ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of:	)	
	)	
JEROME THOMAS LAMPRECHT	)	MM Docket No. 83-985
Middletown, Maryland	)	File No. BPH-820409AB
	)	
BARBARA D. MARMET	)	MM Docket No. 83-987
Middletown, Maryland	)	File No. BPH-820908AW
	)	
For Construction Permit for a	)	
New FM Broadcast Station	)	

To: The Commission

RENEWED MOTION TO DISMISS APPLICATION OF J. THOMAS LAMPRECHT AND WAIVER REQUEST

Barbara D. Marmet ("Marmet") and Frederick Broadcasting LLC, which is the licensee of WAFY (FM), Middletown, MD, and which is owned and controlled by Marmet, hereby renew the request to immediately dismiss the application of J. Thomas Lamprecht ("Lamprecht"), as requested by Marmet in her February 1, 1996, "Motion to Dismiss Application of J. T. Lamprecht" ("Motion"). The Motion was based on Lamprecht's admission of September 19, 1990, that he had lacked a transmitter site since October 1, 1982, and that he had concealed this fact from the Commission for almost eight (8) years. Lamprecht disqualified himself as an applicant by his own actions and misconduct, such that this is not now a "comparative" case. It is a case about Lamprecht's lack of basic threshold qualifications under the law in effect at the time this proceeding was initiated. It

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is a case about Lamprecht's lack of candor with the Commission. This is a proceeding the Commission can terminate upon grant of Marmet's Motion. The record shows that Lamprecht abandoned his application by his decisions (1) not to purchase the transmitter site land he had under contract, (2) to obtain a refund of his deposit on the contract and (3) to employ a strategy of concealment and affirmative deception. To the extent the Commission may deem it necessary in order to act on and grant the Motion at this time, Marmet requests waiver of the rules and procedures adopted by the Commission in its First Report and Order in MM Docket No. 97-234, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licensees*, FCC 98-194, 63 *Fed. Reg.* 48615 (1998) (hereafter *Bidding Order*). In support, Marmet shows as follows:

Background Chronology

- On March 10, 1982, Lamprecht entered into an Agreement of Sale and Purchase with Mr. and Mrs. James R. Remsburg for the purchase of approximately three acres of land for the price of $35,000 ("Agreement"). That Agreement provided that the Settlement would be held on or before October 1, 1982. An Addendum to the Agreement also dated March 10, 1982, provided that if the FCC and the Frederick County Planning and Zoning Commission did not give their approvals, then the contract would be null and void and the deposit returned in full. The Agreement is contained in Exhibit 1, hereto.

- On April 9, 1982, Lamprecht tendered for filing his application.

- On September 8, 1982, Marmet tendered for filing her application.

- On October 2, 1982, Lamprecht lost basic qualifications and began a cover-up of the site defect. Lamprecht no longer had a reasonable expectancy that his proposed site would be available to him, a fact that Lamprecht concealed until September 19, 1990.

- On September 1, 1983, Marmet's and Lamprecht's applications were designated for hearing.
- On June 8, 1984, Administrative Law Judge Walter C. Miller issued his Initial Decision, granted Marmet's application and denied Lamprecht's application. *Jerome Thomas Lamprecht*, 99 FCC 2d 1229 (ALJ 1984).

- On December 11, 1984, the Review Board granted Marmet's application and denied Lamprecht's application. *Jerome Thomas Lamprecht*, 99 FCC 2d 1219 (Rev. Bd. 1984).

- On November 6, 1986, Marmet filed her "Motion For Decision Without Regard For Female Preference."

- On November 18, 1986, Lamprecht filed his "Comments Of Jerome Thomas Lamprecht On 'Motion For Decision Without Regard For Female Preference'" and objected to Marmet's request as "unprecedented and inconsistent with the public interest." Comments at p. 2.

- On April 29, 1987, Marmet filed her "Motion For Decision On Review." Lamprecht opposed that motion on May 8, 1987.

- On April 15, 1988, the full Commission unanimously affirmed the grant of Marmet's application and the denial of Lamprecht's application. *Jerome Thomas Lamprecht*, 3 FCC Rcd. 2527 (1988), *recon. den.*, FCC 88I-062 (released June 28, 1988).

- On June 1, 1988, Lamprecht appealed the Commission's decision, but limited his appeal to the single issue of the constitutionality of gender enhancement. He sought and obtained repeated extensions, until October 5, 1990, to filed his brief.

- On July 7, 1988, the Commission issued to Marmet an unconditional construction permit to operate on Channel 276A at Middletown, Maryland, and later that month assigned the call sign "WAFY(FM)".

- On July 21, 1989, Marmet filed with the FCC a Certification requested by the FCC staff that "she immediately will begin building the proposed facilities after the application [BMPH-890413TB] for modification of construction permit is granted."

- On May 7, 1990, Marmet commenced operation of WAFY(FM), Middletown, Maryland, and Marmet has operated WAFY continuously since that date.

- On May 14, 1990, Marmet tendered an application for license to cover construction permit.

- On August 30, 1990, Marmet sent a letter to the FCC's Associate General Counsel stating that Lamprecht did not have a site for construction of the facilities proposed in his application.
- On September 19, 1990, Lamprecht admitted that he did not have a site and that he had concealed this fact starting October 2, 1982. Lamprecht refused to seek leave to amend his application, and he has not attempted to do so in the intervening eight years since September 19, 1990. Marmet therefore maintains that as a result of Lamprecht's actions and inactions this case ceased being a comparative one on October 2, 1982. The September 19, 1990, admission is contained in Exhibit 2 hereto.

- On February 19, 1992, the United States Court of Appeals for the District of Columbia Circuit vacated the Commission's decision and directed the Commission to resolve the case without considering the gender of the applicants. *Jerome Thomas Lamprecht v. FCC*, 958 F. 2d 382 (DC Cir. 1992).

- On April 24, 1992, Marmet filed "Comments" as to what further action should be taken by the FCC in light of the Court's February 19, 1992, remand. Marmet stated that if the Commission did not affirm the grant of her application without further proceedings or hearings, then she reserved the right to petition to add disqualifying issues against Lamprecht. April 24, 1992, "Comments", p. 8, n. 8.

- On September 18, 1992, the Commission disregarded the gender preference, granted Marmet's application and denied Lamprecht's application. *Jerome Thomas Lamprecht*, 7 FCC Rcd. 6794 (1992). Lamprecht again appealed to the U.S. Court of Appeals for the D.C. Circuit, *Jerome Thomas Lamprecht v. FCC* (Case No. 92-1586).

- On December 15, 1993, Marmet filed her "Brief of Intervenor Barbara D. Marmet" in Case No. 92-1586. Therein, Marmet advised the Court of Appeals that "Lamprecht does not have pending an application that the FCC can grant."

- On February 9, 1994, the Court of Appeals remanded the case to the FCC "for further consideration in light of this court's decision in *Bechtel v. FCC*, No. 92-1378 (December 17, 1993)."

- On December 20, 1994, the Commission granted Marmet's application for license (BLH-900514KB).

- On September 22, 1995, the Commission granted Marmet's application for renewal of the WAFY license (File No. BRH-950530UA).

- On December 4, 1995, the Commission granted Marmet's request to assign WAFY to Frederick Broadcasting LLC, a company which she controlled (File No. BALH-951120GE).

- On February 1, 1996, Marmet filed her "Motion to Dismiss Application of J. T. Lamprecht."

- On February 16, 1996, Lamprecht responded by filing "Jerome Thomas Lamprecht's Opposition to Marmet's Motion to Dismiss Application," as well as a "Motion for Rescission of License and Consent to Assignment.

- On February 28, 1996, Marmet responded to both filings with her "Reply to Opposition to Motion to Dismiss Application of J. T. Lamprecht" and her "Motion to Stay Consideration of Motion for Rescission of License and Consent to Assignment."

- On January 20, 1998, in the absence of any Commission action, Marmet tendered her "Request for Action on Motion to Dismiss Application of J. T. Lamprecht and Request to Terminate Proceeding." Attachment 3 therein is the Affidavit of James R. Remsburg, a copy of which is contained in Exhibit 3 hereto. Mr. Remsburg states that Lamprecht did not call for closing under the March 10, 1982, Agreement and that the Agreement became null and void. Mr. Remsburg further states that as of October 2, 1982, there was no contractual obligation for the Remsburgs to sell the property to Lamprecht and that there was no land available to Lamprecht.

- On January 29, 1998, Lamprecht responded with two filings – his "Jerome Thomas Lamprecht's Opposition to Marmet's Request for Action on Motion to Dismiss Application" at the FCC and a "Petition for Writ of Mandamus Directed to the Federal Communications Commission" filed with the U.S. Court of Appeals for the D.C. Circuit in *Jerome Thomas Lamprecht*, Case No. 98-1052.

- On February 10, 1998, Marmet filed with the FCC her "Reply to Lamprecht's Opposition to Marmet's Request for Action on Motion to Dismiss Application of J. T. Lamprecht and Request to Terminate Proceeding."

- On March 19, 1998, Marmet supplemented her Reply with the "Request for Leave to File and Tender of Supplement to Marmet Reply", in which she provided a Letter Affidavit from retired Administrative Law Judge Walter C. Miller who had presided at the Middletown hearing. Judge Miller stated that, based upon his review of the record, Lamprecht was lacking in candor with the Judge and the Commission, as well as with the Court of Appeals in requesting the Court to grant his application. Judge Miller's letter Affidavit is contained in Exhibit 4 hereto.

- On March 26, 1998, the FCC filed with the U.S. Court of Appeals its "FCC Opposition to Petition for Writ of Mandamus," wherein the FCC advised the Court, at page 8, that "there [are] outstanding and unresolved questions as to Lamprecht's qualifications to receive a grant of his application."

- On March 31, 1998, Lamprecht filed with the FCC his "Jerome Thomas Lamprecht's Memorandum in Support of Marmet's Request for Leave to File and Tender of Supplement to Marmet Reply."

- On May 8, 1998, the U.S. Court of Appeals denied Lamprecht's petition for writ of mandamus. The Court's Order is contained in Exhibit 5 hereto.

Three Anniversaries

Marmet files this Renewed Motion sixteen (16) years after the September 8, 1982, tender of her application for the construction permit for Channel 276A at Middletown, Maryland.

This Renewed Motion is also filed eight (8) years after Marmet first brought to the Commission attention, on August 30, 1990, Lamprecht's lack of basic threshold qualifications.

A third and the most important anniversary is the sixteenth anniversary of Lamprecht's loss of the transmitter site specified in his application. On October 1, 1982, Lamprecht failed to go to Closing on the Agreement. Thereafter the transmitter site that he specified in his application was no longer available to him. He took no action thereafter to attempt to amend his application to specify a new site. Instead, he concealed his lack of qualifications for eight (8) years.

Waiver Request

Since August 30, 1990, at all appropriate stages in this proceeding, Marmet has repeatedly urged the Commission to consider on the merits Lamprecht's September 19, 1990, admission that after October 1, 1982, he no longer had a transmitter site, that he

had concealed this fact from the Commission and that he lacked basic qualifications. Based on this, Marmet urged the Commission to dismiss Lamprecht's application.

The Commission did not act on Marmet's Motion to dismiss Lamprecht's application, even though it had the authority to do so and even though it issued Public Notices stating its intention to resolve issues of basic qualifications.

In its February 24, 1994, Public Notice *FCC Freezes Comparative Proceedings*, 9 FCC Rcd 1055 (1994), the Commission stated that, notwithstanding the freeze, it "will continue to issue decisions only in cases in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case."

In its August 4, 1994, Public Notice *Modification of FCC Comparative Proceedings Freeze Policy*, 9 FCC Rcd 6689 (1994), the Commission affirmed "that during the freeze, the Commission . . . will continue to issue decisions only in cases in which consideration of the applicant's comparative qualifications is unnecessary to resolve the case," adding that "parties to pending comparative proceedings should not file or respond to motions to enlarge the issues, except in those proceedings in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case." The Commission added that "proceedings will not be bifurcated to adjudicate the basic qualifications of some of the applicants, where their disqualification would leave unresolved comparative issues involving other applicants."" *Id.* at 6690. The latter statements clearly applied to the two-party Middletown, Maryland, proceeding, wherein dismissal of the Lamprecht application for lack of basic qualifications would terminate the proceeding.

The Commission now seems to suggest that it will not consider Lamprecht's lack of qualifications until after an auction, *Bidding Order* at ¶¶ 90-91. This appears to be the case, despite the fact that if the Commission found Lamprecht unqualified and dismissed or denied his application, then there would be no auction, and the longest pending initial licensing proceeding could be terminated, consistent with the statutory mandate of Section 309(j)(6)(E) of the Communications Act of 1934, as amended, 47 USC §309(j)(6)(E). This provision provides, as a mandatory rule of construction for competitive bidding, that:

> Nothing in this subsection, or in the use of competitive bidding shall –
>
> * * *
>
> (E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.

The issues of Lamprecht's lack of basic qualifications and his lack of candor have been ripe for Commission consideration for many years. Nevertheless, the release of the *Bidding Order* unquestionably means that now is the time for the Commission to act on Marmet's February 1, 1996, formal Motion.

To the extent the Commission believes that its new rules and procedures adopted in *Bidding Order* would warrant postponement of action on the Motion, then Marmet hereby requests a waiver of those rules and procedures and submits that good cause exists to do so for the following reasons.

The Middletown, Maryland proceeding is the oldest – by many years – initial licensing proceeding pending before the Commission.

The Commission adopted two decisions on the merits granting Marmet's application, while assuming Lamprecht was a qualified applicant. The first decision of April

15, 1988, predated Lamprecht's admission that he had abandoned the Agreement. Only Lamprecht knew that he lacked basic qualifications. Lamprecht's only challenge to the FCC decision concerned the constitutionality of the use of a gender enhancement in the comparative analysis. This was the preference that Marmet had asked the Commission to disregard, to which Lamprecht objected on November 18, 1986. The second FCC decision postdated Lamprecht's admission and was adopted because the Commission was compelled to carry out the mandate of the Court of Appeals in its decision of February 19, 1992. The Court had ordered the FCC to resolve the case without considering the gender of the applicants. The FCC did so, notwithstanding Lamprecht's admitted concealment of his lack of qualifications and the fact that he did not have on file an application the FCC could grant.

The proceeding has been before the United States Court of Appeals for the District of Columbia on three separate occasions. Most recently, in its March 26, 1998, "FCC Opposition To Petition For Writ Of Mandamus", the FCC directed the Court's attention to the fact that "there [are] outstanding and unresolved questions as to Lamprecht's qualifications to receive a grant of his application." FCC Opposition, p. 8. In its May 8, 1998, Order, denying Lamprecht's petition for a writ of mandamus, the Court said that Lamprecht "has not established that he is entitled to the grant of his application."

As Lamprecht stated in that January 29, 1998, petition for writ of mandamus, he has only *one* issue: "the Commission has failed to establish that its denial of his application was free from the taint of unconstitutional policy." Petition at 16. All other matters have

been resolved and have become final, and the 1992 denial of Lamprecht's application was free of any unconstitutional "taint."

In its 1994 Public Notices the Commission stated its intention to address issues of basic qualifications where they would resolve the case. It was incumbent on the Commission to follow its own statements of intentions and to adhere to the procedures, practices and law that it had established and upon which the parties had relied in good faith. *U.S. v. Winstar Corp., 518 U.S. 839, 116 S. Ct. 2432 (1996).*

There are only two parties – one of whom is unqualified – in the Middletown proceeding. Dismissal of Lamprecht's application would permit the Commission grants of Marmet's application to become final and the termination of the proceeding.

Inasmuch as Lamprecht has admitted his lack of basic qualifications, there are no questions of fact and there is no need for a hearing to make findings of fact. The matter can be resolved promptly without a hearing proceeding. Moreover, the Commission has long held "misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust." *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986), *recon. granted in part, denied in part*, 1 FCC Rcd 421 (1986), *modified*, 5 FCC Rcd 3252 (1990). *See also Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1221-23, 76 RR 2d 845, 847-48 (DC Cir 1994).

Marmet placed WAFY on the air on May 7, 1990, and the station has served the public with 24 hours a day service ever since. The Commission granted the WAFY license application. The Commission granted the WAFY license renewal application. The FCC

gave Public Notice of these applications and grants. Lamprecht never sought a stay, either from the FCC or the Court of Appeals, of the April 15, 1988, decision granting the WAFY construction permit. Lamprecht did not object to grant of the many applications filed by WAFY in the ordinary course of operation of a broadcast station. Accordingly, the Commission's stated reason for adopting the procedures in the *Bidding Order* – to expedite inauguration of new services – is irrelevant with regard to Channel 276A at Middletown because WAFY is on the air and has been serving the public for over eight years.

Prior to the adoption of the *Bidding Order* the Commission adopted and released several decisions addressing the basic qualifications of applicants in comparative licensing proceedings, albeit in the context of approval of settlement agreements. [1] Nevertheless, had the Commission not addressed those basic qualifications issues, then the proceedings could not have been terminated.

WHEREFORE, good cause having been shown, Marmet requests that the Commission act on her February 1, 1996, "Motion to Dismiss Application of J. T. Lamprecht" and, to the extent necessary, that the Commission waive its rules and procedures to consider the Motion on its merits at this time.

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[1] *Gonzales Broadcasting, Inc.*, 12 FCC Rcd 12253 (1997); *Heidi Damsky*, 13 FCC Rcd 11688, 12 CR 140 (1998); *Pensacola Radio Partners*, 13 FCC Rcd 11681, 12 CR 136 (1998).

Respectfully Submitted,

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Attorneys for
BARBARA D. MARMET and FREDERICK BROADCASTING LLC

By Harold K. McCombs, Jr.
Harold K. McCombs, Jr.

EXHIBIT 1

B_DLE REALTY, IN(

203 W. Main Street
Middletown, Maryland 21769

REALTOR

1. THIS AGREEMENT OF SALE, made this 10th day of March, 19 80, by and between [illegible] Sellers whose address is 7300 Old Middletown Rd., Middleton, Md. 21769 and Jerome F. Lamrecht Buyers whose address is 114 Whitwood Ave. Baltimore, Md 21209

A deposit of One thousand---------- Dollars ($ 1,000.00) has been received from Buyers in the form of check and to be placed in escrow with Idle Realty, Inc. Broker upon contract ratification and is to be applied as part payment of purchase price of the following described property; situate in Middletown Election District, viz being all/part of that property conveyed to Seller herein by deed recorded in Liber [illegible] Folio [illegible] one of the land records of Frederick County, State of [illegible] and being further described as follows: [illegible] for the unit price of $35,000.00. This is a part of a parcel of land known as [illegible] Farmer Lamhurst, Old Middletown Rd. (Liber 904, Folio [illegible] which will be subject to survey. Cost of survey to be split 50/50 between purchaser and seller. ([illegible]

with improvements thereon known as N/A

including central heating, central air conditioning, plumbing, lighting fixtures, stove, refrigerator, dishwasher, garbage disposal, screens, storm windows and doors, roofs, TV antenna, wall to wall carpeting, N/A

shrubs, trees, shrubs and plants, as now installed on the premises, and any fuel remaining on date of settlement, EXCEPT as follows: _____

for the price of One unit price Thirty five thousand---------- Dollars($ 35,000.00) cash on the date of settlement, of which sum the deposit shall be a part. Any financing of the balance due shall be arranged for by the Buyers before settlement date.

2. FINANCING CONTINGENCY. This contract is contingent upon the Buyers ability to place (a) N/A First mortgage or deed of trust in the amount of not more than $ _____ with interest at ____% per annum, or the maximum prevailing rate at the time of settlement, for a period of at least ____ years; provided, however, that UNLESS BUYER SHALL APPLY TO A LENDING INSTITUTION WHICH NORMALLY MAKES LOANS IN SUBJECT COUNTY, WITHIN SEVEN (7) DAYS FROM THE DATE OF ACCEPTANCE OF THIS CONTRACT, AND SHALL PURSUE LOAN APPROVAL DILIGENTLY, THIS CONTINGENCY SHALL BE DEEMED WAIVED BY BUYERS.

Upon issuance of a commitment from a lending institution that the loan requested above, has been offered, or the receipt of a waiver of this contingency from the Buyer, this contingency shall be deemed waived. Unless a copy of a letter of commitment, or Buyer's waiver, is furnished to Seller's agent within ____ days from the acceptance date of this contract, Seller shall have the option to declare this contract null and void at any time thereafter until receipt of waiver or letter of commitment. If seller voids contract then the deposit shall be refunded to the Buyers

3. SETTLEMENT shall be made on or before October 1, 3 ~~xxxxxxxxx~~ ~~xxxx~~ 19____, if the Buyers shall fail to make full settlement, the deposit herein provided for may be forfeited at the option of the Sellers, in which event the Buyers shall be relieved from further liability hereunder unless the Sellers notify the Buyers and the Agent(s) in writing within 30 days from the date provided for settlement herein of his election to avail himself of any legal or equitable rights, other than the said forfeiture, which he may have under this contract. In the event of the forfeiture of the deposit, the Sellers shall allow the Agent(s) one-half thereof as a compensation for his services, said amount not to exceed the amount of the full brokerage fee.

4. POSSESSION Sellers agree to give possession and occupancy at time of settlement, and in the event he shall fail so to do, he shall become and be thereafter a tenant by sufferance of the Buyers and hereby waives all notice to quit, as provided by the laws effective in the State where the real estate is located. Sellers will leave premises free and clear of trash and debris and broom clean, and the mechanical equipment in operating condition.

5. TITLE Upon payment of the whole purchase price, the Sellers agree to execute and deliver to the Buyers a good and sufficient Deed for the property, containing covenants of special warranty and further assurances. Title is to be good and merchantable, free of liens and encumbrances except as specified herein and use and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood or the sub-division in which the property is located, and publicly recorded easements for public utilities and any other easements which may be observed by an inspection of the property. If the title should be found defective and cannot be perfected, then this agreement shall be null and void and the deposit shall be returned to the Buyers, without interest, damages or costs. If legal steps are necessary to perfect the title, such action must be taken promptly by the Sellers at their own expense, whereupon the time herein specified for settlement will be extended for the period necessary for such prompt action, not to exceed 30 days or by written agreement for a longer extension.

6. ADJUSTMENTS Ground rent, rent, water rent, taxes (including Metropolitan District or County Sanitary Commission charges for sewer and water, if any) and all other public charges on an annual basis, against the premises shall be apportioned as of date of settlement unless otherwise agreed upon herein. Cost of all documentary stamps and transfer tax where required by law, shall be divided equally between the parties hereto. **The Buyer may select his own Titles Insurance, Settlement or Escrow, or Title Attorney.**

7. INSURANCE It is agreed that until settlement, the Sellers shall bear full risk for damages to the property resulting from fire, wind malicious mischief, vandalism, theft or any other perils; not to exceed the purchase price.

8. AGREEMENT OF PARTIES The parties to this contract mutually agree that it shall be binding upon them, their respective heirs, personal representatives, successors and assigns: that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein; that this contract together with any included addenda, contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions statements, warranties or representations, oral or written, not herein contained.

9. COMMISSION The Seller recognize Idle Realty, Inc. as the Listing Broker and Idle Realty, Inc. as the Selling Broker negotiating this contract and agrees to pay a brokerage fee for services rendered amounting to 10 % of the sales price, and the party supervising the settlement is hereby authorized and directed to deduct the aforesaid brokerage fee from the proceeds of the sale and pay to the Listing Broker ____%and to the Selling Broker ____% of the total commission due.

10. INFORMATION TO BE FURNISHED The parties hereto agree to furnish to the Broker, settlement attorney and/or any lending institution upon request such information [illegible]

SPECIAL CONDITIONS Agriculture transfer tax under Art. Section [illegible] Purchaser that property may be subject to an agriculture transfer tax under Art. Section [illegible], Annotated Code of Maryland, as amended, which tax (if any) Purchaser agrees to pay in full.

WITNESSETH: That the Seller does hereby bargain and sell unto the said Buyer and the Buyer does hereby purchase from the Seller the above described property and that we the undersigned do hereby ratify, accept and acknowledge the above to be our Contract of Sale.

Date of Acceptance 3/13/80

Seller _____ Buyer _____

Seller _____ Buyer _____

EXHIBIT 1

BIDLE REALTY
203 W. Main St.
Middletown, MD

ADDENDUM

March 10, 1982

Seller: James R. & Barbara Remsburg

Purchaser: Jerome T. Lamprecht

Property known as: Old Middletown Rd., Liber 994, Folio 288.

1. See attached plat for exact location of property marked in red. Purchaser is buying 3 acres plus or minus of the Remsburg property. This acreage is located at the highest point of elevation of the middle field within the fenced-in area.

2. Purchaser gives equal rights to seller to egress and ingress of said right-of-way. If property of seller is sold, this right to the use of the right-of-way will pass with the property. Right-of-way cannot be fenced.

3. Purchaser will allow seller to plant crops that will be harvested by the settlement date.

4. Contingent on purchaser obtaining an approval from the F.C.C. and Frederick County Planning and Zoning Commission to place FM Radio Tower on this parcel of land for the purpose of transmitting channel 276A. If this approval is not obtained, this contract is null and void and the deposit shall be returned in full.

5. Sellers agrees to give to the buyer ingress and egress thru their property for construction of a Radio Tower.

6. Special Notice. The Broker(s) assume no responsibility for the condition of the property nor for the performance of this contract by any or all parties hereto. Purchaser hereby warrants and represents unto the real estate brokers herein that no Broker(s), servant or employee of said real estate broker(s) has made any statement, representation or warranty to them regarding the condition of the premises or any part thereof upon which Purchaser has relied and which is not contained in this contract.

7. Agreement of Principals. The principals to this contract mutually agree that it shall be binding upon them, their heirs, personal representatives, successors and assigns, that this contract contains the final and entire agreement between the parties hereto, and neither they nor their Broker(s) shall be bound by any terms, conditions, statements, warranties or representations, oral or written not herein contained.

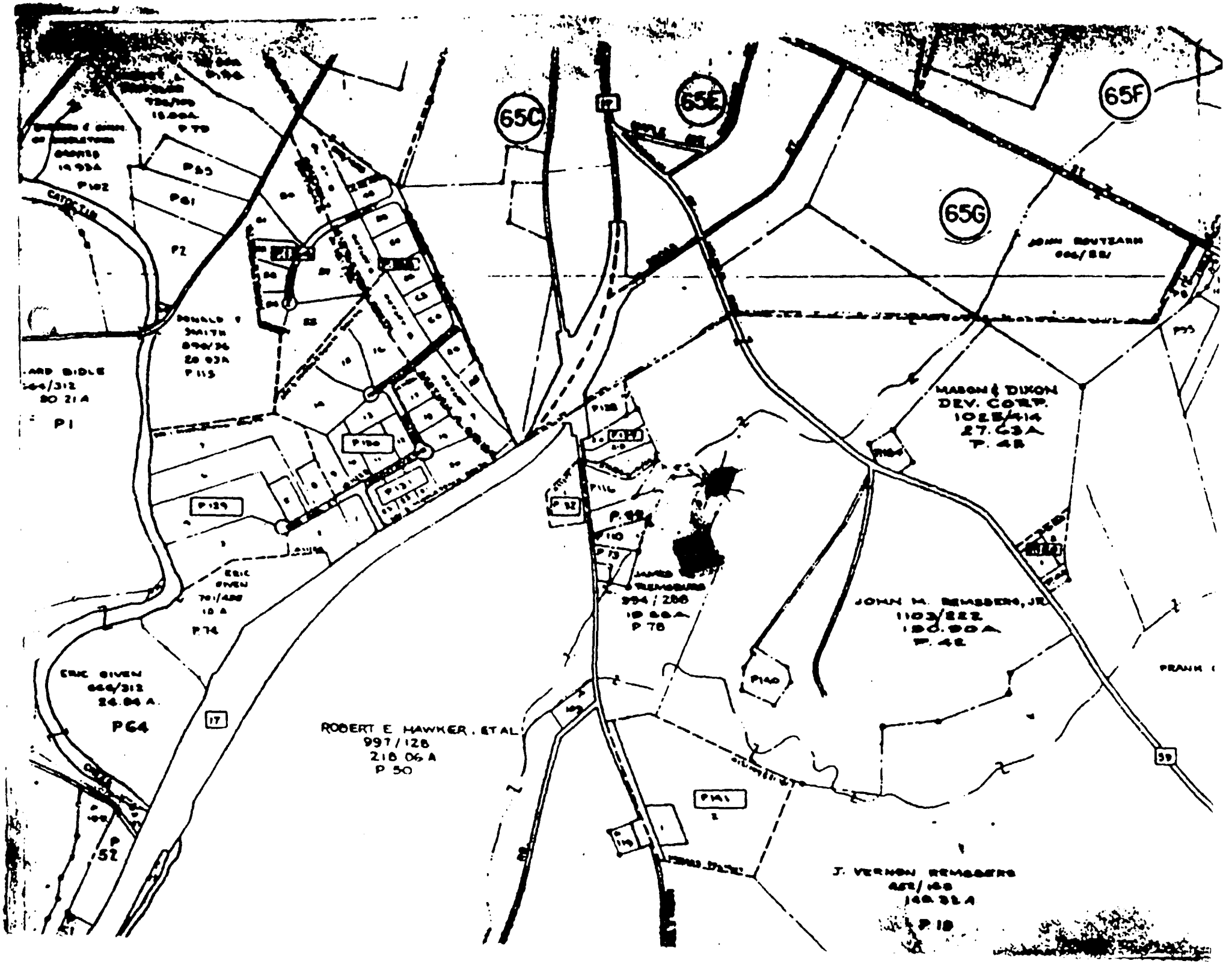
Date of Acceptance 3/13/82

Seller

Seller

Purchaser

Purchaser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P 102
P 115
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P 74
P 64
P 52
P 78
P 140
P 141
P 18
MASON & DIXON
DEV. CORP.
27.63 A
P. 48
JOHN M. REMSBERG, JR.
1103/222
P. 42
ROBERT E HAWKER, ET AL
997/128
218 06 A
P 50
J. VERNON REMSBERG
59

EXHIBIT 2

SHAW, PITTMAN, POTTS & TROWBRIDGE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
2300 N STREET, N. W.
WASHINGTON, D. C. 20037

TELEX/CABLE
89-2693 (SHAWLAW WSH)
TELEPHONE
(202) 663-8000

VIRGINIA OFFICE
1501 FARM CREDIT DRIVE
MCLEAN, VIRGINIA 22102
(703) 790-7900
FACSIMILE
(202) 663-8007

WRITER'S DIRECT DIAL NUMBER

September 19, 1990

Daniel M. Armstrong, Esq.
Associate General Counsel
Federal Communications Commission
1919 M Street, NW, Room 602
Washington, DC 20554

Re: Lamprecht v. FCC
D.C. Cir. No. 88-1395

Dear Mr. Armstrong:

Pursuant to my conversation with Mr. John Riffer, I hereby submit, on behalf of J. Thomas Lamprecht, a response to Barbara Marmet's letter to you dated August 30, 1990.

Although we view the issue raised in Ms. Marmet's letter as entirely irrelevant to any question concerning Mr. Lamprecht's standing to pursue the above-captioned appeal, we nevertheless provide you with the following information so that you may have an accurate picture concerning the status of Mr. Lamprecht's application.

Contrary to the suggestion contained in Ms. Marmet's letter, Mr. Lamprecht did indeed agree with Mr. James R. Remsburg to purchase land as a site for constructing his tower and transmitter. See Exhibit 1 attached. Needless to say, the sale was contingent upon the Commission awarding Mr. Lamprecht the relevant FM license. Subsequent to this agreement, of course, the Commission has denied Mr. Lamprecht the license, eight years have elapsed and Mr. Remsburg has apparently died. Under these circumstances, it would plainly be unreasonable to expect Mr. Lamprecht to retain this option to purchase land for his construction site and he has not done so. In any event, Mr. Lamprecht will have a tower and transmitter site should he obtain the license, since he will lease the space Ms. Marmet apparently currently leases for her station. See Exhibit 2 attached.

I trust this disposes of any issue concerning any possible request for a remand of this appeal. If that is not the case, please advise me as soon as possible.

Thank you in advance for your cooperation.

Sincerely,

Michael Carvin

Michael Carvin
Counsel for J. Thomas Lamprecht

MC:lad
Enclosures

cc: All Counsel
Barbara D. Marmet
c:028macl704.90

IDLE REALTY, INC

203 W. Main Street
Middletown, Maryland 21769

REALTOR

1. THIS AGREEMENT OF SALE, made this 10th day of March, 19 90, by and between James D. & Barbara Lemaure Sellers whose address is 7301 Old Middletown Rd., Middletown, MD 21769 and Jerome F. Lamrecht, Buyers whose address is 11[illegible] Walthwood Ave., Baltimore, MD 21[illegible] A deposit of One thousand---------- Dollars ($ 1,000.00) has been received from Buyers in the form of check and to be placed in escrow with Idle Realty, Inc. Broker upon contract ratification and is to be applied as part payment of purchase price of the following described property; situate in Middletown Election District, viz being all/part of that property conveyed to Seller herein by deed recorded in Liber [illegible] Folio [illegible] one of the land records of Frederick County, State of [illegible] and being further described as follows: [illegible] rights-of-way to property which [illegible] for the unit price of $35,000.00. This is part of a parcel of land [illegible] James & Barbara Lemaure, via Middletown Rd. (Liber [illegible], Folio [illegible]) which will be subject to survey. Cost of survey to be split 50/50 between purchaser and seller. ([illegible]) N/A with improvements thereon known as [illegible] including central heating, central air conditioning, plumbing, lighting fixtures, stove, refrigerator, dishwasher, garbage disposal, screens, storm windows and doors, shades, rods, TV antenna, wall to wall carpeting, [illegible] and any fuel on hand on the premises, and any fuel oil remaining on date of settlement, EXCEPT as follows: N/A

for the price of One unit price thirty five thousand---------- Dollars ($ 35,000.00), cash on the date of settlement, of which sum the deposit shall be a part. Any financing of the balance due shall be arranged for by the Buyers before settlement date.

2. FINANCING CONTINGENCY. This contract is contingent upon the Buyers ability to place (a) cash First mortgage or deed of trust in the amount of not more than $ _____ with interest at ____% per annum, or the maximum prevailing rate at the time of settlement, for a period of at least ____ years; provided, however, that UNLESS BUYER SHALL APPLY TO A LENDING INSTITUTION WHICH NORMALLY MAKES LOANS IN SUBJECT COUNTY, WITHIN SEVEN (7) DAYS FROM THE DATE OF ACCEPTANCE OF THIS CONTRACT, AND SHALL PURSUE LOAN APPROVAL DILIGENTLY, THIS CONTINGENCY SHALL BE DEEMED WAIVED BY BUYERS.

Upon issuance of a commitment from a lending institution that the loan requested above, has been offered, or the receipt of a waiver of this contingency from the Buyer, this contingency shall be deemed waived. Unless a copy of a letter of commitment, or Buyer's waiver, is furnished to Seller's agent within ____ days from the acceptance date of this contract, Seller shall have the option to declare this contract null and void at any time thereafter until receipt of waiver or letter of commitment. If seller voids contract then the deposit shall be refunded to the Buyers.

3. SETTLEMENT shall be made on or before October 1, 3 ~~[illegible]~~ ~~[illegible]~~, 19____, if the Buyers shall fail to make full settlement, the deposit herein provided for may be forfeited at the option of the Sellers, in which event the Buyers shall be relieved from further liability hereunder unless the Sellers notify the Buyers and the Agent(s) in writing within 30 days from the date provided for settlement herein of his election to avail himself of any legal or equitable rights, other than the said forfeiture, which he may have under this contract. In the event of the forfeiture of the deposit, the Sellers shall allow the Agent(s) one-half thereof as a compensation for his services, said amount not to exceed the amount of the full brokerage fee.

4. POSSESSION Sellers agree to give possession and occupancy at time of settlement, and in the event he shall fail so to do, he shall become and be thereafter a tenant by sufferance of the Buyers and hereby waives all notice to quit, as provided by the laws effective in the State where the real estate is located. Sellers will leave premises free and clear of trash and debris and broom clean, and the mechanical equipment in operating condition.

5. TITLE Upon payment of the whole purchase price, the Sellers agree to execute and deliver to the Buyers a good and sufficient Deed for the property, containing covenants of special warranty and further assurances. Title is to be good and merchantable, free of liens and encumbrances except as specified herein and use and occupancy restrictions of public record which are generally applicable to properties in the immediate neighborhood or the sub-division in which the property is located, and publicly recorded easements for public utilities and any other easements which may be observed by an inspection of the property. If the title should be found defective and cannot be perfected, then this agreement shall be null and void and the deposit shall be returned to the Buyers, without interest, damages or costs. If legal steps are necessary to perfect the title, such action must be taken promptly by the Sellers at their own expense, whereupon the time herein specified for settlement will be extended for the period necessary for such prompt action, not to exceed 30 days or by written agreement for a longer extension.

6. ADJUSTMENTS Ground rent, rent, water rent, taxes (including Metropolitan District or County Sanitary Commission charges for sewer and water, if any) and all other public charges on an annual basis, against the premises shall be apportioned as of date of settlement unless otherwise agreed upon herein. Cost of all documentary stamps and transfer tax where required by law, shall be divided equally between the parties hereto. The Buyer may select his own Titles Insurance, Settlement or Escrow, or Title Attorney.

7. INSURANCE It is agreed that until settlement, the Sellers shall bear full risk for damages to the property resulting from fire, wind malicious mischief, vandalism, theft or any other perils; not to exceed the purchase price.

8. AGREEMENT OF PARTIES The parties to this contract mutually agree that it shall be binding upon them, their respective heirs, personal representatives, successors and assigns: that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein; that this contract together with any included addenda, contains the final and entire agreement between the parties hereto, and neither they nor their agents shall be bound by any terms, conditions statements, warranties or representations, oral or written, not herein contained.

9. COMMISSION The Seller recognize Idle Realty, Inc. as the Listing Broker and Idle Realty, Inc. as the Selling Broker negotiating this contract and agrees to pay a brokerage fee for services rendered amounting to 10 % of the sales price, and the party supervising the settlement is hereby authorized and directed to deduct the aforesaid brokerage fee from the proceeds of the sale and pay to the Listing Broker ____%and to the Selling Broker ____% of the total commission due.

10. INFORMATION TO BE FURNISHED The parties hereto agree to furnish to the Broker, settlement attorney and/or any lending institution upon request such information [illegible]

11. SPECIAL CONDITIONS Agriculture [illegible] property may be subject to an agriculture transfer tax under Sec. 7-[illegible] Code of Maryland, as amended, which tax (if any) purchaser [illegible] to pay in full.

WITNESSETH: That the Seller does hereby bargain and sell unto the said Buyer and the Buyer does hereby purchase from the Seller the above described property and that we the undersigned do hereby ratify, accept and acknowledge the above to be our Contract of Sale.

Date of Acceptance 3/13/90

Seller _____ Buyer _____

Seller _____ Buyer _____

EXHIBIT 1

BIDLE REALTY
203 W. Main St.
Middletown, MD

ADDENDUM

March 10, 1982

Seller: James R. & Barbara Remsburg

Purchaser: Jerome T. Lamprecht

Property known as: Old Middletown Rd., Liber 994, Folio 288.

1. See attached plat for exact location of property marked in red. Purchaser is buying 3 acres plus or minus of the Remsburg property. This acreage is located at the highest point of elevation of the middle field within the fenced-in area.

2. Purchaser gives equal rights to seller to egress and ingress of said right-of-way. If property of seller is sold, this right to the use of the right-of-way will pass with the property. Right-of-way cannot be fenced.

3. Purchaser will allow seller to plant crops that will be harvested by the settlement date.

4. Contingent on purchaser obtaining an approval from the F.C.C. and Frederick County Planning and Zoning Commission to place FM Radio Tower on this parcel of land for the purpose of transmitting channel 276A. If this approval is not obtained, this contract is null and void and the deposit shall be returned in full.

5. Sellers agrees to give to the buyer ingress and egress thru their property for construction of a Radio Tower.

6. Special Notice. The Broker(s) assume no responsibility for the condition of the property nor for the performance of this contract by any or all parties hereto. Purchaser hereby warrants and represents unto the real estate brokers herein that no Broker(s), servant or employee of said real estate broker(s) has made any statement, representation or warranty to them regarding the condition of the premises or any part thereof upon which Purchaser has relied and which is not contained in this contract.

7. Agreement of Principals. The principals to this contract mutually agree that it shall be binding upon them, their heirs, personal representatives, successors and assigns, that this contract contains the final and entire agreement between the parties hereto, and neither they nor their Broker(s) shall be bound by any terms, conditions, statements, warranties or representations, oral or written not herein contained.

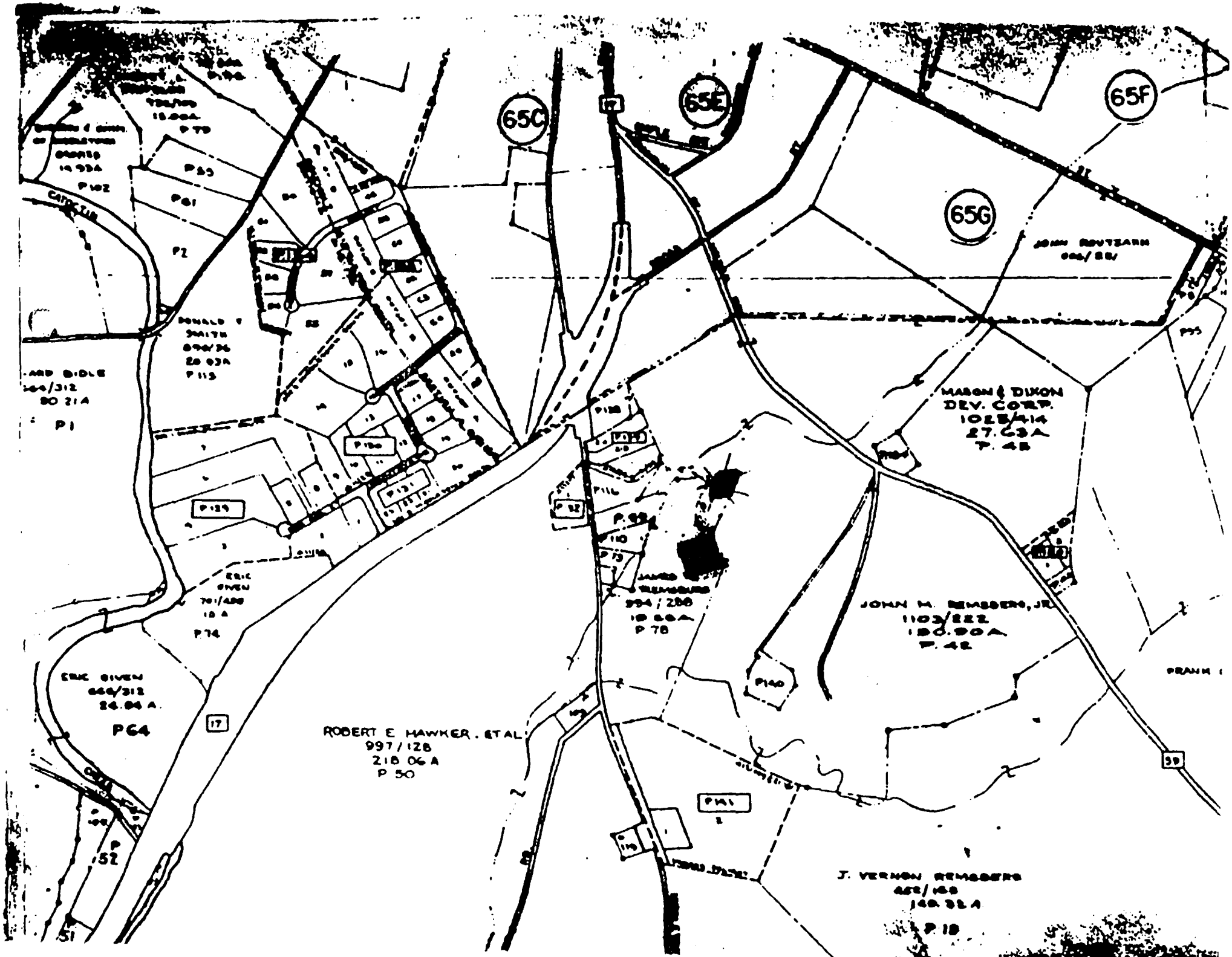
Date of Acceptance 3/13/82

Seller

Seller

Purchaser

Purchaser


65C
65E
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17
P1
P2
P64
P52
P74
P78
P140
P141
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P130
P131
P128
P116
P110
P73
P55
P61
P102
P 79
P 115
P 52
P 51
ERIC GIVEN
ROBERT E HAWKER, ET AL
997/128
218.06 A
P 50
MASON & DIXON
DEV. CORP.
1025/414
27.63 A
P. 48
JOHN M. REMSBERG, JR
1103/222
130.90 A
P. 42
J. VERNON REMSBERG
P 18
59

J. Thomas Lamprecht
112 S. Baywood Lane
Greenville, NC 27834

September 7, 1990

Mr. Dave Yinger
P.O. Box 237
Braddock Heights, MD 21714

Dear Dave:

It was good to make your acquaintance via the telephone. This letter is to confirm our conversation that if we obtain the FM license for 103.1 you will lease to us tower space and transmitter space at the base of the tower. We also would be interested in the possibility of renting office and studio space from you.

Sincerely,

Tom Lamprecht

J. Thomas Lamprecht

EXHIBIT 2

EXHIBIT 3

State of Maryland

County of Frederick

A f f i d a v i t

James R. Remsburg, after being duly sworn does state:

1. I am now and was on March 10, 1982 the owner and a resident on our family farm at 7303 Old Middletown Road, Frederick County Maryland, along with my wife Barbara Ann.

2. On March 10, 1982 my wife and I signed a contract to sell approximately three acres of our farm to Jerome Thomas Lamprecht.

3. The agreement to sell was contingent on Mr. Lamprecht obtaining approval from Frederick County Planning and Zoning and the F.C.C. to place an FM radio tower on the land.

4. Settlement on the purchase was to be held on or before October 1, 1982, and if Mr. Lamprecht did not call for settlement on or before that date the contract was null and void and the deposit was to be returned in full, Mr. Lamprecht's failure to call for settlement ended all obligation I had to sell to Mr. Lamprecht as of October 2, 1982.

5. Thereafter, the property was no longer available for purchase by Mr. Lamprecht. Later, my wife and I developed the property for residential uses. [redacted]

James R. Remsburg

Subscribed and sworn to before me this 12 day of January, 1998

My Commission expires January 1, 2002

Notary Public

EXHIBIT 4

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of:	)	
	)	
JEROME THOMAS LAMPRECHT	)	MM DOCKET NO. 83-985
Middletown, Maryland	)	File No. BPH-820409AB
	)	
For Construction Permit for	)	
New FM Broadcast Station	)	
	)	

To: The Commission

LETTER AFFIDAVIT

Dear Mrs. Marmet:

1. You've asked me if I would make some factual observations on certain events that have occurred in MM Docet No. 83-895 since I issued my Initial Decision in that case on June 8, 1984 (See FCC 84D-42, released June 14, 1984). I have agreed to do so. This letter-affidavit represents those observations.

2. You've also offered me a cash advance to compensate for the time I spent studying and reviewing record documents in the case. I refused to accept any personal compensation. However, we did agree that you would make a $1,500 charitable contribution to:

Aldersgate United Methodist Church
9530 Starkey Road
Seminole, Florida 33777

You have not paid me for any pre-set opinion, and this affidavit provides none.

3. Before preparing this letter-affidavit, I reviewed the following seven documents:

A: A Memorandum Opinion and Order, FCC 84M-062 released January 9, 1984. There a 47 CFR 1.65 failure-to-update issue was added against another applicant to this proceeding, Dragon Communications, Inc. See FCC 84D-82 supra at Footnote 1;

B: Jerome Thomas Lamprecht's Proposed Findings of Fact and Conclusions of Law filed April 27, 1984;

C: The Initial Decision of Administrative Law Judge Walter C. Miller, FCC 84D-42, issued June 8, 1984 and released June 14, 1984;

D: A Federal Communication Commission Memorandum Opinion and Order, FCC 92-450 released October 15, 1992. There the full Commission granted Barbara D. Marmet's application (File No. BPH-820908 AW) and denied Jerome Thomas Lamprecht's application (BPH-820409AB);

E: A Request for Action on Motion to Dismiss Application of J.T. Lamprecht and Request to Terminate Proceeding filed by Barbara D. Marmet on January 20, 1998;

F: Jerome Thomas Lamprecht's Opposition to Marmet's Requst for Action on Motion to Dismiss Application filed January 29, 1998; and

G: Reply to Lamprecht's Opposition to Marmet's Request for Action on Motion to Dismiss Application of J.T. Lamprecht and Request to Terminate Proceeding filed by Barbara D. Marmet on February 10, 1998.

When referring to the above documents, reference will be made to the paragraph-letter designation; e.g. the Presiding Officer's 1984 Initial Decision will be referred to as Para. 3C supra.

4. Now a resident of Florida, I am a retired Administrative Law Judge from the Federal Communications Commission. I presided over the FCC hearing on the four mutually-exclusive applications for FM Channel 276A, Middletown, Maryland. See Para. 3C supra at paras. 1-3.

5. After hearing the evidence in the proceeding I issued an Initial Decision on June 8, 1984. It granted Barbara Marmet's application (BPH-820908 AW) and denied the other three. See Para. 3C supra at Conclusion 15 (Ultimate Conclusion).

6. In so doing, the Presiding Officer relied on two precepts fundamental to communication law. First, only basically qualified applicants can be granted a broadcast construction permit. Stated another way, a broadcast applicant must demonstrate, from the outset, that they are legally, technically, financially, and otherwise qualified to become a Commission licensee. See 47 USC 308(b). And secondly, where there is more than one applicant for the same broadcast frequency, and a decision must be made to determine which applicant will offer the best practicable

service to the public, only basically qualified applicants are entitled to such a comparison.

7. Moreover, in determining whether a given applicant is technically qualified to be a Commission licensee, the Commission and its staff must be satisfied that the applicant has a broadcast transmitter site available (a piece of land), and that that transmitter site is suitable for the power, frequency, and hours of operation the applicant proposes.

8. Availability and suitability are indispensable factors. For the Commission uses the proposed transmitter site to determine who the applicant will serve; how many people the applicant can serve; where those people are located; whether there are any other broadcast services available to such people; and whether the applicant's proposed signal will cause technical interference to some other existing broadcast operation. Stated another way, the transmitter site is the sine qua non of broadcasting.

9. Jerome Thomas Lamprecht filed his FM application for Middletown, Maryland, on April 9, 1982. There he represented that he had an available, suitable transmitter site; i.e. a three-acre tract of land that he proposed to purchase from a James R. Remsburg and his wife. He did, in fact, have such land available at that time.

10. However, several months later; i.e., on October 2, 1982, Lamprecht lost his right to purchase the Remsburg site. Thus, he was no longer basically qualified to become a Commissioner licensee. See Para. 3E supra.

11. Lamprecht never amended his application to show his changed circumstances. And although the proceeding was still in the pre-designation phase, he apparently made no effort to find a new transmitter site. Instead he concealed his deficiency and allowed the Commission's processing staff to process the Remsburg site location. Thus, even before the case was designated for hearing Lamprecht displayed a lack of candor. He was less than candid both with the Commission and his three mutually-exclusive opponents.

12. Consequently, when the Commission set the case down for hearing the following year, they unwittingly did not specify a basic qualifying issue (a site availability issue) against Lamprecht. See 48 F.R. 45598 published October 6, 1983; and Para. 3C supra at para. 3.

13. Lamprecht continued to deceive at both the January 9, 1984 prehearing conference and the March 13 and 14, 1984 hearings. During this time period he was certainly aware that he was required to keep his application up-to-date in all material respects. See 47 CFR 1.65 and Para. 3A supra. But he gave no indication to the Presiding Officer or to the other parties that he was no longer a basically qualified

applicant and was therefore no longer entitled to a comparison under the standard comparative issue.

14. In addition, Lamprecht's lack of candor raised serious comparative consequences. In determining which applicant will offer the best practicable service to the public, the trier-of-fact must determine whether any applicant deserves a comparative preference because of a superior areas and populations proposal. See Para. 3C supra at Conclusion 5(5).

15. Lamprecht filed less-than-candid proposed findings on this point. On April 27, 1984, Lamprecht represented to the Presiding Officer that the Remsburg site was still available to him, that he was entitled to areas and populations calculated from that site, and that therefore no comparative coverage enhancement could be awarded. See Para. 3B at Proposed Finding 53 and proposed Conclusion 32.

16. Completely unaware that Lamprecht was subverting the Commission's processes, the Presiding Officer made findings and conclusions based on the assumption that Lamprecht had reasonable assurance that the Remsburg land tract was still available to him. See Para. 3C, FCC 84D-42 at Finding 49 and Conclusion 14.

17. It appears, based on the documents listed in Para. 3 supra, that Lamprecht has continued to press for a favorable comparative analysis that he wasn't entitled to in the first place. He has continued to improperly lead everyone to believe that he's basically qualified to have his application granted. He has misled the then Review Board; he has misled the full Commission; and he has twice misled the Court of Appeals. He even continued his lack of candor before the Judiciary Committee of the House of Representatives on Thursday, June 26, 1997, at 9:00 a.m. See Para. 3E, Attachment 4.

18. Mrs. Marmet: based on the observations contained in the previous paragraph, it appears that a lot of time, money, and energy has been wasted on a fictional application. Jerome Lamprecht has not had a transmitter site since October 2, 1982: i.e., he has not been basically qualified to be a commission licensee for the last 15 years. This is a sad waste of the taxpayer's money.

19. Part of this waste can be traced to a lack of focus. Everyone has concentrated their attention on one of the comparative criteria, the female gender preference. They have ignored the more important but less glamorous engineering facets of Lamprecht's proposal. But this lack of focus can be directly traced back to Lamprecht's lack of candor.

20. Although it has never been critical to the outcome of the procedure, the Presiding Officer did address and analyze the female gender preference. See Para. 3C supra at Conclusions 11-12 and Footnote 11. He did so because he would have been remiss in his duty not to do so. After all, in those days, minority and female gender

preferences were red-hot items and newsworthy subjects. So not to have made that legal analysis could have resulted in an injustice to any one or all four applicants.

21. Unaware of Lamprecht's lack of candor, the Presiding Officer was admittedly impressed with Lamprecht's career broadcast qualifications. He saw in Lamprecht a potential career broadcaster. See Para. 3C supra at Findings 13-17 and Footnote 11. However, even after giving Lamprecht full comparative credit for his potential, Barbara Marmet was still "...a comfortable winner...". The correctness of that conclusion is now fortified by the fact that Lamprecht - Marmet's leading comparative opponent - was never entitled to a comparative analysis in the first place.

22. In addition, since Lamprecht has abused both the FCC's and the Court of Appeal's processes, his character qualifications are deficient. This would have been an independent reason for not giving Lamprecht a cooperative analysis.

23. In Para. 3E supra at Footnote 1 you point out that the Commission granted your unopposed application for license on December 20, 1994 (BLH-900514 KB), your unopposed renewal on September 22, 1995 (BRH-950530 UA), and your unopposed pro forma assignment application (BALH-951120 GE) on December 4, 1995. Accordingly, I empathize with your concern over the cloud Lamprecht has placed over your FM operation. Perhaps the Commission can remove that cloud by simply terminating the proceeding. Certainly Lamprecht's incomplete and deficient application doesn't justify the existence of such a cloud.

Sincerely,

Walter C. Miller

Walter C. Miller

Lou Ann Lee

Lou Ann Lee

March 9, 1998

LOU ANN LEE
MY COMMISSION # CC 528220
EXPIRES: January 29, 2000
Bonded Thru Notary Public Underwriters

EXHIBIT 5

DUNCAN, WEINBERG, MILLER
& PEMBROKE P.C.
MAY 1 1 1998

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-1052 **September Term, 1997**

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAY 8 1998
CLERK

In re: Jerome Thomas Lamprecht,
Petitioner

BEFORE: Ginsburg, Randolph, and Tatel, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, the opposition thereto, and the reply, it is

ORDERED that the petition be denied. Petitioner has not established that he is entitled to the grant of his application. See Lamprecht v. FCC, 958 F.2d 382, 398-99 (D.C. Cir. 1992) (declining to award petitioner the permit where FCC's initial decision relied on unconstitutional factor but was "not susceptible to mathematical adjustment by this court"). Moreover, to the extent that petitioner merely seeks a ruling on his application, the FCC represents that it "anticipate[s] Commission action by August 1998 that will address the issues that gave rise to the freeze on further action with respect to applicants like [petitioner]." Opposition at 2. In light of this representation, we deny the petition without prejudice to refiling if the Commission does not take appropriate action by August.

Per Curiam

DHG/gmt

CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., do hereby certify that I have caused to be served by mail, First Class postage prepaid, this 1st day of October, copies of the foregoing "Renewed Motion To Dismiss Application Of J. Thomas Lamprecht And Waiver Request", on the following persons:

R. Hewitt Pate, Esquire
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

John I. Riffer, Esquire *
Assistant General Counsel - Administrative Law
Office of General Counsel
Federal Communications Commission
Room 610
1919 M Street, NW
Washington, DC 20554

Norman Goldstein, Esquire *
Mass Media Bureau
Federal Communications Commission
Room 8210
2025 M Street, NW
Washington, D.C. 20554

Harold K. McCombs, Jr.

Harold K. McCombs, Jr.

* By Hand