this use[1]; a set of general conditions that apply to all special use permits[2]; a unique set of conditions

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[1] **[Standards for CMCS Towers]**

v. CMCS facilities subject to the following additional standards:

(1) Within residential zoning districts, CMCS facilities, support structures and associated attachments shall be encouraged to locate on publicly owned and/or leased properties, public/private utility owned properties, or institutional uses.

(2) The location, size and design of such facilities shall be such that minimal negative impact results from the facility. Any application for a new CMCS tower shall not be approved nor shall any building permit for a new CMCS tower be issued unless the applicant certifies that the CMS equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or other structure due to one or more of the following reasons:
   (a) The planned equipment would exceed the structural capacity of existing and approved structures, considering existing and planned use of those structures, and those structures cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.
   (b) The planned equipment would result in technical or physical interference with or from other existing or planned equipment and the interference cannot be prevented at a reasonable cost.
   (c) There are no appropriate existing or pending structures to accommodate the planned equipment, taking into account, among other factors, the applicant's system requirements.
   (d) Other reasons that make it impractical to place equipment planned by the applicant on existing and approved structures.

(3) Applications for CMCS facilities to be located on publicly owned and/or leased properties, including without limitations, public parks, the following criteria shall apply:
   (a) The CMCS facility will not unduly interfere with the functions or aesthetics of the city park or property.
   (b) A CMCS facility shall not be located on any public park less than ten acres in size.
   (c) Minimum distance between any CMCS facility and any playground shall be equal to 1 1/2 times the height of the tower.
   (d) The use of an existing tower or existing support structure is not technically, structurally, economically and/or financially feasible.
   (e) The proposed facility has adequate capacity to handle a minimum of three additional users.
   (f) All towers shall be a "stealth" application or consistent with the natural or built environment or the site. Landscaping and screening may be required in addition to the minimum requirements of this ordinance.
   (g) Obstruction lighting and/or marking shall not be permitted in public parks or on public school properties. On other public properties, proposed lighting may be approved by the city council and/or county commission as an element of the special use permit site plan and conditions.
   (h) Any CMCS facility which has ceased operations for a period of 180 continuous days shall be dismantled and removed from the site at the owners expense. Prior to the issuance of a building permit for such CMCS facility, adequate financial security not to exceed $20,000.00 shall be posted with the building official to assure the dismantling, removing and restoring of the public property/park upon which the CMCS facility will be located.
   (i) The planned equipment will not interfere with emergency communications including without limitation those of the Memphis Fire and Police Departments, the county fire department and/or the county sheriff's department as substantiated through a RF (radio frequency) study. If interference occurs, proper remediation steps shall be taken.

(4) Any proposed tower shall be structurally designed to accommodate at least three additional CMCS sectorized antennae array if at least 100 feet in height, at least five additional CMCS sectorized antennas if at least 150 feet in height or at least six additional CMCS sectorized antennas if at least 170 feet in height. Colocated CMCS antennas shall be placed on a structure in such a manner as to avoid interference with or impairment of operations of existing antennae or other uses.

(5) Nothing in these rules and regulations shall obligate the owner of an existing tower to colocate additional antennas on such tower or be construed to interfere with or limit the rights of parties to set rent or establish other terms and conditions of the shared use of a CMCS tower or facility.

(6) The minimum setback requirement for support structures including associated attachments shall correspond to the zoning district in which they are located, except that a minimum buffer equal to the height of the tower shall be maintained between any support structure (excepting sites incorporating stealth design) and any single-family residentially zoned or used property line.

(7) Accessory facilities shall be permitted but may not include offices, long-term vehicle storage, other outdoor storage, or broadcast studios, except for emergency purposes or other uses that are not needed to send or receive transmissions.

(8) Existing on-site vegetation shall be preserved to the maximum extent practicable and shall be supplemented as required by the office of planning and development as necessary. Where the site abuts residentially developed land, residential zoning districts, the residential portion of an approved planned development, or public land or streets, the site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and

tailored to the site, and a detailed site plan. Under most circumstances a final requirement is the approval of a legislative body, in this case the Shelby County Board of Commissioners.

Cell towers are often necessary in residential areas but never popular. When as in this case, the property borders residential land (e.g. R- and AG Districts), a tower design for residential compatibility is required according to current policy. In this case, staff would specify, the so-call slick-stick design, with flush-mounted antennae.

One of the functions of the OPD staff review is to determine whether another location would be superior. A review of alternative locations has been conducted, as presented in Exhibits A-1 & A-2, Based on this review, it appears that several nearby alternative sites have been considered and apparently been determined to be unavailable. The Federal Telecommunications Act of 1996 does not permit local government regulation to a degree that excludes wireless carriers. In the absence of a specific rationale for widening the search for alternative sites, OPD is willing to support this site as the only practical alterative.

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within 40 feet of the site boundary. Alternatives such as walls or fences may be permitted based on security or other reasons.

(9) Security fencing shall be required around the base and guy anchors of any towers.

(10) Towers shall not be artificially lighted unless:
- (a) Required by the Federal Aviation Administration or other governmental authority;
- (b) Circumstances make lighting appropriate for safety or other reasons unique to a specific application that are set forth in that application, but in no case shall any lighting shine into adjacent residential structures.

(11) The application for a special use permit approval shall include the following:
- (a) A site plan drawn showing the property boundaries, tower, guy wire anchors (if any), existing structures, proposed transmission buildings and/or other accessory uses, access, parking, fences, a landscaping plan and existing abutting land uses around the site.
- (b) A study from a professional engineer which specifies the tower height and design, including a cross-section of the structure, demonstrates the tower's compliance with applicable structural standards, including a certification that the tower will withstand at a minimum sustained winds in accordance with the appropriate building code, and a description of the tower's capacity, including the number and type of antennas which it can accommodate.
- (c) Written statements that the proposed tower will comply with regulations administered by the Federal Aviation Administration, Federal Communications Commission, and all applicable governmental bodies, or that the tower is exempt from those regulations.
- (d) A letter of intent committing the tower owner and his or her successors to allow shared use of the tower, if capacity exists, based on existing and planned use, and if a future applicant agrees in writing to pay any reasonable charge of shared use, the potential use is technically compatible and the future applicant is in good standing.

(12) The minimum setback requirements of chart 2 shall apply to the equipment, structures, and other buildings which are auxiliary to functions of the CMCS tower except as specified in 9v.(6) of this ordinance. Exceptions to the minimum setback requirements may be permitted. The tower height shall not be used to calculate the minimum setback requirements. The height restrictions of chart 2 do not apply to tower height and the height permitted for each new application shall be set on the basis of its own merits.

(13) Any CMCS tower and equipment shall be removed no later than 180 days after ceasing operations.

2 **[Standards of General Applicability]** 1. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.

2. That the proposed building or use will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations.

3. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewers; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.

4. That the proposed building or use will not result in the destruction, loss or damage of any feature determined by the legislative body to be of significant natural, scenic or historic importance.

5. That the proposed building or use complies with all additional standards imposed on it by the particular provision of this section authorizing such use.

OPD staff believes that the tower site is unnecessarily close to the nearby residence on the one-acre tract at the corner of Independence and Woodstock-Cuba. Furthermore the location is closer to Independence Road than is desirable or necessary. Most drivers would prefer to have cell towers as much out of sight as possible. Therefore if the subject property is confirmed as the optimum site, staff requests a redesign to place the tower approximately in the middle of the parent tract. Staff can not support the current siting. [**However after the second Land Use Control Board hearing, the final OPD recommendation was "no objection", since there was no indication that the neighborhood shared OPD's concerns.** **5/12/2008 Update**]

The main reason for the Land Use Control Board's one-month hold was to give the applicant an opportunity to conduct a balloon test and confer with neighbors. Ms. Allmond, the applicant's representative did conduct a balloon test on March 5. She reported that the neighbors, in general did not object and that the preferred location siting was where the applicant was requesting it --- near the existing house and Independence Road.

[**Note:** ***Betsy Guinn of 2290 Independence Road had intended to speak in opposition; however she did not appear at the correct time and missed the opportunity. (Due to a light agenda, all cases were handled in the morning session.) The remarks that Ms. Guinn had intended to make have been included appear in Exhibit B and should be considered part of the record for the Land Use Control Board hearing.***

It should be noted that, although being generally opposed to the tower, Ms. Guinn prefers the applicant's siting, near Independence Road, instead of the location farther back on the property as recommended by OPD staff. **5/12/2008 Update**]

RECOMMENDATION:

Approval with Conditions --- After the public hearing OPD had no objection to since there was no indication that the neighborhood shared OPD's concerns about design issues.

TYPICAL SITE PLAN CONDITIONS

A Special Use Permit is hereby granted to the applicant **Global Signal, LLC** to allow construction and operation of a Commercial Mobile Communications Service (CMCS) Tower and ancillary facilities … in accordance with a site plan approved by the Office of Planning and Development and with the following supplemental conditions.

1. The maximum tower height shall be one-hundred ninety feet (195'), subject to Item 2 below, and the tower will incorporate the "slick stick" design with flush-mounted antennae.

2. The tower shall be free of all lighting, including aircraft hazard lighting, and shall be designed so as to avoid the necessity of such lighting under currently federal regulations.

3. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.

4. The tower shall be constructed within two (2) years of approval by the Shelby County Board of Commissioners The Land Use Control Board may grant a time extension through the applicant filing a correspondence item application with public notice sent to all property owners within five-hundred (500') feet of the property.

5. The tower shall be structurally designed to accommodate at least **six (6)** additional sectorized arrays.

6. A security fence, six feet (6') or more in height shall be constructed around the tower and associated equipment

7. The tower operator shall install and maintain perimeter screening as follows: The site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and within 40 feet of the site boundary. An equivalent alternative may be substituted with the approval of the Office of Planning and Development.

8. The access drive shall have an all-weather surface with asphalt pavement for the first 50 feet from *[the public right of way]*.

9. The location and design of the driveway access to *[the public right of way]*.shall be subject to the review and approval of the County Engineer including the construction of any culverts that made be needed.

GENERAL INFORMATION

Parcel Number:	D0124 00243
Approximate Tower Coordinates:	35° 19' 04"N, 89° 59' 32"W
Street Address:	2148 Independence Road, 38053
Street Frontage:	Independence Road - ±330 feet; Cuba-Woodstock – ±530 ft.
Planning District:	Northwest Shelby
Census Tract:	201
Annexation Status:	Designated Rural in the Shelby County Growth Plan
Zoning Atlas Page:	1335

DEPARTMENTAL COMMENTS

The following comments were provided by agencies to which this application was referred:

City Engineer:

1. This site is located in the Memphis Reserve Area.

Curb Cuts/Access:

2. The County Engineer shall approve the design, number and location of curb cuts.

3. Any existing nonconforming curb cuts shall be modified to meet current County Standards or closed with curb, gutter and sidewalk.

4. The developer should be aware of his obligation under 40 CFR 122.26(b) (14) and TCA 69-3-101 et. seq. to submit a Notice of Intent (NOI) to the Tennessee Division of Water Pollution Control to address the discharge of storm water associated with the clearing and grading activity on this site.

5. Adequate queuing spaces in accordance with the current ordinance shall be provided between the street right-of-way line and any proposed gate/guardhouse/card reader.

6. Adequate maneuvering room shall be provided between the right-of-way and the

gate/guardhouse/card reader for vehicles to exit by forward motion.

7. Required landscaping shall not be placed on sewer or drainage easements.

County Engineer:

1. To keep soil and gravel off public streets, the private ingress/egress drive should have 25' of asphalt pavement where it connects to Independence Road.

2. A driveway permit is required for a culvert connection to Independence Road from the County Engineer and the engineer is responsible for calculating the proper culvert size.

City Fire Division: No comments received.

County Fire Department: No comments received.

City Real Estate: None.

County Real Estate: No comments received.

City/County Health Department:

1. The Water Quality Control Branch has no comments.

City Board of Education: No comments received.

County Board of Education:

Construction Code Enforcement: No comments received.

Memphis Light, Gas and Water:

MLGW has reviewed the referenced application, and has no objection, **subject to** the following comments:

- **It is the responsibility of the owner/applicant** to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- **It is the responsibility of the owner/applicant** to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities. No permanent structures will be allowed within any utility easements.
- Any proposed structures must comply with the **National Electric Safety Code (NESC)** and maintain minimum horizontal/vertical clearances from existing overhead electric facilities.

- **Landscaping is prohibited** within any MLGW utility easement. No trees, shrubs or permanent structures will be allowed within any MLGW utility easements.
- **It is the responsibility of the owner/applicant** to contact **TN-1-CALL** @ 1.800.351.1111, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc
- **It is the responsibility of the owner/applicant** to submit a detailed plan to MLGW Engineering for the purposes of determining the availability and capacity of existing utility services to serve any proposed or future development(s).

- **It is the responsibility of the owner/applicant** to contact the appropriate MLGW engineering area to determine if system improvements may be required and any related cost:
  - MLGW Engineering - **Residential Development**: 528-4858
  - MLGW Engineering - **Commercial Development**: 367-3343
- **It is the responsibility of the owner/applicant** to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

Bell South / Millington Telephone: No comments received.
Memphis Area Transit Authority (MATA): No comments received.

OPD-Regional Services:

This application was reviewed by the MPO staff/Department of Regional Services on February 15, 2008. This application, as submitted, will have no affect on the MPO Long Range Transportation Plan, Transportation Improvement Program, or any other plan, document, program or initiative of this department/organization

OPD-Plans Development: No comments.

Division of Park Services: No comments received.

County Conservation Board: No comments received.

County Sheriff: No comments received.

Neighborhood Associations: None identified

REVIEW OF ALTERNATE SITES
SUP 08-207

ID #	PARCEL NUMBER	OWNER	REASON FOR REJECTING
A	D0124 00358	Shelby County (Fire Station)	Inadequate space for tower & compound. Too close to residences; direct view from several houses; wouldn't meet setback requirements or fall zone requirements.
B	D0124 00021	Cuba-Woodstock Saddle Club	Owner unwilling to sign a lease; adjacent land owner wouldn't allow spill over parking from the Saddle Club under those circumstances.
C	D0124 00514*	Hammontree, D.E.	Unable to qualify landowner. Not successful in obtaining a lease. Power and Telco *(ground line phone link)* not available. Tree removal to construct access drive. Cost prohibitive and severely detrimental to client.
D	D0124 00259* (at the rear)	Smith, R C	Unable to qualify landowner. Parcel was too far away from Highway 51, and [therefore] would not meet coverage objective, leaving holes in coverage and greater risk of dropped calls.
E	D0124 00241	Brathwaite, C	Owner unwilling to sign a lease or place tower on property.

- These are representative sites; other, nearby properties of similar characteristics might also be appropriate

LOCATION OF ALTERNATE SITES FOR REVIEW

EXHIBIT A – Page 2
REVIEW OF ALTERNATIVE SITES

Untitled

MY NAME IS BETSY GUINN AND I LIVE AT 2290 INDEPENDENCE RD

SINCE I KNOW MINDS HAVE ALREADY BEEN MADE UP ON THIS CELL TOWER, I CALLED MY LOCAL REPSENTIVE OPHELIA FORD TO ASSIT ME IN MY QUEST, I AM STILL WAITING ON A CALL BACK..IMAGINE.
TERRY ROLAND SAID HE WOULD ACCOMPY ME HERE BUT I ASSURED HIM I WOULD MUDDLE THROUGH THIS ON MY OWN.

THE BALLOON TEST WAS MADE AND I HAD A CHANCE TO TALK TO VALERIE ALMOND AT LENGTH, SHE IS VERY NICE AND REALLY TRYING TO WORK THIS DELIMA OUT. BUT AS WE ALL KNOW, EVERYONE HAS A JOB AND HERS IS TO GET THIS CELL TOWER IN. SHE DID MENTION TO ME THEY HAD AN ALTERNATE SITE FIRST BUT THE LAND OWNER WOULD NOT AGREE I WONDER WHY,

AND IF ANYONE IS INTERESTED I WILL HAVE A BEAUTIFUL VIEW OF IF FROM MY PROPERTY.
I FIND IT FUNNY THAT VALERIE ALMOND IS PUSHING FOR A CELL PHONE TOWER FOR CRICKET IN MY AREA WHEN SHE USES VERISION FOR HER CELL PHONE CARRIER.
AS MOST PEOPLE KNOW CRICKET IS A INEXPENSICE CARRIER MOST TEENAGERS USE OR PEOPLE WHO DO NOT TRAVEL OUTSIDE OF THE CITY CAN USE. I CAN GUARANTEE YOU CRICKET WILL NOT REACH TO ALAKSA LIKE MY ATT CELL PHONE DOES.

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