



## REQUEST FOR BOARD ACTION

ITEM NO. 17.

**DATE OF MEETING:** March 17, 2014

**REQUESTED BY:** Ed McCarthy, Planner II, Planning & Community Development

**SHORT TITLE:** Resolution to Approve a Special Use Permit (SUP) for the Construction and Operation of a Telecommunication Tower.

**BACKGROUND:** Optima Towers IV, LLC, applicant, on behalf of D&J Properties Inc, owner, is requesting approval of a Special Use Permit for the construction and operation of a 250-foot self support wireless telecommunication tower. The property is located along the southern portion of Island Creek Road, approximately 400 feet south of the intersection of Royal Oaks Dr and US Highway NC HWY 210 W and may be identified as Pender County PINs 3273-12-6298-0000 and 3273-02-8391-0000. The property is zoned RP, Residential Performance, and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; telecommunication towers are permitted via Special Use Permit in the RP zoning district.

**SPECIFIC ACTION REQUESTED:** To Hold a Public Hearing and Consider the Approval of a Special Use Permit for a Telecommunication Tower.

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that:

the Board hereby (approved, modified, denied) a special use permit for a telecommunication tower, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Williams \_\_\_ McCoy \_\_\_ Brown \_\_\_ Tate \_\_\_ Ward \_\_\_

\_\_\_\_\_  
Chairman 03/17/2014

Date

\_\_\_\_\_  
ATTEST 03/17/2014  
Date

**PLANNING STAFF REPORT**  
**Special Use Permit**

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**SUMMARY:**

**Hearing Date:** March 17, 2014

**Applicant:** Optima Towers IV, LLC

**Property Owner:** D&J Properties Inc

**Case Number:** 11046

**Land Use Proposed:** The applicant is requesting the approval of a Special Use Permit (SUP) for the construction and operation of a telecommunication tower, as defined in the Pender County Unified Development Ordinance:

*TELECOMMUNICATION TOWER: A structure, including the tower, antennas, panels, microwave dishes, receiving dishes, equipment building, other transmitting and receiving components and other accessory structures, used for the wireless electromagnetic transmission of information, excluding structures utilized as satellite earth stations and structures utilized for amateur or recreational purposes such as ham radio or citizen band radio.*

**Property Record Number and Location:** The property is located along the southern portion of Island Creek Road, approximately 400 feet south of the intersection of Royal Oaks Dr and US Highway NC HWY 210 W and may be identified as Pender County PIN 3273-12-6298-0000 and 3273-02-8390-0000. There are two tracts associated with this request totaling approximately 28.11 acres, per a discussion with Amy Everett in the Pender County Tax Office (11/5/2013).

**Zoning District of Property:** The property is currently zoned RP, Residential Performance, and telecommunication towers are permitted via SUP in the RP zoning district.

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**PROJECT DESCRIPTION:**

Optima Towers IV, LLC, applicant, on behalf of D&J Properties Inc, owner, is requesting approval of a Special Use Permit for the construction and operation of a telecommunication tower on a tract of land currently being utilized for farm purposes. The proposed location is located along the southern portion of Island Creek Road, approximately 400 feet south of the intersection of Royal Oaks Dr and US Highway NC HWY 210 W.

The project is proposed to consist of the construction of a 250-foot self-support wireless telecommunication tower and supporting facilities. The tower, as proposed, is designed to accommodate five (5) additional communication carriers. According to the applicant's submitted documents, the facility will be located 3.02 miles away from the closest telecommunication tower greater than 75 feet in height.

Based on the height of the proposed telecommunication tower, the facility is required to provide a 250 foot setback from adjoining parcels of land that are residentially developed or are vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional, or from an adjoining local road separating the tower site from such a parcel based on Section 5.3.11.P of the Unified Development Ordinance. Similarly, the minimum distance between the tower and any other adjoining parcel or road must be equal to the minimum setback depth applicable in the zoning district, plus any additional distance necessary to ensure that the tower, as designed, will fall within the tower site.

*As proposed, the current location is in compliance with setback standards, as the tower is set back at least 250' from the nearest property boundary, with the exception of the western property line. Consequently, the applicant has proposed a conditional approval, contingent upon the western boundary*

line between 3273-12-6298-0000 and 3273-02-8390-0000 being dissolved, through a recombination submittal. The dissolution of the western boundary line would ensure that the tower meets the setback requirements.

The tower, as proposed, has set forth the following setbacks: northern front yard setback (440'), western side yard (>250'), southern rear yard (255') and (700'), and 1,230' from the eastern side yard.

Section 5.3.11.P of the Pender County Unified Development Ordinance sets forth specific use standards for Telecommunication Towers.

#### *Telecommunication Facilities*

- 1) *Co-located - Telecommunication antenna units that are attached to structures constructed for purposes other than supporting telecommunication equipment may be no taller than 30 feet or 30% of the structure's height. Co-located towers must comply with all relevant standards of this Article.*
- 2) *Freestanding - Freestanding telecommunication towers must comply with the following standards:*
  - a) *The minimum distance between the tower and an adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional, or from an adjoining local road separating the tower site from such a parcel, must be equal to the tower's height, but not less than 50 feet, nor less than the minimum setback depth applicable in the zoning district. This provision does not apply in relationship to any nonconforming residential use or the residence of a caretaker or watchman accessory to a permitted non-residential use.*
  - b) *The Board of Commissioners, through the Special Use Permit public hearing, may reduce the minimum distance required above on finding that a lesser distance will not be injurious to properties or improvements in the affected area, but in no case may the minimum distance be reduced to less than that equal to 50% of the tower's height, or 50 feet, nor less than the minimum required setback depth applicable in the zoning district in which the tower is located.*
  - c) *The minimum distance between the tower and any other adjoining parcel of land or road must be equal to the minimum setback depth applicable in the zoning district, plus any additional distance necessary to ensure that the tower, as designed, will fall within the tower site.*
  - d) *The distances referred to above must be measured from the outside dimensions of the tower, not from the guy anchors.*
  - e) *If the tower is more than 100 feet high, but less than 180 feet high, it must be engineered and constructed to accommodate at least one additional telecommunication user. If the tower is at least 180 feet high, it must be engineered and constructed to accommodate at least 2 additional telecommunication users. Provision of co-location sites on other towers is encouraged wherever feasible.*
  - f) *The base of the tower and each guy anchor must be surrounded by a fence or wall at least 8 feet high, unless the tower and all guy anchors are mounted entirely on a structure over 8 feet high. Except for its entrances, the fence or wall must be screened with plant material so that no more than two-thirds of its surface is visible, within 3 years after its installation, from a public street or from any adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional.*
  - g) *A buffer yard must be provided around the perimeter of the lease lot as in accordance with the requirements of Article 8, Landscaping & Buffering. A 40-foot-type C buffer yard is required along the inside perimeter of a leased lot or parcel for the utilization of telecommunication towers.*

- h) Radio, television, or other electromagnetic transmission or reception on other properties may not be disturbed or diminished.
  - i) The tower must meet the standards of the Federal Aviation Administration (FAA) for avoiding obstruction of navigable airspace and approaches to public airports (see Federal Aviation Regulations Part 77, as amended), and for marking and lighting structures to promote aviation safety (see FAA Advisory Circular 70/7460, as amended). Specifically, tower lighting must meet applicable FAA standards for either red obstruction lighting systems or dual lighting systems (red lighting for nighttime and medium-intensity flashing white lighting for daytime). If a tower is proposed to be located within 1,000 feet of a private use airport, the application must so indicate.
  - j) Output from the tower's antennas must meet the minimum standards of the Federal Communications Commission (FCC) relating to the environmental effects of radio frequency emissions.
- 3) Standards for Specific Zoning Districts
- b) Non-residential Districts - If the tower is more than 100 feet high, it must be located at least 1,000 feet from any other telecommunications tower greater than 100 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower was made, or that co-location on the tower will not technically satisfy the applicant's specific needs.

This Special Use Permit request has been evaluated for compliance with standards outlined in Section 5.3.11.P, Telecommunication Towers. Based on the applicants' submittal, the request is in conformance with items 1, 2. b, 2.d , 2.e, 2.f, and 3.b. In addition, the applicant accepts and acknowledges items 2.h, 2.j, and 3.a. The applicant has submitted a "Determination of No Hazard to Air Navigation", as it pertains to 2.i. All items will be reviewed during the Site Development review process. The applicant will be required to comply with 2.g during the site plan review process.

As proposed, the tower is not in compliance with 5.3.11 (P) 2. a. or 5.3.11 (P) 2. C. The western side yard setback is proposed to be within 250' of the property line. However, the applicant has proposed conditional approval, contingent upon a satisfactory dissolution of the side property line meeting the requirements of the Pender County Unified Development Ordinance (UDO).

Prior to the issuance of final zoning approval, a site development plan must be submitted and approved in accordance with applicable provisions of the Pender County Unified Development Ordinance. In addition, all other applicable permits and approvals must be obtained including inspections and health department regulation compliance.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
<b>MISCELLANEOUS USES</b>											
Telecommunication Facilities		SD	SD			SD	SD	SD	SD	SD	

**EVALUATION:**

- A. **Public Notifications:** Advertisements for the proposal have been placed in the *Pender-Topsail Post & Voice*. Adjacent property owners were notified by first class mail.
- B. **Basis for Granting SUP:** See attachment A for approval procedures (§3.12.3 of Unified Development Ordinance) and revocation procedures (§3.12.4 of Unified Development Ordinance).

- C. **Unified Development Ordinance Compliance:** The property is currently zoned RP, Residential Performance, and telecommunication facilities are permitted in the RP zoning district by Special Use Permit, as prescribed by the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses.
- D. **2010 Comprehensive Land Use Plan Compliance:** The subject property is classified as Suburban Growth in the *2010 Comprehensive Land Use Plan*. The Suburban Growth land use classification identifies those areas of Pender County where significant residential growth is expected to occur within the planning horizon. Areas designated as Suburban Growth are located primarily adjacent to municipal planning jurisdictions and within or near high growth, unincorporated areas of the County, i.e., Hampstead/Scotts Hill, Rocky Point, and portions of US 421 South. Suburban Growth designates areas where public water and public sewer are available or are planned in the near future.
- E. The SUP request may be supported by a policy within the *2010 Comprehensive Land Use Plan*:
- **Policy 1A.1.5** – *The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.*
- F. **Existing Land Use in Area:** The subject parcel is bordered to the north, west and southwest by mostly single family residential properties and wooded areas. The property to the east and south is heavily wooded and appears to be participating in the State of North Carolina's Present Use Value Program.
- G. **Site Access Conditions:** The proposed use will be proposing to access NC HWY 210 through an adjacent northern property. As proposed, this access will require the recordation of an access easement meeting the Pender County UDO standard and similarly, the new access will be subject to review and approval by the NCDOT.
- H. **Conditions To Consider In Issuing the Special Use Permit For This Project:**
1. The project shall comply with all requirements of the Pender County Unified Development Ordinance, specifically use standards outlined in Section 5.3.11.P, Telecommunication Facilities.
  2. Unless approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void, if a final zoning permit has not been issued for the project within 24 months.
  3. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
  4. The applicant shall meet all other local, state and federal regulations.
  5. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in effect for the duration of this permit.
  6. The applicant/owner shall be responsible for the removal of said telecommunications tower, if the aforementioned structure is abandoned for a period of 120 consecutive days. Costs incurred for removal of the structure shall be the responsibility of the applicant/owner.
  7. The Special Use Permit approval shall be contingent upon the dissolution of the western property line that ensures a setback meeting the requirements of the Unified Development Ordinance.
  8. As proposed, the access will require the recordation of a 45' access easement with a minimum 20' passable travel way through the parcel in which the access will bisect.

## **Attachment A**

### **3.12.3 Procedures for Reviewing Applications**

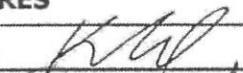
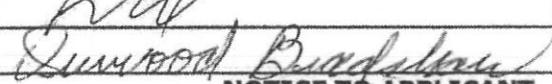
- A. The special uses, as specified in the various districts, may be established only after review and approval by the Board of Commissioners.

- B. The Board of County Commissioners, acting in a quasi-judicial manner and setting, shall hear evidence from the applicant and any interested members of the public.
- C. The Board of Commissioners shall hold a public hearing on the application for a Special Use Permit within sixty (60) days after the completed application is filed.
- D. The Administrator shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.
- E. All Special Use Permit applications must be presented to the Administrator for a determination of completeness.
- F. An appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination.
- G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:
  - 1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;
  - 2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
  - 3. The proposed use shall not constitute a nuisance or hazard;
  - 4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;
  - 5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;
  - 6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;
  - 7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and
  - 8. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

#### **3.12.4 General Provisions Concerning Special Use Permits**

- B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified.

## APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	SUP 11046	Date	10-28-13
Application Fee	\$ 500.00	Receipt No.	
Pre-Application Conference		Hearing Date	12-9-13
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Optima Towers IV, LLC	Owner's Name:	D&J Properties, Inc.
Applicant's Address:	PO Box 2041	Owner's Address:	1777 Kings Landing Road
City, State, & Zip	Mount Pleasant, SC 29465	City, State, & Zip	Hampstead, NC 28443
Phone Number:	843-324-9745	Phone Number:	910-270-2637
Legal relationship of applicant to land owner: Applicant is Lessee, as noted in Pender County Register of Deeds Book 4157, page 0001			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	3273-12-6298-0000 and 3273-02-8390-0000	Total property acreage:	23.76 28.32
Zoning Classification:	RP	Acreage to be disturbed:	.25
Project Address :	Island Creek Road, Rocky Point, NC 28443	NAICS Code:	
Description of Project Location:	Located in Northwest corner of parcel 3273-12-6298-0000 Site is accessed from Island Creek Road (Hwy 210) via a new access entrance from Hwy 210.		
Describe activities to be undertaken on project site:	Wireless communications facility with tower, including necessary access and utilities.		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature		Date:	9/28/13
Owner's Signature		Date:	9/28/13
<b>NOTICE TO APPLICANT</b>			
<ol style="list-style-type: none"> <li>1. Applicant must also submit the information described on the Special Use Checklist.</li> <li>2. Applicant or agent authorized in writing must attend the public hearing.</li> <li>3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.</li> <li>4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application</li> <li>5. <b>Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.</b></li> </ol>			

# HELLMAN YATES & TISDALE

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October 3, 2013

## **VIA FEDERAL EXPRESS**

Ed F. McCarthy, Planner I  
Pender County Planning and Community Development  
805 S. Walker Street  
Burgaw, NC 28425  
(910) 259-2110

RE: Optima Towers IV, LLC's proposed 250-foot self support wireless communication facility to be located on NC Highway 210, Hampstead, NC 28457

Dear Ed:

We are pleased to present this application for a 250-foot self support wireless communications facility to be located on NC Highway 210, Hampstead, NC 28457 on behalf of Optima Towers IV, LLC. The underlying properties are owned by D & J Properties, Inc. and D & J Properties of Hampstead and are designated as Pender County tax map numbers 3273-12-6298-0000 and 3273-02-8390-0000. If approved by the Board of Commissioners the property line will be abandoned and the two properties will be combined as one parcel. The properties are located in the Residential Performance (RP) district. This facility is desperately needed in order to provide adequate voice and advance data coverage to the surrounding area. We have taken the liberty of recasting the relevant sections of the Pender County Ordinance regarding wireless communication towers and antennas below with our response to the relevant section in bold:

### **5.3.11(P) Miscellaneous Uses - Telecommunication Facilities**

1. Co-located - Telecommunication antenna units that are attached to structures constructed for purposes other than supporting telecommunication equipment may be no taller than 30 feet or 30% of the structure's height. Co-located towers must comply with all relevant standards of this Article.

**Applicant accepts and acknowledges this provision. However, this provision does not apply, as this is an application for a new tower.**

2. Freestanding - Freestanding telecommunication towers must comply with the following standards:

- a. The minimum distance between the tower and an adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office &

Institutional, or from an adjoining local road separating the tower site from such a parcel, must be equal to the tower's height, but not less than 50 feet, nor less than the minimum setback depth applicable in the zoning district. This provision does not apply in relationship to any nonconforming residential use or the residence of a caretaker or watchman accessory to a permitted non-residential use.

**Applicant accepts and acknowledges this provision. As shown on Sheet Z01 of the Site Plans and Drawings, attached hereto as Exhibit "1" and incorporated herein by reference, the proposed 250-ft. self support wireless communications facility is set back 440 feet from the front property line; 250 feet from the western side property line; 1230 feet from the eastern side property line; and 700 feet from the rear property line.**

- b. The Board of Commissioners, through the Special Use Permit public hearing, may reduce the minimum distance required above on finding that a lesser distance will not be injurious to properties or improvements in the affected area, but in no case may the minimum distance be reduced to less than that equal to 50% of the tower's height, or 50 feet, nor less than the minimum required setback depth applicable in the zoning district in which the tower is located.

**This provision is not applicable, as the proposed tower meets the setback requirements in subsection (2)(a).**

- c. The minimum distance between the tower and any other adjoining parcel of land or road must be equal to the minimum setback depth applicable in the zoning district, plus any additional distance necessary to ensure that the tower, as designed, will fall within the tower site.

**The setbacks for the RP zoning district are 30 feet in the front, 10 feet to the sides and 25 feet to the rear. As shown on Sheet Z01 of Exhibit "1" the proposed 250-ft. self support wireless communications facility is set back 440 feet from the front property line; 250 feet from the western side property line; 1230 feet from the eastern side property line; and 700 feet from the rear property line, thus ensuring that, in the unlikely event that the tower should fall, it would fall within the parent parcel.**

- d. The distances referred to above must be measured from the outside dimensions of the tower, not from the guy anchors.

**Applicant accepts and acknowledges this provision.**

- e. If the tower is more than 100 feet high, but less than 180 feet high, it must be engineered and constructed to accommodate at least one additional telecommunication user. If the tower is at least 180 feet high, it must be engineered and constructed to accommodate at least 2 additional telecommunication users. Provision of co-location sites on other towers is

encouraged wherever feasible.

**The proposed self support wireless communications facility is 250-feet in height and is designed for five (5) communication carriers, as is shown on Sheet Z02 of Exhibit "1."**

- f. The base of the tower and each guy anchor must be surrounded by a fence or wall at least 8 feet high, unless the tower and all guy anchors are mounted entirely on a structure over 8 feet high. Except for its entrances, the fence or wall must be screened with plant material so that no more than two-thirds of its surface is visible, within 3 years after its installation, from a public street or from any adjoining parcel of land that is residentially developed or is vacant and zoned Rural Agricultural, Residential Performance, Manufactured Home, General Business or Office & Institutional.

**As shown on Sheet Z03 of Exhibit "1," the proposed self support wireless communications facility will be enclosed by a seven-foot-high chained link fence, topped with three strands of barbed wire as an anti-climbing device, for a total height of eight feet. In addition, please see Sheet Z06 of Exhibit "1," which shows the landscaping plan by Optima Towers IV. Optima will plant 30 Cypress Carolina Sapphires and 7 Dwarf Buford Hollies to screen the compound.**

- g. A buffer yard must be provided around the perimeter of the lease lot as in accordance with the requirements of Article 8, Landscaping & Buffering. A 40-foot-type C buffer yard is required along the inside perimeter of a leased lot or parcel for the utilization of telecommunication towers.

**Please see Sheet Z06 of Exhibit "1," which shows the landscaping plan by Optima Towers IV. Optima will plant 30 Cypress Carolina Sapphires and 7 Dwarf Buford Hollies to screen the compound.**

- h. Radio, television, or other electromagnetic transmission or reception on other properties may not be disturbed or diminished.

**Applicant accepts and acknowledges this provision.**

- i. The tower must meet the standards of the Federal Aviation Administration (FAA) for avoiding obstruction of navigable airspace and approaches to public airports (see Federal Aviation Regulations Part 77, as amended), and for marking and lighting structures to promote aviation safety (see FAA Advisory Circular 70/7460, as amended). Specifically, tower lighting must meet applicable FAA standards for either red obstruction lighting systems or dual lighting systems (red lighting for nighttime and medium-intensity flashing white lighting for daytime). If a tower is proposed to be located within 1,000 feet of a private use airport, the application must so indicate.

**The FAA Determination of No Hazard to Air Navigation is attached hereto as Exhibit "2" and incorporated herein by reference. As shown on the FAA Determination, the proposed self support wireless communications facility will employ a dual-medium**

**intensity lighting system.**

- j. Output from the tower's antennas must meet the minimum standards of the Federal Communications Commission (FCC) relating to the environmental effects of radio frequency emissions.

**Applicant accepts and acknowledges this provision.**

2. Standards for Specific Zoning Districts

- a. Residential Districts - Telecommunication towers in residential districts must comply with the following standards:
  - i. If the tower is more than 75 feet high, it must be located at least 1,500 feet from any other telecommunications tower greater than 75 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower has been made, or that co-location on the tower will not technically satisfy the applicant's specific needs.
  - ii. Buildings associated with the tower may not be used as an employment center for any worker (This provision does not prohibit the periodic maintenance or monitoring of equipment and instruments).

**The proposed self support wireless communications facility is 250' a.g.l. and is located 3.02 miles away from the closest tower that is more than 75 feet in height (a 300-ft. tower owned by Crown Castle). This information is shown on Sheet Z01 of Exhibit "1."**

- b. Non-residential Districts - If the tower is more than 100 feet high, it must be located at least 1,000 feet from any other telecommunications tower greater than 100 feet high; provided, however, that this separation requirement does not apply from a tower if the applicant submits sufficient evidence to demonstrate that a reasonable effort to co-locate on that tower was made, or that co-location on the tower will not technically satisfy the applicant's specific needs.

**Applicant accepts and acknowledges this provision.**

**3.12.3 Procedures for Reviewing Applications**

G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:

- 1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;

**A telecommunications facility is listed as a special use in the RP district.**

2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;

**The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property. In fact, the proposed wireless telecommunications facility will not endanger, but actually will enhance, the safety of residents, employees, travelers and neighboring properties by providing adequate wireless infrastructure and effective access to 911 First Responders, fire, police, and EMS.**

3. The proposed use shall not constitute a nuisance or hazard;

**The proposed wireless telecommunications facility shall not constitute a nuisance or hazard. In fact, it will benefit the residents of this area of Pender County by providing access to effective wireless coverage for both voice and advanced data.**

4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;

**The proposed self support wireless communications facility will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners.**

5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;

**Adequate utilities, access roads, drainage, sanitation or other necessary facilities will be provided.**

6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;

**The ingress and egress will be designed as to minimize the traffic congestion in the public roads. After installation, there will only be periodic maintenance visits to the site. The periodic maintenance visits will not cause traffic congestion in the public roads.**

7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and

**Applicant will fully comply with the applicable regulations of the district in which the proposed tower is located.**

8. The proposed use shall not adversely affect surrounding uses and shall be placed on

October 3, 2013

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a lot of sufficient size to satisfy the space requirements of said use.

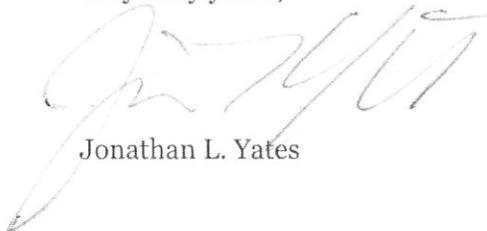
**The D & J Properties, Inc. property is 23.76 acres and the D & J Properties of Hampstead, LLC property is 4.56 acres and both enjoy a healthy vegetative cover, providing plenty of space and separation for the proposed self support wireless communications facility.**

In addition please find the Memorandum of Need for the proposed facility with propagation studies prepared by CelPlan, which are attached hereto as Exhibit "3" and incorporated herein by reference. Also, we have included a list of the adjacent property owners, attached hereto as Exhibit "4," as well as stamped and addressed envelopes.

Finally, enclosed please find the application form, and a letter of authorization from the landowner granting permission to Optima Towers IV, LLC and myself to file all permit applications on their behalf. On behalf of Optima Towers, we thank you very much for your time and consideration in the review of this application. If you have any questions or if we can provide any additional information, please call me at my direct line of 843-414-9754 or 843-813-0103. We look forward to working with you and your staff on this project for Optima Towers.

With warmest regards, I am

Very truly yours,



Jonathan L. Yates

JLY:edh  
Enclosures

## INDEX TO EXHIBITS

1. Site Plans and Drawings
2. FAA Determination of No Hazard to Air Navigation
3. Memorandum of Need and Propagation Studies by CelPlan
4. List of Adjacent Property Owners

Ed, per your request, at this point the only state and federal permits or registrations that are expected are as follows:

1. FAA determination regarding air hazard (already attached to application)
2. NC State Historic Preservation Office determination regarding cultural resources (in process)
3. FCC registration for the tower/site
4. Possibly NC Department of Transportation curb cut permit, for access

Other items would be addressed during the site plan review and construction process, after special use approval.

Please let me know if you need anything further.

Thanks,

Scott

Scott M. Holmes

Attorney at Law

For vCard, click [here](#).

[sholmes@murchisontaylor.com](mailto:sholmes@murchisontaylor.com)

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Wilmington, NC 28401-4537

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Facsimile: 910-763-3046

[www.murchisontaylor.com](http://www.murchisontaylor.com)

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**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
D&J Properties, Inc.

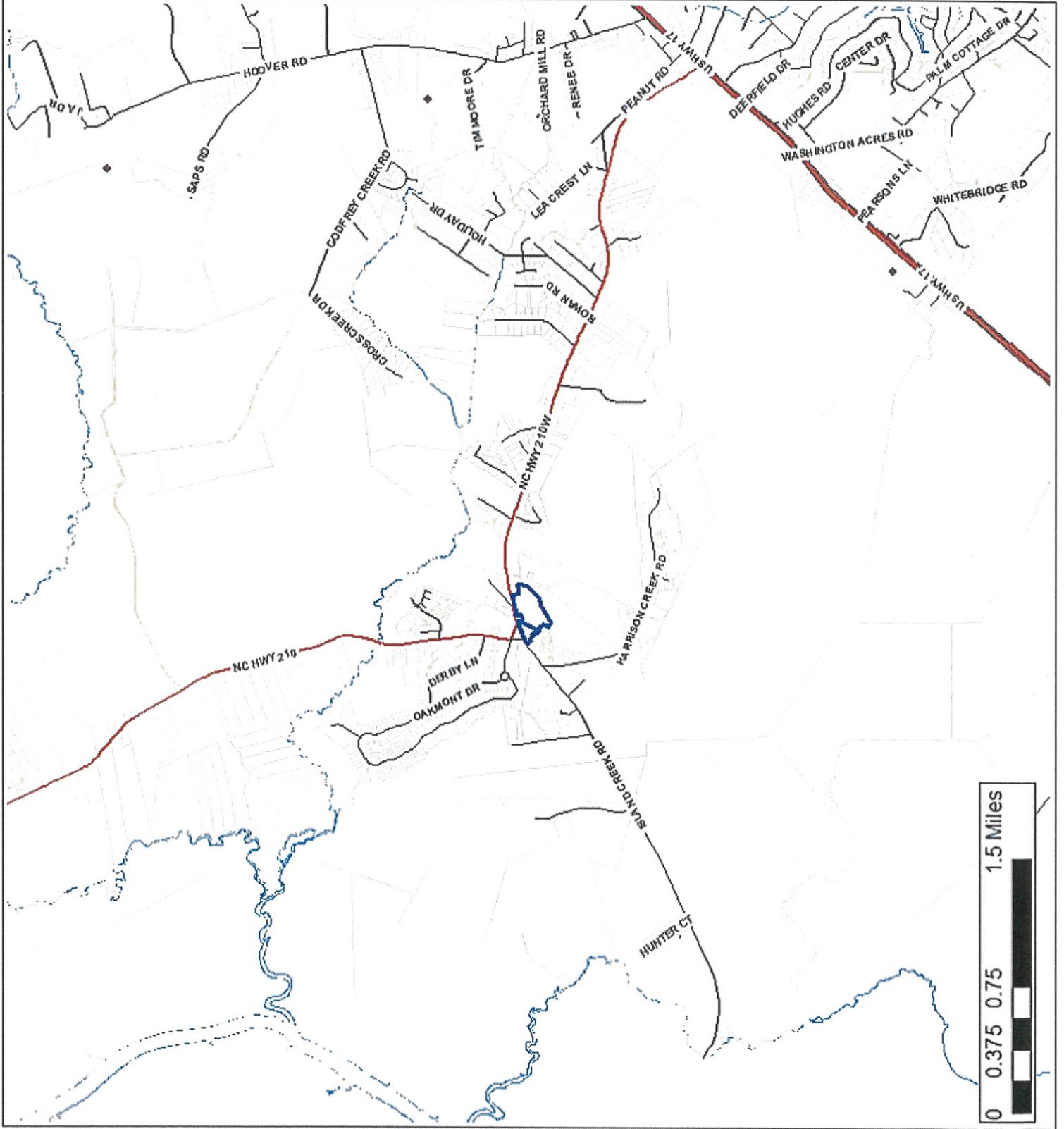
**Special Use  
Permit  
# 11046**

**Legend**

- Subject Properties
- Towers



**Vicinity**





**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
D&J Properties, Inc.

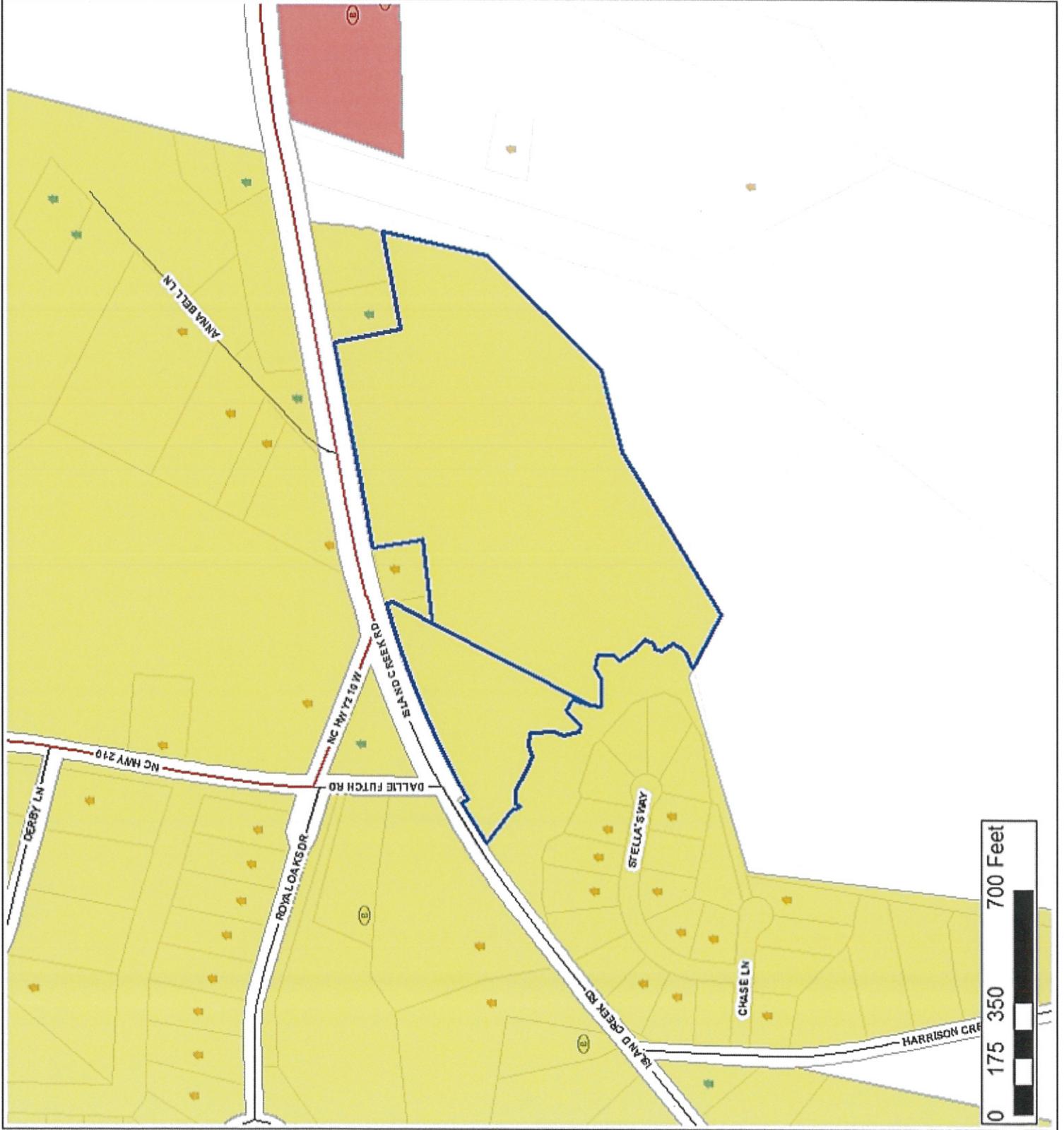
**Special Use  
Permit  
# 11046**

**Legend**

-  Subject Properties
-  Pender County UDO Zoning: EC
-  GB
-  GI
-  INCORP
-  IT
-  C&I
-  PD
-  RA
-  RP



**Zoning**





**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
D&J Properties, Inc.

**Special Use  
Permit  
# 11046**

**2010 Land Use Classification**

-  Conservation
-  Industrial
-  Mixed Use
-  Office, Institutional, Business
-  Rural Growth
-  Suburban Growth



**LAND USE  
CLASSIFICATION**





**Applicant:**  
Optima Towers IV, LLC

**Owner:**  
D&J Properties, Inc.

**Special Use  
Permit  
# 11046**

**Legend**

 Subject Properties



**2012 AERIAL**

