



October 10, 2016

Knoxville-Knox County Metropolitan Planning Commission  
400 Main Street, Suite 403  
Knoxville, TN 37902

Dear Commissioners.

As may be apparent, Town Hall East, a neighborhood organization in East Knoxville, opposes the Verizon Wireless (Faulk & Foster Real Estate Inc.) Use on Review application for a cellular phone antenna at the junction of Holston Drive and Martin Luther King Jr. Ave. in the Burlington area of Knoxville.

Town Hall East is a neighborhood association recognized by the City of Knoxville, Office of Neighborhoods, and our Constitution gives us jurisdiction over the area in question. There may be some boundary overlap with the Burlington Neighborhood Association, a small, newly formed and unincorporated group of residents in that area, but we have worked cooperatively with them in opposing this project.

The Board of Directors of Town Hall East met on October 6, 2016 and unanimously voted to oppose this application and to authorize the delivery of this letter. We would point out further that on September 12 a full membership meeting was held, which was also attended by the leadership of the Burlington Neighborhood Association, and the standing room-only-meeting

had the largest attendance in recent memory. Jim LaPann, a representative of Verizon and an employee of Faulk & Foster, was present and given an opportunity to discuss this proposal. Without exception, the animated group expressed opposition to this ill-conceived application.

There are a number of reasons our organization opposes this project, but before enumerating them, we believe it is important to correct a misunderstanding of the law recently expressed by several civic leaders.

A recent lawsuit in Federal Court involving the City of Knoxville and T-Mobile<sup>1</sup> resulted in a decision against the City and the installation of a tower on Ridgecrest Drive in Knoxville. This has led many to believe that it is not possible to prevent the placement of telecommunications towers wherever the service providers choose. This is not a correct interpretation of the law in that case, the present case, or any other tower issues that may come before and MPC and City Council.

The issues in the T-Mobile case were:

1. Whether the denial of the tower application “effectively Prohibits Wireless Service,”
2. Whether there was “a Significant Gap in Coverage,” and
3. Whether the tower was “the Least Intrusive Means to Remedy the Gap.”

In the T-Mobile case, the Court determined there was “*a significant gap in service coverage*” and that “*the proposed facility would ameliorate a current significant gap in T-Mobile service...*” The Court also reiterated the law that T-Mobile must show “*that a good faith*

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<sup>1</sup> A highlighted copy of Judge Phillips’ Memorandum Opinion is attached to this letter.

*effort has been made to identify and evaluate less intrusive alternatives,”* and found that T-Mobile had investigated at least thirteen alternate sites and demonstrated that none of them were viable. On the other hand, the City in that case alleged there were “*other feasible plans... [but did] not specify what those other plans or solutions might be.*”

The Burlington application is immediately distinguished from the T-Mobile case in that Verizon is not alleging a Gap in Coverage. Rather, as their application clearly states, they are seeking an Increase in Capacity. In other words, Verizon currently has and provides service in the coverage area which the proposed tower would serve.

The Burlington application is also distinguished from the T-Mobile case in that Verizon has made no genuine effort to identify and evaluate less intrusive alternatives to this tower site.

As set forth further below, the MPC has authority under federal and local law to regulate the placement of this tower, and we trust the Commission will not be deterred by a misinterpretation of law.

We believe the Verizon application should be denied for the following reasons:

1. As stated above, Verizon is seeking this tower because of perceived deficiency of “CAPACITY” of their system, not because they don’t already have “COVERAGE.” The law would weigh much further in Verizon’s favor if they had alleged there were gaps in coverage
2. As the T-Mobile case demonstrates, Federal law requires that a tower developer make “*a good faith effort... to identify and evaluate less intrusive alternatives.*” In other words, are there other, less sensitive sites that have been investigated, evaluated, and found to be not viable?

The MPC's Report states that *"based on the documentation provided by the applicant and verified by the review conducted by the Planning Commissions consultant, it has been determined that there are no other alternate sites within a mile that are usable for providing the needed coverage."*

We believe there has been no effort made, in good faith or otherwise, to evaluate other potential sites, and that this inaction alone gives cause for the MPC to deny the application. At a Town Hall East meeting on September 12, the Verizon representative suggested they had evaluated four or five other sites. However, in a September 22 meeting with MPC staff, Mike Reynolds said there was nothing in their files or the original application that referred to other potential site locations. Further, the Commission's consultant, Larry Perry, made no reference to the exploration of alternative parcel of property.

The "alternate sites" referred to in Verizon's discussions and Mr. Perry's original report refer only to their investigation of space on other *existing* towers, not to an investigation of alternate parcels of real estate upon which to put a new tower.

An amended application is being filed by Verizon to allege that they looked at the Warner Tabernacle and a site at the end of Kirkwood St., both of which were viewed only when the undersigned personally drove the representative to those locations. Both of those potential locations are treated dismissively in the amended application.

3. Despite the foregoing, a site at 331 Prosser Rd. (Parcel ID 070NF005; also referred to as Kirkwood St.) has been found 350 yards from the proposed location in an inoffensive location. According to our discussions with Larry Perry, this alternate site would work as well, or perhaps better, than the location at Holston Drive and Martin Luther King Jr. Blvd. The site is an empty lot of 4.77 acres adjoining the city's property at Chilhowee Park. It is closer to Interstate 40, and it is 100 feet higher in elevation than the proposed site. It has a tree-lined ridge top which would

partially hide an antenna tower.<sup>2</sup> The owner has expressed willingness to have a tower put on the site, and is prepared to negotiate a lease or sell the property.<sup>3</sup> This is a viable alternative site, and there are numerous other alternate sites in that immediate vicinity which would not affect a historically sensitive area.

Recently, Prosser/Kirkwood site was again suggested to the Verizon representative, but the undersigned was told there were other considerations to this project which could not be discussed. It leads us to speculate as to whether Verizon is seeking an advantage over competitors, or whether there are other in-house factors, but speculation aside, it should be of no concern in the MPC's view of things. After considering that this is a capacity rather than a gap coverage application, the MPC must decide whether a tower at this particular location is appropriate pursuant to the City's planning ordinances.

4. The September 1, 2016, MPC staff report states that "*the telecommunications tower will be **highly visible** from the nearby residential district and the downtown Burlington area.*" We agree and add that a tower at this location is "intrusive" in addition to being unnecessary for coverage.

5. As per the MPC's staff report, the proposed tower would be placed in both an "*Opportunity Area*" and a "*Sensitive Area.*" While this does not prevent MPC from approving the application, it should factor negatively into its overall view of the matter.

6. The MPC staff report acknowledges that the City has contracted with Knox Heritage

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<sup>2</sup> Photos are attached of this proposed site.

<sup>3</sup> A letter dated October 5, 2016 from Steve Walker, POA Marshall Hargis is attached to this letter.

to apply for a designation as a National Register Historic District, yet because the proposed tower would likely be outside the boundary of that district (by approximately 200 - 300 feet) it is not taken into consideration in Mr. Reynolds' report. It is also noteworthy that the tower would be directly across the street from residences on Speedway Circle, another historic area. We believe these factors are highly relevant, and should factor into the Commission's decision to deny use on review.<sup>4</sup>

7. Section 20 of Knoxville's MPC Ordinance states that *"These regulations are also designed to ensure safety, ensure compatibility with adjacent land uses; **protect revitalization and redevelopment areas, historic districts and other like areas** of considerable city investment; avoid adverse visual impacts to the city landscape; and discourage unnecessary proliferation of wireless facilities."*

Section 20 also states that *"It is the express intent of this section that the **construction of new communication towers be an option of last resort.** To the extent feasible, collocation [sic] of antennas on existing towers and their attachment to building rooftops and other suitable structures should first be sought."*

These regulations, in our opinion, and in conjunction with the other factors listed above, give the MPC authority to deny this application, and should be so exercised.

8. There is a setback required from any residential area for a tower facility of 110% of its height. While there is technical compliance with this requirement in the application, both Martin Luther King Jr. Blvd. and Holston Drive would be within the fall zone as would the adjacent Hardee's restaurant. Isn't there more potential danger to a restaurant with 30 or 40 people in it than to a residence with 3 or 4 people in it? Also, while the tower at this height would not land

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<sup>4</sup> See attached photos of Burlington and Verizon's proposed tower site.

on any residences, the yards of some of the residences are within the fall zone. The Commission using its discretionary authority should opt to deny a tower in this setting.

9. There is duplicity in Verizon's application that references the tower as "125 feet" tall as the request is for the approval of the construction of a the tower designed as a "150 feet" structure built to 125 feet. It is inferred that the additional 25 feet will be added at a later time. In other words, while we're discussing a 125 feet tower, what we are really considering is a tower designed to be easily and quietly converted to a 150 feet tower at some time in the near or distant future. The drawings show that in that event, residences would be in the tower's fall zone.

It is alarming that the Ordinance states that "*an existing tower may be modified or rebuilt to a taller height, not to exceed thirty (30) feet over the tower's existing height... No additional setbacks [i.e., fall zone] shall be required.*" Further, it states that **MPC approval is required only if the addition is 200 feet high or more.** In other words, Verizon could build a 125 foot tower then quickly, and without approval, add up to 25 or 30 feet without further approval of the MPC. In that event, the houses of residents would be in the fall zone and would have not have the protection of that zoning ordinance.

10. Verizon's proposed tower will take parking spaces and create a parking problem in this area, particularly as redevelopment starts and small businesses attempt to attract customers. This is yet another reason to deny the application.

11. The Ordinance requires that "*at least one (1) row of evergreen trees or shrubs capable of forming a continuous hedge at least five (5) feet in height and screening the base of the tower from public view within two (2) years of planting shall be planted and maintained in healthy condition...*" It also requires a chain-link fence behind the greenery.

At the September 8 MPC meeting, Chairman Green strongly suggested that the landscape

requirement should be much higher for this site, perhaps 15 or 20 feet. Despite this, Verizon's original application asked for a variance allowing them to build a wooden fence with three strands of barbed wire in lieu of greenery. The amended application asks for a variance to allow construction of a brick fence, but still no greenery. Either type of fence will add to the blight which the city and developers are attempting to eliminate. Both of these variance requests should, in our opinion, be denied.

12. The MPC staff report relies solely upon Verizon's opinion that there will be no economic injury to property. "*Based on the valuation report by the applicant Faulk and Foster [Verizon's representative]... The use will not significantly injure the value of adjacent property.*" Would you expect Verizon to opine to the contrary? This is a self-serving statement at best and should be disregarded by the Commission. Common sense demonstrates that a 150 ft. high tower with admitted negative visual impact, and the consequent reduction in parking, will both stifle and discourage redevelopment and growth in this fragile area, and affect the stability of the residential community.

13. A change.org online petition generated, in only three days time, over 60 signatures of local residents expressing opposition to Verizon's proposed tower site in Burlington.<sup>5</sup>

Because the tower is not proposed to fill gaps in coverage; because it is not the only viable site for the placement of a tower; because there are other and better sites near the proposed site; because the residents and business owners in this area are overwhelmingly opposed to this placement; and because MPC has a mandate to "*protect revitalization and redevelopment areas,*

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<sup>5</sup> Attached is a October 10, 2016 printout of the change.org petition opposing "the building of a cell tower in historic downtown Burlington." The petition was started on October 7, 2016.



Letter to MPC Commissioners  
October 7, 2016  
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*historic districts and other like areas of considerable city investment; avoid adverse visual impacts to the city landscape;*" this Commission, in its sound discretion, should deny Verizon's Use on Review for a telecommunications tower at the site.

A handwritten signature in black ink, appearing to read 'DT', is positioned above the typed name.

Doug Toppenberg, President  
Town Hall East

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

BRANCH TOWERS, LLC, and T-MOBILE )  
SOUTH, LLC, )

Plaintiffs/Petitioners, )

v. )

No. 3:15-cv-00487  
Judge Phillips

THE CITY OF KNOXVILLE, TENNESSEE )  
and THE CITY COUNCIL OF THE CITY OF )  
KNOXVILLE, TENNESSEE consisting of )  
FINBARR SAUNDERS, DUANE GRIEVE, )  
MARSHALL STAIR, NICK DELLA VOLPE, )  
NICK PAVLIS, DANIEL BROWN, BRENDA )  
PALMER, GEORGE WALLACE )  
and MARK CAMPEN, )

Defendants/Respondents. )

**MEMORANDUM OPINION**

Plaintiffs Branch Towers, LLC and T-Mobile South, LLC filed this civil action against the City of Knoxville, Tennessee, the City Council of the City of Knoxville, Tennessee, and each of its members (collectively “the City”). Plaintiffs applied to the Knoxville/Knox County Metropolitan Planning Commission (“MPC”) to install a wireless telecommunications tower on 2119 Ridgecrest Drive in Knoxville. MPC approved the application and a group of citizens appealed that decision to the City. Plaintiffs now seek a declaratory judgment that the City’s reversal of MPC’s decision and denial of the plaintiffs’ application was a violation of two provisions of the federal Telecommunications Act, 47 U.S.C. § 332(c)(7)(B), and Tennessee law. Plaintiffs have filed a motion for summary judgment and supporting memorandum [Docs. 27, 28], the

defendants have responded in opposition [Doc. 39], and the plaintiffs have replied [Doc. 43]. The Court has also received an amicus curiae brief [Doc. 38] from numerous citizens from the Top of the Ridge Neighborhood Watch.

After carefully reviewing the motion and related pleadings and the administrative record [Doc. 22], the plaintiffs' motion for summary judgment [Doc. 27] will be **GRANTED** for the reasons set forth herein.

## **I. Relevant Facts**

Plaintiff T-Mobile South, LLC provides wireless telecommunications services in the Knoxville, Tennessee area through a network of interrelated and overlapping "cell sites" [R. at 375].<sup>1</sup> Plaintiff Branch Towers, LLC, constructs telecommunications towers that allow wireless carriers, such as T-Mobile, to create and maintain their network of digital cell sites [R. at 314].

T-Mobile's radio frequency ("RF") engineers identified a "significant gap" in its service in an approximately 1.5 square mile area in the Fountain City area of Knoxville [R. at 375]. The topography of the area consists of hilly terrain, rising from the southeast to the northwest, with dense foliage from mature trees ranging between 70 and 100 feet in height [*Id.*]. There are several residential streets, churches, a school, and several heavily traveled roads located in the service gap [*Id.*]. To meet the needs of its customers and to maintain competitiveness, T-Mobile requires indoor residential coverage levels in the gap

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<sup>1</sup>The administrative record is filed in the record as Doc. 22-1 and will be cited as "R. at \_\_\_\_." Pincites refer to the electronic page numbers.

area [*Id.*]. To remedy this gap in service, T-Mobile asked Branch Towers to develop a wireless communications facility within the area [R. at 86].

The plaintiffs ultimately identified property at 2119 Ridgecrest Drive (“the proposed facility”) as suitable for construction of a wireless facility that was capable of meeting the local zoning requirements, and had a landlord willing to lease sufficient space to construct and maintain a wireless facility on her property [R. at 216—17]. The property is zoned R-1, low density residential [R. at 8].

Prior to their application to MPC and during the application and appeal process, the plaintiffs considered several potential alternative locations for the tower, including four existing structures [R. at 377]. A stealth tower at 6242 Grove Drive would be less intrusive than the proposed facility, but was not tall enough to provide the radio frequency coverage necessary to fill the coverage gap [*Id.* at 377, 404]. Similarly, a water tank at 2935 Walkup Drive would be less intrusive than the proposed facility, but was not tall enough to provide the radio frequency coverage necessary to fill the service gap [*Id.* at 377, 403]. A U.S. Cellular tower at 815 Oaklett Road would be less intrusive than the proposed facility, but was determined to be located too far west and would not cover the target area [*Id.* at 377, 404]. A Tennessee Valley Authority tower at 6138 Winter Garden Way would be less intrusive than the proposed facility, but was determined to not cover the majority of the gap to the east [*Id.*]. Further, the Knoxville

Utilities Board, which owns the lines on this tower, discourages collocation<sup>2</sup> on its towers [*Id.*].

The plaintiffs also considered nine raw land sites and three were determined capable of providing sufficient radio frequency (“RF”) coverage to cover the service gap. However, a tower at 500 Gresham Road, location of Gresham Middle School, would have to be 195 feet high, 45 feet higher than the proposed facility [*Id.* at 377, 405]. Further, the tower would have to be less than 200 feet from the school, there would be little screening or buffer, and over 100 homes would be impacted by a view of the tower [*Id.* at 405]. Finally, plaintiffs concluded that the site would have significant liability risks because the tower would be so close to a school [*Id.*]. Thus, it would not be less intrusive than the proposed facility.

A tower at the Snowood Drive property owned by Maurice Grigsby would not meet the setback requirements of the City’s Zoning Ordinance [*Id.* at 377, 406]. Finally, a tower at 6024 Grove Drive, location of the Church of Jesus Christ of Latter Day Saints, would provide the necessary RF coverage but has “significantly less tree coverage and foliage to screen the site” [*Id.* at 377, 405]. Plaintiffs also concluded that this site would have more visual impact on the surrounding neighborhood because of the lack of buffering and the size of the parcel. Thus, it would not be less intrusive than the proposed facility [*Id.*].

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<sup>2</sup>The Wireless Communications Facilities Plan, discussed *infra*, defines “co-location” as “[t]he placement of antennas for two or more carriers on the same tower or structure” [Doc. 39-2 at p. 8]. The term is also written as “colocation” in the plaintiffs’ application to MPC [R. at 315] and sometimes in the case law. See e.g., *T-Mobile Central, LLC v. Charter Twp. of W. Bloomfield*, 691 F.3d 794, 801 (6th Cir. 2012).

Pursuant to the City of Knoxville's Zoning Ordinance, commercial telecommunications towers are "uses permitted on review" for the R-1 zoning designation [Doc. 14-4 at p. 12]. The Zoning Ordinance describes "uses permitted on review" as "so classified because they more intensely dominate the area in which they are located than do other uses permitted in the district; however, the nature of such use makes it desirable that they be permitted to locate therein" [*Id.* at p. 3]. The Zoning Ordinance sets forth the following general standards to guide the MPC, along with other adopted plans and polices:

1. The use is consistent with adopted plans and polices [*sic*], including the "General Plan" and the "One-Year Plan."
2. The use [is] in harmony with the general purpose and intent of these zoning regulations.
3. The use is compatible with the character of the neighborhood where it is proposed, and with the size and location of buildings in the vicinity.
4. The use will not significantly injure the value of adjacent property or by noise, lights, fumes, odors, vibration, traffic, congestion or other impacts detract from the immediate environment.
5. The use is not of a nature or so located as to draw substantial additional traffic through residential streets.
6. The nature of development in the surrounding area is not such as to pose a potential hazard to the proposed use or to create an undesirable environment for the proposed use.

[Doc. 14-4 at p. 3]. The MPC review process is intended to provide for uses which are beneficial to the community but that may involve a potential hazard to the development of an area unless appropriate provisions are made for their impacts and to integrate properly the uses permitted on review with other uses located in the district [*Id.* at p. 18].

MPC may approve a use on review “where it can be shown that the proposed plan or use is in harmony with the general purpose and intent of the zoning ordinance and with the general plan and one-year plan and is reasonably necessary for the convenience and welfare of the community” [*Id.*].

In 2002, MPC adopted a “Wireless Communications Facilities Plan” (“Wireless Plan”) to be used as a guide in making decisions on applications for approval of new telecommunications towers [Doc. 39-2 at p. 6]. Plaintiffs emphasize that the Wireless Plan states that its “guidelines are advisory and adherence to them is not a legal requirement” [*Id.* at p. 16]. The Wireless Plan further states that “[p]roposals that are in substantial compliance with the principles outlined below should be approved” [*Id.*]. Those principles are: (1) “[t]he proposed facility should not burden other properties with adverse visual impacts, nor should the facility detract from the character of the Knoxville-Knox County landscape”; and (2) “[t]he proposed facility should not interfere with the use and enjoyment of other properties and should be consistent with the character of land use and development of the area around its location” [*Id.*]. The Wireless Plan classifies three types of areas for the placement of telecommunications towers: opportunity areas, sensitive areas, and avoidance areas [*Id.*]. It is undisputed that the property at 2119 Ridgecrest Drive is considered both a “sensitive area,” where placement of wireless communication facilities will most likely raise issues related to safety, property values, visibility, or land use compatibility, and an “avoidance area,” where wireless communication towers should not be located [*see R.* at 10, 428; Doc. 39-2 at pp. 18, 20].

On March 27, 2015, Plaintiffs submitted an application to MPC to construct a 150 foot monopole<sup>3</sup> wireless tower on the property at 2119 Ridgecrest Road [R. at 312—321]. As described in the application, the tower will be constructed in the interior of a 5.75 acre, heavily wooded lot and will be connected to Ridgecrest Drive by a 16 foot wide paved road and utility easement [R. at 314—15]. The tower will be structurally capable of supporting collocation by at least three additional telecommunications providers [R. at 314—15]. The facility will have a 165-foot setback, which is equal to 110% of the height of the tower as required by the Wireless Plan [R. at 314, 417; *see* Doc. 39-2 at p. 14]. The materials submitted to MPC include an identification of some of the alternative sites considered, discussed *supra*, and the reasons why they were not deemed to be viable alternatives to the 2119 Ridgecrest Road property [R. at 47—49].

During the time the application was pending with MPC, the plaintiffs submitted several photographs of the proposed site from different angles, photo simulations of balloon tests to demonstrate how the site would look with the proposed tower, and various maps of the area which show the proposed site, existing towers, and T-Mobile's current coverage in the area [R. at 90—108, 423—425]. Also during the period of MPC's review, plaintiff representatives held two meetings with community members and reviewed seven alternative sites suggested by the residents [R. at 408, 427]. Plaintiffs also submitted the professional opinion of Harris B. Simpson, a real property appraiser,

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<sup>3</sup>The Wireless Plan defines a monopole as “[a] cylindrical self-supporting communication tower constructed as a single spire” [Doc. 39-2 at p. 8]. It is worth noting that plaintiffs also suggested an alternate design of a monopole designed to look like a pine tree, also called a “stealth tower,” but that MPC staff recommended against its use because it would look more out of place than a standard monopole [R. at 355].



who concluded that the proposed tower “will have no discernable negative impact on the values, marketability or the rates of appreciation of properties in the surrounding areas” [R. at 56—57].

MPC’s consultant, Larry Perry, reviewed the plaintiffs’ application and concluded that the application met all the requirements of the Zoning Ordinance with the exception of the landscaping requirement which the plaintiffs’ agreed to provide [R. at 12—18].<sup>4</sup> Mr. Perry noted that the plaintiffs had “proven a need for the site for its coverage requirements to include the new 4G technology and the site is necessary to provide that coverage and to overcome the shadowing effect of surrounding hills and wooded areas” [R. at 12]. Further, Mr. Perry agreed that “there are no other alternate sites within a mile that are useable” [*Id.*]. Mr. Perry also opined that the addition of this tower “would probably eliminate the need for other sites nearby” [R. at 15].

MPC staff reviewed the application and Mr. Perry’s report and recommended approval of the application as the “request meets all criteria for a use-on-review in the R-1 zoning district” [R. at 355]. Because the proposed facility would be in both a “sensitive area” and an “avoidance area” under the Wireless Facilities Plan, the MPC report noted that the Plan “discourages moderate monopole towers located within residential neighborhoods” [R. at 356]. However, “[b]ased on the documentation provided by the applicant and verified by the review conducted by the Planning Commission’s consultant

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<sup>4</sup>Mr. Perry was retained by MPC, pursuant to the Zoning Ordinance, to “review and report” on the “technical engineering aspects” of the application. See City of Knoxville Zoning Regulations, Article V, Section 20(B)(1)(f). Unfortunately, the complete relevant zoning provisions are not contained in the record.

[Mr. Perry], it has been determined that there are no other alternate sites within a mile that are useable for providing the needed coverage” [*Id.*].

On August 13, 2015, MPC approved the plaintiffs’ application at its public meeting by a vote of 8 to 5 [R. at 239]. It is worth noting that MPC received substantial opposition to the plaintiffs’ application from the public via written comments, letters from local real estate brokers, online petitions, simulated photographs of the area, maps, information regarding the scenic Dogwood Trails in Knoxville, and articles regarding cell towers in neighborhoods [R. at 115—212]. Many of the comments expressed concerns regarding the placement of a communications tower in a residential neighborhood and the impact this tower would have on the property values and view aesthetics of the residents. Several residents of the neighborhood also spoke in opposition to the application at MPC’s meeting [R. at 215—16, 218, 225].

Knoxville attorney John R. King, on behalf of several property owners and/or residents of property in the neighborhood, appealed MPC’s decision to the Knoxville City Council on August 26, 2015 [R. at 4—7]. In support of their appeal, the residents submitted a report from the Center for Municipal Solutions (“CMS”) containing their critique and evaluation of the plaintiffs’ application, but concluded that CMS “could not make any definitive determinations with respect to the need for what is requested to the exclusion of any reasonable, technically viable alternatives” [R. at 242—66]. The CMS report suggested that the use of “small cells attached to utility and light poles” was “one probably technically viable less intrusive alternative” to the proposed facility [R. at 250]. In response, both Mr. Blewitt and Mr. Perry testified that the use of “small cell systems”

are not effective to remedy a large gap in service coverage [R. at 551, 556]. The neighborhood residents also submitted written and oral comments in opposition to the application at the hearing. The City Council considered the appeal at its September 30, 2015 meeting and voted 7 to 1 to approve the appeal, thus denying the plaintiffs' application [R. at 2—3]. This civil action followed.

## II. Standard of Review

Summary judgment under Rule 56 of the Federal Rules of Civil Procedure is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the burden of establishing that no genuine issues of material fact exist. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Moore v. Phillip Morris Cos.*, 8 F.3d 335, 339 (6th Cir. 1993). All facts and all inferences to be drawn therefrom must be viewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Burchett v. Kiefer*, 310 F.3d 937, 942 (6th Cir. 2002). “Once the moving party presents evidence sufficient to support a motion under Rule 56, the nonmoving party is not entitled to a trial merely on the basis of allegations.” *Curtis Through Curtis v. Universal Match Corp.*, 778 F. Supp. 1421, 1423 (E.D. Tenn. 1991) (citing *Celotex*, 477 U.S. 317). To establish a genuine issue as to the existence of a particular element, the non-moving party must point to evidence in the record upon which a reasonable finder of fact could find in its favor. *Anderson v. Liberty*

*Lobby, Inc.*, 477 U.S. 242, 248 (1986). The genuine issue must also be material; that is, it must involve facts that might affect the outcome of the suit under the governing law. *Id.*

The Court's function at the point of summary judgment is limited to determining whether sufficient evidence has been presented to make the issue of fact a proper question for the factfinder. *Anderson*, 477 U.S. at 250. The Court does not weigh the evidence or determine the truth of the matter. *Id.* at 249. Nor does the Court search the record "to establish that it is bereft of a genuine issue of material fact." *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989). Thus, "the inquiry performed is the threshold inquiry of determining whether there is a need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 250.

### III. Analysis

As outlined by the Supreme Court, Congress enacted the Telecommunications Act "to promote competition and higher quality in American telecommunications services and to 'encourage the rapid deployment of new telecommunications technologies.'" *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005) (quoting 110 Stat. 56). In order to accomplish these goals, Congress sought to reduce the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers. *Id.* Thus, although the Act recognizes "the authority of a State or local government or instrumentality ... over decisions regarding the placement, construction,

and modification of personal wireless service facilities,” 47 U.S.C. § 332(c)(7)(A), Congress included “specific limitations” on that authority. *City of Rancho Palos Verdes*, 544 U.S. at 115—16. Relevant to the pending motion are the provisions that local governments cannot take actions that “prohibit or have the effect of prohibiting the provision of personal wireless services,” § 332(c)(7)(B)(i)(II), and that a denial of a request for authorization to locate a wireless facility must “be in writing and supported by substantial evidence contained in a written record,” § 332(c)(7)(B)(iii).

Whether the Denial Effectively Prohibits Wireless Service in Violation of Section 332(c)(7)(B)(i)(II)

Plaintiffs argue that the denial of their application constitutes an effective prohibition of wireless service in violation of the Telecommunications Act. Section 332(c)(7)(B)(i)(II) of the Act provides that “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). Relying on *T-Mobile Cent., LLC v. Charter Twp. of W. Bloomfield*, 691 F.3d 794 (6th Cir. 2012), plaintiffs argue that they have demonstrated the existence of a significant gap in the service area and the proposed tower is the least intrusive means to remedy that gap [Doc. 28 at pp. 14—21].

In response, defendants emphasize that the Act preserves local government’s authority in regulating the placement of cell towers, citing § 332(c)(7)(A) [Doc. 39-1 at pp. 16—17]. Defendants dispute whether the plaintiffs have demonstrated a significant

gap in coverage and whether plaintiffs have established that there are “no alternative sites” [*Id.* at pp. 17—20].

The Sixth Circuit adopted a two-part test to evaluate whether the denial of an application amounts to an “effective prohibition” claim: (1) there must be a showing of a significant gap in service coverage; and (2) some inquiry into the feasibility of alternative facilities or site locations. *W. Bloomfield*, 691 F.3d at 805. The Sixth Circuit further explained that the “significant gap” refers to a gap in the carrier’s own service and that there is no requirement that actual customer complaints need to be submitted to demonstrate a coverage gap. *Id.* at 807. It is well settled that this Court’s review of whether the denial of the plaintiffs’ application constitutes an effective prohibition of wireless service is a legal determination made without deference to the local zoning authority. See *AT&T Mobility Servs., LLC v. Village of Corrales*, No. 15-2069, 2016 WL 873398, at \*1 (10th Cir. Mar. 8, 2016); *T-Mobile Ne. LLC v. Loudoun Cty. Bd. of Supervisors*, 748 F.3d 185, 192 (4th Cir. 2014); *VoiceStream Minn., Inc. v. St. Croix Cty.*, 342 F.3d 818, 833 (7th Cir. 2003); *Nat’l Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14, 22 (1st Cir. 2002).

1. Whether There is a Significant Gap in Coverage

Plaintiffs contend that they have provided sufficient evidence of a significant gap in coverage by submission of propagation maps and a description of the coverage gap by T-Mobile’s RF Engineer, Kevin Blewitt [R. at 90—91, 550—51], which are the types of evidence that the Sixth Circuit found to be suitable in *West Bloomfield* to support a claim for a substantial gap in coverage [Doc. 28 at p. 9]. Plaintiffs also note that MPC’s

consultant, Mr. Perry, confirmed that there was a gap in coverage [R. at 362 (“there is very little signal coverage in the area”)] and a need for the site [R. at 12 (“[t]he applicant has proven a need for the site for its coverage requirements to include the new 4G technology and the site is necessary to provide that coverage and to overcome the shadowing effect of surrounding hills and wooded areas”)] [*Id.*].<sup>5</sup>

The City suggests that there are questions of fact as to whether T-Mobile has demonstrated a gap in coverage based on T-Mobile’s marketing claims of “4G LTE blanketing this whole area” per City Councilmember Mark Campen [R. at 560; Doc. 39-1 at pp. 19—20]. Similarly, the amicus brief suggests that the “services” which T-Mobile seeks to provide go far beyond the type of services covered by the Telecommunications Act such as merely connecting to telephone landlines [Doc. 38 at pp. 20—21]. Further, the amicus brief notes that the T-Mobile website shows a “fair signal” in the area to be served by the proposed tower [*Id.* at p. 21].

As plaintiffs have pointed out in reply [Doc. 43 at pp. 7—13] and as explained in the plaintiffs’ appeal to City Council [R. at 414], the propagation maps submitted with T-Mobile’s application show the level of signal coverage in the area, whereas the marketing

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<sup>5</sup>The City suggests that Mr. Perry’s report exceeded the scope of his authority because he reviewed plaintiffs’ application “for technical and Federal/State legal compliance” as opposed to just “technical engineering aspects” as set forth in the Zoning Ordinance § 20(b)(1)(f) and that he “is not a lawyer or land use planner” [Doc. 39-1 at p. 20]. This argument is without merit. As set forth in plaintiffs’ reply and Mr. Perry’s supporting declaration [Doc. 43-1], Mr. Perry has both law and engineering degrees and has extensive experience in preparing and reviewing applications for communications towers. Members of both MPC and City Council praised Mr. Perry’s qualifications [*see* R. at 224, 554, 559]. The City did not include his qualifications, attached to his report, in the administrative record. Further, Mr. Perry’s report specifies that he reviewed the application in light of “FAA lighting and marking requirements and proposals” and “FCC requirements regarding signal coverage, towers and lighting” [R. at 14], points which are surely both “technical engineering” concerns and “federal/state legal compliance.”

map on T-Mobile's website shows the kind of technology available in the area, *i.e.*, 4G, 3G, etc.<sup>6</sup> See R. at 41 (“[t]his map does not show the level of coverage that you get with a 4G phone; it just means that if you buy a T-Mobile Phone to use in this area, 4G technology will be available”). T-Mobile also asserts that the “coverage check” on its website, which is not contained in the record, shows outdoor coverage and not necessarily indoor coverage. Similarly, the “fair signal” designation on its website<sup>7</sup> is defined as “cell reception outdoors and occasionally indoors” and is the weakest designation of the 4G LTE signals [Doc. 43 at pp. 8—9]. Plaintiffs have cited numerous decisions from other district courts finding that a lack of “in-building” coverage is the standard for determining whether a significant coverage gap exists [Doc. 43 at p. 8]. See, *e.g.*, *T-Mobile W. Corp. v. City of Huntington Beach*, No. CV 10-2835 CAS, 2012 WL 4867775, at \*17 (C.D. Cal. Oct. 10, 2012); *T-Mobile W. Corp. v. City of Agoura Hills*, No. CV 09-9077 DSF, 2010 WL 5313398, at \*8 (C.D. Cal. Dec. 20, 2010); *MetroPCS New York, LLC v. Village of East Hills*, 764 F. Supp. 2d 441, 453 (E.D.N.Y. 2011); *T-Mobile Cent., LLC v. Wyandotte Cty.*, 528 F. Supp. 2d 1128, 1169 (D. Kan. 2007). Thus, the evidence of the type of available technology in the area does not create an issue of fact as to the level of coverage.

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<sup>6</sup>Mr. Perry's report states that there are “no other towers in the area that can provide the coverage need for the service to the area. The coverage is based on the new technology currently being touted by the various carriers, 4G, for data and voice transmission” [R. at p. 16].

<sup>7</sup>The amicus petitioners have filed a copy of T-Mobile's coverage map as of the filing of their brief (April 21, 2016) which shows that the area around and including Ridgecrest Drive has a “fair signal” [Doc. 38-2]. The definition for “fair signal” is contained in the plaintiffs' reply brief [Doc. 43 at p. 8].



The need for this coverage was also explained in the MPC report. “With the introduction of the smart phone and the sharing of data by phone, and with an increasing number of people replacing land line service with cellular service, there is now a greater demand for service in the residential neighborhoods. This change in the use of cell phones has increased the need for finding suitable sites for telecommunication towers in the residential areas” [R. at p. 10].

The Court finds that plaintiffs have demonstrated a significant gap in service coverage through the propagation maps, the opinion of T-Mobile’s engineer, Mr. Blewitt, and MPC’s own consultant, Mr. Perry. As Mr. Perry notes, “there is very little signal coverage in the area ... [and] the addition of a cell site here ... would probably eliminate the need for other sites nearby” [R. at p. 15]. Neither the City nor the amicus petitioners have submitted evidence to contradict the evidence supplied by the plaintiffs.<sup>8</sup> Because the uncontradicted evidence demonstrates that the proposed facility would ameliorate a current significant gap in T-Mobile service, plaintiffs have met their burden as to the first prong of an “effective prohibition” claim.

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<sup>8</sup>The record contains a few written comments from members of the public to MPC questioning the need for the proposed facility, but they provided no evidence to contradict the existence of the coverage gap. See R. at 134 (“I don’t know of anyone around here who is having difficulty with telecommunication service”), and 149 (“neighborhood residents will receive no direct benefit from the tower, whose signal will radiate outward to distant communities”). As previously noted, “there is no requirement ... that actual customer complaints need to be submitted to demonstrate a coverage gap.” *W. Bloomfield*, 691 F.3d at 807; see *Cellular South Real Estate, Inc. v. City of Germantown*, No. 2:12-cv-02888-JPM-tmp, 2015 WL 3852781, at \*9 (W.D. Tenn. June 22, 2015) (“[t]he relevant inquiry is whether there is a significant gap in the particular provider’s coverage that would be ameliorated by the addition of a new telecommunications tower”); *American Towers, Inc. v. Wilson Cty.*, No. 3:10-cv-1196, 2014 WL 28953, at \*11 (M.D. Tenn. Jan. 2, 2014 (“[a] single opponent’s lay opinion about coverage quality does not upend the conclusion that ATI showed a significant coverage gap”).

2. Whether the Proposed Facility is the Least Intrusive Means to Remedy the Gap

As noted above, the second prong of an effective denial of service claim is “some inquiry into the feasibility of alternative facilities or site locations.” *W. Bloomfield*, 691 F.3d at 805. Thus, the plaintiffs must make some showing as to the intrusiveness or necessity of its proposed means of closing the coverage gap. *Id.* at 808. Contrary to the City’s assertion, the Sixth Circuit has adopted the test used by the Second, Third, and Ninth Circuits, that is, that the manner in which plaintiffs propose to fill the significant gap in service is “the least intrusive on the values that the denial sought to serve.” *Id.* (quoting *APT Pittsburgh Ltd. P’ship v. Penn Twp. Butler Cty. of Pa.*, 196 F.3d 469, 480 (3rd Cir. 1999)).<sup>9</sup> Under the “straightforward” analysis of the “least intrusive” test, the plaintiffs must show “that a good faith effort has been made to identify and evaluate less intrusive alternatives, e.g., that the provider has considered less sensitive sites, alternative system designs, alternative tower designs, placement of antennae on existing structures, etc.” *Id.* (quoting *Omnipoint Commc’ns Enters., L.P. v. Zoning Hearing Bd. of Easttown Twp.*, 331 F.3d 386, 398 (3rd Cir. 2003)). The applicant is not required to “search for alternatives indefinitely.” *Id.*; see *American Towers, Inc. v. Wilson Cty.*, 2014 WL 28953, at \*12 (M.D. Tenn. Jan. 2, 2104) (plaintiff “was not required to turn every stone

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<sup>9</sup>The City suggests that this part of the test requires the provider to show that there are “no alternative sites that would solve the problem” [Doc. 39-1 at p. 17 (citing *VoiceStream Minneapolis, Inc. v. St. Croix Cty.*, 342 F.3d 818, 834 (7th Cir. 2003))]. However, the *West Bloomfield* court specifically considered the test used by the First and Seventh Circuits as outlined in *St. Croix* and rejected it in favor of the “least intrusive” standard. See *W. Bloomfield*, 691 F.3d at 808 (“We ... adopt the “least intrusive” standard from the Second, Third, and Ninth Circuits. It is considerably more flexible than the “no viable alternatives” standard, as a carrier could endlessly have to search for different, marginally better alternatives.”). Accordingly, the “least intrusive standard” is the standard this Court is bound to follow.

in its search for a viable location [and] the fact that it didn't do so is immaterial to Wilson County's legal argument").

Plaintiffs contend and the record reflects that they considered over a dozen alternatives, including existing structures, raw land alternatives, and all of the alternative sites suggested by neighborhood residents [Doc. 28 at pp. 18—19; R. at 377, 403—407]. However, T-Mobile concluded there were no existing structures suitable for collocation and none of the raw land sites were technically feasible, actually available, or less intrusive than the proposed facility [*Id.*]. Similarly, as noted by plaintiffs' attorney, Ms. Miller, in correspondence to MPC, plaintiffs "held two community meetings and reviewed seven alternative sites which residents suggested. Those sites do not present viable alternatives" [R. at p. 41].

The City's response is a bit of a moving target. First, the City argues that the plaintiffs have presented varying reasons for why alternative sites were not considered viable. Second, the City suggests that three of the rejected sites could be viable if the plaintiffs had applied for variances under the Zoning Regulations. Third, the City takes issue with the balloon test and photo simulations presented by plaintiffs as not accurate.<sup>10</sup> Finally, the City contends that the plaintiffs were "unclear" as to how many alternative

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<sup>10</sup>This argument is without merit. The record reflects that the plaintiffs explained the methodology for the balloon simulation photographs on several occasions [*see* R. at 414 ("[t]he dense wooding and foliage prevented Branch from raising the balloon at the exact site of the proposed tower. ...Branch increased the height of the balloon to 210 feet to accommodate for the differences in location and for the impact of possible wind gusts"), 451—52]. Moreover, the City acknowledges that the neighborhood opposition provided "no independent verification of the accuracy" of the photo simulations they submitted [Doc. 39-2 at p. 19].

sites were considered and that plaintiffs presented only conclusory statements, rather than proof, that the alternatives were not feasible [Doc. 39-1 at pp. 18—19].

Although defendants “respectfully submit there are other feasible plans and there are other solutions to the purported problem” [Doc. 39-1 at p. 19], they do not specify what those other plans or solutions might be. The MPC report notes that “[b]ased on the documentation provided by the applicant and verified by the review conducted by the Planning Commission’s consultant, it has been determined that there are no other alternate sites within a mile that are useable for providing the needed coverage” [R. at pp. 10, 12]. The materials submitted to MPC contain a list of seven alternative site evaluations and the reasons why those sites were deemed unsuitable [R. at pp. 47—49]. The materials submitted to City Council include Mr. Blewitt’s declaration and a description of four existing structures which were considered for collocation and nine raw land sites which were considered and the reasons why these alternatives were not viable alternatives [R. at pp. 376—77]. Similarly, the declaration of Ms. Kramer, also submitted to City Council, contained a description of the alternatives considered by Branch Towers and the reasons why these alternatives were not viable alternatives [R. at pp. 403—407]. The record reflects that the plaintiffs considered new alternatives as they were presented throughout this process. Thus, it is unsurprising that the number of sites reviewed increased over time. Further, as the plaintiffs note, prospective sites may be eliminated as viable alternatives if they do not comply with the local zoning requirements, *i.e.*, a variance would be required. *See Indus. Tower & Wireless, LLC v. Haddad*, 109 F. Supp. 3d 284, 302 (D. Mass. 2015); *City of Huntington Beach*, 2012 WL

4867775, at \*18; *City of Agoura Hills*, 2010 WL 5313398, at \*9, \*12. Finally, the record reflects that the plaintiffs proposed and MPC considered alternative designs and placement of antennae arrays, but that those were ultimately rejected [R. at 9, 36—37].

The City's speculative and unsupported assertion that other, feasible alternatives exist is insufficient to refute the plaintiffs' showing that there are no less intrusive alternatives to the proposed facility. See *T-Mobile Cent. LLC v. Charter Twp. of W. Bloomfield*, 2011 WL 1299357, at \*5 (E.D. Mich. Mar. 31, 2011) (once the provider has made a showing of consideration of alternatives, "the burden shifts to the locality to show that there are some potentially available and technologically feasible alternatives") (quoting *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 998 (9th Cir. 2009)). The record reflect that the plaintiffs have considered less sensitive sites, alternative system designs, alternative tower designs, and placement of antennae on existing structures. Because plaintiffs have met their burden as to both of the *West Bloomfield* prongs, the Court finds that the City's decision had "the effect of prohibiting the provision of personal wireless services" in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II) and plaintiffs are entitled to judgment as a matter of law on this claim. Having reached this conclusion, the Court declines to address whether the decision is supported by substantial evidence or whether it violated state law. See *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 999 (9th Cir. 2009); *Skyway Towers, LLC v. Lexington-Fayette Urban Cty. Gov't*, No. 5:15-301-KKC, 2016 WL 817133, at \*7 (E.D. Ky. Feb. 29, 2016).

#### **IV. Conclusion**

For the reasons set forth herein, the Court finds that plaintiffs' motion for summary judgment [Doc. 27] should be **GRANTED**. In light of the Court's conclusion that the City's denial of plaintiffs' application is a violation of the "effective prohibition" provision of the Telecommunications Act, the appropriate remedy is injunctive relief compelling the City to approve the plaintiffs' application and issue the appropriate permits requested therein. *See Wilson Cty.*, 2014 WL 28953, at \* 14. An appropriate order will be entered.

s/ Thomas W. Phillips  
SENIOR UNITED STATES DISTRICT JUDGE

Steve Walker  
1603 Washington Ave., Knoxville, TN 37917  
865-523-4954

October 5, 2016

Mr. Mike Reynolds  
Knoxville-Knox County Metropolitan Planning Commission  
400 Main St., Suite 403  
Knoxville, TN 37902

Re: Proposed Verizon Tower in Burlington

Dear Mr. Reynolds,

I am the former business partner of, and current power of attorney for, Marshall Hargis who is the owner of property located at 331 Prosser Rd., Knoxville, TN. Kirkwood Street comes into the back of this property. I have been contacted by representatives of Town Hall East concerning the availability of this property for a possible cellular phone tower.

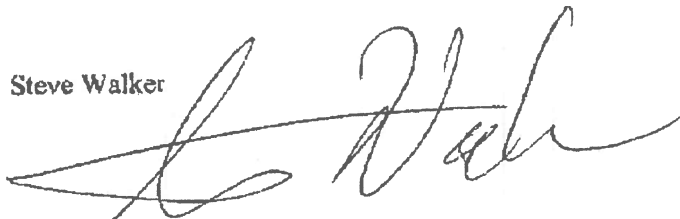
I have discussed the matter with Mr. Hargis and we are prepared to enter into negotiations for the leasing of this tract of land for such a tower. We believe this would be a good use of the land and would welcome such a facility.

The land in question is an empty lot (Parcel ID 070NF005) of 4.77 acres on a bluff adjoining city property at Chilhowee Park. I am told that the elevation is approximately 100 feet higher at the top of this lot than the current proposed site in Burlington, and that it is approximately 350 yards from the current proposed site and closer to the interstate. The top of this hill is removed from residences and covered with trees.

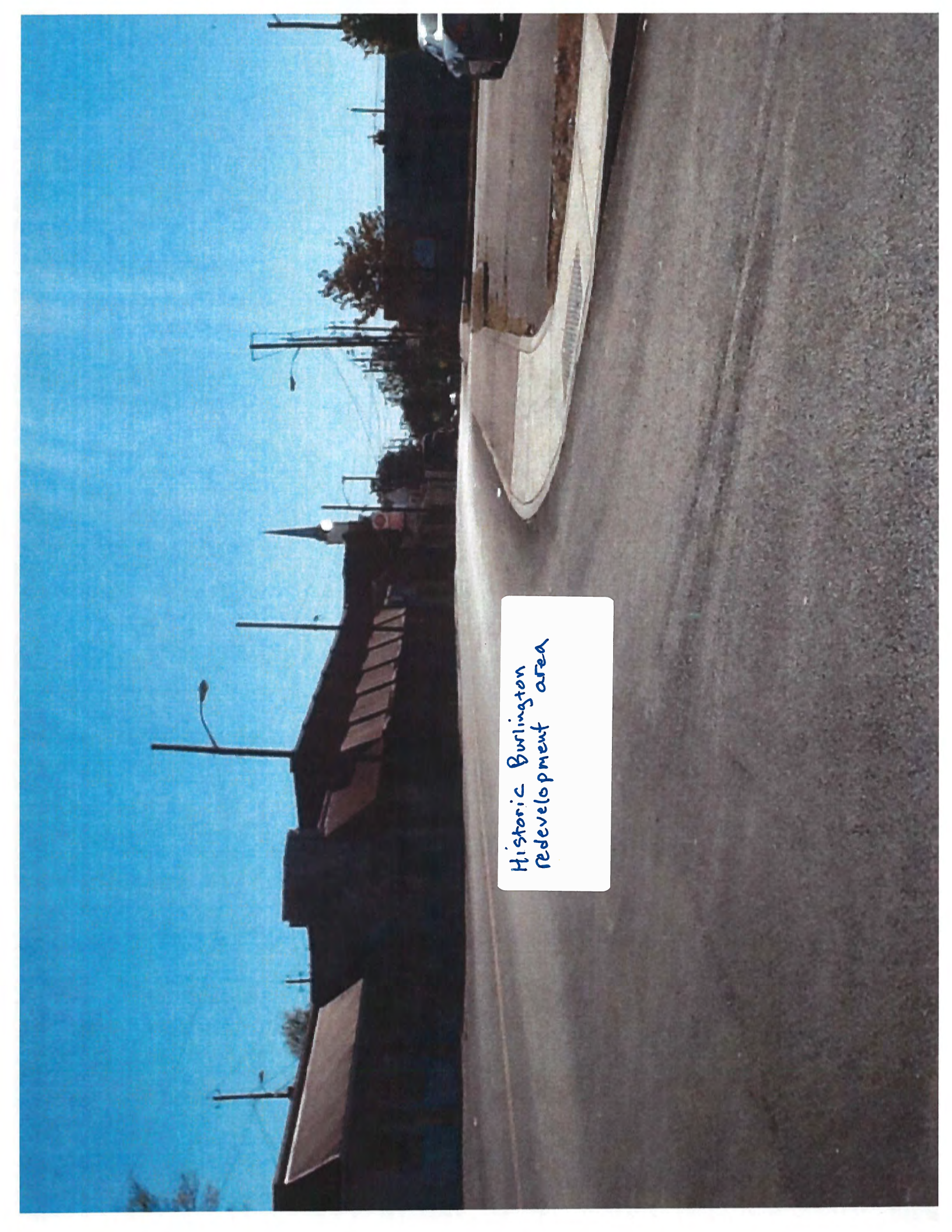
We would also be amenable to the sale of this property.

If I can answer any questions concerning this, please contact me at the above address and phone number. Thank you.

Steve Walker



Historic Burlington  
Redevelopment area







Hardee's Restaurant ↙  
Tower to be placed approx.  
Where the School bus sits.

Also owned by Marsnall Hargis

Alternate Site  
Kirkwood / Prosser

Verizon's Proposed  
Site

Google Maps Kirkwood St



Imagery ©2016 DigitalGlobe, U.S. Geological Survey, Map data ©2016 Google 100 ft

Google Maps Kirkwood St



Map data ©2016 Google 20 ft

Google Maps 399 Kirkwood St



Google

Image capture: Nov 2015 © 2016 Google

Knoxville, Tennessee  
Street View - Nov 2015

Both gated properties are owned by Marshall Hargis. The property to the right is available for a cell tower site. This is approx. 350 yds. from Verizon's proposed site. It also is about 100 ft. higher in elevation

Google Maps Kirkwood St



**change.org**  
Town Hall East

Recipient: Knox County Metropolitan Planning Commission

Letter: Greetings,

Oppose the building of a cell tower in historic downtown Burlington.

# Signatures

<b>Name</b>	<b>Location</b>	<b>Date</b>
Amber Houser	, United States	2016-10-07
Manya Whitney-Miller	Knoxville, TN, United States	2016-10-07
Laurel Winters	Knoxville, TN, United States	2016-10-07
sara whitt-lingerfelt	Powell, TN, United States	2016-10-07
Misty Oaks	Knoxville, TN, United States	2016-10-07
Jennie Mezick	Knoxville, TN, United States	2016-10-07
jeff Petrik	Knoxville, TN, United States	2016-10-07
Mimi Meredith	Knoxville, TN, United States	2016-10-07
Desiree Folger	Knoxville, TN, United States	2016-10-07
Brenda Harkleroad	Knoxville, TN, United States	2016-10-07
Clarita Buffaloe	Knoxville, TN, United States	2016-10-07
Emily Messer	Knoxville, TN, United States	2016-10-08
Michael Glanville	Knoxville, TN, United States	2016-10-08
Mildred Ward	Morristown, TN, United States	2016-10-08
Aleydis Van de Moortel	Knoxville, TN, United States	2016-10-08
Suzy Baxter	Knoxville, TN, United States	2016-10-08
Karen Bacon	Knoxville, TN, United States	2016-10-08
Suzanne McCarter	Knoxville, TN, United States	2016-10-08
James Ward	Knoxville, TN, United States	2016-10-08
Rita Neubert	Knoxville, TN, United States	2016-10-08
Sandra Stevens-Woodland	Knoxville, TN, United States	2016-10-08
Tyler Roy	Knoxville, TN, United States	2016-10-08
Mattie Ragland	Knoxville, TN, United States	2016-10-08
Susan Hughes	Knoxville, TN, United States	2016-10-08
Linden Craig	Knoxville, TN, United States	2016-10-08
Robert Smith	Knoxville, TN, United States	2016-10-08
Travis Miller	Knoxville, TN, United States	2016-10-08
Jane George	Knoxville, TN, United States	2016-10-08
Linda & Joel Morris	Knoxville, TN, TN, United States	2016-10-08
Jennifer Stokes	Knoxville, TN, United States	2016-10-08

<b>Name</b>	<b>Location</b>	<b>Date</b>
Joe Armstrong	Knoxville, TN, United States	2016-10-08
Mary Woolley	Knoxville, TN, United States	2016-10-08
Shirley Moore	Knoxville, TN, United States	2016-10-08
Gary Smiddy	Knoxville, TN, United States	2016-10-08
Paula Smith	Knoxville, TN, United States	2016-10-08
Alexandra Helgert	Knoxville, TN, United States	2016-10-08
Judith Cope	Knoxville, TN, United States	2016-10-08
Jeff Johnston	Knoxville, TN, United States	2016-10-08
Mike Talley	Knoxville, TN, United States	2016-10-08
Jennifer Bohlken	Knoxville, TN, United States	2016-10-08
Mary Helsley	Knoxville, TN, United States	2016-10-08
william Hayman	Knoxville, TN, United States	2016-10-08
Sinead Doherty	Knoxville, TN, United States	2016-10-08
Cheryl Burchett	Knoxville, TN, United States	2016-10-08
Eleanor Folger	Knoxville, TN, United States	2016-10-08
Heather Webb	Knoxville, TN, United States	2016-10-08
Sharon Davis	Knoxville, TN, United States	2016-10-09
Shelley Mangold	Knoxville, TN, United States	2016-10-09
David Lee	Knoxville, TN, United States	2016-10-09
Natalie Mcgee	Knoxville, TN, United States	2016-10-09
Richard Mallory	Knoxville, TN, United States	2016-10-09
teresa marrero	Knoxville, TN, United States	2016-10-09
Chris Holmlund	Knoxville, TN, United States	2016-10-09
Stephanie Greene	Knoxville, TN, United States	2016-10-09
Becky Brewer	Knoxville, TN, United States	2016-10-09
Kimberly Kennard	Knoxville, TN, United States	2016-10-09
Michael Richards	Knoxville, TN, United States	2016-10-09
Lisa Starbuck	Knoxville, TN, United States	2016-10-09
Rosemarie Curnell	Knoxville, TN, United States	2016-10-09
Ellie Dougherty	Knoxville, TN, United States	2016-10-09
louise campbell	Knoxville, TN, United States	2016-10-10
Ronnie Collins	Knoxville, TN, United States	2016-10-10



**Name**

Helen Hewitt

**Location**

Knoxville, TN, United States

**Date**

2016-10-10



Betty Jo Mahan <bettyjo.mahan@knoxmpc.org>

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## Fwd: Verizon Cell Tower Burlington Area

1 message

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**Terry Gilhula** <terry.gilhula@knoxmpc.org>  
To: "Mahan, Betty Jo" <bettyjo.mahan@knoxmpc.org>

Tue, Oct 11, 2016 at 8:18 AM

----- Forwarded message -----

From: **Cheri Dickey** <cdhdickey@gmail.com>  
Date: Mon, Oct 10, 2016 at 5:48 PM  
Subject: Verizon Cell Tower Burlington Area  
To: [contact@knoxmpc.org](mailto:contact@knoxmpc.org)

To: KNOX MPC

I would like to voice my concern and disapproval for the cell tower near Hardee's on Asheville Hwy I grew up in Burlington, lived most of my adult life in the east/northeast area and presently reside on Prosser Road.

Cheri Dickey

October 7, 2016

Dear Members of Knoxville Knox County Metropolitan Planning Commission,

I am writing in response to Item 53. Verizon Wireless on the agenda this Thursday, October 13, 2016. The location of the proposed cell tower should not be permitted for several reasons, some of which are included in the Use on Review Report under Conformity of the Proposal to Adopted Plans. The main reason is more common sense.

First, the applicant states "there are no existing structures in the area that can be used for antennae placement to obtain the required coverage." The new tower is not needed for coverage in the area, because there is already coverage. The tower would be for increased capacity. What structures were considered for antennae placement? It does mention other towers to the southeast and northeast, but there is no mention of exploring existing buildings such as Warner Tabernacle. A better site for the placement of a new cell tower would be at the end of Kirkwood Drive. The area is heavily treed and at a higher elevation, so a less tall tower would be required. Also, there are no residences or businesses adjacent. With all of the tall trees surrounding it, the new tower would be practically hidden from sight.

Why would MPC even consider ruining the Burlington area by placing a new cell tower in the middle of the sight-line, when there is a much more unobtrusive option available? Especially given the fact that a parking variance will be required by the Board of Zoning Appeals, because the proposed property already does not conform to parking requirements. Why has Verizon Wireless not made an effort to explore more conducive sites? The MPC Report states Verizon has, but there is absolutely no documentation to verify that fact. At the most recent Town Hall East meeting, the Verizon Wireless representative was unable to name a single other location that was considered. A Town Hall East representative took the gentleman from Verizon to some other sites on September 12, 2016.

The proposed site does meet the requirements of a fall zone in regards to residential structures. What about the highly patronized businesses which will be well within the fall zone? Hardee's Restaurant, a day care and flea market are within said fall zone. Does MPC only have to be concerned with the possibility of injury for citizens when they are at a residence? It would seem MPC would need to also consider the safety of citizens when visiting neighboring businesses.

The new cell tower location does not incorporate into the East City Sector Plan or the Magnolia Avenue Corridor Plan. The MPC Report states the location of the tower "would jeopardize future redevelopment opportunities of this block." It will jeopardize far more than that block, most likely the entire Burlington neighborhood. Burlington is in the process of obtaining historical status. One of the residences on Speedway Circle is on the Fragile Fifteen. Why would MPC want to stunt the redevelopment of Burlington, and East Knoxville, by approving a cell tower in the middle of the area? If the City and County are truly interested in East Knoxville, why would MPC approve such an eyesore?

It is my hope that the MPC will see fit to do right by East Knoxville and its residents by not approving an obtrusive, unattractive cell tower in the middle of our neighborhood.

Sincerely,

Desiree Folger  
6000 Holston Drive  
Knoxville, TN 37924



Betty Jo Mahan &lt;bettyjo.mahan@knoxmpc.org&gt;

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**[MPC Comment] Verizon cell tower**

1 message

**hollandjb** <hollandjb@earthlink.net>

Mon, Oct 10, 2016 at 4:57 PM

Reply-To: hollandjb@earthlink.net

To: commission@knoxmpc.org

Cc: Town Hall East &lt;townhalleast@gmail.com&gt;

To all Commissioners: I was unable to sign up for an account with Change.org but this is the information I had entered:

JANET HOLLAND  
4508 Holston Hills Rd. 37914  
[hollandjb@earthlink.net](mailto:hollandjb@earthlink.net)

So many people and groups have been working to restore and improve the Burlington and surrounding areas that permitting a tower like this to be erected in their backyard must feel like a slap in the face to them. This tower belongs in an industrial or business section of a city, NOT in a residential one.

Janet Holland

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This message was directed to [commission@knoxmpc.org](mailto:commission@knoxmpc.org)



Betty Jo Mahan &lt;bettyjo.mahan@knoxmpc.org&gt;

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**[MPC Comment] Use on Review application by Verizon Wireless**

1 message

**'Amber Houser' via Commission** <commission@knoxmpc.org>

Mon, Oct 10, 2016 at 2:22 PM

Reply-To: amberhouser@yahoo.com

To: commission@knoxmpc.org

To Whom It May Concern:

I am writing in regards to the application before you by Verizon to build a cellular tower at the Holston Dr and Martin Luther King Blvd. I often visit this area to shop at the Amvets on Holston Dr, and I was very excited to hear about plans and hopes for redevelopment of such a unique area in Knoxville. I am afraid that if you approve Verizon's request, you will be halting the progress that is being made in this community.

When I heard about this prospective project, I didn't really know what a cell tower even looked like because you don't see them in areas that people usually are. That is true for good reason and is partially why it is so disappointing that Verizon is doing so little to find an alternative site. I attended the Town Hall East meeting with Jim LaPann representing Verizon and when I left I felt sick and offended by his perspective of this area. He passed around pictures of the area asking us to find the character within the existing structures; the implication being that the area was already blighted, so who cares? As a Knoxvilleian, a resident of Holston Hills, and a former teacher at Fulton High School, I am well aware of the perception of the east side of Knoxville and how it affects the people and the businesses here. We have Knoxville Botanical Gardens, Zoo Knoxville, the Muse, and a wealth of good restaurants along Magnolia, and yet many have the wrong-headed perception that it is not safe to visit those places. It is our job as residents and your job at MPC to make decisions that support the livelihood of every part of Knoxville.

I am asking you to look beyond what so many people believe about this area; I am asking you to step up and protect it. This cell tower is a monstrosity and it should not be the defining characteristic of a community that is trying to redefine itself. Just imagine how a project like this could have affected Happy Holler or the Old Sevier Community as they grew and are still growing into thriving neighborhoods. East Knoxville deserves just as much consideration, and we have a lot more rural, undeveloped land that would be a more appropriate venue for such a tower. Verizon has not its job in finding an appropriate place for this tower; please hold them to the standard that the law dictates and deny this application. Thank you for your time and thoughtful consideration of this matter.

Sincerely,  
Amber Houser  
Chilhowee Dr, Knoxville

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This message was directed to [commission@knoxmpc.org](mailto:commission@knoxmpc.org)

October 7, 2016

Metropolitan Planning Commission

Dear Commissioners:

The people of East Knoxville and Burlington, in particular, desire to make their neighborhood vibrant and attractive to new residents and small businesses. An industrial-looking tower looming above one of the neighborhood's main entryways would, as proposed, be surrounded by a utilitarian wooden fence topped with barbed wire. This is more appropriate for a salvage yard than a family neighborhood.

We, as citizens, along with Knoxville's appointed and elected officials, must do our best to mitigate its harmful effects on this vital East Knoxville community.

We ask you to do this by taking steps to soften the area around the tower so that its sterile, industrial quality takes on a more residential appearance. This can be done by constructing a brick wall around the tower's base and then mimicking a garden or lawn appearance by an additional 20' of vegetation around the outside of the wall.

Specific design conditions are:

- 1) An 8-foot-tall residentially designed brick wall with no other material (such as barbed wire) on top of, or outside of, this wall.
- 2) The gate material may be cyclone with barbed wire and shall not face a public right-of-way.
- 3) A 20-foot-deep perimeter landscaped bed outside of the brick wall which is irrigated and planted with two alternating rows of bushes or trees. The inside row shall be evergreen plants that have a minimum height of 4 feet at time of planting, reach a minimum mature height of 25 feet, and create an impenetrable screen. The outside row shall be a minimum height of 3 feet at time of planting and produce flowers or berries to create a residential/small business character.
- 4) Total signage shall not exceed 16 square feet and may not be illuminated.

The brick wall around the tower's base creates an immediate but incomplete screen until the perimeter vegetation matures. The brick wall will continue to block any possible opening in the understory screening.

I know you care about our neighbors, neighborhoods, and businesses. The future of East Knoxville depends on how we address this and other future issues.

During your deliberations please state whether you feel locating a telecommunication tower supports our neighborhood character and the reason behind your vote.

Sincerely,

Sandra Korbelik, AICP  
5212 Daphne Drive



Betty Jo Mahan &lt;bettyjo.mahan@knoxmpc.org&gt;

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**[MPC Comment] Proposed Verizon Cellphone Tower in Burlington Area**

1 message

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'David Lee' via Commission <commission@knoxmpc.org>  
Reply-To: daelwlee@yahoo.com  
To: "commission@knoxmpc.org" <commission@knoxmpc.org>

Sun, Oct 9, 2016 at 2:29 PM

October 9, 2016

Dear MPC Commissioners,

I live in Holston Hills and frequently drive on Asheville Highway/Magnolia and Holston Drive/Martin Luther King Jr Ave. A 125 ft. Verizon cellphone tower at the junction of Holston Drive/MLK -- which I understand could, once approved, be extended to a height of 150 ft. -- would be an eyesore and an affront to the residents of Speedway Circle and the Burlington community. We have been told that federal law trumps all else and that we have no recourse in this matter. It is my understanding, however, that companies wishing to install towers are required by federal law to make a good faith effort to identify and evaluate less intrusive alternatives. I have heard nothing that would indicate Verizon has made any such good faith efforts but has chosen as a matter of convenience a very public and highly visible spot that impinges on a predominantly African-American community. Apparently there are not serious gaps in Verizon's coverage that would necessitate such a tower.

The area in question has been marked for rehabilitation and preservation, and the type of barrier and landscaping Verizon has proposed would be an ugly, barebones construction that shows no regard for the advancement and wellbeing of the neighborhood.

David Lee 4519 Owana Dr. Knoxville, TN 37914

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This message was directed to [commission@knoxmpc.org](mailto:commission@knoxmpc.org)



Betty Jo Mahan &lt;bettyjo.mahan@knoxmpc.org&gt;

**[MPC Comment] Proposed Verizon Cell Phone Tower in Burlington**

1 message

mmward@sbcglobal.net &lt;mmward@sbcglobal.net&gt;

Mon, Oct 10, 2016 at 3:18 PM

Reply-To: mmward@sbcglobal.net

To: "commission@knoxmpc.org" &lt;commission@knoxmpc.org&gt;

Dear MPC Commissioners:

My name is Mildred A Ward. My husband, James Ward, and I live at 5121 Green Valley Drive in Knoxville (Holston Hills).

I am writing, as Vice President of Town Hall East (THE) and as a concerned resident of the east Knoxville Area, to urge you to consider opposing the Verizon Cell Phone Tower proposed for the downtown Burlington area.

My husband and I oppose the tower for the following reason - The tower placement is neither necessary nor appropriate for the Burlington area. We cite the following items to support our position.

1. This tower is not needed to provide service. This is an issue of capacity, but not coverage. While enhancing capacity is important, the tower's placement is not required to provide more capacity. If more capacity is required, there are at least two other sites that would serve "capacity" more effectively.
2. Verizon has shown no evidence to us as the Executive Board of THE or our fellow residents that they considered any other locations. In recent meeting with a Verizon representative, this person flatly stated that he knew of no other sites. Exploration by some neighbors have found that a site known as the Kirkwood site and the Warner Tabernacle site were mentioned and then quickly dismissed in a recently amended Verizon proposal. In fact, these two sites were only reviewed when brought to Verizon representative's attention by a THE Board member .
3. Ironically, the Burlington Cell Tower site is incredibly intrusive to the neighborhood. This location is right in the middle of an area struggling to undergo redevelopment. In fact, this tower will be an eye sore in an already distressed area. Burlington is being considered by Knox Heritage as a National Registry Historic District. Burlington NEEDS this recognition to begin re-development. It DOES NOT need a 125 (potentially 150 ft) cell phone tower within 200-300 ft of this District. In reality, two sensitive areas are affected by this tower: 1. Burlington Distrust, as a potential historic Site and Speedway, another historic area.
4. Another issue is safety - the "fall zone" While the 125 tower fall zone does have clearance for housing, it does not for businesses. Don't they count for consideration in safety concerns? Also, the potential tower extension to 150ft, DOES place local residences in the "fall zone."

MPC's own ordinances state that MPC regulations are "...designed to ensure safety and protect revitalization and redevelopment areas, historic districts and other like areas..." How does placement of a cell phone tower that is intrusive to two sensitive community areas and is possibly a safety hazard to those businesses and homes in the area going to help Burlington's struggle to revitalize itself?

For all of the reasons stated above , my husband and I urge you to oppose construction of this tower and seek a better, more "reasonable" location for it.

Thank you consideration of our request. Please feel free to contact us if you have any questions regarding this email.

James and Mildred Ward  
5121 Green Valley Drive



10/11/2016

KnoxMPC Mail - [MPC Comment] Proposed Verizon Cell Phone Tower in Burlington

Knoxville, TN 37914  
[865-521-8917](tel:865-521-8917)

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This message was directed to [commission@knoxmpc.org](mailto:commission@knoxmpc.org)