

**BEFORE THE ZONING HEARING BOARD**  
**OF**  
**SCHUYLKILL COUNTY**

**RE:** Request for a Special Exception by Horvath Communications/Horvath Towers III, LLC.  
**BEFORE:** Daniel Daub, Mary Jo Moss, Dave Ambrose, Scott Thomas, and Eric Seitzinger,  
Members of the Schuylkill County Zoning Hearing Board ("Board").

**MINUTES OF HEARING**

Name of Applicant	.	.	.	.	Horvath Communications/Horvath Towers III, LLC
Location of Subject Property	.	.	.	.	Mahanoy Avenue Girardville Borough Schuylkill County Pennsylvania U.P.I. 45-01-0001.000
Owner of Property	.	.	.	.	Bobby Burns, LLC
Zoning Classification	.	.	.	.	CR Conservation Residential District
Date of Hearing.	.	.	.	.	December 4, 2014
Place of Hearing	.	.	.	.	Courtroom #5 Schuylkill County Courthouse Pottsville, PA
Appearances (for Board)	.	.	.	.	Shane H. Hobbs, Esq.
Appearances (Applicant)	.	.	.	.	Michael S. Grab, Esq.
Applicant's Witnesses (3)	.	.	.	.	Deborah Baker; James Shelton; Joshua Hoagland
Protestants	.	.	.	.	None

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**FINDINGS OF FACT**

After hearing all interested parties and consideration of the evidence presented, the Board finds as follows:

1. Horvath Communications/Horvath Towers III, LLC. ("Applicant") initiated this hearing by applying for a Special Exception with the Zoning Office of Schuylkill County.
2. Applicant has a lease agreement for an approximate 100' by 100' area on the subject property ("Property"), situated on Mahanoy Avenue, Girardville Borough, Schuylkill County, Pennsylvania, identified by UPI No. 45-01-0001.000
3. The Property is owned by Bobby Burns, LLC ("Owner").
4. The Property is located in a CR Conservation Residential District under the Schuylkill County Zoning Ordinance ("Ordinance").
5. Applicant proposes to construct a 140 foot Commercial Communication Tower ("Tower") as a Principal Structure on the Property.
6. The Applicant is seeking relief from Article 3, Section 306.D.2.b and Article 4, Section 402.A.16, of the Ordinance.
7. Public notice of the Hearing was given by advertisement in the Pottsville Republican Newspaper on November 17, 2014 and November 24, 2014.
8. Notice of the Hearing was given by mail to the parties; the notice being sent on November 15, 2014.
9. Notice was also posted on the Property on November 15, 2014; Copies of the notice are being made part of the record, together with the original copy of the Application.
10. Applicant's attorney, Michael S. Grab, Esquire provided introductory testimony regarding the relevant Federal and State regulations as it applies to the proposed use of the Property, and further testified how such use would be compliant with those regulations.

11. Applicant's first witness was Deborah Bake, a licensed real estate salesperson in the Commonwealth of Pennsylvania. She works as a site acquisition consultant for the Applicant.
12. Deborah Bake testified to the Property's overall dimensions and size, which was consistent with the application and parcel identification. Further, she testified to the importance and necessity for the location of the proposed Tower.
13. The Applicant next presented James H. Shelton who is the Director of Radio Frequency ("RF") Engineering of VCOMM Telecommunications, Exton, Pennsylvania. After elaborating on his education and experience in the field of communication towers and broadband/radio frequencies, the Board permitted Mr. Shelton to testify as an expert on this matter if applicable.
14. Mr. Shelton testified that the Applicant is licensed by the Federal Communications Commission ("FCC") to provide wireless communication facilities in various regions across Pennsylvania and the United States.
15. Mr. Shelton further testified that the broadband signal strength in Girardville Borough and the immediate surrounding area will significantly increase with the construction of the Tower, which will ultimately provide better service to customers. He testified that signals produced by the Tower will not cause any type of health concern or hazard to the residents of the community.
16. Further, Mr. Shelton testified that the proposed tower would be in compliance with any and all Federal Aviation Administration ("FAA") regulations.
17. Mr. Shelton submitted several exhibits to the Board in the form of maps and drawings.
18. The Applicant next presented its third and final witness, Joshua D. Hoagland, Jr., who is a Civil Engineer specializing in communication towers and land development. Mr. Hoagland is a Partner with The Crossroads Group, LLC, 301 W. Center Street, Elysburg, Pennsylvania.
19. Mr. Hoagland testified, through the use of construction sketches and maps, that the Applicant proposes to construct a Tower consisting of a 140 foot self-support tower with 9 foot lightning rod on a 100' by 100' ground area. The proposed Tower and Facility will utilize an existing access road that would not generate any significant traffic or require any parking.
20. Further, Mr. Hoagland testified that the proposed Tower will be in compliance with the requisite criteria set forth in Section 402.A.16 of the Ordinance and that its proposed use is permitted by Special Exception pursuant to Section 306.D.2.b of the Ordinance.

21. The Applicant has submitted a completed application, Zoning drawings, Redaction Option and Lease Agreement, and Radio Frequency propagation maps, all of which were accepted and made part of the record.
22. There were no Protestants at the hearing, which was held on December 4, 2014.

### CONCLUSIONS OF LAW

1. The Board is empowered with exclusive jurisdiction to hear and render decisions in Special Exception requests filed with the County. § 111.D.4 & § 116.
2. A Commercial Communications Tower is a permitted Special Exception Use within a Conservation Residential District under the Ordinance. § 306.D.2.b.
3. A Commercial Communications Tower as a principle use must comply with additional requirements set forth in § 402.A.16 of the Ordinance. § 402.A.16.
4. The Board finds all three of the Applicant's witnesses credible: that the proposed use will not cause societal hazards or pose significant risk to public health and safety, and that Applicant has found no other suitable tall structures in the vicinity which would suffice to permit co-location.
5. The Applicant has satisfied the criteria under Section 116 of the Ordinance by a preponderance of the evidence.
6. The proposed construction and use of the Tower demonstrates compliance with the requisite criteria set forth in Article 4, Section 402.A.16.
7. The Applicant agrees that, if the proposed Tower is no longer in active use, it shall be removed within six months after the discontinuance of use.
8. The Board finds that the Applicant has satisfied its burden to justify the award of the Special Exception request consistent with its application.

**DECISION**

AND NOW, this 4th<sup>1</sup> day of December, 2014, the Board **GRANTS** the Special Exception request by Horvath Communications/Horvath Towers III, LLC, and directs the Zoning Officer to approve a permit that is consistent with this decision and Applicant's application.



**DANIEL DAUB, Chairman**



**SCOTT THOMAS, Vice Chairman**



**DAVE AMBROSE, Member**



**MARY JO MOSS, Member**



**ERIC SEITZINGER, Member**

<sup>1</sup> The Board voted unanimously during its hearing on December 4, 2014, to approve Applicant's request. This written decision was drafted and executed on a date following the hearing.