St. Charles Tower or the Daltons may argue that the City cannot revoke the building permit because they have a vested right in the permit due to the fact that they have spent money to construct the tower. *See, e.g., Veal v. Leimkuehler*, 249 S.W.2d 491, 496 (Mo. Ct. App. 1952).

This argument, however, fails under the facts of this case.

It cannot be disputed that St. Charles Tower's application for a permit contains various misrepresentations and material omissions. Those misrepresentations and omissions are set forth above.

It is established law in Missouri and elsewhere that a person cannot claim a vested right in a permit that violates city ordinances or that was granted based on mistake of fact due to misrepresentations or omissions in the permit application. *See, e.g.*, *Rabenau v. Beckemeier*, 436 S.W.2d 52, 57 (Mo. Ct. App. 1968) (holding that there is no vested interest in an illegally issued building permit); *Stokes v. Board of Permit Appeals*, 61 Cal. Rptr. 2d 181, 186 (Cal. Ct. App. 1997) (holding that the permittee did not have a vested right to complete construction where the city was misled into issuing permit); *Elotron, Inc. v. Zoning Hearing Board of Aliquippa*, 729 A.2d 149 (Penn. Comm. Ct. 1999) (holding that the city properly revoked building permit that was obtained through misrepresentation); *see also Boczar v. Kingen*, IP 99-0141-C-T/G, 2000 U.S. Dist. LEXIS 11615, *78-79 (S.D. Ind. 2000) (citing cases from Arizona, Georgia, and Delaware for the proposition that permits acquired based on misrepresentation or through a mistake of fact do not give the permittee a vested right in those permits).

Similarly, a city will not be estopped from revoking a permit that was granted in violation of an ordinance or because of misrepresentations in the permit application. *See Green's Bottom Sportsmen, Inc. v. St. Charles County Board of Adjustment*, 553 S.W.2d 721, 726-727 (Mo. Ct. App. 1977) (holding that the county was not estopped to revoke a permit that violated county ordinances); *see also Stokes*, 61 Cal. Rptr. 2d at 186. "[A]lthough equitable estoppel may apply against the government in situations where there is an intervening zoning or legal change, it will not apply where a permit is merely issued in error." *Chaim v. Los Angeles*, 371 F.3d 1122, 1133 (9th Cir. 2004).

Here, St. Charles Tower's permit application intentionally concealed material facts and made various misrepresentations. Accordingly, the City is entitled to revoke the permit

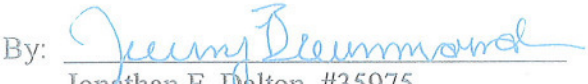
notwithstanding any arguments that St. Charles Tower has a vested right in the permit or that the City is estopped from revoking the permit.

III. CONCLUSION

The Director did not consider the pertinent factors in the Ordinance when it issued the permit to construct a cell phone tower on the Property. Permitting the construction of such a tower on a steep hill in a residential neighborhood (close to a historic property) so that the tower is highly visible violates the City's Ordinance. The tower will be an eyesore for neighboring property owners for years to come and will substantially affect the market value of nearby homes. The Board should enforce the Ordinance, promote the general welfare of the City of Chesterfield, and revoke the permit at issue.

Respectfully submitted,

LEWIS, RICE & FINGERSH L.C.

By: 

Jonathan F. Dalton, #35975
Jeremy P. Brummond #50940
500 North Broadway, Suite 2000
St. Louis, Missouri 63102
(314) 444-7600
(314) 241-6056 (Fax)

Attorneys for Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent on this 19th day of January, 2007, Via first class United States mail, postage prepaid, to:

John King
Blumenfeld, Kaplan & Sandweiss, PC
168 N. Meramec, Ste. 400
St. Louis, Missouri 63105

Robert M. Heggie
Stewart, Mittleman, Heggie & Henry, L.L.C.
222 South Central Avenue, Suite 501
St. Louis, Missouri 63105-3575

Jeremy Drummond

EXHIBIT ONE

EXHIBIT TWO

EXHIBIT THREE

"Facilities should be located to avoid a dominant silhouette on ridgelines, and preservation of view corridors of surrounding residential developments should be considered in the location and design."

[***Quote from City of Chesterfield Ordinance 1003.167.19 (10) (d)***]

Massmann
SURVEYING

EXHIBIT FIVE

December 20, 2006

Re: **CONSTRUCTION OF COMMUNICATION TOWER** on property of David and Linda Dalton, 1401 Wilson Road

Our Project No. 06153 BG001

Based on establishing existing property corners near the new tower under construction at 1401 Wilson Road Chesterfield, and based on an established MSD benchmark and based on copies of plans submitted to the City of Chesterfield to construct the tower (as provided to us by Ms. Strutman), Massmann Surveying, has determined the following:

1.) The tower under construction is approximately 119.4 feet north of the south line of the Dalton property. As scaled from the site plan submitted to the City of Chesterfield, the tower should have been constructed approximately 165 feet north of the south line of the Dalton property. **The tower is therefore being constructed approximately 45.6 feet closer to the properties located south of the Dalton property (Miley's and Svirnovskiy's property) than approved by the City of Chesterfield.**

2.) The tower under construction is approximately 220 feet east of the west line of the Dalton property (as measured along a line parallel to the south line of the Dalton property). As scaled from the site plan submitted to the City of Chesterfield, the tower should have been constructed approximately 335 feet east of the west line of the Dalton property (as measured along a line parallel to the south line of the Dalton property). **The tower is therefore being constructed approximately 115 feet closer to the property located west of the Dalton property (Ms. Strutman's property) than approved by the City of Chesterfield.**

3.) The elevation of the base of the proposed tower as shown on the site plan submitted to the City of Chesterfield should have been 489 feet above sea level (cover sheet of plans). A submittal made on February 6, 2006 to the City of Chesterfield (provided to us by Lauren Strutman) shows the elevation of the base of the proposed tower as being approximately the same level as an

7751 Carondelet Ave. • Suite 600 • Clayton, MO 63105 • 314.862.5577 • 314.862.5579 (fax) • massmannsurveying.com

Massmann
SURVEYING

EXHIBIT FIVE

existing barn adjacent to the tower. We have determined that elevation of the existing barn is approximately 485.5 feet above sea level. We further have determined that the elevation of the tower under construction is approximately 517.6 feet above sea level and is not located in its proximity to the barn as was proposed. **The base of the tower is therefore being constructed approximately 30 feet higher than approved by the City of Chesterfield.**

These determinations are shown on the "Tower Location Sketch" dated December 8, 2006, prepared by this firm.

Massmann Land Services, LLC (d/b/a MASSMANN SURVEYING)

By _____
William F. Massmann Jr. PLS – 1702 (agent)

STATE OF MISSOURI
WILLIAM F. MASSMANN JR.
NUMBER
PLS-1702
PROFESSIONAL LAND SURVEYOR

12/6-07

7751 Carondelet Ave. • Suite 600 • Clayton, MO 63105 • 314.862.5577 • 314.862.5579 (fax) • massmannsurveying.com

TOWER LOCATION SKETCH

1401 WILSON RAOD
IN THE CITY OF CHESTERFIELD
ST. LOUIS COUNTY, MISSOURI

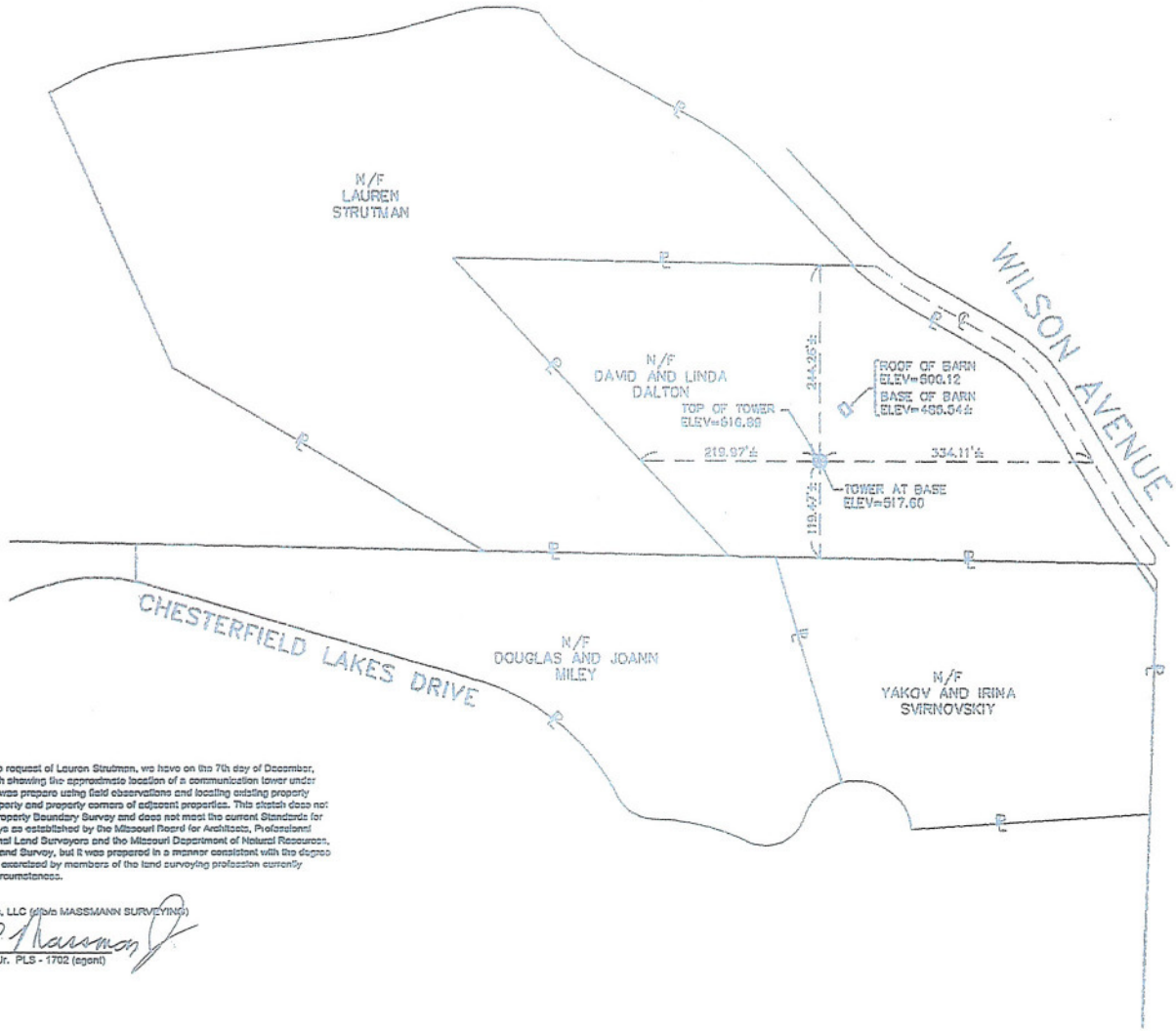
GRAPHIC SCALE

(IN FEET)
1 inch = 100 ft.

BENCH MARK USED: 12-57 ELEV=402.30 - "nq" in center of northeast wingwall of bridge #2-117 on Wilson Road: first bridge south of house #1401 Wilson Road.

ABBREVIATIONS

N/F NOW OR FORMER (OWNERSHIP)
℄ CENTER LINE
PL PROPERTY LINE



This is to certify that at the request of Lauren Strutman, we have on the 7th day of December, 2006, prepared this sketch showing the approximate location of a communication tower under construction. This sketch was prepare using field observations and locating existing property corners of the subject property and property corners of adjacent properties. This sketch does not represent the results of Property Boundary Survey and does not meet the current Standards for Property Boundary Surveys as established by the Missouri Board for Architects, Professional Engineers, and Professional Land Surveyors and the Missouri Department of Natural Resources, Division of Geology and Land Survey, but it was prepared in a manner consistent with the degree of care and skill ordinarily exercised by members of the land surveying profession currently practicing and in similar circumstances.

Massmann Land Services, LLC (d/b/a MASSMANN SURVEYING)

By: William F. Massmann Jr.
William F. Massmann Jr. PLS - 1702 (agent)

EXHIBIT FIVE

Massmann
SURVEYING
7751 Carondelet Ave. Suite 300
St. Louis, MO 63105
314-862-5577, 314-862-5579 FAX

STATE OF MISSOURI
WILLIAM FRANCIS MASSMANN JR.
NUMBER PLS-1702
PROFESSIONAL LAND SURVEYOR

12-07

PROJECT REVISION:

NO:	DATE:	DESCRIPTION:

TOWER LOCATION SKETCH
1401 WILSON ROAD
IN THE CITY OF CHESTERFIELD
ST. LOUIS COUNTY, MISSOURI

DATE: 12/06/06
BOOK NO.: 41
DRAFTED BY: JJH
APPROVED BY: WFM
FILE NAME: 06153.DWG

SHEET TITLE:
PROPERTY SKETCH

SHEET NUMBER:
SUV-1

SHEET NO: 1 OF 1

PROJECT NO: 06153

W:\Land Projects 6 W\06153 Wilson Rd Lauren Strutman Cell Tower\dwg\06153.dwg 1/4/2007 2:30:17 PM CST

LAYOUT: LAYOU-NAME

EXHIBIT SIX

TOWER SHAFT
TOWER BASE CONSTRUCTED
APPROXIMATELY 32' HIGHER
THAN BASE OF BARN
TOWER INDICATED ON FEBRUARY 6TH 2006
SUBMITTAL TO THE CITY TO HAVE BASE OF
TOWER LEVEL WITH THE BASE OF BARN

EXHIBIT SEVEN

PETITION BY RESIDENTS OF THE CITY OF CHESTERFIELD

City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017

To the City of Chesterfield:

We, the undersigned, oppose and object to construction of a cellular telephone tower at 1401 Wilson Road for the following reasons:

1. The cellular tower is inappropriately located in our residential neighborhood.

2. A tower of this size will adversely affect our property values.

3. The tower is an eyesore that protrudes from, and mars, the surrounding landscape.

FULL NAME (print)	ADDRESS (print)	DATE (print)	SIGNATURE
		12-13-06	
John Mock	76 Chesterfield Lakes Rd		
Linda Mock	76 Chesterfield Lakes		
Wendy Cierkeler	26 Chesterfield Lakes		
KENNETH BIDDLE	62 CHESTERFIELD LAKES		
CHARLES ECKERT	67 CHESTERFIELD LAKES		
Deborah Eckert	67 Chesterfield Lakes		
DONN STEELAR	36 Chesterfield Lakes	12-14-06	
DAVID HARDING	29 CHESTERFIELD LAKES RD	12/14/06	
STEVE CHARBONNET	64 Chesterfield Lakes Rd	12/14/06	
Jo Ann Peterson	3 Chesterfield Lakes Rd	12/14/06	
John Dreyenuk	37 Chesterfield Lakes RD	12/14/06	
Sean Zickerick	68 Chesterfield Lakes Rd	12/14/06	
BOB O'BRIEN	31 CHESTERFIELD LAKES RD	12/14/06	
PAUL CRONE	44 " " "	12/14/06	
SHEILA CRONE	44 " " "	12/14/06	
NELSON WAMMINGANI	39 " " "	12/14/06	
LESLIE WAMMINGANI	39 " " "	12/14/06	
Linda Lee	35 " " "	12/14/06	
Paul Lee	35 " " "	" "	
Randy Thompson	32 "	"	
Michelle Wherry	17 " "	" 12/14/06	
Pat Andrews	11 " "	" 12/14/06	
MARK ANDREWS	11	12/14/06	

EXHIBIT SEVEN

Chesterfield Residents Who Oppose the St. Charles Tower Project at 1401 Wilson Road

	Date	Signature	Printed Name	Address
1.	11/4/06	[illegible]	JITENDRA GUPTA	23 Chesterfield LKS RD
2.	11/5/06	[illegible]	IRVIN D. FRIES	38 Chesterfield Lakes Rd.
3.	11/5/06	[illegible]	LU A FRIES	38 Chesterfield Lakes Rd
4.	11/6/06	[illegible]	DONN STREILER	36 Chesterfield Lakes Rd
5.	11/6/06	[illegible]	NELSON [illegible]	29 CHESTERFIELD LAKES ROAD
6.	11-4-06	[illegible]	Santosh Gupta	23 Chesterfield Lakes Rd
7.	11/6/06	[illegible]	Leslie Wainwright	39 Chesterfield Lakes Road
8.	11/6/06	Randy Thompson	Randy Thompson	32 Chesterfield Lake Rd
9.	11/6/06	[illegible]	CHARLES D. FOX	13 Chesterfield Lake Rd.
10.	11/6/06	[illegible]	LISA HARDING	29 CHESTERFIELD LKS RD.
11.	1/18/07	Jade G. Bute	Jade G. Bute	15593 Bedford Forge, Unit #1 63011
12.	1/18/07	Kay B Folsom	KAY B. FOLSOM	1747 BAXTER FOR. Vah. Cr 63005
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EXHIBIT SEVEN

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2. A tower of this size will adversely affect our property values.

3. The tower is an eyesore that protrudes from, and mars, the surrounding landscape.

FULL NAME (print)	ADDRESS (print)	DATE (print)	SIGNATURE
Susan Dean	1245 Walnut Hill Farm Dr	12/22/06	Susan Dean
Charles Philip Dean	1245 Walnut Hill Farm Dr.	12/22/06	Philip Dean
LOLA SCHILLER	1333 PACLAND PL.	1/11/07	Lola Schiller
William Schiller	1333 PACLAND PL,	01-11-07	William Schiller
CHARLES ADAMS	1255 WALNUT HILL	1/16	[illegible]
MARIE ADAMS	FARM DR	1/16	[illegible]
Lenate & Herbert	Glin Alex	1/16/07	Walnut Hill
Jim O'Shea	1230 Walnut Hill Farm	1/16/07	Jim O'Shea
Sandra J. Hammond	1203 Walnut Hill Farm	1/16/07	Sandra Hammond
Merrell Hansen	1234 Walnut Hill farm	1-16-07	Merrell Hansen
JOHN W. HAMMOND	1203 WALNUT HILL FARM 63005	1/16/07	[illegible]
CYNTHIA J. BLASE	1204 WALNUT HILL FARM DR. 63005	1/18/07	Cynthia J. Blase
PAUL F. BLASE	1204 WALNUT HILL FARM DR. 63005		Paul F. Blase

EXHIBIT SEVEN

PETITION BY RESIDENTS OF THE CITY OF CHESTERFIELD

City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017

To the City of Chesterfield:

We, the undersigned, oppose and object to construction of a cellular telephone tower at 1401 Wilson Road for the following reasons:

1. The cellular tower is inappropriately located in our residential neighborhood.

2. A tower of this size will adversely affect our property values.

3. The tower is an eyesore that protrudes from, and mars, the surrounding landscape.

FULL NAME (print)	ADDRESS (print)	DATE (print)	SIGNATURE
Jeffrey Peterson	3 Chesterfield Lakes Rd	12/14/06	[illegible]
John R Miley	14 Chesterfield Lakes Rd	12/14/06	John R Miley
Douglas Miley	14 Chesterfield Lakes	12/14/06	[illegible]
Irina Svirnovsky	12 Chesterfield Lakes	12/14/06	[illegible]
Yakov Svirnovsky	" "	12/14/06	[illegible]
Angela Balassi	54 Chesterfield Pkwy	1/18/07	Angela Balassi
Fred Balassi	54 Chesterfield Lks. Rd.	1/18/07	[illegible]

EXHIBIT EIGHT

"Facilities shall be located to minimize any adverse effect they may have on residential property values."

[*Quote from Chesterfield's Ordinance 1003.167.19 (10) (c)*]

RECEIVED
2007
PLANNING
DEPARTMENT

Board of Adjustment
Chesterfield City Hall
690 Chesterfield Parkway West
Chesterfield, Mo. 63017

Re: Cellular Tower located at 1401 Wilson Road
Public Hearing of Appeal of Administrative Decision
Scheduled for Thursday, January 4, 2007

I have lived in Chesterfield Lakes for 30 years and have been a licensed real estate agent since 1977 working in the West County area. Over the years I have sold the majority of homes in Chesterfield Lakes, some of the home as many as 4 times. I am very familiar with West County property values, particularly in that subdivision.

Installing that cellular tower at 1401 Wilson Road negatively affects the property values at 12 and 14 Chesterfield Lakes Road. I was the listing agent when Dr. and Mrs. Miley purchased the property at 14 Chesterfield Lakes. An important reason for buying the property was the beautiful private wooded setting. They have spent a considerable amount of money maintaining and improving that property. The installation of that tower has destroyed the wooded setting and damaged their property value.

It has been my experience that buyers will typically avoid looking at or purchasing a home that is within sight and range of cellular towers and high tension wires. If they do purchase a home with either of these towers, they expect a significant reduction in the purchase price.

Last spring I sold a home in an expensive and popular subdivision in Chesterfield. The cellular tower was virtually in the back yard and clearly visible. Although the home was perfect in every way, I strongly advised my clients not to purchase the home and I counseled them as to the outcome when they sell.

They ultimately bought the home at 6% below the asking price after 63 days on the market. Typically we see about a 98% ratio of listing to asking price, but in this neighborhood we can see buyers paying full price as the home comes on the market. This 6% represents a large sum of money because it was an expensive home. With the current market trend of many homes on the market, I believe that the percentages could be higher.

tabbies
EXHIBIT
9

I strongly hope that the board decides to revoke the permit to install the cellular tower and recommend that the tower company remove the portion of the tower that is already there,

Thank you for your consideration.

Sincerely,

Peggy Liggett

Peggy Liggett
Sales Associate
Laura McCarthy Real Estate

Charlie A. Dooley
County Executive

Saint Louis
COUNTY
PARKS

Lindsey Swanick
Director Parks & Recreation

Where Fun Comes Naturally

January 18, 2007

Board of Adjustment
Chesterfield City Hall
690 Chesterfield Parkway West
Chesterfield, MO 63017

Dear Sirs:

I am writing in opposition to the plan to erect a cellular tower at 1401 Wilson Road. I am concerned because of the proposed tower's proximity to the historic Laplante-Barner House at 16120 Walnut Hill Farm Drive.

As historian for the St. Louis County Historic Buildings Commission I see every day how fragile our hold is on our historic built environment. As the author of the foreword to Dan A. Rothwell's 1998 book, *A Guide to Chesterfield's Architectural Treasures*, I am especially aware of how few historic resources remain to Chesterfield. The Laplante-Barner House is one of the most historic buildings in Chesterfield and has been recognized as such by being named the oldest Century House in the city by the Chesterfield Historical Commission.

To built such a large structure as the cellular tower in such proximity to this house will certainly compromise its historic setting, and may compromise its long-term viability. This is what the National Park Service means by the expression "adverse impact" when it reviews federally funded projects under Section 106 of the National Historic Preservation Act of 1966. This term would certainly have come up had this project been reviewed as is required under federal regulations, and I must question why no review was undertaken in this case, as the tower requires a federal license.

The City of Chesterfield cannot afford to approve any projects that adversely impact any of its few precious historic resources, and I urge you to reject this proposal.

Sincerely,

Esley Hamilton

Mr. Esley Hamilton
Preservation Historian

EXHIBIT
tabbies
8A

SUSAN T. AND CHARLES P. DEAN
1245 WALNUT HILL FARM DRIVE
CHESTERFIELD, MO 63005
(636-537-1354)

Board of Adjustment
Chesterfield City Hall
690 Chesterfield Parkway West
Chesterfield, MO 63005

Re: Cellular Tower located at 1401 Wilson Road
Public Hearing of Appeal of Administrative Decision
Scheduled for Thursday, February 1, 2007

To Whom It May Concern:

We will be in Florida, and unable to attend the above-mentioned meeting. Please accept this letter as our plea to have the cellular tower on Wilson Road removed.

A major contributing factor for purchasing our home on Walnut Hill Farm Drive twelve years ago was the remote location and the beautiful surrounding countryside. Even though subdivisions and developments have been built around us, there are treed buffers that have allowed our property to remain a secluded hideaway. Now that beauty has been destroyed by an unsightly cellular tower! Imagine our surprise when it suddenly appeared. It looms above everything, and is the most obnoxious intrusion one could imagine. It, single-handedly, reduce the value of our home considerably!

How could such a structure be built without our knowledge or consent? We have been Chesterfield residents for over 20 years. My father, Lester Golub, was on Chesterfield's first planning and zoning committee. We are members of the Chesterfield Chamber of Commerce and we have a real concern and interest in the community. This tower does not belong in a residential section of Chesterfield. There are other commercial areas that are better suited. Please, please reconsider the placement of the tower and remove it.

Susan T. Dean
Charles P. Dean

EXHIBIT
8B

January 16, 2007

Board of Adjustment
Chesterfield City Hall
690 Chesterfield Parkway West
Chesterfield, MO 63017

I am a long-time resident of and voter in the City of Chesterfield. I have always been proud of the beauty of our city and how well it was governed.

I am also a resident of Walnut Hill Farm subdivision off Wilson Road. As I am sure you all know, we are immediately adjacent to a very large cell tower currently under construction on private property on Wilson Road.

I can not see the tower from my home so I am not personally affected but am very upset with how the city has handled this entire process. I am upset not just with the numerous application and procedural violations but, even more so, at how the city has failed to defend it's citizens against corporate abuses and protect the natural beauty of the surrounding countryside. As a homeowner, I am offended at this lack of professionalism.

I am anxious to see how our elected officials and staff will help to remedy this unfortunate situation.

Sincerely,

James T. O'Shea
1230 Walnut Hill Farm
Chesterfield, MO 63005

EXHIBIT
8C

Wednesday, January 10, 2007

Lola Schiller
1333 Pacland Place
Chesterfield, MO 63017

Board of Adjustment
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, MO 63017

Dear Board Members:

As owner of the property located at 1216 Wilson Road, I am writing to register my protest to construction of the cellular telephone tower at 1401 Wilson Road.

The house on my property has a number of large windows facing south, toward the tower. The presence of the tower has definitely degraded the view from the windows.

However, the greater issue is the tower's affect on the value of the property. I purchased the property as an income-producing rental property and as a long-term investment. My experience as a Real Estate agent (since 1988), along with common sense, tells me that the tower has devalued my investment.

During your February 1st hearing of this matter, I ask you to please give very careful thought to the consequences that your findings/actions will have for the owners of neighboring residential properties. Surely, there must be a more appropriate location than a residential area for this type of tower structure.

Thank you, in advance, for your most favorable consideration of the surrounding neighbors.

Sincerely,

Lola Schiller

Lola Schiller

EXHIBIT
8D