

Lincoln MA Planning Board

09/28/00

Subject: Amicus Curiae in support of Petition for Certiorari of Citizens for Appropriate Placement of Telecommunications Facilities, et al.

SUMMARY

By unanimous vote, the Lincoln MA Board of Selectmen and Planning Board have decided to submit this amicus curiae.

In 1997, in response to the Federal Telecommunications Act (FTA), the Lincoln Planning Board held its first public hearing regarding a proposed zoning by-law to allow Wireless Communications Facilities (WCF) by creating an overlay district. In preparation, the board had previously appointed a task force of resident scientists, communications engineers and a lawyer to make recommendations for the proposed new by-law. The task force met with representatives from the wireless service providers and industry experts. They also reviewed propagation studies furnished by several wireless service providers, and our local topography. A number of potential sites were identified and prioritized. Town meeting voted to place 6 scattered sites within the WCF overlay district, with 2 of these sites bordering Route 2, a major arterial highway bisecting the town. WCF within the district are permitted through a special permit process with the Planning Board.

To date the wireless service providers are concentrating on the Route 2 corridor, with two WCF permitted. However, one antenna tower will be built outside of the zoning overlay district, since a federal court determined that one of the overlay district properties was unavailable when that private property owner refused to negotiate with one of the wireless service providers. (That owner had previously been negotiating with a competing provider). As a result, the town will now have an 89' high red and white striped tower with a blinking red light built outside of the zoning overlay district in a developed residential neighborhood and less than five feet from the neighboring property.

Repeatedly, public hearings and town meeting discussions on the WCF by-law, focused on the potential biological hazards of low level microwave radiation; yet the FTA language, as drafted with much assistance from the wireless industry, specifically prohibits towns to consider of environmental factors in dealing with WCF. Nevertheless, the adopted Lincoln by-law includes language that allows the planning board to consider ***“potential human health effects to the extent not contrary to federal law”***.

Original standards for public safety, adopted by the FCC, were based on the heating effects on biological tissue of low levels of microwave energy. These standards were promulgated by the wireless service industry. They completely neglected to consider non-thermal effects of microwave emissions on humans. Several recent peer reviewed scientific studies have raised significant concerns about such hazards, especially to children. While the FCC is not equipped to conduct studies of either thermal or non-thermal biological effects from microwave energy, it has seen fit to minimize the hazards of such effects. Moreover, Congress has not funded any of the proposed independent research by the Environmental Protection Agency (EPA). Are the communication industry corporations and the FCC understating the health hazards? As a result, we are living in fear.

A federal court has ruled in favor of a corporation over the right of a town, and a clear majority of its citizens, to regulate its zoning in matters of health and safety. Why safety, too? The accident rate on Route 2 may increase as drivers begin to accept the distractions of using cell phones.

The following action was also taken by Town Meeting: ***“That it is the sense of this meeting, setting aside legal and financial considerations, the town opposes the preemption, by any corporation or state or federal authority or instrumentality thereof, of the duty of Lincoln town officials to protect town residents their health, safety, environment, freedom of speech, and other rights.”***

PUBLIC HEALTH CONSIDERATIONS

At the several public hearings on the proposed WCF town by-law (now adopted), the concern over potential health hazards came up repeatedly. Each time, representatives of the wireless corporations reminded the Planning Board that we were not allowed to consider environmental or health issues relating to wireless communications technologies according to federal law. However, it became clear that the U.S. Congress had failed to fund research on the health effects for low-level, non-heat generating, microwave emissions, even though scientific studies, mostly in foreign countries, suggested potential hazards, especially to children.

In our public hearings, the planning board also learned that the maximum acceptable threshold levels of microwave emissions were much lower in other countries. The current acceptable emission standards established by the FCC fail to consider non-thermal biological effects of microwave energy.

PUBLIC SAFETY CONSIDERATIONS

Driving a vehicle is a responsibility that requires focus and attention. Accidents occur when a driver's attention is diverted, if only for a few seconds. Most cell phones require the user to hold the device adjacent to the ear and mouth. When initiating a call, the user must look at the device to manipulate the buttons. During this process while driving, both hands are off the wheel and the driver is not watching the vehicle's path of travel. This is irresponsible behavior, and should not be permitted. In our town the wireless service providers have been focusing their coverage on Route 2, where the majority of traffic occurs. It is a high-speed highway with a large volume of vehicles every day. During commuting hours it is at full capacity. We want our roads to be safe. Current cell phone design does not encourage safety, even though the portable telephone is a wonderful tool to call for quick assistance after the accident has occurred.

CONSIDERATIONS FOR THE COURT

- Why has Congress failed to appropriate funds for a comprehensive and continuing study of the non-thermal biological effects at different microwave emission levels, even though it charged the EPA to take the “lead role” for such research in 1970?
- Could it be because the wireless industry does not want the EPA involved?
- Why did the wireless facilities service providers contribute over 4 million dollars to the election campaigns of key members of Congress just prior to the enactment of the Telecommunications Act of 1996?
- Who actually drafted and lobbied for this legislation?
- Was it developed by and for the wireless communications industry?
- Whose interests are being protected?
- What is the appropriate role of government in matters of public health and public safety?
- Has corporate power usurped the power of the individual?
- Was this the intent of the framers of our constitution?

As members of the Board of Selectmen and Planning Board, we are deeply concerned because our government has failed in its responsibility to set convincing health standards for cellular microwave emissions. Current standards were set by the FCC, in cooperation with the wireless service providers, rather than by any independent health agency. They appear unduly suspect. Given the responsibility of our government to protect its citizens, health standards must truly be above suspicion. We ask the court to do everything in its power to correct this inequity.

APPENDIX A

Town of Lincoln By-Law relating to Wireless Communications Facilities

12.6.1 WCF - WIRELESS COMMUNICATIO S FACILITIES OVERLAY DISTRICT

12.6.2 PURPOSE The purpose of this section is to establish areas in which Wireless Communications Facilities may be provided while protecting Lincoln’s unique community character. The WCF – Wireless Communications Facilities Overlay District (WCF District) has been created (a) to provide for safe and appropriate siting of Wireless Communications Facilities consistent with the Telecommunications Act of 1996, and (b) to minimize visual and other impacts of such facilities.

12.6.3 LOCATION The WCF District shall consist of the following parcels:

<u>Assessor Map Parcel No.</u>	<u>Location Street Address</u>	<u>Approximate Acreage</u>
14-16	17 Cambridge Turnpike	30.7
19-4	Mill Street	37.15
48-7	295 Cambridge Turnpike	83.75
96-2	169 Lincoln Road	1.95
103-6	30 Lewis Street	3.28
44-2	51 Sandy Pond Road	20.46

12.6.4 APPLICABILITY The WCF District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning shall remain in full force and effect, except as may be specifically superceded herein.

12.6.5 SUBMITTAL REQUIREMENTS As part of any application for a special permit, applicants shall submit, at

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a minimum, the information required for site plan approval, as set forth herein at Section 17. In addition and without limiting the foregoing, the applicant shall also provide the following supplementary information:

- (a) notarized statement signed by the applicant(s) that all information included in the submittal is materially accurate, true, complete, and verifiable (inaccurate, untrue, misleading or false information submitted in pursuit of a special permit by the applicant, the provider company or their agents may be grounds for denial of a special permit).
- (b) A map of the entire town and the area within two (2) miles of Lincoln's boundaries showing the location(s) of:
 - 1) Existing Wireless Communications Facilities and proposed facilities to be applied for over the next 20 months by the applicant's wireless communications service provider company.
 - 2) Existing Wireless Communications Facilities and known proposed facilities of other service provider companies;
- (c) Data from field measurements taken at the proposed site defining the existing radio frequency emission levels. Such measurements shall be taken within 45 days of the application in a form acceptable to the Planning Board;
- (d) Equipment data and drawings, catalog brochures, manufacturer's specifications, photographs, etc. describing equipment, antenna, equipment mounts, equipment shelters and security barriers;
- (e) Plan at 1" = 40' scale for proposed Wireless Communications Facilities showing the following within the designated district:
 - 1) Location of tree cover within 500 feet of the proposed facility;
 - 2) Dominant tree specie for each area of tree cover;
 - 3) Average height of existing tree cover;

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- 4) Topography contour lines at two foot intervals within 500 feet of proposed Wireless Communications Facility site. Reference contours to mean sea level datum;
- (f) Drawing(s) of cross sections at 1" = 40' horizontal scale and 1" = 20' vertical scale taken at 20 degree (horizontal plane) intervals around the center of the proposed facility and extending 500 feet on each side. Cross section drawings to indicate existing and proposed ground surface, existing and proposed structures, and existing tree cover and proposed new landscape screening materials;
- (g) Proposed schedule, including alternate dates, and arrangements for a temporary test of proposed facility, showing the proposed height and demonstrating its visual impact using such devices as the Planning Board may suggest, such as a guyed balloon or crane. Applicant shall arrange and pay costs for the test(s). The applicant shall give notice of the test(s) by publication in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than fourteen days before the date of the test and by posting the notice in a conspicuous place in the town hall for a period of not less than 14 days before the date of the test(s). At the request of the Planning Board additional test(s) may be required showing alternate heights or locations on the property.
- (h) Plan at 1" = 20' scale of proposed Wireless Communications Facilities showing the following within the designated overlay district:
 - 1) the proposed facility
 - 2) Topographical contour lines within hundred fifty (150) foot radius from the base of the antenna(s)
 - 3) Location and respective elevation of the top of all trees over twenty (20) feet tall within a hundred fifty (150) foot radius from the base of the antenna(s). Elevations are with respect to mean sea level datum.

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Applicants shall also provide such specific information with regard to the proposed facility or matters related thereto as the Board may require. These submittal requirements shall also apply to any application for a modification to or renewal of an existing special permit for a Wireless Communications Facility, but an applicant will not be required to submit duplicate information.

12.6.4.1 A pre-application conference between the proposed applicant(s) and the Planning Board shall be scheduled
(NOT COMPLETE - TO BE CONTINUED)

APPENDIX B

Bibliography of Peer Reviewed Scientific Papers that Address Low Level (non-thermal) Microwave Radiation - Public Health Issues.

(Insert here)