

AGENDA ITEM G

The Merritt Group

May 14, 2003

The Honorable Hubert Brodell, Mayor
City of Jonesboro Alderman
515 West Washington Avenue
Jonesboro, AR 72401

RE: MAPC Agenda Item – Conditional Use Permit – The Merritt Group

Dear Mr. Mayor and Alderman

This letter should serve as a written request to the City Council of Jonesboro to arrange an appeal hearing to be held by the City Council of Jonesboro. We wish to appeal for the following 3 reasons.

1. The outcome of the voting for the May 15, 2003 MAPC hearing and the February 11, 2003 hearing should have been ruled in favor of the Merritt Group. Unfilled or Vacant positions on the MAPC panel cannot be considered as a percentage of the majority of votes because a vacant position is not an authorized membership of the Commission. With this in mind, both votes at both hearings were majority votes in favor of The Merritt Group.
2. The MAPC is in violation of its own ordinance for failing to give written notice as to the reason for denying or disapproving. Some reasons as stated in the newspaper articles would suggest inappropriate use of the National Telecom Act.
3. I would like the City Counsel to hear my case, in which, there has never been any objections from the public or the notified landowners and that The Merritt Group fulfilled all obligations that existed under the City of Jonesboro's ordinance of law at the time and that throughout this five month process the City Planner has used his subjective attitude and position to undermine a positive outcome for the Merritt Group.

Thank you for your time and attention to this matter

THE MERRITT GROUP


Joel Taylor
Sole Proprietor

The Merritt Group

50 North Main , Suite # 3
Eureka Springs, AR 72632

(479) 363-9911 OFFICE

(479) 363-9913 FAX

To: ANNA JACKSON From: Joel Taylor
Fax: 870-933-4637 Date: 5-15-03
Phone: _____ Pages: 2
Re: Appeal CC: _____

- Urgent For Review Please Comment Please Reply Please Recycle

•Comments:



COVER MEMO

TO: Planning Commission Members
OF: City of Jonesboro
FROM: Joel Taylor -- 479-790-2717
OF: The Merritt Group
DATE: May 14, 2003
PAGES: 1
RE: Application for Conditional Use Permit and Replat
Wireless Communication Facility – Browns Lane

Dear Planning Commission Members

This letter is written on behalf of the Merritt Group and submitted with The Merritt Groups application to the Jonesboro Metropolitan Area Planning Commission for a Conditional Use permit for a Wireless Communication Facility and subsequent Replat of Tract C of the M.J. Fox Subdivision, located on the east side of the 2300 block of Browns Lane, Jonesboro, Arkansas. In addition this letter should serve as response to certain questions that have arisen from prior Public Hearings and written correspondence along with clarification to changes made to the Site Development Plan.

Site Development Plan Changes

Access and Parking

The Access driveway will consist of a concrete curb and apron at the Browns Lane entrance and the remaining driveway surface will be of asphalt material. The site is designed to accommodate Service vehicle parking along with turn-about space so all vehicles exiting the site will enter Browns Lane in a forward position.

Fencing and Screening

The new site plan reflects an 8' high solid wooden fence along the west and north portion of the site including the gate area. This should provide a solid opaque screening from any point of visual view from Browns Lane. The south perimeter is bordered by an existing 8' high mature hedgerow and the east side is buffered by a 30' high tree line with underbrush.

Landscaping

The new site plan reflects a landscape design featuring a mulched flowerbed with flowering ornamental trees lining the opaque wooden fence backdrop. In addition, linear flowerbeds will line Browns Lane and a display of shrubs and perennial grasses will provide attractive landscaping to the road right of way.

Lighting

At the present time this site will not require continuous lighting in the form of streetlights, floodlights or any other nightlights. Beacon lighting of the tower is determined by the FAA and unless required, this tower will not have Beacon lights.

2/17/03
H

JUDGE:

Martha Secrease 935-5802

CLERKS:

Carroll Gott 932-2744
Dorothy Johnson 972-5177
Barbara McCauley 932-2324

ALTERNATES:

Alma Burk 935-5824
Clyann Ellis 932-1058
George Penter 932-4859
Lawrence Schneider 932-4469
Roy Secrease 935-5802

A voice vote was taken resulting in all members voting aye with the exception of Councilman Province. Those members voting aye were: Farmer, Hargis, Moore, Williams, Perrin, Street, Young, Dover, Copeland, McCall, and Roddy. The resolution was assigned number 2003:13.

Councilman Farmer moved, seconded by Councilman Hargis to table a resolution authorizing acceptance of state planning and research funds from the Arkansas Highway and Transportation Department for the establishment of a Metropolitan Planning Organization (MPO). The decision was made to postpone the resolution until more information could be provided about the MPO. A voice vote was taken resulting in all members voting aye. Those members voting aye were: Farmer, Province, Hargis, Moore, Williams, Perrin, Street, Young, Dover, Copeland, McCall, and Roddy.

*

Councilman Young moved, seconded by Councilman Street to refer the Conditional Use Permit for The Merritt Group (Joel Taylor, Proprietor) back to the Metropolitan Area Planning Commission. City Planner, Glenn Batten explained the property owner must sign the application for conditional use and this requirement had not been met. A voice vote was taken resulting in all members voting aye. Those members voting aye were: Farmer, Province, Hargis, Moore, Williams, Perrin, Street, Young, Dover, Copeland, McCall, and Roddy.

Councilman Moore moved, seconded by Councilman Street to pull Bid No. 2003:02 – Street Sweeper for the Street Department until the next council meeting, March 3, 2003. A voice vote was taken resulting in all members voting aye. Those members voting aye were: Farmer, Province, Hargis, Moore, Williams, Perrin, Street, Young, Dover, Copeland, McCall, and Roddy.

Councilman Young moved, seconded by Councilman Street to refer the reappointments of Harry Hardwick (Ward 3) and Kathleen Pruitt (Ward 5) to the City Water and Light

The Merritt Group

February 12, 2003

The Honorable Hubert Brodell, Mayor
City of Jonesboro Aldermen
515 West Washington Avenue
Jonesboro, AR 72401

RE: MAPC Agenda Item - Conditional Use Permit - The Merritt Group

Dear Mr. Mayor and Aldermen:

We are writing today to request that the City Council of Jonesboro arrange an appeal hearing to be held by the City Council of Jonesboro. We wish to appeal the outcome of the voting for item number two on the MAPC agenda on 02/11/03.

An application was submitted to the City for a Conditional Use Permit for the installation of a communication tower to be located on Brown's Lane, just north of The Frame House. The land is under contract for sale with the contingency that the Conditional Use Permit be approved prior to consummation of the transaction.

Following discussion of the item by the City staff, our representative, and the commission members, a motion was made and seconded to approve the request. Upon completion of the voting, the result was 4 in favor, and 2 opposed. There was no opposition to the request present. There is currently one vacant seat on the MAPC, one member was absent, and the "Chair" did not vote. By ordinance, five affirmative votes are required for approval of this request. Though a simple majority of the votes of those members present was obtained, the motion failed. No further motion was made, and the item was concluded with no additional action. The failure of MAPC to approve the application is arbitrary, capricious, and contrary to City, State, and Federal law.

A similar presentation as was presented at the MAPC meeting last night will be presented to the City Council during the Appeal Hearing. All questions posed by the City staff will be addressed, and if any Aldermen have questions, we will attempt to address those as well, as they are asked.

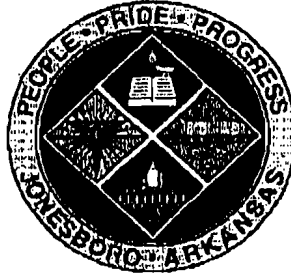
Thank you for your time and attention.

THE MERRITT GROUP



Joel Taylor
Sole Proprietor

50 North Main, Suite 3 Eureka Springs, Arkansas 72632 phone (479) 363-9911 fax (479) 363-9913



DEPARTMENT OF PLANNING, INSPECTION, AND CODE ENFORCEMENT

REPORT ON CONDITIONAL USE CASE CU03-02

DATE: Friday, April 04, 2003
TO: Metropolitan Area Planning Commission
FROM: Glenn Batten, AICP
City Planner
SUBJECT: 3800 Block of Browns Lane
Proposed Communications Tower

CASE FACTS

Hearing Date: April 15, 2003

Property Identification: East side of 2300 block of Browns Lane north of Ecumenical Dr.
Tract C of the M. J. Fox Subdivision

Land Area: 0.26 acre

Property Owner of Record: M. J. Fox

Applicant: Merritt Group (Joel Taylor)
According to information provided by Alltel, Merritt Group is providing site location and acquisition services to MoArk Communications, the eventual owner of the communications tower if this conditional use application is approved. MoArk plans to lease tower space to Alltel and to other communications carriers.

Representative: Hamman Newell Engineering (sealed by George Hamman).

Current Zoning: C-3

Action Requested: Approval of a conditional use to permit the construction of a communications tower.

NOTIFICATION OF PUBLIC HEARING:

Signs notifying the public of a public hearing are not required in cases requesting a conditional use. The petitioner has not presented

evidence of notification of the date, time and place of the public hearing to surrounding property owners. The Zoning Ordinance requires that evidence of notification be provided to the City Planner not later than ten days prior to the date of public hearing. Notice of public hearing was published in *The Jonesboro Sun*.

CHARACTER OF ADJACENT PROPERTY:	Land Use	Zoning
North	Vacant Land	R-1
South	Commercial Building Multi-Family Residential	C-3 R-3
East	Vacant Land	C-3
West	Vacant Land	R-1

Other Case Facts (based on information provided by the applicant).

1. The tower is proposed to be a lattice type with a height less than 150 feet.
2. A wind-load factor on the proposed tower is projected to be 80 mph. (Note: MAPC has required two other towers to have a wind load factor of 110 mph and has required evidence from the tower manufacturer that the tower would collapse within itself).
3. The tower is proposed to be designed to accommodate antennae of four communication carriers.
4. Only directional antennae will be allowed to locate on the tower.
5. The applicant states: "The primary carrier on this tower is Alltel. There is not a formal letter of intent available, however, Alltel issued a work order to seek the necessary approvals. Alltel will not enter into a binding agreement until all necessary approvals are obtained."

ANALYSIS

This analysis is based on a review of the case facts and information provided by the petitioner and application of "Development Standards and Review Guidelines set forth in Section 14.24.02 of the Jonesboro Zoning Ordinance (see page 61). The following conclusions are drawn:


1. A communication tower is listed as a conditional use in the Use Table for Commercial & Industrial Districts (page 34 of the Zoning Ordinance). Based on preliminary information submitted by the applicant, the design of the site meets all applicable provisions of the C-3 district except for parking.
2. The applicant does not address the issue of how the communications tower would be designed, located, constructed and operated so as to protect public health, safety and welfare. The site is so small that sufficient setback from adjoining properties is not possible.
3. The applicant does not provide evidence showing the reason for choosing this particular location, how this location compares with other sites that were considered, how this site is compatible with the surrounding area, and whether the site might adversely affect other properties in the area.
4. The applicant does not include a plan for screening the base of the proposed tower using landscaping and other materials.

5. The applicant has not provided a protocol for monitoring radio frequency emissions and reporting findings to the city on a regular basis.
6. Brown's Lane is one of the more attractive streets in the city. Location of a communications tower in the manner proposed would likely depreciate the appearance and desirability of the street and surrounding area.

RECOMMENDATION.

The need for communications towers to hold antenna for wireless devices is rapidly growing as new products are introduced to the market. This need must be balanced against concerns about the adverse impact these facilities may have on property values, appearance, health and safety of the surrounding neighborhood. It incumbent on the City that care be taken to insure that new communication towers are optimally located to allow a number of communication carriers to improve the coverage and capacity of their service by co-locating on a single tower rather than allowing the proliferation of multiple towers throughout the city.

This petition has not been justified. I recommend that it be denied.



Glenn Batten/AICP
City Planner

4/11/03

Date

Chapter 14.24

Conditional Uses

Sections:

- 14.24.01 Nature and Description
- 14.24.02 Development Standards and Review Guidelines
- 14.24.03 Procedure for Authorizing
- 14.24.04 Effect of Approval

14.24.01 Nature and Description. Certain uses may or may not be appropriately located within various districts due to their unusual or unique characteristics of operation and external effects. Given their unusual character, analysis and judgment of the consequences of each development and use must be given so as to provide for such reasonable conditions and protective restrictions as are deemed necessary to protect the character and integrity of the area in which uses are proposed to be located. Such uses are listed under the various districts herein as "conditional uses," and may be located in the district or districts so designated only in accordance with the procedure described herein.

14.24.02 Development Standards and Review Guidelines. All development shall be designed in such a way as to minimize any potential negative impact on the surrounding area. Special attention shall be given to buffering commercial developments from adjacent single-family areas. Design of the internal traffic circulation system, ingress and egress, off-street parking, loading and pedestrianways shall be sensitive to such conditions as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, and the proper relationship of different land uses. Landscaped areas shall be provided to protect water quality, and reduce erosion, heat and glare. Such areas shall be maintained in an attractive condition. Existing trees on a development site shall be retained where possible. Screening, open space, or other buffer may be required to give adequate separation between uses which are not compatible and shall also be provided for the beautification and enhancement of the property.

In carrying out the purpose of this section, the following development standards and design specifics shall be subject to review and approval. The appropriateness of these standards shall be determined for each specific conditional use location.

- (a) The proposed use is within the provision of "conditional uses" as set out in this Ordinance.
- (b) The proposed use conforms to all applicable provisions herein set out for the district in which it is to be located.
- (c) The proposed use is so designated, located and proposed to be operated that the public health, safety and welfare will be protected.

- (d) The proposed land use is compatible with and will not adversely affect other property in the area where it is proposed to be located.
- (e) The size and shape of the site, including the size, shape and arrangement of proposed structures, as well as signage related thereto, is in keeping with the intent of this Ordinance.
- (f) The proposed ingress and egress, internal circulation system, location and amount of off-street parking, loading and pedestrianways are sufficiently adequate, and not inconsistent with requirements of this Ordinance.
- (g) The proposed landscaping and screening of the proposed use are in accordance with provisions of this Ordinance.
- (h) Safeguards proposed to limit noxious or offensive emissions, including lighting, noise, glare, dust and odor are addressed.

14.24.03 Procedure for Authorizing. The following procedure is established to integrate properly the conditional use with other land uses located in the district. These uses shall be reviewed and authorized or rejected under the following procedure:

(a) Application. An application shall be made by the property owner and filed with the city planner, upon forms prescribed for that purpose, accompanied with the appropriate fee established by the City Council to defray processing costs. The application shall be accompanied by graphic representation showing the location and proposed use of the site, along with such other descriptive material necessary for decision-making. Such may include, but is not limited to: preliminary site plans showing proposed uses and structures; proposed ingress and egress to the site, including adjacent streets; proposed off-street parking and landscaping; lighting and signage; a preliminary plan for provision of sanitation and drainage facilities; and proximity of adjacent uses and buildings.

Each application shall be verified by at least one of the owners of the property proposed to be changed, attesting to the truth and correctness of all facts and information presented with the application.

The filing deadline for inclusion on the planning commission agenda shall be the 17th day of the month preceding the planning commission meeting. Should the 17th fall on a weekend or holiday, the next following workday shall be the filing deadline.

(b) Notice. Upon determining that an application is proper and complete, the city planner shall insure that the matter is set for public hearing before the planning commission. The city planner shall be responsible for insuring that, pursuant to law, at least fifteen (15) days notice of the time, place, and subject of such hearing is published in a newspaper of general circulation in the city.

The applicant shall present evidence to the city planner, at least ten (10) days prior to the required public hearing, that all property owners within two hundred feet (200') of the