

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT**

#18

Redacted 4/15/2008

CASE NUMBER: S.U.P. 08-209

L.U.C.B. MEETING: March 13, 2008

LOCATION: South side of Vanuys Rd; 203 feet east of Catalina St

OWNER OF RECORD: Greater Life Missionary Baptist Church

LESSOR/APPLICANT: Tower Ventures V, LLC

REPRESENTATIVE: Billy Orgel

REQUEST: Cell Tower (CMCS - 160 ft. monopole, with flush-mounted antennae)

AREA: 1.73 Acres

EXISTING LAND USE & ZONING: Church Property in the Duplex Residential (R-D) District

SURROUNDING USES AND ZONING:

North: Across Vanuys single-family residences and duplexes in the R-D District.

East: Single-family residences in the R-D District.

South: Single-family residences in the R-D District fronting on Catalina, Rhodes and Minor Cove.

West: Single family residences in the R-D District fronting on Catalina.

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION AS AMENDED
Approval, with Conditions**

CONCLUSIONS

- 1. This application revisits the Sherwood neighborhood where final arrangements could not be made to construct a tower on property on previously approved site near Prescott Road and Rhodes Avenue (S.U.P. 05-215)*
- 2. Since apparently all nearby alternative sites, have been determined to be unavailable, OPD is willing to support this site as the only practical alternative.*
- 3. Considering the disadvantages of site staff believes that the location of the tower on the site needs to be fine tuned and the landscaping needs to be enhanced.*

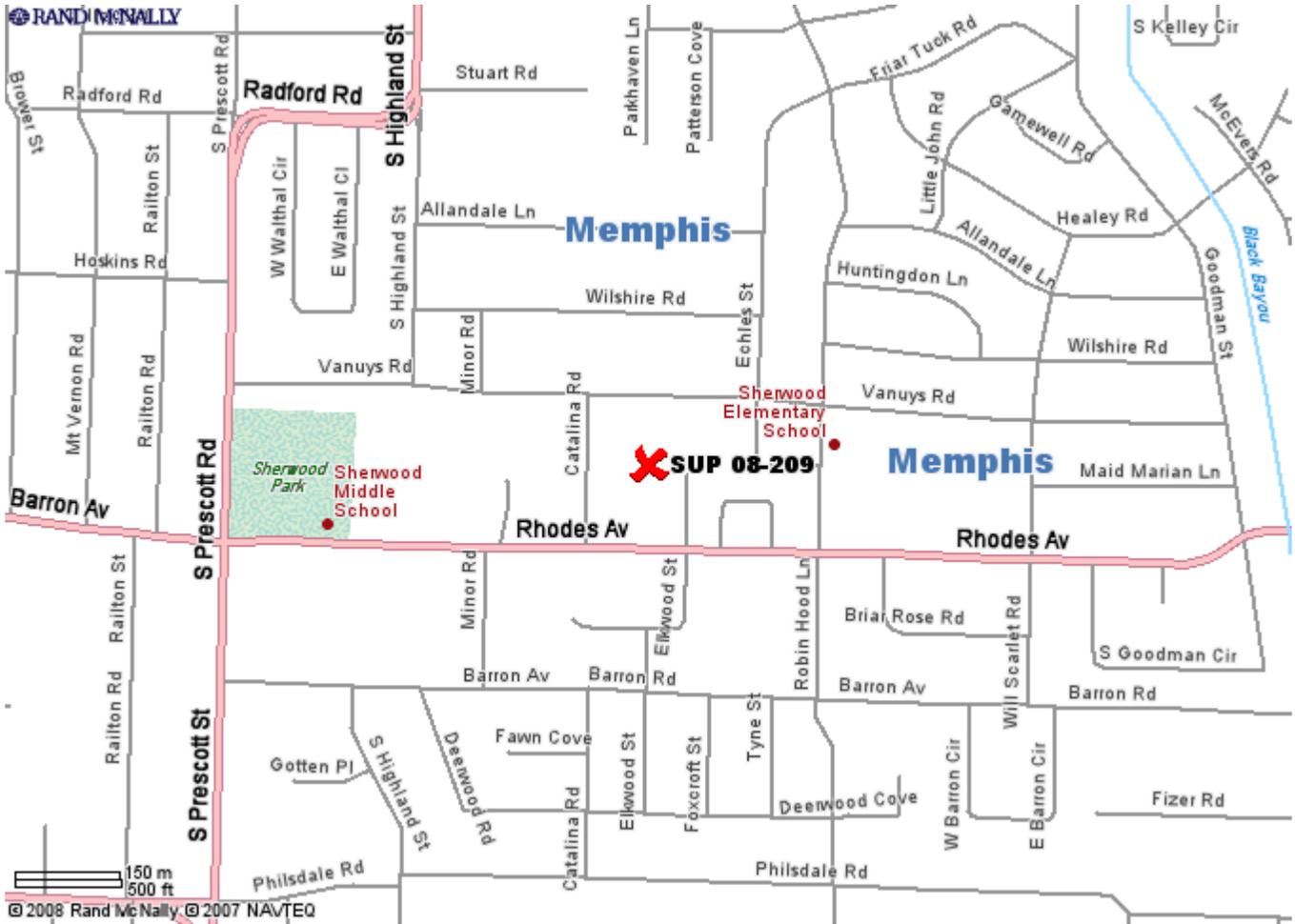


Figure 1: VICINITY MAP
LOCATION OF SUBJECT PROPERTY
(Licensed by Rand McNally & Company for limited distribution)

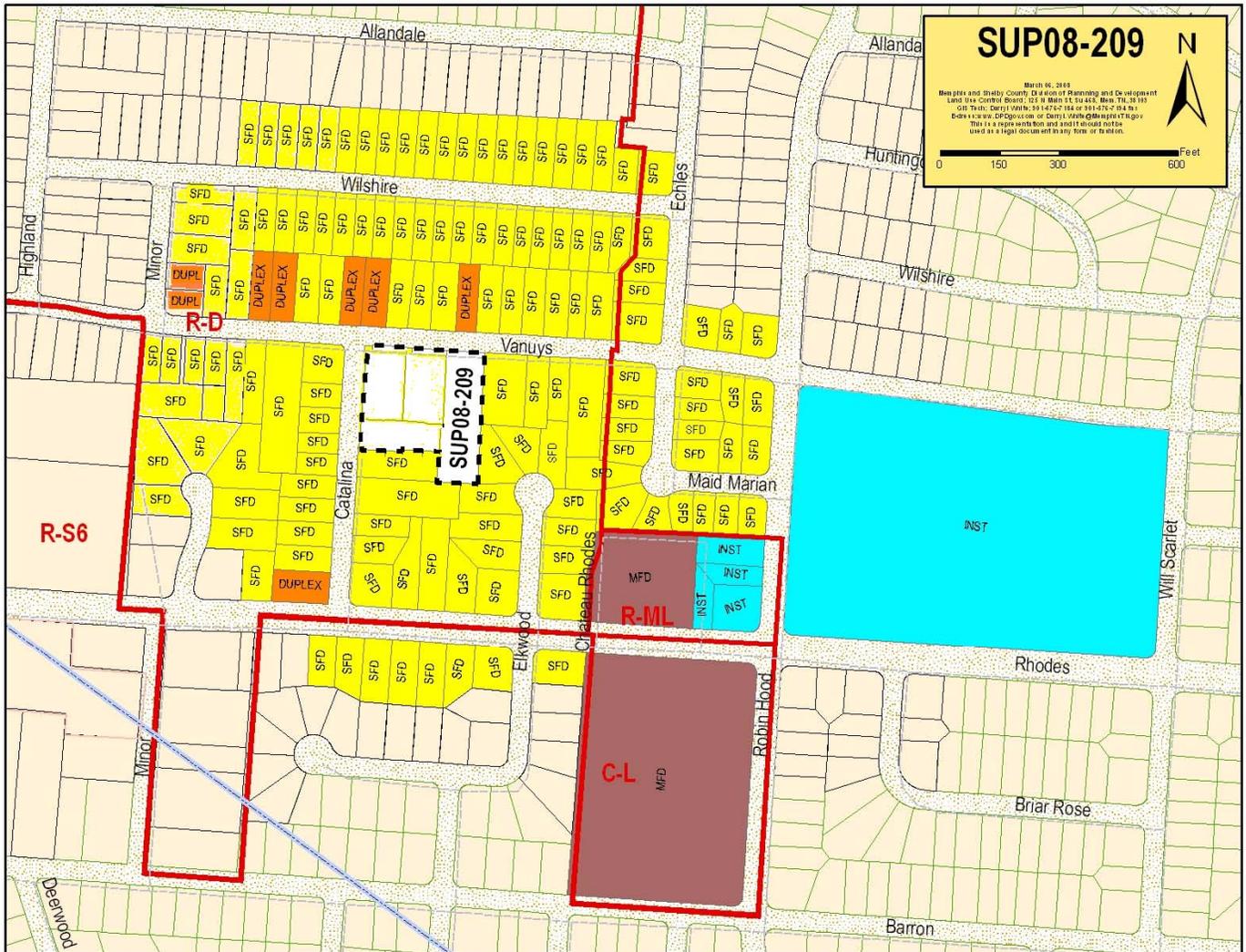


Figure 2: Land Use and Zoning in the Vicinity



**Figure 3: Overhead View of Vicinity
with entire multi-parcel church site outlined**



Figure 4: Overhead view of subject property as defined by applicant

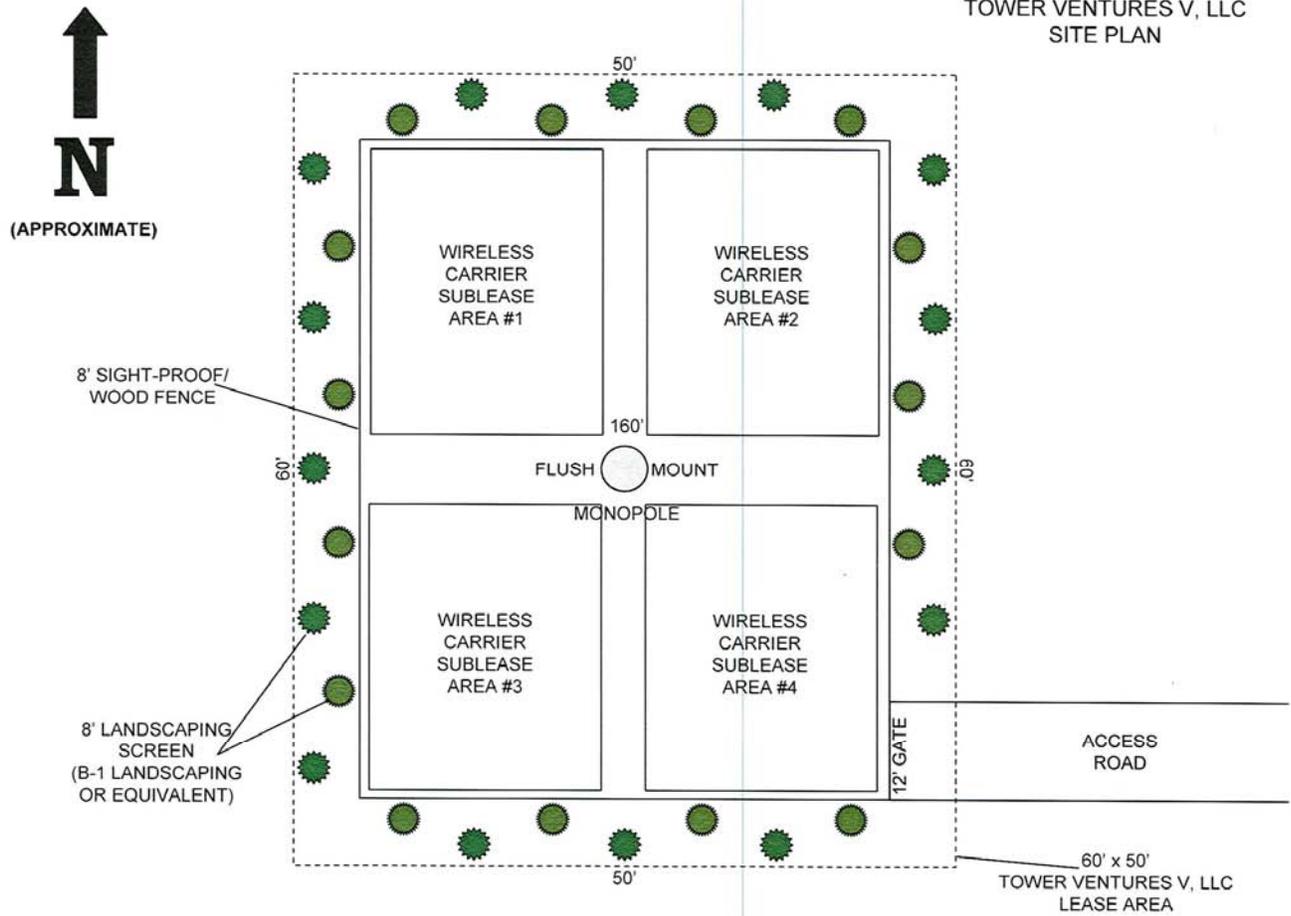
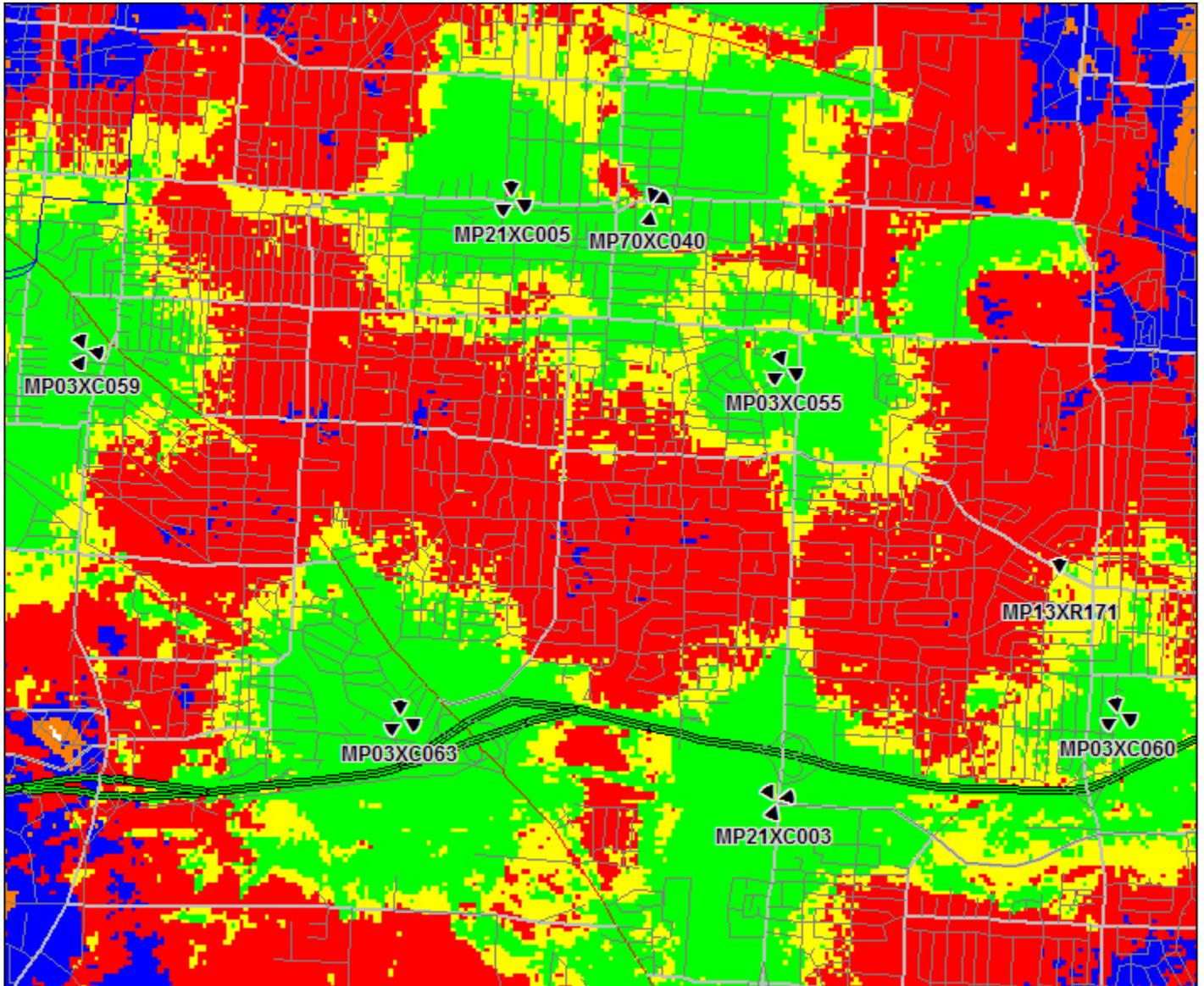
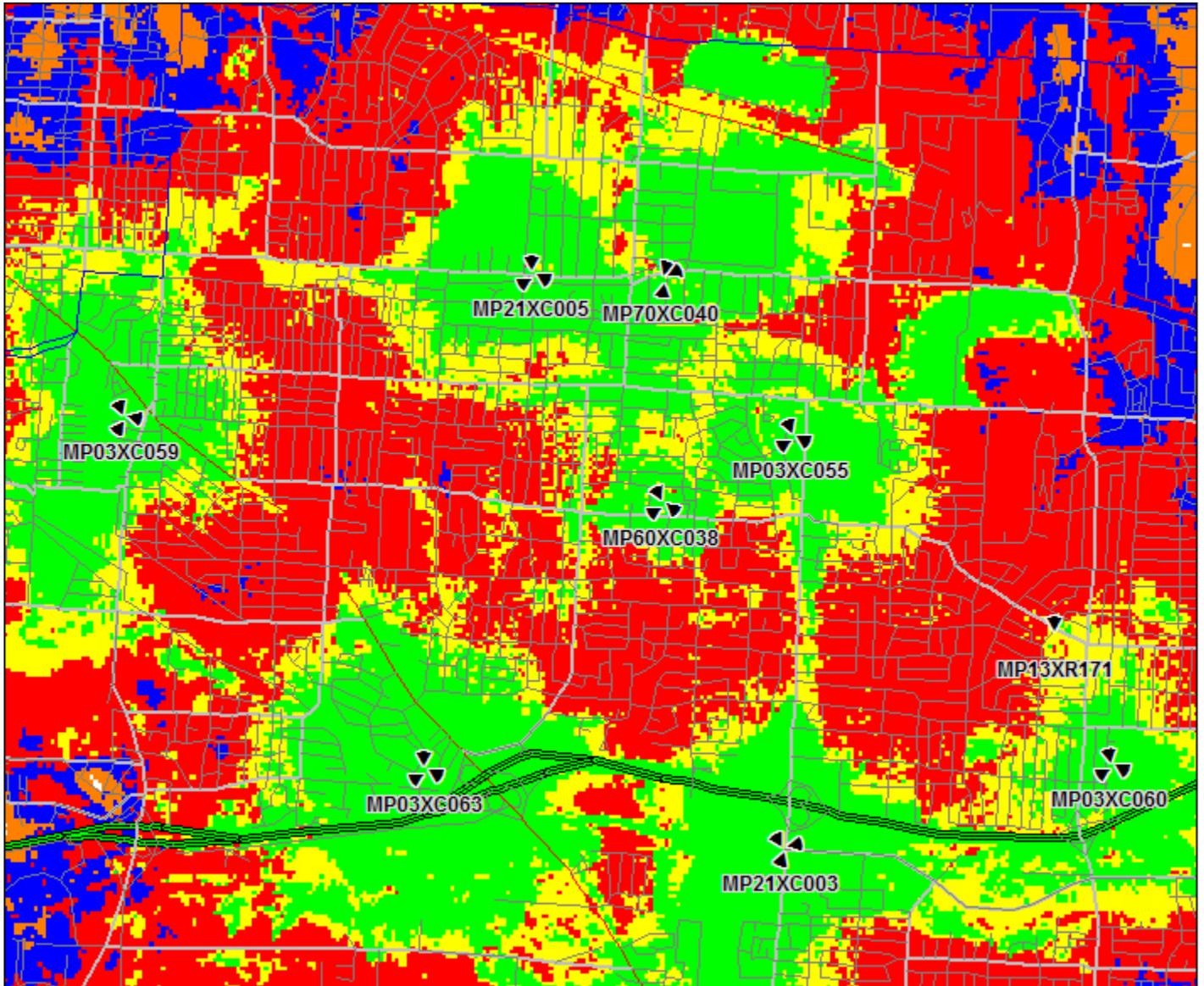


Figure 6: Proposed Site Plan – Detail for Proposed Leased Parcel



**Figure 7: Model of Current Coverage
By Prime Carrier / Tenant for Proposed Tower
(The tower site is at the center of this image)**



**Figure 8: Model of Proposed Coverage
By Prime Carrier / Tenant Using The Proposed Tower
(The tower site is at the center of this image)**



Figure 9: Access to the Tower Site Would Go Through Existing Parking Lot



Figure 2: Duplex at 3598 -3600 Vanuys is Directly Across the Street from the Cell Tower Access Drive

Site Characteristics

The subject property consists of a 1¾ acre site irregularly-shaped tract located on the southeast corner of Vanuys Road and Catalina Street. It includes approximately 310 feet of frontage along Vanuys Road with property extending southward from the street to a depth of 192 feet. A church building occupies roughly the eastern 2/3 of the site; and a church-operated school in a building constructed as a residence, occupied the eastern 1/3 of the site. However the eastern 1/3 of the property extends back to a depth of 342 feet. (Just the lot representing this eastern 1/3 of the site was included in the application.)

Vicinity and Neighborhood

The subject property sits in the middle of a neighborhood, surrounded by single-family residences with a few duplexes located to the north on the opposite side of Vanuys Street. It is part of a church campus that includes a school.

Proposed Development

The applicant, Tower Ventures V, LLC. wishes to develop a cell tower site on the eastern 1/3 of the subject property, in the area behind the church. A unnamed carrier is seeking new service location based their coverage as indicated in the before and after propagation maps as shown in Figures 7 & 8. indicate the situation that would be remedied by the tower. The applicant is requesting a tower height of 160' feet, which would permit the use of the tower by a certain number of additional collocated antennae arrays. The proposed installation may be considered a replacement for a cell tower previously approved near Prescott Road and Rhodes Avenue (S.U.P.05-215) on a church site. The applicant indicates that subsequent to City Council approval of that location in 2005, the church became reluctant about the project and the applicant was unable to conclude the arrangement.

The specific location would be on a area of open space (roughly 100 feet by 125 feet) located behind the church on the eastern 1/3 of the tract. The leased parcel location for the cell tower and ancillary equipment would be in the southwest corner of that area in relative proximity to a house immediately to the west, fronting on Catalina Street and to the east fronting on Minor Cove. Access would be provided through the church parking lot.

Planning Issues

A Commercial Mobile Communications Service (CMCS) tower (commonly known as a cell tower is allowable in the Agricultural (AG) District, subject to certain particular conditions which apply to this use¹; a set of general conditions that apply to all special use permits²; a unique set of conditions

¹ [Standards for CMCS Towers]

v. CMCS facilities subject to the following additional standards:

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

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- (2) The location, size and design of such facilities shall be such that minimal negative impact results from the facility. Any application for a new CMCS tower shall not be approved nor shall any building permit for a new CMCS tower be issued unless the applicant certifies that the CMS equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or other structure due to one or more of the following reasons:
 - (a) The planned equipment would exceed the structural capacity of existing and approved structures, considering existing and planned use of those structures, and those structures cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.
 - (b) The planned equipment would result in technical or physical interference with or from other existing or planned equipment and the interference cannot be prevented at a reasonable cost.
 - (c) There are no appropriate existing or pending structures to accommodate the planned equipment, taking into account, among other factors, the applicant's system requirements.
 - (d) Other reasons that make it impractical to place equipment planned by the applicant on existing and approved structures.
 - (3) Applications for CMCS facilities to be located on publicly owned and/or leased properties, including without limitations, public parks, the following criteria shall apply:
 - (a) The CMCS facility will not unduly interfere with the functions or aesthetics of the city park or property.
 - (b) A CMCS facility shall not be located on any public park less than ten acres in size.
 - (c) Minimum distance between any CMCS facility and any playground shall be equal to 1 1/2 times the height of the tower.
 - (d) The use of an existing tower or existing support structure is not technically, structurally, economically and/or financially feasible.
 - (e) The proposed facility has adequate capacity to handle a minimum of three additional users.
 - (f) All towers shall be a "stealth" application or consistent with the natural or built environment or the site. Landscaping and screening may be required in addition to the minimum requirements of this ordinance.
 - (g) Obstruction lighting and/or marking shall not be permitted in public parks or on public school properties. On other public properties, proposed lighting may be approved by the city council and/or county commission as an element of the special use permit site plan and conditions.
 - (h) Any CMCS facility which has ceased operations for a period of 180 continuous days shall be dismantled and removed from the site at the owner's expense. Prior to the issuance of a building permit for such CMCS facility, adequate financial security not to exceed \$20,000.00 shall be posted with the building official to assure the dismantling, removing and restoring of the public property/park upon which the CMCS facility will be located.
 - (i) The planned equipment will not interfere with emergency communications including without limitation those of the Memphis Fire and Police Departments, the county fire department and/or the county sheriff's department as substantiated through a RF (radio frequency) study. If interference occurs, proper remediation steps shall be taken.
 - (4) Any proposed tower shall be structurally designed to accommodate at least three additional CMCS sectorized antennae array if at least 100 feet in height, at least five additional CMCS sectorized antennas if at least 150 feet in height or at least six additional CMCS sectorized antennas if at least 170 feet in height. Collocated CMCS antennas shall be placed on a structure in such a manner as to avoid interference with or impairment of operations of existing antennae or other uses.
 - (5) Nothing in these rules and regulations shall obligate the owner of an existing tower to collocate additional antennas on such tower or be construed to interfere with or limit the rights of parties to set rent or establish other terms and conditions of the shared use of a CMCS tower or facility.
 - (6) The minimum setback requirement for support structures including associated attachments shall correspond to the zoning district in which they are located, except that a minimum buffer equal to the height of the tower shall be maintained between any support structure (excepting sites incorporating stealth design) and any single-family residentially zoned or used property line.
 - (7) Accessory facilities shall be permitted but may not include offices, long-term vehicle storage, other outdoor storage, or broadcast studios, except for emergency purposes or other uses that are not needed to send or receive transmissions.
 - (8) Existing on-site vegetation shall be preserved to the maximum extent practicable and shall be supplemented as required by the office of planning and development as necessary. Where the site abuts residentially developed land, residential zoning districts, the residential portion of an approved planned development, or public land or streets, the site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and within 40 feet of the site boundary. Alternatives such as walls or fences may be permitted based on security or other reasons.
 - (9) Security fencing shall be required around the base and guy anchors of any towers.
 - (10) Towers shall not be artificially lighted unless:
 - (a) Required by the Federal Aviation Administration or other governmental authority;

tailored to the site, and a detailed site plan. Under most circumstances a final requirement is the approval of a legislative body, in this case the Memphis City Council

Cell towers are often necessary in residential areas but never popular. When, as in this case, the property borders residential land, a “stealth” tower design for residential compatibility is required according to current policy. The common stealth design is the slick-stick design, with flush-mounted antennae. However in this case, the site is in such close proximity to the surrounding residences that OPD believes that more neighborhood friendly design is called for --- specifically a mono-pine of similar quality to the original benchmark monopine located on the north side of Walnut Grove, west of Mendenhall.

One of the functions of the OPD staff review is to determine whether another location would be superior. A review of alternative locations has been conducted, including two nearby public school Sherwood Elementary and Sherwood Middle. Based on this review, it appears that all nearby alternative sites have apparently been determined to be unavailable. The Federal Telecommunications Act of 1996 does not permit local government regulation to a degree that excludes wireless carriers. In the absence of a specific

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- (b) Circumstances make lighting appropriate for safety or other reasons unique to a specific application that are set forth in that application, but in no case shall any lighting shine into adjacent residential structures.
 - (11) The application for a special use permit approval shall include the following:
 - (a) A site plan drawn showing the property boundaries, tower, guy wire anchors (if any), existing structures, proposed transmission buildings and/or other accessory uses, access, parking, fences, a landscaping plan and existing abutting land uses around the site.
 - (b) A study from a professional engineer which specifies the tower height and design, including a cross-section of the structure, demonstrates the tower's compliance with applicable structural standards, including a certification that the tower will withstand at a minimum sustained winds in accordance with the appropriate building code, and a description of the tower's capacity, including the number and type of antennas which it can accommodate.
 - (c) Written statements that the proposed tower will comply with regulations administered by the Federal Aviation Administration, Federal Communications Commission, and all applicable governmental bodies, or that the tower is exempt from those regulations.
 - (d) A letter of intent committing the tower owner and his or her successors to allow shared use of the tower, if capacity exists, based on existing and planned use, and if a future applicant agrees in writing to pay any reasonable charge of shared use, the potential use is technically compatible and the future applicant is in good standing.
 - (12) The minimum setback requirements of chart 2 shall apply to the equipment, structures, and other buildings which are auxiliary to functions of the CMCS tower except as specified in 9v.(6) of this ordinance. Exceptions to the minimum setback requirements may be permitted. The tower height shall not be used to calculate the minimum setback requirements. The height restrictions of chart 2 do not apply to tower height and the height permitted for each new application shall be set on the basis of its own merits.
 - (13) Any CMCS tower and equipment shall be removed no later than 180 days after ceasing operations.

2 [Standards of General Applicability]

1. That the proposed building or use will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.
2. That the proposed building or use will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations.
3. That the proposed building or use will be served adequately by essential public facilities and services such as highways, streets, parking spaces, drainage structures, refuse disposal, fire protection, water and sewers; or that the persons or agencies responsible for the establishment of the proposed use will provide adequately for such services.
4. That the proposed building or use will not result in the destruction, loss or damage of any feature determined by the legislative body to be of significant natural, scenic or historic importance.
5. That the proposed building or use complies with all additional standards imposed on it by the particular provision of this section authorizing such use.

rationale for widening the search for alternative sites, OPD is willing to support this site as the only practical alternative.

In addition, OPD staff has some concerns about the design of the tower site and the proximity of the site to nearby residences. The proposed slick-stick design would satisfy the ordinance requirement for a “stealth design” However OPD believes a better stealth design in this kind of situation would ordinarily be a monopine, with a maximum height of 130 feet. However the applicant makes the argument that a monopine is a more massive structure than the “slick stick” design (flush-mounted antennae). The applicant also indicates the property owner would prefer stick design. OPD would support a neighborhood-based consensus in favor of the monopine. If there is no such consensus, OPD will not object to the slick-stick design in this situation, but will recommend that the landscaping should be enhanced by planting tall maple trees around the tower to mitigate the visual impact of the structure.

In addition, OPD staff would support the installation of a standard streetscape planting screen the entire length of the church parking lot and street, with any appropriate modification that the detail of this site may require.

RECOMMENDATION: **Approval, with conditions**

PROPOSED SITE PLAN CONDITIONS

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

1. The maximum tower height shall be **one-hundred thirty feet (130')**, and the tower will incorporate the **“monopine”** design.

[Note: The applicant’s request is for a 160-ft. monopole, with a “slick stick” design]

2. The tower shall be free of all lighting, including aircraft hazard lighting, and shall be designed so as to avoid the necessity of such lighting under currently federal regulations.
3. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.
4. The tower shall be constructed within two (2) years of approval by the Shelby County Board of Commissioners. The Land Use Control Board may grant a time extension through the applicant filing a correspondence item application with public notice sent to all property owners within

- five-hundred (500') feet of the property.
5. The tower shall be structurally designed to accommodate at least **three (3)** additional sectorized arrays.
 6. A security fence, six feet (6') or more in height shall be constructed around the tower and associated equipment
 7. The tower operator shall install and maintain perimeter screening as follows: The site perimeter shall be landscaped with at least one row of deciduous trees, not less than two inches in diameter, measured three feet above the grade, spaced not more than 20 feet apart within 25 feet of the site boundary, as well as at least one row of evergreen trees and shrubs, at least five feet high when planted and spaced not more than five feet apart to form a solid shrub screen and within 40 feet of the site boundary. Supplementing the screen, the owner of the parent tract shall install and maintain a planting of Tree A [*species options to be specified*] around the perimeter of the above screen. An equivalent alternative may be substituted with the approval of the Office of Planning and Development.
 8. The owner of the parent tract shall install and maintain Plate A-2, or A-3 landscaping along Vanuys Road frontage, provided that equivalent alternatives may be substituted with the approval of the Office of Planning and Development.
 9. The access drive shall have an all-weather surface with asphalt pavement for the first 50 feet from [*the public right of way*].
 10. The location and design of the driveway access to [*the public right of way*]. shall be subject to the review and approval of the County Engineer including the construction of any culverts that made be needed.

GENERAL INFORMATION

Parcel Number:	058040 00003, (-001, -002 also part of parent tract)
Tower Coordinates:	35° 06' 01"N, 89° 56' 33"W
Street Address:	3599 Vanuys Road, 38111
Street Frontage:	Parent Tract: (<u>Vanuys - ± 305 feet; Catalina - ± 184 feet</u>)
Planning District:	Quince
Census Tract:	80
Annexation Status:	Annexation by Memphis in 1950
Zoning Atlas Page:	2140

DEPARTMENTAL COMMENTS

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

City Engineer:

1. The City Engineer shall approve the design, number and location of curb cuts.
2. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.
3. The developer should be aware of his obligation under 40 CFR 122.26(b)(14) and TCA 69-3-101 et. seq. to submit a Notice of Intent (NOI) to the Tennessee Division of Water Pollution Control to address the discharge of storm water associated with the clearing and grading activity on this site.

City Fire Division:

1. Should any carrier on this tower interfere with Emergency Communications, that carrier will remedy problem.

**City/County Health Department-
Pollution Control:**

The Water Quality Branch has no comments.

Environmental Sanitation:

No objections.

City Board of Education:

We looked at both the Sherwood [Middle and Elementary School] s and found in both instances there was just not enough room [to locate a cell tower on the site]. At the elementary school, the location of a tower between the school and the neighborhood would be too much of an encroachment on the residential, in our estimation. JZ

Construction Code Enforcement:

No comments received.

Memphis Light, Gas and Water:

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

- **It is the responsibility of the owner/applicant** to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- **It is the responsibility of the owner/applicant** to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities. No permanent structures will be allowed within any utility easements.
- Any proposed structures must comply with the **National Electric Safety Code (NESC)** and maintain minimum horizontal/vertical clearances from existing overhead electric facilities.
- **Landscaping is prohibited** within any MLGW utility easement. No trees, shrubs or permanent structures will be allowed within any MLGW utility easements.
- **It is the responsibility of the owner/applicant** to contact **TN-1-CALL @ 1.800.351.1111**, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc
- **It is the responsibility of the owner/applicant** to submit a detailed plan to MLGW Engineering for the purposes of determining the availability and capacity of existing utility services to serve any proposed or future development(s).
- **It is the responsibility of the owner/applicant** to contact the appropriate MLGW engineering area to determine if system improvements may be required and any related cost:
 - MLGW Engineering - **Residential Development:** 528-4858
 - MLGW Engineering - **Commercial Development:** 367-3343
- **It is the responsibility of the owner/applicant** to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

AT&T:

No comments.

Memphis Area Transit Authority (MATA): No comments received.

OPD-Regional Services:

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

OPD-Plans Development:

The proposed development is primarily surrounded by single-family residential homes, with the exception of a small area zoned local commercial (C-L) to the south. Moreover, it is incompatible with the character of the rest of the neighborhood and does not conform to the guidelines listed in Policy 48 of the Memphis 2000 Plan which discourages encroachment of intense uses on single family homes.

Memphis Park Commission: No comments received.

Neighborhood Associations:

Orange Mound Concerned Citizens	No comments received.
University District, Inc.	No comments received.



TOWER VENTURES V, LLC
TOWER DEVELOPMENT • SITE ACQUISITION • LEASING • MANAGEMENT

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web - www.towerventures.com

January 29, 2008

Memphis and Shelby County Office of Planning and Development
City Hall
125 North Mid-American Mall
Memphis, TN 38103-2084

RE: Letter of Intent for 160' Flush Mount Monopole Communications Tower at 3603 Vanuys

To Whom It May Concern:

Tower Ventures V, LLC of 4091 Viscount Avenue Memphis, TN 38118 proposes to construct a one hundred sixty foot (160') CMCS tower at 3603 Vanuys. The tower will be a flush mount monopole design and it will be built to support cellular communications and wireless data services. The tower will be built to support four (4) antenna arrays.

Tower Ventures V, LLC proposes to construct an eight-foot (8') wood sight proof privacy fence around the base of the tower and around the associated ground equipment. Tower Ventures also proposes to install an eight foot (8') wide landscaping screen around the perimeter of the fence.

There is a need for improved cellular coverage in this area of Memphis and this site is necessary because there is inadequate signal strength in the Sherwood Forest area. The CMCS equipment planned for the proposed tower cannot be accommodated on any existing structures because there are no appropriate existing structures or pending structures to accommodate the planned equipment, taking into account, among other factors, the licensee's system requirements. Therefore, the proposed tower is needed so that the licensee can provide better cellular coverage and can improve its E911 emergency services network. The citizens of Memphis benefit each time a licensee expands its network coverage because each site enhances the licensee's ability to provide E911 services.

Tower Ventures V, LLC appreciates the Memphis and Shelby County Office of Planning and Development's consideration of this application. Please contact me at (901) 794-9494 Ext 107 if you have any questions concerning this application.

Exhibit A-1: Letter of Intent (Page 1 of 2)

Sincerely,

A handwritten signature in blue ink, appearing to read "Craig Royal". The signature is fluid and cursive, with the first name "Craig" being more prominent than the last name "Royal".

Craig Royal

Tower Ventures V, LLC

ID #	PARCEL NUMBER	OWNER	<u>REASON FOR REJECTING</u>
A1	059088 00047, & -048	Memphis Park Commission	<i>Park site must be at least 10 acres in size according to zoning ordinance*</i>
A2	059088 00042, & -043	Memphis City Schools (Sherwood Middle School)	<i>School site appears to have insufficient room for a tower*</i>
B	058070 00001	Memphis City Schools (Sherwood Elementary School)	Owner unwilling
C	058006 00001C	Fellowship Of Believers In Christ Church	Owner unwilling
D1	058038 00027C	Michael Lofton	Property simply too small for tower
D2	058040 00021	Hosanna Christine Center, Inc.	Property simply too small for tower
E	058038 00014	Memphis Health, Education & Public Facilities Board	<i>Apartment complex appears to have insufficient room for a tower*</i>

**Items shown like this are observations by OPD staff. The other “Reasons for Rejecting” were provided by the applicant.*

Mr. David Adams and the Land Use Control Board:

Regarding: the application for a cell tower in the neighborhood of Sherwood Forest.

I am writing you asking that you deny this application as it will further adversely effect this struggling middle class neighborhood. As a property owner in this area I can tell you that any addition such as the one applied for will add to the demise of the neighborhood and lead to further decay of this area. This neighborhood is in a very tenuous development state I feel the approval of the application will facilitate property devaluation resulting in ruin of this neighborhood.

The citizens of this area need YOUR help in denying this application and protecting this neighborhood. Will you please represent this section of the community and deny this request. Don't destroy this area of the city of Memphis.

Thank you in advance for your help in representing the citizens' best interest by denying this application.

Sincerely,
Patrick "Rick" O'Leary
901.277.5784